**FOLLOW-UP FACTSHEET OF REPORT No. 56/02**

**CASE 12.158**

**BENEDICT JACOB**

**(Grenada)**

1. **Summary of Case**

|  |
| --- |
| **Victim (s):** Benedict Jacob  **Petitioner (s):** Saul Lehrfreund (The Death Penalty Project)  **State:** Grenada  **Merits Report No.:** [56/02](http://cidh.org/annualrep/2002eng/Grenada.12158.htm), published on October 21, 2002  **Admissibility Report:** Analyzed in Merits Report No. 56/02  **Themes:** Domestic Legal Effects / Right to Life /Right to Humane Treatment /Derecho a la Libertad Personal / Garantías Judiciales / Protección Judicial / Pena de Muerte / Condiciones de Detención / Tortura, Tratos Crueles, Inhumanos y/o Degradantes  **Facts:** This case refers to Benedict Jacob who was found guilty of murder pursuant to Section 234 of the Criminal Code of Grenada (now Section 230) and who was sentenced to a mandatory death penalty by hanging on June 30, 1997. The mandatory application of the death penalty in Mr. Jacob’s case meant that he was not provided with an opportunity to present mitigating factors in the context of sentencing, nor was the Court permitted to consider evidence of this nature in determining whether the death penalty was an appropriate punishment in his case. At the time of publication of the merits report, Mr. Jacob was awaiting execution at the Richmond Hill Prison in Grenada, where he was being held in solitary confinement with inadequate hygiene, ventilation and natural light.  **Rights violated:** The Commission concluded that the State was responsible for: a) violating Mr. Jacob’s rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Jacob to a mandatory death penalty; b) violating Mr. Jacob’s rights under Article 4(6), in conjunction with a violation of Article 1(1) of the Convention, by failing to provide Mr. Jacob with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Jacob’s rights under Article 5(1), in conjunction with a violation of Article 1(1) of the Convention, because of its failure to respect Mr. Jacob’s rights to physical, mental, and moral integrity by confining him in inhumane conditions of detention; and d) violating Mr. Jacob’s rights under Articles 8 and 25, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion. |

1. **Recommendations**

|  |  |
| --- | --- |
| **Recommendations** | **State of compliance in 2020** |
| 1. Grant Mr. Jacob an effective remedy which includes commutation of sentence and compensation. | Partial compliance |
| 2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada. | Partial compliance |
| 3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada. | Partial compliance |
| 4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions. | Pending compliance |
| 5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Jacob’s conditions of detention is given effect in Grenada. | Partial compliance |

