



CARDH

Centre d'analyse et de recherche en droits de l'homme

Elected officials' constitutional terms of office One-third of the Senate

Thematic report III
January 3, 2022

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Under the direction of Gédéon Jean, Lawyer and Executive Director of CARDH

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I. Introduction

1. Background and rationale

1. In October 2019, the Center for Analysis and Research in Human Rights (CARDH, in French) conducted a study on the tenure of the two-thirds of the Senate elected in 2015 and 2016, who took office respectively in January 2016 and January 2017.
2. Based on legal principles and the Constitution that both define the length and content of elected officials' mandates, the study concluded that the term of office of the second third expired on January 8, 2018 and that of the first third on January 13, 2020
3. These two-thirds were elected to fill the vacancies of 2016-2018 and 2018-2020. The Senate had reached an agreement with President Jovenel Moïse to keep the second third until January 2020, which means that they had recognized the constitutional term of the said third in January 2018. However, considering the constitutional deadlines, their terms were due to expire in 2017 and 2019.
4. President Jovenel Moïse used force to prevent the senators of the first third from entering the parliament building on January 13, 2020. Some of them believed their term would end in January 2022 and wanted to continue to serve.
5. On January 16, 2020, the concerned senators Jean Renel Sénatus, Jean Marie Junior Salomon, Dieupy Chérubin, Ronald Larèche, Youri Latortue, Nenel Cassy, Onondieu Louis, Willot Joseph and Dieudonne Luma Etienne filed a petition with the Provisional Electoral Council (CEP, in French) asking: **“(…) To recognize that the President of the Republic breached the Electoral Decree by violating Articles 50, 3,50.7,45.2, and 239; To declare that the petitioners are senators in office until the second Monday of the sixth year of their term, that is, January 10, 2022; To recognize the petitioners’ right to bring any civil action for compensation for damages suffered in a timely manner.”**
6. On January 30, the CEP¹ ruled on the request and stated that **“(…) in this case, it does not have any legal reference to bring the matter before the Electoral Court.”**
7. A new summary judgment action was filed by the petitioners but was unsuccessful. The summary judgment court, sitting on February 3, declared that: **“(…) By virtue of articles 185 and 186 of the amended Constitution and whereas the President of the Republic is only subject to trial before the High Court of Justice for any crime or misdemeanor he may have committed in the exercise of his office, the Court must declare itself incompetent *ratione personae*.”** The contestants finally accepted that they were no longer senators.

¹Decision adopted by Councilors Léopol Berlangier FILS, President, Carols Hercule, Vice President, Marie Frantz JOACHIM, Secretary General, Frinel JOSEPH, Treasurer, Lucien Jean BERNARD, member; Marie Hérolle MJCHEL, member; Kenson POLYNICE, member; Josette J.DORCELY, member and Jean-Simon SAINT-HUBERT, member



8. This situation triggered a heated debate about the president's term of office, opening a "Pandora's box"! The question was whether his term would end on February 7, 2021 or February 7, 2022
9. A second legal study conducted by the CARDH and published on May 25, 2020 concluded that according to the spirit and letter of Article 134-2 of the Constitution reinforced by Article 239 of the Electoral Decree of March 2, 2015, the presidential term would end on February 7, 2021². Other jurists, including Mirlande Hyppolite Manigat, professor of constitutional law, have subsequently corroborated the thesis³.
10. After the assassination of President Jovenel Moïse on July 7, 2021, the country experienced an unprecedented situation, the three branches of government being dysfunctional: The Parliament has only 10 senators out of 30 (no deputies); the Court of Cassation has six judges out of 12⁴, and the term of three of them will end next February 17 (Franzi Philémon; Kesner Michel Thermési; Louis Pressoir Jean-Pierre); the Executive is headed by an interim Prime Minister.
11. In addition, in the run-up to the second Monday of January 2022, the mandate of the remaining third of the Senate is already causing controversy. Senators Pierre-Paul Patrice Dumont and Joseph Lambert have issued warnings that their terms are to end on the second Monday of January 2023.
12. This would nurture the idea that Prime Minister Ariel Henry could *manu militari* prevent the senators from entering the space on January 10, 2022, as President Moïse had done on January 13, 2020. There is therefore a need for legal clarification outside of political, or revengeful approaches.

2. Objective

13. Part of the series of thematic reports on the mandate of elected officials initiated in October 2019, this study aims to provide a legal insight into the mandate of the remaining ten senators.

² CARDH: "February 7, 2021: End of the presidential constitutional term", May 25, 2020.

[7 février 2021 : Fin du mandat constitutionnel présidentiel – CARDH](#)

³ Juno7: "The constitutionalist and politician Mirlande Manigat has published a text to justify the end of the mandate of Jovenel Moïse on February 7, 2021", June 13, 2020.

