

10-1-2012

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## Recommended Citation

Annabelle L. Torgman, *Haiti: A Failed State? Democratic Process and OAS Intervention*, 44 U. Miami Inter-Am. L. Rev. 113 (2012)  
Available at: <http://repository.law.miami.edu/umialr/vol44/iss1/7>

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## Haiti: A Failed State? Democratic Process and OAS Intervention

Annabelle L. Torgman\*

*Politics is not a dirty necessity; it is a moral activity that  
can be corrupted, and the collective corruption of the minds  
of political actors leads to the failure of the state.*

—Zephyr Teachout.<sup>1</sup>

### I. INTRODUCTION

Graham Greene, in response to criticism of his novel, *“Les Comedians,”* openly admitted that he was not concerned about the authenticity of his characters so long as Haiti, Doctor Duvalier, and the Tontons Macoute, were “real enough.”<sup>2</sup> The novel, set in a Port-au-Prince hotel in the 1960s, portrays both the island’s unique and vibrant culture, and simultaneously, its political unrest. Fifty years after the novel’s first publication, Haiti has yet to progress much beyond the country depicted in those pages. The 2010 earthquake destroyed the landmarks the novel described, and the power of the Tontons, Macoutes, and Duvaliers has dissipated; the gangs of Cité Soleil, however, still roam the capital’s streets, and violence remains a steady presence in the everyday lives of Haitians.<sup>3</sup> Haiti’s future—though uncertain—relies heavily on the Organization of American States (“OAS”) involvement and its continued provision of foreign aid.

The island nation faced a massive cholera outbreak in 2010, following the devastating earthquake that decimated many populated areas. At most recent count, approximately 6,500 Haitians have been killed by the water-borne disease.<sup>4</sup> Many Haitians

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1. Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 375 (2009).

2. John Bowen, *The Comedians*, N.Y. TIMES, Jan. 23, 1966, <http://www.nytimes.com/1966/01/23/books/greene66-comedians.html>.

3. Duncan Campbell, *Drinking, Dancing, and Death*, THE GUARDIAN (Dec. 16, 2005), <http://www.guardian.co.uk/books/2005/dec/17/grahamgreene>.

4. *Haiti Cholera Victims Demand UN Compensation*, BBC (Nov. 9, 2007), <http://www.bbc.co.uk/news/world-latin-america-15648110>.

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oppose United States intervention and have expressed their opposition through a recent lawsuit against the United Nations brought by 5,000 Haitian victims of the cholera epidemic.<sup>5</sup> Unfortunately, the inability to independently and effectively combat this cholera epidemic is merely one example of the many systemic hurdles Haiti faces today. In addition to low literacy rates,<sup>6</sup> poverty,<sup>7</sup> and increasing violence,<sup>8</sup> political corruption remains front and center as a serious impediment to Haiti's ability to progress beyond Papa Doc's reign.<sup>9</sup>

Haiti's most recent presidential election, seen by many as a farce, excluded the country's largest political party, Fanmi Lavalas, and other candidates for unjustified reasons. In a situation analogous to holding an American election without a Republican Party candidate, the absence of the Fanmi Lavalas party raised claims of corruption.<sup>10</sup> Foreign intervention regarding the election was minimal and investigations of corruption were inconsequential.<sup>11</sup>

During a similar election scandal in Venezuela, more than 800 Venezuelan politicians have been declared "*inhabilitados*," or disqualified by Chávez's comptroller general since 2007 and subsequently disqualified from seeking public office.<sup>12</sup> Leopoldo López, along with other excluded politicians, took their case to the Inter-American Court of Human Rights ("Inter-American Court") claiming that their exclusions were contrary to both the Venezuelan Constitution and the American Convention on Human

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5. Moni Basu, *Haiti Cholera Victims Demand U.N. Compensation*, CNN (Nov. 8, 2011), [http://www.cnn.com/2011/11/08/world/americas/haiti-cholera-lawsuit/?hpt=he\\_c2](http://www.cnn.com/2011/11/08/world/americas/haiti-cholera-lawsuit/?hpt=he_c2).

6. CIA, *Haiti*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited Apr. 1, 2013).

7. *Id.*

8. AMNESTY INTERNATIONAL, *Haiti: Sexual Violence Against Women Increasing* (Jan. 6, 2011), <http://www.amnesty.org/en/news-and-updates/report/haiti-sexual-violence-against-women-increasing-2011-01-06>.

9. TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTION INDEX 2-3 (2010), available at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results). Haiti scored a 2.2 on a sliding scale from 0-10, or highly corrupt to very clean. *Id.*

10. Marc Weisbrot, *Haiti's Election: A Travesty of Democracy*, The Guardian (May 19, 2013), <http://www.theguardian.com/commentisfree/cifamerica/2011/jan/10/haiti-oas-election-runoff>.

11. *Id.*

12. Girish Gupta, *Venezuela's Exclusion of anti-Chávez Candidates Faces a Challenge*, TIME (Mar. 13, 2011), <http://www.time.com/time/world/article/0,8599,2058180,00.html>.

Rights.<sup>13</sup> In September 2011, the Court ruled the ban a violation of Article 23 of the American Convention on Human Rights and likewise ruled that Venezuela must allow López to run for office.<sup>14</sup> A month later the Venezuelan Supreme Court disregarded the binding decision.<sup>15</sup>

This article analyzes Haiti and its uncertain future as compared to the functional democracy in a somewhat similarly situated Venezuela. The analysis relies heavily on the idea that Haiti, as a “failed state,”<sup>16</sup> requires more OAS intervention, especially as compared to a seemingly functional Venezuelan democracy. The concept of “failed state” offers an alternative approach to international law and the manner in which the law responds to democracies in crisis. As this article will discuss, the fact that a country is labeled a “failed state” triggers a unique response within international law, which may require additional attention and resources from outside aid. While international law traditionally leaves each state to govern its constitution and itself, legal norms increasingly address matters of state and may advocate further involvement by international players.<sup>17</sup>

A fair election is instrumental to a country’s survival, yet it is not always realized. Due to the importance of an election as the modern democratic mechanism for choosing a country’s leader, failed states require more OAS oversight and assistance during the election process. A fair and democratic election is vital to Haiti’s survival, but such an election may have come at the expense of Haitian lives. While Venezuelan politicians brought their claims to light via the Inter-American Court, Haitians instead resorted to violence in an effort to pressure the Election Council into providing a more fair and representative democratic election.<sup>18</sup>

Part II explores Haiti’s history, from colonialism to—arguably—democracy. Haiti’s history plays a significant role in its inability to adhere to a democratic process and its tendency to

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13. *Id.*

14. *Venezuela: Supreme Court Disregards Rights in Election Case*, HUMAN RIGHTS WATCH (Oct. 18, 2011), <http://www.hrw.org/news/2011/10/18/venezuela-supreme-court-disregards-rights-election-case>.

15. *Id.*

16. See generally Mario Silva, *Island in Distress: State Failure in Haiti*, 23 Fla. J. Int’l L. 49 (2011).

17. Stephen J. Schnably, *Emerging Int’l Law Constraints on Constitutional Structure and Revision: A Preliminary Appraisal*, 62 U. MIAMI L. REV. 417, 417 (2008).

