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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



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REPORT N° 39/03
PETITION P136/2002
ABU-ALI ABDUR' RAHMAN
UNITED STATES

Approved by the Commission on June 6, 2003

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I. SUMMARY

1. On February 28, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission") received a petition dated February 27, 2002 from the Office of the Post-Conviction Defender of the State of Tennessee (hereinafter the "Petitioners") against the Government of the United States of America (hereinafter the "State" or "United States"). The petition was presented on behalf of Mr. Abu-Ali Abdur' Rahman, formerly Mr. James Jones (hereinafter "Mr. Abdur' Rahman" or "Abdur' Rahman"), a citizen of the United States who is incarcerated on death row in the State of Tennessee. The petition indicates that Mr. Abdur' Rahman was convicted on July 13, 1987 of first-degree murder, assault with intent to commit first-degree murder with bodily injury, and armed robbery, that he was sentenced to death on July 15, 1987, and that his execution was scheduled to take place on April 10, 2002. Mr. Abdur' Rahman's execution was subsequently postponed owing to additional domestic proceedings pursued on his behalf, but has recently been rescheduled for June 18, 2003.

2. The petition alleges that the State is responsible for violations of Mr. Abdur' Rahman's rights under Articles I, XVII, XVIII, and XXVI of the American Declaration of Human Rights (hereinafter the "American Declaration" or the "Declaration"), based upon deficiencies in the fairness of the criminal proceedings against him as well as his competence to be executed in light of his mental condition. The Petitioners also claim that Mr. Abdur' Rahman has exhausted domestic remedies in respect of the allegations raised before the Commission and therefore that his petition is admissible.

3. As of the date of this report, the Commission has not received a response from the State to the petition.

4. As set forth in the present report, having examined the information available and the contentions on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the claims in the present petition relating to Articles I, XVII, XVIII, and XXVI of the American Declaration and to continue with the analysis of the merits of the case.

* Commission Member Prof. Robert Goldman did not take part in the discussion and voting on this case, in accordance with Article 17(2) of the Commission's Rules of Procedure.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Following the receipt of the Petitioners' petition, which was designated as Petition P136/2002, the Commission transmitted the pertinent parts of the complaint to the United States by means of a note dated March 7, 2002 with a request for observations within 60 days as established by the Commission's Rules of Procedure. By note of the same date, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State.

6. Also on March 7, 2002, the Commission granted precautionary measures in favor of Mr. Abdur' Rahman, whose execution was set for April 10, 2002. The Commission requested that the United States take the necessary measures to preserve Mr. Abdur' Rahman's life and physical integrity.

7. On March 13, 2002, the State, by means of a note addressed to the Commission, informed the Commission that it was coordinating with the State of Tennessee and the Office of the Legal Advisor in the United States Department of State to formulate a response to the Commission's request for precautionary measures for Mr. Abdur' Rahman. The Commission acknowledged receipt on March 15, 2002.

8. By means of a letter dated April 2, 2002, the Petitioners informed the Commission that the Tennessee Board of Probation and Parole had unanimously voted against recommending clemency for Mr. Abdur' Rahman. Subsequently, in a note dated April 5, 2002, the Commission informed the State of the additional information provided by the Petitioners and reiterated its March 7, 2002 request for precautionary measures that the State refrain from executing Mr. Abdur' Rahman pending the Commission's investigation of the allegations in his petition.

9. In a communication dated April 9, 2002, the Petitioners informed the Commission that the Governor of Tennessee had denied clemency for Mr. Abdur' Rahman. The Petitioners also advised the Commission that the United States Supreme Court had granted Mr. Abdur' Rahman a stay of execution pending a determination by the Court as to whether it would hear a petition for a writ of certiorari filed on Mr. Abdur' Rahman's behalf, which raised procedural issues concerning the U.S. Anti-Terrorism and Effective Death Penalty Act and the exhaustion of state remedies. By note of the same date, the State informed the Commission that the Commission's April 5, 2002 request for precautionary measures had been transmitted to the State of Tennessee, and that efforts had been undertaken to coordinate a response to Mr. Abdur' Rahman's petition.

10. By letter dated May 2, 2002, the Petitioners informed the Commission that the United States Supreme Court had agreed to hear Mr. Abdur' Rahman's petition for a writ of certiorari and that the case would likely be scheduled in the fall of 2002.

11. The Petitioners, in a communication dated December 11, 2002, informed the Commission that the United States Supreme Court had dismissed its grant of Mr. Abdur' Rahman's petition for a writ of certiorari on December 10, 2002, and that the State of Tennessee had subsequently asked the Tennessee Supreme Court to set an execution date. The Petitioners also indicated that an execution date could be scheduled for as early as seven days from the date of the Petitioners' communication. Accordingly,

the Petitioners asked that the Commission reinstate its March 2002 request for precautionary measures in Mr. Abdur' Rahman's case.

