

**REPORT No. 331/20**  
**CASE 12.145**  
**REPORT ON THE MERITS**  
**19 November 2020**  
**KEVIN DIAL AND ANDREW DOTTIN**  
**TRINIDAD AND TOBAGO**

**I. INTRODUCTION**

1. On April 29, 1999, the Inter-American Commission on Human Rights (“the Commission”) received two petitions and requests for precautionary measures<sup>1</sup> from Herbert-Smith LLP<sup>2</sup> (“the petitioners”) against the Government of Trinidad and Tobago (the “State” or “Trinidad and Tobago”). The petitions were presented on behalf of Kevin Dial and Andrew Dottin (“the alleged victims”), two Trinidadian nationals who at that time were inmates on death row in that country’s State Prison.<sup>3</sup>

2. The Commission approved its admissibility report No. 83/11 on July 21, 2011<sup>4</sup> and on July 27, 2011, notified the report to the parties, placing itself at their disposition to reach a friendly settlement. The parties were allocated the time periods provided for in the IACHR’s Rules of Procedure to present additional observations on the merits of the case. All of the information received by the IACHR was duly transmitted to the parties.

**II. POSITIONS OF THE PARTIES**

**A. Petitioners**

3. The petitioners indicate that the alleged victims were tried and convicted as co-defendants for the murder of Junior Baptiste and sentenced to death on January 21, 1997 by the High Court of Justice of Trinidad and Tobago, pursuant to the country’s mandatory death penalty. The petitioners indicate that, in their defense, Messrs. Dial and Dottin alleged an alibi and testified that the lineup identification procedure at the Besson Street Police Station was flawed, and that the lack of fingerprint evidence or firearms ballistics testing diminished the credibility of Shawn Baptiste’s testimony.

4. According to the petitioners, the evidence against the alleged victims was fabricated by the police, and therefore, they were sentenced through a miscarriage of justice. In this regard, they allege that, on July 9, 1999, Shawn Baptiste swore an affidavit retracting the entirety of his deposition incriminating the defendants. The petitioners allege that since Shawn Baptiste’s testimony at trial was the sole basis for the alleged victims’ convictions, it is clear that the actions of the police perverted the course of justice. In addition, the petitioners informed the IACHR that, on October 15, 1999, Alicia Henry also swore an affidavit supporting the new evidence presented by Shawn Baptiste.

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<sup>1</sup> In accordance with Article 25(1) of the Commission’s Rules of Procedure, on May 11, 1999, the Commission granted precautionary measures on behalf of Kevin Dial and Andrew Dottin and requested Trinidad and Tobago to stay their executions until a decision could be reached on the merits of the case. In light of the absence of any response from the State to its request for precautionary measures, the IACHR submitted a request for provisional measures in favor of the alleged victims to the Inter-American Court of Human Rights (“the Inter-American Court”) on May 25, 1999. On May 27, 1999, the Inter-American Court amplified the provisional measures previously ordered in I/A Court H.R., *Matter of James et al.*, Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of April 3, 2009, para. 14 (later named *Matter of Dottin et al.*), to include the alleged victims. The Inter-American Court lifted the provisional measures on May 14, 2013, given the commutation to life imprisonment of the alleged victims’ death sentences and the lack of information confirming the existence of a situation of extreme gravity and urgency and of risk of such persons suffering irreparable harm to their lives or personal integrity (I/A Court H.R., *Matter of Dottin et al.*, Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of May 14, 2013).

<sup>2</sup> The petitions were originally presented by Slaughter and May. However, in a letter dated August 18, 1999, the IACHR was informed that effective September 1, 1999 Herbert Smith, LLP would represent Messrs. Dial and Dottin.

<sup>3</sup> The Inter-American Commission decided to join the petitions into one single file since the beginning of this procedure, on May 11, 1999, because of the great similarity in the allegations of facts and law submitted by the same petitioners.

<sup>4</sup> IACHR. Report No. 83/11. Petition P12.145. Admissibility. Kevin Dial and Andrew Dottin. Trinidad and Tobago. July 21, 2011.

5. The petitioners contend that, in light of the two new affidavits sworn by the prosecution's key witnesses, the alleged victims' case was submitted to the Trinidad and Tobago Court of Appeal for a second appeal.<sup>5</sup> Nevertheless, the Court of Appeal reaffirmed the alleged victims' convictions and sentences on July 6, 2001. After that, the petitioners observe that an additional petition for Special Leave to Appeal was lodged before the Judicial Committee of the Privy Council ("Privy Council" or JCPC) on November 27, 2002, but it was dismissed on February 14, 2005.

6. The petitioners subsequently informed the IACHR that, pursuant to constitutional proceedings in the High Court of Trinidad and Tobago, the alleged victims' death sentences were commuted to life imprisonment on August 15, 2008.<sup>6</sup> The petitioners underscore that the late commutation of the death sentences does not alter the alleged breaches for the period the alleged victims were on death row for what they consider to be convictions obtained through a miscarriage of justice.

7. The petitioners note that Trinidad and Tobago's denunciation of the American Convention on Human Rights ("the American Convention") took effect on May 26, 1999. Therefore, they maintain that the State is responsible for violations of the American Convention with respect to those facts which took place before that date; as well as for violations of the American Declaration of the Rights and Duties of Men ("the American Declaration") that allegedly occurred after that date. They conclude that the State violated Articles 4, 5, 7, 8, 10, 11 and 25 of the American Convention, and Articles I, II, XVIII and XXVI of the American Declaration. With regard to Mr. Dial, the petition also alleges a violation of Articles 17 and 19 of the American Convention.

8. In that regard, the petitioners mainly complain of three related issues: violations of due process in the course of their arrest, pre-trial detention, trial, conviction and sentencing; conditions of pre-trial and post-trial detention; and the delay in commutation of the alleged victims' death sentences despite jurisprudence from the JCPC requiring such action.

9. The petitioners contend, firstly, that during the whole course of criminal proceedings, beginning with the arrests of the alleged victims, the State failed to respect their right to personal liberty and due process guarantees. In this regard, the petitioners stress, *inter alia*: that the alleged victims were not told of the reasons for their detention at the time of their arrest, nor were they allowed to immediately contact a lawyer or a family member; they were not brought to trial within a reasonable time, since there was a delay of almost two years between their February 24, 1995 arrests and the beginning of their trial on January 15, 1997; they were not given prior notification in detail of the charges against them or the evidence on which the State was going to rely at trial; they were not provided with adequate legal representation by the State; they were not provided with adequate means for the preparation of their defense, nor could they afford adequate representation; and they were not permitted to communicate freely and privately with their counsel. The petitioners emphasize that the alleged victims' deprivation of personal liberty resulted from illegal means, namely conspiracy and fabrication of evidence by the police, as demonstrated by the 1999 affidavits of the two eyewitnesses.

