

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Arnold Ramlogan 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: Ramlogan v. Trinidad and Tobago, Petition 12.355, Inter-Am. C.H.R., Report
No. 48/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANT: the law firm of Lovells
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I. SUMMARY

1. On January 12, 2001, the Inter-American Commission on Human Rights (the “Commission”) received a petition from the London, United Kingdom law firm of Lovells (the “Petitioners”) against the Republic of Trinidad and Tobago (“Trinidad and Tobago” or “the State”) on behalf of Arnold Ramlogan, a death row inmate in the Republic of Trinidad and Tobago.

2. The petition alleged that the State tried and convicted Mr. Ramlogan under Trinidad and Tobago’s Offences Against the Person Act[FN1] for the April 1, 1996 murder of Basdeo Baboolal and sentenced him to the mandatory death penalty by hanging on March 4, 1999. The petition also alleged that the State is responsible for violating Mr. Ram Logan’s rights under Articles I and XXVI of the American Declaration of the Rights and Duties of Man (the “American Declaration” or the “Declaration”) and Articles 4, 5, and 8 of the American Convention on Human Rights in connection with the criminal proceedings against him. These include allegations that Mr. Ramlogan was subjected to a mandatory death sentence, that he has been subjected to inhumane treatment and conditions while in detention, and that he was provided with inadequate legal representations during the course of his legal proceedings.

[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. Ram Logan'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 Mr. Ram Logan's petition in respect of Articles 1, 2, 4, 5 and 8 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. Ram Logan's petition, the Commission transmitted the pertinent parts of the petition to the State by note dated January 22, 2001. The Commission requested the State's observations on the petition within 90 days as established in the Commission's former Regulations.[FN2]

[FN2] 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. As of the date of this report, the Commission had not received response from the State to the Commission's request for information regarding Mr. Ram Logan's petition.

B. Precautionary Measures

7. Contemporaneously with the transmission of the pertinent parts of Mr. Ram Logan's petition to the State, the Commission requested the State to take precautionary measures pursuant to Article 29 of the Commission's former Regulations to stay Mr. Ram Logan's execution pending the Commission's investigation of the allegations in his complaint. This request was made on the basis that if the State executed Mr. Ramlogan before the Commission had an opportunity to examine his complaint, any eventual decision would be rendered moot in terms of available remedies and Mr. Ramlogan would suffer irreparable harm. The Commission did not receive a response from the State to its request for precautionary measures.

C. Provisional Measures

8. In light of the absence of any response from the State to the Commission's request for precautionary measures, by application dated October 18, 2001 the Commission requested pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court") that the Court amplify its

provisional measures in the James et al. Case to encompass Mr. Ramlogan and four other alleged victims with petitions before the Commission.

9. On October 25, 2001, the President of the Inter-American Court decided to order Trinidad and Tobago to take all necessary measures to preserve the life of Mr. Ramlogan so that the Court could examine during its LIII Regular Session the pertinence of the Commission's request. Subsequently, by Order dated November 21, 2001, the Inter-American Court during its LIII Regular Session decided to ratify the President's Order dated October 25, 2001 and to require Trinidad and Tobago to adopt all measures necessary to preserve the life and personal integrity of Mr. Ramlogan so as not to hinder the processing of his case before the Inter-American system for the protection of human rights.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

1. Background to the Complaints

10. According to the petition, Mr. Ramlogan was arrested and detained at Iere Village, Princes Town in the County of Victoria, Trinidad and Tobago on April 2, 1996, for the April 1, 1996 murder of Basdeo Baboolal. Mr. Ramlogan was committed for trial on April 9, 1996 and his trial commenced on January 5, 1999 before the Lord Justice Moosai and a jury in the Fifth Criminal Court, Port of Spain Assizes, in Port of Spain, Trinidad. For most of the trial, Mr. Ramlogan was represented by Mr. El Farouk Hosein. On March 4, 1999, the jury found Mr. Ramlogan guilty of the murder of Basdeo Baboolal and the judge sentenced him to the mandatory death penalty on the same date.

11. Mr. Ramlogan petitioned for leave to appeal against his conviction to the Court of Appeal of the Republic of Trinidad and Tobago, and the Court of Appeal dismissed his application for leave on February 4, 2000. Mr. Ramlogan subsequently petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal as a Poor Person from the judgment of the Court of Appeal, which dismissed his petition on November 15, 2000.

12. During Mr. Ram Logan's trial, the prosecution alleged that on April 1, 1996, Mr. Ramlogan was one of four persons in a car stopped by Police Constable Pittiman, who was on uniformed foot patrol with the deceased, Corporal Basdeo Baboolal. Upon searching the car on Mr. Baboolal's instruction, Constable Pittiman found a ski mask and what felt like a gun on Mr. Ramlogan. Mr. Ramlogan then pulled a gun, which led to a struggle between him and Constable Pittiman, in the course of which Corporal Baboolal was shot and later pronounced dead. Mr. Ramlogan was subsequently cautioned and questioned by the police at his residence, where Mr. Ramlogan made certain potentially incriminating statements. In addition, a gun and 11 rounds of ammunition were recovered from some bushes in a vacant lot next to Mr. Ram Logan's residence. Mr. Ramlogan later gave two written statements to the police, the first of which contained potentially incriminating statements and the second of which retracted what he had said in the first statement.

2. Petitioners' Position on Competence

13. With regard to the Commissions' competence to consider Mr. Ram Logan's complaint, the Petitioners indicated that they are aware that Trinidad and Tobago denounced the Convention with effect from May 29, 1999. They contend, however, that notwithstanding the denunciation, Article 78(2) of the Convention is applicable to Mr. Ram Logan's complaint as the alleged violations took place before the effective date of the denunciation. More specifically, the Petitioners note that according to Article 78(2), Trinidad and Tobago's denunciation does not have the effect of releasing it from its obligations with respect to acts occurring prior to the effective date of the denunciation which may constitute a violation of the Convention. The Petitioners therefore submit that Trinidad continues to be bound by the provisions of the Convention.

