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# Presidential Removal: Impeachment as a Tool to Promote Democracy in Haïti

by BRYNNA BOLT\*

## Introduction

I began writing this note in 2019, the same year that Congress impeached former United States President Donald J. Trump, for the first time, and members of the Haïtian parliament attempted to impeach President Jovenel Moïse. I was struck by the similarities and differences in the impeachment processes, especially given the countries' entwined histories. Now, in 2021, I know that both impeachment proceedings failed to remove either president, despite credible accusations of corruption. Furthermore, both presidents afterwards called for further consolidation of executive power, even as their allotted times in office came to a close.

Another compelling question is why it matters if a president is removable from office before his<sup>1</sup> term expires. Political scientists have long believed that one of the greatest perils of a presidential democracy is its stagnation.<sup>2</sup> As this article discusses later, Haïti's semi-presidential democracy runs the same risk. When faced with stagnation, a presidential term can be interrupted in seven ways: resignation, impeachment, declaration of incapacity, popular recall, coup, assassination, or foreign invasion.<sup>3</sup> Haïti has already experienced a number of undemocratic presidential removals—including by coups, assassinations, and foreign invasions—since gaining independence in 1804. More recently, the country's political and economic

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1. Throughout this paper, I use the pronouns "he/him/his" to refer to the President or Prime Minister's office or official duties. Haïti has had both male and female identifying Presidents and Prime Ministers. I use "he/him/his" because the offices are currently or were most recently filled by men.

2. Juan J. Linz, *The Perils of Democracy*, 1 J. OF DEMOCRACY 51, 54 (1990).

3. Leiv Marsteintredet and Einar Berntzen, *Reducing the Perils of Presidentialism in Latin America Through Presidential Interruptions*, 41 COMPARATIVE POLITICS 83, 88–89 (Oct. 2008).

elite, or *politique de doublure*,<sup>4</sup> have used coups, specifically, to maintain their elite status. Furthermore, foreign states have played significant roles in these unconstitutional transitions of power. Adopting democratic removal processes that are more likely to succeed could mean preventing stagnation and coups, as well as giving the Haïtian people greater opportunity to participate in their government.

President Moïse's term officially expired on February 7, 2021, sparking a constitutional crisis.<sup>5</sup> President Moïse maintains that, because he did not take office until a year after he was elected, he should have another year in office remaining.<sup>6</sup> Haïti's judiciary branch disagrees, and protestors have once again taken to the streets in Port-au-Prince, admonishing President Moïse as a dictator.<sup>7</sup> Furthermore, Haïti's legislature has been completely empty since the beginning of 2020, and no one has passed the election law necessary to hold a presidential race.<sup>8</sup> In February, the Biden Administration in the United States announced its support for Moïse.<sup>9</sup> President Moïse continues to call for a constitutional referendum to rewrite the 1987 Constitution of the Republic of Haïti (the 1987 Constitution), currently set for June of 2021.<sup>10</sup> However, this rewrite would likely be a step closer to another dictatorship in Haïti, rather than towards constitutional order.

This note focuses on impeachment—the legal process by which the legislature, in some cases together with the judiciary, votes to remove a president—as a democratic presidential removal procedure. This note discusses the ways in which Haïtian lawmakers might improve the country's impeachment process to better serve the purpose of peacefully removing a corrupt and unpopular president. Furthermore, this note looks to how the process of impeachment might be molded to hold the entire government accountable to the will of the Haïtian people. The recommendations are made looking to the impeachment processes of other recently formed democracies as models

4. *Politique de doublure* literally translates to “politics of the double.” In Haïti, the phrase is used to refer to the small group of elite citizens (one to two percent of Haïti's total population) who control the country's economy, as well as much of its government, from behind the scenes. Layla Quran, *Why Haïtians Say They Won't Stop Protesting*, PBS (Dec. 5, 2019, 5:05 PM), <https://www.pbs.org/newshour/world/why-haitians-say-they-wont-stop-protesting>.

5. Harold Isaac, Andre Paultre & Maria Abi-Habib, *Haïti Braces for Unrest as a Defiant President Refuses to Step Down*, N.Y. TIMES (Feb. 7, 2021), <https://www.nytimes.com/2021/02/07/world/americas/haiti-protests-President-Jovenel-Mois.html?auth=login-google>.

6. *Id.*

7. *Id.*

8. Clément Jude Charles, *The Context for Haïti's Ongoing Constitutional Reform Process*, CONSTITUTIONNET (Dec. 12, 2020), <https://constitutionnet.org/news/context-haitis-ongoing-constitutional-reform-process>.

9. Isaac et al., *supra* note 5.

10. Brian Concannon, *Is the Whitehouse Greenlighting Haïti's Descent Into Dictatorship?*, RESPONSIBLE STATECRAFT (March 9, 2021), <https://responsiblestatecraft.org/2021/03/09/the-biden-administration-is-greenlighting-haitis-descent-towards-dictatorship/>.

Haïti can draw from. This note analyzes democratic processes in three countries—Brazil, Paraguay, and South Korea—that have impeached a sitting president in the last decade.<sup>11</sup> Their reasons for impeaching presidents have varied. In Latin America, both the Brazilian and Paraguayan legislatures removed their heads of state based on accusations of corruption and political unpopularity, respectively.<sup>12</sup> South Korea’s legislature—with the approval of its Constitutional Court—impeached its president for betraying state secrets.<sup>13</sup>

Part I categorizes Haïti’s democracy and identifies the provisions outlining the impeachment process in its constitution. Part II discusses the role of impeachment in Haïti’s semi-presidential democracy. Part III summarizes the history of presidential removal in Haïti since 1987, through the recent failed impeachment of President Moïse. Part IV compares the Paraguayan, Brazilian, and South Korean impeachment processes—including their relevant actors, definitions of impeachable offenses, and procedures establishing who succeeds an impeached president—and offers recommendations on which aspects could support constitutional norms<sup>14</sup> in Haïti.

### I. The Current Provisions for Impeachment in Haïti’s 1987 Constitution

The first step in analyzing the role of impeachment in Haïti is categorizing the type of democracy that the country practices. There are three main types of democracies in effect today—presidential democracy, semi-presidential democracy, and parliamentary. In a presidential democracy, the President, who is both the head of the executive branch and the symbolic head of state, is elected directly by popular vote for a fixed term.<sup>15</sup> The legislature is separate from the executive and independently elected for a fixed term by popular vote.<sup>16</sup> By contrast, in a parliamentary system, the Prime Minister is the head of the government.<sup>17</sup> Finally, in a semi-presidential democracy, executive functions are split between the President and the Prime Minister.<sup>18</sup> The type of democracy that a country practices affects whether or not a head of the executive branch can be removed by impeachment, who will be the relevant actors, and what happens after removal.

11. See Tom Ginsburg, Aziz Huq, & David Landau, *The Uses and Abuses of Impeachment Power* (Univ. of Chi., Public Law Working Paper No. 731, 2020).

12. *Id.* at 6.

13. *Id.* at 10.

