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Human Rights Defense Network (RNDDH)

**Errors in publication of the
Constitutional Law amending the 1987
Constitution: RNDDH provides an
update**



October 27, 2011

I. Introduction

The ***Constitutional Law amending the 1987 Constitution*** was published in the country official newspaper, under the initiative of the President of Republic at the time, Rene Preval. However, many errors have crept into the amended Acts, which brought President Joseph Michel Martelly to order the withdrawal of the published text.

The ***National Human Rights Defense Network*** (RNDDH) has closely followed the process which led to adoption of this Act and its publication in Moniteur. It is necessary to share with everyone interested in this issue, a summary of the Act adopted, with organization comments and recommendations.

II. Contextualization

Throughout his second term, former President Rene Preval has openly accused the 1987 Constitution to be a source of political instability and a major handicap to the smooth running of institutions and development of the country. According to President Rene Preval, the 1987 Constitution reduces the possibility of a return to dictatorial power while making difficult the establishment of a true democratic power.

For example, President Rene Preval criticizes the frequency of renewal of by- elections, every two (2) years, of the one third of the Senate because of the high financial cost involved in organizing elections. He also regrets the inability of the President to dismiss a Prime Minister he has nominated himself and, he is also allowed to run office for two (2) consecutive terms, thereby imposing a discontinuity in programs implementation.

Therefore, President Rene Preval, in the framework of an advocacy around the issue, has held several meetings that have focused on amending the 1987 Constitution. A Commission in charge of working on this issue was established in 2007.

At the end of his term, President Rene Preval has proposed in the last session of the 48th Legislature a draft amendment of the 1987 Constitution. This draft amendment was passed by the Legislature and declaration of Amendment was published in Moniteur number 109 on Tuesday, October 6, 2009 before being submitted to the 49th parliamentary term.

ational Constituent Assembly to finalize amendment in
ay, May 13, 2011, **the Constitutional Law** amending the
1987 Constitution was published in Moniteur number 58.

This publication has been subjected to many questions due to the fact that the text published differs from the text actually adopted by the **National Constituent Assembly**. In fact, several Members of Parliament have protested against the published text arguing that some items are different from the text adopted. There was havoc afterwards and President Joseph Michel Martelly was forced to issue an order published in Moniteur number 71 in June 3, 2011, the withdrawal of the text while waiting for the official text to be found.

III. A look at the law amending the 1987 Constitution

The amended Constitution is a step forward in the declaration of the rights of citizens in social, political and cultural perspectives.

In fact, it introduces in Articles 17.1 and 31.1.1 the quota for women's participation in public services and political parties. In Article 253.1, it deals with commitment of state institutions in restoring ecological balance.

It devotes in Article 184.2, establishment of the **Superior Council of Judiciary** who would have the right to monitor and discipline Judges. It requires, in Article 285, creation of the **Permanent Electoral Council** (CEP) and the **Superior Council of Judiciary** (CSPJ) three (3) months after the amended Constitution came into force.

In addition, the amended Constitution provides the creation of **Constitutional Council** which is made up of nine (9) members. Under sections 190 bis and further, the Council is responsible for ensuring the constitutionality of laws. It is therefore necessary to regulate government authorities in order to prevent power abuses, adoption and application of unconstitutional laws and arbitrary measures of public authorities.

However, we should also note that among negative charges in the amended Constitution, features the change made in the process to follow to establish the **Permanent Electoral Council** whose prior membership was based on the participation of Departmental Assemblies.

IV. Adopted Amendments

The need to save achievements of amended Constitution has made RNDDH to redouble its efforts to obtain the true version of the text adopted by **National Constituent Assembly**.

Errors in publication of the Constitutional Law amending the 1987 Constitution: RNDDH provides an update

visions of the 1987 Constitution, proposed amendments by 48th Legislature and amendments adopted by the **National Constituent Assembly**:

