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File Number(s): Report No. 80/01; Case 12.264
Session: Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause: Franz Britton and Aka Collie Wills v. Guyana
Doc. Type: Decision
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated: 10 October 2001
Citation: Britton v. Guyana, Case 12.264, Inter-Am. C.H.R., Report No. 80/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANT: I. Kamau Cush
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I. SUMMARY

1. This Report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") by letter dated March 21, 2000, by I. Kamau Cush, Chairman for Economic Empowerment, Guyana, (hereinafter referred to as "the Petitioner") against the State of Guyana, on behalf of Mr. Franz Britton, aka Collie Wills (hereinafter referred to as "Mr. Britton"). The Petitioner alleges that the State of Guyana had violated the rights of Mr. Britton as set forth in the American Declaration on the Rights and Duties of Man (hereinafter referred to as "the Declaration").

2. According to the Petitioner, Mr. Britton, a Guyanese national, and a father of three children, was first arrested on January 19, 1999, by Police officers at Cove and John Police Station, East Coast Demerara, Guyana, a local police Station and was released on January 23, 1999. The Petitioner claims that Mr. Britton was asked to report on January 25, 1999, to that same police station and was re-arrested by Leon Fraser, the Assistant Superintendent of Police, of the Criminal Investigation Department, headquartered at Eve Leary, Georgetown, Guyana. The Petitioner states that subsequent to Mr. Britton's re-arrest eye-witnesses claimed that Mr. Britton was last seen in the company of Mr. Leon Fraser, Superintendent of Police, head of the dreaded "Black Clothes" police, and being bundled into a silver gray car, license plate number PGG 3412. The Petitioner indicates that it is believed that Mr. Britton was taken and confined at Brickdam Police Station, Georgetown, Guyana.

3. The Petitioner reports that Mr. Britton has not been seen since his re-arrest on January 25, 1999, that Mr. Britton's whereabouts are unknown, and that the police has not given any explanation for his disappearance. The Petitioner maintains that Mr. Britton's relatives including his mother, Ms. Irma Wills, have stated that they visited both the Cove and John Police Station at East Coast Demerara, and the Brickdam police station where Mr. Britton was last seen, and that they have been stymied in their efforts by the State authorities in Guyana to ascertain Mr. Britton's whereabouts after his arrest, detention, and transportation to Brickdam Police Station, Georgetown, by Mr. Leon Fraser, Superintendent of Police.

4. For the foregoing reasons, the Petitioner claims that the State has violated the human rights of Mr. Britton guaranteed by the provisions of Articles II (the right to equality before the law), XI (the right to the preservation of health and well-being) XVIII, (the right to a fair trial), XXV (the right to protection from arbitrary arrest), and XXVI (the right to due process of law) of the Declaration. The Petitioner also requested Precautionary Measures pursuant to Article 29 of the Commission's Regulations on behalf of Mr. Britton.

5. On April 4, 2000, the Commission issued precautionary measures pursuant to Article 29 (2) of its former Regulations and requested that the State take the appropriate measures to protect Mr. Britton's life. The Commission also requested that the State provide it with information concerning Mr. Britton's health status, the reason for his arrest and detention, and the location of the detention facilities where he is being held.

6. The Commission concludes that this petition is admissible pursuant to Articles 31, 32, 33, 34, and 37 of its Rules of Procedure.

II. PROCEEDINGS BEFORE THE COMMISSION

7. In presenting the petition to Commission, the Petitioner submitted the following exhibits:

1. A copy of of two letters dated September 11, and September 15, 1999, written by Mr. Britton's mother Ms. Irma Wills requesting information concerning her son's (Mr. Britton) location addressed to Mr. Laurie Lewis D.S.M, Commissioner of Police, Eve Leary, Georgetown, and signed by Irma Willis. At the bottom of the page of the letter dated September 11, 1999, after Ms. Wills signature, there is an encription, "C.C. Mr. Ronald Gajraj - Minister of Home Affairs; Mr. H.D. Hoyte, S.C. M.P; Guyana Human Rights Association; and the Editor, Stabroek News."

