



The International Community Should Pressure the Haitian Government For Prompt *and* Fair Elections

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I. Introduction

On June 28, 2010, Haitian President René Prévail announced Parliamentary and Presidential elections for November 28, 2010, and issued a decree mandating that the country's nine-member Provisional Electoral Council plan for the elections.¹ These upcoming elections will provide the political foundation for effective use of earthquake response funds and the development of a stable society that will be less vulnerable to future natural disasters. The Government of Haiti (GOH) must stick to its deadline, but it must also run fair, inclusive and constitutional elections.

These elections are particularly important to:

- a) re-establish an effective legislature that can make the vital national policy decisions entrusted to it by Haiti's constitution;
- b) establish political accountability for the expenditure of large amounts of money that will have a lasting impact on Haitian society; and
- c) resolve Haiti's current societal disputes in a peaceful and democratic manner.

The failure to hold credible elections will perpetuate the social unrest and political uncertainty that made Haiti vulnerable to the earthquake's damage, and slow to mount an effective governmental response.² The international community, in order to protect its investment in Haiti's reconstruction and facilitate the emergence of a democratic, stable government in Haiti, must use the leverage that its financial contributions to reconstruction provide to ensure the holding of fair, inclusive and constitutional elections.

Haiti currently faces three principal problems relating to elections:

- a) the closing of Parliament when members' terms expired in May 2010;
- b) a credibility crisis for the 1/3 of the Senate elected in flawed elections in 2009 and of the Electoral Council that ran the elections; and
- c) the threat that the Executive Branch will have no Constitutional legitimacy after February 7, 2011.

Haiti's Constitution set elections for all 99 seats in the Chamber of Deputies and 10 of 30 seats in the Senate for November 2009. The Provisional Electoral Council (*Conseil Electoral Provisoire*,

¹ *Presidential Elections Set for November 28*, JAMAICA OBSERVER, June 27, 2010, available at <http://www.jamaicaobserver.com/news/Presidential-elections-set-for-November-28>.

² Brian Concannon Jr. & Ira Kurzban, *Don't Honor Tainted Election*, MIAMI HERALD, Dec. 11, 2009, available at <http://www.miamiherald.com/2009/12/11/1376563/dont-honor-tainted-election.html>.

or CEP) named by President Préval to conduct those elections was not established until October 16, 2009. The CEP quickly scheduled elections for February and March 2010, but those were postponed after the earthquake. The Constitution also requires Presidential elections in November 2010. Before it was rendered non-functional, Parliament granted President Préval's request authorizing him to remain in office for three months beyond his term in case no elections take place by February 2011.³

II. Missing Branch

Haiti's 1987 Constitution establishes a bicameral legislature or Parliament, composed of a Senate and a House of Deputies, as one of the three branches of government, along with the judiciary and the executive branch. The Constitution entrusts the legislature with many important tasks, including confirming and dismissing the Prime Minister and Government, ratifying all international agreements, voting laws and determining the national budget. This essential part of Haiti's government has been unable to function since May 8, 2010, when the terms of all 99 members of the House of Deputies and 1/3 of the Senate expired without the holding of new elections.

The absence of a Parliament is especially important now, when important decisions about Haiti's future are made in the context of the national and international response to Haiti's earthquake. Some important actions will be simply impossible to take; others will be taken by the Executive Branch, but are subject to challenge as unconstitutional. Perhaps most important, the vital role that the Constitution gives the legislature of balancing executive power is now unfulfilled, when it is needed most.

III. Credibility Crisis

Haiti's CEP, and consequently the candidates elected in its elections, suffer from a lack of credibility because: a) the CEP was established through a process not recognized by the Constitution; b) a predecessor CEP, including most of the current members, improperly excluded all candidates from Haiti's largest political party, *Fanmi Lavalas* (FL) from Senatorial elections in 2009; and c) it announced the exclusion of 16 political parties from elections announced for February and March 2010.

