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Session:	Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause:	Brunel Jacquelin, Moises Jean Charles, Marcel Fleurzil, Frantz Delva, Jacques Derenoncourt, Wesner Luc, Justin Brezil and Jean-Sony Philogene 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:	Jacquelin v. Haiti, Case 11.106, 11.108, 11.109, 11.115, 11.119 and 11.121 Inter-Am. C.H.R., Report No. 10/94, OEA/Ser.L/V.85, doc. 9 rev. (1993)
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I. BACKGROUND:

1. Between August and December 1992, the Inter-American Human Rights Commission received petitions reporting disappearances and deaths of several Haitian nationals, allegedly at the hands of the military or armed groups in civilian clothing collaborating with the Haitian armed forces. Judicial investigations were not carried out in any of the cases described below. The pertinent parts of those petitions are summarized as follows:

Case No. 11.106

Brunel Jacquelin, 25, resident of Port-au-Prince, was arbitrarily detained after having been seriously wounded by Haitian soldiers on August 3, 1992, during a military attack in the area where he lived. In a thorough search, the soldiers found a miniature radio device in the victim's house. As a result they accused Jacquelin of belonging to an underground network and threatened to kill him if he did not reveal the identities and addresses of the other members. Since the reported events occurred, his family's inquiries in various prisons have been fruitless because the police claim that they know nothing about him. Brunel Jacquelin is still missing.

Case No. 11.109

Moises Jean Charles, spokesman for the Milot Farmers' Movement, was arbitrarily arrested by the Cap-Haitien police on August 22, 1992. According to witnesses, Charles was detained by policemen as he entered Cap-Haitien when they demanded that he reveal the contents of a report that had purportedly been presented to the OAS delegation, because Charles was in Port-au-Prince when that delegation was collecting reports and complaints in the capital. Since his arrest, his family have had no news of him or where he is being held.

In addition to Charles' arbitrary detention, other actions have been taken against the Milot Farmers' Movement. The headquarters of the association was raided by the military on November 4, 1991 and its property confiscated. The association then moved underground.

Case No. 11.108

Marcel Fleurzil, a member of the political party Congress of Democratic Movements (KONAKOM), 50 years old and father of 10, was murdered and his body found shot and stabbed near the telephone company (TELECO) in Port-au-Prince on September 3, 1992. In June of the same year, Fleurzil had fled from his town when the local police set fire to his house and tried to arrest him. At the time of his death, Mr. Fleurzil was applying for political refugee status after having received numerous death threats from paramilitary groups operating in the region because of his known political affiliation.

Case No. 11.115

Frantz Delva, 23, along with an unidentified companion, was murdered in Port-au-Prince by Haitian soldiers on September 16, 1992. According to eye witness reports, before the slayings, the victims had an altercation with the military who eventually fired on them killing them instantly.

Case No. 11.119

Jacques Derenoncourt, Wesner Luc, and Justin Brezil. Jacques Derenoncourt, 40, member of KONAKOM and a nongovernmental organization affiliated with farmers (ADECOI), disappeared on December 2, 1992. According to various witnesses, he was kidnapped by armed civilians, called death squads, as he was driving his car in down-town Port-au-Prince. His body was found on December 4, 1992, after his assassination by his captors. Wesner Luc and Justin Brezil, also KONAKOM militants, were held by armed civilians in Port-au-Prince on November 22, 1992. Two days later the body of Wesner Luc was found shot and stabbed. Justin Brezil is still missing. According to human rights organizations, the deaths and disappearances of these persons are occurring in a context of widespread unlawful executions and forced disappearances committed by armed civilian groups, particularly in the poorest districts of the capital, where bodies are frequently found in the streets.

Case No. 11.121

Jean-Sony Philogene was detained together with six other young people on December 5, 1992, by a group of armed men who drove them in a jeep to Titaynen, near a mass grave where bodies are secretly disposed of, and opened fire on them. Philogene was the only survivor of this massacre and managed to reach the national highway, where he was rescued by a driver and driven to the St. Francois de Salles Hospital. The hospital refused to admit him but, thanks to a doctor, arrangements were made for him to be taken immediately to the Canape-Vert Hospital. The next day, after he had undergone surgery, several uniformed soldiers appeared at the hospital asking for him. Later a group of five armed men entered Jean-Sony's room, where he was with a relative, and shot him dead.

II. PROCEEDINGS BEFORE THE COMMISSION

1. The Commission began to process the petitions, transmitting to those who exercise power in Haiti, the pertinent parts of the said petitions and requesting further information, within 90 days, to corroborate the reports.

2. Later, through notes dated January 29, May 7, and July 22, 1993, the Commission renewed its request for information on the reports indicating that if it did not receive that information by the deadline it had set, it would proceed to apply Article 42 of its Regulations which establish the following:

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.

3. Notwithstanding the Commission's repeated attempts to obtain information on the alleged human rights violations, and the seriousness of the reports, they who exercise power in Haiti's have failed to provide any information on the matter.

4. The Commission adopted Resolution 34/93 in the course of its 84th Session, held 5th - 15th October 1993 and submitted the same to the Government of Haiti for its pertinent observations. The report also indicated that if the situation was not resolved by the Government within three months from the date of submission, the Commission would have to decide whether to publish the report.

III. CONSIDERING:

1. That the Commission has the authority to hear such cases as they constitute violations of human rights protected by the American Convention: Article 4, on the right to life; Article 25 on legal protection in accordance with Article 44 of the Convention.

