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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 65/06; Petition 81-06
Session:	Hundred Twenty-Fifth Special Session (17 – 21 July 2006)
Title/Style of Cause:	Jimmy Charles v. Haiti
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; Second Vice-President: Florentin Melendez; Commissioners: Clare Kamau Roberts, Paolo G. Carozza, Victor E. Abramovich. Commissioner Freddy Gutierrez Trejo dissented from the decision of the majority.
Dated:	20 July 2006
Citation:	Charles v. Haiti, Petition 81-06, Inter-Am. C.H.R., Report No. 65/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: Brian Concannon and Mario Joseph

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I. SUMMARY

1. On January 24, 2006, the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") received a complaint submitted by Brian Concannon of the Institute for Justice and Democracy in Haiti, and Mario Joseph of the Bureau des Avocats Internationaux (hereinafter, "the petitioners") in representation of Jimmy Charles against the Republic of Haiti (hereinafter "the State" or "Haiti").

2. In their petition, the petitioners allege violations of the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Art. 25.1) established in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention").

3. Petitioners allege that Mr. Charles, an employee of the Haitian telephone company, TELECO, was arrested on January 5, 2005, without an arrest warrant, nor was he apprehended in the act of committing a criminal offense. They state that he was detained without charges and found dead in the State University morgue in Port-au-Prince on January 13, 2005 only hours after his reported release from detention on that same day.

4. The State has not presented a response to the facts alleged by the petitioners, nor has it called into question the admissibility of the petition under consideration.

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5. In this report the IACHR, after analyzing the information available in light of the American Convention concludes that it is competent to consider the petitioners' allegations that the death and detention of the victim violates the rights protected by Article 4, 5, 7, 8 and 25.1 of the American Convention, and as the petition meets the requirements set out in Articles 46 and 47 of the American Convention, it decides to declare the petition admissible. The Commission likewise resolves to notify the parties of its decision, to publish it and include it in the Annual Report to be submitted to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

6. On January 24, 2006, the Commission received the complaint sent by the petitioners.

7. On April 18, 2006, the Commission transmitted the petition to the Haitian State and requested a response from the Haitian State within two months from the date of receipt of the communication, according to Article 30.3 of the Commission's Rules of Procedure.

8. At the time this report was considered, the State had not provided any information in response to the petition.

III. POSITIONS OF THE PARTIES

A. The Petitioners

9. The Petitioners explain that on January 13, 2005, the family of the alleged victim, Jimmy Charles, aged 27 years, father of two young children and employee with the Haitian telephone company, TELECO, discovered the dead body of Mr. Charles with 11 gunshot wounds, in the morgue of the State University Hospital in Port-au-Prince.

10. The petitioners claim that on January 5, 2005, Mr. Charles was arrested by Brazilian soldiers of the UN Stabilization Mission in Haiti (MINUSTAH) in front of his father's home, while he was about to unload sand from a truck for his father's mason business. The petitioners claim that his arrest was illegal because it was neither based on an arrest warrant, nor was he caught in the act of committing a criminal offense.

11. The petitioners state that MINUSTAH handed Mr. Charles over to the Haitian National Police on the same day and Mr. Charles was imprisoned at the Anti-Gang Service police station holding cell in Port-au-Prince, in a single nine by twelve foot cement cell without running water, toilet or furniture where prisoners receive their only food and clean water from family members allowed to drop off food at the cell each morning. The cell in this station is said to be overcrowded, lacking sufficient fresh air and temperatures in the cell can rise to 105 degrees Fahrenheit.

12. The petitioners also allege that over the following days, Mr. Charles' wife and father visited him daily at the Anti-Gang cell and brought him food, and that Mr. Charles continued to remain in detention without having been informed of any formal charges against him, and without any judicial decision approving his arrest.

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13. On January 10, petitioners allege that Mr. Charles was transferred to the Justice of the Peace Court for the South Section of Port-au-Prince, where Judge Marc Pascal declared that Mr. Charles' file was incomplete and the he did not belong under his jurisdiction. Mr. Charles was said to have been returned to the Anti-gang holding cell without receiving a judicial decision approving his arrest and without being informed by the judge of any formal charges against him.

