



Vice-President of the European Commission and High Representative of the European Union for Foreign Affairs & Security Policy Catherine Ashton

Brussels, June 5, 2013

EU action in relation to serious threats to democracy and the rule of law in Haiti

Dear Ms Ashton,

The Coordination Europe-Haiti, a coalition of NGOs and civil society groups concerned with equitable development in Haiti, is worried about the very serious deterioration of the rule of law and the increasingly autocratic behaviour of the Haitian government.

As you know, the EU is collectively the largest aid donor to Haiti with a considerable portion of its spending dedicated to programmes and projects whose objective is to strengthen the rule of law and promote good governance. Yet the EU has largely remained silent as the Haitian government, the leading recipient of these funds, treats the country's laws and constitution with increasing disregard.

Communications Minister, Regine Godefroy, and **Economy and Finances Minister**, Marie-Carmelle Jean-Marie, both resigned in April. In her resignation letter, Ms. Jean-Marie said she had left because her attempts to introduce more transparency in respect of public spending had been rebuffedⁱ. Ms Godefroy's resignation letter stated that she could not perform her duties with "rigour, honour and integrity"ⁱⁱ. This followed the resignation in December of the Haitian government's special political advisor, Richard Morse, who cited "corruption in the palace and infrastructure sabotage".

Recently, in a report to the UNⁱⁱⁱ, followed by an open^{iv} letter after his resignation as the UN's independent human rights expert on Haiti, Michel Forst criticised the government for interference in the justice system, arbitrary arrests and threats to journalists. He cited as an example the case of Calixte Valentin, a presidential adviser who was charged with murder. Forst complained that Valentin was released by a judge "specially appointed for this purpose by the current Minister of Justice".

In the on-going trial of Jean Claude Duvalier, Forst states that despite "assurances from the highest levels of the state that (...) the separation of powers would forbid any interference of the executive branch (...) having observed the manner in which the government prosecutor has been carrying out his questioning over the last few weeks, I can see that this is unfortunately not the case."

Sadly, however, there are two even clearer signs that the government is not committed to operating in a democratic manner. The first of these is the continuing failure to hold long-overdue elections combined with glaring manipulations of the composition of the Electoral Council^v. The second is the constitutional changes promulgated by President Michel Martelly in July 2012.

As for the issue of elections, President Martelly has failed to hold parliamentary and local elections that were due as long ago as 2011. This would appear to be related to his attempts to ensure that the Permanent Electoral Council (PEC) is controlled by him, firstly by constitutional change (see below) and secondly by manipulating the actual appointments made.

Three members of the PEC were appointed by the Supreme Council of the Judiciary without the required quorum. Another three members must be appointed by the legislature. However, with the Senate being inquorate due to the government's failure to hold elections for one third of its seats, these appointments cannot legally be made. Nonetheless, at the end of last year the President insisted that a six-member PEC (the government having appointed 3 further members) was legitimate. Since then, a compromise appears to have been reached with Parliament, with the setting up of a 'Transitional College of the Permanent Electoral Council' (a body for which there is no constitutional basis), but the date(s) for elections remain to be announced. Further delays may lead to a situation where another third of Senate seats become vacant, thereby rendering Parliament inoperative and opening the door to rule by executive decree.

In the absence of local and municipal elections, the Martelly government has replaced some 138 elected local government representatives and mayors with presidential appointees, illegally and hugely increasing his personal executive power while simultaneously debasing and defrauding one of Haiti's most vibrant democratic arenas – local government. This has led to violent clashes between armed factions supporting the 'elected' or 'appointed' local authorities, notably in Grand Goâve, where at least 25 are reported to have been killed in such clashes. Human rights organisations have also raised fears about the nature of the appointees, one example being the appointment, as agent of the executive in the municipality of Desdunes, of a fugitive from justice accused of murder^{vi}.

As for the constitutional changes, some very controversial alterations were promulgated in June 2012. Many legislators claim that the changes published were not the ones they voted on. Furthermore the constitutional amendments have only been published in one of the country's two official languages, French. Failure to conform to the required legalities on this now means there are two constitutions in force (the second being the un-amended 1987 Constitution in the majority language, Haitian Kreyòl).

We believe it is clear that the constitutional changes mark some seriously retrograde steps in the struggle for democratic accountability and rule of law in Haiti. They include the following^{vii}:

(i) **The method of choosing a Permanent Electoral Council (art. 192):** The 1987 constitution provided for the selection of the Permanent Electoral Council at a local, grassroots level, with nominations coming from equivalents of US county and state level representatives. This grassroots participation has never been put into practice, however, and the selection process has been imposed from above, to create a series of Provisional Electoral Councils. The new constitution enshrines this process so that the President, the Supreme Court (chosen by the President from lists prepared by the Senate) and the Parliament select a nine-member Permanent Electoral Council, negating local grassroots participation and centralising top-down control.

(ii) **Presidential succession (art. 149):** The 1987 Constitution provides for the President of the Haitian Supreme Court to assume the presidency and organise new elections in all cases of 'presidential vacancy'. The new amendments make the Prime Minister the provisional President and requires them to organise new elections within 4 months.