1. **Procedural Activity**
2. In 2020, the IACHR requested updated information on compliance from the State on August 14. As of the closing date of this report, the Commission had not received said information from the State. The Commission notes with concern that the State of Grenada has not presented information about measures adopted to implement the recommendations contained in Merits Report No. 56/02 to the IACHR since its publication in 2002.
3. In 2020, the IACHR asked the petitioners for updated information on compliance with the recommendations on August 14. On September 23, the petitioners sent the requested information to the commission.
4. **Analysis of the information presented**
5. The Commission considers that the information provided by the petitioners in 2020 is not relevant to update the follow-up of the case, since it is repetitive of the information presented in previous years without containing information on recent measures adopted to comply with at least one of the recommendations included in Report on Merits No. 56/02.
6. In this sense, because of the lack of updated information on the level of compliance with the recommendations, the IACHR reiterates below the analysis of compliance and conclusions made in its 2019 Annual Report.
7. **Analysis of compliance with the recommendations**
8. **With regards to the first recommendation**,the State has not presented information about compliance with this recommendation.
9. The petitioners previously informed that in the 2002 judgements in the cases of *R v. Hughes*, *R v. Reyes* and *Fox v. The Queen*,[[1]](#footnote-1) the Judicial Committee of the Privy Council declared that the imposition of the death penalty in Eastern Caribbean countries was unconstitutional. As a result of this decision, the State of Grenada was required to review Mr. Jacob’s death sentence as he was automatically sentenced to death upon conviction. Given that by 2008 the State of Grenada had not reconsidered the sentences of those individuals who had been mandatorily sentenced to death, petitions were filed with the Privy Council on behalf of ten prisoners, including Mr. Jacob. On June 11, 2008 the Privy Council quashed Mr. Jacob’s death sentence and remitted his case to the Supreme Court of Grenada, who in turn sentenced him to a number of years in prison. Given the time he had already served in prison and the reduction of his sentence by one third, Mr. Jacob was subsequently released from prison.[[2]](#footnote-2) The petitioners informed in 2018 that Mr. Jacob has not received compensation for the human rights violations he suffered. In 2019 and 2020, the petitioners reiterated the information submitted previously to the Commission. They indicated that, as far as they were aware, to date, Benedict Jacob had not received compensation for the violations he experienced.
10. The Commission values positively the information submitted by the petitioners indicating that the victim has been released from prison. With regard to the granting of compensation to the victim, the IACHR reminds the State that, in accordance with the principles of international law, all failures to comply with an international obligation that cause harm give rise to a duty to provide adequate reparations for it.[[3]](#footnote-3) Pursuant to the case law of the Inter-American system, the victims of human rights violations have a right to receive adequate compensation for the harm suffered. This compensation must take the form of individual measures to restore, indemnify, and rehabilitate the victim, as well as measures of satisfaction and non-repetition guarantees.[[4]](#footnote-4) Likewise, a State cannot modify this obligation or ignore it based on its domestic laws.[[5]](#footnote-5) Therefore, the Commission calls the State to adopt actions to grant Mr. Jacob an effective remedy including compensation and to inform the IACHR of these actions. Based on this, the Commission finds that Recommendation 1 is partially complied.
11. **Regarding the second recommendation**,the State has not presented information about compliance with this recommendation.
12. In 2015, the petitioners informed that Section 230 of the Criminal Code of Grenada still contains the mandatory imposition of the death penalty for murder and that the State has not taken any legislative steps to amend this provision. However, the petitioners also informed that the courts no longer apply the mandatory death penalty in murder cases given that, based on the decision of the Privy Council in *Coard v. Attorney General of Grenada*[[6]](#footnote-6)in 2007, the judiciary has the discretion to impose a lower sentence than the death penalty in these cases. In 2019, the petitioners took note of the legal development in the Caribbean region surrounding the death penalty. They stated that in 2001, the Eastern Caribbean Supreme Court declared the automatic application of the death penalty in San Vicente and the Grenadines and St. Lucia to be unconstitutional, based on its cruel and inhuman nature. They indicated that this ruling was upheld by the Privy Council in a number of resolutions, and that, with the exception of Trinidad and Tobago, the mandatory death penalty has been abolished in the English-speaking countries of the Caribbean. The petitioners informed the IACHR that, based on these decisions, Caribbean jurisdictions had adopted a test called "rarest of rare," which provides for discretion in imposing the death penalty in exceptional situations. In their communication, the petitioners reported that this test is based on two central aspects, in accordance with the decision of the Privy Counsel in *Trimmingham v. R* [2009] UKPC 25 (San Vicente and the Grenadines). First, the crime or offense must be particularly grave, and second, the punishment can only be applied when there are serious questions as to the possibility of recidivism of the offender or the lack of other punishments capable of ensuring attainment of the aims pursued by criminal law. In the view of the petitioners, the standard is a strong presumption in favor of life, and its application has drastically reduced the automatic application of the death penalty in the Caribbean region. In 2020, the petitioners reiterated the information presented in 2019.
13. The Commission values positively the information received that the State of Grenada no longer applies the mandatory death penalty in murder cases and the adoption of the “rarest of rare” test*.* In this regard, in view of the lack of information from the State on actions taken to comply with this recommendation, the Commission asks it to submit information on the measures reported by the petitioners and on any other action taken to ensure the death penalty is not applied in violation of the rights and freedoms guaranteed by the Convention, including in its articles 4, 5, 8, and, in particular, to ensure that no individual is sentenced to death based on a mandatory sentencing law. Based on this, the Commission finds that Recommendation 2 is partially complied.
14. **With regards to the third recommendation**,the State has not presented information about compliance with this recommendation.
15. In 2015 the petitioners informed that as a result of the decision of the Privy Council in *Lewis v. Attorney General of Jamaica*[[7]](#footnote-7)in 2000, the State of Grenada is required to operate fair and proper procedures for the grant of mercy. However, the petitioners informed in 2018 that the State has not adopted any legislative measures to alter its domestic procedures. In 2019, the petitioners reiterated that the Privy Council had handed down the decision *Lewis v. Attorney General of Jamaica*. In the view of the petitioners, with this decision, the State authorities adopted an approach compatible with Jamaica's obligations under the American Convention on Human Rights. Lastly, the petitioners informed the IACHR that the decision in the case of Neville Lewis is binding for Jamaican authorities and the authorities of the other English-speaking countries of the Caribbean. In 2020, the petitioners reiterated the information presented in 2019.
16. In view of the lack of information from the State on actions taken to comply with this recommendation, the Commission asks it to submit information on the measures reported by the petitioners and on any other action taken to guarantee the effectiveness, in Granada, of the right enshrined in Article 4(6) of the American Convention to request an amnesty, pardon, or commutation of sentence. Based on this, the Commission finds that Recommendation 3 is partially complied.
17. **Regarding the fourth recommendation**,the State has not presented information about compliance with these recommendations.
18. In 2019 the petitioners informed that there has been no progress regarding these recommendations. In 2020, the petitioners reiterated the information presented in 2019.
19. Based on this, the Commission finds that Recommendation 4 is pending compliance.
20. **With regard to fifth recommendation**, the State has not submitted information on compliance with it.
21. In 2019, the petitioners indicated that this recommendation is not applicable to Benedict Jacob, as after having served his sentence, he was released. In 2020, the petitioners reiterated the information presented in 2019.
22. The Commission notes that Mr. Jacob was released from prison. However, in view of the lack of information from the State on actions taken to comply with this recommendation, the Commission concludes that the State has partially complied with Recommendation 5.
23. **Level of compliance of the case**
24. Based on the foregoing, the IACHR concludes that the level of compliance of the case is partial. Consequently, the Commission will continue to monitor Recommendations 1, 2, 3, 4 and 5.
25. The Commission welcomes the information presented by the petitioners that Mr. Jacob’s sentence was commuted and that he has been released from prison, and positively views the decisions of the Judicial Committee of the Privy Council which have resulted in the judiciary in Grenada no longer applying the death penalty in a mandatory fashion. At the same time, the IACHR calls the State to adopt the necessary legislative and other measures to fully comply with the recommendations issued in Merits Report 56/02 and to provide up to date and detailed information on these measures to the Commission.
26. **Individual and structural results of the case**
27. This section highlights the individual and structural results of the case which have been informed by the parties.
28. **Individual results of the case**

