

Rebelling Against the Lies and Illegalities

A Better Class of Dictator?

Three years after the earthquake of January 12, 2010, Haiti paused last month to remember and reflect. It might seem unimaginable given a cholera epidemic with a death toll now nudging 8000, some 360,000 people still living under tarpaulins,

and a food crisis that has made Haiti the third hungriest country in the world, but there is a growing sense that the failed and flawed Michel Martelly government is now the country's main problem.

It is not just the "usual suspects" – grassroots activists, public sector

workers, the marginalized majority – pointing the finger. It is individuals in the commentariat, the business sector, the judiciary and the church. Codedly in public, but confessionally in private, it is even UN officials and some of Martelly's paymasters, the donors. Just don't tell anyone else we told you.

In an Op-Ed piece in Haiti's leading newspaper *Le Nouvelliste* on January 1, Leslie Péan listed nepotism, corruption, authoritarianism, kidnappings and murders as hastening what he termed, "the decomposition of the state". What he did not say is that those traits are increasingly seen as that same state's *modus operandi*; that the government is now openly associated with flagrant violations of the "good governance" and "rule of law" principles and practices that it's donors fund it to implement and uphold.

Ordinary Haitians are, as ever, more direct than the chattering classes. Several hecklers simply shouted: "Liar!" as President Martelly promised to boost national food production to 70% of consumption during his Independence Day speech in Gonaïves. "It's bread and circuses without the bread," said one observer.

In mid-September, thousands marched through the country's second largest city, Cap-Haïtien, denouncing corruption, broken promises, the cost of living, authoritarianism, and general insecurity. The following day, grassroots groups such as *Bare yo!* (Stop Them!), *Louvi je!* (Open Your Eyes), *Van an Vante* (The Blowing Wind) and *Sik-lòn* (Hurricane) staged a mock trial. Playing chief judge, activist Eluscar Charles heard endless testimony charging the President with nepotism and corruption. He was found guilty on both counts, along with his wife Sophia, son Olivier and Prime Minister, Laurent Lamothe.

In the last four months of 2012 there were protests in towns and cities throughout the country. A general strike in Les Cayes in September to protest the dismissal of several judges was typical in that, a cack-handed government effort to buy off

strike leaders with a suitcase full of cash the night before backfired hopelessly, boosting turnout and general anger.

In October and November, there were protests, demonstrations and strikes in Gonaïves, Nippes, St. Marc, Trou-du-Nord, Petit Goâve, Fort-Liberté, Belladère, Jérémié and, of course, Port-au-Prince. Although many were relatively small, they were notable for the new alliances between long-time anti-Martelly activists and former supporters. It all culminated in four days of mass protests in Jérémié against a Brazilian company that had stopped work on a new road from Les Cayes.

The killing of a young boy by the National Police riot squad, then the dispatch of Interior Minister Ron-sard Saint-Cyr, served to turn it into full-blown anti-government protest, initially on suspicion that road funds had been stolen, eventually just against endless broken promises. "Martelly promised to build an airport, a power plant, schools... We have rebelled against the lies," concluded one protester.

