

Jake Johnston, Research Associate at the Center for Economic and Policy Research:

To understand the current electoral situation, we really need to start in 2010. The fiasco of that election set the stage for the delays and controversy leading up to this electoral process. 2010 was an extremely difficult time to organize elections: the earthquake hit earlier in the year, the government was barely functioning, and the cholera outbreak burst throughout Haiti in the fall.

The first round election, in November 2010, was a disaster foretold. One of Haiti's most popular political movements, Fanmi Lavalas was still being excluded. The devastation from the quake and cholera meant many had no idea where they were supposed to vote, nor even had their ID cards allowing them to vote. The result: catastrophically low turnout. Less than 20% of registered voters had their vote counted. Some 12% of ballots never even made it to the central tabulation center to be counted.

When 12 of 18 leading candidates held a press conference to denounce the process mid-way through the day, it seemed as though the election could be nullified and held again. Given the massive disenfranchisement on Election Day, there was a solid case to do so.

On Election Day, the head of the UN mission in Haiti, Edmond Mulet approached both Mirlande Manigat and Michel Martelly – two of the 3 frontrunners alongside Jude Celestin – and told them both that they were leading the vote. The next day, they both backed away from their demand that the vote be re-held.

What transpired over the next few months leading to the second round of the election has been pretty well-documented, with a number of whistleblowers coming forward to provide detailed insider accounts. In the end, a political mission from the OAS came to Haiti and after more pressure from the international community, including a visit from Secretary of State Hillary Clinton, Haiti reversed the first round results and pushed Martelly into a runoff with Manigat. As we all know, Martelly went on to become president.

So how did that deeply flawed process impact the current situation?

1) Martelly came to office without a real popular mandate. With such a low turnout, Martelly only received votes from about 16 percent of registered voters. Without consolidating his power through the polls, he was left to consolidate by other means.

Since Martelly had no real political party, the legislature was also dominated by his opponents, which set up the battle that ensued over the next 4 years.

2) Martelly came to office emboldened by the support of the international community. Over the proceeding couple of years, it was clear that Martelly felt as though he could use it to consolidate his power.

Each year from 2012-2014, the government pledged to hold elections but didn't. During that time, the entire lower house termed-out, as did 2/3 of the Senate. In addition, the terms of all mayors across the country expired in 2012, replaced by political appointments. This left Martelly

able to rule by decree though it seems, for the most part, that he's lived up to his pledge to limit decrees to the electoral issue.

Finally, after 4 years of delays, it looks like the first round legislative elections, scheduled for August 9, will happen. Through the 3 elections scheduled this year, Haitian voters will elect over 5,000 public officials, including a new President, 20 Senators, 118 Deputies and thousands of local officials.

That's how we got here. But what are the issues and big questions currently at play? Here are a few:

1) Inclusiveness: These are the first elections in a very long time where all political parties are able to participate and, at least for now, no major parties are boycotting the process.

2) Funding: Even after the donor conference held last week in which more than \$15 million was pledged, Haiti is short of the estimated \$68 million needed for all three rounds of elections. Last week, US Haiti Special Coordinator Tom Adams told me that when you take into account other expenses not covered by the UNDP administered election fund, the total cost will be close to \$100 million, with over \$30 million not yet covered. There are assurances that the first round is fully funded, but where will the money come from for later rounds?

Funding of political parties is also an issue. Despite elections being less than 3 weeks away, the \$10 million in government financing for political parties has yet to be disbursed and the formula for dispersing this money hasn't even been agreed upon. With that funding held up, do parties close to the government, who may have better access to funding, have an unfair advantage?

3) Logistics: It will take an extraordinary amount of logistics to pull off 3 elections by the end of the year. The electoral roll is close to 6 million – but will we see similar problems as we saw in 2010 with low participation and voters prevented from voting due to logistical problems? The schedule is very tight for the August 9 elections and while it seems like they will happen, what sort of an election will actually take place?

