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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

HAITI

OPINION

ON THE DRAFT REFERENDUM DECREE

**Approved by the Council for Democratic Elections at its
83rd meeting (online, 6 June 2025)
and adopted by the Venice Commission
at its 143rd Plenary Session
(online, 13 – 14 June 2025)**

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Table of contents

| | | |
|------|--|----|
| I. | Introduction..... | 3 |
| II. | Context and scope of the opinion | 3 |
| III. | Analysis | 5 |
| | a. Security | 5 |
| | b. General provisions..... | 5 |
| | c. Electoral body and lists..... | 6 |
| | d. Election campaign | 7 |
| | e. Electoral administration | 8 |
| | f. Voting procedures | 8 |
| | g. Election observation | 10 |
| | h. Transmission of results..... | 10 |
| | i. Referendum disputes | 10 |
| | j. Penalties..... | 12 |
| | k. Final provisions..... | 12 |
| IV. | Conclusion..... | 13 |

I. Introduction

1. By letter dated 6 May 2025, Mr Patrick Saint-Hilaire, President of Haiti's Provisional Electoral Council (CEP), requested an opinion from the Venice Commission of the Council of Europe on the draft referendum decree of 2025 ("the draft decree", [CDL-REF\(2025\)028](#)).

2. The rapporteurs for this opinion were Mr Frendo, Mr Holmøyvik, Ms Otálora Malassis, Mr Séners and Mr Vilanova Trias.

3. On 28 May 2025, a delegation from the Commission comprising Mr Frendo, Ms Otálora Malassis, Mr Séners and Mr Vilanova Trias, accompanied by Mr Garrone from the Secretariat, held online meetings with Haiti's Provisional Electoral Council.

4. This opinion has been drafted on the basis of the rapporteurs' comments and the results of the online visit. After examination by the Council of Europe's Council for Democratic Elections (online, 6 June 2025) and an exchange of views with Mr Patrick Saint-Hilaire, President of the Provisional Electoral Council of Haiti, it was adopted by the Venice Commission at its 143rd plenary session (online, 13-14 June 2025).

II. Context and scope of the opinion

5. The proposed constitutional referendum in Haiti is taking place against the backdrop of one of the deepest political and institutional crises in the country's modern history. Since 2019, Haiti has not held legislative elections and has been governed by unelected authorities. This lack of electoral legitimacy has profoundly undermined the constitutional and democratic framework of the State; dysfunctions were already inherent in the Haitian Constitution of 1987, such as the absence of effective mechanisms to remedy institutional blockages and electoral delays.

6. The draft decree setting out the organisation of the future constitutional referendum in Haiti (the date of which is currently unknown but which is supposed to be held in 2025) follows on from the exchanges between the Venice Commission and the Haitian authorities in 2024, under the aegis of the OAS. These exchanges gave rise to two successive opinions from the Venice Commission (interim opinion of June 2024¹ and final opinion of December 2024).²

7. The main points of vigilance mentioned in these opinions are as follows:

- The maintenance of electoral rolls, in particular the registration of women and young voters, as well as of displaced persons;
- Ensuring that all Haitian nationals are able to participate in the electoral process;
- The possibility of suspending the political rights of criminals involved in the serious disturbances of recent years;
- Equal access to the voting process throughout the country;
- Organising the vote for displaced Haitians;
- The organisation of voting by Haitians abroad;
- A balanced composition of the electoral administration;
- Election observation;
- The organisation of the election campaign;
- The use of electronic voting and the electronic transmission of results;
- Equal access to public media;
- Limited public funding for the campaign;

¹ Venice Commission, [CDL-AD\(2024\)017](#), Interim Opinion on possible constitutional and legislative solutions for the conduct of future electoral procedures

² Venice Commission, [CDL-AD\(2024\)042](#), Haiti - Final opinion on possible constitutional and legislative solutions for the conduct of future electoral procedures.

- Full access for national and international observers to all stages of the electoral process;
- Election dispute resolution.³

8. Many of these issues are covered by the draft decree, which primarily details the voting procedure. Others are not, however, as will be developed in the analysis below.

