

REPORT ON THE SITUATION OF HUMAN RIGHTS IN HAITI

INTRODUCTION

A. General Observations

1. An on-site investigation may be conducted either at the invitation of the Government, or on the initiative of the Commission, but in the latter case, the Government's consent is required. The present report concerns the on-site observations conducted as the result of an invitation by the Government of Haiti.

On September 27, 1977, at the time Haiti deposited its instrument of accession to the American Convention on Human Rights, Ambassador Georges Salomon, Permanent Representative of Haiti to the Organization of American States, made the following statement:

And now the Government of Haiti, ever vigilant, ever respecting law and order in this very over-populated country, turns to the Organization of American States and particularly to the Inter-American Commission on Human Rights, which it will soon be invited to Haiti (I have already received instructions on this question). The Commission will come, in part, to examine the few cases still pending before the Commission, but mainly to study, in consultation with the Government, what measures will best serve to make the Haitian people aware of all their civil and political rights, and to promote respect for an expansion of these rights, which are upheld in Haitian domestic laws and in the Constitution.

...

The Haitian Government's invitation to the Commission, contained in a telegram dated January 30, 1978, reads as follows:

Mr. President:

I have the pleasure to inform you that the Government of Haiti proposes to issue an official invitation to the Inter-American Commission on Human Rights to visit Haiti at a mutually convenient date. This visit will enable the Commission to assess the progress the country has made in the area of human rights, and promote respect for and expansion of human rights.

2. In a note dated February 3, 1978, the Commission notified the Government of Haiti of its acceptance of this invitation.

Excellency:

In its forty-third special session held in Caracas on January 26 through February 3, 1978, the Inter-American Commission on Human Rights learned of your cable of January 30 addressed to the Executive Secretary of the Commission, Mr. Edmundo Vargas Carreño.

The Commission would like to express its satisfaction at receiving this official communication, which confirms the Government of Haiti's intention of inviting the Commission to visit the country, announced by you on September 7, 1977 at the time your country's instrument of accession to the American Convention on Human Rights was deposited.

Precise instructions have been given to the Executive Secretary of the Commission, Mr. Edmundo Vargas Carreño, regarding the details of the visit, which must be conducted according to the rules approved by the Commission. Mr. Vargas Carreño will be in contact with Your Excellency upon his return to Washington.

Accept, Excellency, the renewed assurances of my highest consideration.

(s) Andrés Aguilar
President

3. At its meeting held on May 31, 1978, the Commission formed a special Commission to conduct the on-site investigation discussed in the above communications. The Commission also decided to propose to the Government of Haiti that the visit should take place from August 16 through August 25, 1978. On August 2, 1978, the Permanent Mission of Haiti to the Organization of American States replied in the following terms:

My dear Mr. Executive Secretary:

In reference to your letter of July 21, 1978, I have the honor to inform you that the Government of Haiti gives its consent to the on-site visit to Haiti by the Special Commission of the Inter-American Commission on Human Rights to take place August 16 through 25.

I wish the members of the Commission and the staff accompanying them a fruitful and agreeable visit to the hospitable country of Haiti.

Accept, Mr. Executive Secretary, the renewed assurances of my distinguished consideration.

(s) Georges Salomon
Ambassador

4. The rules quoted by the President of the Commission in his note of February 3, 1978 are contained in the resolution quoted below:

RESOLUTION ON ON-SITE OBSERVATIONS

WHEREAS:

Article 11 of the Statute of the Commission and Article 50 of its Rules of Procedure empower the Commission to move to the territory of any American State, with the consent or at the invitation of the Government concerned, for the purpose of carrying out an on-site investigation,

The Inter-American Commission on Human Rights,

RESOLVES:

To establish the following rules:

1. On-site investigations that the Commission may decide to conduct shall be carried out according to the following regulations:
 - a. The Commission shall determine the composition of the special Commission responsible for on-site observations;
 - b. The Special Commission or any of its members shall be able to interview, freely and in private, persons, groups, entities or institutions, the Government being obligated to grant the pertinent guarantees to all those who may give the Commission information, testimony or evidence of any kind;
 - c. The members of the special Commission shall be able to travel freely throughout the country, and shall be provided for that purpose with an official travel document issued by the Government for their identification;
 - d. The government shall assure the availability of local transportation facilities;
 - e. The members of the special Commission shall have access to the jails and all other detention and interrogation centers, and shall be able to interview in private those persons sentenced or detained;
 - f. The government shall provide the special Commission with any document or information regarding the observance of human rights that it may consider necessary for the preparation of its report;
 - g. The Special Commission shall be able to use any appropriate method to collect, record and reproduce information that it considers pertinent;
 - h. The government shall adopt appropriate measures of security for the protection of the special Commission;
 - i. The government shall assure the availability of adequate lodging for the members of the Commission.

2. The guarantees and facilities listed in the preceding paragraph shall be extended to the Secretariat staff accompanying the Commission.
3. The expenses incurred by the special Commission, each of its members and the Secretariat staff shall be borne by the Organization of American States, subject to the pertinent provisions of the regulations.

B. Organization and Work of the Special Commission

1. The special Commission appointed by the Inter-American Commission on Human Rights to conduct the on-site observation in Haiti consisted of three members: Mr. Andrés Aguilar, Chairman of the Inter-American Commission, Mr. Carlos García Bauer and Mr. Marco Monroy Cabra. The Commission was assisted by staff of the Secretariat of the IACHR.

2. As usual, the Special Commission took steps to maintain its independence, and prepared its schedule for the public and private sectors in Haiti, in order to carry out its mission.

3. The observation visit took place from August 16 through August 25, 1978. Since Mr. Andrés Aguilar had to leave for New York on August 20, the Special Commission continued to operate with two members, under the chairmanship of Mr. Carlos García Bauer. Upon its arrival in Haiti, the Special Commission issued a press release, informing the public of the reasons for the visit and inviting individuals or organizations to present communications and to comment on the subject of the observance of human rights in Haiti. It also held a number of press conferences explaining the nature of the Commission's functions and the purpose of its visit. The activities of the Special Commission received satisfactory coverage in the printed media and on the radio and television. The Committee also received the necessary cooperation from the Haitian authorities.

4. The Special Commission went to Port-au-Prince, the capital of Haiti and to two other cities in the interior of the country, Cap Haïtien and Jacmel. In Port-au-Prince, the Commission met with the President of the Republic, Mr. Jean-Claude Duvalier, the State Secretaries for the Departments of the Interior and Defense, Foreign Affairs, Education, Public Health and Population, and Social Affairs, and also with the President of the Legislative Chamber and members of the Supreme Court. It also met with the Archbishop of Port-au-Prince, and had occasion to exchange views with members of the diplomatic corps accredited to the Government of Haiti. In Cap Haïtien and Jacmel, the Committee met with local civil and military authorities.

In both Port-au-Prince and the other places visited, the Commission received denunciations, and heard statements from a number of individuals who wished to speak to it. It also heard from spokesmen from a number of religious groups, and representatives of professional associations, student groups, trade unions and political and civic organizations.

The Special Commission visited the National Penitentiary in Port-au-Prince and local prisons in Cap Haïtien and Jacmel. It was able to talk freely and in private with those prisoners it wanted to see, and with those who had told the Committee

of their desire to submit complaints. The Committee inspected the cells and examined the prison conditions, the medical care and the legal aid available to prisoners, and investigated all questions it considered useful in preparing the present report.

The Commission also visited a number of industries, in particular Ciment d'Haiti where, some time earlier, there had been union troubles. In these factories, the Commission met separately and in private, with employers, workers and union leaders. Unfortunately, the Special Commission was unable to interview workers and union leaders of the HASCO, where according to information received, there had been labor conflicts because the manager or director of the factory, Mr. Hill, an American citizen, had refused access to the factory premises.

5. The Special Commission wishes to point out that the government of Haiti cooperated fully with the Commission during its visit, providing it with the documents and data requested, and not interfering with its work.

C. Sources

The sources used in preparing the present report can be categorized as follows: a. personal observations by members of the Special Commission; b. information obtained during the interviews; c. laws and information furnished by the government of Haiti; d. information obtained from various sources on the observation of human rights in Haiti, and e. documents presented by the complainants and other persons.

D. Organization of the Report

1. The first chapter of the report deals with Haitian law from the perspective of human rights: international obligations assumed by Haiti, the Constitution and laws of the country, and government measures taken in violation of constitutional principles. Subsequent chapters discuss those rights that the Commission feels are particularly pertinent to the situation of human rights in Haiti. The report ends with the Commission's conclusions and recommendations.

2. The individual cases brought to the attention of the Commission and that are cited in the present report, as well as other cases not reported here, will be the subject of separate studies, as called for in the regulations of the Inter-American Commission on Human Rights.

E. Updating of the Current Report

This report was delivered to the Permanent Mission of Haiti to the OAS on Monday, July 2, 1979. At that time, the government of Haiti was given the opportunity, if it so desired, to present within a period of six weeks, its observations to the report. A representative of the government, in a letter dated September 1, 1979, requested an extension of that deadline to October 15. On November 27, 1979, the IACHR received the response of the government of Haiti to the Commission's report. Prior to that date, the government had forwarded a memorandum on the report which was received on June 18, 1979, and some preliminary observations dated August 14 of that same year.

On December 7, 1979, Mr. Endicott Peabody, representative of the government of Haiti, according to a note received on November 16, 1979, and accompanied by Messrs. James Sollins, David Taylor and Jorge Córdova, made an oral presentation to members of the Inter-American Commission. Following its visit to Haiti, members heard testimony and received information from various sources on the situation of human rights in Haiti.

In light of the documents and the additional information received, the Commission decided to update the report to December 13, 1979, the date the report was adopted.

CHAPTER I

LEGAL FRAMEWORK

A. Haiti's international obligations in the field of human rights

1. Haiti has assumed certain international obligations in the field of human rights. It has signed the United Nations Charter and the Charter of the OAS, and has approved the Universal Declaration of Human Rights. Haiti is also a member of the ILO, UNESCO and other international organizations.

2. On February 27, 1977, Haiti deposited its instrument of accession to the American Convention on Human Rights (Pact of San José). The Convention entered into force on July 18, 1978. As a result, Haiti is legally obliged to observe the rights and freedoms upheld in the Convention, and to guarantee all persons under its jurisdiction free and full exercise of their rights, without discrimination for reasons of race, color, sex, language, religion, political or other opinions, national origin or social position, economic situation, birth, or any other social condition (Article 1, paragraph 2).

Article 2 of the Convention obliges the States Parties to adopt such domestic laws as may be necessary to make these rights and freedoms effective. The State Secretary for the Departments of the Interior and National Defense referred to this issue in his note of August 25, 1978:

As of now, this legislation (i.e. decrees conferring full powers on the Head of State) will henceforth be adapted to the Charter on human rights, which has had the force of law in the country since it was ratified.¹

3. Haiti has also ratified international instruments regarding the protection of specific rights, such as the Convention for the prevention and repression of genocide, and the ILO Convention (Nº 29) on Forced Labor.² Haiti has denounced the inter-American conventions on the right of asylum,³ by issuing four decrees dated July 27, 1967. These decrees were later annulled and replaced by four other decrees dated January 28, 1973, "in order to re-establish in conformity with prescribed procedures, the rights and obligations of the Republic of Haiti as a party" to each of these conventions on asylum.

B. The 1964 Constitution and the reforms of 1971

1. The present Constitution in force in Haiti was promulgated in 1964.⁴ The Constitution was amended on January 14, 1971, by a number of reforms dealing with the form of election of the President for Life and the minimum age requirements for public office.⁵ According to the government, the Constitution was “repromulgated” in its entirety by the National Assembly at that time.

The text of the Constitution adopted in 1971 consists of 201 articles divided into 15 chapters. For the purposes of the present report, the most important provisions are those defining the rights and guarantees of the inhabitants of the Republic (Title I), those determining the organization of government (Title IV), and those regulating the state of siege and amendments to the Constitution (Titles XIII and XIV).

2. The following individual rights and guarantees are upheld in the 1971 Constitution: the right to personal freedom (Article 17), and to personal security (Article 17, paragraph 8), the right to be judged by one’s peers (Article 18), the right to property (Article 22), freedom of expression (Article 26), freedom of religion (Article 27), freedom of assembly (Article 31), and the right of association (Article 32). It also establishes the conditions for lawful arrests, detentions and proceedings (Article 17); illegal search and seizure (Article 19), and of illegal sentencing (*nullum crimen nulla poena sine lege*) (Article 21). All cases of detention must be brought before a judge within forty-eight hours to determine the legality of the measure (Article 17). The death penalty is forbidden in political cases, except in the case of treason (Article 25). It should be pointed out that the anti-communist law of April 28, 1967 prescribed the death penalty for the mere expression of ideas that are judged to be communist (See Chapter IV).

The Constitution also establishes the principles of the supremacy of the Constitution (Article 38), the principle of the non-retroactivity of legislation (the most benignant penal laws) (Article 20), inviolability of the mails (Article 54) and the principle of equality before the law (Article 16), a principle that is limited in the case of aliens (Title II, Chapter III).

As will be seen below, the rights, guarantees and principles mentioned above are subject in many cases to certain duties and to limitations set forth in the regulations.

3. The 1971 Constitution organizes the government into three branches: The executive, the legislative and the judiciary (Article 47). The three branches of government are independent of each other and may not delegate their powers nor exceed their mandates (Article 48).

Legislative authority is exercised by a single chamber called the legislative Chamber (Article 49). In certain cases, notably for purposes of revising the Constitution or when it serves as the Supreme Court of Justice, the Chamber takes the name of the National Assembly (Articles 55 and 56). The Chamber normally sits for only three months of the year, but the session may be prolonged (Article 61). Laws are passed by the Chamber and promulgated by the Executive, which has the right of veto. Nonetheless, it is not an absolute veto power since it can be overridden by a two-thirds vote of the members of the Chamber (Articles 68 and 79). The Constitution is precise and detailed in spelling out the inviolability of the members of the Legislature (Articles 70, 71 and 72).

Executive authority is conferred upon a citizen titled President of the Republic (Article 90). The minimum age at which one can become president was 40 under the 1964 Constitution and has been reduced to 18 by the 1971 amendment (Article 91). Article 87 of the 1957 Constitution, which limited the President's term of office to six years, was deleted from the 1964 and 1971 texts. Dr. François Duvalier was designated President-for-Life (Article 99), with the authority to appoint his successor (Article 100), who also has a mandate for life (Article 104).

The Executive Branch has very considerable powers. The President is responsible for the overall administration of the country, for the appointment and dismissal of Cabinet members and public servants, for promulgating the laws, for adopting regulations for the conduct of foreign affairs, and for commanding the Armed Forces, the Police and the National Security Volunteers (Articles 93 and 187). Nonetheless, the President may not grant amnesties except for political matters, and in accordance with the law (Article 93, last paragraph), and in general, has only those powers granted him under the Constitution and the laws (Article 95).

Judicial power is exercised by the Supreme Court (Cour de cassation), the Court of Appeal and the lower courts. Judges are appointed by the President for six years; they may not be removed from their positions during their term, except for "special laws setting forth the reasons for which they are removed from that post" (Article 111). Employees of the Public Prosecutor's Office and justices of the peace may be appointed and dismissed by the President without restriction.

