



Political Crisis in Haiti: Background, Key Information, and Perspectives from Human Rights and Civil Society¹

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Background

For the past three years Haiti has been paralyzed both by protests against Haitian President Jovenel Moïse and Moïse's systematic undermining of agencies and institutions that serve as a check on his power. Responding to these attacks on their democracy, a broad-based social movement calling for an end to impunity and corruption has swept the country, inspired in part by revelations of corruption that implicated Moïse, members of his PHTK party, and many others across Haiti's political spectrum.

In response, Moïse has made blatant moves toward authoritarianism, dismantling state institutions crucial to checks and balances, politicizing the police, and allowing – [if not directly supporting](#) – gangs to take control of Port-au-Prince and surrounding areas. The power of the gangs has steadily grown across the country even in rural areas, inflicting terror throughout the population. Since January 2020, Moïse has been ruling by decree, after Haiti's Parliament – where Moïse's party enjoyed a comfortable majority – failed to pass an electoral law that would have enabled Parliamentary elections. Moïse has used his rule-by-decree power to consolidate the strength of the executive branch including issuing 120 executive orders and 40 decrees. For example, using his decree power, he has limited the powers of the Court of Auditors, one of the few government agencies that still provided a check on the power of the executive. He also created a national intelligence agency accountable only to him and expanded the definition of terrorism in ways that would include protests against his regime. Moïse's use of his power of decree has prompted the international community to voice concerns about abuse of authority.

There is an organized domestic political opposition to Moïse, but many members of the political opposition have themselves been implicated in corruption and abuses and therefore also lack credibility among Haiti's population. Moïse's government has tried to present the current conflict as solely a fight for power between competing political factions. This, however, obscures the voices of Haiti's civil society who have come together in recent years not to support one politician over another, but, believing the current political system as corrupt, to stand up for the basic rights of the Haitian people and to hold their government accountable with a vision and commitment to creating a Haitian state that is accountable to Haitian people, the majority of whom are struggling to survive.

- 1. What are the key points of conflict regarding the crisis in Haiti? What are the positions of Jovenel Moïse, the international community and Haitian civil society with respect to these?*

Constitutional Dispute over Presidential Mandate

A Constitutional dispute has arisen regarding the point at which the clock started ticking on Moïse's five-year term as President. Presidential elections were held in October 2015, and the constitution specifies that the President's term starts on February 7th in the year following the election. But the results were of

¹ The views represented in this document are those of American Jewish World Service and not necessarily of its partners.



the 2015 election were thrown out because of irregularities and fraud. The re-run election took place in 2016, and Moïse was installed as President on February 7, 2017.

Moïse argues that because the Constitution states that the President is elected for a five-year term he is entitled to all five years regardless of the date of the first election. But the Superior Court of the Judicial Power (CSPJ) – the most powerful judicial authority in Haiti - issued a Resolution where it points to Article 134.2 of the Constitution, which provides instructions on the Presidential term in the event that the election is delayed. This article instructs that if an electoral process is delayed, the term of the President will be determined to have begun on February 7th following the election, regardless of the date the President took office, effectively reducing the five-year term. The CSPJ also cites as reasoning Moïse's own act of allowing Parliament to disband even though several members of the Senate had not fulfilled their terms, leading to his one-man rule by decree.

In addition to the CSPJ, the Haitian Federation of Bar Associations, and the majority of civil society including the religious sector agree with the CSPJ's Resolution, asserting that Moïse's term officially ended on February 7, 2021, and calling for processes to form an interim government to prepare for elections.

Despite this, the Biden administration, the United Nations (U.N.) and the Organization of American States (O.A.S) have all picked sides in the dispute, with statements that support Moïse's claims to another year in power, urging swift elections under Moïse's one-man-rule.

As soon as the international community largely sided with Moïse in his claim that he was entitled to another year in power, Moïse stepped up authoritarianism using his powers of one-man rule. He ordered the arrests of people he claimed were plotting a coup against him, including a Supreme Court Judge, because they had been part of discussions for the composition of an interim government. He arbitrarily removed three supreme court justices and replaced them with his supporters without following processes outlined in the Constitution.

Elections: When, under what circumstances, and who should decide?

Even prior to receiving the official backing of the US, UN and OAS to remain in power for another year, Moïse was taking action to construct an electoral system and infrastructure controlled by him. The Constitution sets out requirements for a Provisional Electoral Council, with representatives from different sectors across Haitian society. But Moïse unilaterally set up his own Provisional Electoral Council (CEP). Despite the objection of the Court of Auditors and the Court of Cassation, this CEP was installed by the President in flagrant violation of Constitutional procedures.

