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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report on Haiti by the Expert, Mr. Philippe Texier, prepared in  
conformity with Commission on Human Rights resolution 1988/51

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## I. INTRODUCTION

1. Between 1981 and 1987 the Commission on Human Rights examined the human rights situation in Haiti under the procedure established by Economic and Social Council resolution 1503 (XLVIII).
2. The communications relating to human rights violations examined under resolution 1503 (XLVIII) by the Commission during that period were summarized in the report which the Special Representative submitted to the Commission at its forty-third session, in 1987 (E/CN.4/1987/61, paras. 1-4).
3. During the same period the Commission also had before it the reports of the expert appointed by the Secretary-General to hold consultations with the Government of Haiti about advisory services and technical assistance the Secretary-General might provide in order to facilitate the full enjoyment of human rights by the Haitian people, as requested by the Commission and the Economic and Social Council. The most recent of those reports (E/CN.4/1986/34/Add.3) was examined by the Commission at its forty-second session, in 1986, under the agenda item relating to advisory services.
4. At its forty-second session the Commission on Human Rights, having examined the situation concerning Haiti under the procedure established by Economic and Social Council resolution 1503 (XLVIII), adopted on 13 March 1986 a confidential decision in which it requested its Chairman to appoint a special representative.
5. Originally submitted to the Commission at its forty-third session, in 1987, under the confidential procedure established by resolution 1503 (XLVIII), the report by the Special Representative was later made public by the Economic and Social Council in accordance with the Commission's recommendation in paragraph 11 of its resolution 1987/13.
6. Pursuant to paragraph 12 of that resolution, the Secretary-General had entrusted Mr. André Braunschweig, a French national, honorary Divisional President of the Court of Cassation and a member of the Committee on the Elimination of Racial Discrimination, with the expert mission defined in that paragraph, with a view to "assisting the Government of Haiti in taking the necessary action for the full restoration of human rights in Haiti".
7. In his report (E/CN.4/1988/38), submitted to the Commission as requested in paragraph 13 of the resolution, Mr. Braunschweig explained the Secretary-General's approaches to the Haitian authorities to enable him to visit Haiti for direct contacts with the country's leaders. He also pointed out that he had on a number of occasions informed the Government that he was at the disposal of the Haitian authorities, for the purpose of carrying out his mission, as soon as they thought the time was right. However, the Expert was unable to visit Haiti for direct contacts with the country's leaders and, hence, was unable to meet the Commission's request "to formulate recommendations for the full restoration of human rights in Haiti".
8. At its 52nd meeting, on 8 March 1988, the Commission on Human Rights adopted resolution 1988/51, the main provisions of which state:

"...

Bearing in mind the development of events in Haiti during the past two years, including the violence perpetrated on the occasion of the elections of 29 November 1987, but also the establishment of a civil Government on 7 February 1988,

Noting also that that civil Government has expressed its determination to restore the enjoyment of human rights and fundamental freedoms,

Considering that the United Nations should be prepared to envisage assisting any nation which is going through a delicate and difficult stage on the path to development and consolidation of democracy, if that nation so requests, in order to contribute to respect for human rights and fundamental freedoms,

Considering that it is appropriate to continue to offer Haiti advisory services in the field of human rights,

Concerned about the situation of human rights in Haiti,

1. Takes note of the report of the Expert appointed by the Secretary-General;
2. Expresses its appreciation to the Expert for his report and for the way in which he has discharged his mandate;
3. Shares the regret expressed by the Expert at having been unable, for reasons beyond his control, to travel to Haiti for the purpose of contacting the Government of Haiti;
4. Expresses the view that the obligation to promote and protect human rights and fundamental freedoms calls not only for measures to guarantee the protection of human rights and fundamental freedoms but also for measures intended effectively to prevent any violation of those rights;
5. Invites the Government of Haiti to give priority to the implementation of such measures;
6. Takes note of the attitude displayed by the Government of Haiti towards continued co-operation with the Commission on Human Rights;

..."

9. At its 35th meeting, on 1 September 1988, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1988/12, the main provisions of which are worth noting:

"...

Deploring that the presidential, legislative and municipal elections which were due to be held in Haiti on 19 November 1987 were cancelled because of violence directed against independent election officials and workers,

Concerned that extrajudicial executions and torture and ill-treatment of detainees continue to occur on a wide scale in Haiti,

Noting that the civilian Government which took office in Haiti on 7 February 1988 was overthrown on 20 June 1988,

1. Expresses its deep concern at the continuing deterioration in the situation of human rights and fundamental freedoms in Haiti;

2. Urges the Government of Haiti to observe full respect of the human rights and fundamental freedoms of its citizens;

3. Expresses its hope that the Expert appointed pursuant to Commission resolution 1988/51 will inform the Commission on the extent to which the evolution of the situation has influenced his ability to carry out his mandate;

4. Recommends to the Commission on Human Rights that, on the basis of the new situation and the Expert's report thereon, it consider at its forty-fifth session, without prejudice to the need to continue to render advisory services through the Secretary-General, the possibility of appointing a special rapporteur with a mandate to study and report on the situation of human rights and fundamental freedoms in Haiti;

..."

10. Pursuant to paragraph 8 of Commission resolution 1988/51, the Secretary-General extended Mr. Braunschweig's mandate for one year and, in a note verbale dated 29 March 1988, informed the Government of the Commission's decision and the Expert's intention to visit Haiti, with the agreement of the Government, from 20 to 24 June 1988, to establish contact with the authorities "with a view to taking any action that might be necessary for the full restoration of human rights", in keeping with paragraph 10 of the resolution. In addition, in paragraph 9 of its resolution the Commission invited the Expert to take into account in his contacts with the Government of Haiti the provisions of Commission resolution 1987/13 concerning, inter alia:

"(a) Technical assistance programmes in the field of human rights;

(b) The training programme for qualified Haitian nationals in areas identified by Commission resolution 1987/13;

(c) The possibility of public information programmes in the field of human rights."

