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COMMISSION ON HUMAN RIGHTS
Forty-third session

STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT
PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS, AS PROVIDED
IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL
COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII)

Report of the Special Representative of the Commission on
Human Rights submitted pursuant to confidential decision
relating to Haiti

The attached report, prepared by Mr. Michel Gauvin, Special Representative of the Commission on Human Rights designated pursuant to a confidential decision adopted by the Commission at its 56th (closed) meeting on 13 March 1986, and originally issued under the symbol E/CN.4/1987/R.2, is hereby released for general distribution in accordance with decision 1987/140 of the Economic and Social Council.



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Human Rights submitted pursuant to confidential decision
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The present document contains the text of a report submitted to the Commission on Human Rights at its forty-third session by Mr. Michel Gauvin, designated as Special Representative of the Commission on Human Rights pursuant to a confidential decision adopted by the Commission at its 56th (closed) meeting on 13 March 1986, concerning the human rights situation in Haiti.

*/ All persons handling this document are requested to respect and observe its confidential nature.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Chapter I: Activities undertaken in implementation of the Commission's mandate	6
Chapter II: Economic, social and cultural rights	7
Chapter III: Civil and political rights	13
Chapter IV: Advisory services in the field of human rights	27
CONCLUSIONS	28

INTRODUCTION

1. Between 1981 and 1986, the Commission on Human Rights examined materials concerning the human rights situation in Haiti within the framework of the procedure established under resolution 1503 (XLVIII) of the Economic and Social Council, together with materials and observations received from the Government. In summary, the communications examined by the Commission on Human Rights in the past years and at its last session in 1986 concerned the following allegations: arbitrary suspension and suppression of basic civil rights of Haitian citizens, including freedoms of expression, opinion, press assembly and trade unions. Haitians were alleged to be regularly arrested without charge, detained without trial and denied fair hearing and due process of law. Haitian lawyers were said to be fearful of representing their clients and subjected to intimidations in cases of political trial. The courts and the administration of justice were reportedly run by President Duvalier's appointed staff who lacked the independence to make judgements against abuses of human rights.
2. The special security officers or militia, "Volontaires de la sécurité nationale" (VSN) known as the Tontons Macoutes, were reportedly responsible for large-scale corruption, violence and harassment, including illegal arrests, detention in unknown places, interrogation under torture and killings. They also allegedly engaged in activities of extortion and raids in public meetings. Imprisonment without charges of human rights activists, political opponents, independent journalists, radio broadcasters, trade union leaders and priests were also reported in various communications.
3. It was reported, practically in all the communications, that prison conditions were very harsh; general dietary and sanitation conditions were extremely poor, medical attention was inadequate and, in addition, that detainees were subjected to torture. Some had allegedly died as a result of their treatment. Allegations were also made in the communications with regard to the systematic denial of the political rights of the Haitian people, including denial of free election campaigns and the complaint was made that legislative elections were undemocratic and fraudulent.
4. Haitians, it was further alleged, lived in extreme and deplorable conditions of poverty; 80 per cent were reportedly illiterate. As a result, a mass exodus of persons had taken place.
5. Between 1981 and 1986, the Commission on Human Rights endeavoured to pursue a dialogue with the representatives of the Government of Haiti in the hope of encouraging improvements in the situation of human rights and fundamental freedoms in that country. The Commission adopted various decisions to that effect and also arranged for the designation of a representative of the Commission to undertake direct contacts with the Government of Haiti on the spot. Pursuant to these decisions of the Commission, reports on direct contacts were presented to the Commission in 1982, 1983 and 1984. 1/
6. At the request of the Commission, the Secretary-General also examined ways and means whereby advisory services in the field of human rights could be made available to the Government of Haiti. As part of this process, experts designated by the Secretary-General visited Haiti for discussions with

Government officials and the Commission was seized with reports dealing with advisory services and technical assistance to the Government of Haiti. In the course of the above-mentioned contacts on advisory services and technical assistance, particular emphasis was placed on the establishment and organization of a documentation centre (or library) for the national Human Rights Commission of Haiti; the award of fellowships to Haitian staff working in the field of human rights and the organization and promotion in Haiti of seminars concerning questions of human rights.

7. At its forty-second session, the Commission on Human Rights was informed that consideration was then being given to the possibility of organizing a national training course designed specifically for officials directly involved in the protection of human rights, i.e., officials with responsibilities in the fields of education, administration of justice, police or prison service. The elements of a draft programme for such a training course had been communicated to the Government and were made available to the Commission. 2/

8. In the light of its consideration of the human rights situation then prevailing in Haiti, the Commission on Human Rights, at its forty-second session, on 13 March 1986, adopted within the framework of the procedure provided for by Economic and Social Council resolution 1503 (XLVIII), a confidential decision by which it requested its Chairman to appoint a special representative with the following mandate:

(a) To collect any information concerning the human rights situation in Haiti and to evaluate the development of the situation as regards political, civil, economic, social and cultural rights and freedoms, including the holding of free elections;

(b) To study, with the Government of Haiti, any assistance that might be given as part of the advisory services in the field of human rights;

(c) To report to the Commission at its forty-third session.

The Commission adopted this decision after having examined available materials concerning the human rights situation in Haiti and having taken note of the change in Government which had occurred in that country on 5 February 1986.

9. Having heard a statement by the representative of the Government of Haiti concerning the new Government's intention to restore human rights and fundamental freedoms in Haiti, including the holding of free elections, the Commission stated that it was encouraged by that statement and was desirous of following the development of the human rights situation in the country. The Commission considered that it would be useful for it to be further informed by the new Government of Haiti, before its forty-third session, about the implementation of measures for the promotion and protection of human rights, and about those aspects of the human rights situation in the country which may still require further clarification.

10. Accordingly, the Commission decided to keep the human rights situation in Haiti under review within the framework of Economic and Social Council resolution 1503 (XLVIII) in the light of any further observations received from the Government of Haiti pursuant to this decision and such information as may reach the Commission under Council resolution 1503 (XLVIII).

11. In the course of the deliberations of the Commission, the essential objectives of the Commission were elucidated. The idea, it was felt, was "to offer a helping hand to a country which was living through a time of hope that was shared by the international community". 3/ There was a wish to help the Government "to pursue the process of change begun by it in the interests of the international community and, above all, of the Haitian people". 4/ It was emphasized that the designation of a special representative would not obstruct the process of democratic recovery already under way in Haiti in conformity with the deeply-felt wishes of the people of Haiti.