2. A copy of An Application for a Writ of Habeas Courpus Ad Subjiciendum brought by Mr. Basil Williams, attorney, on behalf of Mr. Britton; and a copy of the the Honourable Justice Carl Singh's Order of the High Court of the Supreme Court of Judicature, Civil Division, dated February 2, 1999, ordering Mr. Laurie Lewis, the Commissioner of Police, to have the body of Franz Britton Wills brought before the Court at Law, in the City of Georgetown, in the County of Demerara, Guyana, immediately after the receipt of the Writ of Habeas Corpus.

3. A copy of an Affidavit dated February 11, 1999, signed by Leon Mark Fraser (sworn before A Commissioner of Oaths to Affidavits), which was filed with the Leave of the Court in the Application for the Writ of Habeas Courpus Ad Subjiciendum. The Affidavit inter alia states

that he released Colly Willis called Franz Britton Willis, from Brickdam police lock-ups on Wednesday January 27, 1999, and that he is not in police custody.

4. A statement of Paula Garraway, which outlines the details relating to Mr. Britton's first arrest on January 19, 1999, his release on January 23, 1999, after she posted Bail in the amount of \$25,000.00 for Mr. Britton, and the circumstances relating to his re-arrest on January 23, 1999, his disappearance and her efforts to obtain information concerning his location from Police authorities.

8. On April 4, 2000, the Commission issued precautionary measures pursuant to Article 29 (2) of its former Regulations and requested that the State take the appropriate measures to protect Mr. Britton's life. The Commission also requested that the State provide it with information concerning Mr. Britton's health status, the reason for his arrest and detention, and the location of the detention facilities where he is being held.

9. On April 5, 2000, the Commission opened this case and forwarded the pertinent parts of the petition to the State pursuant to Article 34 of its former Regulations, and requested that the State provide its observations with regard to the exhaustion of remedies and the claims raised in the petition, within 90 days. The Commission reiterated its request of April 4 and 5, 2000, for information from the State on August 24, 2000, and February 6, of 2001.

10. On August 23, 2001, the Commission sent communications to both the Petitioners and the State pursuant to Article 41(1) of the Commission's Rules of Procedure informing them that it was placing itself at the disposal of the parties with a view to reaching a friendly settlement in the case.

11. To date the State has not responded to the Commission's communications of April 4 and 5, 2000, August 24, 2000, and February 6, 2001, concerning the adoption of precautionary measures and admissibility of the petition and the claims raised therein.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of the Petitioner

12. The Petitioner claims that the State has violated the human rights of Mr. Britton guaranteed by the provisions of Articles II (the right to equality before the law), XI (the right to the preservation of health and well-being) XVIII, (the right to a fair trial), XXV (the right to protection from arbitrary arrest) , and XXVI (the right to due process of law) of the Declaration.

13. The Petitioner alleges that the following State agents are responsible for Mr. Britton's disappearance whilst in police custody:

1. Mr. Bharrat Jagdeo, President of Guyana, who appoints the Minister of Home Affairs;
2. Mr. Ronald Gajraj, Minister of Home Affairs, who supervises the Police Department in Guyana;
3. Mr. Laurie Lewis, Commissioner of Police in Guyana, who supervises the "Black Clothes" police unit which is responsible for most of the extra-judicial killings;

4. Superintendent Leon Fraser, head of the "Black Clothes" police unit, who is directly responsible for that death squad.

14. The Petitioner maintains that steps have been taken to obtain information from the authorities of Mr. Britton's location. Mr. Britton's mother, Ms. Irma Wills, has issued a statement outlining the frustration that she has encountered in her efforts to obtain information from the State Authorities concerning her son's disappearance. In addition, the Petitioner informs that Mr. Britton's mother wrote to the Commissioner of Police, Mr. Laurie Lewis D.S.M on March 11, 1999, and September 15, 1999, requesting an internal investigation of the disappearance of her son whilst in police custody, and also questioned the \$25,000 (Guyanese dollars) demanded by the police as "Bail" for her son who was not formally charged with an offence, and the fact that the \$25,000 was returned to her following her son's disappearance.[FN1]

[FN1] A copy of both letters dated September 11, and September 15, 1999, addressed to Mr. Laurie Lewis D.S.M, Commsissioner of Police, Eve Leary, Georgetown, and signed by Irma Willis, has been provided as an Exhibit to the Commission. At the bottom of the page of the letter dated September 11, 1999, after Ms. Wills signature, there is an encription, "C.C. Mr. Ronald Gajraj - Minister of Home Affairs; Mr. H.D. Hoyte, S.C. M.P; Guyana Human Rights Association; and the Editor, Stabroek News.