1987 Constitution	Proposed amendments in the Amendment Declaration of Legislature	Adopted Amendements
Haitian nationality		
<p>Article 1: Haiti is an indivisible, sovereign, independent, corporatist, free, democratic and social Republic.</p>	<p>Article 1: Haiti is a sovereign, independent, free, democratic and social republic.</p>	<p>Article 1: Haiti is a sovereign, independent, free, democratic and united republic.</p>
<p>Article 11: Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality at the time of birth.</p>	<p>Article 11: Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and had not renounced their nationality possesses Haitian nationality at the time of birth.</p> <p>Repudiation of nationality means a formal declaration before a court in accordance with the Haitian law.</p>	<p>Article 11: Any person born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality possesses Haitian nationality at the time of birth.</p> <p>Article 11.1: The Law establishes conditions under which an individual may acquire Haitian nationality</p>
<p>Article 12: Haitian nationality may be acquired by Naturalization.</p> <p>Article 12.1: Any foreigner after five (5) years of continuous residence in the country may obtain Haitian nationality by naturalization, in accordance with law established.</p>	<p>Article 12: Everything Haitian is subjected to all the rights and duties attached to his Haitian nationality.</p> <p>No Haitian can take precedence over its foreign nationality within the Haitian Republic with Haitian authorities.</p>	<p>Article 12: Everything Haitian is subjected to all the rights and duties attached to his Haitian nationality</p> <p>No Haitian can take precedence over its foreign nationality in the Haitian Republic.</p>
<p>Article 12.2 : Naturalized Haitians shall be allowed to exercise their right to vote, but must wait five (5) years from the date of their naturalization in order to be eligible to hold public offices different from those provided by the Constitution and by the law to native-born Haitians.</p>		<p>Note: article 12.1, 12.2, 13, 14 and 15 of the 1987 Constitution which deals with Haitian nationality are deleted from the 1987 constitution.</p> <p>Note: multiple nationalities are accepted in the Haitian Constitution with the repeal of the 1987 Constitution and adoption of Article</p>

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<p>lost by:</p> <p>a) Naturalization acquired in a foreign country;</p> <p>b) Taking up a political post in the service of a foreign country;</p> <p>c) Continuous residence abroad for three (3) years of a naturalized Haitian without authorization duly granted by Competent Authority.</p> <p>Anyone who loses the Haitian nationality this way shall not recover it.</p> <p>Article 14: A naturalized Haitian in a foreign country may recover his Haitian nationality by meeting all the conditions and formalities imposed in alien country in accordance with the law.</p> <p>Article 15: The dual nationality, both Haitian and foreign is allowed under no circumstance.</p>		<p>12 of the Declaration of amendments.</p>
Quality of Citizen		
<p>Article 16: The union of civil and political rights makes quality of citizen.</p> <p>Article 16.1 Enjoying, Exercising, suspension and loss of these rights are regulated by law.</p>	<p>Article 16: Enjoying, exercising Civil and Political Rights are the quality of citizen. Suspension and loss of these rights are regulated by the Law.</p> <p>article 16.1 : The 1987 Constitution is repealed</p>	<p>Note: This article is adopted as formulated in the declaration of amendment. No proposal has been made on it in the Bicameral Commission report.</p>
Eligibility Criteria for the President, Senators and Members of Parliament		
<p>Article 135 : To be elected President of the Republic of Haiti, it is necessary:</p> <p>a) to be native-Haitian and has</p>	<p>Article 135 : To be elected President of the Republic of Haiti, it is necessary to:</p> <p>a) to be native-Haitian and had not</p>	<p>Article 135 : To be elected President of the Republic of Haiti, it is necessary to</p> <p>a) be native- Haitian and has never</p>

	his nationality;	renounced his Haitian nationality and not hold any other nationality at the time of registration;
Article 91 : To be a member of the Chamber of Deputies, it is necessary: 1) to be a native-Haitian and has never renounced his nationality;	Article 91 : To be a member of the Chamber of Deputies it is necessary: 1) to be native-Haitian and had not renounced their nationality	Article 91 : To be a member of the Chamber of it is necessary: 1)to be a native-Haitian, never had renounced Haitian nationality and not holding any other nationality at the time of registration ;
Article 96 : To be elected senator it is necessary 1) to be native-Haitian and never had renounced his nationality; 4) to be residing in the department to be represented at least four (4) consecutive years preceding the election date;	Article 96 : To be elected senator it is necessary: 1) be native-Haitian and had not renounced his citizenship; 4) to be residing in the department to be represented at least three (3) consecutive years preceding the election;	Article 96 : To be elected senator it is necessary: 1) to be residing in the department to be represented at least three (3) consecutive years preceding the election 4) to be residing in the department to be represented at least three (3) consecutive years preceding election date;
Nomination Criteria for Minister		
	Article 172.1 : To be appointed as a Minister it is necessary: 1) to be Haitian;	Article 172.1 : To be appointed as Minister it is necessary: 1) to be Haitian and produce proof of having met all the requirements as a tax domiciled citizen in Haiti, own real estate that can ensure and protect the State and hold no other nationality at the time of appointment;
Women's participation in the government		
	Article 17.1 : At least, quota principle of thirty percent (30%) of women is recognized at all levels in the government namely in public services	Article 17.1 : At least, quota principle of thirty percent (30%) of women is recognized at all levels in the government namely in public services
	Article 31.1.1 : Any law relating to political parties must contain in its structures and operational mechanisms process in accordance with the quota principles of at least	Article 31.1.1 : Any law relating to political parties must contain in its structures and working mechanisms a process in accordance with the quota principles of at least thirty

