

National Council of Non-state Actors (CONHANE)
National Network for the Defense of Human Rights (RNDDH)
National Episcopal Commission for Justice and Peace (CE-JILAP)
Center for Analysis and Research on Human Rights (CARDH)

**THE UNIQUE NATIONAL IDENTIFICATION CARD: BETWEEN POPULAR
MISTRUST, CORRUPTION OPERATION AND HUMAN RIGHTS VIOLATIONS**

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I. INTRODUCTION

1. In 2018, the Ethics and Anti-corruption Commission of the Senate of the Republic drew the attention of the population to a contract between the Haitian State and the German company DERMALOG Identification Systems GmbH, specialized in the manufacture of biometric devices, aimed at providing identification cards to Haitian citizens.

2. It is quickly reported that the First Lady of the Republic, Martine MOÏSE, was directly involved in the process, at least speeded up, leading to the signature of the contract between, representatives of the State and the National Identification Office (ONI) and the above-mentioned company. In particular, the First Lady is accused of having visited France at least three (3) times during 2017 and of having, during the last trip, accompanied the Director General of the ONI, Jude Jacques ÉLIBERT, to influence the conclusion of the said contract.

3. Several have affirmed that the wife of the President of the Republic's interest in this process of re-registration of citizens is justified for a twofold purpose, which consists in maintaining by all means the Political Party Tèt Kale (PHTK) in power and to earn money.

4. This information considered alarming because of the issues related to the identification of people and the likely impacts on their civil and political rights, has attracted the attention of the Haitian Council of Non-state Actors (CONHANE), the National Network for the Defense of Human Rights (RNDDH), the National Episcopal Commission for Justice and Peace (CE-JILAP) and the Center for Analysis and Research on Human Rights (CARDH), involved for several years in the observation of elections and in the process of strengthening state institutions for the establishment in Haiti of a democratic rule of law.

5. These organizations therefore conducted an investigation into the matter. They examined the context of the creation of the National Identification Office (ONI), analyzed the decrees of September 21, 1987 and June 1, 2005(3) as well as the bill adopted by the Council of Ministers on April 17, 2017, concerning the creation of the ONI, the manufacture of the National Identification Card (CIN) and the attempts to replace it with the Unique National Identification Card (CINU)⁴. In addition, they analyzed the contract binding the Haitian State to the DERMALOG and then went in May, June and July 2019 to the locations of registration of citizens and delivery of the CINU.

6. This report presents the findings of the investigations conducted by the aforementioned organizations.

¹ News item of August 17, 2018, "Public Market: Dermalog file or a brief overview of the willingness to negotiate with the rules";

² News item of July 12, 2018, "Senate Ethics and Anti-corruption Commission/ Invitation, The First Lady Martine Moïse Named in the Dermalog Case"; <https://lenouvelliste.com/article/195753/le-nom-de-la-premiere-dame-martine-moise-cite-in-laffaire-dermalog>¹¹

³ Discovery on the identification of natural persons; 1 June 2005; http://www.migrantsoutremer.org/IMG/pdf/Haiti-Decret-carte_identification_nationale.pdf

Draft law establishing the unique national identification card and relating to the protection of personal data;

<https://www.haitilibre.com/docs/project-legislation-instituant-la-carte-d-identification-nationale-unique-et-portant-sur-la-protection-of-personal-data.pdf>

II. SETTING UP THE ONI

1. Legal framework and creation of the CIN

7. For several years, the identification of the citizens of the country has been a problem to which the decree of September 21, 1987 establishing the National Office for the Identification of Natural Persons attempted to respond.

8. Since this decree has not been implemented, Boniface ALEXANDRE, who took office on February 29, 2004 as President of the Republic⁵, adopted on 1 June 2005, a decree establishing the National Identification Card (CIN).

9. Composed of thirty (30) articles, this decree complements the one establishing the National Office for the Identification of Natural Persons and orders the said Office, in its article 18, to Proceed to the identification of Haitians and Haitians from their births; Maintain the National Identification Register; Receive requests for National Identification Cards; Issue and renew the National Identification Cards; Collaborate with the Haitian Institute of Statistics and Informatics (IHSI) in the census of the population; Perform any other duties assigned to it by law; Collaborating with the Electoral Council for the preparation of lists of electors”.

10. Thus, the creation of the ONI met a twofold fundamental objective: the identification of Haitians and the guarantee of their civil and political rights, in accordance with the Constitution and international instruments to which the State is a party. It is in this sense that Article 3 of the decree in question stipulates that The National Identification Card is issued to any Haitian who has reached the age of eighteen (18) years completed. The issuance of the National Identification Card is an obligation of the State. The first issue of the National Identification Card is free». It is also the only one, under section 12, “to allow an elector to exercise his or her right to vote at any electoral meeting”.

