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page 407

Human Rights in Haiti

**Testimony of William G. O'Neill
to the
Subcommittee on Foreign Operations
of the
House Committee on Appropriations
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Mr. Chairman, thank you for inviting me to testify. My name is William G. O'Neill. I am the Deputy Director of the Lawyers Committee for Human Rights. The Committee's work is non-partisan, holding every government to a single standard, that contained in the Universal Declaration of Human Rights. Mr. Chairman, in my testimony this morning I will briefly describe the current human rights situation in Haiti. I will then compare the human rights situation to guidelines previously established by Congress to measure Haiti's progress towards building democracy.

A. Human Rights in Haiti: 1988-1989

Haiti experienced major political convulsions in 1988. In January, Leslie Manigat became President following elections tainted by widespread fraud and a massive boycott by the voters. Five months later, Lieutenant General Henri Namphy, who led the provisional government ("CNG") prior to Manigat's election, ousted Manigat and once again headed a provisional military government. In September 1988, enlisted men in the Presidential Guard, an elite military unit, removed Namphy and chose then Colonel Prosper Avril to head yet another provisional military regime. The same human rights violations persisted throughout the period, although the number of incidents fluctuated.

1. Right to Life

Haiti experienced several waves of killings by death squads during 1988. The most serious occurred during April and May when bodies were found virtually every morning in Port-au-Prince. Bodies were often left in the street for hours before removal by the authorities, clearly as a means of intimidation. Several eyewitnesses stated that groups of armed men, some in plainclothes and some in the olive green uniform of the Haitian Army, were responsible for the killings. The killings start and stop abruptly and have usually increased in times of political turmoil, particularly when the civilian authorities have attempted to control the military or the remaining supporters of the Duvaliers.

In an effort to crack down on the death squads, in early June then President Manigat arrested some ten soldiers suspected of

being death squad members. The soldiers were released shortly after, however, and Manigat was removed from the Presidency for his attempts to bring the military under civilian control. As the Inter-American Commission on Human Rights of the Organization of American States noted in its September report: "The failure of the military to investigate and punish anyone for these death squad type killings has been a matter of continuing concern to the Commission and leads it to conclude that these death squads function because of the impunity granted to them by the military."¹

Death squad activity increased during October and November 1988.

On November 27 two members of a youth group investigating the September 11 attack on the church of St. Jean Bosco (see below) were killed allegedly by a group of armed men and a uniformed soldier. A third youth was detained and his whereabouts are still unknown. Prior to their abduction, the youths had notified the press that they had identified several people involved in the attack on St. Jean Bosco. There have been no arrests in connection with these recent killings.

While many death squad victims have been local neighborhood leaders or simply arbitrary targets of the killers, at least one human rights activist was killed apparently because of his work to promote democracy and the rule of law in Haiti.

Lafontant Joseph, a lawyer and one of the founding members of the Haitian League for Human Rights, was found murdered in his jeep on July 11, 1988 in Port-au-Prince. His name had appeared on an alleged death squad hit list dated May 25, 1988. Mr. Joseph and members of his family had previously received death threats over the phone. His murder had a chilling effect on the human rights

¹ Report on the Situation of Human Rights in Haiti, Organization of American States OEA/Ser.L/V/11.74, Doc. 9 rev. 1, September 7, 1988, p. 6.

community in Haiti and deprived Haiti of one of its best lawyers. The army began an investigation into the murder, but there have been no arrests.

Churchworkers have also been targets.

On September 11, 1988, armed men attacked men, women and children attending Mass at the church of St. Jean Bosco in Port-au-Prince where Father Jean-Bertrand Aristide was saying Mass. Fr. Aristide had been the target of numerous death threats and his name also appeared on the May 25 hit list. The attackers shot and stabbed several people in the crowded church, killing 13 and wounding 77, including one pregnant woman. Soldiers and police stationed near the church did nothing to stop the attack. Six of the assailants appeared on television and admitted their responsibility but none was ever arrested. There have been no arrests to date.

The situation in the countryside has been no better.

On August 13, 1988, four members of a peasant youth group in the Artibonite were killed by four armed men who attacked youths attending a meeting to commemorate the founding of the group. Eyewitnesses said that three soldiers and one civilian shot at the youths, who were completely taken by surprise. Twelve others were injured. No investigation has been conducted and there have been no arrests.

2. Right of Assembly

The right of assembly was systematically violated in Haiti throughout 1988.

