

Republic of Haiti

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Review of Haiti's Report under the International Covenant on Civil and Political Rights

The Right to Vote

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EXECUTIVE SUMMARY

Haitians' right to vote under Article 25 of the International Covenant on Civil and Political Rights (ICCPR) has been violated in the plainest sense—they have not been able to vote since 2011. Prompt elections are much needed in Haiti. One-third of the seats in Parliament and all local mayors have already termed out. Another one-third of the Senate and all 99 members of the House of Deputies will expire in early 2015. As a result, the only elected positions within Haiti will be the President and one-third of the Senate, and the President may run the government by decree.

While elections have been delayed for many reasons, the principal roadblock has been the Haitian President Michel Martelly's lack of political will to hold elections. Members of Haiti's Senate and political opposition are maligned by the President for interfering with elections when they object and call for an election process that respects the constitution.

Haitians' right to vote was wholly compromised in the 2010 and 2011 parliamentary and presidential elections under ICCPR Article 25(b). The voter registration process as well as the elaboration of the voter registry did not follow Haitian law and led to the disenfranchisement of hundreds of thousands of earthquake victims living in internally displaced persons (IDP) camps. Polling stations were rife with ballot box stuffing and other forms of fraud. Haitians' right to run for political office without unlawful interference under Article 25(a) was also violated. The electoral council arbitrarily excluded over a dozen political parties, including Haiti's most popular political party.

While elections are desperately needed, they will only remedy Haiti's political crisis if they are run freely and fairly by a lawfully mandated electoral council. The Government of Haiti must be reminded to prioritize Haitians right to vote and run for political office. The right to vote can be respect by holding regular, constitutionally mandated elections before political office terms expire to avoid vacancies; ensuring free and full participation of all eligible political parties; and appointing an impartial, constitutionally mandated electoral council to organize fair and regular elections.

Lastly, we urge the Government of Haiti to work in good faith with Parliamentarians and opposition party members to end the current political crisis and guarantee free and fair parliamentary and presidential elections in 2015.

Part I – The Government of Haiti must work with the opposition in good faith to hold fair elections immediately.

Part II – Election procedural law has led to massive disenfranchisement of political parties and entire classes of voters.

Part III –Recommendations.

BACKGROUND AND FRAMEWORK

1. The Government of Haiti (GOH) has not conducted elections since President Martelly took office in May 2011. The Senate has struggled to obtain a quorum since May 2012, when one-third of 30 seats expired leaving vacancies in their place.¹ The terms of another one-third of the Senate and the terms of all 99 members of the House of Deputies will expire in early 2015.² If these seats are allowed to expire, the Executive will be authorized to dissolve the Parliament completely.³ Without elections in the next few months, the only elected positions in the country will be the President and one-third of the Senate. The terms of mayors and other municipal leaders have also expired. The Executive has appointed at least 130 representatives in their stead whose allegiances may or may not reflect the people they govern.⁴

2. The current administration has previously scheduled and committed to holding elections multiple times, most recently by October 26, 2014, only to postpone and ultimately not follow through.⁵ These declarations have come from the current President and his various electoral councils.⁶ The Organization of American States (OAS) prepared to send independent observers to Haiti for scheduled elections in 2013 but those elections were canceled.⁷ In January of 2013 the United Nations Security Council issued a statement to political leaders of Haiti stressing the importance of holding an election that year.⁸

3. While elections have been delayed for many reasons, the principal roadblock has been the Martelly government's lack of political will to hold elections. The President's primary obfuscation has been his refusal to appoint an electoral council provided under Haiti's Constitution, which has delayed the process for the last four years. A set of 2010, constitutional amendments provided for a new selection process for a Permanent Electoral Council (CEP), which would be selected from three branches of government (executive, legislative, and judiciary) and were formally adopted by President Martelly in 2012. However, many of the CEP appointments in 2012 were fraught with controversy, resulting in a nonfunctional permanent council and delayed elections.

