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## News From the Inter-American System

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## NEWS FROM THE INTER-AMERICAN SYSTEM

by Ismene Zarifis\*

### Inter-American Commission on Human Rights

#### **Case 12.342: Balkissoon Roodal (Trinidad and Tobago)**

**Facts:** On November 8, 2000, the Inter-American Commission on Human Rights (Commission) received a petition against Trinidad and Tobago on behalf of Balkissoon Roodal, a death row inmate. The petition alleged violations of Article I (Right to life, liberty and personal security), Article II (Right to equality before the law), Article XVII (Right to recognition of juridical personality and civil rights), Article XVIII (Right to a fair trial), Article XXV (Right of protection from arbitrary arrest), and Article XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man (Declaration). Roodal was arrested and charged with murder in August 1995. Roodal was convicted of murder in July 1999 and received the death sentence, which he unsuccessfully appealed before the Court of Appeal of Trinidad and Tobago. In November 2000, Roodal presented a Special Leave to Appeal as a Poor Person to the Judicial Committee of the Privy Council, which was dismissed. Roodal did not pursue a constitutional motion, because he lacks adequate financial means and access to legal aid. Roodal alleged his human rights were violated due to the mandatory nature of the death sentence; the government's depriving him of a fair trial due to the fact that the prosecution failed to disclose pertinent information to the defense regarding prior convictions of the prosecution's witnesses; the undue delay in his trial; cruel and unusual punishment; inhumane treatment in prison; and his lack of access to the courts.

Trinidad and Tobago denounced the American Convention on Human Rights (Convention) on May 26, 1998 in accordance with Article 78 of the Convention, which took effect on May 26, 1999. Petitioners claimed that although the government denounced the Convention, it remains obligated to respect the rights in the Declaration. The petitioners relied on Advisory Opinion OC-10/89 of the Inter-American Court of Human Rights (Court), which declared the rights in the Declaration as those enumerated in the OAS Charter, to which member state Trinidad and Tobago is bound.

The Commission requested precautionary measures to stay Roodal's execution until the Commission can investigate and decide the case, preserving the opportunity to provide remedies to Roodal in the event of a confirmed violation of the Convention or Declaration.

**Decision on Admissibility:** On October 10, 2001, the Commission declared the case admissible with respect to Articles I, II, XVII, XVIII, XXV, XXVI of the Declaration. The Commission also admitted the petition based on Article 1 (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) of the Convention.

The denunciation of the Convention by Trinidad and

Tobago posed a new challenge for the Commission, because the Commission had not yet interpreted the Convention's application and legal effect on a denouncing state. In considering the admissibility of the case, the Commission acknowledged a member state's power to denounce the Convention, but considered that a denunciation does not relieve a state from its obligations under the Convention for violations committed before the effective date of denunciation. The Commission therefore stated it will maintain jurisdiction over violations of the Convention committed by Trinidad and Tobago before May 26, 1999. As a result, when the Commission considers the merits of the case, it may hold Trinidad and Tobago accountable under the Convention.

While some violations alleged in Roodal's petition occurred before May 26, 1999, others continued beyond this date. Under such circumstances, the Commission could potentially find violations under both the Convention and the Declaration in deciding the merits of the case. Pursuant to general principles of law, the Commission is permitted to apply the Convention even in cases in which parties do not cite violations of provisions of the Convention in their petitions. The Commission will proceed to investigate the facts and decide the case on the merits.

### **Terrorism and Human Rights**

On December 12, 2001, the Commission issued a resolution on terrorism and human rights, announcing its intention to publish a special report on the subject. The report will provide guidance to states regarding the implementation of anti-terrorist legislation and their duties to respect their international human rights obligations. The resolution reiterated the Commission's condemnation of unjustified attacks against civilians and recognized such attacks as crimes under international law. In particular, the Commission interpreted the September 11 attacks on the World Trade Center and the Pentagon as acts committed against all nations in the Americas. Although states have the right and duty to defend themselves from becoming targets of these international crimes, the Commission considers that states are obliged to respect their international human rights obligations and adopt domestic legislation in accordance with these obligations.

