



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/1988/38
3 February 1988

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Forty-fourth session
Agenda item 22

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report on Haiti by the expert, Mr. André Braunschweig, prepared
in conformity with Commission resolution 1987/13

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I. INTRODUCTION

1. Between 1981 and 1987, the Commission on Human Rights examined the human rights situation in Haiti under the procedure established by Economic and Social Council resolution 1503 (XLVIII).

2. The communications relating to human rights violations examined by the Commission during that period, under resolution 1503 (XLVIII) were summarized in the report which the Special Representative of the Commission submitted to it at its forty-third session in 1987 (E/CN.4/1987/61, paras. 1-5).

3. During the same period, the Commission also had before it the reports of the expert appointed by the Secretary-General to hold consultations with the Government of Haiti regarding advisory services and technical assistance which the Secretary-General might provide in order to facilitate the full enjoyment of human rights by the Haitian people, as requested by the Commission and the Economic and Social Council. The latest report (E/CN.4/1986/34/Add.3) was examined by the Commission at its forty-second session, in 1986, under the agenda item relating to advisory services.

4. At its forty-second session the Commission on Human Rights, having examined the situation concerning Haiti under the procedure established by Economic and Social Council resolution 1503 (XLVIII), adopted, on 13 March 1986, a confidential decision in which it requested its Chairman to appoint a special representative.

5. Originally submitted to the Commission at its forty-third session in 1987 under the confidential procedure established by resolution 1503 (XLVIII), the report of the Special Representative was later made public by the Economic and Social Council in accordance with the recommendation of the Commission on Human Rights in paragraph 11 of its resolution 1987/13.

6. At its 42nd (closed) meeting on 2 March 1987, the Commission on Human Rights adopted resolution 1987/13, the main provisions of which should be noted.

7. In paragraph 2 of that text, the Commission:

"Invites the Government of Haiti to continue in its endeavours to develop full respect for human rights and fundamental freedoms in Haiti and to give consideration to the adoption of measures in areas of need indicated by the Special Representative, particularly:

(a) Training and instruction of the police, military and prison personnel in respect for human rights and fundamental freedoms;

(b) Adoption of measures to strengthen the independence of the judiciary;

(c) Absolute prohibition of torture;

(d) Establishment of a panel of eminent Haitian personalities to investigate and report on past human rights abuses in the country;

(e) Possibility of inviting international observers to the forthcoming legislative and presidential elections".

8. In paragraphs 6, 7 and 8 of the resolution, the Commission invites the Secretary-General to proceed to award three fellowships to qualified Haitian nationals to study the protection of human rights in the areas of the police, prisons and justice; to assist in the dissemination of information on human rights in Haiti; and, in co-operation with the Government of Haiti, to finalize the dates for a training course on human rights in Haiti.

9. In paragraph 9, the Commission:

Recommends to the Government of Haiti that it actively consider becoming a party to international instruments in the field of human rights, such as the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". 1/

10. In paragraph 10 of the resolution, the Commission decides "to discontinue its consideration of the situation in Haiti under the procedure established by Economic and Social Council resolution 1503 (XLVIII)".

11. Lastly, in paragraphs 12, 13 and 14 of the resolution, the Commission:

Requests the Secretary-General to appoint an expert with a view to assisting the Government of Haiti, through direct contacts, in taking the necessary action for the full restoration of human rights;

Requests the expert to report on his direct contacts with the Government of Haiti and to formulate recommendations for the full restoration of human rights in Haiti;

Decides to examine the report of the expert at its forty-fourth session under the agenda item entitled 'Advisory services in the field of human rights'".

12. With a view to taking the action requested of him in paragraphs 6, 7 and 8 of the resolution, the Secretary-General transmitted a note verbale on 10 June 1987 to the Ministry of Foreign Affairs and Religious Worship of Haiti, assuring it of the Secretariat's assistance in giving effect to the above-mentioned provisions.

13. The Secretary-General received, on 9 October 1987, the candidature of a Haitian national submitted to him by the Ministry of Foreign Affairs and Religious Worship in response to the offer of three fellowships for training, in accordance with paragraph 6 of the resolution. Although the qualifications of the candidate did not entirely correspond to the areas indicated in the resolution, the candidature was accepted and the fellowship was granted under the advisory services programme. The attention of the candidate was nevertheless drawn to the fact that it would be desirable for the research topic of his fellowship to be related to one of the three areas indicated in the Commission's resolution.

