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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 11/94; Case No. 11.128
Session: Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause: Georges Izmary v. Haiti
Doc. Type: Report
Decided by: Chairman: Professor W. Michael Reisman;
First Vice-Chairman: Dr. Alvaro Tirado Mejía;
Second Vice-Chairman: Dr. Leo Valladares Lanza;
Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor
Claudio Grossman; Ambassador John Donaldson.
Dated: 01 February 1994
Citation: Izmary v. Haiti, Case 11.128, Inter-Am. C.H.R., Report No. 11/94,
OEA/Ser.L/V.85, doc. 9 rev. (1993)

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I. BACKGROUND:

1. On August 31, 1992, the Inter-American Commission on Human Rights received a complaint regarding the death of Mr. Georges Izmary. The pertinent portions of the complaint are as follows:

On May 26, 1992, Georges Izmary, brother of a known supporter of President Aristide, was shot in the back before hundreds of witnesses by a group of soldiers in civilian clothing, who, after the crime, went into the police station known as the "Cafeteria" a short distance away from where the events occurred. When the police arrived, they did not allow Mr. Georges Izmary's family to approach or to take him to a hospital to be cared for. Mr. Georges Izmary was taken by the police to the General Hospital. The family doctor was not allowed to enter the morgue, and the body of the victim could only be recovered three days later, through the efforts of an attorney.

Prior to these events, Mr. Georges Izmary's house had been raided by police officers without a search warrant. The domestic servant was beaten and taken to prison. She was released that same night without being given any reason for her detention.

Mr. Izmary's funeral was interrupted by a group of heavily armed men carrying sophisticated communications systems. The funeral procession was dispersed, and some of the people were detained and beaten.

II. PROCEEDINGS OF THE COMMISSION:

2. The Commission immediately took up the case and asked those who exercised power in Haiti for pertinent information on the events that gave rise to the complaint. Subsequently, on January 10, 1993, the Commission asked the petitioner for additional information to corroborate the events described in the complaint.

3. In a note of January 14, 1993, the Commission agreed to receive Mr. Antoine Izmary, the victim's

brother, to hear his allegations and to receive any documentation that might explain and prove the alleged human rights violations.

4. On February 19, 1993, the Commission again requested information from those who exercised power in the Ministry of Foreign Affairs and additionally requested that it be informed, regarding the case in question, as to whether all remedies under domestic law had been exhausted.

5. The hearing mentioned in paragraph 3 was held during the Commission's 83rd session on February 25, 1993, at its headquarters in Washington, D.C.. Present at the hearing were Mr. Antoine Izmary, representing the family of the deceased, accompanied by his attorney, Mr. Ira J. Kurzban. Also present was the Representative of the Permanent Mission of Haiti to the OAS, Ambassador Jean Casimir, who represented the democratic government of deposed President Jean-Bertrand Aristide. They who exercised power in Haiti were not represented at the hearing.

6. During the hearing, Mr. Antoine Izmary made a statement confirming the events described in the initial complaint and giving further details as follows:

On May 26, 1992, around 6:00 p.m., Mr. Georges Izmary closed the doors of his business establishment at 322 Jean-Jacques Dessalines Boulevard in downtown Port-au-Prince and crossed the boulevard to go to his automobile parked a few steps away.

When he reached the sidewalk on the other side of the street, an armed civilian approached and shot him with a revolver in the right shoulder near the neck. Georges fell face down, and the attacker shot him twice more in the back before going to the police station known as the "Cafeteria" a short distance away.

Having been notified by eyewitnesses of the attack, several members of Mr. Izmary's family went to the scene about an hour later. Uniformed police from the "Cafeteria" did not allow them to approach the body, which was covered with blood. Ignoring the threats of the police there, our older sister and our cousin approached Georges, and seeing that he was still alive, tried to speak to him. At that point, the police ordered them away, threatening them with the same fate as the victim.

Our family tried in vain to convince the police of the urgency of the case. In their opinion, Georges could still have been saved. Faced with the intransigence and hostility of the uniformed police, the family members left to find a doctor.

Having been informed about the situation by radio, I reached the place where the events took place around 7:30 p.m. and found that Georges' body had been taken away. According to several witnesses, a station wagon of the Anti-Gang Service [FN1] took him to the General Hospital morgue.

[FN1] Haitian Armed Forces unit responsible in principle for combatting criminals.