The Supreme Court (Cour de Cassation) has the power of judicial review by which it can declare laws unconstitutional in all cases brought before it. It also acts as an appeals court for all military court decisions (Articles 121 and 120). As a general rule, the courts may not enforce governmental administrative orders or decrees unless they are in conformity with the law (Article 125). Except for certain limitations all hearings must be public, however, cases involving political or press offences are prohibited from being heard in private (Article 122).

4. The 1964 and 1971 Constitutions are flexible. The Legislature may rule on the need for total or partial amendment, without the need for special majorities. It may continue to sit under the name of National Assembly, decree such amendments as it deems useful (Article 198, official text: Article 199, text of the version of the National Press of Haiti).

C. Emergency Legislation

1. State of Siege

On May 2, 1958, the Haitian Legislature proclaimed the state of siege.⁶ This law also authorized the Executive to determine what portion of the territory was placed under a stage of siege, and suspended certain individual guarantees defined in the Constitution then in force.

On the same date, an Executive Order extended the state of siege to the entire national territory.⁷ Shortly afterwards, the Legislature adopted a decree suspending other guarantees and conferring full powers on the President for a six-month period "to take all measures he considers necessary for the internal and external security of the state, and to safeguard the interests of the nation, by means of Decrees having the force of law."⁸ In its observations, the Government

makes known that due to the repromulgation of its Constitution in 1971, the existence of the state of siege ceased at that time.

Article 195 of the 1964 Constitution stipulated as follows:

No place and no part of the territory may be declared to be in a state of siege except in cases of a civil disorder or an imminent invasion by foreign forces.

An act issued by the President of the Republic declaring a state of siege must be signed by all the State Secretaries and shall provide for the immediate convocation of the Legislature to rule on the appropriateness of the measure.

The Legislature shall decree, with the Executive Branch, which of the constitutional guarantees may be suspended in the parts of the territory placed under a state of siege.

The impact of the state of siege on the country shall be governed by a special law.

The 1971 Constitution has an identical text (Article 197, official edition; Article 198, edition of the National Press of Haiti).⁹

2. Full powers and suspension of constitutional guarantees

Both during the presidency of François Duvalier and under the present government, the Legislature at the end of its annual sessions has been in the habit of passing a number of decrees conferring full powers on the Chief Executive during the legislative recesses, and suspending the most important constitutional guarantees for the same period of time. Generally speaking, these recesses last from August until April of the following year, during which time the Haitian people are deprived of the constitutional protection of their most fundamental human rights.

Each year from 1964 to 1970, under the regime of the 1964 Constitution, the Legislature suspended the guarantees upheld in twenty-four (later twenty-three) articles of the Constitution.¹⁰ From 1971 to the present, it has been much more difficult to determine which guarantees have been affected by the decrees in question. By way of example, the Legislative Decree of August 25, 1977¹¹ provides as follows:

Article 1. The Guarantees set forth in Articles 17, 18, 19, 20, 25, 31, 34, 48, 70, 71, 72, 93 (last paragraph), 95, 112, 113, 122 (second paragraph), 150, 151, 155, 193 and 198 of the Constitution are hereby suspended.

Article 2. Full powers are hereby given to the Chief Executive to enable him, until the second Monday in April 1978, to take all measures he may deem necessary to safeguard the territorial integrity of the nation and the sovereignty of the State, to consolidate peace and order, to maintain national political, economic and financial stability, to expand the well-being of the rural and urban population and to defend the

general interest of the Republic, by means of decrees having the force of law.

From 1964-1971, during which time the Constitution was in force, the most important individual guarantees were suspended each year for long periods of time, as a matter of routine. The result was that without these guarantees, there was insufficient protection for the rights consecrated in the American Declaration of the Rights and Duties of Man. Government spokesmen have insisted that the annual decrees of full powers and suspension of guarantees are vital if government programs are to be carried out, and that the practice must therefore be continued in the future. The Government has nonetheless stated that in the future these decrees must abide by the standards of the American Convention on Human Rights.¹²

It should be noted that the February 1979 legislative elections were held during a period of full powers (pleins pouvoirs), during which the constitutional protection of the fundamental rights was suspended.

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1 Note from Mr. Arélien C. Jeanty, State Secretary for the Interior and National Defense of Haiti, addressed to the President of the Inter-American Commission on Human Rights, dated August 25, 1978 (N° D-6: 2030), p. 1.

2 Haiti is a party to the following treaties: Convention on the Prevention and Punishment of the Crime of Genocide (December 9, 1948, entered into force on January 12, 1951); Supplementary Convention on the abolition of slavery, the Slave Trade and Institutions and Practices Similar to Slavery (December 7, 1956, entered into force on April 30, 1957); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (March 21, 1950, entered into force on July 25, 1951); ILO Convention N° 29 concerning Forced or Compulsory labor (1930, entered into force on May 1, 1932); ILO Convention N° 105 concerning the Abolition of Forced Labor (June 25, 1957, entered into force on January 17, 1959); ILO Convention N° 98 concerning the application of the Principles of the Right to Organize and to Bargain Collectively (July 1, 1959, entered into force on July 18, 1951); Convention on the Political Rights of Women (March 31, 1953 entered into force on July 7, 1954); Inter-American Convention on the Granting of Political Rights to Women (May 2, 1948); Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (August 12, 1949); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (August 12, 1949); International Convention on the Elimination of All Forms of Racial Discrimination (December 21, 1965, entered into force on January 4, 1969); ILO Convention N° 100 on Equal Remuneration for Men and Women Workers for Work on Equal Value (July 29, 1951, entered into force on May 23, 1953).

3 Inter-American Convention on the Right of Asylum (Havana, 1928), Inter-American Convention on Political Asylum (Montevideo, 1933), Inter-American Convention on Territorial Asylum (Caracas, 1954), Inter-American Convention on Diplomatic Asylum (Caracas, 1954)

4 Le Moniteur, (Official Gazette), June 21, 1964.

5 Le Moniteur, (Official Gazette), January 20, 1971. This edition will be considered as the official text for the purposes of the present report.

6 Law of May 2, 1958, Article 1.

7 Order of May 2, 1958, Article 1.

8 Decree of the Legislative Body, July 31, 1958, Article 2.

9 The text of the 1957 Constitution was practically identical to the present text. 1957 Constitution, Article 185.

10 Article 216 of the 1964 Constitution (now Article 129) was affected by the 1966 decree, but in 1970, was excluded from the list of suspended provisions. See decrees of the Legislative Chamber of September 17, 1966 and August 20, 1970.

11 Le Moniteur, August 25, 1977.

12 Note from Mr. Aurélien C. Jeanty, Secretary of State for the Interior and National Defense, to the President of the Commission, August 25, 1978, page 1.

CHAPTER II

RIGHT TO LIFE, LIBERTY, AND PERSONAL SECURITY

The American Declaration of the Rights and Duties of Man

Article I:

Every human being has the right to life, liberty and the security of his person.¹

A. Constitutional Provisions

1. Article 5 of the 1964 Constitution of Haiti, as amended in 1971, expressly declares that: "The life and liberty of Haitians are sacred and must be respected by individuals and by the State."

2. Nonetheless, Article 25 provides for capital punishment in the case of treason: "Capital punishment may not be imposed for any political offense except treason." This article defines treason as "taking up arms against the Republic of Haiti, joining avowed enemies of Haiti, and giving them aid and comfort."

B. Individual denunciations of violations of the right to life

3. A communication of July 8, 1971 denounced the arbitrary detention of Joseph Nicolas Gaetjens, a Haitian citizen, who was arrested in Port-au-Prince on July 8, 1964 at 10:00 a.m. by an armed, uniformed police officer, Lt. Edouard Guillot, and by two armed plain clothes men. The arrest took place in the presence of numerous people. The complainant states that since that time, there has been no more information about Mr. Gaetjens, his whereabouts or his situation as a whole. It is stated that no proof has been shown that he was brought before the competent authorities, and that there is fear for his life.

The government of Haiti has not replied to the Commission's request for information on this affair, with the result that, at its thirtieth session, the IACHR decided to invoke Article 51 of its Regulations, and presume the events denounced to be confirmed; the Commission advised the Haitian authorities that these facts constitute an extremely serious violation of the right to freedom and personal security.

The fact that Mr. Gaetjens, a football player of international standing, has not been seen since his detention in 1964, leads to the conclusion that he is dead since he was in the hands of the Haitian authorities under circumstances that have never been made public.

4. In a letter dated January 20, 1972, the Commission was informed as follows:

On April 26, 1963, between two and three in the afternoon, Roland Chassagne, who worked in the workshop of the Deschamps Company, located on the Boulevard Jean Jacques Dessalines in Port-au-Prince, was arrested by four Tonton-Macoutes, who were under the command of a certain attorney named Durand, who lived on Clerveaux street in Petionville. Georges Chassagne, brother of Roland Chassagne, was a

witness to the arrest. The group left in a car in the general direction of the Department of the Interior, the Police Headquarters, and the National Palace.

A few minutes later, Georges Chassagne learned that his brother had been taken to Fort Dimanche.

Georges Chassagne obtained an interview with the State Secretary of the Interior, to whom he recounted his brother's illegal arrest, and demanded that he be released. The Secretary responded that the question would be studied, but since that time no further information was provided.

The government reports that no person of that name was arrested on the date indicated, and made no comment when documents providing these facts were sent to it. The IACHR, in its thirtieth session, invoked Article 51, and presumed the events denounced to be true, declaring that this was an extremely serious violation of human rights.

During the Special Commission's visit to Haiti, the government provided a "List of requests for death certificates," in which the name of Roland Chassagne appears. It indicated that Mr. Maurice Vilaire had filed a request on May 2, 1978. In January 1979, the government was asked to provide more extensive information with regard to this request. The government did so, but did not indicate the circumstances of death.

Another case brought to the Commission's attention is that of Hubert Legros. The Commission was informed that Legros had been detained without trial and without any preliminary investigation by the State's attorney, for a period of two and a half years until December 1972, at which time, he appeared on the list of 72 people granted amnesty by President Jean Claude Duvalier. It was subsequently alleged that three weeks after being released, Legros was arrested and imprisoned in Fort Dimanche because he had supported other prisoners who had been pardoned but who had not been released. In a note dated August 28, 1975, the government reported that Hubert Legros had "received clemency from the President-for-Life of the Republic, which reduced his sentence." The government has never informed the Commission of the details of the trial nor of the sentence which was subsequently reduced. The IACHR received this information, from the government, but the circumstances regarding his death were not explained. The government informed the IACHR on October 5, 1977 that as regards the request for more specific information, "it is up to his parents to file a petition with the civil courts in Port-au-Prince, which will shortly provide them with all the necessary information."

The name of Legros appears on the "List of requests for death certificates," with the observation that Mrs. Andrée Bruts asked for a decision on June 29, 1978.

6. On March 10, 1971, the Commission received a cable asking it to intervene in the affair of 14 people arrested in April 1970, who had been given a secret trial.

Despite repeated demands, notably with respect to Kesner Blain, the government replied only in general terms questioning the Commission's jurisdiction in this area.

With regard to another case, the government informed the IACHR as follows: "Ex-colonel Kesner Blain will be brought before a military court and tried by his peers in the regular manner for the crime of conspiracy and high treason."

The Commission asked for specific information on the question of Kesner Blain on September 19, 1977. It particularly asked about the date on which he was brought to trial and about the sentence he was given. Instead of providing the information asked for, the government informed the Commission that "the parents of Ex-colonel Kesner Blain may file a petition with the civil courts of Port-au-Prince, which will shortly provide them with all the necessary information."

C. Other deaths in prison

7. After the visit of the Special Commission, the Inter-American Commission on Human Rights sent the Government a note on September 11, 1978, with the following list of 151 individuals who, according to the allegations of accusers, were executed while in prison or who died in prison because of lack of medical care.

List of dead prisoners

AUGUSTERE cell 1, Plaine du Cul de Sac, poet, journalist, arrested in January 1971, released in December 1972, re-arrested in January 1973, died in 1975 of diarrhea.

Joseph ALEXANDRE cell 3, known as Djo Malanca, Port-au-Prince, died on November 1, 1975, of physical weakness and mental illness.

Gérard AUGUSTIN cell 1, St. Marc, 53 years old, sociologist, imprisoned 3 times, died on September 19 at 4:00 p.m. of tuberculosis.

Marcus ANDRE cell 7, Jérémie, professor, died in 1975 of diarrhea.

Jean-Claude ALEXANDRE cell 7, Jérémie, professor, died in 1975 of diarrhea.

Ezéchiél ABELARD cell 6, died in September 1976 of tuberculosis.

Massena ANIBOT cell 8, died in August 1976 of tuberculosis and malnutrition, a peasant from l'Arcahaie.

Robert ACHADE cell 7, Arcahaie, died in 1975.

Joseph BRIOLLI cell 4, Port-au-Prince, a former macoute, died in 1976 of diarrhea and tuberculosis

Jean-Robert BELLEVUE cell 1, Plaine du Cul de Sac, professor of history, died in August 1975 of tuberculosis.

Georges BISRETE cell 2, Fond des Blancs, speculator, died in February 1976 of rheumatism and tuberculosis.

André BIEN-AIME cell 3, Cayes, worked in the Chamber of Deputies, died in July 1976 of malnutrition.

Renel BAPTISTE cell 7, Jacmel, lived in the Dominican Republic, worked in Africa on filming The Comedians, died on July 19, 1974 of tuberculosis.

Fred BAPTISTE cell 1, Jacmel, died on June 16, 1974 of tuberculosis and mental illness.

Justin BERTRAND cell 5, Port-au-Prince, a former macoute chief, died on August 26, 1975 of tuberculosis and diarrhea.

Ronel BERTRAND cell 2, Port-au-Prince, a former macoute chief, died in February 1976 of rheumatism and tuberculosis.

Paul BLANC cell 4, husband of the deputy Madame Paul Blanc, died in July 1976 of diarrhea.

Kesner BLAIN cell 3, Port-au-Prince, ex-colonel, died on February 1, 1976 of tuberculosis.

Fritz BAUDET cell 3, Port-au-Prince, coastguard, died in July 1975 of tuberculosis

Noly BURON cell, sailor, died in 1976 of tuberculosis.

Jean-Claude BOUCICAUT cell 4, Port-au-Prince, former macoute, died in January 19, of tuberculosis.

Hora BATISTAIN cell 3, tin-smith, died in February 1973 of typhoid.

Julien BANO cell 1, Arcahaie, died in 1975 of diarrhea.

Henri BAFARD cell 4, Thiotte region, died in January 1973.

Sifra CESAR cell 8, died in 1972 of tuberculosis.

Daul COMPERE* executed on August 7, 1974.

Muscadet CAJUSTE cell 8, former corporal in the Police Department, died in 1976 of tuberculosis.

León CHERY cell 2, Cayes, an old man in his sixties, died on December 10, 1976 of physical weakness.

Gilbert CADOSTIN cell 2, chauffeur, died on October 2, 1976, of tuberculosis.

Camille CEBASTIEN cell 1, Port-au-Prince, pharmacist, owner of the Pharmacie de Lion, died in 1976 of lung congestion.

Jean Roland CELESTIN cell 1, Port-au-Prince, topographer, died in 1975 of typhoid and tuberculosis.

Paul DONNEUR cell 7, Port-au-Prince, artisan, died in 1976 of diarrhea.

Ambroise DESRAVINES cell 7, Port-au-Prince, artisan, died in 1976 of diarrhea.

Serge DE RUISSEAU cell 3, Arcahaie, student, died in 1976 of tuberculosis.