A. April 2009 Elections

On April 19, 2009, Haiti held elections for 12 of the 30 seats in the Senate. The Provisional Electoral Council (CEP) originally approved *FL* as a party, but excluded every *FL* candidate from taking part in the April 2009 vote. Two separate groups of *FL* submitted lists of candidates, as representatives of separate *FL* factions, but the CEP rejected the submissions. When the factions then jointly submitted one list of candidates, the CEP further required an original signature (non-facsimiled) from party leader former President Jean-Bertrand Aristide. The CEP created this new requirement knowing that President Aristide was in exile in South Africa and would be unable to deliver it.

³ President Préval claims that while Haiti's constitution says a president must depart from office on February 7, 2011, it also states that a president must serve five years. Because of delays and controversy in the 2006 presidential elections, President Préval did not come into power until May 14, 2006. Under the proposal, President Préval would remain in office until his successor is elected, but no later than May 14, 2011. See, Jacqueline Charles, *Haitian President René Préval asks to remain in office*, MIAMI HERALD, May 5, 2010, available at <http://www.miamiherald.com/2010/05/05/1615553/haitian-president-rene-preval.html#ixzz0nBLxiX2G>.

The CEP's exclusion of *FL* was not justified under Haitian law. The CEP's mandate does not give it authority to exclude legally recognized political parties, such as *FL*. Moreover, if the two groups claiming to be *FL* tried to register for the elections, a more fair remedy would have been for the CEP to decide which group was the representative of the party the Council had accepted for registration, rather than excluding both groups. Otherwise, any party could get pushed off the ballot by a group of people filing a duplicate set of candidates.

Instead, the CEP effectively silenced Haiti's largest political party that was critical of President Préval's government. *FL* has won every election it has contested, including 90% of the seats in the 2000 parliamentary elections.

FL challenged the CEP's exclusion in court. The leader of the UN Security Council delegation, Jorge Urbina, applauded *FL*'s legal challenge to their exclusion and stated that, "All members of the council were glad to hear from (*Lavalas*) that they are using every legal instrument in their power to reverse this decision" and warned that, "The country cannot allow a political crisis."⁴

The CEP ignored the protest from the international community and *FL*'s legal challenge, and held the April elections as planned. Voters boycotted the election due to the exclusion of *FL*, resulting in a low voter turnout. The CEP claimed 11% voter participation, but virtually every independent observer, including journalists and an unofficial election observer delegation, cited substantially lower percentages, with most estimating a turnout of less than 5%.⁵

B. February 2010 Elections

On November 26, 2009, the CEP announced that 14 political parties, including *FL*, would be excluded from elections scheduled for February 28 and March 4, 2010. The elections, which were originally scheduled for October 2009 but were postponed until February and March 2010, were to include all 99 seats in the Chamber of Deputies and 10 of 30 seats in the Senate.

Again, *FL* complied with election requirements under Haitian law.⁶ President Aristide sent a mandate to the CEP authorizing an *FL* representative, Dr. Maryse Narcisse, to take all necessary actions to register the party. Dr. Narcisse complied with all legal requirements for registration. The authorization was faxed to the CEP on November 19, and the original letter was received November 23, enclosed with a certificate from a Haitian Notary certifying that President Aristide's signature was valid. President Aristide confirmed on local Radio Solidarity on November 25 that he had given authority to *FL* representative Dr. Maryse Narcisse to register the party.

The CEP switched gears, abandoned its request for President Aristide's original signature, and instead cited *FL* for failing to submit an original party authorization for the April 2009

⁴ *UN tells Aristide party to fight in Haiti election*, ASSOCIATED PRESS, Mar. 2009, available at <http://inform.com/politics/tells-aristide-party-fight-haiti-election-249124a>.

⁵ *Haiti: UN applauds publication of Senate election results despite low turnout*, UN NEWS SERVICE, Apr. 28, 2009, <http://www.un.org/apps/news/story.asp?NewsID=30627&Cr=haiti&Cr1=election>. By comparison, 89% of the population had voted in the 1990 presidential election, and 30% had participated in the previous legislative elections of 2006. See Wadner Pierre, *Empty Streets, Empty Boxes: Haitians Reject Manipulated Election*, HAITIANALYSIS.COM, June 30, 2009, <http://www.haitianalysis.com/2009/6/30/empty-streets-empty-boxes-haitians-reject-manipulated-election>.

