

RNDDH Position

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A NEW CONSTITUTION IN HAITI: FOR WHY

1- The Constitution of 1987, considered by many as the most democratic constitution of Haiti's entire history, was approved by referendum on March 29th, 1987. The reception by the population of this new mother law crystallized the main demands of the Haitian people to the fall of the thirty-year dictatorship of Duvalier. It heralded a new era to be characterized by democracy and the promotion of fundamental rights and freedoms. However, it was both nationally and internationally a challenge and even an affront, because for many people it was too democratic.

2- Fought—it has been fought hard— by the enemies of the people. Many Heads of State, during its 34 years of existence, have tried to scuttle it, others wanted, in the form of procedures provided, to adapt it to the necessary current political evolution. The only project, in this sense, that has partially succeeded is the declaration of amendment proposed by the Preval-Bellerive administration in September 2009, and adopted by the national assembly the 9th of that same month. The said declaration was approved at the opening of the first ordinary session of the new legislature in April 2011. Mr. Michel Joseph Martelly, elected President of the Republic, in the elections of November 2010 and March 2011, lent on May 14th, 2011, the oath of use on this amended version of the 1987 constitution.

3- The temptations of certain Presidents, not too inclined to respect democratic principles, tending to either modify or change the 1987 constitution to adapt it to their own conceptions of power, have not fizzled out. They were quickly tempered by the fear of the reactions of the population, viscerally attached to respect for their freedoms and their fundamental rights that this constitution guarantees, and also by the obstacles it imposes on its amendment.

4- Today, this is hardly another attempt to violate the constitution. Mr. Jovenel Moïse, in line with his "democraticide" projects, persists and continues the effort wickedly, despite the penalty provided against such a crime. In fact, the constitution, in Article 21, establishes, "The crime of high treason consists in any violation of the Constitution by those responsible for enforcing it." And Article 21.1 specifies that, "The crime of high treason is punished with hard labor for life without commutation of sentence." How then, can one explain and understand the action of Mr. Jovenel Moïse who, in defiance of Article 150 of the constitution which establishes that, "The President of the Republic has no other powers than those attributed to him by the Constitution," Takes paths contrary to what is established to modify the mother law, this, in any

violation of article 284.3 which provides that, “Any popular consultation aimed at modifying the Constitution by way of referendum is strictly prohibited.” By these acts, Mr. Jovenel Moïse violates the constitution and commits the crime of High Treason—a crime punishable by hard labor for life, without the possibility of commutation of the sentence.

Mechanisms for amending the Constitution: The procedure is devious.

5- The 1987 constitution will complete its 34th anniversary on March 29, 2021. But, also and above all, the Haitian people will have to commemorate, 34 years learning of democracy, between crisis of populism, both left and right, and many attempts at a return to dictatorial and authoritarian order—even militarist. Alongside purely retrograde behavior, the problems facing the Republic of Haiti will have no other solutions than those which characterize humanity, our humanity, all of humanity.

6- There is a general consensus that the Constitution needs to be reformed, more so amended, to correct what needs to be corrected and perfected, but this cannot be done by violating it. If so, we would have derailed the process and seriously jeopardized our immediate future. It should be remembered that the executive power and the legislative power have identical powers, as regards the introduction of a draft amendment, for the first, and a proposal for an amendment for the second. The procedures are clearly laid down in Articles 282, 282.1, 283, and 284.2. Unfortunately, neither of the two powers saw fit to introduce a proposal, in this sense, to the national assembly closing the proceedings of the last ordinary session of the 50th legislature on September 9, 2019.

Mr. Jovenel Moïse wants a new constitution.

7- It is against all these constitutional principles and requirements and the will of the Haitian people that the decision of October 29, 2020 was imposed. On that date, in fact, was published in the Monitor, Official Journal of the Republic, a decree whose title is quite revealing, “Decree establishing the independent advisory committee for the development of the new constitution.”

