THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2023 – 00767

IN THE MATTER OF THE JUDICIAL REVIEW ACT CHAP 7:08

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURUSANT TO THE PROVISIONS OF THE JUDICIAL REVIEW ACT 2000

AND

IN THE MATTER OF THE IMMIGRATION ACT CHAP. 18:01

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 14(1) OF THE CONSTITUTION

AND

IN THE MATTER OF THE DECISION OF THE HONOURABLE MINISTER OF NATIONAL SECURITY TO ISSUE A DEPORTATION ORDER ON THE 7TH MARCH, 2023 TO YOHAN JESUS RANGEL DOMINGUEZ

BETWEEN

YOHAN JESUS RANGEL DOMINGUEZ

Claimant

And

MINISTER OF NATIONAL SECURITY

First Defendant

And

ATTORNEY GENERAL

Second Defendant

UNITED NATIONS HIGH COMMISSIONER OF REFUGEES (UNHCR)

First Interested Party

And

LIVING WATER COMMUNITY

Second Interested Party

Date of Delivery: 4 July, 2023.

Appearances:

1. Mr. J. Heath S.C., Ms. S. Sankar, Ms. V. Ramroop instructed by Ms. A. Gunness, Attorneys-at-law for the Claimant.

2. Ms. S. Sukhram, Ms. S. Singh, Ms. J. Teeluckdharry instructed by Mr. V. Jardine, Ms. R. Wright and Ms. F. Ali, Attorneys-at-law for the Defendants.

3. Ms. G. Maharaj and Mr. G. Rampersad, Attorneys-at-law for the First and Second Interested Parties.

DECISION

1. The instant matter is a hybrid claim in which both judicial review and constitutional relief has been sought in relation to the decision of the Minister of National Security ("the Minister") to issue in relation to the Claimant, a deportation order on the 7 of March 2023 ("the Deportation Order") pursuant to the provisions of the Immigration Act Chap 18.01 ("the Immigration Act").

2. The issues to which the Court must address its mind are as follows:

    a. Whether the First Defendant acted illegally in issuing the Deportation Order dated 7 March 2023;
    b. Whether the decision of the First Defendant to issue the Deportation Order was disproportionate;
    c. Whether the decision of the First Defendant to issue the Deportation Order was irrational and unreasonable;
    d. Whether the Claimant was deprived of the opportunity to be heard;
    e. Whether the First Defendant failed to take into consideration certain relevant information and therefore acted in bad faith in issuing the Deportation Order;
    f. Whether the 2014 Policy created a legitimate expectation that the Claimant would not be ordered deported;
    g. Whether the 1951 Refugee Convention created a legitimate expectation that the Claimant would not be ordered deported;
    h. Whether the Standard Operating Procedures gave rise to a legitimate expectation that the Claimant would not be deported;
    i. Whether the decision of the First Defendant to issue the Deportation Order was unreasonable and amounts to a breach of the Claimant's constitutional right under section 4(a) of the Constitution of Trinidad and Tobago to be afforded a right to liberty and security and not to be deprived thereof except by due process;

j. Whether the decision of the First Defendant to issue the Deportation Order was unreasonable and amounts to a breach of the Claimant's constitutional right under section 4(b) of the Constitution of Trinidad and Tobago to be afforded equality before the law and protection of the law;

k. Whether the First Defendant failed to take into account relevant information and acted in bad faith and whether the decision to issue the Deportation Order amounts to a breach of the Claimant's constitutional right under section 4(d) of the Constitution of Trinidad and Tobago to have equality of treatment from any public authority in the exercise of any functions;

l. Whether the decision of the First Defendant to issue the Deportation Order deprived the Claimant of his legitimate expectation that his Asylum Seeker Status issued by the United Nations High Commissioner for Refugees would be considered and he would not be arbitrarily exiled in breach of his constitutional right under section 5(2)(a) of the Constitution of Trinidad and Tobago;

m. Whether the First Defendant failed to take into account relevant information and whether the decision to issue the Deportation Order amounts to a breach of the Claimant's constitutional right under section 5(2)(e) of the Constitution of Trinidad and Tobago to be afforded the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

n. Whether the First Defendant failed to take into account relevant information, acted in bad faith and whether the decision to issue the Deportation Order breached the Claimant's constitutional right under section 5(2)(h) of the Constitution of Trinidad and Tobago to be afforded the protection of procedural provisions which give effect to his rights;

o. Whether Section 11 of the Immigration Act Chap. 18:01 is unconstitutional as it offends the rule of law in contravention of section 1 of the Constitution and therefore is void and of no effect pursuant to section 2 of the Constitution;

p. Whether the Claimant is entitled to damages for the alleged breaches of his constitutional rights.

The Evidence:

3. The evidence adduced before the Court on behalf of the Claimant came from:

    a. Affidavit of Yohan Jesus Rangel Dominguez sworn to and filed on the 20 March, 2023.
    b. Affidavit of Shalini Sankar sworn to and filed on the 20 March, 2023.
    c. Affidavit of Yohan Jesus Rangel Dominguez sworn to and filed on the 3 April, 2023.
    d. Affidavit of Yohan Jesus Rangel Dominguez sworn to and filed on the 22 May, 2023.
    e. Affidavit of Yohan Jesus Rangel Dominguez sworn to and filed on the 22 May, 2023.

4. On behalf of the Defendants the following persons deposed to affidavits:
    a. Gary Joseph, Acting Permanent Security, Ministry of National Security whose affidavit was sworn to and filed on the 1 May, 2023.
    b. Laura Ramcharitar, Immigration Officer IV, Enforcement Unit, Immigration Division, Ministry of National Security whose affidavit was sworn to and filed on the 1 May, 2023.

Preliminary Issue:

5. Subsequent to the filing of this claim, evidence was adduced to outline that the Claimant had been granted refugee status by the First Interested Party, the United Nations High Commissioner of Refugees ("UNHCR"). Notably, at the time the Minister issued the

Deportation Order, the Claimant had registered with the Second Named Interested Party, Living Water Community ("LWC"). This Court adopted the view that the change in the Claimant's status does not impact upon the manner in which the Court must resolve the aforementioned issues.

6. To effectively and efficiently determine the outlined issues the Court must first comprehensively address and analyse the legal purport and effect of:

    a. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the impact of ratified unincorporated treaties on due process, protection of law and the rights and protections enshrined under the Republican Constitution of Trinidad and Tobago;
    b. The national policy to address Refugee and Asylum Seekers in the Republic of Trinidad and Tobago 2014 as well as the impact and relevance of the 2008 Immigration manual and the interim standing operating procedures (SOPs) which were forwarded by the Permanent Secretary of the Ministry of National Security to Rhonda Maingot of LWC on the 11 August 2017.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol:

7. Trinidad and Tobago on 2 November, 2000 became the 140th country to sign the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and its 1967 Protocol. By acceding to the two international instruments which govern the treatment of asylum seekers and refugees, this country acknowledged the vulnerability of refugees and the role that the international community plays in the protection of the rights of refugees.

8. Article 1 of the 1951 Refugee Convention prescribes the categories of persons to whom the status of refugee may be ascribed and Article 1A (2) defines "refugees" as:

> "any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

9. The principle of non-refoulement constitutes the cornerstone of international refugee protection and is provided for in Article 33 of the 1951 Refugee Convention. This principle prohibits member countries from expelling or returning a person, in any manner, whatsoever, to a place where his life or liberty would be endangered on account of his race, religion, nationality, membership of a particular social group or political opinion. Asylum-seekers are protected from forced return to their country of origin from the time they express a fear of return until a final decision on refugee status is determined.

10. To date, Trinidad and Tobago has not denounced the 1951 Refugee Convention in accordance with the procedure outlined under Article 44.

11. Article 31 of the 1951 Refugee Convention specifically provides for the non-penalisation of refugees and asylum-seekers who may have entered or stayed in a receiving country irregularly, if they present themselves without delay and show good cause for their illegal entry or stay. It further provides that restrictions on movement shall not be applied to such refugees (or asylum-seekers) other than those which are necessary and such

restrictions shall only be applied until their status is regularised or they gain admission into another country.

12. Pursuant to the Advisory Opinion on the Extraterritorial Applicant of Non Refoulement Obligations under the 1951 Convention and its 1967 Protocol, the UNHCR stated as follows:

> "Given that a person is a refugee within the meaning of the 1951 Convention as soon as he or she fulfils the criteria contained in the refugee definition, refugee status determination is declaratory in nature: a person does not become a refugee because of recognition but is recognized because he or she is a refugee. It follows that the principle of non-refoulement applies not only to recognized refugees, but also to those who have not had their status formally declared. The principle of non refoulement is of particular relevance to asylum-seekers. As such persons may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending a final determination of their status."