15. The Petitioner indicates that the Statement of Paula Garraway addressed "To Whom it May Concern" and which was presented in support of the petition informs that Ms. Garraway posted the \$25,000 Bail requested to release Mr. Britton on January 23, 1999, from the Cove and John Police Station, and that Mr. Britton was asked to report to the Cove and John Police Station, Demerara on January 25, 1999, which he did and was re-arrested. According to the Petitioner, Ms. Garraway states that she went to the Cove and John Police Station subsequent to his re-arrest with food for Mr. Britton, but was informed that he had been transported to Brickdam Police Station for questioning. Ms. Garraway states further, that she went to the Brickdam Police Station where he was detained and gave a policeman by the name of "Hope," tea, and a change of clothes for Mr. Britton, but when she returned with dinner for him that evening two policemen who were "sitting at the Lock Up doorway" informed her that Mr. Britton had been released and returned home.

16. In addition, Ms. Garraway reports that she returned home, and "a message came from Lock Up that "Abram" known as "Robo Cop" and Assistant Superintendent Fraser collected him out of the Lock Up sign in the book put him in a silver grey car PGG 3412." Ms. Garraway maintains in her Statement that "from that day I have never heard or seen him ("referring to Mr. Britton)." Moreover, in her Statement, Ms. Garraway contends that she saw "ASP (Assistant Superintendent of Police) Fraser face to face and he told me that my man will come home by weekend with a smile on his face he speak to me sitting on step." Ms. Garraway concludes her Statement by outlining the steps she has taken to ascertain the whereabouts of Mr. Britton from the Police and State authorities without success.

17. The Petitioner states that an Application was made on behalf of Mr. Britton to the High Court of the Supreme Court of Judicature, Civil Division in Guyana for A Writ of Habeas Corpus by his attorney Mr. Basil Williams. The Petitioner indicates that on February 2nd, 1999, the Honourable Mr. Carl Singh, High Court Judge, ordered Mr. Laurie Lewis, Commissioner of Police, to attend the Law Court on Monday February 8, 1999, and appear before Justice Singh to "Show Cause why a Writ of Habeas Corpus Ad Subjiciendum should not be issued" and to have "the body of Franz Britton Wills brought before the Court of Law immediately after the receipt of such Writ." [FN2] The Petitioner claims that to date Mr. Britton has not been seen since he was re-arrested and detained by the Police on January 23, 1999, and that Mr. Leon Fraser, head of the "Black Clothes" police unit, stated inter alia in an Affidavit [FN3] to the Court that he released Mr. Britton (Colly Willis) from Brickdam police station on January 27, 1999, and that he have not seen him since his release.

[FN2] A copy of the Court's Order was produced by the Petitioner as an Exhibit.

[FN3] The Petitioner also submitted as an Exhibit, a copy of an Affidavit dated February 11, 1999, signed by Leon Mark Fraser (was sworn before A Commissioner of Oaths to Affidavits), which was filed with the Leave of the Court in the Application for the Writ of Habeas Courpus Ad Subjiciendum.

B. Position of the State

18. To date the State has not responded to the Commission's communications of April 4 and 5, 2000, August 24, 2000, and February 6, 2001, concerning the admissibility of the petition and the claims raised therein.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence of the Commission

19. The admissibility of this petition is being analyzed in accordance with the provisions of the Commission's new Rules of Procedure which came into effect on May 1, 2001. [FN4]

[FN4] The Rules of Procedure of the Inter-American Commission on Human Rights were approved by the Commission at its 109th Special Session which was held from December 4 to December 8, 2000.