4. Amidst political pressure, President Martelly appointed a bicameral commission in October 2012, the Collège Transitoire du Conseil Électoral Permanent (CTCEP), that was charged with passing a new electoral law in an effort to remedy the electoral council crisis.⁹ The CTCEP submitted a proposed electoral law to a Presidential commission on July 1, 2013. The presidential commission sat on the proposed law for months, and only submitted it to the House of Deputies for approval about a week before its last session of the year, leaving very little time for the House to approve the law.¹⁰ The Prime Minister declared that the electoral law was adopted, but House members say there was never an affirming vote.¹¹ The Senate also never approved the electoral law.

5. President Martelly signed a Presidential order on March 10, 2014, that parliamentary elections will take place on October 26, 2014, and elections for local authorities will be held on December 28, 2014.¹² The announcement follows the March 2014 meeting in which the President met with Haitian leadership and brokered a deal known as the *El Rancho Accord*, to hold elections on October 26, 2014.¹³ At the time

this report was written, the deal has not been approved by the Parliament because of constitutional objections raised by six of the 20 sitting senators (called the G6).¹⁴ They criticize the accord for instituting an unconstitutional electoral council. The accord discussion also excluded several major Haitian political parties, most notably Fanmi Lavalas, the party of former president Jean-Bertrand Aristide. This is significant because Fanmi Lavalas has been arbitrarily excluded from every election since 2004.¹⁵ Additionally, parliamentarians object to Article 12 of the *El Rancho 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.¹⁶ Without approval of the Senate, the *El Rancho Accord* is non-binding.

6. This political chaos surrounding the delayed elections has caused thousands of protestors to march through the streets of the capitol demanding accountability.¹⁷ Many citizens do not understand why the government claims to have no money for infrastructure or food stability. While 76 percent of Haitians live on less than \$2 USD per day, the President reportedly has a travel budget of \$20,000 USD per day plus more for his family and entourage.¹⁸ Anti-government demonstrations occurred on November 18th 2013, March 29, 2014 (the anniversary of the signing of the Constitution), and April 15, 2014.¹⁹ The return of former dictator Jean-Claude “Baby Doc” Duvalier has caused further political instability. While criminal charges for his fraud and political violence crimes committed during his regime from 1971-1986 are pending before a Haitian appellate court, he currently walks the streets of Haiti as a free man. Meanwhile, Duvalier’s former political party, the National Unity Party (PUN), announced it will run in the upcoming elections and has expressed its desire to once again be represented in public.²⁰ President Martelly also appointed Duvalier’s lawyer to the electoral council.

Part I The Government of Haiti must work with the opposition in good faith to hold fair elections immediately.

7. On March 14, 2014, President Martelly met with Haitian political parties, parliamentarians, members of civil society, and the Catholic Bishop’s Conference of Haiti, Cardinal Chibly Langlois, and signed the *El Rancho Accord*. The accord set in motion a plan to hold elections on October 26, 2014, for two-thirds of the Senate, the House of Deputies and local elections, and proposed 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.²¹ The Senate has not signed or approved the accord on constitutional grounds.²² The estimated cost of this election is \$45 million USD of which nearly \$35 million USD has been pledged by international donors.²³

8. A wide range of multinational representatives, including the United Nations (UN), have praised Haiti for its work thus far towards holding elections in October. The UN Special Representative and Head of the UN Stabilization Mission in Haiti (MINUSTAH), Sandra Honoré, has declared the agreement a “victory.”²⁴ However, the accord has not

been approved by the Parliament and therefore lacks any legal authority. It is also widely rejected by some of Haiti's most prominent political parties. This is not the first time Haiti has scheduled elections, only to postpone them indefinitely.²⁵ Furthermore, the agreement itself was not drafted by a consensus of all Haitian political groups. While there were over 50 political parties involved in the negotiations for the *El Rancho Accord*, almost all of those parties had never run in any previous elections. Several well-established political parties attended the discussions, but left when it was clear that their voices would not be heard. These parties, which include *Fanmi lavalas*, MOPOD, INITE, *Kontra pep la*, *Fusion*, and *Ayisyen pou Ayiti*, refused to register their party in the elections initially schedule for October 26, 2014.

