

Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago

ABSTRACT¹

This case concerns six issues consisting of: the mandatory death penalty; the process for granting amnesty, pardon, or commutation of sentence; delays in criminal proceedings; deficiencies in treatment and condition of detentions; due process violations; and denial of access to legal aid, all in connection with the criminal proceedings resulting from the victims' murder convictions in Trinidad and Tobago. Due to the similarities in the cases, the Inter-American Court of Human Rights ordered the joinder of the Hilaire, Constantine et al., and Benjamin et al. cases. This case is of particular interest because Trinidad and Tobago did not appear before or respond to the Court after it was notified of the Court's decision. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

1. Events pertaining to Mr. Haniff Hilaire

A. Chronology of Events

Sometime before February 1991: Mr. Alexander Jordan is the common-law husband of Mrs. Indravani Ramjattan, and he allegedly subjects his wife to spousal abuse.² Due in part to the abusive nature of the marriage, Mrs. Ramjattan develops a relationship with another man, Mr. Denny Baptiste, and she becomes pregnant with his child.³ Upon discovery of this fact, Mr. Jordan further abuses Mrs. Ramjattan, causing her to flee her house with their two children and move to Mr. Baptiste's home.⁴

1. Shauna Bendinelli, Author; Kathryn Benson, Melissa Kurata, Justine Schneeweis, Editors; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Hilaire v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶ 2(b) (Sept. 1, 2001).

3. *Id.* ¶ 2(c).

4. *Id.*

Mr. Haniff Hilaire is living with Mr. Baptiste during this time.⁵ Mr. Jordan learns of his wife's whereabouts, breaks into Mr. Baptiste's home, and takes her back to his house, where he holds her as a virtual hostage.⁶ Mrs. Ramjattan successfully sends a message to Mr. Hilaire, imploring him to rescue her, at which point he and Mr. Baptiste form the intent to beat Mr. Jordan.⁷

Between February 12 and 13, 1991: Mr. Hilaire and Mr. Baptiste go to Mr. Jordan's house and beat him, inadvertently causing his death.⁸

February 13, 1991: The First Criminal Court of Port of Spain (Assizes), Trinidad and Tobago, tries Mr. Hilaire along with Mrs. Ramjattan and Mr. Baptiste for the murder of Mr. Jordan.⁹

May 29, 1995: Mr. Hilaire is convicted and sentenced to the mandatory death penalty for murder.¹⁰ He applies for leave to appeal his conviction to the Court of Appeal of the State.¹¹

November 7, 1996: The Court of Appeal of the State dismisses Mr. Hilaire's appeal.¹²

B. Other Relevant Facts

The record discloses no evidence that Mr. Hilaire had a prior criminal record or a tendency to reoffend.¹³

Mr. Baptiste was convicted and sentenced to the mandatory death penalty for murder.¹⁴ He was included as one of the twenty-four victims in the matter of *Constantine, et al.*¹⁵

Mrs. Ramjattan was convicted and sentenced to the mandatory death penalty for murder.¹⁶ Her case quickly gained widespread international attention, and in September of 1998, the Special Rapporteur on

5. *Id.*

6. *Id.* ¶ 2(d).

7. *Id.*

8. *Id.*

9. *Id.* ¶ 2(a).

10. *Id.*

11. *Id.* ¶ 2(g).

12. *Id.*

13. *Id.* ¶ 2(e).

14. *Id.* ¶ 2.

15. *Id.*

16. *Ramjattan v. Trinidad and Tobago*, Admissibility Report, Report No. 92/98, Inter-Am. Comm'n H.R., Case 11.837, ¶ 1 (Nov. 3, 1998).

Extrajudicial, Summary or Arbitrary Executions for the United Nations issued an urgent appeal to the State not to execute Mrs. Ramjattan.¹⁷ The Special Rapporteur expressed concern that the abuse and extreme violence suffered by Mrs. Ramajattan, including beatings, threats to shoot her, and repeated rapes, were not considered by the investigating authorities or the courts to constitute mitigating circumstances.¹⁸ In early 1995, the Judicial Committee of the Privy Council (the “Judicial Committee”) in London ordered the State to reopen the case based on “new evidence” that she suffered from battered-woman syndrome at the time of the murder.¹⁹ In October 1999, the Trinidad Court of Appeal overturned Mrs. Ramjattan’s murder conviction, finding her instead guilty of manslaughter, and she was released in February 2003.²⁰

2. Events Pertaining to Mr. George Constantine et al.

A. Chronology of Events

November 16, 1988: Mr. Wayne Matthews is convicted and sentenced to the mandatory death penalty by hanging for the murder of Norris Yorke.²¹

March 16, 1989: Mr. Clarence Charles is convicted and sentenced to mandatory death penalty by hanging for the murder of Roger Charles.²²

December 10, 1990: Mr. Mervyn Edmund is convicted and sentenced to the mandatory death penalty by hanging for the murder of Minerva Sampson.²³

July 27, 1994: Mr. Keiron Thomas is convicted and sentenced to the mandatory death penalty by hanging for the murder of Wayne Gerry Williams.²⁴

17. Press Release, Special Rapporteur on Executions Appeals, Special Rapporteur on Executions Appeals to Trinidad and Tobago Not to Execute Woman Convicted of Killing Man Who Abused Her, UN Press Release HR/98/70 (Sept. 30, 1998).

18. *Id.*

19. M. Fineman, *Trinidad to Rehear Case of Battered Wife*, L.A. TIMES (Feb. 5, 1999), <http://articles.latimes.com/1999/feb/05/news/mn-5116>.

20. *How Death Row Mother’s Ordeal Came to an End- Eventually*, TRINIDAD AND TOBAGO NEWSDAY (Nov. 30, 2003), <http://www.newspaper.co.tt/news/0,12320.html>.

21. *Constantine et al. v. Trinidad and Tobago*, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 82, ¶ 2(o) (Sept. 1, 2001).

22. *Id.* ¶ 2(d).

23. *Id.* ¶ 2(i).

24. *Id.* ¶ 2(e).

