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Title/Style of Cause: Alladin Mohammed v. Trinidad and Tobago
Doc. Type: Decision
Decided by: President: Juan E. Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts,
Susana Villaran.
Dated: 9 October 2002
Citation: Mohammed v. Trinidad and Tobago, Petition 12.401, Inter-Am. C.H.R.,
Report No. 50/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANT: the law firm of Oury Clark
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I. SUMMARY

1. On December 11, 2001, the Inter-American Commission on Human Rights (the “Commission”) received a petition from the London, United Kingdom law firm of Oury Clark (the “Petitioners”) against the Republic of Trinidad and Tobago (“Trinidad and Tobago” or “the State”) on behalf of Alladin Mohammed, a death row inmate in the Republic of Trinidad and Tobago.

2. The petition alleged that the State tried and convicted Mr. Mohammed and a co-Defendant, Ramchand Harripersad, under Trinidad and Tobago’s Offences Against the Person Act[FN1] for the July 1996 murder of Sheila Ramkissoon and sentenced both defendants to death by hanging on November 2, 1998. The petition also alleged that the State is responsible for violating Mr. Mohammed’s rights under Articles I, II, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man (the “American Declaration” or the “Declaration”) and Articles 4, 5, 7, 8 and 24 of the American Convention on Human Rights in connection with the criminal proceedings against him. These included allegations that the State imposed a mandatory death sentence upon Mr. Mohammed and improperly took a statement of confession from him. The Petitioners also alleged that the State failed to try Mr. Mohammed within a reasonable time, that he has suffered inhumane treatment by reason of his treatment while in detention and his conditions of detention, and that he was the victim of due process violations in connection with his legal representation and the conduct of his trial.

[FN1] Offences Against the Person Act, (3 April 1925), Laws of Trinidad and Tobago, Ch. 11:08. Section 4 of the Act prescribes the death penalty as the mandatory punishment for the crime of murder, providing that "[e]very person convicted of murder shall suffer death."

3. As of the date of this report, the Commission had not received any information or observations from the State regarding Mr. Mohammed's petition.

4. As set forth in this report, having examined the contentions of the Petitioners on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to admit the claims in the petition in respect of Articles 1, 2, 4, 5, 7, 8 and 24 of the American Convention and continue with the analysis of the merits of the case.

II. PROCEEDINGS BEFORE THE COMMISSION

A. Petitions and observations

5. Following receipt of Mr. Mohammed's petition, the Commission transmitted the pertinent parts of the petition to the State by note dated December 18, 2001. The Commission requested the State's observations on the petition within two months as established in the Commission's Rules of Procedure. By note of the same date, the Commission informed the Petitioners that their complaint had been transmitted to the State.

6. As of the date of this report, the Commission had not received any observations or information from the State concerning the claims in Mr. Mohammed's petition.

B. Precautionary measures

7. Contemporaneously with the transmission of the pertinent parts of Mr. Mohammed's petition to the State, the Commission requested that the State take precautionary measures pursuant to Article 25 of its Rules of Procedure to stay Mr. Mohammed's execution pending the Commission's investigation of the allegations in his complaint. The Commission did not receive a response from the State to its request for precautionary measures.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

1. Background to the complaints

8. According to the record in this complaint, Alladin Mohammed was arrested on July 10, 1996 for the July 1996 murder of Sheila Ramkissoon. He was tried together with his co-defendant Ramchand Harripersad between October 15, 1998 and November 2, 1998 before His Honor Justice Volney and a jury at the High Court in Port of Spain, Trinidad. Both defendants were convicted of murder on November 2, 1998 and sentenced to death by hanging. Mr. Mohammed appealed his conviction and sentence, and in a decision dated February 24, 2000, the

Trinidad and Tobago Court of Appeal dismissed his appeal. Mr. Mohammed then petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal as a Poor Person, which was dismissed on June 12, 2001.

9. The murder of Sheila Ramkissoon was alleged to have arisen during an outing by Mr. Mohammed, Mr. Harripersad and a third individual, Reyad Hussein, at a Bazaar on or about July 7, 1996. The three met Ms. Ramkissoon at the Bazaar, left the venue with her, and agreed to follow her through a tunnel along her route. On reaching the tunnel, Mr. Harripersad was alleged to have made advances to the deceased, which she rejected and then fled. She was pursued, knocked down, stabbed twice in the throat, and then carried further into the tunnel. During the joint trial of Mr. Mohammed and Mr. Harripersad, the prosecution relied on oral statements alleged to have been made by both defendants to the police upon their arrest, as well as written statements subsequently given by the defendants to the police, in which Mr. Mohammed and Mr. Harripersad confessed to the crime and at the same time blamed the other as the principal actor. Also according to the Petitioners, Reyad Hussein testified during the trial and gave an account of the incident that was damning to Ramchand Harripersad but substantially exculpatory of Mr. Mohammed.