11. According to Articles 4 and 7 of the said Decree, the CIN is not only mandatory for all citizens wishing to hold a position in the public service or a political position, is essential to perform certain important acts in civilian life.

12. The card shall be renewable every ten (10) years and shall contain the following information: name; wife’s name of the married woman; first name(s); date of birth; sex; place of birth with details of the department, the municipality and communal section; the marital status; the national identification number based on a coding structure for each citizen; the digital photograph; the digitized fingerprints and the signature of the person concerned.

2. ONI Governance

⁵Intronisation of Boniface Alexandre as 55th Haitian president;
http://metropolehaiti.com/metropole/full_une_fr.php?id=8060

13. According to Article 19 of the Decree of June 1, 2005 and published in the official journal Le Moniteur on July 7, 2005, the governance of the ONI is entrusted to a Board of Directors with a mandate of three (3) years and composed of the following personalities:

- A President, representing the Minister of Justice and Public Safety, designated by the Minister of Justice and Public Safety;
- A Vice-president, representing the Ministry of Interior and Local Authorities;
- A treasurer, representing the Ministry of Economy and Finance, appointed by the Ministry,
- A member, representing the Electoral Council,
- An ex-officio member, Director of the National Archives,

14. According to this article, which echoes Article 142 of the Constitution⁶, the ONI's Board of Directors, whose term of office is renewable once, is appointed by presidential decree adopted by the Council of Ministers.

15. ONI is headed by a Director General. According to Article 20 of the aforementioned decree, the latter is assigned the role of Executive Secretary of the Board of Directors. He participates in the without a deliberative vote. He is appointed by order Council of Ministers, on the recommendation of the Minister of Justice and Public Safety, from a list of three (3) persons submitted by the Board of Directors. From In addition, according to Article 21 paragraph c, it is for the Board of Directors of the ONI to decide on the technological choices to be made for the issue of secure cards.

The ONI Board of Directors, established by Article 19 of the Decree of June 1, 2005, has never been established.

16. It should be noted that until now, the ONI Board of Directors has never been established.

III. ISSUANCE AND DISTRIBUTION OF CIN

17. The pilot registration process for Haitians on the country's first biometric database began in April 2005. Before this launch, an awareness campaign had invited all citizens to show up at the registration centers, most of which had been installed in the town halls.

18. At the time, rumors - that no one would be able to carry out civilian transactions in the country if they did not have this card called then "electoral card" -, had led citizens to demand it in greater or lesser numbers.

⁶ Article 142 of the Haitian Constitution in force: By order made in the Council of Ministers, the President of the Republic appoints the directors general of public administration, the delegates and vice-delegates of the departments and boroughs. It also appoints, after approval by the Senate, the boards of directors of autonomous organizations. "

19. However, despite the obligations articulated in Article 11 of the Decree of 1 June 2005, at the beginning, the card was more an electoral tool than an identification tool as such. Moreover, its broadcast and distribution had as a pretext the imminent completion of presidential and legislative elections and had been a source of concern having brought the Provisional Electoral Council (CEP) then to postpone several times the official dates of the holding of elections⁷.

20. It should be noted, however, that according to technicians interviewed at the National Identification Office (ONI) this first card was printed on a Teslin medium which is only sold to states because it is usually used for maps provided by state authorities.

It is the decree of June 1, 2005 that gives the National Identification Card all its legality.

21. Its validity of ten (10) years ensured a certain tranquility for citizens. In addition, the cards in question contained seventeen (17) figures that provided sufficient information on citizens, so that they could be traced without any possibility of duplication: the department, the municipality, the communal section, the year of birth, etc.

22. It should also be mentioned that the decree of June 1, 2005 confers on the card its full legality.

23. Finally, if, in the 2006 elections, the National Identification Cards (CIN) had been issued by the Organization of American States (OAS), from February 26, 2007, the ONI was set up and the issuance of the cards, the corrections, etc., were entrusted to him on this day.

IV. LIMITATIONS OF THE ONI REGISTRATION SYSTEM AND STRENGTHENING NEEDS

24. As mentioned above, many cards were initially requested before the 2006 elections. However, problems with the registration of citizens, errors in the cards issued and difficulties in distribution had been recorded, which constituted the first limits of the state system of biometric registration of citizens.

25. Over the years, other limits have emerged. ONI was criticized for the saturation of the system, the non-purification of the existing database, in particular after the earthquake of January 12, 2010, the failure to take into account convictions for loss of enjoyment of civil and political rights or to afflictive and infamous penalties, as prescribed by article 14 of the decree of June 1, 2005 10.

