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REPORT ON THE SITUATION OF HUMAN RIGHTS IN HAITI

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GENERAL BACKGROUND

1. The Inter-American Commission on Human Rights has followed with special attention the situation of human rights in Haiti virtually since the Commission's foundation. The deplorable situation of human rights under the regime of François Duvalier (1957-1971) and later under his son Jean Claude (1971-1986), led the Commission to draft a special report in 1979, after conducting an "on-site" observation, and to include the corresponding sections on Haiti in its annual reports. In the course of the nearly thirty years of the Duvaliers' regime, a complex legal and political structure evolved, the effects of which on the observance of human rights are still felt today.

2. In 1986, a few weeks before leaving Haiti, Jean Claude Duvalier had invited the Inter-American Commission on Human Rights to conduct an on-site visit to the country, which never took place. On July 29, 1986, the National Governing Council that succeeded Duvalier sent a new invitation to the Inter-American Commission to observe the situation of human rights in Haiti, and this visit was carried out by the entire Commission from January 20-23, 1987.

3. Bearing in mind that a process of democratization was then underway, and that it included drafting a new Constitution and holding free and pluralistic elections in Haiti, scheduled for November 1987, the Inter-American Commission expressed its concern about run-on human rights to the Government of Haiti. The Commission sent a note to the Minister of Foreign Affairs, in which the Commission requested that it be granted the necessary facilities to continue to observe the development of human rights during that period.

4. In that note, the Inter-American Commission indicated that while it noted positive advances with respect to freedom of expression and association, the IACHR was concerned over the precarious situation of the right to personal liberty and to due process, and about the deplorable conditions in which detained persons were being held. The Commission also stated that it was necessary to halt the use of violence by security forces, which had committed serious abuses with respect to personal integrity. Special mention was made of the disappearances of Haitian citizens, which constituted a precedent of the utmost seriousness. In addition, the Commission requested that the order of expulsion of an opposition political figure be nullified.

5. After the annulment of the November 29, 1987 elections and the tragic events that occurred on that date in Haiti, the Commission considered the situation and in its press release of March 25, 1988, the Inter-American Commission announced its decision to prepare a special report on the situation of human rights in Haiti, and expressed its hope that the Government would allow it to carry out an on-site visit to that end. On April 26th, the Government of Manigat invited the Commission to visit the country.

6. After a very tense period, the Manigat government was overthrown and General Nanphy assumed control on June 20, 1988. In light of these developments, the Permanent Council of the Organization of American States met on June 29, 1988, to consider the situation in Haiti and adopted a resolution in which, among other things, it requests the Inter-American Commission on Human Rights to examine the situation of human rights in the country in order to present a report to the next regular session of the General Assembly. In the resolution, the Permanent Council reaffirmed "the full validity of all the principles of the Charter ... those that call for the effective exercise of representative democracy ... and full enjoyment of fundamental human rights."

7. When the necessary arrangements had been made, a Special Committee of the IACHR carried out an in loco visit to Haiti from August 29 to September 2, 1988. The outcome of that visit was the Report on the Situation of Human Rights in Haiti, approved by the Commission on September 7, 1988, which extensively discusses the range of human rights issues, including the background of the Duvaliers' regime, the repercussions of which the Commission believes are still felt in Haiti. In the Special Report, there is detailed analysis of both historical developments and the legal framework, in particular with reference to the Constitution of 1987, and the situation of a number of human rights affected by the situation in Haiti.

8. A tragic series of events occurred on September 11, 1988 at the San Juan Bosco Church. Twelve parishioners died and more than eight were injured when the temple was burned. On September 17 General Prosper Avril takes power and pledged, among other commitments to reinstate observation of the 1987 Constitution. During his regime, however, the human rights situation began to deteriorate once again. On February 23, the Permanent Council of the Organization of American States convened a meeting to study the situation in Haiti, and adopted the following resolution, which is transcribed verbatim due to its importance:

HUMAN RIGHTS SITUATION IN HAITI

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

RECALLING its resolution CP/RES. 441 (644/86) of February 14, 1986, affirming that the OAS, in strict adherence to the principle of non-intervention, is prepared to cooperate with the

Republic of Haiti for the strengthening of representative democracy, a principle established in the Charter of the Organization;

RECALLING also resolution AG/RES. 824 (XVI-0/86) which authorized the establishment of the Inter-American Fund for Priority Assistance to Haiti;

REAFFIRMING its resolution CP/RES. 489 (720/87) through which it expressed its conviction that it is necessary for the renewal of the democratic process in Haiti and for the adoption of all necessary measures so that the Haitian people can express their will through free elections without any form of pressure or interference;

BEARING IN MIND the resolution (AG/RES. 1022 (XIX-0/89) which adopted the 1989 Annual Report of the Inter-American Commission on Human Rights;

MINDFUL of the Special Report of the Inter-American Commission on Human Rights in Haiti (OEA/Ser.L/V/11.74, Doc.9 rev. 1 of September 7, 1988) and the subsequent country report included in the 1988-89 Annual Report of the Inter-American Commission on Human Rights (AG/doc.2418/89), and

IN VIEW OF the recent events in Haiti and having heard the statement of the Representative of Haiti;

CONCERNED by the state of the fundamental human rights of the people of Haiti and the difficulties in the process towards the establishment of representative democracy in that country,

RESOLVES:

1. To reiterate its declaration in resolution AG/RES. 1022 (XIX-0/89) that "the best guarantee of human rights is the real exercise of representative democracy".

2. To reaffirm its solidarity with the people of Haiti and to reiterate its confidence that they will achieve their legitimate aspirations for peace, freedom, and democracy, without external interferences and in exercise of their right to self-determination.

3. To request the Inter-American Commission on Human Rights, to continue giving priority attention to the human rights situation in Haiti and, with the agreement of the Government of that country, to make a further in situ visit and report to the XX Regular Session of the General Assembly, with prior consideration by the Permanent Council in accordance with Article 90f of the Charter.

4. To recommend to the Secretary General the organization of a Mission of observers to the next election in Haiti, if requested by the Government of Haiti.

5. To urge the reactivation of cooperation with the Government and people of Haiti for the development and consolidation of representative democracy.

6. To request the Secretary General to continue assisting Haiti under the Inter-American Fund for Priority Assistance to Haiti in accordance with the terms outlined in resolution AG/RES. 824 (XVI-0/86).

9. Faced with this Resolution, the President of the Inter-American Commission instructed the Executive Secretary to finalize plans for the the requested observation visit. The heightening of conflicts in Haiti prevented General Avril from following up on the invitation before being replaced by President Ertha Pascal-Trouillot, who agreed that the visit and inspection would be carried out April 17-20, 1990.

10. At the end of the visit, the delegation released the following statement to the press:

Pursuant to Permanent Council Resolution 537 adopted on February 23, 1990, by that body, the Inter-American Commission on Human Rights, in the exercise of its functions, visited Haiti, following the deterioration in the human rights situation in that country. That visit ended today. Under that Permanent Council resolution, the Commission was to look into the human rights situation in Haiti and prepare a full report to be submitted to the General Assembly of the OAS. The delegation was composed of Mr. Oliver H. Jackman, Chairman of the Commission; Mr. Leo Valladares L., Vice Chairman; and, Mr. Patrick L. Robinson, member of the IACHR; Mr. David J. Padilla, Assistant Executive Secretary; Mr. Luis F. Jimenez and Mrs. Bertha Santoscoy, human rights specialists from the Commission's Executive Secretariat, and Miss Gloria Sakamoto, Secretary of the delegation.

During its mission to Haiti, the delegation met with President Ertha Pascal Trouillot, the Minister of Foreign Affairs and Worship, the Minister of the Interior, the Minister of National Defense, the Minister of Social Affairs, the Chief Staff of the Armed Forces, the Minister of Justice and the Council of State, and other government officials.

The delegation also met with representatives of human rights organizations and political parties to hear about the political situation as it relates to representative democracy. It also met with media representatives, both press and radio, to get a status report on the freedom of expression. The delegation held meetings with Haitian jurists, union representatives, representatives of the industrial sector, Chamber of Commerce, the Church, and other forces active in the country.

The delegation visited two prisons where it interviewed those in charge: Pénitencier National, in Port-au-Prince, and the Centre de Détention, in Delmas. It also gathered information on the investigation of several cases that had been brought before it, notably, cases of arbitrary arrests and murders committed during President Prosper Avril's government.

In Pont Sondé, St. Marc, and Piatre, the delegation obtained information on human rights violations, and was able to observe the serious damage inflicted on the latter community. It also gave hearings to persons from various social strata from whom it received complaints, communications, and reports concerning respect for human rights.

Prior to its arrival in the country, the delegation had spelled out what the objectives of its visit were, and announced its intention of gathering all possible information on respect for, and the promotion of, human rights in Haiti. The Government gave the delegation every assurance that there would be no reprisals against persons or groups meeting with the delegation.

From the many depositions it received the delegation was able to establish several common threads. First was mention of the need to create conditions of security that would enable the population to exercise its political rights during the electoral process, soon to start. These conditions, according to those depositions, involved two factors: respect for basic human rights, namely, personal freedom, right of association and of assembly and the right to freedom of expression, among others. Next, linked to security, was the need to bring to trial persons accused of committing very serious human rights violations, as in the case of the massacres of November 29, 1987 and the Saint Jean Bosco Church of September 11, 1988.

The delegation notes that there is a consensus among major sectors of Haitian society as to the lack of any serious investigations, legal proceedings, and appropriate punishment of persons responsible for gross human rights violations which, it is felt, would prevent the candidates from waging their electoral campaigns and would create a climate of mistrust and fear in the electorate. This situation could in all likelihood be the cause of a poor turnout at the elections.

The delegation found it necessary to repeat, on several occasions, that it was absolutely vital that there be a separation between Police and Armed Forces in order to give the police a professional character and provide the necessary training for it to respect human rights.

The delegation was pleased to hear of the commitment made by the Commander-in-Chief of the Armed Forces of Haiti to accentuate professionalism in those Forces, subordinate them to civil authority, and make of them a disciplined tool under the Ministry of Justice, and the guardian of security in the electoral process.

The significant amount of documentation gathered during this visit will be the subject of careful analysis by the delegation, and during the course of its next session, the delegation will adopt a final report containing conclusions and recommendations. The delegation is most pleased at the expression of good will manifested by high Government officials who are anxious to realize the effective exercise of political rights and strengthen the protection of basic human rights.

The delegation must state once again that, as a party to the American Convention on Human Rights, the Haitian State has not only an obligation to respect those rights but also to ensure the full and unrestricted exercise of them. The delegation, therefore, trusts that in the course of the

upcoming elections these rights will be exercised under security conditions that enable all political forces and the Haitian population in general to express themselves and to act quite freely and without fear so that the election per se will fit into the process of democratization under way and into a broader framework of general, basic human rights. These rights would include economic, social, and cultural rights, the observation of which is an indispensable element in meeting the legitimate aspirations of the Haitian people and strengthening the democratic system. The delegation has said that this system is the best guarantee for the protection of human rights.

The delegation also had an opportunity to receive depositions from members of the first Provisional Electoral Board who were elected in that capacity in 1987, in accordance with the Constitution. They were recently appointed to that Board again after being removed from office by the de facto government of General Henri Namphy. They told the delegation with considerable force that the task of organizing and conducting free, fair, and democratic elections could prove to be extremely difficult if the Government did not take immediate and positive measures to ensure the security of the vote and that of the members and personnel of the Board itself and thereby avoid a repetition of the disastrous events of November 29, 1987.

The delegation has also received specific requests from all sectors that the electoral process be monitored by international experts from its inception to its conclusion.

The presence of these international experts will instill greater confidence in the population and reinforce the authority of the electoral board.

A recurring theme in the course of the statements made before the delegation was that of the role of armed groups in Haiti. Several witnesses explained the inherent dangers in the activities of former military officers and the rest of the civil militia known as Tontons Macoutes, accused of systematically terrorizing the population. In the eyes of the public, some were involved in the many atrocities committed after Jean-Claude Duvalier's departure in 1986, especially the massacre of November 29, 1987. It was brought to the delegation's attention that the immediate and full disarmament of these groups should be the immediate priority of the provisional Government. Persons who appeared before the delegation insisted that such an atmosphere prevented witnesses from coming forward to file complaints about such acts.

Time and time again, religious and political representatives said that one of the chief causes of insecurity in the country was the activity of the Chefs de section (Section Chiefs) in the rural

areas. The belief is that these persons who are appointed by the Armed Forces and belong to them grossly overstep their authority as rural police officers, and that they are responsible for numerous arbitrary acts violating the rights of the Haitian citizenry. It has been said that a restructuring of this policing system was a sine qua non for the protection of human rights in the rural areas and for ensuring that adequate conditions are set in place for an unfettered electoral campaign and a free ballot at the upcoming elections.

Media representatives further shared with the delegation their fears that the prevailing insecurity could jeopardize the lives of journalists wishing to give full coverage of the electoral process.

The delegation must present a report on the status of human rights in Haiti, which will discuss further its mission to that country. The Commission will complete the report in the course of its next session to begin on May 7, 1990, at its Headquarters in Washington, D.C. Pursuant to Resolution 537, this report is to be submitted to the General Assembly of the OAS at its twentieth regular session in June, in accordance with Article 90.f of the Charter.

The delegation wishes to underline the cooperation that was extended to the delegation in the discharge of its mission and to thank the Government and people of Haiti as well as the media for their cooperation.

The Commission will continue to observe developments in the human rights situation in Haiti during further visits, which will take place in the near future.

Port of Prince, April 20, 1990

11. As a result of the completed observation, the Special Commission sent its Report to the full Commission which considered the Report during its 77th session and approved it. This report covers the events leading up to the period of General Prosper Avril's government and includes elements observed during the in loco visit. Starting from these elements, the Commission draws the conclusions and formulates the recommendations it deems relevant.

CHAPTER I

POLITICAL RIGHTS

1. The juridical framework and the Commission's doctrine

12. The Inter-American Commission on Human Rights has repeatedly referred to the importance of the exercise of human rights in a framework of representative democracy. The General Assembly of the Organization of American States, too, has adopted many resolutions upholding representative democracy as the system that best guarantees the effective enjoyment of human rights. That system is, moreover, the form of government explicitly adopted by the Member States in Article 3.d of the Organization's Charter. That Article reads, as follows:

The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.

13. One component of representative democracy is the exercise of the political rights recognized in Article 23 of the American Convention on Human Rights. That Article provides as follows:

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 proceeding.

14. It is important to note that Article 27 of the American Convention on the suspension of guarantees "in time of war, public danger, or other emergency that threatens the independence or security of a State..." does not authorize suspension of the exercise of the political rights listed in paragraph 2 of the Article.

15. Meanwhile, in the development of legal doctrine throughout the hemisphere a direct relationship has been repeatedly claimed between the exercise of political rights so defined and the concept of democracy as a form of organization of the State, which in turn presupposes the effective enjoyment of other basic human rights. The concept of representative democracy is rooted in the principle that political sovereignty is vested in the people which, in the exercise of that sovereignty, elects its representatives to exercise political power. Besides, these representatives are elected by the citizenry to carry out specific policies. which in turn implies that the nature of the policies to be implemented has already been extensively discussed (freedom of expression) among organized political groups (freedom of association) that have been able to express themselves and meet publicly (right of assembly). This all obviously presupposes that all the other basic rights --to life, humane treatment and personal liberty, residence and movement, and so on-- have been guaranteed.

16. The effective enjoyment of these rights and freedoms requires a legal and institutional order in which the law takes precedence over the will of the rulers and some institutions have control over others in order to preserve the integrity of the popular will (the constitutional state).

17. Many times has the Inter-American Commission stated its position on this major aspect of the exercise of human rights, its connections with representative democracy and its indissoluble ties to other human rights (see, inter alia, 1978 Report on the Situation of Human Rights in El Salvador, page 126; 1979-1980 Annual Report, page 143; 1980-81 Annual Report,

page 123; 1985-1986 Annual Report, page 203; 1987 Report on the Situation of Human Rights in Paraguay, page 103).

18. The Inter-American Commission on Human Rights has repeatedly stated its views on various elections held in the exercise of political rights. These statements have referred to the close correspondence that should exist between the will of the voters and the results of those elections, as provided in Article 23 of the American Convention. In a negative sense, this close correspondence implies the absence of coercion that distorts the will of the voters.

19. The Inter-American Commission has considered two types of factors that influence the closeness of this correspondence: those associated with the general conditions in which the election is held, and those deriving from the legal and institutional system that organizes and conducts the elections, that is, everything directly and immediately related to the casting of votes.

20. On the general conditions in which elections are held, the Commission's view in its various pronouncements has been that the various political groups shall participate in the election on an equal footing, i.e., that the basic conditions for the conduct of a campaign are the same for all of them. In a negative sense, there must be no direct coercion or undue advantage for any of the contending parties (see, among other sources, 1979-1980 Annual Report, p. 122; 1982-1983 Annual Report, pp. 27 and 28; 1983-1984 Annual Report, p. 119; 1985 Report on the Situation of Human Rights in Chile, pp. 297 and 308; 1986-87 Annual Report, p. 239; 1987 Report on the Situation of Human Rights in Paraguay, pp. 106-107; 1987-1988 Annual Report, pp. 306-308).

21. Regarding the legal and institutional system under which the activities involved in an election are carried on, the Commission has examined the laws that regulate the process to determine whether those laws guarantee both the proper casting and the accurate tallying of votes, emphasizing the faculties vested in the agencies charged with carrying out the operations involved in the electoral process and with monitoring both the operations and the election results.

22. The purpose of this observation is to detect manipulation, if any, of the process in favor of those who control the institutions (generally the government, a political party, or the military), to determine who decides on the validity of the election (the composition of the electoral agencies) and the controls on their decisions (agencies of appeal).

23. The Commission has carried out observations of various aspects of practical operations, such as election records and the conditions or enrollment in them; the makeup of the electoral boards; the makeup and faculties of the electoral tribunal; and the use of ballots that are easy to understand and contain no messages designed to influence the voter (see 1978 Report on the Situation of Human Rights in El Salvador, pp. 151 and 153; Seventh Report on the Situation of Human Rights in Cuba, pp. 44, 45 and 48; 1987 Report on the Situation of Human Rights in Paraguay, p.106); and 1986-1987 Annual Report, p. 236).

24. The Commission interprets the purpose of universal suffrage as to avert any exclusion on political or ideological grounds. The Commission holds that this topic should include the consideration of situations that have been preceded by high political and social tension which prompted sizable numbers of people to leave the country (see the Seventh Report on the Situation of Human Rights in Cuba, pp. 44 and 46; 1985 Report on the Situation of Human Rights in Chile, pp. 289 and 290; 1987 Report on the Situation of Human Rights in Paraguay, pp. 107 ff.).

2. Background of the haitian situation

a. Since February 7, 1986 until September 17, 1988

25. The Inter-American Commission has considered in various opportunities the characteristics of the haitian political system and the way in which political rights are exercised. The high tensions which preceded the exit of Jean Claude Duvalier from the country were followed by the intentions to obtain democracy for the political regime through a serious exercise of human rights. These intentions, however, have not prospered, clearly, and have been frustrated on many opportunities, at times at the high cost of human lives.

26. The following text has the objective of presenting the main targets of the evolution that occurred in Haiti with relation to human rights with the objective of extracting the most important conclusions and proposing the recommendations that would grant in the opinion of the Inter-American Commission on Human Rights adequate attention to these rights. We must keep in mind that the Commission has already referred in extenso to the evolution that we describe in this text, particularly in the Report of the Human Rights situation in Haiti in 1988, and the corresponding section of the 1988-1989 Annual Report.

27. On February 7, 1986, with the departure of Jean Claude Duvalier ended a regime that was characterized by frequent violation of human rights, marked by authoritarianism that consisted of the denial of the exercise of political rights. During the almost 30 years of the Duvalier regime, a complex legal and political structure was instituted which effects on human rights is still felt today.

28. In order to manage the transition the National Council of Government was formed, which integrated followers of Duvalier, as well as identifying sectors with democratic tendencies and also, army officials. It should be noted that the National Governing Council had dissolved the Volunteers of National Security, better known as the Tontons Macoutes, which had been a militia in the direct service of the Duvaliers. Although some of them left the country and others were lynched by the populace in the days following the departure of Jean Claude Duvalier, most of them remained in Haiti, kept their weapons, and became a destabilizing force in society.

29. Another transcending measure adopted by the National Council of Government was to convoke a Constitutional Assembly with the objective of elaborating on a new Magna Carta that would be submitted to referendum. On March 29, 1987, the Constitution drafted by the Constituent Assembly was submitted to a popular vote and approved by 99.8% of the voters. This Constitution imprints a profound change on the legal and political structure of Haiti, and thus some of its provisions stirred tensions. Among such provisions, the following should be mentioned: Article 291, bars persons associated with the Duvaliers' regime from running for public office for a period of ten years; Article 289, establishes the Provisional Electoral Council, with the extensive participation of large segments of society and empowered to organize elections and to conduct the election process, a task which until that time had been the responsibility of the Army. Article 289 also provides for the separation of the Armed Forces from the State and all of its political functions, as well as a separation of the Police, which was subordinated to the Ministry of Justice.

30. Tensions between the military government and the Provisional Electoral Council, whose members officially assumed their offices on May 21, 1987, provoked numerous incidents. The underlying source of these confrontations lay in the Council's demand for administrative independence but, in conformity with the provisions of the Constitution. On June 5, 1987, the Electoral Council proposed before the Ministry of Justice an Electoral Law hopeful that the Ministry of Justice would promptly enact it. On June 22, however, the Government enacted its own Electoral Law with the approval of the Ministry of the Interior in which the powers of the Electoral Council were seriously reduced. This dispute coincided with the onset of a strike

declared by the Autonomous Federation of Haitian Workers, thus producing a situation which coalesced together a number of different issues.

31. The acts of violence began to escalate and repression by the Army provoked numerous deaths and casualties. Also occurring was the renunciation of the leaders on insistent demand for a change in the composition of the National Governing Council. Following the weeks of violent disturbances and very serious repression, which included the massacre of 300 peasants in Jean Rabel, the National Governing Council issued the Electoral Law of the Electoral Council on August 10, and set November 29 as the date of elections.

32. The ensuing period was characterized by nightly violence attributable to death squads and paid assassins where corpses were left out in the open as a warning signal. The Electoral Council demanded that the military government guarantee public safety so that the elections could be held without disruption, but the Government did not perform its constitutional obligation. Moreover, the Electoral Council faced countless obstacles in carrying out its responsibilities, including the burning of its offices in Port-au-Prince. The military government did nothing to address the problems besetting the Council. Two persons lynched for attempted acts of terrorism were identified as members of the Police.

33. On November 29, 1987, elections began in the midst of vandalism and violence that escalated throughout the day and which led the Electoral Council to cancel the election. Unofficial estimates found that there were 200 deaths and a great many wounded as a result of the action of armed groups of civilians acting with unfettered impunity. These armed civilians, in many cases, were supported by uniformed soldiers. Together, they killed defenseless civilians who were waiting in line to cast their votes.

34. The National Governing Council proceeded to dissolve the Electoral Council, holding it responsible for the failure of the elections. The Governing Council then assumed control of the electoral process, and set new elections for January 17, 1988. It appointed a new Electoral Council, whose members were selected by the National Governing Council, and issued an Electoral Law which failed to adequately protect a secret ballot, among other shortcomings. The four major candidates for the Presidency refused to participate in the elections, and three other candidates later joined them in the boycott of the elections.

35. The elections were held in a calm atmosphere, but numerous and serious irregularities prevailed. This led important sectors in Haitian society, including the Bishops

Conference of the Catholic Church, to disqualify the results. Candidate Leslie Manigat won the majority of registered votes, despite heavy abstention, and took office on February 7, 1988. His cabinet was composed of some persons closely linked to the regime of Duvalier, and included the same Minister of the Interior and National Defense who had served in the government of Lieutenant-General Namphy.

36. In its press release of March 25, 1988, the Inter-American Commission announced its decision to prepare a special report on the situation of human rights in Haiti, and expressed its hope that the Government would allow it to carry out an on-site visit to that end. On April 26th, the Government of Manigat invited the Commission to visit the country.

37. Several sources of conflict arose subsequently between the civilian Government of Manigat and the Armed Forces, with some of the latter's officers accused of links to drug trafficking. Tensions mounted to the point that on June 20, 1988, Lieutenant-General Namphy announced to the country, by television broadcast, that the Army had taken over. He proceeded to announce that he would govern by decree and nullified the 1987 Constitution, declaring that no elections would be held until appropriate conditions had been established. President Manigat left the country in exile for the Dominican Republic.

38. In light of these developments, the Permanent Council of the Organization of American States met on June 29, 1988, to consider the situation in Haiti and adopted a resolution in which, among other things, it requests the Inter-American Commission on Human Rights to examine the situation of human rights in the country in order to present a report to the next regular session of the General Assembly. In the resolution, the Permanent Council reaffirmed "the full validity of all the principles of the Charter ... those that call for the effective exercise of representative democracy ... and full enjoyment of fundamental human rights."

39. When the necessary arrangements had been made, a Special Commission of the IACHR carried out an in loco visit to Haiti from August 29 to September 2, 1988. The outcome of that visit was the Report on the Situation of Human Rights in Haiti, approved by the Commission on September 7, 1988, which extensively discusses the range of human rights issues, including the background of the Duvaliers' regime, the repercussions of which the Commission believes are still felt in Haiti. In the Special Report, there is detailed analysis of both historical developments and the legal framework, in particular with reference to the Constitution of 1987, and the situation of a number of human rights affected by the situation in Haiti.

40. On September 11, 1988, another act of violence was committed. The Church of San Juan Bosco in Port-au-Prince was attacked by a large group of armed persons who entered the church and killed 12 parishioners, wounded about 80 others, and set fire to the church. All of the events took place without any interference by the Army barracks located near the church. Father Jean-Bertrand Aristide, a well-known critic of the Government, who was conducting mass and was presumably the chief target of the attack, escaped unharmed. The Inter-American Commission issued a press release expressing its horror at this sanguinary incident.

b. Background to the Avril period

41. On September 17, 1988, a military coup deposed Lieutenant-General Namphy and installed retired General Prosper Avril, who had served on the first National Governing Council, appointed in part by Jean-Claude Duvalier. Avril had been forced to resign from his position by popular pressure due to his political background. Numerous recommendations were made by the political parties to the new government leader. Among the most prominent of these was a recommendation to restore the validity of the Constitution of 1987; to identify and punish those responsible for several massacres, in particular those that occurred on election day and in the Church of San Juan Bosco; to set up a Provisional Electoral Council to organize new elections; to disarm civilian groups; and lastly, to empower with effective authority, the judiciary. Efforts to improve the judicial system were made to halt the unjustifiable acts by which the populace was pursuing justice by its own means.

42. Some of the early measures adopted by the Avril Government were aimed at defusing the situation and protecting certain human rights. Thus, the Armed Forces gave notice that private residences were not subject to searches between 6:00 p.m. and 6:00 a.m. and that all procedures of this kind in conformity with the Constitution, would be conducted with a warrant and in the presence of a justice of the peace. The Government also called for the surrender of weapons held by civilians without proper police permits. In the international sphere, Haiti signed the United Nations Covenant on Civil and Political Rights, as well as the Covenant on Economic, Social and Cultural Rights. Haiti also signed the United Nations Convention against Torture. In addition, it nullified the expulsion order against Father René Poirier, a Canadian priest. It should be noted, however, that despite repeated promises made by General Avril himself to the United Nations, Haiti never ratified the above-mentioned international instruments.

43. Soon after assuming power, General Avril announced the establishment of an independent electoral body to undertake the organization of new elections. On November 3,

1988, the Government issued a draft decree that envisioned the establishment of an electoral council under the authority of the Ministry of Justice. The draft was rejected by several political figures who regarded it as contrary to the Constitution. On February 9, 1989, the Government convoked a congress in which 28 leaders of political parties, trade unions, and professional and trade associations participated, in order to come to an agreement on the outline of a new electoral council. From February 5-7, opposition leaders had held a parallel meeting for the same purpose.

44. On February 23, 1989, the Government issued a decree establishing a Permanent Electoral Council, with attributes similar to that called for in the Constitution. Until it was established, the Executive Branch was to appoint its interim members. The proposal was accepted by some political leaders, while others opposed it and called for the resignation of Avril. Others pointed to the prevailing insecurity which made it impossible to convene elections because repression against the peasantry and people's organizations continued by the "chefs de section."

45. The advances described above gradually began to lose ground. As they were weakened by other situations. First, two well-known leaders of the Tonton Macoutes evaded judicial action: Franck Romain, former mayor of Port-au-Prince and considered in many quarters to be the organizer of the massacre of the Church of San Juan Bosco, left the country when the Dominican Republic granted him diplomatic asylum. Also, the Government of General Avril granted him a safe conduct during it, a purely diplomatic matter. The second leader, David Philogene, who is charged with the murder of known political figure Louis Eugene Athis, was released and allowed to flee to the Dominican Republic. Second, none of the investigations concerning the murder of political leaders; of voters on November 29, 1987; and of parishioners of the Church of San Juan Bosco were followed through.

46. At the same time, social unrest grew stronger, with calls for strikes by the Autonomous Federation of Haitian Workers and alarming levels of violence committed by Armed Groups, producing a monthly list of dead and wounded. But, the police did not undertake neither effective measures to halt the violence, nor investigations leading to the identification and prosecution of those responsible.

47. In March of 1989, the 1987 Constitution was partially put into effect, once again, through a decree, which also permitted the suspension of 36 articles regarded as incompatible with the Government of Avril. On March 30, 1989, the interim members of the Permanent Electoral Council were elected, and sworn in between March and April. Also in March, the President ordered the reform of the judicial system by which Avril brought the prison system

under the Ministry of Justice. The Government also called for the resignation and change in posting of several members of the Armed Forces accused of links to drug trafficking.

48. This last measure sharpened unrest within the Armed Forces, which had hatched the first coup attempt against Avril on October 14, 1988. Combined with the unfolding of the events described in the preceding paragraphs, it led to a second coup attempt, begun in the early morning hours of April 2, 1989, in which the Presidential Guard, loyal to Avril, first confronted the Corps of Leopards. Beginning on April 5, the Dessalines Battalion rose in revolt. These violent confrontations, of which the exact number of victims is unknown, culminated in the defeat of the rebels and the dissolution of the rebel units. Also on April 5, the Government imposed a State of Emergency (état d'urgence) and press censorship. On April 14, the curfew was lifted.

49. On June 16, 1989, the decree establishing the Permanent Electoral Council went into effect. On September 23, the Electoral Council submitted its timetable which allowed from October to December to organize the operational structure of the Electoral Council at the national, departmental, and communal levels and from January to March of 1990 to prepare the census and voter registration rolls. In April 1990, elections would be held for the Administrative Councils of the Communal Sections (CASCE) at three levels. In July of 1990, municipal and legislative elections would be held and on October 17, 1990, the first round of presidential elections would be held, finally, on November 11, 1990, the second round of the presidential elections.

50. Throughout 1989, however, the social and political situation had sharply deteriorated, with marked insecurity in every aspect of life in Haiti. Acts of violence, extortion by armed soldiers and serious confrontations in agricultural zones arising from disputes between peasants and landholders produced a monthly roll of dead and wounded. The Office for the Protection of Citizens, instituted on September 14, 1989, was clearly inadequate to adopt the measures that might have addressed such a dramatic situation. Information received by the Inter-American Commission describes the lack of initiative of the authorities of that office.

51. On September 27, 1989, 33 political and trade union organizations called a general strike to protest the prevailing insecurity in Haiti, the high cost of living, and to call for a postponement of the economic measures advocated by the International Monetary Fund. The strike was widely taken up in Port-au-Prince, and to a lesser degree in the provinces.

52. On November 1, the persistent deterioration of the situation of human rights was greatly exacerbated by the detention of trade union and political leaders Jean-Auguste Mesyeux, Executive Secretary of the Autonomous Federation of Haitian Workers (CATH); Evans Paul, leader of the Committee for Unity and Democracy (KID); and Etienne Marineau, leader of the People's Organization of 17th September (OP 17). This case is thoroughly addressed in other sections of this Report. It will suffice to indicate here that the brutality of the treatment of those mentioned above by the organs of Haitian security, the demonstration on national television of their faces bearing marks of torture, and the lack of adequate medical attention for the victims by Haitian authorities are a clear indication of the urgent need to remedy the deep-rooted causes that have allowed this kind of act to be committed in Haitian society.

53. Political, trade union, and human rights organizations reacted to this situation with a general strike held on November 7 and 8, and then with a sequence of hunger strikes in solidarity with the three leaders who were arrested, tortured and had begun a hunger strike of their own to attain appropriate medical attention. In this climate of violence, insecurity, and repression, the President of the Haitian League for Human Rights, Joseph Maxi, was forced underground when his house was searched and looted by military personnel. On November 22, 14 members of the Haitian League of Former Political Prisoners were detained for "inciting" the population to join in the hunger strike in support of the detained leaders. On November 30, 3 members of the political movement of former President Manigat were assassinated in Port-au-Prince --Auguste Lorémus, Israel Isophe, and Verelt Isophe-- although it remains unclear who was responsible for these crimes.

54. On January 7, 1990, General Avril left Haiti on a trip to Taiwan which was to last until the 15th of January. On January 9, 1990, three prominent Haitian citizens belonging to the Group of Initiative of Civilian Society for the Observance of the Constitution sent a cable to the President of the Republic of China, stating that the people of Haiti were not apprised of the reasons for the trip undertaken by President Avril, and, hence, any commitments arising therefrom would not be recognized by the people. It was signed by Father Antoine Adrien; businessman Antoine Izmary, active member of the Chamber of Commerce; and Dr. Luis E. Roy, founder of the Red Cross of Haiti and one of the chief authors of the Constitution of 1987. In the meantime, a group of political parties and trade union organizations titled Rassemblement National called a general strike for January 12, and for the renunciation of Avril, to no avail.

55. On his return from Taiwan on January 15, 1990, General Avril gave a speech at the airport which was regarded as an incitement to violence against the opposition to his government. On January 16, Jean Wilfred Destin (Ti Will), a popular comedian who broadcasted on Radio Cacique of Port-au-Prince, was killed by 3 unidentified persons. On

January 19, Colonel André Neptune of the Presidential Guard together with his wife and housekeeper were shot to death while driving in their car.

56. On January 20, 1990, a state of siege was imposed for 30 days. A corresponding decree was issued and stated that the occurrence of incidents "which threaten the public order and which seek to impede the normal operation of national institutions and disrupt the democratic process ... in order to protect democratic advances away from terrorism or any other attempt to use force that could lead to a civil war." The decree suspended exercise of the right of every Haitian citizen not to be deported nor to be deprived of his legal capacity or nationality (article 41 of the Constitution), and to enter the country without a visa requirement (Article 41-1 of the Constitution). Also, articles 278 and 278-3 of the Constitution, which refer to the prohibition on imposition of a state of siege except in the case of civil war or invasion by foreign forces and the automatic suspension of a state of siege within fifteen days of its imposition if not renewed by the National Assembly were also suspended. Press censorship was also imposed.

57. On that same day, a decree was issued which reinstated the requirement of a visa for the entry of Haitian citizens into the country, a requirement which had been in force in the Duvalier era and which had been nullified in 1986 by the National Governing Council.

58. Beginning on January 20, 1990, there were numerous arrests, mistreatments, and expulsions of important civic, political, and trade union leaders. Bearing in mind that specific aspects of these acts are covered in other chapters of this report, it will suffice to say that the detentions were carried out without observing any of the established legal formalities. Nearly all of those involved were seriously mistreated, including obvious brutality used in the proceedings. The right to reside and to leave the country voluntarily was also violated.

59. With these measures, the repression which until then had focused on trade union and rural leaders spilled over to include known civil and political leaders of the most diverse positions. The political thrust of repression was clearly demonstrated, as was its serious impact on the operation of such organizations at a time when they should have been preparing for the election timetable.

60. The following persons were detained without formalities, mistreated, and expelled from the country: Hubert de Ronceray, leader of Mobilization for National Development and an important presidential candidate; Dr. Luis Roy, prominent member of the Group of Civil Initiative for Observance of the Constitution and author of the 1987 Constitution;

Serge Giles, leader of the Revolutionary Progressive National Party; Gerard Emile "Aby" Brun of the Congress of Democratic Movements (KONAKOM); Max Bourjolly, of the Unified Party of Communists of Haiti; Sylvain Jolibois of the Jean-Jacques Dessalines Nationalist Sector; Michel Legros, of the League for Democracy; Max Montreuil, of the Neighborhood Committee of Cap-Haitien; and businessman Antoine Izmary, one of the signatories of the telegram to the President of the Republic of China concerning Avril's visit.

61. Approximately 40 other activists were detained while other important leaders such as the Pastor Sylvio Claude of the Christian Democratic Party and Gerard Philippe-Auguste of the Movement of the Country's Organizations went underground. The media adopted varying approaches: Radio Antilles Internationale; Radio Métropole and Radio Haiti chose to suspend their news segments; Radio Lumière (Protestant) and Radio Soleil (Catholic) reported on the events; Radio Cacique chose to cancel all of its broadcasts.

62. A vigorous response to such heedless acts by the Government of General Avril followed shortly. In a statement of January 26, 1990, the Bishop's Conference of the Catholic Church of Haiti condemned the actions of the Government, while the Government of France suspended all economic assistance to Haiti, "due to the violations of human rights," and the Government of the United States deplored the actions taken and adopted a very critical position. The European Economic Community considered the serious implications of these measures for political freedoms and human rights, while the Embassy of Canada in Port-au-Prince regretted the imposition of the state of siege and the measures adopted which could affect the elections scheduled for that year. The Secretariat of the Inter-American Commission on Human Rights, on instructions from its President, sent a cable to the Government of Haiti urgently requesting information and reminding the Government of the commitment to install a democratic government.

63. On January 29, 1990, the Government lifted the state of siege and announced that the expulsion of Haitian nationals had been nullified and that the visa requirement for their return to the country had also been nullified. In adopting these measures, the Government noted that the exceptional measures had achieved their purpose and made it possible to "overcome the crisis that threatened the future of democracy in Haiti."

64. On January 29, 1990, the Permanent Electoral Council released the Electoral Law it had drafted. The reaction, however, was unabated skepticism regarding the possibility of implementing the provisions of the law in the prevailing circumstances. Thus, a group of prominent Haitian citizens who had been expelled (Messrs. Roy, Ronceray, Leger, and Izmary) issued their view that no measure directed at obtaining from General Avril a continuation of the

process of democratization would be effective while he remained in power, and that the first condition for democracy in Haiti was, therefore, the departure of Avril. Rejecting any possibility of accepting a new provisional military government, they advocated the formation of a non-partisan and provisional civilian government, "whose sole mission shall be to organize elections ... within a period of six months and under international supervision." Having expressed their view that it was too late to find constitutional solutions to the vacancy of the presidency, which might bring another Duvalierist to power, they reaffirmed their belief in the need to constitute a provisional government that would be nonpartisan and free of external influence.

65. On February 7 1990, the Government granted a general amnesty to restore freedom to all of those who were detained, while denunciations persisted of further abuses committed by military personnel and armed civilians. The Association of Haitian Journalists issued a press release protesting the detention, on February 14, of journalist Herto Zamor of Radio Métropole and his mistreatment while in custody.

66 On February 23, the Permanent Council of the Organization of American States convened a meeting to study the situation in Haiti, and adopted the resolution, in which the Inter-American Commission was ask to, with the consent of the Haitian government, visit the country in order to inform the next session of the General Assembly about the conditions of human rights in Haiti.

67 On March 4, 1990, the Group of Twelve was established, comprised of eleven political parties and a civic organization. On the following day, a young girl, Rosaline Vaval, was killed by a shot fired by a soldier in the town of Petite Goave. The following days violent demonstrations in several haitian cities took place, including Port-au-Prince, which led to an undetermined number of deaths. Reliable sources put the figure at approximately 20.

c. The new Pascal-Trouillot provisional Government

68. On March 10, 1990, Avril resigned and was transported in a U.S. Air Force aircraft to Florida, while General Hérard Abraham, Chief of Staff, temporarily assumed the office of President. On March 13, Mrs. Ertha Pascal-Trouillot, Judge of the Court de Cassation (Supreme Court) was sworn in as President, with the consent of the Group of Twelve, and proceeded to form a Council of State of 19 members comprised of the chief political and civic associations of Haiti.

3. Structure of the State and posts to be filled in the elections

69. The structure of the Haitian State under the Constitution of 1987 is considered exhaustively in the Report on the Situation of Human Rights in Haiti, prepared by the Inter-American Commission in 1988. Accordingly, this section will treat only of the aspects bearing on determination of the positions to be filled and the positions of those responsible for security in the elections, and on identification of the areas of the State machinery in which resistance may be encountered to the full unfolding of the democratization process.

70. Article 134 of the Constitution provides that the President of the Republic shall be elected by simple majority vote, and that a second round of voting shall be held if no candidate attains that majority in the first round. The President of the Republic is the Head of State and the nominal chief of the Armed Forces--though he does not command them in person--and appoints as Prime Minister and Head of the Government a member of the party who has won a majority in the Congress; if no party has won such majority, he appoints the Prime Minister in consultation with the chairmen of the Senate and Chamber of Deputies. The Prime Minister appoints his own Cabinet.

71. The deputies and senators, the three members of the Council of every communal section, and the three members of the municipal council that governs every commune (the smallest territorial subdivision) are all elected directly as well.

4. The elections

72. Article 149 of the Constitution requires that elections be held within not less than 45 and not more than 90 days after the Presidency becomes vacant. The individuals expelled from the country by General Avril felt that there was no time to comply with the letter of the Constitution, and they proposed the holding of new elections in six months time.

73. During the on-site visit inquiries were made into this matter, and a consensus was found that this problem should be solved by whatever Electoral Council was designated. The IACHR Delegation heard the views of prominent officials and leading politicians on the

necessity of holding the elections before September so that the transfer of power could take place in October, and so coincide with the opening of the fiscal year, the school year, etc.

