

REPORT N° 64/05
PETITION 445/2005
ADMISSIBILITY
YVON NEPTUNE
HAITI
October 12, 2005

I. SUMMARY

1. On April 20, 2005, the Inter-American Commission on Human Rights (Hereinafter "the IACHR" or "the Commission") received a complaint submitted by Brian Concannon, Mario Joseph, Hastings Human Rights Project for Haiti (Hereinafter the petitioners) in representation of Yvon Neptune against the Republic of Haiti (hereinafter "the State" or "Haiti"), the facts of which characterize alleged violations of his rights to humane treatment (Article 5), 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").

2. The petitioners claim that Mr. Neptune, former Prime Minister of Haiti under former President Aristide's administration, was arrested on June 27, 2004, in connection with his alleged participation in the killing of a number of individuals in the town of Saint Marc in February 2004. Since his arrest in June 2004 to the date upon which the petition was brought, Neptune has not been seen by a judge to determine the legality of his arrest.

3. 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.

4. 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 detention of the victim violates the rights protected by Article 5, 7, 8 and 25(1) of the American Convention, and as the petition meets the requirements set out at 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

5. On April 20, 2005, the Commission received the complaint sent by the petitioners, which also included a request for precautionary measures and which was rejected by the Commission.

6. On May 4, 2005, the Commission transmitted the petition to the Haitian State and, in light of the potential risk to Mr. Neptune's life and physical integrity posed by his hunger strike, requested a response from the Haitian State within an abbreviated time of 5 days, in accordance with Article 30(4) of the Commission's Rules of Procedure.

7. 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

8. The Petitioners explain that the alleged victim is an architect by trade, who was elected to Haiti's senate in May 2000. After serving as the Senate's President, he resigned his post to serve as Prime Minister in 2002.

9. The Petitioners explain that in February 2004, two days after making a visit to St. Marc, Haitian Police and civilians reported to be *Bale Wouze* gang members entered the La Scierie neighborhood, which is a *RAMICOS* (alleged anti-government group) stronghold. During the following confrontation, at least three people were killed and many wounded.

10. On March 2, 2004, petitioners allege that a Haitian NGO, the National Coalition for Haitian Rights, called for the arrest and prosecution of Neptune in a press release and further alleged that this group made an agreement with the prosecutor's office to file criminal charges against anyone denounced by the group or other human rights groups.

11. On March 25, 2004, Judge Clunie Pierre Jules, an investigating magistrate in St. Marc, who was charged with investigating the La Scierie case issued an arrest warrant against Neptune.

12. On March 27, 2004 the Interim Government of Haiti (IGH) issued an order banning Neptune from leaving the country.

13. On June 27, 2004, the petitioners allege that the arrest warrant was kept secret. The petitioners add that Neptune turned himself in to the Haitian police after hearing an announcement calling for Neptune's arrest on the radio, and that from that date on the victim has been detained in the national penitentiary ("Pénitencier national") in Port-au-Prince.

14. The petitioners explain that article 26 of the Haitian Constitution prohibits holding a detainee unless a judge has ruled on the legality of the arrest and legally justified the detention within 48 hours. Although the victim has been in custody for nine months (date of receipt of the petition), he has not been brought before a judge and no judge has ruled on the legality of his detention.

15. On July 9, 2004, the Defense filed a motion before the highest instance "Cour de Cassation" to remove the case from the court of St. Marc, arguing that the influence of the surrounding population might have an effect on the independence of the Judiciary. The "Cour de Cassation" denied the motion six months later, on January 17, 2005, on the basis of a minor technicality, namely the failure to pay the processing fee.

16. On July 17, 2004, Judge Bready Fabien of Port-au-Prince questioned the victim about a December 2003 incident that occurred at the National University of Haiti, in which a student protestor and the University's rector were injured. At that time the judge only questioned the victim as a witness to the incident at the National University. He did not rule on the legality of the victim's detention and had no authority to do so.

17. On December 1, 2004, the petitioners allege that police and prison guards fired shots during a protest at the *Pénitencier National*. During the course of the shooting, guards and police killed 10 prisoners. The riot began in a cell block called "Titanic" which is about 20 feet away from the victim's cell. During this riot the petitioners' allege that the victim's life was placed in danger.

18. On February 19, 2005, the petitioners explain that armed men stormed the *Pénitencier National* and as a result, 481 prisoners escaped. During this prison break the petitioners allege that the victim's life was in grave danger. The petitioners explain that the victim was physically removed from the prison during this break, but he immediately asked the authorities of the United Nations Stabilization Mission in Haiti (MINUSTAH) to assist him in returning to the prison.

19. Petitioners allege the State's failure to provide adequate security for the victim due to the risks placed on Neptune during two prison disturbances.

20. On February 20, Neptune begins a hunger strike to protest against his illegal detention.¹

¹ According to information received from public reports, Neptune appears to continue to be on a hunger strike and is being detained in an annex to the National Penitentiary facility in Port-au-Prince

21. On March 10, Neptune collapses due to poor health conditions and is taken to a military hospital run by MINUSTAH.

22. On April 20, 2005, the date upon which the petition was sent, Neptune was still receiving treatment at the UN hospital. He was not brought before a judge to determine the legality of his arrest and detention or formally charged for the crime for which he was accused.

B. The State

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

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

24. 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.² 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.

25. 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.³

26. 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".⁴ 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.

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

² 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 follow

³ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N°4, §135 and 136. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §43

⁴ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report N° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, §45

27. 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 a party to the American Convention since it deposited 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.

28. 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.

29. The Commission likewise considers that it is competent *ratione temporis* since the petition relates to acts allegedly committed in 2001 when the obligations assumed by the State following its subscription to the American Convention were in effect.

30. 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 humane treatment (Article 5), to personal liberty (Article 7) and the right to a fair trial (Article 8).

C. Other Admissibility Requirements

1. Exhaustion of domestic remedies

31. 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 respective states."⁵ The rule of prior exhaustion of domestic remedies allows the state to resolve the problem in keeping with its domestic law before being faced with an international proceeding, which is especially valid in respect of the international jurisdiction over human rights matters.

32. In this matter, the State did not argue the failure to exhaust domestic remedies. It can thus be presumed that the State has tacitly waived a possible objection of non-exhaustion of domestic remedies. The Inter-American Court has indicated that the objection to non-exhaustion of domestic remedies, if it is to be timely, must be raised in the first stages of the proceedings, failing which, a presumption of a tacit waiver by the state to avail itself of it may be made.⁶ The IACHR concludes that in this case there has been a tacit waiver by the State.

D. Time period for submission of the petition

33. Pursuant to Article 46(1)(b) of the American Convention, the general rule is that a petition must be submitted within six months, counted "from the date on which the party alleging violation of his rights was notified of the final judgment". In the petition under consideration, the Commission has established a tacit waiver by the State of its right to invoke non-exhaustion of domestic remedies, thus the requirement of Article 46(1)(b) of the Convention is not applicable.

34. Nonetheless, the requirements of exhaustion of domestic remedies and submission within six months of the judgment exhausting domestic remedies, both set forth in the American Convention, are independent. Therefore, the Commission must determine whether the petition under consideration was submitted within a reasonable time.

⁵ See second paragraph of the Preamble of the American Convention.

⁶ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1987, § 8; *Fairén Garbi and Solís Corrales Case*. Preliminary Objections. Judgment of June 26, 1987, §87; *Gangaram Panday Case*. Preliminary Objections. Judgment of December 4, 1991, §38; *Loayza Tamayo Case*. Preliminary Objections Judgment of January 31, 1996, §40.

35. In this regard, the Commission observes that the petitioners state that the victim was imprisoned in June 27, 2004 and that the petition was lodged only on April 20, 2005. 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*

36. 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 other international organization. Accordingly, the requirements established in Article 46(1)(c) and 47(d) are satisfied.

F. Characterization of the facts alleged

37. Article 47(b) and (c) of the Convention, as well as Article 34(a) and (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.

38. The petitioners allege that the State is responsible for violations of Mr. Neptune's rights under Articles 5, 7 and 8 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.

39. Based on the information submitted by the petitioners and without prejudice to the merits, the Commission concludes that the petition contains allegations that tend to establish violations of the rights protected by Article 5, 7 and 8 of the Convention, while, in keeping with the principle of *iura curia novit*, the Commission tends to find a violation of Article 25 and 1(1). 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 (c) of the Convention, or Article (a) and (b) of the Commission's Rules of Procedure.

V. CONCLUSIONS

40. 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 5, 7, 8 and 25(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.

41. 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 5, 7, 8 and 25.1 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

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 12th day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; and Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.