⁷ Preliminary report of the observation of electoral routes of 7 February 2006, National Network for the Defense of Human Rights (RNDDH), February 2006, 13 pages.

⁸ Nouvelliste du 27 février 2007: The issue of identification cards is now entrusted to the ONI

⁹ According to combined sources, on 12 January 2010, an earthquake of magnitude 7.3 on the Richter scale struck the departments of the West, Southeast and Nippes. The human and material losses were immeasurable: more than three hundred thousand (300,000) people lost their lives, two hundred and fifty thousand (250,000) were injured, thirty thousand (30,000) were reported missing and six thousand (6,000) at least one (1) member has been amputated; 12 January 2010 – 12 January 2011: The RNDDH takes stock of the country's situation one year after the earthquake, RNDDH, 10 January 2011.

26. According to this article, any judgment rendered affecting the civil status or the exercise of an individual's civil and political rights must be notified to the ONI for the purposes of clearing the database. This article provides that in addition 11, once a quarter, vital statistics officers will submit to the ONI all acts affecting the civil status of citizens. It also specifies the conditions under which voter status is lost.

27. Unfortunately, these are legal provisions which, according to the information gathered in the field, have never been implemented. That is why, every time there has been talk of elections, there has always been a question of not cleaning up the database. Consequently, seven (7) years after the establishment in Haiti of the first biometric registration system, the finding that the ONI did not meet the requirements of the decree of June 1, 2005 had been realized. So there was a need to strengthen the system.

28. In this regard, an agreement was concluded on October 12, 2012 between the ONI, represented at the time by its Managing Director, Jean Baptiste SAINT-CYR, on the one hand, and the Société d'investissement Pétion Bolivar SAM, and Smartmatic of Haiti S.A. on the other hand. On the basis of a technical proposal deemed more economical for the Haitian State, the agreement entrusted these entities with the responsibility of revising the system in order to make it able to respond effectively to the many requirements submitted.

The question of not clearing the database has always been raised by citizens interested in the conduct of electoral events in the country. However, this purification could never be effective.

29. According to Article 3 of that Agreement, in addition to registration, a control procedure was to be set up to prevent citizens from registering more than once. In addition, the system was to allow, in particular, the issuing of modernized civil registration documents, the preparation of death registers, issuing and issuing identification cards for registered citizens and at least eighteen (18) years of age, training for Haitian staff.

10 The Registry of the Court of Justice or of the Court of First Instance having delivered a judgment which has acquired the authority of the final and final judgment shall notify the National Identification Office of the decisions modifying the civil status or affecting the exercise of the civil and political rights of an individual such as those affecting nationality, statements of absence, judicial prohibitions, sentences to an afflictive and infamous sentence, and sentences to a correctional sentence deprived of the exercise of certain political rights.

11 The depositaries of civil registers must notify the National Identification Office once a quarter of a shipment of documents affecting the civil status of individuals: act of recognition, judicial declaration of paternity, late declaration of birth, adoption, rectification of civil status documents, marriage certificate, divorce certificate, death certificate, judicial declaration of death (disappearance).

Results in the loss of the quality of voter, death, disappearance, absence, loss of the quality of Haitian, judicial ban, sentence to a correctional sentence depriving the exercise of certain political rights. Only causes the cancellation of the National Registry of Identification, death, disappearance and loss of the quality of Haitian».

12 Smartmatic will help Haiti upgrade its system for recording civil status documents and national identity cards, 20 November 2012; <https://bfmbusiness.bfmtv.com/bourse/smartmatic-va-aider-haiti-a>

30. Within the framework of this agreement, the Haitian State had been equipped with an Integrated System of Identity and Civil Status Management including a complete system of identification called (IDMS), two (2) national data centers, equipped and operational, an ONI technical building installed in Puits Blain , a National Data Warehouse Centre (Datawarehouse), allowing to analyze and report on data from several departments.

31. In addition, to facilitate the registration process and make it accessible to all, seven hundred (700) registration kits were deployed at the rate of six hundred (600) kits in the municipalities of the country and one hundred (100) kits in consulates and embassies abroad. Rolling vehicles were also acquired under this agreement to facilitate field activities. The Haitian State was finally able to benefit from an online training platform in order to ensure the continuing training of ONI employees.

32. At the end of 2014, an improved database was handed over to the ONI and all duplication cases were deleted.

33. The operations of updating this system of registration and delivery of cards, through the training of senior and middle managers, have cost the Haitian State fifty-five million (55.000.000) US dollars.