12. During the Commission's consideration of the situation of human rights in Haiti, the representative of the Government informed it that subsequent to the change in Government which had occurred in that country on 5 February 1986, "the National Governing Council (CNG) had already taken measures to guarantee respect for political, economic and social rights in Haiti. Political prisoners had been released, the freedom of the press had been guaranteed, the volunteer security corps had been dissolved and power would shortly be transmitted to a Government that had come into being through democratic elections. Strong measures were already being applied to guarantee the exercise of political rights, respect for the dignity of the individual, and freedom of expression, but their success depended both on the Haitian people and on the support and assistance which the international community could provide. What was needed was to raise the standard of living of the population, put the country's finances in order and improve education, health services and housing. All those measures were essential to start the country off on the right foot". 5/

13. Members of the Commission "welcomed the statements of the representative of the Haitian Government and hoped that the new Government would continue on its present course". 6/ It was noted that "the collapse of the dictatorship had given rise to great hopes, but numerous reforms were also now required". 7/ It was further noted that though there had been a "de facto change", "there had not yet been free elections in the country and, even though the Governing Council had taken a democratic attitude, that did not, properly speaking, constitute a constitutional process". 8/

14. Some representatives felt that "the most important tasks fell to the Government, which must create certain prior conditions and must, to begin with, draw up a new constitution. It would have to prepare the way for the creation of political parties, allow exiles who wished to do so to return to their country, take whatever steps were necessary to abolish torture, develop an independent judiciary, reorganize the police forces, revise the Penal Code and release political prisoners". Therefore, "the problem at present was to help the Government to consolidate the foundations for its independence and to move forward resolutely towards a pluralist democracy, in accordance with the people's deeply felt wishes" 9/

15. Specific suggestions were made to the Government. Thus, noting that the new Government had expressed its wish to assign priority to respect for human rights, it was pointed out that "the Government should continue along those lines and take appropriate action to restore the constitutional prohibition of torture, establish a genuinely independent judicial power, to prosecute those who had committed serious human rights violations and to issue clear and binding instructions to the security forces. Last, if the Government decided to close Dessalines prison, it would demonstrate its will to make sweeping changes in Haiti". 10/

16. It was emphasized that "there must be a guarantee of the full exercise of democracy and that the Government was acting in accordance with the wishes of the people. Experience had shown that new Governments often needed help, and the representatives of the Governing Council of Haiti had in fact themselves requested help". 11/

17. Questions were asked "whether the Government had set a time-frame within which democracy was to be restored. [...] It would also be all to the good to know what measures had been taken to ensure that the security forces acted in conformity with the law, particularly since the curfew decree. Last, what the Government had done to strengthen the independence and effectiveness of the judicial power". 12/

18. It was noted that "under the previous régime, there had been serious violations of human rights in that country and freedoms had been subjected to severe restrictions. Detainees, in particular, had frequently suffered from ill-treatment. Although the present Government was obviously not responsible for that, it should be requested to take rapid action to rectify the situation". 13/

19. Some representatives felt that the new administration should "resolve the serious problem of the political refugees who wished to return to Haiti to participate in the life of their country". 14/ In this regard the view was expressed that "the special representative must, as it were, be the guarantor of those refugees' return, so that their readaptation to the political and social life they had had to abandon would be facilitated". 15/

20. Concern was furthermore expressed with regard to "the situation of economic and social rights in Haiti". 16/

21. On the issue of advisory services to the Government of Haiti, the representative of the Government informed the Commission as follows: "On the occasion of their recent victory, the Haitian people had demonstrated their maturity and their desire for a just society based on respect for human rights and on the preservation of their national identity in the face of change. As of now, the Haitian people would be in control of their future in a democratic society and would continue to fight with courage and determination, while looking forward to any assistance that the international community might be able to offer them. They would like negotiations with the Secretary-General of the United Nations on training courses for Haitian officials responsible for human rights matters to enable them to make a constructive study of the initiatives taken by the Commission. 17/ He added later that "the Haitian Government was also expecting advisory services to be provided for the task which it intended to carry out ...". 18/

Notes

- 1/ E/CN.4/R.81; E/CN.4/1983/R.4; E/CN.4/1984/R.3.
- 2/ E/CN.4/1986/34/Add.3.
- 3/ E/CN.4/1986/SR.42, paragraph 18.
- 4/ Ibid., paragraph 28.
- 5/ E/CN.4/1986/SR.42, paragraph 3.
- 6/ Ibid., paragraph 33.
- 7/ Ibid., paragraph 35.
- 8/ Ibid., paragraph 14.
- 9/ Ibid., paragraphs 24 and 25.
- 10/ Ibid., paragraph 11.
- 11/ Ibid., paragraph 15.
- 12/ Ibid., paragraph 20.
- 13/ Ibid., paragraph 37.
- 14/ E/CN.4/1986/SR.56, paragraph 6.
- 15/ E/CN.4/1986/SR.56, paragraph 12.
- 16/ Ibid., paragraph 16.
- 17/ E/CN.4/1986/SR.42, paragraph 2.
- 18/ E/CN.4/1986/SR.56, paragraph 55.

Chapter I

Activities undertaken in implementation of the Commission's mandate

22. By a note dated 15 May 1986, the text of the confidential decision of the Commission was formally communicated to the Government of Haiti with an invitation to co-operate in the implementation of the Commission's decision.

23. On 12 August 1986, the Chairman of the Commission on Human Rights appointed Ambassador Michel Gauvin of Canada as the Special Representative of the Commission to carry out the mandate set out in the Commission's confidential decision of 13 March 1986 relating to Haiti. By a letter dated 15 August 1986, the Centre for Human Rights informed the Government of Haiti of the designation of Ambassador Gauvin as the Special Representative of the Commission and further informed the Government that Ambassador Gauvin would be visiting Geneva on 16 September 1986 in pursuance of his mandate and also to plan a visit to Haiti which he hoped to undertake. The Permanent Mission of Haiti to the United Nations Office at Geneva was further informed by the same communication that it might be useful for Ambassador Gauvin to meet with members of the Mission during his stay in Geneva from 16 to 18 September 1986.

24. On 17 September 1986, Ambassador Gauvin met with the Deputy Permanent Representative of Haiti to the United Nations Office at Geneva to discuss the implementation of the mandate which the Commission had entrusted to him. At that meeting, Ambassador Gauvin expressed his desire to co-operate closely with the Government of Haiti with a view to assisting that Government in its desire of improving the situation of human rights and fundamental freedoms in Haiti. He emphasized his desire to assist as much as possible the Government and people of Haiti along the road that they had chosen, namely, the restoration of democracy and the assurance of human rights and fundamental freedoms for all Haitians.

25. Inasmuch as his mandate required the Special Representative to collect any information concerning the human rights situation in Haiti and to evaluate the development of the situation, the relevant specialized agencies with the United Nations system were requested to provide him with any information that could be of assistance to him. A similar request was made to the Organization of American States (OAS). Contacts were also established with relevant departments and offices of the United Nations associated with the programme of international assistance launched by the Secretary-General of the United Nations. Replies were received from ILO, UNESCO, WHO, FAO, OAS and UNDP.

26. With due regard to the need for discretion, the Special Representative also acquainted himself with information in the possession of non-governmental organizations in consultative status with the Economic and Social Council.

27. Following prior discussions with the Government of Haiti, and with its agreement, the Special Representative visited Haiti from 1 to 15 December 1986. He was accompanied by a senior official of the Centre for Human Rights. During his visit to Haiti, the Special Representative had contacts with the Head of State, members of the CNG, Government ministers, Government officials and representatives of the legal profession, trade unions, the churches, non-governmental human rights organizations, leaders of political parties and other eminent Haitian personalities. The Special Representative is appreciative of the co-operation which he received throughout his visit.

Chapter II

Economic, social and cultural rights

28. At their forty-second session, members of the Commission indicated their interest in the advancement of economic, social and cultural rights in Haiti. Accordingly, the following brief profile considers urgent economic and social conditions in Haiti. A discussion follows of recent efforts to generate international assistance for the country.

29. This profile is based on a report on assistance to Haiti which the Secretary-General of the United Nations submitted to the United Nations General Assembly at its fortieth session. The report had been submitted pursuant to General Assembly resolution 39/196 of 17 December 1984, in which the Assembly had requested the Secretary-General to send a mission to Haiti to assess the priority needs of the country and to prepare a programme of assistance for the country. */

30. The Republic of Haiti occupies the western part of the Caribbean island of Hispaniola (the Dominican Republic occupies the remaining two thirds) and some small off-shore islands. It is the smallest and most densely populated of the American republics. Of the total land area of 27,250 square kilometres, only one half can be cultivated; the other half is mountainous and steep, suitable only for forest cover. Rainfall is irregular and the country is subject to periodic severe droughts and occasional hurricanes. Deforestation and soil erosion have become critical problems, reducing even further the land available for cultivation.

