



7 February 2021

End of constitutional presidential mandate

Enhanced version

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CARDH thanks all the institutions and individuals who provided comments whose names are not included in this analysis.

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Accronyms

- CARDH*: Centre d'analyse et de recherche en droits de l'homme [*Center for Analysis and Research in Human Rights*]
- CEP*: Conseil électoral provisoire [*Provisional Electoral Council*]
- CEEI*: Commission d'évaluation électorale indépendante [*Independent Electoral Evaluation Commission*]
- CIEVE*: Commission indépendante d'évaluation et de vérification électorale [*Independent Evaluation and Verification Commission*]

**In-text French acronyms*

I. Abstract

1. The Vienna Declaration and Program of Action, adopted on 25 June 1993 by the Second World Conference on Human Rights, affirms that human rights are guaranteed under the rule of law. This is implemented through the independence of control institutions (*administrative control, judicial control, control of constitutionality and conventionality, etc.*), but above all, through the respect of the Constitution, considered to be the ultimate norm of any country, regardless of its political regime, given its fundamental role of organizing the regular operation and balance of State entities.
2. The implementation of the Constitution is therefore the primary duty of any government. Thus, policy-makers, civil society and human rights organizations, as well as the economic sector have the responsibility to uphold scrupulous respect for the Constitution by those who govern and those who are governed. It is in this sense that CARDH, in its report on human rights in 2019, stressed the fact that, according to the Constitution, President Jovenel Moïse's term of office will come to an end on 7 February 2021.
3. Indeed, the five years that make the presidential term of office (Article 134 (1)) are not calendar, i.e. cumulative regardless of the beginning of the term, but constitutional, which means that they fall within time frames clearly defined by the Constitution: **7 February 2016 to 7 February 2021; 7 February 2021 to 7 February 2026** ... and can in no way be adjourned or extended.
4. Thus, paragraphs 1 and 2 of article 134 stresses: "*the term of office of the President-elect is deemed to have begun on February 7 of the year of the election*", i.e. February 7, 2016, "*in the event that the ballot cannot be held on the scheduled date*", i.e. the last Sunday of October 2016 (the fifth year of Martelly's presidential term).
5. Corroborating the Constitution, Article 239 of the Electoral Decree of 2 March 2015 (Special No. 1), states that in order to harmonize constitutional time and electoral time "(...) *the term of office of the President of the Republic shall end, imperatively, on the seventh (7th) of February of the fifth year of his term of office regardless of the date of his taking office.*"
6. That is why President Joseph Michel Martelly, having been sworn in on May 14, 2011, left the presidency on February 7, 2016, stating in his end-of-term speech before the National Assembly: "(...) *my term of office is coming to an end (...) and shall cease on February 7 of the fifth year of the term, regardless of when I took office.*"¹

¹ G. Jean, « Crises électorales en Haïti, la Commission indépendante d'évaluation et de vérification électorale CIEVE : L'inédit et la fin d'un système », CARDH, Imp. PressMax, p.129

7. In addition, 27 deputies of the 50th legislature (January 2016-January 2020), having been sworn in on the second Monday of January 2017, and 20 senators, six of whom were sworn in on the same date, all completed their constitutional mandate on the second Monday (13) of January 2020.
8. The Constitution and legal precedents are therefore clear: President Moïse's constitutional mandate ends on 7 February of the coming year. There should be no doubt about it.
9. However, it must be stressed that, in addition to the acceleration of poverty (4.5 million Haitians are in food insecurity), the climate of insecurity, the institutional collapse and the widespread corruption that the country is already facing, in this period of COVID-19 pandemic, a deep and unprecedented institutional and political crisis has started.
10. This crisis has already been triggered by a dysfunctional Parliament, the imminent end of the presidential mandate, and a Provisional Electoral Council (CEP) whose mandate has come to an end, thus having no prerogative to organize presidential, legislative and local elections. The red flag has been raised, and the grim picture of a major crisis has been painted. It is now time to stop ignoring them and to start focusing on a sustainable and well-considered solution, theoretical or practical, able to pull the country out of the announced socio-political and institutional blitz.