34. However, the provisions of the above contract could not be fully implemented and the improved database could never be implemented. For example, with regard to Article 3 of the said contract, the ability to erase information with a view to cleaning up the basis is subject to presentation by the beneficiaries of death certificates and communication, by the courts concerned in accordance with the provisions of Article 14 of the Decree of June 1, 2005, decisions of justice passed in force of res sovereignly judged.

35. However, despite these many limitations, the perception was that the ONI system, with some real political will and some adjustments, was able to function as equipped with sufficiently strong legal instruments and implemented with sufficiently robust technological solutions to ensure its sustainability, especially since this database did not offer any possibility of handling data outside the procedures established in the system.

V. ONI SYSTEM EVALUATION AND REFORM PROPOSAL

36. On the eve of the 2016 elections, a performance report had been prepared and presented to ONI officials by the Smartmatic of Haiti S.A. This report entitled Modernization of the National Identity Platform – Enrollment Solution for ONI-Haiti, proposes in six (6) points the reorganizations to operate to improve the performance of the ONI and ensure a fast and efficient service of registration and distribution of cards. These include restoration of maintenance services, training for maximum operation of equipment, restoration of all services in the data center, the improvement of the network connection and the correction of electrical problems encountered especially in Boutillier.

37. Subsequently, and without the link between this report and the resulting information being established, the ONI managers acquired the report again in 2016, expensive equipment to enable

citizens' cards to be authenticated and traced, with a view to clearing the database. It would even be mentioned that, to date, the ONI has not yet finished paying for these equipment¹³.

38. The Modernization of the National Identity Platform – Enrollment Solution for ONI-Haiti 14 proposal was completed and forwarded to the relevant authorities on October 29, 2018. All activities were budgeted to the tune of two million nine hundred and eighty-seven thousand one hundred and ninety-four (2,987,194) US dollars. This proposal was rejected by the State authorities without the reasons for its rejection being communicated.

VI. CREATION OF A NEW DATABASE

39. On 19 April 19, 2017, less than three (3) months after the inauguration of the President of the Republic, in the Council of Ministers, a bill was passed establishing the Unique National Identification Card and dealing with the protection of personal data. This bill of thirty-seven (37) clauses essentially reproduces the provisions of the decree of June 1, 2005 itself composed of thirty (30) articles.

40. However, some changes have been made and, some of them are likely to cause a total upheaval in the identification of persons in Haiti.

The bill adopted by the Council of Ministers on 19 April 2017 is not voted by the Haitian parliament. Consequently, no legal provision permits the replacement of the CIN by CINU.

41. Thus, the Unique Identification Card (CINU) replaces the CIN and a Unique Identification Number (NINU) replaces the NIN. According to clause 3 of the bill, it is identical to the Tax Registration Number (TIN) for those who hold it. This section reads, “The Unique National Identification Number has the same coding structure as the Tax Identification Number (TIN)”.

42. According to section 5.1 of this bill, CINU will be renewed every fifteen (15) years – in lieu of the renewal every ten (10) years of the CIN – on the anniversary of the holder’s birth.

43. According to Article 6, CINU shall include the name, the wife’s name of the married woman, the first name(s), the date of birth, sex, marital status, NINU, digital photography, the coat of arms of the Republic of Haiti in watermark, a smart chip. This smart chip will collect, under section 6.1, the cardholder’s fingerprint, the iris print, biographical data, and the cardholder’s signature.

44. This bill has not yet been voted on in Parliament.

¹³ Source: ONI confirms ongoing authentication process http://metropolehaiti.com/metropole/full_une_fr.php?id=29093&action=print

¹⁴ Modernization of the National Identity Platform, Enrolment Solution for ONI-Haiti; October 29, 2018

45. At the same time, asked to give its opinion on the private contract to bind the Haitian State with DERMALOG, on February 16 and April 11, 2018, the Superior Court of Accounts and Administrative Litigation (CSC / CA) 15 a issued two (2) opinions unfavorable to the signing of this contract.

46. Arguing that only the solicitation of the opinion of the SCC/CA is mandatory and that the government is not bound by the opinions issued by this Court, On April 30, 2018, the government MOÏSE/ LAFONTANT adopted in Council of Ministers a resolution giving authority to the Director of ONI, Jude Jacques ÉLIBERT to sign a contract with DERMALOG.

47. According to the rare information received by citizens who are primarily interested in this contract: The former biometric database containing information on more than nine million (9,000,000) citizens, will be completely set aside and a new base, with biometric information, facial recognition and iris registration will replace it.

48. And, since March 30, 2019, Haitian citizens have been invited to show up to register again and be released, a new national identification card that will give them a new identification number.