⁶ 1987 Constitution of Haiti, Article 92; Civil Code of Haiti, Article 1749.

elections. CEP President Gaillot Dorsainvil told local radio stations, “The *Lavalas* Family party will not be allowed to participate in the next election because the electoral council's legal counsel said the party did not meet all legal requirements.”⁷

1. The International Community’s Response to the Exclusion of *Fanmi Lavalas*

When the CEP announced that FL would be excluded from the April 2009 elections, the international community quickly responded by denouncing the decision. They called for a solution that would include Haiti’s largest and most popular party in the vote.

The U.S. Embassy in Haiti declared that, “under the law, elections should involve all major parties and serve as a unifying force for democracy. An election based on the exclusion...will inevitably question the credibility of elections in Haiti and among donors and friends of Haiti.”⁸

Canadian ambassador Gilles Rivard echoed the concern for fair elections, stating, “We are concerned by the circumstances that have led to the exclusion of all the candidates of one party...Any election's credibility is based on the respect of its laws and its regulations.”⁹

Secretary General of the OAS, José Miguel Insulza, stated, “I cannot help but express my concern about the possibility that an important group of Haitian citizens might feel that they are not being represented in this process.”¹⁰

Despite these principled statements in favor of fair and inclusive elections, when the CEP refused to correct the exclusion of FL, the international community, including the United States, abandoned the principles and provided generous support to the elections. International donors supplied Haiti with \$12.5 million, or 72% of the election’s cost. All of the actors that had criticized the exclusion when it was made, praised the elections when they were held without the participation of FL or over 90% of Haitian voters.

The international community again turned a blind eye when the CEP excluded FL in November 2009 and pledged \$18 million for the February 2010 voting.

By dropping their principled objections to the April election’s flaws and the November exclusion, the international community gave the CEP a green light to keep excluding the government’s political rivals. The international community missed valuable opportunities to pressure the Haitian government to be held accountable to the Haitian people.

⁷ Joseph Guyler Delva, *Aristide party barred from Haiti's February ballot*, Nov. 25, 2009, REUTERS, <http://www.reuters.com/article/idUSTRE5AP03K20091126>.

⁸ Melinda Miles, *Haiti Report for February 16, 2009*, WORKING TOGETHER FOR HAITI | KONBIT POU AYITI. Feb. 16, 2009, <http://lists.haitikonpay.org/pipermail/haitireport/2009-February/000031.html>.

⁹ *Id.*

¹⁰ *Insulza Expresses Concern Over Haitian Situation And Calls for Calm Among Political Actors*, ORGANIZATION OF AMERICAN STATES (OAS), Feb. 7, 2009, http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-029/09.

2. The *Provisional* Electoral Council that ordered the exclusion itself lacks legitimacy

The CEP not only lacks a good reason for excluding the political parties, it also lacks the constitutional legitimacy to do so. The Council is a Provisional Council hand-picked by President Préval, not the independent Permanent Council required by Haiti's 1987 Constitution. The integrity of recent elections has been scrutinized by questions regarding the validity of the CEP's authority.

a. Haiti's ASEC System as Mandated in the Constitution

Under the 1987 Constitution, elections are to be administered by a Permanent Electoral Council, which is to be chosen through the "ASEC system."¹¹ The ASEC system is a large pyramid structure, designed to decentralize democracy by ensuring that those in power are involved in politics at the very local level, where it is hard for centralized money to penetrate.

ASECS (*Assemblés des Sections Communales*) are the foundation of the pyramid structure. Haiti is divided into 10 Departments, each Department is divided into municipalities (or communes), and each municipality is split into communal sections. Each communal section elects a Sectional Assembly (or ASEC). The ASECS play an advisory role to the CASECS, which administer local government. The ASECS also look over the CASECS' shoulders, to make sure they are spending the money well.

Each ASEC sends a representative to the Municipal Assembly. The Municipal Assembly plays a similar watchdog/advisor role at the municipal level. The mayor is supposed to report to it on the use of municipal resources, and cannot sell state lands in the commune without the Assembly's approval. The Municipal Assembly is also responsible for drawing up the list of nominees for judges in the peace courts in the Department.

