

Haiti's Elections: Right Result, For The Wrong Reason

Brian Concannon Jr., Esq.

February 17, 2006

On February 7, Haitian voters went to the polls to elect a President for the fourth time since 1990. Through great patience and determination they overcame official disorganization, incompetence and discrimination, and for the fourth time since 1990 handed their chosen candidate a landslide victory. And for the fourth time Haitian elites, with support from the International Community, started immediately to undercut the victory, seeking at the negotiation table what they could not win at the voting booth.

The foothold for the negotiation was an impasse over whether the successful candidate, Rene Preval, won the 50% of the vote necessary to avoid a runoff election against his nearest competitor. Although early official results and the unofficial tallies by the Preval campaign, international observers and journalists all showed Mr. Preval comfortably above the 50% bar, after 5 days of counting his official results crept 1.3% below it.

The negotiations resulted in a deal that changes the way that the Electoral Council treats blank ballots, which, according to the Council's calculation, puts Mr. Preval back above 50%. By giving Mr. Preval the election, the agreement closes the book on serious charges that the Interim Government of Haiti (IGH) manipulated vote tabulations and discarded ballots to prevent him from winning. It also allows the international community to say, after two years under the brutal and undemocratic IGH, that there is now democracy in Haiti.

The election deal gives a little something to everyone, and that's the problem. Elections are not supposed to make everyone happy; they are supposed to apportion political power according to majority vote, on the basis of set rules. In all likelihood, a correct tabulation of the votes would have given Mr. Preval a first round victory, as exit polls and unofficial tabulations had predicted. Although the negotiated agreement reaches the same result as a correct tabulation would have reached, it does so by changing the rules instead of correcting the violations of the rules.

The deal provides leverage for those seeking to delegitimize Preval's presidency and block the progressive social and economic policies that he was elected to implement. The election's also-rans are already crying foul, and they will be joined by more voices from Haiti's elite and the International Community. Soon enough, invoking "the contested elections of February 2006" will suffice to justify an array of economic and political coercion against Haiti's elected government.

Even Leslie Manigat, the second place finisher, wins with the deal. He earned less than 12% of the votes the first time around, and had no chance of winning a fair second round vote. There were 17,000 more mistakes- unmarked or improperly marked ballots- than Manigat votes. Even if all 30 of the other losing candidates had thrown their support behind Mr. Manigat- and many had already declared for Preval- he still would have been far short of a victory.

The deal spares Mr. Manigat a drubbing in the second round, and more importantly, allows him to claim, forever, that he was cheated out of a chance to win on the second round. He got this

ball rolling by immediately calling a press conference to criticize the International Community and the IGH for caving into the threat of violence.

Mr. Manigat is right that no one should have caved into the threat of violence. But they should have caved into the clear popular vote in favor of Mr. Preval.

The Problem

The defective vote tabulation is just the latest in a long string of efforts to minimize the impact of the poor voters who backed Preval. The IGH engaged in a comprehensive program to suppress political activities of the *Lavalas* movement, where Mr. Preval drew most of his support, in the ten months before the elections. Several prominent politicians were not able to participate as candidates or activists because they were kept in jail illegally. Political prisoners included Haiti's last constitutional Prime Minister, a former member of the House of Deputies, the former Minister of the Interior, and dozens of local officials and grassroots activists. When Haiti's most prominent dissident, Rev. Gerard Jean-Juste, was diagnosed with leukemia, it took a massive campaign, including intervention of top U.S. Republicans, just to obtain his provisional release for desperately needed treatment.

Making Registration Difficult

The voting registration process systematically discouraged poor rural and urban voters from signing up. Where Haiti's democratic government provided over 10,000 voter registration centers for elections in 2000, the IGH installed less than 500. The offices would have been too few and far between for many voters even if they had been evenly distributed. But placement was heavily weighted in favor of areas likely to support the IGH and its allies. Halfway through the registration period, for example, there were three offices in the upscale suburb of Petionville, and the same number in the large and largely roadless Central Plateau Department. In cities, the poor neighborhoods were the last to get registration centers, and Cite Soleil, the largest poor neighborhood of all, never got one.

Complaints and protests forced the IGH to extend the registration period three times and open additional registration facilities. Eventually over 3.5 million voters registered, about three-quarters of the estimated eligible voters. But we will never know how many voters could not get to a registration center, or gave up after losing too many precious work days in the effort. We do know that the registration difficulties disproportionately impacted the rural and urban poor, who voted overwhelmingly for Preval.