	ent (30%) expressed in	percent (30%) expressed in Article 17.1
Parliamentarians - Senators and the President of the Republic's Term of office		
<p>Article 90.1: The member of parliament is elected with an absolute majority of votes cast in the primary assemblies, depending on conditions and rules established by electoral law.</p>	<p>Article 90.1: Electing a member of parliament at the end of the fifth year of his term. He is elected with an absolute majority of votes cast in the electoral assemblies through valid votes in accordance with electoral law.</p>	<p>Article 90.1: Electing a member of parliament is held on the last Sunday of October in the fourth year of his term. He is elected with an absolute majority of popular votes in the electoral assemblies through valid votes under electoral law.</p>
<p>Article 92: Parliamentarians are elected for four (4) years and are re-elected indefinitely</p> <p>Article 95: Senators are elected for six (6) years and are re-elected indefinitely</p>	<p>Article 92: Parliamentarians are elected for five (5) years and are re-elected indefinitely</p> <p>Article 95: Senators are elected for five (5) years and are re-elected indefinitely. They take office on the second Monday in January following their election. Should elections not be completed before the second Monday in January, Senators elected shall take office immediately after confirmation of their election and term of five (5) years is expected to have started on the second Monday of January of the year they resume office.</p>	<p>Article 92: Parliamentarians are elected for four (4) years and are re-elected indefinitely</p> <p>Article 95: Senators are elected for six (6) years and are re-elected indefinitely.</p>
<p>Article 285: National Council of Government shall remain in office until February 7, 1988, date of investiture of the President of Republic elected under this Constitution, in accordance with electoral timetable.</p>	<p>Deletion of article 285</p>	
<p>Article 134.1: The presidential term is five (5) years. This period begins and ends in February 7 after election date.</p> <p>Article 134.2: The presidential elections were held on last</p>	<p>Article 134.1: The presidential term limit is five (5) years.</p>	<p>Article 134.1: The presidential term is five (5) years. This period begins and ends February 7 after election date.</p> <p>Article 134.2: Presidential election</p>

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14.2: The presidential election takes place at the end of the fifth year of presidential term. The President-elect takes office on Feb. 7 after the date of his election. If Election can take place before 7 February, the President-elect shall take office immediately after validation of election and his term of office is supposed to have commenced on 7 February of the year of election.

held on the last Sunday in October of the fifth year of presidential term. The President-elect takes office on Feb. 7 after the date of his election. If Election can take place before 7 February, the President elect shall assume office immediately after validation of election and his term is supposed to have commenced on 7 February of election year.

Motion of inquiry on the Prime Minister

Article 129.6: The Legislature may not take more than a vote of no confidence a year on a matter related to a general government policy declaration.

Article 129.6: The Legislative body may not take for the Prime Minister, more than a vote of non-confidence yearly. Any Prime Minister who obtained a vote of confidence can be arrested within a year (1) after this vote of confidence.

Article 129.6: Legislative Body can not take more than a vote for the Prime Minister yearly. Any Prime Minister who obtained a confidence vote could be arrested within six (6) months after the vote of confidence.

Failure of a non - confidence motion, voted in either House, for the Prime Minister is a vote of confidence.

Failure of a motion of non confidence vote in either House, for the Prime Minister represent a vote of confidence

Article 129.3: Motion of inquiry request must be seconded by five (5) members of the body concerned. It becomes a vote of confidence or censure passed by majority of that body.

Article 129.3: Motion of inquiry request must be supported by one-quarter (1/4) members of the body concerned. It becomes a vote of confidence or censure passed by majority of that body.

Article 129.3: Motion of inquiry request must be supported by one-quarter (1/4) members of the body concerned. It becomes a vote of confidence or censure passed by majority of that body.