14. Meaning adherence to principles of constitutional law, including checks and balances between the branches.

15. Linz, *supra* note 2, at 52–53.

16. *Id.*

17. *Id.*

18. Robert Elgie, *Variations on a Theme*, 16 J. OF DEMOCRACY 98, 107 (July 2005).

The 1987 Constitution establishes the Haïtian government as a semi-presidential democracy, with the President and Prime Minister sharing the responsibilities of the executive branch.<sup>19</sup> The President is the head of state and manages the armed forces, enforcement of the law, and international relations.<sup>20</sup> The Prime Minister manages the day-to-day activities of the government.<sup>21</sup> In addition to the split executive branch, Haïti's government has an independently elected legislature.<sup>22</sup> In the legislature, representatives to the Chamber of Deputies, the lower house, are elected "in direct universal suffrage" (i.e. by a popular vote) for terms of four years.<sup>23</sup> Representatives to the Senate, the upper house, are popularly elected for six-year terms.<sup>24</sup> When a joint session is held between the two houses, they are referred to as the National Assembly.<sup>25</sup>

The President is more limited in the length and number of terms he may serve: the President can be elected for a term of five years, twice, and non-consecutively.<sup>26</sup> Haïtian lawmakers wrote the 1987 Constitution as the Duvaliers' decades long dictatorship crumbled in 1986, and its limits on the presidential office may reflect its drafters' reluctance to give too much power to the new head of state.<sup>27</sup> The President then appoints a Prime Minister who must be approved by a two-thirds majority of the Senate.<sup>28</sup> Therefore, while the Prime Minister is not directly elected, he is chosen through representatives of the people. Each branch, in theory, is independent in its powers and

19. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI Mar. 29, 1987, art. 133.

20. *Id.* at arts. 136–47, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

21. *Id.* at arts. 158–65, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

22. *Id.* at art. 59.

23. *Id.* at art. 94.

24. *Id.* at arts. 92, 95, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

25. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI Mar. 29, 1987, art. 98, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

26. *Id.* at art. 134, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

27. In the three decades before the adoption of the 1987 Constitution, Francois Duvalier and his son, Jean Claude, brutally repressed individual liberties and political opposition and drained the country of its financial resources for their own benefit. The Duvaliers' personal military, the *Tonton Makout*, murdered tens of thousands of Haïtians. It was following these violations of political, civil, and human rights, that the provisional military government, the National Governing Council, established a Constituent Assembly mandated with drafting a new constitution. LAWYERS COMM. FOR HUMAN RIGHTS, PAPER LAWS STEEL BAYONETS: A BREAKDOWN OF THE RULE OF LAW IN HAÏTI 2, 4 (New York 1990); *see also* Andre Paultre, *Haïti Moves Closer to a Constitutional Referendum*, REUTERS (Sept. 19, 2020, 11:33 AM), <https://www.reuters.com/article/us-haiti-politics/haiti-moves-closer-to-constitutional-referendum-elections-idUSKCN26A0W9>.

28. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI Mar. 29, 1987, art. 137, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

provides checks and balances on the others. No branch “may, for any reason . . . go beyond the bounds set for them by the Constitution and the law.”<sup>29</sup>

Under the 1987 Constitution, both the President and the Prime Minister are subject to impeachment.<sup>30</sup> Chapter Five of Title Five of the 1987 Constitution provides the procedures to impeach a sitting President.<sup>31</sup> The process is bicameral and carried out by the legislature’s two houses, the Chamber of Deputies and the Senate, with oversight by the Supreme Court.<sup>32</sup>

According to the 1987 Constitution, the Chamber of Deputies must, by a two-thirds majority, indict the President for “the crime of high treason or any other crime or offense committed in the discharge of his duties.”<sup>33</sup> The Senate may then constitute itself as a High Court of Justice, presided over by the President of the Senate and the President and Vice President of the Supreme Court, to review the charges.<sup>34</sup> Members of the Senate elect from among themselves a Committee of Enquiry to investigate the allegations of wrongdoing.<sup>35</sup> The guilty verdict must be confirmed by a two-thirds majority of the High Court of Justice and may result only in the President’s dismissal and disqualification from office for up to fifteen years; the High Court of Justice cannot impose any criminal penalties on the President.<sup>36</sup> No other law further elucidates how to conduct an impeachment proceeding in Haïti, and no impeachment attempts have successfully established any precedent.

## II. The Role of Impeachment in Haïti’s Semi-Presidential Democracy

In Haïti, like in other democracies, the technical role of impeachment is to remove the President as the head of state. More importantly, impeachment is one of the few ways to interrupt a presidential or semi-presidential democracy and hold the executive branch accountable. Impeachment may also serve as a mechanism for “restarting” a political system as a whole and promoting constitutional order.

29. CONSTITUTION DE LA REPUBLIQUE D’HAÏTI Mar. 29, 1987, at art. 60. The similarities between Haïti’s semi-presidential democracy and that of France are a lingering effect of French imperialism in the region. Robert Elgie, *Duverger, Semi-Presidentialism and the Supposed French Archetype*, 32 WEST EUROPEAN POL. 248 (Mar. 2009).

31. CONSTITUTION DE LA REPUBLIQUE D’HAÏTI Mar. 29, 1987, at art. 185-90.

32. *Id.*

33. *Id.* at arts. 185–86.

34. *Id.* at arts. 185.

35. *Id.* at arts. 188-1.

36. *Id.* at art. 189-1.

37. Linz, *supra* note 2, at 54.

38. Marsteintredet & Berntzen, *supra* note, at 3.

Originally, academics identified rigidity as a major flaw of presidential democracies.<sup>37</sup> More recently, however, articles have questioned whether these regimes are as rigid as once believed.<sup>38</sup> Some jurists have gone so far as to argue that the main benefit of fixed terms and strict divisions between executive and legislative branches is that—once formed—these democracies are relatively stable.<sup>39</sup> According to Tom Ginsburg, a lawyer and professor of International Law at the University of Chicago, the opposite is seen in purely parliamentary systems in which the Prime Minister serves as the sole elected head of government.<sup>40</sup> In England, for example, a vote of no confidence and quick follow-up elections can dismantle the administration in a matter of weeks.<sup>41</sup> By comparison, impeachment is a longer process filled with more hurdles to overcome before a president is removed. But stability can harden into stagnation, or rigidity, particularly if presidents are elected for multiple terms or if one party remains in power for too long.<sup>42</sup> Impeachment, therefore, is a necessary tool to counteract the risks that accompany a stagnant political system, including increased susceptibility to military coups.<sup>43</sup> Prolonged stasis, according to Ginsburg, can make presidential systems unresponsive to public opinion and create an opportunity for political opposition to take unconstitutional measures—such as military coups—to remove presidents.<sup>44</sup>

As a solution, Ginsburg and his colleagues propose governments adopt new models of impeachment that take into account the broader political context of their countries.<sup>45</sup> Contemporary provisions for impeachment proceedings, including those in Haïti's 1987 Constitution, focus on holding accountable a single "bad actor" (i.e. the President).<sup>46</sup> This no longer makes sense if attempted removals of the executive are the result of unresponsiveness or corruption throughout the government.<sup>47</sup> In such situations, Ginsburg argues that impeachment can serve as the "hard reset" a government needs.<sup>48</sup>

While Ginsburg's view of impeachment casts the process as a political tool to be wielded during a democratic crisis, other jurists have studied

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39. See Ginsburg, Huq, & Landau, *supra* note 11.

40. *Id.*

41. *What is a Vote of No Confidence?*, BBC NEWS (Sept. 30, 2019), <https://www.bbc.com/news/uk-politics-46890481>.

42. See *How Impeachment Works Outside America*, THE ECONOMIST (Dec. 16, 2019), <https://www.economist.com/united-states/2019/12/16/how-impeachment-works-outside-america>.

43. *Id.*

44. *Id.*

45. See Ginsburg, Huq, & Landau, *supra* note 11.

46. *Id.* at 7.

