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Title/Style of Cause:	Jean Claude Pierre, Ulrick Pierre and Jerseyla Adrien Juste v. Haiti
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Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan Mendez Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated:	24 February 2000
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I. SUMMARY

1. On May 18, 1994, during an on-site visit to the Republic of Haiti (hereinafter “Haiti”, the “Haitian State,” or the “State”) to observe the human rights situation in that country[FN1], the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by a young man named Ulrick Pierre hereinafter (the “petitioner”). In his petition Mr. Pierre claimed that his family had been attacked on May 12, 1994, by agents of the State security forces, and that those agents caused the death of Jean-Claude Pierre, Ulrick’s adoptive father, inflicted bullet wounds on Ulrick himself, and threatened his sister, Jerseyla Adrien Juste.

[FN1] As a result of the political crisis and the grave human rights situation in Haiti, the IACHR conducted several on-site visits to observe the situation in that country. The military coup d’état directed by General Raoul Cédras deposed the constitutional president, Jean Bertrand Aristide, on September 29, 1991. Hundreds of President Aristide’s supporters were murdered in the days following the coup d’état. A campaign of killings and intimidation was instituted against all those who supported a return to democracy, and was stepped up in the years that followed.

The Organization of American States, concerned by the alarming number of human rights violations, used every means to put an end to those violations and to initiate, in close coordination with the United Nations, a policy of dialogue with the de facto authorities. During the political crisis in Haiti, the IACHR never failed to accord priority to the human rights situation in that country. Accordingly, the IACHR made on-site visits in December 1991, August 1993, May 1994, October 1994, and March 1995. Each year the IACHR presented special reports on the situation of human rights in Haiti to the OAS General Assembly.

2. The complaint alleges that the State of Haiti violated the rights to life and to humane treatment set forth in, respectively, Articles 4 and 5 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), to which the State of Haiti has been a party since September 27, 1977. The petitioner further argues that, in addition to the duty of the State of Haiti to protect the right to life and to humane treatment of its nationals, there is the obligation under Articles 8 and 25 of the American Convention to ensure judicial protection when those rights have been violated.

3. The petitioner reported these events to the pertinent authorities on May 12, 1994. To date, the Commission has no knowledge of any investigation having been carried out by the State.

4. For its part, the Haitian State did not dispute the facts that prompted the complaint. The State maintains that in no circumstances could it be responsible for the human rights violations committed by the successive de facto governments that were in power between September 30, 1991 and October 14, 1994, and that the perpetrators, who had no capacity to obligate the State, should answer personally for their actions.

5. Having analyzed the acts denounced and the testimony of witnesses and documentary evidence contained in the record, in light of the time that has elapsed since the date on which those acts were committed, the Commission concludes that the Haitian State is responsible for violating the rights to life, physical integrity, fair trial, and judicial protection contained in Articles 4, 5, 8, and 25 of the American Convention, for which reason the State must adopt the necessary measures to provide redress for the damages caused to the victims, under its general obligation, contemplated in Article 1(1) of the Convention, to respect and guarantee those rights. Given the established violations, the IACHR recommends that the State conduct a serious, impartial, and exhaustive inquiry to determine the criminal liability of those responsible for the murder of Jean-Claude Pierre and the attack on Ulrick Pierre; that it determine if there were other crimes that prevented an investigation into the events referred to; and that, where appropriate, it apply the respective legal sanctions. Finally, the Commission recommends that the Haitian State pay adequate compensation to Jean-Claude Pierre's relatives on account of these violations.

II. PROCESSING BEFORE THE COMMISSION

6. During the on-site visit, the OAS/UN International Civilian Mission in Haiti (MICIVIH)[FN2] informed the Commission of the murder of Jean-Claude Pierre and the delicate condition of Ulrick Pierre, who was in the hospital as a result of bullet wounds to his ear and neck.

[FN2] The mandate of the OAS/UN International Civilian Mission set up in Haiti in 1992 is to observe the human rights situation in that country.

7. On May 18, 1994, the Commission, accompanied by MICIVIH observers, went to Diquini Hospital in Port-au-Prince, where it took a statement from Ulrick Pierre. The Commission was able to verify the wounds that had been inflicted on Ulrick Pierre.

8. On August 31, 1994, the Commission opened Case N° 11.378 on behalf of Jean-Claude Pierre, Ulrick Pierre, and Jerseyla Adrien Juste, and relayed the pertinent portions of the complaint to the Government of Haiti, granting it a period of 90 days in which to reply, in accordance with Article 34, clause 5, of the Regulations of the IACHR.