8- The President did not consult anyone from the political class and organized sectors of society around his approach. The main members of this so-called independent committee, chosen personally by Mr. Moïse and his advisers, are, for the most part, suffering from precocious senility and their past does not inspire or attest to any democratic culture. As the epitome of indecency and ridicule, the members of this committee, some of whom in the recent past held the highest offices of the State, did not feel in any way embarrassed to take the oath before the president and on the deed of independence.

9- No constitutional provision recognizes these prerogatives of the President of the Republic. President Moïse, in deciding on the drafting of a new constitution to be submitted to a referendum, is giving himself powers that he does not have. In doing so, he systematically violates articles 135.1, 136, 150 and 283.4 of the mother law which he had sworn to respect and to ensure respect. These facts implicitly confirm the putting on hold of the Constitution in force. The Republic of Haiti, no longer governed by a constitutional order, has deviated from the democratic path and therefore from the democratic charter of the Organization of American States (OAS).

10- Haitian society, as a whole, all political tendencies, all religious denominations, all social groups, stands up as a single entity to denounce this rupture of the democratic order and all the consequences that flow from it. President Moïse's approach sets a dangerous precedent for democracy and political stability in the country and even the region. Each elected President will believe he is empowered at the end of their term, to adopt a new constitution, either to strengthen their own power, or to strengthen the power of their political group, and settle there for life.

**An unconstitutional electoral council responsible for organizing a constitutional referendum:
The Epitome.**

11- The very first constitution after Duvalier, adopted by referendum on March 29, 1987, established the existence of an institution responsible, in complete independence, for organizing and controlling electoral operations throughout the territory of the Republic. This is the Permanent Electoral Council, one of the six independent institutions created in support of the three constituent powers of the state. It was never within the remit of the Electoral Council to organize any referendum, especially since this form of popular consultation is formally prohibited by the constitution. Remember, the subterfuge and stratagem of Mr. François Duvalier, to change the constitution and settle permanently at the head of the State, to attach all the attributes of the State, this, by way of referendum. But, in truth, thanks to the corruption of the political system, democratic decoy and corruption succeed.

12- The organization of the very first elections, after the vote on the 1987 constitution, just after its promulgation and publication, was entrusted to a provisional electoral council as provided for in its transitional arrangements. The very first and only constitutional provisional electoral council is that which was responsible for organizing the general elections of November 28, 1987. Since then, no measures have been taken by the various administrations which have succeeded one another, from 1988 to 2020, for the irreversible establishment of the Permanent Electoral Council. The recourse to provisional electoral councils by political consensus, between the executive power, the political parties of the opposition and the actors of the civil society,

made it possible to fill this void. Thus, all the elections carried out during this long period, going from April 1987 to date, have been carried out by the provisional electoral council.

13- Mr. Moïse, on his own initiative, recently appointed a Provisional Electoral Council (CEP). This novel illegal and unconstitutional body, partisan because not representative, denounced by all sectors of society, is also responsible for organizing a referendum to endow the country with a new constitution. No law, no constitutional provision has provided for this scenario. Yet—against the backdrop of a sacking of the main Haitian democratic institutions, against the backdrop of a most deleterious socio-political situation, against the backdrop of violations of fundamental rights and freedoms—Mr. Moïse continues his effort in the misunderstanding and the culture in the matter, and History and the causes of our misfortunes.

Objectives pursued by the adoption of the new constitution: Getting rid of democracy, the inalienable rights of the Haitian people.

14- The wishes of President Moïse to load and dispose of the country's constitution has nothing to do with a demand for adjustment to the political developments experienced by the country over the past 30 years. This choice responds to the personal and/or clan concerns of Mr. Moïse, his mentors or even his bosses. This choice has nothing to do with general interest; the latter is only mentioned as a pretext. The declarations, relating to the strengthening of democracy and the freedoms and rights of the Haitian people, are only a ploy and an illusion. The result pursued is only the modification of the processes leading to the emergence of political will and the general interest. Ultimately, he sees—they see—the solution to the thorny question posed by the squandering of the Petrocaribe Funds for which the population continues to demand accountability. Mr. Moïse, as well as the main leaders of the party which brought him to power, his closest collaborators and advisers, are indexed in the audit reports, on the management of this fund, published by the Superior Court of Accounts and of the Administrative Litigation (CSCCA)