10. The petitioners argue that the State has failed to provide the alleged victims with equal and effective access to constitutional motions before the courts in Trinidad and Tobago for the protection of their rights. In particular, they maintain that the conditions for such recourse are discriminatory because the proceedings are extremely expensive, and no legal aid is available for these motions. The petitioners argue that the alleged victims are indigent and that they do not have access to legal aid to bring a constitutional motion in respect of the issues raised in the petition and therefore are being denied access to a legal remedy. They maintain, however, that the scope of constitutional motions is limited to the constitutional validity of the State's attempt to execute the alleged victims.

11. Secondly, the petitioners argue that the conditions of pre-conviction and post-conviction detention of the alleged victims violated their right not to be exposed to cruel, inhuman, degrading, infamous, or unusual punishment or treatment. Indeed, the petitioners contend that the alleged victims have been detained for more

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<sup>5</sup> Pursuant to Section 64 of the Supreme Court of Judicature Act.

<sup>6</sup> The petitioners cite High Court of Trinidad and Tobago, H.C.A. No. 1412 of 2005, dated August 15, 2008, entered August 19, 2008.

than a decade under inhuman conditions, for instance: there are no educational or recreational activities; they can only have one hour of exercise, while handcuffed, every 1-3 weeks; very little exposure to natural light and inadequate ventilation in their cells; no sanitation facilities; precarious conditions of hygiene; inedible food and limited access to potable water; among others.

12. Lastly, the petitioners contend that the alleged victims were entitled as from 2003 to have their death sentences commuted on the strength of applicable case law emanating from the JCPC, including the Cases of *Roodal*,<sup>7</sup> *Matthews*<sup>8</sup> and *Pratt & Morgan*.<sup>9</sup> In this regard, the petitioners indicate that the Trinidad and Tobago Court of Appeals recognized that failure to give effect to the Pratt and Morgan decisions “may further aggravate the mental anguish on the part of the condemned man.”<sup>10</sup> The petitioners further allege that in August 2005, while the Inter-American Court’s Provisional Measures were in force, the State issued warrants of execution which were read to the alleged victims, following a public announcement by the Attorney General that the State intended to recommence executions of death row inmates. Further, the petitioners claim that while the commutation process was ongoing, the alleged victims were unable to begin the rehabilitation under a life sentence and were not benefiting from sentence reviews at four yearly intervals. While the death sentences were eventually commuted to life imprisonment in August 2008, the petitioners maintain that the imposition of the death sentences, the years spent on death row, and the issuance of warrants of execution that were read to the alleged victims, gave rise to a violation of the rights to life and to personal integrity/humane treatment.

## **B. State**

13. Trinidad and Tobago did not send a response to the petitioner’s additional observations on the merits. This section is thus based on arguments made during the admissibility stage that are related to the merits.

14. The State denies all allegations related to the merits, principally because it considers that the petitioners failed to produce substantive evidence of violations of the American Convention.

15. The State asserts that the 12-month period between the completion of the committal proceedings and the trial was not unreasonable, and further does not amount to a breach of Article 7(5) of the American Convention. It also submits that the pre-trial delay should not be allowed to be raised as an issue and relies on the case of *Fisher v Minister of Public Safety (No. 1)* [1998] A.C. 673 from the Privy Council which held that, as a general rule, it was not appropriate for the purposes of considering whether execution had been rendered inhuman by reason of delay in execution of the sentence to bring into account pre-trial delay.

16. The State claims that no denial of justice, restrictions to legal aid or miscarriage of justice can be said to arise in this case, since all due process guarantees of the alleged victims were respected. The State expresses that the applicants were represented by counsel at their trial and subsequent appeal. The alleged victims had prior notification of the charges against them, were offered legal counsel by the State, legal aid was available, and no restrictions were placed onto their right to communicate freely and privately with counsel.

17. As regards a claim to a breach of personal liberty the State denied any breach and state that the applicants failed to produce substantive evidence to support the allegations.

18. More specifically, the State contends that the existence of the mandatory sentence of death for murder is in accordance with international law and the Convention. It is explained that the trial judge directs the jury to bring a verdict of murder or manslaughter to reflect the circumstances in which the death of the victim ensued. The State reiterated that it was after considering the evidence that the jury returned a unanimous verdict of guilty of murder and that the death sentence is only imposed following a conviction of murder. The State explains that the sentence of death will always be reviewed before the Advisory Committee on the Power of Pardon.<sup>11</sup>

<sup>7</sup> *Balkissoon Roodal v State of Trinidad & Tobago*, [2003] PC 18.

<sup>8</sup> *Charles Matthews v State of Trinidad & Tobago* [2004] PC 2.

<sup>9</sup> *Pratt & Morgan v R. (put: The Attorney General of Jamaica)* (on appeal from Jamaica), [1994] 2 AC 1.

<sup>10</sup> The petitioners refer to *The Attorney General of Trinidad and Tobago v. Angela Ramdeen* [Cv.A No.6 of 2004], para. 39.

<sup>11</sup> Response by the Government of Trinidad and Tobago dated August 18, 1999.

19. The State submits that the IACHR has no jurisdiction to challenge the sentence imposed by the State in accordance with its domestic law; and references the case of Thomas and Hilaire which sets out the law under which the state party will act in this regard. The Judicial Committee of the Privy Council expressed:

“Even if the prison conditions in themselves amounted to cruel and unusual treatment, however, and so constituted an independent breach of the appellants' constitutional rights, commutation of the sentence would not be the appropriate remedy. *Pratt* did not establish the principle that prolonged detention prior to execution constitutes cruel and unusual treatment. It is the carrying out of the death sentence after such detention which constitutes cruel and unusual punishment. This is because of the additional cruelty, over and above that inherent in the death penalty itself, involved in carrying it out after having exposed the condemned man to a long period of alternating hope and despair. It is the circumstances in which it is proposed to carry out the sentence, not the fact that it has been preceded by a long period of imprisonment, which renders it cruel and unusual. The fact that the conditions in which the condemned man has been kept prior to execution infringe his constitutional rights does not make a lawful sentence unconstitutional.

[...]

Their Lordships are unwilling to adopt the approach of the IACHR, which they understand holds that any breach of a condemned man's constitutional rights makes it unlawful to carry out a sentence of death. In their Lordships' view this fails to give sufficient recognition to the public interest in having a lawful sentence of the court carried out. They would also be slow to accept the proposition that a breach of a man's constitutional rights must attract some remedy, and that if the only remedy which is available is commutation of the sentence then it must be adopted even if it is inappropriate and disproportionate. The proposition would have little to commend it even in the absence of section 14(2) of the Constitution, but it is clearly precluded by that section.”<sup>12</sup>

20. The State refers to the views of the United Nations Human Rights Committee (“the HRC”) adopted on 29 July, 1998 in respect of *Dole Chadee et al.*<sup>13</sup> that there was no breach of Article 10 of the International Convention on Civil and Political Rights arising from prison conditions in Trinidad and Tobago. Further reference was made to the case of *Thomas and Hilaire*<sup>14</sup> ruled on by the Privy Council which accepted the findings of the Court of Appeal of Trinidad and Tobago that prison conditions within the State did not amount to cruel and unusual treatment in violation of section 5(2)(b) of the Constitution. The State further denies the allegations of the lack of medical treatment by prison authorities.<sup>15</sup>

21. Finally, the State concludes that the petitioners are merely seeking to use the Inter-American Commission as a final court of appeal, since no denial of justice can be said to arise in this case. Accordingly, the State submits that the alleged victims are not entitled to compensation, because their convictions were the result of criminal procedures which respected all fair trial guarantees.