9. In its final opinion, the Commission accepted that all the rules applicable to the referendum process, which should in principle be adopted by Parliament, should be laid down by an executive decree, given the absence of Parliament in Haiti's current political context.⁴

10. A referendum to adopt a constitution must enjoy the necessary credibility among the population so that as large a majority as possible recognises the legitimacy of this constitution. In its two opinions, the Venice Commission placed great emphasis on the need to *re-establish a minimum level of security* in Haiti prior to any elections or referendums.⁵ Developments in recent months are not reassuring in this respect, as they point to a further deterioration in the situation. The Venice Commission can only repeat that *the security of elections is essential if they are to comply with international standards*: "the personal security of voters, candidates, the electoral administration and observers and the physical security of buildings and equipment must be ensured, as must the security of the electoral campaign", and security must be guaranteed throughout the country.⁶

11. The fundamental principles of electoral law, as defined by the International Covenant on Civil and Political Rights (Article 25), the American Convention on Human Rights (Article 23), the First Additional Protocol to the European Convention on Human Rights (Article 3), the Code of Good Practice in Electoral Matters⁷ and the revised Code of Good Practice for Referendums⁸ cannot be fully guaranteed in the current Haitian context. The Code of Good Practice for Referendums states that "Democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement within the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties".⁹ *For the right to vote* to be effective, citizens must be able to vote without fear of physical harm or other forms of prejudice, coercion or reprisal. The principle of *equal suffrage* means that *access to polling stations* must be effective for all voters throughout the country. However, there is a significant risk that large segments of the population will be excluded from participation because of insecurity, logistical shortcomings and a lack of infrastructure for registering to vote. A social environment marked by corruption, violence and coercion may also be more conducive to electoral fraud and coercion, which hinder *the freedom of voters to form an opinion* - in particular by obstructing the electoral campaign - *and the freedom of voters to express their wishes*, which cannot be achieved in areas controlled by armed gangs.

12. When deciding on the *date of the referendum*, the Haitian authorities should seriously consider the security situation, and in particular the authorities' effective control of the territory and their ability to guarantee voters' rights. Given the very low turnout in the previous Haitian elections, further restrictions on the ability of voters to cast their ballots due to the lack of security may undermine the legitimacy of the outcome of the referendum.

³ See in particular [CDL-AD\(2024\)042](#), *op. cit.* para. 48.

⁴ [CDL-AD\(2024\)042](#), *op. cit.*, para. 25.

⁵ [CDL-AD\(2024\)042](#), *op. cit.* paras 16 ff; [CDL-AD\(2024\)017](#), *op. cit. passim*.

⁶ [CDL-AD\(2024\)042](#), *op. cit.* para. 17; see also Venice Commission, [CDL-AD\(2002\)023rev-cor](#), Code of good practice in electoral matters, para. 112-113.

⁷ Venice Commission, [CDL-AD\(2002\)023rev-cor](#), Code of good practice in electoral matters.

⁸ Venice Commission, [CDL-AD\(2022\)015](#), Revised Code of good practice for referendums.

⁹ Venice Commission, [CDL-AD\(2022\)015](#), Revised Code of good practice for Referendums, II.2.

13. This opinion will focus on the draft decree and not on previous legislation. However, the draft decree cannot be isolated from its legal context, and the question of its relationship with previous legislation is complex. Article 137 gives the referendum decree primacy over previous laws and decree-laws. From a practical point of view, this rule of conflict is understandable and advisable. However, as the contradictions between the different rules may not be obvious and clear, it will leave the CEP with a wide discretion to interpret and decide on the applicability of previous laws and decree-laws. This is particularly the case in relation to the 2021 Electoral Decree. During the online interviews, representatives of the Provisional Electoral Council indicated that, although it does not provide for its application to referendums, the 2021 decree - which is mentioned in the Preamble to the draft decree - will be applied on a subsidiary basis in certain cases not covered by this draft, for example with regard to the constitution of electoral bureaus and guarantees of the secrecy of the vote. Leaving it to the CEP to determine when the 2021 decree is applicable runs counter to the principle of legal certainty, one of the elements of the rule of law.¹⁰ The Venice Commission recommends clarifying the extent to which previous law, and in particular the Electoral Decree of 2021, is applicable to the referendum planned for 2025.

III. Analysis

a. Security

14. As indicated above, the restoration of a minimum level of security is a prerequisite for the organisation of the poll. The developments that follow should be understood in this context.

15. The Inter-American Court of Human Rights has ruled that the preservation of electoral integrity requires States to guarantee effective remedies against actions that undermine electoral integrity.¹¹ Providing adequate security at all polling stations to ensure that the referendum process can take place and continue throughout election day should be considered an action to strengthen electoral integrity.

16. The decree establishes certain security mechanisms in the polling stations: it is stipulated that there will be at least two "referendum security agents" responsible for maintaining peace and order (Article 27). They will be coordinated with the national security forces (Article 28). However, given the security problems in Haiti, particularly with regard to gang activity, additional measures should be considered to ensure the safety of citizens during the referendum process. In addition, the decree does not mention whether there will be coordination with the Multinational Security Support Mission (MSS) in Haiti.

17. For the rest, the decree does not provide for specific security measures to be taken in the present situation. Even if the decree cannot go into detail about the security measures, the Venice Commission strongly recommends that it provide for the broad outlines of the security framework. The decree should thus set out the minimum conditions for the ballot to take place.

b. General provisions

18. Article 2 provides for a very broad remit for the EPC. We will come back to this point in the comments on some of the following Articles.

19. Article 3 states that universal suffrage shall be direct, secret and free. The credibility of the referendum is linked to the actual ability of voters to vote freely and in sufficiently secure

¹⁰ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law checklist, II.B.3 (foreseeability of the laws).

¹¹ I/A Court H.R., Case of Capriles v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of 10 October 2024. Series C no. 541, para. 107.

conditions. If the security of the vote is not guaranteed, the question of respect for universal, equal and free suffrage arises (see paras 14 and following *above*).

20. Article 4 mentions a "*referendum code of ethics*", which is not defined. It would be useful to know what its purpose is and who will draft it. The Venice Commission recommends that this matter be clarified.

c. Electoral body and lists

21. Article 6: Definition of the electorate. The fact that the electoral roll is drawn up 60 days before the final date for drawing up the referendum register is positive. On the other hand, it is problematic that this article does not contain any provision concerning requests for registration that could be made by voters who have been forgotten. Such a provision can only be found in Article 133, in the "final provisions". It would be clearer if it were set out in Article 6 or immediately thereafter. Article 133 enables all citizens to request a change to the electoral roll by applying to the CEP through the local referendum office. The CEP is required to make a decision within 24 hours. Given the large number of displaced persons, estimated at 700,000 in the final opinion but estimated by UNICEF at more than one million in January 2025,¹² it is questionable whether the CEP is capable of processing a large number of requests within the allotted time. Another question is whether it is realistic to re-register all displaced voters in the polling stations where they are located. The Venice Commission recommends considering the creation of specific polling stations in centres for displaced persons.

22. In addition, Article 6 provides, in a classic way, for the inclusion on the electoral roll of any voter enjoying civil and political rights. There is no provision for excluding criminals involved in gangs, even if they are subject to international sanctions.¹³ The only relevant rules to prevent gang members from voting is the ban on armed persons in polling stations (Article 42). It cannot be ruled out that even the presence of a substantial number of unarmed gang members in or around the queue could have an intimidating effect on other voters. The draft decree does not clearly indicate how the CEP and local electoral authorities can deal with passive intimidation by gangs. The Venice Commission recommends provisions that prevent gang members from interfering in the electoral process, and at the very least prohibit them from being members of the electoral administration. As it is difficult to identify gang members, such measures should in any case target those who are subject to international sanctions or who can be identified in some other way.

23. Article 7 enables voters to register in the polling station of their choice "within the framework of pre-registration on the spot", which responds to a recommendation concerning displaced persons.¹⁴ However, it is stated, without further clarification, that this will be done "*in accordance with the procedures defined by the CEP*", which leaves some uncertainty as to this important aspect of the organisation of the ballot. If equal access to the vote is not guaranteed throughout the territory, the question of the legitimacy of the referendum once again arises, at least if the problems are not of a sporadic nature. The Venice Commission recommends that the arrangements for voting by displaced persons be defined more precisely in the decree.