13. Prior to this Republic's signing of the 1951 Refugee Convention, by Cabinet Minute No. 4809 dated 16 November, 1979 the Government agreed that:
    a. Requests for the granting of refugee status on political or economic grounds continue to be dealt with under the appropriate sections of the immigration laws of Trinidad and Tobago governing the grant of resident status.
    b. Cases of refugees from national disasters be left open and be decided, when the need arises, on the basis of the circumstances prevailing in Trinidad and Tobago at the particular period in time.

14. Subsequently, an Immigration Manual was developed in 2008 which provided guidelines to immigration officers when treating with asylum and refugee claims. C81 of the Manual

indicates the necessity for officers to have regard to Trinidad and Tobago's obligations under international conventions (e.g. Refugee Convention) and for applicable persons to not be removed from Trinidad and Tobago except as permitted under applicable law.

15. Trinidad and Tobago is a dualist state which means that international law is not automatically incorporated into the domestic legal system.

16. The Constitution of Trinidad and Tobago provides for the fundamental rights and freedoms of individuals under Section 4 and 5 thereof. Under Section 14, an individual can invoke the jurisdiction of the High Court and seek redress when any rights are infringed or about to be infringed. Sections 4 and 5 provide as follows: -

> "4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
>
> (b) the right of the individual to equality before the law and the protection of the law…
>
> 5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared. (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

…

(b) impose or authorise the imposition of cruel and unusual treatment or punishment …

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

17. It is trite law that Section 5(2) of the Constitution spells out in greater detail though not exhaustively, what is encompassed by the expressions "due process of law" and "the protection of the law" as outlined under Sections 4(a) and (b) of the Constitution.

18. In this claim, the Court has been asked to examine the Claimant's rights under the Constitution and determine whether the provisions of the 1951 Refugee Convention can be viewed, by the Court, as forming part of his right to due process and protection of the law.

19. Lord Templeman in **J H Rayner (Mincing Lane) Ltd v Department of Trade and Industry [1990] 2 AC 418**, stated (at page 476):

"A treaty is a contract between the Governments of two or more sovereign States. International law regulates the relations between sovereign States and determines the validity, the interpretation and enforcement of treaties. A treaty to which Her Majesty is a party does not alter the laws of the United Kingdom. A treaty may be incorporated into and alter the laws of the United Kingdom by means of legislation. Except to the extent that a treaty becomes incorporated into

the laws of the United Kingdom by statute, the courts of the United Kingdom have no power to enforce treaty rights at the behest of a sovereign Government or the behest of a private individual."

20. International convention obligations cannot alter domestic law in this Republic and there is a need for domestic incorporation of convention obligations. Until any such domestic incorporation is effected by the enactment of legislation, the convention obligations operate upon an entirely "ethereal international law plane" and do not in any way impact upon operative domestic law.

21. The Judicial Committee of the Privy Council also pronounced on this issue in **Thomas v Baptiste (1998) 54 WIR 387** at page 422 where it was stated that:

> "It follows that the terms of a treaty cannot effect any alteration to domestic law nor deprive the subject of existing legal rights unless and until enacted into domestic law by or under authority of the legislature. When so enacted, the courts give effect to the domestic legislation, not to the terms of the treaty."

22. Before this Court Gary Joseph at paragraph 14 of his affidavit stated as follows:

> ""Trinidad and Tobago has been careful in how it treated the 1951 Convention. As far as the Ministry is concerned, it has always interpreted the 1951 Convention as part of international law which was not binding in the municipal or domestic laws of Trinidad and Tobago. This country is a relatively small country in terms of size and population with limited resources, and this is one aspect concerning why successive Governments have not taken a clear position to establish a binding policy or to legislate into domestic law the provisions of the 1951 Convention or to give recognition to persons claiming asylum or refugee status."

23. It is evident that in order for international treaties to affect rights domestically, ratification on the international plane is insufficient.

24. The Court does note the dicta of Lord Hoffmann in **Boyce v R [2004] UKPC 32** where at paragraph 25 the Board stated as follows :

> "25… The right of the people of Barbados in domestic law derive solely from the Constitution. But international law can have a significant influence upon the interpretation of the Constitution because of the well-established principle that the courts will so far as possible construe domestic law so as to avoid creating a breach of the State's international obligations. 'So far as possible' means that if the legislation is ambiguous ('in the sense that it is capable of a meaning which either conforms to or conflicts with the [treaty]'; see Lord Bridge of Harwich in R v Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696 at 747) the court will, other things being equal, choose the meaning which accords with the obligations imposed by the treaty".

25. The Board of the Privy Council has, and rightly so, recognised that there must, at times, be an interfacing between domestic law and international law. The Board opined that international law can assist when the Court is called upon to interpret domestic laws and/or the Constitution in situations where the relevant provisions are ambiguous. In the face of such an ambiguity, the law or constitutional provision may or may not be in conformity with international obligations. In such circumstances, the Court will, as so far as possible, construe the domestic law or constitutional provision in a manner which will not occasion a breach of international obligations.

26. The provisions of the Immigration Act and the rights outlined under sections 4 and 5 of the Constitution of Trinidad and Tobago are express and unambiguous. There is no

aspect of the domestic law which bears a possible meaning that conforms with the obligations imposed by the 1951 Refugee Convention. As a result there simply exists no basis for the Court to embark upon any exercise so as to consider whether the operative domestic law as it relates to immigration should be interpreted in a manner to avoid breaching any international law obligation.

27. There can be no dispute that the Constitution is the supreme law and that the rights conferred therein apply to non-nationals, like the Claimant, who fall under the jurisdiction of the State.

28. In the case of **Thomas v Baptise** (supra) the JCPC had to consider whether at the relevant time, a condemned man under sentence of death had a constitutional right to have his application to the Inter-American Commission on Human Rights considered and determined before the imposed sentence could be carried out. Lord Millet stated at page 422:

> "… In their lordships' view, however, the appellants' claim does not infringe the principle which the Government invokes. The right for which they contend is not the particular right to petition the IACHR or even to complete the particular process which they initiated when they lodged their petitions. It is the general right accorded to all litigants not to have the outcome of any pending appellate or other legal process pre-empted by executive action. This general right is not created by the Convention; it is accorded by the common law and affirmed by section 4(a) of the Constitution. The appellants are not seeking to enforce the terms of an unincorporated treaty, but a provision of the domestic law of Trinidad and Tobago contained in the Constitution. By ratifying a treaty which provides for individual access to an international body, the Government made that process for the time being part of the domestic criminal justice system and thereby,

temporarily at least, extended the scope of the 'due process' clause in the Constitution…".

29. The cited case is however of limited assistance as it largely dealt with a common law right which was affirmed under Section 4(a) of the Constitution for full recourse to be had to any pending appellate or local process. In the instant matter, there is no evidence to suggest that the Government of Trinidad and Tobago has departed from the position outlined by Cabinet Minute No. 4809 or that the State has actually dealt with refugees other than as is provided for under the Immigration Act.

30. In ***Thomas*** (supra) the Government of Trinidad and Tobago published "instructions relating to applications from persons under sentence of death" and prescribed time limits after which executions would not be further postponed. These limits referenced applications to the Inter-American Commission on Human Rights. The applicants lodged a petition with the Commission and alleged that their human rights had been violated but the Commission failed to act within the time prescribed in the instructions. Thereafter, a warrant for the execution was read to each applicant. On appeal to the Board, it was held, *inter alia*, although the terms of the American Convention on Human Rights had not been incorporated into domestic legislation, the state ratified the treaty, facilitated and sought to regulate individual access to the Commission. As a consequence, it was held that the government made the process to access the Commission part of the domestic criminal justice system and the due process provision in section 4(*a*) applied.

31. The factual matrix in ***Thomas*** (supra) is drastically different from the operative facts in the instant matter. In ***Thomas*** (supra) condemned men were allowed to petition the IACHR and the Government would have responded to the IACHR's requests for information. It was this practice which was previously adopted by the State that resulted in the view that the applicants had a common law right which was affirmed by Section 4(a) of the Constitution.

32. The 1951 Refugee Convention obligations and the consequential recognition of and/or deference to the role of the UNHCR have not been incorporated into domestic law nor have they been incorporated into the operative immigration framework. Consequently, the approach and recommendations outlined under the 1951 Refugee Convention does not form part of any "due process" or "protection of the law" considerations in this Republic.

33. The Court considered paragraph 29 of Mr Joseph's affidavit and notes that there is no evidence to suggest that the State has ever replaced the processes outlined under the Immigration Act and/or divested itself of its discretion as to the status of migrants nor has it abdicated this responsibility to the UNHCR. There is also no evidence to suggest that there has been any instance whereby a person has been granted asylum or refugee status by the Government of Trinidad and Tobago.

34. The UNHCR has argued that the principle of non-refoulement has also found expression in the Constitutions and/or national legislation of a number of assenting States and it now enjoys the status as a customary international law norm. The body contends the principle of non-refoulement is therefore binding upon all States, whether or not they are parties to the 1951 Convention and/or the 1967 Protocol and further contends that it is equally applicable to States which have not yet codified their international legal obligations into domestic legislation.