### III. FINDINGS OF FACT

22. In application of Article 43(1) of its Rules of Procedure, the IACHR will examine the arguments and evidence provided by the petitioners. As stated above, there has been no response received by the State at the merits stage. Likewise, the Commission will take into account publicly available information that may be relevant to the analysis and decision of the instant case.

#### A. Relevant legal framework

23. Offences Against the Person Act, Chapter 11:08, as amended by section 2 of the Offences Against the Person (Amendment) Act No. 19 of 1985, Section 4, provides:

“Every person convicted of murder shall suffer death.”

24. Section 5 of the Constitution of Trinidad and Tobago establishes:

<sup>12</sup> *Thomas and Haniff Hilaire v Cipriani Baptiste* (Trinidad and Tobago) [1999] UKPC 13 (17 March, 1990), paragraphs 44 and 46.

<sup>13</sup> *Dole Chadee et al* (represented by Mr. David Smythe, of Kingsley Napley, a law firm in London) v. Trinidad and Tobago, Communication No. 813/1998, U.N. Doc. CCPR/C/63/D/813/1998 (29 July 1998).

<sup>14</sup> *Thomas and Haniff Hilaire v Cipriani Baptiste* (Trinidad and Tobago) [1999] UKPC] 13 (17 March 1999).

<sup>15</sup> Response by the Government of Trinidad and Tobago dated August 18, 1999.

## PROTECTION OF RIGHTS AND FREEDOMS

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;

25. Section 6 of the Constitution of Trinidad and Tobago provides:

### SAVINGS FOR EXISTING LAW

6. (1) Nothing in sections 4 and 5 shall invalidate —

(a) an existing law;

## **B. Facts of the case**

26. According to the court record,<sup>16</sup> the alleged victims were arrested by the police on February 24, 1995 and charged with the February 20, 1995 murder of Junior Baptiste (Mr. Baptiste), primarily based on the identification evidence of Junior's elder brother, Shawn Baptiste (Shawn). Junior had been shot in the early hours of February 20, 1995 and had died in hospital early the following day. The shooting took place in the presence of Shawn and of Shawn's girlfriend, Alicia Henry (Ms. Henry), in Shawn's apartment in Laventille.<sup>17</sup> According to the court record,<sup>18</sup> at about 2:50am two attackers entered the apartment and Mr. Baptiste was shot seven times. Ms. Henry suffered three entry wounds believed to be from the same bullets that passed through Mr. Baptiste who had fallen on top of Ms. Henry during the attack. Shawn Baptiste ran out of the apartment followed by both attackers, he escaped and returned to take the two victims to the hospital. Thereafter a report was made to the police station, and police officers secured the apartment but did not search the premises. At the hospital, Junior Baptiste was questioned by a police officer in the presence of a doctor. On being asked who attacked him, he replied, "Maxwell and Peter shoot me". Junior Baptiste was not in a condition to give a formal statement and died later of shock and hemorrhage.

27. The alleged victims of this petition were arrested on February 24, 1995, they were identified by Shawn Baptiste on February 28, 1995, who served as the main prosecution witness, and whose account of events served as primary evidence in the matter.<sup>19</sup>

## **C. Trial and death sentence**

28. On January 21, 1997, following a four-day trial,<sup>20</sup> Kelvin Dial and Andrew Dottin were convicted by a jury's unanimous verdict for the murder of Junior Baptiste and sentenced to the mandatory death penalty by the High Court of Justice in Port of Spain.

## **D. Post-conviction**

29. The alleged victims appealed their convictions and death sentences to the Court of Appeal of Trinidad and Tobago.<sup>21</sup> The Court of Appeal, in a judgment dated October 16, 1997, dismissed their appeals and affirmed their convictions. The grounds of appeal focused on the judge's directions on identification and alibi and the judge's refusal to give a joint enterprise direction.

<sup>16</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>17</sup> Dial & Anor v. The State (Trinidad and Tobago) [2005] UKPC 4, para 1.

<sup>18</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4, para 6.

<sup>19</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>20</sup> The trial took place on 15, 17, 20 and 21 January 1997, Dial & Anor v. The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>21</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

30. These claims formed the basis of the alleged victims' appeal to the Board of the Privy Council for special leave, to which was added a supplementary petition of February 18, 1999, containing a dispute over the ballistics evidence, supported by a report from a ballistics expert of June 4, 1998 which strongly suggested that the revolver allegedly used in the attack was not in fact used.<sup>22</sup> The petitions were dismissed by the Board on April 28, 1999.<sup>23</sup>

31. As found within the facts and procedural history outlined within the case before the Privy Council,<sup>24</sup> Shawn Baptiste and Alicia Henry swore affidavits, respectively on July 9, 1999 and October 15, 1999, retracting the evidence they had given at trial. Specifically, Shawn Baptiste's affidavit contained the following assertions, among others: that he lied about the identification of the gunmen, who he claimed were masked at the time; further than only one had a gun and the revolver found by the police was possibly brought into the apartment by Junior. Moreover, that his original statement about the identification of the assailants was as a result of being threatened by the police and later due to threats by unarmed individuals. In this respect the Council took note that under oath, Shawn Baptiste, made no such claims of being threatened by the police, save for stating that he felt pressured to make his statement. He also confirmed that prior to trial, he and his mother received threats from relatives of Mr. Dial and Mr. Dottin, and reported this to a Sergeant Carrington, who confirmed the facts. As regards Ms. Henry, she claimed that her original statement was drafted for her and she was instructed to read and rehearse it; and gave such evidence at the trial. The Council noted that her evidence to the Court of Appeal was different, which declared that both her police statement and trial evidence was voluntarily given and true.<sup>25</sup>

32. On October 26, 1999, a further petition was presented to the Board of the Privy Council based on Shawn Baptiste's and Alicia Henry's retraction of their evidence, but was withdrawn and replaced with a petition seeking the reference of the case to the Court of Appeal of Trinidad and Tobago for consideration of fresh evidence. The case was referred on April 26, 2001 and heard by the court on July 5 and 6, 2001; the appeal was dismissed, and the convictions affirmed. The alleged victims appealed that decision to the Board of the Privy Council and special leave for the appeal was granted on February 20, 2003.<sup>26</sup>

33. Within the appeal<sup>27</sup> the Council recognized that Shawn Baptiste alone gave evidence identifying the appellants (Mr. Dial and Mr. Dottin). In the hearing, the Privy Council noted of the eyewitness evidence that:<sup>28</sup>

Shawn was far and away the most important prosecution witness: he alone gave evidence identifying the appellants, whom he knew as associates of Junior, as the killers.

