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**Mutual appreciation society. President Michel Martelly seeks advice on how to run Haiti as a dictatorship from Haiti's ousted former President for Life, Jean-Claude Duvalier, Port-au-Prince, October 2011.**

*Duvalier Departs, but Martelly's Duvalierism Marches On*

# Who needs elections?

The fifth anniversary of the devastating earthquake of 2010 will mark another historic moment: it is the day on which Haiti officially becomes a dictatorship and as such, just months after Jean-Claude Duvalier's death, takes one more giant step back to its Duvalierist past.

On 12 January 2015, the mandates a further 10 of the country's 30 senators will expire, rendering the upper house of the National Assembly inquorate and powerless. The Senate has been barely quorate since January 2012, when elections to replace the first third of its members should have been held.

Three years on, those elections have yet to materialise, while the deadline for the next scheduled poll to elect a second one-third tranche of the Senate as well as all 99 members of the lower house, also now due to face the electorate, has also passed. With no lower house and an inquorate upper house, the legislature will be inoperative and total power will revert to the executive, with President Michel Martelly 'left with no option' but to govern by decree.

The origins of the crisis go back to the electoral *coup d'état* that brought Martelly to power in 2011. Why would the President bother with elections when the only mandate that matters is that dictated by the foreign powers that 'selected' him for the run-off election that brought him to power in the first place? (*See inset story*).

The Haitian constitution of 1987 has built in to it elaborate checks and balances between the executive, the legislature and the judiciary. Crucially, these include the power of the National Assembly to impeach the President and the Prime Minister in cases of criminal wrongdoing or violation of the constitution.

When elevated to the presidency in March 2011, Martelly found himself with only three of his own party's deputies in the lower house and no senators. Meanwhile, the party of his excluded presidential rival Jude Célestin held at least a third of the seats in both chambers.

The legislature, then, with its hostile majority and it constitutional responsibility to exercise a watching brief over the executive hung like a sword of Damocles over the head of the new president from the outset. But swords can be blunted, and Martelly proceeded to do exactly that – by doing precisely nothing.

It is the Senate, then, that is at the centre of the current electoral crisis: the lower house votes on all legislation proposed by the executive but that vote must then be ratified by a two-thirds majority in the upper house. If, for some reason, elections are not held to renew one third of senators, the Senate is left *precisely* quorate and it takes very little to bring the legislative machinery grinding to a halt.

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*Inside Account of how OAS Election Experts Manipulated Tally to Eng*

# How the 'Friends of Haiti' got the

On 28 November, 2010, Haitians were called to the urns to have their say in who would replace René Préval as President of Haiti. The moment was hardly propitious: much of Port-au-Prince lay in ruins following the massive earthquake that hit the country on 12 January that year.

One in eight inhabitants of the capital was dead and one-and-a-half million remained homeless, struggling to survive in makeshift IDP camps with inadequate sanitation and access to clean water (see HB68). To add to the misery, Haiti was in the grip of a cholera epidemic – introduced in September by a Nepalese contingent of United Nations 'peacekeepers' – that has gone on to claim over 9,000 lives and sicken well over 750,000.

The elections were a fiasco. For the third time in a row, the largest and most popular political party, *Fanmi Lavalas* of ousted President Jean-Bertrand Aristide, had been excluded, along with fourteen smaller parties. Huge numbers of voters, mainly from poor neighbourhoods and IDP camps, were excluded from the electoral rolls. There were widely-reported irregularities – ballot stuffing, 'lost' ballot papers, intimidation of voters. The only real result was an historically low turn-out – just 23% – on a historically low and inaccurate electoral roll.

When Haiti's Provisional Electoral Council (CEP) released the results of the November ballot, it emerged that former first lady Mirlande Manigat had taken first place, but with insufficient votes (50% +1) to win outright. There would have to be a run-off between the top two candidates.

In second place had come Jude Célestin, son-in-law of the incumbent President, René Préval, and in third place Michel Martelly, but they were separated by only 0.7% of the vote. Both Manigat and Martelly cried foul and demanded a recount, if not a re-run, of the elections, but not under the auspices of the CEP which, by then, had clearly lost any semblance of credibility.

Enter the Organisation of American States (OAS). In late December 2010, with the dispute over the elections still raging and the CEP apparently paralysed, the OAS's Electoral Observation Mission (EOM) took it upon itself to transmute into an Expert Verification Mission (EVM). In mid-January 2011, its preliminary conclusions were leaked to the press. The second and third place candidates had been reversed. Martelly would be a second-round candidate, Célestin would not. The *fait* was, as it were, *accompli.*

### Mathematical Alchemy: Getting 'Results'

What kind of mathematical alchemy had been employed to transform third place into second? In 2011, the Washington-based *Center for Economic and Policy Research* (CEPR) published a report analysing both the original voter data and the methodology employed by the EVM. That report was also included in a paper published in August 2011: 'The Organization of American States in Haiti: Election Monitoring or Political Intervention?'[1]

It turned out that the EVM had looked only at selected ballot box counts (in polling stations where the results were considered 'suspect' because they did not match 'assumptions') and had simply stopped the process when the desired outcome – of reversing the position of second and third placed candidates – had been achieved.

The CEPR report is somewhat technical, but its conclusions are crystal clear: the methodology employed by the OAS to justify altering the results of the first round of the election was 'absurd', 'defied reason' and 'had no basis'. If anything the data suggest the precise opposite of the result arrived at by the EVM: 'By all indications from the data, those who cast their votes did so in favor of Célestin over Martelly.' In short, the EVM, 'did not establish any legal, statistical, or other logical basis for its conclusions.'

Incompetence? Carelessness? Unlikely, given that the EVM really was made up of experts, in particular, statisticians. What then?

The authors point to the plentiful evidence of the political motivation of the OAS. They also highlight the enormous pressure placed on the CEP to accept the doctored results – including the threats of withdrawal of aid made in the UN Security Council in January 2011. Curiously, the initial political pressure was simply for the exclusion of Célestin rather than the promotion of Martelly. Célestin was, as we have said, Préval's son-in-law and Préval had seriously angered Washington by signing up to Venezuela's Petrocaribe initiative.

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### Carnivals, Jet-Setting, Yes; Polls No

The first responsibility of the President of the Republic is to assure the regular functioning of public powers and the continuity of the State (Article 136). That means ensuring that free and fair elections are held in a timely fashion.

Since assuming power in 2011, Martelly has found the time to organise six Carnivals and to jet around the world reportedly collecting eye-watering $20,000 *per diems*. (We cannot know the precise figures as, in flagrant contravention of any number of articles of the Constitution, a veil of secrecy surrounds 'Presidential' expenditure and income.). But somehow Haiti's President has not found the time or resources to call and hold a single election in the last three-and-a-half years.

In a recent interview with the French TV5 network, Martelly laid the blame for that state of affairs on a so-called 'Group of Six' senators who are refusing to pass the necessary law to set the electoral process in motion. But they cannot be blamed for the fact that no elections at any level – from the Communal Sections to the Senate – have happened since Martelly took power.

Such is Martelly's aversion to the ballet box that he has, more than once, prolonged the mandates of Senators. That action is expressly forbidden by the constitution (Article 111.18). But, as Haitians know to their cost, *Konstitisyon se papye, bayonèt se fè* – Constitutions are made of paper, but bayonets of steel.

Who benefits from the current state of affairs? Not the senators, who will all be out of a job on 12 January 2015 in any case; not the people, who have been deprived of exercising a democratic right enshrined in the Constitution. The benefits to the President are, by contrast, multiple.

First, he has effectively castrated a legislature that should provide parliamentary oversight. Second, he has avoided facing any ballot-box evidence of the widespread discontent of the majority of Haitians who increasingly perceive his regime as corrupt and self-serving. Third, he is edging ever closer to the moment when he will be able to constitutionally rule by decree, with nobody looking over his shoulder.

### Meanwhile, Back at El Rancho

The proximate cause of the electoral stalemate is an agreement that should have paved the way for the overdue elections. In March 2014, talks were held at the El Rancho hotel in Pétionville. The 'El Rancho Accord' supposedly represented a deal between the President, political parties and civil society for a political framework allowing for parliamentary and municipal elections to be held in October 2014.

But those talks were anything but inclusive: CSOs critical of Martelly's administration were excluded, as were several major political parties, including *Fanmi Lavalas* – which has been illegally disbarred from fielding candidates in any elections since 2004. Moreover, the Accord stipulated that the body responsible for organising and overseeing the elections would be a 'compromise' Permanent Electoral Council.

The problem was that the PEC in question was loaded with Martelly cronies. For all its manifest faults, the old Provisional Electoral Council had, at least on paper, reflected a wide cross-section of public life (including in its 9 members: journalists, academics, human rights activists, religious figures etc.).

In a fiercely disputed amendment to the Constitution ratified just after Martelly entered office, the old Provisional Electoral Council was to be replaced by a Permanent Electoral Council with a quite different composition: three members nominated by the executive, three by the National Assembly and three by the Supreme Council of the Judiciary (CSPJ).

The CSPJ, responsible for the appointment of judges, as well as the control, regulation, discipline and deliberations of the judiciary, was itself created by a constitutional amendment that was no less controversial, since it appeared to contradict other constitutional provisions that guarantee the independence of the judiciary, in particular, the irremovability of judges.

Thanks to its powers of oversight and 'discipline', whoever controls the CSPJ controls the judiciary – from the humblest local tribunal up to the Court of Appeal. Martelly understood this and lost no time in appointing his godfather and close ally Anel Alexis Joseph as Head of the Supreme Court and President of the CSPJ.

Martelly commented at the time of the ratification of the Constitutional amendments: 'We are tired of provisional electoral councils that used corrupt practices to organise flawed elections.' Quite so, Haitians

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Wikileaks cables from as early as 2007 demonstrate the degree of animus felt towards Préval: 'Préval's weaknesses as an executive, his reflexive nationalism, and his disinterest in managing relations in a broad diplomatic sense', wrote *chargé d'affaires* Thomas C. Tighe, 'will lead to periodic frictions as we move forward our bilateral agenda.' In plain language, Washington's fear was that Préval might not be *totally* compliant and might even – despite all evidence to the contrary – care a little about his country.

### Thuggery, Threats and Tricks

But the full extent of the political intervention that eventually brought Martelly (and about whom there were no fears of 'reflexive nationalism') to power would only be revealed later, by an insider in the process. At Christmas 2010, a Brazilian professor called Ricardo Seitenfus was sacked from his position as Special Representative of the OAS in Haiti as a result of his critique of the role of MINUSTAH, the UN and the OAS in Haiti in an interview he had given to the Swiss newspaper *Le Temps*.

Interviewed in February 2014 for the CEPR's Relief and Reconstruction blog as he publicised his book which enlarged on these criticisms, Seitenfus detailed the politics that lay behind the electoral doctoring conducted by the EVM. Here are some highlights:

• On the very day of the elections, the political head of MINUSTAH, Edmond Mulet, phoned Préval and told him he had 48 hours in which to leave Haiti for good: a plane would be provided, as one had been for Aristide in 2004. Préval refused, and two OAS members spoke out against the illegality of Mulet's instruction. Mulet was stymied; Plan A had failed.

• The appointment of the EVM was Plan B. Its composition was to be decided by the Office of the OAS Secretary General in consultation with the governments of Canada, France and the USA. Apart from a token Chilean and a token Jamaican, all nine members were drawn from those three countries – branded the 'Imperial Trident' by Seitenfus. (France has 'permanent observer' status in the OAS, allowing it to keep an eye on its investment.)

• The objective from the outset was to exclude – at all costs – Célestin from the second round of voting. The basis for this seems to have been the dubious assumption that what few principles Préval still had or was suspected of having might be shared by his son-in-law.

• The method employed was as crude and as flawed as the CEPR report had supposed: arbitrarily assuming that no candidate should have scored more than 225 votes in any individual ballot box, votes in excess of that total were simply thrown away. These included, for the sake of appearances, some votes for Manigat and Martelly, but 60% of those discarded were for Célestin.

