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Title/Style of Cause:	Winston Caesar v. Trinidad and Tobago
Doc. Type:	Decision
Decided by:	President: Dean Claudio Grossman; First Vice President: Dr. Juan Mendez; Second Vice-President: Lic. Marta Altolaguirre; Commissioners: Prof. Helio Bicudo, Prof. Robert K. Goldman, Dr. Peter Laurie, Dr. Julio Prado Vallejo.
Dated:	10 October 2001
Citation:	Caesar v. Trinidad and Tobago, Case 12.147, Inter-Am. C.H.R., Report No. 88/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANT: Lovell, White, Durrant (a firm of Solicitors in London).
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I. SUMMARY

1. On May 6, 1999, the Inter- American Commission on Human Rights (“the Commission”) received a petition from Lovell, White, Durrant, a firm of Solicitors in London, United Kingdom (“the Petitioners”) against the Government of Trinidad and Tobago (“Trinidad and Tobago” or “the State”). The petition was presented on behalf of Mr. Winston Caesar, who is incarcerated at Carrera Convict Prison, Port of Spain, Trinidad and Tobago. The petition states that on January 10, 1992, Mr. Caesar was convicted of attempted rape at the Port of Spain Assizes, Trinidad and Tobago. He was sentenced to life imprisonment and fifteen strokes of the cat o’ nine tails, with a recommendation that he serve at least 20 years including hard labour.

2. The petition alleged that the State is responsible for violations of Mr. Caesar’s rights under Articles 2, 5, 8 and 25 of the American Convention on Human Rights (the “American Convention” or the “Convention”). It stated in particular that the sentence of 15 strokes of the cat o’ nine tails to which the victim was subjected and the conditions of his incarceration both represent breaches of Article 5 of the Convention, that Mr. Caesar’s inadequate representation at trial and the delay in bringing him to trial and in determining his appeal are violations of Article 8 of the Convention, and that the lack of effective recourse to a court or tribunal for protection of Mr. Caesar’s right to be tried without undue delay represents a breach of Articles 2 and 25 of the Convention.

3. As of the date of this report, the Commission had not received a response from the State to Mr. Caesar’s petition.

4. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to admit the claims in the present petition pertaining to Articles 2, 5, 8 and 25 of the Convention and continue with the analysis of the merits of the case.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Following receipt of the Petitioner's petition, on May 13, 1999 the Commission transmitted the pertinent parts of the petition to the State. The Commission requested the State's observations on the petition within 90 days as established by the Commission's prior Regulations.[FN1] Also by note of the same date, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State and that they would be advised of any reply that the State might make.

[FN1] During its 109th special session in December 2000, the Commission approved the Rules of Procedure of the Inter-American Commission on Human Rights, which replaced the Commission's prior Regulations of April 8, 1980. Pursuant to Article 78 of the Commission's Rules of Procedure, the Rules entered into force on May 1, 2001.

6. In a communication dated November 22, 1999, the Petitioners submitted additional information regarding Mr. Caesar's conditions of detention. The Commission transmitted the pertinent parts of that communication to the State in a communication dated November 29, 1999, requesting that information relevant to the case be provided within 30 days.

7. By communication of December 6, 1999, the Government acknowledged receipt of the Commission's communication dated November 29, 1999. In a note dated July 11, 2000, the Commission reiterated to the State its previous request for information relevant to the case within 30 days of the Commission's communication. As of the date of the present report, the Commission has not received any information or observations from the State concerning Mr. Caesar's petition.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

8. In relation to the admissibility of their complaint, the Petitioners claim that Mr. Caesar has exhausted his domestic remedies in Trinidad and Tobago, as required under Article 46(1) of the Convention and Article 31(1) of the Commission's Rules of Procedure. The Petitioners state that Mr. Caesar applied for leave to appeal against his conviction and sentence to the Court of Appeal of Trinidad and Tobago and his application was refused on February 28, 1996. Counsel in the United Kingdom was then instructed on the merits of an appeal to the Judicial Committee of the Privy Council, who subsequently advised Mr. Caesar on November 9, 1998 that an appeal to the Privy Council was unlikely to succeed and that his case did not merit the provision by

Counsel of the certificate necessary to apply for Special Leave to Appeal to the Judicial Committee of the Privy Council as a Poor Person. The Petitioners argue that Mr. Caesar has now exhausted all effective domestic remedies available to him.

