



July 3, 2014

A Constitutional Electoral Council is Imperative for Haiti's Upcoming Elections

Haitian President Michel Martelly issued a decree on June 10, 2014, setting parliamentary and local elections for October 26, 2014. Prompt elections are much needed in Haiti—one-third of the seats in Parliament and all local mayors have already termed out—but elections will only remedy Haiti's political crisis if they are run fairly by a lawfully mandated electoral council. The current Provisional Electoral Council is highly contested with serious and well-founded concerns about its legitimacy, calling into question whether it can run fair and inclusive elections.

The following “Frequently Asked Questions” (FAQs) provide a legal analysis of the proposed plan for elections in Haiti, including the *El Rancho Accord*, the new electoral law and Provisional Electoral Council.

What is at stake in these elections?

Elections in Haiti are long overdue. Elections for all local offices and one-third of the Senate seats, whose terms expired in 2011, have still not been held.¹

- Without timely elections, the Senate has struggled to obtain a quorum since 2012, when one-third of its 30 seats expired (per Article 102 of the Haitian Constitution, Parliament may not make decisions or pass resolutions without a majority of each of the two houses being present²).
- The terms of some 130 local mayors also expired in 2012. Those seats have been filled by “municipal agents,” who were appointed by President Martelly.
- The terms of another one-third of the Senate and all 99 members of the House of Deputies will expire in early 2015 without elections this year.

Why has it taken so long to plan elections?

Elections have been delayed for many reasons, but the principal roadblock has been the lack of an electoral council to start the election process. According to parliamentarians, political opposition and human rights groups, President Martelly has stalled elections since he came into office by facilitating unlawful electoral council appointments and creating political stalemates.

A set of 2010 constitutional amendments provided for a new selection process for a Permanent Electoral Council, which would be selected from three branches of government (executive, legislative and judiciary). The amendments were controversial because members of Parliament stated that the

amendments that were published differed from those adopted in session.³ Amidst pressure from the U.S. and other governments, President Martelly formally adopted the contested amendments in 2012.

Many of the Permanent Electoral Council appointments in 2012 were fraught with controversy. One council member was forced to resign following a rape accusation by his employee.⁴ According to members of Parliament, the judicial branch's selections are not independent because President Martelly illegally named three Supreme Court justices (one was over the maximum age and the other two were not selected from the official lists submitted by the Senate as required by Article 175 of the Constitution), including the Chief Justice Anel Alexis Joseph, in 2012. His appointments allowed President Martelly to influence the nomination of the new judicial council, which is headed by Justice Joseph, and which named the council's judicial members. Moreover, without one-third of the Senate, the legislature had difficulty appointing their three members. As a result the permanent council was nonfunctional and unable to hold elections.

To remedy the electoral council crisis, President Martelly appointed a bicameral commission in October 2012, the *Collège Transitoire du Conseil Électoral Permanent* (CTCEP), charged with passing a new electoral law.⁵ The CTCEP submitted a proposed electoral law to a Presidential commission July 1, 2013. A presidential commission submitted the proposed law to the House of Deputies days before its last session of the year, leaving very little time for the House to approve the law. While the Prime Minister declared that the electoral law was adopted, House members say there was never an affirming vote.⁶ The Senate never approved the electoral law, resulting in another political stalemate at the end of 2013.

Parliamentarians argue that President Martelly's administration has benefitted from the lack of elections; President Martelly has operated without the standard checks and balances of power such as parliamentary oversight. He also has control over the 130 mayors he appointed. Executive control over the electoral council will also favor President Martelly's political party.

What is the El Rancho Accord?

A series of "inter-Haitian dialogues," led by the Catholic Bishop's Conference of Haiti, Cardinal Chibly Langlois, political parties, parliamentarians, and members of civil society took place in January and February 2014, to discuss a plan for elections. Many of the dialogue participants signed the dialogue's outcome document, the *El Rancho Accord* ("the Accord") on March 14, 2014. The Senate has not signed or approved the Accord.⁷

The *El Rancho Accord* sets October 26, 2014 as Election Day for two-thirds of the Senate, the House of Deputies and local elections, and proposes a Provisional Electoral Council (CEP) to be appointed by the three branches of government. The Accord also provides for the approval of amendments to the 2013 electoral law by the executive branch, both chambers of Parliament, the CEP and political parties.

Why have some members of the Haitian Senate refused to approve the El Rancho Accord and disapprove of the proposed Provisional Electoral Council (CEP)?