9. On January 12, 1995, the Commission again requested information from the State of Haiti relating to Case 11.378, granting it a period of 30 days to reply.

10. As part of the processing of the case, by note of May 18, 1995, the Commission offered its good offices for a friendly settlement procedure, pursuant to Article 45 of the Regulations of the IACHR.

11. On May 23, 1995, the Commission reiterated its request to the State of Haiti for information on the case and at the same time placed itself at its disposal with a view to reaching a friendly settlement of the matter.

12. The Government of Haiti replied by note of June 28, 1995 and stated that the letters that the IACHR had sent referred to acts that occurred during the period of the coup d'état and that "the perpetrators of those acts had no power invested in them that was binding upon the Haitian State, that is to say, the constitutional government. Accordingly, they would have to answer personally for all their actions, on both civil and criminal counts." The Government also mentioned some of the measures adopted by the State that were intended to strengthen the mechanisms for protecting human rights, like judicial reform, and a legal aid fund created in March 1995.

13. On July 15, 1995, the petitioner again wrote to the Commission and reiterated the facts of the complaint. He also stated that on July 6, 1994, he and his sister had been granted asylum in France, and that the person in charge of their affairs was Mr. Juste Joseph Gercon.

14. In a letter dated October 10, 1995, the Commission wrote to the Haitian Government in reference to its note of June 28, stating the following:

The Commission would remind the Government of Haiti that, as a state party to the American Convention on Human Rights, it is duty-bound to undertake investigations, impose penalties, and, if necessary, provide compensation to the victims of the alleged violations. The Commission is not oblivious to the difficult situation in the country and is conscious of the efforts that the constitutional Government is making to strengthen the mechanisms for protecting human rights. It is for that reason that the Commission grants it a reasonable time in order to enable it to carry out the investigations relating to the cases that the Commission is processing.

15. By note of May 15, 1996, the Government of Haiti reiterated its position that the acts committed by the de facto government between September 30, 1991 and October 14, 1994 were

not binding upon the State. The Government also pointed out that the report prepared by the National Commission of Truth and Justice (hereinafter CNVJ) had been presented to the Government, and that the Government was considering measures to implement the recommendations contained in the CNVJ's report. Similarly, the Government referred to the establishment of a Criminology Brigade under the Ministry of Justice to investigate all the crimes committed and cases of missing persons reported in the country since September 30, 1991.

16. On February 2, 1999, the Commission requested updated information from the Haitian State on the situation of Case N° 11.378 relating to Jean-Claude Pierre, Ulrick Pierre and Jerseyla Adrien Juste, granting it a period of 30 days to reply. At the time that the Commission considered the instant report, the above mentioned deadline had expired without a reply forthcoming from the Haitian State on the information requested.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

17. The petitioner alleges that the attack on the Pierre family on May 12, 1994, which resulted in the death of his father, Mr. Jean-Claude Pierre, the wounds sustained by Ulrick himself in the course of his attempted murder, and the threats made to his younger sister, Jerseyla Adrien Juste, was perpetrated by agents of the armed forces, who accused them of being lavalasiens.[FN3]

[FN3] Lavalasiens: a term used to refer to those who supported President Jean-Bertrand Aristide's Lavalas Party.

18. A complaint denouncing the acts was filed with the Justice of the Peace of Croix des Missions, Jean Alex Civil, and with Corporal Blauture Joissaint of the Cité Soleil Police Station (Avant Post) situated on the quay. To date, the Commission is not aware that any investigation has been carried out. In view of the danger to their lives, Ulrick and Jerseyla obtained political asylum in France.

19. The petitioner alleges that, in addition to the duty of the State of Haiti to protect the right to life and the physical integrity of its nationals, the State is obliged to ensure legal protection when those rights have been violated, pursuant to Articles 4, 5, 8, and 25 of the American Convention on Human Rights.

B. Position of the Haitian State

20. During the processing of the instant case the State did not dispute the facts that prompted the complaint, which refer to the violations of the right to life and to physical integrity of Jean Claude Pierre, Ulrick Pierre, and Jerseyla Adrien Juste. The Haitian State maintains that under no circumstances could it be responsible for the human rights violations committed by the

successive de facto governments in power between September 30, 1991 and October 14, 1994. The State avers that the perpetrators, who did not have any power to bind the State, should answer personally for their actions.

