



USIPeace Briefing

January 2008

For more information:
info@usip.org

Paper Versus Steel: *Haiti's Challenge of Constitutional Reform*

By Robert Perito and Jasenka Jovic

Haiti's constitution was adopted on March 29, 1987 when over 90 percent of the voters approved it in a popular referendum. The result was not surprising. Among the most democratic in the world, Haiti's constitution was proposed in the aftermath of the brutal Duvalier dictatorship and seemed to promise an end to arbitrary and violent rule. Unfortunately, that was not the case as the country endured two more decades of turmoil. In the period of instability following adoption of the constitution, its provisions were more often ignored or violated than observed.

This was true in part because the document is both extremely complex and occasionally contradictory. It has also proven to be expensive and difficult to implement even under the supervision and with the support of the UN and the international community. A study by Florida International University termed the Haiti constitution "a wonderful exercise in theoretical grandiloquence with little relevance to reality." Haiti's President René Préval has described the constitution as "the single greatest threat to Haiti's long-term stability." Among the many challenges presented by the constitution is the complicated amendment process, which requires action by multiple parliaments and a waiting period until the incumbent president leaves office.

The question of whether Haiti should take on the challenge of amending its constitution was discussed by a panel of distinguished experts at a meeting of the Institute's Haiti Working Group on December 19, 2007. Principal speakers included: Louis Aucoin, associate research professor at the Institute for Human Security at Tufts University; Robert Fatton, the Julia A. Cooper professor of government and foreign affairs in the department of Politics at the University of Virginia; and Professor Robert Maguire, director of the Haiti Program at Trinity College. Ambassador Raymond Joseph, Haiti's ambassador to the U.S. and Timothy Ryan, acting director of the Office of Caribbean Affairs at the Department of State provided formal comments. Robert Perito, senior program officer in the Center for Post-Conflict Peace and Stability Operations at USIP, moderated. Following is a summary of the views the speakers and the audience expressed.

A Reaction to Dictatorship

Haiti has had at least 30 constitutions. Most were drafted at the behest of leaders who sought to expand their powers or remain in office. The 1987 constitution was drafted following the end of a period of brutal, dictatorial rule by the Duvalier family. It was prepared by a constitutional commission of distinguished Haitian jurors, lawyers, historians and intellectuals. It was designed to usher in a new era

of government based on democratic values and respect for human rights. The drafters sought to limit the historic excesses of executive power by expanding the power of the parliament. The document reflects the strong influence of the constitution in the current Fifth French Republic, with its semi-presidential or dual executive system, in which there are both a directly elected president and an appointed prime minister, who is subject to a no confidence vote by the parliament. Unlike the French constitution, however, the Haitian president is not given the authority necessary to fulfill his responsibility as protector of the nation in times of political crisis. The prime minister is also limited in the ability to govern without the consent of the parliament. The powers of the two offices are often blurred or not fully delineated. The drafters borrowed features from earlier French constitutions to limit the power of both executives and to vest authority in the parliament and a complex hierarchy of elected bodies at other levels of government. The constitution specifically forbids a personality cult, banning the use of the name or image of living persons on money, stamps or public buildings.

As a result of its limits on executive authority and its complexity, the 1987 constitution has been more often ignored or applied selectively than enforced during the turbulent period since its adoption. Only in the immediate aftermath of international interventions in Haiti in 1994 and 2004 have elections for president, parliament and local officials taken place and an effort made to abide by the constitution. Between 1997 and 1999, Haiti experienced political gridlock caused in part by the constitution's ambiguity concerning the authority to resolve disputes over interpretation of its provisions and the absence of presidential power to dissolve parliament and to call new elections. After the 2000 election, which returned Aristide to power, a number of factors caused former soldiers and other armed groups to use force to remove the president. These elements were challenges to the flawed senatorial vote count, controversy over control of the Provisional Electoral Council and the general decline in public order. This resort to violence seemed to once again prove the Creole proverb: *Konstitusyon se papye, bayonet se fe* (A constitution is made of paper, but bayonets are made of steel).

A Complex and Ambiguous Constitution at All Levels

For a country attempting to introduce democracy after a history of tyrannical rule, the 1987 Constitution poses problems for every level of government.

- **Presidency:** President Préval has noted the problems created for continuity in leadership by the constitution's provision that limits the president to two, non-consecutive terms. Others have noted the problems created because the president appoints the prime minister from the majority party of the parliament, but can not remove him, nor can he dissolve parliament if it refuses to give his choice for prime minister a vote of confidence.
- **Parliament:** The constitution grants parliament wide powers including approving the prime minister, members of his cabinet, and his program of government. Parliament has the power to question and remove individual ministers from the cabinet, to intervene in criminal trials, and to interpret the constitution's provisions. Arbitrary exercise of these powers can produce political gridlock that no part of the government has authority to resolve.
- **Local Government:** Making local government work is a particular challenge given the decentralized and radically democratic system created by the 1987 Constitution, which provides for an elected council and assembly for every territorial subdivision: communal section, commune, and department. Assemblies oversee and advise councils and elect members to higher bodies. At the apex of this hierarchical pyramid is an interdepartmental assembly that advises the president on development policy and planning. The December 2006 local elections involved 29,000 candidates for 1,429 offices. The system has yet to be fully implemented, nor is there

funding or clear descriptions of authorities and responsibilities. Assemblies are also required to nominate judges for appointment to local courts, a break with common international practice.