47. *Id.*

48. *Id.* at 45.

49. FRANK O. BOWMAN III, *HIGH CRIMES AND MISDEMEANORS: A HISTORY OF IMPEACHMENT FOR THE AGE OF TRUMP* 193 (Cambridge University Press 2019).

50. *Id.* at 235.

impeachment as a sign of prevailing constitutional order. Frank Bowman III, author and law professor at University of Missouri School of Law, describes the primary function of impeachment as constitutionally limiting the conduct of presidents.<sup>49</sup> Even though Bowman acknowledges that impeachment is “ultimately constrained by political norms,” he argues that impeachment serves the will of the people through their elected representatives within a constitutionally defined structure.<sup>50</sup> By making impeachment more difficult than a parliamentary vote, the process implicitly recognizes the status of the President as the head of a co-equal branch of government.<sup>51</sup> As such, he cannot be removed unless he violates the parameters of his office as laid out by his country’s constitution. Political scientists Leiv Marsteintredet and Einar Berntzen, whose work builds on that of Juan J. Linz, agree that a successful impeachment may be seen as proof that democratic rules and procedures are working, rather than as a reflection of democratic crisis.<sup>52</sup> Increased use of impeachment, furthermore, reduces stagnation and raises the degree of accountability between branches.<sup>53</sup>

As the next section of this note will show, clashes between the Haïtian political and economic elite—who, aided by foreign states, historically have held most of the power in Haïti’s government—and the greater populace is a major cause of instability in the country’s semi-presidential democracy. Since 1987, periods of stability seem to last as long as this finite group and their allies abroad are satisfied that the Haïtian head of state acts in their interest. On the other hand, the *politique de doublure* have aided with impunity the unconstitutional removal of popularly elected presidents who threaten their power and control.<sup>54</sup> Professor Cécile Accilien, Haïtian native and Director of the University of Kentucky’s Institute for Haïtian Studies in the Department of African and African-American Studies, believes the *politique de doublure* may already be influencing the popular movement against President Moïse.<sup>55</sup> If constitutional measures continue to fail in shifting the power dynamic in Haïti, stagnation could lead to another coup against its President. Thus, impeachment may serve both a political and constitutional

51. BOWMAN, *supra* note 49, at 236.

52. Marsteintredet & Berntzen, *supra* note 3, at 91.

53. *Id.* at 97.

54. Rick Hellman, *Expert Says Technology Helps Fuel Anti-Government Protests in Haïti*, UNIVERSITY OF KANSAS (Oct. 14, 2019), <http://today.ku.edu/2019/10/14/expert-says-technology-helps-fuel-anti-government-protests-haiti>.

55. *Id.*

56. See PETER HALLWARD, *DAMMING THE FLOOD* (Verso 2007).

57. *Id.* at 32. By comparison, only sixty-one percent of Americans cast ballots in the 2016 presidential elections. Thom File, *Voting in America: A Look at the 2016 Presidential Election*, U.S. CENSUS BUREAU (May 10, 2017), [https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting\\_in\\_america.html](https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html).

function by removing a politically unpopular president within the parameters of the 1987 Constitution.

### III. Political Context Around Presidential Removal in Haïti Since the 1987 Constitution

The source of political instability in Haïti today can be traced back to the coups that undemocratically removed its first elected president, President Jean-Bertrand Aristide. As previously mentioned, a committee of lawmakers drafted Haïti's Constitution in 1987, as the Duvalier dictatorship came to an end.<sup>56</sup> When the new democracy held its first presidential elections in 1990, eighty percent of the electorate turned out to vote.<sup>57</sup> President Aristide, leader of the *Lavalas* party, won with sixty-seven percent of the vote.<sup>58</sup> However, the *politique de doublure*, with support from the United States, quickly undermined the results of these constitutionally mandated elections.

Aristides' victory was the result of the "energetic mobilization" of hundreds of grassroots organizations.<sup>59</sup> He was especially popular among poorer demographics of Haïtians because of his socially conscious rhetoric and programs.<sup>60</sup> However, this same speech and action worried Haïti's political and economic elite.<sup>61</sup> Eventually, even members of the socially-liberal elite, who had hoped that Aristide would act as a "moral figurehead of a government staffed by members of the traditional political class," turned against him.<sup>62</sup> These *politique de doublure* gathered their resources to pay the military to conduct a coup, and—with the help of the United States government—these forces ousted Aristide in 1991.<sup>63</sup>

The four years after President Aristide's removal were among the most violent in Haïtian history. An interim government took over the country's political system.<sup>64</sup> At their behest, the paramilitary group—*Révolutionnaire pour l'avancement et le progrès Haïtien* ("FRAPH")—and, its leader Emmanuel "Toto" Constant, led brutal attacks on neighborhoods with reputations for being pro-*Lavalas*.<sup>65</sup> The violence grew so extreme, and the flow

58. HALLWARD, *supra* note 56, at 32.

59. *Id.*

60. *Id.*

61. *Id.* at 33-34.

62. *Id.* at 35.

63. *Id.* at 34.

64. HALLWARD, *supra* note 56, at 40.

65. The United States Central Intelligence Agency not only kept Constant and other high-ranking officers of FRAPH on its payroll, but also maintained a campaign against Aristide in Washington. *Id.* at 42-44.

66. *Id.* at 50.

67. *Id.* at 44.

of refugees out of Haïti so intense, that the international community insisted that the interim government reinstate Aristide as President in 1994.<sup>66</sup> *Lavalas* never regained the same political momentum, however, after so many of its supporters were killed or arrested.<sup>67</sup>

Another coup against President Aristide, after he was elected for a second term in 2000, further weakened Haïti's democracy. This time, President Aristide faced opposition from the *politique de doublure*, paramilitary groups, including *Front pour la libération et la reconstruction nationales* ("FLRN"), and international forces.<sup>68</sup> After three years of more intense violence throughout the country, rebel groups finally deposed President Aristide in 2004.<sup>69</sup> President Aristide's removal from office was completed by foreign intervention, however, when the French and American governments smuggled him on a plane, out of Haïti, and into the Central African Republic.<sup>70</sup> The official French-American story paints their interference as a rescue, while President Aristide reports that, on the night of February 29, 2004, he was abducted from his home and forced to resign yet again.<sup>71</sup>

To fill the void left by his administration, the United States and the *politique de doublure* installed another interim government.<sup>72</sup> The Chief Justice of the Supreme Court stepped in as acting President, and United States Ambassador James Foley took over as Prime Minister.<sup>73</sup> The provisional government then waited two years to hold elections to replace President Aristide.<sup>74</sup> This delay further damaged Haïti's democracy by postponing constitutionally required elections.<sup>75</sup> Nevertheless, the Haïtian electorate continued fighting for self-rule, and nearly sixty percent of eligible Haïtians participated in the 2006 election of President René Préval.<sup>76</sup> These Haïtians chose to participate in the democratic process despite voter suppression

68. Jeb Sprague, *The FLRN's Family Tree: A Who's Who of Supporters of Guy Philippe's 2000-2004 Paramilitary Insurgency in Haïti*, HAÏTI LIBERTÉ (June 7, 2017), <https://haitiliberte.com/the-flrns-family-tree-a-whos-who-of-supporters-of-guy-philippes-2000-2004-paramilitary-insurgency-in-haiti/>.

69. See HALLWARD, *supra* note 56, at 210–16.

70. *Id.* at 232–36.