In its resolution, the Commission addressed the use of military courts for trying terrorists. According to the Convention, military courts may not try civilians, except in cases in which no civilian court exists or when trial by a civilian court is materially impossible. In the rare instances in which civilians may be tried by military courts, the Commission emphasized that minimum human rights standards apply, such as the requirement of non-discrimination between citizens and non-citizens, the presence of an impartial judge, the defendant's right to be assisted by counsel of his or her own choosing, and the defendant's right to access evidence offered against him or her with the opportunity to challenge it.

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### Executive Secretary Creates Human Rights Defenders Functional Unit

On December 7, 2001, the executive secretary of the Commission resolved to create the Human Rights Defenders Functional Unit, which will receive information on the situation of human rights defenders in the Americas, maintain contact with governmental and non-governmental organizations, and coordinate the activities of the Executive Secretariat of the Commission. The Unit is created pursuant to General Assembly Resolution AG/RES. 1818 (XXXI-0/01), which urges the Commission to pay special attention to the situation of human rights defenders in the Americas and requests that the Commission prepare a study on this subject. This initiative marks a significant development for the protection of individuals who risk their safety and lives to defend human rights.

### Inter-American Court of Human Rights

#### *Hilaire v. Trinidad and Tobago* (Preliminary Objections)

**Facts:** Haniff Hilaire was convicted on May 29, 1995, with two co-defendants, for the murder of Alexander Jordan. Hilaire and one of the co-defendants responded to a plea for help from Jordan's wife, who was mistreated by her husband. Hilaire and Baptiste intended only to injure Jordan, but Jordan died from the severe wounds inflicted by the defendants. Hilaire received the death sentence, which he appealed before the Court of Appeal of Trinidad and Tobago and before the Judicial Committee of the Privy Council in London. The appeals were dismissed. The Commission found violations of Article 2 (Domestic Legal Effects); Article 4 (Right to Life); Article 5.1, 5.2, and 5.6 (Right to Humane Treatment); Article 7.5 (Right to Personal Liberty), and Article 25 (Judicial Protection) of the Convention.

On May 25, 1999, the Commission submitted the *Hilaire* case to the Court. Trinidad and Tobago submitted a preliminary objection contesting the Court's compulsory jurisdiction in the case. The government of Trinidad and Tobago cited its reservation, stating that "Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights . . . only to such extent that recognition is consistent with the relevant sections of the Constitution of Trinidad and Tobago and provided that Judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen."

**Decision:** The Inter-American Court dismissed the preliminary objection by Trinidad and Tobago as to the Court's lack of jurisdiction and resolved to continue to process the case. The Court made several legal arguments with respect to its decision regarding Trinidad and Tobago's purported reservation. Specifically, the Court held that when a state party accepts the contentious jurisdiction of the Court pursuant to Article 62(1) of the Convention, the state accepts the Court's right to settle any controversy relating to its jurisdiction. The Court maintained that if it were to give the state the discretionary power to determine which matters the Court could decide, the Court would not be able to fulfill its jurisdictional role. Further, citing Article 31(1) of the Vienna Convention on the Law of Treaties, the Court emphasized that a treaty must be interpreted in good faith according to its object and purpose. The Court considered that the vague scope of

Trinidad and Tobago's reservation made its instrument of acceptance incompatible with the object and purpose of the Convention. The Court additionally asserted that in light of Article 29(a) of the Convention, which provides that no provision shall be interpreted as permitting any state party, group, or person to interfere with or restrict the exercise of the rights recognized by the Convention, a state's acceptance of the Court's jurisdiction leads to the presumption that the state will subject itself to the compulsory jurisdiction of the Court. Finally, the Court stressed that because human rights treaties are "inspired by a set of higher common values," they are different from other treaties that establish reciprocal obligations between states. Because the object and purpose of the Convention as a human rights treaty is to protect the basic rights of individuals, the Court concluded that the purported reservation would hinder the effect of the Convention. In a separate opinion, Judge A. A. Cançado Trindade distinguished the Court as a human rights judicial body, which has a special duty to uphold fundamental human rights in the region and may construe reservations narrowly so as not to render null and void a state's acceptance of the Court's jurisdiction. ☉

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#### **For more information, contact:**

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