February 17, 1995: Mr. George Constantine is convicted and sentenced to the mandatory death penalty by hanging for the murder of Elsa Constantine.²⁵

May 26, 1995: Mr. Gangadeen Tahaloo is convicted and sentenced to the mandatory death penalty by hanging for the murder of Janetta Peters.²⁶

May 29, 1995: Mr. Denny Baptiste is convicted and sentenced to the mandatory death penalty by hanging for the murder of Alexander Jordan.²⁷

November 9, 1995: Mrs. Natasha De Leon is convicted and sentenced to the mandatory death penalty by hanging for the murder of Chandranath Maharaj.²⁸

November 9, 1995: Mr. Darrin Roger Thomas is convicted and sentenced to the mandatory death penalty by hanging for the murder of Chandranath Maharaj.²⁹

November 15, 1995: Mr. Martin Reid is convicted and sentenced to the mandatory death penalty by hanging for the murder of Fabrina Alleyne.³⁰

January 22, 1996: Mr. Wilberforce Bernard is convicted and sentenced to the mandatory death penalty by hanging for the murder of Ramnarine Saroop.³¹

June 21, 1996: Mr. Wenceslaus James is convicted and sentenced to the mandatory death penalty by hanging for the murder of Siewdath Ramkissoon.³²

October 30, 1996: Mr. Anthony Garcia is convicted and sentenced to the mandatory death penalty by hanging for the murder of Cyril Rob-

25. *Id.* ¶ 2(a).

26. *Id.* ¶ 2(m).

27. *Id.* ¶ 2(c).

28. *Id.* ¶ 2(q).

29. *Id.* ¶ 2(h).

30. *Id.* ¶ 2(k).

31. *Id.* ¶ 2(v).

32. *Id.* ¶ 2(b).

erts.³³

November 26, 1996: Mr. Wilson Prince is convicted and sentenced to the mandatory death penalty by hanging for the murder of Ida Sebastien Richardson.³⁴

November 27, 1996: Mr. Joey Ramiah and Mr. Naresh Boodram are convicted and sentenced to the mandatory death penalty by hanging for the murders of Anthony Curtis Greenridge and Steven Sandy. In addition, Mr. Joey Ramiah is sentenced to death under the Offences Against the Person Act in relation to Dole Chaddee.³⁵

December 13, 1996: Mr. Vijay Mungroo is convicted and sentenced to the mandatory death penalty by hanging for the murder of Edmund Mitchell.³⁶

December 13, 1996: Mr. Steve Mungroo is convicted and sentenced to the mandatory death penalty by hanging for the murder of Edmund Mitchell.³⁷

December 13, 1996: Mr. Phillip Chotalal is convicted and sentenced to the mandatory death penalty by hanging for the murder of Edmund Mitchell.³⁸

January 31, 1997: Mr. Rodney Davis is convicted and sentenced to the mandatory death penalty by hanging for the murder of Nicole Bristol.³⁹

February 7, 1997: Mr. Noel Seepersad is convicted and sentenced to the mandatory death penalty by hanging for the murders of Candace Scott and Karen Sa Gomes.⁴⁰

March 4, 1997: Mr. Samuel Winchester is convicted and sentenced to the mandatory death penalty by hanging for the murder of Esma Darlington.⁴¹

33. *Id.* ¶ 2(f).

34. *Id.* ¶ 2(g).

35. *Id.* ¶ 2(t).

36. *Id.* ¶ 2(r).

37. *Id.* ¶ 2(w).

38. *Id.* ¶ 2(s).

39. *Id.* ¶ 2(l).

40. *Id.* ¶ 2(n).

41. *Id.* ¶ 2(j).

September 29, 1997: Mr. Alfred Frederick is convicted and sentenced to the mandatory death penalty by hanging for the murder of Rahiman Gopaul.⁴²

November 11, 1997: Mr. Nigel Mark is convicted and sentenced to the mandatory death penalty by hanging for the murder of Bhagirath Singh.⁴³

B. Other Relevant Facts

[None]

3. Events Pertaining to Mr. Peter Benjamin et al.

A. Chronology of Events

February 17, 1995: Mr. Mervyn Parris is convicted and sentenced to the mandatory death penalty by hanging for the murder of Anthony Gittens.⁴⁴

November 17, 1995: Mr. Allan Phillip is convicted and sentenced to the mandatory death penalty by hanging for the murder of Brian Barrow.⁴⁵

May 24, 1996: Mr. Narine Sooklal is convicted and sentenced to the mandatory death penalty by hanging for the murder of Mobina Ali.⁴⁶

May 24, 1996: Mr. Francis Mansingh is convicted and sentenced to the mandatory death penalty by hanging for the murder of Mobina Ali.⁴⁷

October 27, 1997: Mr. Peter Benjamin is convicted and sentenced to the mandatory death penalty by hanging for the murder of Kanhai Deodath.⁴⁸

October 27, 1997: Mr. Amir Mowlah is convicted and sentenced to the

42. *Id.* ¶ 2(p).

43. *Id.* ¶ 2(u).

44. Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 81, ¶ 2(f) (Sept. 1, 2001).

45. *Id.* ¶ 2(c).

46. *Id.* ¶ 2(d).

47. *Id.* ¶ 2(g).

48. *Id.* ¶ 2(a).

mandatory death penalty by hanging for the murder of Shaffina Mowlah.⁴⁹

May 29, 1998: Mr. Krishendath Seepersad is convicted and sentenced to the mandatory death penalty by hanging for the murder of Shazard Ghany.⁵⁰

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

1. Chronology Pertaining to Mr. Peter Benjamin

A. Before the Commission

May 26, 1998: The State notifies the Secretary General of the Organization of American States (“OAS”) of its denunciation of the American Convention.⁵¹ In accordance with Article 78(1) of the American Convention, the denunciation comes into effect one year from the date of notification.⁵²

Between January and May 1999: The Commission receives seven petitions from various British law firms on behalf of the seven alleged victims. Between May and June of 1999 the Commission begins the proceedings of the cases.⁵³

Between May 8, 1999 and June 3, 1999: The Commission grants precautionary measures in favor of the victims and requested that the State stay the pending executions until decisions could be reached on the merits of the cases.⁵⁴

May 25, 1999: The Commission requests that the Court expand the provisional measures in the matter of *James et al.* to include Mr. Benjamin, Mr. Seepersad, Mr. Phillip, Mr. Sookal, and Mr. Mowlah, because the

49. *Id.* ¶ 2(e).

50. *Id.* ¶ 2(b).

51. *Id.* ¶ 22.

52. *Id.*

53. *Id.* ¶ 3.

54. *Precautionary Measures 1999*, INTER-AM. COMM’N H.R., <http://www.cidh.org/medidas/1999.eng.htm> (last visited Apr. 17, 2015).

executions of those persons were imminent.⁵⁵

May 26, 1999: The State's denunciation of the American Convention comes into effect.⁵⁶

May 27, 1999: The President of the Court orders the adoption of the requested measures.⁵⁷

June 19, 1999: The Court expands the provisional measures in the matter of *James et al.* to include the two remaining victims.⁵⁸

June 13, 2000: The Commission finds all seven petitions admissible and recommends that the State grant the victims an effective remedy including commutation of sentence and compensation, and a re-trial in accordance with due process protections or release in the case of Mr. Benjamin.⁵⁹ The Commission also recommends that the State adopt such legislative or other measures necessary to ensure: the death penalty is imposed in compliance with the Convention; the right to apply for amnesty, pardon, or commutation of sentence is given effect; the conditions of detention comply with the standards of human treatment; the right to trial within a reasonable time is given effect; and the rights to a fair hearing and judicial protection are given effect.⁶⁰ The State does not respond.⁶¹

B. Before the Court

October 4, 2000: The Commission submits the case of *Mr. Benjamin et al.* to the Court after State failed to adopt its recommendations.⁶²

1. Violations Alleged by Commission⁶³

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence)

55. Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, ¶ 9.