71. *Id.* at 239–40 (quoting an interview that President Aristide gave with Anderson Cooper on CNN on Mar. 1, 2004).

72. *Id.* at 258–60.

73. *Id.* at 259.

74. Michael Keefer, *Fraud and Scandal in Haïti's Presidential Election: Preval's Victory and the U.N.'s Disgrace*, IJDH (Mar. 3, 2006), <http://www.ijdh.org/2006/03/archive/fraud-and-scandal-in-haiti%E2%80%99s-presidential-election-preval%E2%80%99s-victory-and-the-un%E2%80%99s-disgrace/>.

75. *Id.*

76. U.S. DEP'T OF STATE, 109th CONG., HAÏTIAN ELECTIONS: SETTING THE FOUNDATION FOR DEMOCRACY (Comm. Print 2006).

77. Keefer, *supra* note 74.

78. DAVID ROSNICK, CEPR, THE ORGANIZATION OF AMERICAN STATES IN HAÏTI: ELECTION MONITORING OR POLITICAL INTERVENTION? 4 (Aug. 2011), <https://cepr.net/documents/publications/haiti-oas-2011-10.pdf>.

tactics, including arbitrary arrests of candidates and voters and the threat and actual use of violence at and around voting sites.<sup>77</sup>

Foreign states and the political and economic elite continued to meddle in the next series of presidential elections in 2011. *Fanmi Lavalas*, the contemporary iteration of President Aristide's political party since the 2000 elections, was excluded all-together.<sup>78</sup> This exclusion, in addition to the fact that Haïti was recovering from a 7.0 magnitude earthquake that killed 250,000 people and displaced five million, drove the percentage of Haïtian voters who turned out to vote down to only twenty-three percent.<sup>79</sup> Then, after Haïtian election committees inexplicably threw out nearly 7,000 "irregular ballots," Michel Martelly, a Haïtian pop singer and founder of the *Tèt Kale* party, advanced to the final round of elections and eventually became President.<sup>80</sup> Political opponents of Martelly protested when, in the final round of elections, another fifteen to eighteen percent of ballots were discarded.<sup>81</sup> The Organization of American States approved the inexplicable results, but observers speculated that the United States and the Haïtian bourgeoisie played a role in Martelly's conspicuous advancement.<sup>82</sup> Kim Ives, editor of the English language sections of the Haïtian newsweekly *Haïti Liberté*, refers to this era as the end of genuine elections in Haïti, and the beginning of a puppet regime representing primarily the United States alliance with the Haïtian political and economic elite.<sup>83</sup>

As President, Martelly oversaw the passing of amendments to the 1987 Constitution in 2012.<sup>84</sup> The previous legislature had passed the first draft of the Amendments, and there was controversy surrounding whether the versions passed under the Martelly Administration matched those introduced under Préval.<sup>85</sup> The Amendments created new institutions, such as a

79. ROSNICK, *supra* note 78. See also *2010 Haiti Earthquake: Facts, FAQs, and How to Help*, WORLD VISION, [https://www.worldvision.org/disaster-relief-news-stories/2010-haiti-earthquake-facts#:~:text=of%20Wikimedia%20Commons\)-,Fast%20facts%3A%202010%20Haiti%20earthquake,schools%20were%20damaged%20or%20destroyed](https://www.worldvision.org/disaster-relief-news-stories/2010-haiti-earthquake-facts#:~:text=of%20Wikimedia%20Commons)-,Fast%20facts%3A%202010%20Haiti%20earthquake,schools%20were%20damaged%20or%20destroyed) (last visited March 23, 2020).

80. *Id.* See also Jake Johnston, *Haïti's Eroding Democracy*, JACOBIN (Feb. 13, 2017), <https://www.jacobinmag.com/2017/02/haiti-election-democracy-neoliberal-clinton-jovenel-moise-martelly-aristide-preval-duvalier/>.

81. Erik Hayden, *Report: Michel Martelly Wins Haïti's Presidential Election*, THE ATLANTIC (Apr. 4, 2011), <https://www.theatlantic.com/international/archive/2011/04/report-michel-martelly-wins-haiti-presidential-election/349309/>.

82. *Id.*

83. Telephone Interview with Kim Ives, Editor of *Haïti Liberté* (Feb. 6, 2019).

84. Josephine Guylor Delva, *Haïti Constitutional Amendments Finally Take Effect*, REUTERS (June 19, 2012, 5:29 PM), <https://www.reuters.com/article/us-haiti-constitution/haiti-constitutional-amendments-finally-take-effect-idUSBRE85J00R20120620>.

85. MAUREEN TAFT-MORALES, CONG. RESEARCH SERVICE, HAÏTI UNDER PRESIDENT MARTELLY: CURRENT CONDITIONS AND CONGRESSIONAL CONCERNS 5 (Dec. 23, 2015), <https://fas.org/sgp/crs/row/R42559.pdf>.

Constitutional Council, which this article discusses later, and granted dual citizenship rights.<sup>86</sup> The new Amendments also established a gender quota, requiring that thirty percent of employees in the public sector be women.<sup>87</sup>

Jovenel Moïse ran in the next presidential elections as the hand-selected successor of President Martelly.<sup>88</sup> The 2016 elections were first stalled for nearly fourteen months, and then the losing candidates challenged the results after learning that local elections committees had discarded at least ten percent of cast ballots for “irregularities.”<sup>89</sup> These committees further reported flagging up to ninety-two percent of the ballots as suspect.<sup>90</sup> Haïti’s electoral council ultimately upheld President Moïse’s win, and the United States, unsurprisingly, lauded its decision as a return to constitutional rule in Haïti.<sup>91</sup>

Protestors began calling for President Moïse’s impeachment after Haïti’s High Court of Auditors and Administrative Disputes (the “High Court”) issued a report placing his former company, Agritrans, at the center of a massive embezzlement scheme in 2019.<sup>92</sup> The scheme involved the Venezuelan oil program PetroCaribe, which was established by the country’s former President, Hugo Chavez, to lend oil to developing countries in Latin America and the Caribbean at low interest rates.<sup>93</sup> In 2006, Haïti accepted two billion dollars’ worth of oil from the program and promised that the savings would be funneled into infrastructure and social programs.<sup>94</sup> By 2019—eight years and several natural disasters later—it was still unclear if and how

86. Delva, *supra* note 84.

87. *Haiti Amends Constitution*, COUNCIL ON HEMISPHERIC AFFAIRS (July 25, 2012), <https://www.coha.org/haiti-amends-constitution/>.

88. Johnathan M. Katz, *What Happens When a Celebrity Becomes President*, THE ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/international/archive/2016/02/haiti-michel-martelly/461991/>.

89. *Haïti: Violent Protests Erupt Over Presidential Election Results*, THE GUARDIAN (Nov. 29, 2016 10:58 P.M.), <https://www.theguardian.com/world/2016/nov/29/haiti-presidential-election-result-protest-jovenel-moise>.

90. Camila Domonoske, *Fourteen Months After Elections Began, Haïti Finally Has a President-Elect*, NPR (Jan. 4, 2017), <https://www.npr.org/sections/thetwo-way/2017/01/04/508171191/14-months-after-elections-began-haiti-finally-has-a-president-elect>.

91. Press Release by John Kirby, Asst. Sec’y and Dep’t Spokesperson, Bureau of Public Affairs (Nov. 21, 2016), on file with the U.S. Dep’t of State, <https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264474.htm>.