2. That the petitions filed meet the formal admissibility requirements established in Article 46 of the American Convention on Human Rights and Article 32 of the Commission's Regulations.

3. That the petitions are not pending settlement in any other international forum, nor are they repetitions of earlier petitions already examined by the Commissions.

4. That the petitioners have not been able to obtain effective protection from the Haitian authorities as there has been no investigation into the serious facts reported.

5. That in its 1992 Special Report on the Situation of Human Rights in Haiti the Commission stated:

The institutionalized violence and corruption practiced with impunity by members of the army and the police, whose function is to protect the citizenry, has caused a series of abuses against Haitian people At the same time, the judicial authorities have been neither efficient nor decisive in prosecuting investigations into these violations. [FN1]

[FN1] Doc. OEA/Ser.L/V/II.83, doc.18 of March 9, 1993, p. 45.

6. That the events described above is proof of "the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede [certain persons from] invoking certain remedies . . ." [FN2] As the Inter-American Court established in the Velasquez Rodriguez case: "In such cases, resort to those remedies becomes a senseless formality. The exceptions of Article 46(2) [regarding the exhaustion of domestic remedies] would be fully applicable in those situations and would discharge the obligation to exhaust all domestic remedies as they cannot fulfill their objective in that case." [FN3]

[FN2] Inter-American Court of Human Rights, Velasquez Rodriguez case, Judgment of 29 of July 29, 1988. Series C No. 4, pp. 115-116.

[FN3] Idem.

7. That under such circumstances, the requirement that domestic recourse be exhausted, as established in Article 46 of the American Convention on Human Rights, is not applicable to the case in question.

8. That Haiti is a State Party to the American Convention on Human Rights and is therefore obliged to adhere to the principles guaranteed by Article 1 of that Convention which establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

9. That despite the time elapsed since the reported acts took place and the fact that the Commission has repeatedly requested information from those who exercise power in Haiti, they have provided no response whatsoever in the matter.

10. By not responding, those who exercise power in Haiti have not met Haiti's international obligation to supply information within a reasonable time frame, as provided in Article 48 of the American Convention on Human Rights, and that, regardless of the prevailing human rights situation in the country, the Convention remains in force. Consequently, the powers that be, though illegal, have the obligation not only to respect the rights contained in that international agreement, but also to guarantee the full and free exercise of such rights.

11. That Article 42 of the Regulations of the Commission establish the presumption of the facts reported if, by the deadline set by the Commission, the government has not provided the relevant information, and their refusal to so do has been demonstrated in the preceding paragraphs. Article 42 in fine provides for presumption of the alleged facts on condition that the other evidence does not lead to a different conclusion. In the instant case, there is no different conclusion as the Commission previously indicated that the information received from various sources enabled it to confirm that most of the human rights violations in 1992 occurred in a political context which were encouraged by those who exercise power in Haiti in their determination to consolidate their power. [FN4]

[FN4] Op cit., note 1, p. 45.

12. That the Constitution of the Republic of Haiti of 1987 establishes in Article 19 the following guarantees with regard to the right to life:

The Government has the absolute obligation to guarantee the right to life, health, and the respect of the human personality to all citizens without distinction, in accordance with the Universal Declaration of the Human Rights.

13. That the Inter-American Court of Human Rights in its judgment on the Velasquez Rodriguez case, stated 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 such rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention. [FN5]

[FN5] Op cit., note 2, paragraph 176, p. 155.

14. That the Commission recently indicated that numerous violations reported to it were related to the resurgence of activity by the members of irregular armed groups, supported by the Haitian armed forces. [FN6]

[FN6] CIDH press release No. 16, Port-au-Prince, August 27, 1993, p. 6.

15. That they who exercise power in Haiti have also failed to discharge their duty to conduct an effective investigation, within their jurisdiction, to identify the perpetrators of the acts reported and to subject them to the penalties established in Haiti's criminal laws, and also failed to provide the families of the victims with proper compensation.

16. That, in this regard, the Inter-American Court of Human Rights indicated that:

where 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. [FN7]

[FN7] Op cit., note 2, p. 156.

17. That because the procedure for friendly dispute settlement established in Article 48(1)(f) of the Convention and in Article 45 of the Commission's Regulations are not applicable, given the nature of the case and the refusal of those who exercise power in Haiti to provide information, the Commission shall enforce Article 50(1) of the Convention, issuing its opinion and findings on the matter submitted to it for consideration.

18. That because the Government of Haiti has not presented its observations as requested nor adopted the measures recommended by the Commission in Resolution 34/93 within the requisite 90 days;

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION,
RESOLVES:

1. To presume to be true the acts reported in the communications concerning the deaths of Marcel Fleurzil, Frantz Delva, Jean Sony Philogene, Jacques Derenoncourt, Wesner Luc, and the disappearances of Brunel Jacquelin, Moises Jean Charles, and Justin Brezil.

2. To declare that the acts referred to involve violations of the right to life, enshrined in Article 4, and the right to protection by law enforcement recognized in Article 25 of the American Convention on Human Rights.

3. To declare that they, who exercise power in Haiti, have failed to comply with Haiti's obligation to guarantee the full and free exercise of human rights and fundamental guarantees pursuant to Article 1 of the American Convention on Human Rights.

4. 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.

5. 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.