56. See *id.* ¶ 22.

57. *Id.* ¶ 10.

58. *Id.* ¶ 12.

59. *Id.* ¶¶ 6(1)-(7).

60. *Id.*

61. *Id.* ¶ 7.

62. *Id.* ¶ 8.

63. *Id.* ¶ 2.

Article 5(1) (Right to Physical, Mental, and Moral Integrity)
Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)
Article 5(4) (Right of Accused to Be Segregated from Convicted Persons)
Article 5(6) (Detention Must Aim to Reform and Rehabilitate)
Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)
Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal)
Article 8(2) (Right to Be Presumed Innocent)
Article 25 (Right to Judicial Protection)
all in relation to:
Article 1(1) (Obligation to Respect Rights) and
Article 2 (Obligation to Give Domestic Legal Effect to Rights)

2. Violations Alleged by Representatives of the Victims⁶⁴

Same Violations Alleged by Commission.⁶⁵

June 4, 2000: The State submits a preliminary objection to the jurisdiction of the Court.⁶⁶ The State sets forth the same three arguments as in the matter of *Constantine et al.*⁶⁷ The State first argues that the Court did not accept the jurisdiction of the case within the three-month time period required under Article 51 of the American Convention.⁶⁸ Second, the State's reservation from the American Convention precludes the Court's jurisdiction.⁶⁹ Third, the State argued that it has never recognized the Court's jurisdiction.⁷⁰

September 1, 2001: The Court unanimously dismisses the preliminary objection of the State for the following reasons. With respect to the first preliminary objection, the Court found that Article 51 refers to the acceptance of the Court's jurisdiction on the part of the State and not the

64. The victims are represented by Mr. Julian Knowles, Mr. Keir Starmer, Ms. Yasmin Waljee, Mr. Parvais Jabbar, and Ms. Julie Morris. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, 17 (June 21, 2002).*

65. *Id.* ¶ 8.

66. *Benjamin et al. v. Trinidad and Tobago, Preliminary Objections*, ¶ 28.

67. *See id.* ¶ 29.

68. *Id.* ¶ 29(I).

69. *Id.* ¶ 29(II).

70. *Id.* ¶ 29(III).

Court's actions in the exercise of its own jurisdiction.⁷¹ Second, any restriction of any State affecting the Court's jurisdiction has no consequence whatsoever, because the Court is "master of its own jurisdiction" and should not be subordinate to such restrictions that could essentially render its role in the protection of human rights inoperative.⁷² Third, a State party to the Convention can only release itself of its obligations under the Convention by following the provisions that the Convention itself stipulates.⁷³ Judges Antônio Augusto Cançado Trindade, Hernán Salgado Pesantes and Sergio García Ramírez appended Separate Opinions.⁷⁴

Judge Cançado Trindade asserted that the optional clause of recognition of the contentious jurisdiction of the Court has led to a distorted practice.⁷⁵ He further argued the wisdom of amending Article 62 in order to render the clause mandatory, thus establishing automatic jurisdiction of the Court.⁷⁶

Judge Salgado Pesantes opined that it is not possible for a state to disregard the provisions of Article 62(2) and impose conditions on acceptance of the Court's jurisdiction; rather, the state must either accept jurisdiction or not do so.⁷⁷ Next, he concluded that a state may not establish conditions that limit the operation of the jurisdictional organ responsible for interpreting and implying the American Convention.⁷⁸ He also concluded that where reservations are allowed, they have a limited scope and cease to be valid when they are of a general, broad or imprecise nature, especially when they contradict the purpose of the American Convention.⁷⁹

71. *Id.* ¶ 40.

72. *Id.* ¶¶ 72, 81-82.

73. *Id.* ¶ 89.

74. *See generally* Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 81 (Sept. 1, 2001); Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Hernán Salgado Pesantes in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, Inter-Am. Ct. H.R. (ser. C) No. 82 (Sept. 1, 2001); Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Sergio García Ramírez in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, Inter-Am. Ct. H.R. (ser. C) No. 82 (Sept. 1, 2001).

75. Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Opinion of Judge Antônio Augusto Cançado Trindade in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, ¶ 9.

76. *Id.* ¶ 39.

77. Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Hernán Salgado Pesantes in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, ¶ 6.

78. *Id.* ¶ 7.

79. *Id.* ¶ 8.

Judge García Ramírez expanded on the Court's assertion that the effect of the State's declaration with regard to contentious jurisdiction would ultimately exclude the State from the jurisdictional system by pointing out the State's failure to define matters that cannot be heard or decided by the Court⁸⁰ and including various ambiguous expressions which could obstruct the Court's jurisdictional task.⁸¹

He noted that the issue of reservations and declarations that limit the jurisdictional exercise of the Court was a matter separate from the State's objection (which the Court exclusively focused on), and emphasized the desirability of eliminating such reservations and conditions that restrict the Court's ability to protect human rights.⁸²

November 30, 2011: The Court orders the joinder of the *Hilaire, Constantine et al.* and *Benjamin et al.* cases.⁸³

2. Chronology pertaining to Mr. Haniff Hilaire

A. Before the Commission

October 7, 1997: Mr. Hilaire presents a petition to the Commission via fax while incarcerated at the State Prison in Port of Spain.⁸⁴ He alleges that Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 8 (Right to a Fair Trial) of the American Convention were violated by the State⁸⁵ and simultaneously requests the Commission to issue provisional measures and to seek a stay of execution pending the determination of the petition by the Commission.⁸⁶

October 16, 1997: The Commission grants precautionary measures in favor of Mr. Hilaire and requests the State to stay his execution until the Commission considers the case and issues its decision.⁸⁷

80. Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Sergio García Ramírez in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, Inter-Am. Ct. H.R. (ser. C) No. 82, ¶ 4 (Sept. 1, 2001).

81. *Id.* ¶ 6.

82. *Id.* ¶ 8.

83. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 43 (June 21, 2002).

84. Hilaire v. Trinidad and Tobago, Admissibility Report, Report No. 43/98, Inter-Am. Comm'n H.R., Case 11.816, ¶ 1 (Sept. 25, 1998).

85. *Id.* ¶ 5.

86. *Id.* ¶ 2.