35. Pollard J sitting in the CCJ in **Attorney General and others v Joseph and Boyce (2006) 69 WIR 104 at page 198, paragraph 61** stated:

> "61. This brings me to address the relationship between the common law and customary international law, which calls to mind the authoritative statement on this issue by Lord Denning who observed that customary international law, unless in conflict with statute, constitutes part of the common law without the need for transformation by the legislature or the courts:

> "(s)eeing that the rules of international law have changed – and do change – and that the Courts have given effect to the changes without any Act of Parliament, it follows to my mind inexorably that the rules of international law, as existing from time to time, do form part of our English law. It follows, too, that a decision of this Court – as to what was the ruling of international law 50 or 60 years ago, is not binding on this Court today. International law knows no rule of stare decisis. If this Court today is satisfied that the rule of international law on a subject has changed from what it was 50 or 60 years ago, it can give effect to that change – and apply the change in our English law – without waiting for the House of Lords to do it.'

36. At page 199, paragraph 62 Pollard J continued:

> "62. This statement of the law by Lord Denning is supported by internationally recognised publicists like RY Jennings, former president of the International Court of Justice, who submitted:
>
> > '[It] has always been held that general customary international law is a part of the law of England and, therefore, will be applied "as such". Thus international law is a matter of judicial notice, and there is no question of having to prove it by evidence. It is argued and applied in the same way as any other part of the common law. On the other hand, for constitutional reasons, a treaty which requires for its carrying into effect an alteration of English law, or a charge on public funds, requires an Act or other instrument making the needful changes in English law if the courts are to give effect to it.'

But such customary rules of international law must not conflict with statute which always prevails; *Mortensen v Peters*."

37. The Canadian Supreme Court in the case **R v Hape [2007] 2 SCR 292** at paragraph 36 stated:

> "36. The English tradition follows an adoptionist approach to the reception of customary international law. Prohibitive rules of international custom may be incorporated directly into domestic law through the common law, without the need for legislative action. According to the doctrine of adoption, ***the courts may adopt rules of customary international law as common law rules in order to base their decisions upon them, provided there is no valid legislation that clearly conflicts with the customary rule***: I. Brownlie, *Principles of Public International Law* (6th ed. 2003), at p. 41…"
> (Emphasis Court's)

38. This principle that the Court may consider customary international law where there exists no valid domestic legislation which conflicts with the relevant customary law, is premised upon the doctrine of sovereignty. The Supreme Court of Canada in *Hape* (supra) stated at paragraphs 41 to 46:

> "41. The principle of sovereign equality comprises two distinct but complementary concepts: sovereignty and equality. "Sovereignty" refers to the various powers, rights and duties that accompany statehood under international law. Jurisdiction — the power to exercise authority over persons, conduct and events — is one aspect of state sovereignty. Although the two are not coterminous, jurisdiction may be seen as the quintessential feature of sovereignty. Other powers and rights that fall under the umbrella of sovereignty include the power to use and dispose

of the state's territory, the right to state immunity from the jurisdiction of foreign courts and the right to diplomatic immunity. In his individual opinion in *Customs Régime between Germany and Austria* (1931), P.C.I.J. Ser. A/B, No. 41, at p. 57, Judge Anzilotti defined sovereignty as follows: "Independence . . . is really no more than the normal condition of States according to international law; it may also be described as *sovereignty* (*suprema potestas*), or *external sovereignty*, by which is meant that the State has over it no other authority than that of international law" (emphasis in original).

42. Sovereignty also has an internal dimension, which can be defined as "the power of each state freely and autonomously to determine its tasks, to organize itself and to exercise within its territory a 'monopoly of legitimate physical coercion'": L. Wildhaber, "Sovereignty and International Law", in R. St.J. Macdonald and D. M. Johnston, eds., *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory* (1983), 425, at p. 436.

43. While sovereignty is not absolute, the only limits on state sovereignty are those to which the state consents or that flow from customary or conventional international law. Some such limits have arisen from recent developments in international humanitarian law, international human rights law and international criminal law relating, in particular, to crimes against humanity (R. Jennings and A. Watts, eds., *Oppenheim's International Law* (9th ed. 1996), vol. 1, at p. 125; K. Kittichaisaree, *International Criminal Law* (2001), at pp. 6 and 56; H. M. Kindred and P. M. Saunders, *International Law, Chiefly as Interpreted and Applied in Canada* (7th ed. 2006), at p. 836; Cassese, at p. 59). ***Nevertheless, despite the rise of competing values in international law, the sovereignty principle remains one of the organizing principles of the relationships between independent states***.

44. Equality is a legal doctrine according to which all states are, in principle, equal members of the international community: Cassese, at p. 52. It is both a necessary consequence and a counterpart of the principle of sovereignty. If all states were not regarded as equal, economically and politically weaker states might be impeded from exercising their rights of sovereignty. One commentator suggests the following rationales for the affirmation of the equality of states in their mutual relations: "to forestall factual inequities from leading to injustice, to ensure that one state should not be disadvantaged in relation to another state, and to preclude the possibility of powerful states dictating their will to weaker nations" (V. Pechota, "Equality: Political Justice in an Unequal World", in Macdonald and Johnston, 453, at p. 454). Although all states are not in fact equal in all respects, equality is, as a matter of principle, an axiom of the modern international legal system.

45. In order to preserve sovereignty and equality, the rights and powers of all states carry correlative duties, at the apex of which sits the principle of non-intervention. Each state's exercise of sovereignty within its territory is dependent on the right to be free from intrusion by other states in its affairs and the duty of every other state to refrain from interference. This principle of non-intervention is inseparable from the concept of sovereign equality and from the right of each state to operate in its territory with no restrictions other than those existing under international law. (For a discussion of these principles, see the comments of Arbitrator Huber in the *Island of Palmas Case (Netherlands v. United States)* (1928), 2 R.I.A.A. 829, at pp. 838-39.)

46. Sovereign equality remains a cornerstone of the international legal system. Its foundational principles — including non-intervention and respect for the territorial sovereignty of foreign states — cannot be regarded as anything less than firmly established rules of customary international law, as the International

Court of Justice held when it recognized non-intervention as a customary principle in the *Case concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*, [1986] I.C.J. Rep. 14, at p. 106. As the International Court of Justice noted on that occasion, the status of these principles as international customs is supported by both state practice and *opinio juris*, the two necessary elements of customary international law. Every principle of customary international law is binding on all states unless superseded by another custom or by a rule set out in an international treaty. As a result, the principles of non-intervention and territorial sovereignty may be adopted into the common law of Canada in the absence of conflicting legislation. These principles must also be drawn upon in determining the scope of extraterritorial application of the *Charter*."

39. This Court rejects the UNHCR's argument that the 1951 Refugee Convention is binding upon this Republic or that the principle of non-refoulement must be followed as it is customary international law. There are obligations within the 1951 Refugee Convention which are inconsistent with the provisions of the Immigration Act and as a sovereign democratic State, the Parliament of Trinidad and Tobago has the sole and absolute right to make laws for the peace, order and good governance of this twin isle nation. To date, the Immigration Act remains as the operative law in this country with regard to matters of immigration and where customary international law is in conflict with a domestic statute, as is evident on the facts of this case, the latter must prevail.

40. The unincorporated 1951 Refugee Convention cannot be used to extend the scope of the Constitution nor can the processes outlined thereunder be factored into any consideration as to the applicable "due process" or "protection of the law" considerations which apply in relation to the Claimant.

41. Ultimately, the Court must decide whether the Claimant was subjected to a process which was unfair.

42. Protection of the law must be anchored to justice and the rule of law and its application cannot be subjected to the arbitrary or unfair deprivation of constitutional guarantees.

43. On the factual matrix before this Court, there is no basis upon which this Court can conclude that the Claimant's rights under Section 4 and 5 of the Constitution have been violated because recourse and/or recognition was not given to the rights and obligations enumerated under the 1951 Refugee Convention.

44. The said Convention does not form part of the existing domestic legislative framework and the enshrined constitutional rights and the relevant provisions of the Immigration Act are unambiguous and they do not require interpretation. In addition, the Court rejects the contention that by its ratification of the 1951 Refugee Convention, the Government ultimately accepted that the UNHCR is the current body to which potential refugees who land on these shores must have recourse. This body has not been incorporated into this Republic's domestic immigration and/or legislative network. Further, the scope of the due process clause in the Constitution cannot be extended so as to require the State to disregard the provisions of the Immigration Act in relation to persons seeking refugee status and the State is not legally mandated to comply with the unincorporated obligations enumerated under the 1951 Refugee Convention.

45. This Court recognizes that the concept of "due process of law" is a compendious expression. The rule of law is ultimately framed and fashioned by the Constitution of Trinidad and Tobago and not by international Conventions which have not been incorporated either through legislation or settled practice into this Country's domestic legislative framework.

