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## HAVING SEEN:

1. Mr. Nicolas Estiverne, a candidate for the presidency of Haiti, was declared persona non grata by the Haitian Government on Tuesday January 13, 1987. By letter dated January 14, 1987, he presented his case to the Commission.

The facts of his complaint are as follows:

On or about May 13, 1986, I began a campaign for the presidency of Haiti by making an open declaration of my plans to the press and the general public with the techniques that I used such as radio commercials, TV commercials, radio talk show appearances and traveling constantly around Haiti, I became a very popular candidate and the people began to express their desires to see me win the upcoming November elections. However, throughout the campaign, I questioned strongly the present government's legality, its competence and its accounting system.

As you are probably aware a new Constitution is being written and discussed. Article 16 of the proposed document states that: "any Haitian who had become naturalized in any foreign country can regain his or her civil and political rights if after moving permanently to Haiti, he or she makes a personal declaration to the Minister of Justice within one year stating the he or she desires to regain such rights."

I came to the United States in 1969 with my permanent visa. After being drafted into the U.S. Army where I served honorably for 2 years, I became a United States citizen by naturalization. You have to realize that at that time, Baby Doc was President-for life. I then went to school and became an attorney with a fairly good law practice in New Orleans, Louisiana. But when Baby Doc left in February, I felt that it was time to pay my dues to Haiti. I went back with the intent to renounce my U.S. citizenship and to regain my Haitian citizenship.

2. The order of expulsion was dated January 13, 1987, issued by the Ministry of Information and Coordination, and published in the daily newspaper Le Nouvelliste on January 14, 1987. It expelled Nicolas Estiverne, "of U.S. nationality, because of his undesirable conduct which was of such a nature as to compromise the social and political order."

This was the first expulsion to take place following the departure of Jean-Claude Duvalier, ex President-for Life of Haiti. It was announced on January 13, 1987, on the Haitian National Television channel

(Télévision Nationale) 24 hours after Mr. Estiverne had made certain declarations against the C.N.G. also on television. The Haitian press suggested that the two events had a cause and effect relationship.

Reportedly, Mr. Nicolas Estiverne had declared on television and radio that Gen Namphy had a secret plan to take power. Mr. Estiverne had stated that during Gen. Namphy's recent visit to the United States he had had two meetings, the first, Miami to which nine persons were invited, and the second in Washington, to which 13 persons were invited. And that that the purpose of these meetings was to launch a plan by which Gen. Namphy would step down from power towards May or June, and declare himself a candidate for the presidency.

3. By cable dated February 2, 1987, the Commission requested the Haitian Government to present whatever information it deemed appropriate with regard to this case pursuant to Article 34 of the Commission's regulations.

4. By note dated February 17, 1987, the Col. Herard Abraham, Minister of Foreign Affairs, informed the Commission that is cable had been communicated to the appropriate authorities and that a response would be forthcoming.

5. By noted dated March 9, 1987, Mr. Estiverne requested that the Commission impress upon the Government of Haiti the necessity of an accelerated response given the fact that the presidential elections had been set for November 29, 1987, and the people who intend to vote for Mr. Estiverne would be left without a candidate.

6. By note dated March 17, 1988, Col. Herard Abraham, the Minister of Foreign Affairs, transmitted to the Commission a letter No. DG-87 MJ.SCGE/35 dated March 5, 1987, from the Haitian Ministry of Justice, which set forth the reasons for Mr. Estiverne's expulsion from Haiti. This document addressed to Col. Abraham from Mr. Francois Saint-Fleur, the Haitian Minister of Justice, states that Mr. Estiverne:

during his stay in the United States, he renounced his Haitian citizenship. Upon his return to Haiti, after February 7, 1986, he has not made any declaration renouncing his foreign nationality while running for the presidency, without awaiting the provisions to be established by the new Constitution which would set the conditions pursuant to which foreigners of Haitian origin may take part in the next presidential campaign.

Aside from his untimely and premature declaration of his candidacy, he has assumed the right to make particularly defamatory public statements, on television, regard the current leaders of the country. He has forgotten himself to the extent that he has made threats tending to upset the public order.

Taking into account that he is a foreigner Mr. Nicolas Estiverne's behavior can be considered as gross interference in Haitian affairs, indeed, an attack on national sovereignty. Consequently, the expulsion measure taken by the Government is completely legal since it is in conformity with the powers of a Sovereign State.

7. The pertinent parts of this response were communicated to Mr. Estiverne by phone and subsequently, by letter, dated April 7, 1987.