9. The El Rancho Accord has not yet been approved into law by both houses of Parliament because many parliamentarians, including six of the 20 sitting senators (called the G6), oppose the El Rancho Accord on constitutional grounds.²⁶ The El Rancho Accord violates the Constitution on two levels. First, the manner of appointing councilors to the CEP conflicts with the manner in the Constitution. The prime difference is the make-up of its members. 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, associations, Protestant religions, and the National Council of Cooperatives).²⁷ Opposition believes that the Constitutional CEP process makes it less likely that the members will be influenced by political gains. Every election since the Constitution was enacted in 1987 has been run by a provisional council named by different sectors.

10. The second constitutional inconsistency is Article 12 of the *El Rancho Accord*, which would allow the accord to become law without approval by the Parliament.²⁸ Article 12 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.²⁹ This has the effect of the Executive Branch of the government acting unilaterally to create laws without the consent of the Parliament.

11. On June 10, 2014, President Martelly appears to have invoked Article 12 when he signed a presidential decree setting the elections for October 26, and confirming a CEP with only seven of the nine required members, including two members from the legislative branch, two members from the judicial branch, and three members from the executive branch.³⁰ Two of the nine members, Leopold Berlangier (judicial branch) and Nehemy Joseph (legislative branch), refused to be sworn in because of concerns about the process for selecting CEP councilors. However, 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.³¹ The CEP generated additional controversy by selecting Frizto Canton as President. Canton, a lawyer for former dictator Jean-Claude "Baby Doc" Duvalier, was nominated to the council by the executive.³²

12. Opposition leaders call the accord an electoral coup d'état.³³ 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.³⁴ On June 16, 2014, CEP President Fritzo Canton announced June 25, 2014 as the registration deadline for political parties.³⁵ The deadline provided 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 boycott the registration to pressure the government to appoint a lawful and independent body, risking exclusion. Most opposition groups did not register for the elections. In August 2014, the CEP announced that elections would not be held on October 26, 2014, have been continued indefinitely.³⁶ No new date has been announced.

13. The old political party founded under the Duvalier dictatorship, PUN, 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 October 26 legislative and local elections.³⁷ President Martelly has presented Duvalier at public events as an elder statesman and has renewed Duvalier’s diplomatic passport.³⁸

14. Despite these glaring flaws, the *El Rancho Accord* passed through the House of Deputies on April 2, 2014.³⁹ However, the election law has stalled in the Senate. To the persistent refusal of the six Senators known as the G6 opposition that blocks the quorum required to ratify the amendments to the electoral law.⁴⁰ They are preventing the vote specifically in response to the threat posed by Article 12. The Senators fear that if this law is pushed through, it could lead to further unilateral action by the Executive branch.

Part II Election procedural law has led to massive disenfranchisement of political parties and entire classes of voters.

15. The Electoral Law of 2008 sets forth the conditions for free and fair elections and guarantees citizens “the right of universal suffrage...through conditions favoring their participation in the electoral process.”⁴¹ Within the Haitian government, the CEP is responsible for administering elections in accordance with Haitian law and Haiti’s international human rights commitments, including Article 25 of the ICCPR.⁴² Haitian law prohibits voter intimidation, ballot stuffing, multiple voting, violence in and around polling stations, and destruction of ballots and voting materials.⁴³

16. The 2010 elections in Haiti experienced many irregularities in violation of ICCPR Article 25. The failure of the Haitian government and international community to prevent voting irregularities and violence during the November 2010 election constitutes a serious violation of Haitian citizens’ right to equal and universal suffrage. International observers reported ballot stuffing, voter intimidation, violence and vandalism in polling stations.⁴⁴ Observers reported that the Haitian National Police (PNH) and the UN Stabilization Mission in Haiti (MINUSTAH) were unresponsive to security issues at polling stations and failed to protect voters as they exercised their political rights.⁴⁵

Among other matters, the fact that the PNH and MINUSTAH were not able to maintain safety and security at polling stations is a serious violation of Haitians' rights to security of the person. In municipal elections, brazen voter intimidation tactics are frequently used.⁴⁶ Armed men are known to have blockaded polling stations when UN peacekeepers and international observers are absent. These thugs are able to persuade voters to cast their ballot for whichever political party is able to afford their services. In this respect, politicians run their campaigns more like a business than a public service.⁴⁷ These violations along with the exclusion of political parties and disenfranchisement of Haitian voters violate the right to genuine elections.