On March 29, 1988 in Beauchamps, a town in the northwest of the country, soldiers broke up a meeting of peasants who had gathered to celebrate the first anniversary of the approval of the 1987 Constitution. Approximately 30 people were arrested and forced to march all day to the nearest town, where they were held overnight before being released.

Peasant and church groups felt intense pressure from the army and owners of large land-holdings in the Central Plateau area, which has one of the most developed peasant organizations in the country. Despite the right of assembly and association guaranteed

in the 1987 Constitution², numerous army officers and rural police chiefs issued blanket orders forbidding meetings without prior approval. Some army officers and local police chiefs also insisted on their right to attend any meeting. Even prayer meetings in churches were either forbidden or disrupted.

Violations of the right of assembly did not end with the removal of Namphy.

Again in the Central Plateau, a leader of a political party was invited to address the local youth group in Thomassique on October 23, 1988. The leader knew that if he addressed the group in the public square he would have to inform the police, so he went to the local parish hall. The army and police arrived within 10 minutes and forbade the meeting.

On December 5, 1988 in Les Cayes, a major city in southwestern Haiti, the police prohibited a meeting in the town's public square to commemorate a peasant massacre that occurred in 1929. Two people were arrested illegally and soldiers confiscated their film. The next day, while a Mass was being said to commemorate the massacre, soldiers surrounded the church and fired their rifles into the air, creating panic and disrupting the Mass.

Reports of landowners, allied with local army officers and former Tontons Macoutes, threatening and attacking peasants and preventing meetings have increased during the last few months.

3. Rights to Personal Liberty and Humane Treatment

The rights most frequently violated in Haiti are the rights to personal liberty and humane treatment. The 1987 Constitution and the Haitian Penal Code and Code of Criminal Procedure establish

² Article 31.

legal requirements for all stages of criminal proceedings: from arrest through trial to detention.

a. Illegal Arrests

The 1987 Constitution provides that no one may be arrested or detained unless by a written order from a competent legal officer except where the accused is caught in the act of committing a crime. During a fact-finding trip to Haiti in April-May, 1988, my colleague and I heard first-hand accounts of innumerable arrests without warrants, both in Port-au-Prince and in the countryside.

Near one remote village in the Artibonite valley north of Haiti's capital, farmers gave graphic details of local troops arresting neighbors without warrants, beating suspects while in detention and extorting from relatives seeking to bring food to detainees.

The local military commander, when speaking about criminal procedure in his district, declared that torture was prohibited in the detention facilities in the barracks and that every suspect was arraigned before a magistrate in a judicial proceeding within 48 hours of arrest, as required by the 1987 Constitution. He denied that suspects were arrested without warrant and offered us three recent warrants executed by his soldiers. All were formal documents dated within the previous week and signed by the local public prosecutor; none, however, involved criminal or political cases. He further noted that "warrants are not, of course, required for arrest where the person is caught in the act."

b. Unlawful Detention

The 1987 Constitution provides that no one may be detained after arrest for more than 48 hours unless he has appeared before a judge who has ruled that the arrest was legal.³ The Constitution also prohibits the use of unnecessary force, psychological pressure or physical brutality.⁴

The authorities routinely detain people for more than 48 hours without having a judge rule on the legality of the arrest and detention. Yet the army knows the law, the courts are often close to the army detention centers and the judges are not overwhelmed with work.

One recent example concerns the unlawful detention of 15 soldiers allegedly involved in plotting to overthrow General Avril. These soldiers were arrested in mid-October 1988 and released just before Christmas. They were not charged with any specific crime, never brought before a judge and not allowed access to a lawyer.

c. Cruel and Inhumane Treatment

The conditions in Haitian prisons are horrendous. The prisons are overcrowded and filthy; food rations poor and meager. Physical mistreatment of prisoners is commonplace.

The police, under the jurisdiction of the Ministry of Justice, are supposed to operate the prisons. The police and the army, however, have not been separated as required under the 1987 Constitution, so that the prisons are effectively under the control

³ 1987 Constitution, Article 26.

⁴ 1987 Constitution, Article 25.

of the army and the Ministry of Interior. Martial Celestin, former Prime Minister and Justice Minister under Manigat, admitted to us that he had no control over the prisons and could not enter a prison without the army's permission.

Since many arrests are made without warrants and the army controls the prisons, lists of who is in detention are rare. It is extremely difficult to determine who is being held where. The army prison authorities can therefore act with impunity. The following descriptions of prison conditions by former inmates confirm the authorities' abuse of power, and crystallize the violations of the 1987 Constitutional provisions covering arrest and detention.

