

OPINION No. 23/2000 (HAITI)

Communication addressed to the Government on 19 November 1999

Concerning Ernest Bennett, Edouard Soster Boyer, Antony C.J. Charles, Delzince Marcel, Evans François, Ulton Gedeon, Valot Hosse, Josue Joseph, Teluce Jean Lubin, Henriquez Pierre, Bossicot Pierre-Louis, Anovil Sainvil, Bon Jacob Sainvil, Jean Enel Samedy, Jean-Michel Thourvenaut and Raynold Albert Valéry

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regrets that the Government did not reply within the 90-day time limit.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the Government's cooperation. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. According to information from the source, the individuals mentioned below have been the victims of arbitrary detention.

6. In July 1998, Mr. Ernest Bennett, aged 73, was arrested at his home and taken to the Petionville prison. The police allegedly did not produce an arrest warrant, and Mr. Bennett was not apprehended in flagrante delicto. No formal charges were brought against Mr. Bennett, the ex-father-in-law of Mr. Jean-Claude Duvalier, while the latter was President of the Republic. According to information in the media, Mr. Bennett was allegedly arrested for embezzling government funds while Mr. Duvalier was President. According to the Haitian legislation in force, Mr. Bennett should not have been arrested and detained, as the law stipulates that individuals aged 65 or over cannot be detained, with the exception of cases involving violent crimes.

7. Two months after his arrest, Mr. Bennett was brought before an examining magistrate for the first time. On that occasion, the judge found no reason to continue detaining him and ordered him released. Two months later, Mr. Bennett appeared before the same judge, who informed him that he was waiting for government commissioner Jean-Auguste Brutus to sign his release order so as to release him.

8. Mr. Bennett lodged appeals for his release at all levels of the Haitian Government, including the Citizen's Protection Bureau (Mr. Louis Roy). Mr. Bennett remains in detention to date, and is said to be in a precarious state of health; Commissioner Brutus continues to defy the release order.

9. According to the source, the continued detention of Mr. Bennett is a violation of articles 24, paragraph 3 and 26, paragraph 2 of the Haitian Constitution, article 503 of the Code of Civil Procedure (a prosecutor cannot judge in the place of the judiciary) and article 7 of the presidential Decree-Law of 26 July 1979, which stipulates that an examining magistrate must determine within 90 days whether an accused person is to be charged or released. The detention is also contrary to articles 9 and 14, paragraph 2, of the International Covenant on Civil and Political Rights, to which Haiti is a party, and according to article 276, paragraph 2, of the 1987 Constitution, the international treaties ratified by Haiti automatically become part of domestic legislation.

10. Edouard Soster Boyer, aged 25, was arrested on 13 October 1997 at his home in Port-au-Prince. It is alleged that no arrest warrant was produced and that he was not informed of the charges against him. According to media sources, Mr. Boyer was arrested because he was identified as a "co-conspirator" by an imprisoned member of a gang, a certain "Harold", who identified Mr. Boyer through his car as being involved in the crimes with which he is charged.

11. Mr. Boyer appeared before an examining magistrate only once, approximately five months after his arrest. On that occasion, the judge dealt only with the question of the car's ownership, after which Mr. Boyer was returned to the prison, where he remains in detention.

12. According to the source, Mr. Boyer's detention is arbitrary as being contrary to articles 24, paragraph 3, and 26, paragraph 2, of the Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

13. Antony C.J. Charles, aged 49, was arrested at his shop in Port-au-Prince one morning in October 1997. Allegedly no arrest warrant was produced, and he was not surprised in flagrante delicto. Since his arrest, Mr. Charles has been brought before an examining magistrate only once, in December 1998. On that occasion, his lawyer was not able to attend the hearing, and Mr. Charles returned to prison. Commissioner J.-A. Brutus allegedly failed to carry out two judicial decisions ordering Mr. Charles' release.

14. Mr. Charles is accused of forging his birth certificate in order to claim an inheritance from his father, Clémard Joseph Charles. Mr. Charles' widow claims that Antony Charles is not her late husband's legitimate child. In 1996 Mr. Charles produced a copy of his birth certificate, the authenticity of which has since been confirmed through the Haitian National Archives.

15. On 17 March 1998, Mr. Charles' lawyer, Mr. Févry, pleaded Mr. Charles' case before the Supreme Court of Haiti. One of the three judges openly accused the others of accepting money (US\$ 70,000) to keep Mr. Charles in detention. Mr. Févry transmitted similar arguments to the President of the Republic, Mr. Préval. Two days later, Mr. Févry himself was arrested.

