

Democracy Discouraged: International Observers and Haiti's 2015 Elections

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Introduction: The Gordian Knot of a Never-Ending Crisis

By Ricardo Seitenfus

The Haitian electoral crisis of 2015-2016, the focus of this excellent report, sheds light on a situation of grave importance that, I hope, may also become irreversible. Namely, an abandonment of the idea that Haiti's salvation can only come from overseas. Finally, the Haitian government is making the elections a matter of sovereign concern.

A quick glance at the past three decades in Haiti reveals the overwhelming failures of attempts to stabilize or "normalize" the country through foreign support. No less than \$30 billion has been spent on resolving this recurrent crisis. What a complete and utter waste.

The political transition from dictatorship to democracy has not only been the longest and most chaotic for Haiti, it has also not yet managed to set the ground rules in its struggle for power. Changes to Latin American political systems, as well as in those of Spain, Portugal and Greece, have enabled power to be transferred to the people, rendering dictatorships and repressive democracies a thing of the past.

Upheld by foreign influence, Haiti, by contrast, is yet to experience such a transition. Traditionally, the losers of elections have contested the legitimacy of the votes while the winners have abused their power and attempted to subjugate the opposition. The notion of 'crisis' has an unusual dimension here because the mechanisms deployed to resolve conflicts have included resorting to authoritarianism and the use of force.

An acceptance of difference and the coexistence of opposing points of view are not conceivable within the Haitian political sphere. In accordance with this logic, only the use of power can, provisionally, directly tackle the core of a crisis. But from the moment when the exercise of power takes precedence over the reconciliation of interests, the system falls victim to permanent political instability. This is a political system perpetually in pursuit of crisis situations, which then become part of the political *modus vivendi*, thus establishing a foundational norm.

Central to this story lies a history of foreign interventions (unilateral, multilateral, legal or not), mostly implemented through force. The nature and recurrence of these interventions have transformed foreigners into the principal actors of internal crises.

When foreign interference is as strong as it is in the case of MINUSTAH and the so-called Group of Friends[†], this means that the much-maligned Haitian political system has succeeded in positioning its foundational norm and cardinal principles within a global system of crisis management.

The Haitian state only contributes twenty-five percent to the electoral budget. The remaining three-quarters in funding comes from abroad. This situation allows the *International Syndicate*[‡] an important say over electoral disputes. Big countries and international financial institutions form part of a group that subsequently accompanies, advises, recommends, pressures, makes subtle or explicit threats and, finally, has the power to change the overall outcome.

This *International Syndicate* also takes part in the vote through an electoral observation intermediary. During the 2010 elections, the role of the OAS and CARICOM Electoral Observation Mission (EOM) went well beyond what was initially agreed. Indeed, the results the CEP published of the first round were modified by the EOM, excluding presidential candidate Jude Célestin to the benefit of Michel Martelly. Haitian electoral authorities were therefore not only replaced *diktat* through external meddling, but the very will of the voters was ignored.

[†]The Group of Friends of Haiti includes the United States, France, Canada and Brazil, as well as Argentina, Chile, Colombia, Guatemala, Uruguay, Venezuela and Peru.

[‡]This expression is much closer to reality given that a sense of the common good can only very rarely be found present in the actions of the so-called 'International Community'.

Despite external financial and technical assistance since the 1990s that totaled approximately \$3 billion, the Haitian electoral system continues to be marred by institutional fragility and endlessly contested election results.

Since 1993, Haiti has been the recipient of no fewer than seven United Nations peacekeeping operations. Differences aside, all the missions were carried out under the auspices of Chapter VII of the UN Charter. On August 2 1994 the United Nations Security Council (UNSC) adopted Resolution 940 which allowed for the creation of a multinational military contingent to intervene in Haiti. It was the first time in its history that the United Nations used Chapter VII of its charter to deal with a constitutional and thus strictly domestic matter. From the moment the UNSC decided that Haitian internal political crises presented a threat to peace and international security, it too became hostage to the type of politics practiced in the country.

These electoral challenges ought to be at the heart of the *International Syndicate's* strategy in Haiti. Although there are other issues, the electoral problem remains central to resolving these. In the absence of an acceptable *modus vivendi* for all, and clear rules for the actors involved, the situation will be insurmountable. As long as the *International Syndicate* refuses to acknowledge this reality and is happy to accept non-Haitian solutions, the crisis will not disappear. It may benefit from a period of calm but will never fully end. Fortunately, this report provides a glimmer of hope because it calls for a need to focus on the Haitian political sphere, something which should have never, ever escaped the Haitian state in the first place.



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EU observers at a polling place on election day. Photo: EU EOM 2015

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A. Executive Summary with Recommendations

The 2015 elections in Haiti represent a monumental failure of international electoral observation. With the Presidency, two-thirds of the Senate and the entire Chamber of Deputies at stake, the elections were crucial for Haiti's political future. Instead of assessing the vote according to international standards for democratic elections, the Organization of American States (OAS) and European Union (EU) electoral observation missions consistently downplayed, minimized and obfuscated the serious flaws and violations of voters' rights that occurred. Despite clear evidence of fraud, violence and irregularities, OAS and EU observers opposed calls for an independent verification and defended the integrity of the election results. The international observers' positions closely mirrored those of the United States and other large donor nations, raising doubts about the neutrality and independence of such missions. Overall, the presence of OAS and EU observers aggravated Haiti's electoral crisis and made a democratic outcome less, rather than more, likely.

On August 9, 2015, legislative elections were marred by widespread incidents of fraud, violence and voter intimidation. As a result, the vote was annulled at 13 percent of voting centers, and nearly a quarter of all tally sheets were destroyed, lost or excluded from the final results. Election-day unrest and poor organization led to low turnout (18 percent) and the disenfranchisement of many voters. Except in rare cases, police officers stationed at voting centers did not intervene to halt acts of violence and other disruptions, raising questions about whether officers had received an order from above directing them to stand down.

On October 25, 2015, most voters stayed away from the polls, out of apathy or fear inspired by the violent and chaotic August 9 vote. Voting centers were instead crowded with political party observers (*mandataires*), who cast multiple fraudulent votes using blank accreditations that allowed them to vote without being on the electoral list. These passes were illegally bought and sold prior to the elections after the Provisional Electoral Council (CEP) distributed nearly 1 million of them to political parties and observer groups. *Mandataire* votes and votes cast without proper documentation accounted for 40 percent of total votes and had a decisive influence on the presidential, legislative and municipal elections.

In contrast to Haitian observers who strongly denounced the August 9 and October 25 elections, the OAS and EU observer missions described the elections as a successful exercise of democracy. According to both missions, the August 9 elections were marked only by isolated incidents of violence and the October 25 elections experienced minor irregularities, neither of which significantly impacted the electoral results. The heads of the international missions told journalists that election day had unfolded in "near-total normalcy" on August 9 and that October 25 represented "a breath of hope for Haitian democracy."

This praise amounted to willful blindness on the part of the OAS and EU missions, as they neglected the well-documented accounts of fraud, violence and irregularities produced by Haitian observers and corroborated by reports from local and international journalists. Even more disconcerting, both missions ignored evidence of election-day violence and irregularities from their own observers. One quarter of OAS observers were forced to withdraw due to violence at polling places on August 9, while unrest at certain polling stations was so severe that EU observers could not leave their vehicles. The EU and OAS observer missions were aware of the risks that the CEP's massive distribution of blank accreditations entailed before October 25, but nevertheless ignored the black market trade in accreditations and denied the scale of the *mandataire* multiple voting.

The EU and OAS observers' endorsement of the October 25 election results undermined Haitians' efforts to address the irregularities. Massive protests calling for a verification of the vote erupted after October 25, backed by Haitian observers, civil society groups, popular organizations and opposition parties. The electoral crisis culminated in the indefinite suspension of elections on January 22, 2016 and the formation of an interim government. Two official commissions, the Independent Electoral Evaluation Commission (CEEI) and the Independent Commission for the Evaluation and Verification of Elections (CIEVE), were appointed to investigate claims of fraud, with the latter concluding that the presidential race should be rerun.

Every step of the way, OAS and EU observers called for elections to continue despite the tainted results and opposed verification of irregularities. In the face of mounting evidence that a mass of fraudulent votes cast with illegally-purchased accreditations distorted election results, the OAS eventually recognized that “irregularities” (though not fraud) involving *mandataires* had become “a source of concern” (November 6) and had “generated problems” (January 7). The EU mission remained intransigent, alternately misrepresenting the conclusions or attacking the credibility of the CEEI and CIEVE. Both missions consistently defended the integrity of the official results, even after two official commissions uncovered ample evidence of fraud and massive irregularities.

The backing of the international observers lent legitimacy to the elections and hindered efforts to initiate a verification process. Opponents of an independent verification commission included former President Michel Martelly and his allies, as well as the U.S. and other leading foreign powers in Haiti. When pressing the interim authorities to move forward with the second round of presidential elections, U.S. government officials referred to the international stamp of approval given by the OAS and EU missions as the explanation for why it considered verification unnecessary. The OAS and EU reports were used to attack the credibility of Haitian observers, political parties and others demanding an investigation. In addition, the international media cited the EU and OAS observers as credible sources far more frequently than Haitian observers, shaping perceptions of the elections abroad.

The principal function of international observation missions is to ensure that the monitored elections comply with international standards for free and fair elections. Yet despite the widespread and documented violations of voters’ rights, the EU and OAS endorsed both elections as meeting international standards. The flawed assessments suggest that international observer missions are subject to influence by the powerful member-states that sponsor them. OAS and EU observers’ positions on the 2015 elections closely mirrored those of the U.S., Canada, France and Spain – especially where they deviated from the consensus of local observers and the press – an indication that protecting these states’ political and economic agendas in Haiti may have taken precedence over upholding international standards.

The following are recommendations to international electoral observation missions made by Haitian electoral observers, which should be implemented in Haiti’s upcoming elections (scheduled for October 9, 2016) and in future elections:

1. Respect Haiti’s sovereignty and refrain from all interference in the electoral process, including by economic means such as funding.
2. Improve electoral observation missions’ independence and professionalism, not only in observations, but also in public communication about the observation results.
3. Meet with Haitian civil society electoral observation missions before and after the elections to learn their perspective.
4. Improve the consideration of analyses, opinions and proposals of Haitian civil society expressed in consultations.
5. Support a constructive dialogue between political parties and Haitian civil society organizations for solutions to political matters.
6. Facilitate education campaigns and involvement of civil society organizations to make elections a civic activity.
7. Encourage participation of women candidates to meet the constitutional guarantee of 30 percent female representation in all aspects of political life.
8. Support investigation and sanctions provided by the electoral decree and the Haitian Constitution for candidates, partisans, political parties and electoral staff implicated in fraudulent operations.

B. The International Community: An Indispensable Actor With Diminished Credibility

Foreign actors have played a central and controversial role in Haiti's democratic process since the first free and fair elections held in 1990. The "international community" – as the constellation of diplomatic missions made up of powerful countries, associated aid agencies and intergovernmental organizations active in Haiti is known – has helped to organize, fund and legitimize each election cycle over the last 25 years. Although international support has facilitated each of these elections, this support for the electoral process has often been leveraged into influence over electoral outcomes.

Due to this deep and multifaceted involvement, the international community, under the leadership of the U.S., frequently has the last word in Haitian elections. "Recognized as an indispensable actor," notes Haitian sociologist Franklin Midy, "the [International Community] has established itself as the arbiter of the electoral game, final evaluator of the results and ultimate judge of the validity of the vote."¹

International electoral observation missions (EOMs) are a crucial part of this foreign involvement, and their assessments often carry enormous consequences for Haitian governments.² Foreign observers and diplomats have at times stepped beyond the bounds of observing elections, getting directly involved in political negotiations over electoral outcomes.³

The most notorious incident occurred during the chaotic and contested November 28, 2010 elections, when a group of experts from the OAS EOM conducted a partial review of the vote. The OAS mission recommended placing Michel Martelly rather than Jude Célestin in the presidential run-off, but it "did not establish any legal, statistical, or other logical basis for its conclusions," according to Mark Weisbrot and Jake Johnston of the Center for Economic and Policy Research.⁴ The modification of the results, however, benefitted the preferred candidate of the U.S. (Michel Martelly). When the CEP refused to change the results, the U.S. State Department withdrew visas for top Haitian officials and threatened to cut off aid.⁵ UN Secretary-General Special Representative Edmond Mulet warned then-President René Préval that he might be forced to leave the country on a plane if he did not relent. Under extreme duress, the Haitian government accepted the OAS' questionable recommendations, paving the way for Martelly's victory in the second round.⁶ The U.S.-led intervention achieves its objectives, but it undermined Haitians' already-tenuous faith that their votes truly counted.

The involvement of the "international community" in the 2015 elections was again both crucial and controversial. Over \$60 million of the estimated \$100 million budget for the elections was funded by international donors, with the U.S. spending over \$33 million. Most of this funding, however, bypassed the CEP and the Haitian government in favour of UN agencies, which assumed responsibility for key aspects the electoral process.⁷ This funding supported two international electoral observations missions from the EU and the OAS. Foreign diplomats from the U.S., Canada, France, and Spain have been important behind-the-scenes political actors, and have closely coordinated their public declarations with UN, EU and OAS representatives through the Core Group.⁸

Many Haitians were suspicious that interference by foreign powers would again decide the outcome of the 2015 and 2016 elections. "People say: 'it doesn't change anything because even if I vote, if the candidate doesn't please the international community, he won't be elected,'" Jude Célestin told *Agence France-Presse* in September 2016 while on the campaign trail.⁹ "2010 changed everyone," said André Lemercier Georges, campaign manager for presidential candidate Jean Henry Céant, in an October 2015 interview. "If the same thing is happening today, somewhere people are in a room deciding the results."¹⁰ "Haiti, in 2010, was handed over to fraudsters and all-powerful observers," wrote Frantz Duval, editor of Haiti's leading daily newspaper *Le Nouvelliste*, less than a week before the August 9 elections. "We know the rest and its consequences [...] Beware of a relapse in 2015!"¹¹

The OAS observers' role in the 2010 intervention generated a credibility problem for international observation efforts.¹² The EU EOM's Chief Observer Elena Valenciano tried to distance her mission from its OAS

counterparts' past actions, in response to negative perceptions of international observers. During the June 2015 announcement of the EU EOM, Valenciano emphasized that the EU did not observe the 2010 elections and would not involve itself in the interpretation of results (as the OAS mission had) for the current elections. The EU EOM "did not come to interfere with the electoral process," Valenciano assured.¹³ The U.S. State Department's Special Coordinator for Haiti, Kenneth Merten and other American diplomats stressed that the elections were a "Haitian-run process" and that the U.S. did not support any particular candidate or party. "We have all seen the criticism against the international community for involvement in the 2010 elections," Merten noted.¹⁴

Despite these acknowledgments, the actual performance of the OAS and EU observation missions in the 2015 elections increased distrust of the international community in Haiti. Haitian election observers, human rights groups, religious, business and political leaders, journalists, and voters across a broad spectrum of society concluded that the most influential players in the international community systematically supported their Haitian allies rather than upholding international standards for free and fair elections.

C. Haiti's 2015 Elections: Disorder, Irregularities and Fraud

The stage for Haiti's current electoral crisis was set in January 2015, when the terms of ten senators and 99 deputies expired, leaving the country without a functioning legislature. Parliament had been gridlocked, in part over President Martelly's repeated attempts since 2011 to appoint unconstitutional – and, according to his opponents, politically-biased – electoral councils.¹⁵ The conflict meant that Constitutionally-scheduled elections for mayors and one-third of the Senate were not held in 2012. Anti-government protests, which had been increasing since 2014, expanded as President Martelly began to govern without legislative oversight. Forced to compromise, President Martelly appointed a new CEP in February 2015 that followed the spirit of the Constitution, and adopted an electoral decree.¹⁶ While most Haitians gave the benefit of the doubt to the new CEP, there was still substantial concern, based on the conflicts leading up to the voting, about how democratic the elections would be. (For more information on Haiti's political crisis leading up to January 2015, see *Report of the National Lawyers Guild and International Association of Democratic Lawyers Delegation on the October 25, 2015, Presidential and Legislative Election in Haiti*.¹⁷).

1. August 9, 2015 – Organized Chaos

The first round of legislative elections, held on August 9, 2015, were worse than many expected. Incidents of fraud, violence and voter intimidation were widespread, affecting 67.8 percent of voting centers according to Haitian observers. Election-day unrest and poor organization led to low turnout (18 percent) and the disenfranchisement of many voters. Overall, nearly a quarter (23 percent) of tally sheets (*procès verbaux* or PVs) were destroyed, lost or excluded from the final results due to violent unrest, irregularities and logistical failings. Many local observers and national and international journalists reported that police officers stationed at voting centers did not intervene to halt acts of violence and other disruptions, raising questions about whether officers had received an order from above directing them to stand down. President Martelly's PHTK party and its allies were the principal authors of August 9th's *dezod organize* (organized chaos), according to Haitian observers.¹⁸

While Haitian observers roundly criticized August 9 as an "electoral fiasco," the EU and OAS missions hailed the elections – in near identical terms – as "a step forward in strengthening Haitian democracy."¹⁹ During a mid-day press scrum on August 9, EU's Valenciano declared to journalists that the elections were unfolding in conditions of "near total normalcy."²⁰ OAS chief observer Enrique Castillo told journalists that delays and

disorder at a number of voting centers were not “so generalized or so big as to be able to question the whole process.”²¹

The EU and OAS chief observers’ statements were surprising given that both missions’ observation activities were directly affected by election-day violence. EU observers witnessed cases of intimidation or unrest at 40 percent of voting centers, and at several polling places the violence was so severe that observers could not leave their vehicles.²² Violent incidents forced the OAS to withdraw one quarter of its small contingent of observers (7 of 28) before polls closed.²³ The international observers’ preliminary declarations, however, claimed that violent incidents had been “localized” (EU) and “not widespread” (OAS) and had not affected the overall voting process. Neither mission reported any incidents of fraud or other serious irregularities.²⁴



Armed bandits shut down the election and destroyed voting materials at the Damien voting center in Cite Soleil. Photo: Jake Johnston

The international observers’ accounts supported the CEP’s early attempts to downplay the scale of the violence and disruptions on August 9. The CEP initially announced that voting could not be completed at 54 voting centers, while police spokespeople reported that only 26 centers had been affected; in fact, election-day disorder and other serious irregularities had invalidated the vote at 196 of 1508 voting centers (13 percent). The police had demonstrated a “general passivity” on August 9, the CEP later admitted.²⁵ Two weeks after the election, the CEP declared it would rerun one-fifth of electoral districts (25 of 119) due to findings of violence and disorder, accounting for 25 deputy and six senate seats.

