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Title/Style of Cause: Marie Carmel Moise Bley v. Haiti
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners:
Dated: 26 February 2004
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OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANT: the law firm of Greenberg Traurig, P. A.
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I. SUMMARY

1. On December 30, 2002, the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) received a petition lodged by the law firm of Greenberg Traurig, P. A. (hereinafter the “petitioner”), in representation of Mrs. Marie Carmel Moise Bley (hereinafter “the alleged victim”), against the Republic of Haiti (hereinafter “the State” or “Haiti”), the facts of which characterize alleged violations of her rights to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), to compensation (Article 10), to privacy (Article 11), to property (Article 21), to freedom of movement and residence (Article 22), to equal protection (Article 24) and her right to judicial protection (Article 25), established in the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”).

2. The petitioner claims that on July 6, 2000, officers belonging to the local police of Pétion-Ville entered the alleged victim's house by force. One policeman asked her to supply him with drugs she had purportedly stolen from the local Police Chief. He also summoned her to pay a large sum of money and to give him jewelry and other valuable items. The petitioner also claims that the police officers looted and vandalized the house and brutally beat the alleged victim for two hours, tying her arms and legs and hitting her with their guns. It is also alleged that they heated an electric iron to maximum capacity and applied it several times to the alleged victim's right arm and back.

3. The State has not presented a reply to the petitioner's allegations and has not questioned the petition's admissibility.

4. The IACHR, pursuant to the provisions of Articles 46 and 47 of the American Convention, decides to admit the petition as regards potential violations of Articles 5, 7, 8, 11, 21, 25 and 1(1) of the American Convention and to begin proceedings on the merits of the case. It further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. On December 30, 2002, the law firm of Greenberg Traurig, P. A. lodged a petition with the IACHR on behalf of the alleged victim. On May 29, 2003, the Commission transmitted the pertinent parts of the petition to the State and requested information within two months, pursuant to Article 30(3) of the Regulations in effect at that time. At the time this report was considered, the State had not provided any information with regards to this petition

III. POSITION OF THE PARTIES

A. Position of the Petitioner

6. The petitioner explains that the alleged victim is a U. S. citizen, journalist by profession, who resides in Miami, Florida. She formerly traveled to Haiti with regularity, approximately five times a year, to maintain and to supervise her family's property, as well as for work-related purposes. The alleged victim did not engage in any political activities, neither as a journalist nor as a United States citizen.

7. On July 1, 2000, the alleged victim traveled to Haiti. During that visit she stayed at her family's residence, located in Pétion-Ville.

8. The petitioner claims that, on Thursday, July 6, 2000, at approximately 6:30 a.m., the alleged victim was alerted that seven or eight policemen had arrived in three police cars, climbed the fence surrounding her family's residence, and forced entry into the house. The policemen were wearing official uniforms. They demanded to see the owner of the house and proceeded to sequester the alleged victim's cousin, Marie Rose Jarbath, with the objective of learning the whereabouts of the alleged victim's room.

9. When the policemen entered the alleged victim's room, she recognized some of them as belonging to the local police of Pétion-Ville. They opened fire on the alleged victim's bed, ripped off the phone lines from the wall and smashed the house's windows.

10. The petitioner further explains that one policeman ordered the alleged victim to supply him with drugs she had purportedly stolen from the local Police Chief. He further asked the alleged victim to pay him two hundred thousand dollars (US\$200,000). The policemen asked to be supplied with jewelry and other valuable items. The alleged victim responded that she did not know what they were talking about and suggested that the policemen probably were in the wrong house. During these events, the alleged victim witnessed three policemen in her room and two other officers apparently keeping watch at public road immediately outside her family's residence.

11. The petitioner specifies that, using a cordless drill, the policemen threatened to perforate the head of Melissa Lalanne, the seven year old daughter of the maid, Ms. St.-Anne Lalanne, mistakenly thinking her to be the alleged victim's daughter. In addition, several policemen placed a pillow over the head of Claudy Jeanty, other cousin of the alleged victim, and told him not to move or he would be killed. Some policemen ordered Ms. Lalanne to give them an electric iron. The policemen beat her when she refused to give bring them an electric iron.