II. Introduction

11. The role of the Constitution is essentially to: (i) organize the powers and institutions forming the State, as well as their interrelations; (ii) define the political regime as well as the political entity of the State (federal State, unitary State...); (iii) proclaim in a general and explicit manner the fundamental rights of citizens. Seen as superior or supreme law, some constitutionalists consider it to be “*the law of all laws*”². As such, it has a body responsible for ensuring that all other laws are in conformity with it (review of the constitutionality of laws and international treaties)³: Constitutional Council, Constitutional Court, Supreme Court, etc. In any modern and democratic society, or at least one that tends towards the construction of the rule of law, the term of office of a President, parliamentarians, and elected official more generally, is defined by the Constitution.
12. With the intent to anticipate the institutional crisis linked to the end of President Jovenel Moïse’s mandate, in 2019, when the country was in lockdown and the President was close to resigning because of major anti-governmental demonstrations, the Centre for Analysis and Research in Human Rights (CARDH), on a strictly legal basis, addressed the issue in its report “The State of Human Rights in 2019”, published in February 2020⁴. Moreover, CARDH has publicly stressed the urgent need to address the issue of the presidential mandate during numerous meetings and debates held in 2019 and 2020 on the Haitian crisis, bringing together various political and international cooperation actors.
13. In an attempt to revive anti-government mobilization, the presidential term of office seems to have become the spearhead of the opposition. Political parties are in turn beginning to openly support the end of President Jovenel Moïse’s tenure on 7 February 2021.
14. However, what is more worrisome is the fact that President Moïse is now publicly stating that his term of office would last until 7 February 2022, as he made it clear to the opposition in his brief speech on the occasion of the National Flag

² Hans Kelsen, for example, (11 October 1881-19 April 1973), an Austro-American jurist, instigator of the “Pure Theory of Law” and founder of normativism and of the principle of the Hierarchy of Norms.

³ According to articles 54 and 61 of the French Constitution, the Constitutional Council is, first and foremost, responsible for ensuring compliance with the Constitution, which is considered the supreme norm in French law. To this end, it monitors the constitutionality of laws and international treaties, i.e. verifies their conformity with the Constitution. In Haiti, the role of the Constitutional Council, established by the amended Constitution, is to “ensure the constitutionality of laws. It is the judge of the constitutionality of laws, regulations and administrative acts of the Executive Branch” (Article 190). It should be noted that this body has not yet been established.

This control is carried out by “exception” during litigation (before the American judge, the Haitian judge, before the constitutional amendment of 2011) or by “action” when a specific body is seized (French Constitutional Council, Haitian Constitutional Council, not yet established).

⁴ CARDH, “The State of Human Rights in 2019: The Dark Year!”, 18 February 2020.

Day on 18 May 2020. The absence of Parliament, a serious anomaly in the construction of democracy and the principles of the rule of law, and the inefficiency of the judiciary and certain institutions can only amplify this concern.

15. Furthermore, it is important to stress that this declaration was made at a time when the Moïse administration took advantage of the global crisis triggered by the COVID-19 pandemic to declare a state of emergency, allowing it to systematically violate the principles of human rights and good governance⁵, and to issue orders unrelated to the situation. For example, three decrees on matrimonial regimes were issued by the Head of State, amending the civil code, without any supervision by the legislature, currently nonexistent.
16. However, a code fundamentally consists of regulating social operation in a specific field. This is why the prerogative to codify falls to the legislative power with regard to the principle of the separation of powers. These decrees therefore transform citizens' social operation without respecting the separation of powers.
17. In this context, which is akin to a dictatorship, the present legal analysis demonstrates that the end of the presidential term of office is indeed 7 February 2021, and provides to President Jovenel Moïse, as well as the Core Group and any other interested party, with a clear and documented reference on the issue.
18. This new version particularly strengthens the analysis on the legal precedent, taking into account the end of the 50th legislature (January 2016-January 2020) and the mandate of two thirds of the Senate (20 senators) on the 2nd Monday of January 2020, despite the fact that some deputies and senators took office in 2017.

⁵ CARDH :

- « COVID-19, Bilan du « deuxième » état d'urgence sanitaire en Haïti, L'administration Moïse-Jouthe persiste dans la violation des principes de droits humains », 21 May 2020
- « COMMUNIQUÉ DE PRESSE, Journée internationale de la liberté de la Presse, La gestion de l'administration Moïse-Jouthe du COVID-19 : violation de la liberté de la presse et des droits des journalistes », 4 May 2020
- « COVID-19 : Vers le bilan du « premier » état d'urgence sanitaire en Haïti, Violation des principes de droits humains et mauvaise gouvernance », 21 April 2020
- « COVID-19, état d'urgence mondiale limité par les droits humains, Haïti : non-respect des principes de droits humains et de bonne gouvernance », 8 April 2020