12. By note dated December 13, 2002, the Commission reiterated its March 7, 2002 request that the State take the measures necessary to preserve Mr. Abdur' Rahman's life and physical integrity until the Commission had an opportunity to consider his complaint. In a note of the same date, the Commission informed the Petitioners of its request.

13. In a letter dated March 10, 2003, the Petitioners informed the Commission that on March 6, 2003, the Tennessee Supreme Court set a June 18, 2003 execution date for Mr. Abdur' Rahman. Subsequently, by note dated March 18, 2003, the Commission informed the State of the information provided by the Petitioners and reiterated its March 7, 2002 request that the State take the measures necessary to preserve Mr. Abdur' Rahman's life and physical integrity until the Commission had an opportunity to consider his complaint. In the same communication, the Commission renewed its request for information from the State concerning Mr. Abdur' Rahman's petition. As of the date of the present report, the Commission has not received a response from the State.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

14. According to the petition, Abu-Ali Abdur' Rahman is a citizen of the United States who is incarcerated on death row in the State of Tennessee. The petition indicates that Mr. Abdur' Rahman was convicted on July 13, 1987 of first-degree murder, assault with intent to commit first-degree murder with bodily injury, and armed robbery, that he was sentenced to death on July 15, 1987.

15. With regard to the admissibility of the petition, the Petitioners argue that Mr. Abdur' Rahman has exhausted available domestic remedies within the United States. In support of this allegation, the Petitioners provided information and documentation concerning the various legal proceedings pursued by Mr. Abdur' Rahman before the U.S. domestic courts.

16. In particular, the Petitioners' information indicates that Mr. Abdur' Rahman pursued a direct appeal from his conviction and sentence up to and including the U.S. Supreme Court.¹ The information also indicates that Mr. Abdur' Rahman pursued post-conviction proceedings before U.S. federal courts² and participated in clemency proceedings before the Tennessee Board of Probation and Parole and the Governor of Tennessee.³ In the course of these proceedings, Mr. Abdur' Rahman raised

¹ See *State of Tennessee v. James Lee Jones*, 789 S.W. 2d 545 (Supreme Court of Tennessee, 1990); cert. denied 498 U.S. 908 (1990). In addition, on January 15, 2002, the Tennessee Supreme Court dismissed as not ripe for litigation an further appeal brought by Mr. Abdur' Rahman's challenging his competence to be executed on the ground that he was mentally ill.

² For state post-conviction proceedings, see *James Lee Jones, Jr. v. State of Tennessee*, 1995 W.L. 75427 (Tenn. Crim App.) (dismissing appeal from trial court's dismissal of a petition for post-conviction relief); cert. denied 516 U.S. 1122. For federal post-conviction proceedings, see *Abu Ali Abdur' Rahman v. Ricky Bell*, 999 F. Supp. 1073 (U.S. Dist. Ct.); *Abu Ali Abdur' Rahman v. Ricky Bell*, 226 F.3d 696 (6th Cir); cert. dismissed 122 S. Ct. 386; request for rehearing dismissed 122 S. Ct. 386.

numerous procedural and substantive allegations relating to the criminal proceedings against him, including complaints that his jury process was unfair, that he did not receive effective assistance from his trial counsel, that the prosecutor had engaged in numerous incidents of misconduct, and that he was not competent to be executed by reason of his mental condition.

17. With respect to the merits of the complaint, the information provided by the Petitioners indicates that Mr. Abdur' Rahman was convicted and sentenced to death in 1987 in relation to the murder of a drug dealer, Patrick Daniels. The Petitioners claim that during the course of his trial, Mr. Abdur' Rahman's ability to enjoy a fair and just determination of his guilt was denied when the prosecutor made false representations and withheld exculpatory evidence, including the results of lab tests indicating that the coat worn by Mr. Abdur' Rahman did not contain any blood despite the fact that the crime scene was spattered with blood. The Petitioners also contend that Mr. Abdur' Rahman's trial counsel failed to present information on his background, which included information as to extreme physical, sexual and emotional abuse suffered by Mr. Abdur' Rahman during most of his life. In addition, the Petitioners allege that Mr. Abdur' Rahman suffers from mental illness, including borderline personality disorder and Post-Traumatic Stress Disorder, but that evidence concerning his condition was not gathered, presented or considered during his trial. According to the Petitioners, the evidence concerning Mr. Abdur' Rahman's background and mental condition was essential to the jury's determination of guilt and sentence, and, in its absence, he was denied a fair trial.

