

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 27, 2003**

**HILAIRE, CONSTANTINE AND BENJAMIN *ET AL.* *
V. TRINIDAD AND TOBAGO CASE**

COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The June 21, 2002 Judgment of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") in the *Hilaire, Constantine and Benjamin et al. vs. Trinidad and Tobago Case*, in which it:

declare[d] with respect to the merits

[...]

1. that the State violated the right to life enshrined in Article 4(1) and 4(2), in conjunction with Article 1(1) of the American Convention on Human Rights [...] to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

2. that the State breached its obligation established in Article 2 of the American Convention on Human Rights [...] to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

3. that the State violated the right to be tried within a reasonable time protected in Articles 7(5) and 8(1) in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights [...] to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

4. that the State violated the right to an effective recourse established in Articles 8 and 25 in conjunction with Article 1(1) of the American Convention on Human Rights

* Judge Salgado Pesantes informed that Court that, for reasons of *force majeure*, he could not participate in the deliberation and signing of the instant Order.

** Done in Spanish and English, the Spanish text being authentic.

[...] to the detriment of George Constantine, Wilson Prince, Mervyn Edmund, Martin Reid, Gangadeen Tahaloo, Noel Seepersad, Natasha De Leon, Phillip Chotalal, Wilberforce Bernard, Amir Mowlah, and Mervyn Parris;

[...]

5. that the State violated the right to humane treatment enshrined in Article 5(1) and 5(2), in conjunction with Article 1(1) of the American Convention on Human Rights [...] to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

6. that the State violated the right of all persons sentenced to the death penalty to apply for amnesty, pardon or commutation of their sentence enshrined in Article 4(6) in conjunction with Articles 8 and 1(1) of the American Convention on Human Rights [...] to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

7. that the State arbitrarily deprived Joey Ramiah of his right to life in violation of Article 4 of the American Convention on Human Rights [...].

With respect to reparations the Court h[eld]

[...]

8. that the State should abstain from applying the *Offences Against the Person Act* of 1925 and within a reasonable period of time should modify said Act to comply with international norms of human rights protection [...];

[...]

9. that the State should order a retrial in which the new criminal legislation resulting from the reforms to the *Offences Against the Person Act* of 1925 will be applied [...], in the criminal proceedings in relation to the crimes imputed to Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

10. that the State should submit before the competent authority and by means of the Advisory Committee on the Power of Pardon [...] the review of the cases of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

11. on grounds of equity, that the State should abstain from executing, in all cases, regardless of the results of the new trials [...] Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

[...]

12. on grounds of equity, that the State should pay for non-pecuniary damage to the wife of Joey Ramiah, Carol Ramcharan, the sum of US \$50,000 (fifty thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) to support and educate their child, Joanus Ramiah [...];

[...]

13. on grounds of equity, that the State pay Joey Ramiah's mother, Moonia Ramiah, the sum of US \$10,000 (ten thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) for non-pecuniary damage [...];

[...]

14. that the State should modify the conditions of its prison system to conform to the relevant international norms of human rights protection on the matter [...];

[...]

15. on grounds of equity, that the State should pay the representatives of the victims the sum of US \$13,000 (thirteen thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) as reimbursement for the expenses they have incurred in bringing this case before the Inter-American Court of Human Rights [...];

[...]

16. that the State, from the date of notification of the present Judgment, shall provide the Inter-American Court of Human Rights with a report every six months regarding the measures taken to implement the [...] Judgment, and

[...]

17. that the Court shall oversee implementation of [the] Judgment and will deem the case to be closed once the State has duly complied with the terms of the [...] Judgment.

2. The January 16, 2003 brief by the Secretariat in which, under instructions by the President of the Court (hereinafter "the President"), it asked the State of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago") to submit its first report on compliance with the Judgment on the merits and on reparations.

3. The August 1, 2003 note by the Secretariat of the Court (hereinafter "the Secretariat") in which, under instructions by the President, it pointed out to the State its obligation to submit a report every six months regarding compliance with its orders in the June 21, 2002 Judgment.

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to oversee compliance with its decisions.

2. Trinidad and Tobago was a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") from May 28, 1991, date on which it also recognized the jurisdiction of the Court, until May 26, 1999, the date on which the denunciation made by the State entered into force, in accordance with Article 78 of the Convention.

3. Pursuant to Article 78(2) of the American Convention, the denunciation cannot have the effect of releasing the State from its obligations with respect to acts that may constitute a violation of said Convention and that occurred before the entry into force of said denunciation, as stated both in the Judgments on Preliminary Objections¹ and in the June 21, 2002 Judgment.² The facts in this case occurred before the denunciation by the State.

4. In view of the definitive and unappealable nature of the judgments of the Court, pursuant to Article 67 of the American Convention, the State must promptly and completely comply with them within the term set for this purpose.

5. Article 68(1) of the American Convention states that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." In the case under discussion, the State must comply with the treaty obligations of the States Party, which are binding for all branches of government or bodies of the State.