[...]

In one part of his evidence at the trial (although not his evidence identifying the appellants as the killers) Shawn is now conclusively shown to have lied.

34. This "lie" was uncovered by the contradictory evidence found within the ballistics expert report of June 4, 1998, which provided that the .44 revolver that was found within the apartment was not used within the attack and contained bullets within its chamber that in fact could not be fired from that gun. The report stated that "it is not possible to discharge .38 inch or 9mm ammunition from a .44 inch revolver other than by tampering with the ammunition".<sup>29</sup>

35. The Council noted that the Court of Appeal recognized, after review of expert ballistic evidence, that Mr. Baptiste lied about his evidence with respect to the use of the gun found within the apartment by police but not with respect to the evidence identifying the attackers, which the Privy Council found to be consistent with his statements<sup>30</sup>.

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<sup>22</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4, [17].

<sup>23</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>24</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>25</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4., [21 and 22]

<sup>26</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>27</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4.

<sup>28</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4., para. 2 and 3.

<sup>29</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4, [17] and [26]

<sup>30</sup> Dial and another v The State (Trinidad and Tobago) [2005] UKPC 4, [14].

36. The JCPC further made the following observations:

Notwithstanding that PC Seepersad had earlier given evidence of finding the .44 gun under the sheet on the mattress, Shawn was quite emphatic in saying that this was the gun which the appellant Maxwell had been firing at Junior and which then fell from Maxwell's hand as they struggled

[...]

Although defence counsel pointed to this discrepancy in the evidence, relatively little was made of it. Prosecuting counsel for his part reminded the jury that Shawn's scuffle with Maxwell had occurred close to the mattress and he poured scorn on the suggestion, implicit in defending counsel's addresses, that the .44 had not been used by the attackers but more likely belonged to Junior or Shawn himself. He made it plain that the State's case was indeed that the .44 had been one of the guns used in the attack before it had fallen from Maxwell's hand. (No one suggested that perhaps only one of the attackers had fired at Junior, unsurprisingly given the unchallenged expert evidence that 3 of the 4 spent .38 bullets found by PC Seepersad in the mattress had been fired from one firearm, the fourth from another.<sup>31</sup>

[...]

supplementary petition dated 18 February 1999, fresh evidence in the form of a report from a ballistics expert, John Burns, dated 4 June 1998, strongly suggesting that the .44 revolver had not after all been used in the attack. The report stated in terms that "it is not possible to discharge .38 inch or 9mm ammunition from a .44 inch revolver other than by tampering with the ammunition" (as to which there was no sign whatever).<sup>32</sup>

37. The retractions by Shawn Baptiste and Alicia Henry in the affidavits were found to be untrue, save for the evidence of Shawn Baptiste's assertion about the revolver used in the crime. The JCPC therefore considered it necessary to look logically at the evidence in the case to decide whether the lie about the revolver found in the apartment (which Shawn Baptiste claimed was the weapon used by an assailant) was so central to Shawn Baptiste's identification of the attackers as to throw real doubt upon it. The Court reasoned that the Trinidad Court of Appeal did take up this consideration and remained satisfied on the essential integrity of the identification; and therefore, was entitled to regard the convictions as safe and dismiss the appeal. The Privy Council accordingly dismissed the appeal.<sup>33</sup>

38. According to the information provided by the petitioners, not contested by the State,<sup>34</sup> on January 12, 2005, the State Party's London Solicitors confirmed in writing to Simons Muirhead & Burton, solicitors, that the Government of Trinidad and Tobago had accepted the JCPC decision in *Charles Matthew*,<sup>35</sup> and would commute the sentences of those affected, which included the alleged victims. The petitioners provide, however, that local media reports in June 2005 indicated that the Advisory Committee on the Power of Pardon were scheduled to consider the death row inmates' case; which was followed by a statement by the Attorney General to the House of Representatives on June 6, 2005, outlining his intention to execute all those on death row.<sup>36</sup> The petitioners provide that on June 10, 2005, the State, acting through its Ministry of National Security, informed the victims in writing of its intention to convene hearings in respect of their sentences in order to consider issuing warrants of execution; the State also indicated its intention to execute as early as June 14, 2005.<sup>37</sup>

39. A constitutional motion was filed on June 13, 2005 for a declaration that execution would be unlawful. A conservatory order was granted by the Port of Spain High Court on June 13, 2005 imposing temporary stays on execution. The constitutional motion was granted and on August 15, 2008, the sentences of the alleged victims were commuted to life imprisonment.<sup>38</sup> However, according to the petitioners' allegations not contested by the State, while the commutation process was ongoing, the alleged victims were unable to begin rehabilitation under a life sentence and were not benefiting from sentence reviews at four yearly intervals.<sup>39</sup>

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<sup>31</sup> Ibid, para 14 and 15.

<sup>32</sup> Ibid, para 17.

<sup>33</sup> *Dial and another v The State (Trinidad and Tobago)* [2005] UKPC 4.

<sup>34</sup> Written submissions of the Petitioner – October 18, 2005 – Saul Lehrfreund, Parvais Jabber, Simons Muirhead & Burton.

<sup>35</sup> *Charles Matthew v The State* (2004) 64 WIR 412.

<sup>36</sup> Written submissions of the Petitioner – October 18, 2005 – Saul Lehrfreund, Parvais Jabber, Simons Muirhead & Burton.

<sup>37</sup> Revised Petition for and on behalf of the alleged victims, dated April 18, 2008.

<sup>38</sup> Revised Petition for and on behalf of the alleged victims, dated April 18, 2008.

<sup>39</sup> Revised Petition for and on behalf of the alleged victims, dated April 18, 2008.

## **E. Prison conditions**

40. Regarding prison conditions on death row, the petitioners provide the following information which was not contested by the State:<sup>40</sup>

"No integral sanitation and the provision of plastic pails for use as toilets which they were allowed to empty twice a day.

No natural lighting except a fluorescent strip illuminated 24 hours a day outside the cells above the door.

Suffer[ing] from the effect of infestation of mosquitoes, sand flies, cockroaches, crickets and Pigeons in their cells. [Being] let out only twice a month for exercise, during one hour, handcuffed prohibiting useful exercise.

Exhaust fumes from vehicles parked in the prison yard entering the cells causing unacceptable levels of air pollution, contributing to and aggravating the first victim's sinus condition.

Not [being] permitted basic hygienic products – a Doctor's prescription is required for the victims to receive hair shampoo.