11. Mr. Braunschweig, who had been under strict medical supervision for some months, tendered his resignation in a letter dated 10 June 1988 and, as a result, on 22 July 1988, the Secretary-General appointed Mr. Philippe Texier, a French national, President of the High Court in Melun and member of the Committee on Economic, Social and Cultural Rights, to replace Mr. Braunschweig and discharge the mandate assigned by the Commission on Human Rights in resolutions 1987/13 and 1988/51.

12. In a note verbale dated 19 September 1988, the Secretary-General informed the Government of Haiti of Mr. Braunschweig's resignation and the appointment of Mr. Texier for the expert mission. The Secretary-General also informed the

Government of Haiti that, with the agreement of the authorities, the Expert intended to visit Haiti, accompanied by an official of the Centre for Human Rights, from 12 to 17 December 1988, and to visit Geneva on 14 October 1988 for preliminary contacts with the Permanent Representative of Haiti to the United Nations Office at Geneva.

13. Ambassador G. Charles, the Permanent Representative of Haiti, assured the Expert in conversation with him that he would contact his Government and, in the course of the month, would be able to provide a reply regarding the dates of the mission in Haiti. The Expert, during his visit to Geneva on 14 October 1988, also entered into contact with non-governmental organizations.

14. Further to a cable received on 12 December 1988, the Resident Representative of the United Nations Development Programme (UNDP) in Port-au-Prince informed the Centre for Human Rights that he had obtained an official reply from the Haitian Ministry of Foreign Affairs that the Government had no objection to the Expert's mission; a visit was therefore arranged and took place from 15 to 22 December 1988, for the purpose of the direct contacts referred to in Commission resolution 1988/51.

## II. HISTORY OF EVENTS FROM 7 FEBRUARY 1986 TO 31 DECEMBER 1988

15. Since the Expert was unable to visit Haiti in 1987, the Commission did not have the opportunity to consider the situation in Haiti at its forty-fourth session, in 1988. Hence, a brief outline of the many events over a period of two and a half years is essential.

16. On 7 February 1986 President-for-Life Jean Claude Duvalier left Haiti for exile in France, after a period of disturbances which lasted some weeks and left 50 people dead.

17. A National Governing Council (CNG) was promptly formed by four members of the military and two civilians, headed by General Namphy.

18. As from 9 and 10 February, Parliament was dissolved and General Namphy announced a new constitution and elections by direct universal suffrage.

19. After a number of anti-Government demonstrations in May-June 1986, the CNG officially announced that presidential and general elections would be held in November 1987.

20. On 1 August 1986 the CNG issued a decree regulating the functioning of political parties, including the Communist Party, which was legalized for the first time for 50 years. On 19 October 1986, 41 members were elected, but street demonstrations started to be held in order to secure the departure of the CNG. For example, from 17 to 21 November 1986 there was a general strike called by 52 opposition parties, and three people died.

21. The first half of 1987 saw major advances in the transition to democracy. For instance, on 29 March 1987 a referendum adopted the draft Constitution, which entered into force on 28 April 1987. The Constitution, which is very democratic, marks a crucial stage in the country's institutional history. It proclaims "the inalienable and imprescriptible rights to life, liberty and the pursuit of happiness, in accordance with the Act of independence of 1804 and the Universal Declaration of Human Rights of 1948".

22. The Constitution affirms the need for ideological pluralism and for changeovers in power as between political parties, the right to progress, to information, education, health, employment and leisure for all, and the elimination of all discrimination.

23. Based on a "separation and harmonious apportionment of powers", it endeavours "to institute a system of government founded on fundamental freedoms and respect for human rights, social peace, economic equity, and the agreement and participation of the whole population in the major decisions affecting the life of the nation, by means of effective decentralization".

24. It chooses "Liberty, equality and fraternity" as the nation's motto and democratically organizes all of the machinery of State: government, parliament, judicial institutions. It abolishes the death penalty and defines the rights and duties of citizens by principles drawn from the Universal Declaration of Human Rights: the right to life and health, freedom of the individual, the right to a fair trial, freedom of expression, assembly and association, freedom of employment, the right to information, the right to ownership and the right to security.

25. It provides for a high degree of decentralization, ranging from the communal section through the commune, the arrondissement and, the department to the interdepartmental council.

26. Parliament consists of two chambers, the Chamber of Deputies and the Senate; the President of the Republic is elected by universal suffrage; the Government implements the policy of the nation and is answerable to Parliament (art. 156).

27. The judiciary is independent (title V, chap. 4) and its legitimacy lies in the law. There is a Permanent Electoral Council (title VI) and provisions regulate the civil service (title VIII), the economy and agriculture (title IX, chap. 1), the environment (title IX, chap. 2), the family (title X) and the forces of order (title XI), which consist of two separate bodies: the armed forces and the police.

28. Lastly, it includes interim provisions (title XIV).

29. The Constitution of 29 March 1987 has sometimes been criticized but in 1988 it became a symbol of a return to democracy, particularly after it was suspended.

30. The Provisional Electoral Council (CEP) provided for in the Constitution was established on 15 May 1987 both to organize the elections and to form representatives from the various sectors of the population.

31. From 15 to 17 July 1987 there was another general strike, called by 59 organizations demanding the resignation of the CNG and an independent CEP. The crackdown was swift and on a massive scale. For example, close to the town of Jean Rabel, in the north-west, nearly 100 peasants were massacred by an armed group on 23 July 1987. On 2 August 1987, Louis-Eugène Athis, the founder of the Democratic Movement for the Liberation of Haiti (MODELH) was assassinated along with two of his associates. On 13 October 1987, Yves Volé, the Christian Democrat presidential candidate, was also assassinated in Port-au-Prince.

