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REPORT N° 20/04

PETITION 4692/02

ADMISSIBILITY

LYSIAS FLEURY

HAITI

February 26, 2004

I. SUMMARY

1. On October 11, 2002, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) received a complaint submitted by Lysias Fleury (hereinafter the petitioner) against the Republic of Haiti (hereinafter “the State” or “Haiti”), alleging the violation of his personal integrity and liberty, and his honor and dignity, as he was arrested without judicial warrant by police and civilian agents, who threatened him, mistreated him, and subjected him to torture and other degrading treatment during the 17 hours he was deprived of liberty, causing him serious injuries. The petitioner alleges violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), and 11 (protection of honor and dignity) of the American Convention on Human Rights (hereinafter “the American Convention”).

2. 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.

3. 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 action of police and civilian agents violated his integrity, personal liberty, and honor, in violation of the rights protected by Articles 5, 7, 8, 11, 25, and 1(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.

II. PROCESSING BEFORE THE COMMISSION

4. On October 11, 2002, the Commission received the complaint sent by the petitioner, which also included a request for precautionary measures, which were issued by the Commission on October 15, 2002.

5. From October 11, 2002, to March 10, 2003, the IACHR received additional information from the petitioner related to the State’s failure to carry out the precautionary measures that were granted. During this period the Commission requested information from the State with respect to the precautionary measures. The State acknowledged receipt of the communications from the Commission. On March 13, 2003, the Commission presented a request for provisional measures to the Inter-American Court of Human Rights with respect to the Haitian State regarding Mr. Lysias Fleury, alleging *inter alia* that the State failed to carry out the precautionary measures granted by the IACHR. On March 18, 2003, the President of the Inter-American Court decided to order the State to adopt, without delay, the urgent measures needed to protect the petitioner’s life and personal integrity. On June 25, 2003, the Commission received notification from the Court, dated June 20, 2003, of the order issued June 7 with respect to the provisional measures issued on behalf of the petitioner, which confirmed in its entirety the March 18, 2003 order by the Court’s President.

6. After the urgent measures were issued by the President of the Inter-American Court of Human Rights, the Commission received additional information from the petitioner and the State as well as communications from the Court regarding the urgent measures, and, more recently, the provisional measures.

7. With respect to the petition itself, independent of the process of the precautionary, urgent, and provisional measures, the Commission acknowledged receipt of the petition sent by Mr. Fleury, and proceeded to process the petition under number

P 4692/02 of March 10, 2003. The IACHR transmitted to the Haitian State the pertinent parts of the petition and the subsequent communications from the petitioner, giving the government a period of two months from the date of transmittal to submit information.

8. On May 6, 2003, the Commission received a letter dated March 21, 2003, sent by the Ministry of Foreign Affairs of Haiti, which acknowledged receipt of the communication sent by the Commission on March 10, 2003, and, as mentioned in the communication of March 12, 2003, it was indicated that a meeting was held at the Ministry of Foreign Affairs between the petitioner and Mr. Gaspard, a Ministry official, to discuss implementation of the precautionary measures. The State also indicated that the Ministry of Foreign Affairs wanted to organize a working meeting among representatives of the National Police, the Ministry of Justice, and the Ministry of Interior, in order to ensure better monitoring of the matters pending between the Commission and the Government of Haiti.

III. THE PARTIES' POSITIONS ON ADMISSIBILITY

A. The petitioner

9. According to the petition, Mr. Lysias Fleury, a Haitian human rights defender who works with the *Commission Episcopale Nationale Justice et Paix* (Justice and Peace Commission of the Bishops Conference, hereinafter, "Justice and Peace Commission"), was arrested without any judicial warrant on June 24, 2002, at approximately 7:00 p.m. while at home. The petitioner alleges that while he was arrested, he was pistol-whipped by the police. He alleges that he showed the police his identification card from the Justice and Peace Commission and the police said: "You're from human rights? You'll see!"

10. The petitioner alleges that he was transferred to the Bon Repos police station, in Port-au-Prince, where he was detained for 17 hours. He was subjected to "degrading treatment," which caused "serious injuries." More particularly, the petitioner indicates that he was forced to clean the excrement from his cell using his hands. He also explains that on the morning of June 25, 2002, he was beaten in the head and was also clubbed and kicked. He was also forced to sign a statement according to which he was not mistreated by the police, but by members of a CASEC (*Conseil d'Administration des Sections Communales*). The petitioner argued that he suffered this abusive treatment because of his work as a human rights defender.

11. The petitioner alleges in his petition and subsequent communications that on August 1, 2002, he presented a criminal complaint to the public prosecutor of Port-au-Prince reporting the events of June 24 and 25, 2002, requesting that the Public Ministry initiate a criminal action against the police officers of the Bon Repos police station. The petitioner alleges that there was no follow-up to his criminal complaint. In addition, on June 27, 2002, the director of the Justice and Peace Commission of the Bishops Conference presented a criminal complaint to the Inspector General of the National Police.

12. The petitioner alleges that on February 22, he was received at the Office of the Inspector General of the National Police, where he was invited by Inspector John Prévost into a room in which the police who had mistreated him were introduced one by one, i.e. Erick Edris, Timothé Dégand, and Tevnord Joseph. The petitioner had to identify his alleged assailants in their presence. Despite the identification, the three men walked away free from the Office of the Inspector General of the National Police.

13. The petitioner also indicated that he was received by an official from the Ministry of Foreign Affairs on March 7, 2003, to discuss implementation of the precautionary measures issued by the IACHR. This official informed him that he would contact the Director of the National Police and that he would send a letter to the Ministry of Justice seeking updated information on his case.

14. According to the petitioner, no criminal investigation was initiated as a result of the complaint he presented on August 1, 2002 to the Office of the Prosecutor of Port-au-Prince. Nor was any criminal investigation initiated based on the complaint submitted on June 27, 2002 by the director of the Justice and Peace Commission to the Chief Inspector General of the National Police of Haiti.

B. The State

15. The State has not presented any response to the facts alleged by the petitioner in his petition, nor has it questioned the admissibility of the petition under consideration. It simply acknowledged receipt of the communications from the Commission, and, in a letter dated March 21, 2003, and received by the IACHR on May 6, 2003, he indicated that a meeting was held at the Ministry of Foreign Affairs between the petitioner and Mr. Gaspard, a Ministry official, to discuss implementation of the precautionary measures.

IV. ANALISYS

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

16. The petitioner is authorized by Article 44 of the American Convention to submit complaints to the Commission. The petition notes as the alleged victim Mr. Lysias Fleury, a natural person, in keeping with Article 1(2) of the American Convention. The respondent State, the Republic of Haiti, ratified the American Convention on September 27, 1977. Therefore, the Commission is competent *ratione personae* to examine the petition.

17. As regards competence *ratione loci*, all the alleged violations were committed in the jurisdiction of the Republic of Haiti.

18. As regards competence *ratione temporis*, the violations are alleged to have been committed after September 27, 1977, when Haiti ratified the American Convention.

19. As for competence *ratione materiae*, the violations described, if true, could constitute violations of Articles 5, 7, and 11 of the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

20. Article 26(1)(a) of the Convention provides that the admissibility of a petition submitted to the Commission is subject to the requirement that domestic remedies have been pursued and exhausted, in keeping with generally accepted principles of international law. The preamble to the Convention states that it confers international treaty protection, which reinforces or complements the protection offered by the domestic law of the respective states.^[1] 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.

21. In this case, as mentioned above, the petitioner alleges in his petition and subsequent communication that he filed a criminal complaint on August 1, 2002, before the public prosecutor of Port-au-Prince, reporting the events of June 24 and 25, 2002, requesting that the Public Ministry open a criminal investigation against the police officers from the Bon Repos police station. He also indicates that on June 27, 2002, the director of the Justice and Peace Commission lodged a criminal complaint with the Inspector General of the National Police.

22. The petitioner also explains that on February 22, he was received in the offices of the Inspector General of the National Police, where he identified his alleged assailants.

23. According to the petitioner, no criminal investigation was initiated as a result of the complaint lodged on August 1, 2002 with the office of the prosecutor of Port-au-Prince, nor was any criminal investigation opened based on the complaint lodged June 27, 2002, by the director of the Justice and Peace Commission with the Chief Inspector General of the National Police of Haiti.

24. In addition, the State has not alleged failure to exhaust domestic remedies. As the Inter-American Court of Human Rights clearly indicated, a state that seeks to invoke the failure to exhaust domestic remedies must do so expressly in the first stage of the proceeding.^[2] In the instant case, the State did not expressly invoke the failure to exhaust domestic remedies, it merely acknowledged receipt of some communications and informed the IACHR of a meeting between the petitioner and the Ministry of Foreign Affairs. In view of this failure of the State to contest the admissibility of the petition, one can presume a tacit waiver of the objection of failure to exhaust domestic remedies.^[3]

25. In this respect, the Inter-American Court has indicated that the objection of non-exhaustion of domestic remedies, if it is to be timely, must be raised in the first stages of the proceeding, failing which one may presume a tacit waiver by the state to avail itself of it.^[4] The IACHR concludes that in this case there has been a tacit waiver by the State.

2. Time for submission

26. 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.

27. 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.

28. In this regard, the Commission observes that the petitioner states he was arrested without a judicial warrant on June 24, 2002, and was released the next day, without the authorities having carried out a serious investigation to punish the persons responsible. The Commission notes that the original petition was submitted on October 11, 2002. Considering the particular circumstances of the petition under consideration, the Commission considers that it was submitted within a reasonable time.

3. Duplication of procedures and *res judicata*

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

4. Characterization of the alleged facts

30. 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 petitioner's or state's arguments indicate that the petition is manifestly groundless or out of order.

31. The petitioner alleges that the State is responsible for violations of Mr. Fleury's rights under Articles 5, 7, and 11 of the American Convention, as summarized in part III above. The State did not present observations or information on the violations alleged by the petitioner.

32. Based on the information submitted by the petitioner, and without prejudice to the merits, the Commission concludes, in keeping with the principle of *iura curia novit*, that the petition contains allegations that tend to establish violations of the rights protected by Articles 8 and 25 of the Convention in conjunction with Article 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 34(a) and (b) of the Commission's Rules of Procedures.

V. CONCLUSIONS

33. With respect to the alleged violations committed against Mr. Fleury during his arrest and detention, the Commission concludes that it is competent to take cognizance of the instant case, and that the petition is admissible under Articles 46 and 47 of the American Convention with respect to violations of Articles 5, 7, 8, 11, and 25 of the Convention, in relation to the general obligation set forth at Article 1(1).

34. Considering the arguments of fact and law described above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to Articles 5, 7, 8, 11, 25, and 1(1) of the American Convention.
2. To notify the petitioner and the State of this decision.
3. To proceed to analyze the merits.
4. To publish this report 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 the city of Washington, D.C., on the 26th day of February, 2004 (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Freddy Gutiérrez Trejo, Florentín Meléndez, and Paulo Sérgio Pinheiro.

[1] See second paragraph of the Preamble of the American Convention.

[2] See I/A Court H.R., *Case of the Mayagna (Sumo) Community of Awás Tingni*, Preliminary Objections, Judgment of February 1, 2000, paras. 55

[3] I/A Court H.R., *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1987, para. 88. See also IACHR, Report No. 39/96, Case 10,897, Guatemala, October 16, 1996, para. 35; and Report No. 53/96, Case 8,074, Guatemala, December 6, 1996. Annual Report 1996. In addition, see Report No. 25/94, Case 10,508, Guatemala, September 22, 1994. IACHR Annual Report 1994.

[4] I/A Court H.R., *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1987, para. 8; *Fairén Garbi and Solís Corrales Case*. Preliminary Objections. Judgment of June 26, 1987, para. 87; *Gangaram Panday Case*. Preliminary Objections. Judgment of December 4, 1991, para. 38; *Loayza Tamayo Case*. Preliminary Objections. Judgment of January 31, 1996, para. 40.