18. Silva, *supra* note 16 at 57.

resort to violence. Part III examines ballot exclusion in Haiti and also in Venezuela, comparing the OAS' role in both countries. Part IV analyzes the concept of a failed state and its implications in accordance with Article 20 of the Inter-American Democratic Charter, which orders action upon "unconstitutional alterations of the constitutional regime."<sup>19</sup> Part V comments on the future implications for Haiti as a failed state.

## II. HAITI'S CONCEPTION AND STRUGGLE

Columbus's voyage to the Western world in 1492 was one of the Continent's first visits to Hispaniola and the New World.<sup>20</sup> After years of exploiting the indigenous population, additional explorers under the color of the Spanish flag began importing African slaves to make up for the dwindling labor supply decimated by small pox and over-exhaustive labor.<sup>21</sup> After a series of attacks by the French, Spain ceded the western part of Hispaniola—what is now Haiti—to the French in the 1697 Treaty of Ryswick.<sup>22</sup> Renamed St. Domingue, the region became the richest Caribbean colony and one of the richest colonies in the 18th century French empire owing to its centrality to both the slave trade and the mercantile agriculture system developing in the New World.<sup>23</sup> Highly profitable plantations flourished in one of the New World's harshest slave systems. Perhaps most unfortunately, "this era marked the apex of Haiti's economic development."<sup>24</sup>

In 1791, violence erupted during Haiti's first war for independence. After thirteen years of bloody warfare, St. Domingue finally defeated Napoleon's army and on January 1, 1804, established independence from France and renamed itself "Haiti."<sup>25</sup> The new nation had been born of violence and baptized in the bloody overthrow of its continental overlords, foreshadowing the legacy of violent regime change that would dominate Haitian political history. Although Haiti occupied Santo Domingo, the eastern Spanish-speaking half of Hispaniola, Santo Domingo broke away from

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19. Inter-American Democratic Charter art. 20, Sept. 11, 2001, 40 I.L.M. 1289, available at [http://www.oas.org/en/democratic-charter/pdf/demcharter\\_en.pdf](http://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf).

20. PHILIPPE R. GIRARD, CLINTON IN HAITI: THE 1994 U.S. INVASION OF HAITI 9 (2004).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 9-10.

25. *Id.* at 10.

Haiti in 1844 to become the Dominican Republic.<sup>26</sup>

Owning largely to the triangular trade of slaves, crops, and manufactured goods between West Africa, the New World, and the Continental powers, Haiti emerged as a distinctly black, officially French-speaking republic in a white Spanish and English-speaking area dominated by slave owners and colonists. Given the nation's bloody beginnings, it is not surprising that violence erupted mere months after its independence, as black revolutionary leader Jean-Jacques Dessalines ordered a massacre of all whites in the country.<sup>27</sup> This ultimately counter-productive massacre eliminated Haiti's skilled class and devastated the country's economic potential at a time when it could ill-afford the setback.<sup>28</sup> Despite actively assisting other Latin American countries with independence movements, Haiti was excluded from the Western hemisphere's first regional meeting of independent nations in Panama in 1826, and was not recognized by the U.S. until 1862.<sup>29</sup> The French refused to recognize Haiti's independence until 1825, when Haiti agreed to pay 150 million francs indemnity.<sup>30</sup>

Perhaps predictably, the Haitian democracy remained unstable from 1843 to 1915, with 22 changes of government and 102 revolts, civil wars, and various other impromptu revolutions.<sup>31</sup> Poverty became largely self-perpetuating as Haitians, desperate for sources of income and energy, began razing the island's forests.<sup>32</sup> The deforestation diminished acres upon acres of potentially arable farming land.<sup>33</sup> Political unrest and corruption also pushed away potential investors.<sup>34</sup> The country's instability eventually led to U.S. occupation in 1915,<sup>35</sup> when American President Wilson authorized the landing of nearly 350 Marines to secure the interests of U.S. corporations located on or doing business with the island.<sup>36</sup> Although the occupying forces built hospitals, roads

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26. U.S. DEP'T OF STATE, BACKGROUND NOTES: HAITI (Oct. 19, 2011), *available at* <http://www.state.gov/outofdate/bgn/haiti/191075.htm>.

27. GIRARD, *supra* note 20, at 10.

28. *Id.* at 11.

29. U.S. DEP'T OF STATE, *supra* note 26.

30. GIRARD, *supra* note 20, at 11. As an interesting footnote to this "recognition for pay" framework, nearly 60 million of the original 150 million francs remains outstanding to this day.

31. U.S. DEP'T OF STATE, *supra* note 26; *see also* GIRARD, *supra* note 20, at 12.

32. GIRARD, *supra* note 20, at 11.

33. *Id.* at 11.

34. *Id.* at 12.

35. Geoffrey Jones, Note, *The Fifth Amendment Due Process Rights of Interdicted Haitian Refugees*, 21 HASTINGS CONST. L.Q. 1071 (1994).

36. *Id.* at 1078-83.

and reorganized the country's finances,<sup>37</sup> little investment went into improving quality of life or the efficacy of education.<sup>38</sup> After 19 years of U.S. occupation, Haiti finally regained sovereign rule on August 15, 1934 when President Roosevelt signed a letter of disengagement withdrawing American troops and leaving Haiti to its own devices.<sup>39</sup>

Agricultural productivity in Haiti experienced sporadic success until the 1930s,<sup>40</sup> when the American-born Great Depression took a dramatic toll on the Haiti's agricultural sector.<sup>41</sup> Subsequent natural disaster aggravated the economic woes facing the island, as severe flooding damaged the countryside and resulted in poor harvests.<sup>42</sup> Haiti's then-President Stenio Joseph Vincent developed a new constitution and extended his term using the national plebiscite made famous in Napoleonic France.<sup>43</sup> Although the U.S. pressured Vincent to step down, his successor, Dumarias Estime, also fell victim to the power of his office and sought to escape the inevitable turnover of power that accompanies democratic elections.<sup>44</sup> The army, frustrated by decades of power accumulation by the executive branch, abandoned any pretense of commitment to democratic transfer of power, successfully conducting a military coup and installing Colonel Paul Magloire as the national head of state. Unfortunately, Magloire's tenure was also rife with corruption, directly creating the circumstances that gave rise to Haitian's first true despot, François Duvalier.<sup>45</sup>

### *Duvalier Era*

François Duvalier, known as "Papa Doc," rose to power in

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37. GIRARD, *supra* note 20, at 12.

38. JOHN R. BALLARD, UPHOLDING DEMOCRACY: THE U.S. MILITARY CAMPAIGN IN HAITI 1994-1997 28 (1998).

39. U.S. DEP'T OF STATE, *supra* note 26.

40. *Id.*

41. BALLARD, *supra* note 38, at 30.

42. *Id.*

43. *Id.* A plebiscite is a favorite tool of the totalitarian rule to legitimize their control, as voters in a plebiscite are required to choose not between alternate regimes or proposals but to confirm, or reject, a particular form of government or course of action. Because plebiscites function by allowing the government to directly engage the voting public, they provide the veneer of legitimacy. However, plebiscites permit the despot to bypass many of the institutions of civil society that function as a check on power—such as a political party—and thus can function without any opposing political entities or dissenting blocks of voters. Indeed, an 1804 plebiscite in France elected Napoleon emperor.