["Le mandat de Jovenel Moïse prendra fin le 7 février 2021", selon Mirlande Manigat - Juno7](#)

⁴CARDH: "The death of the president of the Court of Cassation, René Sylvestre, "normalizes" the de facto dysfunction of the Justice system", June 28, 2021.

[Le décès du président de la Cour de cassation, René Sylvestre, « normalise » le dysfonctionnement de fait de la Justice – CARDH](#)



3. Axes of the report

14. This study is divided into six parts: **(i)** the presidential and senatorial electoral timetables from 1991 to date; **(ii)** the issue of harmonizing terms in order to understand the spirit of Article 134-2; **(iii)** a summary of the report explaining the end of the presidential constitutional term on February 7, 2021; **(iv)** a summary of the report pointing out that the 2016 elections were a continuation of the 2015 elections; **(v)** the method of approaching the term of senators; and, **(vi)** the legal situation of the remaining one-third of the Senate.

II. Electoral timetables from 1990 to present

15. It is agreed that the December 16, 1990 elections were democratic, the first after the Duvalier dictatorship. Those of November 27, 1987, in which the people were preparing to choose their elected officials, were interrupted in bloodshed⁵. The elections of January 17, 1988, in which Lesly François Manigat was elected, were not democratic. However, his governance was gradually beginning to gain legitimacy when he was ousted by the army on June 20, 1988.
16. In the strict democratic cycle, the constitutional timetable for the terms of office of the president and senators began on February 7, 1991, and on the second Monday of January for senators. In the presidential schedule, the first term begins in an odd year and ends in an even year, during which the second term begins, to end in an odd year. When a president's term begins in an odd year, he will end it in an even year, during which the next president will begin his term, to end in an odd year. In contrast, the term of the Senate (six years; four years; two years) begins and ends in an odd year.

4. Presidential schedule

President	Schedule
52 nd President	7 February 1991 – 7 February 1996
53 rd Président	7 February 1996 – 7 February 2001
54 th Président	7 February 2021 – 7 February 2006
55 th Président	7 February 2006 – 7 February 2011
56 th Président	7 February 2011 – 7 February 2016
57 th Président	7 February 2016 – 7 February 2021
58 th Président	7 February 2021 – 7 February 2026

⁵ These elections should have been the first to be held under the 1987 Constitution. With the active complicity of the Haitian Armed Forces, neo-Duvalier paramilitaries sabotaged the elections on Sunday, November 29, 1987, spreading terror. The carnage at the polling station in Vaillant Alley (Ecole Argentine Bellegarde), where some twenty voters were murdered, is sadly emblematic of this day of terror in Port-au-Prince. The other departments, especially Artibonite, were also affected by this wave of terror.

5. Senatorial schedule

Senators	Six-yearly Schedule
	2 nd Monday of January 1991 – 2 nd Monday of January 1997
	2 nd Monday of January 1997 – 2 nd Monday of January 2003
	2 nd Monday of January 2003 – 2 nd Monday of January 2009
	2 nd Monday of January 2009 – 2 nd Monday of January 2015
	2 nd Monday of January 2015 – 2 nd Monday of January 2021

17. Every two years, there must be elections for one-third of the members. The following table shows the deadlines :

Senators	Biennial Election Schedule
	2 nd Monday of January 1993
	2 nd Monday of January 1995
	2 nd Monday of January 1997
	2 nd Monday of January 1999
	2 nd Monday of January 2001
	2 nd Monday of January 2003
	2 nd Monday of January 2005
	2 nd Monday of January 2007
	2 nd Monday of January 2009
	2 nd Monday of January 2011
	2 nd Monday of January 2013
	2 nd Monday of January 2015
	2 nd Monday of January 2017
	2 nd Monday of January 2019
2 nd Monday of January 2021	
2 nd Monday of January 2023	

III. Question of harmonization of mandates from 1990 to date

18. The need to harmonize the terms of office of elected officials in order to adapt them to constitutional deadlines is not new. Haiti's institutional and economic weaknesses and the lack of a democratic culture regularly give rise to political crises.
19. Generally since 1991, presidents and senators elected for six years (first third) do not complete their terms on a calendar basis⁶. Sometimes they are forced to leave⁷. In other circumstances, political arrangements are made⁸, the law is applied⁹, and legal artifices¹⁰

⁶ Only the first third of senators who took office on May 9, 2006 would have completed their term on a calendar basis (May 9, 2012) (Youri Latortue; Edmonde Suplice Beausile; Joseph Lambert; Vallier Beauplan; Kelly C. Bastien; Anacassis Jean Hector; Nenel Cassy; Francky Exius; Wilot Joseph; Renald Labrèche).