No opportunities for education or self-improvement, and occupy their time by reading limited reading materials and listening to the radio.

Inadequate and almost inedible [food], with rice and bread often containing small particles of rock or gravel causing dental and digestive problems. Restrictive diets are imposed as punishment for breaches of prison discipline. Many inmates lose significant body weight and suffer from malnutrition. The first victim is denied the consumption of vegetables as recommended by the Prison doctor, despite his family's willingness to provide it at their cost. Further his special diet to treat his ulcer, was stopped and he has not been taken to appointments at the General Hospital since August 2005 and experiences difficulties in obtaining prescription tablets for this condition via the prison superintendent.

[Sporadic] access to medical attention.

The state not taking steps to ensure the victims do not have to endure proximity to or view of the physical site of execution or the display of condemned prisoners on their way to being executed. – claim that the persistent reminders of their imminent death, irrespective of any intention by the State or its indifference or carelessness, inflict mental trauma."

41. Further, on March 5, 1995, the General Secretary of the Prison Officers' Association made the following statement in the national newspaper:<sup>41</sup>

"The majority empathise with the inmates because we have to work in the same conditions in which they live. We have a duty to patrol these areas for hours...making periodic checks and walk the pathways that are sticky with filth"

"The conditions are highly deplorable, unacceptable and pose a health hazard"

"It is not easy when there are eleven human beings in a 9' x 6' cell with a five gallon pigtail bucket for a toilet in one corner. It is not a lie when they say you have to sit on the pail or stand up and sleep. It is terrible and it really, really stinks. I won't put my animals in there."

## **IV. ANALYSIS OF LAW**

### **A. Preliminary considerations**

#### **1. Application of the American Declaration and the American Convention**

42. Trinidad and Tobago is a Member State of the Organization of American States since 1967. On May 28, 1991, it became a party to the American Convention when it deposited its instrument of ratification. On May 26, 1998, the State gave notice of its denunciation of the Convention to the Secretary General of the Organization of American States (OAS), and pursuant to Article 78(1) of the Convention, the denunciation became effective on May 26, 1999.

43. As established above, the facts denounced in the instant case started in February 1995. Therefore, the alleged violations that took place between that date and May 26, 1999, will be analyzed under the American Convention, and those that took place after the entry into force of the denunciation of the American Convention will be analyzed under the American Declaration.

<sup>40</sup> Dial and Dottin. Letter to IACHR containing observations on merits 10/34915364\_3.

<sup>41</sup> Revised Petition for and on behalf of the alleged victims, dated April 18, 2008.

## 2. Standard of review

44. Before embarking on its analysis of the merits, the Inter-American Commission considers it relevant to reiterate its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights.

45. That gives rise to the particular importance of the IACHR's obligation to ensure that any deprivation of life may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American Human Rights System, including the American Declaration.<sup>42</sup> That "heightened scrutiny test is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,<sup>43</sup> and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.<sup>44</sup>

46. As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees:<sup>45</sup>

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.<sup>46</sup>

47. The Inter-American Commission will therefore review the petitioner's allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, the prohibition of cruel, infamous or unusual punishment, due process, and to a fair trial as prescribed under the American Declaration have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:

"[t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October, 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.<sup>47</sup>

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<sup>42</sup> See, in this respect, IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011.

<sup>43</sup> See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, para. 136 (finding that "because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life is not arbitrarily taken as a result"); United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3 (observing that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State"); *Report of the United Nations Special Rapporteur on Extrajudicial Executions*, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994) ("the Ndiaye Report"), para. 378 (emphasizing that in capital cases, it is the application of the standards of fair trial to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violation of the right to life).

<sup>44</sup> IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Felix Rocha Diaz, United States, March 23, 2015, para. 54; Report No. 44/14, Case 12.873, Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 127; Report No. 57/96, Andrews, United States, IACHR Annual Report 1997, para. 170-171.

<sup>45</sup> IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

<sup>46</sup> IACHR, Report No. 78/07, Case 12.265, Merits (Publication), Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

<sup>47</sup> IACHR, Report No. 44/14, Case 12,873, Report on Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

## **B. Right to life,<sup>48</sup> to personal integrity,<sup>49</sup> and to judicial guarantees,<sup>50</sup> and the mandatory imposition of the death penalty**

48. According to the longstanding jurisprudence of the IACHR and the Inter-American Court, the mandatory death penalty, that is, the imposition of the death penalty upon conviction for a crime, without an opportunity for presenting and considering mitigating circumstances in the sentencing process, contravenes the American Convention and the American Declaration.<sup>51</sup>

49. With respect to Trinidad and Tobago, the Inter-American Court found that:<sup>52</sup>

[...] [T]he *Offences Against the Person Act* has two principal aspects: a) in the determination of criminal responsibility, it only authorizes the competent judicial authority to find a person guilty of murder solely based on the categorization of the crime, without taking into account the personal conditions of the defendant or the individual circumstances of the crime; and b) in the determination of punishment, it mechanically and generically imposes the death penalty for all persons found guilty of murder and prevents the modification of the punishment through a process of judicial review.

[...] the *Offences Against the Person Act* of 1925 of Trinidad and Tobago automatically and generically mandates the application of the death penalty for murder and disregards the fact that murder may have varying degrees of seriousness. Consequently, this Act prevents the judge from considering the basic circumstances in establishing the degree of culpability and individualising the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different. In light of Article 4 of the American Convention, this is exceptionally grave, as it puts at risk the most cherished possession, namely, human life, and is arbitrary according to the terms of Article 4(1) of the Convention.

[...]

[...] [T]he Court concludes that because the *Offences Against the Person Act* submits all persons charged with murder to a judicial process in which the individual circumstances of the accused and the crime are not considered, the aforementioned Act violates the prohibition against the arbitrary deprivation of life, in contravention of Article 4(1) and 4(2) of the Convention.

[...]

[T]he Court considers that even though thirty-one of the alleged victims in this case have not yet been executed, it is appropriate to find that there has been a violation of Article 2 of the Convention, by virtue of the fact that the mere existence of the *Offences Against the Person Act* in itself constitutes a *per se* violation of that provision of the Convention”

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<sup>48</sup> Article 4 (Right to Life) of the American Convention establishes that:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

Article I of the American Declaration provides: “Every human being has the right to life, liberty and security of his person.”

<sup>49</sup> Article 5 (Right to Humane Treatment) of the American Convention provides:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>50</sup> Article 8 (Right to a Fair Trial) of the American Convention provides that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article XVIII (Right to a fair trial) of the American Declaration provides: “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”

Article XXVI (Right to due process of law) of the American Declaration provides: “Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.”

<sup>51</sup> IACHR, *The Death penalty in the Inter-American Human Rights Systems: From Restrictions to Abolition*, 31 December 2011, p. 27.

<sup>52</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 103, 108 and 116.