24. Article 9 is not very easy to understand: it provides, on the one hand, that the CEP prepares the general electoral roll and, on the other hand, that each polling station keeps a "separate list" comprising voters who have registered on the spot, but it does not deal with the relationship between these two rules. The 2013, 2015 and 2021 decrees were much more specific about the

¹² <https://www.unicef.org/press-releases/almost-one-eight-children-internally-displaced-haiti-armed-violence-continues-unicef>

¹³ See [CDL-AD\(2024\)042](#), *op. cit.* para. 28-29.

¹⁴ [CDL-AD\(2024\)042](#), *op. cit.* paras. 29-30.

compilation of electoral rolls. The Venice Commission recommends clarifying the relationship between the general list and the local lists.

25. Article 11 sets out the identity documents that must be presented by voters at the polling station. As the loss of identity documents by displaced persons is widespread, the Venice Commission recommends that the CEP take active steps to provide or help provide identity documents.

26. The risk of double voting is particularly high due to the number of displaced persons. The Venice Commission recommends effective identification measures to prevent double voting.

27. Article 12 is not very explicit: it states that Haitians living abroad vote "*under the conditions and according to the procedures and modalities defined by the CEP in the countries where this vote takes place*". Nor does it detail the procedures for registering to vote abroad, even though the large number of expatriates could give them an important role in determining the outcome. Given the number of Haitians living abroad, it would be desirable for this major issue to be the subject of a separate chapter in the decree. The inclusion of Haitians abroad in the electoral process would strengthen the legitimacy of the referendum, in a context of social and political polarisation.

28. The wording "defined by the CEP in the countries where this vote takes place" seems to indicate that the CEP may establish different voting procedures and modalities for different countries. Not only could this lead to unnecessary complexity in the administration of the referendum, but different voting procedures and arrangements could also lead to different treatment of voters abroad, which could have an impact on turnout. Given the number of Haitian citizens abroad and the fact that they are not exposed to the same security risks as citizens residing in the country, which facilitates their participation, their vote can have a significant impact on the outcome. The Venice Commission recommends that particular importance be attached to drafting clear rules applicable to voting by Haitians abroad that comply with international standards, in particular the principle of equality.

29. In its final opinion, the Venice Commission referred to the introduction of limited postal or electronic voting for Haitians abroad.¹⁵ The Venice Commission is aware of the technical difficulties involved in introducing such voting methods, and in particular of the security issues involved in electronic voting. However, a gradual introduction of these voting methods could be envisaged.

30. Moreover, voting abroad poses challenges in terms of transporting materials, communicating results and resolving disputes. Therefore, in order to clarify the situation on the points mentioned in the previous paragraphs, the Venice Commission recommends that the decree include at least the essential elements of the procedures and modalities for the registration and voting of voters abroad.

d. Election campaign

31. Article 14 imposes a minimum period of 90 days between the publication of the referendum proposal and polling day. This period is appropriate and should allow citizens to be properly informed.

32. Articles 15 to 17 govern the provision of information to voters on the referendum question. For voters to be able to cast an informed vote, it is essential that they are properly informed about the referendum question and its consequences. The challenge of explaining the content and meaning of a new constitution should not be underestimated.

¹⁵ [CDL-AD\(2024\)042](#), *op. cit.*, para. 32.

33. The decree (Article 15) appears to limit the executive's duty to provide information to the content of the draft constitution. The code of good conduct for referendums goes further and requires an impartial body (such as the Provisional Electoral Council) to make available to voters an explanatory report or balanced propaganda from supporters and opponents of the draft.¹⁶ In addition, and above all, given the security context, in order that voters go to the polls - or take the risk of doing so - it is necessary to conduct a campaign to raise awareness of the major issue represented by the constitutional revision. The Venice Commission recommends that the draft be amended accordingly.

34. Articles 16 and 17 are not very developed as regards the role of the public media in informing voters. Article 16 simply states "*Campaigning for or against the draft Constitution is permitted*". The draft could be amended to require the public media to create information and debate programmes (for television, radio and Internet media) and sections (for the written press and social media) accessible to supporters and opponents of the draft Constitution.