Making Campaigning Difficult

Neither the *Lavalas* movement nor the Preval campaign was able to effectively engage in pre-election campaigning. Police repeatedly fired guns at peaceful pro-*Lavalas* demonstrations throughout the two years of the IGH's reign. In January, a pro-government gang destroyed structures erected for a Preval campaign speech in the town of St. Marc, canceling the event. No arrests were made. Violence and threats of violence forced the cancellation of subsequent events, even the campaign's grand finale the week before the election.

Election Day Vote Suppression

The IGH had limited the voting centers to 807, which would have been inadequate even if the elections had run smoothly (Los Angeles County, with a slightly larger population but only 37% of Haiti's land area and infinitely better private and public transportation, had about 4,400 polling places in November 2005). But by 1 PM on election day, Reuters' headline read: "Chaos, fraud claims mar Haiti election." Most election offices opened late and lacked ballots or other materials; many did not become fully functional until mid-afternoon. Voters arrived at the designated centers to find the center had been moved at the last minute. Many who found the center identified on their voting card waited in line for hours only to be told they could not vote because their names were not on the list. At some centers, tens of thousands of voters were crammed into a single building, creating confusion, and in one case a deadly stampede.

As with the registration deficiencies, the poor bore the lion's share of the election day problems. The two voting centers for Cite Soleil, both located well outside the neighborhood, saw the worst. One of the two, the *Carrefour Aviation* site, was transferred at the last minute to a single building where 32,000 voters had to find the right line to wait in without posted instructions, lists of names or an information center. Throughout the day, journalists and observers noted over and over that centers in Petionville and other wealthy areas were better organized and equipped.

As with registration, many voters persevered despite the obstacles. After frustrated would-be voters took to the streets in spontaneous protests, the IGH made concessions, such as keeping the polls open later and allowing people with voting cards whose names were not on the local list to vote in some places. By the end of the day, most voting centers were operating at a minimal level, and over 60% of registered voters did vote. But we will never know how many people gave up, because they were sick or frustrated or needed to get back to their families.

Counting Some of the Votes

After the problems with registration and voting, Mr. Preval's supporters were pleasantly surprised that the Provisional Electoral Council, or CEP, gave him a large lead in initial reports. On Thursday, the CEP announced that with 22% of the votes counted, Preval had a commanding lead with 62% of the vote. Mr. Manigat trailed at 11%, and Charles Henri Baker, in third place, had 6%. Unofficial reports of the local results from international and Haitian observers and journalists consistently had Preval far over 50%. But by Saturday night the CEP had reduced Preval's official vote to 49.61%; by Monday it was at 48.7%, about 22,500 votes below 50%.

The IGH claims that Preval's decrease was the result of more information coming in and better calculations. But many questions about the tabulation process, combined with the efforts to suppress the *Lavalas* vote before and during election day, raise doubts about those claims. On Tuesday afternoon, Mr. Preval claimed that he had proof that he won 54% of the vote and that the Electoral Council had fraudulently reduced his number.

Shortly after Mr. Preval's announcement, Haitian television broadcast such proof: thousands of ballots, some burnt, most of them Preval votes, found in a dump near Cite Soleil, and not far from the CEP's tabulation center. Preval's opponents claim that his supporters dumped the ballots as a provocation after his speech. But that theory does not explain why witnesses report

seeing the ballots at the dump for a day before the speech, nor how thousands of ballots were removed from CEP custody.

A large number of tally sheets from polling centers are not being counted. 254 sheets were destroyed, reportedly by gangs from political parties opposed to Preval. 504 tally sheets reportedly lack the codes needed to enter them officially. The missing tally sheets probably represent about 190,000 votes- over 9% of the total votes cast- and according to the UN, disproportionately affect poor areas that support Preval. Mr. Preval would not have needed to win an overwhelming percentage of these 190,000 votes to increase his lead by the 22,500.

Who's In Charge?

The Electoral Council, which was named through a complicated process in 2004, is supposed to be running the tabulation of votes. In fact, Jacques Bernard, who was appointed "Executive Director" of the Council- a position not previously recognized in Haitian law- by the Prime Minister late last year, is running the Council's activities. Councilor Pierre Richard Duchemin charges Mr. Bernard with "manipulation" of the results, and "an effort to stop people from asking questions." Another Councilor, Patrick Fequiere, claims that Mr. Bernard is working without the Council and not telling them where his information is coming from. The UN Peacekeeping mission was forced to remove the doors to the tabulation center to prevent Mr. Bernard and his advisors from acting secretly.

