

**REPORT N° 37/99**  
CASE 12.052  
MARTIN REID  
TRINIDAD AND TOBAGO  
March 11, 1999

**I. SUMMARY**

1. By letter dated August 20, 1998, Mr. Glynn Barwick ("the petitioner") of the London firm Simmons & Simmons, presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad") on behalf of Mr. Martin Reid, presently under sentence of death and detained at the State Prison in Port of Spain. The complaint alleges that the following articles of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") were violated by the State of Trinidad and Tobago to the detriment of the petitioner: Articles 4, 5, 8, 24 and 25 of the American Convention. The Commission decides to admit the petition, to continue with the analysis of the merits of the matter and to place itself at the disposition of the parties in order to reach a friendly settlement based on the respect for human rights set forth in the Convention.

**II. PROCEEDINGS BEFORE THE COMMISSION**

2. By letter dated August 20, 1998, Mr. Glynn Barwick, of the London firm Simmons & Simmons, presented a petition to the Inter-American Commission on Human Rights against the Republic of Trinidad and Tobago, on behalf of Mr. Martin Reid, presently under sentence of death and imprisoned at the State Prison in Port of Spain. The petition stated that Mr. Reid was convicted of the offence of murder of Ms. Fabrina Alleyne on April 13, 1994, to which charge he pleaded not guilty. Mr. Reid was found guilty and sentenced to death on November 15, 1995.

3. The State of Trinidad and Tobago responded to the petition by Note POL: 6/16/2 Vol. 9 of October 16, 1998.

4. It should be pointed out that simultaneously with filing the complaint, the petitioner requested the Commission to issue precautionary measures, pursuant to article 29(2) of its Regulations, and to seek a stay of execution pending the determination of the complaint by the Commission. On September 23, 1998, the Commission requested the State to stay Mr. Reid's execution "until such time as the Commission has had the opportunity to consider this case and issue its decision." The Commission requested "an immediate consent to the above request."

5. The State of Trinidad and Tobago did not respond to this request for precautionary measures. The Commission regrets that the State party was not prepared to grant the precautionary measures requested under Article 29(2) of its Regulations, and to guarantee that the Petitioner would not be executed while his case was under examination. In fact, however, as of January 19, 1999, the petitioner has not been executed. The Commission observes that it is not for the State party, but for the Commission, to decide whether or not a complaint is admissible. The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

**III. POSITIONS OF THE PARTIES**

**A. Position of the petitioners**

6. The petitioners stated that Mr. Reid's appeal to the Court of Appeal of the Republic of Trinidad and Tobago was dismissed on November 27, 1996. The Judicial Committee of the Privy Council dismissed Mr. Reid's appeal against his conviction for murder and the death sentence on August 30, 1998.

7. The complaint alleges that the following articles of the American Convention were violated by the State of Trinidad and Tobago, to the detriment of the petitioner: articles 4, 5, 8, 24 and 25 of the American Convention on Human Rights. Specifically, the petitioner alleges serious violations as regards the right to a fair trial in a capital case. He alleges that since the prosecution's case was based on the eye witness testimony of one witness, that the failure of the prosecution to disclose the police statement of that witness to the defense made it impossible for the latter to impeach the witness for inconsistencies. In addition, the petitioner alleges that the imposition of the mandatory death sentence violates Articles 4, 5 and 24 of the Convention. The petitioner also alleges that his prison conditions violate international standards. He also alleges that he did not have a fair trial and the fact that he cannot have a hearing on the question of whether the death penalty should be either imposed or carried out.

## **B. Position of the State**

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

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

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

9. In the response to the petition, the State informed the Commission that the "Instructions Relating to Applications to the International Human Rights Bodies by or on Behalf of Persons under Sentence of Death published by the Government of Trinidad and Tobago on 4 June 1998, apply to the communication of Martin Reid. Case No. 12.052." In addition, the State pointed out that:

. . . in order for any recommendation by the Commission to be considered by the Minister of National Security when advising his Excellency the President of the exercise of the prerogative of pardon, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of this communication by 14 April 1999.

unlike in other legal systems where the prerogative of pardon is considered part of the domestic process, in Trinidad and Tobago the international instance is used to inform the domestic process.

## **IV. ANALYSIS**

### **A. Competence**

10. Trinidad and Tobago is a State party to the American Convention, having ratified the treaty on May 28, 1991. The petition alleges violations of human rights set forth in the Convention which the Commission is competent to review.

### **B. Requisites for the admissibility of the petition**

#### **a. Exhaustion of domestic remedies**

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

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

Accordingly, the Commission understands that the State expressly and irrevocably waives any challenge with respect to remedies invoked, or remedies that could potentially be invoked, by petitioner in domestic legal proceedings in connection with this case.

12. In this case, in regard to the exhaustion of domestic remedies, the Commission takes this opportunity to reiterate its doctrine of non consideration of constitutional motions as effective remedies which must be exhausted, since they neither comply with the requirements set forth in article 8 of the American Convention, nor with the jurisprudence of the Inter American Court.<sup>1</sup>

**b. Timely filing**

13. The petition was presented within six months of the final ruling of the appeal on conviction and sentence pursuant to Article 46(1)(b) of the Convention. The Judicial Committee of the Privy Council in London dismissed Mr. Reid's application for Leave to Appeal his conviction on August 30, 1998. The petition was dated August 20, 1998 and received on August 21, 1998.

**c. Duplication of procedures and *res judicata***

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

**d. Grounds for petition**

15. The Commission considers that the presentation by the petitioner refers to facts, which if proved, tend to establish a violation of the rights guaranteed by the Convention. Since the lack of grounds or the inappropriateness of the petition is not evident, the Commission considers the requisites of Article 47(b) and (c) of the Convention to be satisfied.

**V. CONCLUSIONS**

16. The Commission considers that it has the competence to consider this case and that the petition is admissible, having satisfied the requirements of Articles 46 and 47 of the American Convention.

On the basis of the arguments on the facts and on the law set forth above, and without prejudicing the merits of the matter in question,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
DECIDES:**

1. To declare the present case admissible.

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1 See I/A Court H.R., Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, at paras. 62, 64 and 88; see also I/A Court H.R., "Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and (2)(b) American Convention on Human Rights", Advisory Opinion, OC-11/90 of August 10, 1990 at para. 31; Report No. 90/98, Case No. 11.843, Kevin Mykoo (Jamaica) at para. 35; see also ("Accordingly, in prior cases . . . the Commission has found that the absence of legal aid to file a constitutional motion may render that recourse essentially unavailable to an indigent applicant.") Report No. 96/98, Case No. 11.827, Peter Blaine (Jamaica) at para. 60; and cf. ("With respect to the authors' possibility of filing a constitutional motion, the Committee considered that in the absence of legal aid, a constitutional motion did not constitute an available remedy in the case.") Comm. No. 445/1991, Champagnie et al. v. Jamaica (views of 18 July 1994), Report of the UNHRC (1994), GAOR, 49th Sess., Supp. No. 40 (A/49/40), Vol. II at p. 136, 139 para. 5.2

2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the question.
4. To place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention, and to invite the parties to express their views on this possibility.
5. To maintain in effect the precautionary measures issued by the Commission on September 23, 1998, or until the Commission issues a decision on the merits of the petition.
6. To make public this report and to publish it in its 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 eleven day of the month of March in the year 1999. (Signed) Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Carlos Ayala Corao, and Jean Joseph Exumé.