50. Among the circumstances mentioned by the Commission that are to be presented and considered in the sentencing process are: the prior criminal record of the offender, the subjective factors that could have motivated the conduct, the degree of participation in the criminal act, and the probability that the offender could be rehabilitated. Trinidadian law, however, does not consider any of these factors when sentencing persons convicted for murder. The Commission added that the use of the mandatory death penalty by Trinidad and Tobago and the resulting imposition of the death penalty on all persons convicted of murder without taking into account the particular circumstances or the varying degrees of culpability, also contravened the inherent dignity of the human being and the right to humane treatment protected in Article 5(1) and 5(2) of the American Convention.<sup>53</sup>

51. In the case of *Edwards et al.*, the Inter-American Commission noted, with regard to The Bahamas, that the mandatory sentencing by its very nature precludes consideration by a court of whether the death penalty is an appropriate, or indeed permissible, form of punishment in the circumstances of a particular offender or offense. Moreover, the Commission noted that, by reason of its compulsory and automatic application, a mandatory sentence cannot be the subject of an effective review by a higher court. Once a mandatory sentence is imposed, all that remains for a higher court to review is whether the defendant was found guilty of a crime for which the sentence was mandated.<sup>54</sup>

52. The Commission reaffirms that imposing a mandatory penalty of death for all crimes of murder contravenes the prohibition of arbitrary deprivation of the right to life recognized in Article 4(1) of the Convention, as it fails to individualize the sentence in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused, according to Article 4(2) of the same instrument. By its nature, then, this process eliminates any reasoned basis for sentencing a particular individual to death and fails to allow for a rational and proportionate connection between individual offenders, their offenses, and the punishment imposed on them.<sup>55</sup>

53. In the instant case, the mandatory death penalty set forth in the Offences Against the Person Act was applied to Messrs. Dial and Dottin in February 1997, while the American Convention was in force. The Commission further notes that Trinidad and Tobago still retains the mandatory death penalty, being currently the only country in the Caribbean and in the Organization of American States to retain this penalty, following the Caribbean Court of Justice ruling of June 27, 2018, which found Barbados' mandatory death penalty unconstitutional.<sup>56</sup>

54. The Commission further notes that Trinidad and Tobago still retains the mandatory death penalty. In its report *The death penalty in the Inter-American Human Rights Human System: From restrictions to abolition*, the IACHR has highlighted the role of the Inter-American Commission and Court in the abolition of the mandatory death penalty in the region in the following terms:<sup>57</sup>

The Commission's decision in the *Hilaire* case was the first by an international human rights body to evaluate the human rights implications of the mandatory death penalty.<sup>58</sup> The Commission, and later the Court, drew on standards that had been developed by certain national courts in interpreting international standards. The work of the Commission and Court in turn had an important influence on the development of further standards at the national level, and then by other international instances. At the national level, the Eastern Caribbean Court of Appeal was the first, in 2001, to make explicit reference to the Inter-American Commission's jurisprudence (*McKenzie v. Jamaica* and *Baptiste v. Grenada*) in concluding that the mandatory death penalty in St. Lucia and St. Vincent violated the prohibition of inhuman treatment. In conjunction with these developments, the Judicial

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<sup>53</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 77.

<sup>54</sup> IACHR, Report No. 12.231, Case 12.231. Merits (Publication). Peter Cash. Commonwealth of the Bahamas. April 2, 2014, para. 74.

<sup>55</sup> IACHR, Report No. 12.231, Case 12.231. Merits (Publication). Peter Cash. Commonwealth of the Bahamas. April 2, 2014, para 72.

<sup>56</sup> The Caribbean Court of Justice: CCJ Strikes down mandatory death penalty in Barbados. June 27, 2018. Available at: <https://www.ccj.org/ccj-strikes-down-mandatory-death-penalty-in-barbados/>

<sup>57</sup> IACHR, *The death penalty in the Inter-American Human Rights System: From restrictions to abolition*, OEA/Ser.L/V/II.Doc 68, December 31, 2011, paras. 26 and 27.

<sup>58</sup> Brian Tittmore, "The Mandatory Death Penalty in the Commonwealth Caribbean and the Inter- American Human Rights System: An Evolution in the Development and Implementation of International Human Rights Protections," 13 *Wm. & Mary Bill of Rts. J.* 445 (2004), p. 22.

Committee of the Privy Council helped give legal effect to the mechanisms of the regional system by prohibiting certain States from executing the death sentences of persons whose petitions were pending before the Commission or Court.

Within this context, courts of national jurisdiction have found the mandatory death penalty to be unconstitutional in countries including Saint Lucia (*The Queen v. Hughes*), Dominica (*Balson v. The State*), Belize (*Reyes v. The Queen*), The Bahamas (*Bowe v. The Queen*) and Grenada (*Coard et al. v. Grenada*), among other examples. Following this period of reexamination of the mandatory death penalty, a number of countries have abolished that aspect of the death penalty. The judges of Belize, Jamaica, the Bahamas, Saint Lucia, Grenada and Guyana, among others, now have the discretion to impose lesser sentences. Trinidad and Tobago and Barbados presently remain the only two countries in the region that retain the mandatory death penalty, and Barbados reports that it is in the process of adopting reforms to abolish it in light of the sentence issued by the Inter-American Court in the Boyce case.

55. After the adoption of the IACHR's report, the Caribbean Court of Justice ruling of June 27, 2018, found Barbados' mandatory death penalty unconstitutional.<sup>59</sup> However, Trinidad and Tobago currently retain this penalty.

56. The United Nations Human Rights Committee's *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life* referred to the mandatory imposition of the death penalty in the following terms:<sup>60</sup>

In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements<sup>61</sup> must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.<sup>62</sup> The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.<sup>63</sup>

57. Further, as indicated in the section of relevant legal framework above, Section 6 of the Constitution of Trinidad and Tobago establishes that no law in effect prior to the date the Constitution entered into force may be the object of constitutional challenge. Therefore, and as stated by the Inter-American Court in the case of *Hilaire and Constantine*, "the Offences Against the Person Act is incompatible with the American Convention and thus any provision that establishes that Act's immunity from challenge is likewise incompatible, by virtue of the fact that Trinidad and Tobago, as a party to the Convention at the time that the acts took place, cannot invoke provisions of its domestic law as justification for failure to comply with its international obligation".<sup>64</sup>

58. The Commission finds that the sentence to a mandatory death penalty was based solely upon the category of crime for which Messrs. Dial and Dottin were convicted. Therefore, the Commission concludes that the State of Trinidad and Tobago, by denying an individualized sentencing and the opportunity to present mitigating evidence, violated the victims' rights under Articles 4.1, 4.2, 5.1, 5.2, 8.1 and 25 of the American Convention, in relation to its Articles 1.1 and 2. Further, given that the imposition of the mandatory death penalty continued after the entry into force of the denunciation of the American Convention, and until August 15, 2008, when the sentences of death were commuted to life imprisonment, the State has also violated Articles I, XVIII and XXVI of the American Declaration.