Murat DARELUS cell 1, Pétion-Ville, carpenter, died in February 1975.

Kernisan DUPONT National Penitentiary, Méyotte, Pétion-Ville, workman, died in 1975 of liver disease.

Ronald DUCHEMIN* executed in March 1976.

Guelo DACCUEIL cell 3, Arcahaie, peasant, 48 years old, died in 1976 of tuberculosis.

Horace DACCUEIL cell 7, Arcahaie, peasant, brother of Guelo, died in 1976 of diarrhea.

Fritz DUGASON cell 5, Jérémie, mechanic, died on June 2, 1975 of tuberculosis.

Clothaire DORNEVAL cell 5, Arcahaie, died on January 24, 1976 of hypertension.

Raphael DELVA cell 1, Gonaives, died in June 1976 of tuberculosis.

Jean-Claude DUVAL cell 9, worked at Alpha, died on December 5, 1975 of tuberculosis and physical weakness.

Ovèz DUQUESNE died in August 1976.

Thomas DOMINIQUE cell 6, Plaine du Cul de Sac, chauffeur, died in July 1976 of tuberculosis.

Cadeau Jean DERISIE cell 1, Nan Bannanan, section chief, died in July 1976 of tuberculosis.

Arche DENIS cell 1, Port-au-Prince, son of Lorimer Denis (co-author with François Duvalier of a number of books), former spy who made his reports directly to Duvalier, arrested by Luc Désir after the death of François Duvalier, died in 1976 of typhoid.

Vénèque DUCALIRON National Penitentiary, died in 1973.

Serge DONATIEN cell 1, Artibonite, arrested in February 1975, 25 years old, died in March 1976 of diarrhea.

DATO cell 1, section chief of Thiotte, died in 1976.

Jacques DELILLE died in 1975.

Servilus EXANTUS cell 7, Cul de Sac, attorney, professor, released in 1972, arrested again in January 1973, died in July 1976 of tuberculosis.

Ponax EXANTUS cell 8, Arcahaie, student, died in 1975 of tuberculosis.

Rameau ESTIME cell 1, deputy, Duvalier supporter from the first, died on May 13, 1976 of diarrhea and malnutrition.

Wilterm ESTIME cell 5, died in 1976.

Gesulmé EUGENE cell 1, Plaine du Cul de Sac, teacher, released in 1972, arrested again in 1973, died in 1976 of tuberculosis.

EXANTE cell 2, Arcahaie, died in 1976.

Francis FILS-AIME cell 1, Fort-Liberté, former léopard, died in 1976 of tuberculosis.

Pierre REQUIERE cell 2, Port-au-Prince (Delmas), workman, died in 1976 of tuberculosis.

René FRANEX* executed on August 7, 1974.

Marie-Thérese FEVAL* executed on August 7, 1974.

Rikitt FLORESTAL* executed on August 7, 1974.

Marcel GUERRIER cell 5, Plaine du Cul de Sac, died on October 6, 1975 of tuberculosis

Marie Thérèse GASNER cell 10, died in 1976 of tuberculosis.

Pierre GUERRIER died in 1976.

Jean HORNER Duvalierville, coastguard, died in 1975.

Fritz ICARD cell 2, Miragoane, died on November 13, 1975 of mental illness.

Gérard JOSEPH cell 7, known as Ibert Jn. Baptiste, Gonaives, arrested on July 3, 1973, Place Ste. Anne, died in 1975 of tuberculosis.

Dagobert JEAN cell 2, Hinche, former léopard, died in April 1976 of pleurisy.

Théocel JEAN died in April 1976 in the National Penitentiary.

Ricot JUNIOR died in August 1975 in the National Penitentiary.

Pierre JEAN* known as D'Haiti, executed in March 1976.

Maurice JEAN BAPTISTE cell 1, Jacmel, died on December 4, 1976 of diarrhea.

Samson JEAN-BAPTISTE* executed on August 7, 1974.

Antonio JEAN-BAPTISTE CELL 3, Jérémie, typographer, worked in the State Printing Office, died in 1976 of tuberculosis.

Lucio JULES cell 3, Jérémie, died on October 10, 1976 of typhoid.

Alius JOLIMO cell 3, Plaine du Cul de Sac, peasant, died in 1975 of pleurisy.

Vergnaut JOSEPH cell 6, attorney, and old man of 60 years of age, died in 1976 of physical weakness.

Morency JEAN cell 3, Marchand, peasant, died in 1977 of tuberculosis.

Franck JASSIN cell 7, Port-au-Prince (Section Sou Dalle), teacher, died in 1976 of tuberculosis.

Lesson JOSEPH cell 6, Arcahaie, hougan (voodoo priest), died in 1975 of tuberculosis.

Saint-Vilus JEAN PIERRE cell 5, Plaine du Cul de Sac, peasant, died on March 10 of infectious diarrhea and pulmonary tuberculosis.

Antoine JEAN NOEL cell 3, Quanaminthe, died on February 1974 of malaria and physical weakness.

Resius JEAN BAPTISTE cell 1, Pétion-Ville, died in February 1975, constipated for 22 days.

Emmanuel JEAN POIS cell 1, Croix des Bouquets, shopkeeper, died in 1975 of tuberculosis.

Henri JEAN cell 4, Port-au-Prince, died in 1976 of tuberculosis.

Oswald JULES Verrettes, Assistant Government Commissioner, died in 1976.

Chery LOUISSAINT cell 8, Arcahaie, student, died in 1976 of tuberculosis.

Marcel LAFORET cell 8, Jérémie, agronomist, living in St. Marc, producer of "Niko", "clairin" (local rum drink), died in July 1975 of tuberculosis and mental illness.

Pierre LAURENT cell 8, Port-au-Prince, tailor, arrested after the Gaillard affair, died in 1975 of tuberculosis.

Hubert LEGROS cell 6, Port-au-Prince, died on December 19, 1975 at 5:00 a.m. of diarrhea and tuberculosis.

Loner LIVERT cell 5, Port-à-Piment, student, died on July 19, 1976 of tuberculosis.

Rodrigue LAFORTUNE cell 5, Plaine du Cul de Sac, peasant, died on November 18, 1975 of tuberculosis.

Ives MUZAC cell 1, Jacmel, student, died in June 1976 of tuberculosis.

Gérard MICHEL died in 1975.

MERCERON cell 7, known as Guantanamo, Port-au-Prince, sailor, died in 1976 of tuberculosis.

MENELAS cell 8, known under the name of Aysi, Plaine du Cul de Sac, brought up in the Dominican Republic, former jailer in the Great Prison, involved with Kesner Blain, died in 1976 of tuberculosis.

Cheres Louis MAX cell 2, Plaine du Cul de Sac, peasant, died in October 1975 of tuberculosis.

Louis NOEL cell 6, Quanaminthe, died in 1976 of a liver ailment.

Jean NAPOLEON Croix des Bouquets, died in December 1972.

Jean Marc NERESTAN cell 3, Port-à-Piment, tailor, died in 1976 of tuberculosis.

Semonvil OSIAS cell 2, Cap-Haitien, attorney, died in June 1975.

Cambrone OBANO cell 8, Arcahaie, died in July 1976 of diarrhea.

Charles OCTA Arcahaie, died in 1975 of diarrhea.

Salma PIERRE-PAUL cell 3, St. Marc, lawyer, professor, died on September 17 of tuberculosis.

PIPIRITE cell 3, Barradère, died in 1976 of diarrhea.

Charles PIERRE* executed on August 7, 1974.

Darty PHILIPPE cell 3, Limbé, died in November 1973 of tuberculosis.

Oveny PAUL* executed on August 7, 1974.

Luc PIERRE-PAUL cell 2, Port-au-Prince, accountant working with an English insurance company, died in July 1976, suffering from mental illness.

Jacques PAUL cell 8, Port-au-Prince, son of Paulette Sicot, died in 1976 of tuberculosis.

Lubin PIERRE-LOUIS cell 5, Arcahaie, died on November 1, 1975 of physical weakness.

Edouard PIERRE arrested in 1974, died in 1975.

Eddy PRICE died in March 1976.

Des PREDESTANT* executed in August 1974.

Jean-Claude PHANOR cell 2, former léopard, died on May 3, 1976.

Ronald PERARD* executed in August 1974.

Bertrand RAYMOND cell 1, known as Ti Baron, Plaine du Cul de Sac, professor, died in 1975 of tuberculosis.

Jean-Louis ROY* executed in March 1976.

Jean ROBERT cell 6, alias Derecul, Arcahaie, coastguard, died in 1976 of tuberculosis.

Timothé ROSSINI cell 6, mason, Arcahaie (Carrefour Pois), died in 1975 of diarrhea.

RAOUL cell 4, former detective, militia-man, died in 1976 of tuberculosis.

ROMEL cell 7, died in 1975 of tuberculosis.

Anouche REBECCA cell 3, Cavaillon, former militia-man, died on October 10, 1972 of tuberculosis.

REYNOLD companion of Dagobert Jean (former léopard), died in October 1976.

Jilmiste SYLVESTRE cell..., shoemaker, Port-au-Prince, died on November 1, 1976 of tuberculosis.

Thelison SALADIN cell 1, La Tremblay, peasant, died on December 31, 1976.

Raymond SAINT-LOUIS died on September 11, 1976 of tuberculosis.

John SOUFFRANT* executed on August 7, 1974.

Georges ST. MERZIER cell 4, Jérémie, scrap merchant, died in 1976 of tuberculosis.

Jean-Claude ST. LOUIS cell 7, Port-au-Prince, died on November 13, 1975 of tuberculosis.

Luc ST. VIL cell 5, Fort-Liberté, former léopard, died in September 1976 of tuberculosis.

Gasner SIMEON cell 7, sailor en route to Nassau, ran aground at Guantanamo, handed over to the Haitian government by an American boat, died in 1976 of tuberculosis.

SANTIAGUE cell 7, Arcahaie, former sergeant, died in October 1976 of diarrhea.

Jacques ST. AMAND

Reynold TIMOLEON* executed on August 7, 1974.

Alix THOMAS* executed on August 7, 1974.

Clarel TERVIL* executed in March 1976.

TINTIN cell 9, Limbé, died in 1971 of tuberculosis.

Thelison TONY La Tremblay (Croix des Bouquets) arrested in 1969, released in 1972, re-arrested in February 1973, died in 1976 of diarrhea.

Auguste THENOR cell 1, died in December 1974.

Edner THEAGENE died in 1975.

Jean Rifla VASSEAU* executed in March 1976.

Joseph VILFORT cell 3, Kenscoff, tinsmith, died in 1976 of tuberculosis.

Théophile VICTOME cell 5, Cazale, died on January 2, 1975 of tuberculosis.

Pierre Michel VITAL cell 6, Jérémie, released then re-arrested, died in February 1977 of tuberculosis.

Volmar VOLCY cell 6, died in July 1976.

Durena WASHINGTON cell 5, coastguard, died on October 19, 1974, of rheumatism.

Ellie WELLINGTON cell ..., son of Jamaica, well-known in Port-au-Prince, died in October 1976 of tuberculosis and physical weakness.

Romuls VILBRUN cell 3, Plaine du Cul de Sac, cabinet-maker, died on February 16, 1977 of tuberculosis.

It should be noted that most of the deaths, according to allegations, occurred in 1975 and 1976. According to this information, the principal causes of death were tuberculosis (71 cases) and diarrhea (22), in addition to physical exhaustion, malnutrition and other ailments generally related to the lack of satisfactory medical care.

The case of 17 individuals who, it is said, were executed in 1974 and 1976 is examined later in the present chapter.

It should be noted that while it is true that more than half the deaths occurring in jail took place, according to allegations, as recently as 1976, the list contains only two deaths in 1977 and no reported cases in 1978.

In a note dated October 6, 1978, the government acknowledged that a number of individuals had died in jail. The pertinent parts of the text read as follows:

Within its means, the Haitian government has always provided medical and other care to prisoners. Doubtless, some individuals were unable to accustom themselves to the prison system, and a number of deaths resulted from this, which is to be deplored. Moreover, the individuals whose names appear on the list sent to us are dangerous terrorists responsible for numerous acts of vandalism; some of them died, weapons in hand, during altercations with the forces of order.

In a note of December 27, 1978, the Commission asked the government for more specific information, notably for the names of individuals who had died in prison, and of those who "had died, weapons in hand." To date, no response to this request has been forthcoming.

Nonetheless, during the Commission's visit, the government provided it with a "list of requests for death certificates" on which 32 cases presented regarding prison deaths appeared. In response to the Commission's request about the results of these "requests and judgments," the government furnished declaratory judgments of death by the civil courts of Port-au-Prince, but without indicating the cause of death.

On December 7, 1979, the government of Haiti stated that an absence of information on many of the names in government records suggests that "many names may have been fictitious."

D. Summary Executions

8. In a note dated December 27, 1978, the Commission asked for information on the allegation that, in 1974 and 1976, Haitian citizens were summarily executed. Their names appear in the list of 151 individuals who are said have died in prison.

Summary executions take place in Fort Dimanche. The executions of 1974 and 1976 may be cited as examples. On August 7, 1974, a number of prisoners were executed at Fort Dimanche. They included:

Charles PIERRE	Daule COMPERE
Samson JN. BAPTISTE (nicknamed Don Fred)	Rikitt FLORESTAL
Reynold TIMOLEON	John SOUFFRANT
Alix THOMAS	Ronale PERARD
René FRANEX	Oveny PAUL
Des PREDESTANT	

Seven persons were executed in March 1976. They included:

Clarel TERVIL	Jn. Louis ROY
Marie Thérèse FEVAL	Ronal DUCHEMIN
Pierre Jean (nicknamed d'Haiti)	Jn. Rifla VASSEAU

The form of execution is barbarous. In recent years, they haven't been wasting bullets on executing prisoners. They make prisoners walk forward one by

one in the night towards the sea. And they club them on the back of the neck, like dogs. The soft thud of the clubs can be heard in the cells.

The government did not furnish any information on the matter until December 7, 1979, at which time it stated that "no executions were carried out at Fort Dimanche in 1974, 1975 or 1976, nor were any persons with names similar to those listed on page 25 executed by the government of Haiti at any time during the period in question." The government also challenged the statement that "the thud of the blows can be heard in the cells" as a physical impossibility. However, the Commission has in its power an eyewitness declaration giving the following additional details:

Between Fort Dimanche Prison and the ocean, no more than a mile in distance, there is a wooded area in which, under cover of night, the executioners of Duvalier's government carry out summary executions. Assisted by the calm of night, and doubtless carried by the ocean wind, the cries of the victims reach us clearly in our cells. The place of execution is about 50 meters from the prison, i.e. from the rear wall. It is this area that the prisoners call the "bayarons" or the secret graveyard of Duvalier.

E. Personal Security

Article 17 of the Constitution of Haiti expressly declares "that any unnecessary force or restraint used in the arrest or detention of a person, any moral pressure or physical brutality is forbidden."

Moreover, in December 1972, President Jean Claude Duvalier sent a memorandum to all the commanders of the Military Department and Chiefs of Special Services, in which he stated:

I am certain, Mr. Minister of Justice, that you have grasped the full import of my thinking, and that you will never fail to act according to the law, so that justice may be rendered to whom justice is due.

I ask that as soon as you receive the present Message, you take all steps that may be required to eliminate any abuse of authority that could be committed in your Military Departments and in your various services.