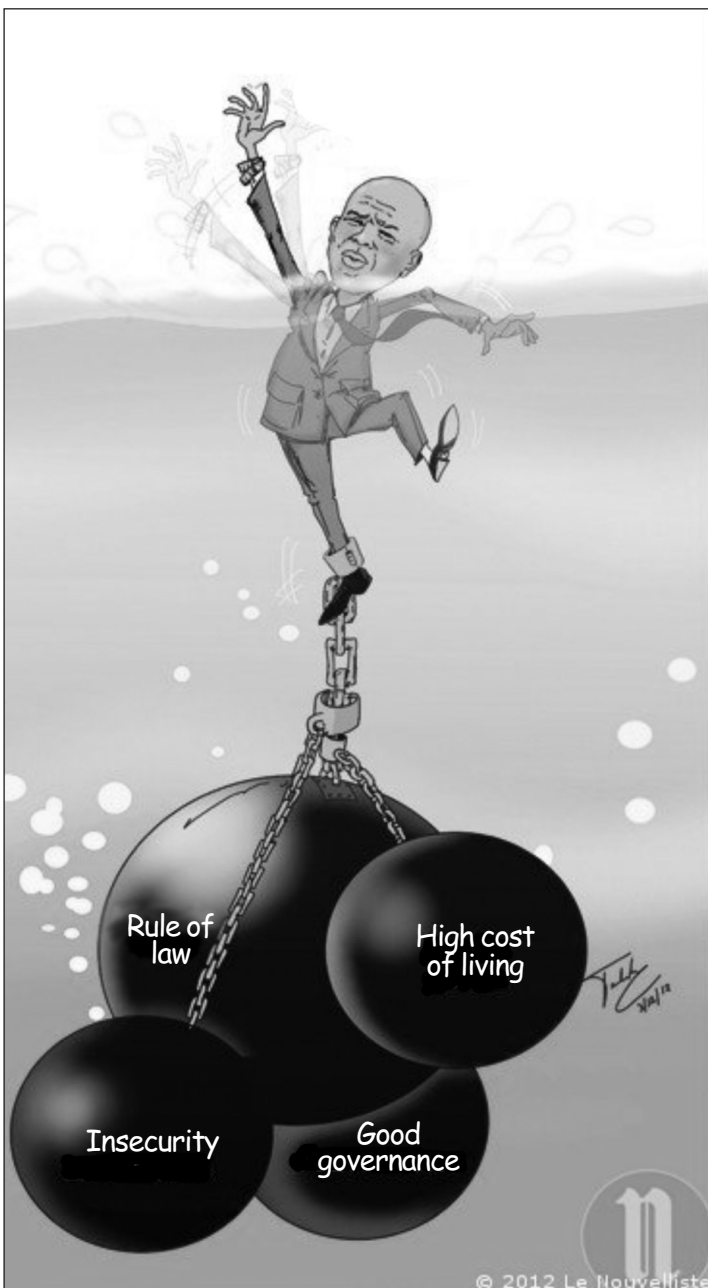
Money in, Money Out

The promises, the reality and the lies are all being increasingly linked by Haitians, cutting across class boundaries to create a new political potential. As a protest at non-payment of salaries by teachers went into its third week in December, news that several less-favoured cabinet ministers were being similarly short-changed leaked out. Later still came stories of cheques to Haitian embassies and diplomats abroad bouncing back to Port-au-Prince. If there was no money for such basics or personally-appointed tribunes of the most generously-funded Haitian government ever, where was it all going?

Haitians have plenty of suggestions. In 31 of the 40 days to mid-December, President Martelly was travelling abroad, mostly with his family and never without a huge entourage. The costs are obvious, but may be exorbitant. Senators have alleged that the President is

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Cartoon: Teddy Mombrun, *Le Nouvelliste* 2012



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 Weighed down by his own abuses, President Michel Martelly as seen by *Le Nouvelliste* cartoonist, Teddy Mombrun. "This is not a government, it's a Martelly money-making clique," says one Port-au-Prince protester.

Hands Up who Knows Where all the School Money has Gone?

On May 26, 2011, just 12 days after his investiture as President, Michel Martelly made his first major policy pronouncement: the launch of the National Fund for Education (FNE). Its aim was simple: get 1.5 million of the Haitian children not regularly in school into the classroom by the end of his five-year mandate. As a basic UN Millennium Development Goal, the ambition was widely applauded by Haitians and foreign donors alike.

The \$360 million in funding needed for this ambitious project was to come from levies on incoming telephone calls and money transfers, thus tapping into the relative wealth of the several-million strong Haitian Diaspora. As an added bonus, no new taxes would have to be raised or old taxes actually collected at home in a country where non-payment of tax by those rich enough to owe, is not just the norm but is viewed as a basic right.

The fanfare that greeted the Fund's launch subsumed many of the vital questions being asked at the time about the legitimacy of the electoral process that had brought Martelly to power, his past as supporter of brutal military rule and very serious doubts about his nationality and thus

whether he was actually eligible to be President.