92. The High Court is “responsible for administrative and jurisdictional control of Government receipts and expenditures, verification of the accounts of the Government enterprises and of the territorial divisions.” CONSTITUTION DE LA REPUBLIQUE D’HAÏTI Mar. 29, 1987, at art. 200. See also *Haïtian Investigators Say President in ‘Embezzlement Scheme’*, FRANCE 24 (Jan. 6, 2019 3:47 AM), <https://www.france24.com/en/20190601-haitian-investigators-say-president-embezzlement-scheme>; Ciara Nugent, *Why a Venezuelan Oil Program is Fueling Massive Street Protests in Haïti*, TIME (June 24, 2019), <https://time.com/5609054/haiti-protests-petrocaribe/>.

the government had spent the money.<sup>95</sup> Though the program eventually terminated as a result of Venezuela's own political instability, Haïti still owes the Venezuelan government two billion dollars.<sup>96</sup>

One contract sponsored by the PetroCaribe program hired Agritrans to rebuild a rural stretch of road in northern Haïti.<sup>97</sup> However, another firm—with the same tax identification number, government patent, technical staff, and resumé of projects in its portfolio as Agritrans—had already contracted to build the road.<sup>98</sup> The only difference between the two companies was their Chief Executive Officers, Moïse and another man.<sup>99</sup> To the High Court, the production of two identical contracts for the same road was “nothing less than a scheme to embezzle funds.”<sup>100</sup> The Haïtian government gave Agritrans advance payment for the job in 2014—immediately before President Moïse announced his campaign.<sup>101</sup> In response to the report, President Moïse's attorney issued a statement maintaining that Agritrans was only fixing a portion of the road and President Moïse was not connected to the project.<sup>102</sup> However, the High Court countered that President Moïse was responsible for supervising and signing contracts at the time payment was issued and, therefore, must have known of the scheme.<sup>103</sup>

In August 2019, members of the Chamber of Deputies called for a vote to impeach President Moïse, referring to his alleged involvement in the Agritrans scandal as “crimes of high treason.”<sup>104</sup> President Moïse's opposition needed eighty affirmative votes to formally indict him.<sup>105</sup> However, almost half of the 119 seats in the Chamber of Deputies were at the time empty because of the government's failure to hold elections the previous term.<sup>106</sup> The rest of the legislators were divided among over twenty parties, most of which represented the same *politique de doublure* who helped Moïse rise to power.<sup>107</sup> Thus, in a session that began on August 21, 2019—and ended in the early hours of the next day—fifty-three of the sixty-one legislators

93. Nugent, *supra* note 92.

94. *Id.*

95. *Id.*

96. *Id.*

97. Jaqueline Charles, *Haïti's President Accused of Embezzlement Scheme in Government Audit of Venezuelan Aid Money*, MIAMI HERALD (June 4, 2019, 1:07 PM), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article231122978.html>.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. Charles, *supra* note 97.

104. Sandra Lemaire and Renan Toussaint, *Haïti's President Survives Impeachment Vote*, VOICE OF AMERICAS (Aug. 22, 2019, 12:08 PM), <https://www.voanews.com/americas/haitis-president-survives-impeachment-vote>.

105. *Id.*

present voted against indictment.<sup>108</sup> Only three legislators voted for impeachment, while five more abstained.<sup>109</sup> Even if the Chamber of Deputies had succeeded in impeaching Moïse, a conviction would have been unlikely, as the thirty-seat Senate—which is responsible for trying an indicted president—was also half empty.<sup>110</sup>

Protestors continued to call for President Moïse's resignation after the impeachment vote. In speaking to a journalist about the protests, Emmanuela Douyon, a Haïtian economist and participant of the demonstrations in Port-au-Prince, is quoted as saying, "It's about accountability, it's about making politicians accountable to society . . . . In Haïti, we can fight corruption as well. It's about time they stop and listen to us."<sup>111</sup> Despite this conviction, Haïti's impeachment process failed and President Moïse remained in office. But then, what constitutional alternatives are available to remove a corrupt President before the political and economic elite—or the United States—instigates another coup? Or, how may the impeachment process be improved to operate more successfully?

Haïti is at a crossroads in terms of how it wants to handle ongoing corruption in its government. Pierre Labossiere, founder of the political organization Haïti Action Committee, claims that protests against Moïse are about more than installing a new President: Haïtians want a new system that holds public servants accountable.<sup>112</sup> The Haïtian people's goal is democracy, and impeachment might be one tool to help achieve this. Even if a new constitution is not borne out of the contemporary popular movement, Haïtian lawmakers could improve the current provisions for impeachment to reinsert the people's voice into the political process. In the following section, an analysis of three other countries' impeachment processes—that of Brazil, Paraguay, and South Korea—is offered. This analysis considers how aspects of these different models may, or may not, be advantageous in Haïti.

#### IV. Questions Surrounding Impeachment

As Ginsburg and Bowman assert, impeachment processes that are able to restart a political system in crisis while maintaining constitutional order require careful crafting. This section discusses just some of the aspects of impeachment that must be considered, including who will participate in impeachments, what will be an impeachable offense, and who succeeds an

106. Lemaire & Toussaint, *supra* note 104.

107. Gourdean Knot, *Jovenel Moïse Tries to Govern Haïti Without a Parliament*, THE ECONOMIST (Jan. 18, 2020), <https://www.economist.com/the-americas/2020/01/18/jovenel-moise-tries-to-govern-haiti-without-a-parliament>.

108. Lemaire & Toussaint, *supra* note 104.

109. *Id.*

110. Knot, *supra* note 107.

impeached president. Furthermore, it analyzes the processes of three countries—South Korea, Brazil, and Paraguay—and makes recommendations on which features of these impeachments may work in the Haïtian context. The recommendations, developed in consultation with leading experts in Haïti’s legal system, take into consideration the promotion of integrity throughout the Haïtian political system and respect for constitutional norms. Finally, the possibility of constitutional amendments is discussed.

#### A. Who Participates in Impeachments?

The first question in framing provisions for impeachment is who will have the power to indict and ultimately impeach a president. In some countries, the legislature is responsible for the entire impeachment process. The bicameral process splits responsibilities for indicting and convicting between the lower and upper houses of the legislature, respectively. Other countries, however, require oversight by another institution, such as a constitutional court.

Both the Brazilian and Paraguayan Constitutions call for the same bicameral procedure as is laid out by the 1987 Constitution. In Paraguay, the Chamber of Deputies—the lower house of Congress—must indict a president for impeachable offenses by a two-thirds majority.<sup>113</sup> The Senate then convicts by a two-thirds majority.<sup>114</sup> In Brazil, the Chamber of Deputies indicts for both common crimes and impeachable offenses by a two-thirds majority.<sup>115</sup> The Senate can convict for impeachable offenses, while common crimes are tried through the criminal courts.<sup>116</sup>

There are both advantages and disadvantages to continuing to use a bicameral impeachment process in Haïti. Theoretically, a bicameral impeachment process benefits a semi-presidential democracy in three ways. First, the indictment at the lower level deters presidential misconduct through its “detection and referral of impeachable offenses.”<sup>117</sup> By indicting presidents that exceed their constitutional powers, it sets a precedent that future administrations must follow. Second, a trial in the Senate serves as a forum for discussing what constitutes an impeachable offense.<sup>118</sup> When the legislature, a group of popularly elected representatives, challenges a president’s use or misuse of power publicly, the people of a country vicariously

112. *Riot or Uprising: A Conversation with Pierre Labbossiere on the Haitian Crisis*, THE LATINX RESEARCH CENTER, UC BERKELEY, <https://lrc.berkeley.edu/2020/01/15/riot-or-uprising-a-conversation-with-pierre-labbossiere-on-the-haitian-crisis/> (last visited March 23, 2021).