12. It is further alleged that the looting of the house by the policemen continued. They were purportedly looking for the "drugs" that they alleged to be in the alleged victim's possession. They only found some modest jewelry and approximately US\$ 2,500. Because they could not find anything else valuable, the policemen started to beat the alleged victim, hitting her in the face and stomach, then striking her right knee, ribs and abdomen, sometimes using their guns as blunt instrument. The policemen also tied the alleged victim's arms behind her back, causing overbending and overstretching of her limbs. They tied her legs as well.

13. The petitioner explains that the policemen then heated an electric iron to maximum capacity and applied it several times to the alleged victim's right arm and back. According to the alleged victim, the policemen appeared to derive pleasure from these actions and she almost lost consciousness on numerous occasions. The petitioner claims that the physical and psychological pain was exacerbated by the alleged victim's smelling of her own burned flesh.

14. The petition also alleges that, when the policemen came across the alleged victim's American passport, they discussed among themselves the consequence of killing a U. S. citizen. After discussion, they contacted their superior with a cellular phone, requesting specific instructions on how to proceed in light of this finding. The cell phone was then placed close to the alleged victim to render possible communication with the policemen's superior. The petitioner specifies that the alleged victim recognized the Police Chief of Pétion-Ville's voice, whom she had just met a few days earlier. The Police Chief threatened to kill her, and the policemen asked the alleged victim to choose a dress to wear in her coffin, because they had been instructed to kill her immediately. It is alleged that the period during which this treatment was inflicted upon the alleged victim totaled approximately two hours.

15. It is alleged that, before leaving the alleged victim's residence, the policemen blindfolded her. They then left, taking with them pictures of the alleged victim as well as some goods including the cordless drill and her jewelry. The police officers threatened to kill her if she reported anything to the authorities, and ordered her to leave the country immediately.

16. The petitioner specifies that, after the police left, the alleged victim was released by a construction worker of the house. It took her several hours before the alleged victim, in shock, was able to stand up by herself. Fearing for her safety, the alleged victim contacted a physician but did not register formally in a hospital. She met with the physician and, upon his advice and instruction, went to the Hôpital Communante Haitienne for emergency treatment.

17. It is alleged that, the very day of the beating, the alleged victim filed a complaint before the Police Nationale d'Haiti. Two police officers, Eugene Lazare and Bertony Telusma,

transcribed a four-hour declaration and drafted a three-page complaint based upon their interview with the alleged victim. Despite multiple formal requests for a solitary copy of the complaint, the Police Commissioner Mignard insisted that it was impossible to give her this document in any form. The police never supplied the alleged victim with a copy of the complaint. The alleged victim also presented a detailed complaint with the U. S. Consulate in Haiti.

18. The petitioner explains that, as a result of the above-described beatings, the alleged victim has suffered serious bodily harm, mental trauma and shock. She is said to suffer from acute insomnia, frequent nightmares and severe chronic fatigue. Psychiatric assistance in the United States was sought. Her body is forever scarred from the burns.

19. The petition alleges that the alleged victim has been proscribed and prevented from seeking recourse in Haiti because domestic legislation does not provide due process of law protection for the safeguard and enforcement of the rights that have been violated in her case. She also claims that she has been denied access to the remedies that Haitian domestic law prescribes, that she has been intentionally and systematically prevented from exhausting them and that there has been an unreasonable and unconscionable delay in the administration of justice and in rendering adjudication.

B. Position of the State

20. The State has not responded to the petitioner's allegations and has not questioned the admissibility of this petition.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

21. The IACHR notes that the State at no time has responded to the petitioner's allegations or questioned the petition's admissibility. At it has done for several cases from Haiti in the past,[FN1] the IACHR would like to stress that Haiti undertook various international obligations through the American Convention on Human Rights, including those provided for in Article 48(1)(a) of the Convention, which stipulates that: "[w]hen the Commission receives a petition or communication (...) (a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...). (e) The Commission may request the states concerned to furnish any pertinent information." The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case.