Each Municipal Assembly sends a representative to the Departmental Assembly. The Departmental Assembly selects the members of the Departmental Council, which administers the Department. Departmental Assemblies play a similar watchdog/advisor role at the Departmental level, and the Departmental Council reports to it. The Departmental Assembly is also responsible for drawing up the list of nominees for judges in the trial courts and appeals courts in the Department. Each Departmental Assembly sends a representative to the Interdepartmental Assembly. The Interdepartmental Assembly helps the executive branch and is involved in policy planning. The Assembly is entitled to attend and vote at Ministerial Council meetings that deal with issues within its domain.

One of the greatest responsibilities of Departmental Assemblies is the power to nominate three people to serve on the national Permanent Electoral Council (CEP) (30 total). The Supreme Court, the executive and the legislature each pick three names from that list (9 total).¹² Because the ASEC system is at the foundation of the pyramid structure, any electoral council is unconstitutional without the ASEC system in place.

¹¹ Haiti Const. art. 63, 67, 75, and 76.

¹² *Id.* at art. 192.

b. The Current Electoral Council

Unfortunately, the decentralized ASEC system has never been implemented in the Constitution's 23 years. Instead, a provisional electoral council has run every election held during that period. The 1987 Constitution allowed for an initial provisional electoral council to run the first elections, which specified 9 different groups that could each send one representative to make up the council. Rather than implementing the ASEC system in time for the second elections, each president since then has instituted a similar provisional council. Without a Permanent Electoral Council, election results can always be contested for being run by an unconstitutional provisional council.

Provisional councils are also vulnerable to political manipulation. CEP composition is made up as follows: 1 member from the private sector; 3 members from the Catholic, Episcopal, and Lutheran churches, 1 member from the human rights sector; 1 member from the Supreme Court; and 3 members from political parties. President Préval has not only chosen which 9 groups participate in the nominations, he has also required each group to submit the names of two people, from which the President selected one. President Préval's system ensures that he retain control over all 9 members of the Council.¹³

The unconstitutional nature of the CEP members' elections calls into question the validity of the CEP's authority, neutrality, and objectivity. At least four senators requested that the April 2009 election be declared invalid and that any follow-up election be blocked until legitimacy issues are addressed. Senior members of the CEP themselves admitted that their current membership was problematic. Nonetheless, one member noted, "Regardless of if the President changes all of the members and the director general or just a few of the members, he has to do something."¹⁴

The CEP's credibility has also been undermined by recent scandal. In May 2010, a CEP member was forced to resign after being accused by one of his consultants of having taken his salary.¹⁵ Other CEP members allegedly wanted to keep the internal conflict concealed. The President and Director General of the CEP were also accused by a Haitian senator of awarding a significant contract to the relative of a CEP official.

As the IFES noted in a recent report, "giving the mandate of organizing the upcoming elections to the current CEP would mean that the electoral process will be considered flawed and questionable from the beginning."¹⁶

¹³ Stephen Lendman, *Haiti's Electoral Charade*, PACIFIC FREE PRESS, Apr. 17, 2009, <http://www.pacificfreepress.com/news/1/4034-haitis-electoral-charade.html>.

¹⁴ Richard Lugar, Ranking Member of the United States Senate, *Haiti: No Leadership – No Elections, A Report to the Members of the Committee on Foreign Relations United States Senate*, June 10, 2010 at 4, lugar.senate.gov/issues/foreign/lac/haiti/pdf/report.pdf.

¹⁵ *Id.*

¹⁶ Sophie Laguény & Rudolf Dérose, *Post-Disaster Assessment on the Feasibility of Organizing Free and Fair Elections in Haiti*, International Foundation for Electoral Systems, May 13, 2010 at 13, <http://www.ifes.org/Content/Publications/Reports/2010/Post-Disaster-Assessment-on-the-Feasibility-of-Organizing-Free-and-Fair-Elections-in-Haiti.aspx>.

IV. Elections must be scheduled quickly, but they must also be fair

The exclusion of a major party highlights ongoing needs within the country for neutral, fair-minded overseers of the electoral process, a reasonable guarantee of safety for political candidates, and judicial and electoral systems that respond to the public's needs for fairness and transparency.