87. *Id.*

October 30, 1997: Mr. Hilaire files a petition for special leave to appeal his conviction to the Judicial Committee.⁸⁸

November 6, 1997: Mr. Hilaire is refused leave to appeal to the Judicial Committee.⁸⁹

December 15, 1997: In response to the petition, the State requests that the Commission issue a decision on the merits of the case within a period of six months, upon which the decision would be considered by the Minister of National security when advising the president of the State as to whether he should exercise the “prerogative of mercy.”⁹⁰

December 19, 1997: Mr. Hilaire files a supplementary petition alleging serious violations with regard to legal representation in a capital case.⁹¹ He asserts that police fabricated evidence, that he knew nothing about Mr. Jordan until he was questioned by the police, and that he was detained in custody as an accused person awaiting trial for over four years, from February 19, 1991 until May 9, 1995, in violation of his right to be tried within a reasonable time.⁹² Additionally, Mr. Hilaire alleges that he had inadequate time to prepare his defense and spent only a few minutes each day during the trial with his attorney.⁹³

February 20, 1998: The Commission meets with the Minister of Foreign Affairs and the Attorney General of the State, where the Attorney General argues that the Commission has no power to challenge the implementation of a death sentence imposed by a court of competent jurisdiction in the State.⁹⁴

March 13, 1998: The Attorney General issues a press release stating that the six month period with respect to certain other petitions similarly requesting a stay of execution pending a decision by the Commission will expire on June 11, 1998 and, after such date, the State will decide what action to take.⁹⁵

88. Hilaire v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶ 2(g) (Sept. 1, 2001).

89. *Id.*

90. Hilaire v. Trinidad and Tobago, Admissibility Report, ¶ 6.

91. *Id.* ¶ 5.

92. *Id.*

93. *Id.*

94. *Id.* ¶ 7.

95. *Id.* ¶ 8.

May 26, 1998: The State notifies the Secretary General of the OAS of its denunciation of the American Convention. In accordance with Article 78(1) of the American Convention, the denunciation comes into effect one year from the date of notification.⁹⁶

July 9, 1998: A warrant of execution is read to Mr. Hilaire and the execution is scheduled for July 14, 1998.⁹⁷ The following day, Mr. Hilaire informs the Commission of the warrant and requests that the Commission ask the Inter-American Court of Human Rights to order provisional measures to preserve his life.⁹⁸

July 10, 1998: The Commission requests the Court to include Mr. Hilaire in provisional measures regarding the matter of *James et al.*, ordered on May 27, 1998, in favor of preserving the lives of other similarly situated petitioners.⁹⁹

July 13, 1998: The President of the Court grants the Commission's request by issuing an order to include Mr. Hilaire in the provisional measures and requiring the State to take "all measures necessary to preserve the life of Haniff Hilaire" while the Court could further examine the Commission's request.¹⁰⁰

September 25, 1998: The Commission finds Mr. Hilaire's petition admissible.¹⁰¹

Approximately January 25, 1999: Mr. Hilaire files a second petition for special leave to appeal to the Judicial Committee.¹⁰²

February 3, 1999: Mr. Hilaire's second petition for special leave to appeal to the Judicial Committee is dismissed.¹⁰³

April 21, 1999: The Commission recommends the State to grant Mr. Hilaire an effective remedy, adopt measures to insure the death penalty was imposed in compliance with the Convention, and adopt measures to

96. Hilaire v. Trinidad and Tobago, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶ 22 (Sept. 1, 2001).

97. Hilaire v. Trinidad and Tobago, Admissibility Report, ¶ 12.

98. *Id.*

99. *Id.* ¶ 13.

100. *Id.* ¶ 14.

101. *Id.* ¶ 20.

102. *Id.*

103. *Id.*

ensure the right to trial within a reasonable time.¹⁰⁴

May 26, 1999: The State's denunciation of the American Convention comes into effect.¹⁰⁵

B. Before the Court

May 25, 1999: The Commission submits Mr. Hilaire's case to the Court after the State failed to adopt its recommendations.¹⁰⁶

1. Violations Alleged by Commission¹⁰⁷

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment)

Article 5(6) (Detention Must Aim to Reform and Rehabilitate)

Article 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

2. Violations Alleged by Representatives of the Victims¹⁰⁸

Same Violations Alleged by Commission.¹⁰⁹

August 16, 1999: The State submits preliminary objections to the admissibility of the petition and the jurisdiction of the Court.¹¹⁰ First, the State argued that the Commission's supplementary petition alleging that the imposition of the death penalty violated Article 4(1) was four months later than the time period provided for in Article 46(1)(b) and

104. *Hilaire v. Trinidad and Tobago, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶ 10 (Sept. 1, 2001).*

105. *See id.* ¶ 22.

106. *Id.* ¶ 16.

107. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 3 (June 21, 2002).*

108. The victims are represented by Mr. Julian Knowles, Mr. Keir Starmer, Ms. Yasmin Waljee, Mr. Parvais Jabbar, and Ms. Julie Morris. *Id.* at 17.

109. *Id.* ¶ 8.

110. *Id.* ¶ 37.

should therefore be dismissed.¹¹¹ Second, the State had agreed to adhere to the Convention with the reservation that it would recognize the compulsory jurisdiction of the Court only to the extent that this recognition is consistent with the State's constitutional laws.¹¹² Third, the State made a reservation when recognizing the compulsory jurisdiction of the court and argued that if the reservation to the Court's jurisdiction was considered invalid, then the State's declaration of adherence to the Convention was invalid, and therefore, the State never recognized the jurisdiction of the Court.¹¹³

September 1, 2001: The Court unanimously dismisses the preliminary objection of the State.¹¹⁴ Regarding the State's arguments of inadmissibility of the complaint, the Court determined that a complaint will not be dismissed for the mere failure of the representatives to invoke a specific article of the Convention.¹¹⁵ Regarding the State's argument that the Court lacks jurisdiction, the Court stated that the State's reservation is incompatible with the object and purpose of the Convention because it would give the State the discretion to decide which matters the Court could hear; thus, the Court dismissed this preliminary objection.¹¹⁶

The exact same separate opinions appended in the *Constantine et al.* Preliminary Objections Judgment were appended to this judgment as well.¹¹⁷

November 30, 2001: The Court orders the joinder of the *Hilaire, Constantine et al.* and *Benjamin et al.* cases and states that the consolidated case would be referred to as the Case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*.¹¹⁸ In the order, the Court takes into account that the petitioners in all of the cases were similarly situated and that the purpose of the actions were virtually identical, the only differences being the particular circumstances of each case.¹¹⁹

January 18, 2002: The President issues an order convening the parties

111. *Hilaire v. Trinidad and Tobago*, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 80, ¶¶ 32-33 (Sept. 1, 2001).

