

The Haitian Constitution 20 Years Later: Where Are We?

March 24, 2007

Draft Conference Summary

Introduction

The community forum, *“The Haitian Constitution 20 Years Later: Where Are We?”*, was an opportunity for the Haitian diaspora community to learn about and engage in a discussion on the constitution as a guide and guarantee for democratic change in Haiti. The Forum, which was organized by the Haitian-American Community Dialogue in collaboration with the Fédération des Associations Régionales Haïtiennes à l’Etranger (FARHE), took place on the afternoon of March 24, 2007 at Holy Cross Church in Brooklyn.

The main objectives of the Forum were to increase knowledge of the history of Haitian constitutions and the context in which the 1987 constitution was drafted, to examine its effectiveness in addressing social and political challenges in Haiti, and to draw out recommendations to better achieve the ideals of the constitution. A particular focus was on the way the constitution addresses the diaspora question, and how the constitution affects expatriate community involvement in Haiti’s development.

The Forum was organized as part of ongoing efforts by the Haitian-American Community Dialogue to encourage collaboration and constructive discussion on issues of importance in the Haitian community. The following is an overview of the panelists’ presentations and the responses of the participants. A complete report on the Forum, which includes panelist biographies, background information on the event and the organizers, and more details on the participants is also available.

The Panel

The Forum featured three panelists with expertise in Haitian constitutional and diaspora issues: Claude Moïse, Michèle D. Pierre-Louis, and Emmanuel Coffy (panelist biographies can be found below). The panel was designed to present different perspectives on the question of the constitution: a structural and historical perspective, a perspective from Haitian civil society, and a perspective from diaspora involvement. Following the panel presentations, participants were invited to share their comments or questions with the panel.

A. Claude Moïse:

In his presentation titled “La question constitutionnelle haïtienne aujourd’hui: L’urgence de la réforme” [“Haiti’s Current Constitutional Question: Urgency for Reform”], Professor Moïse reviewed the 1987 Haitian constitution and made the case for constitutional reform. He asserted that the pact on governance, the

establishment of the state of law, and economic development and social progress all represent enough reasons why a constitutional revision is urgent.

He argued that the current constitution defines the organization of the State, fixes a framework for the political life and is a reference for restoring the political system damaged by so many turbulences over the years. However, he remarked that from 1987 and 2006 the constitution has not been applied continuously as a reference document for the organization of the Haitian State. There have never been satisfactory political solutions or adequate institutional answers to the frequent political crises during that period. Therefore, the constitutional question becomes urgent, because it is a question of restoring legality after a long period of crisis. But this can be realized only if we address the real difficulties, the concrete problems of adjustment and legitimization of the powers granted in the constitution that at any moment can obstruct the establishment and the work of state institutions. Therefore, the flaws, dark spots, and utopian provisions in the constitution must be scrutinized for the country to be ready to enter in the normalcy of the State of law.

Chief among these imperfections are a) an imbalance between the Executive and Legislative powers b) a lack of explicit constitutional provision defining the role of the President as referee and guardian of the Constitution, in charge of ensuring the continuity of the State and the normal functioning of the nation's institutions c) an ambiguous process of formation of the government starting with the nomination of the Prime Minister, that may benefit the expression of partisan interests to the detriment of the national interest; d) the existence of several holes in the constitution that the president of the Republic could maliciously exploit, for example, the lack of obligatory deadline for promulgating laws in spite of the wording of article 144 which demands the President to promulgate them within the timelines prescribed by the Constitution, in reference to articles 121 to 126; e) the absence of an imposed deadline on the Chambers to pass bills, which could be used to disturb or paralyze the functioning of the State; f) a serious problem of legibility of the constitution's text because of approximate formulations which, on various points, can create confusions.

Therefore, concluded Professor Moïse, there is an urgency to act and this will not be an easy task. The constitution does not prohibit amendments, but the clause on amendments is part of the problem rather than the solution. The methods of revision are so rigid that one should wait at least eight years before anything can be modified in the constitutional text. He acknowledged that special and extraordinary steps have already been taken toward normalizing the State since 1987, such as interim governments, calendars, electoral decrees, etc. Maybe the same dynamics can be used to carry out constitutional amendments that everyone or almost everyone judges imperative.

B. Michèle D. Pierre-Louis

Ms. Pierre-Louis delivered a perspective of civil society in Haiti in the constitutional debate. In her presentation titled "The Haitian Constitution: Glimmers of Hope and

Ghosts of the Past" she discussed the origins of the constitution, a history and characteristics of past Haitian constitutions, and she offered a review of the current one. Ms. Pierre-Louis began her presentation in referring to the Greek History where the notion of rule of law, rules and regulations took roots. She defined a constitution as a set of laws that tells us the aspiration of a nation and how to govern it accordingly. She went on to consider a constitution as a social contract where institutions are established to manage the state activities, in a legal fashion.