14. In the alternative, the Petitioners contend that Trinidad remains a party to the American Declaration of the Rights and Duties of Man pursuant to Article 51 of the Commission's Statute. Therefore, even in the event that it is not accepted that Trinidad is bound by the terms of the Convention, the Petitioners asked that the petition be considered with reference to the articles of the Declaration.

3. Petitioners' Position on Admissibility

15. In relation to the admissibility of their complaints, the Petitioners indicate that Mr. Ramlogan appealed his conviction to the Trinidad and Tobago Court of Appeal, which dismissed his appeal on February 4, 2000. He subsequently sought Special Leave to Appeal as a Poor Person to the Judicial Committee of the Privy Council, the highest appellate body in Trinidad and Tobago, which denied his petition on November 15, 2000. On this basis, the Petitioners contend that Mr. Ramlogan has exhausted all of remedies available to him under the laws of Trinidad and Tobago.

16. In addition, the Petitioners claim that the subject matter of Mr. Ram Logan's complaint has not been submitted for examination under any other procedure of international investigation or settlement.

4. Petitioners' Position on the Merits

17. 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 Articles 4(1), 5(1), 5(2) and 8(1) of the American Convention relating to the mandatory death penalty imposed upon Mr. Ramlogan. In particular, the Petitioners argue that the law in Trinidad and Tobago does not permit a hearing by a court as to whether the death penalty was a permissible or appropriate penalty for the alleged victim in light of such factors as Mr. Ram Logan's record and character and other mitigating factors. Rather, the sentence was based solely on the category of crime for which he was found guilty;

(b) the State is responsible for violating Article I of the American Declaration and Articles 5(1) and 5(2) of the American Convention, based upon Mr. Ram Logan's treatment while in

detention and his conditions of detention. Specifically, the petitioners allege that Mr. Ramlogan was the victim of violence on a number of occasions allegedly at the hands of police and prison officials, including at the time of his arrest on April 2, 1996. The Petitioners also allege that the conditions in which Mr. Ramlogan has been held since he was arrested have been unsanitary, unhygienic and in violation of minimum standards of humane treatment;

(c) the State is responsible for violating Article XXVI of the American Declaration and Article 8(2) of the American Convention, on the basis that Mr. Ramlogan was given insufficient opportunity to instruct the lawyers that had been appointed for him and that due to these circumstances he has been unable to prepare his defense. The Petitioners also allege in this connection that Mr. Ramlogan was not informed of his right to a lawyer when he was placed in custody following his arrest, was compelled to sign a statement, and had only 15 to 20 minutes to confer with his lawyer prior to his trial.

B. Position of the State

18. As indicated above, the Commission transmitted the pertinent parts of Mr. Ram Logan's petition on January 22, 2001, with a request that the State provide information relevant to the Petitioners' complaint within 90 days. Despite these requests, as of the date of this report, the Commission had not received any information or observations from the State concerning the claims in Mr. Ram Logan's petition.

IV. ANALYSIS

A. Competence of the Commission

19. 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.

20. As concluded by the Commission on previous occasions,[FN4] by the plain terms of Article 78(2), States Parties to the American Convention have agreed that a denunciation of that treaty 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 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.[FN5] 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,[FN6] 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 e.g. Case 12.342, Report N° 89/01, *Balkissoon Roodal v. Trinidad and Tobago*, Annual Report of the IACHR 2001, para. 23.

[FN5] See similarly I/A Court H.R., *Baruch Ivcher Bronstein v. Peru*, Jurisdiction, Judgment of September 24, 1999, Ser. C N° 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).

[FN6] 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.

21. 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.[FN7]

[FN7] 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.

22. In the present case, the facts alleged, if true, indicate that a preponderance of the events complained of by Mr. Ramlogan 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 therefore indicate that the State remains fully bound by the Convention in respect of the claims contained in Mr. Ram Logan's petition, relating to Articles 4, 5, and 8 of the American Convention.

C. Admissibility

1. Duplication

23. 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.

24. The Petitioners for Mr. Ramlogan have indicated that the claims raised in his complaint have not been submitted for examination by any other procedure of international investigation or settlement. The State has not contested the issue of duplication. The Commission therefore finds no bar to consideration of Mr. Ram Logan's claims 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

25. 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.[FN8] 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.

[FN8] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C N° 25, para. 40.

26. 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

27. 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.

28. 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. Ram Logan's petition was timely filed. In this regard, the Commission notes that the Judicial Committee of the Privy Council dismissed Mr. Ram Logan's petition for Special Leave to Appeal on November 15, 2000, and that Mr. Ram Logan's petition was lodged with the Commission on January 12, 2001. The Commission therefore finds that Mr. Ram Logan's petition was submitted in a timely manner.

4. Colorable Claim

29. 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.

30. The Petitioners in the present complaints have alleged that the State has violated Mr. Ram Logan's rights under Articles 4, 5, and 8 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' petition 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.

31. In addition, while they were not alleged by the Petitioners in their complaint, by virtue of the general principle of law *iura novit curia*,^[FN9] the Commission finds that the circumstances alleged in the petition also tend to establish violations of Articles 1 and 2 of the American Convention.

[FN9] 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

32. The Commission concludes that it has the competence to examine Mr. Ram Logan'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.

33. 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. Ramlogan in respect of Articles 1, 2, 4, 5, and 8 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 Vicepresident; José Zalaquett, Second Vicepresident; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts and Susana Villarán, Commissioners.