32. A peak was reached on the night of 28-29 November 1987, when hundreds of thousands of people, displaying great courage and determination went off to vote. On the morning of the election, massacres occurred in Port-au-Prince, leaving 24 dead and 74 wounded, and an announcement had to be made, half way through the day, that the presidential and the general elections were cancelled.

33. New presidential and general elections were organized for 17 January 1988. They were boycotted by most of the opposition representatives who had stood in November 1987, by the Catholic Church and by a large majority of the electorate. While they involved no physical violence, they were none the less suspected of being fraudulent and cannot be considered as significant, more particularly because of the very low turnout. Leslie Manigat was proclaimed President and took office on 7 February 1988.

34. On 17 June 1988 a crisis broke out between the Government and the army: President Manigat forced General Namphy, the leader of the army, to retire after decisions to transfer officers had been taken without the knowledge of the President. General Namphy was placed under restricted residence. At the same time, Martial Célestin, the Minister of Justice, had proposed a law separating the functions of the police and the army and placing the police under the Minister of Justice, as provided for in the 1987 Constitution. Legislation was also drawn up to keep a check on the situation in the prisons and the conditions of imprisonment.

35. Then, in a military takeover during the night of 19-20 June 1988, General Namphy dismissed President Manigat, who was immediately sent into exile in Santo Domingo. The new Government, announced on 20 June 1988, consisted entirely of members of the military. Its first act was to suspend the 1987 Constitution, and it has not been applied since that time.

36. On 8 July 1988, General Namphy promised a new Constitution that would better reflect the "real situation in Haiti" than did the 1987 Constitution. He undertook to respect human rights and, on 12 July 1988, issued a decree reaffirming the abolition of the death penalty.

37. However, the human rights situation continued to deteriorate and another climax was reached on 10 September 1988 with the massacre of persons attending Sunday mass in the Church of Saint-Jean-Bosco, in Port-au-Prince. Father Aristide, who was celebrating mass, was a target: 11 people were killed and 70 were seriously injured in the course of this action. But the number of victims was probably higher, because the church was burnt down and it was not possible to determine whether some burnt bodies had been removed by the people who committed the crime. Two other churches were attacked later on.

38. It is under these conditions that, on 17 September 1988, a new military takeover brought General Prosper Avril, Jean-Claude Duvalier's last security chief, to power. This movement, largely made up of soldiers and junior officers, was led by Sergeant Joseph Hébreux and committed itself, in its first statement, to respecting Haiti's international commitments and to safeguarding human rights.

39. Sergeant Hébreux from the very outset urged the new President to restore the 1987 Constitution, call elections, make changes in the structures of the army and the system of justice, and institute serious investigations into previous human rights violations.

40. On 15 and 16 October 1988, some 15 soldiers of the Presidential Guard, among them Sergeant Patrick Beauchard, who had called for radical changes, were arrested on the grounds that they were preparing a new takeover; 12 of them were released on the day of our departure from Haiti, on 21 December 1988, and the remaining three, including Sergeant Beauchard, were released a few days later.

41. It can thus be seen that the institutional situation has completely changed since the forty-fourth session of the Commission on Human Rights, as two coups d'état have taken place, one in June and then another in September 1988, and the 1987 Constitution has been suspended, as well as the functioning of the Parliament. It is in the light of these changes that the situation of Haiti should now be considered.

### III. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN HAITI

42. As indicated above, the Constitution of March 1987, approved in a referendum by an overwhelming majority, has not been in force since 20 June 1988. This suspension entails a number of consequences as regards both State institutions and Haiti's international obligations.

#### A. State institutions

43. The military Government now in power is a "de facto" Government. It has no legal or constitutional basis. The very term "de facto Government" was used by General Prosper Avril during the interview he granted us and was repeated by a number of ministers.

44. The Government, and in particular General Prosper Avril, considers that it is not bound by the 1987 Constitution, but that it should apply its spirit. This is a publicly stated position, although the majority of Haitians are demanding a return to the actual terms of the Constitution.

45. The objective, according to the Head of State, is to change structures and to alter the "dictatorship mentality" prevailing in the country. He considers it necessary to change some articles of the Constitution, but does not believe he is vested with this power. He likewise believes that the structures and personnel of the justice system should also be adapted and changed, but that technical assistance and expertise would be needed for that purpose.

46. In fact, however, there is no longer any separation of powers, since all authority is concentrated in the person of General Avril himself. He carries out the functions of government and legislates by decrees, whose legal foundation lies solely in the military takeover.

47. All the decrees, indeed, begin invariably with the following formulas:

"In view of the proclamation of 17 September 1988 by the military Government ...";

"In view of the decree of 20 June 1988 dissolving the Senate and the Chamber of Deputies ..."



48. The independence of the judicial authorities is not safeguarded and their powers are very restricted, as we shall see, since they have been unable to clear up any of the numerous crimes committed during the past few years.

49. The present Government, therefore, has all the features of a military dictatorship, despite the efforts undertaken since September 1988 to make some improvements in the human rights situation.

#### B. International commitments

50. In December 1988, Haiti was party to a number of international and regional conventions concerning human rights. \*/

51. During a ceremony organized by General Avril to mark the fortieth anniversary of the adoption of the Universal Declaration of Human Rights, he addressed a message to the peoples of the world and to the Haitian people in which he said in particular that:

"The celebration of the fortieth anniversary of the adoption of the Universal Declaration of Human Rights comes, for our country, at a time when consensus has rarely been so manifest between the people and the Government as regards the application of the universal standards which act as a basis for us to build up a democratic society for the benefit of all Haitians."

52. In this same message, it was said that 29 November 1988, the date of the first anniversary of the massacre in the rue Vaillant at the time of the 1987 elections, had been declared a day of national mourning and, in addition, the week of 5 to 10 December was decreed Human Rights Week.