16. According to the source, Mr. Charles' detention is contrary to article 24, paragraph 3, and article 26, paragraph 2, of the Haitian Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

17. Delzince Marcel, a Haitian national approximately 29 years of age, was arrested on 27 July 1998 in Port-au-Prince, without an arrest warrant. He has not been brought before an examining magistrate. Mr. Marcel was a member of the Haitian armed forces until his retirement, which coincided with the dismantling of the army in 1995. On 27 July 1998 he had gone to the Ministry of Finance to collect a pension cheque, along with 600 other former members of the military, when a specialized police unit, the Compagnie d'Intervention et de Maintien de l'Ordre (CIMO), arrived to disperse the crowd. Mr. Marcel was among the people arrested. Since his arrest, Mr. Marcel has allegedly never been informed of the charges against him. His family heard the news of his arrest on the radio. According to the media, Mr. Marcel is charged with "plotting against the State".

18. According to the source, Mr. Marcel's continued detention is arbitrary as being contrary to article 24, paragraph 3, and article 26, paragraph 2, of the Haitian Constitution, and to article 7 of the presidential Decree-Law of 26 July 1979. For the rest of the arguments, see the case of Mr. Bennett above.

19. Evans François, a 46-year-old Haitian, was arrested at his home in Port-au-Prince on 18 April 1996 by members of the National Intelligence Service. They did not have an arrest warrant, but the leader of the group, Patrick Moïse, indicated that his men were acting on orders from the "Western Delegation", representing the Office of the President in Delmas.

20. In May 1996, Mr. François' wife contacted Commissioner Brutus to ask about her husband's detention. She was told that her husband was being detained for his own protection, as he had allegedly been arrested by mercenaries. Mr. Brutus repeated the same argument in June 1996. On 7 March, the Clerk of the Court certified that there was no file on Mr. François. On 7 June 1997, Mr. François' case was finally brought before a competent examining

magistrate by his lawyer, Mr. Delienne. Since Commissioner Brutus did not attend the hearing, as he was required to do by law, the judge ordered Mr. François released. Mr. Brutus has not carried out this order to date.

21. According to the source, the continued detention of Mr. François is arbitrary for the reasons cited in the above-mentioned cases.

22. Ulton Gedeon, a 37-year-old Haitian, was a corporal in the Haitian army from 1981 through 1994. On 27 July 1998, he was arrested near the Ministry of Finance, having joined a crowd which was attempting to collect pension cheques, by members of the CIMO. On 29 July 1998, Mr. Gedeon was transferred to the central prison. His family learned of his arrest on the radio; he is allegedly charged with “plotting against the State”.

23. Mr. Gedeon’s wife and sisters questioned Commissioner Brutus on several occasions. In December 1998, they were told that the case would soon be brought before an examining magistrate, and that the family should hire a lawyer. As Mr. Gedeon’s relatives were unable to afford a lawyer, judicial staff told them that the court would not hear the case until Mr. Gedeon was represented.

24. To date, Mr. Gedeon has not been heard by an examining magistrate and has not been told precisely what charges have been brought against him. According to the source, Mr. Gedeon’s detention is arbitrary for the reasons cited in the above-mentioned cases.

25. Valot Hosse, a 34-year-old Haitian, was arrested on 28 July 1998 under conditions similar to those of Mr. Gedeon. Mr. Hosse was not informed of the charges against him, and his wife learned of his arrest on the radio. Mr. Hosse has not been brought before an examining magistrate since his arrest.

26. Mrs. Hosse tried repeatedly to obtain clarifications concerning her husband’s fate. It was allegedly not until three months after her husband’s arrest that she was told by Commissioner Brutus that Mr. Hosse and other individuals arrested with him were not guilty, but that President Préval would not authorize their release. According to the source, Mr. Hosse’s detention is arbitrary for the reasons cited in the above-mentioned cases.

27. Josue Joseph, a 30-year-old Haitian, was arrested on 28 July 1998 in the same circumstances and context as Mr. Gedeon and Mr. Hosse (see above). According to the source, no formal charges have been preferred against him since his arrest, and he has not been brought before an examining magistrate, which confers an arbitrary character on his detention.

28. Teluce Jean Lubin, a 33-year-old Haitian, was arrested on 3 October 1995 at his home in Port-au-Prince. Mr. Lubin had called the police because he felt threatened by the members of a gang which had gathered outside his house. When the police arrived, the members of the gang had disappeared, and Mr. Lubin himself was arrested.

29. Since October 1995, Mr. Lubin has not been informed of the charges against him, and has not been brought before an examining magistrate. The source states that Mr. Lubin’s continued detention is arbitrary for the reasons cited in the above-mentioned cases.

30. Henriquez Pierre, a 55-year-old Haitian, was arrested on 28 July 1998 in the same circumstances and context as Mr. Gedeon, Mr. Hosse and Mr. Joseph (see above). It is alleged that, since his arrest, he has not seen an examining magistrate and has not been formally notified of the charges against him, which, according to the source, confers an arbitrary character on his detention.

31. Bossicot Pierre-Louis, a 36-year-old Haitian, was arrested on 4 July 1997 in Port-au-Prince as he was preparing to board a bus. Mr. Pierre-Louis considers himself to have initially been arrested for participating in a "plot against the Government". His mother was allegedly informed by Commissioner Brutus that he had never received orders to arrest Mr. Pierre-Louis, and that he was well aware of the fact that Mr. Pierre-Louis was not guilty.