35. Article 17 stipulates that the public media must reserve equal space for the "yes" and "no" supporters. The decree does not deal with private media¹⁷ or the Internet. As the role of the public media in Haiti is particularly limited, the Venice Commission recommends introducing campaign rules that take into account its previous recommendations.¹⁸

36. In addition, contrary to the Commission's previous recommendations, the issue of campaign *financing* is not addressed. The Commission reiterates its recommendation to ensure limited public funding of the electoral campaign without encouraging the creation of parties with no real basis.¹⁹

e. Electoral administration

37. Article 20 provides for polling stations (electoral bureaus) composed of only three members (chairperson, vice-chairperson and secretary). This does not contravene international standards, but provision could be made for scrutineers. Article 21 deals with the appointment of polling station members. Here too, the CEP plays a major role. Nothing specifies how the chairpersons of the polling stations (whose powers are set out in Article 25) are to be appointed; it is also the CEP that chooses them. The rules laid down in the previous regulations of 2013, 2015 and 2021 were much more precise. The Venice Commission reiterates its recommendation to provide for a balanced composition of the lower electoral administration, without the possibility of freely dismissing its members;²⁰ it also recommends that criminals involved in gangs should not be members of the electoral administration (*supra* para. 22).

f. Voting procedures

38. Articles 18 and 19 authorise the CEP to establish "at least" two polling stations in each communal section. It is important to note that Article 19 enables the CEP to create additional polling stations if the number of citizens entitled to vote so warrants. To guarantee equal treatment, it would be advisable for the CEP to set a maximum number of voters and a maximum distance for each polling station in advance. With regard to distance, i.e. the burden that the voter must bear in order to vote, the CEP should take into account the security context and not just the physical distance. In a difficult security context, even polling stations that are

¹⁶ [CDL-AD\(2022\)015](#), *op. cit.*, I.3.1.e.

¹⁷ See Venice Commission, Code of Good Practice for Referendums, [CDL-AD\(2022\)015](#), I.2.3.c: "With due respect for freedom of expression, the law should provide that the private audiovisual media ensure minimum access to the various participants in elections, as regards campaigning and advertising.

¹⁸ See in particular CDL-AD(2024)017, paras 57ff.

¹⁹ [CDL-AD\(2024\)042](#), *op. cit.*, para. 48.

²⁰ [CDL-AD\(2024\)042](#), *op. cit.* paras 29-30.

physically close may be difficult to reach if the voter has to cross insecure territory. Therefore, to ensure equal access, the CEP may need to set up polling stations for smaller groups of voters, if they live in isolated areas. The Venice Commission recommends that the draft decree be amended accordingly.

39. Article 34 stipulates that the number of ballot papers sent to the polling stations must be equal to the number of voters registered in each station. However, especially in the current security circumstances, all sorts of incidents can lead to ballot papers being lost or destroyed, and in such cases voting will be made difficult. Furthermore, it is not clear how this system takes account of displaced persons, as the CEP would need to have an overview of the number and identity of displaced persons in the respective polling station areas. It would be prudent to provide for a safety margin, and the Venice Commission recommends that the draft decree be amended accordingly.

40. The decree does not provide for transparent ballot boxes. This would enhance the transparency of the process, and the Venice Commission recommends that this be provided for.

41. It follows from Articles 39 and 56 that voting must take place on paper and not on electronic voting machines. The Venice Commission notes that electronic voting is not planned at this stage, probably because of the difficulty of implementing it at short notice, although it could meet certain security challenges.²¹ It could, however, be envisaged for at least some Haitians abroad (see para. 29 above).

42. Article 41 sets the duration of the ballot (6 a.m. to 4 p.m.) and adds that "*any extension will be communicated at the request of the Electoral Council*". The Commission understands that this refers to the Provisional Electoral Council. The wording does not indicate in which cases extensions are possible. The Commission was informed by the Provisional Electoral Council that, since voters who were still waiting to vote at the closing time of the polling stations were allowed to vote (Article 53), providing for a later closing time could prolong the night-time operations, which was problematic given the energy situation. See also the comments on Article 135 below.

43. Articles 46 to 51 define the presentation of ballot papers and the physical conduct of voting. They make no mention of the insertion of ballot papers in envelopes or the passage of voters through polling booths - the very existence of polling booths, screens or curtains is not even mentioned. Passage through a polling booth or a similar system is essential to guarantee the secrecy of the vote. The 2013, 2015 and 2021 decrees explicitly provided for passage through the polling booth but made no mention of envelopes. However, envelopes could be an additional guarantee of the secrecy of the vote. The Venice Commission recommends that provisions guaranteeing the secrecy of the vote be included in the decree itself.

