

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF BISSOON *ET AL.* V. TRINIDAD AND TOBAGO**  
**JUDGMENT OF NOVEMBER 14, 2022**  
***(Merits and reparations)***

In the case of *Bissoon et al. v. Trinidad and Tobago*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:

Ricardo C. Pérez Manrique, President,  
Humberto Antonio Sierra Porto, Vice President,  
Eduardo Ferrer Mac-Gregor Poisot,  
Nancy Hernández López,  
Verónica Gómez,  
Patricia Pérez Goldberg, and  
Rodrigo Mudrovitsch,

also present,

Pablo Saavedra Alessandri, Registrar, and  
Romina I. Sijniensky, Deputy Registrar

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment structured as follows:

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**I**  
**INTRODUCTION OF THE CASE AND CAUSE OF ACTION**

1. *The case submitted to the Court.* On June 29, 2021, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court the case of “Reshi Bissoon and Foster Serrette” against the Republic of Trinidad and Tobago (hereinafter “the State” or “Trinidad and Tobago”). According to the Commission, the case relates to the alleged international responsibility of the State for the alleged anomalies that occurred during the detention and trial that culminated in the sentencing to death of the alleged victims, as well as their detention conditions that were incompatible with the right to personal integrity. In particular, the Commission submitted to the jurisdiction of the Inter-American Court the facts and human rights violations described in the Merits Report that took place while the American Convention was in force in Trinidad and Tobago; that is, from May 28, 1991, to May 26, 1999.<sup>1</sup> The Commission concluded that the foregoing entailed the violation of the rights recognized in Articles 7(5) (right to personal liberty), 8(1) (judicial guarantees) and 25(1) (judicial protection) of the American Convention, in relation to Article 1(1), to the detriment of Reshi Bissoon and Foster Serrette.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On June 2 and August 29, 2005, Herbert Smith LLP lodged the initial petition before the Commission.
- b) *Precautionary measures.* Together with the initial petition, the petitioners requested the adoption of precautionary measures to avoid irreparable harm to Reshi Bissoon and Foster Serrette. On July 20 and September 19, 2005, the Commission agreed to grant the said precautionary measures.
- c) *Admissibility Report.* On November 13, 2009, the Commission adopted Admissibility Report No. 137/09, in which it concluded that the petition was admissible.<sup>2</sup>
- d) *Merits Report.* On December 31, 2020, the Commission adopted Merits Report No. 398/20, under Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 398/20”), in which it reached a series of conclusions and made several recommendations to the State.
- e) *Notification to the State.* The Merits Report was notified to the State on March 29, 2021, granting it two months to report on compliance with the recommendations. According to the Commission, the State failed to forward a report or request a suspension of the time frame.

3. *Submission to the Court.* On June 29, 2021, the Commission submitted to the jurisdiction of the Inter-American Court the facts and human rights violations described in the Merits Report that had taken place while the American Convention was in force in Trinidad and Tobago; that is, from May 28, 1991, to May 26, 1999, “owing to the need to obtain justice and reparation.”<sup>3</sup>

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<sup>1</sup> On May 26, 1998, Trinidad and Tobago denounced the American Convention on Human Rights. Pursuant to Article 78 of this instrument, the denunciation entered into force one year later; that is, on May 26, 1999.

<sup>2</sup> This was notified to the parties on December 8, 2009.

<sup>3</sup> The Commission appointed Commissioner Edgar Stuardo Ralón Orellana and Executive Secretary Tania Reneaum Panszi as its delegates before the Court. It also appointed Marisol Blanchard Vera, then Deputy Executive Secretary, the Commission’s Executive Secretariat experts, Jorge Humberto Meza Flores and Analía Banfi Vique, together with Thalassa Cox, as legal advisers.

4. *The Inter-American Commission's requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report that occurred between May 28, 1991, and May 26, 1999. The Commission also asked the Court to order the State to adopt measures of reparation and these are described and analyzed in Chapter VII of this judgment. The Court notes with concern that more than 16 years elapsed between the presentation of the initial petition before the Commission and the submission of the case to the Court.

## II PROCEEDINGS BEFORE THE COURT

5. *Notification of the representatives and the State.* The Court notified the Commission's submission of the case to the representatives of the alleged victims<sup>4</sup> (hereinafter "the representatives") and to the State on October 15, 2021.

6. *Brief with pleadings, motions and evidence.* On December 20, 2021, the representatives of the alleged victims presented to the Court their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"). The representatives were in substantial agreement with the Commission's allegations and asked the Court to declare the international responsibility of the State for the violation of the articles indicated by the Commission and, also, the violation of Articles 4(1), 4(2), 4(6) (right to life) and 5(1) (right to personal integrity) of the American Convention, in relation to Articles 1(1) and 2 of this instrument.

7. *Answering brief.* The State did not appoint agents for this case and did not present a brief answering the submission of the case and the Merits Report of the Inter-American Commission or the brief with pleadings, motions and evidence of the representatives. In this regard, the Court recalls that, according to Article 27 of the Rules of Procedure, "[w]hen a party fails to appear in or to continue with a case, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case."

8. *Final written procedure.* In an order of June 2, 2022, the President of the Court, pursuant to his authority under Article 50(1) of the Rules of Procedure, decided not to call for a public hearing in this case and to require the statements of the two alleged victims and the expert opinion of Douglas Mendes QC<sup>5</sup> to be forwarded by affidavit.<sup>6</sup> Also, following a request by the Commission, it ordered the transfer of the expert opinion of Desmond Allum in the *case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*<sup>7</sup> to the instant case as documentary evidence.

9. *Final written arguments and observations.* On September 5, 2022, the representatives submitted their final written arguments, and the Commission presented its final written observations. The State did not present final written arguments. The representatives forwarded two annexes with their final written arguments. Neither the State nor the Commission made any observations in this regard.

10. *Ex officio evidentiary procedures.* In a note of the Secretariat of September 30, 2022, issued

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<sup>4</sup> The alleged victims are represented by Herbert Smith Freehills LLP.

<sup>5</sup> *Queen's Counsel.*

<sup>6</sup> *Cf. Case of Bissoon et al. v. Trinidad and Tobago.* Order of the President of the Inter-American Court of Human Rights of June 2, 2022. Available at: [https://www.corteidh.or.cr/docs/asuntos/bissoon\\_serrette\\_02\\_06\\_22\\_ing.pdf](https://www.corteidh.or.cr/docs/asuntos/bissoon_serrette_02_06_22_ing.pdf)

<sup>7</sup> *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment June 21, 2002. Series C No. 94.

on the instructions of the Court and pursuant to Article 58 of the Court's Rules of Procedure, the Court, *ex officio*, required the State and the representatives to submit additional documents as helpful evidence.<sup>8</sup> On October 14, 2022, the representatives sent a letter indicating that they had been unable to obtain any additional documentation. The State failed to respond to this request.

11. *Deliberation of the case.* The Court deliberated on this judgment on November 14, 2022, in a virtual meeting during its 154th regular session.