15- Mr. Moïse has never hidden his inclinations to see the establishment in the country of a strong and authoritarian presidential regime like the Duvalier and military governments. Just like his desire to perpetuate himself in power. Thus, in 2019, he embarked on an incessant and recurring campaign of slanderous denunciations accompanied by threats, even political persecution against certain members of the political sector and the private business sector. Some now find themselves in hiding, others have taken the path of exile, and the less fortunate find themselves either in the jails of power or quite simply murdered. The assassination of Maître Monferrier Dorval, just a few hours after declaring in a radio program that the country is neither governed nor administered, is the perfect symbol of the cynicism and the criminal instinct that dwells in the heart of the President Moïse.

16- As the obvious imminence of the end of his mandate and the risks of prosecution looms against him, Mr. Moïse has found a better decision to take than to change his constitution to protect himself, protect his backs and those of his relatives. Return to a past conjured up that social movements for democracy, the recognition of freedoms and fundamental rights of citizens seem institutionalized in charters such as that of 1987. In his efforts, Mr. Moïse is ardently supported and encouraged by the former President Martelly and former Prime Minister Laurent Lamothe. Moreover, long before his election, Mr. Moïse was already in the crosshairs of Haitian justice for his involvement in acts of money laundering in short of corruption.

17- The international community, through the United Nations Integrated Office (BINUH) and the Permanent Representative of the Organization of American States (OAS), unfortunately, seem to support Mr. Moïse in his overt and systematic violations of the constitution. Worse, still, these international institutions are complicit or even co-author of such violations of the constitution and the inalienable rights of the Haitian people, by attracting in their wake and by corrupting the Office for the Protection of the Citizen (OPC), if not its officials, who participate, organize activities promoting the new constitution. The mission of this institution, the OPC, is to find out about abuses by the Administration against citizens.

18- Moïses's attempts to change the country's constitution are the subject of the most vehement protests and denunciations from all walks of life. However, for weeks, excerpts, and now a full version of the draft new constitution, have been published through social networks. And, on the airwaves of certain radio stations of the Capital, the propaganda is in full swing. And the referendum initially scheduled for April 2021 is announced for June 2021.

19- The Court of Cassation has not yet scheduled a meeting to receive the constitutional oath of the members of the Provisional Electoral Council appointed since September by Mr. Moïse. This step is essential to establish their legal competence. A timid position, too timid which shows the cautious position of the highest judicial body in place in the Republic. But this position is not enough. The law must be restored to its rights.

20- Meanwhile, according to information relayed by the national media, less than two million of the seven million citizens of voting age have in possession their national identity card which will be transformed into an electoral card in order to be able to draw up the electoral lists. And the process to do this is an opaque process, too public, which portends, if not fraud, mistrust. Confidence must be restored in the process of identifying citizens to promote and allow elections likely to legitimize the powers that will result from them.

21- Because and despite everything, the drunken boat of the current Government continues its way, staggering in a political environment, more and more, deleterious with the proliferation of armed gangs, supported by the authorities, in different regions of the country. Fear invades the hearts and minds of all social strata of the already economically bloodless population—out of genuine fear as well as fear of being kidnapped for ransom.

22- How does one campaign, like going to provincial towns, how does one vote without reestablishing nationwide conditions of security and confidence. While we are talking about a referendum for the month of June and elections for the month of September, the only security force in the country, the Haitian National Police, this week entered into open rebellion against its hierarchy.

23- **One constant, one guarantee:** The continuous deconstruction of republican institutions, the undermining of the fundamental rights and freedoms of Haitian citizens, the specter of coups which return and are installed against any attempt at democratization, of construction of a community founded on the principles of freedom, equality and not on violence and force, not legitimized by law, finally new forms of cooperation between States.

24- These are the challenges both for Haiti and for the institutions of cooperation and peacekeeping around the world.