Continuing, Ms. Peirre-Louis noted that from 1805 to 1987 there were 23 constitutions plus amendments (13 in the 19th Century and 10 in the 20th Century). Added to those are seven foreign interventions, as well. All these constitutional changes are testimonies to the many crises and episodes of instability the country has experienced in the last 200 years. In connection to this, she cited the work of Professor Claude Moïse, who showed in his books how political events and social situations constantly led to revisions and publications of several constitutions. Constitutional change in Haiti, she said, is usually due to class interests or the personality of the strongman of the moment. Ms. Pierre-Louis supported her arguments with legal concepts and political theories, including Montesquieu's theory of principles of political representation, the notions of separation of power, and the system of checks and balances that help avoid dictatorial management, corruption and abuse of power.

Ms. Pierre-Louis also argued that there were different forms of government over the 200 years of Haitian history. She named Jean Jacques Dessalines as an emperor, Henri Christophe as a king, Jean Pierre Boyer, Francois Duvalier, and Jean Claude Duvalier as presidents for life, and so on. Haitian heads of governments have always tried to retain power, which led to political crises. These in turn often led to the formation of new assemblies for the preparation of a new constitution.

Ms. Pierre-Louis went on to give a brief analysis of the 1987 constitution. To date, she said, it has not been fully applied due to political instability and the failure of heads of government to establish the rule of law in the country. Moreover, the current constitution was prepared in a context of fear, terror, oppression, and corruption resulting from the 29 years of the Duvalier dictatorial government.

Ms. Pierre-Louis outlined its strengths and limitations compared to previous constitutions. Its strengths include the official recognition of Creole as a national language, voodoo as a religion and part of the Haitian culture, the creation of the INHRA (Institut National Haitien de la Reforme Agraire), the formation of the Office of Protection of Haitian Citizens, and so on. She also noted, however, that these institutions are not yet fully operational, due in part to the continuing political crisis.

In terms of limitations, she observed that the constitution includes several unnecessary articles and contradictions between articles, lacks clarity, and has unrealistic aspects due to limited human and financial resources in Haiti. She demonstrated that, based on her experience, CASECs and ASECs (territorial collectives), while being pillars of the Haitian form of government, remained unstructured and dysfunctional because of a lack of regulations for their operation.

Ms. Pierre-Louis concluded by raising some questions related to the notions of nationality and property rights for Haitians living abroad and recognized that the Haitian Diaspora plays a major role in the economic development of Haiti. She asserted that it would be necessary to break with the colonial state of mind in thinking and planning for change in Haiti. She was hopeful that debates on the revision and amending of the constitution would be conducted democratically and publicly. It would be important, she felt, to think deeply about the vision and philosophy of government that the constitution should reflect.

C. Emmanuel Coffy

Mr. Coffy addressed the “**Constitutional Limitations on the Diaspora’s Contribution to Haiti’s Development.**” He argued that the rule of law or lack thereof is the greatest impediment to the diaspora’s contribution to Haiti’s development. For the diaspora to be fully engaged in moving Haiti from where it is, there need be a government of laws not a government of men established in the country. He presented some prerequisites to bring this about.

Mr. Coffy argued that the spirit of the current constitution is contrary to modern democratic values for number of reasons: a) the law must be indigenous and should neither be foreign nor imported, yet Haiti’s law is based on Roman Civil Law System and is originally written in French; b) the law is outdated because it contains many antiquated codes; c) the law should reflect the reality and people of the country: Haiti is mostly mountainous with 95% of its population of African descent, yet article 9 makes no mention of rural sections. The Constitution makes no mention of $\frac{3}{4}$ of the land and its inhabitants; d) the law must be equitable, fair, just and applied evenhandedly, but the letter of the law is contrary to equality in Haiti because there is a lack of due process, as evidenced in prolonged pre-trial detention and lack of defense counsel; e) there is a lack of commitment from the society at large to abide by the rule of law.

And in regard to the diaspora community, he maintained that the law continues to be problematic; it does not provide satisfactorily for members of the Haitian expatriate community, including the right to dual citizenship, the right to vote, and the right to own property. In addition, there exists an absence of antitrust laws of any sort, which does not encourage diaspora investment.

Major Conclusions/Outcomes

A. Panelists’ conclusions and recommendations

The three speakers were in agreement that there is urgency for reform and they called for such reform via constitutional amendments. They also indicated that the process would require public debates and would take time.