Null and Blank Votes

Electoral officials have discarded 147,765 votes, over 7% of the total, as "null." Article 185 of the Electoral Code allows officials to nullify ballots if they "cannot recognize the intention or political will of the elector." As the U.S. experience with butterfly ballots and hanging chads demonstrated, voters are going to make mistakes even under the best conditions. Haiti's conditions were far from the best- Presidential ballots were complicated, with 33 candidates, each with a photo, an emblem and the names of the candidate and the party; voters were tired from walking and waiting; some voting was done in the dark by candlelight; and many voters are unused to filling out forms or writing. All these factors could lead to a high number of mistakes- like marking two boxes- that made determining the voters' choice impossible.

But 147,765 voided votes is a high number, suspiciously high since the decision to nullify was made by local officials handpicked by an Electoral Council that had no representation from Preval's *Lespwa* party or *Lavalas*. Overly strict criterion (such as requiring an "x" to be completely within a candidate's box), even if neutrally applied, would have had a disproportionate impact on poor voters, who are more unused to filling out forms than their better-heeled compatriots, and therefore more likely to make mistakes.

Another group of votes, 85,290, or 4.6% of the total valid votes, are classified as blank ballots. These votes were actually counted against Preval, because under the election law they are included in the total number of valid votes that provides the baseline for the 50% threshold. This is a potentially reasonable system, just unreasonably applied to Haiti. In principle the system allows voters to show their displeasure with all the candidates by voting for no one, which can

make sense in places where voting is easier. In practice the system makes no sense in Haiti- it is absurd to think that 85,000 people, many without enough to eat, would leave their babies, their fields and other work and spend hours walking or waiting in the tropical heat just to say they did not like any of the 33 candidates. A more likely explanation is that some voters got confused by the complicated ballots and marked nothing. Again, this problem would disproportionately affect poor voters likely to vote for Preval.

The blank and null ballots combined exceeded Mr. Manigat's vote by 17,000. The rules for blank and null votes are consistent with previous Haitian elections, so it is hard to call the rules themselves fraudulent. But the scale of the distortion of the vote caused by these rules was both foreseeable and preventable. The same problem has arisen at every election since 1990, most of which were observed by the UN and the Organization of American States, which were active in preparing the elections this time around. The distortion could be sharply reduced with a simple voter education campaign: going into poor neighborhoods, demonstrating how to mark ballots and giving voters an opportunity to practice on sample ballots.

There was money available for such a program- the election cost over \$70 million dollars, more than \$30 for every vote cast- most of it coming from abroad. The political parties, many of which represented a fraction of one percent of the electorate, received generous subsidies. But no concerted effort was made to help the much larger share of the voters who had demonstrated difficulty with filling out the ballots.

The Best Solution

The remedy to the problems with the vote tabulation should have been to carefully redo the calculations, in the open. First, the math from all the calculations that were previously made should have been checked against the original tally sheets. Where the tally sheets lacked the codes, the local officials should have been tracked down to confirm that the results are correct.

In the case of electoral materials intercepted on the way to the CEP, it is possible to reconstruct the result through the Electoral Code's backup systems. The actual counting of the ballots is done on site, immediately after the closing of the polls, by each *Bureau de Vote* (each Bureau serves 400 voters). The Bureau officials conduct the counting, but are observed by *mandataires*, or representatives of political parties. A report listing the results of the counting is prepared, and at least six copies are made. The Bureau officials and the *mandataires* all sign each of the copies if they agree with the report. The copies are then distributed widely: one is posted on the voting center door, one copy each is sent to the Communal Electoral Office, the Departmental Electoral Office, and the Electoral Council, and each *mandataire* is entitled to one.

Presumably these copies will leave the *Bureau* in many different directions. It may be easy to intercept the official results in some areas, but it would be much harder to track down all the copies in the hands of *mandataires*. It would be difficult for a *mandataire* to introduce a fraudulent copy of the results that were intercepted, because that would require forging several signatures.

The null votes could have been rechecked through a procedure that applied consistent rules across the country. The null ballots are supposed to be segregated in a separate envelope, so it would be easy to go through the envelopes from a few Bureaus, to ascertain whether there were enough improperly nullified ballots to justify a comprehensive review. If Preval could have added 22,500 votes to his lead from the 147,000 null votes, this alone would have put him over the top.

The blank ballot rule is inappropriate, and it should be changed. But it should be changed for Haiti's next election, when it should be less of a problem anyway because of better voter education.