31. The current population is estimated at 5.3 million, of which approximately 75 per cent reside in rural areas. Although the estimated population growth rate of 1.4 to 1.5 per cent is relatively low, it still exceeds increases in agricultural production. As a result of population pressure on available land and the general lack of alternative employment prospects, net emigration is high, averaging in recent years approximately 25,000 annually.

32. Haiti is the only country in the western hemisphere to be classified by the United Nations as a least developed country. In 1983, per capita GDP was estimated at \$320 which, given the uneven pattern of income distribution, means that the majority of the population live in dire poverty.

Rights to food and health

33. Malnutrition in Haiti is significant and widespread, especially but not exclusively in the rural areas. Haiti also appears to be the most disadvantaged country in the American hemisphere in terms of health conditions. Infant mortality is high - 120 per 1,000 - largely the result of malnutrition. Life expectancy is only 53 years. With the lowest regional per capita protein and calorie consumption, nutritionally related diseases in Haiti are especially severe. Data from a 1978 national nutrition survey

*/ A/40/432.

revealed that 77 per cent of children 0-5 years were malnourished, 30 per cent in moderate to severe categories. In addition, 30 per cent of preschool children and 38 per cent of women were found to be anaemic. National epidemiological reports show that 45 per cent of recorded deaths are due to infectious diseases, a large proportion of which could have been prevented with immunizations. Diarrhoeal disease alone is estimated to account for 25,000 infant and childhood deaths annually.

34. Economic, social and environmental factors all play a role in this poor health situation. Of critical importance is the inadequate supply of potable water and sanitation services. At the beginning of the International Drinking Water Supply and Sanitation Decade, less than half of the urban population had access to potable water and less than 40 per cent possessed any sanitation facilities. The situation for the rural population, especially the majority living in the countryside, was much worse.

35. Weaknesses in the medical and public health infrastructure are also a significant contributing factor.

Right to education

36. Illiteracy rates in Haiti - 77 per cent overall, 90 per cent in the rural areas - are among the highest in the world. The lack of a functionally literate population is one of the most fundamental constraints on the development of the economy. The Government, accordingly, assigns high priority to education and training in its development policy. It is estimated that currently about 55 per cent of the relevant school age population is enrolled in the primary school system and 7 per cent in the secondary school system. The University of Haiti, established in 1944, enrolls less than 1 per cent of the eligible age group.

37. The lack of adequate physical facilities is a major problem. Equally serious is the acute shortage of trained teachers and their distribution. There is an urgent need to enhance training and retraining programmes and to develop schemes to attract and retain teachers in rural areas. Given overall nutritional standards and the distance which rural students must travel to school, school feeding programmes are essential. It is necessary to improve the infrastructure so as to increase accessibility to schools in rural areas. Neither tuition nor books are free in Haiti, and the cost of education imposes onerous if not impossible burden on most of the rural population.

Right to work

38. The national labour force (defined in Haiti as active population aged 10 and above) is estimated at approximately 2.4 million. The basic trends have indicated an absolute decline in the rural labour force offset by increased urban employment, primarily in the service sector. The official unemployment rate is estimated at 11.5 per cent. However, this figure disguises major rural unemployment and underemployment. It is estimated that the current level of agricultural production could be maintained by only 25 per cent of those now categorized as employed farm workers.

Public administration

39. The above-mentioned report of the Secretary-General to the General Assembly at its fortieth session indicated that despite real progress in recent years, inadequacies in public administration constituted a serious constraint to the achievement of the objects the Government had set for an integrated programme of national economic and social development. Administrative weaknesses were found at all levels and in multiple forms. They were manifest primarily in the lack of an appropriate institutional framework, consisting of functional structure, administrative procedures, rules, regulations, techniques and methods, notably in the area of Civil Service organization, but also in the design, planning, implementation and evaluation of policy and in the irregular payment of salaries. As a result, the Government was found not to have at its disposal as yet either the human resources or the institutional capacity for a sustained, concerted effort of national development and the pursuit of complex activities on a large scale.

40. The issue of administrative reform was explored at the VIIth Meeting of the Joint Commission for the Establishment of External Co-operation Programmes in Haiti, held in Washington, D.C. from 27 to 29 May 1981. A detailed plan of action extending over a period of five years (1981-1985) was drafted and texts of legislation required to bring about the reforms were elaborated.

Latest efforts to generate international assistance

41. In May 1986, the Secretary-General received an urgent appeal from the National Governing Council of Haiti for international assistance to enable the country to overcome an extremely difficult and critical situation as it attempts to establish a basis for economic growth and stable political conditions.

42. On 14 May 1986, the Secretary-General, in agreement with the Government of Haiti, appointed Mr. Orlando Olcese as his Special Representative in Port-au-Prince as well as the UNDP Resident Representative. Mr. Olcese arrived in Port-au-Prince on 24 May 1986.

43. The Secretary-General visited Haiti on 24-25 June 1986 and met with the President of the National Governing Council as well as other senior Government officials.

44. Following the visit of the Secretary-General, his Special Representative organized a working group composed of representatives of the United Nations system (ILO, UNCTAD, ECLAC, UNDRO, UNDP, DTCD) to assist the Ministry of Planning in the preparation of an emergency programme of action which would address both immediate needs and more long-term development.

45. As a result of this exercise, on 25 July 1986, a preliminary Emergency Programme was formulated and subsequently discussed in Washington with the World Bank, the United States Agency for International Development and the Inter-American Development Bank. In the course of these consultations, it was agreed to focus on a package of short-term measures.

46. Following further review and consultations, the Government of Haiti approved an "Interim Programme of Development" (Programme Intérimaire de Développement) on 20 October 1986.

Interim Programme of Development

47. The "Interim Programme of Development" outlines the global strategy, priorities and objectives of the National Council of the Government of Haiti for the next two years.

48. The priorities of the Government are essentially:

(a) The recovery of the economy so that the economic growth-rate is larger than population growth;

(b) The reduction of unemployment by maintaining existing jobs and employment generation by promoting the development of economic activities;

(c) The extension of education to include an extensive literacy campaign;

(d) The expansion of health infrastructure to meet the needs of the population, especially in rural areas;

(e) Strengthening of national administration in order to improve management capacity throughout the country.