<sup>59</sup> The Caribbean Court of Justice: CCJ Strikes down mandatory death penalty in Barbados. June 27, 2018. Available at: <https://www.ccj.org/ccj-strikes-down-mandatory-death-penalty-in-barbados/>

<sup>60</sup> United Nations Human Rights Committee's General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life. CCPR/C/GC/36. October 30, 2018, para. 37.

<sup>61</sup> Communication No. 390/1990, *Luboto v. Zambia*, Views adopted on 31 Oct. 1995, para. 7.2.

<sup>62</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4; Communication 1421/2005, *Larranaga v. Philippines*, Views adopted on 24 July 2006, para. 7.2; Communication 1077/2002, *Carpo v. Philippines*, adopted on 6 May 2002, para. 8.3.

<sup>63</sup> Communication No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 Oct. 2000, para. 8.2; Communication 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3.

<sup>64</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 152 c).

## C. Right to a fair trial and to due process of law

### 1. Right to provide a reasoned judgment and the principle of presumption of innocence<sup>65</sup>

59. The right to a fair trial, established in Article 8 of the American Convention, covers all the procedural requirements that must be observed so that persons may defend their rights adequately against any act by the State.<sup>66</sup> One fundamental element of those guarantees is the principle of presumption of innocence.<sup>67</sup> According to the Inter-American Court, this principle means that the defendant does not have to prove that he or she did not commit the offense, because the *onus probandi* is on those making the accusation.<sup>68</sup> Thus, the convincing demonstration of guilt is an essential requirement for a criminal sanction, so that the burden of proof falls on the prosecutor and not on the accused.<sup>69</sup> On this point, the Human Rights Committee has ruled that:

The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.<sup>70</sup>

60. Thus, international human rights law establishes that no person may be convicted of a crime unless there is full proof of his or her criminal responsibility. As the Inter-American Court has stated, “if the evidence presented is incomplete or insufficient, [the accused] must be acquitted, not convicted.”<sup>71</sup> Consequently, the Court has ruled that the absence of full evidence of criminal responsibility in a conviction constitutes a violation of the principle of presumption of innocence.<sup>72</sup>

61. The Commission has also stressed the importance that, in accordance with the principle of the presumption of innocence involving all authorities conducting a trial, any criminal investigation must allow for the presentation and analysis of evidence that may be both favorable and unfavorable to the person being prosecuted.<sup>73</sup> The examination as to whether the State is in breach of the principle of the presumption of innocence may require a review of how the court in question dealt with and assessed the evidence within the framework of due process protections. The IACHR has established that “this exercise is separate from the one criminal court judges must engage in and is exclusively focused on determining whether in performance of their duties, they enforced or overlooked the minimum safeguards, which are provided for under the principle of the presumption of innocence.”<sup>74</sup>

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<sup>65</sup> Article 8 (Right to a Fair Trial) of the American Convention provides that: [...]

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. [...]

<sup>66</sup> I/A Court H. R., *Case of Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, Series C No. 30, para. 74; I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151, para. 116; and I/A Court H. R., *Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 27.

<sup>67</sup> I/A Court H. R., *Case of Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, Series C No. 35, para. 77; I/A Court H. R., *Case of García Asto Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 160; and I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of November 21, 2007, Series C No. 170, para. 145.

<sup>68</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 154.

<sup>69</sup> I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 182.

<sup>70</sup> Human Rights Committee, General Comment No. 32, Article 14, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 30.

<sup>71</sup> I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 120; and I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 153.

<sup>72</sup> I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 121; and I/A Court H. R., *Case of Ruano Torres et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303, para. 128.

<sup>73</sup> IACHR. Report No. 82/13. Case No. 12.679. Merits. José Agapito Ruano Torres. El Salvador. November 4, 2013, para. 142.

<sup>74</sup> IACHR, Report No. 9/14, Case No. 12.700, Merits, Agustín Bladimiro Zegarra Marin, Perú, April 2, 2014, para. 64.

62. The Inter-American Court in the case of *Zegarra Marin vs. Peru*<sup>75</sup> emphasized the relevance of the motivation or the reasoning of the judgment, in accordance with Article 8.1 of the American Convention, in order to guarantee the principle of presumption of innocence, mainly in a conviction, which must express the sufficiency of the prosecution evidence to confirm the accusatory hypothesis; the observance of the rules of sound criticism in the assessment of the evidence, including those that could generate doubt of criminal responsibility; and the final judgment that derives from this assessment. In a specific case, the judgment must reflect the reasons why it was possible to obtain conviction on the accusation and criminal responsibility, as well as the assessment of the evidence to disprove any hypothesis of innocence, and only then be able to confirm or refute the accusatory hypothesis. The foregoing would allow to disprove the presumption of innocence and determine criminal responsibility beyond any reasonable doubt.

63. Further, according to the Inter-American Court, the right to effective domestic remedies, referred to in Article 25(1) of the Convention,<sup>76</sup> is not limited to its mere formal existence, but that “they must be effective, that is to say, they must produce results or responses to the violations of the rights contemplated in the Convention”<sup>77</sup> and must allow “the judicial protection required to be achieved, where appropriate.”<sup>78</sup> The importance of the effectiveness of domestic remedies lies in the fact that they constitute the safeguard of the person against the arbitrary exercise of public power and therefore, the Court has indicated that “the lack of effective domestic remedies places the victim in a state of defenselessness.”<sup>79</sup>

64. The Inter-American Commission has further stated that the right to due process established under Article XXVI of the American Declaration must be interpreted and applied in the context of death penalty prosecutions to give stringent effect to the most fundamental substantive and procedural due process protections.<sup>80</sup> The Commission underscores that the State has the duty to disclose all exculpatory evidence in its possession as well as information favorable to the accused. In particular, in cases involving the death penalty, the State has an enhanced obligation to guarantee that no evidence favorable to the accused is withheld, as this could change the outcome of the trial and give rise to an arbitrary deprivation of life.<sup>81</sup>

65. The petitioners claim that the State has breached the alleged victim’s rights to due process as a result of several inconsistencies that occurred at trial and further that the alleged victims were sentenced through a miscarriage of justice. The State claims that all due process guarantees were respected.

66. The Inter-American Commission must now determine whether the criminal proceedings in the instant case satisfied the above-mentioned inter-American standards. The Commission highlights in this regard that it is the competence of domestic courts, and not of the Commission, to interpret and apply domestic law, and, in the instant case, to determine whether the alleged victims are innocent or guilty. However, the IACHR must ensure that any criminal proceedings that may involve the application of the death penalty would be strictly consistent with the requirements set forth in the American Declaration and Convention.<sup>82</sup>

67. The IACHR notes, based on the facts established in this report, that important doubts existed about the gun used in the killing. The Privy Council made further observations on discrepancies, specific to ballistics evidence,

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<sup>75</sup> I/A Court H.R., Case of *Zegarra Marín v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Serie C No. 331., para. 147.