Mr. Moise’s conclusion and suggestions: Mr. Moise pinpointed the limitations and contradictions of the constitution and the absence of institutions that could help resolve constitutional conflicts or crises. He concluded that any effort to modify the

constitution will succeed only via a consensus among the country's social and political actors. We need to start a debate, he suggested, as broad as possible on the subject. The president of the Republic can initiate such a debate based on his current constitutional authorities. But he cautioned that steps toward amendments to the constitution will certainly bring resistance. It is necessary then to stay away from conflicts and sterile confrontations and to avoid alienating any sector. He identified the special need for a constitutional council to tackle these challenges

Personally, he has submitted to the President a memorandum calling for reform and, at the President's request, he is working on constitutional reform. As part of this process he met with several groups from civil society. This is a start, he said.

Ms. Pierre-Louis's conclusion and suggestions: Ms. Pierre-Louis' conclusion is that the 1987 constitution is not operable, because it is based on illusions and does not take into account the realities of Haitian society. In addition, Haiti's limited human and financial resources make it impossible to carry out all of its provisions efficiently. It also contains numerous gaps (for example, the CASECs). Because of its utopian nature and the lack of means for enforcing the letter of the Law, the constitution has been scoffed at by the army, the church, civil society, and others. Therefore, she concluded, there is an urgent need to revise the constitution and make it more workable. Ms. Pierre-Louis also pointed out the importance of including women in any process of revision of the constitution. For only the women's movement may bring a fresh perspective to the constitution and to Haiti's development.

Mr. Coffy's conclusion and suggestions: It is Mr. Coffy's belief that the constitution is outdated and does not reflect the Haitian reality. The constitution must reflect the climate, cultural norms and way of life of the country. In addition, one and a half to two million Haitians live in the diaspora. Their remittances surpass the international community aid to the country and are the equivalent of 30% of the gross national product. There are more Haitian doctors in the US than in Haiti. It is projected that over 12 million Haitians will be living abroad in the next 30 years. All this makes one wonder, he said, why the current constitution has no provision for the diaspora participation in Haiti's development. Based on this assessment, Mr. Coffy suggested the following:

- a. Draft a new constitution (1st Republic)
- b. Establish elected representatives of the diaspora.
- c. Submit a committee of experts from the diaspora to work with Claude Moïse.
- d. Allow full diaspora participation in Haitian elections, as both voters and candidates for certain positions, at least for those who are green card holders.
- e. The Haitian government should create a Haiti House in New York where Haitian Americans would meet, keep in touch with their culture, discuss issues relevant to the diaspora community, and maintain a line of communication with the Haitian government.
- f. Create a Legal Fund to support and defend the constitution.

C. Audience Reactions and Recommendations

The panelist presentations were followed by a moderated audience discussion. The audience participation was enthusiastic and welcome. Attendees asked questions that were pertinent to the constitution and to their experience and expectations as diaspora members.

In general, audience members expressed their hope to see a simpler and easily understandable constitution, though not necessarily an entirely new constitution. Some questioned the constitution's position on the role of international institutions, such as the United Nations. Others enquired about the provisions of the current constitution with regard to the role of women in Haiti. Still others were critical of the bi-cephalic nature of the current government system in Haiti and called for a Republican régime, whereby the President would be the head of the State and of the government. Many agreed with Mr. Coffy that the constitution does not reflect the country's reality, especially in the language of the text, i.e., being originally written in French. Finally, they identified a need for strong laws to enhance education and ensure children's education and health care.

With regard to the diaspora, most audience members believed they have a be able to participate in the process of constitutional amendments; the constitution should accord the expatriate community certain rights, including access to dual nationality, diaspora rights to vote (Haitians living aboard must be allowed to vote via consulates and embassies) and to representation in parliament, to participate in the country's governance, and to own property. Further, audience members felt that the constitution should reflect and promote solidarity between diaspora members and Haitians who live in Haiti. It must also extend the rights of women to occupy high political positions among other advances.

Organizers' Conclusions and Recommendations

Based on the panelist presentations and on the audience reactions, the Dialogue and FARHE have drawn two sets of recommendations for action.

A. Issues for further discussion in the diaspora community

- Efforts needed for the expatriate community to continue working toward overcoming cultural attitudes that divide communities and discourage collaboration;
- Consensus building around constitutional priorities for the diaspora;
- Strategies for diaspora involvement in constitutional reform in Haiti;
- Resolution of differences between Haitians living in Haiti and those living aboard (e.g. perceptions of the diaspora as arrogant);
- Development of political advocacy in United States to promote Haitian issues.