• When even that failed to produce the desired result, the ceiling for Célestin was reduced to 150 per ballot box, with the excess votes in those ballot boxes apportioned pro rata to the other candidates. That did the trick.

In effect, the work of the OAS 'specialists' consisted of taking the votes of the Haitian people, throwing them in the bin or apportioning them to other candidates until they arrived at the outcome they desired.

What emerges from this shabby episode, is above all the arrogance and contempt that define the attitude and conduct of the self-designated 'Friends of Haiti'. Washington and its collaborators have no intention of allowing the Haitian people to determine their own future, for better or for worse, as long as they insist on voting for the 'wrong' candidates.

But what can one expect of a people tainted by an 'original sin': the original sin of Haitians being to have freed themselves from slavery and ended their colonisation by the world's three leading imperial powers between 1791 and 1803. For more than two centuries, it has been clear that these are facts the hemisphere's new and old imperialists can neither forgive nor forget.

Seitenfus remarks that: 'Once again, the international community behaved in Haiti as if it were in conquered territory. It boldly put into practice, absent any legal, technical or moral basis, a white coup and a blatant electoral intervention.' Indeed, and that was all possible because Haiti was and is conquered territory: conquered by repeated military interventions and occupied since 2004 by a proxy army flying the flag of the United Nations.

The intervention of the OAS did not directly install Martelly in the Presidential Palace, but it paved the way for his 'selection', as Haitians describe it, in the second round poll of March 2011. Just as importantly, perhaps, it taught Martelly a lesson he has not forgotten: the only vote that counts in Haiti is the one cast in Washington. And if elections in Haiti are so meaningless, why bother holding them? (See main story).

1. http://www.cepr.net/documents/publications/haiti-oas-2011-10.pdf
http://www.cepr.net/documents/publications/haiti-french-2011-01.pdf

joked, a permanent one, controlled by the executive, could oversee flawed elections much more effectively.

Since its announcement, in March 2014, the 'Group of Six' senators have refused to ratify the El Rancho Accord and in particular to pass the electoral law required to legally constitute the PEC. They argue that the PEC is not only the creature of the executive but is moreover unconstitutional, having only seven members, not the stipulated nine.

In July 2014, Martelly unilaterally (i.e. unconstitutionally) decreed that elections would take place on 26 October. Like so many other Haitian election days, that date came and went.

There is also the little matter of resources. As one member of the slim-line PEC recently remarked: 'There are serious financial constraints: the PEC doesn't have a penny to its name.' But it does have the support of both MINUSTAH and the Organisation of American States. The Secretary General of the OAS has reassuringly promised that it will send an observer mission if and when the elections take place. Given the financial constraints, it is to be hoped that they bring enough bin-liners to dispose of the discarded ballot papers (see inset story).

### Macoutes Don't Hold Elections

Martelly's refusal to hold elections has serious consequences lower down the electoral ladder that impact much more on ordinary Haitians than does the horse-trading in the Senate. Haiti has 10 territorial Departments, 41 Arrondissements, 133 Communes and 570 Communal (formerly 'Rural') Sections.

Each of those entities is governed by elected local officials who enjoy administrative and financial autonomy. When elections are not held, those roles must still be filled, if their functions are to continue.

And it is here that the clientelism of Martelly's regime is most pervasive and pernicious. Addressing the U.S. Congress last year, Haitian senator Steven Benoît put it this way: 'Currently, municipal government is being managed by handpicked men and women totally dedicated to Martelly. This means that all 420 municipal executive agents replacing the elected mayors whose term has expired, since 2011, are close Martelly political allies. Thousands of elected county officials have also been hand-picked by Martelly to replace those whose term had run out.'

In the dark days of the Duvaliers, the *chefs de section* had been the backbone of the dictatorship. Martelly has clearly learnt from his murderous predecessor, and appears to favour a similar calibre of 'official': a vacant seat on the municipal council of Saut d'Eau, for instance, was recently filled by the presidential appointment of a certain Dorzena Wilma, alias 'Wisky Wisky' who is an alleged member of the notorious Galil Gang of kidnappers (whose leader, Woodley 'Sonson La Familia' Ethéard is currently on the run).