⁷ Originally scheduled for June 4, 1995, the first round of legislative elections for two-thirds of the Senate was held on June 25, and the second round, originally scheduled for July 23, was held on September 17. Those elected were sworn in on October 9 of that year. Seventeen senators from the Lavalas political platform (PPL) and one independent: **i**) Samuel Madistin, **ii**) Jean Mac Donald, **iii**) Roger Sajous, **iv**) Yvon Toussaint (Center), **v**) Edgar Leblanc (Grande-Ance), **vi**) Jean Roumer (Grand'Anse), **vii**) Renaud Bernardin (North), **viii**) Méhu Garçon (North), **ix**) Jean Claude Daniel (Northeast), **x**) Lucien Pierre-Louis (North East), **xi**) Elie Plancher (North West), **xii**) Rhode Jadotte (North West), **xiii**) Jean Joseph Laguerre (South), **xiv**) Paul Denis (South), **xv**) Ivelt Chery (South East), **xvi**) Jean Jeudi (South East), **xvii**) Joseph Wesner Emmanuel (West) ; **xviii**) Senator Jean Robert Sabalat (Independent).

Some senators contested the elections of May 21, 2000, including the President of the National Assembly (Edgard Leblanc Fils) and did not want to give the investiture to the newly elected. They had to leave the Parliament. These newly elected officials took office on August 28, 2000.

The 47th Parliament, which took office on August 28, 2000, was dissolved after the forced departure of President Jean-Bertrand Aristide on February 29, 2004. The two-thirds of the Senate, the first third of which was due to complete its term in 2006, were also forced out by the interim government, which had set up a commission to manage parliamentary assets and staff. No compensation was given to them.

⁸ The final third of the Senate, which was sworn in on May 12, 2006, should have finished its mandate on May 12, 2006, if we base it on the logic of the 2006 general elections, or on the second Monday of January 2007, in order to respect the constitutional timetable, and not on May 14, 2009.

These senators are: Bergrome F. Fouchard (Artibonite); Ultimo Compère (Centre); Jean Maxime Roumer (Grand 'Anse); Huguette Lamour (Nippes); Antoine René Samson (North); Mélius Hyppolite (West); Evelyne Cheron (West); Jean Gabriel Fortuné (South); Ricard Pierre (Southeast).

Based on a political agreement with President Jovenel, the third third of the Senate whose term was to end in January 2018 was kept until the 2nd Monday 2020, coinciding with the end of the 50th legislature and the end of the 2nd third.

The first third of the legislature, which was to complete its term on the second Monday of January 2012 (May 12, 2006-January 2012), was kept until May 12, despite the constitutional amendments of 2011.

⁹ The third (renewal) of the legislative of April 19 and June 21, 2009 having been sworn in the following September 4, completed its term on the 2nd Monday of January 2015.

¹⁰ Three amendments were made to Article 232 of the 2008 electoral law extending the mandate of senators, deputies and President René Préval until May 14, 2011.



are created. Indeed, Haitian politics operates on power relations and clan interests, not on the law.

20. This section provides examples of elected officials who have lost part of their constitutionally defined term of office in order to meet the constitutional deadline.

6. Presidential mandate

6.1. President Jean-Bertrand Aristide: 7 February 1991 – 7 February 1996

21. Elected in the first democratic elections of December 1990, Jean-Bertrand Aristide was sworn in on February 7, 1991. He was the victim of a coup d'état on September 30, 1991 and spent three years in exile. Upon his return on October 15, 1994, he wanted to recover the three years of exile but was forced to hold elections and hand over power on February 7, 1996.

6.2. Joseph Michel Martelly: 14 May 2011 – 7 February 2016

22. Joseph Michel Martelly was sworn in on May 14, 2011 as the 56th president of Haiti. He completed his term on February 7, 2016. In his speech before the National Assembly he had to say: “(...) according to article 134-1 of the mother law, the duration of the presidential mandate is five (5) years. This period begins and ends on February 7 of the fifth year of the mandate, regardless of the date of entry into office.”

7. Senatorial Mandate

7.1. The mandates of two-thirds of the Sante ended on January 13, 2020

23. On January 13, 2020, 20 senators were forced to end their term. Police at the entrance to the Parliament prevented them from entering. The remaining third elected a new office the same day¹¹.
24. Fourteen elected in the legislative elections of August 9 and October 25, 2015 had been sworn in on January 11, 2016. Several others from the November 20, 2016 elections (presidential runoff) had been sworn in on January 10, 2017¹². These senators have spent only three years in Parliament.

7.2. Legislative elections of November 28, 2010

25. The senators from the November 28, 2010 elections, whose runoff took place on March 20, 2011, were sworn in on April 4, 2011. They completed their terms on January 9, 2017:
i) Jocelerme Privert (Nippes); **ii)** Steven Benoît (West); **iii)** Fritz Carlos Lebon (South); **iv)** Edo Zenny (Southeast); **v)** Annick Francois Joseph (Artibonite); **vi)** Jean Baptiste

¹¹ Pierre François Sildor, President; Jean-Marie Ralph Féthière, Quaestor; Wanique Pierre, Secretary

¹² Dont Dieudonne Etienne Luma; Nawoon Marcellus (Bouclier); Sorel Jacinthe; Willot Joseph (PHTK)



Bien-Aimé (Northeast); **vii**) Francois Lucas Saint-Vil (Nippes); **viii**) Wesner Polycarpe (North); **ix**) Francisco Delacruz (Center); **x**) Riché Andris (Grand' Anse).