5. The electoral council

74. As noted, the Constitution of 1987 assigns a structure and functions to the Electoral Council. The independence of this body an essential condition, in the Commission's doctrine, if it is to perform its functions to the full led to clashes with the Army and culminated in the slaughter of voters on November 29, 1987, acquiesced in by the Army and even joined in by some uniformed personnel. General Avril appointed a new Electoral Council along lines relatively similar to those of the Constitution.

75. The Electoral Council called for in the Constitution and dissolved by the government of General Namphy has been reinstated by a decree of April 19, 1990. Pursuant to Article 289 of the Constitution, the functions of the Provisional Electoral Council are to draw up and execute the Electoral Law that is to govern the coming elections. The following institutions must each designate one member of this Council: the Executive Branch, the Episcopal Conference, the Advisory Council, the Court de Cassation (the Court of Appeal, the highest court in the country), the organizations for the defense of human rights, the University Council, the Newspapermen's Association, the churches of the Reformed Church, and the National Council of Cooperatives. At the time of the IACHR Delegation visit these institutions were considering the designation of their delegates, especially whether they would be the same people designated to the original Provisional Electoral Council. On April 29th, the Commission was informed of the membership of the new Provisional Electoral Council: Pierre Gonzalez (Executive), Jean Casimir (Universities), Ernst Nirville* (Journalist Assosiation of Haiti), Philippe Jules* (Council of Cooperatives), Emmanuel Ambroise* (Bodies Defending Human Rights), Jean Francis Merisier (Organized Labor), Rosemond Jean-Philippe (Supreme Court), Arold Julien (Reformed Church), and Yva Youance (Conference of Episcopal Churches).

76. Two members of the original Provisional Electoral Council, Messrs. Phillippe Jules and Emmanuel Ambroise, called on the IACHR Delegation and gave it a vivid account of their experiences in the process that culminated in the failed elections of November 1987. They concluded that every guarantee of personal safety should be provided for both the population at large and the members of the Electoral Council, their relatives, their personal belongings, and the assets of the Electoral Council, to avert a recurrence of the events of 1987, when the members of the Council were assaulted, their assets damaged, their homes raided, and the premises of the Electoral Council subjected to several attacks and even burned in places by arson, all while the forces of law and order stood passively by. These two persons said that it would be hard to hold

elections without guarantees of safety; they proposed the establishment of an independent Electoral Police and affirmed that it was essential to disarm both civilians and retired military men.

6. The electoral law

77. A central point in the dispute between the original Provisional Electoral Council and the National Council of Government under Namphy was the Electoral Law, which resulted in a law riddled with flaws under which Manigat was elected. General Avril issued a new law, which was not discussed in detail owing to widespread skepticism in the political forces. When the IACHR Delegation left Haiti it had not yet been decided how this important matter would be dealt with; this would be decided by the Provisional Electoral Council when its members had taken office.

7. Organization of the electoral process

78. When the IACHR Delegation left Haiti preparations for the electoral process had not yet begun because the Provisional Electoral Council was not yet constituted. As pointed out earlier, the Electoral Council was constituted in April 29, 1990 and begun to take measures for the organization of the electoral process, aspect that the Commission will have to monitor in the coming months.

8. General conditions for the electoral process

79. During its stay in Haiti the IACHR Delegation heard constantly, and from different quarters, references to the insecurity of Haitians in general and of those involved in political and electoral affairs in particular. This insecurity applies to the exercise of all human rights and, according to testimony heard, extends all the way to the most elementary rights such as the rights to life and to humane treatment.

80. In the view of high officials of the Haitian Government who spoke to the IACHR Delegation, Haiti was in a critical situation, as it had to act against this insecurity and organize an

electoral process in a very short time. The insecurity took two main forms, according to the testimony heard: one form generated by violence and the other associated with the economic situation.

81. Regarding the insecurity generated by violence, the Delegation was told that it sprang from the groups linked to the regime of the Duvaliers, who, it was said, retained considerable influence in the machinery of government, the judiciary and the armed forces. According to testimony received, these groups are linked to the remnants of the *Volontaires de la Sécurité Nationale*, or *Tonton Macoutes*, who still have weapons. The Delegation was also told that common criminals were frequently employed to commit crimes for money. Particularly harsh was the violence practiced in rural areas by the Rural Police section chiefs, who are part of the Army, who use their adjoints to oversee the peasants and impose exactions on them, and guard the interests of the major agricultural landowners.

82. The Delegation heard opinions to the effect that there is great economic insecurity because of the impoverished state of great masses of the population, which generates an environment that is not only favorable to outbreaks of violence, but makes it possible for popular discontent to be manipulated by those opposed to the emergence of democratic ways. The Delegation was also told that this impoverishment had seriously contributed to the rise of common delinquency, from which victims defend themselves with their own resources, sometimes using weapons in their possession.

83. The resulting insecurity, the Delegation was informed, has found expression in the commission of common crimes and acts of political violence. Examples of the latter, as expressions of insecurity, are the massacre of voters in the elections of 1987, of parishioners in the church of St. Jean Bosco, the murder of three presidential candidates, one of them a prominent champion of human rights. This political insecurity has also been generated by the physical abuse and torture of labor and political leaders under the preceding administration, and by expulsions from the country. It was also mentioned that the insecurity had extended to newspapermen and the media, which were the targets of frequent attacks. The Delegation received valuable testimony in this regard from representatives of *Radio Haiti International* and *Radio Antilles International*, both of which cited the lack of guarantees for the normal performance of journalistic functions, especially when it involves traveling to the interior.

84. The people interviewed by the Delegation thought that a variety of steps should be taken to counter this climate of insecurity, which severely jeopardized the exercise of political rights in the electoral process about be started. They mentioned, first of all, the absolute necessity that the Armed Forces take a positive attitude and become guardians of order and the

safety of the population, the candidates and the institutions involved, and guarantee the normal progress of the electoral process. The Delegation received a promise of the Minister of Defense, Mr. Jean Thomas, and the Commander of the Armed Forces, General Hérard Abraham, that they would become such guardians and that the events of November 1987 would not be repeated.

85. Secondly, the Delegation received expressions of views that to the effect that it was necessary to disarm the civilian groups who still had arms in their possession and the retired military who had not yet returned them. The Delegation did not hear from the Minister of Defense or the Commander of the Armed Forces of the existence of any specific plans for disarming the civilian population, but was told instead that the Police were acting to seize illegally held arms on the basis of isolated reports.

86. The Delegation was also told repeatedly of the need to separate the Police from the Army and to give the former the function of keep domestic order and training responsive to the requirements of respecting the human rights of the population. The Delegation heard from high government officers their commitment to realize the situation depicted in the Constitution, to which end training programs were in progress in collaboration with police of other countries. Nevertheless, it was realized that it would be some time before a separation of the Police from the Army could be carried out.

87. Finally it was noted that, to overcome the insecurity about exercising political rights, it was indispensable to bring to justice the persons charged with involvement in the grievous violations of human rights that took place on November 29, 1987 and September 11, 1988, and the crimes against presidential candidates, as this would set an example that would deter others who might be contemplating similar acts. This was, according to the witnesses, particularly important, since some of the persons who had instigated and committed the outrages were still in the country, and much of the government administration, including the Ministries of the Interior, Justice and the Army were still heavily influenced by those who had supported or committed those acts. These persons said that failure to set this example prompted victims to take justice into their own hands, often taking the lives of those whom they regarded as the perpetrators of heinous crimes, which further heightened the sense of insecurity.

88. The highest government officials told the Delegation that the main impediment to the holding of trials was a lack of specific complaints, as the National Prosecutor cannot initiate proceedings on its own except in cases of flagrante delicto and, given the time elapsed since the events took place, the crimes can not be investigated de officio because the situation of flagrancy has disappeared. The Delegation heard from the Minister of the Interior that investigations were under way for the bringing of charges. It was explained to the Delegation that no specific

charges existed because the population feared that presented them would provoke retaliation from those they accused.

89. The Inter-American Commission must observe that the absence of judicial actions against persons suspected of having violated human rights constitute an omission that must be promptly corrected. The Commission is aware of the legal and practical difficulties that such actions face. However, the Commission must point out that an action by the State in this regard will contribute not only to repair the material and moral injuries caused, but also will have a preventive effect in avoiding the recurrence of new violations.

90. The Delegation must note that all the persons interviewed acknowledged the Government's disposition to move forward in defense and promotion of human rights and to take steps to establish a representative democracy. The Commission's experience indicates that the armed forces have been an obstacle for the free exercise of human rights, hence, the Commission listened with special interest to the expressions by high military authorities that they will act in conformity with the requirement to protect the human rights of the population. They all said that the present Government had not committed any violations of human rights since taking office, though noting that the Armed Forces had used excessive force when controlling demonstrations, causing the deaths and injuries referred to in other chapters of this Report. They also emphasized the need of a strong presence of international observers during the election campaign, which they regarded as an important contribution to ensuring that it is properly conducted and as a deterrent to violence.

9. The Upcoming elections and the Duvalierists groups

91. Article 291 of the Constitution disqualifies persons who served in the regime of the Duvaliers from public office for ten years. The massacre of voters on November 29, 1987, was blamed by some people --including President Namphy--on the exclusion of Duvalierist candidates, who reacted violently to it. In the elections that made Manigat President in January 1988 it was estimated that most of the deputies elected were Duvalierists. General Avril himself was identified as one.

92. The IACHR Delegation heard views to the effect that candidates should not be excluded from the next elections without sound reason. It was noted that there was a contradiction between the permanent provisions of the Constitution making all Haitian citizens equal and the transitory provisions that debarred certain categories from public office for ten

years. It was said that this proscription could have been to blame for the violence that marred the previous election. There were some who thought that the Provisional Electoral Council should be "judicious" in the acceptance and rejection of candidatures, and apply "flexibly" Article 291 of the Constitution, which forbids Duvalierists to stand for or hold elective public office for ten years. The Commission must point out that it was not informed of any judgment in a criminal suit that affected these persons.

10. Conclusions

93. The Commission concludes from the information in this chapter that, in the forthcoming electoral process, substantial hurdles to the exercise of political rights will have to be overcome if the planned elections are to be a genuine expression of the electorate's will. These hurdles include the serious conflicts affecting Haitian society, which tend to become violent, causing insecurity at all levels of society, especially in connection with the exercise of political rights.

94. The intentions expressed by the highest officials of the Haitian government and armed forces lead the Commission to conclude that they are committed to overcoming limitations on the exercise of political rights and the civil rights connected with them, by providing all citizens the security they require to achieve the effective exercise of such rights.

95. Such good will expressions, however, can not be considered sufficient. The evidence it gathered led the Commission to conclude that to ensure secure conditions for the exercise of political rights, the civilian groups still in unlawful possession of weapons should be disarmed and all members of the armed forces should be subject to full civilian control. The Commission also feels that the armed forces themselves should begin to purge their ranks, bringing to justice those accused of being involved in serious human rights violations. The Commission believes that this will help generate an atmosphere of confidence in the population so the exercise of political rights will not lead to unfortunate occurrences such as those that aborted the 1987 elections.

* Members of the original 1987 PEC.

CHAPTER II

RIGHT TO LIFE AND HUMANE TREATMENT

1. Applicable laws

96. The Right to life is recognized in Article 4 of the American Convention on Human Rights in the following terms:

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.

97. The Right to humane treatment contained in Article 5 of the cited Convention, resolves the following:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

98. The 1987 Constitution of the Republic of Haiti, in Articles 19, 20, 25, and 27 establishes the guarantees regarding the right to life and the humane treatment. These articles said:

Article 19: The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.

Article 20: The death penalty is abolished in all cases.

Article 25: Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden.

Article 27: Any violation of the provisions on individual liberty are arbitrary acts. Injured parties may, without prior authorization, appeal to the competent courts, to bring suit against the authors and perpetrators of these arbitrary acts, regardless of their rank or the body to which they belong.

2. Background

99. The right to life is *sine qua non* for the enjoyment of all the other human rights. It is recognized in the American Convention of Human Rights (Article 4) cited above. Haiti has been a state party to the American Convention since September 27, 1977. The right to life in Haiti, however, has been violated numerous times over the years during the eras of François Duvalier (Papa Doc), Jean-Claude Duvalier (Baby Doc), and their successors in power.

100. The special report issued by the Inter-American Commission on Human Rights in September of 1988 carefully documented many of these violations in the latter period, that is, since February 7, 1986, when President for-Life, Jean-Claude Duvalier's government collapsed and he and his closest associates went into exile.

101. Since the publication of the Commission's 1988 report on the human rights situation in Haiti, official violence in general has continued unabated and the right to life in particular has been routinely violated.

102. These violations are endemic in the sense that they occur with frequency in the capital, Port of Prince, as well as other urban centers throughout the Republic. The countryside too has been the scene of much repression, mostly aimed at agricultural cooperatives, peasant movements, and their leaders. Much of this violence arises from land disputes, a chronic problem in the hinterland of Haiti.

103. So too, the forms of violence, sometimes leading to assassinations, varies from incident to incident. To such an extent is this the case that the word "insecurity" has entered the Haitian vocabulary to describe the constant state of fear and instability that permeates Haitian society.

104. Victims have been killed by uniformed soldiers as well as paramilitary forces, heavily armed, and dressed as civilians. Sometimes the killings appear to take place with the acquiescence of the Army or police who fail to intervene to protect individuals. Motives range from robbery to silencing witnesses to suppressing political or media spokesmen. Personal vendettas also play a part in a situation where impunity is generally the norm. More often than not, victims are killed by gunshot although death by beating is not unknown.

3. Violations of the right to life

105. What follows is a partial list of violations of the right to life that illustrate the general description just provided. It should be noted that all of the deaths mentioned here are quite recent. These prima facie violations are grouped in the following manner: the first category includes killings done by Army soldiers. The second, those committed by Section Chiefs with the assistance of the Army. The third, those perpetrated by the police. Fourth, murders committed by paramilitary groups, possibly Tonton Macoutes. Within these categories, there are cases in which the apparent motive of the murder has been brawl, robbery or debts. However, the purpose is to show that independently of the motive, the agents of the armed forces and police has acted with impunity and violating fundamental rights of persons.

a. Killings done by Army soldiers:

106. Herold Lewis was killed on February 3, 1989, by gunshot by a member of the Army Leopard Corps, named Llerisson Juste, in an argument over a girlfriend.

