



Lowenstein International
Human Rights Clinic
Yale Law School



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Your Excellencies,

As U.S.-based law school clinics working in solidarity with Haitian civil society, we write to express our deep concern about the deteriorating human rights situation in Haiti. Credible evidence shows that President Jovenel Moïse has engaged in a pattern of conduct to create a constitutional crisis and consolidate power. This conduct is undermining the rule of law in the country. There is widespread concern within Haiti, exemplified by massive popular protests this past weekend, that the country is sliding back into dictatorship. In a February 10 editorial, *The New York Times* [noted](#) that “Mr. Moïse has effectively lost all popular support and abandoned any pretense of democratic rule.” As the Security Council reviews the situation in Haiti next week, we urge you to condemn recent violations of the rule of law by President Moïse and to demand that he refrain from further actions that would escalate the constitutional crisis.

Over the past two weeks, President Moïse has taken several particularly alarming actions:

- Moïse’s mandate as president is widely considered to have ended on February 7, 2021, based on an interpretation of the Haitian Constitution¹ endorsed by the [Conseil Supérieur du Pouvoir Judiciaire](#); the [Haitian Bar Federation](#); and many other legal experts and civil

¹ Presidents are elected to a five-year term. Moïse was elected in 2016, in a re-run of the 2015 election. Moïse argues that because he did not take office until 2017, his five-year term runs until February 2022, but this is inconsistent with the Haitian Constitution and the 2015 Electoral Law. The Constitution specifies that the presidential term starts on February 7 after elections are held. Haiti Const. art. 134-1, https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (English translation). Article 134-2 further specifies that when elections are delayed, “the president elected enters into his functions immediately after the validation of the ballot and his mandate is considered to have commenced on 7 February of the year of the election.” *Id.* art. 134-2. The 2016 elections were organized pursuant to the 2015 Electoral Law, which specified that the president’s term would end five years from the mandated start date, regardless of when the president actually took office. Electoral Law of 2015, art. 239(a), *Le Moniteur*, <https://www.haitilibre.com/docs/decretelectoral2015.pdf> (“The term of office of the President of the Republic shall end on the seventh (7th) of February in the fifth year of his term of office, regardless of the date of his entry into office.”) Moïse previously applied this interpretation to [dismiss](#) all local mayors and most of the Parliament last year, resulting in his ruling by decree without any checks on his power. See Jacqueline Charles, “U.S. lawmakers call for Haiti-led transition, support claim Moïse’s presidency ends Sunday,” *Miami Herald*, Feb. 6, 2021, <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article249058630.html> It is also consistent with how term lengths have been interpreted by and for prior Haitian presidents whose periods of time in office have, for various reasons, not amounted to five years. See Jake Johnston, “The OAS Picks Sides in Haiti... Again,” *Center for Economic & Policy Research*, June 4, 2020, <https://cepr.net/the-oas-picks-sides-in-haiti-again/>.

society. But Moïse has refused to step down, citing an alternative reading that extends his term to February 7, 2022.

- Around 3 a.m. on the day Moïse’s term was set to end, the police [arrested](#) at least 18 individuals on allegations that they were planning a coup. They include Supreme Court Justice Yvickel Dabrésil, Police Inspector General Marie Louise Gauthier, and a former presidential candidate. The arrests took place in the middle of the night, and those arrested were not taken before a judge for several days.² On February 10, a judge ruled that Justice Dabrésil’s detention was [illegal](#) and ordered his release. This order was ignored, and Dabrésil remained detained until the following day, when a second judge ordered his [release](#). The chief clerk involved in the first hearing was [terminated](#) by Haiti’s justice minister. Those arrested with Justice Dabrésil continue to be arbitrarily detained.
- On Monday, February 8, Moïse [issued](#) a decree “retiring”—removing—three justices from the Supreme Court, in violation of Haiti’s Constitution: Dabrésil; Wendelle Coq Thélot, who criticized Dabrésil’s arrest; and Joseph Mécène Jean-Louis, the oldest member of the Supreme Court.³ The same day, the police [seized control](#) of the Supreme Court and the Ecole de la Magistrature. These moves [paralyzed](#) the Court’s operations. On February 11, Moïse [issued](#) a decree naming three new judges to the Supreme Court. These nominations are contrary to the procedure set out in Haiti’s Constitution.⁴
- Police have used live ammunition, in addition to rubber bullets, chemicals, and other violent means, to disperse protesters demonstrating against Moïse’s consolidation of power, and several journalists who are covering the protests have been injured. Unidentified attackers shot [two journalists](#) reporting on the protests on February 8. On Wednesday, February 10, Associated Press journalist Dieu Nalio Chéry was [wounded](#) in the leg by a tear-gas canister while documenting a student protest. The same day, CIMO (Corps d’Intervention et de Maintien de l’Ordre) agents [placed](#) a tear-gas canister in the back of a Radio Télé Pacific van. The Association of Haitian Journalists issued a [statement](#) condemning the police conduct, denouncing it as an attack on press freedom. The United Nations Integrated Office in Haiti (BINUH) has also [urged](#) security forces to address the violence against journalists and to promptly investigate and hold accountable those responsible.

The crisis of the last week follows years of credible allegations of grave, state-sanctioned human rights abuses in Haiti. [Haitian human rights organizations](#), the [United Nations](#) and the [Haitian Judicial Police](#) have [documented](#) the involvement of state actors—including senior officials in the

² Haitian law prohibits arrests from taking place between 6 p.m. and 6 a.m., unless they are carried out during the commission of a crime, and requires that individuals arrested be brought before a judge within 48 hours. Haiti Const. arts. 24-3, 26, https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (English translation).

