

# Haiti's Constitution and the Coup

by Brian Concannon; June 01, 2004

In the debate over Haiti's events of February 29, we have heard from almost all angles. We have heard from opponents and supporters of the elected government and its replacement, and from officials from France, the U.S., the Caribbean and Africa. We have not, for the most part, heard from the law. Although both the new and old government claim "legitimacy" (from the Latin word *lex*, or "law"), there has been little analysis of what Haiti's law requires in the circumstances.

In Haiti, like most countries, the Constitution forms the highest law of the land, and automatically voids any inconsistent law or government action. Article 134 of the Constitution of 1987 sets a five year term for presidents, which, in President Aristide's case, ends on February 7, 2006. As in the U.S., a President's term can be shortened only by specified events: a conviction at a trial by the legislature, death, physical or mental incapacity or resignation. None of these events happened here- President Aristide is alive and well, and was never even charged by the legislature. He has categorically denied that he resigned.

A Presidential resignation is a serious matter in any country, so to be effective it should be clear, obviously voluntary, and unambiguous. The U.S. State Department and the de facto authorities in Haiti maintain that President Aristide did resign, citing a handwritten letter signed by President Aristide as proof. But the Creole expert hired by the State Department to translate the letter, Professor Bryant Freeman of the University of Kansas, determined that it was not a resignation.

Boniface Alexandre, the respected Chief Justice of the Supreme Court, was installed as Provisional President six hours after President Aristide's kidnapping. Had the Presidency been legally vacant, Justice Alexandre's selection would have satisfied the Constitution's Article 149, which provides that the Chief Justice should fill such a vacancy. But subsequent developments strayed even farther from Constitutional requirements. First, Article 149 requires that the Provisional President be sworn in by the legislature, and not a single elected official was involved in the Boniface investiture. Second, the article requires the organization of new Presidential elections within 90 days of the vacancy, in this case by May 29. The de facto government has set a target for elections for the end of 2005, over twenty-one months after the supposed vacancy, and at the end of President Aristide's term.

Some argue that security conditions in Haiti made the May 29 deadline impossible, regardless of the Constitutional requirements. That may be true, but if strict compliance with the Constitution is not practically possible, we should strive to comply as closely as possible. If ninety days is too short, twenty-one months is impossibly long. By comparison, after the U.S. intervention in 1994, decent elections were organized in eight months, under arguably more difficult circumstances. Elections in Haiti are particularly urgent because the terms of most legislators and elected officials expired in January. As a result, the only duly elected Haitian officials are a few Senators, and the exiled President.

The selection of the de facto Prime Minister, Gerard Latortue, raises even more legal concerns. There was even less of a vacancy for Prime Minister than for President: Prime Minister Yvon Neptune remained in Haiti, ready and willing to continue his duties. The Constitution does not provide for any change in Prime Ministers upon a Presidential vacancy. The Constitution does require the Prime Minister to be nominated by the President and confirmed by the legislature, along with his ministers and governance program (Article 137, 158). Mr. Latortue was chosen by a counsel of seven "wise men" appointed by a group of three who were in turn appointed. Mr.

Latortue, his ministers and his program have never been approved by Haitian voters or anyone elected by Haitian voters. Furthermore, the Constitution requires that the Prime Minister reside in Haiti for the five years prior to his nomination. Mr. Latortue has resided in Boca Raton Florida the past fifteen years.

The de facto Prime Minister also appears to be fulfilling many roles that the Constitution reserves for the President. The Constitution grants the President several powers, including the power to appoint many public officials and conduct foreign policy. Traditionally, the President also fills symbolic roles such as speaking on important national days. Since his investiture, Justice Alexandre has almost disappeared from public view, leaving important tasks like negotiating with the international community, conducting foreign policy and naming officials to the Prime Minister. He even failed to appear publicly for Haitian Flag Day ceremonies on May 18.

The Constitutional questions raised by the events of February and March have been raised by Haiti's neighbors in the Caribbean Community and by the Africa Union, which together comprise almost a third of the United Nations members. Their calls for an investigation have, so far, not been answered. The Caribbean countries have also brought the issue before the Organization of American States, pursuant to Article 20 of the Inter-American Democratic Charter. Article 20 applies "[i]n the event of an unconstitutional alteration of the constitutional regime," and allows the OAS Permanent Council to take initiatives "to foster the restoration of democracy."

*This was originally published in the Boston Haitian Reporter June 1, 2004*