Re-running certain seats was a welcomed step, but the CEP’s solution failed to address the real scale of the problem.²⁶ Large-scale irregularities and violence had not been limited to the 25 selected constituencies, and as EU Deputy Chief Observer Jose de Gabriel recognized, attacks on polling places had been politically targeted to alter electoral outcomes.²⁷ The CEP’s inadequate response to the deep flaws of August 9 allowed tainted results for many deputy and senate races to stand. As a result, some of the worst perpetrators of election-day abuses secured a seat in the legislature or a spot in the second round of legislative elections on October 25.²⁸

The dishonesty of the CEP eroded trust in the council, which was compounded by the CEP’s subsequent failure to adequately investigate incidents and punish those responsible. The CEP also accepted a series of controversial decisions from the National Office of Electoral Litigation (BCEN) concerning candidates’ challenges to the legislative election results.²⁹

Haitian civil society groups and political parties demanded an independent investigation into the fraud and violence, believing that the CEP lacked the necessary independence. They pointed out that the August 9 election flaws and the Haitian government’s failure to punish perpetrators amounted to significant violations of international and Haitian election standards.³⁰ The OAS and EU EOMs, however, did not join these calls for an investigation, in spite of the admissions of the CEP and the well-documented reports of irregularities and violence by national and international journalists and Haitian election observers. Indeed, neither the EU nor the OAS missions ever revised their overall assessments; both EOMs still insist that the August 9 elections met international standards for democratic elections and that the results were not influenced by violence or fraud.³¹

The Core Group welcomed the elections and reiterated their support for the Martelly government.³² U.S. Ambassador Pamela White said that the elections were “not perfect, but acceptable,” and criticized protesters for “causing disorder in the streets.”³³ As the October 25 presidential, municipal and second-round legislative elections approached, most opposition candidates turned from criticizing the CEP and threatening a boycott of the presidential race to mobilizing for the next round of elections. With the support of the international community, President Martelly and the CEP were able to push the electoral process forward despite a storm of controversy.³⁴

2. October 25, 2015 – The Mandataire Election

The October 25 elections were better organized and less violent than the previous round, but most voters stayed away from the polls out of apathy, disillusionment or fear inspired by the violent and chaotic August 9 vote.³⁵ Voting centers were crowded with an exceptionally large number of political party observers (*mandataires*). The CEP had distributed 915,675 *mandataire* cards and several thousand more observer cards before the elections. Unlike in previous elections, the CEP did not require political parties and observer organizations to submit the names, National Identification Card (CIN) numbers or assigned polling stations of their representatives ahead of time.

The large number of blank accreditations in circulation created a huge potential for fraud. Since accredited *mandataires* and observers are allowed to vote at any polling station without being registered on the electoral list, there was little to prevent anyone in possession of blank accreditations from visiting one polling station to the next, casting an “off-list” vote each time with a different accreditation.

The weaknesses of the *mandataire* system created a structural opportunity for fraud that favored political parties with the most money to spend. Parties with sufficient resources could buy blank accreditations from smaller political parties which were closely aligned with theirs or which did not have the means to mobilize a large number of supporters. This problem was exacerbated by Haiti’s permissive rules on political party formation, which led to 128 parties registering candidates for legislative, local and presidential elections – dozens of which were believed to be proxies for the Martelly Administration.³⁶

Predictably, a flourishing black market for *mandataire* and observer accreditations developed in the lead-up to the election. Passes reportedly sold for \$30 prior to the vote and as little as \$3 on election day.³⁷ On October 24, the CEP withdrew official status from one group (UNADA) after it was caught selling its observer accreditations on the black market.³⁸ Journalists from *Le National* and the *Miami Herald* witnessed vendors selling blank accreditation cards outside polling stations on October 25. A Haitian electoral observation coalition led by the *Réseau National de Défense des Droits Humains* (Network in Defense of Human Rights or “RNDDH”),³⁹ observers from *Komisyon Episkopal Nasyonan Jistis ak Lapè* (Catholic Church’s Justice and Peace Commission or “JILAP”), and researcher Jake Johnston with the Center for Economic and Policy Research (CEPR) all documented the illicit trade in accreditations, as did Senator Steven Benoit.⁴⁰ Haitian sociologist Fritz Dorvilier called the trafficking of accreditation cards “the gravest problem we had in these elections.”⁴¹

Contrary to CEP President Pierre-Louis Opont’s assurances that the accreditations were “fraud-proof,” safeguards against multiple voting (marking a voter’s thumb with ink, detaching the corner on accreditations, rotating *mandataires*) were weak and easily circumvented on election day, in some cases with help of polling station workers.⁴² Last-minute CEP guidelines governing access to polling stations by *mandataires* and observers were poorly understood and unevenly applied by polling station workers.⁴³ A majority of the 234 arrests made by police on October 25 involved *mandataires* who had attempted to commit fraud.⁴⁴ Many of those caught using multiple accreditations to cast fraudulent votes were sprung out of jail by influential politicians associated with the Martelly government.⁴⁵

The massive use of accreditation cards to cast multiple votes on October 25 was immediately denounced by Haitian election observers.⁴⁶ Two days after the election, the RNDDH-led coalition, which had observers in 76 percent of polling stations, raised the alarm about fraudulent votes cast by *mandataires* and politicized

observer groups.⁴⁷ In its November 12 report, the coalition documented “multiple levels of fraud implicating different political parties,” which at times benefited from “the complicity of electoral officials at higher levels to orchestrate a vast operation of electoral fraud.” The report detailed many incidents of multiple voting using *mandataire* and observer accreditations, as well as cases of votes being cast without proper identification. Some irregularities were attributable to a lack of training for polling station workers, but the RNDDH-led coalition emphasized that “the massive fraud documented in the October 25, 2015 elections could not have been achieved without the active participation of the Provisional Electoral Council.”⁴⁸ While noting improvements relative to the August 9 elections in terms of security and electoral organization, the RNDDH observers concluded that the CEP’s efforts “were insufficient to guarantee that the October 25, 2015 elections take place in accordance with democratic principles.”⁴⁹

JILAP observers similarly found that on October 25 “the presence of *mandataires* and electoral observers alike remained an important means for influencing the vote.”⁵⁰ Several registered observation groups acted in a partisan manner on October 25, JILAP reported, and both observer and *mandataire* accreditations were used by political parties to cast multiple votes. “Sunday October 25, 2015 was not the same as August 9, 2015,” JILAP noted in an October 29 communiqué, “but that doesn’t mean that everything went well.” The JILAP communiqué called on the CEP to correct the many irregularities related to the misuse of accreditations, to prevent October 25 from being a “*mandataire* election.”⁵¹

a. EU and OAS Laud October 25 Vote as “A Breath of Hope for Haitian Democracy”

As it had on August 9, the EU EOM did not wait for polling stations to close before declaring October 25 a success. At a mid-day press conference held at the Lycée Pétienville, the EU’s Valenciano lauded the work of the Haitian police and the CEP in organizing the election, and pointed to the role of *mandataires* as a positive aspect of the process. “Despite small irregularities, the electoral operations were unfolding normally,” according to the EU’s chief observer. Overall, the electoral process “has managed to clearly hear the voice of Haitians, their opinions, their wishes and their desires for this country,” Valenciano concluded.⁵²

The EU mission’s subsequent statements repeated this broadly positive assessment.⁵³ In its nine-page preliminary declaration released on October 27, the EU EOM said voting procedures “were largely respected: voters’ identity cards were always verified, and the electoral list (*liste d’émargement*) signed, with few exceptions.”⁵⁴ Overall, EU observers “evaluated positively the conduct of the vote and the vote-counting, as well as the transparency of these operations.”⁵⁵ “The October 25 election day represents a breath of hope for Haitian democracy,” Valenciano said in a press statement.⁵⁶

The OAS observer mission also offered an upbeat assessment of the October 25 elections. “The OAS Mission witnessed a significant improvement yesterday from the August 9th elections,” said Celso Amorim, head of the OAS mission, in an October 26 statement. Speaking to the press, Amorim told journalists that he was confident that “the will of the people will be respected.”⁵⁷ “Of course, we have to wait. It’s not finished, but I have a positive expectation that we’re moving into the right direction,” the Brazilian diplomat said.⁵⁸

Both international observer missions downplayed the significance of fraudulent *mandataire* voting. The OAS recognized that “challenges” arose during election day, but its October 26 press release did not even mention *mandataires*,⁵⁹ while the two-page OAS preliminary report released the same day only noted that the “saturated presence” of *mandataires* in overcrowded polling stations had been in some cases “a cause of frictions.”⁶⁰ The EU claimed the CEP had managed to “limit” the abuse of accreditations by political actors, but admitted that “the risk of double voting by *mandataires* was not totally eliminated.”⁶¹ Despite the “massive presence” of *mandataires*, the EU congratulated the CEP for its effective management of this issue because the problems observed “did not take the same proportions” as on August 9.⁶²

The omissions of the international observers concerning the use of political party and observer accreditations to cast multiple, fraudulent votes were particularly glaring, given that the EU and OAS observer missions were aware of the risks that the CEP’s massive distribution of accreditations entailed before the election.

During discussions with the CEP concerning electoral preparations, some international officials unsuccessfully pushed for online registration of *mandataires* in order to reduce the number of party representatives in polling stations and limit possible abuses. “Everyone knew from the start that there would be a market for passes,” according to one international official involved in the deliberations, which included representatives of the OAS and EU observation missions.⁶³ Yet neither the EU nor the OAS reported on the black market trade in accreditations, despite ample evidence provided by Haitian observers, journalists and political figures. Nor did the EU and the OAS comment on the CEP’s decision to revoke official observer status from UNADA, or report any cases of observers’ accreditations being used to cast fraudulent votes.⁶⁴



*EU observers at a press conference following the August 9 elections.
Photo: Alterpresse*

The two missions diverted attention from the many ways in which October 25 fell short of international standards for democratic elections (see section E(1) below) by making progress relative to August 9, such as the relative absence of election-day violence, the overriding criterion for success. The OAS and EU missions both emphasized the “significant improvements” made by the CEP and the Haitian police.⁶⁵ Presenting the low level of election day violence as a novelty in Haitian history, the EU mused that October 25 “mark[ed] a turning point in Haitian electoral culture.”⁶⁶ In reality, Haiti has experienced election days with little or no violence many times in its recent past (1990, 1995, 2000, 2006).

The August 9 vote represented a low bar for judging the electoral process. According to election observation expert Judith Kelley, celebrating an election’s “bright spots” is a rhetorical strategy commonly used by international observers in order to avoid confronting its more serious flaws: “When monitors endorse highly problematic elections, the language of ‘improvement’ often permeates their public statements.”⁶⁷

b. EU and OAS Endorse “Unacceptable” Results

The potential impact of fraudulent *mandataire* votes on the election’s outcome was central to the development of Haiti’s electoral crisis post-October 25. Haitian observers noted with dismay the large proportion of votes cast “off-list” by *mandataires* in many polling stations. In an election where only 1.5 million votes were cast and over 900,000 accreditations passes were in circulation, the influence of fraudulent *mandataire* votes was magnified by the historically low turnout (26 percent).⁶⁸ JILAP, the RNDDH-led coalition, and *Observatoire Citoyen Pour l’Institutionnalisation de la Démocratie* (Citizens Observatory for Institutionalizing Democracy or “OCID”) urged the CEP to verify the accompanying lists recording the names, CIN numbers and party affiliations of those who cast votes using accreditations (*procès verbaux de carence*) to prevent multiple voting.⁶⁹ The CEP failed to establish any procedures at the Tabulation Center for controlling and eliminating this type of fraud.

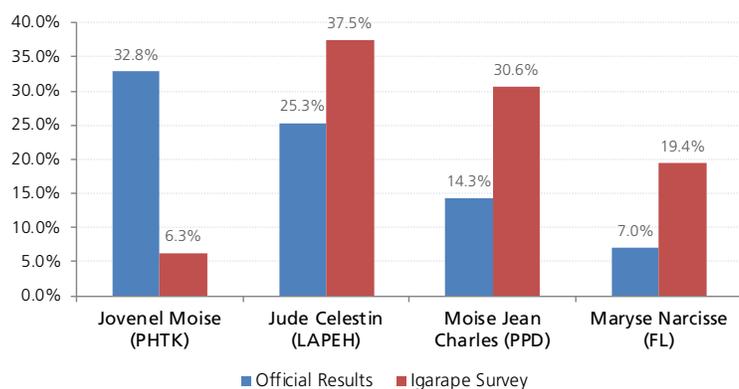
Disturbed by the evident weaknesses in the electoral system and distrustful of the CEP, a coalition of eight leading presidential candidates (“The Group of Eight” or “G-8”, as the coalition was dubbed) called for an independent investigation prior to the announcement of results. The CEP ignored the request for an investigation, as they had after August 9, and announced the preliminary results on November 5, which placed PHTK’s Jovenel Moïse (President Martelly’s handpicked successor) in first place with 33 percent of the vote and LAPEH’s Jude Célestin in second place with 25 percent. CEP member Jaccés Joseph refused to sign the official results, declaring that he doubted the integrity of the results because allegations of fraud had not been

thoroughly investigated. The G-8 declared that the results were “unacceptable,” and called on its supporters to contest the electoral fraud in the streets.

Both international observer missions endorsed the CEP’s preliminary results. On November 6, the OAS said the results were “consistent with what the OAS Mission observed on October 25.”⁷⁰ The OAS mission recognized that “irregularities” involving *mandataires* had become “a source of concern,” but urged political parties to lodge formal complaints through the proper channels, rather than mobilize in the streets.⁷¹ The EU EOM also endorsed the preliminary results for the presidential race, despite its own observations indicating that *mandataires* could have had a decisive impact on the outcome. EU observers reported that *mandataires*, observers and other off-list voters had cast approximately 20 percent of total votes. In the populous Ouest department, home to over 40 percent of Haiti’s registered voters, off-list votes accounted for 40-50 percent of total votes, according to the EU EOM’s own estimates.⁷²

The Core Group hailed the elections as a success and declared their support for the completion of the process. The U.S. viewed the October 25 elections as “significantly better” and “a marked improvement over what took place in August,” explained U.S. State Department Special Coordinator for Haiti Kenneth Merten on November 16, 2015. Merten highlighted the “important role” played by international election observers in the electoral process, who were providing “added accountability to the accuracy of the results.” The OAS observers (whose mission was funded in large part by the U.S.) were singled out for praise: “They have been key observers in the last several Haitian elections and we are very happy they are there.” When asked if the election results were still credible even though over 900,000 *mandataire* accreditations had been distributed and in many cases sold to the highest bidder, Merten defended his position with a reference to the OAS EOM: “Yes, at the end of the day, we believe that the announced preliminary results – to us, to the OAS and, frankly, to our partners in the Core Group – are largely credible.”⁷³

On November 19, a survey by the Igarape Institute cast doubt on the fidelity of the official results. The Brazil-



based research center’s survey of over 1,800 voters in 135 voting centers on October 25 found that support for Jovenel Moise’s competitors (Jude Célestin, Moise Jean-Charles and Maryse Narcisse) was significantly higher than the official results indicated. The survey found that 37.5 percent of respondents had voted for Célestin, 30.6 percent voted for Jean Charles and 19.4 percent for Narcisse, while the governing party’s Moise was the choice of just 6.3 percent of survey respondents.⁷⁴ Significantly, the survey excluded political party *mandataires* from its sample of voters.⁷⁵

c. The EU and the BCEN Investigation: An “Extreme Permissiveness” for Irregularities and Fraud

Calls for an independent investigation multiplied after an investigation by the BCEN revealed pervasive irregularities. Two presidential candidates (Dr. Maryse Narcisse of *Fanmi Lavalas*, who finished in fourth place, and Vilaire Cluny Duroseau of MEKSEPA) challenged the preliminary results at the BCEN. In response, BCEN judges reviewed a non-random sample of 78 tally sheets on November 21-22, 2015 and found that all 78 sheets featured irregularities.⁷⁶ The BCEN’s ruling, which resulted in votes from all 78 tally sheets examined for the presidential race being excluded, confirmed the suspicions of many Haitian observers.