44. *See id.* at 30.

45. *See id.* at 33.

1957.<sup>46</sup> Synonymous with greed, corruption, and oppression, Duvalier's reign was the beginning of Haiti's struggle with dictatorship.<sup>47</sup> Wary of the existing military's power, Papa Doc replaced the entire Haitian military leadership with loyal followers, essentially creating his own private militia by recruiting criminals practiced in intimidation and extortion.<sup>48</sup> Papa Doc's opponents either fled the country or were murdered.<sup>49</sup> After completing this preliminary housekeeping, Papa Doc declared himself to be the president of Haiti for life. One of his first acts as "president" was to amend the constitution to concentrate his personal power and eliminate any possibility of electoral turnover and thwarting any hope for a democratic and legitimate form of government.<sup>50</sup>

Generally, a constitutional division of power exists between governmental bodies so as "to limit the influence of any particular class, to limit mob rule. . .to limit tyranny, but also to limit corruption."<sup>51</sup> As his aims ran counter to this general principle of constitutional rule, Duvalier began his reign by eliminating an entire legislative house, vesting all legislative control in the resulting unicameral body.<sup>52</sup> To ensure that the presidency remained in his family lineage, prior to his death in 1971 Duvalier named his son, Jean Claude, nicknamed "Baby Doc," Haitian president for life.<sup>53</sup> To Duvalier's benefit, the U.S. was too occupied with Cuba and Fidel Castro to interfere with the disturbing concentration of power occurring within Haiti. Thus unencumbered by international interference, Duvalier was able to hand-pick his successor and vest control of the nation within the Duvalier family for a subsequent generation.<sup>54</sup>

### III. HAITIAN ELECTIONS

During the period considered, "Duvalierism without Duvalier,"<sup>55</sup> generally considered to be 1986-87, numerous killings

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46. Mario Silva, *Island in Distress: State Failure in Haiti*, 23 FLA. J. INT'L L. 49, 54 (2011).

47. *Id.* at 54.

48. BALLARD, *supra* note 38, at 33-34.

49. Silva, *supra* note 46, at 54-55.

50. Silva, *supra* note 46, at 55 (2011).

51. Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 369-70 (2009).

52. *Id.* at 55.

53. Silva, *supra* note 46, at 55.

54. BALLARD, *supra* note 38, at 35.

55. Jana Evans Braziel, *Duvalier's Ghosts: Race, Diaspora, and US Imperialism in Haitian Literatures* 179 (Univ. Press of Fla. 2010).



ravaged the countryside, giving rise to a culture of fear. Jean-Bertrand Aristide himself, Haiti's first post-Duvalier democratically-elected President, narrowly escaped death when the army opened fire on him for his political activities.<sup>56</sup> In March 1987, Haiti's 24th constitution was ratified, establishing a semi-presidential system (similar to modern-day France's) designed to dilute executive power and favor the status quo of the dominant classes.<sup>57</sup> The army—who slaughtered about 150 people as they waited to cast their ballots—cancelled the November elections on polling day.<sup>58</sup> Political instability and violence ensued: army generals killed more civilians during the military's first year in power than Jean-Claude Duvalier's government did in fifteen years.<sup>59</sup> While the U.S., as part of its efforts to promote democracy by influencing elections in the Caribbean and Latin America, pushed for a centrist representative in the election, the majority of Haitians who showed up to the polls—turnout was estimated at around 4% of the available electorate—chose a leftist, Leslie Manigat, who supported social revolution and spoke out against the army.<sup>60</sup> Manigat was removed from office by the military within his first four months in office.<sup>61</sup>

In 1990, international pressure led to a “relatively honest presidential election” in Haiti, as turnout was over 50% of the available electorate; approximately 67% of which supported the new president, Aristide.<sup>62</sup> Aristide appealed to the poor largely because they viewed him as an activist against the Duvalier regime. This marked the first democratic election to take place in Haiti, nearly 200 years after it gained independence.<sup>63</sup> The election was arguably an impressive leap toward democracy, as the UN and the OAS both actively played a role in ensuring the dignity of the election process.<sup>64</sup>

Nonetheless, Aristide's popularity did not last long as he refused to recognize the National Front for Change and Democracy (“FNCD”), the electoral coalition that supported his presiden-

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56. PETER HALLWARD, DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT 27-28 (2007).

57. *Id.* at 28.

58. *Id.*

59. *Id.* at 29.

60. *Id.* at 29-32.

61. *Id.*

62. GIRARD, *supra* note 20, at 14; U.S. DEP'T OF STATE, *supra* note 26.

63. Irwin P. Stotzky, *Constitutionalism and Democracy: An Essay in Honor of Stanley N. Katz*, 63 U. MIAMI L. REV. 83, 90 (2008).

64. *Id.*

tial campaign, even though the FNCD controlled both chambers of the reconstituted Haitian parliament. Upon realizing that Aristide preferred appointing activists from his popular movement to government jobs rather than the career bureaucrats, members of the FNCD turned against Aristide.<sup>65</sup> Troubling issues with the newly elected government were not limited to the opponents of Aristide, however, as his documented use of mob violence to intimidate opponents began to characterize his tenure.<sup>66</sup>

Despite his initial popularity, Aristide's fatal leadership flaw—an inability to control the military—was revealed when General Raoul Cedras launched a coup.<sup>67</sup> A mere six months after Aristide became President, Cedras' violent military removed Aristide from power and forced him into exile in Venezuela, and later, Washington D.C.<sup>68</sup> The U.S. played an ambiguous role during and after this turnover, officially denouncing Aristide as a “demonstrable killer,” “psychopath,” and a grave human rights abuser. Although curiously, it would provide him with asylum years later.<sup>69</sup> Notwithstanding the ambivalent attitude of the Bush administration, the U.S. secretly supported the 1991 coup.<sup>70</sup> Although gross human rights violations had briefly stopped during Aristide's term, his tenure was extremely detrimental to the leftist political party, which arguably never fully recovered from the 1991 coup.<sup>71</sup>

In the days and weeks following the coup, tyranny ensued; the OAS responded by suspending economic relations, while the U.S. responded by freezing Haiti's accounts and imposing a trade embargo.<sup>72</sup> From October 1991 to September 1994, a *de facto* military regime governed Haiti, completely destroying any semblance of democracy by torturing thousands of people and murdering approximately 5,000 more.<sup>73</sup> Presumably, the goal was to subjugate the Haitian population, harkening back to the fearful society of the Duvalier era.<sup>74</sup>

The OAS's activist role following the Haitian crisis in 1991

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65. HALLWARD, *supra* note 56, at 36.

66. Silva, *supra* note 46, at 57.

67. *Id.*

68. Stotzky, *supra* note 63, at 90-91.

69. *Id.* at 104

70. See HALLWARD, *supra* note 56, at 40-41.

71. *Id.* at 44.

