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Lovells

14 December 2001

Direct line 2962
[REDACTED]

Our ref L1YW/1162599.01
Matter ref A0020/08096

Lic Manuel E Ventura-Robles
The Secretary
Inter American Court of Human Rights
APDO 6906 - 1000
San José
Costa Rica
South America

Dear Sir

**HILAIRE, CONSTANTINE AND BENJAMIN ET AL V TRINIDAD AND TOBAGO
(11.816/049; 11.787/039 AND 12/48/022)**

We refer to your fax of 16 November 2001 concerning the reparations in the consolidated case of Constantine et al. We have seen a copy of the Memorial of the Inter-American Commission of Human Rights on Reparations in this case.

This application is made on behalf of prisoners under sentence of death in Trinidad and Tobago. The purpose of the proceedings at the Inter American Court is to ensure that there is an opportunity for the Honourable Court to consider the proper relief that may be granted to the applicants, in respect of violations of their rights, under the American Convention on Human Rights.

We would submit as follows:

1. COMMUTATION OF SENTENCE

- 1.1 In circumstances where violations are found by the Court in respect of the mandatory nature of the death sentence, the absence of mercy hearings, the conditions of detention and the length of detention, we submit that the appropriate remedy is an Order to commute of the sentence to life imprisonment. We are aware that, in the absence of an order requiring the State to commute the sentences to life imprisonment, Trinidad and Tobago may, insofar as it is minded to comply with the Court order, adopt its usual practice to commute the sentences to a fixed term of 75 years without an opportunity for parole. We, therefore, submit an order for commutation to a life sentence should also include a reference to the need for the sentence to allow for the opportunity to apply for parole.
- 1.2 We refer to the Inter American Commission's findings of violations of fair trial in respect of Martin Reid (12.052) and Peter Benjamin (12.148). Additionally, we submit there are a number of other petitioners who also assert that their trials were unfair on the basis of

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inadequate representation, pre-trial delay, absence of expert evidence and non-disclosure of material evidence. In all of these cases we would submit, that the State is required to provide an effective remedy for that violation. Whilst it is accepted that it is not the role of the Honourable Court to review the convictions, we assert that the Court should direct that the State provide an effective remedy by requiring the exercise of the President's discretion to refer the cases to the Court of Appeal of Trinidad and Tobago to review the safety of the convictions in accordance with domestic and international obligations and quash the convictions or order a retrial as necessary.

2. ADOPTION OF NECESSARY LEGISLATIVE MEASURES

2.1 We refer to the Inter American Commission's Memorial on Reparations Chapter E on Necessary Legislative Measures and would repeat and concur with the representations made therein on the legislative measures to be adopted to remedy the violations relating to the mandatory nature of the death penalty, the right to apply for an amnesty, provision of adequate conditions of detention, a trial within a reasonable time and the right to a fair trial and to judicial protection through access to constitutional motions.

2.2 In addition, we would submit that any legislative changes to implement individual sentencing and the right to apply for amnesty should necessarily involve changes to the legal aid legislation to provide for the properly funded legal representation of each case. We are aware that individualised sentencing, involves substantial legal work in the identification and preparation of expert witness evidence. In this regard we refer the Honourable Court to the expert witness report presented in this case on the Nature and Role of Mitigating Evidence in Capital Cases submitted by the Centre for Capital Assistance, November 2001. In order to ensure that the right to individualised sentencing and the right to apply for an amnesty are real and effective rights we would submit that this will require an Order that the consequential legislative changes be made to the Trinidad and Tobago Legal Aid Act 1999.

3. JOEY RAMIAH

Joey Ramiah (case number 12.129) (Naresh Boodram and Joey Ramiah) was executed whilst his case was pending before the Inter American Rights system in violation of the Inter American Court Order for provisional measures of 29 May 1999. In these circumstances, the petitioners request the Court to make an appropriate Order as to compensation reflecting the intentional failure to respect the authority of the Inter American Court to which Trinidad and Tobago was, at the time, bound. Mr Ramiah is survived only by his mother. We refer to the Inter American Commission's Memorial on Reparations in this regard and confirm that, despite extensive efforts to make contact with Mrs Ramiah, she remains reclusive. We attach an affidavit from Mr Ramiah's legal representative, Kingsley Napley, which confirms the steps which have been taken to communicate with her. Notwithstanding this, we concur with the Commission's representations that the gravity of the violation of Joey Ramiah's rights requires a payment to be made for moral damage to Mrs Ramiah, as his next of kin or, in the absence that the funds are not claimed prior to her death, that they should pass to her successors.

4. COMPENSATION

We are aware that the court has, within its discretion, the power to order financial compensation in respect of violations. However, in order to emphasise that this action is brought, not to enrich the petitioners, but rather to preserve their life and liberty, we will not be seeking financial compensation in respect of any violation.

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5. COSTS

We wish to re-emphasise that the lawyers involved in the submission of this case to the Inter American Court will not be seeking their costs in relation to this application. The petitioners' legal advisers are conducting this case on a pro bono basis to ensure the petitioners are properly represented before the Honourable Court.

6. EXPENSES

We would submit that the expenses incurred in respect of the hearing before the Inter American Court should be recovered from the State insofar as these are not covered by the Inter American Commission. These should include the travel and per diem allowance for accommodation for the legal representatives and the expert witnesses in attending the hearing and an additional amount representing the costs of preparation of the appeal to cover courier, photocopying and travel expenses in visiting prisoners and affidavit fees. To that end we attach a schedule at appendix A in this regard.

We humbly request your consideration in the matters referred to above.

Yours faithfully



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