14. On January 11, petitioners state that Mr. Charles' legal representative at the time, Roosevelt St. Jean, went to the Anti-Gang service to ask about his client and the status of the case. A police inspector by the name of Nazaire was said to have told him that another police report had been written but still needed to be signed by the head of the Anti-Gang Service, who was absent. He further was said to have explained that Charles was going to be sent before the Justice of Peace Court of the East Section and suggested that Mr. St. Jean wait for his client at the East Section Court on the next day.

15. According to the petitioners, Mr. Charles' wife last saw him alive on the morning of January 12, when she brought him food. On the same day, his father went to the Anti-Gang cell at approximately 2 o'clock in the afternoon, but his son was no longer there. He was told that Mr. Charles had been released earlier that day at around noon. He immediately went to his son's house to see whether he had returned home. After not finding him there, he went to the Peace Court of the East Section where his son was supposed to appear that day, and was told that he had not appeared at the tribunal. His father finally found his son's bullet-ridden body in the morgue of the State University Hospital on the following day, January 13. The personnel advised him that Mr. Charles' dead body had arrived on an ambulance at approximately 2 o'clock in the afternoon of January 12, the day of his release from detention.

16. Petitioners further claim that, in a press statement, police spokeswoman later alleged that Mr. Charles was killed during a clash between the police and 'bandits' in the neighborhood of La Saline after having been released. The petitioners argued that this claim is not credible however, because a reasonable individual, just being released from detention for one week in an overcrowded and unsanitary police cell, would return home to see his family or go into hiding, but not participate in an armed confrontation in a distant part of the city.

17. Rather, the petitioner claims that the sequence of events and the available circumstantial evidence suggest that Mr. Charles was killed while he was still in police custody or immediately after his 'release' from the Anti-Gang cell only to be seized again and executed either by regular members of the Haitian National Police (HNP) or by irregular police attaches assigned to the Anti-Gang commissariat. The petitioners further allege that the body arrived in an ambulance and that the HNP have police ambulances on call and which have repeatedly been used to transport victims of extra-judicial executions to the State Hospital morgue.

18. The petitioner also notes that where a person, who was last seen alive while being detained by state authorities, is found dead soon thereafter, such circumstantial evidence creates a strong presumption that state actors were responsible for the killing. In many such instances, the petitioner states that it is not the exclusive burden of the victim's next-of-kin to prove the state's responsibility for the victim's violent death. Rather, the state bears the burden of

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exonerating its agents actors from bearing responsibility for the death of a person they held in custody.

19. In connection with the issue of exhaustion of domestic remedies, the petitioners state that on January 25, 2005 Mr. Charles' father and wife filed a criminal complaint with the Chief Prosecutor at the Tribunal of First Instance of Port-au-Prince and constituted themselves a civil party to the criminal proceedings. To date, there has been no progress in the proceedings.

20. The petitioners further state that Mr. Charles' next-of-kin made requests on January 25, 2005 and renewed the request on March 14, 2005, to obtain an autopsy of Charles' body and a forensic analysis to determine, inter alia, the proximity, direction and angle from which the 11 shots that killed Charles were fired. According to the petitioner, despite these efforts, no autopsy was performed on Charles' body. Further, the petitioners claim that no impartial investigation has been launched, nor has any government or judicial official taken steps to cast light on the circumstances of Charles' death.

21. Finally, the petitioner alleges that the petition should be admitted based upon: (1) grounds of unwarranted delay in the investigation and criminal proceedings due to the fact that the state has taken no steps to investigate the case and proceed with the family's legal complaint up to the date the petition was presented to the Commission; (2) grounds that separate civil proceedings do not constitute an adequate remedy for the violation in question, and where the primary remedy is that the perpetrators be brought to justice, a goal that can not be pursued in the civil courts; and (3) on grounds that the Haitian justice system is ineffective and does not afford due process of law for the protection of the rights that have been violated.