6. The obligation to comply with the rulings in the decisions of the Court are in accordance with a basic principle of law regarding the international responsibility of the State, backed by international case law, according to which the States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already stated before and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they cannot refuse to fulfill the previously established international responsibility for domestic reasons.³

7. On July 5, 2002 the Secretariat the State of the Judgment on the merits and on reparations in the instant case, for which reason the terms to submit its first reports on compliance expired on January 5 and July 5, 2003, respectively.

8. The State has not supplied information pertaining to compliance with the June 21, 2002 Judgment, pursuant to operative paragraph sixteen of the aforementioned Judgment. Therefore, the Court has noted that the State was supposed to report every six months –that is, on January 5 and July 5, 2003- on the measures adopted, and, as the Court has verified, it has not fulfilled that obligation.

¹ Cf., *Hilaire Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 80, para. 28; *Benjamin et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 81, para. 22; and *Constantine et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 82, para. 28.

² Cf., *Hilaire, Constantine and Benjamin et al. Case*. June 21, 2002 Judgment. Series C No. 94, paras. 12-20.

³ Cf., *Bulacio Case*. September 18, 2003 Judgment. Series C No. 100, paras. 116-118; *Benavides Cevallos Case. Compliance with judgment*. September 9, 2003 Order of the Court, Considering three and six; and *Baena Ricardo et al. Case. Compliance with judgment*. June 6, 2003 Order of the Court, Considering four.

9. Providing sufficient information on compliance with the Judgment is a duty of the State, repeatedly stated by this Court.⁴

10. Article 1(1) of the Convention stipulates the duty of the States Party to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise by all persons under their jurisdiction.⁵

11. Pursuant to the terms of Article 65 of the American Convention:

[t]o each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

12. Article 30 of the Statute of the Court provides that:

[t]he Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

13. Due to the fact that the State has not fully complied with its obligation to report, if said situation were to continue the Court, applying Article 65 of the Convention (*supra* Considering 11) and Article 30 of the Statute of the Court (*supra* Considering 12), may include the instant Order into its Annual Report for the year 2003, for it to be submitted to the General Assembly of the Organization of American States.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its authority to oversee compliance with its judgments and pursuant to the provisions of Articles 65, 67, 68(1) and 78(2) of the American Convention on Human Rights, Article 30 of the Statute of the Court and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That, pursuant to the basic *pacta sunt servanda* principle, and in accordance with the provisions of Article 68(1) of the American Convention on Human Rights,

⁴ Cf., *Neira Alegría et al. Case. Compliance with judgment*. November 28, 2002 Order of the Court, Considering nine; *El Amparo Case. Compliance with judgment*. November 28, 2002 Order of the Court, Considering eight; *Loayza Tamayo Case. Compliance with judgment*. November 27, 2002 Order of the Court, Considering eight; *Castillo Páez Case. Compliance with judgment*. November 27, 2002 Order of the Court, Considering nine; *Garrido y Baigorria Case. Compliance with judgment*. November 27, 2002 Order of the Court, Considering eight; *Blake Case. Compliance with judgment*. November 27, 2002 Order of the Court, Considering nine; *Caballero Delgado and Santana Case. Compliance with judgment*. November 27, 2002 Order of the Court, Considering six and seven; and *Baena Ricardo et al. Case. Compliance with judgment*. June 21, 2002 Order of the Court, Considering two; *Baena Ricardo et al. Case. Compliance with judgment* June 6, 2003 Order of the Court, Considering ten and twelve; and *"Last Temptation of Christ" (Olmedo Bustos et al.) Case. Compliance with judgment*. November 28, 2003 Order of the Court, Considering ten.

⁵ Cf., *Juan Humberto Sánchez Case*. June 7, 2003 Judgment. Series C No. 99, para. 142; *"Five Pensioners" Case*. February 28, 2003 Judgment. Series C No. 98, para. 163; and *Case of the Mayagna (Sumo) Awas Tingni Community*. August 31, 2001 Judgment. Series C No. 79, para. 154.

the State has the duty to promptly comply with the June 21, 2002 Judgment issued by the Inter-American Court of Human Rights in the *Hilaire, Constantine and Benjamin et al. vs. Trinidad and Tobago Case*.

2. That the State cannot elude its obligations issuing from the June 21, 2002 Judgment of the Court, despite having denounced the Convention, for which reason it must effectively comply with the Judgment pursuant to Article 78(2) of the Convention.

3. That to date, the State has not reported to the Court on compliance with the aforementioned Judgment issued by the Inter-American Court of Human Rights.

DECIDES:

4. If the current situation persists, to report on it to the General Assembly of the Organization of American States, pursuant to Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court of Human Rights.

5. To urge the State to adopt such measures as may be necessary to effectively and promptly comply with said Judgment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

6. To notify the State, the Inter-American Commission on Human Rights and the representatives of the victims of the instant Order regarding compliance.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary