



Press release

23 March 2017

HEADLINE: Execution of the intellectually disabled is unconstitutional in Trinidad says Privy Council, but courts may still impose death sentences

Today, the Judicial Committee of the Privy Council in London delivered a long awaited [judgment](#) in the appeals of [Lester Pitman and Neil Hernandez](#), two intellectually disabled men who had both been convicted of murder and sentenced to the mandatory death penalty in Trinidad.

The cases were heard by the Privy Council, which is still the highest court of appeal in Trinidad and Tobago, in May 2016. Pitman and Hernandez, who both have extremely low IQs and are classified as intellectually disabled, brought appeals arguing that the imposition of a death sentence on someone with an intellectual disability amounts to cruel and unusual punishment and is prohibited under the Trinidadian Constitution.

In a judgment, delivered 23rd March 2017, the Privy Council accepted that the execution of a person with severe mental impairment, was a cruel and unusual punishment, and that someone with a significant learning disability like Pitman and Hernandez might be entitled to constitutional protection against execution. However, it found that the death penalty could still be imposed on them and it is up to the President to exercise mercy and commute their death sentences.

The Privy Council concluded that as Trinidad and Tobago retains the mandatory death penalty for murder, an offender can only avoid having the death sentence imposed by demonstrating that they cannot be held fully culpable for their actions and meet the legal test of diminished responsibility.

In cases like that of Pitman and Hernandez, where, despite severe mental impairment, the defence of diminished responsibility was not met or raised at the trial, the death sentences are therefore legitimate. The Court concluded that, prisoners in similar circumstances must therefore rely on the President to prevent their execution being carried out.

Whilst we welcome the decision that the execution of a person with severe mental disability is unconstitutional in Trinidad, we are concerned that, by relying on the discretion of the President to grant mercy, those with an intellectual disability are not sufficiently protected from having their human rights violated.

[Read our legal commentary on this case](#)

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Note to Editors

About the Death Penalty Project

[The Death Penalty Project](#) is an independent international human rights organisation housed in the offices of Soho legal firm Simons Muirhead & Burton, LLP. For more than 20 years, the Death Penalty Project has worked to protect the human rights of those facing the death penalty. The

Death Penalty Project also carries out activities focussed on broader criminal justice issues and human rights concerns.

Lester Pitman and Neil Hernandez were represented *pro-bono* by UK barristers Edward Fitzgerald QC, Paul Bowen QC, Alison McDonald QC, Ruth Brander, Amanda Clift-Matthews, (In-house Counsel), Daniella Waddoup and Katherine Buckle.



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