Also ignored were voices pointing out that unilaterally instituting such a tax without Parliament's consent was unconstitutional, or that the tax would disproportionately affect the poorest, with the \$1.50 levy on a remittance of \$20 dollars to a family struggling to feed itself being the same as that on a transfer of hundreds of thousands of dollars for a business or property purchase.

Equally unclear was who would be the main beneficiaries: would the Fund be paying the private school fees of better-off Haitians, thus using the remittances of the poorest to subsidise the education of the relatively well-off? And in a country where up to three-quarters of primary school pupils are in private schools, would the Fund simply be subsidising the expansion of private schools rather than reinforcing the woefully inadequate and underfunded state sector?

Although the Central Bank – BUH – was to be in charge of collecting the money on transfers, no one knew who would be contracted to manage the levies on international calls, or indeed under what terms. Despite this, the new President was adamant that the Fund would be

managed in an independent and transparent manner, citing the IMF and auditors Price Waterhouse Cooper as guarantors.

As it turned out, Martelly appeared to have a ready-made candidate for this in the form of his former business partner and the director of his election campaign, Laurent Salvador Lamothe. As head of his own company Global Voice, Lamothe had extensive experience of how profitable such levy systems could be in various African countries. Profitable for him as well as his client states, that is. Renowned as a tough negotiator, Lamothe's company had reportedly been getting up to 50% of the value of all levies collected in such schemes.

Almost nothing was heard of the Fund until September 2011, when the President's Education minister-designate, Gaston Merisier, stated that the FNE had amassed \$28 million. However, it soon emerged that only \$2 million of this, the share from money transfers, was with the BUH. The remaining \$26 million was credited to an account in the name of CONATEL, the national telecoms regulator, and as such closed to even the most elemental external scrutiny.

The lack of any basic accountability or trans-

parency meant that serious discrepancies in consequent figures as to the value of the Fund cited by Diaspora news organisations, members of the Haitian Senate, civil society organisations, and even the head of Digicel, Haiti's largest telecoms operator, tax payer and employer, could not be reconciled.

In January 2012, mounting concern forced Martelly to address the issue of the FNE, declaring: "Not one cent of the money has been touched... the people around me are not thieves... *the money is so secure I can't tell you anything about it.*" To ensure nothing was revealed "about it," government lawyers began threatening the news outlets asking questions.

Meanwhile, Digicel's concern rapidly evaporated, perhaps their energies were focused on their imminent takeover of their only sizeable rival in Haiti, *Voilà* – a transaction that attracted minimal regulatory interference from CONATEL, despite it granting them an effective cell-phone monopoly.

Sadly, one thing does confirm Martelly's assertion that none of the Fund has actually been disbursed: there has been no discernable boost to the Haitian education system. While a num-

ber of pupils who had not previously attended school are now getting 'free education' (albeit far fewer than the government claims, as its figures include pupils already in free education), both public and private schools have been overwhelmed by an intake of unfunded students for whom they are unable to provide the basics, not least teachers.

Nothing has changed in the year since Martelly's only comment on the Fund. The start of the 2012-2013 school year was again delayed by a full month due to lack of funding. Teachers continue to demonstrate in pursuit of months of unpaid wages. The original lack of a legal framework in setting up the FNE means its proceeds cannot be handed to the Ministry of Education. That state of affairs has now become institutionalised, the failure to hold elections for a number of Senate seats means it remains inquorate and thus constitutionally unable to ratify any retroactive legal framework.

But what of the actual value of the Fund? While in Florida in December 2012, where he had somewhat bizarrely decided to make his 'State of the Nation' (Haiti, not the United States) address, Martelly told the *Miami Herald* that

the FNE was worth \$16 million. That was dramatically at odds with the estimated revenue at its launch, which after 16 months would have been \$136 million, not to mention a statement by CONATEL on 31 December, which put the Fund's value at \$81 million.

Is the discrepancy explained by the level of Global Voice's percentage take for collecting the levies? If so, either of the figures above would mean, that percentage is well above the generous 50% Global Voice has pocketed elsewhere in the world. Someone who would know has, since the inception of the Fund, been promoted to Prime Minister of Haiti, namely Laurent Lamothe.