72. GIRARD, *supra* note 20, at 18-19.

73. Irwin P. Stotzky, *The Truth About Haiti*, 26 CONN. J. INT'L L. 1, 28 (2010).

74. *Id.* at 29.

was due to the newly adopted Santiago Resolution, which called for restoration of President Aristide's constitutional authority.<sup>75</sup> The OAS urged all states to isolate Haiti, commercially and diplomatically, instituting a hemisphere-wide embargo.<sup>76</sup> Although arguably aimed at a positive outcome, the OAS and UN embargoes had harmful long-term effects on the Haitian economy, including exacerbation of the deforestation problem, as Haitians stripped trees for charcoal to supplement their meager incomes. Furthermore, the UN Security General believed the junta was a threat to peace, as evidenced by its failure to implement an agreed-upon solution.<sup>77</sup> In 1994, the OAS took action over and above the already existing embargo by prohibiting all commercial flights to and from Haiti, freezing Haiti's assets, and proscribing financial dealings with Haiti.<sup>78</sup>

For its part, the Clinton administration emphasized devotion to the democratic ideal in Haiti because of serious concerns about human rights violations.<sup>79</sup> In 1994, President Clinton guaranteed Aristide's return to Haiti in exchange for certain concessions, including amnesty for those responsible for the coup and U.S. control of the nation's police force.<sup>80</sup> President Clinton then deployed approximately 20,000 Marines to remove "a regime guilty of 'executing children, raping women, killing priests and of 'slaying orphans.'"<sup>81</sup> While the idea of a short-term American military presence was initially supported, Haitians were quickly dismayed by their purported liberators once Marine boots hit the ground. It became apparent that the purpose of this new U.S. occupation was to disarm the Haitian people, not the Haitian military.<sup>82</sup> This marked yet another damaging hit to Haitian democracy and instilled the notion that the U.S. presence in Haiti was unwelcome.<sup>83</sup> During this period, fearful of yet another military uprising, the Haitian population demanded destruction of the army, a

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75. Lois E. Fielding, *Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian assistance to Restore Democracy*, 5 DUKE J. COMP. & INT'L L. 329, 359 (1995).

76. Stephen J. Schnably, *The Santiago Commitment as a Call to Democracy in the U.S.: Evaluating the OAS Role in Haiti, Peru, and Guatemala*, 25 U. MIAMI INTER-AM. L. REV. 393, 421 (1994).

77. Fielding, *supra* note 75, at 361.

78. *Id.* at 362.

79. GIRARD, *supra* note 20, at 28.

80. HALLWARD, *supra* note 56, at 50.

81. *Id.* at 51.

82. *Id.*

83. *Id.* at 52.

demand promptly responded fulfilled by Aristide, despite contrary pressures from the U.S.<sup>84</sup>

Following Aristide's presidency in 1996, René Préval became the second democratically elected Haitian president.<sup>85</sup> During a five-year uninterrupted term, Préval's presidency resulted in record-low unemployment rates, privatized public entities, and a successfully-implemented national police force (effectively replacing the army).<sup>86</sup> Thus, it was no surprise that in 2000, Aristide was elected President for a second time.<sup>87</sup> According to Haiti's 1987 Constitution, the president is elected to a five-year term by a nation-wide majority vote—although presidents cannot serve two consecutive terms, they can serve two non-consecutive terms.<sup>88</sup> Some consider the 2000 elections the “most remarkable exercise in representative democracy in Haiti to date.”<sup>89</sup> Despite the absence of support promised by the OAS and international donors, the elections attracted unprecedented numbers of registered Haitian voters who were able to cast their ballots at a surprisingly generous number of polling stations.<sup>90</sup>

On the other hand, critics claim that the 2000 elections were “tainted by accusations of corruption, intimidation, and violence that destroyed [its] legitimacy and incited passionate and long-lasting protests.”<sup>91</sup> Despite waiting long hours to cast their ballots, Aristide won sixty-five percent of the votes once again—the Lavalas' third presidential landslide election in a row—without any reported voting irregularities.<sup>92</sup> The OAS characterized the elections as “flawed,” claiming an incorrect methodology had been used to calculate the vote percentages.<sup>93</sup> Additionally, the OAS argued that eight of the Senate contests should have gone to a second round of voting—seven of which the Fanmi Lavalas won. Aristide never revised the election procedures, nor did he respond to pressure by the OAS.<sup>94</sup> The OAS also criticized Haiti's Provin-

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84. *Id.* at 54.

85. Stotzky, *supra* note 63, at 92.

86. Silva, *supra* note 46, at 59.

87. *See id.*

88. Constitution of Haiti (1987), available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

89. HALLWARD, *supra* note 56, at 76.

90. *Id.*

91. Ben J. Scott, *Order in the Court: Judicial Stability and Democratic Success in Haiti*, 37 VAND. J. TRANSNAT'L L. 555, 571 (2004).

92. HALLWARD, *supra* note 56, at 76.

93. *Id.* at 78.

94. *Id.* at 79.

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cial Electoral Council (“CEP”), the independent institution that acts as the exclusive and final arbiter in all electoral matters.<sup>95</sup> As a critical component of the 1987 Constitution, CEP responded with claims that the OAS was trying to discredit them to achieve an outcome more favorable to its own organizational interests.<sup>96</sup>

*Post-Earthquake*

The January 2010 earthquake further weakened Haiti’s public sector by destroying twenty-seven of twenty-eight national government buildings and killing about twenty percent of Haiti’s civil service workers.<sup>97</sup> Following the earthquake, OAS member states and permanent-observer states committed to help the Electoral Observation Mission (“EOM”) oversee Haiti’s general elections, during which Haiti was expected to elect a president, ten senators, and eighty nine members of Congress.<sup>98</sup> The EOM’s mission was to help guarantee transparency in the electoral process; unfortunately, the process did not proceed smoothly.<sup>99</sup>

In the 2010 election, nearly all of the major candidates expressed apathy over Haiti’s election and called for the election to be voided.<sup>100</sup> In the weeks preceding the elections, “deadly outbursts” erupted in the streets between rival political factions.<sup>101</sup> Allegations of fraud and reports that a significant number of voters were turned away from the polling stations mired the elections legitimacy.<sup>102</sup> The candidates expressed their anger through demonstrations against the CEP.<sup>103</sup> Even though the CEP acknowledged problems with voter lists, they refused the candidates’ demands to void the election results.<sup>104</sup>

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95. *Id.*

96. *Id.*

97. Margaret L. Satterthwaite, *Indicators in Crisis: Rights-Based Humanitarian Indicators in Post-Earthquake Haiti*, 43 N.Y.U. J. INT’L L. & POL. 865, 938 (2011).

98. Press Release, Organization of American States, OAS Member States and Permanent Observers Pledge Assistance to Haiti Electoral Observation Mission (July 29, 2010), available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-284/10](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-284/10).

99. *See id.*

100. Jonathan M. Katz, *Major Candidates in Haiti Call for Halt to Election*, CHARLESTON GAZETTE, November 29, 2010, available at 2010 WLNR 23811385.

101. Blake Schmidt, *U.N. Urges Calm Following Election Fraud Claims Lead Haitians to Seek Voiding Sunday Vote*, WASHINGTON TIMES, November 30, 2010, available at 2010 WLNR 23796529.