7.3. Thirds of April 19 and June 21, 2009

26. The third from the legislative elections of April 19 and June 21, 2009¹³, having been sworn in on the following September 4, completed their term of office on the 2nd Monday of January 2015, coinciding with the end of the term of office of the 99 deputies forming the 49th legislature. These senators, whose names follow, served for five years and five months: John Joël Joseph, (West), Derex Pierre-Louis (North East), Moïse Jean Charles (North), Maxime Roumer (Grand Anse), Wencesclas Lambert (South East), Joseph Benoît Laguerre (South), Jean William Gentille (Nippes), Jean Willy Jean-Baptiste (Artibonite), Jean Rodolphe Joizile (North East) Mélius Hyppolite (North West) and Michelet Louis (Artibonite).

7.4. Two thirds of the Senate of the elections of June 25 and September 17, 1995

27. Elections were held on June 25 (first round) and September 17 (second round), 1995, for two-thirds of the Senate, which were sworn in on October 9, 1995. On January 12, 1999, President Préval declared the end of their mandate in accordance with the electoral law (Article 185) and reached a political agreement on March 6 with the political parties for the organization of elections

8. Mandate of Members of Parliament

8.1. End of the 50th legislature on January 13, 2020

28. The first round of legislative elections was held on August 9, 2015, to elect deputies to the 50th legislature, and the second round on October 25. Nonetheless, they were cancelled in some constituencies. Complementary elections for 25 constituencies were therefore held on November 20, 2016, for the presidential election, and the elected officials were sworn in in January 2017. Some districts had elections in 2017 and elected officials were sworn in during the current year. As the legislature ended on the second Monday of January 2020, all MPs, regardless of the year they took office, left Parliament.

¹³ On April 19, 2009, the first round to renew the third third party, which took office in April 2006 for two years, and to complete the mandates of Senators Rudolph Boulos (Northeast), elected for six years in 2006 and ousted for his American nationality, and Emmanuel Limage, elected in 2006 for a term of four years, who died in a traffic accident in Savanne desolote (not far from Gonaives) on January 20,



8.2. 46th legislature: 9 October 1995-12 January 1999

29. Elections were also held on June 25 (first round) and September 17 (second round), 1995, for the 46th legislature, which was sworn in on October 9, 1995. On January 12, 1999, President Préval declared the end of his term of office in accordance with the electoral law (Article 185) and reached a political agreement on March 6 with the political parties for the organization of elections.

IV. Report Summary: “February 7, 2021, end of the presidential constitutional mandate”, May 25, 2020

9. Article 134 (paragraphs 1 and 2)

30. According to Article 134-1 of the amended Constitution, “**The duration of the presidential term is five (5) years**”. The five years defined are not calendar years, but are part of a timeframe: 2011-2016, 2016-2021... No matter when the president takes office, for whatever reason, his or her term will end on the date set. This is explicit in the spirit and letter of the Constitution.
31. Thus, the second paragraph of Article 134, creating a legal fiction, continues: “**In the event that the election cannot be held before February 7, the elected president shall take office immediately after the validation of the election and his or her term of office shall be deemed to have begun on February 7 of the year of the election.**” This reflects the spirit of the constitution, which harmonizes election time with constitutional time, since it is difficult to conduct elections within the timeframe provided.
32. The year of the presidential election being 2015 (October), also being the fifth year of Martelly’s presidency, the Constitution peremptorily prescribes that Jovenel Moïse’s presidential term will end on February 7, 2021, regardless of when he took office.

10. Principle of strict application of the Constitution

33. One of the fundamental principles underlying the constitution is its strict application by those in power, particularly the President of the Republic, who is the first person to respect it.
34. As such, Article 136 makes the president the guarantor of the proper functioning of the institutions. He must therefore apply the constitution and not interpret what it defines as the presidential mandate.

11. Electoral Decree of March 2, 2015 (Article 239)

35. The electoral decree of March 2, 2015, regulating elections, published in Le Moniteur (special #1. 30), takes the wording of Article 134-2 of the Constitution and strengthens it. It expressly enshrines its spirit and letter, in the following terms: “**in order to harmonize constitutional and electoral time on the occasion of elections held outside constitutional time, for whatever reason, the terms of office of elected officials expire in the following manner: a) the term of office of the President of the Republic necessarily ends on the seventh (7th) of February of the fifth year of his term of office regardless of the date on which he took office (...).**”



36. It can be recalled that the adverb "necessarily" literally reaffirms that the term of office of the president elected in an election held outside of constitutional time will end on February 7 of the fifth presidential year set by the constitution, which leads to the discussion of legal precedents.