Worse still, perhaps, is the fund being used for other purposes, governmental or non-governmental? Presidential slush funds are hardly unknown in Haiti, in fact historically they have been the norm. It was just this sort of transparency vacuum that allowed the national Treasury to become the personal purse of the Duvaliers. And as Haitians are now asking: if this level of opacity and poor governance surrounds such a flagship as the FNE, what else is going on in even less scrutinised parts of this administration? ■

Photo: Haitian TV grabshot inside police vehicle



In the service of the State? Clifford Brandt, scion of the Haitian elite and self-confessed kidnap gang leader, in the custody of police who have now arrested five of their colleagues including the commander of a presidential security team in the same case.

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pocketing personal travel expenses of \$20,000 a day, his wife Sophia \$10,000 and their son Olivier, an official adviser, some \$7,500. Cabinet ministers, advisers, officials and business people accompanying the President are said to be on lesser stipends.

There is of course no way of knowing the truth of this because demands from parliamentarians for ac-

counts are often met with blatant refusals. One thing is clear, however: large chunks of government spending are now in the hands of the President's family in private offices, bypassing even nominal scrutiny or state control. *Aba Grangou*, the government's hunger-fighting social programme run out of the First Lady's personal office, is just the best known of several examples.

All this follows the well-docu-

mented allegation that President Martelly personally received \$2.5m in kickbacks for reconstruction contracts with the Dominican Republic, a charge that has never even been addressed, let alone answered. "This is not a government, it's a Martelly money-making clique," complained one Port-au-Prince protester.

Equally clear is the price of trying to raise such matters, let alone

investigate them. Martelly may no longer personally threaten journalists who ask questions he objects to, but there are plenty in his entourage prepared to do the job for him, especially among his bodyguards – at best a personal security corps, at worst the nucleus of a paramilitary force.

The government's latest weapon of choice is defamation lawsuits, something the Inter-American Commission on Human Rights has described as an effort to criminalise speech directed at those engaged in matters of public interest, given that defamation carries criminal as well as civil penalties under Haitian law. Another option is just to throw protesters or lawyers who raise such issues into jail.

On September 28, the Chief Prosecutor for Port-au-Prince, Jean Renel Sénatus, reported that the Justice Minister, Jean Renel Sanon, had fired him for refusing to arrest 36 government critics. The targets included Mario Joseph, the leading human rights attorney HSG brought to London last year. Sénatus also revealed that the President had asked his legal adviser, Josué Pierre-Louis to serve warrants against two other lawyers, Newton St. Juste and André Michel. Their 'offense' had been to file corruption charges against the presidential family and several ministers. "This is how Duvalier started," observes Mario Joseph.

At the time of his dismissal, Sé-

natus was the sixth Port-au-Prince prosecutor in just 18 months, a measure of the occupational risk of not doing the President's "legal" bidding. Josué Pierre-Louis, on the other hand, was soon promoted to head Martelly's unconstitutional six-person Permanent Electoral Council (see below), where he still sits, despite facing rape allegations from a former staff member, Marie Danielle Bernardin.

In the Service of the State

By December, the general sense of insecurity had reached new post-earthquake heights in Haiti. As human rights monitors published ever-longer lists of assaults, kidnappings and murders, both the Canadian and US governments issued strongly worded travel advisories, warning their nationals to stay away from Haiti. The news came as the flagship of the government's much-vaunted tourism strategy, a five-star hotel, opened its doors, making the contrast between image and reality starker than ever.

In this maelstrom, one case hogged the spotlight. On October 16, the vehicle carrying Nicolas and Coralie Moscoso, son and daughter of Haitian banker Robert Moscoso, was pulled over by men posing as Haitian police. Handcuffed and blindfolded, they were only freed seven days later following an unpaid \$2.5m ransom demand. But what really rocked Haiti



Facing up to dictatorship. Past meets present, meets future? President Michel Martelly, 'Sweet Micky' embraces Jean-Claude Duvalier, 'Baby Doc', while his son Nicolas Duvalier, 'Nico', waits in the wings. "This is how Duvalier started," says Mario Joseph of Martelly's threats, arrests and constitutional abuses.

to its core was the identity of the man who led police to them, a confessed leading member of the kidnap gang: 40-year old Clifford Brandt, the son of one of the country's richest businessmen.