One former detainee in an army prison in the Central Plateau area described how he was arrested without a warrant by two soldiers who beat him on the head with clubs for 15 minutes each day for the first three days of his detention. He was kept in prison for eight days without charge or hearing. Twenty-seven inmates occupied a cell 35 feet by 15 feet. There were no toilet facilities and all had to share a small bucket in the corner. The only food provided was a small amount of gruel. While families were not allowed to visit, they could leave food, but this never got to the prisoners. The detainee was given no medical care throughout his detention, nor was he allowed access to a lawyer.

Another detainee described conditions in the police prison in downtown Port-au-Prince. He had been arrested by men in civilian clothing who had an arrest order from the army (not from a judge or prosecutor). He was kept in a cell measuring 8 feet by 15 feet with 52 other inmates. There were no sanitary facilities at all. He was fed a handful of rice and corn once a day. He never saw a lawyer or a doctor during his 26 day detention, nor was he ever brought before a judge. On one occasion he was brought, hand-cuffed, before some army officers and he was repeatedly hit on both sides of his head. He was then put in the "djake" position and hit more than 100

times with a bat all over his body. He started to bleed from his ears, nose and mouth.

B. United States Policy

The Reagan Administration suspended most direct aid to the Haitian government following the election day massacre on November 29, 1987. While Administration support for the aid suspension waxed and waned with the flow of events, Congress remained steadfast. After the installation of General Avril as President, the Administration noted that while statements and symbolic steps were encouraging, aid would not be renewed until the Avril government's acts showed strict respect for human rights and the beginning of a transition to civilian, democratic rule. Congress in a non-binding resolution last year specified the criteria it would use to judge whether Haiti was establishing respect for human rights and a transition to democracy, including:

1. restoring the 1987 Constitution;
2. appointing a genuinely independent electoral commission to oversee elections and announcing a date certain for elections;
3. observing strictly human and civil rights;
4. disarming and restraining Tonton Macoutes;
5. establishing judicial proceedings to investigate and prosecute human rights violations; and
6. demonstrating the willingness of the Haitian armed forces to submit to legally constituted civilian authorities and to respect and follow the Constitution.

The preceding information and the following analysis show how Haiti has failed to meet Congress's criteria.

1. Restoring the 1987 Constitution

General Namphy suspended the 1987 Constitution on grounds that it was "inappropriate" for a country like Haiti. General Avril has continued this suspension stating that the 1987 Constitution "contains certain dispositions that do not fit in with a government that was not elected,"⁵ thus ignoring the massive popular approval of the 1987 Constitution. While General Avril has agreed to govern "in keeping with the spirit" of the 1987 Constitution, such an ambiguous promise gives too much latitude to the authorities. Congress should continue to insist on the restoration of the 1987 Constitution.

2. Appointing a genuinely independent electoral commission and announcing a date certain for elections

General Namphy abolished the Provisional Electoral Council ("CEP") following the November 29, 1987 aborted elections and named his own council to oversee the boycotted and tainted elections of January 17, 1988. General Avril has also refused to re-establish the CEP and has instead proposed the creation of an Electoral College of Haiti to oversee elections. This Electoral College would come under the jurisdiction of the Ministry of Justice; its

⁵ Foreign Broadcast Information Service, Latin America, October 25, 1988, p. 5.

members would be chosen by the executive branch and it would draft and submit an electoral law for approval to the executive branch.

The Electoral College would violate numerous provisions of the 1987 Constitution which sets forth the composition and duties of the CEP. Most importantly the provisions granting power to the executive branch over the Electoral College run counter to Congress's insistence on a genuinely independent electoral commission.

After nearly five months in office, General Avril continues to refuse to set a date certain for elections.

3. Strict observance of human rights

General Avril has stated his firm support for observing human rights and establishing the rule of law in Haiti. The Haitian government in December became a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture. General Avril has met with representatives of the Haitian human rights community. These are commendable steps. Beyond the words and symbolic acts, however, human rights violations daily afflict many Haitians. The first part of this testimony details the widespread violation of the rights to life, personal liberty, humane treatment and association/assembly. Moreover, labor rights are also under attack: strikes are broken up by the army, workers trying to organize are fired and union officials have been

threatened.⁶ Even press freedoms have been under attack. Radio stations have been attacked and journalists have been threatened and have had their tapes and notes confiscated by soldiers.