I want the soldiers of the Young Army of the New Haiti to understand that they, like their commanders, cannot use violence with impunity or cause it to be used on any person without legitimate reason, in the exercise or during the course of the exercise of their duties.

I feel a sense of pride in seeing them refrain from any intrusion into homes and from any arrests motivated by personal interest.

I ask you to urge the soldiers in your Department and services to obey the law.

Thus they will help My Government ensure order, security, social peace and harmony, justice and the common good at all times.

A copy of this memorandum appears in the note dated January 8, 1975 received from the government of Haiti in response to a request for information.

9. Despite this provision in the Constitution, and despite the instructions of the President, the Commission has received complaints from a number of individuals released after the presidential amnesty.

One denunciation transmitted by the Inter-American Commission to the government of Haiti on September 11, 1978 reported as follows:

Political prisoners arrive at Fort-Dimanche only after a fairly long detention in the Dessalines Barracks. It is in fact to the barracks that the forces of repression take prisoners for interrogation in the first instance after their arrest. Once there, prisoners are always savagely tortured. After this stage, detention begins in Fort-Dimanche.

Fort-Dimanche is one element in the whole system of repression, and as a place of detention, it serves to depersonalize political prisoners, reduce them to the state of animals before their death. Political prisoners are conditioned on arrival at Fort-Dimanche. They are undressed and examined like beasts of burden, not for medical purposes, but in order to humiliate them. Face to the wall, head lowered, the prisoner is insulted by the jailer, who reduces him to the status of an object, a mere number. He is then taken under the wing of the major of his cell, that is to say, by the prisoner responsible for the cell. This cell-major is responsible for helping the jailer in the depersonalization process. He is generally a prisoner who, after a long period of detention, is completely under the jailer's thumb, and shows himself willing to collaborate with him in this depersonalization exercise.

Still pursuing the goal of depersonalizing the prisoner, the jailer gives him psychological conditioning and often forces him to react to sounds and to gestures. No matter what he needs, and no matter what the reason, the prisoner does not have the right to speak to the jailer. This is a serious violation that is severely punished. Only the cell-major can serve as intermediary between the jailer and the prisoner, if he feels it necessary.

The Cells

The cell, which generally measures 3 meters by 3 meters, has only one window of 1 meter by 70 centimeters, in which cement blocks are placed, with the result that very little light or air penetrates. The cell is intended for 22 or 33 prisoners. Each prisoner, therefore, has a space that is only 30 centimeters wide.

At night, the prisoners sleep in relays. The first group sleeps from 8:30 till 11:00 p.m., and the next group from 11:00 to 1:30 in the morning. Generally, newcomers sleep on the cement floor for the first three months of their detention. Then they receive a mat of woven straw, which is 1 millimeter thick and less than 1,1/2 meters long. In the hot season—which is almost nine months of the year—the prisoner is dying of heat, is bathed in sweat at night; during the three-month cold season, he is shivering day and night.

Sanitary conditions

Piled up like sardines in this cell, which is never swept or disinfected, the prisoners are eaten up by vermin (body lice, head lice, bed bugs) and by mosquitoes that come up from the swamps surrounding the prison and carry malaria and other illnesses. The cell always stinks of the foul odor from the five-gallon recipient we use as a latrine. The bucket is never disinfected, it is covered with dried fecal matter, and one of us has to go out of the cell to empty it into a hole that has been dug for this purpose at the end of the prison. Some prisoners who, after a certain time in detention, have become physically weaker, unfortunately sometimes let the bucket drop in the corridor; they are therefore obliged to pick everything up with their hands, under penalty of very severe punishments. The prisoner does not get any toilet paper or soap. When what remains of his underwear gets too dirty, he has to wash it with urine because there is no water.

Nobody takes a bath at Fort-Dimanche. Nonetheless, we are awakened at 2:00 o'clock in the morning so that we can be taken to a standpipe where there is a trickle of water. The prisoner can either drink a little water, or wash out his mouth, because a cell of 22 to 33 people is given only five minutes for this operation. Anyone who breaks the regulations is badly beaten up.

Food

The prisoner's daily ration is a small loaf of bread weighing 20 grams, a little bit of corn mash sprinkled with a few macaroni, without spices, with no oil and sometimes almost raw. The food, of which there is very little, has no substance to it, which explains why the prisoners are hungry and why they have vitamin deficiencies. We are never given meat, vegetables, milk or fruit, we never have any of the foods the human body needs. In fact, we use the floor for a plate, because the jailer gives the plate with one hand and takes it away with the other. We are served on the same plates, which are not washed, despite the dangers of contamination.

Water is rationed. Each prisoner is entitled to only two glasses a day, and the prison has only 18 glasses for approximately 195 prisoners. We receive water in a big pail, which can be overturned by a mishap: then we simply lose the whole day's ration.

Medical care

Dr. Treván, who is responsible for medical care, visits the prison only two or three times a year. He does not even come to register a death. Medical care is more properly speaking under the responsibility of a nursing aide, and he makes only one visit a month. This means that people with tuberculosis or vitamin deficiencies or any other kind of illness may receive an aspirin before they die. The sick are given no care at Fort-Dimanche. "Medicine is far too expensive for scum like you," said Enos St. Pierre, the hangman-jailer who was appointed directly by Duvalier. "We do not stop people from dying. If you are tired, stick your head in the latrine bucket, commit suicide, outside, they know that you are already dead." Those are the kind of things the assistant jailer, Enos St. Pierre and Captain Jean-Joseph of the Presidential Guard, head of the prison, say to the prisoners. These two officers of the Haitian Army take pleasure, indeed show a sadistic zeal in making prisoners die little by little, and in humiliating them before their death. For example, Enos St. Pierre was unmoved, indeed was snickering at a dying man who was asking for a

little water before he died. The prisoner must have died about half an hour after the torture.

Illnesses – Mortality Rate

Illness is frequent at Fort-Dimanche. The most common maladies are pulmonary tuberculosis, vitamin deficiency, dysentery, mental problems and diarrhea. The diseases characteristic of Fort-Dimanche are tuberculosis, diarrhea and edema caused by worms burrowing under the skin. To cure stomach problems, diarrhea or malaria, the prisoner uses urine to wash his head, or drinks a little urine. Is urine of any therapeutic value? I leave it up to medical scientists to answer that question, but a sick man uses it; whether it comforts or consoles him, I don't know.

The amount of contagion is extremely high because of the severe overcrowding in the cells. All of this explains why the average survival time in Fort-Dimanche is for rarely more than one year. Sixty percent of the deaths are due to tuberculosis, and forty percent to vitamin deficiencies and diarrhea. The death rate at Fort-Dimanche is very high. These totally inhuman conditions of detention became considerably worse in 1976, at the very time when the Duvalier Government was talking about liberalization and improving prison conditions.

In fact, 96 deaths were registered at Fort-Dimanche in 1976, particularly during the months of October, November and December. This is a record for the number of crimes committed in one year at Fort-Dimanche. The preceding year, 1975, there were 55 deaths for an average of 170 prisoners. It could thus be said that in recent years, death was a constant presence at Fort-Dimanche. Prisoners always know when death has struck, that it is hovering in the cells, because each time someone dies, the prisoners strike up a chorus of "It is only 'au revoir'," and then "Nearer my God to thee." Sometimes the body stays in the cell for some hours after the death, until the jail officer deigns to authorize its removal. Sometimes, the prisoners are obliged to eat their meager meals over the corpse of a prison companion who has just died. The dead man is rolled up in the thin straw mat that had been his bed, and is carried by the prisoners out to the brush-covered piece of land where common-law prisoners bury him under a thin layer of earth. It has sometimes happened that dogs eat the corpse."

This account concurs with what other former prisoners have said.

The government informed the Commission that "it has always given medical and other care to prisoners, within its means."

The government has stressed in various occasions, including during the visit of the Special Commission that Fort-Dimanche was closed in 1977 by order of President Jean-Claude Duvalier. However, the Commission has received repeated denunciations to the effect that not all of Fort-Dimanche was closed, but rather only the area of collective cells, called "Nirvana." The Commission has even received testimony that certain construction has taken place at Fort-Dimanche, which has increased the number of solitary cells, among other changes.

10. During its mission to Haiti, the Special Commission visited the National Penitentiary and talked to a large number of prisoners. None complained of physical ill treatment, but certain prisoners said that they did not have the legal

defense they needed, because of the fact that there were not sufficient legal aid attorneys.

The Commission has received testimony, both written and oral, which states that conditions in the Haitian prisons, particularly those in Port-au-Prince, have worsened since the visit of the Special Commission. One Haitian, who was in prison at the time, has provided the Commission with details of conditions just before, during and after the visit:

Some time in August, things began to improve and we could hear on the guards' radios that a team from the OAS Commission on Human Rights was going to visit the prison. One week before the visit, they began to prepare. A large number of prisoners left. They were transferred elsewhere or set free. After the Commission left, an old prisoner of the Penitentiary came back and told me that he and many others were transferred to Fort-Dimanche or to Croix-des-Bouquets. Conditions of the few prisoners who were not transferred also changed greatly. For example, they reduced the number of persons per cell to two or three. The cells were re-painted. There were beds. We were well clothed and given tennis shoes. The food ration was increased and improved. Some days before the visit, Col. Louis Charles, together with Major Orcel of the Detective Service, came to each cell and told us that the Commission would ask us certain questions, and they gave us the answers to make. The Commission came to the prison one day around 11:00 a.m. All the prisoners were taken to the central courtyard, where there were several members of the Commission, Colonel Louis Charles and the Government Commissioner, Rodrigue Casimir. The latter were present throughout the questioning of all the prisoners by members of the Commission. When my turn came, I answered as I had been told to do. At 6:00 p.m., everything given out for the occasion, except the clothing, was taken away. Soon after the Commission's departure, many prisoners were returned to the Penitentiary.

11. In a decree of September 29, 1977, the Haitian government decided to grant "full and complete amnesty... to all citizens accused of terrorism or of any other subversive act perpetrated against the security of the State."

During its time in Haiti, the Special Commission visited the following penitentiaries: the National Penitentiary, and the Cap-Haitien and Jacmel Barracks, but found no political prisoners.

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1 [American Convention on Human Rights](#)

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

CHAPTER III

RIGHT OF PROTECTION FROM ARBITRARY ARREST AND RIGHT TO DUE PROCESS OF LAW

The American Declaration of the Rights and Duties of Man

Article XXV:

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

Article XXVI:

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.¹

1. Articles 17, 18, 19, 20 and 21 of the Haitian Constitution protect the Haitian people against violations by government agents of the right referred to in the present chapter. These articles read as follows:

Article 17. Individual liberty shall be guaranteed. No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner which it prescribes.

In addition, no one may be arrested or detained except by order of a legally competent official.

For the execution of such an order it is necessary:

1. That it formally state the reason for the arrest and the law that punishes the act charged;

2. That legal notice of it be given and that a copy of the order be left with the accused at the time of its execution, except in cases of flagrante delicto.

No one may be kept under arrest more than forty-eight hours unless he has appeared before a judge who is assigned to rule on the legality of the arrest and the judge has confirmed the arrest by a decision giving reasons.

In the case of a petty offense, the arrested person shall be referred to the Justice of the Peace, who will then pronounce a final decision.

In the case of more serious offenses, an appeal may be filed, without prior permission, simply by addressing a petition to the presiding judge of the relevant Civil Court, who, on the basis of the prosecutor's oral statement, shall rule on the legality of the arrest in a special session of the court, without postponement or rotation of judges, all other cases being suspended.

In each case, if the arrest is judged illegal, the arrested person shall be released, any appeal to a higher court or to the Supreme Court (Cour de Cassation), notwithstanding. Any unnecessary force or restraint in the arrest or detention of a person, any moral pressure or physical brutality is forbidden.

All violations of these provisions shall be considered arbitrary acts against which the injured parties may, without prior authorization, appeal to the competent courts, prosecuting either the authors or the perpetrators, regardless of their rank or the body to which they belong.

Article 18. No one may be denied access to the judges to whom the Constitution or the law assigns him. A civilian may not be tried by a Military Court, nor may a military person be denied access to a court of ordinary law, in an exclusively civil matter, except when a state of siege has been declared by law.

On December 7, 1979, the government informed the Commission that it is interpreting Article 17 in such a way that when detention follows an arrest made pursuant to an arrest warrant, the forty-eight hour requirement within which the accused must be taken before a judge is deemed satisfied by the initial judicial determination of issuance of the warrant.

Article 19. House searches and seizures of papers shall be prohibited except pursuant to the law in accordance with legally prescribed procedures.

Article 20. No law shall be applied retroactively, except in criminal cases and only when it is favorable to the offender.

The law shall be retroactive in effect whenever it takes away vested rights.

Article 21. No penalty may be established except by law or imposed in the cases provided by law.

2. Over the last two years, the Commission has received denunciations of violations of these constitutional provisions. For example, a communication dated December 6, 1975 estates as follows:

On May 9, 1974, Mr. Marc Romulus was arbitrarily arrested in Port-au-Prince by government authorities, and was detained under inhuman conditions in Fort-Dimanche, Port-au-Prince, Haiti. Since his arrest one year and six months ago, he has not been brought to trial, nor has he had legal counsel. He has not been permitted to communicate with his family or a priest.

At first, the Government denied that Mr. Marc Romulus had been detained but it then acknowledged openly that he had been kept in secret detention without trial for more than two years.

Later, at its 41st session in May 1977, the Commission applied Article 51 of its Regulations, and decided to take the events thus denounced as having been confirmed.

Mr. Romulus was released as part of the general amnesty decree issued by President Duvalier in September 1977.

Also at the 41st session, the Commission took up a case (N^o 1944) concerning 72 individuals who, according to the denunciation, were not given due process of law, even though they had been detained for a number of years. Following an exchange of correspondence with the government of Haiti, the Commission decided to apply Article 51 of its Regulations, and to take the events thus denounced concerning 54 of these persons (whose names appear in an appendix to the resolution) as having been confirmed.

The resolutions in these two cases appear in the 1977 Annual Report of the Commission presented to the OAS General Assembly in June 1978, prior to the Special Commission's visit to Haiti.

In its preliminary observations of the Commission's Report, the government itself admits that there are serious problems in the administration of justice in Haiti. The Commission finds it appropriate to cite some of these remarks:

Many of the accused persons held in Port-au-Prince (and of course in other urban areas) are poor and illiterate, hardly speak or understand French (which is the official language of the Court), and have a very poor understanding of how Haitian justice works. Moreover, despite the government's efforts in this regard, the Haitian people are not always fully aware of the rights guaranteed to all citizens by the Penal Code and the Constitution of Haiti. The accused can therefore languish in prison for minor infractions as well as for serious crimes without being brought to justice, because they have been arrested arbitrarily, due to delays in drawing up the reasons for the accusations, due to delays in bringing the accused before the judge, or due to the limited number of sessions.

In the opinion of the government, most of the problems in the administration of penal justice in Haiti stem from a lack of resources that would enable the accused to be brought before the competent judicial authorities as prescribed by the Constitution and Penal Code. Even though the law is still violated at every level, despite the improvements introduced over the last seven years, violations are

most often due to the fact that this administration is overburdened, understaffed, or does not act unless pressure is applied, not to mention that the number of accused to be brought before the courts is very substantial. Moreover, even though the administration of penal justice has been revived from the period prior to 1971, it is still basically based on the 19th Century French model established several decades ago before the populations of Port-au-Prince and the rest of Haiti had increased considerably and reached their present level.