20. In his petition, the Petitioner alleged violations of Articles II, XI, XVIII, VII, XXV, and XVI and of the Declaration. Article 23 of the Commission's Rules of Procedure provides that:

[a]ny person or group of persons, or non-governmental entity legally recognized in one or more Member States of the OAS, may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case

may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol in the Area of Economic, Social and Cultural Rights, the Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The Petitioner may designate an attorney or other person to represent him before the Commission, either in the petition itself or in another writing.

21. The petition in this case was lodged by Mr. I Kamau Cush, a national of Guyana. The Declaration became the source of legal norms for application by the Commission[FN5] upon Guyana becoming a Member State of the Organization of American States in 1991.[FN6] In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,[FN7] and the Commission's Rules of Procedure to entertain the alleged violations of the Declaration raised by the Petitioner against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction *ratione temporis*, *ratione materiae*, and *ratione personae* to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the Petitioners' claims relating to violations of the Declaration.

[FN5] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[FN6] Guyana became a Party to the OAS's Charter on January 1, 1991.

[FN7] Article 20 of the Commission's Statute provides as follows:

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
- (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
- (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

B. OTHER GROUNDS OF ADMISSIBILITY

a. Exhaustion of Domestic Remedies

22. This case raises the issue of whether the State's silence by not responding to the Commission's communications constitutes a waiver to object to non-exhaustion of domestic remedies as established by the Commission's jurisprudence. The issue of exhaustion of domestic remedies is governed by Article 31 of the Commission's Rules of Procedure. Article 31(1) of the Commission's Rules of Procedure provides that: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the general principles of international law." Article 31(2) states that the preceding paragraph shall not apply when:

- a. The domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
- b. The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The State of Guyana is not a party to the American Convention, however, for purposes of analysis only, the Commission refers to the case of La Comunidad Mayagna (Sumo) Awastinguini in which the Inter-American Court of Human Rights in construing Article 46(1)(a) of the American Convention^[FN8] which provisions are similar to Article 31(1) and 31(2) of the Commission's Rules of Procedure stated the following waiver of domestic remedies rule:

[FN8] Guyana is not a party to the American Convention. Article 46 Article 46 (1) of the American Convention provides that: Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (a) that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international Law."

Article 46 (2) of the American Convention provides: The Provisions of the paragraphs 1(a) and 1(b) of this Article shall not be applicable when:

- (a) The domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
 - (b) The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
 - (c) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
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Indeed, of the generally recognized principles of international law referred to in the rule of exhaustion of domestic remedies, the foremost is that the State defendant may expressly or tacitly waive invocation of this rule (Castillo Páez case, Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Loayza Tamayo case, Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para.40). Secondly, in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceeding or, to the contrary, it will be presumed that the interested State has waived its use tacitly (Castillo Páez case, Preliminary Objections. Ibid, para. 40; Loayza Tamayo case,

Preliminary Objections. Ibid, para. 40; Castillo Petruzzi case, Preliminary Objections Judgment of September 4, 1998. Series C No. 41, para. 56). Thirdly, the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness(Castillo Páez case, Preliminary Objections. Ibid, para. 40; Loayza Tamayo case, Preliminary Objections. Ibid, para. 40; Cantoral Benavides case, Preliminary Objections. Judgment ofSeptember 3, 1998. Series C No. 40, para. 31; Durand and Ugarte case, Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33).[FN9]

[FN9] La Comunidad Mayagna (Sumo) Awas Tingni, Preliminary Objections, Judgment of February 1, 2000, page 12, para 53. Series C: Opinions and Judmennts, No. 67.

24. It is also important to note the Commission's jurisprudence concerning the issue of waiver of exhaustion of domestic remedies. The Commission's rulings on this issue are illustrated in some cases from the Caribbean, namely, the cases of Rudolph Baptiste, Report No. 38/00,[FN10] Omar Hall, Report No. 25/00,[FN11] and Brian Schroeter and Jeronimo Bowleg, Report No. 123/99. In those cases the Commission found that where the States were given the opportunity to respond to the issue of exhaustion of domestic remedies and failed to do so, that those States had tacitly waived their rights to object to the admissibility of those petitions based upon the waiver of exhaustion of domestic remedies rule.

[FN10] Case No 11.743, (Grenada), Annual Report of the Inter-American Commission on Human Rights, 1999, Volume I, pp. 721, and 737.

[FN11] Case No. 12.068, (The Bahamas), Id. Annual Report of the Inter-American, pp. 184, and 187.

25. The Commission notes that to date, the State has not provided the Commission with information concerning the issues relating to the admissibility and merits of the petition.

26. In light of the foregoing the Commission finds that in accordance with jurisprudence of the Inter-American System that the State tacitly waived its right to object to the admissibility of the petition based upon the waiver of exhaustion of domestic remedies rule.

27. The Commission concludes that this petition is admissible pursuant to Article 31 of the Commission's Rules of Procedure.

b. Timelines of the Petition

28. In the petition under study, the Commission has found that the State tacitly waived its right to object to the admissibility of the petition based upon the exhaustion of domestic remedies requirement, such that the requirement under Article 32(1) of the Commission's Rules of Procedure does not apply. Nevertheless, the requirements of the exhaustion of domestic remedies and the presentation of a petition within six months of notification of the final

judgment that exhausted remedies are independent. Consequently, the Commission must determine whether the petition under study was presented within a reasonable time. In this regard, the Commission observes that the petitioner's original communication was received on March 21, 2000, The Commission notes that the Petitioner maintains that an Application was made on behalf of Mr. Britton to the High Court of the Supreme Court of Judicature, Civil Division in Guyana for A Writ of Habeas Corpus by his attorney Mr. Basil Williams, on February 2nd, 1999. The Commission further observes that the Honourable Mr. Carl Singh, High Court Judge, ordered Mr. Laurie Lewis, Commissioner of Police, to attend the Law Court on Monday February 8, 1999, and appear before Justice Singh to "Show Cause why a Writ of Habeas Corpus Ad Subjiciendum should not be issued" and to have "the body of Franz Britton Wills brought before the Court of Law immediately after the receipt of such Writ." [FN12] However, the Commission observes that to date, Mr. Britton has not been seen since he was re-arrested and detained by the Police on January 23, 1999. In light of the particular circumstances of the present petition, the Commission considers that the petition was lodged within a reasonable time.

[FN12] A copy of the Court's Order was produced by the Petitioner as an Exhibit.

c. Duplication of Procedures

29. This petition satisfies the requirement of Article 33 of the Commission's Rules of Procedure because the information in the record does not reveal that the subject matter of the petition is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member; nor does it essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member, pursuant to Article 33 (1) and (2) of the Commission's Rules of Procedure.

d. Colorable claim

30. The Petitioner has alleged that the State has violated Mr. Britton's rights under Articles II, XI, XVIII, XXV and XXVI of the Declaration. Pursuant to Article 34 of the Commission's Rules of Procedure, the petition states facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure, [FN13] and the statements of the petitioner indicate that the petition is not manifestly groundless or out of order' or that the supervening information or evidence presented to the Commission does not reveal that the matter is inadmissible or out of order. Therefore, the Commission concludes, without prejudging the merits of the case, that the petition is not barred from consideration under Article 34 of its Rules of Procedure.

[FN13] Article 27 of the Commission's Rules of Procedure provides: "The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member

States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure."

31. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare this petition admissible pursuant to Articles 37 of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES TO:

1. Declare that the petition is admissible with respect to the claimed violations of Articles II, XI, VIII, XXV and XXVI of the American Declaration.
2. Maintain in effect the Precautionary Measures issued on April 4, 2000.
3. Transmit this Report to the State of Guyana and to the Petitioner.
4. To make public this Report and to publish it in its Annual Report to the General Assembly.

Done and signed in Washington, D.C., on the 10TH of the month of October, 2001. Signed: Chairman, Claudio Grossman, First Vice-President, Juan Méndez, Second Vice-President, Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo, Hélio Bicudo, Commissioners.