4. Disarm and Restrain Tonton Macoutes

Former U.S. Ambassador Clayton McManaway stated that following the downfall of Duvalier, approximately 3,500 weapons out of 22,000 had been confiscated from the Tonton Macoutes. General Namphy did nothing to disarm the Macoutes. General Avril began a program to stop and search cars and to search houses for weapons. In late October, special soldiers wearing a distinctive badge were authorized to search houses from 6 a.m. to 6 p.m. This program yielded some results, but it was discontinued, allegedly because people masquerading as soldiers were using the program as a pretext to rob and steal. Whatever the reasons, the episode demonstrates that disarming the Macoutes is possible given the necessary political will. The Avril government showed briefly that it had this will and capability. The Macoutes currently remain well-armed and continue to threaten, intimidate and kill.

5. Investigate and prosecute human rights violations

The Haitian authorities have performed abysmally in investigating and prosecuting human rights violations. On this count the Haitian authorities have fostered a climate of impunity further encouraging and protecting violators of human rights.

⁶ Labor Rights in Haiti, Post-Hearings Statement of Lance Compa, UE Washington Representative to the GSP Subcommittee of the Trade Policy Committee, Office of the United States Trade Representatives, November, 1988, p. 29.

Speedy and competent investigations of human rights violations, followed by arrests and trials, have not occurred even in the most notorious cases, including the following:

1. August 1987 murder of Presidential candidate Louis Eugene Athis: a government report stated it could not identify the perpetrators, yet a local police official had been identified as the organizer and leader of the attack; he had been under arrest, but was released and allowed to escape to the Dominican Republic.
2. October 1987 murder of Presidential candidate Yves Volel: he was murdered in front of the central police station in Port-au-Prince allegedly by plainclothes police officers; no investigation resulted and no arrests.
3. November 29, 1987 election day murders: government commission said it was impossible to identify individuals responsible. No arrests.
4. Murder of lawyer and human rights activist Lafontant Joseph, July 1988: no investigation, no arrest.

Two recent events indicate that the Avril government will continue this terrible performance. First, the government proposed that independent human rights groups could investigate the November 29, 1987 election day killings, the government thereby abdicating its own responsibility to investigate and prosecute. The human rights organizations rightly pointed out that they lacked subpoena power and the necessary protection to pursue the government's proposal. The government itself must assume its responsibility to enforce the law and its treaty obligations and not leave the job

to non-governmental entities who are themselves threatened by the very people responsible for the violations.

Second, on December 31, 1988 the Avril government issued a safe conduct to Franck Romain, who had sought asylum in the Dominican Embassy following the September coup. Mr. Romain, a close associate of the Duvaliers and former mayor of Port-au-Prince, was an alleged leader of the Tonton Macoutes. After the attack on the church of St. Jean Bosco, he announced on the radio that the attack was understandable and that such acts were only the beginning. While not openly admitting his responsibility for the attack, he is certainly a prime suspect.

Allowing Mr. Romain's release and safe conduct to the Dominican Republic raises grave doubts about the Avril government's commitment to prosecute human rights abuses. A thorough investigation into his activities under Duvalier and since 1986 should have been conducted before allowing him to leave.

6. Haitian Army's willingness to submit to civilian authority and the Constitution

The Haitian Army has not demonstrated a willingness to submit to civilian rule. The soldiers who led the September 1988 coup threw out many officers who were viewed as corrupt or Macoutes. It is important to note that the soldiers did this themselves and several stated that they would never tolerate civilians attempting similar actions.

Two officers have recently denounced acts committed by their soldiers against civilians. However, many officers refuse to allow their soldiers charged with crimes to appear in civil courts.

The most visible sign of the Army's continuing disdain for civilian authority was the unlawful arrest and detention by the Avril government of 15 soldiers. These soldiers were never formally charged, never had a hearing on the lawfulness of their arrest and detention and never had access to a lawyer.

C. Conclusions

United States policy should remain firm; the aid suspension should continue unless and until the Haitian government acts to address the concerns raised by Congress in 1988. The United States should encourage and support the burgeoning human rights community and Haitian lawyers who take on human rights cases, sometimes at great personal risk. Given the deplorable state of most Haitian prisons, the U.S. should also encourage the Haitian government to allow the International Committee of the Red Cross access to the prisons, something the government has not done since 1985.

Both the Organization of American States and the United Nations have recently expressed grave concern at the human rights situation in Haiti.⁷ Now is not the time to change our policy. The Avril government has made many positive statements and has

⁷ For OAS report, see Note 1 above. For UN resolution, see Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1988/L.28, August 26, 1988.

taken certain symbolic steps. However, the United States should wait until the Haitian government takes concrete steps that demonstrate its willingness to break with the past and begin a credible transition to civilian rule and respect for human rights before renewing direct aid.