49. Reflecting these priorities, the Government has formulated a labour intensive Investment Programme. The Programme contains 26 projects for which external assistance amounting to \$43 million is required as outlined below:

<u>Title</u>	<u>Cost (\$000)</u>
<u>Agriculture</u>	
Irrig. Rehab., Moreau Fonfroide	1,720
Irrig. Rehab., Port-à-Piment	502
Irrig. Rehab., Bois-Neuf (Saint-Marc)	226
Irrig. Rehab., Les Anqlais	1,400
Irrig. Rehab., Gascoigne	1,600
Irrig. Rehab., and Flood control	3,654
Rehab. of flood areas, Plaine Christine	1,825
Rural development, Sequin	214
DRI Marmelade	<u>615</u>
Total Agricultural: (9 projects)	11,756
<u>Transport</u>	
Rehab. of Route Côte de Fer (44 km)	1,706
Miragone by-pass (2.8 km)	<u>1,700</u>
Total Transport: (2 projects)	3,406

<u>Title</u>	<u>Cost (\$000)</u>
<u>Urban Development</u>	
Completion of Urban transport link, Canapé-Vert - Petion-Ville	1,400
Urban transport upgrading several villages	3,175
Low-income housing, five towns	2,000
Widening road through Carrefour	<u>8,500</u>
Total Urban: (4 projects)	15,075
<u>Education</u>	
Re-equipping private and public school classrooms	5,855
Non-formal training for street children	820
Repair damaged schools	3,898
Literacy programme of Catholic Church	<u>1,650</u>
Total Education: (4 projects)	12,223
<u>Health</u>	
Support of National Vaccination Campaign	<u>265</u>
Total Health: (1 project)	265
<u>Potable Water</u>	
Bainet (73,000 people)	140
L'Anse à Gallet	95
Fonds Verrettes	91
Balladère	63
Bodaire et Fonds Tortue	178
Vallée de Jacmel	<u>77</u>
Total Potable Water: (6 projects)	644
Total list: (26 projects)	<u>43,369</u>

50. The Investment Programme was presented to the international community by the World Bank in a Consultative Group meeting held at the end of November 1986 in Paris. Several donors announced major increases in their aid levels compared to those before the Government took office in February 1986, including an approximate doubling of disbursements by Canada, France, the United States of America, the European Economic Community and the International Development Association of the World Bank.

51. Members of the Government emphasized to the Special Representative that the Government's policy was aimed at rendering justice for all Haitians, which included not only civil and political but economic and social rights. They said that priority was being given to education and agriculture: education because of the high level of illiteracy and the need for the Haitian people to be aware of their duties as well as their rights; agriculture because of the necessity to stop the influx of rural populations to the cities where no work could be found for them.

52. Other eminent and responsible leaders outside the Government expressed serious concerns over the degrading economic situation and what they called inefficient measures by the Government to cope with the problem. They criticized the Government for allowing free entry of goods that competed unfairly with local products, in particular the failure of the Government to stop the illegal entry of rice from abroad which resulted in serious hardships for the local population and agriculture. Some of them went as far as predicting that unless the economic situation improved they feared the worst because of the too great disparity between the haves and the have nots.

Chapter III

Civil and political rights

Constitutional structure

53. At the time of preparation of this report, Haiti was without a constitution and the provisional Government was ruling through decrees. During his meeting with the head of State on 11 December the Special Representative was given a copy of the draft Constitution which the CNG had just presented to the Constituent Assembly for consideration. With some exceptions, e.g. the Press and political parties laws, pre-existing legal codes continued to be applied alongside previous legislation some of which dates back to the last century. The Constitution promulgated in 1983 by the previous Government has been abolished.

54. In the light of this situation, it might be useful to provide an indication of Haitian constitutional experience. Under recent constitutions and laws individual freedom has been guaranteed and no one could be arrested, detained or prosecuted except in cases expressly set forth in law. No one could be kept in detention for more than 48 hours without being brought before a judge competent to rule on the legality of his arrest and unless the judge approved the detention based on properly presented evidence.

The Executive

55. Until 1950 the legislature elected the President. Subsequently he was chosen by the electorate at large. The President appointed members of the cabinet, the prefects who governed the arrondissements, the members of the judiciary, and several other categories of public officials. He approved and promulgated new laws and was responsible for ensuring the execution of the articles in the Constitution and the acts and decrees of the National Assembly. In cases of serious conflict between the legislative and executive powers, the President has had the power to dissolve the legislature.

The Cabinet

56. The President was usually assisted by a cabinet made up of Secretaries of State. Five was considered the minimum with additional members if the President deemed it necessary. The Secretaries of State could appear before the National Assembly to defend administration bills or to voice the objections of the executive branch to bills proposed by the Assembly.

The Legislature

57. Previously the legislature was both bicameral and unicameral. The Constitutions of 1950 and 1957 provided for a legislature of two chambers - the Senate and the Chamber of Deputies - which would become the National Assembly when meeting in joint session. The members of both houses served six-year terms. An assembly composed of prominent individuals in each department elected 21 senators and 37 deputies were elected by popular vote. In 1961 President François Duvalier dissolved the legislature and created a unicameral body known as the National Assembly.

58. The attributes of the National Assembly as defined by past constitutions were to declare war on the recommendation of the executive power, to approve or reject peace treaties and other international treaties and conventions to revise the Constitution, and to act as a high court of justice. Its meetings were public, although they could be held in camera, for example, at the request of five members. In case of emergency, when the legislature was not in session, the executive could call an extraordinary session.

The Judiciary

59. The highest court was the Court of Cassation, composed of a President, a Vice-President and 10 judges. It usually functioned in two chambers with five judges each, but on appeals and challenge to constitutionality of laws and decrees it had to function as a whole. Judges of the Court of Cassation were required to be at least 30 years old, had to have practised law for at least 10 years, and had to have held the position of judge or public attorney for at least seven years.

60. Below the Court of Cassation were four courts of appeal located in Port-au-Prince, Les Cayes, Gonaïves and Cap-Haïtien. The court at Port-au-Prince had a President and five judges, whereas the others had a President and four judges. These courts heard both civil and criminal cases. In order to be appointed individuals had to be either judges of courts of first instance for three years or military advocates for at least 10 years. These courts heard all appeals from courts of first instance and criminal appeals from justice of the peace courts when something more than a mere correctional matter was involved.

61. Courts of first instance, both civil and criminal were located in the 13 cities, Port-au-Prince, Cap-Haïtien, Les Cayes, Gonaïves, Jacmel, Saint-Marc, Petit-Goâve, Port-de-Paix, Jérémie, Anse-à-Veau, Aquin, Fort-Liberté and Hinche. They heard first instance civil cases in which the amount involved was not greater than 5,000 gourdes and all criminal cases other than police matters. Judges of these courts had to have practised law for at least two years.

62. Justice of the peace courts were also located in each of the country's principal communes, numbering 124 at one stage and in other specific places determined by law. Each court had one judge plus an undefined number of other officials. In order to be appointed an individual needed a law degree, be at least 25 years of age, be in full enjoyment of civil and political rights, and to have completed a probationary period of at least one year. These courts heard all cases where the amount involved did not exceed 500 gourdes and first instance cases where this amount did not exceed 1,000 gourdes. They also handled landlord and tenant disputes. Their jurisdiction in criminal matters extended only to cases where the penalty did not exceed six months in gaol.

63. In addition there were accounts courts that dealt with administrative contracts, land courts that heard cases involving property rights, juvenile, military and labour courts.

64. The President of the Republic appointed all judges. Those in the Court of Cassation and courts of appeal served 10 years, the others, seven years. The country's legal system stems basically from Roman law, as modified by the Napoleonic code.

Transitional arrangements

65. Following the change of Government on 7 February 1986, the National Governing Council (CNG) has been acting as the provisional Government. Among other things, it has abolished the Constitution elaborated under the previous Government in 1983, dissolved the National Assembly, disbanded the Volontaires de la sécurité nationale (VSN) (Tontons Macoutes); liberated political prisoners; restored freedom of the press and other mass media, and allowed the reopening of two outspoken radio stations as well as promising democratic elections.

66. One of the CNG's priorities has been to restore law and order in putting an end to violence. Initial incidents of violence and looting which erupted after President Duvalier's departure were directed mainly at the headquarters of the VSN and other public buildings. Unofficial figures estimated that 200 people were killed, among them civilians, members of the VSN and others linked to the former Government.

