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## BACKGROUND:

1. The Inter-American Commission on Human Rights received a communication on August 11, 1978 charging as follows:

On April 24, 1970, Mr. Octave Cayard, who was at that time a Colonel in the Haitian Armed Forces and a Commander in the Haitian Coast Guard, attempted an unsuccessful up rising against the Haitian Government.

When the rebellion failed, Colonel Cayard, his family and 118 other military men who had taken part in the uprising were forced to leave the country.

The Government of Haiti seized the property owned in Haiti by Colonel Cayard, his wife, his daughter and some of the 118 other soldiers. On April 24, 1970, according to the complaint, the Tontons macoutes, the State Political Police, ransacked Mr. Cayard's home and a printing works belonging to a commercial company, the "Imprimerie Serge Bissainthe", in which Mr. Cayard was a share-holder. All the equipment, which was estimated to be worth about US\$150,000, was taken away and the machines transferred to the State Printers.

The complaint emphasizes that even if the Government of Haiti had wished to institute proceedings against Colonel Cayard by seizing his property, it nonetheless had no reason and no legal grounds for confiscating the property of his wife and his daughter, or of the printing works with which he alone was associated. His property also included a farm, located at Hatte-Lathan, and other real estate that is not described in the complaint but which had been acquired, according to the complaint, by purchase contracts or by gifts made by close relatives.

The complaint asks the Inter-American Commission on Human Rights to use its good offices with the Haitian Government to restore the confiscated property in question to its owners.

2. The Commission transmitted the pertinent parts of the complaint to the Government of Haiti in correspondence dated October 2, 1978 and asked it to provide the relevant information. On October 19 of the same year, the Commission received the Haitian Government's reply which stated that those persons who had participated in the rebellion were still in possession of their property, and that they could freely dispose of it, since they retained their right of ownership, except where the property was mortgaged or had been the subject of other financial transactions whose terms had not been honored.

As far as Madame Cayard's property was concerned, the Government considered that it was a strictly private matter and declared that Madame Cayard could recover her property by making arrangements with her many creditors.

In the same note, the Government of Haiti added that Mr. Cayard had received a favor from the Government of Haiti. Mr. Cayard and his companions had preferred to flee to Puerto Rico and then to the United States rather than suffer the full effects of the law and make reparations for the damage caused by their irresponsibility when they bombarded Port-au-Prince.

3. The Government's reply was transmitted to the claimant on January 3, 1979, and he returned his observations in a letter dated January 18, 1979. The claimant stated that his own property, and the property of his spouse, of his daughter and of some of the 118 other soldiers who had taken part in the rebellion had been seized by members of the Government or by their friends. By way of example, he mentioned that Ambassador Pierre Caudenet had built a "mansion" on his property situated in "Debussy"; Captain Fritz Tippenhauer had sold some of the property belonging to Mr. Cayard that was located at Haut de Turgeau. The Haitian Army was currently occupying 6 hectares of land that he owns at Hatte-Lathan; none of these lands had ever been subject to a lien.

The claimant added that on his departure from Haiti in April 1970, he owed only a little more than US\$1,000 to the Bank of the Department of Agriculture and US\$600 to the Agricultural and Industrial Development Institute. Two-thirds of a country property--in three parcels--served as collateral for these debts, while the other third, and all his other property, was free of any lien. The claimant concluded by accepting the government's position that the participants in the rebellion of April 24, 1970 could retain their ownership rights over their property, but he asked the government to issue the necessary instructions so that the property occupied by third parties could be restored to its owners. The claimant further agreed that once the situation of property encumbered by mortgages or by other liens had been arranged, the property should be returned to its owners. The claimant also insisted that the property of the printing works also be returned to the company that owned it.

4. Mr. Cayard recently informed the Commission that he has attempted to settle the situation of some of his property through the Haitian Consul in New York, but that the Consul had told him that he had instructions from the government not to deal with any matter that concerned Colonel Cayard.

5. The Government of Haiti received Colonel Cayard's observations on October 4, 1979, and on March 24, 1980, the Commission received another communication from the government rejecting the terms of the first letter and declaring that, no matter what their origin, the terms of that letter would contradict Articles 2, 3, 4 and 5 of the Decree of April 27, 1970 which had ordered confiscation of the property of Colonel Cayard and the other soldiers. The Decree also stripped these citizens of their Haitian nationality. The government forwarded a photocopy of that Decree.

We give below the pertinent passages of that communication, which were transmitted to Colonel Cayard:

I have the honor to acknowledge receipt of your letter in reference to Case 2976 concerning the property of ex-Colonel Cayard in which note is taken of a clause according to which "the rebels retained ownership of their property in Haiti, with the exception of property that was mortgaged or that had been the subject of other financial transactions whose terms had not been honored.

"This Foreign Ministry has no knowledge of that clause which, no matter what its origin, would be in contradiction with Articles 2, 3, 4 and 5 of the Decree of April 27, 1970 regulating the property in question. According to that Decree:

'The property, both movable and immovable of whatever type, of those former Haitian citizens is confiscated for the benefit of the State.

'All agreements concerning that property that had not been entered into on a date certain prior to the twelve months preceding the date of the present Decree are null and void as of course.

'The Director General of Taxation shall take possession, on behalf of the State, of all the real property and movable goods and chattels that belonged to those former Haitian citizens. The movable goods shall be sold for the benefit of the State, and the real property shall pass into the private domain of the State.

'Within thirty days after publication of the present Decree, all banking institutions, notaries, commercial establishments, all private parties holding sums of money or other movable goods on behalf, of or owing monies or goods to these former Haitian citizens must make a full declaration there of to the Tax Administration, and make over to the State, represented by the Director General of Taxation, the agreements they have with said individuals.