³ Civil society leaders have condemned the move as illegal, noting Article 177 of the Constitution, which states that Supreme Court judges are “irremovable” unless they have been legally determined to have abused their authority. Haiti Const. art 177, https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (English translation).

⁴ The Constitution requires that the president nominate judges chosen from a list provided by the Senate. See Haiti Const. art. 175, https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (English translation). Although Moïse claimed in a Tweet to have followed this procedure, the Senate has not been in session for many months, since the terms of most members of parliament have expired. See *supra*, note 1.

Moïse administration and the Haitian National Police (HNP)—in a [series of massacres](#) against communities active in the opposition movement. The United Nations has also [documented](#) extensive use of violence against protesters during the demonstrations that have taken place between 2018 and 2019, including at the hands of the HNP.

Over the course of his presidency, Moïse has systematically undermined other governmental branches and agencies that serve as a check on his power. He has ruled by decree for more than a year, since the terms of most members of Parliament ended without Moïse submitting an electoral law to facilitate the election of their replacements. Following the expiration of the terms of all of the country's [mayors](#), Moïse is now one of only 11 elected leaders in office.

Defying calls to limit his use of decrees to the organizing of legislative elections, Moïse has instead sought to implement [sweeping legislative changes](#). In November, he ordered the creation of a [national intelligence agency](#) and criminalized commonly used forms of peaceful protest.⁵ Most broadly, Moïse has [instructed](#) the provisional electoral council (CEP) to hold a constitutional referendum before the legislative elections, in violation of the amendment process set forth in the Constitution. The [proposed reforms](#) would fundamentally restructure the government and significantly strengthen the presidency, at the expense of the legislature and other offices.

The grave human rights violations and systematic efforts to consolidate power severely undermine the possibility that Moïse will oversee free and fair elections for his replacement. Haitian civil society has repeatedly called for a transition government to be put in place to manage elections.

We are concerned that the UN response to the crisis has, at times, sent the wrong signal to Moïse and may embolden him to further restrict democracy and human rights. The [statement](#) by the Secretary-General's spokesperson on February 8 endorsing the continuation of President Moïse's mandate until 2022 was widely interpreted in Haiti as a decision by the international community to "side with" Moïse. The statement contradicts interpretations by Haitian judicial institutions. President Moïse has, in turn, [cited](#) the spokesperson's statement to argue that his interpretation "is indisputable."

We are also concerned that BINUH is supporting the unconstitutional referendum process. BINUH's [statement](#) welcoming the proposal for constitutional reform--without any acknowledgement that the process unilaterally started by President Moïse violates the constitutional amendment process--might further reinforce Moïse's departure from the rule of

⁵ Following outcry, including strong critique from the Ombudsman's office (Office de la Protection du Citoyen) concerning the sweeping powers and lack of accountability of the national security agency, President Moïse later published a new decree modifying some of the original provisions. However, many of the concerning features were left untouched. See Robenson Geffrard, *Décret pour le Renforcement de la sécurité publique: Kidnapping, barricades sur la voie publique, destruction de biens, détention d'armes illégales... sont désormais des actes de terrorisme*, Le Nouvelliste, Dec. 3, 2020, <https://lenouvelliste.com/article/223867/kidnapping-barricades-sur-la-voie-publique-destruction-de-biens-detention-darmes-illegales-sont-desormais-des-actes-de-terrorisme>; *L'OPC recommande à l'exécutif de modifier certains articles dans les décrets relatifs à l'ANI et à la sécurité publique*, Le Nouvelliste, Dec. 30, 2020, <https://lenouvelliste.com/article/224756/lopc-recommande-a-lexecutif-de-modifier-certains-articles-dans-les-decrets-relatifs-a-lani-et-a-la-securite-publique>; *Jovenel Moïse apporte quelques modifications au décret portant création de l'Agence nationale d'intelligence*, Le Nouvelliste, Feb. 4, 2021, <https://lenouvelliste.com/article/226023/jovenel-moise-apporte-quelques-modifications-au-decret-portant-creation-de-lagence-nationale-dintelligence>.

law. BINUH and other UN agencies in Haiti have further announced the provision of [technical and logistical support](#) for the unconstitutional referendum. Moreover, while the Secretary-General's reports on Haiti and subsequent Security Council statements over the past year have repeatedly expressed concern about the rise in gang violence and attacks against civilians, they have largely been silent on the documented role of state actors, including senior officials in the Moïse administration, in the commission of massacres against opposition strongholds. These positions are especially concerning in light of BINUH's mandate to promote good governance, the rule of law and human rights.

The UN system should refrain from actions that facilitate President Moïse's efforts to advance an unconstitutional referendum and electoral process. Instead, the Security Council and the broader UN system should forcefully support democratic principles, human rights and the rule of law, and condemn Moïse's attacks against Haiti's constitutional institutions.

Specifically, we call on the Security Council to:

- Call for the immediate release of those still being arbitrarily detained in connection with the February 7 arrests;
- Clearly affirm the right of the Haitian people to self-determination. The United Nations should neither insist on nor support elections without evidence of concrete measures to ensure that they are free, fair, inclusive and not undermined by attacks on political opposition, the media and Haitian civil society;
- Ensure that the United Nations refrains from providing political, technical, or financial support for the unconstitutional referendum;
- Reaffirm the right to peaceful protest, call for President Moïse and Haiti's security forces to respect this right, and condemn the recent violence against protesters and journalists; and
- Call for investigations into and prosecutions of those responsible for gross human rights violations allegedly committed by, or with the support of, the government.

We thank you for your consideration. Please do not hesitate to contact us if we can provide any further information.

Yours sincerely,

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The Clinics' statement does not represent their respective law school's institutional views, if any.