67. On 25 February, Lieutenant-General Namphy the President of the Provisional CNG, stated that the political programme of the CNG has been the maintenance of law and order, respect for civil and human rights, safeguards of territorial integrity, justice for all in all endeavours, establishment of a liberal, democratic and just social order, the maintenance and consolidation of diplomatic ties to friendly countries, structural reform of public administration, support to the formation of labour unions and associations, revitalization of institutions through decrees on freedoms of the press and of political parties, the drafting of a new constitution, and the organization of rural, municipal, legislative and presidential elections.

68. On 27 February 1986, the CNG announced a plan to form a consultative body made up of notables representing the nine departments of Haiti. This body, which was created in July, had as its tasks, inter alia, to propose a procedure and a calendar for the choice of the Constituent Assembly and submit them to the CNG for approval and to help the Government by giving advice and recommendations on regional and national affairs, regarding political, social and economic projects and contributing to the preparation of future elections.

69. On 7 June 1986, Lieutenant-General Henri Namphy, announced a timetable for transition, including elections held on 19 October 1986 for a constituent assembly to draft a new constitution; for rural and municipal elections in July 1987 and presidential and legislative elections in November 1987. The elected president is expected to be installed in February 1988.

70. Pending a new constitution, guarantees for the protection of human rights and fundamental freedoms are provided by the legal codes. Haiti is also a State party to the American Convention on Human Rights and to certain ILO conventions. Furthermore, Haiti is a member of the United Nations and, to that extent, bound by the human rights provisions of the United Nations Charter as interpreted and amplified by the Universal Declaration of Human Rights. However, it has not, so far, become a State party to the International Covenant on Economic, Social and Cultural rights or the International Covenant on Civil and Political Rights or the Optional Protocol thereto.

71. The Haitian people have lived through a nightmare, and having suddenly acceded to freedom, their expectations are naturally high and they are impatient. At the same time the task facing the transitional Government is not an easy one. Much work needs to be done on the political, economic and social structure in Haiti. It is difficult to remove problems overnight or to redress an inherently difficult situation in a short space of time. The clash of expectations and the inability of the transitional Government to deliver concrete results has led to complaints about problems of authority and decision making in Haiti. A transitional situation has thus been rendered even more difficult by these factors.

Over-hanging issues

72. There are certain over-hanging issues from the past legal and institutional structure that cannot be ignored in any examination of the present situation of human rights in Haiti. For example when, in 1979, the Inter-American Commission on Human Rights undertook an examination of the situation of human rights in Haiti, it adopted the following recommendations, which would seem to have continuing relevance to the situation in Haiti. The Commission recommended:

- that Haiti bring its domestic legislation into line with the provisions of the American Convention on Human Rights to which it is a party (as already indicated Haiti is not yet a party to the International Covenants on Human Rights);
- that it take the measures needed to improve prison conditions;
- that it take such measures as may be necessary in order to lessen the inequalities which are an obstacle to observance of human rights;
- that it permit, without restrictions or conditions, entry into the country of Haitian nationals who are living abroad as a result of expulsions decreed by the Government, or for any other reason, and who wish to return to their country. */

73. Recent studies of the situation of human rights in Haiti under the previous Government found that the judiciary was independent of the executive only in theory and that there was a serious backlog in the hearing of cases. In September 1985, the Minister of Justice therefore introduced legislation designed to reduce the backlog of cases plaguing the courts. The changes included lengthening the annual court calendar, extending the hours for daily court sessions and imposing penalties on judges who did not complete caseloads and lawyers who did not vigorously defend clients. These problems surely could not be remedied simply by a change of Government.

74. Haitian law has required an arresting authority to present to the accused a warrant specifying the alleged violation of law. If an arrest was made without a warrant, a judicial ruling on the validity of the detention had to be obtained within 48 hours. Haitian law also required a suspect to be

*/ Organization of American States. Inter-American Commission on Human Rights. Report on Situation of Human Rights in Haiti (OEA/SER.L/V/II.46).

charged at least two weeks prior to the trial. However, it was found in the past that this did not always happen in practice. Similarly, while the law permitted legal counsel for defendants, clients were in the past sometimes not allowed to meet with their lawyer until immediately before the trial. There was no system of bail, though "provisional liberty" could be obtained in some cases. It would surely be pertinent to keep these issues under active review.

75. Likewise, just before the change of Government prison conditions were found to be generally very bad in Haiti although prisoners were permitted to receive visitors, food and medical treatment. That situation would also require continuing attention.

76. Human rights organizations have included the Government-sponsored National Human Rights Commission created in 1982. This nine-member commission was intended to investigate complaints by citizens of Government abuses, but it had only advisory powers and did not involve itself in "political" cases. The Haitian Human Rights League, founded in 1979, is affiliated with the International Federation of Human Rights. Organizations recently established include an Ecumenical Centre for Human Rights and the Centre for the Defence of Liberties (CHADEL). It would seem pertinent to pursue efforts for the assurance of independent national human rights organizations.

Current situation

77. Observers of the unfolding situation in Haiti have asked the following pertinent questions:

1. Is the Government improving the human rights situation in Haiti?
2. Is it implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy?
3. Is it establishing a framework for free and open elections leading to a democratically-elected civilian Government, which would include free and functioning political parties and associations, free labour unions and freedom of the press?
4. Is it co-operating fully in implementing international development, food and other economic assistance programmes in Haiti?
5. Is it maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner?
6. Is it continuing its investigation of alleged human rights abuses and corruption by the Duvalier Government and is it prosecuting, in accordance with due process, those responsible for human rights abuses and corruption?
7. Is it maintaining a free and independent judiciary system?
8. Is it restructuring the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional Government and an elected civilian Government?

9. Has there been a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and has a code of conduct been adopted to assure adherence to these standards?
10. Is the Government making substantial efforts to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption?
11. Is the Government ensuring that freedom of speech and assembly are respected?
12. Is it conducting investigations into the killings of unarmed civilians in Gonaïves, Martissant, and Fort Dimanche, and prosecuting, in accordance with due process, those responsible for those killings, and preventing any similar occurrences in the future?
13. Is it providing education and training to the Haitian armed forces with respect to internationally recognized human rights essential in a democracy, in order to enable them to act in a manner respectful of those rights?
14. Is it taking steps to implement its policy of disarming former members of the VSN?

78. Mindful of such questions the Special Representative has looked at the current situation of human rights in Haiti.

1. The maintenance of law and order

79. The Special Representative has noted that one issue of continuing concern to the Inter-American Commission on Human Rights has been what is considered the CNG's inability to disarm the VSN. The Commission reported in its last annual report that it had received expressions of concern regarding the inability of the new authorities to suppress abuses by former Macoutes. The Commission also reported that it had been informed that peaceful demonstrators were shot, killed or wounded by security forces during protests and that such acts had gone largely uninvestigated despite widespread calls for such investigations.

80. The Commission also noted with concern that few persons had been brought to trial for killings which have occurred since 7 February 1986. The Commission found that acts imputed to the security forces had not been fully investigated. Other international human rights organizations have complained that, by and large, those who engaged in gross abuses of human rights in the past are not being investigated and prosecuted.

81. During the Special Representative's visit to Haiti clashes occurred in the Gonaïves region, a rice-producing region. In recent months smuggled rice from abroad had been under-selling the locally-produced rice causing economic hardships to the producers of rice in the vicinity of Gonaïves. Consequently road-blocks were set up by the producers to search vehicles suspected of transporting contraband rice, which led to clashes between the two groups resulting in many victims.