107. Lazarre Lewis was killed on March 1, 1989, by Corporal Exant Jerome over a small debt owed by the victim to a relative of the killer. Jerome was reportedly arrested but it is not known whether he was ever processed or whether he remains in detention. The violation occurred in the capital.

108. Iramis La Croix was shot and killed on March 9, 1989, by a soldier during a street argument on a main thoroughfare in Port-au-Prince. La Croix's killer was then shot by another soldier during the dispute.

109. Gerard Laforest had been head of the State Lottery. The day before his murder, April 1989, a soldier guarding a lottery drawing tried to change a number drawn and a shoot-out ensued. This was televised nationally. Laforest, an anti-Duvalierist, was known for his honesty and his efforts to eliminate corruption in the lottery system. He was shot and left in his car. A soldier named Celidon Watson was arrested but the case has not been processed.

110. Justin Ocanne was shot and robbed on April 4, 1989, by a soldier in Port-au-Prince. Ocanne was a moneylender.

111. Regis Charlot was a student and Koyo, Tito, and Ti Simon were peasants. On May 1989, they were involved in trying to reclaim land from a former Tonton Macoute named Charidieu Joseph. When Joseph complained to the Army in St. Marc, a group of soldiers was dispatched to the scene and killed the four victims. Local peasants subsequently attacked and killed Joseph's mother, Jeanette Dor. This was following by an Army attack on the peasants whose homes were burned. A number were wounded by soldiers.

112. On May 7, 1989, Corporal Maxo Crib shot Delbau LeBlanc, three times in the head, when he intervened to protect his elderly father who was being beaten by Corporal Crib.

113. Gilles Charles was shot On May 27, 1989, by two soldiers who had broken into the studio of Radio Men Kontre. Charles was ranting but did not threaten the soldiers. The radio station later protested by going off the air for several days.

114. Michel Jean Ronald was shot to death on July 7, 1989, in the Bourdon neighborhood of the Capital. A witness indicated that one of the killers wore a military uniform. It is believed that he was eliminated for having been a witness to the election day massacre of November 29, 1987.

115. On July 11, 1989, Joanis Malvoisin was shot (and later died at a hospital) by a group of soldiers from the Petite Riviere barracks. The leader of the squad was Corporal Wilfred Pierre-Louis. The attack occurred in the victim's home. It appears that the killing was part of a larger repression of local peasants in the Savien section of Petite Riviere de l'Artibonite, led by Section Chief Jean LaCoste Edouard.

116. On September 1, 1989, Jean-Robert Dorvil was taken by soldiers from his home in the Correfour neighborhood at night; his body was found the following day, bullet ridden.

117. Daniel (last name unknown) was killed on September 6, 1989, by Sergeant Seymour Séide when he intervened in a fight with the Sergeant's cousin. When the fight ended the Sergeant returned with a group of armed men. The victim was also robbed of \$60 according to his mother.

118. Jean Fleriste was beaten to death on October 18, 1989, by soldiers who accused him of being a subversive in the Ferrier neighborhood of the town of Fort Liberté.

119. Saul Saint Come was killed and robbed of \$2,000 by soldiers at 1:00 a.m., at Boudette-Petite-Place, on November 12, 1989, in Marchand Dessalines.

120. Charles (last name unknown), along with Jaures Celeste and Mercurieu Gregoire, were arrested on November 18, 1989, by soldiers led by Corporal Smith and Attaché St. Gel at Petite Riviere de l'Artibonite and accused of theft. Beaten severely, Charles died at the local military post on November 25.

121. Benicier Rene, a leader of the Regional Organization of Planters in Arcahaie, was shot in the chest on December 7, 1989, by men in Army uniforms at his home in Arcahaie. He died of his wounds.

122. Norvillen Maxime was arrested on December 14, 1989, as he alit from a bus by Corporal Raymond Cadet and a man known only as Jose. Taken to the Limbé Army base, he died on December 20. His relatives state that his body showed signs of torture.

123. Jean Wilfred Destin, a popular radio satirist known as Ti Will, was shot three times and killed on January 16, 1990, by three plainclothesmen following a sarcastic evening broadcast over Port-au-Prince Radio Cacique, in which he had poked fun at General Prosper Avril's trip to Taiwan.

b. Killings committed by section chiefs with the assistance of the army:

124. Ogenio Benoit was shot on May 3, 1989, by Edouard François, the Section Chief of a town called Lestage. Benoit was shot while trying to flee from a voodoo session which had been interrupted by an infuriated François who was subsequently given Army protection.

125. Onondieu François and Jean Robert François were peasants involved in a land dispute. On June 4, 1989, Section Chief Archange and his assistant Vercy Dorcé shot them and wounded five others. Later they burned down 28 peasant homes. No action has been taken against the perpetrators.

126. Wisly Laurius was murdered on June 8, 1989, by Section Chief Chrisner Adrien in the Basse-Terre area of Marchand-Dessalines. The 20 year-old victim was involved in a land dispute. No prosecution has been undertaken.

127. Wilson Richardson was shot and killed, on October 12, 1989, in a land dispute by a group composed of Charidieu Joseph, Section Chief Hyppolite Pierre, Second Lt. Ernst Cadet, and four other soldiers in the Pont-Dujour area of Marchand-Dessalines.

128. In March 12, 1990, according to testimonies taken by the special Commission during its on-site visit to Haiti, the local Section Chief of Piatre, accompanied by a policeman entered the area and killed a peasant who was involved in a four-year old land dispute with a large landowner named Nadal. Thereafter, the residents of Piatre avenged the peasant's death by killing the Section Chief and policeman. When these events became known, another group of peasants from a different nearby locale called Deluge went to Piatre to threaten peasants residing there. The Deluge group was thereupon repulsed by the inhabitants of Piatre. The former group then withdrew only to return accompanied by between 30-50 uniformed soldiers who proceeded to attack the Piatre peasants burning their homes, a total of 335 residences, and killing eleven peasants including children, and wounding an unknown number of others. In addition, the Piatre peasants' cattle were slain and their crops burned. The besieged peasants then fled for their lives. The witnesses/survivors showed members of the special Commission a large number of spent cartridges that had been fired upon them by members of the Army. The special Commission visually verified the destruction of the peasants' homes and other property.

129. The Army version of these events, however, is entirely different. Officers claim that they intervened merely to separate two warring groups of peasants and that no one died in this action.

c. Killings perpetrated by the police:

130. Ernest LeBlanc was killed on August 25, 1989, by the Anti-Gang Investigation Unit agent Claudy Joachim when he left the courthouse in Port-au-Prince after paying a fee to the court clerk. The victim had been sued for a personal debt.

131. Francky Jean-Louis was killed on September 21, 1989, by three plainclothes detectives when he became involved with the arrest of a street vendor. Jean-Louis was 30 years old.

d. Killings committed by paramilitary groups, possibly Tonton Macoutes

132. Telison Releus was killed on May 9, 1989, by a group of armed men in the Duval neighborhood of Croix des Bouquets near Port-au-Prince. The victim had worked for the Electric Company. His wife was raped and his small daughter was shot in the leg.

133. Samson François was shot on a public street by three armed men on June 16, 1989. Later the same day three armed civilians grabbed another young man for no apparent reason and shot him three times. These murders occurred on busy Port-au-Prince streets. A witness identified one of the men as Aji Mal, a former local government official.

134. Gregory Delpé was murdered on July 5, 1989, at his home at night. The victim had been a student leader and his brother heads a political party. The perpetrators, dressed in civilian clothes, accused the victim of opposing the Avril Government, threatened the rest of the family and stole \$4,000 from the family grocery business. The prosecutor closed the case insinuating that it was a family affair.

135. Elie Antoine and Cédul Ernés were killed on July 10, 1989, in an armed attack by 20 men at 2:00 a.m. in the Cite Soleil section, known as Cite Carton. The victims died in their homes of gunshot wounds. No investigation is known to have been conducted.

136. Philippe Smith was killed on September 24, 1989, while defending his mother who was being attacked by four armed men. The mother was seriously injured. The victim was a 22 year old plumber.

137. Vilme Eliazar was stabbed to death on October 6, 1989, by unknown assassins after a protest against the general state of insecurity by the Catholic Church's Justice and Peace Commission, of which the victim was a member.

138. Israel Isophe, Verel Isophe, and Dragus Lorneus were killed in Drouillard outside of Port-au-Prince on November 17-18, 1989, for putting up pro-Manigat posters. The perpetrators, dressed in civilian clothes and driving a gray truck, beat and shot to death Israel Isophe and Dragus Lorneus. Verel Isophe was dragged by a rope around his neck behind the truck until he was dead. The killings appear to be politically motivated.

139. Col. André Neptune was a veteran officer of the Haitian Army. On January 19, 1990, was shot and killed along with his wife and servant at approximately 8:30 p.m. Col. Neptune's body was left near the home of opposition leader Hubert de Ronceray. Following Col. Neptune's murder a 30 days state of siege was imposed.

140. More recently, in the week just prior to the downfall of the Avril government, press reports indicated that 20 more persons died at the hands of the Armed Forces and more than 100 were wounded, mostly during street demonstrations against the government.

141. To a great extent the violence of the week of March 4-11, 1990, was prompted by the killing of a schoolgirl, Rosaline Vaval, by a soldier's stray bullet in the town of Petit Goave. From there the street demonstrations throughout Haiti grew to the point that General Avril was forced to leave the country.

4. Violations of the right of humane treatment

142. Besides the numerous violations of the right to life detailed above, the recent history of Haiti is replete with the violation of the related right of humane treatment.

143. Typically violations of the physical integrity of persons in Haiti consists in the wanton beatings and flailings of soldiers, police, Tonton Macoutes, and rural section chiefs perpetrated against individuals for political, personal or venal motives alike. Literal stomplings into submission are hardly uncommon in a virtually lawless society.

144. This is not to say that more systematic forms of premeditated torture have been superceded. On the contrary, prisons and jails are sites in which coercion, confession wrenching, and general information are squeezed from helpless victims not unlike the manner in which this was done in the times of Papa Doc, his son, and their successors.

What follows are graphic examples of these practices:

145. Naly Beauhanais is the president of the Public Transportation Workers Union. On January 12, 1989, following his arrest at 5:00 a.m. on a day designated for a general strike, was taken to an Army camp near Lamentin and beaten for an hour with clubs and gun butts on his ears, head, and buttocks. He was released on January 31, having never been charged with a crime.

146. Jude L. Jean Jacques, the youth leader, was shot at 6:00 a.m. on the day of the national strike, January 12, 1989, by uninformed men. This occurred in Port-au-Prince. He later recovered from his shoulder wound.

147. Ernst Charles and Vaudre Abelard, leaders that had helped organize a demonstration by the Association of the Revolutionary Unemployed were taken on March 4, 1989, to Fort Dimarche, where they were beaten, and released after a few hours. They later had to go to the hospital for treatment.

148. Fred Pierre, Alzy Henriot, Gabriel Dugne, and Rony Serat belong to the Popular Literary Movement. On June 17, 1989, they were arrested by soldiers in Limbé, badly beaten, and released the next day. Henriot's arm was broken.

149. Thomas Odena was arrested on June 19, 1989, by Section Chief Merilien Pierre for his work in Konakom, the National Committee of the Congress of Democratic Movements. During his eight day detention he was hit 30 times with a truncheon.

150. On June 29, 1989, Lyonel Theodore and Paul La Roche, two organizers of a market protest in Port-au-Prince were arrested, beaten, and released after several hours by a judge.

151. Prudent Juste and Luxine, Cedieu, Lousine, and Moise Eltiné belong to the Labadie Youth Movement in the Artibonite Valley. On July 10, 1989, they were arrested in Labaret by six men dressed in civilian clothes, including the Section Chief named Recevé. They were held for 23 days at the Petit-Riviere jail. While there they were subjected to a torture called the "Piquet" which consisted in standing on their toes and leaning against a wall supporting their weight with two fingers. When the prisoners moved from that position, they were subject to a beating. All five were beaten regularly with sticks. Their torturers included one Sergeant Alexis and one Corporal Smith.

152. Following his arrest on August 1, 1989, Jean Robert Lalanne, a leader of the National Popular Assembly, was suspended around a pole and beaten to a point where he lost count after some 40 blows. Major Coulanges Justafort was present along with five other soldiers. A man named Phonor administered the beating. After his release the following day, Lalanne had to be hospitalized.

153. Celifaite Dumesle, a member of Tét Kole, a national peasant movement, was arrested on August 2, 1989, by a Section Chief of Cabaret, one Anovil St. Vil, who personally kicked and punched him during his detention. He was later beaten with a night stick by soldiers at the jail in Jean Rabel. Never charged with a crime, he was released at the end of August.

154. Inalia Analion, also a member of Tét Kole, was beaten to the point of bleeding by Lt. Adrien Saint-Julien during her arrest on August 2, 1989. Never formally charged, she was released at the end of August.

155. Florvil Guillaume who was involved in a land dispute in the Sixth Communal Section of Petite Riviere de l'Artibonite, was arrested and severely beaten on August 18, 1989, by the Section Chief's assistant, known simply as Senior. He was held for four days.

156. On September 26, 1989, Guito Geauvy was arrested and shot in the hand by a soldier named Raymond Fenelon for supporting a general strike.

157. On November 1, 1989, Jean Auguste Mesyeux, Evans Paul, and Etienne Marineau, three political opposition leaders, were beaten terribly following their arrest and then shown, battered and bloody, on national television. Their treatment included kicks and stomping while handcuffed. Night sticks were used on the soles of their feet, their kidneys and testicles. Their noses were burned with lighters. Their torturers included General André Jean-Pierre, soldier Jean-Pierre Bismark, and Second Lieutenants Délius Joseph, Fritz Pierre, and Faustin Miradieu, all of the Presidential Guard. The beatings lasted hours over a period of days. Paul suffered five broken ribs and a crushed hip. One of Etienne's eardrums was punctured and he suffered a broken finger. His injuries made it impossible for him to stand. After three months of imprisonment, the three were released.

