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Session: Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause: Hubert Pascal v. Haiti
Vonel St. Germain v. Haiti
Yolette Etienne, Inelda Cesarand Kedner Baselais v. Haiti
Destinas Vilsaint v. Haiti
Frenel Regis v. Haiti
Carlos Bassette, Mathurin Vincent and Travil Lamour v. Haiti
Eliphete Abeltus v. Haiti
Thomas Andre v. Haiti
Antoine Augustin v. Haiti
Maurice Damucy v. Haiti
Jean Emile Estimable 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
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I. BACKGROUND

1. Between August 1992 and January 1993, the Inter-American Commission on Human Rights received petitions denouncing the arbitrary detention, torture and mistreatment of numerous Haitian nationals by members of the Haitian Armed Forces. Judicial investigations were not carried out in any of these cases. The pertinent parts of the complaints are described below:

Case No. 11.105

Hubert Pascal, a native of Petit-Goave and father of a member of "Konbit Komilfo," was arbitrarily arrested on August 11 and 19, 1992. On both occasions, the arresting agents were the military forces based in the area. They justified their actions by claiming that Pascal had been a signatory of a protest letter transmitted by the media in Port-au-Prince, protesting the first arrests made in Petit-Goave. On both occasions, the arresting soldiers mistreated Hubert Pascal.

Case No. 11.107

Vonel St. Germain, age 37, leader of the church choir in the Cayes-Jacmel area and an active director of youth groups, was arbitrarily arrested while at work at the Jacmel contributions office on August 12, 1992. The individuals making the arrest were military troops, some in uniform, others in civilian dress. According to the petition, St. Germain was arrested because the military found photographs of President Aristide in his home. While in custody, Vonel St. Germain was mistreated.

Case No. 11.110

Yolette Etienne, Inelda Cesar and Kedner Bazelais, members of the Youth Solidarity (SAJ) group, a lay youth organization with close ties to President Aristide, were unlawfully detained in Port-au-Prince on September 1, 1992. The youth were arrested by 10 armed soldiers after being interrogated. There was no judge present during the interrogation, which took place at one of the youth group's facilities. During their detention, these young people were mistreated by the soldiers who later arrested them.

Case No. 11.111

Destinas Vilsaint was arbitrarily detained by the Port-a-Piment police on September 5, 1992. Vilsaint, who went into hiding in Port-au-Prince following the coup d'etat that deposed President Aristide, was arrested while he was in Port-a-Piment visiting three of his children, who were sick at the time. From that moment on, Destinas Vilsaint has been the victim of torture inflicted by the police. The reports received indicate that he is in very bad health.

Case No. 11.112

Frenel Regis, a former member of the Departmental Electoral Bureau (BED) in the Saut d'Eau region, was arbitrarily arrested by local military on September 1, 1992. During his confinement, Regis was harassed and brutally tortured.

Case No. 11.114

Carlos Bassette, Mathurin Vincent and Travil Lamour were arbitrarily detained by soldiers stationed in that area and taken to the Barraderes subdistrict prison in the Nippes region on September 24, 1992. From the moment of their arrest, these individuals have been tortured and mistreated. They are members of grassroots organizations and had been persecuted in Barraderes prior to their arrest. Because of that persecution, they remained in hiding for several months. They were detained when they returned to the area and have been tortured and mistreated since. Other members of the same organizations are currently being sought: Jean Sylvian Toussaint, Christian Etienne, St-Paul, Jean Robert Noel and Gaston Joseph.

Case No. 11.113

Eliphete M. Abeltus, clerk to a justice of the peace, was arbitrarily arrested by military troops in Port-Margot on October 2, 1992. The soldiers said that Abeltus was a member of President Aristide's inner circle and a leader of the Port-Margot resistance movements. Eliphete M. Abeltus was severely beaten while in custody.

Case No. 11.118

Thomas Andre, age 25 and a resident of the Deuxieme Cite Soleil in Port-au-Prince, was arbitrarily detained at approximately 6:00 p.m. on October 31, 1992, by two soldiers from Fort-Dimanche. At the time he was detained, Andre was with friends, discussing the political situation in the country. At one point, he shouted: "Down with the criminal Cedras! Up with the people's struggle! Long live democracy! Hooray for the return of the elected President." While under arrest, the victim was severely beaten by the soldiers and later released. He is now under intensive medical treatment as a result of the injuries his body sustained when he was tortured.

Case No. 11.120

Antoine Augustin, age 30, a teacher and a high ranking official in President Aristide's administration, was unlawfully detained on December 5, 1992, by Cap-Haitien police. Augustin was Chief of Staff of the Ministry of Information in the Aristide government and a member of the National Popular Assembly. Antoine Augustin was mistreated while in custody.

Case No. 11.122

Maurice Damucy, KONAKOM coordinator in the Bainet region, was arbitrarily detained by local soldiers on December 8, 1992. The detention took place right in the street, as Damucy was on his way to tell other KONAKOM members of a wave of repression unleashed against members of his party. Maurice Damucy was brutally beaten by the soldiers who detained him and is presently in the Bainet prison.

Case No. 11.102

Jean Emile Estimable, a journalist with Radio Cacique, was arbitrarily detained by the Marchand Dessalines police on January 22, 1993. According to reports received, police planted pro-Aristide pamphlets in Estimable's pockets as a pretext to arrest him. Jean Emile Estimable was in a state of precarious health because of the blows inflicted by police, when he was taken to the St. Marc garrison.