14. The Centre for Human Rights, furthermore, received a letter, dated 8 October 1987 from the Permanent Representative of Haiti to the United Nations in New York, requesting a list of United Nations documents on human rights which the Organization might make available, in conjunction with

its assistance, to the Haitian Government in order to set up a reference library on human rights in Haiti. The Centre replied affirmatively to that request and, in a letter dated 13 November 1987, it sent a list comprising some 300 titles of documents, reports and publications which it could submit for the approval of the Government of Haiti.

15. Regarding paragraph 7 of the Commission's resolution, the United Nations Department of Public Information is currently exploring the possibilities of translating and perhaps printing the Universal Declaration of Human Rights in Creole.

16. As to the training course on human rights in Haiti, which in accordance with paragraph 8 of the resolution "should be held as early as possible", the Centre for Human Rights has had contacts with the Permanent Mission of Haiti to the United Nations Office at Geneva, following the sending of the note by the Secretary-General of 10 June 1987. As a result of those contacts in a letter of 30 July 1987 the Centre submitted specific proposals to the Haitian authorities for the organization of such a course and requested their agreement for it to be held at the earliest possible date.

II. MANDATE OF THE EXPERT

17. Concerning the implementation of paragraph 12 of the resolution, the Secretary-General entrusted Mr. André Braunschweig, a French national, an honorary Divisional President of the Court of Cassation and a member of the Committee on the Elimination of Racial Discrimination, with the expert mission defined in that paragraph, with a view to "assisting the Government of Haiti in taking the necessary action for the full restoration of human rights in Haiti".

18. On being notified of his appointment on 8 October 1987, the expert began at once to make arrangements to visit Haiti at a very early date.

19. By a note verbale dated 9 October 1987, the Secretary-General informed the Haitian authorities of the appointment of the expert and, in consultation with him, requested the agreement of the Government of Haiti for the expert to visit the country from 2 to 7 November 1987.

20. The expert arrived in Geneva on 15 October 1987 and, in the Centre for Human Rights, met the Permanent Representative of Haiti to the United Nations Office at Geneva, who informed him that, while no reply had been received from his Government, he thought it could hardly be in a position to consider receiving an expert and facilitating his mission, at a time when the country was already preparing for elections.

21. The expert nevertheless expressed a very strong desire to travel on the dates he had planned and emphasized that the mandate entrusted to him, required direct contacts to be made with the Haitian authorities, as soon as possible, and indeed before the official opening of the election campaign.

22. While giving his assurance that he would notify his Government of the expert's insistence, the Permanent Representative nevertheless proposed that the expert should consider the possibility of postponing his visit until after the elections, i.e., until January 1988.

23. Bearing in mind the specific nature of the mission entrusted to him, as defined in paragraph 12 of the resolution, the expert was induced to take account of the informal suggestion made to him by the Permanent Representative of Haiti and, after consultation with the secretariat, he decided not to visit Haiti in November. The Permanent Representative was then notified of the decision to postpone the expert's visit to Haiti until January 1988.

24. In spite of this delay and to minimize the ensuing inconvenience, the expert immediately began preparing for the direct contacts which he would be able to have with the Haitian authorities once it became possible for him to carry out his mission. For that purpose, he collected a number of documents and met various personalities, including some of Haitian nationality, in Geneva and in Paris to enable him to follow developments in the situation in Haiti.

25. Thus, he had to change his plans once more owing to the disruption of the election timetable. According to that timetable, the first round of the presidential, legislative and municipal elections was due to be held on 29 November 1987, the second round on 20 December 1987 and a possible third round for elections to the Senate on 3 January 1988.

26. However, the tragic events which occurred on 29 November 1987 first obliged the Provisional Electoral Council to suspend the electoral process towards 9 a.m. that day, and then compelled the National Governing Council, at around 2.30 p.m., to dissolve that body and annul the electoral law of 10 August 1987. Finally, on 9 December 1987, the National Governing Council announced that the first round of elections had been set for 17 January 1988.

27. The expert was therefore faced with a further insurmountable obstacle to the discharge of his mandate.

28. In a letter dated 3 December 1987, addressed to the Director-General of the United Nations Office at Geneva, the Permanent Representative of Haiti at Geneva referred to the situation in the following terms:

"...

1. In view of the forthcoming elections, it was agreed during consultations with the secretariat to postpone the visit to Haiti which Mr. André Braunschweig had planned to make from 2 to 7 November 1987 in conjunction with the expert mission entrusted to him.

2. While welcoming Commission resolution 1987/13 and Economic and Social Council decision 1987/140, the Government of Haiti regrets that it has not been possible to give full effect to all the provisions of these two texts. It hopes that this can be done as soon as possible, once the situation is favourable.

