



Lowenstein International
Human Rights Clinic
Yale Law School



Joint Statement from U.S. Human Rights Clinics on Haiti's Constitutional Referendum

June 8, 2021

As U.S.-based law school clinics working in solidarity with Haitian civil society, we call on the United States government to unequivocally denounce the planned illegal constitutional referendum. Yesterday the government announced that the vote, most recently scheduled for June 27, [is postponed, citing the recent spike in COVID 19 cases and deaths](#). The U.S. government must recognize how significantly the referendum undermines Haiti's democracy and heed the demand of Haitian civil society calling to cancel it altogether.

We [remain deeply concerned](#) about the deteriorating human rights and political situation in Haiti. Most alarming—and requiring urgent and unequivocal denunciation—is the constitutional referendum. The referendum will ask Haitian people to vote “yes” or “no” on a new Constitution. This vote is illegal: The Constitution expressly prohibits change, let alone overhaul, by referendum.¹ The vote comes on the heels of dozens of presidential decrees that purposefully undermine checks on the executive and would consolidate power in the presidency. The [United States](#) and [United Nations](#) have condemned the process as not being sufficiently participatory or transparent. Further, [the incomplete voter ID rollout](#) and [unprecedented level of insecurity](#) make access to the vote impossible for many Haitians.

Context

President Moïse is [one of eleven elected officials in Haiti](#). His time in power has been punctuated by mass protests against corruption in which he is implicated, by gang violence and impunity for perpetrators, and by increasingly bold authoritarian actions.² Having failed to hold elections in 2018 and 2019, President Moïse began ruling by decree in January of 2020. Since then, he has issued a series of decrees that erode the checks on his power³ by, for example, [limiting judicial](#)

¹ LA CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI [CONSTITUTION] Mar. 29, 1987, art. 284.3, *translated at* https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en.

² See Int'l Human Rts Clinic, Lowenstein Int'l Human Rts. Clinic & Global Justice Clinic, Joint Statement from U.S. Human Rights Clinics on the Constitutional and Human Rights Crises in Haiti, (Feb. 13, 2021), *available at* <https://chrgj.org/2021/02/14/gjc-issues-statement-on-the-constitutional-and-human-rights-crisis-in-haiti/>

³ See, e.g., Jacqueline Charles, *Slew of Presidential Decrees Have Some Wondering if Haiti Is on the Road to Dictatorship*, MIAMI HERALD (Dec. 21, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article247954080.html>; *L'instabilité politique menace l'année 2021, selon les observateurs*, AYIBO POST (Jan. 3, 2021), <https://ayibopost.com/linstabilite-politique-menace-lannee-2021-selon-les-observateurs/>. In July, the mandates of municipal leaders expired. The President issued a decree converting these locally elected leaders into “municipal commissions,” which can be removed or replaced at any time by the executive branch. See Robenson

[oversight](#), [firing the head of the financial crimes unit](#) that had implicated Moïse in corruption, and [setting up a new intelligence agency](#) with sweeping powers of surveillance.

[Legal institutions](#), [civil society leaders](#), and policymakers, including [members of the U.S. Congress](#), agree that President Moïse's lawful last day in power was February 7, 2021.⁴ He has refused to step down. On February 8, President Moïse forcibly “retired” members of Haiti's Supreme Court and then [unconstitutionally appointed new justices](#). Meanwhile, gang violence and insecurity [have gone from bad to catastrophic](#). Kidnapping has [skyrocketed](#), and people are unable to go about their day-to-day activities without fear. There is evidence that the Moïse administration is [using—or, at minimum, abiding—gang violence to silence the opposition](#). Thousands of Haitian people have [repeatedly protested against the President](#), criticizing both his authoritarian behavior and the corruption, insecurity, and violence that they experience daily.

The Constitutional Referendum

Article 284-3 of the [1987 Constitution of Haiti](#) reads: “General elections to amend the Constitution by referendum are strictly forbidden.”

If passed, the [new Constitution](#) would fundamentally restructure the government and significantly strengthen the presidency. It [abolishes the senate and office of the prime minister, and would make it lawful for Moïse's hand-picked electoral council to oversee elections later this year](#).⁵

[Haitian opposition to the referendum is widespread](#).⁶ Haitian civil society organizations have denounced it as an illegal power grab, a move to [“restore dictatorship in Haiti.”](#) President Moïse's

Geffrard, *La présidence prend le contrôle des mairies*, LE NOUVELLISTE (July 8, 2020), <https://lenouvelliste.com/article/218352/la-presidence-prend-le-contrôle-des-mairies>.

⁴ 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. LA CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI [CONSTITUTION] Mar. 29, 1987, art. 134.1, translated at https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en. 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), 170 Le Moniteur Spécial No. 1, <https://www.haitilibre.com/docs/decreteelectorale2015.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>. The February 7 end to the President's term 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*, CTR. FOR ECON. & POL'Y RSCH. (June 4, 2020), <https://cepr.net/the-oas-picks-sides-in-haiti-again/>. This view is endorsed by the [Conseil Supérieur du Pouvoir Judiciaire](#); the [Haitian Bar Federation](#); and many other legal experts and civil society.

⁵ In Article 202 of the proposed Constitution, each branch of government is authorized to appoint three people to the Permanent Electoral Council. However, Article 266 of the proposed text states that a provisional council will oversee elections until the permanent council is named. Although there is ambiguity, the [proposed text](#) seems to indicate that the current provisional electoral council, appointed by Moïse, will oversee the elections scheduled for this year.