113. CONSTITUCIÓN REPÚBLICA DEL PARAGUAY, June 20, 1992, art. 225.

114. *Id.*

115. CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL, Oct. 5, 1988, art. 86.

116. *Id.*

117. Johnathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Devise*, 49 DUKE L.J. 1, 3–4 (1999).

insert their voice into the process. Come the next parliamentary election, they can vote out legislators whose conduct during the trial they disagree with. Finally, constitutional provisions that require a super majority of two-thirds of both houses to indict and convict a president ensure that a president cannot be removed by the legislature too easily.<sup>119</sup> If the hurdles for removal were too low, the legislature and executive would no longer be co-equal branches.<sup>120</sup>

However, as the failed impeachment of President Moïse demonstrates, indicting and convicting a president without a complete and participatory legislature—itsself a symptom of a democratic crisis—would likely be impossible. When members of the Haïtian legislature moved to indict President Moïse, they lacked the necessary support largely due to the empty seats and coalitions in the Chamber of Deputies.<sup>121</sup> Coalitions are a common feature of parliamentary systems, and further delayed elections could perpetuate empty seats in Haïti's National Assembly.<sup>122</sup> Therefore, the possibility of having to rely on a dysfunctional legislature is a major risk associated with the bicameral impeachment structure in Haïti.

In contrast, South Korea's Constitution requires that the National Assembly, the country's legislature, jointly indict a president, but the Constitutional Court—a specialized body charged with adjudicating constitutional matters—convicts. The National Assembly of South Korea approved the creation of the Constitutional Court through constitutional amendments passed in 1987.<sup>123</sup> The charge of the Constitutional Court is to only adjudicate matters of constitutional law, and its duties are separate from those of the country's Supreme Court.<sup>124</sup> The Constitutional Court is made up of nine justices: three are appointed by the President, three by the National Assembly, and three by the Supreme Court.<sup>125</sup>

In 2003, the Constitutional Court of South Korea exonerated President Roh Moo-hyun after his indictment by the National Assembly on charges of corruption, contempt for the Constitution and constitutionally established bodies, and maladministration.<sup>126</sup> In its argument against conviction, the Court concluded that the National Assembly's corruption charges

118. *Id.* at 42.

119. BOWMAN, *supra* note 49, at 236.

120. *Id.*

121. Telephone Interview with Brian Concannon, Attorney (Dec. 20, 2019).

122. See *generally* LAWRENCE DODD, COALITIONS IN PARLIAMENTARY GOVERNMENT (Princeton Univ. Press 1976).

123. Youngjae Lee, *Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective*, 53 AM. J. COMP. L. 406, 413 (2005). These amendments passed while the country was transitioning out of military dictatorship, at the same time that Haïti was emerging from similar circumstances. *Id.* at 413.

124. *Id.*

125. *Id.*

126. *Id.* at 414.

were aimed at President Roh's campaign manager, not the President, and that the other charges were political in nature and, therefore, not impeachable.<sup>127</sup> Thus, the Constitutional Court made the final decision as to whether President Roh was removed from office.<sup>128</sup>

A constitutional court is more insulated from the problems associated with political coalitions and vacant legislatures (though not entirely since the legislature would still need to indict a president on impeachment charges). However, one argument against creating a constitutional court in Haïti is that a court is not a politically accountable institution.<sup>129</sup> Furthermore, Bowman argues that making a court the ultimate decisionmaker for impeachment upsets the "constitutional balance."<sup>130</sup> In South Korea, the drafters of the 1987 Amendments got around this issue by ensuring that members of its Constitutional Court are nominated by all three branches of the government, including those elected by popular vote.<sup>131</sup> This means that the people, through the legislature and executive, have a say in who serves on the Court. An alternative in the Haïtian context could be that a constitutional court is directly elected. Furthermore, Constitutional Court justices in South Korea are limited to serving only one term.<sup>132</sup>

The 1987 Constitution already calls for a Constitutional Council, under the 2012 Amendments.<sup>133</sup> Like in South Korea, the members of the Council are nominated by all three branches of government for a term of three years.<sup>134</sup> The Council's mandate is "to decide on the conflicts which oppose the Executive Power and the Legislative Power or the two branches of the Legislative Power."<sup>135</sup> However, it does not currently play a role in impeachment under the 1987 Constitution. If the drafters of a new Haïtian constitution choose to do so, they could change this.

Evaluating the potential success of the Constitutional Council's participation in impeachment in Haïti mandates other considerations, as well. The ability of a constitutional court to be a neutral adjudicator of constitutional issues would depend on its fortitude against corruption. Today, many members of the judiciary in Haïti—though not all—are susceptible to bribes (which both advance a backlogged criminal justice system and alleviate the

127. Lee, *supra* note 123, at 423.

128. *Id.* at 421.

129. BOWMAN, *supra* note 49, at 238.

130. *Id.*

131. Lee, *supra* note 123, at 431.

132. *Id.*

133. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI Mar. 29, 1987, art. 190ter, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

134. *Id.* at art. 190ter-2, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

135. *Id.* at art. 190ter-7, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

judges' own poverty).<sup>136</sup> At the same time, while the 1987 Constitution calls for an independent judiciary, in practice, the executive and legislative branches exert significant influence over the judicial branch.<sup>137</sup> Therefore, additional measures will need to be taken to strengthen accountability in the judiciary for a constitutional court to succeed in Haïti.

Neither retaining a bicameral process for impeachment in the legislature nor introducing a constitutional court is a guarantee of a successful impeachment. Now that the strengths and weaknesses of each have been identified, Haïtian lawmakers may debate who should be involved with the impeachment process.

#### B. What is an Impeachable Offense?

The creators of a new, or revised, impeachment process in Haïti must also consider what is an impeachable offense, and who will create this definition. Setting strict standards for what is an impeachable offense may prevent a legislature from impeaching a president anytime it disagrees with his policies. Such standards also delineate when a crime is sufficiently severe, and whether it must have been committed during a presidential term. Additional laws could be helpful in defining impeachable offenses, or clear direction from a constitutional court could establish guidelines.

Under the Paraguayan Constitution, an impeachable offense includes crimes committed in the exercise of office and other common crimes.<sup>138</sup> A president may also be impeached for *mal desempeño*, or the poor exercise of his government functions.<sup>139</sup> Jurists have criticized this standard as too vague, allowing legislators to overthrow a president when they disagree with his policy choices.<sup>140</sup> For example, in its formal charges against Paraguayan President Fernando Lugo, the Paraguayan Chamber of Deputies cited his signing of the Ushuaia II Protocol, an international charter requiring Paraguay to act in furtherance of democracy and land reforms, as well as his inability to alleviate “insecurity in the country.”<sup>141</sup> According to the Paraguayan Constitution, these actions were legal exercises of President Lugo’s executive power.<sup>142</sup> However, Paraguay’s Congress disagreed with his methods of governance and chose to impeach him.

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136. *Haïti: Corruption*, GLOBALSECURITY, <https://www.globalsecurity.org/military/world/haiti/corruption.htm> (last visited Mar. 8, 2021).

137. *Id.*

138. Rebecca Szucs, *A Democracy’s Poor Performance: The Impeachment of Paraguayan President Fernando Lugo*, 46 GEO. WASH. L. REV. 409, 424–30 (2014).