17. In order to be able to vote in Haiti, Haitian citizens must register with the National Office of Identification (ONI), which manages the electoral register.⁴⁸ The ONI provides national identity cards which are required to vote.⁴⁹ The ONI must also update the electoral register by removing the names of all deceased persons and persons who have lost the legal right to vote.⁵⁰ The CEP creates electoral lists for each polling station using the ONI's electoral registry.⁵¹

18. During the 2010 elections, thousands of registered voters living in IDP camps were unable to vote as a result of confusing voter registration practices. After the earthquake on January 12, 2010, the Haitian government established Centers of Operation and Verification (OVCs) to register voters in the IDP camps.⁵² However, the OVCs worked outside the Electoral Law failed to reconcile foreign registration lists with the official electoral register, thereby causing great confusion in voter registration.⁵³ As a result, the ONI did not recognize many of the voters registered by the OVCs. In addition to this duplication of registration, there were significant discrepancies between the ONI's electoral register and the voter lists produced by the CEP for the polling stations.⁵⁴ The ONI also proved to be incapable of distributing more than 100,000 national identity cards to voters who were duly registered on the day of the election.⁵⁵

19. Registered voters in 2010 reported that their names were excluded from the electoral registry at their customary polling stations.⁵⁶ Voter registration lists were unreliable and thousands of voters were prevented from voting because they could not find their names on the list. By failing to establish an accessible voter registration process that would enable universal participation of voters and to maintain a current and accurate voter registry, the Haitian government violated the rights of Haitian citizens to universal and equal suffrage. The widespread disenfranchisement and, in particular, the exclusion of Haiti's largest political party contributed to the very low turnout figure of 22.9 percent in the November 2010 election. This low turnout, the lowest for presidential election in the Americas in the last 60 years,⁵⁷ is due to systematic and generalized violations and to the exclusion of political parties.

20. Four years after the devastating earthquake of 2010, over 100,000 people continue to live in the IDP camps and face similar voter registration problems as in the November 2010 election. The process for applying for a voter identification card must be made easier.⁵⁸ Even if the IDPs are able to apply for the identification card, the process can take up to three months to produce and issue these cards.

21. In a move that received remarkably little news media, the CEP excluded entire political parties, including the largest party in Haiti, *Fanmi Lavalas* (FL), without justification or legal authority from the 2010 and 2011 elections.⁵⁹ The CEP's unlawful exclusion of political parties violated the parties' right to freedom of association under the Haitian Constitution⁶⁰ as well as Articles 22, 25, and 26 of the ICCPR. The ICCPR grants the Haitian people the right to free association without political discrimination, as well as the right to vote in fair elections. Under the ICCPR, the right to freedom of association must be strictly observed. In this case, the Haitian government flouted the rights of these parties in clear violation of their right to free association. Although the parties could have appealed to the civil courts, past decisions in their favor have been disregarded, making their political exclusion an insurmountable obstacle to fair elections.⁶¹ These exclusions were largely ignored and no actions have been taken by Haitian officials despite international pressure to ensure inclusive elections in 2014.⁶²

22. The validity of elections in Haiti is also called into question due to actual or apparent corruption. Citizens of Haiti are suspicious of foreign funds directed towards campaign contributions. This money is often spent on genuine campaign needs but much foreign aid is also spent on polling observers and officials. There are also reports of vote buying and stuffed ballot boxes in some parts of Haiti.⁶³ For example, one vote can be sold for as little as \$25 USD.⁶⁴ In 2010, the United States spent as much as \$16 million USD to fund Haitian elections and the international community has already pledged \$35 million USD for the 2014 elections.⁶⁵ Although this aid is sorely needed to pay for elections infrastructure, without more transparency and independent monitoring, this money appears to be funding politicians for which they are never held accountable. Suspicions are aroused even further when candidates can refuse to disclose campaign contributors; the winner of the most recent election admitted to spending \$7 million USD in the election and utilized foreign consulting services.⁶⁶

Part III Recommendations

Progress in earthquake reconstruction, stabilizing Haiti's democracy and ending poverty will only be possible if the Haitian government respects Haitians' right to vote and holds regular, constitutionally mandated elections. Illegitimate elections in 2010, contaminated by a corrupt electoral council, illegal exclusion of political parties,⁶⁷ ballot-stuffing⁶⁸ and an arbitrary recount by the Organization of American States,⁶⁹ set Haiti on its way to its current political crisis.