112. *Id.* ¶ 43.

113. *Id.* ¶ 52.

114. *Id.* ¶ 99(1).

115. *Id.* ¶ 42.

116. *Id.* ¶¶ 91-98.

117. *See generally* *Hilaire v. Trinidad and Tobago*, Preliminary Objections.

118. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 43 (June 21, 2002).

119. *Id.*

to a public hearing on the merits and eventual reparations of the case.¹²⁰

February 8, 2002: The State replies that it would not attend the public hearing convened by the Court.¹²¹

February 20 and 21, 2002: The Court holds a public hearing at which the testimony of three expert witnesses called by the Commission is heard, as well as the final arguments on the merits and eventual reparations from the Commission and the representatives of the alleged victims.¹²²

3. Chronology pertaining to Mr. George Constantine, et al.

A. Before the Commission

Between July 1997 and April 1999: The Commission receives twenty-three petitions from various British law firms on behalf of twenty-four alleged victims.¹²³ The Commission begins the proceedings of the cases on various dates between August 1997 and April 1997.¹²⁴

Between May 1998 and November 1999: The Commission declares all twenty-three petitions admissible.¹²⁵

May 22, 1998: The Commission requests that the Court adopt provisional measures to preserve the lives and physical integrity of Mr. James and Mr. Garcia.¹²⁶

May 26, 1998: The State notifies the Secretary General of the OAS of its denunciation of the American Convention. In accordance with Article 78(1) of the American Convention, the denunciation comes into effect one year from the date of notification.¹²⁷

May 27, 1998: The President of the Court orders the adoption of the re-

120. *Id.* ¶ 47.

121. *Id.* ¶ 49.

122. *Id.* ¶ 52.

123. Constantine et al. v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 82, ¶ 3 (Sept. 1, 2001).

124. *Id.*

125. *Id.* ¶¶ 8-9.

126. *Id.* ¶ 12.

127. *Id.* ¶ 28.

requested measures in the matter of *James et al.*¹²⁸

Between June 8, 1998 and May 1, 1999: The Commission grants precautionary measures in favor of the victims and requested that the State stay the pending executions until decisions could be reached on the merits of the cases.¹²⁹

Between May 1999 and August 1999: The Court expands the provisional measures in the matter of *James et al.* to include all twenty-three living victims.¹³⁰

May 26, 1999: The State's denunciation of the American Convention comes into effect.¹³¹

June 4, 1999: The State executes Mr. Ramiah pursuant to his second murder conviction for the murder of Dole Chaddee.¹³²

November 19, 1999: The Commission recommends that the State grant the victims an effective remedy including commutation of sentence and compensation, provide adequate compensation to the next of kin of Joey Ramiah, and adopt such legislative or other measures necessary to ensure: that the death penalty is imposed in compliance with the Convention; that the right to apply for amnesty, pardon, or commutation of sentence is given effect; that the right to trial within a reasonable time is given effect; and that the rights to a fair hearing and judicial protection are given effect.¹³³

B. Before the Court

February 22, 2000: The Commission submits the case of Mr. Constantine et al. to the Court after the State failed to adopt its recommendations.¹³⁴

128. *Id.* ¶ 13.

129. *Precautionary Measures 1999*, INTER-AM. COMM'N H.R., <http://www.cidh.org/medidas/1999.eng.htm> (last visited Apr. 17, 2015).

130. *Constantine et al. v. Trinidad and Tobago*, Preliminary Objections, ¶¶ 14-15.

131. *See id.* ¶ 28.

132. *Id.* ¶ 2(t).

133. *Id.* ¶¶ 9(1)-(6).

134. *Id.* ¶ 18.

1. Violations Alleged by Commission¹³⁵

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment)

Article 5(6) (Right to Humane Treatment)

Article 7(5) (Right to Personal Liberty)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8(2) (Right to Be Presumed Innocent)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effects to Rights)

2. Violations Alleged by Representatives of the Victims¹³⁶

Same Violations Alleged by Commission.¹³⁷

June 14, 2000: The State submits a preliminary objection to the jurisdiction of the Court.¹³⁸ The first argument set forth was that the Court did not accept jurisdiction of the case within the three-month period stipulated in Article 51.¹³⁹ The remaining second and third arguments are identical to the second and third arguments set forth in the Preliminary Objection of the *Hilaire* case, decided the same day.¹⁴⁰

September 1, 2001: The Court unanimously dismisses the preliminary objection of the State.¹⁴¹ With respect to the first argument, the Court found that Article 51 refers to the acceptance of the Court's jurisdiction on the part of the State and not the Court's actions in the exercise of its

135. *Id.* ¶ 2.

136. The victims are represented by Mr. Julian Knowles, Mr. Keir Starmer, Ms. Yasmin Waljee, Mr. Parvais Jabbar, and Ms. Julie Morris. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, 17 (June 21, 2002).*

137. *Id.* ¶ 8.

138. *Constantine et al. v. Trinidad and Tobago, Preliminary Objections, ¶ 21.*

139. *Id.* ¶ 33.

140. *Id.* ¶¶ 42-51.

141. *Id.* ¶ 90(1).

own jurisdiction.¹⁴² With respect to the State's second and third arguments, the Court's reasoning was essentially identical to its reasoning set forth in the Judgment on Preliminary Objections of the *Hilaire* case.¹⁴³

November 30, 2011: The Court ordered the joinder of the *Hilaire, Constantine et al.*, and *Benjamin et al.* cases.¹⁴⁴

III. MERITS

A. Composition of the Court

Antônio Augusto Cançado Trindade, President
Alirio Abreu Burelli, Vice-President
Hernán Salgado Pesantes, Judge
Oliver H. Jackman, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge

Manuel E. Ventura Robles, Secretary
Pablo Saavedra Alessandri, Deputy Secretary¹⁴⁵

B. Decision on the Merits

June 21, 2002: The Court issues its Judgment on Merits, Reparations and Costs.¹⁴⁶

The Court found unanimously that Trinidad and Tobago had violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 4(2) (Limitations on Death Penalty), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Haniff Hilaire, Mr. George

142. *Id.* ¶ 42.

143. *Id.* ¶¶ 79-89; Additionally, Judges Cançado Trindade, Hernán Salgado Pesantes, and Sergio García-Ramírez appended Separate Opinions, all identical to their Separate Opinions in the Constantine et al. case. *See generally* Constantine et al. v. Trinidad and Tobago, Preliminary Objections.

144. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 43 (June 21, 2002).*

145. Judge Máximo Pacheco Gómez, by reason of *force majeure*, was unable to participate in the deliberation and signing of the Judgment. *Id.* at n*.

146. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs.*

Constantine, Mr. Wenceslaus James, Mr. Denny Baptiste, Mr. Clarence Charles, Mr. Keiron Thomas, Mr. Anthony Garcia, Mr. Wilson Prince, Mr. Darrin Roger Thomas, Mr. Mervyn Edmund, Mr. Samuel Winchester, Mr. Martin Reid, Mr. Rodney Davis, Mr. Gangadeen Tahaloo, Mr. Noel Seepersad, Mr. Wayne Matthews, Mr. Alfred Frederick, Ms. Natasha De Leon, Mr. Vijay Mungroo, Mr. Phillip Chotalal, Mr. Naresh Boodram, Mr. Joey Ramiah, Mr. Nigel Mark, Mr. Wilberforce Bernard, Mr. Steve Mungroo, Mr. Peter Benjamin, Mr. Krishendath Seepersad, Mr. Allan Phillip, Mr. Narine Sooklal, Mr. Amir Mowlah, Mr. Mervyn Parris, and Mr. Francis Mansingh,¹⁴⁷ because:

*The Court affirmed that the conventional rules concerning the death penalty should be interpreted as imposing restrictions designed to strictly limit its application and scope in order to reduce its application and bring about its gradual disappearance.*¹⁴⁸

*The Court found three types of limitations applicable to States that have not abolished the death penalty.*¹⁴⁹ *First, certain procedural requirements must be strictly observed and reviewed.*¹⁵⁰ *Second, its application must be limited to the most serious crimes, unrelated to political offenses.*¹⁵¹ *Third, certain considerations involving the person of the defendant must be taken into account.*¹⁵²

*The Court found that the Offences Against the Person Act has two principal aspects: first, in the determination of criminal responsibility, it only authorizes the competent judicial authority to find a person guilty of murder solely based on the categorization of the crime without taking into account personal conditions of the defendant or individualized circumstances of the crime; next, it mechanically imposes the death penalty for all persons found guilty of murder and prevents modification of punishment through judicial review.*¹⁵³

The Court concluded that the Offences Against the Person Act violates the prohibition against the arbitrary deprivation of life, in contravention of Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and

147. *Id.* ¶¶ 85-118.

148. *Id.* ¶ 99.

149. *Id.* ¶ 100.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* ¶ 104.

4(2) (Limitations on Death Penalty) of the Convention.¹⁵⁴

Although the Commission did not specifically allege a violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Article 4 (Right to Life) of the Convention,¹⁵⁵ the Court found that states must refrain from promulgating laws that disregard or impede the free exercise of rights recognized in the Convention and concluded that the mere existence of the Offenses Against the Person Act in itself constituted a per se violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁵⁶

Articles 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Haniff Hilaire, Mr. George Constantine, Mr. Wenceslaus James, Mr. Denny Baptiste, Mr. Clarence Charles, Mr. Keiron Thomas, Mr. Wilson Prince, Mr. Darrin Roger Thomas, Mr. Mervyn Edmund, Mr. Martin Reid, Mr. Rodney Davis, Mr. Gangadeen Tahaloo, Mr. Noel Seepersad, Mr. Wayne Matthews, Mr. Alfred Frederick, Ms. Natasha De Leon, Mr. Vijay Mungroo, Mr. Phillip Chotalal, Mr. Naresh Boodram, Mr. Joey Ramiah, Mr. Nigel Mark, Mr. Wilberforce Bernard, Mr. Steve Mungroo, Mr. Peter Benjamin, Mr. Krishendath Seepersad, Mr. Allan Phillip, Mr. Narine Sooklal, Mr. Amir Mowlah, Mr. Mervyn Parris, and Mr. Francis Mansingh,¹⁵⁷ because:

The Court asserted that, in certain cases, a prolonged delay in itself can constitute a violation of the right to a fair trial.¹⁵⁸ In these situations, the State must provide an explanation and proof as to why it needed more time than normally required to issue a final judgment in a particular case.¹⁵⁹

The Court had previously ruled that due process of law requires that a defendant is able to exercise his rights and defend his interest effectively and in full procedural equality with other defendants.¹⁶⁰

154. *Id.* ¶ 108.

155. *Id.* ¶ 110.

156. *Id.* ¶ 116.

157. *Id.* ¶¶ 119-152.

158. *Id.* ¶ 145.

159. *Id.*

160. *Id.* ¶ 146.

In order to protect the right to effective recourse, established in Article 25 (Right to Judicial Protection), the Court emphasized that it is crucial that the recourse be exercised in conformity with the rules of due process, protected in Article 8 (Right to a Fair Trial), which includes access to legal aid.¹⁶¹

The State's domestic law did not recognize the right to trial within a reasonable period of time, and therefore did not conform to the dictates of Articles 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) and 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in conjunction with Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁶²

The Court found that persons convicted of murder did not have access to adequate legal assistance for the effective presentation of constitutional motions.¹⁶³ Although the State protects the right to bring constitutional motions, it did not provide the accused with the proper legal aid to effectively exercise it, in violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).¹⁶⁴

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) of the Convention, to the detriment of Mr. Haniff Hilaire, Mr. George Constantine, Mr. Wenceslaus James, Mr. Denny Baptiste, Mr. Clarence Charles, Mr. Keiron Thomas, Mr. Anthony Garcia, Mr. Wilson Prince, Mr. Darrin Roger Thomas, Mr. Mervyn Edmund, Mr. Samuel Winchester, Mr. Martin Reid, Mr. Rodney Davis, Mr. Gangadeen Tahaloo, Mr. Noel Seepersad, Mr. Wayne Matthews, Mr. Alfred Frederick, Ms. Natasha De Leon, Mr. Vijay Mungroo, Mr. Phillip Chotalal, Mr. Naresh Boodram, Mr. Joey Ramiah, Mr. Nigel Mark, Mr. Wilberforce Bernard, Mr. Steve Mungroo, Mr. Peter Benjamin, Mr. Krishendath Seepersad, Mr. Allan Phillip, Mr. Narine Sooklall, Mr. Amir Mowlah, Mr. Mervyn Parris, and Mr. Francis Mansingh,¹⁶⁵ because:

The Court stated that any person deprived of his or her liberty has the

161. *Id.* ¶ 148.

162. *Id.* ¶ 152.

163. *Id.*

164. *Id.*

165. *Id.* ¶¶ 153-172.