21. The State did not dispute the events denounced with respect to the failure to investigate and provide judicial guarantees. The State merely informed the Commission that a legal aid fund had been set up in March 1995. The State mentioned that the judiciary had not taken up ex officio all the cases of human rights violations recorded in the country during the three years of terror and complete lack of lawfulness. However, a National Commission of Truth and Justice had been established with a mandate to clarify all the crimes committed during that period.

22. By the same token, the Haitian State limited itself to reporting the establishment of a Criminology Brigade under the Ministry of Justice to investigate crimes committed since September 30, 1991. At no point, however, did the State address the failure to investigate the case in question. Furthermore, in spite of the fact that the State undertook on May 15, 1996 to inform the Commission of all the arrangements made by the government to find and punish the guilty parties in accordance with the law, to date, it has not done so.

IV. ANALYSIS

A. Admissibility

a. Competence of the Commission

23. The Commission is competent to take up the instant case, as it concerns claims involving rights recognized in the American Convention, as provided for in Article 44 of that Convention, to which the State of Haiti has been a party since September 27, 1977. These rights include Article 1(1), regarding the obligation to respect rights; Article 4, right to life; Article 5, right to physical integrity; Article 8, right to a fair trial; and Article 25, right to judicial protection.

24. The petition satisfies the formal requirements of admissibility contemplated in Article 46(1) of the American Convention and in Articles 32, 37, 38, and 39 of the Commission's Regulations. Indeed, the petition refers to facts that tend to establish a violation of the rights guaranteed by the Convention.

25. The Commission finds that the case of Jean Claude Pierre, Ulrick Pierre, and Jerseyla Adrien Juste is not pending in another international proceeding for settlement, in view of the fact that this exception has not been alleged by the parties, nor is the subject of the said petition substantially the same as one previously studied by the Commission or by another international organization (Article 47(d) of the Convention).

b. Exhaustion of domestic remedies

26. As to exhaustion of domestic remedies, the petitioner alleges that the facts were denounced by MICIVIH observers before the Justice of the Peace of Croix des Missions, Jean

Alex Civil, and before Corporal Blauture Joissaint of the Cité Soleil Police Station, on May 12, 1994.

27. The State of Haiti did not dispute *expressis verbis* the facts alleged by the petitioner with respect to exhaustion of domestic remedies. In the instant case, the Government failed to file within the prescribed time periods an objection asserting non-exhaustion of domestic remedies. Only after lengthy delays did the State reply to the Commission's requests for information, including those relating to domestic remedies. Moreover, the information that the State did supply did not answer the questions put by the Commission. The foregoing constitutes a tacit waiver by the State of any objection to admissibility based upon non-exhaustion of domestic remedies.[FN4]

[FN4] Velásquez Rodríguez Case, Preliminary Objections, Judgement of June 26, 1987, Inter-American Court of Human Rights, Series C No. 1, para. 88.

28. The Commission finds that since May 12, 1994, the day the events denounced occurred, an unreasonable amount of time has elapsed without an investigation being carried out, as provided by the exception to prior exhaustion of domestic remedies under Article 46, clause 2, paragraph c, of the Convention and Article 37, clause 2, paragraph c, of the Regulations of the IACHR.

29. For his part, the petitioner has stated that he denounced the human rights violations before the authorities under the domestic jurisdiction provided by the law of the State of Haiti. However, the recourse to domestic remedies in the case of the Pierre family was fruitless.

30. In this regard, the Inter-American Court of Human Rights has stated the following:

...when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[FN5]

[FN5] Velásquez Rodríguez Case, Preliminary Objections, Judgement of June 26, 1987, Inter-American Court of Human Rights, para. 91, p.40.

31. The Commission further finds that the six-month period contemplated in Article 38(1) of the Regulations of the IACHR (*ratione temporis*) for lodging a petition with the Commission, following the date on which the party alleging violation of his rights has been notified of the final ruling (*res judicata*), does not apply since the case qualifies for the exception provided in Article 38(2) of the Regulations. Article 38(2) provides that the deadline for lodging a petition shall be within a reasonable period of time, in the Commission's judgment, as from the date on

which the alleged violation of rights has occurred, considering the circumstances of each specific case.

32. In light of the foregoing considerations, the Commission concludes that the instant petition satisfies the requirements of admissibility stipulated in the American Convention and in the Commission Regulations.

33. Pursuant to the provisions of Article 48, clause 1, paragraph f of the Convention and of Article 45 of its Regulations, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights contained in the Convention. The friendly settlement procedure did not succeed, however, owing to the lack of response from the parties.