It should be mentioned that when the crime took place, an Anti-Gang Service station wagon, from a different unit from that of the "Cafeteria" was nearby. By a "strange coincidence," it was that station wagon, instead of an ambulance, that took Georges away. So, the soldiers not only killed him, but they made sure the job had been finished.

The soldiers on duty at the hospital repeatedly refused to allow my sister and cousin, who were accompanied by a doctor, to enter the morgue.

On the same night as the murder, Colonel Henri-Robert Marc Charles, a member of the High Command of the Haitian Armed Forces (FADH), offered to use his influence to have Georges' body returned to the family. Nevertheless, the body could only be recovered three days later, through the efforts of our attorneys. The findings of the autopsy performed on our brother Georges were not given to us despite our legally interposed requests to obtain them.

In Georges' case, the autopsy performed served no medical-legal purpose. It was more like an additional

attack, this time on the body of the victim, designed to confirm his death and to intimidate the members of his family.

Georges' funeral was held on June 2, 1992 in a climate of terror. There were more police present than family members and friends who came to express their support for the family. On the way to the cemetery, the procession was brutally dispersed by the police. They made a number of illegal arrests, particularly of our employees. Only seven close family members of the deceased were allowed to proceed to the cemetery.

7. During the hearing, the Commission members asked Mr. Antoine Izmary to identify the eyewitnesses of the events reported in the initial communication.

In reply, the complainant stated the following:

There were many witness, mainly passersby and sidewalk vendors near the business. In particular, one person close to the family was present at the scene of the crime when it took place. He asked that his identity not be revealed for reasons of personal safety.

The vendors who witnessed Georges' murder ran away and did not return to the scene for fear of reprisals against them. The police of the "Cafeteria" station and their auxiliaries [FN2] of the Anti-Gang Service returned to the scene of the crime to learn the identity of anyone who was there when the events occurred.

[FN2] Civilian agents assigned to certain army units, particularly the Anti-Gang Service.

8. The Commission also asked Mr. Antoine Izmary whether all remedies under domestic law had been exhausted.

In response, the complainant stated that:

the legal procedures for filing a complaint were totally inoperative because of the political situation in Haiti after the coup d'etat of September 30, 1991.

9. Mr. Antoine Izmary told the Commission:

That my brother's murder had been committed under the odious practice reintroduced into Haiti after the 1991 coup, which consisted of killing civilians -- at night and during the day -- and disposing of their bodies to erase all traces of their existence. I am speaking today on Georges' behalf, but I am also speaking for all those who have disappeared -- children, students, journalists, farmers, workers and all of the peaceful citizens who have been victims of the state of terror prevailing in Haiti.

That many persons were asking, with good reason, whether the victim had been attacked in error, because they believed that I was the one the attackers wanted to eliminate at all costs, in view of my political stands, because I do not support the "putschists" or the smugglers and because I openly campaign for the return of President Aristide to the country. As is well known, I am deeply involved in my country's politics, not as a politician but as someone working to achieve the necessary changes in government, against the old imperialist style. I gave financial support to the winner of the December 16, 1990 elections, not to obtain any personal gain but to try to open a road to the majority of the people who are in poverty.

Finally, it should also be mentioned that on the day after the coup d'etat, on October 1, 1991, my house was attacked by the armed forces, who threw a grenade at it. On October 15 of that same year, I was illegally arrested in the home of my brother Georges by twenty soldiers, some of them uniformed, others in civilian clothing, and all heavily armed. On that same date, around 1:00 a.m., seven of the men who

had taken part in my arrest entered my brother's home and stole jewelry, money, and electric appliances. To frighten Georges, they fired guns near his ears. I was detained for 11 days and was released without being given any reason for my detention or for the attack on my home. On April 4, 1992, my brother Georges' home was raided by the police and soldiers, and his domestic servant was arrested and beaten. She was released that same night. At the same time, another group of soldiers entered my home and, when they didn't find me there, withdrew. In mid-January 1993, I was arrested again -- this time according to the police for not having a driver's license. I was held in jail for three days.

10. At the end of the hearing, the petitioner submitted his statement in writing along with photographs of the victim showing the bullet wounds on his body and the marks from the autopsy that had been performed. He also attached photographs from local newspapers showing the participation of police and auxiliaries when they dispersed the victim's funeral procession, and letters containing the views of the public on the crime. (This documentation is on file.)