The Government of Haiti is urged to take the following steps to protect Haitians right to vote and run for political office:

1. Hold regular, constitutionally mandated elections before political office terms expire to avoid vacancies;
2. Take all measures necessary to ensure that elections are free and fair;

3. Take all measures necessary to ensure free and full participation of all eligible political parties;
4. Hold a legal and inclusive voter registration process to guarantee universal suffrage;
5. Provide all eligible voters with voter identification cards so that they can participate in elections;
6. Ensure that an impartial, constitutionally mandated electoral council is appointed to organize fair and regular elections; and
7. Work in good faith with Parliamentarians and opposition party members to guarantee free and fair Parliamentary and Presidential elections in 2015.

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¹² Haiti – FLASH: The Government convened the population in elections, Haiti Libre, June 11, 2014, <http://www.haitilibre.com/en/news-11344-haiti-flash-the-government-convened-the-population-in-elections.html>.

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- ⁴³ *Id.* at art. 155, 202, 205.
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- ⁴⁸ Electoral Law of 2008, Le Moniteur, July 25, 2008, art. 27.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at art. 29.
- ⁵¹ *Id.* at art. 31.
- ⁵² Interview with CEP, October 14, 2010.
- ⁵³ IJDH June 2010 Report, *supra* note 11, at 6-7.
- ⁵⁴ The CEP recorded 35,000 more registered voters than the ONI. Rapport du RNDDH sur les elections presidentielles et legislatives du 28 Novembre 2010, RESEAU NATIONAL DE DÉFENSE DES DROITS HUMAINS, Dec. 3, 2010, at 4 (hereinafter RNDDH Report).
- ⁵⁵ *Id.* at 4.
- ⁵⁶ *Id.* at 6.
- ⁵⁷ RNDDH Report, *supra* note 29, at 3.
- ⁵⁸ Interview with Belus E., law student at UNIFA, in Port-au-Prince, Haiti, (March 6, 2014).
- ⁵⁹ Dan Beeton, *Haiti's Elections: Parties Banned, Media Yawns*, Center for Economic and Policy Research, May 2011, *available at* <http://www.cepr.net/index.php/op-eds-&-columns/op-eds-&-columns/haitis-elections-parties-banned-media-yawns>.
- ⁶⁰ 1987 Constitution of Haiti art. 33-1 (providing political parties the right to “compete with each other in the exercise of suffrage” subject to conditions set forth by law).
- ⁶¹ 1987 Constitution of Haiti art. 33-1 (providing political parties the right to “compete with each other in the exercise of suffrage” subject to conditions set forth by law).
- ⁶² *Id.*
- ⁶³ Haiti Senate, Inter-Parliamentary Union, (April 27, 2014), http://www.ipu.org/parline-e/reports/2138_E.htm.
- ⁶⁴ Interview *supra*, note 35.
- ⁶⁵ Maureen Taft-Morales, *Haiti's National Elections: Issues, Concerns and Outcomes*, Congressional Research Service, July 18, 2011, *available at* <https://opencrs.com/document/R41689/2011-03-23/>.
- ⁶⁶ Randal Archibold, *A Roguish Candidate Taps Haitians' Discontent*, New York Times, March 17, 2011, *available at* <http://www.nytimes.com/2011/03/18/world/americas/18haiti.html>.
- ⁶⁷ 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.

⁶⁸ Jason Beaubien, *Weary, And Wary, Haitians Prepare For Elections*, NPR (Oct. 7, 2010), <http://www.npr.org/templates/story/story.php?storyId=130402973>; see also *Elections that Do Not Reflect the Will of the People*, <http://www.ijdh.org/on-the-violation-of-voting-right-in-haiti-elections-that-do-not-reflect-the-will-of-the-people-bureau-des-avocats-internationaux-canada-haiti-action-network-transafrica-forum-louisiana-justice-in/#.Ujje3dJQGuJ>.

⁶⁹ 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.