III. 7 February 2021: End of presidential mandate

A. Constitution

i) Article 134, paragraphs 1 and 2

19. According to article 134, paragraphs 1 and 2, of the Constitution: *“The presidential term of office shall be five (5) years. This period shall begin and will end on 7 February following the date of the elections. The presidential election shall be held on the last Sunday of October of the fifth year of the presidential term. The President-elect shall take office on February 7 following the date of his election.”*
20. **The five years defined by the Constitution are not calendar, but consistent with the 2021 timeline.** The amendment made in 2011, under the presidency of René Préval (May 9, 2011), was essentially aimed at harmonizing the electoral time with the constitutional time: 2011-2016, 2016-2021. This is explicit, both in the letter and the spirit of the Constitution.
21. Thus, in order to avoid any deleterious attempt by a President to remain in power beyond the scheduled date, the second paragraph of article 134 continues in the following terms: *“In the event that the ballot cannot take place before 7 February, the President-elect shall take office immediately after the validation of the ballot and his or her term of office shall be deemed to have begun on 7 February of the year of the election.”*
22. The year of the election was 2015, in which the electoral process was triggered - more precisely on 9 August and 25 October (President Martelly's 5th year). The Constitution, as the supreme law, therefore peremptorily prescribes that the presidential term ends on 7 February 2021, irrespective of the date on which the newly elected President takes office.
23. ***Why is the term of office of elected officials not necessarily calendar, i.e. cumulative?***
24. **Harmonize constitutional and electoral times.** Emerging from a dictatorship of almost thirty years (1957-1986), Haiti entered a democratic process after the departure of the Duvaliers on 7 February 1986, adopting and proclaiming the Constitution of 29 March 1987⁶. The first democratic elections, in which the people could freely choose their leaders, were held on 16 December 1990.

⁶ In the preamble to the Constitution, it is stated that: *“the Haitian people proclaim the present Constitution to guarantee their inalienable and imprescriptible rights, in accordance with their act of independence and the Universal Declaration of Human Rights.”*

25. However, this process will be disrupted, for various reasons, including coups d'état, political crises and, often, the unwillingness of most governments to establish the founding institutions of democracy. For example, the Permanent Electoral Council, provided for in the 1987 Constitution, has not yet been set up.
26. On top of the political instability⁷, there is therefore the constant need to reach a consensus to form a Provisional Electoral Council (15 Provisional Electoral Councils⁸) for the organization of elections, which perpetuates a failure to comply with the electoral and constitutional timetables provided for in the Constitution.
27. In order to ensure that the delay in the organization of the elections does not continue to affect the constitutional timelines, the 2011 amendment was adopted, expressly stating that the constitutional timeline remains stable regardless of when the elections are held. It is therefore this spirit of the Constitution, which is, moreover, of public notoriety, that will be expressly enshrined and reinforced by the 2015 Electoral Decree (see point B).

ii) Principle of strict application of the Constitution

28. Given its central role in the organization of the State, constitutional law is part of public law. One of the fundamental principles underlying the Constitution is its strict application by governments, including the President of the Republic, who is considered to be the first person responsible for respecting it. As such, article 136 of the Haitian Constitution makes the President the guarantor of the proper functioning of institutions. He must therefore apply it and not interpret what it defines in simple and clear terms, such as, for example, the presidential mandate.

B. Electoral Decree of March 2, 2015 (*Le Moniteur*, Special No. 1): Article 239

29. The term of office of elected officials is fixed by the Constitution. It establishes a body responsible for organizing elections, on the basis of a law passed by Parliament or, exceptionally, on the basis of a decree, in the event that there is

⁷ For example, in January 1999, Haiti experienced a legislative vacuum. Indeed, the rivalry between the Lavalas political party (OPL) – which had a majority in Parliament – and President René Préval did not allow for the electoral machinery to be set in motion in 1998. Other political crises arose due to the failure to respect electoral deadlines, and elections were organized after the end of the mandate of elected officials (legislative and local): 2000; 2010; 2011; 2015 (Lemoine Bonneau, “Le mandat de 10 sénateurs est-il arrivé à terme ?” Newspaper Le Nouvelliste, 1 December 2017, <https://lenouvelliste.com/article/179882/le-mandat-de-10-senateurs-est-il-arrive-a-terme>).

⁸ From 1987 to 2010, 11 provisional electoral councils had been established, with three more created under Martelly’s presidency. Currently there is one, created under the exceptional presidency of President Privert. Combined sources:

G. Jean, “Crises électorales en Haïti, La Commission d’évaluation électorale indépendante (CEEI), contribution pour une sortie de crise”, CARDH, Haiti, Port-au-Prince, Imp. PRESSMAX, April 2016. Haiti- reference: http://www.haiti-reference.com/politique/elections/conseil_elect.php

no Parliament. The law organizing the 2015 elections is the decree of 2 March 2015, published in Le Moniteur, Special No. 1.

30. This Electoral Decree takes up the wording of article 134 (2) of the Constitution and expressly states its letter and spirit, consisting essentially of “*harmonizing constitutional and electoral time.*”
31. In this regard, article 239 of the said decree stipulates: “*with a view to harmonizing the constitutional and electoral times on the occasion of elections organized outside constitutional time, for whatever reason, the terms of office of elected officials shall come to an end in the following manner: a) The term of office of the President of the Republic shall imperatively come to an end on the seventh (7th) of February of the fifth year of his term of office, regardless of the date of his taking office.*”
32. It is worth recalling that the adverb “*imperatively*” literally reaffirms that the term of office of the President-elect of an election held outside constitutional time - that is, after 7 February of the fifth year of the President-elect’s term of office, for whatever reason (political, economic or other) - ends on 7 February of the fifth presidential year established by the Constitution. This will lead us to discuss some legal precedents where the amended Constitution has been applied.