Fourteen others were arrested with Brandt, five of them police officers, with the police themselves claiming that Division Inspector Yves Michel Bellefleur was one of the gang leaders. Bellefleur had

been widely denounced for the kidnapping of businessman Emame Jean-Louis back in April, but now seemed to have run out of protectors in his own ranks. He was killed down in a hail of bullets on November 9, the killers driving a vehicle with a license plate reading "service of the state," – a reasonable clue as to who needed to silence him.

For four weeks President Martelly was uncharacteristically silent.

When he did speak, he claimed the whole incident actually proved the effectiveness of the Haitian police. Not quite. One of three police officers even better connected than Bellefleur and arrested as an accomplice of Brandt was Thébée "Febe" Marc-Arthur, the commander of the President's Security CAT (anti-ambush) Team and a close personal friend of Martelly.

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Support Group,
49 Stanger Road,
London SE25 5LD

Phone:
0208 676 1347

Email: info@
haitisupportgroup.
org

Website:
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group.org

Design: Smith+Bell
(www.smithplusbell
.com)

Contributors:
Phillip Wearne
(main article)
Andy Taylor
(inset article)

Editors: Andy Leak
Anne McConnell
& Andy Taylor

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Adding to the sense of official protection, the Moscoso family reported that no action had been taken in the case until they had complained to US authorities who, through the FBI, had twisted some official arms.

Amongst the evidence of massive arms smuggling found with Brandt was an official identity card issued by the National Palace's security office identifying him as an "Adviser to the President". As one Haitian radio host joked: "Adviser in what? Extortion?"

Denounced as a fake by a Palace spokesman, the card fed into the general belief in official criminality. Within days, students protesting the killing of an economics major, Damaël D'Haiti, by police, had a new rallying call: "The advisers are kidnapers! The criminals are in the National Palace!" Within days of that, Justice Minister Sanon responded by sacking Deputy Government Commissioner Gérald Nor-gaïsse for releasing five students detained at the protest.

Many experts agree with the students. "The National Palace is up to its neck in the kidnapping case of Brandt et al," says Pierre Espérance, director of the National Human Rights Defence Network (RNDDH), which published an in-depth report on the case in November. And it's not just the perpetration of the crime. Espérance says his most immediate concern is government interference in the case "to prevent justice".

In many ways the Brandt kidnapping revelations have already been a game changer. Kidnapping, like so much crime in Haiti, has always been regarded as the preserve of poor gangs from slum neighbourhoods, a criminal enterprise with political objectives. Brandt has revealed it to be a white shirt rather than T-shirt crime, with criminal organisation and political objectives stretching to the very top, with accomplices apparently entrenched in the National Palace.

Fixing the Election Referee

Arbitrary arrests, illegal detentions, authoritarian aggression, criminals hiding in the establishment, it was hardly surprising that at the end of a fact-finding mission in December, Michel Forst, the UN's Independent Expert on human rights in Haiti said he was worried. "It is not conceivable that in a state ruled by law, those responsible for law enforcement feel entitled not to respect the law," he complained, citing a pervasive national impunity.

Any real study of the judicial changes pledged and enacted by Martelly indicates a power grab rather than reform aimed at achieving the judicial independence enshrined in the constitution. In July, the nine members of the Supreme Council of the Judiciary (CSPJ) responsible for the control, regulation, discipline and deliberations of the judiciary, as well as the appointment of judges, were finally appointed.

This involved nominally giving away powers that for decades had been in the hands of government through the Ministry of Justice. So the CSPJ's nominees had to be reliable, its independence convincingly checked. But such efforts only produced another backlash. Within two months, two of the CSPJ's nine members, had resigned. Both complained about the lack of independence, noting that key staff were still being appointed by the Ministry, to which they continued to report.

That all may have gone virtually unnoticed if it were not for one of the few initiatives the Executive did want the CSPJ to take promptly: the selection of three of its number to sit on the nine-member Permanent Electoral Council (CEP). This body was designed to finally replace the Provisional Electoral Council (also, confusingly, the CEP) that has controlled Haitian elections for some 25-years.

Prompt maybe, illegitimate certainly. Just four of the CSPJ's members chose three of themselves as CEP members, ignoring the constitutional quorum of five for any CSPJ vote. All this happened under Anel Alexis Joseph, who, as dictated by the constitution, is also head of the Supreme Court, a post for which he is actually ineligible, being above the age limit of 65 years when sworn in. Joseph's two colleagues on the Supreme Court were equally illegitimate, having been unilaterally appointed by Martelly without the endorsement of the Senate, as required.

No one appreciates the necessity of a compliant Electoral Council better than Michel Martelly. This was the body that placed him third in the first round of the presidential election in 2010, just below the government candidate, and refused to "adjust" his vote to ensure his place in the two-candidate run-off until put under extraordinary pressure by representatives of the "international community".

Having fired the provisional electoral council by presidential decree in December 2011, Martelly has since done his best to replace it to his own specifications, ignoring all legalities. Beyond the three judicial appointments, three more nominees are due from the executive (Martelly himself) and three from the legislature. But with the Senate effectively inoperative as a result of the government's failure to hold elections for one-third of its seats, the legislature cannot legitimately nominate anyone.

By the end of the year the President had resorted to simply insisting that a six-member CEP was legitimate. If all this looks like a blatant effort to control the electoral machinery in the name of his candidates, it is. And his own constitutional changes mean that in the next presidential poll, at least, that candidate could now be Michel Martelly himself, despite the ban on a sitting president succeeding himself in the 1987 constitution.

Constitutional Coup de Martelly

Controversial constitutional changes were finally promulgated by the President in June 2012. Among a myriad of executive powers taken and parliamentary powers abrogated, is a provision making the Prime Minister president, if the latter resigns. Any Prime Minister becoming president thus is responsible for organising elections within four months, with those four months now counting as a full presidential term. This would allow Michel Martelly to be re-elected President within four months of resigning during his last days in office.

Such a move would be facilitated by a Prime Minister whose appointment does not now have to be ratified by parliament at any stage, on original nomination or on becoming provisional President. Along with this goes a massive increase in presidential control of the national budget. No itemised budget or any detail of actual expenditures is now legally required to be submitted to parliament.

As if all that was not enough, the new amendments include the abrogation of Article 297, the core of the 1987 Constitution as it repealed four specific laws considered the legal basis of Duvalierism. These included the law that established the Court of State Security and a real François Duvalier classic, a 1969 law abolishing "all imported doctrines," held, at various times, to include all freedom of thought and expression and the right to free association.

If many Haitians are not actually aware of these constitutional changes, there is a good reason. To date Martelly has failed to publish both the changes and the complete new constitution in Haitian Kreyòl, which is, in itself, a violation of the constitution.

The complete failure of the international community to speak out on any of this is depressingly predictable. The US State Department in particular has been calling on Martelly to push through these constitutional "reforms" as an answer to Haiti's political "paralysis". Such paralysis is, of course, partially the result of foreign donors failing to demand that the key principles of the 1987 constitution, namely meaningful checks on presidential powers and decentralization of budgets and decision-making, be put into practice.

Shortly after his appointment as US Special Coordinator for Haiti in 2010, Ambassador Tom Adams announced that he had asked all his expert staff to answer a simple question. Why had Haiti and the Dominican Republic, so similar politically and economically 50 years ago, diverged so markedly since?

"The only answer they could come up with was that the Dominican Republic had had a better class of dictator," he stated. Asked if Michel Martelly, who had just assumed the presidency as a result of blatant foreign intervention in his favour was just that, a better class of dictator, he dismissed the question, but not the premise. No wonder. ■