8. By letter dated June 24, 1987, Mr. Estiverne presented his observations to the response of the Haitian Government as follows:

I had received your letters containing my complaints against the Haitian government's violation of my rights. I must inform you that the answer given by the Haitian government is outrageous. Considering that Haiti had just liberated itself from a dictatorship, it is obvious that the intent of this new regime is not noble at all. The same things that the Duvaliers killed people for are now reasons for expulsion of Haitian

citizens from Haiti. Freedom of speech has never existed in Haiti and still does not exist. The government complained about my statements against the present regime as if my statements were not truthful.

At the time of my candidacy, there were not laws prohibiting anyone from being a candidate and the government never sent me any warnings about any violation of the laws of the country. The only thing that took place is that I denounced a scheme that the President of the Council of National Government had in order to usurp the power, and when the plan was revealed by me, they got angry.

I strongly object to the government's contention that I renounced my Haitian citizenship. My roots are still in Haiti, I own property there and my parents are buried there. How in the world could I renounce anything about my Haitian background. I am a naturalized of the United States and I am proud of it. The only thing the Haitian military dictatorship has to say is that they are trying to exclude from Haiti anyone who can be a real challenge to them; and I fit that category.

I am therefore requesting from the Haitian government the right to return home and to see my family, and to make public the restitution of such rights to me. Otherwise, once I am in Haiti, an accident may happen to me, as it has been the case for many citizens who have tried to challenge the government.

9. By note date July 30, 1987, the Commission transmitted the pertinent parts of Mr. Estiverne's observations to the Government of Haiti, requesting that it submit any further observations within the ensuing thirty days.

10. On August 27, 1987, the Commission received an additional communication from Mr. Estiverne. Mr. Estiverne transmitted to the Commission the copy of a letter that he had sent, dated August 20, 1987, to Mr. Francois Saint-Fleur, the Minister of Justice, pursuant to Article 286 of the new Constitution of Haiti, whereby he requested the Haitian Government to restore his nationality. In that letter he indicated that since May 21, 1986, his address in Haiti has been Ruelle Alerte No. 111 in Port-au-Prince, and he attached a copy of his birth certificate to the letter, which documented that he had been born in Saint Marc, Haiti on October 11, 1944.

11. By note dated September 25, 1987, the Commission communicated this information to the Government of Haiti.

12. By note dated September 30, 1987, the acting Minister of Foreign Affairs, Col. Jacques Joachim, transmitted the following text in response from the Minister of Justice, without, however, including a copy of that note. The text of this note, dated September 31, 1987, states:

The observations formulated by Mr. Nicolas Estiverne are without basis, if it is true that Haiti has just freed itself of a dictatorship it cannot be admitted that this dictatorship has been replaced by an anarchic system, where chaos rules and where the lawless, in disdain of the law, incite citizens to acts of violence, leading the country to disorder and to insecurity.

The Expulsion Order of the National Government Council which was taken on January 13, 1987, against the U.S. citizen Nicolas Estiverne, was designed to guarantee internal security, peace, order and respect for the laws.

13. This response of the Haitian Government was communicated to Mr. Estiverne on November 4, 1987.

#### CONSIDERING:

1. That the Constitution of Haiti, approved by a national referendum on March 29, 1987, and, in force, provides in Article 286 the following:

Any Haitian, who has adopted a foreign nationality during the 29 years preceding February 7, 1986, can,

by a declaration made to the Ministry of Justice, within a period two years from the date of publication of the Constitution, recover his Haitian nationality with all the advantages deriving therefrom, in conformity with the law.

2. That Mr. Nicolas Estiverne, by letter dated August 20, 1987, to Mr. Francois St. Fleur, the Minister of Justice, attempted to regain his Haitian nationality, pursuant to the procedure set forth in the Constitution. The Commission considers that, by carrying out this constitutionally prescribed procedure, which has not been subject to any supplementary regulations, Mr. Estiverne has exhausted his domestic remedies.

3. That Mr. Nicolas Estiverne was not permitted to regain his nationality and the he has been deprived of the possibility of regaining his nationality and participating in the political life of his country for reasons invoked by the Haitian Government which have never been subject to judicial review.

4. That this case fulfills all the admissibility requirements set forth in the American Convention on Human Rights, however, since Mr. Estiverne is not interested in a friendly settlement in this case the procedure set forth in Article 48 (f) of the abovementioned Convention is not applicable.

5. That this case involves the substantive right set forth in Article 20 of the American Convention on Human Rights, in particular, paragraph 3 thereof, which provides that “no one shall be arbitrarily deprived of his nationality or the right to change it.”

6. That the facts of the case reveal that Mr. Estiverne had left Haiti for the United States and became a United States citizen because he did not wish to live under a dictatorship, and that the Duvalier dictatorship perpetuated itself in power as Francois Duvalier’s son, Jean-Claude, was designated to succeed the father and was subsequently designated president-for-life by the Haitian Constitution.