82. Government ministers themselves referred to the troubles at Gonaïves during their meetings with the Special Representative. As regards the importation of contraband rice they explained that following food shortages after the overthrow of the Duvalier régime the authorities had found it difficult to cope with large-scale smuggling, that Haiti has a very long coastline and that thus it had been difficult to stop the many small boats bringing in contraband rice from nearby Miami. Secondly, the army had been reluctant to use force, hoping the matter would resolve itself with time. The attitude of the Government to the events in Gonaïves was further evidence of the need for a police force separate from the military.

83. Around the time of the Special Representative's visit to Haiti there had also been concern about the fate of one Charlot Jacquelin who had "disappeared" several weeks earlier and had not yet been found. The Special Representative, aware that the Working Group on Enforced and Involuntary Disappearances had inquired about the fate of Jacquelin, used the occasion of his visit to inquire about his whereabouts. He was assured by the Minister of the Interior that the Government had nothing to do with the disappearance of Mr. Jacquelin, that there was no record of his having been arrested and the forces of the law were pursuing their investigations.

84. The attention of the Special Representative was also drawn to the case of Vladimir David, 18 years of age and apparently of Haitian and Canadian nationalities, who had disappeared on 7 November 1986. The Special Representative was given an appeal signed by the mother of Mr. David and countersigned by 21 organizations in Haiti, including several human rights organizations. The statement said that eyewitnesses saw David leaving the demonstration on 7 November. The statement continues that eye witnesses saw David being taken into custody by policemen identified by their blue uniform between l'Ecole Coeur de Jésus and the monument "Marron Inconnu". Since then he has never been seen again. Appeals by the mother and by numerous organizations to the police to clarify the whereabouts of David have so far been unsuccessful.

85. The case of David has also been take up by the Canadian Ambassador in Haiti with police officials and the Minister of the Interior, who informed the Ambassador on 11 December 1986 that there was no record of David ever having been arrested and that the police had no knowledge of his whereabouts.

86. It was impossible for the Special Representative in his short stay in Haiti to establish definite responsibility for each of the above-mentioned cases of killings or disappearances on the part of the local authorities. Considering the past disregard of the authorities for the basic rules of law and the practice of arbitrary arrests it would seem logical to conclude that such acts are those of individuals that are not necessarily condoned by the authorities. However, the Government did charge and bring to trial a police sergeant who had killed a truck driver. He was condemned to 18 years of prison with total loss of the rights of citizenship. Under Duvalier such officers of the law might have been reprimanded only.

2. The present situation of human rights in general

87. Haiti is a country that has passed through nearly 30 years of a brutal and self-serving dictatorship. Its illiterate population has suffered from large-scale poverty, neglect and misery. Under Duvalier the enforcement of law and order was left to the VSN numbering between 250,000 to 300,000 according to estimates offered to the Special Representative while the armed forces numbering between 7,000 to 8,000 were confined to the defence of the country. With the end of the dictatorship and the abolition of the VSN the army has become the sole institution responsible for maintaining law and order, for steering the country to democratic elections and for laying the bases for observance of human rights in the future. The good faith of the Head of the Army and Chief of State, Lieutenant General Namphy, has been acknowledged by most of the leaders and dignitaries the Special Representative met in Haiti. It has to be recognized, however, that the army is very small in number to undertake the tasks which face it, with only about 1,000 soldiers trained in police duties. Furthermore a significant part of the lower ranks of the armed forces is illiterate. The Special Representative received a number of complaints about individual acts of misconduct on the part of members of the armed forces. Incidents reported to the Special Representative included arrests without warrants, intimidation of citizens by individual members of the army, particularly in the rural areas, acts of maltreatment during detention, two cases of disappearances of persons and reported incidents of torture. Having regard to the nature and size of the armed forces, its lack of experience in policing functions and its past role in Haitian society, it would seem that many incidents have taken place which do not result as much from policy as from ineptitude and breach of discipline. In view of the situation described above the Government would need to increase training of the armed forces in order to improve respect for human rights and fundamental freedoms. The need for a trained and more efficient police force is a priority need and the Special Representative was pleased to learn that the Government had sought outside help in the training of its police and armed forces.

3. The transition process

88. In a pastoral message of 11 April 1986 the Bishop of Haiti gave the following expression to the aspirations of the Haitian people:

"The drafting of a Constitution, of an electoral law, of a law on political parties requires the participation of the people. The Constitution and laws must be submitted for ratification before their official adoption. This presumes that a charter and the laws be drafted in simple terms and in a language understood by the people.

"The population must take an active part in the designation of its leaders at the rural, county, district, department and national levels. Also the people must freely choose their Chiefs of Rural Police, their Mayors, their Representatives, their Senators and their President."

89. With regard to the conduct of elections it has been stated that the country urgently requires a campaign of public education and discussion to allow people to properly make use of their rights. It may be noted in this connection that the elections for a Constituent Assembly to draft a new constitution had very low participation rates, less than 5 per cent per unit.

90. The Special Representative was assured by members of the CNG that it was the firm determination of the Government to implement its declared course of leading the country towards the path of democracy and respect for human rights. They pointed to various positive measures that had been undertaken by the Government, including total freedom of expression, of assembly and of strikes, the freeing of all political prisoners, the liberty for former exiles to return, the prosecution of some past offenders against human rights, the abolition of repressive laws and the enactment of new laws such as those on political parties and the press, as well as the signing of new international conventions such as the Inter-American Convention Against Torture. Reference was also made to measures undertaken to improve the administration of justice to investigate past abuses and to train the armed forces to abide by the rules of a democracy. As far as the latter was concerned, seminars had been organized for the armed forces and training was being sought from countries such as France and Canada. With regard to investigations it was explained that one difficulty facing the Government was that people were often reluctant to come forward to testify owing to their experience with the past Government.

91. Difficulties encountered in bringing about reform during a period of transition were also explained. For example, the people were clamouring for the "de-Duvalierization" of the Government and especially of the foreign service. Efforts had been made to get rid of those whose association with the Duvalier régime was objectionable. However it was impossible to eliminate all persons who had served under that régime without bringing the Government to a halt. It was also essential in the foreign service to provide for continuity of service. A good number of diplomats had entered the foreign service through examinations and had been promoted on the basis of their qualifications. Furthermore, the removal en masse and the replacement of diplomats abroad was a costly operation that the Government could not afford at the moment.

92. Some Ministers mentioned a particular difficulty encountered by the Government. They said that a number of political leaders and groups failed to play a constructive role in the process of political organization and debate and consequently were not assisting the Government to consolidate stability in the country. It may be noted, however, that while the Special Representative was in Haiti a spokesman on behalf of 10 political parties met with the CNG to suggest to the Government the formation of a Conseil Electoral Permanent (CEP) in preparation for the election. The CNG promised to respond soon to their request.

93. Ministers of the Government further pointed out that some of the political leaders felt that having worked actively against the Duvalier régime they had more claim to leadership. In addition, some political leaders and groups, for their own narrow ends, were also agitating and fomenting disturbances, sometimes deliberately provoking the armed forces into reacting and thus embarrassing the Government. As an example reference was made to the events at Fort Dimanche on 26 April 1986, when agitators pushed a group of

demonstrators to enter the fort, which is an arms depot. Consequently, the military had had to repulse the demonstrators when they tried to enter. A few persons were killed by bullets, others were wounded and three were electrocuted by a broken electricity cable.