46. Although the right to the "protection of law" is pervasive and multifaceted, that right must be circumscribed by the laws of Trinidad and Tobago.

47. The contention that Section 11 of the Immigration Act is unconstitutional as it offends the rule of law and stands in conflict with section 1 of the Constitution and that the said section should be declared as being void pursuant to section 2 of the Constitution is one which is not grounded in either law or fact and must be and is categorically rejected by this Court.

48. The failure by the State to effect domestic incorporation of the 1951 Refugee Convention or to take decisive action to give effect to the obligations which it acknowledged when it assented to the said Convention is unfortunate and regrettable. This situation can have consequences and this non-compliance may adversely affect this Nation's international reputation and possibly attract the imposition of sanctions to register international disapproval of Trinidad and Tobago's failure to legislatively incorporate convention obligations. However no international body can, at this stage, mandate or demand that this Sovereign Republic is bound by or that it must adhere to and/or implement the 1951 Refugee Convention obligations.

Does the 1951 Refugee Convention create a Legitimate Expectation?

49. Any meaningful analysis of the concept of legitimate expectation requires recourse to the following material considerations:
    a. In order to establish a legitimate expectation, there must exist a representation or undertaking which is "clear, unambiguous and without relevant qualification";
    b. The mere existence of a scheme is inadequate in itself to generate a substantive legitimate expectation;
    c. The existence of any such representation or undertaking can be ascertained by asking how, on a fair reading, the representation or course of conduct would reasonably have been understood by those to whom it was made;

d. The undertaking/representation must have been made in relation to a clearly defined class or group;

e. A legitimate expectation, properly and legally founded, can be frustrated if there is a good reason to do so;

f. The proportionality of the response of the decision maker is to be determined by having regard, *inter alia*, to the objective intent which is being pursued.

50. In *Thomas* (supra) Lord Millett, addressed the contention that the Government's ratification of the American Convention gave rise to a legitimate expectation on the part of the appellants that they would not be executed before their petitions to the IACHR were finally determined and stated at pages 424 to 425 as follows:

> "The Government advances a number of reasons for rejecting the appellants' contention. It claims, for example, that ratification is a private process which is not attended by public notice and that the ratification of the Convention was a transaction between the Government of Trinidad and Tobago and the Organisation of American States. There was no public statement that the Government had ratified the Convention and the appellants were not informed of the fact. It submits that ratification of an unincorporated treaty is incapable of raising a legitimate expectation that the Government will comply with the provisions of the treaty; or that it raises at best a legitimate expectation that the Government will introduce appropriate legislative measures to give effect to the treaty.
>
> ***The short answer to this is that the appellants do not rely on the Government's ratification of the Convention alone. They rely on the fact that the Government implemented the Convention, which did not need the introduction of any legislative measures to bring it into operation. Condemned men were allowed to***

petition the IACHR; the Government responded to the IACHR's requests for information; and confirmed the position by publishing the Instructions.

In their lordships' view, however, the appellants' arguments based on legitimate expectation face an insurmountable obstacle. Even if a legitimate expectation founded on the provisions of an unincorporated treaty may give procedural protection, it cannot by itself, that is to say unsupported by other constitutional safeguards, give substantive protection, for this would be tantamount to the indirect enforcement of the treaty; see *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273. ***In this sense, legitimate expectations do not create binding rules of law***; see *Fisher v Minister of Public Safety and Immigration (No 2)* (1998) 53 WIR 27 at page 36. ***The result is that a decision-maker is free to act inconsistently with the expectation in any particular case, provided that he acts fairly towards those likely to be affected***. But mere procedural protection would not avail the present appellants. Any legitimate expectation that their execution would be delayed until their petitions were heard, however long it might take, cannot have survived the publication of the Instructions. By the time they lodged petitions which the IACHR was competent to entertain, they knew that they were subject to strict time limits which might expire before their petitions were determined; see *Fisher v Minister of Public Safety and Immigration (No 2)* at page 36. The appellants sought to answer this by relying on the fact that the Instructions were unlawful. Their lordships do not think that this is an answer." (Emphasis Court's)

51. In the instant matter the Government never definitively adopted or activated, on a domestic plane, the terms of the 1951 Refugee Convention. The evidence before this Court has established that in Trinidad and Tobago there has never existed any settled practice in relation to refugees and asylum seekers which accorded with the obligations outlined under the 1951 Refugee Convention.

52. As previously outlined, in the absence of incorporation, the 1951 Refugee Convention and the Rome statue have no effect and/or legal status in Trinidad and Tobago. As a consequence the processes outlined therein cannot be used to circumvent the provisions of the Immigration Act or override any lawfully issued deportation order. Although this Republic has acceded to the 1951 Refugee Convention and the later 1967 Protocol to the Convention, the international obligations of non- refoulement imposed by Article 33(1) are not directly binding and cannot be used to create enforceable rights on a domestic plane as there has been no domestic legislative incorporation of the non-refoulement principle.

53. Accordingly, the Claimant cannot successfully advance the position that he had a legitimate expectation that the principle of non-refoulement applied to him.

54. The matters complained of by the Claimant with respect to perceived rights and/or entitlements derived from the 1951 Refugee Convention or the 1967 Protocol are misguided, patently non-justiciable and fall outside the scope of either judicial or constitutional review.

The National Policy to Address Refugee and Asylum Seekers in the Republic of Trinidad and Tobago

55. In 2014, the Government developed a policy document intituled, "The National Policy to address Refugee and Asylum-Seekers in Republic of Trinidad and Tobago 2014" (the 2014 Policy) and same was adopted by Cabinet in June 2014. This document considered the refugee status determination procedure and proposed a three (3) phased strategy to refugee status determination which would allow for the transfer of knowledge and

expertise on refugee status determination to Trinidad and Tobago through training provided by the UNHCR.

56. LWC was identified as the implementing partner of the UNHCR in Trinidad and Tobago, to work alongside UNHCR so as to ensure that asylum-seekers and refugees have a dignified stay while they are within Trinidad and Tobago. LWC subsequently undertook the reception of asylum claims and facilitated the registration of asylum-seekers with UNHCR. LWC also provided assistance with local orientation and information regarding housing, health, education, documentation, security and other social services to asylum-seekers and refugees.

57. In the 67th session of the Executive Committee of the High Commissioner's Programme (3rd – 7th October, 2016), Trinidad and Tobago made the following statement which outlined, *inter alia*, that three hundred (300) persons were recorded as asylum seekers as at September, 2016: -

> "….Cognizant of the need to offer protection to vulnerable populations, the Government of the Republic of Trinidad and Tobago (GORTT) acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in 2000, and is also signatory to the United Nations (UN) Convention Against Transnational Organized Crime and supplementing conventions, and the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. …
>
> Trinidad and Tobago receives the second largest number of asylum seekers in the region, after Belize, and has been experiencing increases in arrivals of persons of concern. This is evident by the data which highlights that forty-three (43) asylum seekers were recorded in 2013, while three hundred (300) have been recorded as at September 2016. Records indicate that these persons originate from Asia, Africa, the Caribbean, Central and South America.

Previously, ad hoc procedures had been in place to treat with asylum seekers which saw UNHCR and its honorary liaison, the Living Waters Community conducting RSDs with little involvement by government agencies. The government has sought to address this situation through the development of a National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago, adopted by Cabinet in June 2014. The Policy provides for a phased approach to the development of a RSD mechanism and promotes the transition from UNHCR leading the RSD procedure to the government of Trinidad and Tobago taking full responsibility. It includes capacity building, the adoption of Standard Operating Procedures (SOPs), the enactment of legislation and the creation of a Refugee Unit within the Immigration Division.

This phased approach was the result of cooperation with the UNHCR and aligns with international best practice.

Trinidad and Tobago is currently in the first phase of policy implementation. Capacity building has been taking place with UNHCR facilitating training in international refugee law. Through a collaboration between UNHCR and the United States Citizenship and Immigration Services (USCIS), relevant officers participated in the USCIS Refugee, Asylum and International Operations (RAIO) Combined Training and the Asylum Division Officer Training Course (ADOTC) in 2014.

Training has also been provided in UNHCR's ProGres v4 database for the registration of asylum seekers and refugees….

As part of our commitment to the principle of responsibility-sharing, the government of T&T has facilitated a Refugee Transfer Mechanism enabling

refugees from neighbouring islands to come to Trinidad and Tobago to finalise their resettlement to an accepting country.

The Government of Trinidad and Tobago has been working assiduously to protect and promote the human rights of migrants, migrant workers and their families and continues to revise its polices and legislation in order to meet the demands of a global population on the move, while pursuing its own national security interests."

58. The 2008 Immigration Manual which the State generated reflected an approach to treat with the issue of refugees in a somewhat flexible manner but nowhere in the Manual was it expressed that the said directives overrode the provisions of the Immigration Act.