139. *Id.*

140. *Id.* at 411, 418, 436.

141. *Id.* at 429–31.

142. *Id.* at 432.

President Lugo's impeachment demonstrates how the *mal desempeño* standard extends the power of the legislature beyond the bounds of the "mutual checks and balances" function of impeachment.<sup>143</sup> Lugo was a democratically elected president and, even though he lost popularity as his country's economy worsened, he continued to act within the parameters of executive authority.<sup>144</sup> A favorable interpretation of President Lugo's impeachment would compare the process to a "vote of no confidence against the president."<sup>145</sup> From a less forgiving perspective, his impeachment is more similar to a "parliamentary coup."<sup>146</sup> President Lugo's removal gave legal credence to the *mal desempeño* standard as a circumvention of the separation of powers and the results of a popular election.<sup>147</sup>

In Haïti, a *mal desempeño* standard for impeachment might undermine, rather than promote, constitutional norms. While it would be easier to convict a corrupt executive under a lower standard, having one that is so vague places a large amount of discretion in the hands of legislators. Further, while it would be difficult for a half-empty Chamber of Deputies to indict a president based on any standard, a vague one might actually be an additional incentive for a corrupt president to postpone elections and keep the legislature empty. To prevent the executive's interference with the impeachment power and to keep their own ranks accountable, Haïtian lawmakers could pass a law with a more precise definition of what counts as an impeachable offense.

Such a law exists in Brazil and labels an impeachable offense as a *crime de responsabilidade*.<sup>148</sup> *Lei 1079*, enacted in 1950, defines impeachable offenses to include: crimes against the existence of the Union (meaning crimes that threaten the existence of the Brazilian federal government); crimes against the free exercise of constitutional powers; crimes against the exercise of political, individual, and social rights; crimes against homeland security; crimes against the administration of justice; crimes against budget laws; crimes against the safekeeping and legal employment of public funds; and crimes against the enforcement of judicial decisions.<sup>149</sup>

In 2016, Brazilian President Dilma Rouseff was impeached under *Lei 1079*.<sup>150</sup> Calls for her impeachment arose in the wake of a "kickback scheme and bribery scandal" at the oil firm Petrobras, known as "Operation

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143. Szucs, *supra* note 138, at 432.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Alexandra Rattinger, *The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States*, 49 U. MIA. INTER-AM. L. REV. 129, 145–46 (2017).

149. *Id.*

150. *Id.* at 145–46.

Carwash.”<sup>151</sup> According to Brazilian prosecutors, Petrobras inflated contracts, accepted bribes, and channeled portions of the funds into three political parties: the Workers Party (President Rousseff’s party), the Democratic Movement Party of Brazil, and the Progressive Party.<sup>152</sup> The Brazilian criminal courts tried Luiz Inácio Lula da Silva, President Rousseff’s predecessor, as the ringleader of the operation and sentenced him to nine years in jail.<sup>153</sup> The legislature could not impeach President Rousseff for participation in the scandal, however, because no evidence linked her directly to any of the crimes.<sup>154</sup> Furthermore, most of the bribery occurred before her election in 2011.<sup>155</sup> Rousseff was ultimately impeached on unrelated charges of misappropriating government funds during her reelection campaign in violation of the country’s budget laws.<sup>156</sup> The impeachment of President Rousseff exemplifies how a law defining impeachable offenses influences what formal charges the legislature can bring against a president.

A Haïtian law carefully defining impeachable offenses could prevent the legislature from impeaching a president for carrying out policies it disagrees with, while still holding the executive accountable. In Haïti, *crimes de responsabilidade* might include corruption or embezzlement—both of which President Moïse was accused of. Taking a lesson from President Rousseff’s impeachment, Haïtian lawmakers may also want to decide whether presidents should be impeachable for crimes committed before they take office or only during their term. A law allowing for presidents to be impeached for crimes they committed before taking office may have helped legislators remove President Moïse for his participation in the PetroCaribe scandal in 2014.<sup>157</sup>

Different still from both Paraguay and Brazil, the Constitutional Court of South Korea has set binding precedent that created the standard for when a president can be impeached. When the Constitutional Court overturned the impeachment of President Roh, its detailed analysis concluded that South Korean presidents can only be impeached for: 1) violations of the law, 2) violations committed while in office, and 3) when damage inflicted “on the free and democratic basic order is so grave that only removal from office can repair the damage.”<sup>158</sup> The Constitutional Court found that President Roh both violated election law and showed contempt for the country’s

151. Rattinger, *supra* note 148, at 150.

152. *Id.*

153. *Id.* at 151.

154. *Id.*

155. *Id.* at 153.

156. *Id.*

157. The drafters of a new Haïtian Constitution or amendments may also consider including “emoluments clauses,” such as those included in the United States Constitution, as a way of further outlawing bribery and corruption. See BOWMAN, *supra* note 49, at 278–80.

159. Lee, *supra* note 123, at 414.

constitution and constitutionally established bodies; however, the Court ultimately decided that his removal was unnecessary because his legal violations were not serious enough to cause lasting harm to constitutional order.<sup>159</sup> The Court also recognized that the legislature indicted President Roh largely for political reasons, and impeachment—a legal process—was not the solution.<sup>160</sup>

Following this standard in 2017, the Constitutional Court removed South Korean President Park Geun-hye from office for “acts that violated the Constitution and laws.”<sup>161</sup> The National Assembly indicted President Park for divulging state secrets to a confidante, who was later implicated in a massive bribery scandal involving the head of Samsung.<sup>162</sup> The Constitutional Court convicted President Park, finding that her actions “betrayed the trust of the people and were the kind that could not be tolerated for the sake of protecting the Constitution.”<sup>163</sup>

One major drawback to using a constitutional court’s precedent to create a standard for impeachment in Haïti is that judicial decisions require time, and another impeachment must take place for there to be such a precedent. Defining an impeachable offense by law is the *ex-ante* versus *ex-post* approach. On the other hand, there is no guarantee that a law on impeachment would pass quickly through the legislature. Proponents of reshaping Haïti’s impeachment process, with the input of the Haïtian electorate, should consider these various methods of defining an impeachable offense, while taking into account the advantages and risks of a lower or higher standard for impeachment.

### C. Who Succeeds an Impeached President?

Finally, Haïtian lawmakers must determine who will succeed a president if an impeachment is successful. In both Paraguay and Brazil, the Vice President succeeds an impeached President.<sup>164</sup> Vice presidents may be perceived as illegitimate presidents, however, because they are not directly elected to the office by popular vote. Furthermore, they may be involved in the same crimes or scandals as those that toppled their predecessors. Another option is to hold entirely new elections in a set amount of time, as South Korea’s Constitution requires.

160. Lee, *supra* note 123, at 414.

161. *Id.*

162. Choe Sang-Hun, *South Korean Removes President Park Geun-hye*, N.Y. TIMES (Mar. 9, 2017), <https://www.nytimes.com/2017/03/09/world/asia/park-geun-hye-impeached-south-korea.html>.

163. Lee, *supra* note 123, at 214.

164. *Id.*

165. *How Impeachment Works Outside America*, *supra* note 42.