The Constitution Creates Special Problems for the Préval Government:

- **The Army:** The constitution makes provision for a Haitian Army with supreme authority vested in a commander appointed by the president. Aristide suspended and demobilized *the Force Armée d'Haiti*, replacing it with the Haitian National Police. The issue of whether Haiti should have an army remains alive, as do questions about status of former soldiers and the army's potential role in a country with no external enemies and a history of military coups.
- **The Diaspora:** Haiti's large, talented and affluent diaspora is a possible source of desperately needed human and financial capital. However, the constitution denies Haitian citizenship to dual nationals. This has discouraged external investment and prevented members of the diaspora from returning to work in Haiti. Previous Haitian governments have valued the diaspora for its generosity; remittances topped \$1.6 billion in 2007. The Préval government has indicated a strong interest in tapping the diaspora for needed skills and money, but the Constitution's provisions on citizenship remain a major barrier.
- **The Courts:** President Préval has called for creation of a constitutional court with the power to interpret the constitution, rule on questions related to government authority and impose solutions in the manner of the U.S. Supreme Court. Without a constitutional court, Haiti's risks future crisis from political gridlock.
- **The Elections:** Under the constitution, elections are organized and controlled by a Permanent Electoral Council composed of nine members: three appointed by the president; three by the Supreme Court and three by the National Assembly from names lists provided by the department assemblies. Since the department assemblies are not fully organized and functioning they cannot provide the name lists. Provisional Electoral Councils (PEC) appointed by the president organized previous elections.

Senate Elections Pose an Immediate Challenge

The constitution requires that one-third of the thirty members of the Senate are elected annually. Elections scheduled for November 2007 were delayed when members of the PEC accused its leaders of embezzling funds and threatening them with a gun. On December 12, President Préval named a new PEC to organize the Senate elections and indirect elections for local assemblies, probably in spring 2008. This action ended speculation about whether the elections would go forward. Préval has called attention to the fact that Haiti cannot afford the multiple elections on various dates required by the constitution and that donor funds would be better spent on development projects. The U.S. has assured the Haitian government it will provide \$3.8 million to fund the senatorial elections and has counseled that the political costs of failing to hold elections would outweigh the financial cost of undertaking them. The U.S. believes holding the elections is necessary to build the capacity and credibility of the Préval government.

Ticking Time Bomb or Opportunity for National Dialogue?

In an October 17, 2007 speech marking the 201st anniversary of the death of revolutionary leader Jean Jacques Dessalines (who promulgated Haiti's first constitution), President Préval declared that the 1987 constitution posed a threat to the country's stability and called for constitutional reform. Since then, the Haitian polity has focused on the legal and political challenges of amending the constitution.

The constitution requires that amendments be approved by two consecutive parliaments and that successful amendments may only take effect after the installation of a newly elected president. Referendums on constitutional reform are expressly forbidden. Under current circumstances, proposed amendments could not be adopted by parliament until 2010 and could not become effective until 2011. Politically, the process of reviewing the constitution could prove destabilizing. Already, President Préval's call for an amendment to allow presidents to serve two consecutive terms has raised suspicions that he seeks to avoid leaving office despite his repeated statements that he will not seek another term.

The experiences of South Africa, Rwanda and Nicaragua, however, suggest that if properly managed, the process of reforming the constitution could provide an opportunity for national political dialogue and result in reconciliation among disparate political and social elements. These countries conducted national educational campaigns that introduced the issues and informed citizens, who were invited to comment on the draft constitution through mailing in suggestions and participation in town meetings, focus groups and conferences. This open and participatory process was conducted over a period of five to seven years in order that there was no rush to judgment on critical issues and representatives of civil society had ample opportunity to provide their views. Meanwhile, existing constitutions were followed and amendments were adopted in accordance with constitutional provisions assuring legitimacy and continuity.

A similar process for Haiti would solve the problem of how to achieve constitutional reform without imperiling the country's fragile democracy. President Préval has vowed to convene a constitutional commission of Haitian and foreign experts to make recommendations for reform. This process could succeed if: (1) the diaspora were assured its views would be considered on the issues of dual nationality and achieving the benefits of Haitian citizenship; (2) all political factions and social groups were invited to participate in a national dialogue; and (3), the UN and the international community provided guidance, encouragement and financial support. The role of the U.S. government will be particularly important in providing leadership for this effort.

The long-term solution to Haiti's 200-year-old constitutional crisis does not lie in amending the current document, but in achieving a spirit of constitutionalism--widespread acceptance that any short-term gain from violating the constitution would not be worth the long-term risk of endangering the "rules of game," which are generally beneficial and which everyone has agreed to live by. An example of constitutionalism was the acceptance by Americans of the 2000 election Supreme Court decision that gave the Electoral College victory to President Bush even though Vice President Gore had won the popular vote. This spirit will take a long time, but it is worth making a start by utilizing an open, fair and deliberative process for comprehensive constitutional reform beginning this year.

About the Authors:

This USIPeace Briefing was written by Robert Perito, senior program officer, and Jasenka Jovic, program assistant, in the Center for Post-Conflict Peace and Stability Operations at the United States Institute of Peace. The views expressed here are not necessarily those of USIP, which does not advocate specific policies.

About the Center for Post-Conflict Peace and Stability Operations:

USIP's Center for Post-Conflict Peace and Stability Operations aims to transform societies emerging from conflict by promoting stability, democracy, economic development, and social reconstruction.

About the United States Institute of Peace:

The United States Institute of Peace is an independent, nonpartisan, national institution established and funded by Congress. Our mission is to help prevent, manage, and resolve international conflicts by empowering others with knowledge, skills, and resources, as well as by our direct involvement in peacebuilding efforts around the world.