11. In notes of June 15 and July 23, 1993, the Commission again requested information from those exercising power in Haiti and stated that if it did not receive the information by the set deadline, it would be compelled to consider the application of article 42 of the IACHR Regulations, which reads as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

12. During the on-site visit by the IACHR Delegation to Haiti on August 23-27, 1993, the delegation received testimony from one person [FN3] who was present at the place where the events of May 26, 1992 occurred. He confirmed the statements in the complaint and said he was at the side of Mr. Georges Izmerly when he was shot and had seen two men running to the "Cafeteria" police station, one of them with a pistol in his hand. Testimony was also received from Mrs. Jeannette Izmerly and Mirna Hasboun Handal, members of Mr. Georges Izmerly's family, who confirmed the events that gave rise to the complaint and said they had approached and touched Mr. Georges Izmerly while he was still alive. They also said that they had wanted to take Mr. Izmerly away and had urged the soldiers to save him, but at that moment four policemen approached pointing machine guns at them, and prevented them from removing Mr. Izmerly and from remaining there. One of the policemen threatened them, saying they would suffer the same fate as Mr. Georges Izmerly if they did not leave ("Je vous ferai devenir un passoir comme l'individu etale.") The written statements, duly signed, are on file with the Commission.

[FN3] At the request of the person who testified before the IACHR Delegation, his identity is not revealed for reasons of his safety.

13. As stated in the previous paragraphs, the Commission asked those exercising power in Haiti several times to send information on the alleged human rights violations; but despite the seriousness of the allegations, it received no reply.

14. That during the 84th period of sessions held 5th - 15th October 1993, the Commission adopted Resolution 35/93 in which the Government of Haiti was requested to submit their response to the instant case within three months of the date of the submission, and further to otherwise exercise its option pursuant to Article 62(2) of the Convention, to recognize the jurisdiction of the Inter-American Court of Justice, in the present case, failing which, the Commission would decide whether to publish this report.

III. CONSIDERING:

1. That the Commission is competent to hear the instant case because it involves violations of the following rights protected in the American Convention on Human Rights to which Haiti is a party -- Right to Life (article 4), Right to Judicial Protection (article 25) -- and according to the provisions of article 44 of the Convention.

2. That the submitted petition meets the formal admissibility requirements established in article 46 of the American Convention on Human Rights and in article 32 of the Commission's Regulations.

3. That the petition is not pending in any other international settlement procedure and is not a resubmittal of a previous petition already reviewed by the Commission.

4. That the petitioner has not been able to obtain effective protection from the organs having jurisdiction in his country, and as was previously noted by the representative of the victim's family: "[t]he legal procedures for filing a complaint were totally inoperative because of the political situation in Haiti after the coup d'etat of September 30, 1991."

5. That the Commission, aware of the serious problem affecting the judicial system in Haiti, has addressed that issue on several occasions, noting that the justice administration's inability to combat the atmosphere of insecurity which has prevailed in the country has been recognized by the government's officials themselves, who have told the Commission that "the forces of law and order are not psychologically or physically prepared to deal with the lack of security in the country." [FN4] In addition, the Commission has stated that "the absence of judicial action against persons suspected responsible for grave human rights violations constitutes an omission that must be promptly corrected." [FN5]

[FN4] Report on the Situation of Human Rights in Haiti, doc. OEA/Ser.L/C/II.77. rev. 1, doc. 18 of May 8, 1990, p. 58.

[FN5] Ibid, p. 61.

6. That the Commission recently stated the following in its 1992 Report on the Human Rights Situation in Haiti: [FN6]

The institutionalized violence and corruption practiced with impunity by members of the army and police whose function is to protect the citizenry has caused a series of abuses against the Haitian people . . . At the same time, the judicial authorities have been neither efficient nor decisive in prosecuting investigations into these violations.

[FN6] Doc. OEA/Ser.L/V/II.83, doc. 18 of March 9, 1993, p 45.

7. That for the above reasons, the requirements on exhausting all remedies under domestic law, as established in article 46 of the American Convention on Human Rights, are not applicable.

8. That although over a year has elapsed since the events described in the complaint occurred and although the Commission has repeatedly requested information from those who exercise power in Haiti, they have not provided any reply in the instant case.

9. That because it has not replied, the Haiti has not fulfilled its international obligation to supply information within a reasonable time, as established by article 48 of the American Convention on Human Rights, and that regardless of the political situation prevailing in the country, the Convention is still in force. Accordingly, those who exercise power, even if its use is illegal, have the obligation not only to respect the rights set forth in that international agreement, but also to guarantee the full and free exercise of those rights.