9. Furthermore, the Petitioners submit that due to lack of funding and the fact that legal aid is not available for Constitutional Motions in Trinidad and Tobago, Mr. Caesar is unable to pursue a Constitutional Motion before domestic courts for the protection of his fundamental rights. It is submitted that without expert legal representation in Trinidad, Mr. Caesar would not have a realistic prospect of success in such a motion due to the complex nature of the provisions of the Trinidadian constitution.

10. In respect of the timeliness of the petition, the Petitioners argue that Mr. Caesar received legal advice from Counsel and from his solicitors in the United Kingdom that his case did not merit the necessary Counsel's certificate to apply for Special Leave to Appeal to the Judicial Committee of the Privy Council as a Poor Person. He was informed of Counsel's opinion by a letter from his solicitors dated November 9, 1998. The Petitioners submit therefore that "final judgment" in this case should be considered to have been delivered to Mr. Caesar no earlier than November 9, 1998 and that, as his petition was lodged with the Commission on May 9, 1999, Mr. Caesar has complied with the time limit specified for lodging petitions in Article 46(1)(b) of the Convention and Article 32(1) of the Commission's Rules of Procedure.

11. Also in relation to the admissibility of their complaint, the Petitioners contend that the matters complained of in Mr. Caesar's petition have not previously been submitted for examination by any other procedure of international investigation or settlement.

12. With respect to the merits of their complaints against the State, the Petitioners claim the following:

a) The sentence of flogging with 15 strokes of the cat o'nine tails to which the victim was subjected on February 5, 1998 was a violation of Article 5(1) and 5(2) of the Convention. In support of this claim, the Petitioners rely in part on the case of *Tyrer v United Kingdom*[FN2] in which the European Court of Human Rights concluded that a sentence of three strokes of the "birch" passed on a 15 year old boy constituted "cruel, inhuman or degrading treatment."

[FN2] Eur. Court H.R., *Tyrer v. United Kingdom*, Judgment of 25 April 1978, Series A, No. 26.

b) The victim's conditions of detention amount to a breach of Articles 5(1), 5(2) and 5(6) of the Convention. In particular, the Petitioners claim that Mr. Caesar sleeps on a concrete floor in a cell of dimensions 8 feet x 6 feet with a ventilation shaft of 2 feet x 1 foot. His toiletry, food and clothing allowances are limited. Since his incarceration, Mr. Caesar has contracted tuberculosis and suffers from chronic hemorrhoids. The Petitioners also indicate that they are not aware of any attempts by the State to reform Mr. Caesar or to readapt him socially.

c) The delay of more than 8 years in bringing Mr. Caesar to trial and more than 2 years in determining his application for leave to appeal represents a breach of his right to a hearing within a reasonable time under Article 8(1) of the Convention.

d) The lack of an effective method available to the victim in Trinidad and Tobago to complain of the undue delay in bringing him to trial contravenes Articles 2 and 25(1) of the Convention.

B. Position of the State

13. As indicated above, by communication dated December 6, 1999 the State acknowledged receipt of the Commission's note of November 29, 1999. Apart from this communication, however, the Commission has not received any information or observations from the State respecting Mr. Caesar's petition.

IV. ANALYSIS

A. Competence of the Commission

14. The Republic of Trinidad and Tobago became a party to the American Convention on Human Rights when it deposited its instrument of ratification of that treaty on May 28, 1991.[FN3] Trinidad and Tobago subsequently denounced the American Convention by notice given one year in advance on May 26, 1998 in accordance with Article 78 of the American Convention on Human Rights, which provides as follows:

[FN3] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/I.4 rev.8 (22 May 2001), p. 48.

78(1) The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

(2) Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

15. By the plain terms of Article 78(2), states parties to the American Convention have agreed that a denunciation taken by any of them will not release the denouncing state from its obligations under the Convention with respect to acts taken by that state prior to the effective date of the denunciation that may constitute a violation of those obligations. A state party's obligations under the Convention encompass not only those provisions of the Convention relating to the substantive rights and freedoms guaranteed thereunder. They also encompass provisions relating to the supervisory mechanisms under the Convention, including those under Chapter VII of the Convention relating to the jurisdiction, functions and powers of the Inter-

American Commission on Human Rights.[FN4] Notwithstanding Trinidad and Tobago's denunciation of the Convention, therefore, the Commission will retain jurisdiction over complaints of violations of the Convention by Trinidad and Tobago in respect of acts taken by that State prior to May 26, 1999. Consistent with established jurisprudence,[FN5] this includes acts taken by the State prior to May 26, 1999, even if the effects of those acts continue or are not manifested until after that date.

[FN4] See similarly I/A Court H.R., *Baruch Ivcher Bronstein v. Peru*, Jurisdiction, Judgment (24 September 1999), para. 37 (noting that the obligations of States Parties to the American Convention on Human Rights to guarantee compliance with its provisions applies both to the substantive and procedural norms under the treaty).

[FN5] According to the jurisprudence of the Inter-American Court and Commission and that of other international human rights tribunals, human rights instruments may properly be applied in respect of acts that arose prior to the ratification of those instruments but which are continuing in nature and whose effects persist after the instruments' entry into force. See e.g. I/A Court H.R., *Blake Case*, Preliminary Objections, Judgment of July 2, 1996, Series C No. 27, paras. 33-34 and 46; IACHR, *João Canuto de Oliveira v. Brazil*, Report N° 24/98, Annual Report of the IACHR 1997, paras. 13-18. See similarly Eur. Court H.R., *Papamichalopoulos et al. v. Greece*, June 24, 1993, Series A N° 260-B, pp. 69-70, 46.

16. In respect of acts taken by the State wholly after May 26, 1999, the State remains bound by the American Declaration of the Rights and Duties of Man and the Commission's authority to supervise the State's compliance with that instrument, having deposited its instrument of ratification of the OAS Charter on March 17, 1967 and thereby becoming an OAS member state.[FN6]

[FN6] See Statute of the IACHR, Article 20 (providing in respect of those OAS member states that are not parties to the American Convention on Human Rights that the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights). See also 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*, July 14, 1989, Ser. A N° 10 (1989), paras. 35-45; I/A Comm. H.R., *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

17. In the present case, the Petitioners claim that the State has violated Mr. Caesar's rights under the American Convention. The claims in the petition relate to acts alleged to have been taken by the State prior to the effective date of its denunciation. The alleged victim of the alleged violations is a natural person, and his complaints relate to events alleged to have occurred

in the territory of Trinidad and Tobago. The Commission is therefore competent to examine the alleged violations of the American Convention on Human Rights presented in this petition.

B. Admissibility

1. Duplication of Procedures

18. According to the Petitioners, the matters complained of in this petition have not previously been submitted for examination by any other international organization. The State has not provided any observations on the issue of duplication of procedures. The Commission therefore finds that the petition is not inadmissible under Article 33(1) of its Rules of Procedure.

2. Exhaustion of Domestic Remedies

19. Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure specify that, in order for a case to be admitted, remedies under domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law.

20. Article 46(2) of the Convention and Article 31(2) of the Commission's Rules of Procedure provide, however, that the exhaustion of domestic remedies requirement shall not apply when 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, when 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 when there has been unwarranted delay in rendering a final judgment under domestic remedies. Moreover, the jurisprudence of the inter-American system makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Inter-American Court, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable.[FN7] In the face of such a waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might have properly been raised by a state relating to the exhaustion of domestic remedies.

[FN7] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

21. In the present case, the State has failed to provide any observations or information respecting the admissibility of Mr. Caesar's claims. Nevertheless, based upon the extensive submissions provided by the Petitioners, it is clear to the Commission that the State's legislation fails to afford due process for the protection of the rights alleged to have been violated in the Petitioners' petition or that Mr. Caesar has been hindered from exhausting such remedies. The record before the Commission indicates that Mr. Caesar was precluded from pursuing his

petition for Special Leave to Appeal to the Judicial Committee of the Privy Council by reason of the advice by Counsel that his case was unlikely to succeed and therefore did not merit the certificate necessary to seek leave to appeal. The State has not disputed these facts or otherwise demonstrated that remedies for the matters complained of in the Petitioners' petition are available in fact or in law or have not been exhausted.

22. Based upon these circumstances, the Commission finds that the State's legislation fails to afford due process for the protection of the rights alleged to have been violated in the Petitioners' petition or that Mr. Caesar has been hindered from exhausting such remedies. Accordingly, the Commission concludes that the exhaustion of domestic remedies requirement does not apply in the circumstances of this case, and therefore that the Petitioners' claims are not barred under Article 46(1)(a) of the Convention or Article 31(1) of its Rules of Procedure.

3. Timeliness

23. In accordance with Article 46(1)(b) of the Convention and Article 32(1) of the Commission's Rules of Procedure, the Commission shall consider those petitions that are lodged within a period of six months from the date on which the complaining party was notified of the final judgment at the domestic level. Article 46(2)(a) of the Convention and Article 32(2) of the Commission's Rules of Procedure provide, however, that in cases in which an exception to the exhaustion of domestic remedies applies, the petition shall be presented within a reasonable time, as determined by the Commission, considering the date on which the alleged violation of rights occurred and the circumstances of each case.

24. As noted above, the Commission has concluded that the Petitioners are exempted from the exhaustion of domestic remedies requirement in the circumstances of this case. As a consequence, the six-month period prescribed under the Convention and Rules is likewise inapplicable to the Petitioners' complaint.

25. Further, after considering the circumstances of Mr. Caesar's case, including in particular the fact that Mr. Caesar was not advised until November 9, 1998 of Counsel's opinion on the merits in his case of a petition for Special Leave to Appeal to the Judicial Committee of the Privy Council, the Commission considers that his petition was lodged with the Commission within a reasonable time in compliance with Article 32(2) of the Commission's Rules of Procedure. Accordingly, the Commission finds no bar to the admissibility of the petition under Article 46(1)(b) of the Convention and Article 32 of the Commission's Rules.

4. Colorable Claim

26. Articles 46(b) and 47(c) of the Convention and Articles 34(a) and (b) of the Commission's Rules of Procedure require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention or other applicable instruments, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

27. The Petitioners allege that the State is responsible for violations of Mr. Caesar's rights under Articles 2, 5, 8 and 25 of the Convention the particulars of which are summarized in Part III.A above. The State has failed to provide any observations or information on the violations alleged by Mr. Caesar.

28. Based upon the information provided by the Petitioners, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations, that, if proved, tend to establish violations of the rights guaranteed by the Convention, and that the statements of the Petitioners are not on the information provided manifestly groundless or obviously out of order. Consequently, the claims in the petition are not barred as inadmissible under Article 47(b) and 47(c) of the Convention and Article 34(a) and (b) of the Commission's Rules of Procedure.

V. CONCLUSIONS

29. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention and Articles 31 to 34 of the Commission's Rules of Procedure.

30. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare admissible the Petitioners' claims as to the alleged violations of Articles 2, 5, 8 and 25 of the Convention.
2. To give notice of this decision to the State and to the Petitioners.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., the 10th day of the month of October, 2001.
(Signed): Dean Claudio Grossman, President; Dr. Juan Méndez, First Vice-President; Lic. Marta Altolaguirre, Second Vice-President; Prof. Hélio Bicudo, Prof. Robert K. Goldman, Dr. Peter Laurie, and Dr. Julio Prado Vallejo, Commissioners.