Many parliamentarians, including six of the 20 sitting senators (called the G6) oppose the *El Rancho Accord* on constitutional grounds.⁸ The Accord has not been approved by both houses of Parliament and any provision that conflicts with the Haitian Constitution is invalid (Under Article 282 of the Constitution, the Constitution can only be amended by two-thirds of each of the two Houses in Parliament).⁹

The *El Rancho* manner of appointing councilors to the CEP conflicts with the manner in the Constitution. The *El Rancho* CEP is appointed from the three branches of government, whereas the Constitutional CEP is designated from nine different sectors of society (Executive Branch, Episcopal Conference, Advisory Council, Supreme Court, human rights; Council of the University, journalist associations; Protestant religions, and National Council of Cooperatives).¹⁰ Every election since the Constitution was enacted in 1987 has been run by a provisional council named by different sectors.

Parliamentarians also object to Article 12 of the Accord, which provides that if both branches of Parliament do not approve amendments to the electoral law within 10 days of signature of the agreement, the law is automatically on hold and the CEP is allowed to override the lack of approval and move forward with elections.¹¹ Given that the term of one-third of the Senate expired, the Senate claims that Article 12 is a loophole to evade Parliamentary approval.

President Martelly appears to have invoked Article 12 on June 10, 2014, when he signed a presidential decree setting the elections for October 26, and confirming a CEP with only seven of the nine required members.¹² Opposition leaders call the Accord an electoral *coup d'état*.

What is the composition of the current El Rancho Provisional Electoral Council?

The *El Rancho* CEP currently has only seven of the required nine members: two members from the legislative branch, two members from the judicial branch, and three members from the executive branch. Two of the nine members, Leopold Berlangier (judicial branch) and Nehemy Joseph (legislative branch) have refused to be sworn in because of concerns about the process for selecting councilors. In order to accommodate these concerns on June 11, 2014, the judicial council voted 5-2 to replace one of its other members. Although Chief Justice Joseph participated in this vote, after President Martelly objected, Justice Joseph annulled the vote the following day.

The CEP generated additional controversy by selecting Frizto Canton as President. Canton, a lawyer for former dictator Jean-Claude Duvalier, was nominated to the council by the executive.¹³

How are political parties being excluded in the electoral process?

Coalitions of political parties have issued public statements denouncing the *El Rancho Accord*, claiming exclusion from the electoral process and demanding a provisional electoral council that is independent

and selected pursuant to the Constitution. They claim that the exclusion started during the *El Rancho* dialogue. Several parties that observed or participated in the *El Rancho* talks walked out to protest that parties not aligned with the current government were being ignored.¹⁴

On June 16, 2014, CEP President Fritzo Canton announced June 25, 2014 as the registration deadline for political parties.¹⁵ The deadline provides an impossible dilemma for political parties. Either they register with an electoral council whose appointment violates the Constitution and is controlled by the executive branch, indicating prospects for unfair elections, or they boycott the registration to pressure the government to appoint a lawful and independent body, risking exclusion.

Will the Duvalier political party enter the upcoming elections?

The old political party founded under the Duvalier dictatorship (“National Unity Party”), says it plans to enter candidates in the upcoming elections. Jean-Claude "Baby Doc" Duvalier, who faces criminal charges for murder, disappearances and torture under his regime, attended the party’s ceremony when it announced that its candidates would run “at all levels” in the legislative and local elections.¹⁶ President Martelly has presented Duvalier at public events as an elder statesman and has renewed Duvalier’s diplomatic passport.¹⁷

What can the international community do to support fair and timely elections in Haiti?

Progress in earthquake reconstruction, stabilizing Haiti’s democracy and ending poverty will only be possible if the upcoming elections in Haiti are prompt, fair and inclusive. Unfortunately the upcoming elections are on the road to further undermining Haiti’s democracy rather than stabilizing it.

These elections must not repeat the errors of the last.¹⁸ Illegitimate elections in 2010, contaminated by a corrupt electoral council, illegal exclusion of political parties,¹⁹ ballot-stuffing²⁰ and an arbitrary recount by the Organization of American States,²¹ set Haiti on its way to its current political crisis. A month before the 2010 elections, 45 members of the U.S. Congress, most of them Democrats, warned Secretary of State Hillary Clinton that supporting flawed elections “will come back to haunt the international community” by generating unrest and threatening the implementation of earthquake reconstruction projects. The U.S. government funded the elections anyway to the tune of \$15 million.

The U.S. can support rule of law and democracy by conditioning election funding on a lawful and independent electoral council that can run fair and inclusive elections.

Haitian voters have tried to communicate their opposition to illegitimate elections in many ways: boycotting the 2009, 2010 and 2011 votes, demonstrating in the streets, and rejecting the elections in the press and in political meetings. They will keep trying until they find a way to make their government, and the international community, listen.