The EU mission, in response, contested the CEP Tabulation Center’s decision to exclude votes from all 78 sheets from the final results, arguing that “quasi-totality” of irregularities were not serious enough to warrant exclusion. Only three of the 78 sheets showed any evidence of fraud, according to the EU analysis, released on December 19, 2015.⁷⁷

Joris Willems, a Belgian observer with the JILAP delegation, analyzed the same 78 tally sheets and reached a different conclusion. While acknowledging that the BCEN had in some cases applied a rigid standard to irregularities that likely represented excusable mistakes, 49 tally sheets contained serious irregularities that merited either exclusion or further verification. Far from reasserting the general soundness of the electoral process, Willems concluded, the counter-analysis showed “an extreme permissiveness of the EU EOM with regards to the irregularities found by the BCEN.”⁷⁸

U.S. Ambassador Peter Mulrean seized on the EU’s analysis to dismiss Haitian observers’ accounts as unfounded. In a December 2015 interview, Mulrean said: “We hear talk of massive fraud, but we have not yet seen proof. Our embassy had observers deployed throughout on election day. They did not see massive fraud. The observation missions of the European Union and OAS, who had certain international observers on the ground, did not see massive fraud.” When asked about the evidence of fraud and irregularities found by the BCEN, Mulrean argued that such concerns were overblown, referring to the EU’s analysis of the 78 tally sheets. If there were growing doubts about the elections’ credibility among Haitians, Mulrean explained, it was because “the same accusations have been repeated a hundred times.”⁷⁹ Mulrean’s statements provoked outrage among Haitian observers and political parties, who viewed the Ambassador’s remarks as an attempt to unduly influence the deliberations of a newly-appointed commission, tasked with evaluating the October 25 election.⁸⁰

d. Spinning the Independent Electoral Evaluation Commission’s (CEEI) Ambiguous Findings

The widespread irregularities uncovered by the BCEN did not convince the CEP to conduct a deeper review of the election’s flaws. Final results for the presidential race were published on November 24, with only minor revisions. The EU and OAS observation missions committed to observing the next round of elections and urged Haitian voters to participate. Street protests against electoral fraud and calls for an independent investigation intensified after the final results were published.

In response to the concerns of a broad spectrum of civil society, encompassing human rights groups, Catholic bishops, Protestant pastors, political parties and observer groups, President Martelly postponed the final round of elections (slated for December 27, 2015) and appointed the Independent Electoral Evaluation Commission (CEEI) on December 22, 2015.

In its report released on January 3, 2016, the CEEI declared: “The testimonies gathered were unanimous in recognizing that the 25 October 2015 elections were tainted by irregularities, and that several candidates benefited, through their representatives at polling stations, from these irregularities comparable to fraud.”⁸¹ The CEEI examined a sample of 1771 randomly-selected tally sheets and found that 92 percent of tally sheets had at least one “serious irregularity,” and 54.1 percent had three or more serious irregularities. But hampered by a limited mandate and a short timeframe, the CEEI was either unable to determine or unwilling to state the impact of fraud on the legitimacy of the results. Instead, the CEEI ambiguously concluded that the October 25 vote was marked by “grave irregularities” that were “akin to fraud” and made a series of recommendations to be implemented before the final round of elections.⁸²

The day after the release of the CEEI’s report, the EU’s Jose Antonio de Gabriel denied that the pervasive irregularities found by the commission in its sample of 1771 tally sheets were “grave” or “akin to fraud.” De Gabriel claimed that the CEEI had only uncovered tally sheets with a few incorrect CINs or “two or three missing signatures.” The “immense majority” of irregularities were “completely human and understandable errors” made by polling station workers filling out forms at the end of a long election day, according to de Gabriel.⁸³ In de Gabriel’s view, the CEEI report vindicated the counter-analysis of the 78 tally sheets, which had already “proved” that only minor irregularities attributable to “fatigue, lack of motivation or lack of training” had occurred on October 25.⁸⁴ The CEEI provided no support for the claims of “massive fraud” leveled by Haitian observers and no justification for scrapping the election results, the deputy chief observer concluded.⁸⁵

De Gabriel's comments misrepresented the CEEI report's findings. The grave irregularities highlighted by the CEEI report included the systematic exploitation of *mandataire* accreditations to cast fraudulent votes on election day:

The mobilization of an exaggerated number of *mandataires* (more than 900,000) who were able to vote outside of their polling stations ... was the cause of many irregularities or fairly serious problems during the electoral activities of 25 October 2015. This led, above all in polling stations in urban areas, to the manipulation of votes and the purchasing of accreditation cards by political parties having the financial means. Many *mandataires*, benefiting from the complicity or negligence of polling station workers, voted at multiple polling stations.⁸⁶

The CEEI provided yet more evidence that votes cast by *mandataires* had significantly swayed the outcome. In over a quarter (27.2 percent) of the tally sheets in the Commission's sample, "off-list" votes accounted for more than 15 percent of total votes. Although the CEEI was unable in its short mandate to determine how many fraudulent votes were cast by *mandataires* and other off-list voters, the Commission warned that it was potentially quite large.⁸⁷ The CEEI also found clear indications that voting without proper documentation was rife.⁸⁸

The OAS mission was more willing to admit that "irregularities" involving *mandataires* had "generated problems" on October 25, but it too insisted that the grave problems documented by the CEEI had not affected the final outcome of the presidential election. "Despite these irregularities," the OAS claimed in a January 7 communiqué, "the information gathered by EOM/OAS on the ground did not show inconsistencies with the final results presented by the CEP in terms of which two candidates go to the run-off."⁸⁹

e. OAS and EU Give Green Light for Controversial January 24 Vote Despite Boycotts

Despite widespread concerns about fraud and irregularities raised by the CEEI, President Martelly set January 24 as the date for elections, which did not leave adequate time to enact the Commission's recommendations. The Core Group supported Martelly's decision to quickly hold elections and U.S. officials pressured second-place finisher and G-8 member Célestin to drop his boycott of the second round of the presidential race.⁹⁰ The OAS EOM welcomed the January 24 date as "a step in the right direction."⁹¹ Nearly every major sector of Haitian civil society opposed the rush to elections without a more in-depth evaluation of electoral fraud. As election-day approached, protests grew larger and several members of the CEP resigned.⁹² On January 22, faced with massive civil society opposition, the CEP suspended elections indefinitely.⁹³



*A demonstration against the scheduled presidential runoff in Port-au-Prince.
Photo: Hector Retamal/Agence France-Press*

At the peak of the electoral crisis, both international observer missions echoed the statements of the Core Group and reiterated that independent verification of the broadly-contested results was unnecessary. When the wave of protests and denunciations from civil society and in the press forced the suspension of the final round of elections, the EU EOM reiterated its support for the Haitian electoral process and called on Haitians to respect the electoral results.⁹⁴

On the eve of the elections' suspension, Gerardo de Icaza, the OAS director of the Department of Electoral Cooperation and Observation, reiterated his faith in the

outcome: “We reached the conclusion that despite the irregularities, and despite the fact that the process could be significantly better, the results of the two people who passed to the second round would not change.”⁹⁵

f. The OAS Quick Count, a Statistical Sleight-of-Hand?

The international observers justified their confidence in the official results by reference to the OAS mission’s “quick count.” The quick count drew on end-of-day tallies recorded by OAS observers from a statistically-representative sample of ballot boxes to establish an independent estimate of final election returns. Since their statistical projection yielded results similar to the official vote totals announced by the CEP, the OAS argued that the vote had not been manipulated.⁹⁶

The trouble with the OAS’ conclusion is that a quick count does not measure fraud or other irregularities committed during the voting itself. Quick counts, if done well, can assess whether election results have been manipulated *after* the count’s data is collected, not before. In this case, the data was collected after the polls closed and the votes were counted. But the October 25 *mandataire* fraud, along with votes cast without proper or with falsified identification occurred throughout the day, and ended before the votes were counted. The OAS quick count recorded the votes in the sample ballot boxes at the end of the day, but it could not provide any insight into how the ballots got into the boxes or whether they were legitimate. Using the quick count to counter evidence of *mandataire* fraud is the statistical equivalent of placing new locks on the barn door after the horse has escaped.



OAS Chief Observer Celso Amorim speaking to journalists on October 25, 2015. Photo: Gerardo de Icaza

When asked if the quick count proved the legitimacy of the vote, Gerardo de Icaza acknowledged that it only showed that results were “consistent with the counting at the voting centers.”⁹⁷ Nonetheless, de Icaza and other international election observers continued to cite the quick count as evidence that the vote had not been manipulated and that Haitian observers’ claims of “massive fraud” were unfounded.⁹⁸

D. The “International Community” Versus Verification

1. The Uses of International Observers in Post-Martelly Haiti

Without an elected successor to take President Martelly’s place at the end of his term on February 7, negotiations between the various branches of government began over the formation of a transitional administration. Although parliament is usually only sworn in once the electoral cycle is complete, 92 parliamentarians elected through the contested elections on August 9 and October 25 took office on January 11. On February 5, President Martelly reached an agreement with Chancy Cholzer and Jocelerme Privert, the presidents of the Chamber of Deputies and the Senate, respectively. The accord confirmed that President Martelly would leave office on February 7 and laid out a process for establishing a provisional government.⁹⁹ Jocelerme Privert was elected provisional president by the National Assembly and was sworn in on February 14 with a mandate of 120 days to restore public confidence in the stalled electoral process. Enex Jean-Charles was approved as

Prime Minister on March 25, and on March 30 a new CEP was established.¹⁰⁰ President Privert's 120-day term ended June 14, but pro-Martelly lawmakers refused to hold quorum in parliament to extend Privert's mandate.¹⁰¹

As Haiti debated the formation of a verification commission, the U.S. and its Core Group allies used the positive assessments of OAS and EU EOMs to argue that verification was a waste of time. At a UN Security Council meeting on March 17, U.S. Ambassador to the UN Richard Pressman called for Haiti's elections to be completed as quickly as possible, noting that "neither we nor the international observation missions sent by the European Union and the Organization of American States found proof of massive and widespread fraud." Pressman denounced Haitian observers who had "spread a narrative ... of widespread fraud," which was "not just unhelpful but harmful." Representatives of France and the EU both cited the EU EOM's assessment of October 25 to argue that Haiti's second-round presidential elections should be held on the basis of the announced results. Representatives of major donor nations, meanwhile, underlined "the importance of completing the electoral cycle without further delay" and reminded Haiti that their continued financial support was hanging in the balance.¹⁰² The International Monetary Fund, the Inter-American Development Bank and the EU reduced or withheld budget support to the interim government, because "the political transition in Haiti has taken longer than expected." U.S. diplomats in Haiti reiterated that there was "an opportunity cost for political machinations."¹⁰³

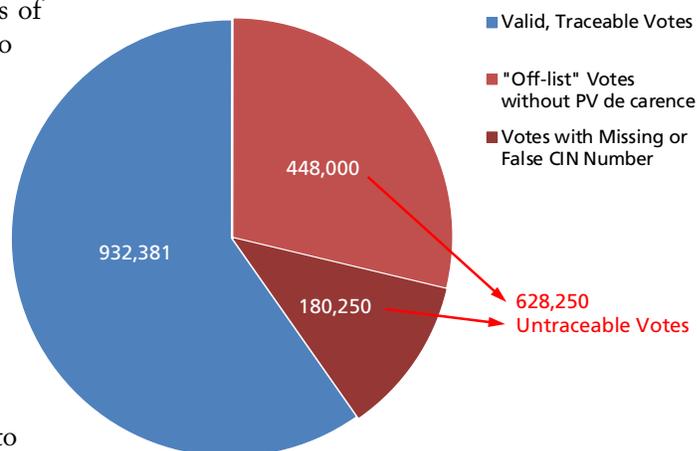
President Martelly's PHTK party similarly capitalized on the international observers' positive reports to dismiss accusations of fraud and attack the verification commission. In an April 2016 op-ed in the *Miami Herald*, PHTK presidential candidate Jovenel Moïse argued that his victory was legitimate, since the OAS and EU EOMs, as well as the U.S. government, had "deemed the results to be fair and the allegations of widespread electoral fraud highly exaggerated."¹⁰⁴ PHTK spokesperson Rudy Hériveaux insisted that there was no reason to question the results and no need for any further verification, since international observers had been "unanimous" in recognizing that "the elections unfolded perfectly."¹⁰⁵

In response to the continuing demands of civil society and political parties, President Privert created the Independent Commission for the Evaluation and Verification of Elections (CIEVE) on April 29 over the objection of pro-Martelly legislators and international donors.¹⁰⁶

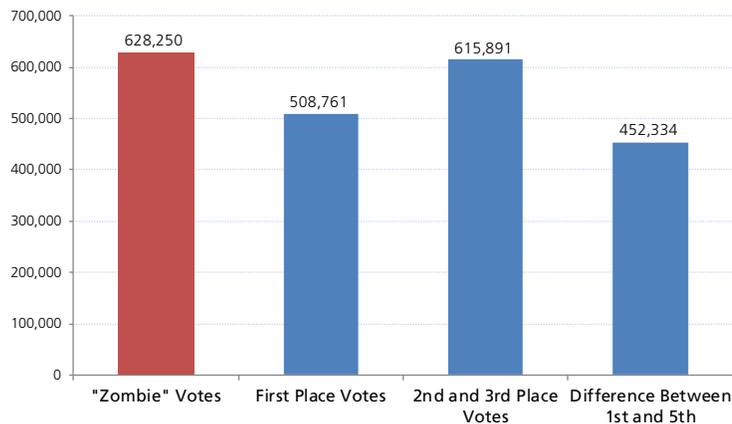
2. Commission for the Evaluation and Verification of Elections (CIEVE): 40 percent of Votes Were "Zombie Votes," Requiring New Presidential Elections

The CIEVE's mandate gave the Commission 30 days to submit a report to "restore confidence in the [electoral] process and ensure the accuracy of the results."¹⁰⁷ The CIEVE analyzed a sample of 3,235 tally sheets and other "sensitive materials," drawn from the 12,939 polling stations whose tallies were included in the final results of the October 25 presidential election.¹⁰⁸ The CIEVE also reviewed certain BCEN decisions concerning the legislative races based on complaints submitted by candidates.

The Commission's report, released on May 30, concluded that "the electoral process was marred by serious irregularities, grave incoherencies and massive fraud."¹⁰⁹ Using the documentary evidence from its sample of polling stations, the CIEVE revealed that 40 percent of the votes considered valid by the CEP in the presidential race were "untraceable," i.e. votes that could not be traced to any living voter.¹¹⁰ Ballots cast using the over 900,000 blank



accreditation cards distributed by the CEP, which allowed the cardholder to vote at a polling station without being on the electoral list, were the largest source of untraceable votes (28.7 percent). The other major source of untraceable votes (11.5 percent) came from voters who cast a ballot using a fake or otherwise invalid CIN numbers. The CIEVE found that only nine percent of the tally sheets met the criteria for acceptability laid out in the Electoral Decree.¹¹¹ The Commission stated that violations of the electoral decree on October 25 “were committed systematically (well-organized) and with the intention of cheating (fraud)” and in some cases, “linked directly to the electoral apparatus itself.”¹¹²



The CIEVE concluded that the presidential results were badly distorted by what Commission President François Benoit called “zombie votes,” the total number of which – 628,000 out of 1,538,393 votes cast – “exceeded the legitimate votes acquired by politicians.” As the report explained, the number of untraceable votes was “higher than the number of votes received by the first-place candidate according to the results of the CEP, higher than the total number of votes received by the second- and third-place candidates, and higher than the difference between the first- and fifth-place candidates.”¹¹³

In light of its findings, the CIEVE recommended that the new CEP discard the October 25 results and organize a new presidential election. The CIEVE identified 27 decisions by the BCEN and BCED that merited an impartial review and suggested a host of reforms to Haiti’s electoral machinery to prevent a repeat of October 25’s problems.¹¹⁴

3. CIEVE’s Conclusions Consistent with Findings of Prior Electoral Commissions and Haitian Election Observers

The CIEVE’s conclusion that fraud and irregularities undermined the integrity of the October 25 election was consistent with the findings of earlier investigations and observation reports. According to the largest coalition of Haitian observers, led by RNDDH, the CIEVE report “revealed what several observation organizations had already painstakingly found in regards to the August 9 and October 25, 2015 elections.”¹¹⁵ The level of irregularities found by the CIEVE was also consistent with prior examinations of electoral records at the CEP’s Tabulation Center by the BCEN and the President Martelly-appointed CEEI.

What distinguished the CIEVE’s findings from those of the CEEI and Haitian observer reports¹¹⁶ was that it measured the influence of *mandataire* votes and votes cast without proper documentation on the final results, using the records of the CEP’s Tabulation Center. Questions about the impact of fraud and irregularities on the electoral outcome had been raised repeatedly after October 25, but neither Haitian observer groups nor the CEEI established the precise scale of these phenomena.¹¹⁷

The CIEVE finally laid to rest any confusion about the significance of *mandataire* votes in the election’s outcome. Off-list votes accounted for 29 percent of all votes cast, but only 3.6 percent of the corresponding *procès verbaux de carence* (a polling station’s record of the names, CIN numbers and party affiliations of those who cast votes using accreditations) could be found in the Tabulation Center’s records. Without these lists, there was no way to verify who had cast off-list votes and thus control for multiple voting. The nearly one-third of total votes cast (448,000) using political party and observer accreditations were therefore untraceable. The CIEVE report declared that accreditation passes were “the link responsible for breaking the electoral process’ chain of surveillance.”¹¹⁸

Notwithstanding its contribution, the CIEVE report had several important shortcomings. The most glaring inconsistency was that the CIEVE called for rerunning only the presidential election, even though the October 25 legislative races were logically just as compromised. The CIEVE interpreted its mandate narrowly, which restricted the Commission to reviewing contested BCEN decisions for the legislative elections. The CIEVE thus failed to address the egregious use of fraud and violence during the August 9 elections, which acted as an anti-democratic process of “pre-selection” for many deputy and senate seats going into the October 25 elections.¹¹⁹ The CIEVE also did not attempt to establish which political parties or candidates were most involved in electoral fraud, limiting the chances for accountability.¹²⁰ Examining in greater detail the statistical sample of tally sheets might have allowed the CIEVE to determine if certain voting centers had high levels of off-list voting, and whether particular candidates’ or parties’ vote totals were correlated with a higher proportion of “off-list” votes.

a. EU Observers Withdraw in Protest, Harshly Criticize CIEVE Report

The CIEVE’s conclusions were broadly accepted by election observers, journalists, civil society and – with the exception of former President Martelly’s PHTK – political parties in Haiti. But the international community reacted coldly to the CIEVE report.¹²¹ The U.S. stated that it “regretted” the decision to rerun elections and announced that it was withdrawing election funding. U.S. State Department spokesperson John Kirby relied on the international observers’ views to justify its position: “We’ve made no bones about the fact that we had concerns about the way the process was unfolding ... I think it’s important to remember that we financially supported the 2015 elections, and those results we, the European Union, the Organization of American States all found to be credible.”¹²²

Shortly after the CEP accepted to rerun the presidential race, Chief Observer Valenciano announced on June 8 that the EU EOM was withdrawing from Haiti in protest. Valenciano reiterated the mission’s view that the October 25 elections were “globally consistent with international norms” and charged that the work of the CIEVE contained “numerous factual, legal, conceptual and methodological weaknesses.”¹²³

The EU EOM elaborated on Valenciano’s criticisms in a 15-page attack on the CIEVE and its findings. The lengthy EU analysis accused the CIEVE report of echoing “the [unfounded] allegations of fraud made by losing candidates” and “certain civil society organizations” in the days after October 25. The EU claimed the Commission had “ignored both the letter and the spirit of the electoral decree” and that its statistics on irregularities were “erroneous,” “unreliable” and based on “a misunderstanding, intentional or unintentional, of the Haitian electoral system.”¹²⁴

The EU’s strongest critique was that the CIEVE had exaggerated the number of “untraceable” votes by artificially depressing the number of *procès verbaux de carence* it found. The EU pointed to the discrepancy between the proportion of *procès verbaux de carence* found by the CIEVE in its sample of tally sheets (3.6 percent) versus the proportion found by the CEEI (40 percent) and claimed that this difference was unjustifiable. A greater number of *procès verbaux de carence* could have been located at the Tabulation Center, but the CIEVE refused to retrieve them, the EU alleged.¹²⁵ This “devastating” oversight raised serious questions about “the will or the diligence” of the CIEVE in accomplishing its work and “radically weakened the credibility of the principle conclusion of its analysis,” according to the EU.¹²⁶ The EU undermined its argument with its admission that the *procès verbaux de carence* may have been stored at the Departmental Election Bureaus or lost in the intervening months between the CEEI and the CIEVE.¹²⁷

The EU argued that CIEVE’s statistics on votes cast using false or missing CIN numbers were not reliable, since the Commission’s technicians may have intentionally made errors to bias the sample. The EU criticized the CIEVE for not conducting a double entry of data (having two different technicians each enter the same data) to control for human errors. CIEVE’s technicians were politically motivated, the EU suggested, and may have taken advantage of their position to wilfully introduced errors in order to inflate the number of votes cast with false or incorrect CINs.¹²⁸ But the EU EOM could not provide any evidence in support of this extraordinary claim, because it did not to observe the CIEVE’s work in the Tabulation Center. In reality, the

CIEVE's methodology allowed for a generous margin of error, making data entry mistakes unlikely to have distorted the Commission's statistics on votes cast without proper documentation. The CIEVE considered a CIN number as incorrect only if less than 10 out of 14 (or 17) numbers on a tally sheet matched the official registry. As a Commission member explained, the obvious reason that single-entry of data was used was that the CIEVE's technicians did not have time to do a more extensive analysis, but the EU did not consider the time constraints the Commission was working under.¹²⁹

The EU EOM's sweeping accusations prompted an angry reply by the CIEVE's technical branch. The mission's attack on the CIEVE constituted a "partisan, biased and untimely" intervention in Haiti's electoral process, which the technical branch argued violated international observers' stated commitments to impartiality, neutrality and respect for national sovereignty¹³⁰ (see section E(2) below). The EU EOM was acting "not like an observation mission seeking to preserve the integrity of an electoral process, but rather like a politically-interested and -motivated actor." Over the course of the 2015 elections, the technical branch argued, the EU EOM had "acted as an ally of the forces that threaten democracy."¹³¹

b. OAS Mission Reacts to the CIEVE: A Civil and Constructive Response

The OAS EOM released its own response to the CIEVE report on August 2, 2016, which struck a different tone. "It is clear that many of the problems with the 2015-2016 Haitian electoral process stemmed from the figure of the party representative," the OAS noted. Although the OAS defended the results by referring to its quick count, the mission recognized that there was evidence of vote buying and voter substitution. The proliferation of political parties and the distribution of blank accreditations had resulted in "excessive numbers of political party representatives who were authorized to vote at polling places other than those where they were registered." The OAS EOM admitted that this "irregularity" along with other "significant organizational shortcomings" on October 25 had made it "difficult to control how many times these party representatives voted."¹³²

While identifying several limitations of the CIEVE report, the OAS did not contest the decision to rerun the presidential election, concentrating its response on making recommendations for the new elections going forward. The OAS' civil and constructive tone marked a positive step for its observation of the upcoming October 9, 2016 elections.

E. Observing the Observers: The Question of Bias

1. EU and OAS Endorse Elections as Complying with International Standards

A principal function of observation missions is to ensure that the monitored elections comply with the country's obligations under national and international law. Yet, despite the widespread and documented violations of voters' rights, the EU and OAS endorsed both elections as meeting international standards.

The foundation for international standards regarding democratic elections is Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Article 25 provides for "genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters."¹³³ The ICCPR has been ratified by Haiti, which means that it is part of Haitian law according to the Constitution, and forms part of the criteria used by EU and OAS observer missions when evaluating electoral processes.¹³⁴

Haitians' voting rights under the ICCPR were systematically violated during the 2015 elections. During the August 9 vote, voters' rights to freely express their political preferences at the ballot box were undermined by widespread irregularities, violence and voter intimidation, as Haitian observers documented and the CEP

belatedly confirmed. The EU's own observers reported unrest and voter intimidation at 40 percent of voting centers. In General Comment 25 on the ICCPR, the UN Human Rights Council specified that voters “must be free to vote for any candidate for election ... without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will.”¹³⁵ Nonetheless, both the OAS and the EU EOMs claimed that the August 9 elections met international standards.

The rampant *mandataire* fraud on October 25 constituted another violation of Haitian voters’ rights, in particular their right to equal suffrage. As General Comment 25 to the ICCPR emphasizes, equal suffrage means that the “method of allocating votes should not distort the distribution of voters or discriminate against any group.”¹³⁶ “The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another.”¹³⁷ The black market for accreditation passes favoured parties with the financial means to buy passes and mobilize large numbers of *mandataires*. This resulted in a distorted allocation of votes and violated the principle of one person, one vote.

The EU EOM’s guidelines require the mission to consider both mitigating and aggravating factors when evaluating whether an election meets international standards. Factors that should lead to a critical finding include when problems are: a) foreseeable, b) of regional or national scale, c) not acknowledged by authorities despite evidence of their occurrence, d) the result of undue government or partisan interference in the process, e) addressed using an opaque problem-solving procedure, f) not appropriately and lawfully addressed as they are identified, g) cause diminished public confidence in the electoral system, and/or h) incidents of coercion and violence.¹³⁸

Most if not all of these aggravating factors apply to the August 9 and October 25 elections, meaning that the EU EOM should have concluded that they did not comply with international standards. The electoral problems were foreseeable, as opposition parties and human rights organizations warned prior the elections of problems arising from the closeness of the CEP to the Martelly administration, which they feared would unduly influence the CEP’s will to enforce election procedures. The warnings turned out to be correct, with allegations that Martelly’s block of parties most often instigated the violence and won in most of the polling stations impacted by electoral violence and chaos.¹³⁹ Most importantly the CEP’s failure to acknowledge and adequately address the national scale of fraud and violence on August 9 and October 25 diminished public confidence in the electoral process and election results.¹⁴⁰

2. International Observers Neglected Their Own Standards for Electoral Observation

International observers not only failed to uphold international standards, they neglected their own standards and guidelines for electoral observation. For instance, the EU’s Code of Conduct for Election Observers states that observers must “refrain from making any personal or premature comments about their observations to the media or any other interested persons.” The EU’s Valenciano’s comments to the media on August 9 about the legislative elections unfolding in “near-total normalcy” (while his observers hid in their car) and “a breath of hope for Haitian democracy” were premature and misrepresentative.¹⁴¹

The EU EOM’s downplaying of *mandataire* fraud and voting without proper documentation on October 25 contradicted their electoral observation handbook. The EU handbook instructs observers to be wary of vote buying, multiple voting and voting without proper documentation. “Such practices, or even allegations of them,” the Handbook notes regarding vote buying, “are very serious and can undermine the credibility of the entire election process.”¹⁴² The EU handbook also tells observers to make sure that a register of all voters is maintained, as a means of preventing multiple voting, suggesting that the EU EOM was wrong to criticize the CIEVE for the importance it placed on the *procès verbaux de carence*.¹⁴³

The practice of the OAS mission also deviated significantly from the guidelines laid out in the OAS observers’ manual. The OAS manual, for instance, warns that quick counts “are based on a relatively small sample of observers” and “should be interpreted with caution, as one more source of information used in evaluating the electoral process.”¹⁴⁴ Yet the OAS EOM based its endorsement of the October 25 elections primarily on the quick count.

Both the OAS and EU observer manuals state that observation missions must collect election-related information from a wide range of sources, including domestic observer organizations, and should give their opinion on the credibility of alleged electoral abuses.¹⁴⁵ The Declaration of Principles for International Election Observation, which both the EU and the OAS have endorsed, states that international observers “should welcome information provided by [domestic election observers],” which forms “an important complement to the findings of international election observation missions.”¹⁴⁶

During the 2015 elections, Haitian observer groups were well-placed to provide information and document incidents that international observers might miss. Haitian organizations deployed significantly more observers (a combined 2940 observers with JILAP and the RNDDH coalition, versus 205 observers with the EU and OAS missions) and visited more polling stations (EU visited 1.84 percent of BVs; OAS visited 32.3 percent of CVs; RNDDH visited 76.59 percent of CVs) than the international EOMs.¹⁴⁷ In addition, international observers wore vests that identified them as election observers, while the CEP prohibited Haitian observers from doing so.¹⁴⁸ This heightened visibility, combined with their general lack of Haitian Creole fluency,¹⁴⁹ may have made it harder for OAS and EU observers to catch *mandataires* and others engaged in fraud or other illicit activities than for Haitian observers.¹⁵⁰

International vs. National Observers for August 9, 2015 Legislative Election

Name of Mission	National or International	Number of Observers on Election Day	No. of Polling Stations (BV) or Voting Centers (CV) Observed	Percent of Total Polling Places Observed	Average No. of Observers per Polling Place Observed
EU	International	80	253 BVs	1.8%	0.32 per BV
OAS	International	28	171 CVs	11.3%	0.16 per CV
JILAP	National	1,700	n/a	n/a	n/a
OCID	National	1,700	1,273 BVs	9.3%	1.34 per BV
RNDDH ¹	National	1,500	724 CVs	48.1%	2.07 per CV

1. RNDDH observed in a coalition with CNO & CONHANE

International vs. National Observers for October 25, 2015 Legislative and Presidential Election

Name of Mission	National or International	Number of Observers on Election Day	No. of Polling Stations (BV) or Voting Centers (CV) Observed	Percent of Total Polling Places Observed	Average No. of Observers per Polling Place Observed
EU	International	80	253 BVs	1.8%	0.32 per BV
OAS	International	123	487 CVs	32.3%	0.25 per CV
JILAP	National	1,300	n/a	n/a	n/a
OCID	National	1,830	1401 BVs	10.2%	1.31 per BV
RNDDH ¹	National	1,640	1155 CVs	76.6%	1.42 per CV

1. RNDDH observed in a coalition with SOFA, CNO & CONHANE

Note: There were 1,508 voting centers (CVs) containing 13,725 polling stations (BVs) during the 2015 elections.

With very few exceptions, however, the EU and OAS neglected the reports of Haitian observers or journalists in their assessments of the elections. Nor did the international observers explain why documented incidents of fraud, violence and voter intimidation provided by these sources were not credible.

3. Explaining Bias: The Political and Economic Entanglements of OAS and EU observers

The performance of the OAS and EU EOMs during the 2015 elections raises serious questions about the impartiality, objectivity and transparency required of international observers.¹⁵¹ Concerns of bias in international election observation are longstanding, according to political scientist Judith Kelley. The “most important” problems of electoral observation, Kelley argues, arise from the “political entanglements” and “practical constraints” of the observers themselves, which “compromise not only their effectiveness, but also, more importantly, their long-assumed neutrality.”¹⁵²

The OAS and EU observers' assessments may have been unduly influenced by the political and economic agendas of certain Core Group member-states. The presidential and legislative elections strongly favoured President Martelly's PHTK and its political allies, an outcome that accorded with the interests of the Core Group. Haiti's major international donors (the U.S., Canada, France, Spain) were favourable to President Martelly's foreign investment-oriented development agenda and were eager to see it continued by the next administration.¹⁵³ The U.S. and Spain, in particular, maintained close relations with President Martelly's government and U.S. diplomats frequently emphasized the need for political stability.¹⁵⁴

The Core Group – and the U.S. in particular – was also inclined towards presidential electoral results that kept out of the second round the two candidates most closely associated with former President Jean-Bertrand Aristide (Pitit Dessalines' Moïse Jean-Charles and Fanmi Lavalas' Maryse Narcisse), regardless of fraud.¹⁵⁵ For the U.S., domestic political concerns contributed to its preoccupation with avoiding a verification commission

and completing the elections on schedule, according to many political analysts.¹⁵⁶ The U.S. retaliated against the Haitian government for re-running the presidential elections by withdrawing election funding.¹⁵⁷



U.S. State Department Special Coordinator for Haiti, Kenneth Merten, a key player in Haiti's 2015 electoral crisis. Photo: Le Nouvelliste

Powerful member-states wielding influence within inter-governmental organizations can cause observers to produce biased electoral assessments. In the case of the OAS and the EU – where Core Group member-states exercise significant influence – both organizations have strict supervisory mechanisms for the drafting of observer missions' official statements.¹⁵⁸ This supervision by member-states creates room for political interventions, which can lead observation missions to “tone down their criticisms” or even “falsely endorse fraudulent elections.”¹⁵⁹ Not surprisingly, the positions of the OAS and EU observers closely mirrored those of the Core Group throughout the 2015 elections.

The CIEVE technical branch noted the similarity between the EU EOM's positions and those of the international powers in Haiti:

It is obvious that the behaviour of the EU EOM did not prioritize principles of electoral integrity. The EU EOM chose, if not to defend partisan political interests, then at least to preserve the economic interests of the donors who have never concealed their impatience to finish as quickly as possible the Haitian electoral process that, according to them, cost more than \$100 million US.¹⁶⁰

Geopolitical considerations and calculations of interest had been allowed to supersede international standards in the EU EOM's evaluation of the election, the technical branch argued. It was only “partisan blindness” that prevented the EU EOM from recognizing the evident flaws in the elections.¹⁶¹

One constraint on the OAS and EU missions was their financial dependence on the same large donor nations that were financing the elections. The U.S. contributed \$33 million to the 2015 elections budget, which combined with the contributions of other Core Group member-states came to \$60 million in total. The U.S. and Canada also provided the lion's share (87 percent) of the OAS mission's \$2.2 million budget, with the U.S. providing more than half (\$1.15 million) of the mission's funding; Canadian and American officials were influential in the top levels of the mission.¹⁶² Spain, meanwhile, played a leading role in the EU EOM.¹⁶³

The flawed assessments of the OAS and EU EOMs demonstrate that one cannot assume that a firewall separates the international observer missions from the interests of powerful member-states.¹⁶⁴ Observers deployed by inter-governmental organizations are “those with the greatest political baggage and least autonomy.”¹⁶⁵ “It is somewhat paradoxical” Kelley remarks, “that organizations like the EU tend to observe elections in countries in which they have some stake, either through foreign aid or political relations, because these are exactly the types of elections in which monitors face greater political constraints in formulating their assessments.”¹⁶⁶

G. Recommendations

The following is a summary of recommendations to international electoral observation missions made by Haitian electoral observers,¹⁶⁷ which should be implemented in Haiti's upcoming elections (scheduled for October 9, 2016) and in future elections:

1. Respect Haiti's sovereignty and refrain from all interference in the electoral process, including by economic means such as funding.
2. Improve electoral observation missions' independence and professionalism, not only in observations, but also in public communication about the observation results.
3. Meet with Haitian civil society electoral observation missions before and after the elections to learn their perspective.
4. Improve the consideration of analyses, opinions and proposals of Haitian civil society expressed in consultations.
5. Support a constructive dialogue between political parties and Haitian civil society organizations for solutions to political matters.
6. Facilitate education campaigns and involvement of civil society organizations to make elections a civic activity.
7. Encourage participation of women candidates to meet the constitutional guarantee of 30 percent female representation in all aspects of political life.
8. Support investigation and sanctions provided by the electoral decree and the Haitian Constitution for candidates, partisans, political parties and electoral staff implicated in fraudulent operations.

Endnotes

1. Franklin Midy, «Partis politiques aux élections en Haïti», *Les partis politiques dans la construction de la démocratie en Haïti*, Sous la direction de Laënnec Hurbon, Avec la collaboration de Alain Gilles et Franklin Midy, (International IDEA: 2014); Cf. Peter Hallward, *Damming the Flood*; Alex Dupuy, *The Prophet and Power: Jean-Bertrand Aristide, the International Community, and Haiti* (2007).
2. In May 2000, OAS observers initially declared Haiti's legislative elections a success. The OAS mission, however, later objected to the method used by the CEP to calculate vote totals for eight Senate seats, precipitating a withdrawal of international support for Haiti's electoral process. The OAS' criticisms also served as a pretext for a drastic (and in the case of the Inter-American Development Bank, illegal) reduction of development aid to the Haitian government. The \$500 million aid embargo contributed to the downfall of the second Aristide administration in the 2004 coup d'État, which was followed by a UN military occupation that has yet to end. David Rosnick, *The OAS in Haiti: Election Monitoring or Political Intervention?* Center for Economic and Policy Research (August 2011), pp. 1-2, <http://cepr.net/publications/reports/oas-in-haiti>.
3. In February 2006, amid growing protests over fraud, foreign diplomats devised a compromise solution over how to count the abnormally large number of blank ballots (nearly 12 percent of total votes), giving René Préval a first-round victory. Carol J. Williams, *Belgian Option' Helped Avert Crisis*, Los Angeles Times (Feb. 19, 2016), <http://articles.latimes.com/2006/feb/19/world/fg-haiti19>.
4. Mark Weisbrodt and Jake Johnston, *Analysis of the OAS Mission's Draft Final Report on Haiti's Election*, MRZine (Jan. 18, 2011), <http://mrzine.monthlyreview.org/2011/wj180111.html>.
5. Ricardo Seitenfus, *L'échec de l'aide internationale à Haïti: dilemmes et égarements*, Port-au-Prince, Éditions de l'Université d'État d'Haïti (2015); Dan Beeton and Georgianne Nienaber, *Haiti's Doctored Elections, Seen from the Inside: An Interview with Ricardo Seitenfus* (Feb. 24, 2014), https://www.dissentmagazine.org/online_articles/haitis-doctored-elections-seen-from-the-inside-an-interview-with-ricardo-seitenfus ; *Clinton E-Mails Point to US Intervention in 2010 Haiti Elections*, Haiti: Relief and Reconstruction Watch, Center for Economic and Policy Research (Sep. 7, 2016), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/clinton-e-mails-point-to-us-intervention-in-2010-haiti-elections>.
6. *Id.* *The US spent \$33 Million on Haiti's Scrapped Elections – Here is Where it Went*, Haiti: Relief and Reconstruction Watch, Center for Economic and Policy Research (Jun. 7, 2016), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/the-us-spent-33-million-on-haiti-s-scrapped-elections-here-is-where-it-went>; Commission Episcopale Nationale Justice et Paix, *Rapport d'observation électorale 2015* (Mar. 31, 2016), p. 27.
7. *Id.* The UNDP managed the elections basket fund, while another UN agency, UNOPS was responsible for transporting election materials to and from polling stations. The UN peacekeeping mission MINUSTAH assisted with election-day logistics and security. The OAS provided technical assistance for the preparation of the electoral registry.
8. The Core Group includes the ambassadors of the U.S., the European Union, Brazil, Canada, France, Spain, and the Special Representatives of the OAS and the UN. "The United States continues to work closely with the Core Group as a multilateral mechanism as well as with the United Nations Special Representative in Haiti as well as with the Organization of American States going forward," *Remarks Kenneth H. Merten Special Coordinator for Haiti Haitian Americans for Progress w/ moderator Dr. Cassandra Theramene via Teleconference* (Nov. 16, 2015), <http://www.state.gov/p/wha/rls/rm/249962.htm>.
9. AFP, *Haitians fed up with politicians: presidential candidate*, Yahoo News (Sep. 10, 2016), <https://au.news.yahoo.com/world/a/32583968/haitians-fed-up-with-politicians-presidential-candidate/?cmp=st#page1>.
10. Jake Johnston, *After Haiti's First-Round Elections, the Legacy of Intervention Looms Large*. NACLA (Dec. 11, 2016), <https://nacla.org/news/2015/11/12/after-haiti%E2%80%99s-first-round-elections-legacy-intervention-looms-large>.
11. Frantz Duval, *Observation électorale : mea culpa et serment d'honnêteté sont nécessaires*. Le Nouvelliste (Aug. 3, 2015), <http://lenouvelliste.com/lenouvelliste/article/148138/Observation-electorale-mea-culpa-et-serment-dhonnete-sont-necessaires#sthash.x6FZO2MI.dpuf>.
12. « L'Union européenne et l'Organisation des États américains se préparent à observer le déroulement des prochaines élections en Haïti. À la demande du président Martelly, un protocole d'accord a été signé avec ces deux institutions à cet effet. Les autorités haïtiennes ainsi que les observateurs insistent et parlent d'observation au moment où la communauté internationale jouit de très peu de crédibilité depuis les élections de 2010. » See, Louis-Joseph Olivier. *Peu crédibles, les missions d'observation reviennent*. Le Nouvelliste (Jul. 20, 2015), <http://lenouvelliste.com/lenouvelliste/>

[article/147522/Peu-credibles-les-missions-dobservation-reviennent#sthash.Ynm1JGda.dpuf](http://lenouvelliste.com/lenouvelliste/article/147522/Peu-credibles-les-missions-dobservation-reviennent#sthash.Ynm1JGda.dpuf).

13. "... but to make sure that the will of the Haitian people is reflected as faithfully as possible in the electoral results, in all transparency," Luis-Joseph Olivier. *Observation électorale, l'UE ne va « ni interpréter ni manipuler les résultats »*. Le Nouvelliste (Jul. 21, 2016), <http://lenouvelliste.com/lenouvelliste/article/147590#sthash.koqLzwpM.dpuf>; Edrid St Juste et Jocelun Belfort. *L'UE déploie une mission d'observation électorale en Haïti*. Le Nouvelliste (Jul. 15, 2016), <http://lenouvelliste.com/lenouvelliste/article/147328/LUE-deploie-une-mission-dobservation-electorale-en-Haiti#sthash.9KSOi3sN.dpuf>
14. "It is important for us to keep first and foremost in our minds that this is a Haitian-run process and has to be. It is the process that we have supported and not any particular candidate or party. We have all seen the criticism against the international community for involvement in the 2010 elections." *Remarks Kenneth H. Merten Special Coordinator for Haiti Haitian Americans for Progress w/ moderator Dr. Cassandra Theramene via Teleconference* (Nov. 16, 2015), <http://www.state.gov/p/wha/rls/rm/249962.htm>.
15. National Lawyers Guild, International Association of Democratic Lawyers, *Report of the National Lawyers Guild and Association of Democratic Lawyers Delegation on the October 25, 2015, Presidential and Legislative Elections in Haiti* (Nov 2015), p. 5, <https://www.nlg.org/news/releases/nlg-and-iadl-election-observers-establish-flaws-haitis-october-25-vote-call> (hereinafter "NLG Report").
16. Institute for Justice & Democracy in Haiti, *Ensuring Fair Elections in Haiti: Legal Analysis of Recent Developments* (Jan. 19, 2015), <http://www.ijdh.org/2015/01/topics/politics-democracy/ensuring-fair-elections-in-haiti-legal-analysis-of-recent-developments/>. See also, *An Electoral Farce, But who is laughing?*, Haiti Support Group Briefing No 80 (Jan. 2016) (hereinafter "An Electoral Farce"), <http://haitisupportgroup.org/download/haiti-briefing-80-an-electoral-farce/?wpdmdl=13315>
17. NLG Report, *supra* note 14, at 5.
18. NLG Report, *supra* note 14, at 6-8
19. "Yesterday's election was a step forward in strengthening Haitian democracy," said the OAS Chief of Mission Enrique Castillo. *OAS Mission in Haiti: Elections Marked a Step Forward* (Aug. 10, 2015), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-218/15. "C'est un pas positif dans la consolidation de la démocratie," said the EU EOM's Elena Valenciano, *Haiti-Elections: legislatives du 9 aout, l'UE y voit un pas décisive malgré les failles*. HPN Haiti (Aug, 11, 2015), <http://hpnhaiti.com/site/index.php/component/content/article/16552-haiti-elections-legislatives-du-9-aout-lue-y-voit-un-pas-decisif-malgre-les-failles>. The one exception among Haitian observers: OCID, which received funding from the U.S. and Canada. The observer group's positive assessments of August 9 led to questions being raised in the Haitian press about the group's lack of autonomy from its funding sources. Danio Darius. *Elections : OCID n'a pas tout observé dimanche* Le Nouvelliste (Aug.13, 2015), <http://lenouvelliste.com/lenouvelliste/article/148592/Elections-OCID-na-pas-tout-observe-dimanche>.
20. *Haiti-Elections-UE: "Les elctions se deroulent en Presque totale normalite"*, HPN Haiti (Aug. 9, 2015), <http://www.hpnhaiti.com/site/index.php/politique/16531-haiti-elections-ue--1-les-elections-se-deroulent-en-presque-totale-normalite-r--video>.
21. Evens Sanon, *OAS: Irregularities did not disrupt overall Haiti elections*, Seattle Times (Aug. 9, 2015), <http://www.seattletimes.com/nation-world/world/fistfights-sporadic-reports-of-fraud-in-haiti-elections/>. The OAS Chief Observer Castillo said at a August 10 press conference, "We cannot assess whether the problems ... could disqualify the process as a whole. Our impression up to today is they don't." Castillo deferred judgement on the matter to the CEP, adding: "But it's up to the (electoral) council to evaluate that." The Miami Herald reported that others believed the number of voting centers forced to close because of violence was higher than four percent. "Rosny Desroches, the head of an observer group, said voting was interrupted at 14 percent of voting centers while six percent were interrupted by armed individuals." Jacqueline Charles. *Observers: Haiti elections weren't perfect, but they happened — finally*. Miami Herald (Aug. 10, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article30652860.html>.
22. Union Europeenne Mission D'Observation Electorale Haïti 2015, *Declaration Preliminaire, Un pas positif vers le renouvellement des institutions malgré une participation faible, des incidents et des irrégularités qui n'ont pas fait dérailler le scrutain*, (Aug. 11, 2015) (hereinafter "EU Aug. 11 Preliminary Report"), p. 8; Communication with Joris Willems, election observer with JILAP.
23. The OAS still maintains that violent incidents "were not widespread and did not affect the overall process." "Multiple incidents of violence took place over the course of the day, forcing the Provisional Electoral Council (CEP) to close some polling stations and the Mission to withdraw seven observers who were unable to complete their work. However,

- these incidents were not widespread and did not affect the overall process.” Organization of American States, *Report Electoral Observation Mission, Observation of the Independent Electoral Evaluation and Verification Commission (CIEVE) Republic of Haiti* (Aug. 1, 2016), <http://www.oas.org/fpdb/press/Haiti-Rapport-anglais.pdf>, (hereinafter “OAS CIEVE Response”), p. 1. In June 2016, the EU EOM stated that the mission « avait conclu que les élections législatives, municipales et le premier tour des élections présidentielles d’octobre 2015, étaient globalement conformes aux normes internationales. Ceci malgré un certain nombre de failles et d’irrégularités observées, qui cependant n’étaient pas de nature à altérer les résultats dans leur ensemble. » Analyse MOU EU du rapport de la Commission Indépendente d’Évaluation et Vérification Électorale (CIEVE) (Jun 8, 2016), p.1 (hereinafter “EU CIEVE Response ”)
24. EU Aug. 11 Preliminary report, *supra* note 22; Organization of American States, Preliminary Observations of OAS Electoral Mission to Haiti (Aug. 10, 2016), <http://www.oas.org/documents/eng/press/Observaciones-preliminares-de-la-Mision-de-Observacion-Electoral-de-la-OEA-haiti-ingles.pdf> (hereinafter “OAS Aug. 10 Preliminary Report”)
 25. Amelie Barron, *Disorder, delays mar Haiti’s long-awaited election*, Yahoo News (Aug. 9, 2015), <https://www.yahoo.com/news/violence-low-turnout-threaten-haitis-sunday-elections-035425298.html?ref=gs>; *Haiti taking ‘resolute’ steps towards renewal of democracy and stability – UN envoy*, UN News Centre (Oct. 8, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52201#.V8BcNjWu1Op>; see also, NLG Report, *supra* note 14, at 23, footnote 22.
 26. According to the CEP, candidates and their supporters had “disrupted” the vote in eight out of ten departments in the country, “ransacking voting centers and stealing voting materials.” NLG Report, *supra* note 14, pp. 7-8.
 27. *L’Union européenne fait des propositions pour améliorer le processus électoral*, Le Nouvelliste (Aug. 25, 2015), <http://lenouvelliste.com/lenouvelliste/article/149015/LUnion-europeenne-fait-des-propositions-pour-ameliorer-le-processus-electoral>.
 28. NLG Report, *supra* note 14, at 8
 29. *Id.* at 9.
 30. Widespread violence in polling stations on August 9 intimidated Haitians from voting, thus thwarting the “free expression of the will of the electors,” under the International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, Art. 25 (Dec. 16, 1966) (hereinafter the “ICCPR”). The violence also discredits election results. In the days after August 9, the CEP prepared a report for the Haitian National Police (PNH) with details of incidents of violence from their investigation and recommendations of criminal charges. However, few criminal charges have been pursued, sending a message of impunity to candidates and voters for October 25. See, NLG Report, *supra* note 14 at 6-7, 9. See also, Electoral Law of 2015, March 2, 2015 at 56 – 61; Electoral Law of 2008, Le Moniteur, July 25, 2008 at art. 155, 202, 205.
 31. The OAS still maintained that violent incidents “were not widespread and did not affect the overall process.” OAS CIEVE response, *supra* note 23, at 1. In June 2016, the EU EOM stated that the mission “avait conclu que les élections législatives, municipales et le premier tour des élections présidentielles d’octobre 2015, étaient globalement conformes aux normes internationales. Ceci malgré un certain nombre de failles et d’irrégularités observées, qui cependant n’étaient pas de nature à altérer les résultats dans leur ensemble.”
 32. *Communiqué de presse : La Représentante spéciale du Secrétaire général des Nations Unies en Haïti et les membres du « Core Group » saluent la tenue du scrutin du 9 août*. MINUSTAH (Aug. 10, 2015), <https://minustah.unmissions.org/communiqu%C3%A9-de-presse-la-repr%C3%A9sentante-sp%C3%A9ciale-du-secr%C3%A9taire-g%C3%A9n%C3%A9ral-des-nations-unies-en-ha%C3%Afti-et-3>.
 33. At her last press conference on August 27, 2015, then-U.S. Ambassador to Haiti Pamela White stated: “I am happy to see that the first round of elections occurred, and that the outcome, while not perfect, was acceptable.” On September 9, Ambassador White released a series of Tweets reaffirming this position that the first-round legislative elections did not require major correctives: “We cannot go back, because that would be ‘lave men siye atè’,” (“To wash one’s hands and then dirty them on the ground.” This Haitian proverb can be translated as “Ending up back where we started.”) The Ambassador stated her opposition to calls for the resignation of the CEP or the creation of a transitional government and accused protestors criticizing the CEP of “causing disorder in the streets.” Congresswoman Waters. *Congresswoman Waters Urges Secretary Kerry to Support Free, Fair and Democratic Elections in Haiti* Congresswoman Waters website (Oct. 5, 2015), <https://waters.house.gov/media-center/press-releases/congresswoman-waters-urges-secretary-kerry-support-free-fair-and>
 34. Denunciations of the electoral council and weeks of protests resulted in the resignation of one CEP member.
 35. “Though respondents were understandably concerned with corruption, they had not lost all faith in democracy. Three

- quarters said they would vote if they were confident the elections were free and fair.” Athena R. Kolbe and Robert Muggah, *Assessing Haiti’s Electoral Crisis – Results of a 2016 Survey*, Igarapé Institute, pp. 10, 12, <https://igarape.org.br/wp-content/uploads/2016/03/NE21AssessingHaitisElectoralLegitimacycrisis.pdf>.
36. NLG Report, *supra* note 14, at 17. See also, An Electoral Face, *supra* note 16.
 37. Jacqueline Charles, *Haiti election results delayed until Thursday*, Miami Herald (Nov. 2, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/article42379425.html>; Jean Michel Cadet, *Vers un pari gagné !* Le National (Oct. 26, 2015), <http://www.lenational.org/vers-un-pari-gagne/>.
 38. Despite being stripped of official observer status, UNADA’s accreditations were still able to be used on October 25. According to both the RNDDH coalition and JILAP, three organizations with no track record of electoral observation (UNADA, LHACIM, COFE) acted as proxies for political parties. See, Commission Episcopale Nationale justice et Paix, *Rapport d’observation elettorale* (Mar. 31, 2016), p.19 (hereinafter “JILAP Report”) and SOFA, CNO, CONHANE, RNDDH, October 25, 2015: *A Massive Planned Operation of Electoral Fraud* (Nov. 12, 2015), p. 24-27, <http://rddh.org/en/october-25th-2015-elections-a-massive-planned-operation-of-electoral-fraud/>, (hereinafter “RNDDH Nov 12 Report”).
 39. The coalition included : Solidarité Fanm Ayisen (SOFA), Conseil National d’Observation (CNO), Conseil Haitien des Acteurs Non Etatiques (CONHANE) and Réseau National des Défense des Droits Humains (RNDDH).
 40. *Presidential Elections in Haiti: The Most Votes Money Can Buy*, Haiti: Relief and Reconstruction Watch, Center for Economic and Policy Research (Nov. 03, 2015), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/presidential-elections-in-haiti-the-most-votes-money-can-buy>.
 41. Jacqueline Charles. *Haiti election results delayed until Thursday*. Miami Herald (Nov. 2, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/article42379425.html>; SOFA, CNO, CONHANE, RNDDH, *Preliminary observations concerning October 25th elections* (Oct. 27, 2015), p. 4, <http://rddh.org/content/uploads/2015/10/6-Elections-RNDDH-CNO-CONHANE-SOFA-27-octobre-2015-ANG.pdf>, (hereinafter “RNDDH Oct 27 Report”); See also, RNDDH Nov 12 Report, *supra* note 38. See also, *La Jilap, insatisfaite, demand au CEP de prendre des mesures*, Le Nouvelliste (Oct. 30, 2015), <http://lenouvelliste.com/lenouvelliste/article/151824/La-#sthash.9X4vzxMo.dpuf>.
 42. *Id.*
 43. *Règlements relatifs à l’accreditation des mandataires*, Conseil Electorale Provisoire (Oct. 15, 2015), https://www.cephaiti.ht/files/Liens_utiles/CEP_Reglements_mandataires.pdf.
 44. NLG Report, *supra* note 14, at 16 ; *Haiti-Elections: Pari tenu pour le CEP*, HPN Haiti (Oct. 21, 2015), <http://www.hpnhaiti.com/site/index.php/politique/17165-haiti-elections-pari-tenu-pour-le-cep>.
 45. Maxime J. Rony, a lawyer hired by a local bar association to represent indigent residents who were arrested on election day in October said he had interviewed jailed election monitors who were members of the governing party but were caught with multiple accreditations from different political parties. Mr. Rony was stunned when many of his clients called influential politicians for help paying the \$175 fine, a fortune for most Haitians. “They voted more than once, and they all quickly paid their fines and were released from jail, all of them,” Mr. Rony said. Frances Robles, *U.S. Presses for Haiti Runoff Vote Amid Fears of Violence and Fraud*, NY Times (Jan. 21, 2016), http://www.nytimes.com/2016/01/22/world/americas/us-presses-for-haiti-runoff-vote-amid-fears-of-violence-and-fraud.html?partner=IFTTT&_r=1.
 46. *Premières Observations relatives au scrutin du 25 octobre 2015*, RNDDH; JILAP, *Michelson Césaire. La Jilap, insatisfaite, demande au CEP de prendre des mesures*, Le Nouvelliste (Oct. 10, 2015), <http://lenouvelliste.com/lenouvelliste/article/151824/La-Jilap-insatisfaite-demande-au-CEP-de-prendre-des-mesures>; OCID was slower to recognize the role of mandataire fraud, but on November 4, it criticized the failure of the CEP to prevent instances of fraud “notably by political party mandataires.” Rony Desroches et Abdonel Doudou. *Le manque de transparence du Centre de Tabulation des Votes persiste et inquiète (Communiqué de presse No. 14)*. OCID Haiti (Nov. 4, 2015), <http://ocidhaiti.org/index.php/2015/11/04/le-manque-de-transparence-du-centre-de-tabulation-des-votes-persiste-et-inquiete-communique-de-presse-no-14/>.
 47. RNDDH Oct. 27 Report, *supra* note 41.
 48. RNDDH Nov. 12 Report, *supra* note 38, at 28.
 49. *Id.* at 47.
 50. En dépit des corrections mineures apportées, la présence des mandataires tout comme l’observation électorale est restée un moyen important pour influencer le scrutin. See, JILAP Report, *supra* note 38, at 19.

51. *Id.*
52. *Les scrutins du 25 octobre marqués par la volonté des électeurs haïtiens*, Mag Haiti (Oct. 25, 2015), <http://www.maghaiti.net/les-scrutins-du-25-octobre-marques-par-la-volonte-des-electeurs-haitiens/>; *Haïti-Elections: La Mission d'observation de l'Ue dresse un bilan positif à la mi-journée*, Alterpresse (Oct. 25, 2015), <http://www.alterpresse.org/spip.php?article19080#.V4k4X6Ku1Pg>.
53. EU Aug. 11 Preliminary Report, *supra* note 22. The EU EOM's October 27 press release "hail[ed] the celebration of a calm and globally well-organized election day."
54. *Id.* at 9.
55. Union Europeenne Mission D'Observation Electorale Haiti 2015, *Declaration Preliminaire, Une Journée électorale calme et globalement bien organisé dont la participation peine a décoller* (Oct 27, 2015), p. 1 (hereinafter "EU Oct. 27 Preliminary report"). The EU's preliminary declaration was somewhat critical of the "still excessive" number of *mandataires* in polling stations, which was "problematic" and an element of the electoral system that needed to be "rationalized" in the future.
56. *Id.*
57. Jean-Michel Caroit, *En Haïti, l'« exploit » d'élections générales sans violence*, Le Monde (Oct. 26, 2015), http://www.lemonde.fr/ameriques/article/2015/10/26/en-haiti-l-exploit-d-elections-generales-sans-violences_4796903_3222.html.
58. Jacqueline Charles, *Patience, calm urged as votes counted in Haiti*, Miami Herald (Oct. 25, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article41375367.html>.
59. *OAS Electoral Observation Mission to Haiti Recognizes Efforts of Authorities in General Elections*, OAS (Oct. 26, 2015), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-322/15. The only irregularities the OAS EOM reported were "isolated incidents of violence" that "did not affect the overall course of the election."
60. Organization of American States, *Preliminary Report OAS Electoral Observation Mission to Haiti* (Oct. 26, 2015) ("hereinafter "OAS Oct. 27 Preliminary Report"), p. 1. "Observers reported that polling stations were overcrowded and that the saturated presence of party representatives was in various instances a cause of frictions."
61. *Id.* at 8.
62. EU Oct. 27 Preliminary Report, *supra* note 55, pp. 4, 9. The EU highlighted the safeguards and regulations put in place by the CEP and its timely delivery of accreditations. But its own observers reported that regulations governing *mandataires'* access to polling stations were frequently not respected. At 25 percent of the polling stations visited by EU observers, there were more than 10 *mandataires* present, in violation of the CEP's regulations. In addition, the EU noted, "the rotation of *mandataires* foreseen by the CEP was not always effectuated." Nonetheless, the EU optimistically concluded that safeguards intended to "limit the risk of multiple voting" were respected in the majority of cases.
63. In light of the difficulties that arose on August 9 related to the late and inadequate distribution of *mandataire* accreditations, and the conflicts this provoked, political parties involved in these discussions were wary of moves to limit access to accreditations and opposed the measures proposed by the international officials. Jake Johnston, communication with OAS election officials. A member of the US congressional delegation also confirmed that they were aware of the risk of accreditations being abused in this way prior to October 25, saying that it was entirely "predictable." Nikolas Barry-Shaw, communication with an OAS electoral observation member.
64. EU Oct. 27 Preliminary Report, *supra* note 55. While recognizing the general problem of electoral observation groups "that were in reality vehicles for partisan interests," the EU argued that the CEP's decision to limit the number of recognized national observer groups to 15 had successfully dealt with the issue. Neither mission commented on the failure to prevent UNADA accreditations from being used on October 25 in spite of the ban.
65. The OAS EOM commended "the efforts put forth by electoral and security authorities, which resulted in significant improvement on the August 9 elections." See, OAS Oct. 27 Preliminary Report, *supra* note 60, at 1. In her comments to the press, the EU's Valenciano struck a similar note: "We have noticed an improvement at the administrative and security level in the elections of October 25, 2015." *Les scrutins du 25 octobre marqués par la volonté des électeurs haïtiens*, Mag Haiti (Oct. 25, 2015), <http://www.maghaiti.net/les-scrutins-du-25-octobre-marques-par-la-volonte-des-electeurs-haitiens/>; *Haïti-Elections : La Mission d'observation de l'Ue dresse un bilan positif à la mi-journée*, Alterpresse (Oct. 25, 2015), <http://www.alterpresse.org/spip.php?article19080#.V4k4X6Ku1Pg>.
66. The EU's preliminary declaration stated that acts of violence on October 25 "remained limited and localized, without major consequences on the electoral process." The relative success of October 25, the EU stated, was due to the fact

that the electoral council “was able to learn from the dysfunctions of August 9.” See, EU Oct. 27 Preliminary Report, *supra* note 55, at 1, 9. The EU EOM characterized the October 25 vote as “well organized” and “conducted in a notable climate of serenity, compared to the August 9 election day.”

67. Judith Kelley, *Election Observers and Their Biases*, Journal of Democracy, Vol 21, No 3, July 2010 (National Endowment for Democracy and The Johns Hopkins University Press) (hereinafter “Kelley, Biases”), p. 166.
68. NLG Report, *supra* note 14, at 10.
69. Rony Desroches et Abdouel Doudou, *Le manque de transparence du Centre de Tabulation des Votes persiste et inquiète* (Communiqué de presse No. 14), OCID Haiti (Nov. 4, 2015), <http://ocidhaiti.org/index.php/2015/11/04/le-manque-de-transparence-du-centre-de-tabulation-des-votes-persiste-et-inquiete-communique-de-presse-no-14/>. JILAP report, *supra* note 38, at 20; RNDDH Oct. 27 Report, *supra* note 41, p. 5.
70. While street protests gained momentum, opposition leaders announced a boycott and Haitian observers called for an independent investigation, both international observation missions declared that they would observe the elections and urged Haitian voters to participate in the next round. The mission said it would make recommendations for the next round of elections to the CEP focusing on the issue of mandataires, but the report was never made public. See, *OAS will observe the second round of presidential elections in Haiti in December*, (Nov. 6, 2015), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-332/15.
71. Confident that “political will and resolute action by the CEP will allow overcoming the challenges encountered during the October 25 elections,” the OAS urged political parties to lodge formal complaints through the proper channels, rather than mobilize in the streets against fraud. The mission said it would make recommendations for the next round of elections to the CEP focusing on the mandataire issue, but the report was never made public. See, *OAS will observe the second round of presidential elections in Haiti in December*, OAS (Nov. 6, 2015), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-332/15.
72. The Ouest department accounted for 31 percent of total votes cast, and the EU in its critique of the CIEVE report estimated, based on its own observations, that 40-50 percent of votes in the Ouest were cast off-list, while off-list votes were 10 percent of total votes in the rest of the country. Therefore, percentage of off-list votes in Ouest (12.4 – 15.5) + percentage of off-list votes in rest of Haiti (6.9) = 19.3 - 22.4 percent of total votes. EU CIEVE Response, *supra* note 23, at 10. Assailants believed to be Haitian police killed one demonstrator (Maxo Gaspard) outside the headquarters of Pitit Dessalines on November 5, 2015, and police arrested several other opposition demonstrators, but deputy chief observer de Gabriel hailed the supposed lack of any outbursts of violence following the release of the preliminary results. Luis-Joseph Olivier. See, *La communauté internationale se prononce en faveur du second tour*, Le Nouvelliste (Nov. 6, 2015), <http://lenouvelliste.com/lenouvelliste/article/152170/La-communaute-internationale-se-prononce-en-faveur-du-second-tour>; Thomas Peralte. *Assassinat de Maxo Gaspard*; Haiti Liberte (Nov. 17, 2015), <http://www.haiti-liberte.com/archives/volume9-18/Assassinat%20de%20Maxo%20Gaspard.asp>.
73. “Q: With over 900,000 mandataires voting out of 1,500,000 million votes, and with the mandataires votes being sold to the highest bidder, does the State Department believe the election results to be credible?” (After a long preamble about right of candidates to contest fraud through contentieux bureaux ...) “Yes, at the end of the day, we believe that the announced preliminary results – to us, to the OAS and, frankly, to our partners in the Core Group – are largely credible. And so, we applaud the CEP for identifying results tally sheets where there was fraud that was found.” See, Kenneth H. Merten. *Remarks Kenneth H. Merten Special Coordinator for Haiti Haitian Americans for Progress w/ moderator Dr. Cassandra Theramene via Teleconference* (Nov. 16, 2015), <http://www.state.gov/p/wha/rls/rm/249962.htm>.
74. According the CEP, PHTK’s Jovenel Moïse came in first place with 32.8 percent of the vote, LAPEH’s Jude Célestin came in second with 25.3 percent and in third and fourth places respectively were Pitit Dessalines’ Moïse Jean Charles with 14.3 percent and Fanmi Lavalas’ Dr. Maryse Narcisse with 7 percent. But the survey found that Célestin was the first place choice while Jean Charles and Dr. Narcisse were second and third place choices. The governing party’s Jovenel Moïse was the fourth most popular choice. See, *New Survey Casts Doubt on Haiti Election Results*, Haiti: Relief and Reconstruction Watch, Center for Economic and Policy Research (Nov. 15, 2015), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/new-survey-casts-doubt-on-haiti-election-results>.
75. Athena R. Kolbe, Nicole I. Cesnales, Marie N. Puccio, Robert Muggah, *Impact of Perceived Electoral Fraud in Haitian Voter’s Beliefs about Democracy*, Igarapé Institute (Nov. 20, 2015), p. 5, https://igarape.org.br/wp-content/uploads/2015/11/NE-20_Impact-of-Perceived-Electoral-Fraud-on-Haitian-Voter%E2%80%99s-Beliefs-about-Democracy.pdf.
76. Robenson Geffrard, *78 procès-verbaux sur 78 ont des problèmes, mais cap sur le 2e tour, indique Opont*, Le Nou-

- velliste (Nov. 30, 2015), <http://lenouvelliste.com/lenouvelliste/article/153093/78-proces-verbaux-sur-78-ont-des-problemes-mais-cap-sur-le-2e-tour-indique-Opont>.
77. Most of the problems with the 78 tally sheets amounted to “simple errors” in filling out forms by poorly-trained election workers and other “minor irregularities without impact,” according to the EU. p. 2 « la quasi-totalité des PV ne présentent pas d’irrégularités de nature à déterminer leur mise à l’écart, encore moins des indices de fraude en faveur d’un candidat. », « les simples erreurs de remplissage, ainsi que les irrégularités mineures sans impact » *Analyse des 78 PV vérifiés par le Bureau du Contentieux Electoral National*, Mission d’Observation Electorale de L’Union Europeenne Haiti 2015 (Dec. 19, 2015).
78. Joris Wliems, Élu, par qui ?, Avec-Papiers (Jan.16, 2016), <http://www.avec-papiers.be/Home/?p=2238>.
79. Jean Daniel Sénat, *On n’a pas encore vu les preuves de fraudes massives, le 11 janvier et le 7 février on espère voir les nouveaux élus en place, explique l’ambassadeur des Etats-Unis*, Le Nouvelliste (Dec. 28, 2015), <http://lenouvelliste.com/lenouvelliste/article/153926/On-na-pas-encore-vu-de-preuves-des-fraudes-massives-le-11-janvier-et-le-7-fevrier-on-espere-voir-les-nouveaux-elus-en-place-explique-lambassadeur-des-Etats-Unis>. Mulrean’s original statement to *Le Nouvelliste* in French: « On entend parler de fraudes massives, mais pour l’instant on n’a pas encore vu de preuves. Notre ambassade a eu des observateurs déployés un peu partout le jour de scrutin. Eux, ils n’ont pas vu de fraudes massives. Les missions d’observation de l’Union Européen et de l’OEA, qui avaient des centaines d’observateurs internationaux sur le terrain n’ont pas vu de fraudes massives. » « Je pense que c’est une accumulation de doutes. Le fait que ça traîne aussi longtemps, que le processus de contestation dure si longtemps, que les mêmes accusations sont répétées cent fois, tout cela provoque une accumulation dans la tête des gens. »; The Miami Herald reported in April 2016, “Washington, however, remains opposed to any kind of recount, noting that international observers “found no evidence of massive fraud.”” *Jacqueline Charles. Kerry’s warning to Haiti: Patience is wearing thin on delayed elections*, Miami Herald (Apr. 15, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article72085692.html#storylink=cp>.
80. Jean Daniel Senat, *RNDDH et CONAHNE dénoncent une tentative d’influencer le travail de la commission d’évaluation*, Le Nouvelliste (Dec. 29, 2016), <http://lenouvelliste.com/lenouvelliste/article/154039/RNDDH-et-CONAHNE-denoncent-une-tentative-dinfluencer-le-travail-de-la-commission-devaluation> ; Danio Darius, *Maryse Narcisse juge les déclarations de Peter F. Mulrean et de Kenneth H. Merten intempestives*, Le Nouvelliste (Dec. 30, 2016), <http://lenouvelliste.com/lenouvelliste/article/154065/Maryse-Narcisse-juge-les-declarations-de-Peter-F-Mulrean-et-de-Kenneth-H-Merten-intempestives>.
81. CEEI, *Les recommandations du Rapport de la Commission d’Evaluation Electorale Indépendante* (Jan. 3, 2016), p. 10, http://www.radiotelevisioncaraibes.com/nouvelles/elections-2015/les_recommandations_du_rapport_de_la_commission_d_evaluation_ele.html (hereinafter «CEEI Report»).
82. CEEI’s recommendations included a review of controversial BCEN decisions, the dismissal of CEP members credibly accused of accepting bribes, better training for polling station workers and the creation of a political dialogue between the relevant actors. Id. at 1.
83. Louis-Joseph Olivier, *L’Union européenne sur la même logueur d’onde que la Commission d’évaluation*, Le Nouvelliste (Jan. 4, 2016), <http://lenouvelliste.com/lenouvelliste/article/154145/LUnion-europeenne-sur-la-meme-logueur-donde-que-la-Commission-devaluation>.
84. *Id.*
85. The deputy chief observer even claimed that the CEEI had shown the potential impact of fraud on the results to be “minimal.” “The results published by the CEP could not have been otherwise,” de Gabriel stated. “We say that consistent with our own observations, the actual differences that can indicate an intention to commit fraud, to change results in favour of a given candidate were minimal.” “We can see it, we have verified it just as other organizations have, the projection of results reflects exactly the results that were published by the CEP for the first round of the presidential race.” This is likely a reference to the OAS quick count. *Id.*
86. CEEI Report, *supra* note 81 at 6.
87. *Evaluation Commission’s Ambiguous Report May Only Deepen Haiti’s Electoral Crisis*, Haiti Election 2015.blogspot.ca (Jan. 5, 2016), <http://haitielection2015.blogspot.ca/2016/01/evaluation-commissions-ambiguous-report.html>.
88. In its sample of 1771 tally sheets, the Commission found that many votes had been cast without the proper documentation: 57.1 percent of tally sheets had votes without the corresponding signature or fingerprint of the voter recorded on the voter list, 46.8 percent of tally sheets examined had votes that were cast using an invalid CIN number, and 30.6% of tally sheets had votes that lacked a CIN number altogether. The scale of these irregularities is potentially

massive. Commission member Rosny Desroches stated in a radio interview with Radio Vision 2000 that at one polling station in La Saline, 200 people voted without providing CIN numbers, while only 25 voted with a voting card. The CEEI was not able to establish the scale of these phenomena, either due to a lack of political will or due to the extremely short timeframe accorded to it by the Martelly government. See, *Evaluation Commission's Ambiguous Report May Only Deepen Haiti's Electoral Crisis*. HaitiElection2015.blogspot.ca (Jan. 5, 2016), <http://haitielection2015.blogspot.ca/2016/01/evaluation-commissions-ambiguous-report.html>; Dario Darius, *La commission d'évaluation avait recommandé une évaluation plus approfondie*, Le Nouvelliste (Apr. 1, 2016), <http://lenouvelliste.com/lenouvelliste/article/157313/La-commission-devaluation-avait-recommande-une-evaluation-plus-approfondie>.

89. After the release of CEEI's report, the OAS mission released statements on January 7 and January 12 that admitted that *mandataires* had "generated problems" on October 25 and welcomed the CEP's decision to reduce the number of *mandataires* from over 900,000 to 38,000 as a "positive measure." This change, along with other modifications to electoral rules such as stricter controls on Haitian observation groups, would help "prevent the repetition of the irregularities presented in the August 9 and October 25 elections." This was done in part by separating delaying the local elections. The OAS claimed to have notified the CEP about the irregularities found by the Evaluation Commission, though one would never know it judging by the mission's public statements. "Some of the irregularities identified by the Evaluation Commission which must be addressed before the next phases of the electoral process had been highlighted in the recommendations presented by the OAS Mission following the August 9th and October 25th elections, both in public preliminary statements and in two reports to the CEP. See, *Presidential Run-Off in Haiti: A step in the right direction*, OAS (Jan. 7, 2016), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-359/16. Other measures highlighted by the OAS statement included the CEP decision to restrict *mandataire* voting to polling stations where they are on the electoral list, to allow more oversight of the tabulation center's operation and improved training for polling station workers. See, *Electoral Observation Mission welcomes adoption of recommendations ahead of presidential run-off in Haiti*, OAS (Jan. 12, 2016), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-361/16. Confident that "political will and resolute action by the CEP will allow overcoming the challenges encountered during the October 25 elections," the OAS urged political parties to lodge formal complaints through the proper channels, rather than mobilize in the streets against fraud. The mission said it would make recommendations for the next round of elections to the CEP focusing on the *mandataire* issue, but the report was never made public. *OAS will observe the second round of presidential elections in Haiti in December*, OAS (Nov. 6, 2015), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-332/15.
90. Jacqueline Charles, *Célestin says 'No' to Haiti presidential runoff*, Miami Herald (Jan. 7, 2016), <http://www.miami-herald.com/news/nation-world/world/americas/haiti/article53455695.html>. "Now that Mr. Célestin is boycotting the runoff, he says various American diplomats have met with him at least a dozen times, encouraging him to participate in the race because they are concerned that the current president's mandate will expire Feb. 7 without a replacement, causing a power vacuum," Frances Robles. *U.S. Presses for Haiti Runoff Vote Amid Fears of Violence and Fraud*, NY Times (Jan. 21, 2016), <http://www.nytimes.com/2016/01/22/world/americas/us-presses-for-haiti-runoff-vote-amid-fears-of-violence-and-fraud.html>.
91. *Presidential Run-Off in Haiti: A step in the right direction*, OAS (Jan. 7, 2016), http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-359/16
92. *Id.*
93. *Haiti Elections News Roundup - January 25*, HaitiElection2015.blogspot.ca (Jan. 25, 2016), <http://haitielection2015.blogspot.ca/2016/01/haiti-elections-news-roundup-january-25.html>.
94. *L'UE appelle au respect des résultats du scrutin du 25 Octobre 2015*, Vant Bef Info (Jan. 25, 2016), <http://www.vantbefinfo.com/haiti-elections-moe-ue-haiti-2015-lunion-europeenne-appelle-au-respect-des-resultats-du-scrutin-du-25-octobre-2015/>.
95. Frances Robles, *supra* note 90.
96. Jake Johnston. *Why the OAS Quick Count Doesn't Mean What They Want You to Think it Means*. Haiti: Relief and Reconstruction Watch, Center for Economic and Policy Research (Feb. 1, 2016), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/why-the-oas-quick-count-doesn-t-mean-what-they-want-you-to-think-it-means>.
97. For a fuller discussion of this point, see Jake Johnston's article. *Id.*
98. For instance, during a January 27 OAS council meeting on the situation in Haiti, Gerardo de Icaza, the head of the OAS electoral observation department, discounted claims of massive fraud, saying the "results published by the CEP agreed with the OAS statistical sample." The organization had conducted three other statistical tests that all showed the same top four candidates, according to Icaza. See, *Id.* At a March 2016 panel discussion in Washington D.C., de Icaza

again referred to the OAS quick count to defend his view that irregularities had not affected the outcome: “We saw less than perfect elections, but in our opinion those irregularities – we saw them, people have said that our observers are blind, they are not ... the irregularities that we saw were not a determining factor in the results.” “What you expect from us is to come out and say there was a massive fraud, the results should not be accepted, everything should be scrapped and we should start from zero. Well, I cannot say that,” de Icaza said. While de Icaza pointed to safeguards in place to reduce mandataire multiple voting, he could not rule out that they had voted multiple times: “Did they all vote only once? We do not know.” See, *Haitian Human Rights Leaders Make the Case for Electoral Verification at Washington Roundtable*, haitielection2015.blogspot.ca (Mar. 10, 2016), <http://haitielection2015.blogspot.ca/2016/03/haitian-human-rights-leaders-make-case.html>; and *Video: Round Table on Supporting Free & Fair Elections in Haiti*, CEPR (Mar. 7, 2016), <https://www.youtube.com/watch?v=55QEXB7LIJs&feature=youtu.be>. The OAS response to the CIEVE again repeated this argument: “It bears noting that the results published by the CEP coincided with those of the statistical sample taken by the OAS observers. (emphasis in original) Since the official results were repeatedly questioned, the Mission performed three additional statistical cross-comparisons, taking into account the official returns and the incident reports submitted by our observers, and eliminating discrepancies between the Mission’s data and the official results. None of the cross-comparisons yielded substantially different results, and the order of the first four places remained unchanged.” OAS CIEVE Response, *supra* note 23, at 2. In January 2016, the EU’s de Gabriel referred to the OAS quick count when defending the results as well: “We can see it, we have verified it just as other organizations have, the projection of results reflects exactly the results that were published by the CEP for the first round of the presidential race.” See, Louis-Joseph Olivier, *L’Union européenne sur la même logueur d’onde que la Commission d’évaluation*, Le Nouvelliste (Jan. 4, 2016), <http://lenouvelliste.com/lenouvelliste/article/154145/LUnion-europeenne-sur-la-meme-logueur-donde-que-la-Commission-devaluation>.

99. *Texte de l’accord signé le 6 février 2016 au palais national*, E-Haiti Network (Feb. 7, 2016), <http://ehaitinetwork.com/texte-de-laccord-signé-le-6-fevrier-2016-au-palais-national/>.
100. The new CEP members are Marie Frantz Joachim (women’s sector), Carlos Hercule (Catholic Church), Jean Simon Saint-Hubert (human rights sector), Léopold Berlangier (media), Marie Héroline Michel (private sector), Dorcély Josette (trade unions), Kenson Polynice (peasants’ and vodou sector), Frinel Joseph (Protestant denominations), and Bernard Jean Lucien (university sector). There was a certain level of controversy over the choice of Jean Simon Saint-Hubert as the human rights sector representative with Kettly Julien, the executive director of l’Institut Mobile d’ Education Démocratique (IMED), denouncing the nomination. It’s Julien, not Saint-Hubert, who has gained the majority of votes (18 out of 28) to represent the HR sector in the CEP during the February 29 meeting of human rights groups. *Formation CEP : Les organisations de droits humains à couteaux tirés !* Rezo Nodwes (Mar. 7, 2016), <https://rezonodwes.com/formation-cep-les-organisations-de-droits-humains-a-couteaux-tires/>; and ‘*Haïti-Droits Humains: Le secteur fait choix de Kettly Julien comme représentante au CEP*’, Haiti Press Network (Mar. 3, 2016), <http://www.hpnhaiti.com/nouvelles/index.php/politique/33-personal-tech/593-haiti-droits-humains-le-secteur-fait-choix-de-kettly-julien-comme-representante-au-cep#.Vtzt-5rDkER.twitter>; on the new CEP, see ‘*Composition du Conseil*, Cephaiti.ht, <https://www.cephaiti.ht/Composition-du-Conseil.html> and *Haïti - FLASH : Les membres du CEP nommés par Arrêté présidentielle*, Haiti Libre, (March. 30, 2016), <http://www.haitilibre.com/article-17014-haiti-flash-les-membres-du-cep-nommes-par-arrete-presidentiel.html>. The previous CEP was accused, of publishing results, in the words of Electoral Councillor Jaceus Joseph , that “do not correspond with the reality of the ballot box” as well as attempting to hide the scale of electoral violence, See: “*There was fraud*”, says Electoral Councilor, Haiti Sentinel, (Dec. 5, 2015), <http://sentinel.ht/2015/12/05/fraud-says-electoral-councilor/>.
101. Jacqueline Charles, *As interim president’s term ends, Haitians ask, ‘Who’s in charge?’*, Miami Herald (Jun. 16, 2016) <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article84045662.html>.
102. Pressman: “Some political actors and observers spread a narrative late last year that included allegations of widespread fraud in the electoral process, challenging the credibility of the elections. That narrative does the Haitian people a real disservice. It was not just unhelpful but harmful, and greatly undermined the efforts of the Haitian Government, assisted by the international community, to give the Haitian people the opportunity to have their voices heard through a democratically elected Government.” See, *7651st meeting transcript: The Haiti Question*, United Nations Security Council (Mar. 17, 2016), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7651.
103. Jake Johnston, *As Haiti Political Crisis Deepens, International Organizations Reducing Aid Just as the Country Needs It Most*, Alternet (Mar. 25, 2016), <http://www.alternet.org/world/haiti-political-crisis-deepens-international-organizations-are-reducing-aid-just-country-needs>.
104. Jacqueline Charles, *Stop stalling on Haiti’s presidential election*, Miami Herald (Apr. 12, 2016), <http://www.miamiherald.com/opinion/op-ed/article71435012.html>.

105. The EU and OAS observation missions had shown that the “isolated irregularities” that did occur were solely due to a lack of training for polling station workers, according to Hériveaux. “These are not people with preconceptions, prejudices and a partisan spirit on the political level.” « Le classement restera tel quel avec comme candidat admis au second tour M. Jovenel Moïse, le candidat du PHTK, et, bien sûr, M. Jude Célestin », déclare l’ex-sénateur. Rudy Hériveaux rappelle que selon les observateurs internationaux qui, dit-il, jouissent d’une crédibilité et sont reconnus à travers le monde entier, les élections du 25 octobre dernier se sont bien déroulées et les résultats ont reflété la réalité des urnes. « Ce ne sont pas des gens qui ont des a priori, des préjugés, et un esprit partisan sur le terrain politique. Ils ont été unanimes à reconnaître que les élections se sont déroulées parfaitement et que les quelques irrégularités isolées qu’on a pu observer c’était surtout la conséquence du manque de formation du personnel des bureaux de vote. Les erreurs de ces personnes ne sauraient remettre en question la validité des résultats des élections », insiste-t-il. See, Danio Darius, *La Commission d’évaluation électorale est «illégale, inconstitutionnelle, antidémocratique et antirépublicaine»*, selon le PHTK, Le Nouvelliste (May, 2, 2016), <http://lenouvelliste.com/lenouvelliste/article/158363/La-Commission-devaluation-electorale-est-illegale-inconstitutionnelle-antidemocratique-et-antirepublicaine-selon-le-PHTK#s-thash.6tvToGMu.dpuf>.
106. Jacqueline Charles, *As Haiti misses presidential runoff deadline, protests scheduled*, Miami Herald (Apr. 23, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article73540982.html>; Frantz Duval, *Elections: « Nous attendons les décisions du CEP »*, dit l’ambassadeur américain Peter F. Mulrean, Le Nouvelliste (Apr. 04, 2016), <http://lenouvelliste.com/lenouvelliste/article/157392/Elections-Nous-attendons-les-decisions-du-CEP-dit-lambassadeur-americain-Peter-F-Mulrean>.
107. Commission Indépendante d’Évaluation et de Vérification Électorale, *Rapport de la Commission Indépendante d’Évaluation et de Vérification Électorale*, Gouvernement de Haïti (May, 8, 2016) (hereinafter « CIEVE Report»), p. 8.
108. The commission reviewed partial voting lists, signing sheets, lists for political party representatives and national observers, and registered complaints. Tally sheets in theory included documentary evidence of votes tabulated at polling stations, and each sheet should have a maximum of 450 votes. *Id.* at 46-51.
109. *Id.* at 30.
110. The earthquake exacerbated problems with documentation due to difficulty updating electoral lists from the estimated 200,000 lives lost and the fraudulent use of dead electoral voters for the elections.
111. CIEVE Report, *supra* note 107, at 17. See also, Décret Electoral, Spécial n° 1 du 2 Mars 2015, Art. 171.
112. CIEVE Report, *supra* note 107, at 30.
113. *Id.* at 6.
114. *Id.* at 5.
115. POHDH, JILAP, CARDH, CONHANE, CNO, RNDDH, *Press Release* (Jun. 10, 2016), <http://rddh.org/content/uploads/2016/06/8-Commission-V%C3%A9rification-CEP.-Rapport-%C3%A9valuation-10jun16-ENG.pdf>.
116. The one major Haitian observer group that did not immediately denounce acts of fraud on October 25 was the Citizen Observatory for the Institutionalisation of Democracy (Observatoire pour l’Institutionnalisation de la Démocratie or “OCID”). The group, which monitored 10.21 percent of Haiti’s polling stations, initially reported that “notwithstanding incidents related to a few deficiencies as well as to the determination of several malicious individuals, the elections were held in better conditions of security and were marked by an appreciable participation of the electorate.” See, *Haiti - Elections : Electoral Observation Report of the OCID on the opening of vote*, HaitiLibre (Oct. 26, 2015), <http://www.haitilibre.com/en/news-15582-haiti-elections-electoral-observation-report-of-the-ocid-on-the-opening-of-vote.html>; see also, *Haiti - Elections : Observation report of OCID on the close of voting*, HaitiLibre (Oct. 27, 2015), <http://www.haitilibre.com/en/news-15591-haiti-elections-observation-report-of-ocid-on-the-close-of-voting.html>.
117. *Evaluation Commission’s Ambiguous Report May Only Deepen Haiti’s Electoral Crisis*, HaitiElection2015.blogspot.ca (Jan. 5 (2016), <http://haitielection2015.blogspot.ca/2016/01/evaluation-commissions-ambiguous-report.html>; Rony Desroches; see also, *La commission d’évaluation avait recommandé une évaluation plus approfondie*, Le Nouvelliste (Apr. 1, 2016), <http://lenouvelliste.com/lenouvelliste/article/157313/La-commission-devaluation-avait-recommande-une-evaluation-plus-profondie>.
118. CIEVE Report, *supra* note 107, at 11.
119. JILAP Report, *supra* note 38, at 16.
120. CIEVE Report, *supra* note 107.
121. *US Withdraws Funding for Haiti Elections*. Haiti: Relief and Reconstruction Watch, Center for Economic and Policy

Research (Jul. 8, 2016), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/us-withdraws-funding-for-haiti-elections>; see also, *Haiti Elections News Roundup - June 7*, haitielection2015.blogspot.ca (Jun. 7, 2016), <http://haitielection2015.blogspot.ca/2016/06/haiti-elections-news-roundup-june-7.html>.