II. PROCEEDINGS BEFORE THE COMMISSION:

1. The Commission began processing these petitions by forwarding to those who exercise power in Haiti, the pertinent parts of the petitions in question. It asked those authorities to provide additional information within 90 days, to enable the Commission to corroborate the facts denounced.

2. Subsequently, by notes dated January 29, May 7, and July 22, 1993, the Commission again asked those who exercise power in Haiti for information on the facts denounced and indicated that if that information was not received by the established deadlines, Article 42 of its Regulations would be applied, which provides:

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. Despite the Commission's repeated attempts to obtain information on the human rights violations alleged in the petitions and despite the seriousness of the charges, those who exercise power in Haiti failed to provide any information thereon.

4. The Commission adopted Resolution 33/93 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 and response. The report also indicated that if the situation was not resolved by the Government within three months of the date of submission, the Commission would decide whether to publish the report.

III. CONSIDERING:

1. That the Commission has the authority to hear the instant cases as they concern violations of human rights protected by the American Convention: Article 5 on the right to humane treatment; Article 7 on the right to personal liberty; and Article 25 on the right to judicial protection, by virtue of Article 44 of the Convention.

2. That the filed petitions satisfy the formal requirements for admissibility set forth 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 and are not repetitions of earlier petitions examined by the Commission.

4. That the petitioners have been unable to secure effective protection from the Haitian authorities having jurisdiction, as no investigation was conducted into the serious facts reported in the petitions.

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

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. [FN1]

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

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

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

[FN3] Idem, parr. 68.

7. That under such circumstances, the requirement that domestic remedies be exhausted as stipulated in Article 46 of the American Convention on Human Rights does not apply to the cases in question.

8. That Haiti is a State Party to the American Convention on Human Rights and as such is obligated to respect the principles guaranteed under Article 1 thereof, which provides the following:

The States Parties to the 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 elapsed time since the events prompting the reported acts took place and despite the Commission's repeated requests for information from those who exercise power in Haiti, no response on the cases in question has been provided.

10. That by not responding, those who exercise power in Haiti have failed to comply with Haiti's international obligation to provide information within a reasonable period of time, as provided in Article

48 of the American Convention on Human Rights, and that irrespective of the political situation in the country, the Convention continues to be binding. Consequently, those exercising power, albeit illegal power, have an obligation not only to respect the rights upheld in that international agreement but also to guarantee their free and full exercise.

11. That Article 42 of the Commission's Regulations provides that the facts denounced shall be presumed to be true if, during the period set by the Commission, the government has not provided the pertinent information. The preceding paragraphs have established that those who exercise power in Haiti did not provide that information. The final clause of Article 42 contains a proviso to the effect that the facts shall be presumed to be true provided other evidence does not lead to a different conclusion. In the instant case, no other conclusion can be drawn because, as said before by the Commission, information received from a variety of sources has corroborated the fact that most of the human rights violations that occurred during 1992 took place in a political context created by those who exercise power in Haiti in their effort to consolidate their hold on power. [FN4]

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

12. That the facts that prompted these petitions to the Commission constitute a selective and systematic practice of violating the human rights of those persons who have some link with the constitutional Government of deposed President Aristide or are merely suspected of supporting the restoration of democracy in the country.

13. That in most of the petitions, the victims were arrested because they had photographs of President Aristide and/or voiced their sympathy for the deposed President publicly. In some cases, military or police personnel even planted pamphlets supporting Aristide's return in the victims' pockets as a pretext to arrest them.

14. That in these petitions, arbitrary detention was routinely coupled with severe beatings and mistreatment. In some cases, the mistreatment continued while the victim was in custody, in the form of torture sessions and other types of harassment. Some petitions report that the torture and mistreatment inflicted upon some victims did permanent damage to their health.

15. That in the judgment in the Velasquez Rodriguez case, the Inter-American Court of Human Rights 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 and the victim's full enjoyment of such rights is not restored as soon as possible, 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. [FN5]

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

16. They who exercise power in Haiti have failed to comply with the duty to conduct an effective investigation within their jurisdiction to identify those responsible for the facts denounced and to subject them to the penalties established in Haiti's laws.

17. That because of the refusal of those who exercise power in Haiti to furnish information

concerning the facts denounced, it is extremely difficult for the Commission to determine whether some of the victims in these cases have been released or are still being held, while being denied recourse to the remedies under domestic law.

18. That because the facts in these cases are not such that they can be resolved through recourse to the friendly settlement procedure provided for in Article 48(1)(f) of the Convention and Article 45 of the Commission's Regulations and because of the refusal of those who exercise power in Haiti to provide information, the Commission must comply with the provisions of Article 50(1) of the Convention and issue its opinion and conclusions on the matters put to it for consideration.

19. That because the Government of Haiti has not presented its observations as requested nor adopted the measures recommended by the Commission in Resolution 33/93 within the time frame of 90 days allotted by the Commission;

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume to be true the facts as stated in the petitions concerning the arbitrary arrest, torture and mistreatment of Hubert Pascal, Vonel St. Germain, Yolette Etienne, Inelda Cesar, Kedner Baselais, Destinas Vilsaint, Frenel Regis, Carlos Bassette, Mathurin Vincent, Travil Lamour, Eliphete Abeltus, Thomas Andre, Antoine Augustin, Maurice Damucy and Jean Emile Estimable.

2. To declare that these facts imply violations of the rights recognized in the American Convention on Human Rights, chiefly the right to humane treatment recognized in Article 5, the right to personal liberty contained in Article 7, and the right to judicial protection recognized in Article 25.

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

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.