VII. PRESENTATION OF THE CONTRACT LINKING THE HAITIAN STATE TO DERMALOG

49. The contract for the establishment of a new national biometric identification system in Haiti, replacing that established by the Decree of June 1, 2005, was signed between the Haitian State – represented by Heidi FORTUNE, Minister for Justice and Public Safety, Jude Alix Patrick SALOMON, Minister for Economy and Finance and Jude Jacques ELIBERT, Director General of the ONI – on the one hand and the company DERMALOG – represented by Jean FRANÇOIS KIPP, Africa Sales Manager – on the other hand.

It is recorded in the contract binding the Haitian State to DERMALOG, a provision according to which the first payment representing 30% of the total amount of the contract, is subject to the notification of approval of the contract by the CSC/CA.

50. This contract, which was the subject of the then Prime Minister, Jack Guy LAFONTANT, is established under section 19, for a term of seven (7) years, “from the effective date, coinciding with the date of signature of the contract by the Superior Court of Auditors and Administrative Litigation (SCC/CA).”

51. In addition, according to article 4.1 of the contract, the Haitian State must pay the sum of twenty-seven million seven hundred thousand (27.700.000) US dollars according to the following schedule:

- 30% upon notification of contract approval by CSC/CA
- 50% as the system is implemented and open to service
- 20% after the system is finally put into service.

15 <https://lenouvelliste.com/article/191496/marche-public-dossier-dermalog-ou-petit-aperçu-de-la-volonte-de-negocier-avec-les-regles>

VIII. CURRENT SITUATION

52. According to information circulating, eight million two-hundred thousand (8,200,000) US\$16, representing 30% of the total amount of the contract, have already been paid to DERMALOG by the Haitian State despite the two (2) adverse opinions issued by the SCC/CA. In addition, a further transfer of US\$2 million (2,000,000) was made to DERMALOG, South Africa, without it being provided for in the contract.

53. On March 30, 2019, the process of registering citizens for the delivery of CINU began. Some universities and institutions, both private and public, have hosted mobile registration centres. At the time of the investigation and the writing of this report, banking institutions were also the registered offices of their staff. At the same time, DERMALOG has already provided work materials, facilitated technology training sessions, and mentored technicians.

54. Physically, the background and shape of the map have changed. Today, it is made of polycarbonate in order to promote, according to the technicians met on the spot, a better durability compared to the Teslin support which was changeable. It should be noted that this is not the view of all ONI technicians.

1. Citizen Registration Process – Maps Provided Since the DERMALOG Project

55. At the time of registration, the citizen shall present the original of his or her birth certificate or extract from the archives, or a legalized baptismal certificate, or any other document required. These documents are scanned and then given to the person concerned.

56. NINU is assigned by the system. It provides general information on the identity of the person for example his geographical coordinates, the department, the municipality, the communal section, his current physical address, his telephone number and his specificity (sex, person living with a physical disability or any other specific trait). Thus the data that appear on the new card are the first name, last name, place of birth, date of issue, signature of the holder, number of the card, sex, nationality, date of birth, date of expiration, NINU, department, municipality, communal section, physical address.

57. The registration process began in Port-au-Prince and in many provincial cities.

58. During a tour conducted in May, June and July 2019, by the organizations involved in this investigation, it was noted that:

- In the communes of Boucan-carré, Cap-Haïtien, Cayes, Cayes-Jacmel, Ennery, Jacmel, Terrier-Rouge, Marigot, Miragoâne, Mirebalais and Trou-du-Nord, the service is available, even if it is better organized in some of these cities and not at all in others. For example, at the office of Cap-Haitien, the service is organized on the basis of letters of the alphabet. The office operates on a weekday basis and each day corresponds to a letter. Three (3) units are responsible for collecting information from citizens before introducing it to technicians who are called upon to finalize the procedure. However, they wait more than an hour online before being served.

- In the municipalities of Jacmel and Marigot, citizens must first make an appointment, at least twenty (20) days in advance. On the agreed date, they will only take five (5) to seven (7) minutes with the technician to complete the registration process.

Citizens who had just applied for the CIN did not even have time to claim them from the ONI that already had a CINU imposed on them

- Since May 21, 2019, the municipalities of Ennery and St-Michel de l'Attalaye have received the manufacturing equipment for the new identification card. However, the services did not start due to employees claiming ten (10) months of salary arrears. Consequently, since the arrival of the equipment, no mobilization has been noticed at the ONI offices of these two (2) municipalities. In addition, citizens met in the vicinity of the offices of the ONI of these municipalities complain that they have not even had the time to claim the CIN that the state already imposes on them a CINU.

59. In the municipality of Aquin, citizens spend hours online before being received. And often technicians are unable to work because of the freeze in the computer system or because of problems intercepting the internet signal.