18. In support of the allegations on the merits of Mr. Abdur' Rahman's complaint, the Petitioners provided documentation and other information, which included excerpts of testimony from Mr. Abdur' Rahman's trial, a Tennessee Bureau of Investigation crime lab report concerning the absence of blood stains on Mr. Abdur' Rahman's clothing, summaries of alleged instances of previous misconduct on the part of Mr. Abdur' Rahman's prosecuting and defense attorneys, and accounts of physical, sexual and emotional abuse suffered by Mr. Abdur' Rahman during his childhood and adolescence and associated mental illness.⁴

19. Based upon the aforementioned allegations, the Petitioners contend that the State is responsible for violating Mr. Abdur' Rahman's right to life, liberty, and personal security under Article I of the Declaration, his right to recognition of his juridical personality and civil rights under Article XVII of the American Declaration, his right to his right to a fair hearing under Article XVIII of the American Declaration, and his right to due process of law under Article XXVI of the American Declaration.

B. Position of the State

20. As indicated above, the Commission transmitted the pertinent parts of the Petitioners' petition to the State on March 7, 2002 with a request that the State provide information relevant to the Petitioners' complaints within 60 days. Despite this request and the Commission's subsequent communications concerning the precautionary measures adopted in favor of Mr. Abdur' Rahman, including its March 19, 2003 renewed

³ See Letter from the Petitioners dated April 2, 2002, informing the Commission that the Tennessee Board of Probation and Parole had voted 6-0 against recommending that the Governor of Tennessee grant Mr. Abdur' Rahman clemency; Letter from the Petitioners dated April 9, 2002, informing the Commission that the Governor of Tennessee had denied clemency to Mr. Abdur' Rahman.

⁴ See Appendices A to T accompanying the February 27, 2002 petition of Abu-Ali Abdur' Rahman

request for a response to the Petitioners' petition, the Commission has not received any information or observations from the State concerning the admissibility or merits of the allegations contained in Mr. Abdur' Rahman's complaint.

III. ADMISSIBILITY

21. The Commission has considered the admissibility of the present complaint pursuant to Articles 30 and 34 of its Rules of Procedure and makes the following determinations.

A. Competence of the Commission *ratione personae, ratione materiae, ratione temporis and ratione loci*

22. The Commission is competent to examine the petition in question. Under Article 23 of the Rules of Procedure of the Commission, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. The alleged victim, Mr. Abdur' Rahman, is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure. The United States has been subject to the jurisdiction of the Commission since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter.

23. Inasmuch as the Petitioners have filed complaints alleging violation of Articles II, XVII, XVIII and XXVI of the American Declaration, the Commission is competent *ratione materiae* to examine the petition.

24. The Commission is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred on and after February 19, 1986, the date on which Mr. Abdur' Rahman was detained for the murder of Patrick Daniels. The facts alleged therefore occurred subsequent to the date on which the United States' obligations under the American Declaration took effect.

25. Finally, the Commission is competent *ratione loci*, given that the petition indicates that Mr. Abdur' Rahman was under the jurisdiction of the United States at the time the alleged events occurred, which reportedly took place within the territory of that State.

B. Duplication

26. No information appears on the record indicating that Mr. Abdur' Rahman's complaint has been previously submitted to the Commission or any other intergovernmental organization of which the United States is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioners' claims under Article 33 of the Commission's Rules of Procedure.

C. Exhaustion of Domestic Remedies

27. Article 31(1) of the Commission's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized 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.⁵ 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.

28. In the present case, the State has failed to provide any observations or information respecting the admissibility of Mr. Abdur' Rahman's claims, and has thereby 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. Moreover, the information provided by the Petitioners verifies that Mr. Abdur' Rahman has pursued both appeal and post-conviction review proceedings before the domestic courts in the United States concerning the complaints raised before the Commission, with the U.S. Supreme Court dismissing Mr. Abdur' Rahman's last petition for a writ of certiorari on December 10, 2002. In these circumstances, the Commission finds that Mr. Abdur' Rahman's claims are not barred from consideration under Article 31(1) of its Rules of Procedure.

D. Timeliness of the Petition

29. In the petition under consideration, the Commission has concluded that the United States tacitly renounced its right to assert an objection of failure to exhaust domestic remedies, as a result of which the requirement of Article 32(1) of the Commission's Rules of Procedure is not applicable. However, the provisions of the Rules of Procedure requiring the prior exhaustion of domestic remedies and the lodging of the petition within a period of six months from the date of final judgment of the domestic court are independent. The Inter-American Commission must therefore determine whether the petition under review was presented within a reasonable period. In that connection, the Commission observes that the original petition was received on February 28, 2002 and the last decision of the domestic courts was handed down on December 10, 2002. The Commission therefore considers that the petition was lodged within a reasonable period of time.

