

# **The Urgency of the Indirect Elections**

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The Provisional Electoral Council is inexplicably late in organizing the indirect elections leading to the formation of a Permanent Electoral Council. At the beginning of December 2006 the administration of the CEP made sure there was a plan for the formation of the Permanent Electoral Council in the course of the month of May 2007. Since then the entire program for the establishment of the Permanent Electoral Council has been in place.

One must recall that the elections for the Territorial Collectives took place on December 3, 2006. Since December 11, 2006, 95 percent of the results (before challenges) for the 1,420 posts to be filled have been known. How can one explain that the CEP has taken five months to manage the challenges and organize the follow-up elections for only 5 percent of these elections when the whole organizational structure was in place? Moreover, the candidates to the ASECs and the municipal delegates have waited six months for their results. It is precisely the ASECs and municipal delegates who elect the assemblies in the indirect elections. In other words, as long as they are not in office, the indirect elections for the formation of the Permanent Electoral Council, the departmental councils, the interdepartmental council, and the installation of the judges cannot take place. It is important to emphasize that all these institutions are absolutely necessary for the forward progress of the nation. No country can aspire to create a durable democracy without the organization and consolidation of these fundamental institutions.

To this day, the Provisional Electoral Council is still not ready to hold the indirect elections. Moreover, a draft law on the indirect elections has been sent to the executive branch to be relayed to the parliament for enactment. This law reconciles certain contradictions between the electoral decree of 2005 and the three decrees (appearing in the government gazette on May 30, June 2, and June 13, 2006) promulgated by the interim government.

## **The legal texts defining the indirect elections of the territorial collectives**

<b>Constitution of March 29, 1987</b>	<b>Law on the organization of the communal-section collectives (published April 4, 1996)</b>	<b>Electoral decree of 2005 (published February 11, 2005)</b>	<b>Decree setting the organization and operations of the communal sections (published May 30, 2006)</b>	<b>Decree setting the organization and the functioning of communes (Published June 2, 2006)</b>	<b>Decree setting the organization and operations of the departments (Published June 13, 2006)</b>
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All the elections carried out to date, i.e., the presidential elections, the second round of the legislative elections, as well as the direct elections of the territorial collectives (mayors,

communal assemblies, ASECs, and municipal delegates) were carried out strictly under the aegis of the electoral decree of 2005.

It is to be noted, however, that there is an incompatibility between the electoral decree of 2005 and that of May 30, 2006 in the number of members of the ASECs to be elected. Nevertheless, this did not impede the holding of these elections and no objections were made, nor was any draft law proposed to the executive.

<p><b>Electoral decree of February 11, 2005</b> (Article 92)</p> <p>The ASEC is composed of:</p> <ul style="list-style-type: none"> <li>• Seven representatives if the communal section has less than 5,000 inhabitants</li> <li>• Nine representatives if it has between 5,000 and 15,000 inhabitants</li> <li>• Eleven if it has more than 15,000 inhabitants</li> </ul> <p>The CEP prepares the list of the communal sections and the number of representatives. Each ticket of the ASEC chooses its official representative.</p>	<p><b>Decree of May 30, 2006</b> (Article 17)</p> <p>The members of the ASEC are elected by universal direct suffrage in each settlement, neighborhood, or village from the lists of candidates put forward by the associations of those settlements or neighborhoods properly registered with the mayor of the commune. The law determines the number of ASECs to elect in the following manner:</p> <ul style="list-style-type: none"> <li>• One member per settlement (less than 500 inhabitants)</li> <li>• Two members for a large settlement (more than 500 inhabitants)</li> <li>• Two members per neighborhood</li> <li>• Two members per village</li> </ul>
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It is all the same curious that today questions of incompatibility between the electoral decree and the decrees of the interim government are raised whereas the elections of December 3 for the ASECs and the municipal delegates who indirectly elect the municipal assemblies were organized according to the electoral decree of 2005.

Moreover, the decree of May 30, 2006 is in flagrant contradiction with the constitution of March 29, 1987 on the indirect elections to the municipal assemblies which constitute the whole first stage and the key institution to put in place, since all the other structures are dependent on these municipal assemblies. However, the decree of June 2, 2006 restores Article 67 of the constitution. Thus, certain articles of the decrees of the interim government are in conflict.

<b>Constitution of March 29, 1987 (Article 67)</b>	<b>Decree of May 30, 2006 (Article 47.2)</b>	<b>Decree of June 2, 2006 (Article 10)</b>
<p>The municipal council is assisted in its task by a municipal assembly formed especially by a representative of each of the communal sections</p>	<p>The number of members to be elected to the municipal assembly is determined by the size of the population of each communal section, as follows:</p> <ul style="list-style-type: none"> <li>• Less than 1,000 inhabitants: 2 delegates</li> <li>• Between 1,000 and 4,999 inhabitants: 3 delegates</li> <li>• Between 5,000 and 5,999 inhabitants: 4 delegates</li> <li>• More than 6,000: 5 delegates</li> </ul>	<p>The members of the municipal assemblies are elected by the ASECs according to Article 67 of the constitution, i.e., one representative per communal section.</p>

There is certainly a need to reconcile and repair these contradictory decrees published by the interim government, and parliament should see to it. Even so, these three decrees (May 30, June 2, and June 13, 2006) do not constitute any kind of handicap to holding the indirect elections. They can be put on low beam by the parliament to avoid any equivocation or confusion in the holding of the elections. Good management of the process could bring about a Permanent Electoral Council in one hundred days making it possible for the renewal of one-third of the senate to be done by a permanent CEP. It is however highly doubtful that the present CEP is capable of realizing this process.

The electoral decree which covers the elections to this day allowed the Provisional Electoral Council to organize the elections of the assemblies. Also, the constitution does not leave any doubt about the role of the electoral institution in organizing elections on the national territory. In Article 191, the constitution stipulates, “The CEP is in charge of organizing in complete independence all the electoral operations on the whole territory of the republic all the way to the publication of the results.”

No decree can modify an article of the constitution.