

Haiti's Constitutional Crisis: A Tangled Web of Aberrations

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Oh, what a tangled web we weave / When first we practice to deceive – Sir Walter Scott

Once again, Haiti is bracing for social unrest as a constitutional crisis unfolds; and this time, the dispute is over the end of the current president's term in office. Jovenel Moise, who was sworn in on February 7, 2017, vows to stay in office until February 7, 2022, the day he argues his term legally ends. Opposition leaders and several political activists, on the other hand, demand that he steps down on February 7, 2021 and will refuse to recognize him as president past that date. The issue seems to be divisive even among power players in Washington, D.C.

In a February 5th press conference, the U.S. State Department's spokesperson reiterated the need for a democratic transfer of power in Haiti and voiced that “a new president should succeed President Moise when his term ends in 2022.” A few hours later, in a departure from the Biden administration's position, U.S. senator, Patrick Leahy, and seven congressional representatives called for a “Haitian-led democratic transition” and rejected “any attempt by President-Moise to retain power” past February 7, 2021.

Indeed, the issue is not as black and white as often portrayed. For some, it comes down to a simple arithmetic exercise; for others — including many legal scholars — there are strong arguments supporting the end of the president's term a few months earlier than he anticipated. This predicament did not arise out of thin air; it is the result of past failures to reinforce democratic institutions, repeated violations of the constitution, and adoption of band-aid agreements culminating into a domino structure of complications. This article attempts to summarize the series of events that led to this crisis and calls for a sincere dialogue among all political actors as the only way out of this tangled web of digressions.

It all started in February 2004, after a bloody rebellion forced democratically elected president, Jean-Bertrand Aristide, to flee into exile three years into his 5-year term, set to expire on February 7, 2006.

Following Aristide's departure, the chief justice of the Supreme Court, Boniface Alexandre, was sworn in as interim president with a clear constitutional mandate: the organization of new elections within 120 days for a newly elected president to finish the previous president's term. The Alexandre administration did not organize elections as mandated by

the constitution but instead served the rest of President Aristide's term; an unconstitutional arrangement made with the international community's blessing. General elections were scheduled for October 2005, but due to technical delays, Haitians did not go to the polls until February 7, 2006, the day that a new president was supposed to be sworn in. The results were announced a few weeks later, and President Rene Préval took office on May 14, 2006, under the general expectation that he would serve until February 7, 2011.

During his presidency, President Préval, along with some legislators, introduced constitutional amendments that would eventually be adopted by parliament at the end of his term. Drawing from the abnormalities of the 2005-2006 election cycle, one of these amendments modified article 134-2 re-establishing the official swear-in date and introducing a special clause to account for unplanned delays in presidential elections. This special clause would preserve constitutional order and synchronize presidential terms. The modified article 134-2 stipulates:

The president-elect assumes his functions on the 7th of February following the date of his election. In the event that the election cannot take place before the 7th of February, the president-elect assumes his functions immediately after the ballot validation and his term is considered to have commenced on the 7th of February of the year of the election.

In October 2010, a few months after the devastating earthquake that killed more than 300,000 people, President Préval was due to organize elections for his successor. These elections were to be concluded in the fall of 2010 so that a new president could take office on February 7, 2011. Unfortunately, fraud allegations and widespread unrest following the first round triggered an OAS [1] recount, and a second round was scheduled after February 7, 2011. Michel Martelly, who won the second round, was sworn in as the new president of Haiti on May 14, 2011. He promised to leave office on Feb 7, 2016, pursuant to the new amended article 134-2.

Four years later, in 2015, it was President Martelly's turn to organize elections. As in 2010, the first round of presidential elections failed to yield a winner as no one received more than 50% of the vote. Thus, a run-off was scheduled for January 2016. The opposition claimed massive voter fraud and successfully prevented a second round between Jovenel Moise, Martelly's hand-picked candidate, and Jude Celestin, the opposition's most popular candidate. President Martelly left office on February 7, 2016 without an elected successor, but an unconventional deal was struck before his departure. The deal called for an interim president to be selected by the senate. His mission was to organize the second round and transfer power on May 14, 2016 to a new president whose term would end on February 7, 2021. The interim president, Jocelerme Privert, established a new electoral council that called for the cancellation of the 2015 presidential elections after an independent council found serious cases of voter fraud and massive irregularities; a fresh first round was scheduled for October 2016 with the same candidates[2]. In the do-over, Jovenel Moise was declared winner with 55% of the vote and was sworn in on February 7, 2017.

Today, President Moise argues that since he was sworn in on February 7 in the year *following* the new elections, the second clause of article 134-2 does not apply to him, so he should serve until February 7, 2022, marking a five-year term. The opposition argues that since the elections took place after February 2016, his term should be considered as having

commenced in February 2016, “the February of the year of the election”, and should therefore leave office on February 7, 2021, according to the 2nd clause of article 134-2. The opposition has also accused President Moïse of hypocrisy and operating on a double-standard. There exists a constitutional amendment like the amended article 134-2 for elected officials of the legislative branch. In 2020, ten senators only served 4 years out of their six-year terms pursuant to this amendment. These senators were supposed to join the senate in 2014 but did not do so until 2016 since President Martelly failed to organize mid-term parliamentary elections in 2013. Likewise, President Moïse failed to organize mid-term parliamentary elections in 2019. Consequently, the senate was reduced to only 10 senators from 30 and was rendered inoperative. In a tweet dated January 13, 2020, President Moïse announced that he noted that parliament was officially prorogued. Since then, he has been ruling by decree.

Given the absence of a constitutional court to settle these disputes, this crisis is expected to prolong with serious consequences for the country’s economic development, thus creating additional challenges for an already vulnerable population. A slew of poor choices that prioritized short-term solutions over long-term structural changes have left the country trapped in a web of complications. To return to constitutional normalcy, the first step will be a sincere dialogue among all actors which would require everyone to make necessary sacrifices for the country’s benefit.

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Notes

[1] Organization of American States

[2] New candidates were not allowed to register, instead past participants were asked instead to “reconfirm their participation”.

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