



NATIONAL HUMAN RIGHTS DEFENSE NETWORK (RNDDH)

Membre de la
fidh

Reflections of the RNDDH on the decrees creating the ANI and organizing the strengthening of public security in Haiti

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I. INTRODUCTION

1. From January to December 2020, the MOÏSE / JOUTHE administration adopted thirty-eight (38) decrees on such diverse and unexpected subjects as: the professional lease (May 11, 2020), the regulation of leasing operations (May 12, 2020), the reform of matrimonial property regimes (May 13, 2020), security law (May 14, 2020), the Haitian Penal Code (June 24, 2020), the prior review of the Superior Court of Auditors and Administrative Disputes (CSC/CA) (November 6, 2020), etc.

2. If the publication of the decree on the Haitian penal code had raised the indignation of a large part of the Haitian population, because of the fact that provisions requiring a societal agreement, had been decided unilaterally by the current state authorities, those creating an intelligence agency and organizing the strengthening of public security and published in the official newspaper Le Moniteur on November 26, 2020, are for their part, downright staggering.

3. And it is precisely to draw the attention of public opinion to these two (2) pieces of legislation that the National Network for the Defense of Human Rights (RNDDH) shares with all those interested in the issue, these few reflections on these documents that risk resulting in violations of the fundamental rights and individual freedoms of the Haitian people.

II. OBJECTIVES OF THESE DECRETS

4. The visas of these two (2) decrees are very rich and cite inter-American and UN instruments for the promotion and defense of human rights as if to affirm that they are inspired by them.

5. Similarly, the recitals of these decrees mention the importance of combating recurrent acts of insecurity, terrorism and the importance of protecting oneself against the threats posed by criminal organizations to public freedoms. Today, the illicit activities of armed gangs, reinforced by government authorities, are a topical issue. Armed attacks and massacres against disadvantaged neighborhoods, kidnappings followed by kidnapping for ransom, are perpetrated

by armed gangs, most of them members of the G-9 an Fanmi coalition and Allies, and consequently, close to the power in place.

6. Thus, societal problems of insecurity and human rights are used by the authorities in place, in order to make the Haitian population to accept these two (2) decrees which nevertheless reduce its fundamental rights and individual freedoms.

III. DEGREE ESTABLISHING, ORGANISING AND OPERATING THE NATIONAL INTELLIGENCE AGENCY (ANI)

7. This Order, adopted in Council of Ministers on November 25, 2020, has seventy-three (73) articles, divided into eight (8) chapters and covering, inter alia, the mission and powers of the ANI, its organization and operation, the status of its staff, the source of its resources, etc. However, certain provisions have attracted the attention of the RNDDH.

a) On the responsibilities of the ANI

8. In accordance with Article 1 of the decree establishing it, the ANI is placed under the supervision of the Ministry of the Interior and the Territorial Authorities.

9. According to Article 2, the ANI is an organization for gathering information and repressing acts hostile to national security and the protection of the fundamental interests of the Nation. It is therefore an organization capable of conducting investigations and punishing criminal acts.

10. In addition, at the level of Article 5 of the Order, the specific powers of the ANI are set out. In this sense, the ANI may, among other things:

- Participate in the surveillance of individuals and groups likely to resort to violence and to undermine national security and social peace;
- Contribute to the territorial oversight function, ...

11. Still at the level of this article, other powers that do not refer to any specific task are also enacted. For example, the ANI may also:

- Counteract and repress acts and threats of global destabilization;
- Carry out, within the framework of its powers, “any action entrusted by the Government” and provide the Government with summaries of the information available to it;

- Contribute to the achievement and preservation of the strategic interests of the State of Haiti.

12. Section 65 of the Order states that intelligence-gathering techniques are “graded and measured according to the threats, risks and dangers to the Nation”. However, the unit of measure for these threats is not known.

b) The appointment of the members of the Executive Board of the Agency

13. According to Article 6 of the Decree, the ANI has a Directorate-General, a General Inspection of Intelligence Services, a Central Directorate of Intelligence Services Administration, Technical Directorates of Intelligence, departmental intelligence directorates, a data processing and analysis center and an intelligence academy.

14. According to Articles 8, 14 and 28 of the Decree, the Director General of the ANI, the Inspector General of Intelligence Services, the Director of the Intelligence Academy, are all appointed by Presidential Order and have a term of three (3) years.

c) On ANI agents

15. ANI agents are recruited within the National Police of Haiti (PNH), within the Armed Forces of Haiti (FAD'H) as well as among the Haitian population. According to Article 32, they are subject to a vetting process to “identify the potential for information leakage and assess their suitability for the position”.

16. ANI officers operate strictly anonymously, as per section 43. Only the director general and the inspector general of intelligence will be known. However, in Article 12, paragraph 8, it is specified that «the general inspection assesses and proposes sanctions against agents committing acts contrary to the rules and ethical principles applicable to the intelligence business», without any explanation as to the referral of this inspection against unidentified agents, who are authorized to make use of false information, in the performance of their duties.