60. In some municipalities, such as Anse-à-Galets and Pointe-à-Raquette - located on Île de la Gonâve - the ONI office is not operational. The entrance barrier is closed and the space is not frequented. According to the information collected, one of the officials with whom it was possible to talk by telephone said waiting for the order of the central office of Port-au-Prince and the transfer of the necessary equipment to provide the card service to the population of La Gonâve.

61. As of July 22, 2019, less than two hundred and fifty thousand (250,000) electors were registered on the base.

2. Delivery of cards to citizens

62. Persons who have registered in the mobile centres of Port-au-Prince have seven (7) days to claim their new card. Two (2) weeks after this deadline, the unclaimed card is given to the ONI office in Bourdon, which is a call and delivery centre. According to the information gathered, this centre contacts registered persons who have not claimed their card on time and gives them an appointment. Those who have been called come to the centre, provide their biometric fingerprints and receive their card in record time.

63. However, some persons present themselves to the Centre without having been contacted beforehand. They wait longer because of the delay in finding their card. Sometimes they are more likely to go home until they are contacted.

16 Dermalog contract: already USD 2 million diverted, according to Youri LATORTUE; <http://www.loophaiti.com/content/contrat-dermalog-2-millions-usd-du-tresor-public-deja-detournees>

64. It was also recorded that some citizens were called by the centre but were unable to receive their card even though they moved to the site.

65. Bourdon's centre does not record. However, if the delivered card has errors or is damaged, the information is collected for patch tracking.

IX. CONSIDERATIONS AROUND THE CONTRACT LINKING THE HAITIAN STATE TO DERMALOG

1. Breach of the Decree of 4 May 2016 on the preparation and enforcement of financial laws

66. As previously mentioned, the contract between the Haitian State and DERMALOG was signed, despite two (2) adverse opinions from the SCC/CA. This is a gross violation of the Constitution. In its fourth paragraph of Article 200, it states that "The Superior Court of Auditors and Litigation is consulted on all matters relating to public finance legislation and on all draft contracts, Financial and Commercial Agreements and Conventions to which the Crown is a party."

67. This consultation must be done before these contracts are signed. So it is a "check" a priori.

68. In addition, the contract binding the Haitian State to the firm DERMALOG violates the decree of May 4, 2016 on the preparation and enforcement of financial laws. Article 85 of the decree, published in the Official Journal Le Moniteur of February 1, 2017, states that All draft contracts, agreements and agreements of a financial or commercial nature in which the State is a party must be the subject of a consultation of the Superior Court of Auditors and Administrative Disputes before their signature by the parties»

2. Breach of legal provisions relating to the award, enforcement and settlement of public contracts.

69. The award, execution and procedure of public contracts are governed by a set of specific texts, in particular the Law of 10 June 2009, published in the Official Journal Le Moniteur of 12 June 2009, laying down general rules for the award, enforcement and regulation of public contracts. Article 34-117 of the Act permits the awarding of a contract by direct agreement or by direct agreement, on the basis of compliance with the specific conditions relating to:

- the fact that only a supplier or service provider has a license or an exclusive right relating to the contract in question,
- the urgency of the moment,
- monitoring to complete a contract already executed by the supplier.

According to Article 85 of the Decree of 4 May 2016 on the preparation and enforcement of financial laws, all projects of a financial or commercial nature binding the Haitian State must be analyzed by the CSC/CA well before their signature.

70. It is then up to the institution concerned to present the reasons for choosing the contract by direct agreement or by direct agreement. However, according to the Court, the ONI could not justify this decision and convince it of its merits.

3. The mandatory scope of the SCC/CA notice

71. The opinion of the Court is binding in that it is binding on the State. The CSC/CA is the only institution responsible for judging the actions of the public administration. Article 2 of the Decree of 23 November 2005 establishing the organization and functioning of the Court states that it is an Independent Institution whose mission is to judge the acts of the Public Administration, the accounts of the Accounting Officers and Accountants of public funds and to assist Parliament and the Executive in monitoring the implementation of laws and regulations relating to the Budget and Public Accounting.”

72. In addition, the second paragraph of Article 86 of the aforementioned Decree states that "in the event of denunciation of acts of corruption, misappropriation or misappropriation of public funds, the Court may carry out unannounced and ad hoc audits. The Court does not only audit documents. It can visit the site to ensure that expenditures and revenues are in order.”

73. By requiring an opinion of the Court on any financial contract to which the State is a party, the legislator wanted to ensure that the State carries out an a priori review before the conclusion of that contract, to protect the economic and superior interests of the nation.