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- ¹ *Haiti must break political impasse to achieve progress*, UN envoy tells Security Council, UN News Centre (Mar. 2, 2013), <http://www.un.org/apps/news/story.asp?NewsID=44435>.
- ² Haitian Constitution of 1987, Article 102.
- ³ Charlie Hinton, *Haiti's Constitutional Horror Show*, Counterpunch, October 5, 2012, <http://www.counterpunch.org/2012/10/05/haitis-constitutional-horror-show/>.
- ⁴ *Id.*
- ⁵ *Haiti- Elections : Swearing in, installation, and election of members of the Bureau of CTCP*, HaitiLibre.com, April 30, 2013, <http://www.haitilibre.com/en/news-8385-haiti-elections-swearing-in-installation-and-election-of-members-of-the-bureau-of-ctcep.html>. See also *To rebuild Haiti, Restoring Democracy is a Must*, Bloomberg, April 7, 2013, <http://www.bloomberg.com/news/2013-04-07/to-rebuild-haiti-restoring-democracy-is-a-must.html>.
- ⁶ Robenson Geffrard, *Le vote des députés jette la confusion*, Le Nouvelliste, September 11, 2013, <http://lenouvelliste.com/article4.php?newsid=121186>.
- ⁷ *Haiti – Politique : Le « Core Group » salue l'accord inter-haitien* (texte intégral de l'accord), HaitiLibre (Mar 21, 2014), <http://www.haitilibre.com/article-10763-haiti-politique-le-core-group-salue-l-accord-inter-haitien-texte-integral-de-l-accord.html>.
- ⁸ *Haiti – Politic : The dialogue between the Executive and the Senate ends in failure*, HaitiLibre (Jun. 5, 2014), <http://www.haitilibre.com/en/news-11302-haiti-politic-the-dialogue-between-the-executive-and-the-senate-ends-in-failure.html>.
- ⁹ Haitian Constitution of 1987, Article 282.
- ¹⁰ Haitian Constitution of 1987, Article 289.
- ¹¹ *Haiti – Politique : Le « Core Group » salue l'accord inter-haitien* (texte intégral de l'accord), HaitiLibre (Mar 21, 2014), <http://www.haitilibre.com/article-10763-haiti-politique-le-core-group-salue-l-accord-inter-haitien-texte-integral-de-l-accord.html>.
- ¹² *Haiti- Elections: The opposition parties denounced the decision of President Martelly*, Haiti Libre (Jun. 12, 2014), <http://www.haitilibre.com/en/news-11358-haiti-elections-the-opposition-parties-denounced-the-decision-of-president-martelly.html>.
- ¹³ *Martelly Appoints Duvalier Lawyer to Oversee Elections*, Center for Economic and Policy Research (May 6, 2014), <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/martelly-appoints-duvalier-lawyer-to-oversee-elections>.
- ¹⁴ *Fanmi Lavalas, Fusion, Inite et d'autres partis réclament la formation d'un nouveau CEP*, Le Nouvelliste (May 14, 2014), <http://lenouvelliste.com/lenouvelliste/article/130943/Fanmi-Lavalas-Fusion-Inite-et-dautres-partis-reclament-la-formation-dun-nouveau-CEP.html>.
- ¹⁵ *Haiti – Notice : Registration of political parties and candidates for BED and BEC, last deadline*, HaitiLibre (Jun. 18, 2014), <http://www.haitilibre.com/en/news-11397-haiti-notice-registration-of-political-parties-and-candidates-for-bed-and-bec-last-deadline.html>.
- ¹⁶ Evens Sanon and Trenton Daniel, *Old Duvalier party plans to run in Haiti election*, The Associated Press (Apr. 24, 2014), <http://news.yahoo.com/old-duvalier-party-plans-run-haiti-election-173735217.html>.
- ¹⁷ Randal C. Archibold, *Haitian Dictator May Be Charged with Human Rights Crimes, Court Says*, The New York Times (Feb. 20, 2014), <http://www.nytimes.com/2014/02/21/world/americas/haitian-dictator-may-be-charged-with-human-rights-crimes-court-says.html>.
- ¹⁸ Brian Concannon, Jr., *Haiti's Flawed Elections: They Told Us So*, Boston Haitian Reporter (Nov. 2, 2010), <http://www.bostonhaitian.com/node/253>.
- ¹⁹ Institute for Justice & Democracy in Haiti, *Haiti's November 28 Elections: Trying to Legitimize the Illegitimate* (Nov. 22, 2010), http://www.ijdh.org/haiti-s-november-28-elections-trying-to-legitimize-the-illegitimate-ijdh/#.UjoNJBb_5Rc.
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- ²¹ Dan Beeton and Georgianne Nienaber, *Haiti's Doctored Elections, Seen from the Inside: An Interview with Ricardo Seitenfus*, Dissent Magazine (Feb. 24, 2014), http://www.dissentmagazine.org/online_articles/haitis-doctored-elections-seen-from-the-inside-an-interview-with-ricardo-seitenfus.