### **III JURISDICTION**

12. Trinidad and Tobago ratified the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") on May 28, 1991. That same day, the State accepted the contentious jurisdiction of the Court.

13. On May 26, 1998, Trinidad and Tobago denounced the Convention. This denunciation came into effect one year later, on May 26, 1999, as stipulated in Article 78 of the American Convention. However, the Court recalls that the second paragraph of this article establishes that a denunciation "shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation."<sup>9</sup>

14. Consequently, and based on the temporal framework specifically submitted to the Court by the Commission (*supra* para. 4), the Court will examine the alleged violations of the American Convention that occurred between May 28, 1991, and May 26, 1999, and their subsequent effects.<sup>10</sup>

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<sup>8</sup> In particular, the Court requested the following: (i) all the documents related to the detention of Messrs. Bissoon and Serrette and, in particular but not limited to: any record of their arrest and any document notified to the alleged victims at the time of their arrest; (ii) all the documents relating to the preliminary inquiry; (iii) all the documents related to the appeals proceedings before the Court of Appeal of Trinidad and Tobago (remedies of appeal, and a transcript of the hearing before that court), and (iv) all the claims, complaints, requests or remedies filed before the domestic authorities denouncing the alleged violations of due process, as well as the possible response of those authorities.

<sup>9</sup> For further development of the interpretation of this article on denunciation, see: *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*. Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, paras. 59 to 65.

<sup>10</sup> The Court recalls that the organs of the inter-American protection system are authorized "to continue processing petitions and contentious cases related to alleged violations of the American Convention due to internationally wrongful acts committed prior to the denunciation taking effect. Thus, the Commission and the Inter-American Court may examine, within the framework of the system of individual petitions and contentious cases, an internationally wrongful act committed by a State that has denounced the Convention, even after the denunciation produces effects: (i) for acts or omissions before and up to the date on which the denunciation takes effect; (ii) for acts of a continuous nature that commenced before the date on which the denunciation takes effect, such as in cases of enforced disappearance of persons, or (iii) for "continuous or manifest" effects of acts that predate the moment in which the denunciation takes effect." Cf. *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*. Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, para. 77.

## IV EVIDENCE

### **A. Admissibility of the documentary evidence**

15. The Court received documentation submitted as evidence by the Commission and by the representatives and, as in other cases, this is admitted in the understanding that it was presented at the appropriate procedural moment (Article 57 of the Rules of Procedure).<sup>11</sup>

16. The Court notes that, together with their final written arguments, the representatives presented two annexes that correspond to two judgments handed down by the Judicial Committee of the Privy Council on May 16, 2022. The Court recalls that Article 57(2) of the Rules of Procedure allow it to admit evidence referring to a fact that occurred after submission of the brief with pleadings, motions and evidence. The Court notes that the said annexes refer to facts that were subsequent to the presentation of the representatives' pleadings and motions brief. Accordingly, the said annexes are admitted.

### **B. Admissibility of the testimonial and expert evidence**

17. The Court deems it pertinent to admit the statements provided by affidavit,<sup>12</sup> insofar as they are in keeping with the purpose defined by the President in the order requiring them.<sup>13</sup>

## V FACTS

18. In the instant case, it must first be pointed out that the State did not take part in the proceedings. In this regard, Article 41(3) of the Rules of Procedure should be recalled, which establishes that the Court "may consider those facts that have not been expressly denied and those claims that have not been expressly controverted as accepted." Consequently, the Court finds it appropriate to determine the proven facts in this case taking into account, in addition to the State's silence, other elements that allow it to establish the truth of the facts and their legal assessment, in exercise of its responsibility for the protection of human rights and, to this end, it will apply the relevant principles of treaty law and general international law.<sup>14</sup> However, over and above the possible prejudice for the State, the Court recalls that a State's inactivity before an international human rights court is contrary to the object, purpose and spirit of the American Convention and the collective safety mechanism established in that instrument.<sup>15</sup>

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<sup>11</sup> The documentary evidence should be presented, in general and pursuant to article 57(2) of the Rules of Procedure, together with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable, and evidence forwarded outside these procedural opportunities is inadmissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure*, grave impediment) or if it relates to a supervening fact – that is, one that occurred after the said procedural moments. *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Habbal et al. v. Argentina. Preliminary objections and merits.* Judgment of August 31, 2022. Series C No. 463, para. 26.

<sup>12</sup> The Court received the affidavits made by the alleged victims Reshi Bissoon and Foster Serrette, as well as that of expert witness Douglas Mendes QC, all proposed by the representatives.

<sup>13</sup> The purpose of all these statements was established in the order of the President of the Inter-American Court of June 2, 2002. Available at: [https://www.corteidh.or.cr/docs/asuntos/bissoon\\_serrette\\_02\\_06\\_22\\_ing.pdf](https://www.corteidh.or.cr/docs/asuntos/bissoon_serrette_02_06_22_ing.pdf)

<sup>14</sup> *Cf. Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of March 11, 2005. Series C. No. 123, para. 39.

<sup>15</sup> *Cf. Case of Caesar v. Trinidad and Tobago, supra*, para. 38.

19. That said, in this chapter, the Court will establish the facts of the case based on the factual framework submitted to its consideration by the Inter-American Commission (see *supra* para. 4) in relation to the following aspects: (a) the trial of Mr. Bissoon; (b) the trial of Mr. Serrette; (c) the commutation of the death sentence to life imprisonment, and (d) the alleged detention conditions during their pre-trial detention.

#### **A. The trial of Mr. Bissoon**

20. On November 28, 1995, three men took part in the theft of a vehicle that resulted in the death of L.A.R.<sup>16</sup> In this regard, on December 1, 1995, Mr. Bissoon was arrested and, together with two other individuals, charged with murder.<sup>17</sup>

21. Mr. Bissoon's trial began on October 11, 1999,<sup>18</sup> and he was found guilty of murder on October 29, 1999, and sentenced to death by the High Court of Trinidad and Tobago.<sup>19</sup> All the appeals filed against his conviction were denied.

#### **B. The trial of Mr. Serrette**

22. On the afternoon of October 9, 1998, Mr. Serrette's brother went to Mr. Serrette's house and found him cleaning what appeared to be blood from his heel. On entering the bedroom, the brother found Mr. Serrette's wife and son dead in a pool of blood. He reported the facts to the police. As a result, on October 13, 1998, Mr. Serrette was arrested and charged with the murder of his wife and son.<sup>20</sup>

23. Mr. Serrette's trial began on May 15, 2001,<sup>21</sup> and, on May 21, 2001, he was found guilty and the High Court of Trinidad and Tobago sentenced him to life imprisonment for the manslaughter of his wife, and to death for the murder of his son.<sup>22</sup> All the appeals filed against his conviction were denied.

#### **C. Commutation of the death sentence to life imprisonment**

24. At a date following the facts that are subject to the temporal jurisdiction of this Court, Messrs. Bissoon and Serrette filed a series of appeals against their convictions, which were denied. However, the Court has been informed that, on August 15, 2008, the death sentences of Messrs. Bissoon and Serrette were commuted to life imprisonment,<sup>23</sup> because the Judicial Committee of the Privy Council

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<sup>16</sup> Cf. Court of Appeal of Trinidad and Tobago, *Curtis Sirju [sic] and Reshi Bissoon v. The State* Judgment of May 26, 2000 (evidence file, folio 4).