12. **Legis Precedents**

12.1. President Joseph Michel Martelly: May 14, 2011 – February 7, 2016

37. Joseph Michel Martelly was sworn in on May 14, 2011 and completed his term on February 7, 2016, despite the vacuum caused by the political-electoral crisis.

12.2. January 13, 2020: end of the 50th legislature

38. Twenty-seven MPs were sworn in in January 2017. One MP was sworn in at the end of the year. Regardless of the year they took office, all MPs left Parliament on the 2nd Monday of January 2020.

12.3. January 13, 2020: end of the mandate of one third of the Senate

39. The terms of 20 senators had ended on January 13, 2020. Six, from the November 20, 2016 elections, were sworn in on January 10, 2017. No deliberation was made on when they were sworn in.

Report available at:

February 7, 2021: End of the presidential constitutional term - CARDH (FRA)

February 7, 2021: End of the presidential constitutional term - completed version - CARDH (FRA)

V. Report Summary: “The November 20, 2016 Elections as a Continuation of the 2015 Electoral Process,” June 22, 2020

40. In the second thematic report on the tenure of elected officials, CARDH demonstrated that the November 20, 2016 elections were a continuation of the 2015 process.

13. Agreement of February 5, 2016

41. The Agreement of February 5, 2016 signed between President Joseph Michel Martelly, the President of the National Assembly (Jocelerme Privert) and the President of the Chamber of Deputies (Cholzer Chancy) is the political act consecrating the non-respect of the electoral time and creating an artifice to enter the immutable constitutional time.
42. The title of the agreement indicates this clearly: **“Political agreement for institutional continuity at the end of the mandate of the President of the Republic, in the absence of Presidential elections, to continue the electoral process begun in 2015.”**
43. It states that : **“The President of the Republic, before 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. (...) Once the vacuum is established, 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. This new President will have to form a new CEP, whose mission is to “re-launch 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.””**

14. Mission of the new interim president

44. In his inaugural address on February 14, 2016, the new president, Jocelerme Privert, identified three lines of action including the **“continuation and strengthening of the electoral process.”**

15. Mission of the Provisional Electoral Council (CEP, in French)

45. In accordance with his mission (February 5, 2016 Agreement), the president established a Provisional Electoral Council on March 30, 2016. Its mandate was to **“continue the electoral process begun during the year of 2015.”**

16. Position of the “Core Group”

46. On February 14, 2016, the U.S. Embassy’s Office of Political Affairs in Haiti welcomed the National Assembly’s election of Mr. Jocelerme Privert and considered it **“a first step toward the completion of the electoral process begun during 2015.”**

47. In a statement issued on February 28, 2016, the Core group called on actors to take steps to **“proceed with the re-establishment of the Provisional Electoral Council and the completion of the 2015 electoral process.”**

17. Position of political parties

48. On February 15, 2016, the G8 (eight parties with the most votes)¹⁴ proposed the formation of a commission of inquiry to **“deepen the assessment made by the Independent Electoral Evaluation Commission (IEEC, in French) and clean up the voting process through the analysis of the partial electoral lists (LEP, in French), tally sheets, minutes, ballots, and complaints filed to determine the extent of irregularities and fraud.”**

18. Position of civil society

49. IN a note published on February 22, the *Haiti chérie* foundation stressed that it **“welcomed with great satisfaction the president’s efforts to revitalize the Provisional Electoral Council, which will have to continue the process initiated in 2015.”**

19. Independent Electoral Evaluation and Verification Commission (CIEVE, in French)

50. On April 27, 2016, the Independent Electoral Evaluation and Verification Commission (CIEVE, in French)¹⁵ was established with a mandate to **“clean up the voting process by analyzing the lists of voters, partial electoral lists, tally sheets, minutes of deficiency, minutes of incidence, ballots and complaints already registered.”**
51. The Commission recommended that the electoral processes (presidential and legislative) be resumed. However, the Electoral Council did not follow the recommendation.

Report available at:

[The November 20, 2016 elections, a continuation of the 2015 electoral process - CARDH](#)

¹⁴ The G8 included eight candidates: i) Sauveur Pierre Étienne (Oganizasyon Pep kap Lite, OPL); ii) Moïse Jean-Charles (Pitit Dessalin); iii) Jude Célestin (Ligue Alternative pour le Progrès et l'Émancipation Haïtienne, LAPEH); iv) Jean-Henry Céant (Renmen Ayiti); v) Steven I. Benoit (Konviksyopn); vi) Charles Henry Baker (Respe); vii) Éric Jean-Baptiste (Mouvement Action Socialiste, MAS); viii) Samuel Madistin (Mouvement Patriotique Populaire Dessalinien, MOPOD).