B. Issues for discussion with the Haitian government

- Identification of areas for collaboration with the diaspora community in regards to constitutional revision;

- Diaspora expression of strong support for the government's efforts to revise the constitution;
- Creation of a committee of experts from the Diaspora to work with Claude Moïse on constitutional reform;
- Suggestions of provisions that will guarantee the rights of Haitians living abroad, including the dual citizenship, the right to vote and hold public offices, the right to own property and the protection of such property;
- Development with the government of modalities for participation of Haitians living abroad in the political life of the country, e.g., voting in consular offices;
- Identification of areas for diaspora collaboration in Haiti's development;
- Examination of how the diaspora's economic contribution can be more effectively used toward the country's development;
- Explore with the government other ways (beyond economic) Haitians living abroad could contribute to the country's development, including meaningful academic exchange, scientific transfer, a greater role and better coordination for regional organizations already operating in Haiti, etc.

Next Steps

The Forum goals were to facilitate a dialogue about the constitution, to help the diaspora better understand the document, and to examine strategies for diaspora actions. It was the beginning of a healthy discussion on these questions that will include many different perspectives. For all its success, the conference would be meaningless if there was no follow-up or further exploration of the participants' suggestions. The Dialogue and FARHE strongly believe that many of the recommendations that emerged from the discussion are worthy of attention and action on the part of both the Haitian government and the diaspora community.

The key now is to keep the discussion momentum alive within the diaspora community. Most of the issues raised and recommendations made by those who attended the conference need further deliberation, for they represent the views of a small number of people. In order to have a real diaspora impact on the constitutional reform and Haiti's development, there needs to be maximum input from and consensus among members of the expatriate community around all issues. In the meantime, it is imperative to open meaningful lines of communication between the expatriate community and the Haitian government. Through these channels, diaspora representatives will be able to discuss with government representatives issues that are important for Haitians living abroad; and will officially transmit to the government the hopes and suggestions of diaspora members regarding the constitution and their role in Haiti's development.

About the Panelists

Professor Claude Moïse is a noted historian, constitutional scholar, an editor at *Le Matin Journal*, and a conference speaker. He is the author of several books, including, *Constitutions and Power Struggles in Haiti* (2 volumes), *From the American Occupation to the Duvalier Regime*, *To Rethink Haiti: Greatness and*

Misery of a Democratic Movement, The National Project of Toussaint Louverture. He has lived many years in Canada, was one of the organizers of the National Committee of Remembrance of the Bicentenary of the Haitian Independence in 2004, and was recently invited by President René Préal to reflect and make recommendations on the challenges of the constitution.

Ms. Pierre-Louis is the founder and Director of Foundation Connaissance et Liberté (FOKAL), an institution that promotes culture, education and grassroots civic organization in Haiti. She holds a Masters degree in Economics from Queens College (CUNY). Ms Pierre-Louis was Assistant Director of Haiti's National Airport Authority, a founder of the first national micro credit institution (SOFIHDES), and General Director of the only nationwide literacy campaign (1986-88). Ms. Pierre-Louis currently is also a consultant in the fields of management, education and development and teaches courses in Caribbean history at Quisqueya University.

Mr. Emmanuel Coffy is an Intellectual Property Attorney at the Farrell Law Firm, PC in Uniondale, NY. He holds a Masters Degree in Electrical Engineering from Florida Tech, Melbourne, FL and a Juris Doctor from Seton Hall Law School in Newark, New Jersey. Mr. Coffy is Assistant Coordinator of FARHE.

About the Sponsors

The Forum was presented by the Haitian American Community Dialogue with the co-sponsorship of the "Fédération des Associations Régionales Haïtiennes à l'Étranger"-FARHE.

The Haitian-American Community Dialogue is a project of the Conflict Resolution Program at AFSC, the American Friends Service Committee. The AFSC has been supporting the Dialogue as part of its commitment to peacebuilding and community building locally and globally. The Dialogue is a nonpartisan group consisting of Haitian and Haitian American community leaders and activists in the NYC metropolitan area. It seeks to encourage respectful communication, active listening and openness to divergent viewpoints in the Haitian American community.

FARHE (Fédération des Associations Régionales Haïtiennes à l'Étranger), founded in 1999, is a coalition of hometown organizations in the New York City metropolitan area that provide humanitarian aid exclusively in Haiti, including building schools, health centers and libraries, renovating parks, and providing running water and electricity in many small, often forgotten localities in Haiti. FARHE educates and helps member organizations by providing them with structural capacity, project management skills and a platform to navigate the US and Haitian systems. FARHE believes that the potential for change in Haiti should start at the grassroots level and through collaboration and dialogue among the different sectors of the Haitian community. Most importantly, FARHE wants members of the expatriate community to play an active part in the solution to Haiti's problems at all levels.