C. Legal precedent

iii) Joseph Michel Martelly: 14 May 2011-7 February 2016

33. Winner of the presidential elections of 28 November 2010 (first round) and 20 March 2011 (second round) and having been sworn in on 14 May, Mr Joseph Michel Martelly completed his term of office and officially handed in the presidential hat to Parliament on 7 February 2016, despite the vacuum caused by the political-electoral crisis.
34. In his speech before the National Assembly, President Martelly had to declare: “*This 7 February 2016 (...) my mandate is coming to an end. Indeed, according to Article 134 (1) of the mother law, the presidential term of office is five (5) years. This period begins and ends on February 7 of the fifth year of the term, regardless of the date of taking office.*”
35. As demonstrated, the Constitution clearly sets the term of office of the President at February 7, 2021. This is reinforced by the principle of strict application of the Constitution and the legal precedent created by the departure of President Martelly on 7 February 2016.

iv) End of the 50th legislature (13 January 2016-13 January 2020): 27 deputies spent less than four years in Parliament (Article 92-1)

36. The first round of legislative elections was held on 9 August 2015 to elect the deputies of the fiftieth legislature⁹, the second round on 25 October 2015, simultaneously with the first round of the presidential election. In some constituencies, the elections were cancelled, requiring a new election. In accordance with the Constitution, the elected deputies took office on the second Monday of January 2016. By-elections for 25 constituencies were held on 20 November 2016, on the occasion of the presidential election, and the elected deputies were sworn in in January 2017 (see annex I). Some constituencies held elections in 2017, and those elected were sworn in during the current year.
37. As the legislature ended on the second Monday of January 2020, all deputies, irrespective of the year in which they took office, left Parliament. **As a result, some deputies spent three years in Parliament, others only two years.**
38. **The term of office of deputies is therefore not calendar, but forms a legislature set in a period by the Constitution: second Monday of January 2016 to second Monday of January 2020.** As for the presidential term, in the event that elections have not taken place on the scheduled date, the elected deputies take office after the validation of the ballot, and the term of office begins on the date provided for in the Constitution (second Monday of January of the election year).
39. As such, article 92 (1) stipulates that “*the deputies take office on the second Monday of January following their elections and sit in two (2) annual sessions. The duration of their mandate forms a legislature. In the event that the elections cannot be completed before the second Monday of January, the elected members take office immediately after the validation of the ballot and their four (4) year mandate is deemed to have begun on the second Monday of January of the year in which they take office.*”

v) 13 January 2020: end of term for two thirds of the Senate¹⁰

40. On 13 January 2020, President Jovenel Moïse declared, by means of a tweet, the end of the mandate of 20 senators: 14 elected in the legislative elections of 9 August and 25 October 2015, having been sworn in on 11 January 2016; six others, elected in the elections of 20 November 2016, having been sworn in on

⁹ The number of seats in the Chamber of Deputies was increased from 99 to 119, in accordance with the Electoral Decree of 2 March 2015, initially providing for 118 single-member constituencies. A new decree of the following 13 March divided the constituency of Cerca-la-Source into two constituencies: Cerca-la-Source and Thomassique.

¹⁰ **The first third** is made up of the following senators (second senators): 1) Antonio Cheramy; 2) Évallière Beaulan; 3) Nawoon Marcélus; 4) Jacques Sauveur Jean; 5) Carl Murat Cantave; 6) Wilfrid Gélín; 7) Ricard Pierre; 8) Hervé Fourcand; 9) Saurel Jacinthe; 10) Francener Dénius. **The second third** is made up of the following senators (first senators): 1) Youri La tortue; 2) Nènel Cassy; 3) Ronald Larêche; 4) Onondieu Louis; 5) Jean Renel Sénatus; 6) Jean Marie Junior Salomon; 7) Dieupie Chérubin; 8) Guy Philippe.

10 January 2017¹¹. **These six senators spent only three years in Parliament.** The President's tweet has no legal value, and some Senators believe that they are still in office. But the fact is that, currently, Parliament has only 10 senators instead of 30.