44. Furthermore, the option of a blank vote is not provided for (Article 46); it should be considered.²²

45. Article 55 prohibits the presence in polling stations, at the time of counting, of any person other than the members of the polling station and the national or international observers. This is a standard rule in Haiti (already included in the 2013, 2015 and 2021 decrees). In many countries, the counting of votes is public, which helps to ensure that the process runs smoothly. The possible presence of observers limits the inconvenience of closed doors, but if there are no observers in a polling station, no monitoring will be possible.

²¹ [CDL-AD\(2024\)042](#), *op. cit.* para. 33 et seq.

²² [CDL-AD\(2022\)015](#), *op. cit.* I.3.1.c.

g. Election observation

46. Article 70 provides for the presence of national and international observers "*at all stages of the referendum process*", which is very positive; see also Article 54 (repeated in Article 69) for the vote count and Article 81 for the tabulation process. It should be noted, however, that on this point too, the power is in the exclusive hands of the CEP, which alone can accredit observers (Articles 70 to 79), and that it is referred to specific regulations (Article 71).²³ In particular, provision should be made for an obligation to facilitate access for observers at all stages of the process. The Venice Commission recommends the adoption of regulations in line with international standards, taking into account, where necessary, the specific situation of international observers.²⁴

47. In its report on election observers as human rights defenders, the Venice Commission stressed that "election observers play a crucial role as human rights defenders in ensuring respect for essential rights and freedoms. However, despite their significant contributions, domestic and international observers are increasingly encountering obstacles in monitoring electoral processes around the world. The difficulties they encounter include harassment, false accusations, defamation, threats, restrictions on free movement, detention, expulsion and, in some cases, even physical violence."²⁵ Therefore, in the context of escalating violence, the Venice Commission recommends that additional protection be provided to observers.

h. Transmission of results

48. Article 66 provides for the use of new information and communication technologies for the electronic transfer of the minutes of the vote count to the CEP, which is a good thing and echoes a recommendation of the Venice Commission.²⁶ However, the draft decree does not specify either the nature of these technologies or the security arrangements for this procedure, which are an important element in guaranteeing the fairness of the results. During the online interviews, the Provisional Electoral Council indicated that these technologies would be used in particular for voter registration and the communication of results, in order to ensure security.

i. Referendum disputes

49. Articles 87 to 99 set out the rules for contesting the results, in particular by creating a Referendum Litigation Office made up of 3 members of the CEP, three representatives of the lawyers and two magistrates. Hearings are public; decisions are taken by majority vote, are final and cannot be contested (Article 97).

50. Article 87 provides that the Provisional Electoral Council shall draw up the rules governing referendum disputes. The Venice Commission understands that these are only detailed rules, as the essential rules are laid down in the decree.²⁷

51. The Code of Good Practice for Referendums stresses that an effective system of appeal must be provided and that a final appeal to a court is the preferred option in most Council of Europe member states.²⁸ However, the Venice Commission considered that, "if judges with the

²³ The Provisional Electoral Council has informed the Commission that observers may be delegated by political parties.

²⁴ Venice Commission, [CDL-AD\(2024\)039](#), Report on Election Observers as Human Rights Defenders; [CDL-AD\(2012\)018](#), Declaration of Global Principles for Impartial Observation and Monitoring of Elections by Citizens' Organizations and Code of Conduct for non-partisan citizen observers and monitors; [CDL-AD\(2009\)059](#), Guidelines for an Internationally Recognised Status of Election Observers.

²⁵ [CDL-AD\(2024\)039](#), *op. cit.* para. 109.

²⁶ [CDL-AD\(2024\)042](#), *op. cit.* para. 33. Electronic transmission should make it possible to avoid the delays observed during the 2015 and 2016 elections, [CDL-AD\(2024\)017](#), *op. cit.*, para. 46.

²⁷ See Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law checklist, I.A.4.iii, on the limits of legislative delegation.

²⁸ [CDL-AD\(2022\)015](#), *op. cit.* II.4.3(a).

appropriate skills cannot be found, a pragmatic solution according to which the Transitional Electoral Council decides disputes as the last instance can be envisaged."²⁹ In these very special circumstances, it would seem acceptable for the Referendum Litigation Office not to be made up of a majority of career magistrates. However, the CEP will be both judge and party in resolving disputes against its own decisions, insofar as it is the CEP that organises the referendum. Acceptance of the referendum result, which is so crucial to social stability once the vote has taken place, also depends on acceptance of the legitimacy and independence of the supervisory body. The Venice Commission recommends avoiding decisions being taken by the CEP and then submitted on appeal to a body comprising CEP members.³⁰

52. The method of appointing or electing the chairperson of the Referendum Litigation Office is not specified. The Commission recommends that this be specified.

53. Article 91 gives the State or any civil society association structure the right to refer a case to this complaints office. During the online interviews, the Provisional Electoral Council indicated that "the State" means the executive - the government or the Transitional Presidential Council. In comparative law, it is not common for the State to initiate electoral disputes, as it is up to the voter to defend his or her rights. As for "civil society association structures", the concept is not clear either: does it mean any association? In accordance with the Code of Good Practice for Referendums, and in order to make the process inclusive and in line with international standards, the Venice Commission recommends that (only) citizens be allowed to lodge appeals directly.³¹ The right of all voters to appeal is not only important to guarantee their right to vote, but also to allow other stakeholders to assess the scope and importance of irregularities.

54. The referral deadline is very short: 24 hours, while the Administrative Jurisdiction Division has only two days to issue its decisions once a referral has been made (Article 95). In accordance with the Code of Good Practice for Referendums,³² time limits are short in many countries because of the legitimate desire to allow a rapid decision on the fairness of the ballot. The Code of Good Practice in Electoral Matters provides for time limits for appeals and for decisions to be taken within three to five days at first instance.³³ The 24-hour period seems too short, as gathering information and assessing the extent and seriousness of irregularities can take some time. These difficulties may be exacerbated by the security situation. The Commission recommends slightly longer timeframes for appeals and decision-making. If necessary, the deadline for publishing the final results (five days, Article 98) could be extended by one or two days.³⁴

55. Article 92 states that the Referendum Litigation Office has only one section, made up of five members, whereas the Office has eight members. During the online interviews, representatives of the Provisional Electoral Council clarified this provision: five members sit on the board, the others are reservists.

56. In addition, and more importantly, the provisions on disputes do not specify the decision-making power of the Referendum Litigation Office, and in particular the conditions under which the ballot may be annulled. However, the law does not rule out this sanction (see Article 135, below, *a contrario*). The Venice Commission recommends that the Referendum Litigation Office should have the power to annul the ballot if irregularities may have affected the outcome.³⁵

²⁹ [CDL-AD\(2024\)017](#), *op. cit.*, para. 52.

³⁰ See [CDL-AD\(2024\)017](#), *op. cit.* para. 50.

³¹ Cf. [CDL-AD\(2022\)015](#), *op. cit.* II.4.3.f: a reasonable quorum may be imposed for appeals by voters concerning the referendum results.

³² [CDL-AD\(2022\)015](#), *op. cit.* II.4.3.g.

³³ [CDL-AD\(2002\)023rev-cor](#), *op. cit.* II.3.3.g.

³⁴ While the late announcement of the results may lead to a loss of confidence, deadlines of three to five days should not pose a problem, once the provisional result of the referendum is known and made public.

³⁵ [CDL-AD\(2022\)015](#), *op. cit.* II.4.3.e.

57. Article 99 states that "*the CEP shall take the necessary measures in the event of proven fraud and shall refer the matter to the competent court*". The first part of this sentence is imprecise. It does not indicate to which phase of the electoral process it applies (during the campaign, on polling day, after the poll?) or the type of measures that may be envisaged. The Venice Commission recommends that this provision be clarified.

j. Penalties

58. Chapter X (art. 102 to 130) contains a large number of punitive provisions, some of which are very severe in the event of infringement of the rules on referendums.

59. In a normal situation, the establishment of criminal sanctions by decree-laws issued by the executive would raise problems of legality unless there was a clear basis in the law in the formal sense. In the specific context of Haiti, the principle of necessity could justify certain criminal sanctions linked to the precarious security situation, which are not adequately regulated in the general criminal code. However, the draft decree goes further and imposes criminal sanctions with a potential prison sentence for the sale and consumption of alcohol (Article 104) and the organisation of or participation in public demonstrations during the vote (Article 110). Representatives of the Provisional Electoral Council informed the Commission, however, that the decree does not introduce any offences or penalties not provided for in the formal legislation.³⁶

60. Article 104 provides for a fine or imprisonment of up to 25 days for the sale or consumption of alcohol in public spaces between 6 p.m. on the eve of polling day and 6 a.m. on the day after polling day. The logic of this prohibition, and to some extent its proportionality, might be acceptable if the prohibition on the sale and consumption of alcohol were accompanied by a right for election officials to reject drunken voters, but no such rule exists in the Decree.