⁵ I/A Court H.R., *Loayza Tamayo Case*, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

E. Colorable Claim

30. Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments." The petitioners allege that the State has violated Articles I, XVII, XVIII, and XXVI of the Declaration.

31. The Commission has outlined in Part III of this Report the substantive allegations of the Petitioners, as well as information submitted by the Petitioners in support of those allegations. After carefully reviewing the information and arguments provided by the Petitioners in light of the heightened scrutiny test applied by the Commission in capital punishment cases,⁶ and without prejudging the merits of the matter, the Commission considers that the petition states facts that tend to establish violations of Articles I, XVII, XVIII, and XXVI of the Declaration and is not manifestly groundless or out of order. Accordingly, the Commission concludes that the Petitioners' petition should not be declared inadmissible under Article 34 of the Commission's Rules of Procedure.

F. Precautionary Measures

32. According to the information presently available, Mr. Abdur' Rahman's execution is scheduled to take place on June 18, 2003. In this connection, the Commission recalls its jurisprudence concerning the legal effect of its precautionary measures in the context of capital punishment cases. As the Commission has previously observed, its ability to effectively investigate and determine capital cases has frequently been undermined when states have scheduled and proceeded with the execution of condemned persons, despite the fact that those individuals have proceedings pending before the Commission.

33. In an effort to avoid this dilemma, it has been the Commission's practice to request precautionary measures from states in capital cases to preserve a condemned prisoner's life and physical integrity until the Commission has had an opportunity to investigate his or her claims. The Commission has expressed the view in this regard that OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate. As the Commission has emphasized on numerous occasions, it is beyond question that the failure of an OAS member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals. For these reasons, the Commission has determined that a member state disregards its fundamental human rights obligations under the OAS

⁶ According to the Commission's established jurisprudence, it will review and decide capital punishment cases with a heightened level of scrutiny, to ensure that any deprivation of life that an OAS member state proposes to effect through the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments. See Report No. 57/96 (*Andrews v. United States*), Annual Report of the IACHR 1997, paras. 170-171; Report No. 38/00 (*Baptiste v. Grenada*), Annual Report of the IACHR 1999, paras. 64-66; Report No. 41/00 (*McKenzie et al. v. Jamaica*), Annual Report of the IACHR 1999, paras. 169-171.

Charter and related instruments when it fails to implement precautionary measures issued by the Commission in these circumstances.⁷

34. In light of these fundamental principles, and given that the Commission has determined the claims raised by Mr. Abdur' Rahman to be admissible in accordance with its Rules of Procedure, the Commission hereby reiterates its request of March 7, 2002 pursuant to Rule 25 of its Rules of Procedure that the United States take the necessary measures to preserve Mr. Abdur' Rahman's life and physical integrity pending the Commission's determination of the merits of his petition.

V. CONCLUSIONS

35. The Commission concludes that it has the competence to examine the Petitioners' allegations, and that the petition is admissible in accordance with the Commission's Rules of Procedure.

36. 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 TO:

1. Declare the present case admissible, in respect of Articles I, XVII, XVIII, and XXVI of the American Declaration.
2. Transmit this report to the parties.
3. Continue with the analysis of the merits of the case.
4. Reiterate its request pursuant to Rule 25 of the Commission's Rules of Procedure that the United States take the necessary measures to preserve Mr. Abdur' Rahman's life and physical integrity pending the Commission's determination of the merits of his petition
5. Publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done on the sixth day of the month of June, 2003: Marta Altolaguirre, President; José Zalaquett, First Vice-President; Clare Roberts, Second Vice-President; Juan E. Méndez, Julio Prado Vallejo, and Susana Villarán, Commissioners.

⁷ See Case 12.243, Report N° 52/01, *Juan Raul Garza v. United States*, Annual Report of the IACHR 2000, para. 117; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/III.111 doc.21 rev. (6 April 2001), paras. 71, 72. See *similarly* I/A Court H.R., Provisional measures adopted in the *James et al.* Case, Order of August 29, 1998, Series E; International Court of Justice, *Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America)*, Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, N° 104, paras. 22-28; United Nations Human Rights Committee, *Dante Piandiong and others v. The Philippines*, Communication N° 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4; Eur. Court H.R., *Affaire Mamatkulov et Abdurasulovic c. Turkey*, Reqs. Nos. 46827/99, 46951/99 (6 February 2003), paras. 104-107.

The undersigned, Ariel Dulitzky, as Principal Specialist in charge of the Executive Secretariat of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the Secretariat of the Commission.

Ariel Dulitzky
In charge of the Executive Secretariat