<sup>17</sup> Cf. Statement of Reshi Bissoon of December 1, 1995 (evidence file, folios 2875 to 2880).

<sup>18</sup> Cf. High Court of Trinidad and Tobago, transcript of the trial of Curtis Sirjus and Reshi Bissoon (evidence file, folio 2117).

<sup>19</sup> Cf. High Court of Trinidad and Tobago, transcript of the trial of Curtis Sirius and Reshi Bissoon (evidence file, folio 2804).

<sup>20</sup> Cf. Court of Appeal of Trinidad and Tobago, *Foster Serrette v. The State* Judgment of January 23, 2002 (evidence file, folio 21).

<sup>21</sup> Cf. High Court of Trinidad and Tobago, transcript of the trial of Foster Serrette (evidence file, folio 2895).

<sup>22</sup> Cf. High Court of Trinidad and Tobago, transcript of the trial of Foster Serrette (evidence file, folio 3017).

<sup>23</sup> In the context of the constitutional motions filed by both of them owing to the judgment handed down by the Judicial Committee of the Privy Council on July 7, 2004, in the case of *Charles Matthew v. The State*, in which it determined that the imposition of the mandatory death penalty was incompatible with the prohibition of inhuman or degrading punishment established by the Constitution of Trinidad and Tobago, the death sentences of Messrs. Bissoon and Serrette were commuted to life imprisonment on August 15, 2008. Cf. Judicial Committee of the Privy Council, *Charles Matthew v. The State* (2004) 64 WIR 412, Judgment of July 7, 2004. Available at: <http://www.bailii.org/uk/cases/UKPC/2004/33.html>. See also, High Court

determined that the said sentence was incompatible with the prohibition of inhuman or degrading punishment established by the Constitution of Trinidad and Tobago.

25. The Court underlines that, to reach this conclusion, the Judicial Committee of the Privy Council accorded great relevance to the fact that Trinidad and Tobago had been a member of the Organization of American States since March 14, 1967, and that, as such, it was obliged to respect and ensure the rights contained in the American Declaration on the Rights and Duties of Man. It also pointed out that the country had ratified the American Convention on Human Rights and had accepted the contentious jurisdiction of the Inter-American Court. Furthermore, the Judicial Committee noted that, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, and also the United Nations Human Rights Committee had determined that the mandatory death penalty was incompatible with "obligations under international law." Thus, it referred to numerous reports of the Inter-American Commission that have repeatedly underlined this, including *McKenzie et al. v. Jamaica*, Report No. 41/00 of April 13, 2000; *Baptiste v. Granada*, Report No. 38/00 of April 13, 2000; *Edwards et al. v. Bahamas*, Report No. 48/01 of April 4, 2001, and *Sewell v. Jamaica*, Report No. 76/02 of December 27, 2002. In addition, regarding the case law of the Inter-American Court, the Judicial Committee of the Privy Council referred expressly to the judgment in the *case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* of June 21, 2002, and, in particular, to paragraphs 102 to 108 in which the Court concluded that the automatic and generalized application of the death penalty, as was the case in Trinidad and Tobago, was contrary to Article 4(1) and 4(2) of the American Convention.<sup>24</sup>

#### **D. Alleged detention conditions during pre-trial detention**

26. The representatives indicated that, while in pre-trial detention, Mr. Bissoon was subjected to the following conditions in the Golden Grove Prison:

- he was held in a dusty cell with limited light and ventilation in which he was obliged to use newspaper as a mattress. Moreover, detainees had to urinate in a bucket and defecate in newspaper;
- he was only allowed a two-minute bath each day;
- the prison's hygiene conditions were totally inadequate with dead insects in the food;
- he was locked in his cell most of the time, except for two or three times a week when he was accorded 45 minutes for exercise;
- he was subjected to corporal punishment by several prison officials during his first day of pre-trial detention;
- access to medicines was limited, and
- family visits were restricted.

27. The representatives also indicated that, while in pre-trial detention, Mr. Serrette was subjected to the following conditions in the Golden Grove Prison:

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of Justice of Trinidad and Tobago, Ruling of August 15, 2008 (evidence file, folios 1889 to 1891).

<sup>24</sup> Cf. Judicial Committee of the Privy Council, *Charles Matthew v The State* (2004) 64 WIR 412, Judgment of July 7, 2004. Available at: <http://www.bailii.org/uk/cases/UKPC/2004/33.html>



- initially, during the three days he was held in the police station, he was not fed;
- all his clothes, except for his underwear, were taken away and, consequently, he suffered from the cold in his cell;
- he was left without a change of clothing for three days;
- he had to sleep on the concrete floor;
- he was not allowed to take a bath, and
- he was not provided with water and was obliged to drink his own urine.

28. The Court also underlines that, according to the Commission and the representatives, on March 5, 1995, the General Secretary of the Prison Officers' Association made the following statement in a national newspaper on the prison conditions of those condemned to death:

The majority [of the prison authorities] empathise with the inmates because we have to work in the same conditions in which they live. We have a duty to patrol these areas for hours...making periodic checks and walk the pathways that are sticky with filth. [...] The conditions are highly deplorable, unacceptable and pose a health hazard. [...] It is not easy when there are eleven human beings in a 9' x 6' cell [approximately 2.7 x 1.8 meters] with a five-gallon pigtail bucket for a toilet in one corner. It is not a lie when they say you have to sit on the pail or stand up and sleep. It is terrible and it really, really stinks. I won't put my animals in there.<sup>25</sup>

## **VI MERITS**

### **RIGHT TO PERSONAL INTEGRITY, PERSONAL LIBERTY, JUDICIAL GUARANTEES AND JUDICIAL PROTECTION<sup>26</sup>**

29. The Court notes, first, that the Commission submitted to its jurisdiction the alleged violations committed between May 28, 1991, and May 26, 1999, indicating that Trinidad and Tobago was responsible for the violation of Articles 7(5), 8(1) and 25(1) of the American Convention owing to: (i) the alleged violation of the right of anyone who has been detained to be tried within a reasonable time; (ii) the alleged anomalies in the trial of Mr. Bissoon, and (iii) the alleged detention conditions.<sup>27</sup>

30. The Court also notes that, in their pleadings and motions brief, the representatives alleged a series of violations relating to: (i) the alleged violation of the right of anyone who has been detained to be tried within a reasonable time; (ii) the alleged anomalies in the trials against the alleged victims; (iii) the automatic imposition of the death penalty and subjection to the death row phenomenon; (iv) the State's alleged failings when commuting the death sentences to life imprisonment, and (v) the detention conditions to which the alleged victims were subjected.