Haitian civil society strongly rejects the international communities call for Moïse to organize elections in 2021 given all that Moïse has done to dismantle democracy in Haiti in his four years as President, with many proclaiming it is hard to imagine even the possibility of a legitimate election to take place under Moïse's rule. The installation of his own CEP demonstrates that he has no interest in legitimate elections. It is also hard to imagine how credible elections are possible in the context of gang violence, killings, and kidnappings condoned or even possibly encouraged by him, where these acts of terror are most prominent in the poor communities that have led protests against Moïse. Any election organized by his one-man rule - instead of done through an open, transparent, and fair process - will not have popular support, will be boycotted by most of Haitian society, and will have such low turnout due to the violence and illegitimacy of the electoral context that the results will be a sham, thus further destabilizing an already unstable democracy.



Moise's Plans to hold a Constitutional Referendum

Even as the Constitutional debate about Moise's term and the timing of elections continues, an additional and even more pressing concern is unfolding over the Constitution itself. Despite the fact that Haiti's Constitution bars referendums about the Constitution, Moise is forging ahead with a Constitutional referendum in June which, if passed, will expand executive power and immunity, in addition to changing term limits for the President. Moise has greatly publicized his plans to benefit from a disbanded Parliament and his one-man rule to make changes to Haiti's Constitution through a referendum. He has promoted the possibility for Constitutional changes as his "legacy project." He has also named a commission for the redrafting of the Constitution.

While nearly all actors across Haitian society are in agreement that Constitutional reforms are needed in order to prevent gridlock in the future, there is broad agreement across the Haitian population that changes to the Constitution should never be made unilaterally, and in the context where the system of checks and balances has been systematically dismantled by the same person attempting to push through changes to the Constitution. In order for Constitutional changes to be legitimate, robust inclusion across sectors of Haitian society are required, along with transparent and inclusive processes for redrafting and initiating changes.

Human rights abuses in Haiti

Human rights abuses have exploded in Haiti over the last four years under Moise's rule. Human rights organizations in Haiti, including American Jewish World Service's partners, have documented ten massacres in only the last two years at the hands of gangs that are connected with different political factions including the party of Moise, and that operate with complete impunity under Moise's administration. Kidnapping for ransom have skyrocketed, targeting rich and poor alike, and sowing terror throughout Haiti.

According to the National Network for Human Rights in Haiti (RNDDH):

- From 2018 to 2020, at least 10 massacres and armed attacks were recorded in the Western Department, resulting in the shooting or stabbing of 343 people, the disappearance of 98 others and the gang rape of 32 women. 251 children were orphaned as a result of these various massacres and armed attacks.
- Similarly, since 2020, kidnappings followed by demands for ransom have skyrocketed, often with many people abducted on the same day in different events. Upon release, many victims say they were approached by uniformed police officers. Others reported being taken to the sites where they were held as hostages in vehicles with official license plates. In addition to the trauma of the kidnappings, Haitian families are going into debt to pay huge ransoms to kidnappers with no guarantee that their loved ones will be returned to them alive.
- Abducted women and girls are systematically raped and subjected to inhuman and degrading treatment.

For too long Moise and many in power in Haiti have acted with impunity, either indirectly or directly responsible for human rights abuses in the country, with little regard for the rights of the Haitian people. For rule of law to be restored, and those that violate human rights with impunity to be held to account, democracy must be restored in Haiti through a credible, transparent and inclusive process, and the conditions put in place for free and fair elections to occur.



2. *If not Moïse, then what? What does the path to elections look like if not under Moïse?*

Civil society is calling for an interim government to be formed immediately, with a mandate to create the context for free, fair, and inclusive elections.

The interim government should be composed of a non-partisan, non-corrupt team, the result of a consensus between civil society actors and political actors. The composition of the interim government should respect the 30% minimum quota of participation of women. The interim government's mandate should also include:

- The initiation of the process of judicial reform to ensure that there is sufficient independence to intervene where needed regarding elections.
- The organization of electoral mechanisms and infrastructure including
 - A legitimate and legal Electoral Council to replace the one unilaterally named by Moïse;
 - Audit of electoral cards issued; and
 - A new electoral law to enable participation and reduce opportunities for fraud.
- Expanding conditions for civic participation, including measures to reduce risks of participating in elections, measures to empower and enable Haitian people to participate in elections; measures to depoliticize the police and build confidence in their ability to provide security in the electoral context.

3. *What is the current US administration position on this crisis and why is it a problem?*

The State Department has not altered its stance on Moïse, and his claim to another year in power, in any way since President Biden took office, with representatives from the State Department issuing statements in support of Moïse's claim to another year in power and continuing to push for swift legislative elections in 2021.

While U.S. representatives have made some comments criticizing Moïse's actions in expanding his own powers and weakening state institutions that would provide a check on his power, the U.S. is reported as insisting that the only way out of the crisis is through elections, ignoring the cries of Haitian civil society, Haitian legal scholars, Haiti's religious sector, universities, and legal experts.

The U.S. push for elections has in fact empowered Moïse to take unilateral action to organize elections without following any of the processes required by the Haitian Constitution. After former Secretary of State Mike Pompeo tweeted in August 2020 "It is critical that Haiti schedule its overdue legislative elections, form an inclusive (electoral council), and strengthen rule of law and support for human rights" Moïse – contrary to Article 289 of the Haitian Constitution which requires robust participation from Haitian society in creating the Electoral Council - named his own Electoral Council, responsible for planning, implementing, and overseeing elections. The new Electoral Council that he appointed lacks representation from the key sectors of Haitian society that are stipulated in Article 289. Included among those missing from the composition of the Electoral Council are the Catholic Church, the Episcopal Church, Unions and the Universities, which all refused to participate in the process that they did not consider to be legitimate under the Moïse regime.

The U.S. has not raised concerns about the process of the naming of the CEP, but rather, Pompeo suggested that – with the naming of the CEP - there was no longer a barrier for Moïse to organize elections, so he should essentially get on with it, stating in a tweet in October 2020 that he expected elections to happen by the end of January 2021.



Under the Biden administration, this position has largely not changed. Most recently, Jeffrey DeLaurentis, the acting U.S. ambassador to the U.N., stated "We urge the government of Haiti to hold overdue legislative elections as soon as possible in order to restore the parliament's Constitutional role," he said. He added "Recent actions unilaterally removing and appointing three supreme court judges, creating a national intelligence agency, and actions constraining the role of Haiti's independent audit agency risk damaging Haiti's core democratic institutions."

The U.S. position on Haiti is contradictory; the U.S. is trying to simultaneously recognize the undemocratic acts of Jovenel Moise and his abuse of power, while expecting that this same undemocratic, authoritarian leader has the capacity or intention to organize a free and fair election.

The push by the U.S. and its allies in the international community for elections this year is essentially a push for illegitimate elections, the results of which will be rejected by all except the ruling party.

If Moise tries to move forward with elections and is empowered by the international community to do so, Haiti will move to a state of violence akin to a civil war. If elections are held in this context, they will not be legitimate and the crisis will deepen and the violence will intensify, threatening many more Haitian lives. **Because the Moise regime has no possibility to organize an election that Haitians would deem legitimate, a transition government will be needed as the results of a hastily organized election by Moise will be rejected by all other actors in Haitian society except for those close to Moise. The question is not whether a transition government can or should organize elections, the question is how long Haitians must endure the violence of the existing regime, and how many more lives will be lost, before a true transition begins.**

An interim government has the potential to be the start of that process of change and can be used as a tool to build consensus across Haitian society towards the types of changes that must be made and the processes that can lead to the development of credible institutions. Most importantly and urgently, Haitians need accountability for the massacres, the murders, the rapes, the torture and the kidnappings that leave them in a state of terror. But for this transition to begin, and to become a reality, there must be civil society leadership in the transition, and the international community and the U.S. Government must stand behind that leadership.



4. *Recommendations for U.S. Government action toward supporting democracy, peace, and stability in Haiti:*

- **The U.S. Secretary of State should stop its diplomatic and public support for Jovenel Moise's continued term in office through February 2022.** Instead of taking sides in Haiti's current Constitutional dispute, State Department policy should focus on supporting the core principles of democracy and human rights in Haiti.
- **The U.S. Congress and Department of State should issue statements of concern regarding the corruption, human rights abuse, and democratic decline under Jovenel Moise's rule, including:**
 - The complete impunity for 10 massacres between 2018 to 2020 by armed gangs operating with Jovenel Moise's blessing if not tacit support;
 - Profiting from his status as a rule by decree President to:
 - i. Dismantle the Court of Auditors actively investigating corruption including cases implicating Jovenel Moise and members of his party;
 - ii. Decimate the systems of checks and balances, including the recent firing of three Supreme Court justices and unilaterally naming their replacements and naming a new Electoral council that he stacked with supporters
 - i. Create a national intelligence agency accountable only to the Executive,
 - ii. Order the arrest of many of his most vocal political detractors accusing them of plotting a coup against him
- **The U.S. Secretary of the Treasury, Attorney General, and Secretary of State should put U.S. Law Enforcement and human rights investigative agencies to work** to investigate money laundering, arms trafficking, human rights abuses, and other illegal acts by Haitian officials and private sector leaders. Using the Global Magnitsky Sanctions Program, hold Haitian leaders accountable for human rights abuses and corruption by applying individual sanctions.
- **The U.S. Secretary of State should appoint a new U.S. Ambassador to Haiti** to reset relations and reshape the role with a focus on democracy, human rights, and accountability.
- **The U.S. Congress and Department of State should seek advice from legitimate and representative Haitian civil society** regarding recommendations on a way forward through the current crisis, human rights violations, and corruption. This consultation should include a Congressional Delegation to Haiti, as well as other communication mechanisms to ensure ongoing and consistent consultations and cooperation with Haitian civil society.
- **The U.S. Government and international community should recognize that free and fair elections cannot be safely or legitimately conducted within a year** given the current context of state sponsored and sanctioned gang violence, human rights abuse and increasing authoritarianism, unconstitutional and illegal Electoral Council (CEP), and the failure to register voters.
- **The U.S. Government and international community should instead follow the lead of Haitian civil society in determining when to support elections in Haiti**, support electoral reforms, and push for neutral, independent election monitors to be in place prior to any elections.