59. On the 11 August, 2017, the Permanent Secretary of the Ministry of National Security wrote to Ms. Rhonda Maingot the founder of LWC and provided a copy of the agreed revised interim standing operating procedures (SOPs) for the protection of asylum-seekers in Trinidad and Tobago amongst all stakeholders including the Ministry of National Security, Immigration Division, UNHCR and LWC. These revised SOPs provisions purported to revise the SOPs from the 2014 Policy.

60. The Claimant asserts that these SOPs were intended to guide the actions of all stakeholders pending the enactment of either legislation to give effect to the 1951 Refugee Convention and/or the enactment of the National Policy to Address Refugees and Asylum Matters in Trinidad and Tobago.

61. The Joint Select Committee on Human Rights, Equality and Diversity was established under House of Representatives Standing Order 106 and Senate Standing Order 96 and has the duty of considering, from time to time, and reporting whenever necessary, on all matters related to:

a. compatibility of Acts of Parliament with human rights, and any matters relating to human rights in Trinidad and Tobago (but excluding consideration of individual cases);
b. Government compliance with national and international human rights instruments to which Trinidad and Tobago is a party;
c. the promotion of measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all people including marginalized groups on the basis of gender, age (elderly, youth, children) disability and the creation of an inclusive and more equitable society through greater social justice and sustainable human development within Trinidad and Tobago.

62. In the 10th Report of the Joint Select Committee on "Human Rights, Equality and Diversity" the Committee was informed that there were Interim Standard Operating Procedures (SOPs) for the treatment of asylum seekers and refugees. In the said report, the Committee indicated that these SOPs were developed by the International Affairs Unit, Ministry of National Security, UNHCR and LWC.

63. The procedure suggested to be adopted when dealing with asylum seekers and refugees covered three scenarios. Under the SOPs the UNHCR had to conduct the status determination to determine whether the individual is an asylum seeker and/or a refugee. Upon receipt of this information, immigration would then know whether to enact their regular procedures or whether they should put the individual under an Order of Supervision.

64. The Committee indicated that some procedures changed since the introduction of these SOPs and that these revised SOPs were to remain in effect until legislation is enacted and/or official approval of the National Policy to Address Refugee and Asylum Matters in Trinidad and Tobago. The Claimant pointed out that there is no information which demonstrates that these SOPs are no longer in effect.

65. The UNHCR has created the website help.unhcr.org/trinidadandtobago and this website is currently operational. Following registration as an asylum-seeker, an interview is scheduled and conducted by UNHCR to gather the facts of the claim for the refugee status determination procedure. After the interview, UNHCR determines whether the applicant is a refugee based on the refugee definition in the 1951 Refugee Convention and guided by its own mandate.

66. Applicants who are recognized as refugees will be informed in writing and/or via telephone of their rights as refugees and be provided with guidance regarding any additional steps which must be taken with LWC and the Immigration Division. Applicants whose claims are rejected will be informed through a notification letter and they are told of the reasons for the rejection. Persons who receive a first instance denial have the right to appeal.

67. Paragraph 36 of the National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 by Trinidad and Tobago on the 17th August 2021 outlined that:

> "In light of the global crisis concerning the status of refugees and asylum seekers, and in keeping with its obligations as a State Party to the 1951 Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees, the Government of Trinidad and Tobago developed a National Policy to address Refugee and Asylum Seeker matters which was approved by the Cabinet in 2014. The policy provided a framework to enable the Government to conduct its own Refugee Status determination (RSD) process. Interim Standard Operating Procedures (SOPs) on treating with refugees and asylum seekers were designed to ensure that asylum claims are assessed in a timely and efficient manner, through the coordinated efforts of the Immigration Division and UNHCR. The 2014

policy was unable to be fully implemented due to the influx of Venezuelan migrants which threatened to overwhelm the immigration system and hinder the advancement of the national asylum system. In light of the challenges encountered, the Ministry of National Security is in the process of finalizing an updated policy for the State to assume full responsibility of the RSD process."

UNHCR remains solely responsible in deciding whether an individual qualifies as an asylum seeker or refugee"

68. The Court noted that the 2014 Policy's heading signals that it was not a clear policy but "*A phased approach towards the establishment of a national policy."* It is obvious to this Court that the tentative nature of discussions and the fact that the document merely encapsulated prospective plans are also reiterated within the body of the said document. The 2014 Policy states, *inter alia*:

> "Given that Trinidad and Tobago has neither a national legal framework on asylum and refugee matters nor trained personnel to process claims of persons who purport to be fearful of persecution or were subjected to serious violations of human rights in their countries of origin or habitual residence, a three (3) phased strategy to refugee status determination is highly recommended for implementation."

69. The wording suggests that there was a recommendation of strategies for implementation and the eventual enactment of domestic legislation.

70. The enactment of legislation to incorporate the provisions of the 1951 Refugee Convention falls squarely into the Legislature's remit and this body must invariably respond to the macro-political and macro-economic policies and directives as determined by the Government.

71. No court can legitimately usurp the authority of the Government to formulate its macro-economic and socio policy positions.

72. It is evident that the 2014 Policy contemplated the eventual enactment of legislation and the Court noted paragraphs 8 to 11 of Mr Joseph's affidavit where he deposed as follows:

> "The Draft 2014 Document represented the first phase of this process and was approved by Cabinet. As such, the Draft 2014 Document was preliminary and general in nature, and it was expected to be developed further and made relevant to the peculiar circumstances of Trinidad and Tobago. The Draft 2014 Document proposed having the GORTT work together with the United Nations High Commissioner for Refugees (hereinafter "the UNHCR") and the Living Water Community (hereinafter "the LWC") initially. However, it should be noted that no further steps were taken to develop the said Draft 2014 Document since an agreement could not be arrived at with the UNHCR and the LWC. As a result of this, there was no implementation and/or execution of any of the initial proposals set out in the Draft 2014 Document.
>
> As such, the Draft 2014 Document did not progress to another stage and a final form was never agreed upon. Therefore, it does not represent the policy position by the GORTT which could bind this country to treat with persons who claim to be refugees or asylum seekers. At no time did any rights flow from this document and the GORTT does not consider itself bound by this document.
>
> At the time of the development of the Draft 2014 Document, there were few refugee or asylum claims in Trinidad and Tobago. These claims were made to the LWC and not to the GORTT. The GORTT has never accepted any of these claims

nor has recognised any refugee status granted by UNHCR. Although reference to it has been made, from time to time, by members of the Cabinet, it was always clearly the policy of the GORTT that this draft document was not binding on it and has never been considered to be binding on it.

Furthermore, the contents of the Draft 2014 Document are not consistent with the provisions in the Immigration Act, Chapter 18:01 of the laws of the Republic of Trinidad and Tobago".

73. The Claimant has outlined that a legitimate expectation was created by the 2014 Policy that the operational suggestions outlined therein would be applied.

74. In **HCA No 2905 of 2004 Nutrimix Feeds Ltd v Patrick Manning,** the Court held that overarching public interest factors prevailed and the practice giving rise to the alleged legitimate expectation that local chicken producers would be protected was trumped by the public interest and by subsidiary legislation. The Court found:

> ""The Claimant failed to establish an unambiguous and unqualified representation in respect of the alleged policy/practice of surcharge protecting local chicken producers and that in any event any expectation would be defeated by an overriding public interest in keeping chicken prices within the reach of poor people."

75. In **R v North and East Devon Health Authority ex p Coughlan (Secretary of State for Health and another intervening) [2001] QB 213** the circumstances under which a party might resile from a substantive legitimate expectation were explained as follows:

"[57] There are at least three possible outcomes. (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury grounds (Associated Provincial Picture Houses Ltd v Wednesbury Corp'n [1948] 1 KB 223). This has been held to be the effect of changes of policy in cases involving the early release of prisoners: ….

(b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see Attorney General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires.

(c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

[58] …..In the case of the third, the court has when necessary to determine whether there is a sufficient overriding interest to justify a departure from what has been previously promised."

76. The burden of proof when resiling from a substantive legitimate expectation as described in *Coughlan* (supra) was reiterated and explained in the case of **Paponette v Attorney General of Trinidad and Tobago [2010] UKPC 32** at paragraphs 37 and 38 as follows:

> "37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.
>
> 38. If the authority does not place material before the court to justify its frustration of the expectation, it runs the risk that the court will conclude that there is no sufficient public interest and that in consequence its conduct is so unfair as to amount to an abuse of power. …It is for the authority to prove that its failure or refusal to honour its promises was justified in the public interest…."

77. In **De Smith's Judicial Review 6th ed.**, it is stated at paragraphs 12-012 and 12-013 as follows:

> "…Will the assiduous fulfillment of legitimate expectations deter public bodies from articulating their policies? Policies must not be treated as a set of rules, yet, as Sedley L.J. put it: "a policy has virtues of flexibility which rules lack and virtues of consistency which discretion lacks". Underlying these questions is the fundamental issue of the degree of scrutiny (Wednesbury or more instrusive)

which the courts should employ when judging whether the non-application or alteration of a policy in the public interest outweighs the unfairness to the individual who legitimately expected the policy to be applied….