31. Regarding the alleged violations committed during the criminal trials, the Court notes that either: (a) there was no indication of the exact date on which these occurred, or (b) they occurred during the trial that began on October 11, 1999 (Mr. Bissoon), or on May 21, 2001 (Mr. Serrette), or subsequently.<sup>28</sup> All the foregoing took place outside the temporal framework submitted to this

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<sup>25</sup> Statement made by the General Secretary of the Prison Officers' Association.

<sup>26</sup> Articles 5, 7, 8 and 25 of the American Convention on Human Rights.

<sup>27</sup> Cf. Merits Report No. 398/20, Case 12,740, Reshi Bissoon and Foster Serrette with regard to Trinidad and Tobago, December 21, 2020, OEA/Ser.L/V/II, para. 75 (merits file, folio 27).

<sup>28</sup> Regarding the alleged violations of judicial guarantees that occurred immediately after Mr. Bissoon's arrest (and that

Court and its jurisdiction *ratione temporis*. Therefore, the Court will not examine: (i) the alleged anomalies during the criminal trials; (ii) the alleged violation of the American Convention owing to the automatic imposition of the death penalty and subjection to the death row phenomenon, or (iii) the State's alleged failings when commuting the death sentences to life imprisonment.

32. Consequently, based on the arguments of the representatives and of the Commission, in the instant case, the Court will examine: (i) the alleged violation of the right of anyone who has been detained to be tried within a reasonable time, and (ii) the conditions under which Messrs. Bissoon and Serrette were detained between December 1, 1995, or October 13, 1998 (the date of their respective arrests), and May 26, 1999 (the date on which Trinidad and Tobago's denunciation of the American Convention came into force).

#### **A. Arguments of the parties and of the Commission**

33. The **Commission** considered that the length of time between the arrest of Mr. Bissoon on December 1, 1995, and the start of the trial on October 11, 1999, violated the right to be tried within a reasonable time established in Article 7(5) of the American Convention, and also Article 8(1) of the Convention. It added that there was no justification for this delay. Moreover, it indicated that following their arrest, the alleged victims were subjected to very "poor" detention conditions.

34. The **representatives** agreed with the Commission when indicating that almost four years had elapsed between the arrest of Mr. Bissoon on December 1, 1995, and the start of the trial on October 11, 1999, which entailed a violation of the right to be tried within a reasonable time and a violation of Articles 7(5) and 8(1) of the American Convention. Furthermore, they indicated that the State had also failed to comply with a reasonable time in the case of Mr. Serrette, who was arrested on October 13 1998, and tried starting on May 15, 2001.

35. In addition, they alleged that the detention conditions of Messrs. Bissoon and Serrette failed to meet the requirements established in the Prison Rules of Trinidad and Tobago or the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). This involved a violation of Article 5 of the American Convention.

36. The **State** did not comment in this regard.

#### **B. Considerations of the Court**

##### *b.1 Right of anyone held in pre-trial detention to be tried within a reasonable time*

37. The Court notes, first, that although the Commission and the representatives indicated that the detention of Messrs. Bissoon and Serrette and their sentence violated Articles 7(5) and 8(1) of the American Convention, in the instant case, this allegation must be examined under Article 7(5), because it relates specifically to the reasonableness of the pre-trial detention.<sup>29</sup> That said, the Court reiterates that pre-trial detention is the harshest measure that can be applied to anyone accused of an offense, and therefore its application should be exceptional, because it is limited by the right to the presumption of innocence, as well as by the principles of necessity and proportionality, which are

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do fall within its temporal jurisdiction), the Court considers that insufficient evidence has been provided to prove them.

<sup>29</sup> *Cf. mutatis mutandis, Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354 paras. 359 to 369 and 419.

essential in a democratic society.<sup>30</sup> In this regard, the Court recalls that pre-trial detention must abide strictly by the provisions of Article 7(5) of the American Convention, in the sense that it may not continue beyond a reasonable time, or the subsistence of the reasons cited to justify it. Failure to comply with these requirements amounts to the execution of a punishment before the sentence has been pronounced, which is contrary to the universally recognized general principles of law.<sup>31</sup> Thus, even when reasons exist to maintain a person in pre-trial detention, Article 7(5) guarantees that they must be released if the time spent in detention has exceeded a reasonable limit.<sup>32</sup> In other words, if a person remains deprived of liberty in pre-trial detention and the trial is not held within a reasonable time, Article 7(5) of the Convention is violated.

38. The Court also notes that a factor that should have a bearing on the need to try the accused within a reasonable time is the fact that if this person is being held in pre-trial detention,<sup>33</sup> this has a serious impact on the right to personal liberty and, therefore, it is essential that the trial be held promptly.<sup>34</sup> In this regard, the Court recalls that the right to personal liberty “also imposes a judicial obligation to process the criminal proceedings during which the accused is deprived of liberty with greater diligence and promptness.”<sup>35</sup> Thus, when the duration of pre-trial detention exceeds a reasonable time, the State may restrict the liberty of the accused by other measures that are less harmful than deprivation of liberty to ensure their appearance at the trial.”<sup>36</sup>

39. Furthermore, the time that a person remains in pre-trial detention cannot be analyzed in the abstract; rather, its reasonableness must be determined by examining the individual facts together with the specific characteristics of each situation and, among other matters, whether domestic law prescribes a specific duration, the actual duration of the pre-trial detention, the offense or offenses in question, and the characteristics of the criminal proceedings and the situations that have occurred during those proceedings.<sup>37</sup>

40. That said, the Court notes that the pre-trial detention of Mr. Bissoon began on December 1, 1995, the day on which he was arrested,<sup>38</sup> and ended on October 29, 1999, the day on which the guilty verdict and the sentence were delivered.<sup>39</sup> However, based on the temporal framework for

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<sup>30</sup> Cf. *Case of Suárez Rosero. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 228.

<sup>31</sup> Cf. *Case of Suárez Rosero v. Ecuador, supra*, para. 77, and *Case of the "Juvenile Re-education Institute" v. Paraguay, supra*, para. 229. See also, Rule 13.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of November 28, 1985; and Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of December 14, 1990.

<sup>32</sup> Cf. *Case of Amrhein et al. v. Costa Rica, supra*, para. 362.

<sup>33</sup> In this regard, the UN Human Rights Committee has indicated that “[i]n cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible.” Cf. UN, Human Rights Committee, Communication No. 818/1998, Views adopted on August 1, 2001, CCPR/C/72/D/818/1998, para. 7.2; *Mr. Glenroy Francis et al. v. Trinidad and Tobago*, Communication No. 899/1999, Views adopted on July 25, 2002, CCPR/C/75/D/899/1999, para. 5.4, and *Barroso v. Panama*, Communication No. 473/1991, Views adopted on July 27, 1995, CCPR/C/54/D/473/1991, para. 8.5.

<sup>34</sup> Cf. *mutatis mutandis, Case of Carranza Alarcón v. Ecuador. Preliminary objections, Merits, reparations and costs*. Judgment of February 3, 2020. Series C No. 399, para. 87.

<sup>35</sup> Cf. *Case of Bayarri v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 70, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 360.

<sup>36</sup> Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 120.

<sup>37</sup> Cf. *Case of Bayarri v. Argentina, supra*, paras. 70 and 74, and *Case of Barreto Leiva v. Venezuela, supra*, para. 120.