With Martelly taking on the mantle of his late-departed friend and mentor, 'Baby Doc' Duvalier, and as the international community looks on approvingly, one is reminded of the Kreyòl adage *Makout pa konn fè eleksyon* – Macoutes are not in the habit of holding elections.

If the 1987 Constitution is so insistent on the separation of executive, legislative and judicial powers it is because Haitians know only too well the consequence of their convergence. Between 1957 and 1986 the writ and whim of the executive, Duvalier father and son, was what passed for law in Haiti, with the slightest murmur of dissent or opposition ruthlessly suppressed.

We have seen, above, the tactics employed by the Martelly administration to nullify the national legislature and control local government, but when HSG visited Haiti in June of this year, most of the progressive CSOs with whom we met were no less worried by the erosion of the distinction between the executive and the judiciary with some going so far as to claim that the judiciary has become the political arm of the executive.

In addition to the take-over by the executive of the CSPJ, there have been two high profile and closely related scandals over the last 18 months that appear to suggest that Martelly is convinced that the justice system is there to do his bidding.

In July 2013, Serge Jean Joseph, a judge who was investigating accusations of corruption in public office, money-laundering, embezzlement and fraud against the President, his wife and son, and several government officials, issued a judgement ordering that the Prime Minister (Laurent Lamothe) and

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various ministers and officials be made available for questioning by the judicial authorities.

On 11 July, judge Joseph was summoned to a meeting with Martelly and Lamothe at which explicit death threats were allegedly issued. Joseph's wife told reporters that Martelly had asked her husband, sarcastically, 'Do you know of any country where the President's wife is hauled before a court?' To which the judge replied: 'Yes, one governed by rule of law'.

Two days later Joseph was dead, apparently felled by a massive stroke. Few in Haiti believe he died of natural causes and the case remains open. Martelly and Lamothe may yet be charged with high treason by the Senate constituting itself as High Court. Another good reason to keep the Senate inquorate.

## Martelly's Justice: Arrest the Accusers

A month after judge Joseph's untimely demise, a young man named Enold Florestal was arrested and detained by investigating magistrate (*juge d'instruction*), Lamarre Bélizaire. The charge was complicity in murder, and it related to an incident in 2010. Florestal had been beaten up and hospitalised in a domestic dispute with his wife's family. His brother, Josué, complained to the police, who sent a patrol to investigate. A gun battle ensued and Florestal's brother-in-law, Frantzi Duverseau, was shot dead by the police. Enold Florestal was, at the time, being treated in hospital.

The charges against Florestal are, in themselves, absurd, but they make perfect sense when one knows that it was Florestal who had brought the accusations of misconduct in public office (*usurpation de fonction*) against Martelly and his family in January 2012. Moreover, the Florestals are founder members of Group 77 – a political movement affiliated to the Patriotic Movement of the Democratic Opposition (MOPOD).

In a further bizarre twist, it turns out that Bélizaire's appointment as an investigating magistrate was itself illegal: he failed to fulfil no fewer than three of the statutory requirements for the position. The story lurched further into farce in September 2013 when Bélizaire was disbarred from practising for ten years, having issued an illegal arrest warrant against Florestal's lawyer, André Michel. But the ultimate farce is that Bélizaire's disbarment will only come into effect *after* he has finished serving as an investigating magistrate!

For his part, Bélizaire continues to demonstrate both his unabashed incompetence and his total partiality. In August this year he renewed the original warrants against the Florestal brothers (who still languish in prison) and, for good measure, added the name of André Michel – apparently forgetting what led to his own disbarment in the first place. Haiti's National Network for the Defence of Human Rights (RNDDH) has branded the continued detention of the Florestals, and the persecution of their defence team, as 'an utter debasement of the Haitian judicial system.'