…The liberty of a public body to change its policies in an important constitutional principle…"

78. This Court holds the view that the 2014 Policy was a draft document which was intended to be a possible roadmap for the future implementation of an operational policy. The 2014 Policy was intended to be a statement for the future rather than a clear statement of an operational policy and evidently, no steps were taken to implement the draft policy. An examination of the said 2014 Policy also reveals that the word "DRAFT" was watermarked unto the policy's pages.

79. The 2014 Policy contains no clear unambiguous statements which are devoid of any relevant qualification so as to suggest that Trinidad and Tobago unequivocally agreed to accept refugees or asylum seekers. Notably, no evidence has been adduced before this Court to suggest that by virtue of the said policy that any 1951 Refugee Convention implementing procedure or process was actually adopted and/or engaged.

80. The Executive cannot by way of policy formulation circumvent the legislative authority of the Parliament. Cabinet does not make law and that power falls under the sole remit of the Legislature. The contention that the 2014 Policy formalised and/or incorporated the 1951 Refugee Convention obligations into the domestic legal framework is quite frankly absurd and devoid of merit.

81. Having considered the 2014 Policy, this Court holds the view that the Government did not commit itself to the implementation of the suggestions contained therein and there was no effectual incorporation of the 1951 Refugee Convention obligations into the domestic

legal framework. As a consequence, no legitimate expectation could have arisen from the 2014 document. In addition, there is no evidence to establish that the policy ever formed part of the Immigration Division's practice or procedure or that there was ever any implementation of a comprehensive, ascertainable and clearly defined operational process which resulted in a circumstance where asylum/refugee status seekers could override the provisions of the Immigration Act. The said 2014 document has never been cloaked with legal efficacy and cannot be used to usurp the provisions of the Immigration Act.

82. After 2000 it appears that the Government did not act with alacrity and failed to address the issue of domestic incorporation of the 1951 Refugee Convention obligations. Eventually in 2014 it embarked upon a process of dialogue and consultation with the intent of developing a phased implementation of the 1951 Refugee Convention obligations. This intent notwithstanding, no clear and definitive policy was never formalised or implemented.

83. Even if there was an implementing policy in place (and this Court has already found that no such implementation was effected) there was express and unequivocal deviation from that policy and from the guidelines ensconced under the 2008 Immigration Manual, after the Joint Select Committee meeting on the 6 April 2018.

84. In Mr. Joseph's affidavit it was stated that at a Refugee Stakeholder Meeting conducted on the 17 July 2018, it was communicated by the representative of the Ministry to the representatives of UNHCR and the LWC that anyone found to be leaving and re-entering the country illegally would be prosecuted as required by the law, even if they are in possession of an asylum seeker certificate. After 2018, the then Minister of National Security and the Prime Minister also issued statements relating to illegal economic migrants from Venezuela.

85. Mr. Gary Joseph stated in his affidavit at paragraph 13 as follows:

> "any effect which the Draft 2014 Document may have had, has been negated in several statements made by the Prime Minister, Dr. The Honourable Keith Rowley and by the former Minister of the Ministry, the Honourable Stuart Young. These statements referred to the surge in the arrival of Venezuelans in Trinidad and Tobago which began in 2019".

86. On 23rd September 2020, the then Minister of National Security spoke about 'Venezuelan repatriation not being a breach of any rules' and he stated as follows:

> "One, (illegally entering T&T) it is in breach of our Immigration Act. Two, you're entering without a visa; that is also a breach of the Immigration Act and three, you're now in breach of our COVID regulations as they've come to be known because you've come across the border without permission."

87. The Minister further stated that:

> "A UNHCR (United Nations High Commission for Refugees) registration receipt does not trump the laws of Trinidad and Tobago nor will we allow it to. The fact that we signed a UN charter or treaty in 1967 or thereabouts is not something that we are disregarding but even in circumstances where you're dealing with a pandemic, persons' constitutional rights as citizens of Trinidad and Tobago can be suspended to allow the state to protect the population,".

88. In a statement released on 25 November 2020, the Prime Minister stated as follows:

> "Trinidad and Tobago is currently under the latest assault, using nameless, faceless people armed with innocent children, to try and force us to accept their understanding of "refugee status and international treaty" where a little island nation of 1.3 million people must be expected to maintain open

borders to a next door neighbour of 34 million people even during a pandemic. This is a matter, not for the OAS, but for the people of Trinidad and Tobago.

Currently we have closed our borders even to our own citizens in this pandemic and would resist all efforts by others who are hell bent on forcing open our borders through illegal immigration. Under the rubric of "humanitarian" this interpretation, if accepted, will effectively prise open our borders to every economic migrant, gun runner, drug dealer, human trafficker and South American gang leader/members. All they will be required to do is make the 7 mile boat trip and claim to be "refugees".

We staunchly support the work of the United Nations but this threat and the persistent disregard for the outstanding humanitarian efforts extended by the people of Trinidad and Tobago, do not conform with the spirit and purpose of the UNHCR. It is our little island nation which facilitated the registration of 16,000 Venezuelan migrants and even as we ourselves are struggling to cope with our own difficulties we have afforded them comfort, aid and opportunity. If after all that, our nation's image is to be tarnished through the facilitation of illegal penetration of our borders then certainly, that will be the unkindest cut of all. I call on all the people of Trinidad and Tobago to continue to be the humane and caring people that we have demonstrated that we are, as we do not demonize our migrant neighbours but we all continue to be protected by the laws of Trinidad and Tobago".

89. On 1 December 2020, the Prime Minster publicly stated during an interview on CNC3's The Morning Brew that "Any Venezuelan found entering the country illegally will be deported."

90. At the time the Claimant entered this jurisdiction in 2021 the Government had expressly communicated that illegal immigrants whether or not they were in possession of an asylum seeker certificate would be treated in accordance with the provisions of the Immigration Act. In the absence of legislation which incorporated convention obligations, the Government, not constrained by any legislative shackle, was free to revise, re-evaluate and/or refashion its approach with respect to the status of persons who may have fallen under the ambit of protection outlined in the 1951 Refugee Convention. Having considered the evidence adduced, the Court is unable to conclude that the approach adopted by the Government was one which was arbitrary or irrational.

91. This is a small island State with limited and over taxed resources. The unlawful, unregulated, uncontrolled and unrelenting influx of migrants purporting to be refugees and/or asylum seekers posed and still poses critical challenges and has significant societal consequences. The influx of migrants is a circumstance which materially impacts upon the lives and resources of every citizen of this Republic. The Government was therefore entitled to reconsider the approach to be adopted and to re-evaluate its policy implementation response.

92. At times, international organizations emboldened by unlimited resources and the support of developed nations can lose sight of the prevailing economic, societal and infrastructural limitations under which small nations such as Trinidad and Tobago operate. Though well intentioned and driven by their principled enthusiasm, they may disregard or discount the practical operative conditions and constraints which may need to be addressed to ensure the receiving Country's continued survival, viability and functionality. It must be understood that international agreements cannot obviate the need to respect a Nation's Sovereignty or dismiss its constitutional supremacy. On a humanitarian level there does exist the requirement, so far as is practicable, to assist and support refugees. In Trinidad and Tobago, however, the Government cannot be faulted if its policy position with respect to refugees has been confined and constrained by the socio economic challenges which confronts all citizens.

93. In the event that the Court is wrong and the 2014 Policy is viewed as a document which provided clear and unequivocal representations as to the Government's commitment to implement the suggestions contained therein, any legitimate expectation which reasonably arose therefrom or by virtue of the 2008 Immigration Manual or any other document, were emphatically negated by the forceful, pellucid and decisive statements issued by the Prime Minister and the then Minister of National Security as referenced earlier in this judgment. Both these office holders identified and articulated logical and rational public interest reasons which signalled the Government's intention to resile from any such policy or the 1951 Refugee Convention implementation process. The outlined considerations included, *inter alia*, public health, economic and national security concerns and the impact occasioned by the influx of illegal migrants from Venezuela.

94. Government, and not the Court, is vested with the mandate to govern and the Court will conscientiously, independently and fearlessly ensure that this mandate is discharged in accordance with the Constitution and the rule of law.

95. The Government's articulated approach to migrants offended neither the Constitution nor the rule of law but was a proportionate response based upon its rational and reasoned macro-economic and socio-political concerns which required decisive responses as a global pandemic was ongoing. The Government saw it fit to engage steps, which in its opinion, safeguarded the citizens of Trinidad and Tobago in an attempt to avert a collapse of the public health system. These steps were taken to prevent any compromise of the Republic's economic and national security systems. The State comprehensively outlined and reaffirmed the approach to be followed with respect to migrants who ran afoul of the provisions of the Immigration Act and the position adopted cannot be viewed as one which was irrational or unreasonable.