94. Members of the CNG pointed out that in order to dispel any fear that they would retain power after two years they had openly and publicly eliminated themselves as candidates to the Presidency. Furthermore, the CNG had abolished the VSN, although it had never obtained the full lists of its members and of their weapons. It was further emphasized that the CNG was determined to act within the law and to establish the basis for free elections, bearing in mind that except for short periods before Duvalier the country had never had proper elections. The Haitian people had never participated in elections. Political parties had been denied the experience in organizing themselves. The Press had not been free and had had no experience in performing its task and duty as a source of objective information. As a result their sudden access to freedom of action and expression was leading at times to irresponsible reporting.

95. Members of the Government acknowledged that the degree of participation in the elections for the Constituent Assembly had been low, but they explained that the elections had been useful as a trial run in educating the people to participate in elections for the selection of representatives other than a president. However the political parties had played little role in the elections for the Constituent Assembly because they saw little to gain in participating in a campaign aiming at finding persons for a 60 day mandate. They had been reluctant to invest the time, money and effort required, thereby neglecting the educational aspect of the elections for the population and failing their duty as an educated group.

96. Acknowledging the importance of preparation, education and information, members of the Government pointed out that they could not do this task alone. Political parties had also a great responsibility in debating issues, to educate the public. The political parties had up to now lost 10 months to play this important role.

97. Members of the Government made repeated pleas for better sympathy and international understanding in the difficult and complex process unfolding in Haiti. They reiterated their desire and determination to hand over power to an elected Government at the end of two years and to establish in the meantime the basis and infrastructure for the elections to be held in 1987 and 1988.

98. Members of the Government stated that although numerous positive measures had been undertaken the Government had neglected to sufficiently publicize those measures. As one Minister put it, this was not a Government of politicians but rather a "caretaker" Government by the military which did not always understand the need to explain itself. It was in office with a specific calendar to accomplish and once that calendar is achieved it would hand over power.

99. The point was made rather forcefully by a Government Minister that "there has never been a Government in the history of Haiti as liberal as this one". He drew attention to the fact that there was unprecedented freedom of speech and of expression. The people were free to attack the reputation of even the Head of State, and of the Ministers - free to make all sorts of statements,

even to the extent that some had called for the overthrow of the Government by force, without being molested and without fear of reprisal. The Government would be in its right to arrest those who make such seditious statements but shows tolerance on account of past deprivations of freedom of expression. In the past, the long hands of repression would have stifled them and even physically eliminated them. Such things no longer happened in Haiti.

100. Other reliable persons acknowledged to the Special Representative that there was an evident atmosphere of freedom in Haiti manifested by free speech and press and freedom to leave and enter the country. The presence and fear of the "Macoutes" were no longer felt.

4. The Political Parties Law

101. Commentators have alleged that the Political Parties Law adopted in July 1986 is a refurbished version of the restrictive law on political parties adopted by the Duvalier Government in 1985. They claimed that the new Law leaves to the Justice Minister the arbitrary power to decide the existence of political parties. The present Law requires that in order to obtain legal recognition a party must submit the names and addresses of some 5,000 members (under the Duvalier régime a party needed a minimum number of 18,000 members to exist, distributed across the nine geographic departments of Haiti). Any party identified with a particular religion or trade union is automatically disqualified.

102. The above-mentioned concerns were put by the Special Representative to members of the Government who stated that the Government had initially proposed a figure of 2,000. However, it was at the request of a number of prominent political leaders that the minimum figure was increased to 5,000. The Government had acceded to their suggestion but was now being criticized by marginal parties for eliminating them on grounds of insufficient membership.

5. The Press Law

103. On 3 August the CNG announced a new Press Law which became effective on 6 October 1986. Although the new law removed certain provisions such as "offences against the Chief of State and the First Lady of the Republic" and offences "against the integrity of the people's culture" (formerly punishable by one to three years in prison) and provided that publications no longer had to be submitted to the Interior Ministry 72 hours prior to publication, the new law was criticized on the grounds discussed below.

104. Article 1 of the new Press Law includes in the press category, as did the 1980 Press Law, bookstores and printing facilities. These are equally liable as newspapers and magazines for violations of the law, although they may only be connected to such publications by a financial agreement and have no say on their contents. It is said that the inclusion of bookstores and printing facilities in the press category amounts to imposing on bookstores and printing firms a responsibility while having no practical means to exert control over the contents of the books or magazines.

105. Other concerns voiced about the Press Law included the following:

1. That journalists must obtain a licence, renewable annually, from the Ministry of Information;
2. That applicants for the licence must submit a university degree or a high school diploma and a press card from a registered news organ;
3. That anything deemed to "endanger public morals or public order" is punishable;
4. That the "right to respond" to alleged defamation by the press is so broad as to lead to harassment and restriction of press freedom. Under the new law the Government may close newspapers for failing to provide space in their publications to allow the subject of defamation to reply;
5. That radio and television newscasters must disclose on the air the sources of their information.

106. The Minister of Information, replying to these criticisms from an international organization of journalists, claimed that the registration provisions of the decree did not restrict press freedoms but that the decree was an administrative measure to establish the professional identity of journalists. Referring to the section of the law providing for respect of morals and public order, he said that that provisions was similar to one contained in the American Convention on Human Rights (art. 13, para. 2). As for the clause on defamation, the new law did nothing more than repeat the existing defamation law. He also claimed that the qualification requirements on minimum education had been proposed by the Haitian press organizations themselves, such as the Haitian Society of Journalists. Regarding the need to disclose the source of information, the Minister emphasized that the protection of professional secrets was already guaranteed by Haitian law and that the new press law referred to the obligation of the radio and television journalists to mention the source of the news that was broadcast.

107. The Minister explained the spirit in which the new law had been promulgated. He stressed that the Government was intent on doing everything possible to ensure that the present and future Governments respected citizens' rights. As for human rights in general the present Government was taking steps to commit itself and future governments to national and international obligations for the respect of human rights. The Government therefore intended to ratify all international conventions on human rights so as to bind future governments.

108. With regard to freedom of expression the Government considered that following the fall of the Duvalier régime the media needed to be reminded not only of their rights but also of their responsibility in the exercise of their newly-acquired freedom of expression. The Government had also wished to raise the standard of journalism in the country and for this purpose was awarding fellowships and organizing seminars for journalists. The qualification requirements were established with these objectives in mind.

6. The Judiciary

109. At the present time, when Haiti is in the process of establishing new democratic institutions and consolidating respect for human rights and the rule of law, the independence of the courts is a sine qua non condition for democratization. A truly independent and impartial judiciary in Haiti is a prerequisite for any proper judicial system. This requires total independence from the executive. It may be noted in this regard that the Inter-American Commission on Human Rights has specifically called for a "reform of the judiciary in Haiti".

110. The Minister of Justice explained to the Special Representative that fundamentally the Haitian legal system was based on that of the French legal tradition and needed no change. The problem was not with the system but with some of the people who applied the law. To remedy this state of affairs the Minister had gone to different parts of the country and spoken to judges about the importance of their role and about their newly acquired independence. The Government had organized seminars on the administration of justice and was planning to extend these across the country. The Minister also said that he had given weekly press conferences in order to highlight the concerted efforts being made to improve the administration of justice. He had created new civil and criminal tribunals. He had addressed requests to countries such as France and Canada for assistance in organizing seminars on the administration of justice and on the training of judicial personnel. He had created new law schools in order to respond to the present shortages of lawyers. He added that the formation of lawyers and the training of judges were areas where a great deal of effort had to be deployed. The assistance of the international community could be helpful in these areas.