53. Above all, the Head of State, reaffirming his determination "to consolidate the process of establishing representative democracy to safeguard all human rights in Haiti", announced the following "landmark measures" by the Government:

(a) Accession to the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966;

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\*/ As regards the human rights conventions adopted by the United Nations, Haiti had ratified the following conventions by December 1988: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; and the Convention on the Political Rights of Women.

(b) Accession to the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966;

(c) Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984;

(d) Ratification of the Inter-American Convention to Prevent and Punish Torture, adopted by the General Assembly of the Organization of American States (OAS) on 9 December 1985;

(e) Signature of the Additional Protocol to the American Convention on Human Rights.

54. The very positive nature of these accessions and ratifications should be emphasized. They demonstrate the laudable intention of "committing the Haitian nation to breaking definitively with the unspeakable practices which had resulted from the collapse of political power" (speech by Prosper Avril).

55. What is more, General Avril's thinking is clear when he affirms that:

"The State, in terms of respect for human rights, is duty-bound to set an example. We must therefore work to rebuild our judicial system, improve the penitentiary system and create greater awareness among members of the armed forces and rural police officers by organizing seminars so that everyone, in his field, feels he too is involved in the protection of citizens' rights".

56. However, this declared willingness to improve a much deteriorated situation, even if it is real, cannot at the present time be easily translated into domestic legislation. While article 276-2 of the 1987 Constitution does indeed provide that "international treaties or agreements, once approved and ratified in the forms prescribed by the Constitution, shall be incorporated in Haitian law and shall abrogate all laws not in conformity therewith", the suspension of the Constitution strips the statements of intention by General Namphy in June 1988 and by General Avril in September 1988, as well as the ratifications and accessions of December 1988, of any normative substance.

57. A purely moral commitment has therefore been made, one that is certainly very encouraging, but not binding in terms of domestic legislation. Only with the restoration of the 1987 Constitution could the recently-ratified international instruments be incorporated in the Haitian legal system.

#### IV. PRESENT HUMAN RIGHTS SITUATION IN HAITI

58. It should be pointed out, in introducing this paragraph, that fundamental rights such as the right to life, freedom and security, the right to a fair trial, the right to choose one's own political system, freedom of expression or association, trade union freedoms and the right to freedom of movement were constantly flouted during the Duvalier period, which lasted from 22 September 1957 to the departure of Jean-Claude Duvalier in February 1986. François Duvalier, known as "Papa Doc", and then from April 1971 onwards his son Jean-Claude, nicknamed "Bébé Doc", President for Life like his father, had never bothered to respect human rights.

59. They had organized a militarized system of surveillance of the population by means of the "Volontaires de la sécurité nationale" (VSN), better known as the "tontons macoutes", who were guilty of so many violations of human rights - including persecution, rape, torture and murder - that the Organization of American States (OAS), in its latest report on the situation of human rights in Haiti, in September 1988, stated that "for many Haitians the Duvalier era represented the absence of the rule of law", and added that:

"Human rights violations and the repression institutionalized under the régime of François Duvalier (Papa Doc) were notorious. Killings in Haiti aroused no international indignation. Civil, political, economic, social or cultural rights were non-existent. Haiti has been considered the basket case of the hemisphere ... The human consequence has been an exodus of approximately one million Haitians who form the "diaspora", as the Haitians term their exile population."

60. It can easily be understood, therefore, that the departure of Jean-Claude Duvalier on 7 February 1986 represented an immense hope, a kind of resurrection, for the Haitian people. Yet the structures of "macoutism" are still in place and human rights violations have not stopped, even though the situation has improved since the coup d'état on 17 September 1988.

61. Without going into details, attention should be drawn, at least briefly, to the most serious violations of human rights between February 1986 and December 1988. These, it should be noted, are only significant examples.

#### A. Principal violations of human rights

62. This section deals simply with the most notorious facts concerning assassinations, massacres, torture or disappearances.

63. Places of detention, first of all, have often been the scene of the most serious abuses. This applies to both prisons and military facilities.

64. The Criminal Investigation Service, near the National Palace at Port-au-Prince, has been the scene of numerous deaths as a result of torture, ill-treatment or summary execution: 3 deaths in 1987, 20 deaths in April and May 1988, 3 in July 1988. Amnesty International has gathered testimony from various sources on torture and ill-treatment and it reports some 25 cases of non-recognized detention during the period of the Namphy and Manigat Governments. After 17 September 1988, Colonel Georges Valcin, the new police chief, announced that the Service would change direction. It should nevertheless be pointed out that there are at present no lists of detainees, despite the repeated demands of Haitian human rights associations.

65. The National Penitentiary: the conditions of detention are better, and in principle, the prisoners are held there for court proceedings. All the same, at least one death occurred there in 1988, the death of Princius Noël, for reasons unknown. However, this prison has held several hundred detainees for long periods, without charge or legitimate grounds (between 250 and 400 cases reported up to September 1988).

66. Fort-Dimanche: a military barracks where many murders were perpetrated under the Duvaliers. It is a place that was still used as a detention centre after 1986. It has been reported, for example, that 46 persons were shot or bayoneted to death there during the weekend of 28 and 29 November 1987. However, no investigation has been undertaken since then to shed light on these cases.

67. Several members of the Rassemblement des démocrates nationaux progressistes (RDNP), Leslie Manigat's party, were held there in the hours which followed General Namphy's coup in June 1988. Information has reached us that detentions have continued, but this could not be verified owing to the secrecy which has always surrounded measures of detention. The closure of this place of detention has been announced a number of times, most recently in October and again in December 1988, although it has not proved possible to verify this either.

68. The Dessalines barracks, the main place of detention and torture in the time of the Duvaliers, seem to have been used less since February 1986, although complaints were received by a number of non-governmental organizations up to August 1988.

69. Other places of detention exist in the provinces, and a great deal of testimony has been gathered on the ill-treatment suffered by peasants arrested at Hinche, Gonaïves, Jean Rabel, Thomonde and other places. These actions involved either provincial or local military authorities, or "section heads".