10. That article 42 of the Commission's Regulations provides that complaints shall be presumed to be true if during the period set by the Commission, the Government has not provided the pertinent information. Such refusal has been shown in the above paragraphs of this report. Article 42, in fine, subjects the presumption that the alleged facts are true to the proviso that no other evidence leads to a different conclusion. In the present case, there is no different conclusion, as the Commission has pointed out that the information received from various sources has corroborated that most of the human rights violations in 1992 occurred in a political context fostered by those who exercise power in their desire to consolidate power. [FN7]

[FN7] Ibid, p. 45.

11. That the absence of a reply gives rise to the presumption contemplated in article 42, and that article 42 alone would be enough to presume that the charges against the those who exercise power in Haiti are true, but in this case, the presumption is reinforced by the testimony of persons who witnessed the events.

12. That the 1987 Constitution of the Republic of Haiti establishes in article 19 guarantees regarding the right to life. The text of that article is as follows:

The State has the absolute obligation to guarantee the right to life, health and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.

13. That the Inter-American Court of Human Rights states in its judgment on the Velasquez Rodriguez case that:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished . . . , the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the government allows private persons or groups to act freely and with impunity to the detriment of the rights recognized in the Convention. [FN8]

[FN8] Velasquez Rodriguez case, judgment of July 29, 1988, paragraph 176, p. 155.

14. That in this case, those who exercise power in Haiti acted not only to hide the identity of the person who perpetrated the crime, as that person went to the "Cafeteria" police station seeking refuge as shown in testimony the Commission has in its possession, but also showed a complete unwillingness to conduct a de officio investigation of a crime of which they had full knowledge -- given that the place where the events took place was close to the police station and that it was agents of the Anti-Gang Service who took the victim to the hospital.

15. That in addition, the police agents demonstrated great contempt for the life of Mr. Georges Izmary in not allowing a doctor to attend to him when his life might have been saved, as the soldiers refused to allow family members and the family doctor to approach the victim.

16. That such an attitude by those exercising power in Haiti fully demonstrates violations of the human rights protected by the Convention, both by their actions in hiding the offender in their facilities and by their failure to act when they did not carry out their duty to conduct an effective investigation within their jurisdiction to identify those responsible and to impose on them the penalties established in Haiti's penal laws, thus ensuring proper reparation for the victim's family.

17. That in this respect, the Inter-American Court on Human Rights has stated: "[w]here the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government. thereby making the State responsible on the international plane." [FN9]

[FN9] Ibid, p. 56.

18. That based on the legal principle of ultra petita, the Commission is not issuing a definitive judgment regarding the attacks perpetrated (prior to May 26, 1992) on the persons of Georges and Antoine Izmary by members of the police and army, as reported at the hearing granted to the complainant, because those attacks were not part of the elements contained in the initial complaint. However, the information received does permit the Commission to establish a frame of reference and to determine within what context the death of Mr. Georges Izmary occurred, in view of the repressive and intimidating acts by the soldiers against the Izmary family.

19. That because the procedure for a friendly settlement established in article 48(1)(f) of the Convention and in article 45 of the IACHR Regulations is not applicable, and because of the nature of the case and the refusal of those exercising power in Haiti to provide information, the Commission must comply with article 50, subparagraph 1 of the Convention by giving its opinion and conclusions on the issue submitted to it for consideration.

20. That because the Government of Haiti has not presented its observations as requested, and nor has it conformed to the recommendations indicated in Resolution Ne 35/93 within the requisite time period of 90 days;

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that they who exercise power in Haiti have violated the Right to Life provided for in article 4 of the American Convention on Human Rights and the Right to Judicial Protection recognized in article 25 of that Convention through the actions of its agents which led to the death of Mr Georges Izmary, which occurred in Port-au-Prince, on May 26, 1992.

2. To declare that Haiti has not complied with the obligation to ensure the free and full exercise of fundamental human rights and guarantees to all persons subject to its jurisdiction, as imposed by article 1 of the American Convention on Human Rights.

3. To take note of the fact that the Government of Haiti, because it was illegally overthrown, has been unable to investigate the actions denounced or punish those responsible.

4. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Haiti did not adopt measures to correct the situation denounced within the time period.