102. *Id.*

103. Katz, *supra* note 100.

104. *See id.*

UN soldiers helped Haitian police guard polling stations.<sup>105</sup> The OAS claimed that as many as ten percent of voters were denied voter IDs prior to the election. Curiously, the OAS failed to give a statement following the vote.<sup>106</sup> Calls for a new election increased, especially due to the exclusion of the Fanmi Lavalas party.<sup>107</sup> Fanmi Lavalas was also excluded from the two-round Senate elections in April and June 2009 due to their failure to file proper paperwork—a charge its leaders denied.<sup>108</sup> In November 2009, Fanmi Lavalas was excluded for failing to submit an original party authorization for the April 2009 elections.<sup>109</sup> The exclusion of Fanmi Lavalas and other candidates contributed to a general lack of credibility in the election and its results, ultimately leading to a widespread boycott of the elections by the Haitian populace, including the leaders of Fanmi Lavalas.<sup>110</sup> The party's attorneys provided documentation claiming the reasons provided for the ban was mere pretext, but the party was nonetheless barred from participating in the election.<sup>111</sup>

Canadian Ambassador Gilles Rivard expressed concern about the elections after learning the CEP reneged on a pledge to reconsider Lavalas' exclusion. He asked, "[i]f this is the kind of partnership we have with the CEP going into the elections, what kind of transparency can we expect from them as the process unfolds?"<sup>112</sup> The UN also urged local Haitian officials to provide justifications for excluding 17 political groups from participating in the legislative elections.<sup>113</sup> Despite accusations, criticism, and questioning, the issue remains largely unaddressed by the Haitian government to this day.

Not only was the candidate selection process questionable and somewhat mysterious, voter turnout was, perhaps understandably, quite low. Fewer than twenty-three percent of Haiti's registered voters had their vote counted in either of the two

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105. Schmidt, *supra* note 101.

106. *Id.*

107. *Id.*

108. *Id.*; Kevin Edmonds & Roger Annis, *With Friends Like These . . . CARICOM and Haiti*, CARIBBEAN360 (Nov. 15, 2010), available at <http://www.caribbean360.com/opinion/49393.html#axzz2Pp9SMllc>.

109. Edmonds, *supra* note 108.

110. *Id.*

111. *Id.*

112. Dan Coughlin & Kim Ives, *Haiti's Rigged Election*, THE NATION, June 16, 2010, available at <http://www.agenceglobal.com/article.asp?id=2582>.

113. *UN Peacekeepers React to Election Ban in Haiti*, SUN-SENTINEL, Nov. 28, 2009, available at 2009 WL 24065761.

presidential rounds, the lowest electoral participation rate in the hemisphere since 1945, according to the Washington-based Center for Economic and Policy Research.<sup>114</sup> The OAS sent a team to review the first-round results and determined that fraud and irregularities significantly affected the outcome of the elections.<sup>115</sup>

Days after the first-round presidential election results were announced—which placed Mirlande Manigat and Celestin head-to-head—thousands of protestors reacted violently, accusing the ruling party of illegally registering the votes of Haitians killed in the earthquake.<sup>116</sup> Protestors also accused the Unity party, current president Preval's own party, of rigging the vote for their favored candidate, Jude Celestin.<sup>117</sup> Furious Haitians set fire to Unity party's headquarters, burned tires, torched vehicles, and set up roadblocks in Port-au-Prince.<sup>118</sup> UN forces intervened using flash grenades, tear gas and rubber bullets to quell the protests in the streets of Port-au-Prince after the presidential results were announced.<sup>119</sup> The U.S. embassy agreed that the vote-counts were inconsistent and supported a review of the preliminary round.<sup>120</sup> After a week of grueling violence, the CEP agreed to recount the disputed votes.<sup>121</sup> Although the CEP and OAS are involved in regulating the voting process, voters most likely refrained from taking part in the elections because they were either fearful of violence, or simply apathetic towards the future leaders of their country. Despite foreign aid organizations administering and reviewing the elections, Haitian leaders failed to engage in efforts to restore voter confidence in future free and fair elections.<sup>122</sup>

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114. *Id.* See also *CEPR Examines OAS Report on Haiti's Election, Finds It "Inconclusive, Statistically Flawed, and Indefensible"*, Center for Economic Policy and Research (Jan. 11, 2011), available at <http://www.cepr.net/index.php/press-releases/press-releases/cepr-examines-oas-report-on-haitis-election-finds-it-qinconclusive-statistically-flawed-and-indefensibleq>.

115. U.S. Dept. of State. Press Release, *supra* note 26, at 7.

116. *Id.*

117. *NBC Nightly News: Violence Erupts in Haiti After Elections* (NBC television broadcast Dec. 8, 2010) (available at 2010 WLNR 24392048).

118. *Id.*

119. *Id.*

120. *Fraud Claims Over Haiti's Presidential Run-Off*, EURONEWS (Dec. 8, 2010, 11:15PM), <http://www.euronews.net/2010/12/08/fraud-claims-over-haiti-s-presidential-run-off/>.

121. Ralph Henry, *Haiti: Envoys and Poll Officials try to Defuse Tensions*, INTER PRESS SERVICE (Dec. 13, 2010), <http://www.ipsnews.net/2010/12/haiti-envoys-and-poll-officials-try-to-defU.S.e-tensions/>.

122. THE POLITICAL ECONOMY OF REFORM FAILURE, 294-97 (Mats Lundhal & Micheal L. Wyzan eds., 2005), available at <http://www.untag-smd.ac.id/files/>

*Inter-American Democratic Charter & OAS Intervention  
and the Limits on Restoring Democracy*

The OAS remains an integral resource for Haiti's survival, and may function as a possible means for establishing democracy, even though it is not the Organization's primary role. The OAS, the oldest organization of its type in the world, boasts a reputation as possibly "the best-organized, and most effective of all the regional organizations of its type."<sup>123</sup> Despite its legacy, the OAS constantly faces criticism: on the one hand, the OAS has been criticized as too involved, and on the other, it has been criticized as "lethargic in the face of a grave threat."<sup>124</sup>

The OAS declares that, "representative democracy is an indispensable condition for the stability, peace and development of the region," and thus upholding democracy is one of its essential roles.<sup>125</sup> Adopted in 1991, the OAS's Santiago Resolution further stressed the importance of democracy in its member states, instructing the Security General to call for an immediate meeting upon any irregular interruption of the democratic political institutional process.<sup>126</sup> Policy trends have encouraged democracy as a right and the UN's election monitoring bolsters this idea of preserving the right to democracy.<sup>127</sup>

Although its organizational mission is a product of a member-state agreement, the OAS is often forced into a superficial approach for problem solving between nations. For instance, the OAS's charter states that, "[a] member of the Organization whose democratically constituted government has been overthrown by force may be suspended" by the OAS.<sup>128</sup> While this is essentially an anti-coup clause in that it prohibits the unconstitutional replacement of one democratic regime by another, the Charter is

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Perpustakaan\_Digital\_2/POLITICAL%20ECONOMY%20The%20Political%20Economy%20of%20Reform%20Failure.pdf.

123. Jeffery M. Brown, *Benevolent Assistance or Bureaucratic Burden: Promoting Effective Haitian Reconstruction, Self-Governance, and Human Rights Under the Right to Development*, 6 INTERCULTURAL HUM. RTS. L. REV. 209, 230 (2010).

124. Ronald Barliant, *The OAS Peace and Security System*, 21 STAN. L. REV. 1156, 1156 (1969).

125. Charter of the Organization of American States, *available at*: [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm#ch1](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm#ch1).