Jacqueline Charles, Caribbean Correspondent of Miami Herald:

Let me start by giving you a couple of numbers so you understand just how intricate and complex this is. Three elections are scheduled and these are the most complicated elections that Haiti will ever be holding. One, because of the number of candidates involved: Basically, in Haiti today, you have only 11 elected officials (the President and 10 Senators). That means over 6000 posts are opening. As Jake mentioned, you have 5.8 million voters. We're talking about 12.8 million ballots that are involved in this process, over 13,000 polling stations, and over 4,000 candidates. The official number being quoted as the cost for the elections is \$74 million but as I reported, when Thomas Adams from the State Department testified before Congress, he said that the shortfall was more like \$50 million. A lot of that has to do with security and the Haitian National Police: For the first time, Haiti's going to have to bear the brunt of putting on these elections. Unlike in 2010 when they had a lot of assistance from the UN, a

lot of this is going to fall on their shoulders. So, as a journalist when you're looking at this, you're basically anticipating the problems.

I remember reporting so much in 2010, and even the election prior, about the need for donkeys to get some of these sensitive materials to polling stations. I've heard reports that there are still polling stations—despite the construction of roads—that are still at least an hour's walk from the nearest drive-able point. I've been assured by some of the UN folks involved that they are going to address the logistics, hire donkeys and hire people but for instance, there are more than 50,000 people that have to be employed by the CEP to take part in this process. The recruitment has been very slow and also very late. When you look at the CEP's calendar, they have been behind in this process. We're about 3 weeks out but you really don't sense that there's an election coming in the country. A lot of people have been sort of campaigning but they're waiting for some of the \$10 million. They just don't have the money given the financial decline in the country today so there's a lot of speculation that there's going to be very low voter turnout.

When you talk to people from civil society, one of the big issues is the lack of civic education taking place on the radio. The first day that the campaigns officially opened, the CEP put up a couple of banners basically saying "I'm voting, we're all voting." But critics also say that when you listen to popular radio stations that the masses are listening to, you don't hear ads that are paid for by the Electoral Council.

If we get to August 9th, how much of a mess is it going to be? Ultimately, you've got about 1,885 candidates who are basically going for 139 seats. I'm not going to be able to cover the entire country. The reality is, in the beginning you're looking for whether the polls open and close on time, voter participation, and problems. The question becomes how much these problems factor in.

Everyone's talking about the voter list: 5.8 million is over 20% more than the last election but a lot of these people are still living in camps. Today, there are 65,000 people in camps, minimum. Even in Cnaan, there are at least 300,000 people but it's not factored into official numbers from the government. Some people have also had their voting stations changed. Do those people know where they're supposed to vote? Are people going to make the effort and are they really into these elections? In past elections, people have talked about the effort required to vote with pride but also dismay, mentioning walking as many as 6 hours to participate and exercise their civic duty. Will they do it again?

These legislative elections are going to be a test for what's to come: If they go well, we can start to move to October 25 for the presidential elections. These will by far be the most complicated because we'll have presidential, 2nd round of the legislative, and also local elections all at the same time. The local elections have over 4,000 candidates! Again, we need to see what happens on August 9 and how they pull it off.

Funding is another issue, which Jake talked about. The first round of elections is fully funded but we also have October 25 and December 27, if need be. I wouldn't be surprised if the local elections, which are 4 years overdue, are moved into next year because of the cost. The international community has been frustrated by Haiti's elections cycle. For a country that's poor with money issues, how is it that you have so many elections, and so often? These things are very costly and unfortunately, it was one of the things

that didn't get passed in the last Constitutional amendment changes. So I suspect that some in the international community are saying Haiti needs to step up.

The Haitian government *has* stepped up: Right now, they're the largest contributor to the election fund—over \$13 million. The Prime Minister told me they're prepared to provide another \$10 million for the political parties and another \$6 million for the Haitian National Police.

As a journalist, I'm not necessarily going to be able to tell you who won what seats. There are clearly candidates that we're looking at and we're interested in. A number of people are controversial and would get parliamentary immunity if they win but the big questions will be more like: How did they go, how did Haiti pull it off, and what sort of preparations will be needed for the next round or are these elections such a mess that it'll take weeks and months to figure it out so the October 25th round will have to be delayed?

Wesley Lainé, Ella Baker Legal Intern at IJDH:

I will get right into the “décharge” issue. What is the décharge? Basically, it is an audit certificate or document certifying that an individual did not misuse public funds while in office. I read a piece yesterday in the Foreign Policy magazine in which the author called the “décharge” a Haitian electoral law. Well it's actually a bit more than that. It's in the constitution, so it's a constitutional requirement. It's the law of the land.