..."

29. The expert nevertheless was anxious to have a further discussion with the Permanent Representative of Haiti and visited Geneva on 15 December 1987. In the Centre for Human Rights he met the Permanent Representative, who confirmed to him the circumstances in which the elections had been postponed but indicated that, in his view, the delay would not prevent the President-elect of the Republic from taking office, as scheduled, on 7 February 1988. At the conclusion of the meeting, the expert requested the Permanent Representative of Haiti to inform his Government that he continued in any event to be at the disposal of the Haitian authorities, for the purpose of carrying out his mission in Haiti, as soon as they considered the time to be opportune.

30. Elections were held on 17 January 1988 and on Sunday, 24 January, Mr. Leslie Manigat was proclaimed President of the Republic of Haiti.

31. The expert sent the following letter, on 29 January 1988, to the Permanent Representative of Haiti to the United Nations Office at Geneva:

"...

Further to discussions in Geneva on 15 October and 15 December 1987, I have the honour to remind you that the Secretary-General of the United Nations has entrusted me with the mission specified in paragraph 12 of resolution 1987/13 adopted by the Commission on Human Rights.

The proclamation, last Sunday, of Mr. Leslie Manigat as President of the Republic of Haiti means that new constitutional institutions will soon be set up in your country. Accordingly, I should like to confirm to you that I remain at the disposal of the Haitian authorities with a view to discharging my mission and to request you would so inform the President of the Republic, once he has taken office, and likewise the head of the new Government.

..."

III. CONCLUSION

32. Paragraph 13 of resolution 1987/13 requests the expert, inter alia, to "formulate recommendations for the full restoration of human rights in Haiti", but since he has been unable to enter into direct on-the-spot contact with the country's present leaders, the expert is obviously not in a position to meet that request.

33. His regret at not yet having been able to carry out his mandate is, however, tempered by the feeling that a useful dialogue on the subject of human rights can only take place with the political authorities which will have taken definitive charge of their country's future.

34. Nevertheless, the work of preparing his visit to Haiti has given the expert an idea of the main lines along which the emissary of the Commission on Human Rights might offer assistance to the Haitian Government.

35. These derive from the institutional event of capital importance which has occurred since the Commission's forty-third session. On 29 March 1987, the Haitian people voted massively and with excellent discipline on the occasion of a referendum held in order to ratify the Constitution of the Republic of Haiti. Unqualified approval has thus been given to a basic instrument whose ethical and legal value lies in the exemplary principles it upholds, which are to serve as the foundation for a true democracy.

36. Extracts from the Constitution are annexed to this report. The articles reproduced are those with most bearing upon respect for individual freedoms and human rights.

37. The concretization of these constitutional rules is the task to which Haiti's new rulers will have to devote all their efforts without delay, guaranteeing the operation of the institutions envisaged in the Constitution by means of legislative texts or regulations.

38. In any event, the Government of Haiti should be enjoined to give priority to resolving problems connected with the setting up of an independent judiciary, the establishment of an autonomous police force, and the reform of the prison system at both the practical and the moral levels.

Note

1/ Haiti is a party to the following conventions:

The International Convention on the Elimination of All Forms of Racial Discrimination;

The International Convention on the Suppression and Punishment of the Crime of Apartheid;

The Convention on the Elimination of All Forms of Discrimination against Women;

The Convention on the Prevention and Punishment of the Crime of Genocide;

The Slavery Convention;

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;

The Convention Relating to the Status of Refugees;

The Protocol Relating to the Status of Refugees;

The Convention on the Political Rights of Women.

Annex

THE MOST SIGNIFICANT ARTICLES IN THE 1987 CONSTITUTION OF HAITI
RELATING TO HUMAN RIGHTS

...

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

Article 20: The death penalty, on whatever grounds, shall be abolished."

...

"Article 22: The State shall recognize the right of every citizen to decent housing, to education, to food and to social security."

...

"Article 24: Individual liberty shall be guaranteed and protected by the State.

Article 24.1: No one may be prosecuted, arrested or detained except in the cases determined by the law and in the manner which it prescribes.

Article 24.2: Except in cases of flagrante delicto, arrest and detention shall take place only upon a warrant issued in writing by a legally competent official."

...

"Article 25: Any harshness or constraint not required in order to apprehend a person or to keep a person in detention, and any moral pressure or physical brutality, in particular during interrogation, shall be prohibited.

Article 25.1: No one may be interrogated in the absence of their lawyer or of a witness of their choice.

Article 26: No one may be kept in detention unless he has appeared, within the forty-eight (48) hours following his arrest, before a judge who is assigned to rule on the legality of the arrest and the judge has confirmed the detention with statement or reasons.

Article 26.1: In the event of a minor infraction, the accused person shall be brought before a justice of the peace, whose decision shall be final.

In the event of an offence or a crime, the accused may, without prior permission and by means of a simple written statement, lodge an appeal with the senior judge of the Court of First Instance, who, on the basis of the conclusions of the Office of the Prosecutor shall, at an emergency sitting not subject to postponement or rotation and given absolute priority, rule upon the legality of the arrest and the detention.

Article 26.2: If the arrest is ruled unlawful, the judge shall order the detainee's immediate release and this decision shall be executed at once, any appeal, review appeal or stay of execution notwithstanding.

Article 27: All breaches of provisions relating to individual liberty are arbitrary acts. Injured persons may, without prior authorization, apply to the competent courts with a view to prosecuting the originators and perpetrators of such arbitrary acts, whatever their status and whatever the organization to which they may belong."

...

"Article 28: All Haitians shall have the right freely to express their opinions on all subjects through the channel of their choice.

Article 28.1: Journalists shall freely exercise their profession within the limits of the law. Such exercise may not be subject to any authorization or censorship except in the event of war.

Article 28.2: Journalists may not be forced to reveal their sources. They shall, however, be in duty bound to verify the authenticity and accuracy of all information. They shall likewise be required to respect professional ethics."

...

"Article 30: All religions and all forms of worship shall be free. Every person shall have the right to profess his or her religion or creed, provided that the exercise of this right does not disturb public peace and order.

Article 30.1: No one may be compelled to join an association or to follow religious instruction contrary to his or her convictions.

Article 30.2: The conditions for the recognition and operation of religions and creeds shall be laid down by law.

Article 31: Freedom of association and of unarmed assembly for political, economic, social, cultural or any other peaceful purposes shall be guaranteed."

...

"Article 32: The State shall guarantee the right to education. It shall supervise the population's physical, intellectual, moral, professional, social and civic training.

Article 32.1: Education shall be the responsibility of the State and of the territorial collectives. These shall make schools available free of charge to everyone and supervise the level of training of teachers in the public and private sectors."

...

"Article 35: Freedom of work shall be guaranteed. All citizens shall have the obligation to work in their chosen field with a view to providing for their own and their family's needs and to co-operate with the State in the establishment of a system of social security.

Article 35.1: All employees of a public or private institution shall have the right to fair wage, to rest, to paid annual leave and to the payment of a bonus.

Article 35.2: Equality of working conditions and of conditions as to wages shall be guaranteed by the State to workers irrespective of their sex, beliefs, opinions and matrimonial status.

Article 35.3: Trade union liberties shall be guaranteed. All workers in the private and public sectors may join their respective craft trade union exclusively for the protection of their working interests.

Article 35.4: Trade unions shall be essentially non-political, non-profit-making and non-denominational. No one may be compelled to join them.

Article 35.5: The right to strike shall be recognized within the limits laid down by law.

Article 35.6: The age limits for paid work shall be laid down by law. Special laws shall be enacted to regulate the work of minors and of domestic servants.

Article 36: Private property shall be recognized and guaranteed. The modalities of its acquisition and use, as well as its limits, shall be established by law."

...

"Article 40: The State is placed under obligation to make public through the spoken, written and televised press, in the Creole and French languages, acts, decisions, decrees, international agreements, treaties and conventions and all matters pertaining to the life of the nation, with the exception of information which falls within the scope of national security.

Article 41: No individual of Haitian nationality may be deported or forced to leave the national territory.

No one may, on whatever grounds, be deprived of his or her legal status and nationality for political reasons.

Article 41.1: No Haitian shall require a visa in order to leave the country or to return to it.

Article 42: No citizen, civilian or military, may be withdrawn from the jurisdiction of judges assigned to him under the Constitution and the law."

...

"Article 43: No house search and no seizure of documents may take place except by virtue of the law and in the manner it prescribes.

Article 44: Prisoners awaiting trial on remand shall be kept separate from those serving a sentence.

Article 44.1: Prison conditions shall meet the standards governing respect for human dignity in accordance with the relevant legislation.

Article 45: No sentence may be imposed except by law or applied except in the cases laid down by law.

...

"Article 49: The freedom and secrecy of correspondence and of all other forms of communication shall be inviolable. Any restrictions may be imposed only by a well-founded decision of the judicial authority, in accordance with the guarantees provided by law."

...

"Article 51: The law may not have retroactive effect, except in criminal matters when it is favourable to the accused."