126. Fielding, *supra* note 75, at 349.

127. *Id.* at 337.

128. Protocol of Amendments to the Charter of the Organization of American States (A-56), "Protocol of Washington", (Dec. 14, 1992), *available at* [http://www.oas.org/dil/treaties\\_A-56\\_Protocol\\_of\\_Washington.htm](http://www.oas.org/dil/treaties_A-56_Protocol_of_Washington.htm).



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silent about post-revolutionary circumstances where a new democracy is developing or situations where an incumbent leader takes steps to weaken democracy.<sup>129</sup>

This approach has often been criticized, although such criticism generally fails to contextualize the nature of the problems the OAS is attempting to resolve. A dispute between the Dominican Republic and Haiti led to the Dominican Republic mobilizing its military for an invasion, Venezuela promising military support, and the U.S. sending a Navy task force with a Marine landing party; all were anxious to topple Duvalier's regime.<sup>130</sup> The OAS, on the other hand, responded by sending a five-member committee to Port-au-Prince to investigate and mediate the dispute, and excluded itself from the Duvalier government entirely.<sup>131</sup> Acting as a mediator, the OAS' presence "inhibited the aggressive tendencies of both parties," providing both sides the room necessary to make concessions.<sup>132</sup> The OAS was criticized for its role in handling the situation because it made no effort to reform the Haitian government or eliminate the root of the tension between the two countries.<sup>133</sup> However, the nature of the nonintervention was crucial in gaining the approval of the regional powers, including Brazil, Chile, and Mexico, and the crisis passed without violence.<sup>134</sup> While the Council adhered to Article 7, which calls for "pacifying action," this course of action has been recognized for its preservation of the status quo; however, OAS intervention alone is incapable of establishing democracy in Haiti.<sup>135</sup>

With new international law developments supporting humanitarian efforts to restore democracy, the UN has also taken an important role in Haiti's survival. Under Article 39 of the UN Charter, a threat to peace and security is present when a democratic government is overthrown.<sup>136</sup> While humanitarian assistance not involving force is supported in resolutions and declarations of the UN and of regional organizations, use of force is advocated in circumstances involving serious human rights atrocities.<sup>137</sup> For example, in September 1994, the UN Security

129. David Landau, *The Importance of Constitution-Making*, 89 DENV. U. L. REV. 611, 620 (2012).

130. Barliant, *supra* note 124, at 1184.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 1185.

135. *Id.* at 1203.

136. Fielding, *supra* note 75, at 329.

137. *Id.* at 330.

Council Resolution 940 authorized a U.S.-led military force to oust the military dictatorship and return Aristide to power.<sup>138</sup>

While the UN and the international community recognize the need to restore democracy in Haiti, the OAS and Haitian officials must actively work together. Haiti could improve its current position by imposing OAS involvement per Article 20, which states:

“In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and take such decisions as it deems appropriate.”<sup>139</sup>

As for the meaning of an “unconstitutional alteration,” the election concerns witnessed in Haiti likely fall into the category because when voter turnout is low and the result is met with such violence, there is presumably a disconnect between the people and the democratic process.<sup>140</sup>

Furthermore, although mechanisms exist to protect international democracy, such norms are non-binding forms of “soft law.”<sup>141</sup> For example, although the Inter-American Democratic Charter addresses issues dealing with elections, it is not binding on a country.<sup>142</sup> Specifically, the Inter-American Democratic Charter explicitly provides for a “right to democracy,” and the preamble states that “cooperation between American states requires the political organization of those states based on the effective exercise of representative democracy.”<sup>143</sup> The Charter “also creates certain instruments meant to help the OAS in assessing and responding to breakdowns in democracy.”<sup>144</sup> Yet, because the Inter-American Democratic Charter is not afforded the formal sta-

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138. *Id.* at 329.

139. Inter-American Democratic Charter, *available at* [http://www.oas.org/en/democratic-charter/pdf/demcharter\\_en.pdf](http://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf).

140. *Id.*; *see also* Beverly Bell, *The Poor Always Pay: The Electoral Crisis in Haiti*, HUFF POST WORLD, 2010, [http://www.huffingtonpost.com/beverly-bell/the-poor-always-pay-the-e\\_b\\_795876.html](http://www.huffingtonpost.com/beverly-bell/the-poor-always-pay-the-e_b_795876.html).

141. *See generally* Kal Raustiala, *Form and Substance in International Agreements*, 99 A.J.I.L. 581 (2005). “Soft-law” refers to those documents and forms of quasi-legislation that do not have any legal impact in the traditional sense but still serve as guiding principles or foundations on which normative relations can be built. Most declarations of the United Nations fall under this umbrella, as do other action plans and codes of conduct originating within similar multinational organizing bodies.

142. Inter-American Democratic Charter, *supra* note 139, at art. 23-25.

143. *Id.* at preamble, art. 1.

144. Landau, *supra* note 129, at 619.

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tus of a treaty, the Inter-American Democratic Charter does not represent “binding international norms” and is effectively a form of “international soft law” carrying questionable efficacy.<sup>145</sup>

*OAS Responses in Venezuela and Haiti*

The Inter-American Court and its sister institution, the Inter-American Commission on Human Rights, both hold responsibility for protecting human rights in the Western Hemisphere.<sup>146</sup> When the OAS adopted the American Convention on Human Rights in 1969, the Inter-American Court was created, ultimately beginning operations in 1979.<sup>147</sup> The Inter-American Court acts as a last resort for human rights abuse complaints that are inadequately addressed by domestic remedies.<sup>148</sup>

Geographically, the Inter-American Court has jurisdiction over both Haiti and Venezuela, both OAS members who have ratified the American Convention.<sup>149</sup> While the Inter-American Court’s jurisdiction is limited by subject matter, the Court can hear allegations of state violations of the binding human rights instruments of the OAS and violations of the American Convention.<sup>150</sup> The OAS has relatively under-utilized judgment enforcement powers, although the General Assembly of the OAS has discretionary authority to sanction States refusing to comply with orders of the Court.<sup>151</sup> For example, after the military junta took over the government and ousted President Aristide, the General Assembly instituted broad-based economic sanctions on Haiti.<sup>152</sup> Presently, there is substantial pressure to comply with the Court, which is outside of formal OAS established powers.<sup>153</sup>

Countries of the western hemisphere took a great step forward in international democratic development by adopting the Inter-American Democratic Charter in 2001.<sup>154</sup> The Democratic Charter not only expressly defines democracy, but also provides

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145. *Id.*

146. Lea Shaver, *The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?*, 9 WASH. U. GLOBAL STUD. L. REV. 639, 640 (2010).

147. *Id.* at 640-41.

148. *Id.* at 647.

149. *Id.* at 651.

150. *Id.*

151. *Id.* at 664.

152. Shaver, *supra* note 146, at 664.

153. *Id.*

154. Enrique Lagos & Timothy D. Rudy, *In Defense of Democracy*, 35 U. MIAMI INTER-AM. L. REV. 283, 308 (2004).

the “regional international intergovernmental organizations with additional legal and diplomatic tools to thwart a coup d’état in a member state, or reverse unconstitutional interruptions of the democratic order or unconstitutional alterations of a constitutional regime.”<sup>155</sup> Despite the fact that all OAS member states, including Haiti and Venezuela, nominally adhere to the meaning of “democracy,” political, social and economic pressures have led to what observers call “democratic fatigue,”<sup>156</sup> the interesting phenomenon wherein the constant barrage of elections and candidate evaluations causes the average voter to “tune-out” the democratic processes requiring their attention.

