

Port-au-Prince, Haiti, June 2, 2020

Statement by the OAS Secretary General on the Presidential Constitutional Mandate  
**Haitian human rights and civil society organizations dismayed**

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**Mr. Secretary General,**

The Haitian civil society and human rights organizations, signatories of this letter, have read your statement of May 29, 2020, in which you affirm that «the mandate of President Jovenel Moïse will expire on February 7, 2022 », further recalling that “the current health crisis should remind us of the importance of strengthening democratic rules and institutions.”

Following such a declaration, the signatory organizations come to wonder if: the Secretary General has accurate and accurate information regarding the duration of the presidential term according to the Haitian Constitution. With this declaration, does the Secretary-General not go against the fundamental mission of the Organization of American States, which is “to promote democracy [which] is essential to the social, political and economic development of the peoples of the Americas”? and international law? As a multilateral organization, does this declaration commit the heads of states and governments that are members of the Organization?

In order to clarify certain points and to ensure the clear understanding of the Haitian constitutional system relating to the presidential mandate, as well as its legal precedent, the Haitian civil society and human rights organizations that signed this letter.

**I. On the term of the presidential constitutional mandate: February 7, 2021**

A. Constitution (Article 134-2) and Electoral Decree (Article 239)

**Mr. Secretary General,**

The term of office of the President of the Republic currently in office inevitably ends on February 7, 2021. Indeed, according to article 134, paragraph 1 of the Haitian Constitution of 1987 amended, currently in force: The term of the presidential term is five (5) years. This period begins and ends on February 7 following the election date. The presidential election is held on the last Sunday of October in the fifth year of the presidential term. The President-elect shall take office on February 7 following the date of his election.”

**However, the five years defined by the Constitution are not calendars, that is cumulative, but respectful of the constitutional timetable:** February 7, 2011 to February 7, 2016; February 7, 2016 to February 7, 2021... This is one of the fundamental reasons for the 2011 amendment. It was essentially a matter of harmonizing constitutional and electoral times. This is explicit, and in the spirit, and in the letter of the Constitution.

Thus, in order to avoid any harmful attempt on the part of a President to remain in power beyond the expected date, the second paragraph of Article 134 continues as follows: “If the election cannot be held before February 7, the president-elect shall take office immediately after the validation of the election and his term of office shall be deemed to have begun on February 7 of the year of the election.”

In addition, the electoral decree of March 2, 2015 (Le Moniteur, Special No. 1), in its article 239, reiterates and strengthens article 134-2, stipulating that “In elections held outside constitutional time, for any reason, the terms of office of elected officials shall expire in the following manner:

a) The term of office of the President of the Republic shall end on the seventh (7th) of February in the fifth year of his term of office, regardless of the date of his entry into office”.

Harmonizing constitutional and electoral times is not only a matter of public awareness, but consecrated by the decree, therefore by the law. Moreover, it is not superfluous to recall that the adverb “obligatorily” literally reaffirms that the mandate of the President-elect in an election held outside constitutional time – that is, after February 7, of the year of the election (5th year of the current President’s term), for whatever reason (political, economic or otherwise) – will end on February 7 of the fifth presidential year fixed by the Constitution.

**Mr. Secretary General,**

There is no doubt that the Haitian Constitution (Article 134-2) and the electoral decree of 2015 (Article 239) stipulate peremptorily that the mandate of President Jovenel Moïse will end on February 7, 2021.

#### B. Principle of strict application of the Constitution

**Mr. Secretary General,**

Given its central function in the organization of the State, constitutional law, and therefore the Constitution itself, is part of the public law that must be strictly applied by the governments, including the President of the Republic, considered as the first person to comply with it. As such, Article 136 of the Haitian Constitution makes the President the guarantor of the smooth running of the institutions. It must therefore apply it and not interpret what it defines in simple and clear terms, such as, for example, the presidential mandate.

President Moïse cannot determine the duration of his term of office, in the same way that the Secretary General himself could not define his own mandate according to his interpretation of the OAS Charter, establishing the institution. It must simply be satisfied with the mandate and mission assigned to it by the Charter, which can only be amended by States, in accordance with the Charter itself and the principles of international law.

### C. Legal precedent: application of the Constitution and the electoral decree

#### **Mr. Secretary General,**

A look at the application of the Haitian Constitution since its entry into force, creating an explicit legal precedent, seems necessary to further clarify the national constitutional system.

Joseph Michel Martelly: May 14, 2011-February 7, 2016. Winner of the presidential election of November 28, 2010 (first round) and of March 20, 2011 (second round) and having taken the oath on May 14, 2011, Mr. Joseph Michel Martelly completed his mandate and deposited the presidential scarf in Parliament, Co-depositary of national sovereignty, February 7, 2016, despite the vacuum caused by the political-electoral crisis. In his speech to the National Assembly, the President Martelly had to declare: This February 7, 2016 (...) my mandate is nearing its end. According to Article 134-1 of the Mother Law, the presidential term is five (5) years. This period begins and ends on February 7 of the fifth year of the mandate, regardless of the start date.”