96. It cannot be forgotten that a Ministerial Directive which was issued in June 2020 recorded that foreign nationals entering Trinidad and Tobago unlawfully were undesirables under section 8(1)(q) of the Immigration Act. This position logically superseded and replaced any expectations derived under the 2014 Policy or under the 2008 Immigration Manual.

97. The Claimant also contends that by virtue of the Standard Operating Procedures (SOPs), he ought to have been released on an Order of Supervision and that a Special Inquiry should have been held. He asserts that the SOPs created a legitimate expectation that the Government had signalled its intent to rely upon the 1951 Refugee Convention.

98. The Defendant submitted that the document which contained the proposed SOPs was confidential and was not meant to be disseminated. This submission is supported when regard is had to the letter dated 11 August 2017 from the Permanent Secretary, Ministry of National Security to the Founder of the Living Water Community. The said letter was exhibited at page 271 of the Claimant's affidavit filed on 20 March 2023 and stated that:

> "The Ministry wishes to advise that the circulation of this document is restricted to the primary points of contact identified, as in the document".

99. It is therefore unfortunate that this document reached into the Claimant's possession and is now before the public in these proceedings.

100. Having regard to the very clear directive that the SOP document was meant to be confidential, the said document cannot reasonably be relied upon by the Claimant. The document was not meant to be published and disseminated and it cannot be said that the Claimant and/ or any similarly circumstanced person were promised benefits deriving from the document.

101. Gary Joseph at paragraph 35 of his affidavit stated that:

"On the 11th August 2017, the High Court issued a decision in the matter CV2017-02148 Henry Obumneme Ekwedike v the Chief Immigration Officer and the Attorney General of Trinidad and Tobago ruling that the Order of Supervision were not being used in the manner in which the law intended. This ruling had directly impacted the procedures specified in the revised SOPs, specifically the use of OS as an alternative to detention to asylum-seekers. As such, there was a requirement to review the revised the standard operating procedures to include a suitable alternative to detention and therefore, the revised SOPs were not operationalized. Thereafter, on the 17th October 2017, a representative from the UNHCR and the Living Waters Community were advised that the Ministry was reviewing the revised SOPs in light of the ruling in Henry Obumneme Ekwedike**.**

Thereafter, at the Refugee Stakeholder Meeting held on the 16th January 2018, the UNHCR and the LWC were briefed on the impact of the ruling in Henry Obumneme Ekwedike on the revised SOPs and undertook to submit comments on alternative to detention.

As a result, the Ministry had continued to treat with the asylum seekers and refugees within the provisions of the Immigration Act and the representatives from the UNHCR and the LWC were briefed on this fact at several Refugee Stakeholder Meetings held in 2018.

I am aware that at a Refugee Stakeholder Meeting conducted on the 17th July 2018 it was communicated by the representative of the Ministry to the representatives of the UNHCR and the LWC that it was advised that anyone found to be leaving and re-entering the country illegally should be prosecuted as required by law, even if they are in possession of an asylum seeker certificate. The

representative from the UNHCR indicated that the GORTT's position was understood.

The issue as it relates to the treatment of the asylum-seekers and the refugees remained unresolved as of present. The last sitting of the Refugee Stakeholder Meeting took place on the 19th July 2019."

102. It is also noteworthy that the SOP document sets out that: "These SOPs take immediate effect upon notification of the approval by the Permanent Secretary, Ministry of National Security to the relevant Units/ Divisions/Organisations".

103. Before this Court, no evidence has been adduced to establish that any such notification of approval was, in fact, issued.

104. Based on the evidence adduced, the SOPs were never finalized nor were they operationalised and there was no clear or unambiguous promise that the SOP document would have been applied to persons similarly circumstanced to the Claimant.

105. In any event, after the SOP document was generated, senior government officials signalled a clear and comprehensive position of the Government's intent to ensure that the existing immigration laws under the Immigration Act were engaged and enforced.

106. Consequently, this Court holds the view that the Claimant's argument that the SOPs gave rise to a legitimate expectation is also devoid of merit.

107. The unprecedented influx of migrants especially from Venezuela undoubtedly imposed significant constraints upon the State and catalysed a review of its course of dealing with migrants. Notwithstanding the statements issued and the imposition of public health regulations and restrictions, the Nation's borders were breached with

impunity and the inflow of migrants continued unabated. For over 23 years the State has vacillated with respect to the implementation and incorporation of the obligations outlined under the 1951 Refugee Convention into the domestic legislative framework. This indecision has not augured well for this Republic. A proactive legislative response is now urgently required to deal with this current circumstance and there should be legislative clarity and a determination should be made with respect to the extent to which the 1951 Refugee Convention obligations are to be incorporated into domestic law. This society may well derive benefits from the presence of migrants equipped with specific skill sets in areas which may include, *inter alia*, hospitality, construction and manufacturing. On the other hand, the prevailing economic climate suggests that the country may lack the resources to adopt a "come all ye who labour and are heavy laden and we shall give you rest" approach. A structured, measured and formalised legislative process may therefore encourage and facilitate the meaningful incorporation and integration of a manageable number of migrants into the society and its workforce. This type of measured approach can ultimately endure to the economic benefit of Trinidad and Tobago.

108. The Court must now turn to the Minister's decision to issue a deportation order and examine the said decision so as to ascertain whether same was, *inter alia*, unreasonable, irrational, disproportionate, unlawful, illegal, procedurally flawed and/ or whether the decision violated the principles of natural justice.

109. In the instant case, the Claimant first came to the attention of the Immigration Division on the 19 August 2022 when he was detained by police officers attached to the Fyzabad Police Station. After being medically examined, he was handed over to the Immigration Division on the 22 August 2022. The following day, the Claimant was interviewed by an Immigration Officer II. In the said interview, the Claimant stated that:

a. He entered Trinidad and Tobago of his own volition on or about October or November 2021 at a beach in the Morne Diablo area on board an unknown vessel

and failed to appear before an immigration officer for examination on the date of his arrival contrary to section 22(1)(i) of the Immigration Act;

b. He was not in possession of a passport or requisite visa as required under the Second Schedule of the Immigration Act and contrary to Regulations 13(5) and 13(11) of the Immigration Regulations;

c. He was working in Trinidad as a labourer in the construction section earning Fifteen Hundred Dollars ($1,500.00 TTD) per week;

d. He cited employment opportunities in Trinidad and Tobago as being the reason for his action for entering the jurisdiction in order to support his children in Venezuela and he made no mention about being persecuted by the Government of Venezuela or being threatened for lobbying against the Government of Venezuela. The interview notes were read over to him by the Spanish interpreter and he confirmed the accuracy of the record.

110. After this interview, the Claimant was issued a Reasons for Arrest and Detention Form dated 23 August 2022 and he was notified as to the reasons for his arrest. This document was interpreted for him by the Spanish language interpreter and he signed same. Thereafter, the Claimant was also placed on an Order of Supervision.

111. The Defendant pointed out that based on the Claimant's responses, he possibly breached Section 22(1) of the Immigration Act and that he may have also breached other provisions of the said Act and may have committed the following offences:

a. He likely illegally entered Trinidad and Tobago and therefore likely committed an offence under section 40(a) of the Act;

b. He likely entered into Trinidad and Tobago without a valid and subsisting visa and possibly breached Regulations 13(5) and 13(11) of the Immigration Regulations;

c. He likely entered this country without being in possession of a passport issued by the country in which he is a national or citizen and possibly breached Regulation 13(1) of the Regulations;

d. He was employed without being in possession of a valid work permit and therefore seemingly acted in contravention of Regulation 10(1) of the Immigration Regulations;

e. By failing to comply with the conditions and requirements of the Act or the Regulations he likely fell within the prohibited class under section 8(1)(p) of the Act;

f. By way of the direction of the Minister on 20 July 2020, all persons found to be or attempting to enter this country illegally or other than in accordance with the Act were deemed to be "undesirable inhabitants or visitors" within the scope of section 8(1)(q) of the Act, and therefore members of the prohibited class.

112. In light of the foregoing, the Defendant advanced the view that the option which the Minister ultimately adopted, occasioned the least harm, prejudice and/or detriment to the Claimant.

113. The Claimant however contends that he ought to have been subjected to a Special Inquiry.

114. The Immigration Act establishes two processes by which a deportation order can be made against an illegal entrant such as the Claimant. The first is through a Special Inquiry which is provided for under sections 23 to 27 of the Immigration Act or the second process provides that information and evidence can be placed before the Minister in order for him to act within his discretion to determine whether to issue a deportation order by virtue of sections 7(4), 9(5), 10(6) and 11(a) of the Immigration Act. If the second process is engaged, there is no requirement for the Minister to hold any Special Inquiry in relation to the illegal immigrant.

115. Based on the evidence adduced before this Court, the Court holds the view that the Claimant likely fell within the prohibited class of persons under sections 8(1) (p) and

8(1)(q) of the Immigration Act. As a consequence, pursuant to section 11 of the Immigration Act, the Minister was empowered to issue a deportation order.