The ballots found in the Cite Soleil dump could have been traced. All ballots are numbered, and each Bureau keeps a record of the numbers on the ballots it used and did not use. The chain of custody could have been followed, to see how the ballots left CEP custody.

Following these procedures would have been time consuming, but it would have provided verifiable answers to the questions raised about the vote tabulation, and a clear answer as to whether Mr. Preval needed to face a second round. It also would have provided other answers- whether the charges of manipulation in the tabulations were justified, and who diverted the ballots to the Cite Soleil dump.

In giving up his right to a correct tabulation of the vote, Mr. Preval probably calculated that the international community, which had not complained about the inadequate registration and voting facilities, and only lightly complained about the IGH's political prisoners, would show similar restraint when faced with tabulation irregularities. And he knew that if the first round could be stolen from him, the second round could as well.

The Chosen Solution

The negotiators, instead of correcting the tabulation, decided to change the rules for the calculation of blank votes. They allotted blank votes to the candidates' totals proportionately to each one's existing vote share. So Preval got 48.7% of the blank votes, Manigat 12%, etc., which pushed Preval up over the 50% bar. This solution does make sense- it assumes, probably correctly, that the blank votes resulted from confusion, and allocates the votes accordingly. The result is the same as if the CEP simply discarded the blank votes, and treated them the same as null votes.

But what is sensible is not always what is legal. Preval's opponents know that a regime that can be negotiated into power can be negotiated out of power. They have already staked out the position that Preval is illegitimate because the deal changed the rules of the game in the middle of the contest. They will keep saying it, and will soon enough be joined by the International Community who will keep saying it. In the not-too-distant future, the election's illegitimacy will be accepted as "fact" in the elite Haitian and international press, at the UN, the OAS and the International Financial Institutions. The "fact" will justify withholding money for schools and hospitals, and sending money to political parties with no electoral support. The fact that Mr.

Manigat had no chance of winning a second round, widely acknowledged now, will be forgotten or never learned by the next rotation of diplomats and journalists to Haiti.

Conclusion

An editorial in this Friday's New York Times proclaims that this future begins now. The Times declares that the election deal "tarnishes the democratic legitimacy" of Preval's landslide. It recommends that Preval remove the tarnish by "reaching out to his opponents" (e.g. pursuing policies that the voters rejected), and "reining in his violence-prone supporters." The editorial did not suggest that Mr. Preval's opponents, many of whom were key players in the violent overthrow of Haiti's democracy two years ago which led to thousands of deaths, rein in their supporters. Nor, when it declared that "Haiti will need international support for a long time," did the Times mention its own groundbreaking report of January 29 that the U.S., among other members of the International Community, intentionally undermined and overthrew Haiti's elected government in 2004.

Although the Times does not find the context of two weeks or two years ago relevant, it does catalogue Preval's sins from his first administration, and it is a fair bet that we will hear this list often over the next five years. The police "remained brutal and corrupt" (by any account, the police have become much more brutal and much more corrupt under the IGH); "no progress was made toward creating a competent judiciary" (Preval's administration saw the two best human rights prosecutions in Haiti's history in 2000, both lauded by the UN, Amnesty International and, among others, the New York Times; Preval also made the Judges Academy, dismantled by the IGH, operational); "legislative elections were badly flawed;" "drug trafficking flourished;" etc.

Last week's election was Haiti's fourth Presidential election since 1990. The previous three-1990, 1995 and 2000- were all conducted without serious violence. Each time, the voters supported the candidate of the *Lavalas* political movement at levels unheard of in "mature democracies"-no runner-up ever topped 16% of the vote. But each time a minority in Haiti, with support from the International Community, successfully limited this mandate. President Jean-Bertrand Aristide, the victor in the first and third of those elections, suffered two successful coup d'etats, and spent half of his two terms in exile. President Preval managed to spend his whole term in office and pass power to an elected successor (the first Haitian President to do so), but a manufactured political crisis and perpetual squabbling about the extent of the *Lavalas* landslides prevented the seating of a legislature. More important, the crisis successfully diverted President Preval's energies and attention away from the economic and social development policies he was elected to implement.

Haiti's politics are not parlor games. Each coup d'etat leads to thousands of deaths, and many more times that are killed by diseases that would be prevented or treated by the programs of a less embattled government. The life expectancy for men in Haiti has dropped below 50. It is far past time for the International Community to stop condemning Haiti to repeating this outrageously unjust history.

Brian Concannon Jr., Esquire, directs the Institute for Justice & Democracy in Haiti, www.ijdh.org, and observed several elections in Haiti for the Organization of American States.