<sup>38</sup> Cf. Statement of Reshi Bissoon of December 1, 1995 (evidence file, folios 2875 to 2880).

<sup>39</sup> Cf. High Court of Trinidad and Tobago, transcript of the trial of Curtis Sirjus and Reshi Bissoon (evidence file, folio

which this Court has competence, it will examine the time that Mr. Bissoon was in pre-trial detention from the day of his arrest until the day that Trinidad and Tobago's denunciation of the American Convention took effect (May 26, 1999); a duration of more than 41 months.

41. The Court notes that Mr. Bissoon's case bore some similarity to the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* in which it declared, *inter alia*, the violation of Article 7(5), because in that case, the time between the arrest of the 24 victims and the date on which they were sentenced ranged from 32 months to 8 years.<sup>40</sup> Additionally, the Court notes that the State, by deciding voluntarily not to take part in these proceedings, has not provided any arguments or evidence to prove: (i) a conduct that was particularly diligent, or (ii) the reason or reasons why it had required more than three years to deliver judgment in this case.<sup>41</sup> Indeed, any detention, regardless of its duration, must be sufficiently justified by the State, and this did not happen in the instant case. Added to this, the Court notes that the domestic proceedings to which Mr. Bissoon was subjected were not particularly complex owing to the persons involved, the complexity of the offense, or the production and assessment of the evidence.

42. In sum, the Court considers that, in this case, the 41 months that Mr. Bissoon was held in pre-trial detention (within the framework of the Court's jurisdiction *ratione temporis*) violated the reasonable time required by Article 7(5) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Mr. Bissoon.

43. Regarding Mr. Serrette, the Court notes that, although the alleged victim was arrested on October 13, 1998 (that is, within the Court's temporal jurisdiction), the denunciation of the American Convention by Trinidad and Tobago entered into force on May 26, 1999 (in other words, five months after his arrest). Therefore, this Court has insufficient evidence to be able to examine the alleged violation of Mr. Serrette's right to be tried within a reasonable time.

*b.2 Detention conditions to which Messrs. Bissoon and Serrette were subjected from the time of their arrest until the entry into force of the denunciation of the American Convention by Trinidad and Tobago*

44. The Court recalls that Article 5(1) of the Convention establishes the right to personal integrity, both physical and also mental and moral, in general terms, Meanwhile, Article 5(2) establishes, more specifically, the absolute prohibition of subjecting anyone to torture or to cruel, inhuman or degrading treatment or punishment. Moreover, it has now been recognized that the absolute prohibition of torture, either physical or psychological, forms part of international *ius cogens*.<sup>42</sup>

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2804).

<sup>40</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, reparations and costs. Judgment of June 21, 2002. Series C No. 94, para. 120.

<sup>41</sup> Added to this, in Communication no. 908/2000 on *Xavier Evans v. Trinidad and Tobago*, the UN Human Rights Committee analyzed the time that has elapsed between the date of his arrest and the date of his trial in a case in which the victim was sentenced to life imprisonment for murder and determined that the delay of 2 years and 3 months between those dates violated articles 9(3) and 14(3)(c) of the International Covenant on Civil and Political Rights. The Committee ruled similarly in Communication no. 818/1998 on *Sandy Sextus v. Trinidad and Tobago*, in which it indicated that a delay of 22 months between the victim's arrest and the trial for murder violated the same articles 9(3) and 14(3)(c) of that international treaty. Cf. United Nations, Human Rights Committee, Communication no. 908/2000, Views of May 5, 2003, CCPR/C/77/D/908/2000, para. 6.2, and United Nations, Human Rights Committee, Communication no. 818/1998, Views of August 1, 2001, CCPR/C/72/D/818/1998, para. 7.2.

<sup>42</sup> Cf. *Case of Maritza Urrutia v. Guatemala*. Merits, reparations and costs. Judgment of November 27, 2003. Series C No. 103, para. 92, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*. Merits, reparations and costs. Judgment of November 28, 2018. Series C No. 371, paras. 177 and 178.

45. The Court has also indicated that the violation of the right to physical and mental integrity has different gradations and ranges from torture to other kinds of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity based on endogenous and exogenous factors (such as, the duration of the treatment and the context, and the individual's age, sex, health and vulnerability), which must be analyzed in each specific case.<sup>43</sup> In other words, the personal characteristics of alleged victims of torture or cruel, inhuman or degrading treatment, must be taken into account when determining whether their personal integrity has been violated because such characteristics may alter their perception and, consequently, increase the suffering and the feeling of humiliation when subjected to certain treatment.<sup>44</sup>

46. According to Article 5(2) of the Convention, everyone deprived of their liberty has the right to detention conditions that are compatible with their personal dignity, and the State must guarantee their rights to life and to personal integrity. Consequently, the State, as the entity responsible for detention centers, is the guarantor of those rights of the inmates.<sup>45</sup>

47. That said, the Court notes that the representatives have consistently described, both before the domestic authorities,<sup>46</sup> and throughout the proceedings before both the Commission and the Court,<sup>47</sup> the deplorable conditions under which Messrs. Bissoon and Serrette were detained. These have been confirmed by the statements of Messrs. Bissoon and Serrette.<sup>48</sup> The State has not taken part in these proceedings before the Court and, therefore, it has not refuted these allegations.

48. The specific instruments concerning the treatment of those deprived of liberty at both the inter-American and the universal level stress the essential nature of human dignity – as one of the most fundamental values – in the implementation of all prison policies.<sup>49</sup> In this regard, the Court recalls that numerous decision of international bodies cite the United Nations Standard Minimum Rules for the Treatment of Prisoners when interpreting the content of the right of prisoners to decent and humane treatment. This Court has also had recourse to those rules when analyzing the compatibility of detention conditions with the American Convention.<sup>50</sup> The Minimum Rules indicate basic standards

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<sup>43</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 177.

<sup>44</sup> Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of Omeara Carrascal et al. v. Colombia, supra*, para. 193.

<sup>45</sup> Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Raxcacó Reyes v. Guatemala, supra*, para. 95.

<sup>46</sup> Cf. Letter of March 18, 2008, addressed to the Commissioner of Prisons by Mr. Bissoon's representatives (evidence file, folio 1811).

<sup>47</sup> Cf. Petition lodged before the Inter-American Commission on Human Rights on behalf of Reshi Bissoon on August 25, 2005, para. 103 (evidence file, folio 54); Petition updated before the Inter-American Commission on Human Rights on behalf of Reshi Bissoon on April 18, 2008 (evidence file, folio 1059); Petition lodged before the Inter-American Commission on Human Rights on behalf of Foster Serrette on May 31, 2005, paras. 74 and 75 (evidence file, folio 1193); Petition updated before the Inter-American Commission on Human Rights on behalf of Foster Serrette on April 18, 2008, paras. 74 and 75 (evidence file, folio 1772); Petition updated before the Inter-American Commission on Human Rights on behalf of Foster Serrette on February 8, 2010, paras. 19 to 21 (evidence file, folios 1809 and 1810), and Brief with pleadings, motions and evidence of December 20, 2021, para. 3.9.24 and 3.17.27 (merits file, folios 73, 74, 82 and 83).