[FN1] IACHR, Report N° 129/01, Case 12.389, Haiti, paras. 11 and foll. IACHR, Report N° 79/03, Case P139/02, Haiti, paras. 10 and foll.

22. The IACHR considers that it must also indicate that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The

Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN2]

[FN2] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 135 and 136. IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 43.

23. The IACHR and the Inter-American Court of Human Rights have also indicated that “the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.”[FN3] The Commission therefore reminds Haiti that it has a duty to cooperate with the organs in the inter-American human rights system, for optimal fulfillment of its functions to protect human rights.

[FN3] Velásquez Rodríguez case, Judgment of July 29, 1988, para. 138. IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

B. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

24. The petitioner is authorized under Article 44 of the Convention to lodge a complaint with the IACHR. The petition names as the alleged victim one individual whose rights Haiti undertook to respect and ensure pursuant to the American Convention.[FN4] Regarding the State, the Commission notes that Haiti has been a State Party to the Convention since September 27, 1977, when it deposited the respective instrument of accession. The Commission is therefore competent *ratione personae* to examine the petition.

[FN4] The IACHR has previously defined a “alleged victim” to be every person protected by the Convention as established generically in Article 1(1) in accordance with the regulations establishing the rights and freedoms specifically recognized therein. See: 1998 Annual Report. Report No. 39/99, Mevopal Petition, Argentina. para. 16.

25. The Commission is competent *ratione loci* to hear the petition, because the latter alleges the violation of rights protected by the American Convention within the territory of a State Party to the Convention. The IACHR is competent *ratione temporis*, because the obligation to respect and ensure the rights protected under the Convention was already in effect in the State on the date of the events alleged in the petition. Finally, the Commission is competent *ratione materiae*, because the petition denounces events related to human rights protected by the American Convention, such as the right to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), to compensation (Article 10), to privacy (Article 11), to property (Article 21), to freedom of movement and residence (Article 22), to equal protection (Article 24) and her right to judicial protection (Article 25).

C. Other admissibility requirements

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the Convention stipulates that admission of a petition shall be subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The Convention's preamble states that the IACHR grants "international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states."^[FN5] The rule of exhaustion of domestic remedies allows States to resolve the problem in their domestic legal system before facing international proceedings, which is legally sufficient in the international human rights jurisdiction.

[FN5] See: Second paragraph in fine of the Preamble to the American Convention.

27. In the present case, the petitioner alleged that on July 6, 2000 alleged victim filed a complaint before the Police Nationale d'Haiti. Two police officers, Eugene Lazare and Bertony Telusma, transcribed a four-hour declaration and drafted a three-page complaint based upon their interview with the alleged victim. Despite multiple formal requests for a solitary copy of the complaint, the Police Commissioner Mignard insisted that it was impossible to give her this document in any form. The police never supplied the alleged victim with a copy of the complaint. The petition alleges that the alleged victim has been proscribed and prevented from seeking recourse in Haiti because domestic legislation does not provide due process of law protection for the safeguard and enforcement of the rights that have been violated in her case. She also claims that she has been denied access to the remedies that Haitian domestic law prescribes, that she has been intentionally and systematically prevented from exhausting them and that there has been an unreasonable and unconscionable delay in the administration of justice and in rendering adjudication.

28. In this case the State did not argue the failure to exhaust domestic remedies and so a tacit waiver of the objection of non-exhaustion of domestic remedies is presumed.^[FN6] In this regard, the Inter-American Court has stated that, "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State

entitled to make it, lest a waiver of the requirement be presumed.”[FN7] The IACHR concludes that this requirement was met. In conclusion, the IACHR finds that the condition of exhaustion of domestic remedies has been fulfilled.

[FN6] See Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, para. 88. See also: IACHR Report N° 30/96, Case 10.897, Guatemala, October 16, 1996, para. 35 and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. 1996 Annual Report of the IACHR. And Report N° 25/94, Case 10.508, Guatemala, September 22, 1994, page. 52. 1994 Annual Report of the Inter-American Commission on Human Rights.

[FN7] Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 1, para. 8; Fairén Garbi and Solís Corrales case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 2, para. 87; Gangaram Panday case, Preliminary Objections, Judgment of December 4, 1991, Series C, N° 12, para. 38; and Loayza Tamayo case, Preliminary Objections, Judgment of January 31, 1996, Series C, N° 25, para. 40.

2. Timeliness of the Petition

29. Article 46(1)(b) of the Convention stipulates that the petition must be lodged within a period of six months from the date on which the individual whose rights were violated was notified of the final judgment exhausting domestic remedies. In the petition object of this report, the IACHR has established the State’s tacit waiver of its right to invoke the failure to exhaust domestic remedies. Therefore, the requirement set forth in Article 46(1)(b) of the Convention has been satisfied as a consequence of the State’s attitude. However, the requirement in the Convention to exhaust domestic remedies is separate from the requirement to present the petition within six months of the ruling that exhausts those remedies. The Commission must therefore determine whether or not the petition was presented within a reasonable time frame. In that regard, the IACHR observes that the petitioner indicated that the alleged facts occurred on July 6, 2000. The IACHR notes that the original petition was lodged on December 30, 2002. In light of the particular circumstances of this petition, the IACHR considers that it was presented within a reasonable time frame.

3. Duplication of proceedings and res judicata

30. Neither party has claimed that the subject of this petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. The Commission therefore considers that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Colorable claim

31. Articles 47(b) and (c) of the Convention and Articles 34(a) and (b) of the Commission's Rules of Procedure require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention or other applicable instruments, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

32. The petitioner alleges that the State is responsible for violations of Mrs. Marie Carmel Moise Bley's rights under Articles 5, 7, 8, 10, 11, 21, 22, 24 and 25 of the Convention, the particulars of which are summarized in Part III.A above. The State has failed to provide any observations or information on the violations alleged by the petitioner.

33. Based upon the information provided by the petitioner, and without prejudging the merits of the matter, the Commission finds that the petitioner's petition contains factual allegations, that, if proved, tend to establish violations of the rights guaranteed by Articles 5, 7, 8, 11, 21, and 25 of the Convention, as well as of Article 1.1 of the Convention, and that the statements of the petitioner are not on the information provided manifestly groundless or obviously out of order. Consequently, the claims in the petition regarding Articles 5, 7, 8, 11, 21, and 25 of the Convention are not barred as inadmissible under Article 47(b) and 47(c) of the Convention and Article 34(a) and (b) of the Commission's Rules of Procedure. Nevertheless, the original petition submitted also contained allegations of violations of Articles 10, 22 and 24 of the Convention. The petitioner did not provide any factual or legal argumentation to the effect that these violations occurred. Consequently, after having analyzed the facts described in the petition, the Commission concludes that the latter does not state facts that tend to establish a violation of the rights guaranteed by Articles 10, 22 and 24 of the Convention.

V. CONCLUSIONS

34. Upon examining this case, the Commission finds that the petition is admissible with respect to petitioner's allegations of violations of Articles 5, 7, 8, 11, 21, and 25 of the Convention, as well as of Article 1(1) of the Convention, and that the petition is inadmissible with respect to petitioner's allegations of violations of Articles 10, 22 and 24 of the Convention, in accordance with the provisions of Articles 46 and 47 of the American Convention. The Commission further decides to notify the parties of this decision and to publish it and include it in its Annual Report to the OAS General Assembly.

35. Based on the foregoing arguments of fact and of law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare the present case admissible in respect of Articles 5, 7, 8, 11, 21, 25 and 1(1) of the American Convention, pursuant to Articles 46 and 47 of the Convention.

2. Declare the present case inadmissible in respect of Articles 10, 22 and 24 of the American Convention, in accordance with the provisions of Articles 46 and 47 of the Convention.
3. Notify the parties of this decision.
4. Continue to examine the merits of the case.
5. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 26th of February, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.