10. In his defense, Mr. Harripersad, who gave evidence at trial, had first alleged that Mr. Mohammed was responsible for the murder, and subsequently alleged that he had an alibi and denied any involvement in Ms. Ramkissoon's death. Mr. Mohammed similarly testified at trial and blamed Mr. Harripersad for the murder.

2. Petitioners' position on competence

11. The Petitioners contend that the Commission is competent to consider the complaints of violations of the American Convention contained in their petition, on the basis that, although Trinidad and Tobago denounced the American Convention, effective in May 1999, Article 78(2) of the Convention provides that a denunciation shall not have the effect of releasing the state party concerned from the obligations contained in the Convention with respect to any act that may constitute a violation of these obligations and that has been taken by that state prior to the effective date of the denunciation. As Mr. Mohammed's arrest and trial pre-date the effective date of Trinidad's denunciation, the Petitioners contend that the Commission may consider and apply the Convention in respect of the claims relating to these events. To the extent that alleged violations are evidenced following the effective date of Trinidad's denunciation, the Petitioners indicate that they place reliance on the American Declaration of the Rights and Duties of Man.

3. Petitioners' position on admissibility

12. In relation to the admissibility of their claims, the Petitioners provided information indicating that Mr. Mohammed unsuccessfully appealed his conviction to the Trinidad and Tobago Court of Appeal, which dismissed his appeal on February 24, 2000. Mr. Mohammed then sought Special Leave to Appeal as a Poor Person from the Judicial Committee of the Privy Council, which dismissed his petition on June 12, 2001.

13. The Petitioners also indicate that Mr. Mohammed has not pursued a Constitutional Motion in the domestic courts of Trinidad and Tobago because he is indigent and because legal aid is, in practice, not available to indigent Petitioners seeking to challenge constitutional violations against their person.

14. In addition, the Petitioners claim that Mr. Mohammed's petition is not pending in another international proceeding, having regard to Article 46 of the American Convention.

4. Petitioners' position on the merits

15. Insofar as it is pertinent to evaluating the admissibility of the present petition, the Commission notes that the Petitioners have presented the following claims:

(a) the State is responsible for violating Mr. Mohammed's rights under Articles I, XVIII and XXVI of the American Declaration and Articles 4, 5 and 24 of the American Convention, relating to the mandatory nature of the death penalty that was imposed upon him. In particular, the Petitioners argue that by requiring the death penalty to be imposed on every person convicted of the crime of murder, Mr. Mohammed has been deprived of individualized sentencing based upon his personal circumstances and those of his crimes and subjects him to cruel treatment or punishment. The Petitioners also claim that, for this reason, the law in Trinidad and Tobago fails to reserve the death penalty for the most serious offenses;

(b) the State is responsible for violating Mr. Mohammed's rights under Article 8(3) of the Convention, because Mr. Mohammed was coerced into making oral and written statements of confession upon his arrest and during his detention in custody for more than two days without legal representation;

(c) the State is responsible for violating Mr. Mohammed's rights under Articles 7(5) and 8(1) of the American Convention, because of the 2 year and 3 month delay between his July 10, 1996 arrest and the start of his trial on October 15, 1998;

(d) the State is responsible for violations of Mr. Mohammed's rights under Article XXVI of the American Declaration and Article 5 of the American Convention, based upon his treatment in detention and his conditions of detention. These include allegations that for extended periods of time the alleged victim was subjected to crowded and unhygienic conditions in poor facilities, has been the subject of verbal abuse by prison guards, and has suffered from fever on a number of occasions as well as deteriorating eyesight;

(e) the State is responsible for violations of Mr. Mohammed's rights under Article XXVI of the American Declaration and Article 8 of the American Convention, relating to the failure of the trial judge to order separate trials for Mr. Mohammed and Mr. Harripersad, errors in the manner in which the trial judge summed up the law and evidence to the jury, and inadequacies in Mr. Mohammed's legal representation during his trial, including the non-attendance of counsel and the failure to call witnesses favorable to Mr. Mohammed.

B. Position of the State

16. As indicated above, the Commission transmitted the pertinent parts of Mr. Mohammed's petition on December 18, 2001 with a request that the State provide information relevant to Mr. Mohammed's complaint within two months. Despite this request, as of the date of this report, the

Commission had not received any information or observations from the State concerning the claims in Mr. Mohammed's petition.

IV. ANALYSIS

A. Competence of the Commission

17. 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.[FN2] 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:

[FN2] 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.

18. As concluded by the Commission on previous occasions,[FN3] States Parties to the American Convention have, by the plain terms of Article 78(2), agreed that a denunciation taken to the Convention 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 Convention's supervisory mechanisms, including those under Chapter VII 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.

