



UNIVERSITE QUISQUEYA
Louis-Joseph-Janvier Chair on Constitutionalism in Haiti

Memorandum on the expiration of President Jovenel Moise's term
February 8, 2021

February 7, 2021, has come and gone, while those who support Jovenel Moise's departure and those who want him to hold on to power cannot reach a consensual interpretation of the constitution with regard to the end of the president's term.

In the face of these irreconcilable positions, the Louis-Joseph-Janvier Chair on Constitutionalism in Haiti hereby publishes its position based solely on the law, leaving it up to the national and international political actors to assume their stances depending on their own dynamics.

A significant segment of the population claims that Mr. Jovenel Moise's term expired on February 7, 2021, in light of Article 134-2 of the amended Constitution, on the ground that because he was elected in 2016, his term ended five years after the date of the election. As for Mr. Moise, he avails himself of Article 134-1 —providing that the president serves a five-year term which starts on February 7, when the president takes the oath of office— to assert that his term will run until February 7, 2022.

The Chair stresses that articles of a piece of legislation help construe one another and cannot, should any ambiguity arise, be construed in isolation. It further stresses that in a given text, the legislator may state general principles, but can also subject these principles to derogations which constitute exceptions or special rules. Finally, there is a rule of construction according to which a law governing a specific subject matter overrides a law that governs general matters. In the event of a conflict, the law governing the specific subject matter prevails.

Article 134-1 of the amended version of the 1987 Constitution reads as follows: "The President serves a five-year term. This period commences and will end on February 7, depending on the date of the elections." The constitution, therefore, asserts, as a general rule, the principle that the president's five-year term starts running from the date the President of the Republic takes the oath of office.

Article 134-2, however, constitutes a derogatory rule to the principle laid down in Article 134-1, and applies to those special circumstances where presidential elections are not held within the constitutionally prescribed timeframe. It asserts, indeed: " The presidential election takes place on the last Sunday of October of the fifth year of the presidential term. The president-elect assumes his duties on February 7, following the date of his election. In the event that the ballot cannot take place before February 7, the president-elect assumes his duties immediately after the validation of the ballot, and his mandate is deemed to have commenced on February 7, of the year of the election." As a result, when the presidential election could not be held on schedule for the president to be sworn in on the day of the expiration of his predecessor's term, the mandate of the new president expires on February 7, at the expiration of a five-year period which started to run on the year of the election.

While reviewing the relevant course of events, the Chair notes that the presidential election could neither be held nor finalized during the fifth year of Mr. Martelly's term. That election was reconducted, or, to borrow the electoral body's own word, it continued beyond February 7, 2016, which marked the end of Mr. Martelly's term. The presidential election was held on November 20, 2016, and led to the election of Mr. Moise, as indicated on the certificate issued to him by the Provisional Electoral Council in January 2017. Therefore, these circumstances trigger the application of the special and derogatory provisions of Article 134-2 of the Constitution, which overrides Article 134-1. As a result, in light of this article's application, Mr. Moise's term is deemed having commenced on February 7, 2016, and ended on February 7, 2021.

The Chair cannot look past the fact that Mr. Moise remains at the National Palace in violation of the Constitution. The nature of both his presence and its ensuing actions ought to be analyzed and qualified. Article 134-3 of the amended version of the 1987 Constitution is formulated in such a way as to avoid any ambiguity: "The President of the Republic's term cannot be extended." The imperative present tense used does not allow for any legal quibbling and dismisses all attempts at justifying Mr. Moise's presence at the helm of the Executive Branch. His conduct, supported by the armed force of the Haitian National Police, is illegal and all actions taken by him after February 7, 2021, are those of a usurper, punished by the Penal Code.

The Chair notes with regret that for the second time in less than five years, political gridlocks have prevented elections from occurring and led to a constitutional vacuum. The rule of law is trampled. The Chair wishes for wisdom to prevail for the good of the nation.

On Behalf of the Chair:
Bernard Gousse, Professor
Jacky Lumarque, Rector of Universite Quisqueya