In Brazil, President Rouseff was succeeded by her Vice President, Michel Temer, per the Brazilian constitution's mandate.<sup>165</sup> Though his administration argued that President Temer was a legitimate president because he was elected alongside Rouseff, many—including Rouseff—disagreed.<sup>166</sup> Rouseff accused Temer of intentionally sabotaging her administration during the impeachment process, an accusation that Temer has since confirmed.<sup>167</sup> Temer, furthermore, battled accusations of corruption while he was President, and authorities then arrested him for his participation in “Operation Carwash” soon after he left office.<sup>168</sup>

Ginsburg argues that this rule-oriented approach of substituting a president with his vice president does not constitute a “political reset” or alleviate the problem of stagnation.<sup>169</sup> According to Ginsburg, “the vice-president model of success raises an obvious possibility of manipulation,” whereby those responsible for a president's removal can essentially hand-select his successor.<sup>170</sup> The predictability of this rule-oriented approach also would not work in Haïti because it would make it possible for outside forces, such as the *politique de doublure*, to set up a chosen replacement for the President. Ginsburg prefers the South Korean design as a way of avoiding this risk.<sup>171</sup>

If there is a vacancy in the office of the President in South Korea, whether because of impeachment, or for some other reason, the government must hold elections within sixty days.<sup>172</sup> Following the impeachment of President Park, Moon Jae In was promptly elected.<sup>173</sup> This allowed a complete transition of power from President Park's right-wing coalition to the left-of-center Democratic Party.<sup>174</sup> President Moon's approval ratings showed that the people viewed him as a legitimate president and were in favor of this shift in the ruling party.<sup>175</sup>

Neither holding new elections immediately after a presidential vacancy nor allowing a predesigned successor to take office would work

166. See Inacio Vieira, *Brazil's President Michel Temer Says Rouseff Was Impeached for Refusing His Economic Agenda*, THE INTERCEPT (Sept. 23, 2016), <https://theintercept.com/2016/09/23/brazils-president-michel-temer-says-rousseff-was-impeached-for-refusing-his-economic-agenda/>.

167. *Id.*

168. *Id.*

169. *Michel Temer: Brazil Ex-President Arrested in Corruption Probe*, BBC (Mar. 21, 2019), <https://www.bbc.com/news/world-latin-america-47657159>.

170. Ginsburg, Huq, & Landau, *supra* note 11, at 56.

171. *Id.*

172. *Id.*

173. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] Oct. 27, 1987, art. 68 (S. Kor.).

174. Gi-Wook Shin and Rennie J. Moon, *South Korea After Impeachment*, 28 J. OF DEMOCRACY 117–31 (2017).

175. *Id.* at 117–31.

176. *Id.* at 125.

flawlessly in Haïti. The 1987 Constitution, with the 2012 Amendments passed under President Martelly, calls for elections within 120 days of any presidential vacancy.<sup>176</sup> In the meantime, the Council of Ministers under the direction of the Prime Minister is supposed to lead the government.<sup>177</sup> However, civil society argues that an independent council should be created to oversee the elections—which will take longer than 120 days—to ensure the following elections are truly fair. Lawmakers should keep these concerns in mind when drafting provisions for impeachment.

#### D. Amendments

Another option for updating impeachment proceedings—rather than creating an entirely new constitution or passing additional laws defining the process—is to amend the 1987 Constitution. France, a former imperialist oppressor in Haïti, amended its Constitution in 2007 to allow for presidential impeachment.<sup>178</sup> French legislators previously held no such authority, and the move represents advancing limitations on an otherwise powerful executive.<sup>179</sup> However, whether changing the constitution through amendments makes sense in Haïti depends on how feasible it would be to make such alterations legally.

Passing a constitutional amendment in Haïti is subject to a number of restrictions. Under the 1987 Constitution, the National Assembly may not deliberate on a constitutional amendment unless two-thirds of each house of the legislature is present.<sup>180</sup> Additionally, passing an amendment requires a two-thirds majority of the total votes cast.<sup>181</sup> The amendment then will not enter into effect until the next president's term.<sup>182</sup>

Thus, improving the provisions for impeachment through constitutional amendments would likely be challenging in Haïti. The current vacancies in the Chamber of Deputies and Senate preclude even a vote, while the

177. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, Mar. 29, 1987, art. 149, *amended by* Loi constitutionnelle de 2012 portant amendement de la Constitution de 1987.

178. *Id.* However, some Haitian jurists argue that the Kreyol version of the Constitution, which is also an official version and calls for elections within forty-five to ninety days and the President of the Supreme Court to take over, should be followed. This is problematic because the current President of the Supreme Court, Rene Sylveste, was only appointed on February 1, 2019 by President Moïse. IJDH, *Haiti at a Crossroads* (May 2019), [http://haitiaction.net/News/IJDH/5\\_17\\_19.html#b156](http://haitiaction.net/News/IJDH/5_17_19.html#b156).

181. Katrin Bennhold, *France Backs Impeachment Rules for Presidency-Europe-International Herald Tribune*, N.Y. TIMES (Feb. 19, 2007), <https://www.nytimes.com/2007/02/19/world/europe/19iht-chirac.4649007.html>.

182. *Id.*

183. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, Mar. 29, 1987, art. 284.

184. CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, Mar. 29, 1987, at art. 284–1.

185. The many limitations on passing a constitutional amendment in Haïti, again, likely stem from its drafters' worry that a strong executive would try to consolidate too much power. *Id.* at art. 284–82.

prohibition on enacting amendments during a single presidential term means that President Moïse could not be impeached under the new process. Circumventing these rules, President Moïse has set a date for a constitutional referendum in Haïti. This referendum is likely illegal, and experts have called it a “power grab” by Moïse.<sup>183</sup> The proposed changes include abolishing the Senate and the position of Prime Minister, replacing these with a Vice President picked by the President, and granting him direct control over the ministries.<sup>184</sup> Essentially, Haïti’s semi-presidential system would be undone and power consolidated in the executive branch.

### Conclusion: Haïti’s Path Forward

The main goal of democratic processes in Haïti should be ensuring that the people’s voice is represented in Haïtian politics, rather than the interests of the *politique de doublure* or foreign states. Thus, in order to advance constitutional order in Haïti, lawmakers must draft a new impeachment process with the country’s political history in mind. This note attempted to lay out several aspects of impeachment for Haïtian lawmakers to consider in the event that the 1987 Constitution is rewritten or amended. Furthermore, it analyzed the impeachment processes in other countries where presidents have been impeached. The note made recommendations as to which features of these other processes may be beneficial to promoting constitutional order within the broader context of the Haïtian political system. The possible answers to who should participate in the impeachment process, what should be an impeachable offense, and who should succeed an impeached president are all essential aspects of the impeachment process and were discussed.

When considering who will participate in impeachments, one risk associated with a bicameral process in the legislature is that seats in the Chamber of Deputies or Senate will be empty. Thus, no vote for indictment or conviction will pass. An independent institution like a constitutional court may be susceptible to pressure from either the legislature or executive, unless its members are held directly accountable to the people through a universal vote.

Furthermore, a vague standard for judging what is an impeachable offense would allow the legislature to undermine the executive as a co-equal branch of government. Laws or precedent established by a constitutional court defining what is an impeachable offense would prevent the legislature from mounting a “parliamentary coup” against the President. Finally, ensuring that elections quickly follow a president’s removal would prevent the

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<sup>183</sup> Concannon, *supra* note 10.

<sup>184</sup> *Id.*

*politique de doublure* or foreign powers from using an impeachment to place government officials they control in positions of power. These changes to the 1987 Constitution could take the form of constitutional amendments, but passing amendments is a difficult process and dangerous under the current President. Creating a new constitution altogether, with participation by the people, may be more beneficial to democracy in the Haïti.