B. Analysis of the merits

a. Liability of the State

34. The State of Haiti did not specifically dispute the facts denounced before the Commission. In its responses to the petitioner's complaint, the State claimed that in no circumstances could it be responsible for the human rights violations committed by the successive de facto governments in power in the country between September 30, 1991 and October 14, 1994. The State indicated further that the perpetrators, who did not have any power to bind the State, should answer personally for their actions. Accordingly, the Commission considers it pertinent to expound a number of generally recognized principles of international law regarding the liability of the State.

35. To begin with, the fact that the violations may have been committed by a Government lacking democratic legitimacy does not alter the international responsibility of the Haitian State. Indeed, international law provides that a change of government outside the constitutional rules, followed by a coup d'état, nevertheless stems from the principle of the autonomy of states to choose their political regime, and therefore that the previous state continues to exist in spite of any constitutional and political changes to it.

36. The foregoing stems from the so-called principle of continuity of the state, according to which the rights and responsibilities of the state are not affected by a new internal form of government even though the source that originated it might be illegal. The Commission has ruled on the continuity of the state on frequent occasions, in particular in the amnesty cases against the republic of Chile, where it stated that:

Notwithstanding the regime that issued the law or the state organs that applied it or facilitated its application, the state of Chile is responsible for the violations incurred by Decree Law 2191, which was not repealed by the present Legislative and which was applied by the Judiciary. Although the events occurred under the previous military regime, the State of Chile still bears responsibility, as these events have still not been investigated, nor has any punishment been meted out.[FN6]

[FN6] Report N° 25/98 on Cases 11.505, Alfonso René Chanfeau Orayce; 11.532, Agustín Eduardo Reyes González; 11.541, Jorge Elías Andrónico Antequera and his brother Juan Carlos, and Luis Francisco González Manriquez; 11.546, William Robert Millar Sanhueza and Jorge Rogelio Marín Rossel; 11.549, Luis Armando Arias Ramírez, José Delimiro Fierro Morales, Mario Alejandro Valdés Chávez, Jorge Enrique Vásquez Escobar, and Jaime Pascual Arias Ramírez; 11.569, Juan Carlos Perelman and Gladys Díaz Armijo; 11.572, Luis Alberto Sánchez Mejías; 11.573, Francisco Eduardo Aedo Carrasco; 11.583, Carlos Eduardo Guerrero Gutiérrez; 11.585, Máximo Antonio Gedda Ortiz; 11.595, Joel Huaiquín Benavides; 11.652, Guillermo González de Asís; 11.657, Lumy Videla Moya; 11.675, Eulogio del Carmen Ortiz Fritz Monsalve; and 11.705, Mauricio Eduardo Jorquera Encina. See IACHR 1997 Annual Report, OEA/Ser.L/V/II. 98, doc. 6, rev., April 13, 1998, pp.520-559. See IACHR 1996 Annual Report, Report Nos. 36/96 and 34/96, Chile, pp.162-240. On this point see also Greek Case, in Yearbook of the European Convention on Human Rights, 1969, Martinus Nijhoff, The Hague, 1972.

37. The Inter-American Court of Human Rights has confirmed that the responsibility of the State exists independently of changes in government, specifying the following:

According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred[FN7].

[FN7] Velásquez Rodríguez Case, Judgement of July 29, 1988, Inter-American Court of Human Rights, para. 184, p.76.

38. Consequently, the Haitian State cannot avoid its international responsibility, on the basis that the acts in violation of human rights were not committed by its Government, or that the perpetrators had no power to bind the State and should answer personally for their actions on both civil and criminal counts. On this point, the Court has held that:

under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law[FN8].

[FN8] Ibid, para. 170, p. 70.

39. The responsibility of the State means, however, that acts generating responsibility can be classed as "acts of the State". To that end, the generally recognized principles of international

responsibility specify an act of the state as any act by agents of the State or by persons whose prerogatives are generally attributed to the state.[FN9]

[FN9] See Henkin, Pugh, Schachter, and Smit, *International Law: Cases and Materials*, West Publishing Company, St. Paul, Minn, 1980, pp.257-263.

40. Finally, the Commission finds on the question that “the perpetrators should answer personally for their actions,” that the objective of international human rights law is not for international organizations to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the states responsible.[FN10]

[FN10] *Velásquez Rodríguez Case*, Judgement of July 29, 1988, Inter-American Court of Human Rights, p.51.

It devolves upon the State to respect the rights and freedoms recognized in the American Convention, in such a way that any impairment of those human rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.[FN11]

[FN11] *Ibid*, para. 164, p.67.

b. Violations of Articles 4 and 5 of the American Convention

41. Article 4 of the American Convention on Human Rights provides that, "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."[FN12]

[FN12] Haitian law also protects the right to life, Article 19 of the 1987 Constitution establishing that, "The state has the overriding obligation to guarantee the right to life, to health, and respect for the person of every citizen without distinction, in accordance with the Universal Declaration of Human Rights". By the same token, Article 20 of the Constitution resolves the abolition of the death penalty in all matters.

42. Article 5 of the American Convention provides that every person has the right to have his physical, mental, and moral integrity respected.

43. The testimonies of three individuals who witnessed the events denounced (who requested that their names be withheld), which have not been refuted by the Government, reveal that, on May 12, 1994, at around 3:00 a.m., four men dressed as civilians (one of them wearing an olive drab army cap) and heavily armed with revolvers and submachine guns, broke violently into the abode of the Pierre family (at 0931 Rue Soleil # 17, Cité Soleil). The assailants, unable to open the steel door of the trading store owned by Mr. Pierre, made a hole in the cement wall leading to the Pierre's house.

44. The four men then beat two members of the family, namely Jean Claude Pierre (aged 40) and Ulrick Pierre (aged 19), insulting them and referring to them as lavalasiens, while also demanding money from them. According to the complainant, the assailants then tied the arms of Jean-Claude Pierre and Ulrick Pierre with a length of electric cable, took them out into the street, and shot Jean-Claude Pierre in the ear. Then they shot Ulrick Pierre in the neck and, believing him dead, left him where he lay. The attackers left Jean-Claude Pierre's corpse without taking the two gold rings he was wearing or any goods from the shop. Ulrick's sister, Jerseyla Adrien Juste (aged 17), was released after being threatened.

45. Ulrick was taken to the General Hospital. Observers with the OAS/UN International Civilian Mission, who were investigating another case, then took Ulrick to Diquini Hospital in Carrefour at the request of one of his relatives, who feared that the assailants would find out where he was and murder him. At Diquini Hospital, the IACHR lawyer took a statement from Ulrick and was able to verify the wounds that he had sustained.

46. During the processing of the case, Ulrick Pierre named two of the persons who had participated in the attack and murder of Jean-Claude Pierre as Corporal Louis-Mar, a guard at the National Palace, and Sergeant Linisse, of the Cité Soleil Police Station (Avant Post). According to Ulrick, Sergeant Linisse gave the order to kill him and his father.[FN13]

[FN13] Additional information presented by the petitioner on July 15, 1995.

47. The events denounced were not disputed by the State. The State's response does not specifically address the violations that took place on May 12, 1994, but rather asserts in a general manner that it cannot be responsible for the violations committed in Haiti between September 29, 1991 and the October 14, 1994.[FN14]

[FN14] See communications from the Haitian State of June 28, 1995 and May 15, 1996.

48. The absence of a substantive response by the State to the facts alleged would be sufficient to permit the Commission to take the events denounced by the petitioner as being true. Bearing in mind, however, the various circumstantial and conclusive evidence in this case, particularly the political connotations of the attack on the Pierre family, which was accused of supporting the political regime of the President deposed by the de facto military government, the Commission

cannot disregard additional grave facts relating to the de facto government which pursued or tolerated a practice of repression and terror against a defenseless people from 1991 to 1994.[FN15]

[FN15] See IACHR Special Reports on the Situation of Human Rights in Haiti, 1993, 1994, and 1995.

49. In its 1995 Special Report on the Situation of Human Rights in Haiti, the Commission stated that an estimated 3,000 people had been murdered since the coup d'état on September 29, 1991.

In 1993, following the signing of the Governors Island Agreement, the repression escalated to alarming levels when the people, encouraged by this agreement, publicly expressed their support for President Aristide. Cases of arbitrary arrest, beating, illegal search, confiscation of goods and arson, abduction, and torture increased, and this forced victims and their family members to abandon their homes and live underground. President Aristide stated, mid-1994, that the number of deaths had risen to 5,000..[FN16]

[FN16] Report on the Situation of Human Rights in Haiti, doc. OEA/Ser.L/V/II.88, doc. 10 rev., February 9, 1995, CIDH/OEA, pp.34 and 36.

50. On the occasion of its on-site visit to Haiti in May 1994, the Commission received information on 210 cases of extrajudicial executions recorded between February and May that year. The OAS/UN International Civilian Mission established 340 cases reported between February and June 1994.[FN17]

[FN17] Ibid., p. 48.

The Commission obtained testimonies that irrefutably established the army's responsibility in the massacre of defenseless people in March 1994. These attacks all showed similar characteristics: veritable military campaigns in which army units, assisted by FRAPH and other paramilitary groups, surrounded and erupted in localities under the pretext of combating subversive groups and locating illegal arms, indiscriminately beating up people and committing acts of arson, destruction of their crops and robberies, followed by arbitrary arrest.[FN18]

[FN18] Ibid., p. 35.

51. During the aforementioned on-site visit, the Commission also observed that most human rights violations of which it was apprised followed a systematic pattern of repression, which in turn revealed a political plan of intimidation and terror against the Haitian people, especially in sectors that supported President Aristide or that had demonstrated in favor of democracy in Haiti. Thus, in the marginal slums of Port-au-Prince, such as Cité Soleil, armed paramilitary groups carried out raids late at night, murdering and robbing its residents.[FN19]

[FN19] Idem.

52. In its 1995 Report, the Commission concluded that "the serious deterioration of the human rights situation was in keeping with a plan of intimidation and terror against defenseless people and it held the authorities holding de facto power in Haiti accountable for these violations." [FN20]

[FN20] Ibid., p. 36.

53. The testimonies and documentary evidence obtained by the Commission in the course of its on-site visit in Haiti, which took place over the same period as the murder of Jean Claude Pierre, as well as the manner in which the attack on the Pierre family's house was perpetrated (excessive use of force to destroy a cement wall, late at night, carrying weapons normally used by members of the army or paramilitary groups, acting with complete impunity), are sufficient to establish the participation or complicity of the de facto authorities.

54. Based upon the foregoing, the Commission is convinced that that attack against the petitioner and his family formed part of a practice of intimidation pursued by the de facto military government against anyone who supported the democratic regime. Accordingly, the Commission concludes that agents of the de facto military government violated the right to life to the detriment of Jean Claude Pierre, and the right to physical integrity to the detriment of Ulrick Pierre, both these rights being contained in Articles 4 and 5, respectively, of the American Convention.

55. With regard to Ulrick's younger sister, Jerseyla Adrien Juste, who was at the scene of the events, the MICIVIH and the IACHR were able to obtain an eyewitness statement from her immediately after the violations were committed. However, the evidence does not establish that she was the victim of an attack on her person that endangered her physical or mental integrity, as set forth in Article 5 of the American Convention.

c. Right to judicial protection

56. The responsibility of the State of Haiti in this case also relates to Article 25 of the American Convention, which stipulates that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his 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.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

57. Under Article 25 of the Convention, the petitioner and victims' relatives have the right to a simple and prompt recourse, or any other effective recourse, against acts that violate their fundamental rights recognized by the Constitution and by the American Convention.

58. The record before the Commission indicates that on May 12, 1994, the MICIVIH observers testified before the Justice of the Peace of Croix des Missions, Mr. Jean Alex Civil, and before Corporal Blature Joissaint of the Cité Soleil Police Station on the events underlying the petitioner's complaint. However, the competent authorities did not open an investigation, despite the fact that Article 19 of the Code of Criminal Procedure of Haiti stipulates that:

Any established authority and any functionary or official who, in the performance of their duties, learns of a crime or of an offense, must immediately advise the Sheriff of the authority under whose jurisdiction that crime or that offense has allegedly been committed, or in which the suspect may have been found, and convey to that magistrate all related information, oral proceedings, and written records.

59. The Haitian State did not refute the lack of judicial protection denounced in the present case. On the contrary, it stated that, "The judiciary has not taken up ex officio all the cases of human rights violations recorded in the country during the three years of terror and complete lack of lawfulness. However, a National Commission of Truth and Justice had been established with a mandate to clarify all the crimes committed during that period." [FN21]

[FN21] Communication from the Haitian State of June 28, 1995.

60. The Commission notes that the State recognized *expressis verbis* its incapacity to take up ex officio every case involving human rights violations. However, it should also be mentioned that the instant case concerns a murder offense, which is prosecutable ex officio, and in respect of which the Commission has repeatedly requested information from the Government.

61. The State also refers to Haiti's National Commission of Truth and Justice (CNVJ) as an institution designed to remedy human rights violations. However, the Commission believes that the CNVJ does not constitute a legal institution or body whose decisions carry the authority of

res judicata. In legal terms, the scope and mission of the CNVJ are relatively limited, since it does not have the legal competency to mete out punishments or to award compensatory damages to victims. Accordingly, this institution cannot reasonably be considered an adequate substitute for judicial proceedings that ensure an effective recourse.

62. The Inter-American Court has interpreted Article 25(1) to ensure not only a simple and prompt recourse, but also an effective recourse for protection of the rights recognized in the Convention.[FN22] Indeed, Article 25(1) incorporates the principle recognized in international human rights law of the effectiveness of the procedural instruments or means designed to guarantee such rights.[FN23] It is not sufficient that the remedy in question be formally recognized by the system of laws of the State. Rather, the State must develop the possibilities of an effective remedy, and that remedy must be substantiated in accordance with the rules of due process of law.[FN24]

[FN22] Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Inter-American Court of Human Rights. (Ser. A) N° 9 (1987), para. 23.

[FN23] Ibid, para. 24.

[FN24] Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz Cases, Preliminary Objections, Judgements of June 26, 1987, Inter-American Court of Human Rights, paras. 91, 90, and 92, respectively.

63. Article 25(1) recognizes the procedural institution of amparo, which is a simple and prompt judicial remedy designed for the protection of all the rights recognized in the Convention and in the constitutions and laws of the states parties. The effectiveness of the remedy provided for under Article 25 can be undermined if, as the Court has said, the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments, in any other situation that constitutes a denial of justice, for example, when there is an unjustified delay in the decision, or when, for any reason, the alleged victim is denied access to a judicial remedy.[FN25]

[FN25] Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Inter-American Court of Human Rights. (Ser. A) N° 9 (1987), para. 24.

64. The facts in the present case reveal the failure of a simple, prompt, and effective remedy to respond to the victim's claims to his right to justice. The time taken by the Haitian authorities to pronounce on the events denounced (nearly five years), is a further indication of the ineffectiveness of the judicial system in affording protection of rights contained in the American Convention.

65. The petitioners went before the jurisdictional organ provided by the Law, in order to seek a judicial remedy that would enable them to bring a criminal proceeding against the persons who violated their rights. This demonstrates that the petitioner had free access to that remedy. However, the Commission takes the view that the right to effective judicial protection provided in Article 25 is not exhausted simply by free access to and processing of the judicial remedy. It is necessary that the organ involved reach a reasoned conclusion on the merits of the claim, and that it establish the admissibility or inadmissibility of the legal claim that specifically gives rise to the judicial remedy.[FN26] Moreover, the tribunal's final decision constitutes the basis of the judicial remedy recognized by Article 25 of the American Convention, as the decision will entail indispensable individual guarantees and obligations for the state.

[FN26] The Commission has expressed its understanding in relation to Article 25 of the Convention on several occasions. See Case 10.950 "Mejía Egocheaga".

66. In the instant case, the authorities (the Croix des Missions Court) before which the violations were denounced ignored the claim for justice. The Commission finds that the inaction of the competent authorities had the effect of rendering the petitioner unable to obtain an effective judicial remedy that would enable him to institute a criminal proceeding against alleged acts in violation of his rights.

67. The Commission finds that the internal logic itself of any judicial remedy, especially as provided by Article 25, indicates that Judge must firmly establish the truth or the error in the claimant's allegation. The claimant goes before the judicial organ to allege an infringement on his rights, and the organ in question, after a procedure to consider evidence and arguments concerning that allegation, is under obligation to decide whether the claim is sound or unsound. Otherwise, the judicial remedy would be incomplete.

68. Apart from being incomplete, the judicial remedy would be plainly ineffective since, by not enabling the violation of rights to be recognized, it would not be adequate to protect the infringed right of the individual nor to provide him fitting redress in the event that violation were proven. The Inter-American Court has ruled that:

Article 25 (1) incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights. As the Court has already pointed out, according to the Convention:

"...States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such states to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdictions."

According to this principle, the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which

the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy, which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.[FN27]

[FN27] OC-9/87, para. 24.

69. The Commission notes that the provision contained in Article 25, clause 2, paragraph a, itself expressly establishes the right of any person claiming a judicial remedy to "have his rights determined by the competent authority provided for by the legal system of the state".[FN28] To determine such rights involves making a determination of the facts and the alleged right, that will have legal force and that will bear on and deal with a specific object. This object is the claimant's specific claim. When, in this case, the Court of the Justice of the Peace of Croix des Missions ignored the petitioner's claim, it failed to determine the petitioner's rights or to analyze his claim's soundness. As a result, the State prevented the petitioner from enjoying the right to a judicial remedy under the terms of Article 25.[FN29]

[FN28] Article 13 of the European Convention on Human Rights provides that: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." In the Case of Silver and others, Judgement of March 25, 1983, the European Court, established in reference to Article 13 that, "The principles that emerge from the Court's jurisprudence on the interpretation of Article 13 (art. 13) include the following: (a) where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress..."

[FN29] See Case 10.087, Report 30/97, Argentina, OEA/Ser/L/V/II.97 doc.13.

d. Right to a fair trial

Under Article 8(1) of the American Convention:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

70. As mentioned, the acts in violation of human rights at issue in this petition were denounced before the Justice of the peace of Croix des Missions on May 12, 1994. However, the authorities did not initiate any judicial proceeding. The Commission finds that the fact that

nearly five years have elapsed since the events occurred without the commencement of a criminal suit demonstrates that no serious investigation has been carried out.[FN30] The foregoing renders the State responsible on the international plane. In this respect, the Inter-American Court of Human Rights has stated the following:

[FN30] See Case of Genie versus Nicaragua, submitted by the IACHR to the Inter-American Court of Human Rights on January 6, 1994; see also Report N° 17-89, Case N° 10.037, Mario Eduardo Firminich, in IACHR 1988-1989 Annual Report, p. 38.

The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. 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.[FN31]

[FN31] Velásquez Rodríguez Case, Judgement of July 29, 1988, para. 177, pp.72 and 73.

71. Considering that the case was not examined in a judicial proceeding and that four years and ten months elapsed without an investigation of the events that would enable the corresponding criminal proceedings to be instituted to identify and punish the guilty parties, the Commission concludes that Haitian State failed to satisfy the requirement regarding reasonable time stipulated in Article 8(1) de the American Convention.

e. Obligation to respect rights

72. The correlative obligations of Haiti under Articles 4, 5, 8, and 25 of the Convention relate to the obligations assumed by states parties under Article 1 to ensure to all persons subject to their jurisdiction the free and full exercise of the rights and freedoms recognized by the applicable domestic laws and by the American Convention. The violations described show that the State of Haiti failed to fulfill the obligation contained in Article 1, clause 1, of the Convention to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms.

V. ACTIONS TAKEN AFTER REPORT N° 47/99

73. On March 12, 1999, the Commission approved Report 47/99 on this case, pursuant to Article 50 of the Convention, and transmitted it to the Haitian State, with its respective

recommendations. The Commission set a two-month deadline for compliance with its recommendations.

74. Although this deadline has passed, the Haitian State has not presented its observations on Report N° 47/99.

VI. CONCLUSIONS

75. The Commission concludes that the State of Haiti is responsible for the violation of the right to life to the detriment of Jean Claude Pierre, and the right to physical integrity to the detriment of Ulrick Pierre, these rights being enshrined in Articles 4 and 5 of the American Convention.

76. The State of Haiti has not adopted effective measures to ensure the rights of the victims to a fair trial and to judicial protection. This omission on the part of the State constitutes a violation of Articles 8 and 25 of the Convention, which together establish the right to those effective measures. The State of Haiti has failed to fulfill the obligations assumed under Article 1, clause 1 of the Convention to respect and ensure the free and full exercise of the rights and freedoms under the Convention.

VII. RECOMMENDATIONS

77. Based on the analysis and conclusions contained in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF HAITI:

1. Carry out a thorough, impartial, and effective investigation to ascertain the circumstances surrounding the death of Jean Claude Pierre and the injuries to Ulrick Pierre on May 12, 1994, in order to identify and punish those responsible in accordance with Haitian law.
2. Adopt the necessary measures for the relatives of the victims named in the first paragraph of the instant report to receive adequate and timely compensation for the violations established herein.

VIII. PUBLICATION

78. On December 8, 1999, the Commission sent Report N° 116/99--the text of which is above--to the Haitian State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations. In accordance with Article 51(2), the Commission, in this phase of the process, shall confine itself to assessing the measures taken by the Haitian State to comply with the recommendations and to remedy the situation under review. The Haitian State has not presented its observations on Report N° 116/99.

79. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides: to reiterate the conclusions and

recommendations contained in Chapters VI and VII supra; to publish this report; and to include it in the Commission's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Haitian State with respect to those recommendations, until the State has fully complied with them.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on this 24th day of February 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.