17. More surprisingly, Article 12, paragraph 2, states that the General Inspectorate of Intelligence “has access to all places, documents and information relevant to the fulfilment of its mandate”.

d) The duties of ANI staff

18. According to Article 48 of the Order in Council, officers, who are separate from the Agency itself, may search and seize any objects, documents or substances found on the premises.

19. They identify offences, gather evidence, conduct investigations, in any institution, public or private service.

20. In addition, ANI officers shall issue minutes as evidence, until proven otherwise, in accordance with section 50.

e) Impunity of the ANI and its agents

21. According to Article 45 of the decree, the agents of the ANI have the opportunity to establish permanent contacts with individuals involved in serious crime without being themselves criminally responsible.

22. In addition, section 49 makes them untouchable. In fact, no legal action may be brought against ANI agents for acts committed in the performance of their duties, without the General Inspection of the Intelligence Services having first imposed administrative sanctions on the agents in question, with the express authorization of the President of the Republic.

23. Under section 67, any ordinary or extraordinary court action to prevent the operation or execution of the activities of the ANI is inadmissible, making it an extrajudicial institution.

24. Finally, the agents of the ANI as well as the agency proper, have to report only to the President of the Republic himself, according to Articles 16, paragraph 5 and 68, where it is clearly stated that the Agency must submit a daily intelligence report, to the President.

IV. STRENGTHENING PUBLIC SAFETY ORDER

25. There are thirteen (13) sections of the Strengthening Public Safety Order.

26. In its article 1, this decree adds, to the acts of terrorism already enshrined by the various legal instruments, offences which until then were considered as offences and crimes of common law as:

- Theft, extortion, fire, destruction, damage and deterioration of public and private property;
- Embarrassing the public highway by depositing, leaving any materials or things in it, for the purpose of preventing or diminishing the freedom or security of passage;
- Dropping waste, dirty, noxious or slippery substances on public roads.

27. This Order further establishes the difference between legal persons and natural persons involved in acts of terrorism. It punishes in its article 2, from thirty (30) to fifty (50) years of criminal imprisonment as well as a large fine ranging from two to one hundred million gourdes,

persons guilty of acts of terrorism. For legal persons found guilty, the fine varies, according to Article 3, between ten (10) million and one (1) billion gourdes.

28. Other punishments, such as dissolution, temporary or permanent prohibition of the functioning of institutions guilty of terrorism, may also be imposed.

29. In Article 6, the decree, dealing with the illicit transport of firearms and ammunition, obliges the drivers of all means of transport to search the luggage of their passengers, to examine carefully the interior of the vehicles at their disposal, under penalty of thirty (30) to fifty (50) years of criminal imprisonment.

30. While it is possible for those guilty to cooperate and to have their sentence reduced by half, this is not the case for fines which, according to section 11 of this order, “may in no case be reduced”.

31. According to Article 12, prison sentences and fines may be imposed twice, depending on the status of those involved in acts of terrorism, particularly in the case of persons responsible for the security of life and property or persons under contract with the State.

V. GENERAL CONSIDERATIONS AND CONCLUSIONS

32. The decree establishing, organizing and operating the National Intelligence Agency (ANI) as well as the decree for the strengthening of public security, have just been adopted in a context where, apart from the third of the Senate, Only one elected official is currently in office in the country, namely the President of the Republic Jovenel MOÏSE. The latter, assisted by his team, has been adopting in cascade since the beginning of 2020, legislation that is very worrying, that he would never have dared to address to the Haitian parliament in the form of bills, despite the fact that the Haitian Party Tèt Kale (PHTK) from which it came and Allies, had a comfortable majority in parliament.

33. It is not superfluous to recall that the President has never before shown that he could rise to the prescribed level of Article 136 of the amended 1987 Constitution, in order to ensure the smooth running and stability of the institutions, while he is now setting out to create a new entity, tailored to the scale of his political ambitions and personal interests.

34. With regard to the creation of the ANI itself, it should be recalled that the Haitian state already releases every month, a fund for intelligence services. For example, for the fiscal year October 2018 – September 2019, the Haitian government disbursed one billion, forty-one million, three hundred and twenty-nine thousand seven hundred and seventy-eight (1,041,329,778) gourdes. The various state institutions and bodies that have received this huge amount allocated to intelligence and police expenditures are:

- The Department of Justice and Public Safety,

- Office of the Secretary of State for Public Security,
- National Police of Haiti,
- The Office of the President,
- The general administration of the National Palace,
- The National Palace Security Service,
- President's Special Account Staffing,
- The Prime Minister's Office,
- Staffing for the Prime Minister's Special Account,
- The Minister's Office at the Ministry of the Interior and Territorial Authorities,
- Minister's Office, Department of National Defense,
- Department of National Defense Branch,
- The questure of the Chamber of Deputies.