⁶ See, for example, *Haiti-Crise: Le gouvernement de facto contraint, sur diktat des Nations unies, de reporter, au 27 juin 2021, son référendum controversé*, ALTERPRESSE (Feb. 24, 2021),

own party does not support the referendum, [noting the authoritarian model of the proposed constitutional reforms](#).

Free and Fair Elections Are Not Possible

While the unlawful nature of the referendum should alone prompt the United States to withdraw any form of support for the vote, conditions on the ground also make free and fair elections impossible. The [incomplete rollout of the new voter identification card](#) means that millions of eligible voters will not have access to the polls. The [Electoral Council has stated that 4.5 million voters have been registered for the referendum and registration is now closed](#). The voting population of Haiti is [estimated at 7.3 million](#).

Violence also impedes the vote. The risk of gang violence and kidnappings have made Haitian people unable to [attend school](#), let alone vote. They are “[living in a time of terror.](#)” [Violence has historically accompanied elections](#), even when the pre-election conditions were more stable than those in Haiti today. On May 25, the Electoral Council [reported](#) that it was unable to visit 35 of the 328 polling centers in the West Department—home to Port-au-Prince and nearly half of Haiti’s people—due to insecurity. Further, [Haitian human rights organizations](#), the [United Nations](#), [Harvard Law School](#), and the [Haitian Judicial Police](#) have documented the involvement of state actors—including senior officials in the Moïse administration and the Haitian National Police—in a [series of massacres](#) against communities active in the opposition movement.

The government of Haiti cited [the recent spike in COVID 19 cases and deaths](#) in their decision to postpone the referendum. Even if COVID cases were to decline,

[Haitian civil society organizations have made it clear that it is impossible to hold fair and impartial elections under the current president](#); they continue to issue statements opposing the referendum.⁷

The former [U.S. Ambassador to Haiti similarly conceded](#) that conditions for fair elections do not exist.⁸

International recognition that the referendum vote is illegal and illegitimate is mounting. On May 20, the European Parliament adopted a [resolution on Haiti concluding that the constitutional referendum “should not be held.”](#) The U.S. government has [criticized the referendum](#) and stated that it [will not provide financial support](#). The [United Nations and several other countries’ ambassadors have noted](#) the lack of transparency and insufficient participation in the process. However, [the](#)

https://www.alterpresse.org/spip.php?article26738#.YK_SCZNKgUo; Claire Destin , *Haiti R f rendum constitutionnel: un projet mort-n  et un mouvement nul, selon la soci t  civile ha tienne*, QUOTIDIEN D’HAITI, <https://lequotidiennews.org/haiti-referendum-constitutionnel-un-projet-mort-ne-et-un-mouvement-nul-selon-la-societe-civile-haitienne/>; *Haiti-Corruption: Le r f rendum inconstitutionnel et ill gal de Jovenel Mo se, un projet pour prot ger les dilapidateurs des fonds PetroCaribe, pr vient le parti politique Pitit Desalin*, ALTERPRESSE (Mar. 25, 2021), <https://www.alterpresse.org/spip.php?article27051#.YLEYOZNKhnl>; Conf rence des  v ques Catholiques d’Haiti, *Note de la Conf rence des  v ques Catholiques d’Haiti (CEH) par rapport   la Conjoncture socio-politique*, HAITI-R F RENCE (June 2, 2021), <https://www.haiti-reference.com/pages/2021/06/02/note-ceh20210601/>; Bruno Sat & Carole Petit, *Haiti: Mobilisation contre le projet de r forme constitutionnelle*, GUADELOUPE LA 1 RE (Mar. 30, 2021), <https://la1ere.francetvinfo.fr/guadeloupe/haiti-mobilisation-contre-le-projet-de-reforme-constitutionnelle-972355.amp>.

⁷ *Id.*

⁸ The most recent State Department Travel Advisory reads: “Do not travel to Haiti due to kidnapping, crime, civil unrest, and COVID-19.” U.S. Dep’t of State, Haiti Travel Advisory (June 1, 2021), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/haiti-travel-advisory.html>.

[United States, the United Nations, and the Organization of American States have each provided technical assistance or aid](#) to enable the vote to move forward, tacitly facilitating the unconstitutional vote.

It is not a coincidence that President Moïse is aiming to dispose of the 1987 Constitution—birthed out of the effort to move Haiti from dictatorship to democracy—as he attempts to consolidate power and shield himself and his affiliates from accountability for the human rights abuses and corruption that continue under his presidency. The Biden administration should support democracy and human rights in Haiti. This requires an urgent, public, and unequivocal denunciation of the unlawful constitutional referendum. It should not be postponed; it should never be held.

For more information, please contact:

Ellie Happel, Haiti Project Co-Director & Clinical Instructor
Global Justice Clinic, New York University School of Law
206-816-0544
ellie.happel@nyu.edu

Gabrielle Apollon, Haiti Project Co-Director
Global Justice Clinic, New York University School of Law
929-244-9081
mar755@nyu.edu

Beatrice Lindstrom, Clinical Instructor
International Human Rights Clinic, Harvard Law School
404-217-1302
blindstrom@law.harvard.edu

James Silk, Binger Clinical Professor of Human Rights
Allard K. Lowenstein International Human Rights Clinic, Yale Law School
203-687-8809
james.silk@yale.edu

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