For instance, in May 1992, the Venezuelan General Assembly passed a resolution in response to an attempt to overthrow the democratic Venezuelan government.<sup>157</sup> More recently, the OAS forcefully accused Venezuela’s government of “human-rights abuses, political repression, and eroding the separation of powers among government branches in the oil-rich country.”<sup>158</sup> The 1992 Venezuelan elections elicited attention and speculation from the OAS and the Inter-American Court. Specifically, Leopoldo López, a Venezuelan economist and politician, was among over 300 Venezuelan politicians declared “*inhabilitados*” and barred from running in the November 2008 elections.<sup>159</sup> The *inhabilitados* were disqualified from seeking public office until 2014, with the government alleging that they were “guilty of corruption in their past.”<sup>160</sup> Eighty percent of the barred politicians were opposition politicians, most of whom, like López, were neither formally charged nor convicted of any crime.<sup>161</sup> The Inter-American Court of Human Rights commenced its investigation into the disqualifications from the Venezuelan elections and heard testimony from López concerning his own disqualification in March 2011.<sup>162</sup> López expressed relief at the opportunity to speak with neutral judges, stating that “Venezuela is obligated to comply with human rights treaties and con-

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155. *Id.* at 309.

156. *Id.*

157. Fielding, *supra* note 75, at 350.

158. Paulo Prado, *OAS Report Chastises Venezuela*, WALL ST. J., Feb. 25, 2010, available at <http://online.wsj.com/article/SB10001424052748703510204575085801117383696.html>.

159. Gupta, *supra* note 12.

160. *Id.*

161. *Id.*

162. Leopoldo López, *Venezuelan Democracy Gets its Day in Court*, THE HUFFINGTON POST (Mar. 1, 2011, 5:31PM), [http://www.huffingtonpost.com/leopoldo-lopez/venezuelan-democracy-gets\\_b\\_829997.html](http://www.huffingtonpost.com/leopoldo-lopez/venezuelan-democracy-gets_b_829997.html).

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ventions which it has signed and ratified.”<sup>163</sup>

While the Court ruled in favor of López and the other disqualified political candidates, forcing the Venezuelan government to comply with the ruling pursuant its Constitution, the Venezuelan government remains reluctant and resistant.<sup>164</sup> In fact, the Venezuelan government decided to override its comptroller and the Supreme Court decision, issuing a ruling ordering Venezuelan government to lift the ban on López and allow him to run in the 2012 elections.<sup>165</sup>

Despite President Hugo Chávez’s death in March 2013, the latent prospect of change in Venezuelan politics and society is uncertain. Although President Hugo Chávez dominated the presidency in Venezuela since 1999 and his death could provide a major change for the political landscape of Venezuela, the likelihood of such change is difficult to determine, as the OAS has so far been reluctant to intervene in the affairs of that nation, but the subsequent election of Nicolás Maduro was much closer than anticipated and was marked by the significant participation of Venezuelan ex-pats casting votes for the opposition candidate.<sup>166</sup>

In fact, the OAS’ response has consistently been characterized as “tepid,” as Chávez used his lawfully elected position to undermine other democratic institutions by, for example, closing and intimidating hostile media and weakening and packing the country’s Congress, Supreme Court, and control institutions like the Ombudsman.<sup>167</sup> While the power to intervene seems to be available to the OAS in the face of such democratically subversive actions, it has done virtually nothing because “in the absence of an unconstitutional interruption in democracy that might trigger the suspension clause, it is able to monitor and facilitate dialogue only at the invitation of the Venezuelan state.”<sup>168</sup>

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163. *Id.*

164. Tamara Pearson, *Venezuelan Opposition Politician Barred for Breaking the Law, Not for Politics*, VENEZUELANALYSIS (Oct. 19, 2011), <http://venezuelanalysis.com/news/6566>.

165. *Id.*

166. Adrián Bonilla, *OP-ED: Stability Will Mark Post-Chávez Venezuela*, INTER PRESS SERVICE NEWS AGENCY (Mar. 15, 2013), <http://www.ipsnews.net/2013/03/op-ed-stability-will-mark-post-chavez-venezuela/>. See also William Neuman, *Venezuela Gives Chávez Protégé Narrow Victory*, The New York Times (April 14, 2013), <http://www.nytimes.com/2013/04/15/world/americas/venezuelans-vote-for-successor-to-chavez.html?pagewanted=all>.

167. Landau, *supra* note 129, at 620.

168. *Id.*

## IV. FAILED STATE

The term “failed state” emerged in academic discourse in 1992 to describe nations without effective government that are unable to perform domestic functions and meet obligations under international law.<sup>169</sup> Similarly, international law labels states with inoperative governments whose infrastructure has broken down considerably as “failed states.”<sup>170</sup> These states often have little or no control over violence, cannot create peace or stability for the national populations, and cannot ensure economic growth or reasonable distribution of social goods.<sup>171</sup> These failures also result in the decay of physical infrastructure and declining standards of living, often leading to internal armed conflict.<sup>172</sup>

State failure has also been more loosely described as a state’s inability to provide “political goods to its citizens and to the international community.”<sup>173</sup> The term also suggests that rebuilding effective structures is incredibly difficult, almost infeasible.<sup>174</sup> Contemporary examples of failed states include Somalia and Afghanistan;<sup>175</sup> Somalia has not had a government for more than a decade, and Afghanistan’s government controls only parts of their territory.<sup>176</sup> The lack of an effective government leads to a series of challenges, including “disharmony between communities, incapability of controlling borders and territories, ethnic and other inter-communal hostility, predatory behavior by ruling classes, growth of criminal violence, flawed institutions, absence of democratic debate, deterioration of infrastructures, privatization of health and schooling systems, rise in corruption, and decline in income levels.”<sup>177</sup>

While there is some debate as to what countries qualify as “failed states,” nations like “Haiti or Afghanistan, which have historically had difficulty supporting a fully functioning government because of tribal rivalries and endemic civil wars,” are often seen as paradigmatic of this classification.<sup>178</sup> Haiti’s current condition

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169. John Yoo, *Fixing Failed States*, 99 Calif. L. Rev. 95, 100 (2011).

170. Chiara Giogetti, *Why Should International Law Be Concerned About State Failure?*, 16 ILSA J. INT’L & COMP. L. 469, 473-4 (2010).

171. Rose E. Brooks, *Failed States, or The State as Failure?*, 72 U. CHI. L. REV. 1159, 1160 (2005).

172. Yoo, *supra* note 169, at 100.

173. Giogetti, *supra* note 170, at 473.

174. Brooks, *supra* note 171, at 1163-4.

175. *Id.* at 1161.

176. Giogetti, *supra* note 170, at 474.

177. *Id.* at 476.