74. In the contract concluded between the Haitian State and the firm

DERMALOG, it is expected that the first payment of 30% of the amount of the contract, constituting the first legal act reflecting the willingness of the parties to give effect to that contract, will be granted after approval by the Court. Indeed, the first paragraph of Article 4 states: 'An initial installment of 30

% of the total contract amount will be paid upon receipt of the notification of approval of this contract by the Superior Court of Auditors and Administrative Disputes. DERMALOG will be required to provide a guarantee of one hundred percent (100%) of the amount received. The amount of the deposit may be reduced as DERMALOG deliveries are made in proportion to their value, after their acceptance by the ONI.”

Article 4 of the contract between the Haitian State and DERMALOG proves that both parties are aware of the mandatory nature of the opinion of the CSC/CA.

17 "The contract has been concluded by mutual agreement or by direct agreement: 1) where the needs can be met only by a service requiring the use of an intervention patent, a license or exclusive rights held by a single contractor, a single supplier or a single service provider; 2) in the case of an emergency due to unforeseeable circumstances or force major that does not allow the deadlines laid down in the tender procedures to be respected; 3) in the case of a reasoned emergency where the contracting authority is required to cause a contract to be performed in lieu of the defaulting contractor, supplier or supplier; 4) for supplies, services or works which complement those which were the subject of a first contract performed by the same contractor, provided that the initial contract was awarded in accordance with the tender procedure, whereas the supplementary contract covers supplies, services or works which are not included in the contract initially concluded but which have become necessary as a result of unforeseen circumstances external to the parties, and that these supplies, works services cannot be technically or economically separated from the main contract.”

4. Evidence of corruption surrounding CINU issuance transactions

75. For at least three (3) reasons, RNDDH, CARDH and CONHANE believe that there are numerous signs of corruption under the contract between the Haitian State and the firm DERMALOG:

- This contract should not have started because the SCC/CA, as requested, had given an unfavorable opinion on two (2) occasions. Suspicions then become legitimate since the Haitian State gave the impression of having at all costs wanted to give effect to this contract.
- Article 4 of the said contract states that 30 % of the total amount must be paid to the firm, after approval by the CSC/CA. However, even with two (2) express adverse opinions, the amount could be disbursed.
- Two million (2.000.000) US dollars were transferred to the firm while the payment of this amount is not foreseen anywhere in the contract. This fact gives rise to all speculation¹⁸.

5. Total lack of transparency, failure to respect the right to information and participation

76. No official communication has been made by the state authorities and no information has been provided to Haitians to justify the change of the database and the change of identification numbers, from seventeen (17) to ten (10).

77. Unilaterally and covertly, the government decided to eliminate the citizens' database and replace it with another. According to Article 40 of the Constitution, Obligation on the State to give publicity by means of spoken, written and televised press in the Creole and French languages to the laws, decrees, decrees, international agreements, treaties, conventions, to everything concerning national life, except for national security information”.

78. In the contract linking the Haitian state to DERMALOG, there appears to be no forecast for the supervision of the work to be provided, which suggests that no verification will be made. However, the disbursement of most of the sums is conditional on the (partial or full) execution of the contract. However, it is not up to the parties concerned in this report to decide whether the planned work has actually been carried out.

79. In addition, the establishment of the existing database required the collection of information for fourteen (14) years. A similar process should normally go through project implementation, field tests, pilot days prior to actual deployment. All of these steps either went unnoticed or simply were not followed, which suggests that they were all done at the same time.

Dermalog contract: already USD 2 million diverted, according to Youri Latortue; <http://www.loophaiti.com/content/contrat-dermalog-2-millions-usd-du-tresor-public-deja-detournes>

6. On the non-protection of the economic interests of the Haitian State

80. For two million (2.000.000) US dollars, there is reason to believe that the current database could have been consolidated, its increased capacity and its streamlined system.

81. However, the Haitian government has chosen to spend twenty-seven million (27,700,000) US dollars to build another database from scratch.

82. Even having already spent the considerable sum of fifty-five million (55,000,000) US dollars for the establishment of the current ONI base does not seem to have caused the authorities to reflect on the consequences of the rejection of the ONI. The adoption of such a decision is contrary to the principle of protection of the economic interests of the State.

83. In addition, the fact that this card was printed on a Teslin support sold exclusively to the states, protected the citizens and the Haitian State against the risks of counterfeiting, which is no longer the case since the new medium used is distributed more widely and can be sold to any public or private institution.

In contracts that commit public treasury funds, the economic interests of the Haitian state must be a priority. This was not the case in the DERMALOG file.

In addition, the change of the card from the secure Teslin support and sold only to States to the polycarbonate support, sold to all companies and institutions, is of great concern.