70. The section heads, who come directly under the army, constitute the most important local authority in the rural areas. They have almost complete power over the peasant population and commit numerous abuses, according to testimony gathered by Haitian and international non-governmental organizations, particularly at the Human Rights Forum held in Port-au-Prince on 9 and 10 December 1988.

71. They are accused of arbitrary arrests, ill-treatment, beatings, torture and sometimes summary executions. They are very often from "macoute" forces, and are the subject of numerous criticisms calling for the elimination of their present functions and a reorganization of communes and communal sections, as provided for in the 1987 Constitution.

#### Massacres and assassinations

72. These have been numerous since 1986, and only the main ones can be mentioned here.

#### Jean Rabel

73. Situated in the northern part of the country, this small town was the setting for the killing of more than 200 peasants on 23 July 1987, according to various sources, and in particular the report prepared by a commission of inquiry appointed by the CNG.

#### Elections of 29 November 1987

74. Several days before the elections, many attacks had already been carried out against individuals or homes by unidentified armed groups.

75. On 29 November 1987, while people were queuing outside polling stations to vote, unidentified armed groups fired into the crowd, killing at least 34 persons. According to eye-witness accounts, some of these murders were committed in the presence of security forces, and indeed with their collaboration. Following this massacre, which considerably shocked the international community, the CNG and General Namphy appointed a commission of inquiry to look into the facts. The commission produced a report concluding that responsibility was impossible to establish. No one has so far been arrested or charged as a result of this event.

Attack on the Church of Saint-Jean-Bosco on 11 September 1988

76. The main purpose of this attack was to kill Father Aristide, who was celebrating Sunday mass in this parish. It must be emphasized that Father Aristide had already been the target of one assassination attempt on 23 August 1987, at Freycineau, near Saint Marc, along with other priests and nuns.

77. This Salesian priest, one of the most popular figures of the "Ti léglise" (Church of the Poor) was always depicted - rightly or wrongly - as a leader of the opposition, and had received numerous threats.

78. On 11 September 1988, a score of armed civilians with red arm bands burst into the Church of Saint-Jean-Bosco, in the La Saline district of Port-au-Prince, while Father Aristide was celebrating mass. They were armed with guns and machetes, killed at least 11 persons and injured about 70. They then set fire to the church, causing widespread panic in the crowd. The church was totally destroyed and it has been impossible to establish exactly the number of dead and injured.

79. Several witnesses stated that, among the killers, they recognized employees of Franck Romain, the mayor of Port-au-Prince. Some of these individuals later made statements on radio and television, glorying in their actions and saying they were ready to repeat them.

80. This led to a movement of revolt, admittedly deplorable and excessive, by people living in the poor districts of Port-au-Prince, who summarily executed three of these persons.

81. On 17 September 1988, Franck Romain obtained political asylum in the embassy of the Dominican Republic in Port-au-Prince. Judicial proceedings were instituted against him, and all Haitian human rights organizations and democratic circles have called for a proper inquiry, arrest and trial.

82. The Government of Haiti, by the time we arrived in the country, had refused to provide him with safe passage out of Haiti. We have since learnt that a safe conduct for Santo Domingo was granted on 31 December 1988. The official statement indicates that this decision was taken "to respect obligations under the Inter-American Convention on Political Asylum". According to the international press, the Minister of Information gave an assurance that Franck Romain's departure would not prevent action being taken against him at a later stage.

### Assassinations

83. In addition, numerous assassinations of prominent persons have occurred over the past two years and we will cite only the most significant. The body of Lafontant Joseph, a human rights lawyer, was found on 11 July 1988 in his car on an isolated road near Port-au-Prince airport. He had been one of the co-founders and last general secretary of the Haitian Human Rights League and had directed the Centre for the Promotion of Human Rights.

84. Louis Eugène Athis, leader of MODELH, was hacked to death with machetes, along with two of his associates at Léogane on 2 August 1987.

85. Yves Volel, a lawyer, was killed on 13 October 1987, near the Criminal Investigation Service, by members of the security forces, in the presence of press and television journalists.

86. These are only the most well-known cases but many accounts attest to the fact that one or more bodies have been discovered somewhere in the country almost every day since February 1986. This phenomenon, however, virtually came to an end in December 1988.

87. Lastly, several cases of disappearances have been reported, following arrests made by the security forces or by unidentified civilians. The last three cases recorded were those of Johny Cadet, on 20 September 1987 in Port-au-Prince, Wilner Joseph Mills, on 24 September 1987, and Elifette Clairjuste, in February 1987.

### B. Responsibility for violations and Government investigations up to September 1988

88. During this period up to September 1988, there was no change in the principal administrative posts, i.e. in the Ministry of Defence, the Ministry of the Interior, the Criminal Investigation Service and the main prisons and military barracks.

89. The ordinary system of justice, organized along traditional lines (Court of Cassation, Courts of Appeals, judges and justices of the peace), did not play its role. The cases of torture, ill-treatment and arbitrary detentions led to practically no checks on its part, no arrests, no proper investigations.

90. One of the major weaknesses of the Haitian system lies in the militarization of the police. There is no civilian police, although the 1987 Constitution provided for the separation of the military and the police forces with the police coming under the Ministry of Justice. This has never been done. Although it was announced in 1987 that this measure would be studied, the study was never carried through.

91. However, there have been repeated charges of responsibility on the part of security personnel. For example, on 2 September 1988, the police announced that a lieutenant from the Dessalines barracks would be prosecuted for causing the death of Jean-Baptiste Schubert under torture. This case seems to have led to no further action.

92. As indicated above, judicial guarantees are virtually non-existent in the rural areas, where section heads are not subject to any real control by the State.

93. "Tonton macoute" activities did not come to a halt after February 1986, and they even increased from June 1987 to September 1988: groups of civilians armed with machetes or pistols threatening peasants, raiding homes and making arrests, sometimes in the company of the security forces. They are suspected of having committed many murders, yet not one of them has ever been seriously bothered. Their activities stepped up sharply between the takeovers by General Namphy and General Avril, and during that period they acted openly, wearing the well-known red armbands, as was the case in particular during the events at the Church of Saint-Jean-Bosco.

94. The security forces themselves have often been accused of participating in criminal acts during 1987 and 1988. Inquiries were sometimes announced but never carried through.

95. During the National Governing Council (CNG) period (February 1986 to February 1988), it was repeatedly proclaimed that human rights violations would be punished. No significant action has been undertaken to date, either for the murder of Louis-Eugène Athis and his friends, that of Yves Vollel, the massacre at Jean Rabel or all of the other violations.

96. After the massacre during the elections on 29 November 1987, General Namphy appointed a commission to report on the matter. The report concluded that it had not been possible to establish involvement by "tontons macoutes" in the affair and that "it was not possible to believe" that the "macoutes" might be responsible for such atrocities. That report was heavily criticized and General Avril was forced to propose a new commission (see chap. V).

97. To our knowledge, no serious judicial investigation is under way for any of the crimes committed since 1986. It should be added that there have been no investigations into the Duvalier period. However, it is commonly acknowledged, in particular by OAS, that disappearances, extrajudicial executions and torture took place constantly during those 29 sombre years. The most serious thing, moreover, is that up to September 1988 most of the individuals suspected of actively playing a part in human rights violations or authorizing or encouraging them still occupied important posts in the Government, the administration or the security forces.

#### V. VISIT TO HAITI AND SUBSEQUENT ACTIVITIES

98. The Expert, accompanied by an official from the Centre for Human Rights at Geneva, visited Haiti from 15 to 22 December 1988, with a view to making contact with the authorities and with democratic forces and non-governmental organizations, to observe the facts and evaluate the current human rights situation.

99. At the Government level, the Expert met with General Prosper Avril, the Head of State; Mr. Gilbert Austin, the Minister of Justice; Colonel Carl Dorsainvil, the Minister of the Interior; Mr. Serge E. Charles,

the Minister for Foreign Affairs; and Mr. Pierre Jeannot, the President of the Court of Cassation. He also visited the National Penitentiary, where he met with an aide to Colonel Christophe Dardonbré, the latter having sent word at the last minute that he would be detained by an important meeting.

100. The Expert also met with church representatives: Mr. Lafontant, General Secretary of the Episcopal Conference and Father Joseph Serge Miot, Permanent Secretary, and Reverend Sem Marseille, President of the Protestant Federation.

101. He also had a number of meetings with democratic leaders or former political figures: Mr. Hervé Bazin, Movement for the Institution of Democracy in Haiti (MIDH); Mr. Gourgues, Co-operation Front; Mr. F. Latortue, President of the Movement for the Democratic Liberation of Haiti (MODELH); Reverend Sylvio Claude and Charles Ménard, Christian Democratic Party; Mr. Serge Gilles, National Progressive Revolutionary Party of Haiti (PAMPRA); Mr. Victor Benoit, National Committee of the Congress of Democratic Movements (KONAKOM); Mr. Dejoie, National Agricultural and Industrial Party (PAIN); and Mr. Théodore, Haitian Communist Party (PCH).

102. The Expert also met representatives from all the human rights defence organizations: the Haitian League for Human Rights (Mr. Joseph Maxi, Mr. Léon Jeune, Mr. Jean-Claude Nord); the Ecumenical Human Rights Centre (Mr. Jean Claude Bajeux, Mr. Jacinthe Sorel and several lawyers, including Mr. Moysse Senatus); the National Human Rights Defence Network (RENADDWAM) and the Petion Bolivar Centre (Mr. Arnold Antonin); the Haitian Centre for the Defence of Civil Liberties (CHADEL) (Mr. Jean-Jacques Honorat); the Haitian League of Former Political Prisoners (Mr. Robert Duval); and the Ecumenical Mutual Aid Service (Mr. Daniel Henris and Dully Brutus).

103. He also met with trade union leaders, in particular from the Haitian Workers' Confederation (CATH) (Mr. Armand Pierre).

104. On Sunday 18 December 1988 he travelled into the countryside, on the central plateau, to meet peasants at Hinche, and more specifically at Papaye, where he held discussions with Jean-Baptiste Chavanne, President of the Peasant Movement of Papaye (MPP). He also met journalists from Radio-Haiti and Radio-Soleil and from a new magazine, Haiti solidarité internationale (Mr. Mischa Gaillard).

105. A number of informal meetings were held with various leading Haitian and foreign personalities, in particular Mr. Louis Roy, former member of the Constituent Assembly and one of the people who drew up the 1987 Constitution; Dr. Robert Jean Louis, President of the Haitian Medical Association; Mr. Paul Etienne, who had been arrested and expelled from the Dominican Republic; representatives of Amnesty International and several members of diplomatic or co-operative missions. It was not possible to meet Father Aristide, despite the fact that an appointment had been made.

106. On 14 December 1988 the Expert met in New York with Mr. Kenneth Roth, the Deputy Director of the Human Rights Watch association, and Mr. Jocelyn MacCalla, the Director of the National Coalition for Haitian Refugees, who arrived from Port-au-Prince where they had participated in the human rights week organized by various Haitian associations.



107. Lastly, mention should be made of the valuable help given by the Resident Representative of the United Nations Development Programme, who spared neither time nor effort in contributing to the effectiveness of a mission whose goal was to meet with as many representative leaders as possible in a few days.

108. All of these meetings, supplemented by a perusal of numerous governmental and non-governmental documents and the international press form the foundations for this report. They will not be summarized here, but will be used to provide a general impression and the conclusions drawn by the Expert.