*right to be treated with dignity, and the State has the responsibility and duty to guarantee his or her personal integrity while detained.*¹⁶⁶

*The Court had previously concluded that holding a person in isolation in a small cell without ventilation or natural light constitutes cruel, inhuman, and degrading treatment.*¹⁶⁷ *The Court noted that all of the victims in the case were living under the constant threat that they may be taken to be hanged at any moment.*¹⁶⁸

*In finding that the detention conditions that all the victims experienced and continued to endure created circumstances that impinged on their physical and psychological integrity, the State's detention conditions constituted cruel, inhuman, and degrading treatment in violation of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment).*¹⁶⁹

Articles 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence) and 8 (Right to a Fair Trial) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Haniff Hilaire, Mr. George Constantine, Mr. Wenceslaus James, Mr. Denny Baptiste, Mr. Clarence Charles, Mr. Keiron Thomas, Mr. Anthony Garcia, Mr. Wilson Prince, Mr. Darrin Roger Thomas, Mr. Mervyn Edmund, Mr. Samuel Winchester, Mr. Martin Reid, Mr. Rodney Davis, Mr. Gangadeen Tahaloo, Mr. Noel Seepersad, Mr. Wayne Matthews, Mr. Alfred Frederick, Ms. Natasha De Leon, Mr. Vijay Mungroo, Mr. Phillip Chotalal, Mr. Naresh Boodram, Mr. Joey Ramiah, Mr. Nigel Mark, Mr. Wilberforce Bernard, Mr. Steve Mungroo, Mr. Peter Benjamin, Mr. Krishendath Seepersad, Mr. Allan Phillip, Mr. Narine Sooklal, Mr. Amir Mowlah, Mr. Mervyn Parris, and Mr. Francis Mansingh,¹⁷⁰ because:

The Court emphasized that the death penalty should be applied only for the most serious crimes and in exceptional circumstances, and those sentenced to death should be granted the additional right to seek amnesty, pardon, or commutation of the sentence before competent author-

166. *Id.* ¶ 165.

167. *Id.* ¶ 164.

168. *Id.* ¶ 168.

169. *Id.* ¶ 169.

170. *Id.* ¶¶ 173-189.

ity.¹⁷¹

Consequently, the Court found, the State was under the obligation to guarantee that the victims sentenced to death were able to effectively exercise the aforementioned right.¹⁷² The State had a duty to implement a fair and transparent procedure by which offenders sentenced to death were able to make use of all favorable evidence deemed relevant to the granting of mercy.¹⁷³

The Court concluded that the application of the procedure for granting mercy was in fact characterized by a lack of transparency, lack of available information, and lack of participation by the victims, amounting to violations of Articles 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence) and 8 (Right to Fair Trial).¹⁷⁴

Article 4 (Right to Life), in relation Articles 1(1) and (2) of the Convention, to the detriment of Mr. Joey Ramiah,¹⁷⁵ because:

Despite having been duly notified of provisional measures expressly ordered by the Court, the State executed petitioner Mr. Joey Ramiah.¹⁷⁶

The Court found that the execution constituted an arbitrary deprivation of the right to life, aggravated because the Court had expressly indicated that the execution should be stayed pending the resolution of the case by the inter-American human rights system,¹⁷⁷ in violation of Article 4 (Right to Life).¹⁷⁸

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Antônio Augusto Cançado Trindade

Judge Cançado Trindade advocated in favor of the contemporary criminal justice doctrine distancing from the theory of retribution, which is central to the death penalty, because it is inconsistent with the social aim of punishment and punishment should be limited by the de-

171. *Id.* ¶ 184.

172. *Id.* ¶ 188.

173. *Id.*

174. *Id.* ¶ 189.

175. *Id.* ¶¶ 190-200

176. *Id.* ¶ 197.

177. *Id.* ¶ 198.

178. *Id.* ¶ 200.

gree of the perpetrator's criminal responsibility.¹⁷⁹

Next he noted that the concept that the death penalty *per se* constitutes cruel, inhuman, and degrading treatment has been articulated in international practice.¹⁸⁰

Finally, Judge Cançado Trindade emphasized the international law principle of *pacta sunt servanda*, enshrined in the Vienna Convention of the Law of Treaties of 1969, which incorporates the concept of good faith and transcends the law of treaties.¹⁸¹

2. Concurring Separate Opinion of Judge Sergio García Ramírez

Judge García Ramírez discussed the inconsistency between the Offenses Against the Person Act mandating the death penalty for any person convicted of murder and the Convention, which prohibits arbitrary administration of the death penalty.¹⁸²

Next, he emphasized the importance of categorizing the offense of murder according to the “intrinsic gravity of the crime,” and giving the trier of fact authority to apply individualized sentences.¹⁸³

Further, Judge García Ramírez stated that application of the Offenses Against the Person Act resulted in arbitrary death sentences in this case because trials failed to satisfy due process, the right to apply for amnesty, pardon, or commutation of sentences was ineffective, and one person was executed despite provisional measures ordered by the Court.¹⁸⁴

Finally, Judge García Ramírez noted the necessity of distinguishing between a regime of deprivation or liberty corresponding to a person not yet convicted and a convicted criminal.¹⁸⁵

3. Concurring Opinion of Judge Carlos Vicente de Roux Rengifo

Judge de Roux Rengifo took issue with the Court's failure to explicitly discuss the relationships among Article 4(1) (Prohibition of Ar-

179. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 19 (June 21, 2002).

180. *Id.* ¶ 33.

181. *Id.* ¶ 43.

182. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations, and Costs, Concurring Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 3 (June 21, 2002).

183. *Id.* ¶ 10.

184. *Id.* ¶ 16.

185. *Id.* ¶ 19.

bitrary Deprivation of Life), Article 4(2) (Limitations on Death Penalty), and Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁸⁶

Finally, he asserted that the State's violation of Article 4(2) (Limitations on Death Penalty) in conjunction with Article 2 (Obligation to Give Domestic Legal Effect to Rights), rendered application of the death penalty arbitrary, which led to the infringement of Article 4(1) (Prohibition of Arbitrary Deprivation of Rights).¹⁸⁷

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Reform Legislation

The State should refrain from future application of the Offences Against the Person Act.¹⁸⁸

The State must bring the law into compliance with the respect and enjoyment of the rights of life, personal integrity, a fair trial, and due process as embodied in the Convention.¹⁸⁹

Specifically, legislative reform should include the introduction of different categories of murder, so as to take into account the particular circumstances of both the crime and the offender, and punishment must be commensurate with the gravity of the act and the criminal culpability of the accused.¹⁹⁰

2. Retry Victims

The State must apply the aforementioned legislative reforms in the new trials.¹⁹¹

186. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations, and Costs, Concurring Opinion of Judge Carlos Vicente de Roux-Rengifo, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 5 (June 21, 2002).

187. *Id.* ¶ 4.

188. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, ¶ 212 (June 21, 2002).

189. *Id.*

190. *Id.*

191. *Id.* ¶ 214.