¹⁵ This Commission was made up of : François Benoit; Jean Wilfrid Sanon; Mc Donald Jean; Eric Michel Gaillard; Gédéon Jean.

VI. Rationale for understanding the mandate of senators

52. In order to understand the term of office of senators, three cases can be presented: **i)** general elections for three senators per department; **ii)** elections to fill a vacancy or vacancies or to complete the term of office of a senator; **iii)** elections for the renewal of a third.

20. General elections for three senators per department

53. At the general legislative elections, three senators are elected per department in accordance with Article 94-1 of the Constitution: **“The number of senators is fixed at three (3) per department.”** The first senator is the one who obtains the most votes. He will have a six-year term; the 2nd senator will have a four-year term and the 3rd senator a two-year term.

54. Examples: general elections of December 16, 1990 (second round of legislative elections held on January 20, 1991); legislative elections of 1995 (first round held on June 25 and second round on September 17); general elections of 2006 (first round held on February 7 and second round on April 21, 2006); general elections of 2010 (first round held on November 28 and second round on March 20, 2011).

Title	Mandate	Senators per department	Number of Senators	Three thirds
First Senator	6 years	3	10	1 st third
Second Senator	4 years	3	10	2 nd third
Third Senator	2 years	3	10	3 rd third

55. According to article 95, **“Senators are elected for six (6) years and are indefinitely reeligible. They take office on the second Monday of January following their election. The Senate is renewed by thirds (1/3) every two years”** (paragraph 3).

21. Renewal

56. For the renewal of one third that replaces another, the elected officials have a six-year term. In the example mentioned above, those elected to renew the 3rd third party who had a two-year term will have a six-year term. The first third, which had a six-year term, will remain for four years and the second third for two years. The cycle continues in this manner.

57. Under section 50-3 of the 2015 election decree, **“In senatorial elections involving both a renewal and one or two vacancies within the same department, the electors shall vote for as many candidates as there are positions to be filled. The candidate with the highest number of votes shall hold office until the second Monday in January of the sixth year of**

his or her term. The Senator elected with the next lowest number of votes shall fill any vacancy occurring during the term of office for the remainder of the term. Any possible third Senator elected, that is, the one who comes third, shall complete the term that expires first.”

22. Elections to fill a vacancy or vacancies or to complete the term of a Senator

58. In the case of elections to complete a term of office or to fill one or two vacancies, the term of office of those elected shall begin on the date provided for in the constitution and shall end in accordance with the constitution.
59. According to article 95 of the Constitution, **“In case 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 shall be deemed to have started on the second Monday of January of the year of taking office.”**
60. Section 50-3 of the 2015 Election Decree provides further clarity by stating that **“On the occasion of senatorial elections involving (...) one or two vacancies. (...) The Senator elected with an immediately lower number of votes shall fill the vacancy produced during the term for the time remaining. Any third Senator elected, i.e., the one who comes in third place, completes the term that ends first.”**

VII. Approaches to the term of office of one-third of the Senate

61. Several approaches can be taken to address the end of the term of the current one-third of the Senate: **(i)** renewal; **(ii)** end of the term of one-third of the Senate one year after the end of the term of the President and two years after the end of a legislature; **(iii)** biennial renewal; and **(iv)** six-year term.

23. Renewal

62. Elections for the ten senators currently in office were held on November 20, 2016 (during the presidential) and January 29, 2017 (runoff), the results of which were proclaimed on February 25. They were sworn in on March 17, 2017 to replace the third formed by the senators of the elections of November 28, 2010 (first round) and March 20, 2011 (second round), whose swearing in took place on April 4, 2011 : **(i)** Jocelerme Privert (Nippes); **(ii)** Steven Benoit (West); **(iii)** Fritz Carlos Lebon (South); **(iv)** Edo Zenny (South-East); **(v)** Annick Francois Joseph (Artibonite); **(vi)** Jean Baptiste Bien-Aimé (Nod-East); **(vii)** Francois Lucas Saint-Vil (Nippes); **(viii)** Wesner Polycarpe (North); **(ix)** Francisco Delacruz (Center); **(x)** Riché Andris (Grand-Anse).
63. The newly elected senators were: **i)** Wanique Pierre (PHTK) elected in the first round (58.74%) for the Northeast; **ii)** Joseph Lambert (KONA) elected in the first round (53.78%) for the Southeast; **iii)** Pierre Paul Patrice Dumont elected in the second round for the West; **iv)** Jean Marie Ralph Fethière (PHTK) elected in the second round for the North; **v)** Rony Célestin (PHTK) elected in the second round for the Center; **vi)** Garcia Delva (AAA) elected in the second round for Artibonite; **vii)** Pierre François Sildor (PHTK) elected in the second round for the South; **viii)** Denis Cadeau (Bouclier) elected in the second round for Nippes; **ix)** Jean Rigaud Bélizaire (Consortium) elected in the second round for Grand' Anse; **x)** Kedlaire Augustin (PHTK) elected in the second round for the North West.
64. These new senators have replaced a third of the outgoing ones (renewal). They have a six-year mandate that will end on the 2nd Monday of January 2023.

24. Term one year after the end of the term of the President of the Republic and two years after the end of a legislature

65. Based on the constitution's electoral cycle, the term of one-third of the Senate ends one year after the end of the president's term (five years) and two years after the end of a legislature's term (four years). However, this thesis applies when the presidential constitutional term ends in an even year, since the term of senators begins and ends in an odd year (see Chapter II, "Electoral timetables from 1990 to the present").



66. When the President's term ends in an odd-numbered year, it coincides with the end of the term of one-third of the Senate. For example:
- **February 7, 1996 -February 7, 2001, for the President, 2nd Monday of January 1999-2nd Monday of January 2001 for one-third;**
 - **February 7, 2016-February 7, 2021, for the President, 2nd Monday of January 2019-2nd Monday of January 2021 for one-third.**
67. As demonstrated in the report “February 7, 2021, End of the Presidential Constitutional mandate” published on May 25 by the CARDH, President Jovenel Moïse’s term ended on February 7, 2021.
68. Furthermore, the thesis applies in two hypotheses. The first is when the Senate is fully functioning, that is, in accordance with the constitutional cycle. Thus, the third whose mandate will have ended one year after the end of the presidential mandate and two years after that of the Chamber of Deputies is known. The second is when the Senate has a third party (dysfunction) whose term will end one year after the term of the president's term, depending on the election of that third party.

25. Second third of the 2006 senatorial elections

69. Some are objective and in accordance with the Constitution. Others are subjective and even appear to be vindictive. The second third of the 2006 senatorial elections (first round on February 7 / second round on April 21), which took office on May 7, ended its mandate on May 7, 2010 (four years). A vacancy occurred until April 2011 when the third party that was to replace it took office and completed its term on January 11, 2017.
70. As mentioned in paragraph 60, this last third was replaced by the ten senators currently serving (renewal). Some consider their terms to end in 2022 according to this schedule: **2006-2010 (2nd third elected for four years); 2010-2016 (one-year vacancy); 2016-2022 (renewal)**
71. This approach is subjective and therefore cannot be a scientific reference for determining a constitutional mandate. Indeed, one cannot base oneself on an election to determine the mandate, given that the polls have not been regularly carried out and senators have taken office in even years since August 28, 2000 (two-thirds), which is contrary to the constitutional timetable, considered as the reference (see Chapter II, “**Senate timetable**”).
72. Furthermore, those who support this thesis consider that there was a vacancy between May 7, 2010 and April 4, 2011 and another between January 11, 2016 and January 9, 2017. The first period was indeed a vacancy since it created a void, but the second was not, since the senators were in office until January 2017.

26. Six-year term

73. Based on the six-year term established by the Constitution, the term of these ten senators had expired on the 2nd Monday of January 2021 (2nd Monday of January 2015 – 2nd Monday of January 2021).

27. Biennial renewal

74. Article 95 stipulates that senators are elected for six (6) years and renewed by thirds (1/3) every two years (paragraph 3). Every two years, the mandate of one third ends. Thus, there is a senatorial mandate that should end on January 13, 2022. In fact, one third left on January 13, 2020.
75. Like the logic based on the end of the President's term of office and that of a legislature, the approach to renewal by thirds leaves something unclear. Nowhere in the constitution does it say that if there is exceptionally a third in the Senate, he or she must, regardless of his or her entry into office and term of office, leave one year after the end of the President's term. In the regular cycle, on the occasion of general elections, the term of the first third of the Senate elected for six years will end one year after the term of the president elected for five years.
76. This section frames the most logical approaches taken by current and former senators. The first ones affirm that the mandate will end in January 2023. The second ones, forced to end their mandate in January 2020, maintain on the other hand that it will end in January 2022. What is the constitutional approach applicable to the ten senators currently in office a few days before the second Monday of January 2022?

VIII. Conclusion

28. Disorganization of the electoral cycle since the coup of September 30, 1991

77. Since the coup d'état of September 30, 1991, elections have not been held on the scheduled date. The fact that senators took office on August 28, 2000 (two-thirds of the votes cast on May 21 and July 9) and on May 12, 2006 (three-thirds of the votes cast on February 7 and April 21, 2006) represents a disruption of the constitutional timetable, which requires an odd year for the taking of office and the end of the term. From then on, we would be outside the Constitution. In addition, the third part, which had a two-year mandate, sat for three years and three months (May 12, 2006 – May 14, 2009).
78. It therefore seems wrong to refer to the 2006 elections to define the constitutional term of office of senators or of a third. Only the 1991 legislature was in accordance with the constitutional timetable. For more than 30 years, the situation has been one of disorder reinforced by a constant political crisis. The country is paying the consequences. For the first time, the Parliament has had only one third of its senators for two consecutive years, a situation which may last even longer.