178. Yoo, *supra* note 169, at 101.

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meets any of these definitions of a “failed state.” It is incapable of performing its obligations due to a collapse of the state’s structures, resulting in a powerlessness of governmental authorities to perform their functions such as enforcing the rule of law, maintaining economic and structural infrastructures, and supplying health and education services.<sup>179</sup> For example, although public education is nominally “free,” the cost is still too high for many Haitian families who must also pay for uniforms, textbooks, and supplies.<sup>180</sup> Furthermore, following the January 2010 earthquake, most schools in the greater Port-au-Prince area ceased operating.<sup>181</sup>

While Haiti largely fits the above definition of a failed state and sits on the World Bank’s “fragile states” list—as well as the Fund for Peace’s worst functioning states list—it seems inaccurate to label Haiti as a “failed state.”<sup>182</sup> The past tense “failed” suggests finality, indicating that the state has little to no chance of recovery. The term *failing* state is probably more appropriate. Whether failed or failing, these states present a major challenge to the international community.<sup>183</sup> The undesirable effects of ineffective democratic government in Haiti present several concerns for the U.S. For instance, the U.S. faces an influx of Haitian seeking to immigrate, creating a number of domestic policy issues involving accommodation and treatment of Haitian immigrants vis-à-vis other immigrant groups.<sup>184</sup> Moreover, the UN Secretary General observed that, “if States are fragile, the peoples of the world will not enjoy the security, development and justice that are their right.”<sup>185</sup>

Many suggest that the UN and other international bodies must “foster new democracies by offering formal oversight to ensure the proper and effective administration of new governments.”<sup>186</sup> Furthermore, if the key to recovery for Haiti is democratization, “the nation must create a system of legitimate, inclusive, informed elections.”<sup>187</sup> However, “naively pressuring states to hold

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179. Giogetti, *supra* note 170, at 473.

180. State Department Documents, Haiti 2010 WLNR 21650783 pg. 3.

181. *Id.*

182. Yoo, *supra* note 169, at 102-103.

183. *Id.* at 104.

184. Ben J. Scott, *Order in the Court: Judicial Stability and Democratic Success in Haiti*, 37 VAND. J. TRANSNAT’L L. 555, 564 (2004).

185. Yoo, *supra* note 169, at 104.

186. Scott, *supra* note 185, at 567.

187. *Id.* at 568.

instant elections can lead to disastrous results.”<sup>188</sup> While Haiti’s need for international support is necessary to create stability and democracy, Haiti must nonetheless learn self-sufficiency.<sup>189</sup> Thus, an electoral fix may not be the first step; perhaps other institutions are necessary for democracy to take root, such as free-market economic conditions, independent civil organizations, and a functioning local government system.

## V. CONCLUSION: HAITI’S FUTURE

Economists speculate that all of the money spent on government and infrastructure “will ultimately mean little to the country’s development if Haiti is unable to create jobs and become more business-friendly.”<sup>190</sup> Today, approximately four out of five Haitians live on less than \$2 a day, about half of the population is illiterate, and about only one out of five Haitians is employed.<sup>191</sup> While the earthquake left more than 300,000 dead and over 1.5 million homeless, poverty and illiteracy were widespread even before the disaster. It is no small wonder that Haiti ranked twelfth on the Fund for Peace’s list of worst functioning states.<sup>192</sup>

In order for Haiti to become an emergent country, or recover from its current state of failure, new schools, new roads, new ports, new police, and new leadership are necessary. Because failed states usually breed violence, this task is a costly one. Haiti has sporadically allowed—or more accurately, been unable to do anything about—armed bands roaming throughout the country, leading to famines and violence.<sup>193</sup> Despite the demand for humanitarian aid, the absence of effective government thwarts attempts to address the humanitarian crisis.<sup>194</sup> Although the UN authorizes intervention to help distribute humanitarian aid, there has been little effect.<sup>195</sup> Due to the lack of structure of failed states, compliance with international law is cumbersome, posing a possible threat to other nations in the region.<sup>196</sup> The gravity of the threat is

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188. *Id.* at 569.

189. *Id.* at 567.

190. Jose de Cordoba & David Luhnnow, *Haiti Readies Request for \$11.5 Billion—Government Will Present Donors With Plan To Emerge From Decades as Semi-Failed State*, WALL ST. J. (Mar. 31, 2010), <http://online.wsj.com/article/SB10001424052702303601504575154172634674414.html>.

191. *Id.*

192. Yoo, *supra* note 169, at 103.

193. *Id.*

194. *Id.* at 107.

195. *Id.*

196. *Id.* at 110.



unpredictable—one need only look to the sea-faring pirates or extremist jihadis spawned from Somalia’s black hole of government institutions—but as a matter of international law, the absence of a central government makes compliance with international treaties and agreements difficult—even impossible.<sup>197</sup>

It is in the interest of the international community to remedy the current state of Haitian government. The first step would be decentralization to break down the “militaristic foreign policies.”<sup>198</sup> Decentralization usually implies an increase in the number of nations that support policies of free trade and a reduction in force to resolve international disputes.<sup>199</sup> Rules must be implemented to promote free trade and to encourage the adoption of international legal norms.<sup>200</sup> Instead of looking to “macro” issues dealing with international law and its involvement in failed states, the “micro” issues should play a primary role in recovery.<sup>201</sup> “Micro” issues analyze how nations should intervene and restore the function and sovereignty of failed states.<sup>202</sup> At a micro level, international law can restore government authority in failed states like Haiti by insisting on “power-sharing agreements” between conflicting groups in the country.<sup>203</sup>

Despite aid from powerful and wealthy foreign donors like the U.S., influential international organizations like the UN and the OAS, and even support from neighbor states like Venezuela, the foreign assistance model has proved unsuccessful in Haiti.<sup>204</sup> A likely explanation for this is lack of donor coordination, donor fatigue, and a weak Haitian central government unable to properly address its needs and obligations.<sup>205</sup>

The OAS must continue its election oversight efforts in Haiti to ensure the country conducts free and fair elections. In Venezuela’s case, party leaders and/or other member states should bring claims to the Inter-American Court regarding its election procedures. Although the Venezuelan government is attempting to disregard the 1992 decision and the Court’s decisions may have little internal influence within Venezuela, it is significant that the

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197. *Id.*

198. Yoo, *supra* note 169, at 137.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 150.

204. Brown, *supra* note 123, at 216.

205. *Id.* at 218.

international community has condemned Venezuela's democracy-suppressing tactics. Haiti's election problems are far more complex than those in Venezuela; for this reason, Haiti's "failed state" status requires a different approach than merely appealing to the IACHR. However, it should be impressed upon Haitians to use judicial means for addressing human rights abuses, evidence of fraud, or "unconstitutional alterations," rather than resorting to violence or repression. By filing claims before the IACHR, the international community can gain further insight and awareness into the plight of Haitians in a post-earthquake state. When conflicts are brought to the judiciary, OAS's ability to mediate and conduct effective meetings and solutions is facilitated.

Although the U.S. has emphasized restraint, it has failed to institute a system for accountability of government or military officials. One approach is to hold trials of the military to "help institutionalize constitutional government" and, "show that a constitutional government can in fact respond meaningfully to deeply felt popular imperatives."<sup>206</sup> A system of accountability would shed light on the main figures of authority on the nation, and with the help of the OAS and the UN, free and fair elections could be possible. Such elections would be the first step in Haiti's advancement from a "failed state" to an emerging developing country, and would help restore confidence in the country and the international community.

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206. Schnably, *supra* note 17, at 538.