<sup>48</sup> Cf. Notarized statement by Reshi Bissoon of July 28, 2022, paras. 12 and 40 (evidence file, 3124 and 3129) and Affidavit made by Foster Serrette on July 28, 2022, paras. 12 and 42 (evidence file, folios 3111 and 3118).

<sup>49</sup> Cf. *Differentiated approaches with respect to certain groups of persons deprived of liberty (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments)*. Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29, para. 40.

<sup>50</sup> Cf. *inter alia*, *Case of Raxcacó Reyes v. Guatemala, supra*, para. 99 and ff; *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, paras. 151 and 198; *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011, Series C No. 236, para. 85, and *Matter of the Urso Branco Prison with regard to Brazil. Provisional measures*. Order of the Inter-American Court of Human Rights of August

concerning accommodation, personal hygiene, health-care services, and exercise for prisoners. In particular, the rules establish a series of minimum requirements, namely:

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work, (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. [...]

20(2). Drinking water shall be available to every prisoner whenever he needs it.<sup>51</sup>

49. The Court notes that, while in pre-trial detention in the Golden Grove Prison (that is, from December 1, 1995, to October 29, 1999, for Mr. Bissoon, and from October 13, 1998, to May 21, 2001, for Mr. Serrette), Messrs. Bissoon and Serrette were held in dirty cells in very unhygienic conditions, with little light and ventilation and, in the absence of a mattress, forced to sleep either on the floor or on newspapers. In addition, there were no adequate sanitary installations where Messrs. Bissoon and Serrette could comply with the needs of nature when necessary and in a clean and decent manner.<sup>52</sup> Moreover, Mr. Serrette stated that he was not provided with drinking water and, at times, had to drink his own urine.<sup>53</sup> He also indicated that he remained locked up in his cell most of the time, except for two or three times a week when he was able to exercise for 45 minutes.<sup>54</sup> In this regard, the United Nations Standard Minimum Rules for the Treatment of Prisoners establish that “[e]very prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.”<sup>55</sup>

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29, 2002, considering paragraph 10.

<sup>51</sup> Cf. Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977. In 2011, the UN General Assembly decided to establish an open-ended intergovernmental Expert Group to review and possibly revise the rules. In May 2015, the Commission on Crime Prevention and Criminal Justice (CCPCJ) endorsed the revised rules and submitted the[m ...] for approval by the Economic and Social Council (ECOSOC) and subsequent adoption by the General Assembly, [...] which adopted the revised rules on December 17, 2015, during its 80<sup>th</sup> session (Resolution A/RES/70/175 of January 8, 2016). At its fourth meeting, the Expert Group recommended that the revised rules be known as “the Nelson Mandela Rules.” Since the facts that are the subject of the Court’s analysis took place between February 24, 1995, and May 26, 1999, the Court will take into account the criteria established in the 1995 Standard Minimum Rules.

<sup>52</sup> Cf. Affidavit made by Reshi Bissoon on July 28, 2022, para. 12 (evidence file, folio 3124), and Affidavit made by Foster Serrette on July 28, 2022, paras. 12 and 42 (evidence file, folios 3111 and 3118).

<sup>53</sup> Cf. Affidavit made by Foster Serrette on July 28, 2022, para. 12 (evidence file, folio 3111).

<sup>54</sup> Cf. Affidavit made by Reshi Bissoon on July 28, 2022, para. 12 (evidence file, folio 3124).

<sup>55</sup> Cf. Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977, para. 21.1.

50. The Court recalls that, since it is responsible for detention centers, the State must guarantee that inmates have living conditions that safeguard their rights. On other occasions, this Court has indicated that keeping an individual confined in overcrowded conditions, with little ventilation and natural light, without a bed to rest on or adequate conditions of hygiene, in isolation or solitary confinement, or with undue restrictions on visiting conditions, constitutes a violation of personal integrity.<sup>56</sup> The Court also considers it relevant to take into account standards recommended by international bodies for the minimum acceptable conditions as regards the space required for a dignified life in prison.<sup>57</sup> It has also indicated that the absence of minimum conditions that ensure a supply of drinking water within a prison constitutes a serious failure of the State to comply with its duty to guarantee the rights of those held in its custody, given that due to the particular circumstances of any deprivation of liberty, those detained cannot satisfy by themselves a series of basic needs that are essential for a decent life, such as access to sufficient clean water.<sup>58</sup>

51. Additionally, the Court notes that the UN Human Rights Committee has had occasion to examine detention conditions in Trinidad and Tobago's prisons at the time of the facts of this case. Thus, in the case of *Xavier Evans v. Trinidad and Tobago*, the Committee analyzed, *inter alia*, the victim's detention conditions while he was on death row between July 4, 1988, and January 4, 1994, and determined that those conditions violated Article 10(1) of the International Covenant on Civil and Political Rights which stipulates that: "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."<sup>59</sup> The Committee ruled in a similar sense in the case of *Glenroy Francis et al. v. Trinidad and Tobago* in relation to the detention conditions in the Golden Grove and Port of Spain prisons from 1986 to 1997, both when the victims were in pre-trial detention, and after they had been sentenced to death.<sup>60</sup> Another significant case is

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<sup>56</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, Merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 150, and *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006, para. 315. See also, *Differentiated approaches with respect to certain groups of persons deprived of liberty (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments)*. Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29, para. 40.

<sup>57</sup> Cf. *Differentiated approaches with respect to certain groups of persons deprived of liberty (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments)*. Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29, para. 103. See also, International Committee of the Red Cross (ICRC) (3.4 meters in shared cells and 5.4 meters in individual cells) and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (4 meters in shared cells and 6 meters in individual cells). See also, *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 90.

<sup>58</sup> Cf. *Case of Vélez Loor v. Panamá. Preliminary objections, Merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 216, and *Differentiated approaches with respect to certain groups of persons deprived of liberty (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments)*. Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29, para. 40. Meanwhile, the UN Human Rights Committee has indicated that holding an individual in a small cell for twenty-three hours each day, isolated from other men, in enforced darkness, with little to keep him occupied, and without permitting him to work or to undergo education, constituted a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person. In the case of *Albert Womah Mukong*, the Human Rights Committee insisted on the universality of the right to decent and humane treatment and rejected economic or budgetary considerations being used as an excuse for failing to respect this right. Cf. UN, Human Rights Committee, *Anthony McLeod v. Jamaica*, Communication No. 734/1997, Views of June 3, 1998, CCPR/C/62/D/734/1997, para. 6.4, and UN, Human Rights Committee, *Albert Womah Mukong v. Cameroon*, Communication No. 458/1991, Views of August 10, 1994, CCPR/C/51/D/458/1991, para. 9.3. See also, *Case of Raxcacó Reyes v. Guatemala, supra*, para. 96.