35. Information must therefore be shared with the public on the use of these funds. And, if today, the Haitian State – and not a de facto government – deems it necessary to provide the country with a special task-force called to organize and process information, all sovereign institutions must be set up beforehand.

36. Moreover, it is both curious and scandalous to note that in the visas of the decree establishing the ANI, reference is made to regional and international legal instruments to which Haiti is a party such as the American Convention on Human Rights, the 1966 Pacts on Civil, Political and Economic Rights, social and cultural rights which protect and guarantee individual freedoms and fundamental rights. The spirit and the provisions of this decree violate the provisions of these instruments which protect fundamental rights and individual freedoms. This proves, if need be, the level of contempt of President Jovenel MOÏSE and his team vis-à-vis the commitments made by the Haitian state in terms of promotion, respect and protection of human rights.

37. It is also of great concern that ANI officers – who have access to all places, documents and information relevant to the fulfilment of their mandate – are subject to a vetting process only to assess whether they are deleterious or not. Similarly, it is unacceptable that these agents have to report only to the President of the Republic, especially since the general inspection set up by this decree has only a cosmetic role to play because its referral cannot be made by members of the population, victims of abuses committed by anonymous agents.

38. The decree in question is in fact an orchestrated coup against the National Police of Haiti and the Courts and Courts of the Republic. By conferring on the ANI an extra-judicial power and empowering it to carry out the tasks reserved for the police and justice, the President grants himself full powers to evolve outside any legal and institutional framework. This, at least, is demonstrated by Article 5 paragraph 23, which stipulates that the ANI may “Receive and execute the mandate to investigate for justice, apprehend persons sought by the judicial authority and refer them to the competent authorities”.

39. Next to the ANI, on the same day, November 26, 2020, a decree on strengthening public security, much more nefarious than the first, was adopted for, among other things, provide a broader definition of terrorism and further restrict the fundamental rights and individual freedoms of the Haitian people.

40. At first, crimes of common law are changed into acts of terrorism; thefts, the throwing of trash, assassinations, the barricade of an area, etc. simply become and without any further consideration, of acts of terrorism.

41. Second, there are severe, unrealistic and therefore hardly enforceable sanctions. Almost life sentences are provided. For example, a person may receive between thirty (30) and fifty (50) years of criminal imprisonment. And these are sentences that can be imposed twice, depending on the status of those convicted of terrorism.

42. Similarly, there is a penalty of one year imprisonment per round for any person guilty of unlawful possession of firearms and ammunition or the unlawful transport of firearms and ammunition, etc., offences considered, with this decree, as acts of terrorism. And drivers of all modes of transportation – including transit drivers – are required to search their passengers' luggage because they are also at risk of being convicted of terrorism.

43. Without taking into account the astronomical fines that can also be imposed against both natural and legal persons, it is clear that these nefarious provisions were enacted by leaders who do not take into account the Haitian reality. Indeed, on the basis of shipments of firearms and ammunition generally seized in Haiti, in customs, in the borders, it becomes clear that the criminal foresight in this area is enormous and that it is a back door used by the authorities to convict people outright for life.

44. Moreover, this is to ignore the reality of public transport in Haiti, ensured by the private sector including drivers, especially those who drive buses connecting the different geographical departments between them, have neither the right nor the habit of searching the personal luggage of passengers and passengers.

45. Thus, with this new decree on strengthening public safety, people are at risk of being convicted of illegal possession of firearms and ammunition found in their public transport vehicle, without their knowledge of the presence of these objects.

46. For the RNDDH, the decrees of November 26, 2020 clearly aim to establish in the country, in the true sense of the term, a political militia that recalls the dictatorship of Duvalier. With an agency that has the power, among other things, to “counteract and repress acts of threats and global destabilization” and the possibility of convicting persons wrongly or wrongly indexed for terrorism, in the commission of ordinary crimes and offences, President Jovenel MOÏSE is a predator of human rights and a proven dictator.

47. Rather than strengthening the police and judicial institutions by providing them with the necessary means to enable them to carry out their tasks validly, President Jovenel MOÏSE, at the end of his mandate, endows himself with fanciful instruments – oneself-legal means – to give oneself the legal means to:

- attack all persons or organizations involved in monitoring the functioning of key state institutions;
- suppress anti-government protests;
- curb the will of the Haitian people to challenge their presence at the head of the country, after the expiry of their mandate.

48. This way of proceeding of the President of the Republic leads the country to a real state of exception, where, in the name of the «reason of State», the rights and freedoms protected by the national, regional and international instruments of protection of human rights, are simply suspended or even banned.

49. The response to the President of the Republic therefore lies in the dynamic of the uprising and mobilization of all the vital forces of the country. Today, it is imperative to bring him back to democratic reason by forcing him to withdraw outright from all his unconstitutional decrees which clearly reflect the will of the PHTK regime to restore the dictatorship in Haiti, in defiance of democratic gains.