In Haiti's civil law system, both the codes—whether civil or penal—and the statutory and constitutional laws usually must be interpreted strictly unless the interpretation has been challenged and modified by the Cour de Cassation or the Constitutional Council. But it is unclear when, if ever, the Constitutional Council was in function.

We know what the décharge is, so now we can get to the procedure. The person seeking the décharge must approach parliament. A commission made up of members of the Senate and the House of Deputies must then decide whether or not to grant the décharge.

The question is—what happens when Parliament is not functioning? The Constitution is silent; it does not spell out an alternative procedure to obtain the décharge.

Here's the current situation:

- a) There is a constitutional requirement
- b) There is no parliament to execute the procedure
- c) There are candidates who need a décharge
- d) The CEP is using this as a sword to eliminate those who do not have the décharge

I will briefly talk about three cases:

Former minister of the interior Thierry Mayard Paul is a polarizing figure in Haiti's politics but he is also a good lawyer. He sought a décharge for three years and was unable to get it. Consequently, he took his

case to court and won a positive verdict. But the CEP simply said ‘we are not bound by this verdict’ and disqualified him for lacking a *décharge*.

Former Prime Minister Lamothe also took his case to court. But he invoked an old legal principle, “la théorie des formalités impossibles”, or the theory of informal possibilities. It’s an old legal principle that has credibility in French jurisprudence. It basically says that when an extraordinary event prevents you from fulfilling a procedural duty, you may be exonerated from that duty. The court agreed with Lamothe. But the CEP once again ignored the verdict.

Jacky Lumarque’s case is an exceptional one. The CEP had originally accepted his candidacy. It reversed its decision after receiving a letter of complaint that Lumarque had managed state funds and did not have a *décharge*. This is a bit problematic because the Superior Court of Accounts and Administrative Litigation affirmed that Lumarque did not manage public funds. Lumarque’s colleagues also asserted that he had no role in managing funds. Nonetheless, the CEP put an extra burden on Lumarque to prove otherwise and ultimately did not accept his candidacy. It’s almost as if the CEP has used the *décharge* as a double sword in Lumarque’s case.

The Constitution does not say “if we think or if it’s alleged that you managed public funds”; the Constitution is clear on this, “Those who managed public funds” must have a *décharge*. So it may be unfair for the CEP to put this extra burden on Lumarque.

Question and Answer Session:

- Why was *décharge* originally written into the Constitution?
 - The *décharge* is mentioned nearly 15 times in the Constitution. That’s how important it is. It has an important purpose of fighting corruption. More specifically, it seeks to prevent corrupt candidates from running for office. But it also could be used as a shield and thus allow those who do not have it to run for office when there isn’t a way to get the *décharge*. The question is whether it’s a shield or a sword. The current CEP is using it as a sword.
- Is violence expected before, during and after the elections?
 - In some towns, polling places have been burned down or there is only one police officer on duty, nervous about what will happen once the elections start. Something like this is hard to predict, though. Everyone will be watching to see what happens as the first round of elections approaches.
- Why were the ballots shipped from Dubai?
 - This is actually pretty standard procedure. These ballots have special security measures that are meant to prevent fraud.
- Why is the US so involved in Haiti’s elections?
 - Unfortunately, Haiti is influenced by the national community because it has to rely on them to fund the elections. The US funds a large part of the elections process, which gives it a say in the matter.

- Will e-voting be allowed?
 - No. Currently, everyone involved in elections is really trying to prevent fraud like that which took place in 2010. Unfortunately, e-voting has a greater possibility of fraud than regular ballots.
- Will the Diaspora be allowed to vote?
 - No. In the past, Haitian politicians have made promises of having the Diaspora vote but nobody has held candidates to these promises. The issue of the Diaspora vote is ultimately tied to the citizenship issue. Without dual citizenship, it's nearly impossible for the diaspora to have full access to Haiti. Perhaps the diaspora must support a candidate that will fight for a constitutional amendment that allows dual citizenship. Until that happens, the Diaspora will always be on the sidelines watching things happen in Haiti.
- How is the crisis in the Dominican Republic playing into these elections?
 - The candidates aren't really taking a stand on this issue yet. Since it affects both Haitians and Dominicans, Haitian voters need to ask candidates where they stand and press them to take action on important issues like this.