

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF 25 SEPTEMBER 1999**

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

JAMES *ET AL.* CASES

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court") of 25 May 1999, in which it decided

1. With respect to the Provisional Measures adopted by the Court on 29 August 1998:

a. To maintain the Provisional Measures ordered by the Inter-American Court of Human Rights on 29 August 1998, in favour of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia, Christopher Bethel, Darrin Roger Thomas, Haniff Hilaire and Denny Baptiste. With respect to Anthony Briggs, to maintain the Provisional Measures ordered in his favour until such time as the Court, having previously considered the reports concerning the present status of his Case, issues a decision on this matter.

b. To urge the State of Trinidad and Tobago to comply with the Order of the Court of 29 August 1998, and henceforth report every fifteen days 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.

c. To urge 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.

2. With respect to the Commission's request for amplification of the Provisional Measures in favour of 20 persons:

a. To ratify the Order of the President of the Inter-American Court of Human Rights of 11 May 1999.

b. To order the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, so as not to hinder the processing of their Cases before the Inter-American system.

c. To require the State of Trinidad and Tobago to include in the fortnightly Reports to which reference is made in operative paragraph 1.b of this Order, information on the status of the appeals and scheduled executions of Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotolal, George Constantine, Rodney Davis,

Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester, and to require the Inter-American Commission on Human Rights to include its remarks on this information in its observations.

d. 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 Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangaleen Tahaloo, Keiron Thomas and Samuel Winchester.

2. The Order of the Court of 27 May 1999, in which it decided

1. To amplify the provisional measures ordered in the *James et al.* Cases and to order the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Peter Benjamin, Kevin Dial, Andrew Dottin, Anthony Johnson, Amir Mohlaw, Allan Phillip, Krishandath Seepersad and Narine Sooklal, so as not to hinder the processing of their Cases before the Inter-American system.

2. To require the State of Trinidad and Tobago to include in the fortnightly Reports to which reference is made in operative paragraph 1.b of the Order of the Court of 25 May 1999 (*supra* Having Seen 1), information on the status of the scheduled executions of Peter Benjamin, Kevin Dial, Andrew Dottin, Anthony Johnson, Amir Mohlaw, Allan Phillip, Krishandath Seepersad and Narine Sooklal, and to require the Inter-American Commission on Human Rights to include its remarks on this information in its observations.

3. 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 Peter Benjamin, Kevin Dial, Andrew Dottin, Anthony Johnson, Amir Mohlaw, Allan Phillip, Krishandath Seepersad and Narine Sooklal.

3. The communication of 18 June, 1999, which was received in the Secretariat of the Court on the same date, in which the Inter-American Commission on Human Rights (hereinafter "the Commission") submitted to 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 the amplification of the provisional measures ordered by the Court in the *James et al.* Cases, to include Mervyn Parris (Case No. 12.156) and Francis Mansingh (Case No. 12.157), whose cases are currently pending before the Commission against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago.")

4. The aforesaid communication, in which the Commission requested the Court to order the State

[to] take the measures necessary to preserve the lives and physical integrity of Mervyn Parris and Francis Mansingh so as not to hinder the processing of their cases before the Inter-American system, and until the situation of extreme gravity and urgency no longer persists in relation to these individuals.

5. The arguments presented by the Commission, to the effect that:

a) there are two additional petitions pending before the Commission that were received by it on 25 May 1999 that indicate that Mervyn Parris and

Francis Mansingh have been sentenced to the penalty of death for the crime of murder in Trinidad and Tobago and whose cases have not been submitted for examination under any other procedure of international investigation or settlement to any other international organisation;

b) in each case, the petition states facts that tend to establish a violation of the rights guaranteed under the Convention. In particular, the petitions alleged that the alleged victims' conditions of detention in prison violate the State's obligations under Article 5 of the Convention, and that the trials that resulted in their convictions and sentences were unfair, contrary to Article 8 of the said Convention, acts that were taken by the State prior to 26 May 1999, the effective date of the State's denunciation of the Convention;

c) certain issues raised by the circumstances of the alleged victims, in particular the compatibility of their death sentences with the rights protected under the Convention, cannot be effectively challenged before domestic courts in the State, and therefore, effective domestic remedies do not appear to be available;

d) the Commission requested precautionary measures in each of these cases pursuant to Article 29(2) of the Commission's Regulations, with no response from the State;

e) the State's denunciation of the Convention, pursuant to Article 78 of said instrument, should not be considered to affect the jurisdiction of either the Court or the Commission to entertain these matters;

f) the Commission has not had the opportunity to complete its examination of these complaints and to issue decisions in all of these cases, and, given these circumstances, it considers that the execution of the two individuals would render any eventual decision of the Commission moot, in terms of the efficacy of potential remedies, causing irreparable harm to the individuals to whom the sentences and complaints relate.

6. The Order of the President of the Court (hereinafter "the President") of 19 June 1999, in which he amplified the provisional measures to include Mervyn Parris and Francis Mansingh, and decided:

1. To require the Republic of Trinidad and Tobago to take all measures necessary to preserve the lives of Mervyn Parris and Francis Mansingh, 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 et al.* Cases.

2. To require the Republic of Trinidad and Tobago to submit an urgent communication to the Inter-American Court of Human Rights by 1 July 1999, 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 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 its XLV Regular Session.

7. The failure of the State to comply with operative paragraph (2) of the President's Order of 19 June 1999 (*supra* 6.)

CONSIDERING:

1. That Trinidad and Tobago has been a State Party to the American Convention since 28 May 1991, and that it accepted the jurisdiction of the Court on the same day.
2. That the State gave notice of its denunciation of the Convention to the Secretary General of the Organisation of American States on 26 May 1998, and that, pursuant to Article 78(1) of the said Convention, the denunciation became effective on 26 May 1999.
3. That, pursuant to Article 78(2) of the American Convention, the denunciation does not have the effect of releasing the State from its obligations with respect to acts occurring prior to the effective date of denunciation which may constitute a violation of the said Convention.
4. 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.
5. 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.
6. That the aforementioned Order of the President of 19 June 1999 was issued in conformity with the provisions of the Convention and the Rules of Procedure and the information presented in the matter.
7. That, even though the Commission has not completed its consideration of Cases No. 12.156 and 12.157, it has advised the Court that in each of these cases "th[e] petitions [s]tate facts that, if proven, tend to establish violations of the rights guaranteed under the Convention."
8. That the Cases included in the Request for amplification 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 will study the request of the Commission in the light of the elements to be taken into account in conformity with Article 63(2) of the Convention, that is, the existence of a situation of extreme gravity and urgency and the necessity to avoid irreparable damage to persons.
9. That the information presented by the Commission provides grounds for 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.

10. That the States Parties to the Convention should fully comply in good faith (*pacta sunt servanda*) with all of the provisions of the Convention, including those relative to the operation of the two supervisory organs of the American Convention; 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 refrain from taking actions that may frustrate the *restitutio in integrum* of the rights of the alleged victims.

11. 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 recognised in this Convention or to restrict them to a greater extent than is provided for herein.

12. 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 of protection of human rights.

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,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of 19 June 1999.
2. To order Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Mervyn Parris and Francis Mansingh so as not to hinder the processing of their cases before the Inter-American system until the situation of extreme gravity and urgency no longer persists in relation to these persons.
3. To urge the State of Trinidad and Tobago to report every fifteen days on the status of the appeals and scheduled executions of Mervyn Parris and Francis Mansingh 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 urge 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 Mervyn Parris and Francis Mansingh.

Antônio A. Caçado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary