

**ORDER OF THE
INTER-AMERICAN OF HUMAN RIGHTS
OF AUGUST 29, 1998**

**PROVISIONAL MEASURES ADOPTED BY THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF
TRINIDAD Y TOBAGO**

JAMES *ET AL.* CASE

HAVING SEEN:

1. In reference to the matters of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel:

a. The communication of May 22, 1998, and its annexes, in which the Inter-American Commission on Human Rights (hereinafter "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures on behalf of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, in connection with Cases 11.814, 11.815, 11.854, 11.855 and 11.857, respectively, currently pending before the Commission against the State of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago"). In this communication the Commission petitioned the Court

to request the Republic of Trinidad and Tobago to stay the executions of the individuals on "death row" in the five cases at issue until such time as the Commission has had the opportunity to examine and decide these cases pursuant to the Convention and the Commission's Regulations.

and set out the facts, which are summarized below:

- i) the alleged victims have been sentenced to death by the State;
- ii) the Cases, 11.814, 11.815, 11.854, 11.855, and 11.857, were presented to the Commission on behalf of the alleged victims between October 7 and December 17, 1997; in all of them the petitioners requested the adoption of precautionary measures in order to stay the imminent executions of the alleged victims until after the Commission had duly considered and decided their cases;
- iii) in each of the five cases, the petitioners allege to the Commission that the State has violated specific rights of the American Convention to the detriment of the alleged victims;
- iv) in each of the five cases, the Commission adopted and notified the State of the precautionary measures requested by the petitioners. However, the State did not respond to the requests for precautionary measures; and
- v) the Commission has stated that it has at its disposal information to support the presumption that the executions of the five alleged victims are planned for June, 1998.

b. The Order of the President of the Court (hereinafter "the President") of May 27, 1998, in which he decided:

1. To require the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, so that the Court may examine the pertinence of the provisional measures requested by the Inter-American Commission on Human Rights.

2. To require the Republic of Trinidad and Tobago to inform the Inter-American Court of Human Rights by June 5, 1998, on the measures taken in compliance with this Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights so that this information can be studied by the Court.

3. To submit the request of the Inter-American Commission on Human Rights, this Order, and the report that will be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during its XL Regular Session, to be held from June 8 to 19, 1998.

c. The report of the State of June 5, 1998, which was submitted in accordance with the Order of the President of May 27, 1998.

d. The Order of the Court of June 14, 1998, by which it ratified the Order of the President of May 27, 1998, and decided:

1. To order Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, so as not to hinder the processing of their cases before the Inter-American system.

2. To order Trinidad and Tobago to submit a report by June 30, 1998, on the measures taken in compliance with this Order, and to require the Inter-American Commission on Human Rights to submit its observations on this report within fifteen days of its receipt.

3. To summon Trinidad and Tobago and the Inter-American Commission on Human Rights to a public hearing on this matter at the seat of the Court on August 28, 1998, at 10:00 a.m.

e. The report of the State of June 30, 1998, which was submitted in accordance with the Order of the Court of June 14, 1998.

f. The observations of the Commission on the report by the State of June 30, 1998, which were submitted on July 17, 1998, in accordance with the Order of the Court of June 14, 1998.

2. In reference to the matter of Darrin Roger Thomas:

a. The communication of June 26, 1998, in which the Commission submitted to the Court, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure, a request for the amplification of the provisional measures adopted by the Court in the James, Briggs, Noel, Garcia and Bethel Cases, to include Darrin Roger Thomas, whose Case (12.021) is currently pending before the Commission against Trinidad and Tobago. In this communication, the Commission requested the Court to order

the Republic of Trinidad and Tobago to take provisional measures to stay the execution of Darrin Roger Thomas until such time as the Commission has had the opportunity to examine and decide Case 12.021, filed on his behalf, pursuant to the Convention and its Regulations.

and set out the facts, which are summarized as follows:

i) The petition on behalf of Darrin Roger Thomas was presented to the Commission on March 28, 1998;

ii) the Commission acknowledged receipt of that communication to the petitioner by means of a note dated April 1, 1998, and placed it under study;

iii) on June 26, 1998, the Commission received written notification from the petitioners that the preceding day Mr. Thomas had been informed that he was to be hanged on June 30, 1998, at 6:00 a.m.; and

iv) having established that the petitioners had presented elements sufficient to meet the requirements of the Convention and its Regulations, the Commission opened Case 12.021 on June 26, 1998, and requested Trinidad and Tobago to present the respective information.

b. The Order of the President of June 29, 1998, in which he amplified the provisional measures to include Darrin Roger Thomas, and decided:

1. To require the Republic of Trinidad and Tobago to take all measures necessary to preserve the life of Darrin Roger Thomas, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the James, Briggs, Noel, Garcia and Bethel Cases.

2. To require the Republic of Trinidad and Tobago to submit an urgent communication to the Inter-American Court of Human Rights by June 29, 1998, on the measures taken in compliance with this Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights, so that this information can be studied by the Court.

3. To require the Inter-American Commission on Human Rights to present its observations on the urgent communication submitted by the State within two days of the receipt of said document.

4. To submit the request of the Inter-American Commission on Human Rights, this Order, and the urgent communication that will be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during the related hearing to be held on August 28, 1998, at its XLI Regular Session.

c. The report of the State of June 29, 1998, which was submitted in accordance with the Order of the President of June 29, 1998, and an additional report from the State submitted on July 8, 1998.

d. The observations of the Commission on the report by the State of June 29, 1998, which were submitted on July 2, 1998, in accordance with the Order of the President of June 29, 1998.

3. In reference to the matter of Haniff Hilaire:

a. The communication of July 10, 1998, in which the Commission submitted to the Court, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure, a request for the amplification of the provisional measures adopted by the Court in the James, Briggs, Noel, Garcia and Bethel Cases, to include Haniff Hilaire, whose Case (11.816) is currently pending before the Commission against Trinidad and Tobago. In this communication, the Commission requested the Court to order

the Republic of Trinidad and Tobago to take provisional measures to stay the execution of Haniff Hilaire until such time as the Commission has had the opportunity to examine and decide Case 11.816, filed on his behalf, pursuant to the Convention and its Regulations.

and set out the facts, which are summarized as follows:

i) the petition on behalf of Haniff Hilaire was presented to the Commission on October 9, 1997;

ii) the Commission opened the Case on October 16, 1997, and requested the State to respond to the allegations in the petition within 90 days and to provide precautionary measures, by staying the execution of Mr. Hilaire until such time as the Commission has had the opportunity to examine this case and to issue its decision;

iii) at no time did the State respond to the Commission's request for precautionary measures; and

iv) the Commission affirmed that it was informed that a warrant of execution had been read to the condemned prisoner and that he was scheduled to be executed on July 14, 1998.

b. The Order of the President of July 13, 1998, in which he amplified the provisional measures in favor of Haniff Hilaire and decided:

1. To require the Republic of Trinidad and Tobago to take all measures necessary to preserve the life of Haniff Hilaire, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the James, Briggs, Noel, Garcia and Bethel Cases.

2. To require the Republic of Trinidad and Tobago to submit an urgent communication to the Inter-American Court of Human Rights by July 13, 1998, on the measures taken in compliance with this Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights, so that this information can be studied by the Court.

3. To require the Inter-American Commission on Human Rights to present its observations on the urgent communication submitted by the State within two days of the receipt of said document.

4. To submit the request of the Inter-American Commission on Human Rights, this Order, and the urgent communication that will be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during the related hearing to be held on August 28, 1998, at its XLI Regular Session.

c. The report of the State of July 15, 1998, in response to the Order of the President of July 13, 1998.

d. The observations of the Commission on the report by the State of July 15, 1998, which were submitted on July 17, 1998, in accordance with the Order of the President of July 13, 1998.

4. In reference to the matter of Denny Baptiste:

a. The communication of July 17, 1998, received in the Secretariat of the Court on July 21, 1998, in which the Commission, pursuant to Article 63(2) of the American Convention and Article 25 of the Rules of Procedure, submitted a request for the amplification of the provisional measures adopted by the Court in the James, Briggs, Noel, Garcia and Bethel Cases, to include Denny Baptiste, whose Case (11.840) is currently pending before the Commission against Trinidad and Tobago. In this communication, the Commission requested the Court to order

that the Republic of Trinidad and Tobago take the measures necessary to stay the execution of Mr. Denny Baptiste until such time as the Commission has had the opportunity to examine and decide Case No. 11.840, in accordance with the norms and procedures specified in the American Convention and the applicable Regulations.

and set out the facts, which are summarized as follows:

i) the petition on behalf of Denny Baptiste was presented to the Commission on November 17, 1997, and a supplementary complaint was filed on December 12, 1997. These were transmitted to the State on November 24, 1997 and January 12, 1998, respectively;

ii) the Commission opened the Case on November 24, 1997, and requested the State to respond to the allegations in the petition within 90 days and to provide precautionary measures, by staying the execution of Mr. Baptiste until such time as the Commission has had the opportunity to examine this case and to issue its decision;

iii) the State responded to the Commission's request for information on January 16, 1998. It informed the Commission, *inter alia*, that the Instructions "are deemed to apply to the communication of Denny Baptiste"; [Instructions Relating to Applications from persons under Sentence of Death issued by the Government of Trinidad and Tobago on October 13, 1997];

iv) at no time did the State respond to the Commission's request for precautionary measures; and

v) according to the Commission, the six month period, set forth under the Instructions, expired on July 16, 1998. No warrant of execution has yet been issued in Mr. Baptiste's case.

b. The Order of the President of July 22, 1998, in which he amplified the provisional measures in favor of Denny Baptiste, and decided:

1. To require the Republic of Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Denny Baptiste, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the James, Briggs, Noel, Garcia and Bethel Cases.

2. To require the Republic of Trinidad and Tobago to submit an urgent communication to the Inter-American Court of Human Rights no later than July 24, 1998, on the measures taken in compliance with this Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights, so that this information can be studied by the Court.
 3. To require the Inter-American Commission on Human Rights to present its observations on the urgent communication submitted by the State within two days of the receipt of said document.
 4. To submit the request of the Inter-American Commission on Human Rights, this Order, and the urgent communication that will be presented by the Republic of Trinidad and Tobago for the consideration of the Inter-American Court of Human Rights during the related hearing to be held on August 28, 1998, at its XLI Regular Session.
- c. The report of the State of July 28, 1998, in response to the Order of the President of July 22, 1998.
 - d. The observations of the Commission on the report by the State of July 28, 1998, which were submitted on July 30, 1998, in accordance with the Order of the President of July 22, 1998.
5. The Court summarizes the content of the State's reports of June 5, June 30, June 29, July 8, July 15 and July 28, 1998, in regard to the above matters as follows:
 - a. The State cannot stay an execution until the Warrant of Execution has been issued and read;
 - b. the Commission is empowered by Article 41 to make recommendations only; and, therefore, it cannot overturn judgments from the State's domestic courts;
 - c. the delay in the proceedings before the Commission, and the failure of the Commission to follow the approximately eight month timeframe established by the State for appeals to international bodies, constitutes cruel and unusual punishment as defined by the State's domestic laws as established by the case of Pratt and Morgan, and would *de facto* abolish the death penalty, thereby usurping the legislative functions of the State of Trinidad and Tobago;
 - d. the State followed due process in all of the present cases, including an appeal to the highest court of appeal, and the Commission would still have other options available to compensate any violations it finds subsequent to an execution;
 - e. international organs have a duty to create the necessary machinery to allow a State to comply with its own domestic laws and its constitutional obligations in the field of human rights;
 - f. the State made reference to its reservation to the American Convention in regard to the jurisdiction of the Court, which reads as follows:

As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the

Court does not infringe, create or abolish any existing rights or duties of any private citizen.

The State claims that this reservation would render null and void any decision of the Court which violates the pertinent sections of its Constitution.

6. The Court summarizes the observations of the Commission of July 2, July 17, and July 30, 1998, in the above matters as follows:

a. As there are only five to seven days between the issuance and reading of a Warrant of Execution and an execution, such a short timeframe would impede the Court's ability to issue effective provisional measures;

b. the Commission's competence under Article 41 is broader than the State alleges, and includes authority to accept individual petitions for the express purpose of determining if human rights have been violated by a State;

c. Article 26 of the Vienna Convention on the Law of Treaties establishes the principle of *pacta sunt servanda*, which requires states to comply domestically with their international obligations and to act in good faith; moreover, the State's timeframes, which the Commission considers to be mere policy, are inconsistent

with the timeframes established by the Statutes and Rules of Procedure of the Commission and the United Nations Human Rights Committee;

d. the petitions before the Commission in these cases allege human rights violations; and

e. the Vienna Convention on the Law of Treaties, as interpreted in Advisory Opinions OC-13 and OC-14 of this Court, requires States to create the necessary machinery to meet their international obligations.

7. The statements of the Commission during the public hearing on August 28, 1998, which demonstrated the urgency of the situations of the alleged victims, all of whom are still under imminent sentence of death and, therefore, at continued risk of irreparable damage.

8. The refusal of the State to appear at the public hearing held by the Court on August 28, 1998.

CONSIDERING:

1. That Trinidad and Tobago has been a State Party to the American Convention since May 28, 1991, and that it accepted the jurisdiction of the Court on the same day.

2. That Article 63(2) provides:

[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That pursuant to Article 25 (1) of the Rules of Procedure:

[a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request

of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.

4. That the aforementioned Orders of the President of June 29, July 13, and July 22, 1998, were issued in conformity with the provisions of the Convention and the Rules of Procedure and the information presented in the matter.

5. That, even though the Commission has not completed its consideration of Cases 11.814, 11.815, 11.854, 11.855, 11.857, 12.021, 11.816, and 11.840, it has advised the Court that "[i]n each case the petitioner made a *prima facie* case alleging that the State violated one or more articles of the American Convention to the detriment of the defendant".

6. That the Cases included in the Request have not yet been submitted to the Court and the consideration of the issues at hand is, therefore, based not upon the merits of said Cases but upon the State's procedural obligations as a Party to the American Convention. Therefore, the Court cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. Such other issues are properly brought before the Court only through contentious cases or requests for advisory opinions.

7. That the States Parties to the Convention should fully comply in good faith (*pacta sunt servanda*) to all of the provisions of the Convention, including those relative to the operation of the two supervisory organs; and, that in view of the Convention's fundamental objective of guaranteeing the effective protection of human rights (Articles 1(1), 2, 51 and 63(2)), States Parties must not take any action that may frustrate the *restitutio in integrum* of the rights of the alleged victims.

8. That Article 29 of the American Convention provides that:

[n]o provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.

9. That, should the State execute the alleged victims, it would create an irremediable situation incompatible with the object and purpose of the Convention, would amount to a disavowal of the authority of the Commission, and would adversely affect the very essence of the Inter-American system.

10. That the function of the supervisory organs of the American Convention is to ensure that the provisions of the American Convention are observed and adequately applied by States in their domestic laws, and not, as Trinidad and Tobago has argued, to ensure that State Parties comply with their own domestic laws.

11. That the continuance of the stays of execution in the present matters is aimed at ensuring that the State Party faithfully observes its obligations under the Convention.

12. That the information presented by the Commission and the State allows the Court to conclude that a situation of "extreme gravity and urgency" exists, making it imperative to order the State to adopt, without delay, the provisional measures necessary to preserve the life and physical integrity of the alleged victims.

13. That the failure of the State to appear at the public hearing on August 28, 1998, represents a violation of its international obligations under the American Convention.

NOW THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure,

RESOLVES:

1. To ratify the Orders of the President of the Inter-American Court of Human Rights of June 29, July 13 and July 22, 1998.

2. To order Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste so as not to hinder the processing of their cases before the Inter-American system.

3. To require the State of Trinidad and Tobago to report every fifteen days, beginning on September 1, 1998, on the status of the appeals and scheduled executions of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste, and to require the Inter-American Commission on Human Rights to send its observations on these reports to the Inter-American Court of Human Rights within two days of their receipt.

4. To require the State of Trinidad and Tobago and the Inter-American Commission on Human Rights to inform the Inter-American Court of Human Rights immediately of any significant developments concerning the circumstances of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste.

Judge García-Ramírez informed the Court of his concurring vote, which is attached hereto.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade
Pacheco-Gómez

Máximo

Oliver Jackman
Burelli

Alirio Abreu-

Sergio García-Ramírez
Roux-Rengifo

Carlos Vicente de

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary

CONCURRING VOTE OF JUDGE SERGIO GARCÍA-RAMÍREZ

I concur in the terms of the Order of the Court for provisional measures to which this concurring vote refers. Moreover, I take note of the statements in the file, in the sense that the State of Trinidad and Tobago is under certain judicially established timeframes to execute the capital punishment, which begin at the time the person is convicted and sentenced to death. With respect to this, I observe that considerable time remains before these timeframes expire in the cases referred to by these provisional measures, as well as in those provisional measures previously considered by the Court, in which it has ordered the similar measures.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary