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**SUMMARY OF THE INTERIM OPINION ON POSSIBLE
CONSTITUTIONAL AND LEGISLATIVE SOLUTIONS FOR FUTURE
ELECTORAL PROCESSES IN HAITI**

(Washington, 29 October 2024)

Intervention by

Ms Janine OTALORA MALASSIS

Substitute member of the Venice Commission for Mexico

Ladies and Gentlemen

The Organization of American States (OAS) has asked the Venice Commission to analyse Haiti's electoral framework and propose solutions for future elections. The Commission's delegation of experts¹ met from 13 to 15 May at OAS headquarters with Haitian representatives, experts in the field and OAS officials. The decision was taken to issue an interim opinion, adopted by the Venice Commission in June, given that we had not yet held meetings with the Transitional Presidential Council. **The purpose of this opinion is to present an overview of the key issues relating to the organisation of elections in Haiti and to formulate possible constitutional and legislative solutions for the conduct of these elections.**

II. Context and constitutional framework

Generally speaking, the main structural and functional weaknesses affecting the country's ability to organise regular and credible elections have been identified. Haiti's Constitution, adopted by referendum, dates from 1987. It provides for a Permanent Electoral Council, which organises the entire electoral process and prepares the draft electoral law. No electoral law has been passed since 1987.

The last legislative and presidential elections were held in 2015 and 2016. Currently, there is no permanent electoral law and great instability in the political system, including the absence of a functioning Parliament and President.

The Venice Commission based its interim opinion on the universal standards laid down by the United Nations, the conventions and declarations of the OAS, the First Additional Protocol to the European Convention on Human Rights and the Venice Commission's Code of Good Practice in Electoral Matters.

III. Analysis

The Venice Commission identified flaws in the 1987 Haitian Constitution that created a cycle of instability. For example, the constitutional requirement for elections every 18 months, combined with the absence of provisions to deal with institutional delays or dysfunctions, creates a situation where the absence of elections leads to the collapse of the government. In addition, the absence of a functioning Permanent Electoral Council and of a permanent electoral law exacerbates the crisis.

This lack of mechanisms for maintaining institutions between electoral processes prevents constitutional solutions to crises, which may require extra-constitutional measures.

While recognising the immediate need to organise elections, the Venice Commission asserts that it is essential to remedy these constitutional flaws to ensure long-term stability. In particular, it suggests amending the rules governing the partial renewal of the Senate and the Permanent Electoral Council in order to avoid new crises (including measures to ensure the permanence of these bodies in the absence of elections). However, the lengthy constitutional amendment process provided for in the constitution (requiring super majorities and two presidential terms) makes constitutional amendment before the next elections unfeasible.

¹ The rapporteurs of the Venice Commission were: Mr Michael Frendo, Mr Eirik Holmøyvik, Ms Janine Otalora Malassis and Mr François Séners. Ms Simona Granata-Menghini, Director, Secretary of the Venice Commission, and Mr Pierre Garrone also took part in the missions.

The Venice Commission suggests the possibility of constitutional amendments, by extra-constitutional means, while recognising that their democratic legitimacy would be limited, given that the Transitional Presidential Council was not elected by popular vote. Consequently, a **referendum** should be considered if it is decided that amendments to the Constitution need to be adopted before the next elections in order to secure the support of the population.

The Venice Commission also stresses the importance of **stable electoral legislation** for the credibility of the electoral process and the consolidation of democracy.

Frequent changes in electoral rules can confuse voters and reduce confidence in the system. While recognising that the current absence of a democratically elected government complicates the situation, the Commission suggests using the most recent electoral legislation as a starting point for the next elections, with the necessary adaptations in the event of constitutional changes. It stresses that a balance must be struck between the need for legal legitimacy and the pragmatic realities of the Haitian situation.

In order to organise free and fair elections, the Venice Commission considers that there are two essential prerequisites: **electoral capacity** (the ability to organise elections effectively) and **electoral security** (the security of voters and electoral material).

Specific aspects of the electoral process must also be taken into account in the rules to be applied at the next elections and, if necessary, provided for in new legislation, such as:

- The right to vote and to be elected: access to citizenship, restrictions on the right to vote and the need for a clear and accessible procedure for registering voters, including voters abroad. The rules that apply must not be too restrictive. People with dual nationality must be able to vote and be elected.
Furthermore, the restrictions on the right to stand for election of people who have lived outside Haiti for the 2 years prior to the election are contrary to international standards. The rules governing access to and loss of Haitian nationality will have to be revised.
- For electoral administration, it is recommended that a permanent, independent and impartial body be set up. A balanced political composition can contribute to equally balanced decision-making.
- The voter registration system must be improved and strengthened to achieve permanent electoral rolls. Drawing up an electoral roll for the diaspora will be complicated in the circumstances of Haitian immigrants.
- It is suggested that polling stations be made accessible throughout the country, that the transport of electoral material and voting processes be made secure, and that transparent counting procedures be established.
- With regard to electoral appeals, the current situation whereby the Permanent Electoral Council decides in the last instance, including appeals against its own decisions, is contrary to the universal principles of judicial certainty. It is therefore recommended that a fair and accessible appeals procedure be adopted to deal with electoral disputes.
One option would be to create an Electoral Tribunal made up of judges from other courts specialising in electoral matters. The essential point is that electoral disputes should be dealt with by two bodies.
- Provision must be made for national and international election observation to guarantee transparency and fairness.

- With regard to election campaigns, the financing of political parties and campaigns, and the media, the importance of guaranteeing fair competition is emphasised in the opinion. The standards will have to guarantee the neutrality of the public authorities on these three subjects. The Venice Commission stresses that limiting the beneficiaries of public funding (making access to it subject to the results of elections) is a way of reducing the number of parties and therefore their burden on the state budget. In addition, public funding of political parties must take precedence over other forms of funding.

In the longer term, the Venice Commission recommends **assessing the current electoral system**, which is a two-round majority system for presidential and parliamentary elections and a relative majority system for municipal elections, and examining possible reforms to achieve greater inclusion and better representation of the various sectors of the population. This would include reviewing the electoral boundaries after the electoral process, so as not to delay it. Measures will also have to be taken to guarantee equality between men and women, and particularly the participation of young people.

Conclusions

The Venice Commission reiterates the need for Haiti to address its constitutional and legislative shortcomings in order to organise free and fair elections. It stresses the importance of striking a balance between legal requirements and the practical realities of Haiti's current situation.

The Venice Commission remains at the disposal of the Haitian authorities and the OAS for any further opinion or assistance.

Link to the Opinion

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