122. *Daily Press Briefing - July 7, 2016*. US Department of State. (Jul. 7, 2016). <http://www.state.gov/r/pa/prs/dpb/2016/07/259433.htm#HAITI>.
123. « Etant donné ces circonstances, et dans un souci de cohérence dans la logique des tâches qui m'ont été attribuées, je considère que, au vu l'annulation du premier tour des présidentielles, les conditions ne sont plus réunies pour la continuation des travaux la MOE UE. «Ceci malgré un certain nombre de failles et d'irrégularités observées, qui cependant n'étaient pas de nature à altérer les résultats dans leur ensemble. La MOE UE avait par ailleurs souligné la transparence des procédures mises en oeuvre par le CEP à l'époque.» *L'Union européenne met fin à sa mission d'observation électorale en Haïti*, *Le Nouvelliste* (Jun. 8, 2016), <http://lenouvelliste.com/lenouvelliste/article/159738/LUnion-europeenne-met-fin-a-sa-mission-dobservation-electorale-en-Haiti>.
124. Like PHTK and its allies, the EU also characterized the CIEVE as both unconstitutional and a violation of the February 5 agreement. According to the EU, the CIEVE's creation represented "a particularly serious breach in the constitutional principle of the independence of the CEP and, in a wider sense, of that of the division of powers." This set a "bad precedent" which could "seriously erode the independence of future electoral councils" vis-a-vis the executive. The EU added that Martelly's CEEI was similarly unconstitutional, but this ex post facto denunciation is hard to take seriously, given the EU's previous endorsement of the CEEI and its work, an endorsement made without any questions raised about the commission's constitutional legitimacy. See, EU CIEVE Response 23, *supra* note , at 5-6. The CEEI and the February 5 agreement had both called for a more in-depth evaluation of the previous phases of the elections in order to restore confidence in the process. Moreover, in keeping with the CEP's constitutional authority over electoral matters, the CIEVE's recommendations were not binding on the CEP. See, *Accord or Discord? Political agreement eases tensions, but crisis persists*, haitielection2015.blogspot.ca (Feb. 14, 2016), <http://haitielection2015.blogspot.ca/2016/02/accord-or-discord-political-agreement.html>; see also, Danio Darius, *La commission d'évaluation avait recommandé une évaluation plus approfondie*, *Le Nouvelliste* (Apr. 1, 2016), <http://lenouvelliste.com/lenouvelliste/article/157313/La-commission-devaluation-avait-recommande-une-evaluation-plus-approfondie>. As political scientist Frédéric Thomas stated, "paradoxically, however, it is not the EU but Haitian institutions and civil society that have most accurately interpreted and respected their Constitution, reconfiguring the contours of national and popular sovereignty. See, Frédéric Thomas, *The European Union and Haiti: Everyday Neocolonialism*, Haiti Support Group (Jul. 5, 2016), <http://haitisupportgroup.org/the-european-union-and-haiti-everyday-neocolonialism/>. In general, the EU EOM's criticism was out of proportion to the handful of valid (though limited) concerns raised in its analysis. Most notably, the inconsistency of the CIEVE's call to rerun the presidential election only, when the legislative races held on October 25 were clearly just as susceptible to influence by the forms of fraud identified by the commission. The lack of information on the methodology used by the commission for the analysis of CINs on tally sheets, and fuller details on the results obtained, was another valid point.
125. The EU cited the CTV director (Widmack Matador) claiming that additional *PVs de carence* may have been stored in the CTV's archives with the municipal results, but that the CIEVE members failed to request them specifically. EU CIEVE Response, *supra* note 23, at 3, 8, 14. But it is not clear why the EU was so certain that more *PVs de carence* were available at the CTV, see footnote 125.
126. EU CIEVE Response, *supra* note 23, at 3.
127. Elsewhere, the EU suggested that many of these documents may be found in the CEP's departmental offices (BCEDs) rather than the CTV: "For the election workers who followed instructions to the letter, it is conceivable that the *PVs de carence* can be found stored with the other materials not sent to the CTV in the departments (generally secured on MINUSTAH's bases), while others took the initiative of including them in the shipment to the CTV." See, *Id.* at 9. The discrepancy between the *PVs de carence* found by the CIEVE and the CEEI could also result from these documents being discarded or lost between early January and May, when the CIEVE started working. Indeed, as the EU recognized in a footnote: "The succession of verifications and contestation consequently meant that since December 2015 the CTV did not have absolute control over its own documents." See, EU CIEVE Response, *supra* note 23, at 8. JILAP suggested that these documents had indeed gone missing in the course of the electoral process: "Des observateurs au centre de tabulation ont constaté que ces listes de votants hors LEP ont bel et bien été retirées des PV. Mais personne ne peut dire ce qu'elles sont devenues." See, JILAP Report, *supra* note 38, at 20. When asked about this claim, Commission member Gédéon Jean replied that the EU's position was "illogical," since it was not the responsibility of the Commission members but of the CTV staff to provide them with the proper documentation. They asked for the *PVs de carence*, the CTV staff retrieved it from the relevant archives, and they worked with what they had. There

was no question of the Commission asking for documents from a specific archive and not from others, since this was not their responsibility but that of the CTV staff. “The EU invented that!” Nikolas Barry-Shaw, phone conversation with Gédéon Jean, July 21 2016. No explanation other incompetence or deception on the part of the CIEVE was noted by the EU EOM.

128. La double saisie est un mécanisme de qualité essentielle, spécialement dans le domaine électoral, afin d’éliminer les erreurs accidentelles ou encore intentionnelles des opérateurs, indépendamment de leur niveau de formation ou leurs affinités politiques, ainsi que de la méthode de leur sélection. En l’occurrence, la grande majorité des opérateurs de la CIEVE a été recruté par la commission elle-même, sans transparence. See EU CEIVE Response, *supra* note 23, at 4. La base de donnée ne peut être considéré fiable, puisqu’elle n’a pas été créé par une double saisie, pourtant un mécanisme de qualité essentielle dans le domaine électoral afin d’éliminer les erreurs accidentelles ou encore intentionnelles des opérateurs, excluant toute possible influence de leurs affinités politiques. En l’occurrence, la grande majorité des opérateurs de la CIEVE a été recruté par la commission elle-même, sans transparence, et ils travaillaient sans supervision apparente. *Id.* at 3, 4, 11.
129. On the question raised about the smaller sample size and methodology used by the CIEVE for the finding that 10 percent of votes lacked proper documentation, Gédéon Jean explained that the commission was working on a very tight deadline, and due to lack of time was obliged to select a smaller random sample for this check. The EU apparently did not raise its criticisms with the Commission members, or at least did not include their views in its analysis. Nikolas Barry-Shaw, phone conversation with Gédéon Jean, July 21 2016.
130. *Declaration of Principles for International Election Observation, and Code of Conduct for International Election Observers*, UN (Oct. 27, 2005), p. 2 (hereinafter “Declaration of Principles”). The code of conduct for EU election observers, Rule 6, states, “Observers will maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties, candidates, or with reference to any issues in contention in the election process.” See, *Handbook for European Union Election Observation* (Third Edition) (2016), p. 21 (hereinafter “EU Handbook”).
131. The technical branch viewed the EU EOM’s analysis of the CIEVE as “filled with arrogance, insults and contempt for the rights of the Haitian people,” attitudes that reflected that “an increasingly evident racism” among certain diplomats and international bureaucrats towards the Haitian people. Within Haiti, there was “unanimous” agreement that the elections of 2015 were not transparent, credible and honest, if not “a veritable fiasco,” the technical branch pointed out. The CIEVE’s findings of *mandataire* fraud, voting without proper documentation and widespread irregularities had confirmed Haitian observers’ reports, journalists’ accounts, and the BCEN’s and CEEI’s reviews of the Tabulation Center’s documentation, all of which the EU mission disregarded. The technical branch suggested that the EU EOM had been embarrassed by the CIEVE’s conclusions, recalling how “from the earliest moments” the mission had “struggled to defend the August 9 and October 25 elections” as among of the most credible elections in Haiti’s history. See, *Réponse du bras Technique de la CIEVE a l’analyse de la MOU-EU*, (Jun. 14, 2016) (hereinafter « CIEVE Response »), pp. 1- 3, http://www.ijdh.org/wp-content/uploads/2015/06/Rapport_CIEVE_Analyse_MOE_UE-V3_20160614.pdf.
132. *Id.* at 2, 9.
133. ICCPR, *supra* note 30, Art. 25. The American Convention on Human Rights guarantees the “[r]ight to participate in government” through “genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.” American Convention on Human Rights, Part I: State Obligations and Rights Protected, Chapter II: Civil and Political Rights, Art. 23(b).
134. Haitian Constitution of 1987, Art 276 and EU Handbook, *supra* note 130, at 32. “Hence, the basic criteria or standards for electoral observation used by OAS election observation missions are drawn from instruments, elaborated and subscribed to by the OAS member states.” In addition, the OAS bases its standards various rights related to electoral processes consecrated in the Inter-American Democratic Charter, as well as the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969). See, Organization of American States, *A Manual for OAS Electoral Observation Missions* (Oct 2007), p. 27 (hereinafter “OAS Manual”).
135. UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, available at: <http://www.refworld.org/docid/453883fc22.html>.
136. *Id.*
137. *Id.*
138. EU Handbook, *supra* note 130, at 33.

139. NLG Report, *supra* note 14, at 8.
140. Both August 9 and October 25 were marked by low voter turnout. Turnout was estimated at 18 percent nationwide on August 9 (10 percent in the capital), and 26.6 percent on October 25 (15 percent in the capital). Some studies suggest a far lower turnout for both elections. These numbers are historically low when contrasted with higher turnout in previous presidential elections. See, Igarape Report, *supra* note 35; see also, Kim Ives and Yves Pierre Louis, *Paltry Turnout Due to Fear, Fraud, and Voter Disenfranchisement*, HAITI LIBERTE, (OCT. 28, 2015), AVAILABLE AT [HTTP://WWW.HAITI-LIBERTE.COM/ARCHIVES/VOLUME9-16/PALTRYPERCENT20TURNOUTPERCENT20DUEPERCENT20TOPERCEN20FEAR.ASP#](http://www.haiti-liberte.com/archives/volume9-16/paltrypercent20turnoutpercent20duepercent20topercen20fear.asp#) AND INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA), *VOTER TURNOUT DATA FOR HAITI*, [HTTP://WWW.IDEA.INT/VT/COUNTRYVIEW.CFM?ID=99](http://www.idea.int/vt/countryview.cfm?id=99).
141. In addition, the EU EOM's critique of the CIEVE was not based on "well documented, factual, and verifiable evidence," in violation to the EU's code of conduct. See, EU Handbook, *supra* note 130, at 21. The EU attack on the CIEVE clearly went beyond "bring[ing] irregularities to the attention of the election officials" and into the realm of "giv[ing] instructions or countermand[ing] decisions of the election officials," something observers are not supposed to do according to the code of conduct. *Id.*
142. *Id.* at 70, 108.
143. *Id.* at 174.
144. OAS Manual, *supra* note 134, at 19.
145. For instance, the EU Handbook calls on observation missions to record "information of any reports of election-related violence and intimidation" from sources such as domestic election observers and local journalists and "to double check the information ... and give their opinion on the credibility of the claims." Elsewhere, the Handbook states that observers "should track and follow up on any allegations of vote-buying, for instance by checking whether authorities have investigated such reports or complaints." According to the OAS manual, it is "imperative" that assessments be based on multiple, reliable sources of information, such as domestic election observers and local media, in order to "address diverse issues that go well beyond the things that can be observed on election-day at polling sites." See, EU Handbook, *supra* note 130, at 70, 77. See, OAS Manual, *supra* note 134, at 20-22.
146. Declaration of Principles, *supra* note 130, at 6, para 17.
147. JILAP, *supra* note 38, at 5; RNDDH Nov. 12 Report, *supra* note 38, at 1; EU Oct. 27 Preliminary Report, *supra* note 55, at 9; OAS Oct. 27 Report, *supra* note 59, at 1; Barry-Shaw, communication with an OAS electoral observation member.
148. JILAP, *supra* note 38; RNDDH Nov. 12 Report, *supra* note 38, at 23.
149. According to telephonic interviews and email exchanges with members of the EU and OAS EOM missions, neither mission had any members who spoke Haitian Creole. Creole and French are Haiti's national languages, but Creole is spoken by 100 percent of the population, while French is only spoken by 10-20 percent of the population.
150. Judith Kelley, *The Good, the Bad, and the Ugly: Rethinking Election Monitoring*, International Institute for Democracy and Electoral Assistance (2012) (hereinafter "Kelley, The Good, the Bad, and the Ugly") p. 7. Nikolas Barry-Shaw, communication with an OAS electoral observation member. OAS and EU claims that their observers did not see any fraud on the scale documented by Haitian observers may well be true; international observers can succeed in deterring fraud and irregularities at polling places where they are present while still failing to prevent a fraudulent outcome overall. The OAS manual notes that the first-hand information collected by the EOM "requires meticulous interpretation" since "it is possible to believe that the information collected by the EOM does not point to any irregularities in the election, when these have actually occurred." "This is possible if the EOM does not detect irregularities, for instance, because it was denied access to certain key aspects of the electoral process or simply because it was not present in the country long enough to collect first-hand information about certain events and aspects of the electoral process." OAS Manual, *supra* note 134, at 25.
151. Rule six of the Code of Conduct for EU Election Observers states, "Observers will maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties, candidates, or with reference to any issues in contention in the election process." See, EU Handbook, *supra* note 130 at 21. See also, Declaration of Principles, *supra* note 130, at 2.
152. Kelley, The Good, the Bad, and the Ugly, *supra* note 150, at 9. Kelley collected data on 1,324 national elections and well over 600 observation missions from 1975 to 2004 for the Project on International Election Monitoring.
153. Jake Johnston, *Outsourcing Haiti, How disaster relief became a disaster of its own*, *Boston Review* (Jan. 16, 2016), <https://bostonreview.net/world/jake-johnston-haiti-earthquake-aid-caracol>.

154. Pamela White, U.S. Ambassador to Haiti, “I think the great instability at the beginning of the [Michel] Martelly administration is certainly much calmer now. We have not seen major shifts in the government. They do occasionally change ministers, but the major ones that we interact with have been pretty stable for a long time. That is a great plus. The most important thing is that the prime minister has been stable for a long time, and that is incredibly important to us because he controls all of the ministers; he controls the vision for how to move forward. He is very tough on corruption and very supportive of private industry and enterprise, tourism, jobs — all of these things with which we agree. So having a steady hand there has been incredibly important.” “... I do try to support the Martelly administration because I think that they care about their people, but also because any change in government here destabilizes the country and throws us five years backwards. We just can’t afford to keep doing that in Haiti. To have a stable and elected government complete a full term is very important. And most politicians [and Haitian people] believe that too, I think. Especially with the elections that we really want to have happen this year, we do have money that we put into the basket that will be used by the UN to do logistics and work with the transitional C.E.P [Conseil Electoral Permanent].” Larissa Liburd, *An Interview with Pamela A. White, U.S. Ambassador to Haiti*, *The Politic* (Aug. 14, 2013), <http://thepolitic.org/an-interview-with-pamela-a-white-u-s-ambassador-to-haiti/>. See also, *Remarks by Haiti Special Coordinator Kenneth Merten - Elevating Haiti and Its Diaspora*, U.S. Department of State (Nov. 14, 2016), <http://www.state.gov/p/wha/rls/rm/249523.htm>. Political consultant Antonio Sola is widely recognized as the link between the Martelly government and Spain. See, *Antonio Sola : le maitre à penser des Tèt Kale*, Rezo Nodwes (Dec. 5, 2015), <https://rezo-nodwes.com/antonio-sola-le-maitre-a-penser-des-tet-kale/>. See also, *An Electoral Face*, *supra* note 16.
155. Days after the cancellation of the January 24 elections, a U.S. congressional source told Reuters that the Obama administration would be worried if former President Aristide were playing an important role. “They’re not thrilled with Aristide’s forces coming back.” *Le Nouvelliste*, meanwhile, reported that the Core Group’s opposition to a verification commission was motivated in part by fear that Moïse Jean-Charles, “whom they dread,” might get another chance at the presidency. Frank Jack Daniel, *Aristide has behind-the-scenes role in Haiti’s new crisis*. Reuters (Jan. 26, 2016), <http://www.reuters.com/article/us-haiti-election-aristide-idUSKCN0V42TV>.
156. The Obama administration wanted to keep Haiti out of the media spotlight, since the political and economic failures of Haiti’s post-earthquake reconstruction might reflect poorly on Hillary Clinton’s presidential candidacy. As U.S. Secretary of State, Clinton was a strong supporter of President Michel Martelly and played a key role in his ascent to the presidency in the 2010-11 elections. Nikolas Barry-Shaw, *Clinton’s Long Shadow*, *Jacobin* (May 27, 2016), <https://www.jacobinmag.com/2016/05/haiti-elections-hillary-clinton-fraud-corruption-earthquake-martelly/>.
157. Jacqueline Charles, *Will a Haiti election without U.S. dollars undermine the vote?* *Miami Herald* (Jul. 18, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article90376627.html>.
158. Kelley, *The Good, the Bad, and the Ugly*, *supra* note 150, at 9, 13. U.S. and Canada in the case of the OAS, France and Spain in the case of the EU.
159. Judith Kelley, *D-Minus Elections: The Politics and Norms of International Election Observation*, International Organization, Volume 63, Issue 4 (Oct. 2009), p. 769.
160. CIEVE Response, *supra* note 131, at 2.
161. *Id.* at 1
162. While the top leadership of the OAS mission was Latin American, Canadians and Americans composed six of the eleven other members of the Core Team. See, *Haiti: General Information*, OAS, <http://www.oas.org/eomdatabase/moeinfo.aspx?lang=en&id=377>.
163. Both the Chief and the Deputy Chief Observers for the EU were Spanish, and the Spanish Foreign Ministry closely supported their stance on the CIEVE. See, *Results of first round of presidential elections in Haiti annulled*, Spanish Government website (Jun. 10, 2016), http://www.exteriores.gob.es/Portal/en/SalaDePrensa/Comunicados/Paginas/2016_COMUNICADOS/20160610_COMU161.aspx.
164. Such conflicts of interest are among “the most persistent problems that have surfaced throughout my study,” Kelley notes. Kelley, *The Good, the Bad, and the Ugly*, *supra* note 150, at 11-13.
165. *Id.* at 9, 11.
166. Kelley, *Biases*, *supra* note 67, at 169.
167. These recommendations were collected from written reports from RNDDH, COHANE, SOFA, CE-JILAP, POHDH, and MOLEGHAF.