Joint Statement from U.S. Human Rights Clinics
on the Constitutional and Human Rights Crisis in Haiti

February 13, 2021

As U.S.-based law school clinics working in solidarity with Haitian civil society, we are deeply concerned about the deteriorating human rights situation in Haiti and about the U.S. response to date. Credible evidence shows that President Jovenel Moïse has engaged in a pattern of conduct to create a constitutional crisis and consolidate power that undermines the rule of law in the country. We call on the U.S. government to denounce recent acts by President Moïse that escalate the constitutional crisis.

Over the past week, Moïse has taken several particularly alarming actions that violate the rule of law:

- Moïse's mandate as president is widely considered to have ended on February 7, 2021, based on an interpretation of the Haitian Constitution[1] endorsed by the Conseil Supérieur du Pouvoir Judiciaire; the Haitian Bar Federation; and many other legal experts and civil society. But Moïse has refused to step down, citing an alternative reading that extends his term to February 7, 2022.

[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/.

- 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 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 crisis over 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 Moïse administration and the Haitian National Police—in a series of massacres against communities active in the opposition movement. In December 2020, the U.S. Treasury Department sanctioned two former senior officials in President Moïse's administration and notorious gang leader Jimmy Cherizier, who also has ties to the government, for carrying out a brutal massacre in La Saline in 2018 during which at least 71 people were killed.

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[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.

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, rather than supporting democracy in Haiti, the U.S. government has sent the wrong signal to Moïse. The current U.S. administration should not continue the improper pressure that the Trump administration placed on Haitian actors to acquiesce to an unconstitutional electoral process. Instead, the Biden administration should support democracy and human rights and condemn Moïse's attacks against Haiti's constitutional institutions. Otherwise, Moïse may be emboldened to further restrict human rights and democracy.

Further, at a time when Haiti is mired in a political crisis and stability is particularly fragile, the United States has continued deportation and expulsion flights to Haiti unabated. Since the beginning of February, ICE has deported more than 600 people to Haiti, many without even the opportunity to request asylum. These flights have included many children, infants and pregnant women.

We urge the U.S. government to support the rule of law in Haiti and call on the Haitian government to meet its international human rights obligations. Specifically, we encourage the

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[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.

United States to take the following steps:

- 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 States 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.

- Refrain from politically or financially supporting the unconstitutional referendum.

- Reaffirm U.S. support of the right to peaceful protest, call for Moïse and Haiti's security forces to respect this right, and condemn the recent violence against protesters and journalists.

- Call for investigations into and prosecutions of those responsible for gross human rights violations allegedly committed by, or with the support of, the government.

- Halt all deportation and Title 42 expulsion flights to Haiti, in light of the constitutional crisis, nationwide unrest and political turmoil that is intensifying on a daily basis.

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