*Restoration of the infringed right measures*

* Benedict Jacob’s death sentence was commuted by the Supreme Court of Grenada to a custodial sentence of a number of years and he was subsequently released from prison.

1. **Structural results of the case**

*Non-Repetition Measures*

* The 2002 decisions of the Judicial Committee of the Privy Council in *R v. Hughes*, *R v. Reyes* and *Fox v. The Queen*, which held that the imposition of the death penalty in Eastern Caribbean countries was unconstitutional, resulted in the conversion of death penalty sentences to sentences of life imprisonment in Grenada.
* The 2007 decision of the Judicial Committee of the Privy Council in *Coard v. Attorney General of Grenada*, which held that Section 230 of the Criminal Code of Grenada must be interpreted to mean that the death penalty for murder is discretionary, has had the result that the judiciary in Grenada no longer mandatorily applies the death penalty in murder cases.

1. Judicial Committee of the Privy Council, Queen v. Hughes, [2002] UKPC 12 (United Kingdom); Judicial Committee of the Privy Council, Reyes v. R, [2002] UKPC 11 (United Kingdom); Judicial Committee of the Privy Council, Fox v. R, [2002] UKPC 13 (United Kingdom). [↑](#footnote-ref-1)
2. IACHR, 2017 Annual Report, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR and friendly settlements of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 1167. [↑](#footnote-ref-2)
3. IACtHR, Case of La Cantuta v. Peru, [Reparations and Costs. Judgment of November 29, 2006. Series C No. 162](http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf), paras. 199-200. [↑](#footnote-ref-3)
4. CIDH, [Principal Guidelines for a Comprehensive Reparations Policy](http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf), February 19, 2008, OEA/Ser/L/V/II.131, doc. 1, párr. 1; United Nations General Assembly, Resolution 60/147. [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](http://www.un.org/ruleoflaw/files/BASICP~1.PDF), December 16, 2005. A/RES/60/147. [↑](#footnote-ref-4)
5. IACtHR, Case of La Cantuta v. Peru, [Reparations and Costs. Judgment of November 29, 2006. Series C No. 162](http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf), para. 200. [↑](#footnote-ref-5)
6. Judicial Committee of the Privy Council, Coard v. A.G. of Grenada, Appeal No. 10 of 1996, February 7, 2007 (United Kingdom). [↑](#footnote-ref-6)
7. Judicial Committee of the Privy Council, Lewis v. Attorney General of Jamaica, Appeal Nos. 60, 65 and 69 of 1999 and 10 of 2000, September 12, 2000 (United Kingdom). [↑](#footnote-ref-7)