<sup>59</sup> The Committee noted that victim was held on death row "for a period of five years in a cell measuring 6 by 9 feet, with no sanitation except for a slop pail, no natural light, being allowed out of his cell only once or twice a week during which he was restrained in handcuffs, and with wholly inadequate food that did not take into account his particular dietary requirements." Cf. UN, Human Rights Committee, *Xavier Evans v. Trinidad and Tobago*, Communication No. 908/2000, Views of March 21, 2003, CCPR/C/77/D/908/2000, para. 6.4.

<sup>60</sup> Cf. UN, Human Rights Committee, *Glenroy Francis et al. v. Trinidad and Tobago*, Communication No. 899/2000, Views

that of *Teesdale v. Trinidad and Tobago*, in which the Committee also determined that Mr. Teesdale's detention conditions between 1988 and 1996 (both when he was being held in pre-trial detention and after he had been sentenced to death) violated, *inter alia*, the said Article 10(1) of the International Covenant on Civil and Political Rights.<sup>61</sup>

52. Based on the above, the Court concludes that the State failed to comply with the minimum standards during the detention of Messrs. Bissoon and Serrette while they were held in pre-trial detention. Therefore, the Court concludes that Messrs. Bissoon and Serrette experienced severe mental suffering in detention conditions that did not comply with the relevant international standards and this violated their right to physical, mental and moral integrity established in Article 5(1) of the American Convention and constituted cruel, inhuman and degrading treatment, contrary to Article 5(2) of the Convention, all in relation to Article 1(1) of this instrument.

## **VII REPARATIONS**

53. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>62</sup>

54. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the rights that were violated and to redress the consequences of such violations.<sup>63</sup> Therefore, the Court has considered the need to establish diverse measures of reparation in order to redress the harm comprehensively so that, in addition to financial compensation, measures of restitution, rehabilitation and satisfaction, together with guarantees of non-repetition have special relevance for the harm caused.<sup>64</sup>

55. The Court has established that the reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Consequently, the Court must observe this concurrence to rule correctly and pursuant to law.<sup>65</sup>

56. Taking into account the violations of the American Convention declared in the preceding chapter, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation,<sup>66</sup> the Court will examine the claims submitted by the

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of May 14, 1997, CCPR/C/75/D/899/1999, para. 5.6.

<sup>61</sup> Cf. UN, Human Rights Committee, *Kenneth Teesdale v. Trinidad and Tobago*, Communication No. 677/1996, Views of April 15, 2003, CCPR/C/74/D/677/1996, para. 9.1. See also, *Michael Wanza v. Trinidad and Tobago*, Communication No. 683/1996, Views of June 10, 2002, CCPR/C/74/D/683/1996, para. 9.2, and *Rawle Kennedy v. Trinidad and Tobago*, Communication No. 845/1998, Views of March 28, 2002, CCPR/C/74/D/845/1998, para. 7.8.

<sup>62</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Deras García et al. v. Honduras. Merits, reparations and costs*. Judgment of August 25, 2022. Series C No. 462, para. 90.

<sup>63</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 and 2, and *Case of Deras García et al. v. Honduras*, *supra*, para. 91.

<sup>64</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Deras García et al. v. Honduras*, *supra*, para. 92.

<sup>65</sup> Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Deras García et al. v. Honduras*, *supra*, para. 93.

<sup>66</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 to 27, and *Case of Deras García*



Commission and the representatives, and also the corresponding arguments of the State, in order to establish the measures tending to redress the said violations.

### **A. Injured party**

57. This Court has considered that, pursuant to Article 63(1) of the Convention, anyone who has been declared the victim of a violation of any right recognized therein is an injured party. Therefore, the Court considers that Reshi Bissoon and Foster Serrette are the “injured party” and, as victims of the violations declared in Chapter VI of this judgment, they will be the beneficiaries of the reparations ordered by the Court.

### **B. Measures of satisfaction**

58. Even though neither the Commission nor the representatives requested measures of satisfaction, the Court considers, as it has in other cases,<sup>67</sup> that the State should publish, within six months of notification of this judgment: (a) the official summary of the judgment prepared by the Court, once, in the Official Gazette, in an adequate and legible font; (b) the official summary of the judgment prepared by the Court, once, in a national newspaper with widespread circulation in an adequate and legible font, and (c) this judgment in its entirety, available for one year, on an official website of the State, in a way that is accessible to the public from the website’s home page. The State must inform this Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the fourth operative paragraph of this judgment.

### **C. Other measures requested**

59. The **Commission** recommended that the State review “its laws, procedure and practices” to ensure that persons accused of “capital crimes” are tried within a reasonable time after their arrest and, if convicted, sentenced in accordance with the rights established in the American Declaration and, in particular, the rights to a fair trial, due process and humane treatment during their imprisonment.

60. The Commission also recommended that the State ensure that conditions in the Frederick Street Prison in Port of Spain are compatible with international human rights standards in accordance with the right to protection against cruel, infamous or unusual punishment (Article XXVI of the American Declaration).

61. In addition, the Commission recommended to Trinidad and Tobago that it abolish the death penalty, including the mandatory death penalty.

62. Lastly, the Commission recommended a review of the trial and the sentence imposed on Messrs. Bissoon and Serrette pursuant to the guarantees of a fair trial and due process established in Articles XVIII and XXVI of the American Declaration.

63. The **representatives** asked the Court to order the State to abstain from applying the “Offences Against the Person Act 1925” in cases in which it would be incompatible with the American Convention, and to adopt legislative or other measures to ensure that the death penalty was not

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*et al. v. Honduras, supra*, para. 93.

<sup>67</sup> *Cf. Case of Montesinos Mejía v. Ecuador. Preliminary objections, Merits, reparations and costs.* Judgment of January 27, 2020. Series C No. 398, para. 226, and *Case of Deras García v. Honduras, supra*, para. 168.

imposed in a manner inconsistent with the rights and freedoms recognized in the American Convention and other international human rights instruments and, in particular: (a) that it was not imposed in a mandatory fashion; (b) that different categories of murder were introduced that took into account the particular circumstances of the crime and of the perpetrator, and (c) that respect for, and enjoyment of, the rights to life, personal integrity, a fair trial and due process were ensured. They also asked that Trinidad and Tobago comply with the American Convention and other relevant international human rights instruments concerning prison conditions. Lastly, they asked the Court to order the release of Messrs. Bissoon and Serrette or that they receive a new trial, and also that measures of rehabilitation and resocialization be adopted.