109. It should be emphasized that in the economic and social field, Haiti is extremely poor. This poverty is the result of nearly 30 years of dictatorship and the ensuing upheaval. The country's economic and environmental situation is disastrous and the extreme poverty is very striking both in Port-au-Prince and in the countryside. The unemployment rate is very high, the minimum wage extremely low and trade union freedoms and the right to strike are not respected in the least. According to several sources, a significant number of people continue to leave the country by boat (boat people) for the shores of the United States of America.

110. The population of Haiti is estimated at 5.4 million. In 1985, the per capita gross domestic product was estimated at \$350 a year, but 80 per cent of Haitians are living below the critical poverty line of \$150 a year. Haiti is the only country on the American continent in the least developed group (LDCs). Malnutrition is serious and widespread. Agriculture, on which 75 per cent of the population depend, no longer meets national needs and has been showing a food deficit of the order of 50 per cent. This situation tends to grow worse because of the population growth (1.9 per cent a year) and because the land is split up into ever smaller plots. Furthermore, the erosion and deforestation problem is a threat to the country's agricultural future. The infant mortality rate is high (124 per 1,000) and life expectancy one of the lowest on the American continent (55 years). The illiteracy rate is 77 per cent for the country as a whole, but 90 per cent in the rural areas. The unemployment rate in 1986 was considered to be of the order of 25 to 30 per cent in the towns and underemployment of the order of 80 per cent.

111. There can be no improvement without a firm political will, a permanent end to all corruption and a very substantial amount of properly used international aid.

112. Since February 1986, the political situation has been marked by very great instability (see chap. II), and the obvious indecision of the Government, caught as it is between the Duvalier forces and the democratic sector, gives no reason to hope for a lasting change to democracy.

113. However, some emphasis should be placed on General Prosper Avril's publicly stated readiness to work towards a gradual improvement in the human-rights situation, which has been expressed in several ways, and his repeated wishes to organize a transition.

114. The ratification of the various covenants and conventions (see chap. III), although it does not have binding force, still indicates the will to bring Haiti's position into line with that of the international community.

115. The Decree of 16 December 1988 providing for a review of some articles of the general regulations for the armed forces in Haiti is another example. This provides for changes in the system of appointing rural police officers, mentioned earlier under their better-known name of "section heads".

116. According to article 2 of the Decree:

"Rural police officers shall be appointed for four years. They shall be chosen by the members of the Communal Sections during elections held for the appointment of members of the Administrative Council of the Communal Sections (CASECs) from among the citizens who stand for election to this post.

...

Rural police officers shall be helped in their duties by two sworn deputies chosen by the district commander at the proposal of the ... CASEC.

When a post becomes vacant either by death, resignation or for any other reason, the district commander shall recommend to the High Command of the Armed Forces of Haiti, through the commander of the military department, one of the deputies, who shall perform the duties of a rural police officer until the following elections. Another deputy will then be proposed by the CASEC to the district commander."

117. Therefore, these police officers remain under the strict control of the army, for in particular article 5 provides that "rural police officers shall be subject to quarterly evaluation reports from the district commander to the High Command."

118. This decree is a good illustration of the spirit of the current reforms and their limits. The decision that the section heads will be elected is undeniably a move in the right direction, but genuine local democracy cannot be instituted while the local officials responsible for public order are either military personnel or civilians falling strictly under the authority of the military.

119. Some of the section heads most severely criticised by the peasants have in fact been dismissed, but many of them continue to commit abuses of authority yet remain in their positions.

120. Even more ambiguous is the Head of State's attitude towards two fundamental problems: (a) finding out the truth and punishing those guilty of the most serious massacres; (b) organizing an electoral timetable.

121. Concerning item (a), after the total failure of the first commission of inquiry appointed by General Namphy to look into the 29 November 1987 massacre, at the end of November 1988 General Avril signed a decree establishing a new commission of inquiry "to continue the inquiry into the events that occurred in the territory of the Republic on 29 November 1987."

122. This commission would consist of five persons: one representative of the Head of State, one high-ranking military official and three civilians appointed by their peers to represent them: a journalist, a member of the bar and a leader of a human-rights defence association, who would chair the commission.

123. The commission would be in charge of inquiring into "the causes and circumstances" of the 29 November 1987 massacre. It does not appear to have the power to designate those responsible and have them arrested.

124. Supposing this commission is established, something which appeared to involve some difficulties at the time of the Expert's visit to Haiti, it should be stressed that it places the three civilian representatives in a very difficult position, since they have no real coercive power. Furthermore, their participation in such a body entails serious risks for their physical safety.

125. In fact, in a State under the rule of law, it is for the State and the State alone to find out the truth and punish the guilty: the Prosecutors of the Republic (known as Government commissioners, in Haiti) for the prosecution, and the judges for investigation and trial. But the judiciary in Haiti does not play its role, either out of incompetence or lack of will or independence, owing to its links with Duvalierism, or even out of corruption. Judges often have strong political views, lack training and have probably covered up too many abuses during the Duvalier era to preserve the Haitian people's trust.

126. Regarding item (b), there is a very strong demand in Haiti for the electoral timetable to be organized in accordance with the 1987 Constitution (title VI): establishment of an electoral council: "to organize and supervise with complete independence all electoral procedures throughout the territory of the Republic until the results of the ballot are announced."

127. The Permanent Council would draft the electoral law and keep the electoral registers up to date; it would consist of nine members: three chosen by the Executive, three by the Court of Cassation and three by the National Assembly. It would resolve any electoral disputes that might arise.

128. Article 289 provides initially for a Provisional Electoral Council of nine members: one by the Executive, who is not a public official; one by the Episcopal Conference; one by the Court of Cassation; one by the human-rights organizations, who may not be a candidate in the elections; one by the Council of the University; one by the Journalist Association; one by the Protestant religions; and one by the National Council of Co-operatives.

129. Article 289-2 stipulates that if any body or organization does not appoint a member, the Executive shall fill the vacancy or vacancies.

