

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 92/98; Case 11.837  
Title/Style of Cause: Indravani Ramjattan Pamela v. Trinidad and Tobago  
Doc. Type: Decision  
Decided by: Chairman: Carlos Ayala Corao;  
First Vice Chairman: Robert K. Goldman;  
Second Vice Chairman: Jean Joseph Exume.  
Commissioners: Alvaro Tirado Mejia, Claudio Grossman.  
Dated: 3 November 1998  
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Report No. 92/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)  
Represented by: APPLICANT: Slaughter and May  
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## I. BACKGROUND

1. By fax dated November 17, 1997 the London firm of solicitors, Slaughter and May, presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad") on behalf of Ms. Indravani (Pamela) Ramjattan, presently under sentence of death at the State Prison in Port of Spain. The petition stated that the High Court of Trinidad at the Port of Spain Assizes tried the Applicant for the murder of Mr. Alexander Jordan, her common-law husband, on February 13, 1991, along with two co-defendants, Mr. Denny Baptiste and Mr. Haniff Hilaire. The Applicant was convicted on May 29, 1995 and sentenced to the mandatory death penalty for murder.

### Precautionary Measures

2. Simultaneous with the presentation of the complaint, the Applicant requested the Commission to issue precautionary measures, pursuant to article 29(2) of its Regulations, and to seek a stay of execution pending the determination of the complaint by the Commission. On November 21, 1997, the Commission requested the State to stay Ms. Ramjattan's execution "until such time as the Commission has had the opportunity to consider this case and issue its decision." The Commission requested "an immediate consent to the above request."

3. The State of Trinidad and Tobago did not respond to this request for precautionary measures. The Commission regrets that the State party was not prepared to grant the precautionary measures requested under article 29(2) of its Regulations, and to guarantee that the Petitioner would not be executed while his case was under examination. In fact, however, as of September 28, 1998, the petitioner has not been executed. The Commission observes that it is not

for the State party, but for the Commission, to decide whether or not a complaint is admissible. The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. Ms. Ramjattan's appeal to the Court of Appeal of the Republic of Trinidad and Tobago was dismissed on November 7, 1996. The Court of Appeal subsequently issued a written judgment on March 10, 1997. On October 10, 1997, the Applicant filed a Petition for Special Leave to Appeal to the Privy Council which was dismissed on November 7, 1997.

5. The complaint alleges that the following articles of the American Convention were violated by the State of Trinidad and Tobago to the detriment of the Applicant: articles 4, 5, 8 and 11 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). On January 23, 1998, an Additional Submission was filed on behalf of Ms. Indravani (Pamela) Ramjattan by the petitioners alleging violations of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the "Convention of Belem do Para." Specifically, as regards the first petition, it is alleged that the Applicant is a woman who has suffered an appalling history of physical and mental abuse at the hands of her common-law husband, Alexander Jordan, the deceased. Jordan, according to the petition first came into the life of the Applicant when she was 14 years old, he 33. When the Applicant was 17 years old she was sent against her will to live with Jordan who had bought the property next door to her parents'. They had six children by February 12, 1991, the date of the alleged crime. Jordan allegedly subjected the Applicant to a "reign of terror," and her lover, Denny Baptiste, with whom she was 5-6 months pregnant, allegedly inflicted the fatal blows and the Applicant, according to the petition "was not even in the same room when the fatal blows were struck." The State delayed four years and three months in bringing the case to trial and by the time the petition was filed with the Commission the Applicant had been on death row for two years and six months. With the exception of her eldest daughter who gave evidence at her trial in May 1995, she has not seen her children (who were between 2 and 11 years of age at the time of her arrest) throughout her time in prison. In addition, the petitioners allege serious violations as regards the right to legal representation in a capital case. According to the petition, the first time she met her defense attorney was at the Preliminary Hearing; she received no prior notice of the charges and had no opportunity to prepare her defense; at the trial she was represented by a different attorney who visited her twice prior to the trial, each time for only twenty minutes; during the actual trial she was only able to see her attorney for 3-5 minutes on some days of the trial, not every day; no importance was attached, by her attorney, to the physical and mental abuse she had suffered and its impact on her conduct in relation to the alleged crime; no witnesses were called in her defense.

6. The State of Trinidad and Tobago responded to the petition by Note POL:6/16/2 Vol. 7 of April 16, 1998. In this Note, the State informed the Commission that the "Instructions Relating to Applications from Persons under Sentence of Death issued by the Government of Trinidad and Tobago on 13 October 1997, are deemed to apply to the communication of Indravani Ramjattan. Case No 11.837." In addition, the State pointed out that:

... in order for any recommendation by the Commission to be considered by the Minister of National Security when advising his Excellency the President of the exercise of the prerogative of mercy, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of the communication within a period of six months from the date of the despatch of the response by the State party.

In other words, the State requested that the Commission issue a decision on the merits in this case within a period of six months from April 16, 1998 or by October 16, 1998. According to the State, the decision of the Commission would be considered by the Minister of National Security when advising the President as to whether he should exercise the prerogative of mercy. Unlike other systems where the prerogative of mercy is considered part of the domestic process, in Trinidad and Tobago the international instance is used to inform the domestic process.