**End of the 50th Parliament (January 13, 2016 - January 13, 2020): 25 Congressman spent less than four years in Parliament (Article 92-1).** The Constitution fixes the term of office of the deputies to four years. The general elections were held on August 9, 2015. However, in some ridings, the elections were cancelled or disrupted. In accordance with the Constitution, the elected deputies took office on the second Monday of January 2016, on January 11. By-elections for 25 constituencies were then held on November 20, 2016, and elected officials were sworn in in January 2017. As the legislature ended on the second Monday of January 2020, all Congressman, regardless of the year in which they took office, left Parliament.

**January 13, 2020 end of the mandate of 20 Senators elected.** On January 13, 2020, the Senate’s two-thirds and four-year terms expired. Six of them were sworn in in January 2017, so they spent three years in Parliament. Like the presidential mandate and that of the deputies, the Constitution stipulates: "in the event that the elections have not taken place before the second scheduled Monday in January, the elected senators shall take office immediately after the validation of the vote and their six (6) year term shall begin on the date provided for in the Constitution" (2nd Monday of January of the election year) (Art. 95-2 of the Constitution).Note that the Senate renews itself by a third every two years.

### D. Recall of the electoral process that brought Jovenel Moïse to power on February 7, 2017

#### **Mr. Secretary General,**

The Haitian civil society and human rights organizations, signatories of this letter, take this opportunity to remind you of the electoral process that led to the election of Mr. Jovenel Moïse. The presidential and legislative elections were held on August 9 and October 25, 2015, respectively, to elect the 57th President of the Republic and the deputies forming the 50th legislature, as well as 20 senators. However, the political crisis did not allow President Joseph Michel Martelly to complete these elections. Therefore, on December 22, 2015, in accordance with its statutory prerogatives, it created the Independent Electoral Evaluation Commission (CEEI), with the mission of “take all necessary measures to evaluate the electoral process and make recommendations to the Provisional Electoral Council and the Government (...)”<sup>1</sup>.

Noting that the Commission recommends «a more thorough technical review of the responsibility of the electoral machine», and to reconsider «the files handled by the National and Departmental Electoral Litigation Offices <sup>2</sup>», which will provoke the resignation of the members of the Provisional Electoral Council, whose President on January 13, 2016 <sup>3</sup>, the President Joseph Michel Martelly concluded, jointly with the Parliament, a political agreement called: **“Agreement for institutional continuity at the end of the mandate of the President of the Republic in the absence of an elected President and for the continuation of the electoral process begun in 2015 <sup>4</sup>”**.

According to the agreement: on February 7, 2016, the President Martelly deposited the presidential scarf in Parliament, which then elected a provisional, not constitutional president, with the mission to complete the electoral process of 2015, which President appointed a new Provisional Electoral Council to complete the remainder of the elections, while considering the recommendations of the Independent Electoral Evaluation Commission (CEEI)<sup>5</sup>.

On November 20, 2016, the new Provisional Electoral Council, in accordance with its mandate, carried out the presidential election, rejecting the recommendation of the new Commission (Independent Electoral Assessment and Verification Commission<sup>6</sup>), namely, the “resumption of the electoral process <sup>7</sup>”, the results of which were announced on January 3, 2017. **Thus, President Jovenel Moïse, 57th President of the Republic of Haiti, was born of the process initiated in 2015 and his mandate will end on February 7, 2021.** Could the role of the OAS go against the Constitution and the fundamental principles of international law, recognized by the United Nations and international cooperation?

## **II. Mission of the Organization of American States (OAS)**

E. “right to self-determination” or “right of peoples to self-determination”, enshrined as “jus cogens”

**Mr. Secretary General,**

The Haitian civil society and human rights organizations, signatories of this letter, would like to remind you that by repeating the principle of the «right to self-determination» or the «right of

peoples to self-determination», consecrated as "jus cogens" by the International Court of Justice (ICJ), the Charter of the Organization of American States, states in its articles 1 and 2: "The <sup>1</sup> peoples of the Americas have the right to democracy and their governments have the obligation to promote and defend it (...). The effective exercise of representative democracy constitutes the basis of the rule of law and the constitutional systems of the Member States (...)».

The promotion of democracy, the rule of law and the principles of human rights, the primary mission of the Hemispheric Organization, therefore presupposes the promotion of respect for the Constitution of States, thus defining their political system, their legal form, the mandate of elected officials...

#### F. Respect for human rights: political rights

Like the United Nations, the OAS is based on human rights: civil, political, economic, social and cultural. Thus, the American Convention on Human Rights, adopted in San José, Costa Rica, on November 22, 1969 (Inter-American Specialized Conference on Human Rights), ratified by Haiti, stipulates in its Article 1, that the States Parties undertake to respect the rights and freedoms recognized in this Convention and to guarantee their free and full exercise to all persons within their competence, without distinction based on race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition”.