41. Each senator does not have a term of six calendar years, but rather a constitutional term of six years¹², being renewed every two years for a senator, depending on his or her place in the elections (1st; 2nd; 3rd), regardless of the date of taking office, for whatever reason.
42. The President estimated that two thirds of the Senate had filled the 2016-2018 and 2018-2020¹³ vacancies respectively. Having won the first round of elections in 2015, Senators Youri Latortue and Jean Renel Sénatus are among those who consider that their term of office should end in 2022, according to the provisions of article 50 (3) of the 2015 electoral decree (one vacancy¹⁴ and one renewal¹⁵).
43. Senators took office on the second Monday of January following the elections and have a six-year term, with a two-year interval between terms. Indeed, every two years, one third of the Senate is renewed (i.e. 10 senators), through an election, in order to ensure the permanence of the Senate (Article 95 of the Constitution). In general elections, in which three senators (30 in total) are elected per department, their term of office varies between 2, 4 and 6 years, in order to corroborate the logic of biennial renewal: the senator with the highest number of votes has a term of six years; the next senator has a term of four years; the last one has a term of two years.

¹¹ Ms Dieudonne Etienne Luma (PHTK); Mr Joseph Lambert (Kona); Mr Nawoon Marcellus (Bouclier); Mr Sorel Jacinthe (Inite Patriyotik); Mr Willot Joseph (PHTK); Mr Wanique Pierre (PHTK): <https://www.haitilibre.com/article-19759-haiti-politique-prestation-de-serment-de-6-nouveaux-senateurs.html>

¹² Referring to the constitutional logic of vacations, the term of office of the 20 senators should have ended respectively on the 2nd Monday of January 2017 (1st third, i.e. the senators obtaining the fewest votes), and the 2nd Monday of January 2019 (2nd third, i.e. the senators obtaining the most votes). Indeed, in January 2015, following the departure of one third of the Senate (10 senators elected in 2009 for a term of 6 years), then counting 20 senators, two vacancies occurred: from January 2015 to January 2017; from January 2017 to January 2019. However, it should be noted that the terms of these 10 Senators had expired in January 2014. An amendment to the 2008 electoral law was adopted in December 2013, allowing them to continue their mandates until January 2015 (Parliamentary Union, http://archive.ipu.org/parline-f/reports/1137_E.htm).

In addition, it should be noted that, according to the amended Constitution, the first vacancy occurred in January 2012, when one third of the Senate elected for a 6-year term in 2006 (Article 231 of the 2008 Electoral Law), for which elections had only been held in 2011.

¹³ In 2018, a joint (executive-legislative) commission had been working on the mandate of the first third, which implies tacit or express recognition of the end of its mandate. An agreement would have been reached to this effect.

¹⁴ A vacancy occurs when, for example, one-third of the Senate ends its term without an election to replace it.

¹⁵ Renewal occurs when elections are held on the scheduled date, so that the 10 outgoing senators are replaced by the newly elected senators.

44. However, if the elections concern a vacancy and a renewal, the first senator elected holds a six-year term. The next senator shall fill the vacancy created during the term for the time remaining. In the event that there is a third elected Senator, the latter shall complete the term that expires first.
45. In this regard, article 50 (3) of the 2015 Electoral Decree states: *“In senatorial elections involving both a renewal and one or two vacancies in the same department, voters shall vote for as many candidates as there are vacancies to be filled. The candidate with the most votes remains in office until the second Monday in January of the sixth year of his or her term. The Senator elected with the next higher number of votes fills the vacancy occurring during the term for the time remaining. Any third Senator-elect, the one who comes in third, shall complete the term of office that expires first.”*
46. As with the presidential and deputy mandates, in the event that elections were not held before the second Monday of January in question, the elected Senators would take office immediately after the validation of the ballot and their six (6) year term would begin on the date provided for in the Constitution (second Monday of January of the election year).
47. The second paragraph of Article 95 stipulates: *“In the event that the elections cannot be completed before the second Monday of January, the elected Senators shall take office immediately after the validation of the ballot and their six (6) year term of office shall be deemed to have begun on the second Monday of January of the year in which they take office.”*
48. Nevertheless, it is worth recalling the electoral process, in particular the *“Political Agreement for institutional continuity at the end of the term of office of the President of the Republic in the absence of an elected President for the continuation of the electoral process begun in 2015”*, which provisionally brought Mr. Jocelerme Privert to power with the aim of completing the process, in accordance with article 134 (2).

D. Electoral process that brought Jovenel Moïse to power on 7 February 2017

49. Presidential and legislative elections were held on 9 August and 25 October 2015 respectively to elect the 58th President of the Republic and the 50th legislature (deputies), as well as 20 senators. The political crisis prevented President Joseph Michel Martelly from completing these elections. Thus, on 22 December 2015, he established the Independent Electoral Evaluation Commission (CEEI), and on 5 February 2016 he jointly signed a political agreement with Parliament, entitled: *“Political Agreement for institutional continuity at the end of the term of office of the President of the Republic in the absence of an elected President for the continuation of the electoral process begun in 2015.”*

vi) Independent Electoral Evaluation Commission (CEEI)

50. By an order issued on 22 December 2015, President Joseph Michel Martelly established the Independent Electoral Evaluation Commission (CEEI) with the mandate to “*take all necessary steps to evaluate the electoral process and make recommendations to the Provisional Electoral Council and to the Government (...)*”¹⁶.”
51. In tacit recognition that the elections of 9 August and 25 October 2015 were contrary to democratic standards, the Independent Electoral Evaluation Commission recommended “*a more thorough technical review of the accountability of the electoral machinery*” and to reconsider “*the cases handled by the National and Departmental Electoral Dispute Offices.*”¹⁷”
52. Following the publication of the Commission’s report, popular mobilization continued, leading to a series of resignations of several electoral advisers, and the resignation of the President of the Council, Mr. Pierre Louis Opont, on 23 January 2016, only 14 days before the end of the presidential term.
53. Not provided for in the amended Constitution, which assigns respective responsibilities to the executive, legislative and judicial branches, this situation led President Martelly to “whip up” an extra-constitutional formula to complete the electoral process.

vii) “Political Agreement for institutional continuity at the end of the term of office of the President of the Republic in the absence of an elected President for the continuation of the electoral process begun in 2015”¹⁸”

54. On 5 February 2016 President Martelly, together with Parliament, represented by the President of the Senate and the President of the Chamber of Deputies, initialed the agreement: “*Political Agreement for institutional continuity at the end of the term of office of the President of the Republic in the absence of an elected President for the continuation of the electoral process begun in 2015.*”
55. The essence of this agreement was to corroborate the end of President Martelly’s term of office on 7 February 2016, as required by the Constitution, and to continue and complete the electoral process initiated in 2015, through a provisional President and the establishment of a new Electoral Council to follow up on the recommendations of the Independent Electoral Evaluation Commission (CEEI), established by President Martelly himself.

¹⁶ Presidential Decree of 22 December 2015

¹⁷ G. Jean, « Crises électorales en Haïti, La Commission d’évaluation électorale indépendante (CEEI), contribution pour une sortie de crise », CARDH, Press Max, April 2016.

¹⁸ *Ibid*, p. 77

56. **1. End of the presidential term on 7 February, in accordance with article 134 (2) of the Constitution.** The Agreement stipulates that: “*the President of the Republic, through the National Assembly, shall make an address to the Nation concerning the end of his term of office and his departure from power on 7 February 2016.*”
57. Furthermore, at the end of his term of office, the President of the Republic shall “*inform Parliament, as co-depositary of sovereignty, of the vacuum in executive power caused by this situation. The President of the National Assembly, in a respective message, shall acknowledge the message of the President of the Republic and note the presidential vacuum, leading to the dysfunction of the Executive Power. Once the vacuum has been noted, the President of the National Assembly shall entrust the Prime Minister in office with the management of current affairs and announce the election by the National Assembly of a provisional President.*”
58. Following the indirect election organized by the National Assembly on the basis of the said agreement and not the Constitution, President Jocelerme Pivert had to recall, in his inaugural speech, that his mission rests on three pillars, including: “*the continuation and strengthening of the electoral process.*”
59. **2. Formation of a new Provisional Electoral Council (CEP) with a view to “relaunching the finalization of the electoral process.”** The agreement provides for the formation of a CEP whose mission is to complete the electoral process. “*(...) this new President will have to form a new CEP, whose mission is to restart the electoral process after evaluating the steps taken and implementing the technical recommendations of the Independent Electoral Evaluation Commission, organize the second round of the presidential election and install the President-elect.*”
60. Thus, the Order of 30 March 2016, 171st year No. 60, appointing the members of the Provisional Electoral Council (CEP) states: “*Considering the agreement of 5 February for institutional continuity (...) Considering that it is necessary to appoint the nine (9) members of the Provisional Electoral Council (CEP) for the continuation of the electoral process initiated during the year 2015, in accordance with the aforementioned agreement of 5 February 2016.*”
61. On the report of the Ministry of Justice and Public Security, and after deliberation in the Council of Ministers, the following citizens were appointed members of the Provisional Electoral Council (CEP): 1) Mr. Carlos Hercule; 2) Mr. Fritsnel Joseph; 3) Mr. Kenson Polynice; 4) Mr. Marie-Hérold Michel; 5)

Mr. Josette Jean Dorcely; 6) Mr. Leopold Berlangier; 7) Mr. Lucien Jean-Bernard, 8) Ms. Marie Frantz Joachin, 9) Mr. Jean Simon Saint-Hubert¹⁹.

62. **3. Establishment of the Independent Electoral Evaluation and Verification Commission (CIEVE).** In accordance with his mission and the agreement above-mentioned, Interim President Jocelerme Privert consulted political actors and established the Independent Electoral Assessment and Verification Commission (CIEVE) on 27 April 2016²⁰.

63. The mandate of the new Commission was to “*streamline the voting process by analyzing the sign-in lists, the By-Lists of Electors (BLEs), the Tally Sheets, the Notice of Deficiencies, the Incident Reports, the ballots and the complaints already recorded.*”²¹ In accordance with its terms of reference, the Commission recommended the “*resumption of the electoral process*”²², a recommendation which was not followed by the Presidency nor the Provisional Electoral Council. The Provisional Electoral Council asked candidates already registered in the presidential process to confirm their candidacy, which some did. As a result, there was no new presidential election that would have resulted, inter alia, in : (i) a new registration for the candidates, meaning the integration of other personalities into the process and new candidate ballots; (ii) a new General Electoral List (LEG), which would have included newly adult (18 years) citizens, therefore eligible to participate, enjoying the right to vote, in accordance with the Constitution, the International Covenant on Civil and Political Rights and the American Convention on Human Rights; (iii) new Partial Electoral Lists (PEL); (iv) new Tally Sheets; (v) new Departmental and Communal Electoral Lists.

64. The presidential election was held on 20 November 2016. Obtaining 55.67% of the votes and declared elected in the first round according to the CEP results, Jovenel Moïse was sworn in on February 7, 2017, as the 58th President of the Republic of Haiti. **Thus, this process, initiated on October 25, 2015, ended in January 2017, with the proclamation of the results and the swearing-in of the President on February 7, 2017.**

¹⁹ These personalities represent respectively: The Episcopal Conference of Haiti (CEH); the reformed cults; the peasant/Vodou sector; the trade union sector; the press sector; the university sector; the women's sector; and the human rights sector.

²⁰ Presidential Decree of 28 April 2016

²¹ *Ibid*

²² G. Jean, « Crises électorales en Haïti, la Commission indépendante d'évaluation et de vérification électorale CIEVE, L'inédit et la fin d'un système, CARDH, April 2016, Imp. PRESSMAX, p. 130.

IV. Conclusion

E. February 7, 2021, end of constitutional presidential mandate

65. There is absolutely no doubt that the mandate of President Jovenel Moïse, winner in the first round according to the CEP of the electoral process, initiated on October 25, 2015, will end on February 7, 2021, according to: (i) the provisions of Article 134 (2) of the Constitution; (ii) the principle of strict application of and respect for the Constitution; (iii) the legal precedent created by President Joseph Michel Martelly, who ended his term on 7 February 2016, having been sworn in on 14 May 2011; and (iv) the “*Political Agreement for institutional continuity at the end of the term of office of the President of the Republic in the absence of an elected President for the continuation of the electoral process begun in 2015*”, which provisionally led Jocelerme Privert to power.

F. Reminder of some historical precedents relating to compliance with the constitutional presidential timetable

66. It seems relevant to recall a few precedents relating to the respect of the five constitutional – not calendar – years of the presidential term during troubled times:

67. *i) Jean Bertrand Aristide (7 February 1991 - 7 February 1996)*. Having been sworn in on 7 February 1991 as the new President, winner of the 16 December 1990 elections, President Jean-Bertrand Aristide was the object of a *Coup d'État* by the military on 30 September 1991, forcing him to spend three years in exile. He returned to the country on 14 October 1994, held elections on 17 December 1995 and left power on 7 February 1996.

68. *ii) Jean Bertrand Aristide/Boniface Alexandre (7 February 2001 - 7 February 2006)*. Having been sworn in on 7 February 2001 for a second term, Jean-Bertrand Aristide was forced to step down from power on 29 February 2004. In accordance with the then Constitution, Mr. Boniface Alexandre, President of the Court of Cassation, was sworn in on 8 March 2004 to fill the vacancy. René Garcia Préval, winner of the presidential election of February 6, 2006, was sworn in on May 14, 2006.

69. *iii) Joseph Michel Martelly (14 May 2011- 7 February 2016)*. Having been sworn in on May 14, 2011, President Joseph Michel Martelly completed his term on February 7, 2016.

70. Regardless of whether the presidential elections were held in 2017 or 2018, the term of office of the President-elect is to end on 7 February 2021. The Constitution is clear that, regardless of the date on which the election is held, the

term of office of the President-elect “*shall be deemed to have begun on 7 February of the year of the election,*” that is, 7 February 2016.

71. Elected at the second level through the “Political Agreement” of 6 February 2016, Mr. Jocelerme Privert, having spent one year in power (7 February 2016 - 7 February 2017), completed the electoral process and served an “extraordinary”, and not a constitutional term.

G. Need to anticipate the political-institutional crisis after 7 February 2021: absence of Parliament and end of the mandate of the Provisional Electoral Council responsible for finalizing the 2015 electoral processes.