32. Since his arrest over two years ago, Mr. Pierre-Louis has not been informed of the charges against him and has not been brought before an examining magistrate, which, according to the source, confers an arbitrary character on his detention.

33. Anovil Sainvil, a 32-year-old Haitian, was arrested on 20 July 1998; it is not known where. According to the source, he is currently incarcerated in the "political" section of the central prison in Port-au-Prince. He has not been brought before an examining magistrate, and has not been formally notified of the charges against him, which, according to the source, confers an arbitrary character on his detention.

34. Bon Jacob Sainvil, a 30-year-old Haitian, was arrested on 8 September 1998 in Petionville. As in his brother's case, the reasons for his detention are still unknown, and he is allegedly being held in the "political" section of the central prison. As in his brother's case, no arrest warrant was produced, no formal charges were brought against him and he has not been brought before an examining magistrate.

35. Jean Enel Samedy, a 32-year-old Haitian, was arrested in August 1996 on the premises of the Hubert-Deronsray political party, for which he was working at the time. The police did not produce a warrant when they arrested him. No formal charges have been preferred against him, and he has not been brought before an examining magistrate for a period of more than three years. Contacts made by his wife with the Joint United Nations/OAS International Civilian Mission in Haiti (MICIVIH) have produced no results. According to the source, Mr. Samedy's continued detention, without charges and without trial, is of an arbitrary character.

36. Jean-Michel Thourvenaut, a 33-year-old Haitian, was allegedly arrested at his home in Gérard on 6 August 1996, also without an arrest warrant. According to Mr. Thourvenaut's father, his son was subjected to abuse and ill-treatment on arrest. He was not informed of the charges against him.

37. Eight months after his arrest, Mr. Thourvenaut appeared before Commissioner Brutus, who allegedly ordered him not to try to "take revenge" after his release. He was subsequently returned to the prison, and has not appeared before a prosecutor or examining magistrate since spring 1997. He has not been formally charged.

38. In 1998, Mr. Thourvenaut's father engaged the services of a lawyer to prepare his son's defence. The lawyer allegedly told Mr. Thourvenaut's father that his son's detention order had been issued by Mr. Jean-Bertrand Aristide, former President of the Republic, and was irreversible. According to the source, Mr. Thourvenaut's continued detention is of an arbitrary character.

39. Raynold Albert Valéry, a 37-year-old Haitian, was arrested on 9 September 1997, without an arrest warrant, and was taken to the national prison in Port-au-Prince. Mr. Valéry was accused of raping a girl living in his neighbourhood. The girl was examined by a doctor and a medical expert, who found no trace of sexual activity or sexual abuse. The girl's family had initially agreed to withdraw the complaint against Mr. Valéry in return for US\$ 3,000, but eventually withdrew the complaint unconditionally.

40. One year after his arrest, Mr. Valéry was first brought before an examining magistrate, who ordered him to appear before a "correctional court" within 15 days. To date Mr. Valéry has not appeared before such a court. According to the source, his continued detention is of an arbitrary character.

41. The Working Group notes that the above-mentioned individuals were all arrested without mandates issued by a judicial authority, whereas they had not been apprehended in flagrante delicto.

42. The Working Group also notes that, some of those arrested were not brought before a judge for periods ranging from two months to three years. Some were in fact never brought before a judge, at least by the time when this communication was submitted to the Working Group, which means that they have remained ignorant of the charges against them, in violation of article 9, paragraph 2, and article 14, paragraph 3, of the International Covenant on Civil and Political Rights.

43. Even more serious, decisions have been taken to release some of the detainees, such as Ernest Bennett, Antony C. J. Charles and Evans François, which Commissioner Brutus - in apparently customary behaviour (see Working Group Opinion No. 24/1999 concerning Frantz Henry Jean Louis and Thomas Asabath) - has refused to execute in his capacity of Chief Prosecutor of Port-au-Prince, in violation of article 26, paragraph 2, of the 1987 Constitution, according to which, in the case of an arrest which he deems to be illegal, a judge must order the immediate release of the person arrested and the release must be executed immediately despite the existence of any appeal to a higher body or the Supreme Court.

44. Consequently, in the opinion of the Working Group, there has been a violation of the international norms relating to the right to a fair trial of such gravity as to confer an arbitrary character on the deprivation of liberty of the above-mentioned individuals (category III). Furthermore, concerning the detention of Ernest Bennett, Antony C.J. Charles and Evans François, who are still in custody despite a release order issued by an examining magistrate, the deprivation of liberty is also arbitrary because it manifestly cannot be justified on any legal basis (category I).

45. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to put an end to the impunity enjoyed by those responsible for the deliberately arbitrary detentions mentioned above (Commission on Human Rights resolutions 1999/34 and 2000/68).

Adopted on 14 September 2000