[FN3] See e.g. Case 12.342, Report N° 89/01, *Balkissoon Roodal v. Trinidad and Tobago*, Annual Report of the IACHR 2001, para. 23.

[FN4] See similarly I/A Court H.R., *Baruch Ivcher Bronstein v. Peru*, Jurisdiction, Judgment of September 24, 1999, Ser. C No. 54, 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 system 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. 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. Moreover, in the case of a denunciation of the Convention, Article 78(2) explicitly provides the Convention with continuing application beyond the effective date of the denunciation in relation to potentially violative acts taken before that date.

19. 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] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, 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.

20. In the present case, the facts alleged, if true, indicate that a preponderance of the events complained of by Mr. Mohammed occurred wholly prior to May 26, 1999. Other events may have occurred prior to May 26, 1999 but continued or had their effects manifested after that date. None of the facts alleged appear to have occurred wholly after the effective date of Trinidad's denunciation. These circumstances indicate that the State remains fully bound by the Convention in respect of the claims contained in Mr. Mohammed's petition, relating to Articles 4, 5, 7, 8 and 24 of the American Convention.

B. Admissibility

1. Duplication

21. Article 46(1)(c) of the American Convention and Article 33(1) of the Commission's Rules of Procedure provide that the Commission shall not consider a petition if its subject matter is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member, or if it essentially duplicates 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.

22. The Petitioners have indicated that the claims raised in Mr. Mohammed's petition are not pending before another international proceeding having regard to Article 46 of the Convention. The State has not contested the issue of duplication. The Commission therefore finds no bar to consideration of Mr. Mohammed's complaint under Article 46(1)(c) of the American Convention or Article 33(1) of the Commission's Rules of Procedure.

2. Exhaustion of domestic remedies

23. 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 of the domestic legal system must have been pursued and exhausted in accordance with the generally accepted principles of international law. The jurisprudence of the inter-American system makes clear, however, 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 N° 25, para. 40.

24. In the present case, the State has failed to provide any observations or information respecting the admissibility of the alleged victims' claims. The Commission therefore finds that the State has implicitly or tacitly waived its right to object to the admissibility of the claims in the petition based upon the exhaustion of domestic remedies requirement. Accordingly, the Commission finds 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 of the petition

25 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.

26. In the instant case, the Commission has established that the Republic of Trinidad and Tobago waived its right to argue that domestic remedies were not exhausted, and so the requirement contained in Article 46(1)(a) of the American Convention and Article 31(1) of the Commission's Rules does not apply. However, the requirement that domestic remedies be exhausted is independent of the requirement that a petition be lodged within six months following the judgment exhausting domestic remedies. The Commission must therefore decide whether Mr. Mohammed's petition was timely filed. In this regard, the Commission notes that the Judicial Committee of the Privy Council dismissed Mr. Mohammed's petition for Special Leave to Appeal on June 12, 2001 and that Mr. Mohammed's petition was lodged with the Commission on December 1, 2001. The Commission therefore finds that Mr. Mohammed's petition was lodged in a timely manner.

4. Colorable claim

27. Article 47(b) of the Convention and Article 34(a) of the Commission's Rules of Procedure require a petition to be declared inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention or other applicable instruments. Article 47(d) of the Convention and Article 34(b) of the Commission's Rules of Procedure deem inadmissible any communication where the statements of the petitioner or the State indicate that the petition is manifestly groundless or out of order.

28. The Petitioners in the present complaint have alleged that the State has violated Mr. Mohammed's rights under Articles 4, 5, 7, 8 and 24 of the American Convention. Based upon the information provided by the Petitioners, as summarized in Part III of this report, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petitions contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by the American Convention, and that the statements of the Petitioners are not on the information provided manifestly groundless or out of order. Consequently the claims in the petition are not barred under Article 47(b) and 47(c) of the Convention and Article 34 (a) and (b) of the Commission's Rules of Procedure.

29. In addition, while they were not alleged by the Petitioners in their complaint, by virtue of the general principle of law *iura novit curia*,^[FN8] the Commission finds that the circumstances alleged in the petition also tend to establish violations of Articles 1 and 2 of the American Convention.

[FN8] See e.g. I/A Court H.R., Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Judgment of June 21, 2002, para. 107.

V. CONCLUSIONS

30. The Commission concludes that it has the competence to examine Mr. Mohammed's complaint, and that the claims in his petition are admissible in accordance with Articles 46 and 47 of the Convention and Articles 31 to 34 of the Commission's Rules of Procedure.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the claims of Mr. Mohammed in respect of Articles 1, 2, 4, 5, 7, 8, and 24 of the American 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 at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9th day of the month of October, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts and Susana Villarán, Commissioners.