64. The **State** did not comment on the foregoing.

65. Regarding the application of the "Offences Against the Person Act", the Court notes that, already in the *case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, it had ordered the State of Trinidad and Tobago "to abstain from applying the Offences Against the Person Act of 1925 and, within a reasonable time, amend [it] to comply with international norms for the protection of human rights."<sup>68</sup> Therefore, the Court considers it unnecessary to reiterate this measure of reparation, because it already forms part of its monitoring of compliance with the corresponding judgment.<sup>69</sup>

66. A similar situation exists as regards the Commission's request that the State ensure that detention conditions are compatible with international human rights standards because, already in the *case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* it had ordered the State of Trinidad and Tobago "to modify the conditions of its prison system to conform to the relevant international norms for the protection of human rights."<sup>70</sup>

67. Regarding the Commission's request that Trinidad and Tobago abolish the death penalty, the Court recalls that Article 4 of the American Convention incorporates a gradual approach to the abolition of the death penalty and this is reflected in its second paragraph, which prohibits extending its application "to crimes to which it does not presently apply", according to the third paragraph, "[t]he death penalty shall not be reestablished in States that have abolished it." Thus, the Convention seeks the gradual adoption of the necessary safeguards to restrict the application of capital punishment definitively, until its total elimination.<sup>71</sup>

68. Lastly, regarding the other measures of reparations requested, the Court notes that no causal nexus exists between the violations that have been declared and the amendments requested.

#### **D. Compensation**

69. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the

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<sup>68</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 212 and eighth operative paragraph.

<sup>69</sup> Cf. The Court notes that it has applied Article 65 of the American Convention in that case, because it has verified that the State has not complied with that judgment.

<sup>70</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 217 and fourteenth operative paragraph.

<sup>71</sup> Cf. *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs*. Judgment of May 10, 2019. Series C No. 376, para. 63, and *Case of Ruiz Fuentes et al. v. Guatemala*, *supra*, para. 80.

facts of the case.<sup>72</sup>

70. The Court has also established in its case law that non-pecuniary damage “may include both the suffering and afflictions caused by the violations and also the impairment of values of great significance to the individual, and any alteration of a non-pecuniary nature in the living conditions of the victims.” In addition, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, this can only be compensated for the purposes of integral reparation to the victim by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court determines in reasonable application of sound judicial criteria and in terms of equity.<sup>73</sup>

71. The **Commission** made a general recommendation that “pecuniary compensation” be paid.

72. The **representatives** asked the Court to establish the compensation for pecuniary damage [*sic*<sup>74</sup>] that it considered “fair and appropriate,” taking into account the “significant physical and mental suffering” experienced by Messrs. Bissoon and Serrette. Subsequently, they considered that the sum of US\$10,000.00 (ten thousand United States dollars) would be appropriate.

73. The **State** did not comment on the foregoing.

74. Although the representatives referred to pecuniary damage, based on the content of their request and its nature, the Court interprets that they were referring to the non-pecuniary damage caused by the violations of the Convention. In this regard, the Court notes that the death sentence, and also the conditions under which the victims were detained during the time Trinidad and Tobago was subject to the Court’s jurisdiction, gave rise to a certain degree of suffering and anguish, with consequences on their personal and professional life. In this regard, Mr. Bissoon stated that all the facts described in this case had a “harmful impact on his mental health, physical health, and personal and family life.”<sup>75</sup> Mr. Serrette made a similar statement.<sup>76</sup>

75. Therefore, considering the circumstances of this case, the violations committed, the suffering caused and experienced to different degrees, and the time that has elapsed, the Court will now establish, in equity, compensation for non-pecuniary damage in favor of the victims.

76. Consequently, the Court orders, in equity, the payment of US\$10,000.00 (ten thousand United States dollars) in favor of Mr. Bissoon, and US\$5,000.00 (five thousand United States dollars) in favor of Mr. Serrette, for non-pecuniary damage.

### **E. Costs and expenses**

77. The **representatives** indicated that they would not charge legal fees because they had represented the victims *pro bono*. They added that the expenses incurred before the Court would be covered by the Victims’ Legal Assistance Fund (*infra* paras. 77 and *ff.*). Consequently, the Court will not rule on this item.

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<sup>72</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Deras García et al. v. Honduras, supra*, para. 123.

<sup>73</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Deras García et al. v. Honduras, supra*, para. 123.

<sup>74</sup> Although the representatives referred to pecuniary damage, the Court will examine this claim under the heading of non-pecuniary damage.

<sup>75</sup> Cf. Affidavit made by Reshi Bissoon on July 28, 2022, para. 41 (evidence file, folio 3132).

<sup>76</sup> Cf. Affidavit made by Foster Serrette on July 28, 2022, para. 43 (evidence file, folio 3119).

***F. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court***

78. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the Inter-American Human Rights System in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."<sup>77</sup>

79. In a note of the Court's Secretariat of March 29, 2022, the President authorized the access of the alleged victims to the said Legal Assistance Fund to cover the presentation of a maximum of three statements. In an order of the President of June 2, 2022, it was specified that the Legal Assistance Fund would cover the reasonable expenses of the preparation and dispatch of three affidavits. On August 4, 2022, the representatives were asked to forward, before August 19, 2022, all the vouchers authenticating the disbursements made for the preparation and dispatch of the affidavits of Messrs. Bissoon and Serrette, and of expert witness Douglas Mendes SC. The representatives did not respond to this request and, therefore, the Court's Secretariat did not proceed to make a reimbursement.

80. Based on the foregoing, and since the Court's Secretariat did not make any disbursement from the Legal Assistance Fund, the Court does not need to make a ruling in this section.

***G. Method of compliance with the payments ordered***

81. The State shall make the payment of the compensation for non-pecuniary damage established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, without prejudice to making the complete payment in advance, pursuant to the following paragraphs.

82. If either of the beneficiaries is deceased or dies before he receives the respective amount, this shall be delivered directly to his heirs, in keeping with the applicable domestic law.

83. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in national currency using, to make the respective calculation, the market exchange rate published or calculated by a pertinent banking or financial authority on the date nearest the day of payment.

84. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the sums established within the indicated time frame, the State shall deposit those amounts in their favor in a deposit certificate or account in a solvent financial institution of Trinidad and Tobago, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

85. The amounts allocated in this judgment as compensation for non-pecuniary damage shall be delivered in full to the persons indicated, as established in this judgment, without any deductions derived from possible taxes or charges.

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<sup>77</sup> Cf. AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during its XXXVIII regular session, at the fourth plenary session held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System," Article 1(1).

86. If the State should incur in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Trinidad and Tobago.

**VIII  
OPERATIVE PARAGRAPHS**

87. Therefore,

**THE COURT**

**DECLARES,**

Unanimously, that:

1. The State is responsible for the violation of Article 7(5) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Reshi Bissoon, pursuant to paragraphs 37 to 42 of this judgment.
2. The State is responsible for the violation of Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Reshi Bissoon and Foster Serrette, pursuant to paragraphs 44 to 52 of this judgment.

**AND ESTABLISHES:**

Unanimously, that:

3. This judgment constitutes, *per se*, a form of reparation.
4. The State shall make the publications indicated in paragraph 58 of this judgment.
5. The State shall pay the amounts established in paragraph 76 of this judgment for non-pecuniary damage, pursuant to paragraphs 81 to 86 of this judgment.
6. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it.
7. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 14, 2022, in the Spanish language.

Corte IDH. *Case of Bissoon et al. V. Trinidad and Tobago*. Merits and Reparations. Judgment of November 14, 2022.

Ricardo C. Pérez Manrique  
President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri  
Secretary

So ordered,

Ricardo C. Pérez Manrique  
President

Pablo Saavedra Alessandri  
Secretary