7. The Inter-American Commission on Human Rights, at the request of the Government, held a meeting on February 20, 1998, during its 98th period of sessions, with Mr. Ralph Maraj, Minister of Foreign Affairs of the Republic of Trinidad and Tobago and Mr. Ramesh L. Maharaj, the Attorney General of that State. In his statement, the Attorney General argued that the "Commission has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago." The argument of the State is as follows:

Under the Convention, the Commission has the power to make recommendations to the State Party, but in so far as those recommendations relate to a sentence imposed by the courts of the State Party it would be acting *ultra vires* if it attempted to alter by its recommendations the domestic law of the State in respect of sentencing. The Commission therefore has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago.

The Constitution of Trinidad and Tobago mandates all arms of the State, including the Judicial arm, to uphold the law of Trinidad and Tobago. The State of Trinidad and Tobago therefore has a mandatory obligation to ensure that its Constitution and laws are not undermined, subverted or frustrated in their operation. It was for this reason that the Government of Trinidad and Tobago, by its reservation entered when accepting the compulsory jurisdiction of the Inter-American Court of Human Rights, stated that the Court can only have jurisdiction to the extent that it is consistent with the Constitution of Trinidad and Tobago. The Commission therefore does not have jurisdiction either by its acts or omissions to prevent in any way a sentence, authorized by the Constitution and laws of Trinidad and Tobago and pronounced by a court of competent jurisdiction, from being carried into effect. It is therefore open for the Government of Trinidad and Tobago, whilst a petition is pending before the Commission, to carry out the sentence of death once the time stipulated in accordance with the Constitution and laws of Trinidad and Tobago has expired. The Commission may recommend the award of compensation to a victim. It may recommend that the State Party correct those matters which gave rise to a substantive breach so that others do not suffer the same violation in future. However it is submitted that the Commission, either directly or by its recommendation, has no power to alter the lawful sentence imposed by a court of a State Party. (Emphasis added).

### III. GENERAL CONSIDERATIONS

A. The Commission's Competence

8. Trinidad and Tobago is a State party to the American Convention, having ratified the treaty on May 28, 1991. Trinidad and Tobago ratified the "Convention of Belem do Para" on June 4, 1996. The petition alleges violations of human rights set forth in the American Convention which the Commission is competent to review.

B. Procedural Admissibility of the Petition

1. Exhaustion of Domestic Remedies

9. The Government of Trinidad and Tobago stated in its response dated April 16, 1998 that:

In the interests of expediency (...) notwithstanding the failure of the Applicant to first seek redress for his grievances by way of a Constitutional Motion before the domestic courts of Trinidad and Tobago, except as herein expressly provided, the State party raises no challenge to the admissibility of this communication based on the exhaustion of domestic remedies rule (...).

10. The petitioners, in the observations to the response of the State Party, dated July 22, 1998, noted that "the State Party has raised no challenge to the admissibility of this communication based on the 'exhaustion of domestic remedies rule.' The State Party has intimated, however, that the Applicant should first have sought redress by way of a Constitutional Motion before the domestic courts of Trinidad and Tobago. It is submitted that legal aid to a Death Row inmate in Trinidad and Tobago to bring a Constitutional Motion is not available. The remedy of a Constitutional Motion is therefore effectively denied under domestic law for the purposes of Article 46(1)(a) of the Convention or Article 37(2)(b) of the Regulations. Article 46(2)(b) of the Convention and Article 37(2)(b) of the Regulations provide that the requirement for domestic remedies to have been exhausted is not applicable where:

'the party alleging the violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.'

It is submitted that the Applicant has effectively been denied access to the remedy of a Constitutional Motion, or has been prevented from exhausting this remedy, by virtue of the fact that legal aid is in effect not available for a Constitutional Motion."

11. The jurisprudence of the Inter-American Commission and Court supports the view that a remedy needs to be effective and capable of producing the result for which it was designed, and that it is not sufficient for the remedy simply to be available. (Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987, para. 88). For an indigent prisoner, who has exhausted all judicial appeals including recourse to the Judicial Committee of the Privy Council in London, to be expected to file a constitutional motion, the burden of proof lies with the State to show that this remedy is effective and capable of producing the result which would make it worthwhile for the prisoner to pursue. In the opinion of the Commission, the State did not meet the burden of proof in this case and consequently the Commission finds this case admissible.

2. Timely filing

12. The petition was presented within six months of the final ruling of the appeal on conviction and sentence pursuant to Article 46(1)(b) of the Convention. Ms. Ramjattan's appeal against conviction and sentence was dismissed by the Court of Appeal of Trinidad and Tobago on March 10, 1997. Her application for leave to appeal her conviction was dismissed by the Judicial Committee of the Privy Council in London, on November 7, 1997. The petition was filed before the Commission on November 17, 1997.

3. No duplication of other international procedures

13. The petition satisfies the requirements of article 46(1)(c) in that it is not pending settlement in another international proceeding, nor does it duplicate a petition already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

IV. CONCLUSION

14. The Commission finds that the petition is admissible having satisfied the requirements of article 46 of the American Convention.

15. Taking the foregoing considerations into account,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To place itself at the disposal of the parties with a view to seeking a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention.
3. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 3rd day of the month of November 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, and Claudio Grossman.