61. On the other hand, according to Article 130, all convictions for offences under Chapter IX entail automatic loss of civil and political rights for at least five years and up to twenty years. An automatic loss of civil and political rights, even for a minor offence such as drinking alcohol in public places on election day (Article 104), is disproportionate.

62. The Venice Commission recommends that the criminal provisions be reviewed to ensure that they comply with the principles of necessity and proportionality.

k. Final provisions

63. Article 135 provides that a partial interruption of the vote, for whatever reason and wherever it may occur, may not be considered as grounds for annulling the referendum process. This provision is imprecise; it is legitimate that a very local and short interruption should not invalidate the ballot, but the same cannot be said of a large-scale interruption lasting several hours, which would deprive many voters of the opportunity to vote. This provision should be accompanied by the possibility of extending the voting period beyond 4 p.m. in order to make up for the time lost due to the interruption, so that voters are not deprived of their right to vote due to external events beyond their control. The Venice Commission recommends that the draft decree be amended accordingly.

64. On Article 137, see para. 13.

³⁶ See [CDL-AD\(2016\)007](#), Rule of Law checklist, *op. cit.* II.B.7 (*nullum crimen, nulla poena sine lege*).

IV. Conclusion

65. In a letter dated 6 May 2025, Mr Patrick Saint-Hilaire, President of Haiti's Provisional Electoral Council (CEP), asked the Venice Commission of the Council of Europe for an opinion on the draft referendum decree for 2025.

66. This draft decree follows on from the exchanges between the Venice Commission and the Haitian authorities in 2024, under the aegis of the OAS. These exchanges gave rise to two successive opinions from the Venice Commission.³⁷

67. The Venice Commission can only insist once again on the need to *re-establish a minimum level of security* in Haiti before any elections or referendums. Developments in recent months are not reassuring in this respect, as they point to a further deterioration in the situation. The Venice Commission can only repeat that *the security of elections is essential if they are to comply with international standards*.

68. The Venice Commission makes the following key recommendations regarding the content of the referendum decree:

- A. *Provide for the broad outlines of the safety framework*, in particular with a view to:
 - prevent gang members from interfering in the electoral process, and at the very least ban them from being members of the electoral administration;
 - guarantee the safety not only of voters and polling station staff, but also of observers;
 - ensure the secure transmission of results;
- B. Clarify the extent to which previous law, and in particular the Electoral Decree 2021, is applicable to the referendum planned for 2025;
- C. Guarantee the effective exercise of the right to vote by displaced persons, by specifying the arrangements, and if necessary by providing for polling stations in centres for displaced persons;
- D. Provide at least the essential elements of the procedures and arrangements for registering and voting by electors abroad;
- E. Include rules guaranteeing the secrecy of the vote in the decree itself;
- F. Provide for a balanced composition of the lower electoral administration, without the possibility of freely revoking its members;
- G. Develop the rules relating to election campaigns, in accordance with international standards;
- H. Provide limited public funding for election campaigns without encouraging the creation of parties with no real basis;
- I. Avoid decisions being taken by the CEP and then submitted on appeal to a body comprising CEP members;
- J. Allow (only) citizens to lodge appeals directly;
- K. Provide for slightly longer deadlines for appeals and decisions on appeals;
- L. Provide that the Referendum Litigation Office has the power to annul the ballot if an irregularity may have affected the outcome;
- M. Review the criminal law provisions to ensure that they comply with the principles of necessity and proportionality;
- N. Clarify the scope of the "referendum code of conduct".

69. Other recommendations are given in the body of the text.

70. The Venice Commission remains at the disposal of the Haitian authorities for further assistance in this area.

³⁷ [CDL-AD\(2024\)017](#), *op. cit.*; [CDL-AD\(2024\)042](#), *op. cit.*