7. Trade union rights

111. Claims of a certain reluctance on the part of the Government to independent organizing efforts by trade unions have been made in ICFTU telex News NR 31/86 of 15 October 1986, which reported on labour conditions in Haiti:

"The ICFTU has just received information on anti-trade union action by the new Government of Haiti. According to the ICFTU, at least three union leaders have been dismissed for their activities and certain factories still refuse to negotiate with elected union representatives. A series of intimidatory acts against people trying to organize workers are also reported. The ICFTU's regional organization for the Americas (ORIT) has intervened with the authorities indicating that while it firmly supports the Haitian Democratic process, this process should not harm workers. The ORIT has launched a campaign to keep international public opinion aware of developments in this country."

112. In the sphere of trade union rights it should be noted that Haiti is a party to ILO Convention No. 87 on Freedom of Association and ILO Convention No. 98 on the Right to Collective Bargaining. Haiti is thus under an international legal commitment to respect these two conventions. While the international legal obligations were reflected in national laws in part, the Duvalier régime did not live up to these obligations. There existed little control over labour contracts and labour inspectors did not exercise their duties as required by the legislation, sometimes with the tacit and

active complicity of the past Government. This has left a de facto situation that needs to be corrected. It is accordingly suggested that as a first step towards redressing the situation and establishing trade union rights and freedoms in Haiti, the Government should make employers and employees better aware of the requirements of existing labour legislation and of the Government's obligations under the ILO conventions. The Government should remind those concerned of its determination to see that international obligations under ILO Conventions 87 and 98 and Haitian labour legislation are respected lest legal sanctions be applied.

113. As part of its overall effort to comply with its international commitments the Government might wish to consider the need for an updated labour code. The ILO and national and international trade union organizations could be of assistance in this process, and they might therefore be invited, if the Government so wished, to offer their advice or technical assistance as appropriate in the elaboration of an updated labour code.

8. Return of Haitians living abroad

114. The requirement of re-entry visas for Haitians who have been abroad for more than 90 days has been criticized in the past. It has further been complained that the Government had not been clear in defining the status of Haitians abroad, a prerequisite for refugees and exiles wishing to return. The Special Representative received the assurances of the Government (which was supported by independent observers in Haiti) that all Haitian nationals were free to return to their country. On 24 September 1986, the Government had issued an appeal to all Haitians living abroad to return especially those with professions, trades, education to help the country in a moment of reconstruction and reconciliation.

Chapter IV

Advisory services in the field of human rights

115. As is indicated in the introduction to the present report, the provisions of advisory services in the field of human rights to the Government of Haiti has been under consideration by the Commission on Human Rights for some time. By its decision of 13 March 1986, the Commission requested the Special Representative to study with the Government of Haiti any assistance that might be given as part of the advisory service programme in the field of human rights. As was also indicated above, discussions with the Government of Haiti hitherto had concentrated on the establishment in Haiti of a reference library on human rights, the provision of human rights fellowships and the organization of seminars and training courses. The Special Representative considers that these projects should be implemented as soon as possible. As emphasized by leaders of Haitian human rights organization, training courses in Haiti should be organized with the active participation of Haitian human rights NGOs. The awarding of human rights fellowships should also take into account the needs of Haitian human rights NGOs.

116. Haiti is a country which presents special challenges to the human rights advisory services and technical assistance programme of the United Nations. The country is undergoing a period of political transition from dictatorship to democracy. It faces serious economic and social problems. In response to the economic and social difficulties, emergency assistance programmes have been launched under the personal leadership of the Secretary-General of the United Nations. The projects so far identified by the Government, as well as by international agencies, have concentrated on the developmental sector giving human rights topics a secondary priority.

117. Against this situation, what then could be the goal of the United Nations human rights programme? In seeking to assist the Government and people of Haiti in pursuing their process of democratization as well as in establishing constitutional, legislative, judicial, administrative and educational bases for developing an effective national human rights system within Haiti, assistance in the sectors of teaching training and dissemination should be given priority. It is therefore submitted for consideration that discussions take place between the Government, UNDP and the Centre for Human Rights to set up specialized training programmes, to provide instruction in human rights to police, military, and prison personnel. Such specialized programmes could be organized either in Haiti, or at specialized institutions outside of Haiti. Discussions could take place between the Government, UNDP and the Centre for Human Rights on how such training programmes could be financially and technically assisted. Some countries might be approached by the Haitian Government and the United Nations to sponsor training programmes.

118. In view of the magnitude of the task to be performed in assisting a continuing and long-term process of guaranteeing human rights in Haiti, it might be worth studying the possibility of appointing a human rights specialist among the staff of the UNDP personnel in Port-au-Prince to facilitate the dialogue with various Haitian authorities concerned, so that opportunities might be taken to integrate human rights projects in the overall development programmes. Further consultations might take place between the Government of Haiti and the United Nations on this aspect.

119. In a period where the Government and people of Haiti are committed to the principle of democracy and of respect for human rights it is important for the people to be aware of their basic rights and for them to be presented with information to that effect in a language and form that they can understand. Efforts for the dissemination of the Universal Declaration of Human Rights could be pursued by the Government with the help of the United Nations if requested. One of the initial steps would appear to be to provide an official translation of the Universal Declaration into creole, its presentation in simplified form and its wide dissemination throughout the country.

120. The ratification by Haiti of the International Covenants on human rights would provide a valuable framework for efforts in this sector. The Government should therefore be encouraged and assisted to ratify the two Covenants as well as the Convention against Torture.

Concluding Observations

121. In the preceding chapters of the present report the Special Representative offered some comments on various issues affecting the realization of economic, social and cultural as well as of civil and political rights. In doing so the Special Representative was particularly mindful of the complexity of the problems facing Haiti and that the future of human rights and fundamental freedoms in that country will be greatly affected by the finding of solutions to endemic economic and social problems. The full realization of human rights and fundamental freedoms in Haiti will require a determined and concerted commitment by all social groups of Haitian society. The following suggestions appear to the Special Representative as worthy of special consideration by the Government of Haiti:

1. The new Constitution which was being studied by the Constituent Assembly at the time of writing should contain guarantees of human rights corresponding to the Universal Declaration of Human Rights. In this regard human rights organizations could be invited to provide the benefit of their reflections to the Government.
2. Before legislative elections are held the laws on the conduct of elections should be promulgated well in advance so as to provide all possible assurance that the democratically expressed wishes of the people will be respected.
3. At the legislative and presidential elections which are scheduled, international observers might be invited.
4. As the Government has expressed its intention to strengthen the judiciary, seminars on the administration of justice, on the training of judicial personnel and the provision of legal education to form more lawyers should be encouraged and assisted.
5. The flagrant past abuses of human rights by members of the VSN, the military, police and security service should be investigated inasmuch as is possible. For the future peace of mind of the Haitian people it might be helpful that a panel of eminent Haitian personalities be created and entrusted with a mandate to report on major past abuses of human rights in Haiti in order to draw lessons for the future.

6. The treatment of prisoners and detainees still needs to be improved in Haiti. The Crime Prevention Branch of the United Nations Centre for Social Development and Humanitarian Affairs could provide its services and advice if the Government so wishes.
7. In the field of trade union rights there is indicated a need for the Government to encourage trade unions and employers' organizations to enter into a constructive dialogue.
8. An independent and vigorous National human rights commission in Haiti could do much to promote respect for human rights and fundamental freedoms.

122. As far as the provision of United Nations advisory services in the field of human rights to the Government of Haiti, immediate emphasis could be placed upon the following:

(a) The awarding by the United Nations of at least three fellowships in 1987 to Haitian citizens in the following areas: human rights in the administration of justice; the role of the police and security personnel in securing and protecting human rights; and the human rights of prisoners and detainees;

(b) The organizing of a national training course on human rights in Haiti during 1987.