72. The protagonists, in particular President Jovenel Moïse, must be realistic and responsible, as the country is mired in a deep and unprecedented institutional and political crisis, over and above the current disastrous socio-economic situation: increasing poverty (4.5 million Haitians are food insecure) and unemployment, exponential reduction in purchasing power (about 110 gourdes for one US dollar), galloping insecurity, institutional collapse, etc.
73. There is no Parliament. The Provisional Electoral Council, whose mandate was to “*resume the 2015 electoral process, implement the recommendations of the Independent Electoral Assessment Commission and finalize and proclaim the results of the elections*”, has come to an end, in accordance with the electoral law (article 240) and the order of 29 March 2016.
74. The President, the opposition and civil society must be clear-sighted and vigilant in proposing legitimate, innovative and constructive solutions and clear action plans on the transition formula to be adopted, choosing, for example, either the Court of Cassation to assume the Presidency, or a personality by informed consensus, capable of forging the foundations of a new beginning for the benefit of the daughters and sons of the Nation, or by jointly opting for one or more public law theories reflecting the circumstances, otherwise the disaster that is about to occur will be very hypothetical for the country at all levels.

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2. Electoral law of 6 July 2008
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Annex I

Electoral results of the 23 deputies sworn in in 2017 whose terms expired in January 2020

 CARDH <small>Centre d'analyse et de recherche en droits de l'homme</small>					
Official results for the elections of deputies, January 2017					
Constituency	Department	Name of candidate	Political party	Number of votes	Percentage
Saint-Marc	Artibonite	Samuel d'Haïti (M)	KONA	17'507	65.47%
Verrettes	Artibonite	Gerard Paul Lormeus (M)	PLATFÒM LEVE KANPE	8'999	58.20%
Desdunes	Artibonite	Baudelaire Noelsaint (M)	OPL	4'089	57.68%
Petite-Rivière-de-l'Artibonite	Artibonite	Prophane Victor (M)	BOUCLIER	6'601	54.84%
Savanette/Quartier Baptiste	Centre	Guerda Bellevue Benjamin Alexandre (F)	APLA	2'244	51.92%
Boucan-Carré	Centre	Jude Jean (M)	PHTK	3'382	53.09%
Jérémie	Grand Anse	Saint-Jean Marie Gladice Lundy (F)	BOUCLIER	8'423	53.31%
Saint-Raphael	Nord	Jean-Wilfrid Borgella (M)	PHTK	4'622	59.09%
Acu-du-Nord	Nord	Rodney Charles (M)	PITIT DESSALINES	4'808	53.76%
Dondon	Nord	Hermogene Daniel (M)	FUSION	2'529	54.29%
Port-Margot	Nord	Philome Hilaire Fanfan (M)	PHTK	3'313	53.14%
Grande-Rivière-du-Nord/Bahon	Nord	Jacques Julmice (M)	VERITE	6'565	55.27%
Môle Saint-Nicolas	Nord-Ouest	Yves Dupras (M)	VERITE	4'413	58.52%
Cabaret	Ouest	Joseph Manes Louis (M)	FANMI LAVALAS	5'489	59.19%
Archaie	Ouest	Pierre Fequiere Julien (M)	CANAAN	N/A	56.79%
Cité Soleil	Ouest	Lemaire Pierre (M)	RENMEM AYITI	8'328	76.54%
Gressier	Ouest	Joseph Antonio Vericain (M)	PHTK	5'502	56.41%
Port-au-Prince (1er)	Ouest	Roger Millien (M)	FANMI LAVALAS	6'273	32.81%
Cornillon	Ouest	Raymonde Rival (F)	APLA	4'758	55.19%
Camp-Perrin/Maniche	Sud	Bertin Augustin (M)	VERITE	6'465	66.53%
Port-à-Piment	Sud	Daniel Letang (M)	KID	2'157	52.13%
Marigot	Sud	Deus Deronmeth (M)	PONT	4'852	52.54%
Côte-de-Fer	Sud-Est	Roudy Devil (M)	OPL	6'525	64.00%

To be noted: other elections were held for 4 other deputies, i.e. 27 in total.

Annex II

Electoral results of the 6 senators sworn in in 2017 whose terms expired in January 2020

 CARDH Centre d'analyse et de recherche en droits de l'homme		
Senators taking office in 2017		
Departement	Name of candidate	Political party
Centre	Willot Joseph	PHTK
Grande-Anse	Saurel Jacinthe	INITE PATRIYOTIK
Nord	Dieudonne Numa Étienne	PHTK
Nord	Nawoom Marcellus	BOUCLIER
Nord-Est	Wannick Pierre	PHTK
Sud-Est	Joseph Lambert	KONA