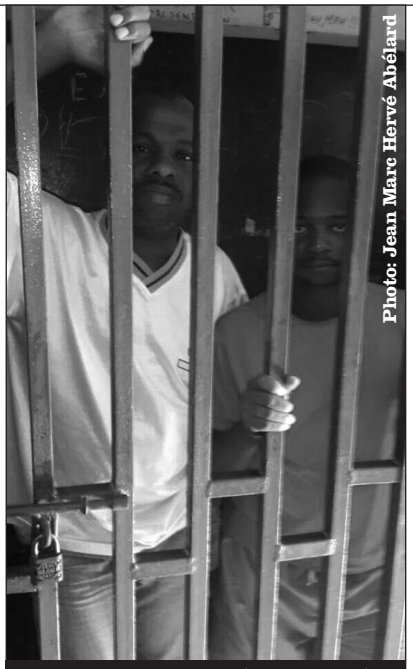

Photo: Jean Marc Hervé Abélard

**Political prisoners: Odigé and Thimotée, proof that there are political prisoners in Haiti despite Martelly's assertion to the contrary.**

If Martelly paid any attention during his schooling at the elite College of Saint-Louis de Gonzague – along with fellow alumni Jean-Claude Duvalier, Laurent Lamothe and death-squad leader 'Toto' Constant – he would know that Toussaint Louverture had warned that '[the roots of the tree of liberty] grow deep, and they are numerous'.

It may be too early to talk of a Haitian Spring, but with every blow of the axe that Martelly aims at the Haitian Constitution, rule of law, and due democratic process more and more shoots of resistance break the earth. Since mid-October, Haiti has seen waves well-organised street protests against the regime.

## Judges Orders: Straight from the Palace

On 17 October, and again on 26 October, tens of thousands took to the streets in peaceful but raucous demonstrations to demand elections and respect for the Constitution. Martelly had 'decreed' elections for 26 October, so with characteristic Haitian humour the demonstrators set off in search of the polling stations. When none were to be found they demanded the keys to the National Palace.

Before breaking up the march with tear gas and water cannon, the police and a justice of the peace served pre-prepared arrest warrants for 'public order offences' on the two leaders of the Patriotic Front for the Respect of the Constitution (FOPARC), Biron Odigé and Rony Thimotée. But, with their habitual incompetence, the authorities neglected to have them appear before a judge, making their detention illegal.

Fortunately, as much as Martelly – a former Tonton Macoute – may hanker after the 'good old days', dissidents can no longer be 'disappeared' into the dungeons of Fort Dimanche: Odigé and Thimotée have friends, and they know where they are being held. Their prisons – in Carrefour and Croix-des Bouquets – are now the destination of daily marches demanding their release.

Meanwhile, during his visit to France, Martelly declared that 'as far as I aware, there are no political prisoners in Haiti.' RNDDH begs to differ. In an open letter timed to coincide with that visit they drew attention specifically to the case of Odigé and Rony, but also underlined the way Martelly has systematically violated the separation of powers: 'The Haitian judiciary is struggling to free itself from the control of the executive. The President of the Supreme Council of the Judiciary receives his orders directly from the National Palace and follows them unquestioningly.'

The most worrying aspect of this revolt for Martelly and his backers in Washington, Ottawa and Paris, must be not only how geographically widespread it is, but how politically broad-based it appears to be. Recent rallies have seen conservatives like Mirlande Manigat, cross-party platforms like MOPOD, and centrist CSOs like RNDDH standing shoulder to shoulder with the leftist militants of FOPARC and the newly-formed *Coordination Dessalines* (KOD) – both of which are close to former President Aristide's *Fanmi Lavalas*.

With 12 January fast approaching, and no elections on the horizon, the protests against the regime seem likely, if anything, to gather in magnitude and frequency. But there are worrying signs that Martelly, too, might be spoiling for a fight. During his recent trip to France he let slip that he had been in contact with the Inter-American Defense Board (an organism of the OAS) with a view to creating a 'parallel force' alongside the Haitian National Police. He already has a small paramilitary force, trained in Ecuador and stationed in the Artibonite – the remnants of his so-called 'Pink Militia'.

So far, Martelly's international backers are standing by him, accusing the 'Group of Six' of playing party politics and sabotaging the elections in order to provoke a confrontation with the executive, but if the tens of thousands on the street become hundreds of thousands, they may yet decide to cut their losses. If they do, Martelly and his cronies may find themselves spending the millions they have pocketed on a (very) extended vacation in the South of France, while the 'Friends of Haiti' cast round for the next Duvalier.