7. Lack of legal framework for the issuance of CINU

84. There is no legal authority for state authorities to issue CINU. In this sense, it is not superfluous to recall that the bill of April 19, 2017 which enshrines it has not yet been adopted by the Haitian parliament.

X. GENERAL REMARKS AND CONCLUSIONS

85. The Haitian State, in deciding to set up a whole new database, has chosen to discard without hesitation any information collected during fourteen (14) years of human and material investment.

86. The decision to spend twenty-seven million seven hundred thousand (27,700,000) US dollars for the establishment of a new database, instead of two million nine hundred and eighty-seven thousand one hundred and eighty-four (2.987.194) to be justified and supported by solid arguments. However, no sufficient reason has been presented to the population which, however, has the right, in the first instance, to understand why its taxes will be used in a project similar to that of the CIN, with the same results. It is therefore clear that such a transaction violates the economic interests of the Haitian state.

87. The inability to clean up the existing database is often presented as one of the major reasons why the government has chosen to establish a new database. However, periodic purification remains and remains an obligation to justify the reliability of the database, whatever it may be.

The Unique National Identification Card:
Between popular mistrust, corruption and human rights violations

So the important thing is to hire technicians who can clean it up as citizens' marital status changes.

88. In addition, the contract with DERMALOG raises many concerns.

- It violates the decree of May 4, 2016 concerning the preparation and enforcement of financial laws which requires a priori control of all contracts binding the Haitian State.
- It violates the legal provisions relating to the award, enforcement and settlement of public contracts, since the justification for the choice of contract by direct agreement could not convince the CSC/CA, which had already issued two (2) unfavorable opinions on this subject.
- It violates the principle that the SCC/CA opinion is binding since it was signed in contravention of the opinion issued by that entity.
- Finally, the fact that the First Lady participated at one level or another in the DERMALOG selection process is not to help the government. This unusual situation and the circumstances surrounding the conclusion of this contract raise serious questions about the transparency and regularity of the process.

89. As a result of an additional payment of US\$2 million (2,000,000) not provided for in the contract, The possibility of illegal and reprehensible corrupt activities being carried out in this case cannot be ruled out.

90. In addition, in addition to these considerations, some other areas of concern need attention include:

- DERMALOG is a manufacturer of biometric devices. It has no expertise in identity management. Its choice by the state authorities is an indication of their level of ignorance or negligence in the field of identity management and civil status.
- The Act is clear. The NIN attaches itself to its holder, its holder throughout its lifetime. However, deciding to replace it with NINU amounts to trivializing the reasons why this decision was taken by the legislator. In this sense, it should be recalled that the Haitian citizen holds in addition, a Tax Registration Number (NIF) despite the provision in Article 29 of the Decree of June 1, 2019 which advocated its disappearance at the expiry of the identity card. We cannot decide each time, to change the identification numbers of citizens or to assign them again, without thinking that this will have an impact on the organization of community life.
- Contrary to the provisions of Article 3 of the bill passed in Council of Ministers, the number of the new identification card, assigned by the system, is in no way consistent with the Tax Registration Number. If this had been the case, the damage would have been less on citizens' lives.

- A sales manager based in Africa has been authorized by DERMALOG to hire the firm. This situation constitutes a risk for the Haitian State.
- DERMALOG has a seven (7) year contract, whereas previous contracts only lasted one year. In this sense, the Haitian State has a duty to justify this more or less long period of time granted to this firm.

91. It took fourteen (14) years for the State to register its citizens. At a time when we are talking about by-elections, it is a lost bet to believe that it is possible to register all voters in the country in just a few months.

92. Today, some citizens have just authenticated their CIN, others have renewed their CIN and others have claimed their first CIN. They have not yet had time to breathe or even recover the card requested as it is no longer valid.

93. Finally, in their haste, the state authorities have not realized that the process initiated is illegal since the bill enshrining CINU, NINU and data protection has not yet been adopted by the Haitian parliament.

94. It is therefore clear that, as things stand and according to the information gathered on the ground, a new identification card does not meet any need. It will only contribute once again to cast doubt and discredit on an executive already decried, having lost the confidence of the Haitian people, and yet continues to work in the most total opacity.

95. In light of the above considerations, CONHANE, RNDDH, CE-JILAP and CARDH recommend:

a) At the National Identification Office (ONI):

- during the recording and distribution of the new national identification card unique;
- to examine the advisability of cleaning up the existing database.

b) To the Superior Court of Auditors and Administrative Litigation (CSC/CA):

- to seize the file, in accordance with the Law of 4 May 2016, due to the suspicions of corruption surrounding the entire process.