7. That upon the departure of Jean-Claude Duvalier from Haiti on February 7, 1986, Mr. Estiverne made plans to return to Haiti, with the intent of renouncing his U.S. citizenship and of regaining his Haitian citizenship.

8. That in spite of the fact that Article 286 of the Haitian Constitution sets forth a simple procedure for the recuperation of Haitian nationality for persons of Haitian origin who changed their nationality during the Duvalier era, Mr. Estiverne, who followed the requisites of this procedure, was not permitted to recover his Haitian nationality.

9. That, in addition, on January 13, 1987, an order of expulsion was issued against Mr. Estiverne, because of his “U.S. nationality, and because of his undesirable conduct which was of such a nature as to compromise the social and political order.”

10. That Article 22, paragraph 6 of the American Convention on Human Rights provides that “An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.”The facts reveal that Mr. Estiverne was not given a hearing, administrative or judicial, in order to defend himself against the charges motivating the expulsion by the Government.

11. That the facts reveal further that the summary expulsion of Mr. Estiverne was motivated by political considerations. Mr. Estiverne alleges that his expulsion from Haiti was a measure taken to silence his criticism of the alleged political ambitions of General Henri Namphy.

12. That Article 13 of the American Convention protects the right of everyone to freedom of thought

and expression and that this right “includes the freedom to see, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, or in the form of art, or through any other medium of one’s choice.”The Haitian Government, in its response dated March 5, 1987, from the Ministry of Justice termed Mr. Estiverne’s public statements “defamatory” regarding the political leaders of Haiti at the time. Any abuse of the right of freedom of expression, which may be considered to threaten the national security or public order, is subject to vindication by means of a suit pursuant to the libel or defamation laws of the domestic legal system. Such a remedy was not available to Mr. Estiverne.

13. That Article 23 of the American Convention provides that every citizen shall have the right “to vote and to be elected a genuine periodic elections.”That Mr. Nicolas Estiverne sought to recuperate his Haitian nationality, and had returned to live in Haiti, in order to participate in the political life of the country, and to run for the presidency of Haiti, an opportunity denied to Haitians during the previous 29 years. The Haitian Government, again in its response of March 5, 1987, from the Ministry of Justice, stated that Mr. Estiverne:“Upon his return to Haiti, after February 7, 1986, he was not made any declaration renouncing his foreign nationality while running for the Presidency, without awaiting the provisions to be established by the new Constitution which would set the conditions pursuant to which foreigners of Haitian origin may take part in the next presidential campaign.”By expelling Mr. Estiverne, however, the Haitian Government preempted him from recuperating his Haitian nationality, pursuant to the provisions of the new Constitution which did not enter into force until after it was approved by the national referendum on March 29, 1987.

14. That Article 25 of the American Convention provides that:

1. Everyone has the right to a simple and prompt recourse, or any other effective recourse, before a competent court or tribunal for protection against acts that violate one’s fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

That Mr. Nicolas Estiverne was deprived of a “simple and prompt recourse” in Haiti to protect his right to change his nationality and thereby recuperate his Haitian citizenship (Article 20), the recuperation of which would have entitled him to participate in the political life of Haiti and to run for the presidency, a right guaranteed by Article 23 of the American Convention.

Mr. Estiverne was also deprived of the procedural guarantee of a “simple and prompt recourse” to challenge the order of expulsion issued against him on January 13, 1987, which deprived him of the substantive right to live in Haiti and the right not to be expelled therefrom unless “pursuant to a decision reached in accordance with law” a right guaranteed by Article 22, paragraph 6, of the American Convention. Mr. Estiverne was deprived of his right to live in Haiti without the minimal due process guarantees inherent in a judicial or administrative procedure which could have afforded him the opportunity of having been informed of the reasons motivating his expulsion, prior to the actual issuance of the expulsion order, and of having had the opportunity to defend himself against the charges presented against him.

And lastly, Mr. Estiverne’s expulsion from Haiti, allegedly motivated by his criticism of the current political figures in Haiti, if true, deprived him of a procedural recourse to defend the truth of his statements in a libel or defamation suit, and is tantamount to an illegitimate interference with his substantive right to freedom of expression (Article 13 of the American Convention).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
RESOLVES:

1. To declare that in the present case the Government of Haiti has violated Articles 25 (Right to Judicial protection), 13 (Freedom of Thought and Expression), 20 (Right to Nationality), 22 (Freedom of Movement and Residence) and 23 (Right to participate in Government).
2. To transmit this resolution to the Government of Haiti and to the Petitioner and to publish it in its Annual Report to the General Assembly of the OAS, in accordance with article 63 (g) of its Regulations.