116. The Court notes that a comprehensive report was forwarded to the Minister, the Claimant's alleged breaches of the Immigration Act were outlined and the requisite evidence in support of the said breaches was supplied. The information as to the Claimant's refugee/asylum application and the fact that he had registered with UNHCR was also placed before the Minister although the said information was not required under the Immigration Act.

117. This Court in **CV2019-01113 Sanctuary Workers' Union and Mitoonlal Persad v The Minister of Labour and Small Enterprise Development**, provided its views on the concept of proportionality and said as follows:

> "52. This Court holds the view that proportionality can be viewed as a legitimate head of review in exceptional circumstances where the impugned decision materially impacts the enshrined fundamental rights of citizens.
>
> 53. Access to justice is a pivotal part of any functional democracy and is an indispensable requirement for the Rule of Law. Consequently, any decision which interferes with a citizen's fundamental rights such as his/her ability to access justice, is one, which must attract the Court's anxious scrutiny. The Court can and should in such a circumstance use the tool of proportionality in its determination as to whether such a decision should stand.
>
> 54. Where a decision, effected by a public authority, impacts upon a fundamental right, the decision maker must consider all the relevant criteria and adopt a proportional approach. Before such a decision is made, the decision maker should address the following questions:

1) Whether the objective of the measure is sufficiently important to justify the limitation of a protected right?

2) Does the factual matrix present several appropriate or applicable options?

3) Which option would occasion the least harm, prejudice or detriment, having regard to the ultimate objective of the decision to be made?

4) Will the contemplated decision impose disproportionate disadvantages upon the individual to whom the intended decision relates?"

118. In exceptional cases the concept of proportionality can be viewed as a legitimate ground of review where the impugned decision materially impacts upon the enshrined constitutional rights of the affected individual. On the operative factual matrix before this Court, the Claimant likely fell under the classification of an "undesirable inhabitant or visitor "and the decision effected by the Minister did not violate any of the Claimant's constitutional rights.

119. As a sovereign State, decisions can be made by the Government as it relates to border control and refusal of entry to non-nationals having regard to public interest considerations is entirely permissible.

120. Section 16 of the Immigration Act authorises the detention of persons pending deportation. As articulated by Lord Stephens in **Jesus Alexander Rodriguez Martinez (by his kin and next friend Luisa Del Valle Martinez Hernandez) and another (Appellants) v the Chief Immigration Officer (Respondent) (Trinidad and Tobago) [2022] UKPC 29** at paragraph 66, "the power of detention under Section 16 of the Immigration Act is impliedly limited to such period of time as is reasonably necessary to carry out the process of deportation…".

121. Notably, the Claimant, since the 23 August 2022, has been under an Order of Supervision and has not been subjected to detention. Consequently, the Deportation Order did not affect or impinge upon his freedom of movement and liberty.

122. The Claimant relied heavily on the SOP's, the efficacy of which was addressed earlier in this judgment. The procedure outlined in the revised draft SOP's could not have led to the formation of any legitimate expectation that the Minister was bound by same. Consequently, the only options which were available to the Minister at the material time were those provided for under the Immigration Act.

123. By virtue of his own utterances the Claimant likely stood in breach of Section 8(1)(p) and several other sections of the Immigration Act.

124. The rights to freedom of movement and liberty are not absolute and at the time the Claimant entered this jurisdiction, there were various regulations in place which curtailed movement in an attempt to contain the spread of Covid-19.

125. In his affidavit, Mr. Joseph gave evidence that the COVID-19 situation caused an unprecedented global pandemic and was a grave public health emergency. These circumstances caused the Government to give priority to the framing of public health and immigration control policies to manage risks to public health. The Government also implemented border control measures, disease screening protocols and imposed quarantine requirements upon nationals and non-nationals.

126. Mr. Joseph gave further evidence that the Government responded to the need to secure and manage the country's economic position. Mr. Joseph stated that the effects of the "shocks" of COVID-19 were still being felt and control over and stability of the country's borders was required to assist in the recovery of the economy.

127. In judicial review proceedings the threshold to establish irrationality is notoriously high. In the case of **Council of Civil Service Unions and Others v Minister for the Civil Service [1985] A.C. 374**, the court defined the term 'irrational' at page 410 as follows:

> "… By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it…".

128. On the evidence adduced before this Court, there was no requirement imposed on the Minister to hold a Special Inquiry prior to the exercise of his discretion to issue a deportation order pursuant to section 11 of the Immigration Act. No Special Inquiry was needed to determine whether the Claimant was in breach of the Immigration Act, as through his own admission, he stated that he entered Trinidad and Tobago at a place other than a port of entry, eluded examination by an immigration officer and his statement revealed that he may have committed various other offences.

129. The inapplicability of the 2014 Policy and the SOPs has been exhaustively outlined earlier in this judgment and in the operative circumstances, the Minister was obligated to consider and be guided by the provisions of the Immigration Act when he reviewed the comprehensive report on the Claimant which was presented to him and in relation to which he had to make a decision.

130. It is the Court's view that the Minister properly exercised his discretion when he issued the Deportation Order. Ultimately, this Court is resolute in its view that the Minister's decision was reasonable, rational, fair, proportionate and same was not rendered in bad faith.

131. The Government made difficult decisions with respect to the required responses to COVID-19 and adopted the policy to deem all foreign nationals who attempted to enter this jurisdiction illegally as "undesirable inhabitants" pursuant to section 8(1)(q) of the Immigration Act. This decision was made at a time when citizens were unable to return home unless onerous and stringent entry exemptions were obtained. Having reviewed the evidence, there exists no credible basis upon which the Court could conclude that the Minister acted inappropriately or with *mala fides* when he issued the Deportation Order.

132. In the circumstances, the Court categorically rejects the arguments advanced by the Claimant that the Minister's decision to issue the Deportation Order was unfair, unreasonable, illegal, irrational, disproportionate or procedurally flawed and that same should be set aside.

Natural Justice:

133. Michael Fordham in the **Judicial Review Handbook 6th Edition at paragraph 60:2** at page 625 states:

> "Natural Justice has always been an entirely contextual principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair. The content of the duty depends on the particular function and circumstances of the individual case."

134. With respect to *audi alteram partem*, the Privy Council in **R v Secretary of State for the Home Department, Ex p Doody [1994] 1 AC 531** at page 560, stated:

> "… What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too

well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer…"

135. In the recent Privy Council case of **Public Service Commission v Ceron Richards [2022] UKPC 1,** their Lordships were called upon to consider whether there were breaches of the rules of natural justice. In deciding whether there was such breach the Court considered, in addition to the case of **R v Secretary of State for the Home Department, ex p Doody [1993] UKHL 8**, the authority of **Lloyd vs Mc Mahon [1987] UKHL 5** was referenced at paragraph 30 which stated:

"… the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends

on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

136. The issue as to whether the process engaged in relation to the Claimant adhered to the principles of natural justice depends upon the prevailing circumstances considered against the need to ensure that there was "fairness". The Claimant was interviewed, his representations were duly recorded and they were included in the report which was presented to the Minister. In the circumstances, there is no merit in the assertion that the Claimant was denied an opportunity to be heard or that he was treated in a manner which violated the principles of natural justice.

137. This Court can ascertain no identifiable reason to set aside the Minister's decision to issue the Deportation Order. The Claimant by his statement and responses admitted to entering Trinidad and Tobago of his own volition on or about October or November, 2021 at a beach in the Morne Diablo area on board an unknown vessel. He accepted that he failed to appear before an immigration officer for examination on the date of his arrival. His statement revealed that he was not in possession of a passport issued by Venezuela (in possible breach of Regulation 13(1) of the Immigration Regulations) nor did he have the requisite visa (in possible breach of Regulations 13(5) and 13(11) of the Immigration Regulations). He also informed that he subsequently gained employment without being in possession of a valid work permit and so possibly breached Regulation 10(1) of the Regulations.

138. The Claimant, by his admissions, seemingly violated several laws and regulations. This type of disrespect and disregard for the laws of Trinidad and Tobago, the supremacy of the Republican Constitution and the Sovereignty of this State must be condemned and cannot be condoned. The laws of this Republic must be respected and should be rigidly enforced.

139. For the reasons which have been outlined, the Claimant's claim is hereby dismissed and he shall pay to the Defendant costs to be assessed by the Court in default of agreement. In the circumstances the Court holds the view that it is necessary to reaffirm the existing law and declares as follows:

a. The Court hereby declares that the obligations enumerated under the 1951 Refugee Convention and the principle of non-refoulement do not apply to the Republic of Trinidad and Tobago as there has been no domestic incorporation.

b. The Court also declares that Section 11 of the Immigration Act is not unconstitutional as it does not offend the rule of law nor does it stand in conflict with provisions of the Constitution.

……

FRANK SEEPERSAD

JUDGE

The Honourable Mr. Justice Frank Seepersad
Supreme Court of Trinidad and Tobago

Assisted by Liam Labban JRC