158. Louis Jerome Michel was attacked and beaten by three unidentified men on November 5, 1989, following a radio interview in which he told of the killing of his younger brother earlier in the same year by a soldier dressed in civilian clothes.

159. Faya Jean-Baptiste was robbed of a small portable radio and beaten by soldiers of the Presidential Guard in front of the National Palace on November 14, 1989.

160. On November 15, 1989, Soland Cameau, Nelson Ceramy, Orelus Bernard, and Camille Marceau, four peasant activists, were arrested and charged with being communists. They were beaten and released after 14 days of confinement.

161. On December 1, 1989, Robert Pierre-Louis was beaten by a group of soldiers belonging to the Presidential Guard for allegedly having criticized General Avril.

162. Patrick Beauchard, a former Sergeant in the National Army and leader of the coup that overthrew Gen. Namphy, was arrested on December 13, 1989, near Petit Goave by members of the Presidential Guard. Later his sister reported on Radio Antilles that her brother had been so severely beaten that his face and eyes were terribly swollen, and that among other things, he could no longer see out of one eye as the result of having been hit by a gun butt.

163. Lemoine Auguste was arrested on December 15, 1989, by Section Chief Carobert Deronville in Grand Plaine area of the Isle of Gonaive. He was severely beaten for "having criticized the government."

164. Wilfred Pierre was arrested and beaten on December 16, 1989, by a policeman named Paul Pierre-Louis in Costa, the Third Communal Section of Les Anglais. The problem grew out of a dispute at a cockfight. Pierre was set free several hours later.

165. Jean Charles Mayol, leader of the November 28 National Progressive Movement, was police arrested on December 19, 1989, in the Artibonite Valley, beat him at the Marchand Dessaline jail and robbed him of \$30. He was freed on December 26. He stated that he had been accused of carrying a machete which he was using to work his land.

166. Dr. Louis Roy, the 74 year-old constitutional lawyer, was arrested at his home on January 20, 1990, by an Army captain and two soldiers. He was taken to the police station where some thirty soldiers were beating a large number of persons. Dr. Roy himself was hit about the ears and punched in the face. Later he was exiled to Miami.

167. Herbert de Ronceray, the president of Mobilization for National Development, was arrested at his home along with 20 fellow members on January 20, 1990. Soldiers outside kept guard while "civilians" handcuffed him. His arrestors broke his glasses, beat him on the chest and head and poked him in the eye with a lit cigarette. He was later sent into exile.

168. On January 20, 1990, Michel Legros, a member of the League to Install Democracy in Haiti, was arrested at his home, severely beaten, and sent into exile.

169. Dr. Sylvan Jolibois, a political leader of the Jean-Jacques Dessalines Nationalist Sector, was arrested at his clinic on January 20, 1990, by plain clothes police and taken to the National Penitentiary. His beating was so severe he spit up blood. No reason was given for his arrest. He was later released.

170. On January 20, 1990, Fernand Gérard La Forêt and Marie Denise Douyon were stopped at a police checkpoint on the road and accused of carrying weapons. They were taken to the Anti-Gang Investigation Service of the Police, questioned and beaten. La Forêt's hands and legs were tied together to form a circle. He was then hung around a pole and his back was whipped. This lasted three hours. Thereafter he was denied food and medical treatment for a number of days. His companion, Marie Denise Douyon, was beaten about the head and body aggravating a pre-existing ovary condition. She is still recovering.

171. Serge Gilles, an intellectual and leader of the Nationalistic and Progressive Revolutionary Party, was detained at his home along with several colleagues on January 20, 1990, by six heavily armed men dressed in civilian clothing without a warrant. Thrown on the floor, he and his company were kicked, beaten and otherwise brutalized in front of his wife and two children. His home was sacked. Transported to the Anti-Gang Investigation Service, Gilles received a blow on his ear that ruptured the eardrum. After 30 minutes in a cell, they were delivered to the local police who treated them correctly. Major Clerjeune apologized for the "mistake." The apology was reiterated by Colonel Romulus and the men were released.

172. Joseph Fernel Manigat, a political leader of the Alliance of Popular Organizations, was detained on January 22, 1990, in Cap Haitien, taken to the police station and severely beaten. When he was released on February 1, he gave a statement over Radio Metropole describing how he had been hit some 40 times about the head with a stick, seriously injuring his left ear.

173. On January 25, 1990, Dicertain Armand was arrested along with a number of fellow Christian Democrats by civilian and military officials including the Mayor of Thomazeau and his assistant named Kesner Pongnon and Rossuel Février, respectively. While still at home, Armand was tied up and hit with a gun butt. He was later released.

5. Conclusions

174. The rights to life and humane treatment have been repeatedly violated in Haiti during the period covered by this report up until the time of the installation of the new civilian Government of Ertha Pascal Trouillot. These violations were committed mostly by elements of the Haitian Army or paramilitary forces acting in collusion with the Armed Forces or with their acquiescence. Substantial numbers of paramilitary forces known formerly, rural section chiefs frequently commit abuses of these rights in their treatment of peasants and peasant leaders.

175. What emerges then is a clear picture of institutionalized violence practice by the very forces whose obligation it is to preserve the peace and protect citizens from violations of the right to life. The same conclusion can be reached with regard to the physical integrity of citizens. The institutional forces consisting of the army, the police, the section chiefs and their paramilitary henchmen, far from assuring humane treatment of prisoners, are chronic violations of this basic human right.

CHAPTER III

RIGHT TO PERSONAL LIBERTY AND JUDICIAL GUARANTEES

1. Legal Rules

176. The Right to Personal Liberty is recognized in Article 7 of the American Convention on Human Rights in the following terms:

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

177. The Right to Judicial Guarantees is contained in Article 8 of the above-cited Convention, which stipulates the following:

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.

The Haitian Constitution of 1987 sets forth in Articles 24, 25, 26, 27 and 27-1, the legal guarantees of the individual in Haiti as regards the right to individual liberty. These articles read as follows:

Article 24: Individual liberty is guaranteed and protected by the State.

Article 24-1: No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes.

Article 24-2: Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official.

Article 24-3: For such an order to be carried out, the following requirements must be met:

a. It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged;

b. Legal notice must be given and a copy of the order must be left with the accused at the time of its execution;

c. The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment;

d. Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.

e. Responsibility for an offense is personal, and no one may be arrested in the place of another.

Article 25-1: No one may be interrogated without his attorney or a witness of his choice being present.

Article 26: No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.

Article 26-1: In the case of a petty violation, the accused shall be referred to a justice of the peace, who shall then hand down a final decision.

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

Article 26-2: If the arrest is judged to be illegal, the judge shall order the immediate release of the arrested person and that order shall be enforceable immediately, regardless of any appeal to a higher court or the Supreme Court for an order forbidding enforcement of the judgment.

Article 27: Any violation of the provisions on individual liberty are arbitrary acts. Injured parties may, without prior authorization, appeal to the competent courts, to bring suit against the authors and perpetrators of these arbitrary acts, regardless of their rank or the body to which they belong.

Article 27-1: Government officials and employees are directly liable under civil and administrative criminal law for acts carried out in violation of rights. In such cases, civil liability extends to the State as well.

179. The legal system of Haiti establishes certain official positions which are intended to serve the State in connection with the prosecution of criminals and the safeguarding of individual rights: the Commissaire du Gouvernement (Public Prosecutor) and the Juge d'Instruction (Examining Judge).

2. Situation during the Avril Government

180. According to information received by the Commission, the right to personal liberty and to judicial guarantees was seriously compromised in Haiti beginning in September, 1989. The early months of the period covered by this report witnessed a steady intensification of "insecurity", as evidenced in arbitrary detentions, many of them effected by "chiefs of section" and their deputies. For its part, the judicial system has demonstrated neither effectiveness nor decisiveness in pursuing investigations of such violations.

181. Beginning in November, arbitrary detentions became more selective, and in most cases targeted popular leaders who demonstrated their opposition to the Government, and thus a systematic campaign of intimidation of the populace was established.

182. Finally, the arbitrary detentions that took place under the Decree of State of Siege declared by General Prosper Avril on January 20, 1990, were frequently followed by expulsion from the country of detainees, although they were charged with no crime and there was no sign that due process had been observed. Authorities sought to justify arbitrary detentions and expulsions as a measure to "neutralize terrorists" who had created a "climate of tension" and "poisoned the atmosphere."

3. Arbitrary detentions

183. Several examples are given below of illegal arbitrary detentions that were carried out without a proper warrant for arrest or search of private homes. These arrests were frequently effected violently, violating the right to physical integrity, and the reader will therefore note that some of the victims have been named in the preceding chapter. In some of

these cases, the victims were released a few days later, without being charged, and in other cases it is not known with certainty whether these individuals remain in prison.

184. On September 4, 1989 in Terre-Nette, VI Section Communal de Verrettes, Mr. Jeannot Alexandre was detained by Milord Joseph, Chief of Section, who accused him of being a communist.

185. On the same day in Montrouis, at 10:00 a.m., the Chief of Section Difficile St. Georges illegally detained Emilia Fleuvant, who had organized a prayer meeting, and he beat those in attendance, claiming that all meetings were prohibited.

186. On September 6, in Petite Rivière de l'Artibonite, Mr. Bernard Fleuvant was arbitrarily detained and beaten by Dieubon, commanding officer of the military garrison of that city.

187. Daubermane Dorvilus and Souvenir Joseph were detained arbitrarily by Chief of Section Pierre Hyppolite on September 7 in Grand Bois, in Marchard-Dessalines, accused of being agitators.

188. On the same day at approximately 2:00 p.m. Pierre Daniel Edmé was detained in Port-au-Prince without an arrest warrant by two men dressed in olive green uniforms.

189. On September 11, Edouard Joseph was arbitrarily detained and beaten by Chief of Section Gerard Lubin and his deputy in Belle Fontaine, Section Communale de Kenscoff. Mr. Edouard Joseph is being held in the military garrison of that city.

190. Hervé Durand and Charles Romain, members of the Neighborhood Council Federation (FEDKA) were arbitrarily detained by the police of Pétiön-Ville in Port-au-Prince on September 16.

191. On the same day, in Delmas 33, at approximately midnight, Lhérisson Dor was detained by military officers and his house was searched. It is believed that Dor was first taken to the National Palace and later to the Anti-Gang Investigations Center, before being transferred to the National Penitentiary. However, relatives of Lhérisson visited all of the detention centers without locating the victim. According to information provided by his brother Salomón Justin, Lhérisson was charged with planning the assassination of Sergeant Joseph Heubreux, a trusted ally of General Avril.

192. Also on September 16, in St. Michel de l'Attalave at 4:00 a.m., two deputies of the Section Communale (district division) illegally detained Mr. Val Cesar, and charged him without being out too early. They took him to the military barracks, where a soldier wounded him by gunshot and another cut off his left arm. The victim was hospitalized.

193. On September 20 in Champagne, in the area of Borgne, deputies of the Section Communale, following orders of the Chief of Section, Liverdieu Andrési, illegally detained Noisens Petit Nègre for holding a meeting of the town's Popular Assembly (APL). Noisens Petit Nègre was released after paying the equivalent of fifty dollars.

194. Jean Laforêt was illegally detained on September 22 by two military officers for having said that the National Palace was protecting "macoutes". Laforêt was taken to the prison in Port-au-Prince.

195. On September 26 in Petit-Goâve, at approximately 11:45 p.m., Guito Geauvy was detained and wounded by gunshot by soldier Raymond Fénelon. The victim was accused of instigating the general strike called for September 27.

196. Max Bourjolly, a member of the United Party of Haitian Communists (PUCH) and his bodyguard were detained on September 20, accused of illegal possession of weapons. The accusation was apparently based on a decree dated March 23, which had not been published. Mr. Bourjolly was released two days later.

197. On October 18, Arsène Moïse was illegally detained by soldiers of the city's garrison during a public demonstration in Gonaïves. Arsène Moïse is a militant of the group known as Tambour Vérite Jeunes Gonaïves.

198. On the same day in Pétit Goâve, Savary Zanny was arbitrarily detained during a public demonstration, accused of being an agitator.

199. On October 22, Jean "Madichon" was arbitrarily detained by the police in Cayes; the reasons for his detention remain unknown.

200. On October 25, in Savannette, a region on Haiti's western border, a delegation of the League of Former Haitian Prisoners (LAPPH), comprised of Marc-Elie Blanc and Daniel André, attorneys, and Jacquese Juste, their driver, were arbitrarily detained and taken to the military garrison. This delegation had travelled to Savannette to investigate military persecution in that region against certain citizens who had been forced into hiding. The two attorneys and the driver were released the next day, following protests by the National Coalition of Haitian Refugees and America Watch.

201. During the month of November, the Government of President Prosper Avril was noted for its arrests of popular leaders associated with the political opposition, which had for some time refused to participate in the elections organized by the Avril Government.

Evans Paul, Jean Auguste Mesyeux and Etienne Marineau

(the Detainees of La Toussaint)

202. On November 14, the Inter-American Commission on Human Rights received a denunciation regarding the detention of Messrs Jean Auguste Mesyeux, member of the Autonomous Federation of Haitian Workers (CATH), Evans Paul, member of the Committee for Unity and Democracy (KID), and Etienne Marineau, deputy leader of the People's Organization of September 17, a radical group of the former Presidential Guard.

203. According to information received, the Ministry of Information published a communique on November 2, reporting on the arrest of these three individuals, accused of conspiring to assassinate President Prosper Avril and the Military High Command. They were

detained in a private home by members of the Presidential Guard on November 1, 1989. The communique from the Ministry of Information is transcribed below:

The Office of the Director of Information of the Ministry of Information and Coordination, following the communique received from the headquarters of the Police of Port-au-Prince, is able to report on the events of Wednesday, November 1, 1989, at 5:45 p.m., in Oleon Street, in connection with the arrest of Evans Paul, Etienne Marineau, Jean Auguste Mesyeux. Found in their possession were three M-14 rifles, three Uzi machine guns, a disassembled Galil rifle, a package of 9 mm. cartridges, and dynamite.

The purposes of the group were to initiate terrorist activities in an attempt on the life of the President of the Military Government, to physically eliminate all officers of the Armed Forces of Haiti, to physically eliminate certain civilian figures, and to impose a people's militia.

Patrick Beauchard, Germain Sonthonax, Saintil Villex, Joseph Klébert, Philémon René, Oupette Casner, Altidor Jean Allipson, Getry Figaro and Thimotee Jean Franck, who are likewise implicated in this affair, are being actively sought by the police.

204. On the day before the arrest of Evans, Mesyeux and Marineau, the Rassemblement Nationale, a confederation of political and trade union organizations, had announced its plans to hold a month of peaceful protests in opposition to the Avril regime, culminating with a mass demonstration on November 29, anniversary of the failed elections of 1987.

205. On November 2, the arrested leaders were shown on State Television, bearing obvious signs of torture. In addition, the authorities showed weapons, ammunition and dynamite, allegedly found in their automobile. According to Commander Léopold Clerjeune, head of the Anti-Gang Brigade, Etienne Marineau and Patrick Beauchard had offered a guard \$7,000.00 to place dynamite in the Palace of Government. The detainees were held incommunicado for eight days, despite the fact that the Constitution of 1987 provides that individuals arrested be brought before a magistrate within 48 hours. The Government refused for two weeks to allow independent doctors to examine the detainees and on November 13 the three prisoners began a hunger strike in protest.

206. The Commission requested that the Government of Haiti take the necessary measures to transfer Messrs. Mesyeux, Paul and Marineau to a hospital for humanitarian reasons, given their precarious health condition.

207. The Government of Haiti responded to the Commission's request for information on November 17, stating the following:

Doctors of the Haitian Red Cross visited the three defendants on Friday, November 10, and recommended that they be given proper beds and wool blankets. Unfortunately, the defendants chose not to use the beds placed at their disposal, and instead spread the blankets on the ground.

Moreover, they received tetanus shots and had access to X-ray examinations. The three defendants are regularly visited by the doctor of the National Penitentiary Center.

In the specific case of Marino Etienne,[1] he was today taken to the Military Hospital today, where he refused the proffered treatment. He requested the presence of his private physician, but the latter could not be located. The Government intends to request the Haitian Medical Association to undertake to provide the services of one of its members to Marino Etienne, should he accept this offer.

Although only Marino Etienne appears to require hospitalization, the Government of Haiti, in response to the request of the Inter-American Commission on Human Rights, has decided to allow the hospitalization of the three detainees, until a government physician, in agreement with the private physician of each detainee, finds that his hospitalization is no longer necessary.

208. The prisoners requested attention by their private physicians and after two doctors assigned by the Haitian Medical Association visited the prisoners on November 19 and 23, the Armed Forces of Haiti published a press communique accusing them of attempting to assassinate Etienne by administering improper medication. Finally, on December 1, authorities transferred the three defendants to the National Penitentiary Center. The three detainees suspended their hunger strike on December 11.

209. The Haitian League of Human Rights pointed to the irregularities that took place in connection with the detention of Mesyeux, Paul and Marineau, and in the judicial proceedings. The arrest was carried out in a private home, after 6:00 p.m., without a court order and without information regarding the in flagrante delicto detention. The defendants were subjected to severe torture and were not immediately allowed the care of their private physicians. The right to defense was not duly exercised, as they were not allowed to communicate freely with their attorneys, who were formally prohibited from visiting their clients later in the military hospital.

[1] The correct name is Etienne Marineau.

210. The arrest and presentation on television of the detainees, bloodied as a result of torture, was criticized by public opinion and interpreted by the opposition and by human rights groups as an attempt to intimidate the populace.

211. The CATH and the Rassemblement National called a strike for November 7 and 8 which paralyzed Port-au-Prince and nearly all the provinces, in order to demand an immediate release of the three detainees. Subsequently, CATH, together with the OP-17 and the KID issued an order for a 24-hour general strike for November 22, calling again for the release of the detainees. Also, Reverend Max Dominique, Louis Roy, Antoine Izmary, Sabine de Manigat, Guy Beauduy, René Theodore, Gabriel Miracle, Arthemise Paul, Irene Paul and their two children aged 11 and 13 began a hunger strike, in solidarity with the general protests, to obtain the release of the detainees.

212. The leader of the Group of September 17, former Sergeant Patrick Beauchard, who had been arrested before in October of 1988 and subsequently released, escaped capture on November 7 together with Paul, Mesyeux and Etienne, because he arrived late to the meeting at which the others had been arrested. On seeing soldiers surrounding the house, Beauchard escaped, hiding with 8 other persons also accused of conspiring to assassinate President Avril.

213. Two days later, on November 9 at 2:00 a.m., three jeeps arrived at Hinche, carrying 25 military officials, who identified themselves as members of the Presidential Guard of Port-au-Prince. Led by Captain Placide Jolicocur, Commander of the military district of that locality, they invaded the home of Bonny Beauchard under the pretext of seeking her cousin, former Sergeant Patrick Beauchard, who was accused of conspiring against the Government of Avril. When the military personnel did not find Patrick Beauchard, they detained and beat

Bonny and Charles Beauchard. The Commission was later informed that Bonny and Charles Beauchard were released a few days later.

214. The Commission was informed that Patrick Beauchard had been arrested on December 13 at 4:00 a.m., and beaten by soldiers of the Presidential Guard, near Petit Gôave, and taken to the garrison for questioning. Hebert Beauchard, Patrick's brother, Sosthene St. Jean, the local Section Chief, and his deputy Valles Plaisival and his wife, were also detained, accused of harboring Beauchard.

215. On November 18, Gaston Jean-Baptiste, Archange Mardi and Germaine Louis Mai, members of the Haitian League of former Political Prisoners (LAPPH) were detained without a court order by the Armed Forces in Tiotte (in the southeast of Haiti) and taken to the local military barracks.

216. On November 22, 12 more people were detained by members of the same Tiotte garrison, in Anse à Pitres, among them two young boys and the well known political figure, Guy Baudy. They were accused of meeting illegally to incite the local population to a hunger strike to demand the release of the three detainees in Port-au-Prince. Gastón Jean-Baptiste and Guy Baudy were beaten while held in custody. On November 27 they were all released without being formally charged.

217. On November 19, Mario Scott, regional delegate of the RDNP, and his assistant Roland St. Louis, were detained arbitrarily in Hinche (in the central region of the country), by military officials, and released a few days later.

218. On November 25, Frantz L. Jean, member of the National People's Assembly (APN), Aloute Jean-Louis, and Ilio Alexis, members of the Peasant Association of Melonière (APM), were detained by Brigadier Vilson Ledon, as they attended a meeting to discuss problems relating to the Melonière community. The three were accused of meeting without the presence of local officials. They were taken to a nearby prison in the city of Chantal, and released 2 days later.

219. On December 4, in Pétite Riviere de la Artibonite, Pierre Berthéus was detained and beaten by a policeman known as "Stavien". Berthéus remained in prison until January.

220. On December 14, in Pétite Rivière de la Artibonite, three officers of the garrison, armed with clubs, illegally detained Joachim Charles, for unknown reasons.

221. On December 15, in Grande Plaine, Section Communale de la Gonâve, the Chief of Section, Carobert Dévonville, arbitrarily detained Lemoine Auguste, beat him brutally, and accused him of criticizing the military government.

222. On December 25 in Roche-Plate, Baptiste, in the area of Mirebalais, at approximately 2:00 a.m., eight military officials and several deputies of the Section commanded by Sergeant Idéric Calixte arbitrarily detained Brénévil Comeau, Sadrack Comeau, Elie Comeau, Raoul Comeau, and Excene Louis, all members of the Rassemblement des Paysans de Baptiste, accused of being communists. The victims were beaten at the time of their detention and later taken to the nearby prison in Belladère. According to the testimony of a member of the organization, the detention took place with the complicity of former Tonton-Macoute, Jean Ernst Charles. The victims were freed on January 9, although they were unable to return to their homes in light of the overt hostility of local authorities to members of their organization.

223. On January 8, 1990, in Touche Moulin, IV Section Communale de Petite Rivière de la Artibonite, Police Officer Lereste Floréstal arbitrarily detained Wilfrid Souvenance, accusing him of being a member of the Youth Movement of Labadie (MJL).

224. On January 10, in Petit Grove, the police detained Yvon Pascal for having participated in a demonstration.

225. On January 12, in Carrefour at approximately 2:00 a.m., Naly Beauhanais, Secretary General of the Haitian Transportation Workers Union (CSTH) was detained by a group of military officials and armed civilians. Beauhanais was accused of being an agitator and was brutally beaten by soldiers commanded by Captain Serge Dopoux before being sent to the Camp d'application (training base) of Lamentin. Beauhanais was held for 19 days in the National Penitentiary without being brought before an Examining Judge. On January 31, he was released

and two days later several soldiers appeared to search his house, in order to intimidate him not to take any action against them.

226. On January 13, in Point-Benoit, Pétite Rivière de la Artibonite, Wildor Jn. Baptiste and Miguel Exilhomme were detained illegally and accused of subversion by Chief of Section Seland Georges.

227. On January 15, in Cap-Haitien, at 1:00 a.m., Stanley Jean Marie was arbitrarily detained by policeman Robert Lecorps, who accused him of going to Port-au-Prince to participate in the assassination of President Avril upon his return from Taiwan. Jean Marie was taken to the police station and freed six hours later.

228. On January 19, Marie-Denise Douyon and Dr. Gerard Laforêt were detained as they were going to the beach at Aquin by several soldiers who searched their automobile, and upon finding a hunting rifle, proceeded to beat them. Douyon and Laforêt were taken to the Anti-Gang prison. Three days later the soldiers took them to the home of Douyon's mother to search the house and later took them to the prison where they were again tortured, and left in very serious condition. Marie-Denise was transferred to a women's prison in Port-au-Prince and Laforêt was taken to an infirmary, given his serious health condition.

229. On January 19, in Grande Anse de Tiburon, Sergeant Jean Michel detained Pierre St. Germain, accusing him of organizing meetings prohibited by the Government.

230. With the municipal elections only three months away in Haiti, General Prosper Avril proclaimed a state of siege on January 20, 1990. This measure was taken after the assassination of André Neptune, Colonel of the Presidential Guard, on January 19, to protect the country from "terrorism" and "civil war". The arrest of various political leaders is described below.

231. Dr. Louis Roy, head of the Organization for the Defense of the Constitution and member of a civic society was accused of treason by General Prosper Avril on January 15, for having sent a telegram to the Government of Taiwan where Avril was travelling on an official visit, in which he announced that the people of Haiti would not recognize any agreements between the two governments. Roy was beaten during his detention, on January 20, and

expelled from the country the following day.

232. Hubert De Ronceray, leader of the centrist Mobilization for National Development (MDN) was detained on January 20 by a large number of soldiers in civilian dress, who beat him and put out a cigarette on his eyelid. During Avril's trip to Taiwan, Dr. Ronceray had requested the Chief of Staff of the Army (Herard Abrahams) to remove General Avril from office, accusing him of seeking "to rig the upcoming elections to remain in power." Dr. Ronceray was expelled from the country on January 21.

233. Serge Gilles, leader of the Nationalist Revolutionary Progressive Party (PANPRA) was detained on January 20 at his home and beaten in front of his family and again later in the National Palace. Gilles was released after authorities declared that his arrest had been a mistake.

234. Gerard-Emile (Abi) Brun, member of the National Committee of the Congress of Democratic Movements (KONAKOM), was detained together with 25 others members of KONAKOM on January 20 as they met at the headquarters of the Ecumenical Center of Human Rights. The headquarters was searched and Brun and others were beaten. Gerard-Emile Brun was expelled from the country the next day.

235. Dr. Sylvan Jolibois, member of the Nationalist Jean-Jacques Dessalines Sector was detained on January 20 at the clinic where he was working. Dr. Jolibois was beaten in front of patients and taken to the National Penitentiary where he was again mistreated and where he was not allowed to receive medical attention or to see his family.

236. Max Carré, member of the MDN, Gesner Prudent and Philippe Stevenson, members of the Movement for the Implementation of Democracy (MIDH) and Georges Werliegh, member of PANPRA, were detained on January 20 and released a few days later.

237. Max Bourjolly, Secretary General of the Communist Party (PUCH), and Michel Legros, member of the League for Democracy, were detained on January 21 and expelled from the country the next day.

238. Frank Sénat, leader of the Democratic Bloc and President of the Federated of Workers Union was detained on January 21 by a group of soldiers belonging to the Anti-Gang Service. The soldiers broke a window of Sénat's home to gain entry and gave no reason for the arrest.

239. Max Monteuil, leader of the Neighborhood Committee of Cap-Haitien was detained on January 21 and expelled from the country the next day.

240. Antoine Izmary, a prominent businessman, was detained on January 23 and expelled from the country the next day.

241. Franck Rene, member of the Haitian Liberation Party was detained in Marchand Dessalines on the night of January 27 and taken to the National Penitentiary.

242. Illegal detentions also took place in the provinces. Joseph Frenel Manigat, member of the National Alliance of People's Organizations (ANOP), was removed by force from Radio Citadel, where he had gone to read a communique from his organization against Avril. Manigat was detained by armed civilians and taken to the Cap-Haitien prison on January 23, where he was severely beaten. Manigat was released on February 1.

243. During the night of January 25 and January 27, in Dalon and Terre Rouge (Grand Boulay), 13 peasants, members of the Christian Democratic Party (PDCH) were detained and beaten by soldiers commanded by Kesner Pongnon, the Prefect and Commander of the military district of Thomazeau. Some of the homes of the peasants were ransacked by the soldiers, who inquired about the whereabouts of Rev. Silvio Claude and the weapons he allegedly gave to the peasants. The peasants were taken to the Thomazeau jail and only a few were released on January 31.

244. As part of an effort to justify the repressive measures carried out in recent months, the Government of President Prosper Avril published a press release on February 7, 1990, announcing an amnesty for 19 political detainees in the following terms:

The Director of Public Information of the Ministry of Information, Culture and Coordination announces to the public that by administrative order dated February 6, 1990, a complete amnesty has been granted to the following persons:

Sylvan Jolibois

Erbe Morovia

Frank Sénat

Fernand Gérard Laforêt

Marie Denise Douyon

Evans Paul

Marino Etienne

Jean Auguste Mesyeux

Wilner Metellus

Charlot Reynold

Jean Thomas

César Henri

Louis Jean Duval

Delinois Jamson

Gelsey Joseph Fils

Amazone Jean Franckel

Dimanche Jean Renel

Frank René

Franz Patrick Beauchard

This Office, on February 7, 1990, mindful of the decision of the people of Haiti to build a future of freedom, fraternity and human solidarity, wishes to emphasize that this amnesty reflects the unanimous desire of the Government of the Republic to work untiringly to build a FUTURE DEMOCRACY unhindered by extremism or any form of violence, at a time when our society aspires to harmonize its development, since September 17, 1988, with the great currents of change that today dominate current events.

Port-au-Prince

February 7, 1990

Director of Public Information

245. Despite the fact that the Government pardoned several political detainees, authorities in the provinces continued the practice of arbitrary arrests. On February 15, the Commission was informed by the Haitian Association of Journalists of the detention of Herto Zamor, journalist and correspondent of Radio Metropole in Grand-Anse. At the time of his detention, Zamor was mistreated and forced to lie in excrement.

246. During the visit in loco from April 17 to 20, the Delegation from the IACHR received word from human rights groups of the release of the following persons:

Jeannot Alexandre

Emilia Fleuvant

Bernard Fleuvant

Edouard Joseph

Herve Durand y Charles Romain

Val Cesar

Jean Laforêt

Guito Geauvye

Arsene Moyse

Savary Zanny

Jean "Madichon"

Hebert Beauchard

Sosthene St. Jean

Valles Plaisival

Lemoine Auguste

Wilfrid Souvenance

Herto Zamor

4. Situation since the beginning of President Ertha Pascal

Trouillot's Provisional Government

247. The situation on the day following the installation of the civil government headed by Ertha Pascal Trouillot was particularly critical. On one hand, the presence of the "Macoutes" generated an atmosphere of insecurity in the population, and on the other hand, the Army showed itself to be more repressive toward the movements of popular organizations.

248. On March 17th, in Baptiste, a community located 19 kilometers from Belladère, the section chief "macoute de Mon Leon", Level Latis, accompanied by Sergeant Idérick Joseph, detained three militant members of popular organizations: Baldomere and Romenet Cameau, members of the Rassemblement des Paysans de Baptiste and Antelet Cameau, member of the Comité de Jeunes Paysans Haïtiens. The victims were beaten at the time of their detention and were accused of being subversives.

249. On March 19th, en Borgne, an area in northern Haiti, the Borgne Peasant's Movement (BPM), which unifies several popular assemblies, held a meeting in the Grand Plaza

of Borgne. Around 20,000 peasants from all nearby communities met to protest against the presence of the "macoutes" in the inner circle of public administration, in order to demand the expulsion of the section chiefs who terrorize the people. The Military shot at the demonstrators, leaving more than 150 wounded, and detained more than 300 people. Among the victims detained were Ruben Lamour, member of the BPM, Désir Pierre, seriously injured in the leg, and Nicodème St. Cyr.

250. On April 2, en Valliere Elie Garsonville, mayor of the city, was detained and beaten by members of the military for having ordered an investigation of violence committed by the military. Garsonville is still being held in the Valliere jail.

251. During the on-site visit, the Special Commission went to Piatre, where it was informed of the following occurrences: In February 1986, after Jean-Claude Duvalier left Haiti, the peasants of Piatre decided to initiate legal action to recover territory from which they had been expelled by landowner Olivier Nadal, beginning the appropriate judicial process with the presentation of their titles to the land. According to information released to the Commission, the lands occupied by Nadal are worked by peasants from the community of Delugé, generating conflicts between them and the peasants from Piatre.

252. As was demonstrated to the Special Commission during its visit to Piatre, the lack of efficiency within the judicial system to resolve these problems lies at the base of the grave problems that have arisen in the area. It was also mentioned to the Commission that this judicial inefficiency is present in the entire Artibonite region and is manifested in different forms through serious conflict. In Sondé the Commission delegation heard similar claims of how the peasants lack effective judicial remedies to defend their territorial rights, which constitutes a violation of their human rights, and specifically, of article 25 of the American Convention on Human Rights, to which Haiti is a party. It should be noted that these conflicts have provoked numerous deaths and the arrest of Jean Milius Jean Baptiste, who after nine months remains in the Saint Marc prison without trial or process of any kind.

253. The inefficiency of the judicial system was explained to the Commission to be the result of the great influence over the judiciary exercised by the landowners, who have been evicting peasants from their lands. To accomplish the action described, the landowners resort to the military and the section chiefs to repress any form of resistance. The Commission was able to observe how the peasants in Piatre have been forced to move to the high area of the mountains, where the means of subsistence are extremely scarce.

5. Harassment of human rights groups

254. During the period covered by this report, persons directly involved in human rights advocacy have been subject to arbitrary arrest on orders from President Avril's Government. Despite the legal restrictions, the Armed Forces have continued to search the headquarters of human rights groups without a warrant.

255. One of the people who suffered such harassment from the authorities is Joseph Maxi, Attorney-at-Law and President of the Haitian Human Rights League. On November 3, 1989, on the air, Mr. Maxi offered legal assistance to Evans Paul, Etienne Marineau, and Jean Auguste Mesyeux who had been arrested and tortured. Immediately following this announcement, his home was searched by the National Police Guard, and was under military surveillance, thereby preventing him from returning to his family.

256. On November 18, Gaston Jean-Baptiste, Archange Mardi, and Germaine Louis Mai, members of the League of ex-Political Prisoners of Haiti (LAPH), a human rights group headquartered in Port-au-Prince, were arrested by the Armed Forces in Tiotte (to the Southeast of Haiti), without warrant, and taken to the barracks there. The military accused them of meeting illegally to encourage the local population to go on a hunger strike as a means of seeking the release of Mesyeux, Paul, and Marineau. Gaston Jean-Baptiste was beaten while in custody. On November 27, they were released with the formal charge being made.

257. On January 20, 1990, at around 3:00 p.m., a group of armed men, accompanied by police soldiers, burst into the premises of the Ecumenical Human Rights Center in Port-au-Prince. They shot the front door open, removed the filing cabinets and book shelves, and ripped out the telephone wires. At the time, there were approximately 30 delegates of KONAKOM holding their weekly meeting and they were abused by the assailants who identified themselves as members of the Presidential Guard. One of the members of the National Secretariat of KONAKOM, Gerald-Emile Brun, an architect, was beaten and taken to the Presidential Palace along with the other delegates. Most of the prisoners were released on the same day, but Brun remained in military custody until the night of January 21, when he was expelled from the country. On arrival in Miami, Brun had to spend a few days in the hospital because of the blows sustained.

258. On January 21, at around 10:00 p.m., a group of armed men (two in uniform) appeared at the home of Robert Duval, President of the League of ex-Political Prisoners of Haiti, and finding no family member there, beat the servant taken care of the house. Robert Duval and his family did not return home for fear of being arrested.

6. Conclusions

259. Examination of the practices of the Government and of the denunciations made before this Commission shows a series of violations originating in the Government of General Prosper Avril which led to a state of irregularity and complete lack of protection for the population with respect to measures adopted against them by agents of the State.

260. The practice of the Government of Haiti under Avril's regime consisted of detaining political opposition without meeting the minimum requirements of the law. Most of the detentions took place during hours proscribed by the Constitution, private homes were searched without a court order and methods were used that violated the physical integrity of the victims.

261. The incapacity of the judicial system to combat the atmosphere of insecurity that has prevailed in both the capital and rural areas was recognized by the Government itself. The Minister of the Interior and Armed Forces, Acédius Saint Louis, in an interview given on September 7, 1989, said: "The forces of law and order are neither psychologically nor materially prepared to deal with the lack of security in the country".

262. There is a consensus among important sectors of haitian society that the persons accused of having committed human rights violations in incidents like the massacres of November 29, 1987 and at the San Juan Bosco Church on September 11, 1988[2] should be brought to justice. However, President Ertha Pascal-Trouillot's provisional government has mentioned that the lack of complaints prevents justice from being carried out; for example, in January 1988 and investigative committee was formed to look into the November 29 massacre and it received no complaints on the subject. As for the San Juan Bosco massacre, Justice Minister Pierre Labissière informed the IACHR Delegation that based on a complaint Elise Francois had been arrested in connection with the occurrences at the church, and that procedures established by law would be followed.

263. The majority of the arbitrary detentions have been carried out by the "section chiefs" and the "assistants" who are designated by and form part of the Armed Forces. The activities of these individuals have far exceeded their function as rural police officers, leading to an atmosphere of insecurity among the population. According to information received by the Commission, the judicial authorities have shown neither efficiency nor decisiveness in resolving the investigations of these violations.

264. As can be seen from the denunciations received, in certain cases detentions have been extended for long periods, and in other cases the victims have been released after a few days, but in all cases they have been kept incommunicado, no charges have been brought against them, and they have not been afforded the guarantees of due process. In this respect, the violation of the right to personal liberty allows the emergence of an atmosphere that is propitious to the violation of other human rights, such as the right to judicial guarantees and personal safety.

265. The description given in this chapter points to the conclusion that the rights to personal liberty and to judicial guarantees have been gravely compromised during the period covered by General Avril's regime. Since the inception of President Ertha Pascal-Trouillot's provisional government, the Commission has been able to observe a considerable decline in human rights violations.

[2] The massacres of November 29, 1987 and the one of the San Juan Bosco Church of September 11, 1988, are mentioned in the Report on the Human Rights Situation in Haiti, 1988 page 81 and 103.

CONCLUSIONS AND RECOMMENDATIONS

266. From the above exposition the Inter-American Commission is able to draw conclusions and make recommendations. First of all, it wishes to state that it has found in the highest officers of the Government of Haiti a positive attitude to move forward in the protection and promotion of human rights, including political rights, through the exercise of which it is sought to establish representative democracy. The Commission heard with satisfaction the commitment on the part of the Government that the Armed Forces of Haiti, will guard order and safety of the population and of the candidates during the electoral process to begin shortly and will prevent a recurrence of the events of November 29, 1987.

267. The Commission sensed a climate of latent insecurity that tends to break out in response to a variety of problems, sometimes culminating in acts of utmost severity. The extreme violence of agents of the Army, and of the section chiefs and armed civilians associated with ruling sectors that have fallen from power, prompts harsh acts of violence by victims, which in turn are put down by the Armed Forces. In the Commission's view, it is essential that this vicious circle of violence be broken, and the main burden of responsibility for accomplishing this devolves upon the Army and the Police. They must respect the human rights of civilians in their demonstration control methods, and effectively protect civilians who are set upon by groups of armed civilians or by soldiers in their own ranks. In this regard it is for the Government to take the initiative that members of the Armed Forces and Police, in charge of maintaining safety, will receive exemplary sanctions when found responsible of abuses against the civilian population.

268. What emerges then is a clear picture of institutionalized violence by the very forces whose obligation it is to preserve the peace and protect citizens from violations of the right to life. The same conclusion can be reached with regard to the physical integrity of citizens. The institutional forces consisting of the army, the police, the section chiefs and their para-military henchmen, far from assuring humane treatment of prisoners, are chronic violators of this basic human right.

269. The Inter-american Commission must observe that the absence of judicial actions against persons suspected responsible for grave human rights violations constitute an omission that must be promptly corrected. The Commission is aware of the legal and factual difficulties that such actions face. However, the Commission must point out that an action by the State in this regard will contribute not only to repair the material and moral injuries caused, but also will have a preventive effect to avoid the recurrence of new violations.

270. The inefficiency of the Judicial Branch and the fact that it is to a degree the captive of the power interests, make the populace highly insecure about the safety of their rights, and are cited by some people as the reason for taking the law into their own hands. This situation is particularly dramatic in rural areas, where the inhabitants are bereft of any legal recourse for the assertion of their rights and are at the mercy of the section chiefs and their "adjoints." The testimony taken and information gathered have convinced the Commission that, in practice, the section chiefs widely exceed their assigned functions, and it feels, therefore, that the system must be radically changed so that those police officers will be truly responsive to the will of the people democratically expressed. This is why the Commission has listened attentively to the statements of both the Minister of the Interior and the Commander-in-Chief of the Armed Forces with a view changing the duties, functions and origins of the section chiefs.

271. The inefficiency of the Judicial Branch is also reflected in the irregular procedural status of many individuals in custody. It is therefore of the essence to take a census of the penal population in order to ascertain their procedural status and set at liberty those against whom there are no well-founded charges. This will help improve the deplorable conditions that the Commission found in the jails.

272. The Commission observed the presence of a healthy freedom of expression in Haiti, though it was told that there are restrictions on this right that must be quickly changed. The Commission finds that the journalists and owners of mass media have good reason to fear the possibility of something happening to them, especially during the election campaign and in the countryside. Because of this, the Commission is of the view that the Government and the Armed Forces must make every possible effort to protect the journalists and guarantee their safety in the real exercise of their right to freedom of expression, an essential prerequisite for truly free and honest elections.

273. It is also for the Government to disarm the groups of civilians and retired military men who still are in illegal possession of weapons. The Commission is convinced that this would measurably reduce the insecurity of the population and help avert an escalation of conflict and additions to the terrible loss of life that has already taken place. The Commission must express its satisfaction at hearing that the highest authorities are putting into practice programs that will separate the Police from the Army as prescribed by the Constitution, and hopes this process will be completed as quickly as possible.

274. The Commission has further observed that political, labor and humanitarian groups are exercising their right to association. However, the freedom to exercise this right is under the same cloud of insecurity that lowers over all the others, and the Commission is of the view that the Government should enforce continued freedom to exercise it.

275. Finally, the Commission must reaffirm that the Haitian State, as a party to the American Convention on Human Rights, is under the obligation not only to respect those rights, but also to enforce the freedom to exercise them fully. It hopes that in the coming election campaign, human rights will be exercised in a climate of security that will enable all political forces and the Haitian population at large to express themselves and act in complete freedom and without fear. In this way, it feels, the current democratization will surround the act of voting with the broadest range of human rights, including the economic, social and cultural rights, whose realization is essential to attainment of the Haitian people's legitimate aspiration to a

decent life. This, in the view of the Commission, would truly strengthen representative democracy which, as has been repeatedly stated, affords the best guarantee of the full realization of human rights.