Since the services of the Public Prosecutor's Office and of the Examining Magistrate are overburdened, there is strong pressure to get around the procedures designed to ensure that the accused are dealt with fairly. For example, the rule whereby a person under arrest must be brought before a judge within 48 hours is often the first to be violated. The rule for a speedy trial is another such example. Since there are simply too many accused, the government knows that many of them are judged out of court. Whether or not the prisoners appear before the court, each case is often dealt with on an individual basis, and imprisonment is determined by a whole set of factors such as the seriousness of the crime, the time already spent in prison, the accused's socioeconomic position and/or nationality, the number of detainees waiting to appear, and—an important factor—whether the accused has an attorney to look out for his interests.

Given the nature of the problems set forth above, the government of Haiti has approved a plan proposed by the Bar Association of Port-au-Prince whereby it will establish a free legal aid service for defendants who face a prison sentence and who lack the means to pay an attorney.

Although establishment of this service does not guarantee that all defendants will have a speedy hearing or be judged impartially, it will surely make it possible to reduce the cases of unjustified and prolonged detention. In the long run, it will also make it possible to make the administration of Haitian criminal justice more efficient and more equitable.

The government has also approved another plan for the administration of criminal justice whereby a Legal Bureau would be established at the Central Police Station of Port-au-Prince. This office will be modeled after the legal counsel offices which have been created in the United States during the last 15 years in most central police stations. In the United States, their purpose has been to provide the police chiefs with the legal assistance they need and to assist the police stations in their relations with the courts and with the entire judicial system.

3. During its visit to detention centers in a number of places in Haiti, the Special Commission heard prisoner complaints about their lack of access to attorneys. Prisoners in the National Penitentiary in Port-au-Prince showed considerable lack of confidence in the few legal aid attorneys available to them.

During its visit to the towns in the interior of the country, the Special Commission interviewed prisoners in local jails, who informed it that a large number

of prisoners had been condemned to between three and six months imprisonment without the benefit of due process.

The prisoners, notable those in Jacmel, declared that while they had not been mistreated in the local prison, they had been subjected to physical abuse at the time they were arrested by the section chief. This official seems to be responsible for maintaining order in the rural section under his control, and for arresting all persons accused of serious crimes.

Another aspect of the situation observed by the Special Commission during its visit was, as has been observed, the interference of the Executive in the affairs of the Judiciary.

4. Special mention should be made of the State Security Tribunal, which was created by an Act of August 25, 1977 of the Legislature. This special court, established to punish offenses affecting national (internal and external) security, covers "infractions whose ends or motives are political." The judges are appointed by Presidential Decree, as is an active-duty military officer to aid the public prosecutor of the State Security Tribunal. According to Article 15 of the law, the indictment is served on the accused three days before he is scheduled to appear in court. Article 18 states that the court hearing shall begin only at the order of the public prosecutor, following the decision of the State Secretary of the Department of Justice. In addition, any one accused of a felony or a misdemeanor who has not yet been judged was given over to the jurisdiction of the newly created State Security Tribunal.

On December 7, the government informed the Commission that the law had been amended in March 1979 in order "to integrate the Tribunal into the normal judicial structure of the Port-au-Prince Court System, and to assure defendants the rights to counsel and to appeal both in timely fashion."

5. In conclusion, it should be pointed out that after the Special Commission's visit, the Haitian Legislature, since its closing session on September 19, 1978, has again given full powers to the President-for-Life and has suspended Articles 17, 18, 19 and 20, thus restricting the protection given under the Constitution.

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1 [American Convention on Human Rights](#)

Article 8 – Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
 - b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defense;

- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - g. the right not to be compelled to be a witness against himself or to plead guilty; and
 - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
 4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

CHAPTER IV

RIGHT TO FREEDOM OF INVESTIGATION, OPINION, EXPRESSION AND DISSEMINATION OF IDEAS, AND RIGHT TO RELIGIOUS FREEDOM AND FREEDOM OF WORSHIP

The American Declaration of the Rights and Duties of Man

Article III:

Every person has the right freely to profess a religious faith and to manifest and practice it both in public and private.

Article IV

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.¹

A. Freedom of investigation, opinion, expression and dissemination

1. Article 26 of the 1957 Constitution sets forth the right to freedom of expression in the following terms:

Everyone has the right to express his opinion on any matter and in any means within his power. The expression of thought, whatever form it takes, may not be subject to prior censorship except when a state of war has been declared.

Abuses of the right to freedom of speech shall be defined and punished by law, but this shall not infringe upon the right of the freedom of speech.

The underlined phrase was deleted from the 1964/1971 text currently in force (Article 26).

Current Haitian legislation contains a number of legal provisions that place considerable restrictions on the freedom of speech. The most important of these is the law of April 28, 1969:

Article 1. Communist activities, no matter what their form, are hereby declared crimes against the security of the State: all verbal or written, public or private expressions of communist teaching; all propagation of communist or anarchist doctrine by lectures, speeches, conversations, reading, public or private meetings; by tracts, placards, periodicals, newspaper articles, brochures, books, pictures, all written correspondence or verbal contact with local or foreign associations, or with persons involved in spreading communist or anarchist ideas, and receiving, collecting or providing funds directly or indirectly for the propagation of such ideas;

Article 2. All those, in whatever capacity: bookseller; owner or manager of a printing establishment; owner, manager or lessor of public or private meeting halls; owner, lessor or lessee of residences, religious minister, missionary, preacher, professor, primary school teacher, etc., who may have suggested or facilitated execution of such crimes, or harbored or given assistance to the authors of those crimes shall be declared guilty of the very same crimes;

Article 3. Individuals prosecuted under Articles 1 and 2 of the present law shall be tried before a permanent military court martial proceeding;

Article 4. The authors of an accomplices in crimes listed above shall receive the death penalty, and their goods and chattels shall be confiscated and sold for the benefit of the State;

Article 5. All individuals seized in flagrante delicto engaged in anarchist of terrorist activities are declared outlaws;

Article 6. The present law repeals all laws or provisions of laws, all decrees or provisions of decrees, all decree-laws or provisions of decree-laws that are contrary to it, and it shall be diligently executed by the State Secretaries for the Interior, Defense and/or Justice, as appropriate.

Done in the Legislature, Port-au-Prince, this 28th day of April 1969, in the 166th year of Independence.

The above provisions punish the mere expression of certain ideas or the mere profession, even in private, of certain articles of political belief by the death penalty. No specific action against the duly constituted powers of the state nor the creation of a danger for those powers is needed to make it a crime. Secondly, there is no specific legal definition of the ideologies condemned by this law.²

In short, the very broad principle of power granted under Article 2 can only serve as a brake or obstacle to free expression and dissemination of ideas in general. The same latitude is found in the decree of August 6, 1958 which punishes with imprisonment "authors and propagators of false information and rumors that could disturb the pace."³

The dissemination of ideas by the broadcast media or written press is regulated, in addition to the aforementioned provisions, by a decree-law of June 13, 1950⁴ and by a decree of August 26, 1957.⁵ The former decree-law imposes fines and prison on the press for insulting or libeling the President of the Republic, but the truth of the allegation may not be used as a defense (Articles 7 and 13). The second decree takes up the theme of the earlier decree, and calls for additional

sentences for authors of "designs, engravings, pictures, writings or any other mode of expression of thought (which) is intended to undermine the authority of one or more members of the constituent bodies of the State" (Articles 2 and 3).⁶

The Press Law of September 28, 1979

In the months prior to enactment of this law, government authorities had called in members of both the written and broadcast media and issued them warnings not to print or broadcast any information or comments on the government of Haiti or its top officials without prior approval. For example, there was no news at all about the damage caused by Hurricane David in September of 1979. These warnings, which were for the most part heeded, have now been codified into the present law.

The press law was also presaged by an official communiqué dated May 9, 1979 and signed by three government Ministers, which required that all films and theatre plays must be reviewed by an official committee, whose members are appointed by the government. This communiqué provoked a strong reaction in Haiti to the extent that some 200 intellectuals in the country signed a declaration opposing this form of prior censorship.

Any analysis of the law should begin with Title III, "Freedom of the Press and its Limitations," Article 21 of which begins with a ringing declaration of freedom of the press: "There is full freedom of the right to express thoughts and opinions on all subjects"; but it continues with a general qualifying clause by which exception is made for "instances of press abuse of violations determined by the law." More seriously and even more broadly, Article 22 prohibits press organs "from offending the Chief of State or the First Lady of the Republic" and "from making any attack against the integrity of the people's culture." It is obvious that the interpretations that might be given this article leave little room for the press to treat important facets of the national life without running the risk of being brought to court charged with violation of these prohibitions. Violation of the former carries with it imprisonment of one year and a fine of 2,000 to 5,000 gourdes. Also punishable by a fine of 1,000 to 2,000 gourdes and imprisonment of six months to two years are "any offense, any defamatory allegation or insinuation, or any wrong committed by the press against a Foreign Chief of State, a member of the diplomatic corps accredited to the country, a member of the Executive Branch other than the Chief of State, a member of the Legislative Branch, a member of the Court of Appeals or of the staff of that court in the exercise of their duties, a senior official" (Article 41). These as well as other provisions of the law extend not only to the author of the offense but also to any accomplice, such as editors, publishers and vendors.

Other parts of the law that merit discussion because of their possible influence on freedom of the press include Article 29, which prohibits "the entry, circulation and sale in the country of a foreign publication that is subversive or against good morals." The phrase which we have underlined is so vague as to be susceptible of easy abuse. Moreover, Article 4 requires that "at the time of publication and before any distribution, five copies of the printed matter shall be deposited" with the Secretary for the Defense and Interior. Deposit before distribution opens the door for a prior censorship and destruction of the edition, such as happened with the Petit Samedi Soir at the time of the February 1979 election.

Finally, any discretion is taken from the press by Article 67 which states that the press must report "every official statement, every message or address by the Chief of State."

In its Report to the XXXV General Assembly of the Inter-American Press Association, the Commission on Freedom of the Press and Information, held in Toronto, Canada, October 19-25, 1979, stated that with the enactment of the new press law, which creates a National Press Association, all hope is lost of establishing freedom of expression in the country, since the Association will be able to decide who can and who cannot be a reporter in Haiti. The General Assembly itself resolved that the press law made freedom of the press impossible in Haiti and asked that President Duvalier amend the law before it entered into force in accord with his promise of democratization and freedom of expression.

2. Because of the legal restrictions described in the preceding paragraph, freedom of expression has in fact been extremely limited under the last two governments. According to denunciations received by the Commission, government acts restricting or abolishing freedom of expression have taken the following forms:

- a. Admonition and warnings, of an increasingly severe nature, to journalists about the tenor of their articles or broadcasts;⁷
- b. Prior censorship, notably, prohibition of new publications;⁸
- c. Closing of existing newspapers on account of the ideas published;⁹
- d. Personal threats against journalists and other citizens on account of their ideas or expressions;¹⁰
- e. Personal aggression against journalists or other citizens on account of ideas they have expressed or circulated.¹¹
- f. Imprisonment of journalists and other citizens on account of their ideas;¹²
- g. Death of journalists and other citizens on account of their ideas or expressions, either by simple homicide¹³ or by execution in prison.¹⁴

Illustrations of these denunciations are provided in the cases described below. To these must be added the cases described in preceding chapters, particularly as regards the right to life, liberty and personal security, to the extent that those violations were motivated by the victims' ideas, speech or dissemination.

3. The Inter-American Commission on Human Rights has received communications denouncing violation of the right to the freedom of inquiry, opinion, expression and dissemination in the following specific cases:

Case 2975

According to denunciations concerning this case, Mr. Ezéchiel Abélard, a night-time radio announcer on Radio Métropole was arrested in October 1975 and taken to Fort Dimanche, where he was held in cell N^o 6. In September 1976, without

having had the benefit of any legal proceeding, Mr. Abélard died in prison of tuberculosis. The Commission transmitted the pertinent parts of these denunciations to the Government.

Other information received by the Commission reports that Mr. Abélard was not involved in political affairs, but at the time he was arrested, was conducting a survey on a housing project planned by the Ministry of Social Affairs.

Case 2044-A

On June 1st, 1976, Mr. Gasner Raymond, a twenty-three year old journalist, was found dead by the side of the road leading from Port-au-Prince to Léogâne. Mr. Raymond was a reporter for the independent weekly Le Petit Samedi Soir.

Two weeks before his death, an article appeared in Le Petit Samedi Soir under Mr. Raymond's line, in which he violently criticized the government for having used troops to stop a worker's strike in the Haitian Cement Factory; it appeared that this was the first labor intervention of this type in 16 years. In earlier articles, Mr. Raymond had denounced corruption and immorality among the Catholic clergy in Haiti.

According to denunciations received by the Commission shortly before his death, Mr. Raymond had received death threats from the police because of his article on the strike at the Haitian Cement plant.

Two and half months before Mr. Raymond's death, Le Petit Samedi Soir published an article reporting that Gasner Raymond and other reporters had been interrogated for four hours by authorities of Petit-Goave. The article mentioned the threats and the pressures to which the reporters were subjected and commented:

We still feel a certain anxiety when we are waiting for Carl Henry Guiteau, Jules Nicolas or Gasner Raymond, when they are expected back from following up a lead.¹⁵

The denunciation received about this case describes Mr. Raymond's death as an assassination; it places responsibility in the hands of the security forces, and suggests that the motives therefore were Mr. Raymond's articles on the strike and the desire to make an example of him, and use his death as a warning.

The government of Haiti replied in the following terms to the requests for information, as called for under the Regulations:

...

This affair could well be classed, like so many others throughout the world, as one of those that upsets and confuse public opinion, and disconcerts the police and the courts. Here are the unvarnished facts:

One morning, a body was discovered on the road from Port-au-Prince to Léogâne, it was Gasner RAYMOND. The editor of the newspaper where he worked wrote to the Ministry of the Interior asking him to open an inquiry on the murder. A communiqué from the Association of Haitian Journalists acknowledged that the necessary investigations had

been conducted, but that despite the efforts of the military and judicial authorities, there was no evidence on which to base a charge. Ill-intentioned people attempted to bring politics into this affair, but were never able to provide any proof.

The Question is still there, and neither the Police nor the courts have abandoned their efforts to shed light on this deplorable murder.¹⁶

According to Le Petit Samedi Soir, the results of the official inquiries have not yet been published.¹⁷ The person denouncing this affair stated that:

Since Haiti has no independent inquest services or judiciary services, it may be concluded in advance that neither the military or police authorities nor the courts would have found sufficient evidence to warrant an accusation in this affair...an accusation which could implicate their own services.

According to Le Petite Samedi Soir, the official enquiry was headed by Major Maxine Antoine, of the Criminal Investigation Division and by Colonel Jean Valmé, of the Dessalines Barracks.¹⁸

Another denunciation received by the Commission describes "Militiamen" from the Port-au-Prince Police Headquarters as having perpetrated the crime, and quotes Mr. Joseph René, a current member of the National Jeanclaudiste Action Council, Mr. Ti-Georges Saillé, owner of houses of prostitution in the capital city, and Mr. Azis, director of the Ciment d'Haiti Corporation, as instigators. The Commission has transmitted the pertinent elements of this communication to the government, along with part of a newspaper article giving further information on Mr. Raymond's movements two hours before his corpse was discovered.

On December 7, 1979, the government stated that "any allegation that the police made threats against Mr. Raymond's life because of an article written about the strike is specious, false and malicious." The government also stated that the investigation of Raymond's death is being carried on by the police force, and noted that the case is still "open" and the investigation is continuing.

The Commission is continuing its processing of this case.

Case 3502

The facts in this case may be summarized by quoting part of a recent report on freedom of the press in Haiti. This is the report of the Inter-American Press Association on the status of the press in Haiti, drawn up by Messrs. Wilbur Landrey and Alex W. Maldonado, dated February 27, 1978:

Since the case of Hebdo Jeune Presse is the cause of the present gloom among young Haitian newsmen, we will go into it in some detail.

In November, when Bob Nerée, editor of Jeune Presse was in France at the invitation of the French government, a succession of articles appeared in Hebdo Jeune Press that were daring for Haiti. One was about the Amnesty International report on deaths in Haitian prisons in the early 1970s. Another was a story about the new role of the Haitian

army. Another said liberty begins with freedom of the press. And then came the article about the National Security Volunteers, the militia formed by François Duvalier to support him in power. That article recounted that these Tonton Macoutes, more discreet since the younger Duvalier had come to office, were resuming their old bad ways in many parts of the country. The key phrase was the recommendation that the army be used to curb the excesses of the VSN.

Almost every week Bob's father, Rev. Nerée, who was acting editor in Bob's absence, was called in and warned by Interior Minister Aurélien Jeanty that the newspaper was going too far. On the same afternoon that the criticism on the VSN appeared—on December 8, a Thursday—Rev. Nerée was summoned again. Present this time were also Col. Jean Valmé, chief of security at the Dessalines barracks, and his two principal assistants. Valmé is in charge of internal security.

The Nerées do not want to talk about any of this, but at that meeting, Jeanty is reported to have told the elder Nerée that this was the last warning. Jeanty is also reported to have said he would be watching for the next issue of the newspaper and to have said he would be watching for the next issue of the newspaper and to have told the elder Nerée that if he thought President Carter could do something for him, he would see it wasn't true.

Three days after that meeting, on Sunday, Bob Nerée returned home from Europe. Then on Tuesday, December 13, the attack came on his father.

It was in the evening. Rev. Nerée came out of his church after Bible Class and got into his car with his sister-in-law, Bob's aunt. The account we got of this from several sources is that the then drove away from the church on the divided highway and made a U-turn to come back in the other lane. When they were almost in front of the church again, a red car cut them off and forced Rev. Nerée to stop. Then it deliberately backed into his car.

Two men got out, and CAME back to him. They were later identified as VSN members. They told him to get out and look at the damage he had caused. At the urging of his sister-in-law, he refused, suggesting that an insurance agent be called. By this time, another car had driven up behind. The driver of that car got out, walked to the aunt's side of the car, dragged her out, knocked her down and kicked her under the car.

There is some confusion about what followed, but the car went to the police headquarters, where policemen took notes, and then to the hospital. One of the local VSN leaders, a Weber Guerrier, was said by some reports to have arrived at the police station to have demanded why Nerée had not been taken instead to the notorious political prison of Fort Dimanche.

When Bob Nerée and his friends heard about the beating, they immediately began spreading the word. They informed the U.S. Embassy, the story began going out on the radio stations, even on the government station until it suddenly quit mentioning the incident the next day. When the newspapers came out, Le Matin reported what became the government line—

that it was a traffic accident. The government newspaper, Le Nouveau Monde, reported that it didn't have enough details to say exactly what happened. Le Nouvelliste, an independent newspaper and the oldest in Haiti, reported that Nerée had been attacked.

At a press conference, the government issued a communiqué saying the beating appeared to have resulted from a dispute over a traffic accident. At the same time, the communiqué defended the mission of the VSN and then reiterated the principles of "democratization and liberalization." It also called on the press to cooperate in development of the country and said the press would benefit from public security.

The communiqué was not good enough for the Haitian newsmen, and the press conference itself was an indication of how far things have moved in Haiti. The newsmen present threw hard questions at Jeanty about what had happened, about how their security would be guaranteed. The communiqué mentioned that the men involved in the Nerée affair would be judged. The questioners asked who would judge them and elicited their names. And the newsmen pushed Jeanty to make a significant statement "You must know that you cannot just write anything," he said, "You must know that in writing, you inform and at the same time you educate. It's your duty." These were almost the same words the President used when he talked to us.

The text of this extraordinary (for Haiti) press conference was printed in Le Nouvelliste, a fact that was also extraordinary. And the same newspaper printed an agency story on the Nerée attack which was at variance with the government communiqué.

On behalf of the Association of Haitian journalists, Charlier also issued a communiqué on the Thursday of the press conference. It protested the unjustified attack on Nerée by two citizens after an auto accident. Some other newsmen we talked to considered the communiqué both tardy and weak. They saw it as another example of their charge that the association did not really represent the interest of Haitian newsmen.

Nothing has been heard of any trial of the attackers since the press conference. Newsmen and diplomats we talked to reported that the men involved were released after being in custody overnight.

Meanwhile, after the attack, Bob Nerée simply suspended the publication of his newspaper in protest and it hasn't appeared since. The attack left Rev. Nerée paralyzed on one side and 42 days later he underwent surgery to relieve a subdural hematoma that was causing the paralysis. It was successful. "We stopped publication of Jeune Presse because we don't think the necessary work conditions or guarantees for press freedom as we conceive them exist in Haiti."

The Commission has received additional information on this case, according to which, one of the cars involved in the incident belonged to Mr. Weber Guerrier, head of the National Security Volunteers. The material authors of the attack, according to the denunciations received, were given very light sentences, were released, a few days after the trial ended, and continued to receive their salaries during the time they were under sentence. On July 29, 1978, at the Militia Day celebrations, these two individuals were standing just behind the President of the Republic.

The Commission has transmitted to the government the pertinent parts of the denunciations received in this case.

The government, on December 7, 1979, reported that Rev. Luc Nerée is not paralyzed or incapacitated in any way, and has been carrying out all of his former functions, except with respect to the newspaper with which he was formally associated.

Case 2977

The weekly magazine Regard was founded by Mr. Guay César in October 1977. The first issue appeared on October 14 of that year, under the editorial direction of its founder. According to denunciations received, on November 3, 1977, the State Secretary for the Interior and Defense, Mr. Aurélien C. Jeanty, called Mr. César to his office to tell him that the Government had decided to close Régard. No valid reason was given to warrant closing the magazine.

On March 13, 1979, Mr. César informed the Commission that Régard would reopen on March 31.

On December 7, 1979, the government informed the Commission that "Mr. Guay César, owner of the magazine, began publication without heeding the long-established law to deliver a small number of copies to the Ministry of the Interior in advance of publication. The Ministry of the Interior did call Mr. César in to draw his attention to this rule. This was the sole purpose of the meeting. It is also believed that the true reason for closing the magazine was a lack of capital and the small sales volume. The government has at present, and has had in the past, no objection to resumption of publication of Mr. César's magazine."

"Aedipe" Affair

The following quotation is found in the Langrey-Maldonado report of February 27, 1978 to the Inter-American Press Society:

Jean Magloire served as Minister of Interior in the François Duvalier government. During Duvalier's heart attack in 1959, Magloire in effect ran the country. Owner of a sand and concrete construction company, he is a member of the small Haitian wealthy class.

During the previous regime, Magloire published his newspaper Aedipe. Six years ago, however, following François Duvalier's death, Magloire was called by a high military officer and ordered to suspend publication. The officer said the orders came from "higher up". In September of 1973 Magloire tried again to publish a newspaper and was again ordered to stop.

In the still optimistic days of November, 1977, Magloire attempted once more to publish Aedipe. The first issue ran an editorial quoting the President's statements on freedom of the press. It also called for free elections. After several copies reached the street, Magloire was called by the Minister of the Interior and ordered to stop publication. The paper has not reappeared. It is generally believed that the government considers Magloire as a potential source of conservative political opposition.

On December 7, 1979, the government stated that the editor of the Journal Aedipe had been called to the Ministry of the Interior for the same reason as that given in the Régard case and not with a view to ordering suspension of publication. Indeed, since the editor of Aedipe publicly sympathizes with the political views of the President of Haiti, it is a rather dubious proposition that suspension of the journal was influenced by government action.

Le Petit Samedi Soir Case

Following legislative elections on February 11, 1979, the weekly Le Petit Samedi Soir devoted its February 17-19 edition to a critical analysis of the electoral process and the results of the recent ballots.

At 5:00 p.m. on Friday, February 16, when the issue was ready for distribution, the editor of the journal was called, along with other journalists, to a press conference organized by the Ministers of the Interior, Justice and Information. It emerged from this meeting that the government was asking journalists "to refrain from all criticism of past electoral activities." The representative of Le Petit Samedi Soir called the Ministers' attention to the fact that the journal "was already printed, and contained a criticism of the legislative elections." He was told "to bear in mind what had just been said."

As a result of this official intervention, the editors of Le Petit Samedi Soir decided to burn the entire issue. The government of Haiti stresses that it reimbursed the journal for all losses incurred in connection with the abandoned issue.

4. The Special Commission would like to emphasize that its activities during the period it spent in Haiti were reported in full in the Haitian press, which also published a series of articles on human rights in general immediately prior thereto. The press releases issued by the Special Commission were printed in full.

5. In connection with the dissemination of ideas, the Special Commission was impressed by an informative booklet published in Creole by the Catholic Church on many aspects of human rights. This document not only informs about the different human rights but also tells what can be done if violations occur.

The members of the Special Commission were assured that these informational documents were being freely distributed by the Catholic Church without any government interference.

6. The Minister of Education told the members of the Special Commission that there was a program for the teaching of human rights in school. However, subsequent interviews did not turn up any cases where the program had been implemented. With regard to the particular question of human rights education, it should be indicated that the Catholic Church conducts a number of programs for this purpose, and has distributed a text in Creole of the American Declaration on Human Rights, several copies of which were forwarded to the Special Commission.

7. With regard to the press after our visit, it would be very useful to quote in full the section on Haiti in the Report by the Commission on Freedom of the Press and Information presented to the XIV General Assembly of the Inter-American Press Association in October 1978:

Some unusual things have happened in Haiti since the inter-American Press Association's mission to that country in February 1978.

1. Three newspapers, *Le Matin*, *Panorama* and *Le Nouvelliste*, published the complete text of the extensive report on freedom of the press in Haiti. A number of radio stations read the report in its entirety. Since certain sections of the report criticized the government, its publication is unprecedented in the recent history of Haiti.

2. Two men were brought to trial, found guilty and sentenced to four months in prison for the attack on Rev. Nerée, editor of a weekly that was often critical of the government.

3. About thirty Haitian journalists signed an appeal that the Haitian Press Association, this far a tool of the government, be reorganized.

4. For the first time, Haitian publications and radio programs began to publish information and commentaries on abuses by the police and on other violations of human rights. Last September, Mr. Dieudonné Fardin, editor of the weekly *Le Petit Soir* even published a forceful editorial criticizing the Haitian Legislature for having passed a law giving excessive powers to the President. The weekly maintained that this law was unconstitutional.

These and other facts, in the context of the realities of Haiti are obvious evidence that the Inter-American Press Association (SIP) can play a constructive and important role in obtaining freedom of the press in Haiti. However, the positive situation has changed significantly over the last few weeks, as a SIP mission has realized.

1. The radio stations are silent: progressive journalists in the radio stations are imposing their own censure. They are receiving threats, some say from the government, others from the "economic powers." Journalists are being accused of provoking strikes. A government service put out a declaration reporting that severe measures would be taken against any individual fomenting unrest amongst the workers. Following these measures, the radio stations decided to remain silent, not only about labor questions, but about all issues that might be controversial.

2. Direct censorship: on Tuesday October 4, the director of a major industrial firm called a press conference attended by 25 journalists and by representatives of a number of embassies, including the French and United States embassies. This unusual interest was due to the fact that the firm, HAMASCO, S.A., is owned by the Duvalier family, and has been the subject of a serious family quarrel. In the afternoon, the Minister of Information personally telephoned the journalists who had been at the press conference, and forbade them to publish a single word. No one did.

3. Persecution: Jean Dominique is the leading radio commentator insisting on greater freedom of the press. Some time ago, in the government newspaper, he was accused of being "a liar." Members of the armed forces telephoned him to tell him that he should stop publishing information about strikes. The owners of his station asked for an indemnity of \$20,000; their lawyer's main argument was that Dominique had made their radio station into a movement "of

political opposition" to the government. If he loses the case, it is probable that Dominique will lose his station. Since he was denounced in the government newspaper, Dominique has maintained absolute silence.

4. Franz Joseph, the most well-known neurologist in Haiti, was exiled about two weeks ago. He was accused of being an agitator. Nothing has been published about Joseph's exile. Journalists admit that they are afraid to write anything.

With the exception of Mr. Charlier, a journalist who form part of the government, all the people the last SIP mission met stated that there has been no progress in Haiti as regards freedom of the press since its last visit. Some even say that the situation has become worse.

Last August, the Organization of American States sent a Human Rights Commission to Haiti. The independent radio stations were inundated with people, many of whom came from rural areas in the interior of the country, asking to be allowed to air their complaints against the police and the armed forces on the radio. At least one station, Radio Haiti Inter, did so. And Le Petit Samedi Soir published articles and editorials on human rights.

It seems that "hawks" within the government reacted sharply to the OAS visit. The energetic measures against the press started after the Commission left the country.

These journalists need our help.

8. The Gourgue case (Case N° 4670)

On Friday evening, November 9, 1979, the Chairman of the Haitian League for Human Rights, Professor Gérard Gourgue, was scheduled to speak at the Pères Salesiens building in Port-au-Prince on the "Political Atmosphere and Human Rights." As Prof. Gourgue began his address after being introduced by a fellow officer of the League, the audience for the most part students, but also invited guests from the diplomatic community broke into confusion, as a result of which many persons, including Mr. Gourgue and his family, were hospitalized due to injuries caused by blows received, flying objects, and even gunshots.

It is claimed that 200 persons in an estimated crowd of between 1,000 and 6,000 persons had been placed in the audience by the government to create the disturbance. It is also alleged that the police in attendance did nothing to quell the outbreak or to protect those in attendance from assault. In attempting to help the victims, the Salesian Fathers were "brutally handled."

This information was forwarded to the government of Haiti in a cable of November 13, 1979, followed by additional data two weeks later. By a note of November 21, received at the Secretariat on December 3, 1979, the government stated that "downright abuse had been leveled at the government, which unfortunately overheated the atmosphere." In the government's opinion, the scuffle was caused by a clash that pitted supporters and opponents of the speaker against each other, but the police intervened rapidly and re-established order.

The disruption of this meeting on human rights, attended by several prominent members of the Haitian League for Human Rights, raises serious doubts about the possibility of holding assemblies to discuss this subject, and also causes concern about the continued effective operation of programs of organizations dedicated to the promotion and protection of human rights.

B. FREEDOM OF RELIGION AND WORSHIP

The Constitution guarantees the Haitian people freedom of religion in the following terms: "All religions and faiths shall be equally recognized and free. Every one may profess his religion and practice his faith, provided he does not disturb law and order. No one may be compelled to belong to a religious organization or to follow a religious teaching contrary to his convictions." (Article 27).

During their visit, the members of the Special Commission met with representatives of a number of religious groups, and have no reason to believe that the rights set forth in Article 27 are impeded by government action.