B. The State

22. The State has not presented any response to the facts alleged by the petitioners in their petition, nor has it questioned the admissibility of the petition under consideration.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

23. The IACHR notes that the State at no time has responded to the petitioners' allegations or questioned the petition's admissibility as it has done for several cases from Haiti in the past.[FN1] The IACHR recalls that Haiti is responsible for the international obligations it assumed under the terms of the American Convention of Human Rights. Article 48.1.a of the Convention is of particular relevance in that it establishes procedures to be followed when a petition or communication is referred to the Commission. The IACHR shall "request information from the government of the state indicated as responsible for the alleged violations" and "(t)his information shall be submitted within a reasonable period." The provisions of Article 48.1.e stipulate that the Commission "may request that states concerned to furnish any pertinent information." This obliges State parties to the Convention to provide the Commission with such information as it may require to analyze individual petitions.

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[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.

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24. The IACHR stresses the importance it accords to the information it requests as it provides a basis for the Commission's decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation of the States represents a fundamental obligation within the international procedural framework established by 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 compliant 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 States jurisdiction unless it has the cooperation of that State.[FN2]

[FN2] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N° 4, §135 and 136. Inter-American Commission on Human Rights, Report Nº 28/96, Case Nº 11.297, Juan Hernández (Guatemala), October 16, 1996, §43.

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25. The Commission and the Inter-American Court of Human Rights have also stated that "the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long the contrary is not indicated by the record or is not compelled as a matter of law" and the presumption has been explicitly recognized in Article 39 of the Commission's Rules of Procedure and Article 38.2 of the Courts Rules of Procedure.[FN3] Bearing this in mind, the Commission reminds the State of Haiti of its obligation to cooperate with the various agencies of the Inter-American system of human rights in order to facilitate their efforts to protect individual rights.

[FN3] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report Nº 28/96, Case Nº 11.297, Juan Hernández (Guatemala), October 16, 1996, §45.

B. Competence of the Commission ratione personæ, ratione loci, ratione temporis and ratione materiæ

26. The petitioners are entitled to lodge a complaint with the Commission pursuant to Article 44 of the American Convention. The petition designates as alleged victim an individual whose rights Haiti committed to uphold and guarantee given the general obligation to respect rights which it subscribed under Article 1 of the American Convention. The Republic of Haiti has been

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a party to the American Convention since it deposed its instrument of accession thereto on September 27, 1977. The Commission thus holds that it has the requisite competence ratione personae to adjudicate the petition before it.

27. The Commission considers that it is competent ratione loci to consider the petition as the alleged violations were committed within the territory of a state party to this treaty.

28. The Commission likewise considers that it is competent ratione temporis since the petition relates to acts allegedly committed in 2005 when the obligations assumed by the Haiti following its accession to the American Convention on September 27, 1977.

29. Finally, the Commission holds that it has the competence ratione materiae because the case denounces alleged violations of rights which are protected by the American Convention, namely the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8) and the right to judicial guarantees (Article 25).

C. Other Admissibility Requirements

1. Exhaustion of domestic remedies

30. Article 46.1.a of the American Convention provides that the admissibility of a petition submitted to the Inter-American Commission pursuant to Article 44 is subject to the requirement that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to have the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, prior to any submission before an international mechanism.

31. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

32. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, it may first be noted that the State in question may expressly or tacitly waive the invocation of this rule.[FN4] Second, in order to be considered timely, the objection that domestic remedies have not been exhausted must be raised during the first stages of the proceeding; otherwise, it will be presumed that the interested State has tacitly waived its use.[FN5] Finally, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness. [FN6] Consequently, if the State in question does not provide timely

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arguments with respect to this requirement, it will be understood to have waived its right to argue the non-exhaustion of domestic remedies and thereby discharge the burden of proof that would correspond to it.

[FN4] See, e.g., IACHR, Report Nº 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objections. Judgment of November 30, 2005. Ser. C No. 139, para. 5; I/ A Court H.R., Case of Moiwana Village v. Suriname. Judgment of June 15, 2005. Ser. C No. 124, para. 49; I/ A Court H.R., Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Ser. C No. 118, para. 135.

[FN5] See, e.g., I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53, I/A Court H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and Court have established that "the first stages of the process" must be understood as the admissibility stage of the proceedings before the Commission, that is, "before any consideration of the merits." See, for example, IACHR, Report Nº 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October, 13 2005, which cites, I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN6] See, e.g., IACHR, Report Nº 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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33. In the present case, the petitioners have alleged that the exception provided for under Article 46.2, namely the denial of access to the remedies under domestic law, the prevention from exhausting them and the unwarranted delay in rendering a final judgment, apply here, and the State has not controverted that argument. Accordingly, on the basis of: the terms of Article 46 of the Convention and Article 31 of the Rules of Procedure; its review of the case file, particularly taking into account the lack of an investigation into the death of Mr. Charles, the failure of the state to proceed with criminal proceedings in the case and the delay of close to one and a half years in which authorities have not yet rendered a judgment; and in the absence of specific and concrete information indicating that available and effective remedies were not exhausted, the Commission concludes that the exception under Article 46.2 applies and that there has been a tacit waiver by the State.

D. Time period for submission of the petition

34. In accordance with Article 46.1.b of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the

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complaining party was notified of the final judgment at the domestic level. The six-month rule ensures legal certainty and stability once a decision has been taken.

35. In those cases in which an exception to the requirement of prior exhaustion applies, Article 32 of the Commission's Rules of Procedure provides that petitions must be presented within a reasonable period of time, as determined by the Commission. In accordance with this Article, in its analysis the Commission "shall consider the date on which the alleged violation of rights has occurred and the circumstances of each case."

36. With respect to the petition under study, the Commission has established that the exception provided for under Article 46.2, namely, the denial of access to the remedies under domestic law, the prevention from exhausting them and the unwarranted delay in rendering a final judgment, apply here, and must accordingly evaluate whether the petition was presented within a reasonable period of time in accordance with the circumstances of the situation presented for its consideration. In this regard, in accordance with the circumstances presented in the petition, the Commission observes that the petitioners state that the victim was discovered dead on January 13, 2005 and that the petition was lodged on January 24, 2006. In light of the particular circumstances of this petition, the IACHR considers that it was presented within a reasonable time frame.

E. Duplication of procedures and res judicata

37. The Commission understands that the subject matter of the instant petition is not pending settlement before any other international organization nor does it reproduce a petition already examined by this or other international organization. Accordingly, the requirements established in Article 46.1.c and 47.d are satisfied.

F. Characterization of the facts alleged

38. Article 47.b and 47.c of the Convention, as well as Article 34.a and 34.b of the Commission's Rules of Procedure consider a petition inadmissible if it does not state facts that tend to establish violations of the rights guaranteed by the Convention or other applicable instruments, or if the petitioners' or state's arguments indicate that the petition is manifestly groundless or out of order.

39. The petitioners allege that the State is responsible for violations of Mr. Charles' rights under Articles 4, 5, 7, 8 and 25 of the American Convention as summarized in part III above. The State did not present observations or information on the violations alleged by the petitioners.

40. The Commission concludes that the petition contains factual allegations, that if proved to be true, tend to establish violations of the rights protected by Articles 4, 5, 7, 8 and 25.1 of the Convention, and Article 1.1, reflecting the general duty to respect the rights protected in the Convention. In addition, the IACHR considers that based on the information submitted, the petitioners' allegations are not manifestly groundless or out of order. Accordingly, the IACHR concludes that the petition should not be considered inadmissible under Article 47.b and 47.c of the Convention, or Article 34.a and 34.b of the Commission's Rules of Procedure.

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V. CONCLUSIONS

41. Having examined the present petition, the Commission concludes that it is competent to consider it. It finds that the petition is admissible with respect to petitioners' allegations of violations of Articles 4, 5, 7, 8, 25.1 in connection with Article 1.1 of the Convention. The Commission concludes likewise to advise the parties of this decision, and to proceed with its publication and inclusion in the Annual Report it will submit to the General Assembly of the OAS.

42. 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:

1. To declare the present case admissible in respect to Articles 4, 5, 7, 8 and 25.1 in connection with Article 1.1 of the American Convention.
2. To notify the petitioners and the State of the present decision.
3. To proceed with the examination of the merits of the case.
4. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.
5. To proceed with the examination of the merits of the case.
6. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Guatemala, Guatemala, on the 20th day of the month of July 2006. (Signed): Evelio fernández Arévalos, President; Florentín Meléndez, Second Vice-president; Clare Kamau Roberts, Paolo G. Carozza, Victor E. Abramovich, Commissioners, and Commissioner Freddy Gutierrez Trejo dissented from the decision of the majority.