'All receipts of payment or notes of hand not bearing a date certain prior to the twelfth month period preceding the date of the present Decree are null and void as of course.

'All violations of the present provisions shall be punished by a fine representing 50 percent of the undeclared monies or other movable property and by a sentence of three to twelve months imprisonment to be handed down by the Court of Corrections at the request of the Public Prosecutor".

6. The Commission again wrote to the Government of Haiti, calling its attention to the contradiction between the letter of October 19, 1978 and the latest communication of March 24, 1980. The Commission also asked for the Government's official position with regard to Mr. Cayard's property.

7. Mr. Cayard wrote a further communication to the Commission, under cover of a letter dated October 5, 1981 and received on October 8 of the same year. The claimant emphasized the unconstitutional nature of the Decree of April 27, 1970, and stated that even though, in a country with a government such as Haiti's, recourse to legal means in an effort to solve this kind of problem is worse than useless, his legal counsel had attempted to do so at the risk of their lives, but without success. The only course left to the claimant, therefore, was to put himself in the hands of the Inter-American Commission on Human Rights by lodging his complaint and his reservations about the unlawful measure taken against him.

Mr. Cayard also noted that the property confiscated included the property of his wife, Madame Marie-Carmen Cayard, and the property of his daughter Marie-Therese Cayard, and the machines and supplies from the printing works that had been mentioned earlier. He stressed that neither his wife nor his daughter was cited as a perpetrator or accomplice of the acts that the government used as grounds for issuing the Decree of April 27, and that as a result, their property ought to be restored to them.

Mr. Cayard then described the confiscated property and stated that, according to community property law, the Haitian Government must restore to Madame Cayard half of the property acquired during the marriage. The description of the real property confiscated is given below:

i. Property of Marie-Carmen Cayard nee Clermont, purchased with her own money and therefore belonging to her in her own right according to the law.

a. 55 carreaux of land in the village of "Hatte-Lathan", les Varreux, in the commune of Croix-des-Bouquets, bounded on the North by La Hasco, on the South by Andre Theard and La Hasco, on the West by La Hasco and on the East by the main Port-au-Prince to St. Marc road.

b. One carreau of land located at Delmas, in the "Predailler" section of Saint-Martin, bounded on the North by the State, on the South by the remaining property of Mentor Jacques, on the East by the heirs of Placide Jean-Charles and Octave Cayard and on the West by the State and Chislaine Herard.

ii. Property of Marie-Therese Cayard, a minor, aged 11 years at the time of the confiscation Decree, who inherited from her grandfather gifts that now belong to her in her own right.

a. A property in Port-au-Prince, in the "Drice" section of Turgueu, in the place commonly known as "Debussy" measuring 23 meters 80 and fronting on a 15-foot road to the North leading to the main "Debussy" road; 24 meters 78 in a broken line of 2 angled sections measuring 7 meters 95 and 16 meters 93 on the opposite side, to the South; 23 meters 74 in depth and 21 meters 56 on the opposite side to the East, for a total area of 534.5 square meters. The property is bounded on the North by a 15-foot road leading into the "Debussy" road after some 30 meters; on the South by Octave Cayard and Leonce, on the East by number 1 or Madame Roger Fortune nee Lina David, and on the West by Madame Beranger, according to the plan and survey report drawn up by the surveyor Jean Ramile Dorilas on February 22, 1965, which have been duly registered and transcribed.

b. 2 and 33/100 carreaux of land in the "Predailler" section of les Varreaux in the region known as "Mais Gate", bounded on the North by Eric Laroche, on the South by Edmond Polynice Jr., on the East by Jacques Craan and on the West by the heirs of Stephen St-Phard.

#### WHEREAS:

1. In the present case, the Government of Haiti has confiscated the property of Mr. Octave Cayard without having followed the pertinent legal procedure, in violation of Article XVIII of the American Declaration of the Rights and Duties of Man.

2. Even though the confiscation was carried out under the terms of the Decree of April 27, 1970 published by virtue of the state of siege in effect in Haiti, no procedure was followed in taking that measure, Mr. Cayard did not have the opportunity to defend himself, and no financial indemnity was paid to him.

3. The Government of Haiti seized the property of Madame Marie-Carmen Cayard and of Marie-Therese Cayard, and the property owned by the company "Imprimerie Serge Bissainthe", without any judicial decisions having been taken and even though Madame and Mademoiselle Cayard were not cited in the Decree ordering confiscation to which the present resolution refers as perpetrators, accomplices or conspirators in the military movement led by ex-Colonel Octave Cayard.

4. Despite the length of time that has passed since April 27, 1970, the Government of Haiti has not restored the confiscated property to Colonel Cayard, Madame Marie-Carmen Cayard, Mademoiselle Marie-Therese Cayard or to the Serge Bissainthe Company, despite numerous procedures instituted by them.

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that in the present case, the Government of Haiti has violated Article XVIII (right to a fair trial) and Article XXIII (right to property) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Government of Haiti:

- a) that it restore to its owners the property confiscated on the basis of the Decree of April 27, 1970;
- b) that it restore the property seized from Madame Marie-Carmen Cayard, Mademoiselle Marie-Therese Cayard and the Company "Imprimerie Serge Bissainthe" to its owners; and
- c) that it inform the Commission within sixty days of the measures it has taken to ensure that the

recommendations made here are implemented.

3. To convey the present resolution to the Government of Haiti and to the claimants.

4. To include the present resolution in its Annual Report to the General Assembly of the Organization of American States.