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1 [American Convention on Human Rights](#)

Article 12 – Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13 – Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

2. A communication received by the Commission declares as follows:

Promulgation of such a law seeks to make every patriot, every democrat, every non-supported of Duvalier into a communist agent, in an effort to discourage all attempts to contest or oppose the Duvalier regime. This law authorizes abusive interpretations of citizens' actions, and justifies the worst kinds of repressive measures. It even allows citizens' intentions to be pre-judged... The iniquitous character of this law become all the more evident:

 - since there is no communist organization or party in official existence in the country;

- since the criteria whereby a citizen can be accused of communism have never been defined;
 - no communists have ever been brought to trial;
 - since assassinations have been committed, in the name of this law coveted goods have been appropriated, competitors have been eliminated, witnesses have disappeared, and power based on terror has been imposed;
- since an individual, even a communist, is not a citizen without rights.
- 3 Le Moniteur, 11 August 1958.
- 4 Le Moniteur, June 19, 1950.
- 5 Le Moniteur, August 27, 1957.
- 6 The two decrees stipulate that damages and libel committed by the broadcast or print media against civilian or military authorities are not considered as political crimes (Articles 16 and 1 respectively). Any violations of the Decree of August 26, 1957 entail, as a matter of course, as a supplementary penalty, the closing of the broadcasting station that aired the damages or libel (Article 4). A decree of October 12, 1977 (Le Moniteur, December 21, 1977) prohibits ham-radio operators from transmitting or receiving messages of political or religious nature, or from transmitting news or making allusions against the authorities or friendly states (Article 102). This same decree also stipulates that those responsible for commercial stations must "check programs to prevent information, even if correct, from causing damage, or alarming the population by their form, presentation or timing" (Article 51).
- 7 See the Jean Dominique affair below.
- 8 See the Aedipe affair (November 1977) below.
- 9 See Régard affair (November 1977) below.
- 10 See the Dieudonné Fardin affair, below.
- 11 See the Luc Nerée affair (December 1977) below.
- 12 See the Ezéchiel Abélard affair (November 1975) below.
- 13 See the Gasner Raymond affair (June 1976) below.
- 14 See the cases mentioned in previous chapters.
- 15 Le Petit Samedi Soir, N° 137, March 13-19, 1976, page 12.
- 16 Note from Mr. Edner Brutus, Secretary of State for Foreign Affairs to the Commission, March 23, 1977 (POL/NAL: 64).
- 17 Le Petit Samedi Soir, N° 242, May 27 through June 2, 1978, page 5.
- 18 *Idem*, p. 7.

CHAPTER V

RIGHT OF ASSEMBLY AND RIGHT OF ASSOCIATION

American Declaration of the Rights and Duties of Man

Article XXI:

Every person has the right to assemble peacefully with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

Article XXII:

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.¹

1. Articles 31 and 32 of the Constitution of Haiti guarantee the rights of assembly and association. These articles read as follows:

Haitians may assemble peaceably and without arms, even for the purpose of discussing political affairs, without prior authorization, in conformity with the laws governing the exercise of this right. This provision shall not apply to public gatherings which shall be entirely subject to police regulations (Article 31).

Haitians shall have the right of association, of forming political parties, labor unions and cooperatives (Article 32).

2. The right of assembly guaranteed by the Constitution has been seriously restricted in practice, mainly for political reasons, by the measures taken by the government to prevent the organization and development of political parties in the country.

3. Moreover, Article 31 on the right of assembly is one of those articles that the Legislature has often suspended, as it has done at the present time (Decree of September 19, 1978).

4. While the right of association was not one of the rights suspended by the Legislature, it was severely limited by Article 236(bis) of the 1948 Penal Code, which requires government authorization to form a group of more than 20 persons desiring to meet regularly for religious, literary, political or other purposes. The text of this regulation is as follows: "No association of more than 20 persons whose purpose is to meet daily or on certain regular days, to discuss religious, literary, political or other matters may be formed except with the consent of the government, and under such conditions as the authorities may wish to set. The total number of persons indicated in this article shall not include those persons living in the house where the association is meeting."

5. This article may also serve to prevent any political group or association, no matter what its nature, from acting freely.

6. One of the matters that was of particular interest to the Special Commission was trade union freedom. This is what prompted members of the Commission to visit a number of factories to interview workers. It is evident that, far from being promoted, unionization is discouraged by intimidation. The workers consulted said that they wanted to form trade unions, but were afraid of losing their jobs if they were active in this area. At the Ciment d'Haiti, the Special Commission met with union groups, one of which had been elected by middle management and the other by the blue-collar workers. It was alleged that the firm tolerated the relatively moderate demands of these groups so that it could show that trade union freedom did indeed exist. The Special Commission also notes the fact that there are no labor federations or confederations operating in Haiti.

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1 American Convention on Human Rights

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

CHAPTER VI

RIGHT TO RESIDENCE AND MOVEMENT AND RIGHT TO NATIONALITY

The American Declaration of the Rights and Duties of Man

Article VIII:

Every person has the right to fix his residence within the territory of the State of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

Article XIX:

Every person has the right to the nationality to which he is entitled by law and to change it if he so wishes, for the nationality of any other country that is willing to grant it to him.¹

A. RIGHT TO RESIDENCE AND MOVEMENT

1. During its visit, the Special Commission received a series of cables and other communications from Haitian citizens reporting that despite President Duvalier's statements to the effect that all Haitians living abroad could return to Haiti and live in the country without any problems, they had been refused permission to return to Haiti to testify before the Commission.

2. One of these cables, dated August 18, 1978, raises the question in the following terms:

Wish to inform you that the Haitian Consul in Puerto Rico, Pierre Chavenet, on instructions from Minister of Foreign Affairs, is using delaying tactics in order not to deliver visas and passports to Haitians wishing to testify before the Inter-American Commission. On government orders, airlines flying to Haiti refuse Haitian passengers wishing to return to their country who do not have a passport and entry visa issued within the previous 30 days by a Haitian consul. Refusal by Haitian government to deliver passports and visas for entry to their own country to Haitian citizens living abroad is a flagrant violation of human rights.

The government of Haiti states that "the action of the Consul was taken in contravention of government policies, and the individual concerned was suspended and relieved of his responsibilities because of this incident. The only Haitians refused re-entry as a result of government policy have been those who are known subversives and whose stated intentions are to overthrow by force the duly constituted government of Haiti. As to these individuals, the government can see no justification for their return, and does not feel that its actions constitute a breach of any of the obligations to which it is bound."

3. Another cable from ten Haitians who wanted to re-enter their country to talk to the Commission quoted similar cases in which the Consuls-General of Haiti in New York and Montreal had refused them visas. They too protested that "any American, Frenchman or Canadian can enter Haiti without a visa, while a Haitian citizen who was born in the country, cannot do so."

4. The question was raised with high-level government authorities, who admitted to the Commission that certain individuals who were Haitian citizens by birth had not received permission to re-enter their country for security reasons.

B. RIGHT TO NATIONALITY

5. Contrary to the clauses on nationality in the American Declaration, the Legislature of Haiti, in a Decree dated August 23, 1963, stripped 54 individuals accused of treasonable activities of their citizenship. This measure was taken the day after the pertinent Constitutional guarantees were suspended. Moreover, the individuals in question were stripped of their retirement, and their property was confiscated and passed to the State.

6. Subsequently, the Presidential Decree of February 27, 1974 defined the conditions under which Haitian citizenship could be acquired and lost. The Commission is particularly interested in the two paragraphs of Article 17 that prescribe loss of citizenship "(5) for all services rendered to the enemies of the Republic or for transactions conducted with them" and "(6) for final sentencing, after a full hearing, to life imprisonment for infamous crimes."

7. We believe it would be very useful to repeat what the Commission said on another occasion on the subject of loss of citizenship:²

Loss of citizenship is sometimes a tactic in a political struggle, but it always has the effect of leaving a citizen without a land and without a roof of his own, and of forcing him to take refuge abroad. On another plane, it has an inevitable impact on foreign jurisdictions and no State may arrogate to itself the power of taking measures of this type. If the practice of stripping citizens of their nationality were to become generalized, for whatever reason and for whatever purposes, the world would have a new machinery for producing stateless persons. And this at the time when there has been a world-wide crusade to relieve the suffering of thousands of stateless persons and refugees forced into exile by political violence or war and by the other tragedies that have afflicted a large part of humanity in recent years, obliged to seek shelter in a foreign home. For these reasons, and for many other considerations that are not pertinent here, the Commission feels that this anachronistic, uncivilized punishment, which is legally unjustifiable in any part of the world, is a thousand times more odious and reprehensible in our countries of the Americas, and should therefore be permanently forbidden in the practice of all governments.

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¹ American Convention on Human Rights
Article 22. Freedom of Movement and Residence
1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

Article 20. Right to Nationality

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

²
11, 1977). "Third report on the situation of human rights in Chile" (OEA/Ser.L/V/II.40, doc. 10, February

CHAPTER VII

RIGHT TO VOTE AND TO PARTICIPATE IN GOVERNMENT

The American Declaration of the Rights and Duties of Man

Article XX:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.¹

Article 16 of the Haitian Constitution proclaims that "Every Haitian may take an active part in his country's government, hold public office, or be appointed to a government position, without distinction as to color, sex or religion," and Article 40 stipulates that "For the citizen, voting is not only a right but an obligation imposed by his civic duty."

A. LEGISLATIVE BRANCH

The 1964 Constitution established a uni-cameral legislature, and there has been no subsequent amendment of this provision. The chamber of 58 deputies is elected by a Primary Assembly according to conditions set by law. Geographical representation has no place in the Constitution, whether in terms of population, economic importance or number of registered voters. Haiti is still without permanent electoral laws, but rather promulgates a new law each time the Executive finds it necessary to call elections for local posts or for the Legislature. The legislators serve for a six-year term: elections are held for new terms of office and to replace those who resign, die, are dismissed, etc.

Electoral procedure is that the President of the Republic chooses and nominates those citizens who are to be elected by the Primary Assembly; thus, the Legislature is not in a position to exercise the powers granted it under the Constitution, and does not represent the popular will, but rather the will of the Executive.

The legislative elections announced by the government, the first since the elections at the beginning of the sixties, were held on February 11, 1979. Two members of the opposition were candidates for seats in parliament. The candidate from the city of Cap Haitien, who is opposed to the present regime, won easily over his opponent, a former member of the President's cabinet, who was supported by the government. The candidate from the city of Port-au-Prince said after his defeat that there had been irregularities and fraud in the elections.

B. EXECUTIVE

President François Duvalier was elected in accordance with Article 77 of the Constitution of September 22, 1959, which stipulates that:

The President of the Republic shall be elected for six years. He may not be re-elected immediately, and in no case may his term of office be extended.

Two other articles in that Constitution are interesting on the subject of the presidential election.

The President of the Republic shall be elected by secret ballot, by direct suffrage, by a majority of the votes cast by all electors of the "Republic" (Article 88).

Four months before expiration of the President's term of office, he shall convoke the Primary Assemblies, which shall meet, as a result of this convocation, or as established by law, on the first Sunday in April, in order to elect the President of the Republic (Article 89).

The new Constitution adopted by the National Assembly in 1957 keeps this provision on the form of electing the President and on his term of office.

Later, on April 30, 1961, the National Assembly became unicameral. The Legislature that was thus created replaced the 1957 Constitution by the 1964 Constitution, which gave much more extensive powers to the new President, and bestowed the title of President-for-Life on François Duvalier (Article 196).

In January 1971, President Duvalier had the 1964 Constitution amended so that his son, Jean Claude Duvalier, could replace him as President-for-Life. In order to do this, it was necessary to change the minimum age, which had been 40, so that his son, who was at that time 18 years old, could become President. Other provisions were added also so that President François Duvalier could designate his successor, also for life (Articles 102 and 104). This happened despite the fact that Article 46 stipulates that "national sovereignty is vested in all the citizens. The people shall exercise the prerogatives of sovereignty directly by: 1. election of the President of the Republic."

As a result, Haitians have had no say in choosing the head of the Executive Branch for the last fifteen years. Freedom to participate in government is incompatible with the institution of a presidency for life.

C. POLITICAL PARTIES

While it is true that Article 32 of the Constitution, which grants Haitians the right of association, refers specifically to the creation of political parties, it was seen in Chapter V that section 236(bis) of the Penal Code requires the consent of the government in order to form a group of more than twenty persons.

In his interview with members of the Special Commission, the President responded to a question about the absence of political parties in Haiti by saying that

there have never been any, and that he thought it would not be possible to form any because the people were not prepared.

Sylvio Claude Case

At the beginning of July 1979, Sylvio Claude publicly announced the formation of the Haitian Christian Democratic Party. This party, the Haitian Christian Democratic Party of June 27 and the Haitian National Christian Party, were formed during the period of liberalization of President Jean Claude Duvalier, and were the first independent political parties in Haiti in the last two decades. The Haitian Christian Democratic Party of June 27, founded by Grégoire Eugène, has since ceased active operations because of government harassment, according to Eugène.

On August 30, 1979, police arrived at the headquarters of the Christian Democratic Party in Port-au-Prince with the purpose of arresting Sylvio Claude. Claude escaped through a rear window although he suffered a gunshot wound in the hand. He fled to Radio Station RGR and informed the radio audience about the attack on the Christian Democratic Party and the attempt to arrest him. He also gave details of his arrest at the beginning of the year and alleged that he had been severely tortured at that time in the Dessalines barracks and that he feared for his life. The police arrested Claude and Gérard Résil, Director of Radio RGR, at the station at approximately 5 p.m. Résil was released the following day, but only after a public apology. Claude was taken to the Dessalines barracks, where it is presumed he is still being held.

Prior to his arrest on August 30, Claude had declared as a candidate in the February 1979 elections for the constituency of Mirebalais. His opponent was Madame Max Adolphe, a strong government supporter known for her interrogation of political prisoners. Before the election, however, the government declared Claude's candidacy illegal and forced him to withdraw from the race. Shortly thereafter, Claude was arbitrarily arrested by security police in civilian clothes, accompanied by an army sergeant, and taken to the Dessalines barracks where he claims he was beaten and tortured by electric shocks applied to the soles of his feet. He was then summarily put on a plane to Colombia. He returned to Haiti some months later.

In connection with the August arrest of Sylvio Claude, a group of police in civilian clothes went to the office of the Christian Democratic Party where they arrested Me. Dupleix Jn-Baptiste, Me. Valere Augustine and Me. Edouard Franck, who happened to be there at the time. All three are members of the Haitian League for Human Rights. They were taken to the Dessalines barracks where, it is claimed, they were mistreated before being interrogated.

The allegations concerning the August arrest of Sylvio Claude were transmitted to the government of Haiti on October 26, 1979.

The Claude case has been cited as a reflection of various phases of the current situation of human rights in Haiti. First, the arrest of Claude and the ransacking of the party headquarters can be seen as an attempt to stifle the fledgling political parties. Moreover, it shows a judicial system that permits Claude to be held without charges and without trial for more than three months. Finally, the detention of Gérard Résil for the sole "crime" of having allowed a Haitian citizen an opportunity to explain his predicament directly affects the right to information and dissemination of ideas.

1 [American Convention on Human Rights](#)

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
- c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

CHAPTER VIII

RIGHT TO EDUCATION AND RIGHT TO THE PRESERVATION OF HEALTH AND TO WELL-BEING

American Declaration of the Rights and Duties of Man

Article XII:

Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

Article XI:

Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.¹

1. It is difficult to evaluate the Haitian government's effort to promote these fundamental rights and the basic right to work discussed in the next chapter because of its reluctance to provide up-dated statistics to the relevant international agencies. While the Haitian Constitution clearly establishes these rights (Article X), there is little concrete evidence that there has been any systematic effort to ensure their full development.

2. A commitment to the full development of these rights is seriously limited in Haiti by a complex of restraining political and historical factors which exacerbate problems created by conditions of absolute poverty. A December 1978 World Bank Report estimates that 89.7% of the rural population lives in this state of deprivation. Only 30% of the land in Haiti can be cultivated because of its generally mountainous character, and much of this relatively small area consists of plots that

have been subdivided so many times that they cannot provide subsistence for a family. Erosion is a devastating problem caused by the wholesale scalping of the forests for wood for export in the 19th century and for the production of charcoal in this century, and is seriously compounded by the lack of any governmental programs for the improvement of agricultural techniques. There have been no official land reform measures undertaken by the Haitian government, a condition that is exacerbated by the large-scale seizure of peasant lands by local *Ton Ton Macoutes* following any dispute or denunciation. Physical and political constraints substantially overlap in Haiti: a population density of 393 persons per square kilometer of arable land, a GNP of \$232 per capita in 1977, and severe over-utilization and erosion of the soil, combine with and result from a history of government neglect of the vast majority of the population.² Government services that do exist, such as the agricultural support services of the Department of Agriculture, are hampered by deficient funding and insufficient personnel.³

The degree to which the economic fortunes of the Haitian people are shaped by the contemporary political reality is reflected by the World Bank's analysis of governmental budgetary procedures. In 1977, 30% of all expenditures and 35% of total revenues were channeled through special checking accounts held at the National Bank that made it virtually impossible to determine their sources or eventual disposition. Under these conditions, it is questionable whether badly needed foreign assistance programs effectively reach their targets. The operations of the government's *Régie du Tabac* also indicate the vast reforms necessary before respect for human rights can be more than a goal. (As a monopoly of the Duvalier family, the *Régie du Tabac* has exclusive control over the distribution of fish, cotton, evaporated, condensed and fresh milk, butter, cheese, margarine, wine, champagne, whiskey, rum, perfumes, dental products, soap, bandages, air conditioners, automobiles, airplanes and most electrical appliances.) Additionally in 1977, the *Régie* collected G4.9 million but made only G2.9 million available to the public treasury for general budgetary expenditures, with the disposition of the remaining two million Gourdes not being revealed.⁴ In analyzing these patterns, it is apparent that specific political reforms must occur before the goals set forth in the Haitian Constitution can begin to be fulfilled in the area of basic rights to education and health.

3. Articles 29 and 180-1 of the Haitian Constitution establish a goal of free, mandatory primary school education to reduce illiteracy. The most recent figures available indicate that 76.7% of the Haitian population is illiterate.⁵ The same source indicates that 85.5% of the population had no schooling in 1971, and that only 4% had ever finished primary school. Haiti's compulsory education laws are of little more than academic interest because there are often no suitable schools within reasonable distance in the rural areas. As of 1974, the last year for which data is available, the total government expenditure for education officially equaled only G24 300.000 or \$4,8 million representing expenditures of 0.7% of the GNP.⁶ The World Bank in 1978 calculated that this was the lowest rate of expenditure in the world, adding that illiteracy was the highest in the hemisphere at 83%, reaching over 90% in rural areas.

4. The Haitian government's formal commitment to the preservation of health and the general welfare is set out in Article 159 of the Constitution: "The aim of the economic system is to ensure to all members of the national community a decent life. It is based chiefly on the principles of social justice." However, in reality, "the simplest necessities of life: shoes, adequate shelter, clean water to drink and

bathe in, are luxuries beyond the average family's means."⁷ For example, according to a 1978 World Bank Report, the most recent estimates are that over 96% of occupied dwelling are without piped water and less than 3% of all dwellings have access to electricity.

5. Haitian life-expectancy is among the lowest in the Western hemisphere, estimated at just 52 years in the 1978 Report of the World Bank. This same report gives the infant mortality as 149.1 per 1 000 live births, a figure surpassed by only one other country in the hemisphere. The 1978 World Bank Report cites the death rate for children age 1-4 at 33 per 1 000 in 1970, which represents an increase from 27 per 1 000 in 1960. In the latest WHO Vital Statistics Reports, the Haitian government supplied only one of five figures requested from participating governments. It is therefore impossible to assess the improvement or worsening of Haiti's infant health status.

6. The nutritional status of Haitians is probably the worst in the Western hemisphere, leaving them most susceptible to disease, with over 75% of children under the age of five suffering from malnutrition.⁸ From the age of four months, children in Haiti exhibit subnormal growth rates which worsen continuously, due to both caloric and protein deficiencies. Subnormal growth culminates in great differences between the 5% of urban children raised in wealthy families, and the average rural child: by the teen years, there is a 50 pound difference in weight and a six inch difference in height between these children.⁹

The morbidity and mortality rates of contagious diseases associated with malnutrition—hyper endemic malaria, diarrhea, amoebiasis, tuberculosis, kwashiorkor, avitaminosis, marasmus, tetanus and yaws exist at perhaps the highest rates in the Western hemisphere.¹⁰ In addition to children, women of childbearing age and men active in the labor force have been selectively studied and found to be nutritionally deficient, leading to low levels of both health and productivity: the average protein intake per day is 39 grams, and the average calorie intake is 1 700, figures which are very inferior to calculated minimum human needs.

The World Bank estimates that the minimum per capita cost for consumption of the recommended minimum diet and essential nonfood items would be G1 000 (\$200) annually. By these estimates, over 90% of Haiti's population cannot afford this minimal standard of consumption. So, the recommended minimum per capita calorie intake for Haiti is of the order of 2 000 calories per day, yet a U.S. new study quoted by the World Bank in 1979 found a national average of approximately 1700 per day, totally unbalanced in proteins and fats. Many people suffer from multiple nutritional deficiencies, with only 13% of all Haitian children considered normally nourished in 1975.¹¹ Even this number appear high when compared with the 9.6% in northern urban and 8.1% in northern rural areas who are adequately nourished. According to the 1978 Report of the World Bank,¹² more than 50% of Haitian children under 5 suffer from such malnutrition as to require medical care. The same report notes that Haiti was unique in the hemisphere in having the highest decline in calorie intake while at the same time having the lowest per capita calorie intake in 1971-73. Dr. Kendall W. King concluded that, "Unless means can be found to reactivate such vital governmental services as public works, education, agriculture and health, it is unrealistic to anticipate any major improvement in the nutritional status of the population."¹³ The Duvalier government has taken few, if any, steps to reduce this debilitating and pervasive malnutrition. In fact, a 1978 IADB Report shows that the situation in some cases has worsened.

7. According to the World Bank, public health in Haiti in 1978 was completely insufficient. Medical facilities and trained personnel in the country are minimal. In 1970, there was one physician per 13 000 inhabitants, one nurse for 7 500 inhabitants, and 1.37 hospital beds per 1 000 inhabitants. However, in reality the situation is worse: one-half of all physicians and high proportions of all health facilities are concentrated in Port-au-Prince, and the majority of the population receives no medical care. Over one-half of all doctors and nurses trained in Haiti have gone into exile for political and economic reasons.

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- 1 [American Convention on Human Rights](#)
Article 26. Progressive development
The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.
 - 2 World Bank Report, December 1978.
 - 3 [Ibid.](#)
 - 4 [Ibid.](#)
 - 5 UNESCO, [Statistical Yearbook](#) 1977, 45 p.
 - 6 [Ibid.](#)
 - 7 Vera Rubin and Richard P. Schaefer, Eds. 1975. [The Haitian Potential: Research and Resources of Haiti](#). N.Y. Teachers College Press. P. 158.
 - 8 World Bank Report, p. 30.
 - 9 Rubin and Schaefer, *supra*, p. 148.
 - 10 WHO Statistical Annual, 1978.
 - 11 World Bank Report of 1978, p. 64.
 - 12 [Economic and Social Progress in Latin America](#) 1978, p. 138.
 - 13 Rubin and Schaefer, *supra*, p. 156.

CHAPTER IX

RIGHT TO WORK AND TO A FAIR WAGE

American Declaration of the Rights and Duties of Man

Article XIV:

Every person has the right to work, under proper conditions, and to follow his vocation freely, in so far as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

1. Article 24 of the Constitution of Haiti grants full enjoyment of this right to the Haitian people.

Every worker shall be entitled to a fair wage, job training, health protection, social security, and the welfare of his family insofar as his country's economic development permits.

Any worker may participate, through his representatives, in the collective determination of working conditions. All workers shall be entitled to rest and leisure.

All workers may protect their interests through trade-union activities. Each worker shall belong to the trade union representing his particular occupation.

Annual vacations with pay shall be compulsory.

2. Article 173 reads as follows:

Work, a social function, shall enjoy the protection of the state and shall not be subject to exploitation.

The state shall endeavor to provide the manual or intellectual worker with an occupation that will enable him to provide his family, as well as himself, with the economic conditions of a decent life.

3. The 1978 ILO Yearbook of Labor Statistics demonstrates that the economically active population of Haiti is very high, yet this must be understood in conjunction with an elevated unemployment rate and a very low salary range. Additionally, workers are sometimes not paid, are accorded no paid annual vacation, no transportation allowance, no medical assistance or any other social service. According to the World Bank Report of 1978, sixty per cent of the Haitian population live on incomes of G 300 (\$60), and 90% cannot afford necessary minimum food and essential non-food items. Continuing inflation exacerbates this problem. According to the World Bank report of 1976, unemployment in Haiti is rampant. Real unemployment was estimated at 12.3% in the whole country and 16.2% in Port-au-Prince. Almost 80% of the economically active population is employed in agriculture, and of these 75% are classified as underemployed. An ILO report estimates that real unemployment reaches 49% in the agricultural sector and as high as 62% for the country as a whole, making the right to work somewhat illusory. This figure includes unemployment as well as underemployment.

4. Despite the Constitutional guarantees of Article 24, numerous obstacles prevent the formation and existence of unions in Haiti, not the least of which is Law 236(bis), already mentioned in the Report, that requires the authorization of the government prior to the formation of any group of more than 20 persons. No major union workers associations have existed in Haiti since 1962, and the country is unaware of all the conventions of the International Labour Organization.

5. The Haitian government recently announced a new minimum wage of 11 Gourdes a day beginning in December 1979. It is useful to note that this is equivalent to 3234 Gourdes a year, a sum achieved by less than 5% of the economically active population in Haiti. Despite repeated references to the minimum wage laws, the Haitian government has never explained this discrepancy.

CONCLUSIONS

Following its on-site observation in Haiti, and in consideration of the other evidence listed in the present report, the Commission has reached the following conclusions:

1. Two stages in the observance of human rights can be distinguished in Haiti: a. the first is characterized by the nonobservance of human rights, the right to life, personal security or personal freedom, or the right to due process. B. the second stage, which began in 1971. During the visit, there were certain indications that the current government wishes to improve the situation with regard to respect for an observance of human rights. The President of the Republic expressed his intention personally to the Special Commission. Nevertheless, the Commission has information of events that have happened and on legal acts passed after the visit of the Special Commission, which leads it to believe that this intention has not been carried out.

2. During the latter period, the right to life was violated particularly in 1975 and 1976; it has in fact been proven that numerous people died in summary executions or during their stay in prison, or because of lack of medical care. It should nonetheless be observed that there has been a notable improvement as regards this right.

3. There are reliable indicators that many individuals were victims of torture inflicted in certain cases by the neighborhood chiefs, both during interrogations after arrests and during imprisonment.

4. It has been proven that numerous persons are detained without having benefited from any form of legal procedure, and without having access to an attorney. There is no clear-cut separation of powers in Haiti. Legal guarantees are seriously restricted by virtue of the "state of siege" that are in effect on an almost permanent basis, and by virtue of the Security Court instituted by the law of August 25, 1977, establishing procedures with limited guarantees as to the right of a legal defense. The Judiciary does not appear to have the independence necessary to exercise its functions.

5. It may be said that freedom of inquiry, opinion, speech and dissemination of thought does not exist. There are taboo questions which cannot be discussed, such as all matters concerning the President's family, the dictatorship, the extra-budgetary revenues of the Régie du Tabac, etc. There is recourse to procedures such as warnings and admonitions of increasing severity to journalists, issued by the Ministry of the Interior; there is also prior censorship, closing of newspapers, threats, assaults and incarcerations.

6. Freedom of religion and freedom of worship are fully guaranteed.

7. Freedom of association is extremely restricted. Article 236(bis) of the 1948 Penal Code, which requires government authorization to form a group of more than twenty people, prevents the creation of any literary, political or other type of association. Trade union freedom does not exist as such. There are neither federations nor confederations or trade unions; the right to strike is limited. The government has made it difficult to form political parties and associations in general.

8. There have been violations of the right to residence, movement and nationality. In fact, numerous people have been exiled and, despite the amnesty,

certain of them have not been able to return to the country. Likewise, numerous persons have been deprived of their nationality for their political ideas.

9. While it is true that there have been legislative elections, the law of September 19, 1978, gives the President of the Republic full powers, and suspends numerous civil and political rights and certain prerogatives of the Judiciary. Moreover, there are no political parties and the people do not effectively participate in government affairs.

10. With regard to the effectiveness of the right to education, health, welfare, and the right to work and to a fair wage, it may be said that it is almost nonexistent, particularly because of the extreme poverty, illiteracy, poor hygiene, high birth rate and high infant mortality rate, high rate of unemployment, the lack of medical materials, the low per capita income, etc., which prevent the citizens from enjoying the economic, social and cultural rights set forth in the OAS Charter and in numerous international instruments.

RECOMMENDATIONS

In light of the preceding conclusions, and taking into account the background information and the events that took place after its visit, the Commission recommends to the government of Haiti:

1. That it bring its domestic legislation into line with the provisions of the American Convention on Human Rights to which Haiti is a Party. To this end,

- a. It repeal Article 236(bis) of the 1948 Penal Code which seriously hampers exercise of the right of association;
- b. It repeal the law authorizing loss of citizenship, except for cases called for under international law;
- c. it repeal the Press Law of September 28, 1979, which seriously hampers exercise of freedom of information.

2. That it investigate and punish those responsible for the numerous violations of the right to life and physical security.

3. That it eliminate the numerous restrictions imposed in the practice on freedom of expression and dissemination of ideas.

4. That it permit, without restriction or conditions, entry into the country of Haitian nationals who are living abroad as a result of expulsions decreed by the government, or for any other reason, and who wish to return to their country.

5. That it make the amendments needed to the Constitution so that the actual exercise of the political rights upheld in Article 23 of the American Convention can be guaranteed.

6. That it take the measures needed to improve prison conditions.

7. That it take such measures as may be necessary, using all resources available, to improve the social and economic conditions of the country, in order to

lessen the inequalities which are an obstacle to observation of human rights. Cooperation will be needed from international agencies, particularly from the Organization of American States, if this is to be achieved.

The Inter-American Commission on Human Rights makes a special appeal to international organizations to give Haiti the aid it urgently needs to improve living conditions among the population, and to exploit its resources, so that the country can establish respect for an full enjoyment of civil, political, economic, social and cultural rights.