29. Renewal, appropriate and unequivocal constitutional approach

79. For the ten senators in office, the approach based on renewal is the one that conforms to the Constitution and is not controversial. In fact, since the adoption of the Constitution to the present day, a term of six years is assigned to the renewed third and to the first third in the case of general elections (ballots for three thirds). **As such, their mandate will end on the second Monday of January 2023.**
80. With the exception of the two-year and six-year timeframes, the other approaches leave a window of discretion (subjectivity) and would thus be used for political, vindictive and other purposes. But constitutional law shall be strictly applied.

30. Two extra-constitutional situations could put an end to the mandate of the ten senators

81. The ten senators are currently the only ones elected and therefore hold a gateway to national sovereignty (Article 58 and following of the Constitution). Two situations can contribute to an early end of their mandate. The first is that the country is in a state of institutional dysfunction¹⁶, and the senators can negotiate their mandate to facilitate a consensual solution with the objective of re-establishing the institutions and continuing the efforts in favor of the rule of law. The second is that the population can rise up against

¹⁶ Senators can do nothing but collect their allowances and enjoy privileges in a context where the population is forced further into abject poverty. A senator receives: a mere 40,000 US dollars to buy a company car; 250,000 gourdes each month for patronal celebrations; 250,000 gourdes for a secondary residence, 70,000 gourdes for fuel; 250,000 gourdes per month for the maintenance of his office in his department.

one third of the Senate and act as a sovereign in the sense of Article 58 and following of the Constitution.

31. The term of the 59th president began on February 7, 2021 and will end on February 7, 2026

82. In accordance with the second paragraph of Article 134 of the Constitution and Article 239 of the Electoral Decree, the term of office of the 59th President of the Republic began on February 7, 2021 and will end on February 7, 2026.

32. January 8, 2024, end of the 51st legislature

83. The term of the 50th Legislature ended on January 13, 2020, in accordance with the Constitution and the Electoral Decree. The term of the 50th legislature began on that date and will end on the 2nd Monday of January 2024.

33. Two vacancies in Senate

84. The expiration of the term of office of the senators on January 13, 2020 and the failure to hold elections have caused two vacancies. The term of the next senators will be based on the logic of two vacancies and not renewal. In other words, the term of office started on January 13, 2020.

85. This situation can be altered by changing or amending the constitution to change the length of the term of office of elected officials and the frequency of elections.

34. Ways to solve the problem

86. Presence of law over politics. Since 2006, political, clannish and personal interests have taken precedence over the law. Our politicians and civil society must respect the law and democratic principles and depoliticize institutions such as the judiciary and oversight bodies.

87. To bring the constitutional cycle back to the electoral cycle, Article 232 of the 2005 Electoral Decree was amended three times. The first amendment extended the mandate of the last third of the Senate, the second extended the mandate of the local authorities and the Chamber of Deputies, and the last extended the mandate of President Préval and the other senators.

88. Amendments passed on May 9, 2011 harmonized the electoral time with the constitutional cycle by setting the term of senators at six years. Michel Joseph Martelly, freshly elected and about to be sworn in on May 14, demanded two consecutive terms and the senators an extension of their mandate. President René Préval, did not agree.

89. Between May 9, 2011 and June 19, 2012, three amendments were made, two of which were published: the amendments voted in Parliament on May 9, 2011; those falsified and published in the Monitor of May 13, 2011 (# 58) and then reported the following June 6

(# 72); the texts corrected by civil society leaders including Edouard Paultre, André Apaid and Rosny Desroches, and published in the Monitor of June 19, 2012 (# 96).

90. Reduce the frequency of elections. The pace of elections must be reduced, and terms harmonized. The country does not have the financial and institutional resources to hold elections every two years. Moreover, citizens, including politicians, do not yet have a democratic culture.
91. Establishment of the Permanent Electoral Council. A Provisional Electoral Council for each election is a source of instability and an enormous economic and human waste for the country. For each election, a provisional CEP is formed whose members have, for the most part, no electoral expertise. With a five-year, seven-year or nine-year term, the members of the permanent electoral institution will develop expertise and will not be beholden to anyone.
92. An electoral law and a special court. At each election, if there is a parliament, a law is passed, if not, the Executive adopts a decree. There is always a legal battle between the Executive, the Parliament and other forces (economic, civil society...) to control the elections. The members of the Electoral Council who participate in the operations and publish the results sit as judges on the contentious bodies: the national (BCEN), departmental (BCED) and communal (BCEC) electoral dispute offices. This scheme does not respect the principle of the double level of jurisdiction. Secondly, the councilors are not trained as judges and do not have electoral specialties. Finally, this configuration largely explains the corruption scandals that plague almost all elections.