These rights include the civil and political rights set out in Article 23, stipulating that: All citizens must enjoy the following rights and faculties: to participate in the direction of public affairs, directly or through freely elected representatives; to elect and to be elected in the framework of authentic periodic consultations, by universal and equal suffrage, and by secret ballot guaranteeing the free expression of the will of the electors (...)”, in accordance with the law.

As mentioned above, the 2015 Constitution and Electoral Decree constitute the two main texts regulating the elections and setting the term of office of the elected President of the electoral process from 2015 to February 7, 2021. They must be respected. The Moïse administration was to hold elections in 2017 and 2019, respectively for the first third, then a second third of the Senate, as well as for the deputies who were to form the 51st legislature. The dysfunction of Parliament is therefore a breakdown of the democratic process and a violation of political rights. Has this situation been ignored by the OAS?

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<sup>1</sup> - Presidential decree of December 22, 2015.

<sup>2</sup> -Centre for Human Rights Analysis and Research (CARDH) “February 7, 2021, End of the Presidential Constitutional Mandate, Full Version”, p.14, May 30,2020, www.cardh.org.

<sup>3</sup> -Ibid

<sup>4</sup> -Ibid

<sup>5</sup> -Ibid

<sup>6</sup> -Presidential decree of April 28, 2016.

<sup>7</sup> -Gédéon Jean, “Electoral Crises in Haiti, the Independent Electoral Assessment and Verification Commission CIEVE, L'inédit et la fin d'un système”, CARDH, November 2016, Imp. PRESSMAX, P. 130.

When President Jovenel Moïse himself declared, by means of a tweet, the end of the mandate of the deputies of the 50th Parliament and 20 senators, most of whom entered Parliament in 2017, and consequently, announced the Parliament "lapsed", in accordance with Articles 92-1, 95-1 of the Constitution and Article 239 of the Electoral Decree, the OAS had not expressed itself in accordance with its Charter and international law. **How do you determine, today, contrary to the Constitution and the Charter, the end of the mandate of the Haitian President on February 7, 2022? On what exact legal basis is this statement based?**

G. Remarks on the general situation in COVID-19

**Mr. Secretary General,**

The Haitian civil society and human rights organizations, signatories of this letter, take advantage of this correspondence to remind you that the socio-political and economic situation of the country is very worrisome:

elections are not organized;

- Parliament is therefore dysfunctional;
- corruption is making its way through COVID-19<sup>8</sup>;
- people's living conditions are deteriorating at an exponential rate (4.5 million Haitians in food insecurity, more than 110 gourds for a US dollar);
- freedoms and human rights are systematically violated, including the directives of the Inter-American Commission on Human Rights on COVID-19;
- the pandemic of COVID-19 rages in overcrowded prisons where detainees succumb daily;
- the gangsterized country;
- massacres continue in the working-class neighborhoods under the irresponsible gaze of the leaders;
- the efforts of the PNH remain insufficient due to the political obstacles and the lack of financial, human, technological means...;
- justice, in terms of public service, is almost non-existent.

**Mr. Secretary General,**

The Haitian civil society and human rights organizations, signatories to this letter, condemn your declaration, which goes against the Charter itself and international law, and hope that this letter will have clarified the Haitian constitutional system and its legal precedent, explicitly determining the end of the presidential constitutional mandate on February 7, 2021. However, they are pleased that the OAS "remains ready and willing to work with all parties involved in finding the best solution" for the people, as the situation in the country is very worrisome.

As vigilante organizations, they want, as much as you do, to find "the best solution" for the protection of the civil and political rights of Haitian citizens and democratic gains. This solution, however, must be established on clear constitutional and theoretical grounds. The current health crisis must remind us of the importance of strengthening the founding institutions

of <sup>2</sup>democracy. It is in this spirit, and with the concern to protect the prescribed of the Constitution, establishing the principles defining the Haitian democratic system, that these organizations undertake to enforce them.

### **Signatory organizations**

Centre for Human Rights Analysis and Research (**CARDH**)

Centre Commission Episcopale Nationale – Justice and Peace (**CE-JILAP**)

Haitian Council of Non-state Actors (**CONHANE**)

Centre for Economic and Social Research and Training for Development (**CRESFED**)

Alternative Justice Program (**LAP**)

National Network for the Defense of Human Rights (**RNDDH**)

Sant Karl Lévéque (**SKL**).

### **For authentication purposes:**

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<sup>8</sup> - The US\$18 million contract, signed with a Chinese firm, without the agreement of the Superior Court of Auditors and Administrative Litigation, is a clear example of this (Orders 30 August 2017 published on 14 and 15 September 2017, Issues 25 and 26),