The Advisory Committee on the Power of Pardon must resubmit the victims' cases to the executive authority competent to render a decision regarding the mercy procedure, which should be carried out in accordance with the Convention concerning the right to life and in strict compliance with the norms of due process.¹⁹²

Regardless of the outcome of the new trials, the State should refrain from executing the victims.¹⁹³

3. Reform Prisons

The State must bring its prison conditions into compliance with the relevant international human rights norms on the matter.¹⁹⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court determined the State owed \$50,000 for the support and education of Joanus Ramiah, son of Mr. Joey Ramiah.¹⁹⁵

2. Non-Pecuniary Damages

The Court determined the State owed \$10,000 for the suffering of Mrs. Moonia Ramiah, mother of Mr. Joey Ramiah.¹⁹⁶

3. Costs and Expenses

The Court determined the State owed \$13,000 for the expenses incurred by the representatives of the victims in the course of the international proceedings before the Court.¹⁹⁷

192. *Id.*

193. *Id.* ¶ 215.

194. *Id.* ¶ 217.

195. *Id.* ¶ 216.

196. *Id.*

197. *Id.* ¶ 219.

4. Total Compensation (including Costs and Expenses ordered):

\$73,000

C. Deadlines

The State must fulfill its monetary obligation by rendering payment within six months of the pronouncement of the Judgment of June 21, 2002.¹⁹⁸

Regarding the other measures ordered without a specific deadline, the State must comply within a reasonable time from the pronouncement of the Judgment.¹⁹⁹

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

January 16, 2003: The Secretariat, under instructions by the President, asked the State to submit its first report on compliance with the Judgment.²⁰⁰

August 1, 2001: The Secretariat, under instructions by the President, pointed out to the State its obligation to submit a report every six months regarding compliance with its orders in the Judgment.²⁰¹

November 27, 2003: The Court found that the State had not complied with the Judgment, specifically the January 5, 2003 and July 5, 2003 compliance report due dates.²⁰² The Court reported persistent noncompliance to the General Assembly of the Organization of American States, urged the State to adopt such measures as may be necessary to effectively and promptly comply with the Judgment, and to notified the State, the Commission, and the representatives of the victims regarding compliance.²⁰³

198. *Id.*

199. *Id.* ¶ 212.

200. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Having Seen" ¶ 2 (Nov. 27, 2003).

201. *Id.* "Having Seen" ¶ 3.

202. *Id.* "Declares" ¶ 2.

203. *Id.* "Decides" ¶ 2.

April 3, 2009: The Court lifted the provisional measures with respect to the thirty-one living victims²⁰⁴ upon finding that, consistent with the recent decision of *Boyce et al. v. Barbados*, the purpose of the provisional measures had been met and the State's continuing obligations to the victims would be analyzed within the framework of the compliance monitoring on the judgment.²⁰⁵

The State amended the Offences Against the Person Act in 2000 by creating three categories of murder that take into account the conditions of the crime, only the first of which two warrant the death penalty.²⁰⁶ The last execution that took place in the State was in 1999.²⁰⁷ However, capital punishment has widespread public support in the State where murder rates are extraordinarily high.²⁰⁸ In response to Privy Council rulings that have made it more difficult for the State to use the death penalty, the government proposed a bill in 2011 that would amend the State's constitution and enable it to overturn Privy Council rulings, essentially reinstating the death penalty.²⁰⁹ The bill was defeated in Parliament but Prime Minister Kamla Persad Bissessar continues to push for capital punishment.²¹⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Hilaire v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 80 \(Sept. 1, 2001\).](#)

[Benjamin et al. v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 81 \(Sept. 1, 2001\).](#)

[Constantine et al. v. Trinidad and Tobago, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 82 \(Sept. 1, 2001\).](#)

204. Matter of James et al. regarding Trinidad and Tobago, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., "Decides" ¶ 1 (Apr. 03, 2009).

205. *Id.* "Considering" ¶¶ 9-11.

206. See Offences Against the Person Act (Act No. 90/2000) (Trin. & Tobago).

207. *Trinidad and Tobago Urged Not to Resume Executions*, BBC NEWS (Feb. 17, 2011), <http://www.bbc.com/news/world-latin-america-12495228>.

208. *Id.*

209. *Id.*

210. A. Badoo, *As Murders Swell, Death Penalty Spin Rises*, TRINIDAD AND TOBAGO NEWSDAY (Jan. 29, 2012), <http://www.newspday.co.tt/politics/0,154475.html>.

[Constantine et al. v. Trinidad and Tobago, Preliminary Objections, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 82 \(Sept. 1, 2001\).](#)²¹¹

[Constantine et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Hernán Salgado Pesantes in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, Inter-Am. Ct. H.R. \(ser. C\) No. 82 \(Sept. 1, 2001\).](#)²¹²

[Constantine et al. v. Trinidad and Tobago, Preliminary Objections, Separate Concurring Opinion of Judge Sergio García Ramírez in the Judgments on Preliminary Objections in the Hilaire, Constantine et al. and Benjamin et al. Cases, Inter-Am. Ct. H.R. \(ser. C\) No. 82 \(Sept. 1, 2001\).](#)²¹³

2. Decisions on Merits, Reparations and Costs

[Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 94 \(June 21, 2002\).](#)

[Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Concurring Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 94 \(June 21, 2002\).](#)

[Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Concurring Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 94 \(June 21, 2002\).](#)

211. Judge Antônio Augusto Cançado Trindade's separate opinion is appended to the Constantine et al. Judgment on Preliminary Objections. The Inter-American Court of Human Rights website also lists this separate opinion as appended to both the Hilaire Judgment on Preliminary Objections and the Benjamin et al. Judgment on Preliminary Objections.

212. Judge Hernán Salgado Pesantes's separate concurring opinion is appended to the Constantine et al. Judgment on Preliminary Objections. The Inter-American Court of Human Rights website also lists this separate opinion as appended to both the Hilaire Judgment on Preliminary Objections and the Benjamin et al. Judgment on Preliminary Objections.

213. Judge Sergio García Ramírez's separate concurring opinion is appended to the Constantine et al. Judgment on Preliminary Objections. The Inter-American Court of Human Rights website also lists this separate opinion as appended to both the Hilaire Judgment on Preliminary Objections and the Benjamin et al. Judgment on Preliminary Objections.

[Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations and Costs, Concurring Opinion Judge Carlos Vicente de Roux-Rengifo, Inter-Am. Ct. H.R. \(ser. C\) No. 94 \(June 21, 2002\).](#)

3. Provisional Measures

[Matter of James et al. regarding Trinidad and Tobago, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 03, 2009\).](#)

[Matter of James et al. regarding Trinidad and Tobago, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 28, 2005\).](#)

[Matter of James et al. regarding Trinidad and Tobago, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 02, 2003\).](#)

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2015] *Hilaire, Constantine, and Benjamin et al. v. Trin. And Tobago* 1123

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