While the 1987 constitution ensures that a retiring President cannot serve consecutive terms, the new amendments stipulate that the four months a Prime Minister serves as interim President count as a full term, thus a sitting President could resign during a fourth year in office, temporarily transfer the presidency to the Prime Minister they had personally selected, then run again without waiting 4 years.

Obviously this increases the threat of exactly the sort of dictatorship the 1987 constitution was designed to consign to history in the wake of 29 years of rule by the Duvaliers.

(iii) **Approval of the annual budget and expenditure scrutiny (art. 228, 229):** The 1987 Constitution requires the president to submit a detailed (line item) annual budget and the previous year's expenditures report for Parliamentary approval, and gives Parliament the power to refuse to legislate on any matter until these financial requirements are adequately fulfilled by the Executive. The new amendments provide that a 'general budget' will suffice, thus severely limiting Parliamentary oversight of expenditure. We consider this as particularly worrying, given that it is official EU policy to require transparency and accountability of aid budgets. [Incidentally, we regret and continue to protest the Commission's insistence that the EU's own budget support conditionalities for countries like Haiti remain confidential, hence depriving EU tax payers of any means of assessing whether their money is used appropriately or effectively in Haiti, while exposing the EU as a whole to the charge of blatant hypocrisy given the requirements placed on the Haitian government by the EU as regards transparency.]

(iv) **The return of Duvalier era laws:** The new amendments abrogate Article 297 from the 1987 constitution,. This repealed the most egregious laws that formed the 'legal' basis of 'Duvalierism'. These included the law of 2 August 1977 that established the State Security Court, the law of 29 April 1969 condemning all imported doctrines (attacking freedom of thought and expression, political association and freedom of association) and the law of 5 September 1935 on superstitious beliefs (effectively criminalising the widely-practised religion of Vodou). Hence these Duvalier era laws are now effectively revived and with them, potentially, the death penalty which was abolished in 1987.

Perhaps the most striking expression of the deterioration of the Human rights/Rule of law situation in Haiti relates to the increasing persecution faced by many of the 320,000 or so Haitians who remain internally displaced (IDPs), almost three years after being made homeless by the 2010 earthquake. Not only are the IDPs living in appalling conditions, at the mercy of the elements and devoid of the most basic sanitary facilities in the face of the ongoing cholera epidemic, with little done to alleviate their conditions, let alone develop a long term solution to their housing needs, but they are facing a steep increase in illegal forced and violent evictions from the makeshift camps they inhabit. All this has been noted by the United Nations Coordination for Humanitarian Affairs^{viii}. An alarming report by Amnesty International^{ix} highlights their plight and notes that in many cases the evictions are not only carried out with the tacit approval of the authorities, but with the active participation of the police. AI has documented the case of one man being beaten to death by police officers after being arrested for protesting the destruction of his shelter^x.

The examples we mention are by no means exhaustive, and we can provide many more, but we hope all this is sufficient to demonstrate to you and your staff the seriousness of the threats to the rule of law and democracy in Haiti.

To us it is incredible that the EU has so far remained silent on issues, which are at the heart of declared EU policy and aid priorities. We believe the success of all such aid efforts in Haiti is in serious jeopardy as the country slides towards a new dictatorship.

We would therefore urge you to publicly call on President Martelly to address the above matters and to take meaningful steps to ensure the current slide towards authoritarianism is reversed. Should satisfactory progress not be made, we believe the EU should consider limiting the direct budget support provided to the government. An obvious alternative would be to work increasingly via correctly elected local authorities and Haitian civil society groups. This would, we believe, help to further both group's ability to monitor their own government, as well as improving the chances of EU

funds furthering genuine equitable and sustainable development in Haiti.

We would very much appreciate your views on these matters and stand ready to assist with any further information, observation or analysis.

Yours sincerely,

On behalf of the Coordination Europe-Haiti,



Evert-Jan Brouwer, chairman

For more info: www.coordinationeuropehaiti.eu

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- ⁱ [Text of Ms Jean Marie's resignation letter](#) (in French)
 - ⁱⁱ [Text of Ms Godefroy's resignation letter](#) (in French)
 - ⁱⁱⁱ [Report of the independent expert on the situation of human rights in Haiti, Michel Forst to the Human Rights Council of the United Nations](#)
 - ^{iv} [Text of Mr Forst's 'Open Letter'](#) (in French)
 - ^v [Statement by three leading Haitian human rights organisations on the manipulation of the electoral apparatus](#) (in French)
 - ^{vi} [National Human Rights Defense Network news release](#) (in French)
 - ^{vii} [Text of the Haitian Constitution detailing 2012 amendments to French version](#) (in French)
 - ^{viii} [United Nations Office for the Coordination of Humanitarian Affairs report, April 2013](#)
 - ^{ix} ["Nowhere to Go" Forced Evictions in Haiti's Displacement Camps, Amnesty International](#)
 - ^x [Haiti: Protester 'beaten to death by police' following attack on camp, Amnesty International](#)