Article 149.2: No procedure for government inquiry can be initiated during temporary busy period incapacity of the President of the Republic or presidential vacancy. When such a procedure was initiated before the period is suspended

Article 149.2: No procedure for government inquiry can be initiated during temporary busy period incapacity of the President of the Republic or presidential vacancy. When such a procedure was initiated before the period is suspended

Law enforcement authorities

Article 264: Armed Forces

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<p>Haitian Armed Forces are instituted to ensure security and integrity of the Republic.</p>	<p>s, Sea, Air and Technical the Haitian Armed Forces are instituted to ensure security and integrity of the Republic.</p>	<p>Land Forces, Sea, Air and Technical Services. The Haitian Armed Forces are instituted to ensure security and integrity of the Republic.</p>
Constitutional Council		
	<p>Article 190bis: The Constitutional Council is the highest court of the State in constitutional matters. It decides on constitutionality of the law and regulations.</p> <p>Its decisions are not subject to any appeal and are binding on public authorities and all administrative and judicial authorities.</p>	<p>Article 190bis: The Constitutional Council is a body responsible for ensuring constitutionality of laws, regulations and administrative acts of the executive.</p> <p>Its decisions are not subject to appeal.</p>
	<p>Article 190ter 1 : To be a member of the Constitutional Council, it is necessary:</p> <ol style="list-style-type: none"> 1. To be a native-Haitian and has not renounced his nationality, 2. be forty (40) years at the time of appointment 3. Enjoy his civil and political rights and never had been sentenced to afflictive and infamous punishment for common crime 4. Owning a building in Haiti or exercising a profession or carrying on a business in Haiti 5. Residing in Haiti for five (5) consecutive years prior to the date of appointment 6. Have been relieved of his 	<p>Article 190ter 1 : To be a member of Constitutional Council it is necessary:</p> <ol style="list-style-type: none"> 1. To be native-Haitian and had never renounced his nationality and hold any other nationality at the time of appointment, 2. be forty (40) years at the time of appointment 3. Enjoy his civil and political rights and never had been sentenced to afflictive and infamous punishment for common crime 4. Owning a building in Haiti or exercising a profession or carrying on a business in Haiti 5. Residing in Haiti for five (5) consecutive years prior to the date of appointment 6. Have been relieved of his responsibilities if one has been

	<p>ities if one has been public funds</p> <p>7. be of good character and high integrity</p>	<p>handling public funds</p> <p>7. be of good character and high integrity</p>
	<p>Article 190ter 5 : The Constitutional Council ensures and shall decide:</p> <p>a) On Constitutionality of organic laws before they are promulgated,</p> <p>b) On Constitutionality of rules and regulations of the Senate and House of Representatives before their implementation.</p> <p>For the same purpose, laws in general may be referred to the Constitutional Council before promulgation by the President of the Republic, Senate President, President of the House of Representatives, a group of fifteen (15) members of Parliament or ten (10) Senators, Political Parties, trade unions and all other legally recognized associations.</p> <p>The law determines other entities empowered to consult the Constitutional Council.</p>	<p>Article 190ter 5 :Constitutional Council ensures and shall decide when it is consulted:</p> <p>a) About Constitutionality of laws before they are promulgated,</p> <p>b) About Constitutionality of rules and regulations of the Senate and the House of Representatives before their implementation.</p> <p>c) About by-laws</p> <p>For the same purpose, laws in general may be referred to Constitutional Council before being promulgated by the President of Republic, Senate President, and President of house of representatives, a group of fifteen (15) members of parliament or ten (10) Senators.</p> <p>The law shall determine procedure for organizing, mode of operation of Constitutional Council and other entities authorized to consult it.</p>
	<p>Article 190ter 7: The Constitutional Council is due to rule on jurisdictional conflicts that arise between the Executive and the Legislative power or the two branches of legislative powers.</p>	<p>Article 190ter 7: The Constitutional Council is due to rule on conflicts between the Executive and the Legislative Power or the two branches of legislative power.</p> <p>Similarly, they decide on</p>

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	they decide on jurisdictional conflicts between	Administrative Courts, Electoral Courts and courts of law.
	al conflicts between	Administrative Courts, Electoral Court and Courts of law.

V. Remarks and recommendations

The 1987 Constitution has never been implemented though it contains provisions which ensure civil, political, economic, social and cultural rights of Haitians and foreigners living in Haiti.

According to him, amended Constitution has many weaknesses. However, it is clear that it meets the social needs of all Haitian citizens. Moreover, it is innovative in that it introduces in the main law, provisions relating to the **Superior Council of the Judiciary, Constitutional Council**, mandatory participation of women in government, protection of environment and rebalancing ecology. It also incorporates provisions on social rights such as right to education and right to training, etc... Consequently, the **Constitutional Law amending the 1987 Constitution** must be considered the result of a tremendous work which has been done by the 48th Legislature and by **National Constituent Assembly**. This work can not be done in vain.

By publishing the above table, RNDDH would like the truth to come about the proposed amendments and those effectively adopted by **National Constituent Assembly**.

With all these considerations, RNDDH would like to recommend to the President of Republic, Joseph Michel Martelly to find the act which will allow him to promulgate the **2011 Constitutional law amending the 1987 Constitution**.