130. The Provisional Electoral Council prepared the November elections in 1987.

131. However, the Head of State, who does not feel bound by the Constitution, has proposed another decree organizing another electoral college, which would come under the Ministry of Justice and the justices of the peace. Democratic circles have criticised this bill on a number of counts and expressed many hesitations.

132. To date, no timetable has been set, and General Avril told us it was his intention to hold meetings with all of the political parties in the first two weeks of January 1989, to prepare the modalities and dates for the elections.

133. From September 1988 onwards, great hopes were raised because of the popular nature of the demands of the soldiers, who had purged the superior officers most involved in the repression. Talks have begun with democratic circles, and it may be said that effective freedom of opinion and expression exists. The "déchoukaj" (purge, or dismissal, in Creole) took place with no notable violence.

134. In this connection, it should be remembered that the period February 1986 to September 1988 had included summary executions or lynchings in the streets, by persons who had suffered under the oppression of the Duvalier régime. Such excesses are extremely unfortunate and should be condemned. They could have been avoided if the forces of order and justice had played their part.

135. The arrest of 15 soldiers on 15 October 1988 seemed to indicate a pause in this trend. The theory of a plot, put forward by the Government, has not been proved for the time being, and the release of Sergeant Beauchard and his friends made it impossible to find out the charges against them. The insecurity intensified, and certain followers of Duvalier who had originally been excluded were appointed to important posts ("rechoukaj"). Killings, which had more or less ceased, started up again. Certain members of the opposition were arrested (for example, Charles Manigat and Max Montreuil at Cap-Haïtien).

136. On 29 November 1988 there were other positive developments: the declaration of a day of mourning, a human-rights week, ratification of conventions, release of soldiers ... but, on 31 December 1988, Franck Romain, suspected of being one of the ringleaders in the massacres, was authorized to leave the country.

137. These references to a few recent events are good illustrations of the ups and downs in a situation that gives no reason for optimism in the near future. Although an improvement in the human-rights situation has been observed since 17 September 1988, the root causes of the violations have not been eliminated and might at any moment give rise to outbreaks of violence.

## VI. CONCLUSIONS

138. The general conclusions from the study of the human-rights situation in Haiti, the institutional framework and international commitments are contained in chapters III and IV. They may be summarized as follows:

(a) Since 17 September 1988, an effort has been made to give signs at the national and international levels of an awareness of the need to ensure respect for human rights in Haiti;

(b) However, the political will to take specific measures aimed at ensuring everyday observance of these rights has not so far been convincingly demonstrated;

(c) The Government and the judiciary have not devised effective measures for conducting enquiries into past human-rights violations and judging the culprits;

(d) They have not been able to prevent further violations from happening every day, in the towns, and especially in the countryside;

(e) There are currently numerous obstacles in the way of a real improvement in the human-rights situation in Haiti:

(i) An ineffective judiciary;

(ii) The militarization of the rural areas;

(iii) The failure to separate the army and the police forces;

(iv) The fact that those responsible for the principal massacres, in particular the massacres on 29 November 1987 and 11 September 1988, have not been placed on trial;

(v) The military and economic power of the paramilitary forces, which should be disarmed to ensure sufficient security to resume an electoral process;

(f) The Government, having no basis in law, cannot rely on lasting support from the country's democratic forces;

(g) The Constitution of 29 March 1987, which was approved by the vote of a very large majority and which the Haitian people have been calling for, must enter into force promptly if a climate of trust is to be re-established.

(h) The electoral process should be speedily restored and organized to safeguard citizens' physical safety and freedom to vote as they wish and make sure that they gradually take their country's future in hand again;

(i) The situation as regards respect for economic, social and cultural rights is alarming and should be corrected as soon as possible;

(j) Although there has been a slight improvement since 17 September 1988, the large number of extremely negative factors are conducive to a pessimistic analysis of the country's situation, which cannot change without the firm will to ensure respect for the rule of law.

## VII. RECOMMENDATIONS

139. In conformity with his mandate under Commission resolutions 1987/13 and 1988/51, the Expert submits the following recommendations:

(a) It is essential for the Commission to continue to monitor the human-rights situation in Haiti, with a view to fostering a real process of improvement;

(b) It is advisable for the Commission to express deep concern at the continued deterioration in the situation regarding human rights and fundamental freedoms;

(c) In view of the events that have occurred since its forty-fourth session, it is desirable for the Commission to consider the possibility of appointing a special rapporteur to study the situation of human rights and fundamental freedoms in Haiti and to report on the subject, in conformity with Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1988/12;

(d) The Expert further recommends that the Commission should consider whether, in view of the present situation in Haiti, which has changed radically since the forty-fourth session, the conditions have been met for continuing to provide advisory services through the Secretary-General;

(e) Assuming the Commission feels that advisory services should be provided, the Expert recommends that efforts should focus on:

- (i) Holding free elections under peaceful conditions and with guarantees for citizens' safety;
- (ii) Strengthening and improving the judiciary to enable it to fulfil its mission with complete independence;
- (iii) Support for planning a general policy regarding development and assistance for the poorest communities;
- (iv) Specific technical assistance in matters pertaining to the police, so as to foster the organization of civilian police services trained in human rights and in the minimum standards for maintaining order;

(f) If assistance in advisory services is maintained, the Expert also recommends that all human-rights organizations should be involved in any training programmes.

140. These are the recommendations submitted by the Expert as a result of his first visit to Haiti. He believes it is essential to continue the dialogue with the present Government of Haiti and leaves it to the Commission to decide what form this dialogue should take so as to afford the best chance of success in a situation that has deteriorated very badly.

141. He proposes that more generally, the Commission should use the situation in Haiti to begin an overall consideration of the goal of advisory services. In particular, he suggests examining the question whether minimum standards of respect for international norms should not be required in order for a country to benefit from United Nations advisory services.

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