The United States, OAS and UN have invested billions of dollars in Haiti over the last few years. The UN peacekeeping mission in Haiti cost \$600 million a year before the earthquake. The U.S. Agency for International Development contributed \$287 million to Haiti in 2009. The international community continues to pour money into the country. More than \$11 billion has been pledged to rebuild Haiti's infrastructures stronger than ever. Meanwhile, UN Special Envoy to Haiti Bill Clinton works hard to convince private investors to invest in Haiti.

All these investments are threatened by the CEP's exclusion plan. The Haitian Government cannot be held fiscally accountable to its international investors or implement policies necessary to manage its future until it is held politically accountable to its voters. As Senator Richard Lugar stated to the Senate Committee on Foreign Relations, "[T]he positive effect of assistance programs will be limited if Haiti lacks a responsible, popularly elected government... The lessons learned in Iraq and Afghanistan demonstrate that the greatest constraint to rebuilding devastated countries, war-torn or otherwise, is the absence of strong and transparent leadership. A free and timely election strengthens legitimacy and public support enjoyed by any government, and this is especially important in Haiti as it contends with a natural disaster and a long legacy of troubled governance."¹⁷

The international community has been pushing President Préval's government to hold elections in November 2010. A recent report to the U.S. Senate Foreign Relations Committee recommended that the U.S. Government urge President Préval to issue a decree establishing a date for elections and granting the CEP a mandate to prepare for Presidential and parliamentary elections. Perhaps in response to the pressure, on June 28, President Préval set the elections for November 28. But President Préval's decree mandates that the current CEP plan for the elections. The elections will be meaningless to the Haitian people if the CEP is allowed to exclude legal political parties from participating.

To assure fair elections, we recommend that the international community take the following actions:

- 1) Insist that President Préval dissolve the current CEP and appoint a new one through a process that ensures neutrality competence and credibility with Haiti's voters;
- 2) Empower the new CEP with the mandate and funding to initiate preparation of electoral lists and identifications cards, as well as voter education campaigns in anticipation of elections; and
- 3) Denounce any actions by the CEP that threaten the fairness or inclusiveness of the elections, including the unlawful exclusion of political parties, and follow-up the denunciation by withholding financial support for the elections and recognition of results from unlawful elections.

¹⁷ Lugar, *supra* note 14.

“The absence of democratically elected successors could potentially plunge the country into chaos, adding a political crisis to the death and destruction caused by the January 12 earthquake.”¹⁸

The international community cannot turn their back on this election. Experience in Haiti and elsewhere demonstrates that preventing citizens from challenging government policies through the ballot box inevitably will lead to challenges outside the ballot box. If the Council does not change course, Haiti's streets will be filled with angry protestors confronting UN troops and blaming the United States for supporting yet another undemocratic regime. The international community cannot afford, morally or economically, to allow social unrest to stall Haiti's redevelopment.

There is no question that holding elections in Haiti will not be easy. Registering voters following the earthquake will be a challenge, with the loss of over 200,000 people and the internal displacement of over 2 million others, many having lost proofs of along with their homes. But these types of challenges have been overcome in the past, most notably in 1864 in one of the most important presidential election in the U.S. Abraham Lincoln had ample justification to postpone the elections for his second term in office. The U.S. was in the middle of a civil war, with the loss of over one-half of a million Americans and the displacement of millions others. The confederate states boycotted the elections, so only the Union states would be voting. The popular vote would test President Lincoln's policies of war and the Proclamation of Emancipation. But as one historian put it, “The spirited yet orderly process of the 1864 elections, with relatively little corruption and negligible violence, became a sterling example and vindication of the democratic process itself. Furthermore, it was an election in which voters cast ballots to determine crucial questions about the direction of the war, the government, and the society.”¹⁹

Similarly, allowing the Haitian people the opportunity to hold the legislative and executive branches accountable for their post-earthquake policies would vindicate the democratic process in Haiti. Given the colossal effect that the earthquake has had on Haitian people, free and fair elections in Haiti now could be as vital as they were for the U.S. in 1864.

¹⁸ *Id.*

¹⁹ See <http://elections.harpweek.com/1864/Overview-1864-1.htm>.