<sup>76</sup> Article 25.1 (Right to Judicial Protection) of the American Convention provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>77</sup> I/A Court H. R., *Case of Bámaca Velásquez Vs. Guatemala*. Merits. Judgment of November 25, 2000. Serie C No. 70, para. 191.

<sup>78</sup> I/A Court H. R., *Case of Tibi Vs. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 7, 2004. Serie C No. 114, para. 131.

<sup>79</sup> I/A Court H. R., *Case of the Constitutional Tribunal Vs. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Serie C No. 71, para. 89.

<sup>80</sup> See similarly Advisory Opinion OC-16/99, supra, para. 136 (concluding that “[b]ecause execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result.”). IACHR, Report No. 13/14, Case 12.422. Merits (Publication). Abu-Ali Abdur’ Rahman. United States. April 2, 2014, para. 53.

<sup>81</sup> IACHR. Report 53/13, Case 12.864, Ivan Teleguz, United States. July 15, 2013, para. 98.

<sup>82</sup> See similarly, IACHR, Report No. 78/15, Case 12.831. Merits (Publication). Kevin Cooper. United States. October 28, 2015, para. 149.

and noted that where defense counsel attempted to address the matter, it was without effect. Moreover, the review by the Privy Council highlighted the failure of the prosecution to fully consider the exculpatory evidence within the expert evidence and build a case inclusive of it. Specifically, it noted that “a report from a ballistics expert [...] strongly suggest[ed] that the .44 revolver had not after all been used in the attack.” Also, one eyewitness that testified at the hearing before the Privy Council noted that no motive was ever suggested by the prosecution for the killing and that Shawn, the most important prosecution witness, lied in one part of his evidence at trial.

68. The case under analysis raises therefore one question that is directly related to the principle of presumption of innocence, which involves the evidence on which Messrs. Dial and Dottin’s conviction was based. As the Privy Council has noted, the prosecution built the State’s case on inconsistent evidence, without consideration of exculpatory evidence from the ballistics evidence. In cases involving the death penalty, the State has an enhanced obligation to guarantee that no evidence favorable to the accused is withheld, as this could change the outcome of the trial and give rise to an arbitrary deprivation of life.<sup>83</sup> Though the information was not in the strictest sense withheld, the result is similar since the existence of exculpatory evidence was not considered.

69. Based upon the foregoing, the Commission concludes that the lack of a serious analysis of the inconsistencies in the evidence constitutes a violation of the right of Messrs. Dial and Dottin to due process, particularly, regarding the right to provide a reasoned judgment and the principle of presumption of innocence established in Articles 8.1 and 8.2 of the American Convention, in relation to Article 1.1 of the same instrument. The Commission also concludes that the lack of an effective remedy with regard to the inconsistencies in the evidence, constitute a violation also of the right established in Article 25(1) of the Convention, in relation to Article 1(1) of the same instrument.

## **2. Right to be tried without undue delay<sup>84</sup>**

70. According to the standards developed by the Inter-American human rights system, a remedy must be effective, i.e., it must provide results or responses consistent with the objectives that it was intended to serve, which is to avoid the consolidation of an unjust situation. Also, the right of access to justice requires that the facts investigated in criminal proceedings be resolved within a reasonable period of time, since a prolonged delay may, in certain cases, constitute in itself a violation of judicial guarantees.<sup>85</sup>

71. The IACHR has also considered that the burden of proof ought to be on the State to justify the delay in light of the following elements: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities; and d) the impact of the legal situation on the person involved in the proceedings.<sup>86</sup>

72. In the case of Michael Edwards et al., the Commission found that The Bahamas had violated the right of Messrs. Schroeter and Bowleg to be tried without undue delay pursuant to Article XXV of the Declaration, given they were not brought to trial until approximately 26 months after they were arrested.<sup>87</sup> Relying on jurisprudence from the Inter-American Court, the Commission indicated that:<sup>88</sup>

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<sup>83</sup> IACHR, Report 53/13, Case 12.864, Ivan Teleguz, United States, July 15, 2013, para 98.

<sup>84</sup> Article 7(5) of the American Convention provides: “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.”

<sup>85</sup> IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 205.

<sup>86</sup> IACHR, Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the Case of Hilaire v. Trinidad and Tobago, May 25, 1999, p. 45; and IACHR, Report No. 130/17, Case 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, para. 138.

<sup>87</sup> IACHR, Report No 48/01 Case 12.067, Michael Edwards, Case 12.068, Omar Hall, Case 12.086, Brian Schroeter & Jeronimo Bowleg, The Bahamas, April 4, 2001.

<sup>88</sup> IACHR, Report No 48/01 Case 12.067, Michael Edwards, Case 12.068, Omar Hall, Case 12.086, Brian Schroeter & Jeronimo Bowleg, The Bahamas, April 4, 2001, para. 218.

In addressing the issue of a “reasonable time” under Articles 7(5) and 8(1) of the Convention, the Inter- American Court has confirmed that the purpose of the reasonable time requirement is to prevent accused persons from remaining in that situation for a protracted period and to ensure that a charge is disposed of promptly.<sup>89</sup> The Inter-American Court has also considered that the point from which a reasonable time is to be calculated is the first act of the criminal proceedings, such as the arrest of the defendant, and that the proceeding is at an end when a final and firm judgment is delivered and the jurisdiction thereby ceases. According to the Inter-American Court, the calculation of a reasonable time must, particularly in criminal matters, encompass the entire proceeding, including any appeals that may be filed.<sup>90</sup>

73. The petitioners contend that the period between the date of arrest on February 21, 1995 and the commencement of trial on January 15, 1997 constitutes a violation of the right to be brought to trial within a reasonable time as required by Article 7.5 of the Convention.<sup>91</sup> The State, for its part, denies the existence of any undue delay in the trial.

74. Messrs. Dial and Dottin were arrested on February 21, 1995, the trial started on January 15, 1997, and on January 21, 1997, they were sentenced to death. Therefore, there was a delay of almost 23 months from the date of the arrests to the date they were brought to trial. The Commission notes that there is no information before it on the proceedings carried out by the authorities during that period, nor does the State report on them. The Commission further notes that the prosecution does not appear to have been particularly complex, and there is also no indication that the prosecution’s case consisted of complex evidence that might assist in explaining such a delay. The State has failed to provide the Commission with any information suggesting that the case was sufficiently complex to warrant a 23-month delay between the victims’ arrest and the sentencing. Similarly, there is no information before the Commission concerning the procedural activity of the victims or the conduct of the judicial authorities that explains or justifies such delay.

75. In light of the Commission’s prior jurisprudence,<sup>92</sup> and that of the Inter-American Court of Human Rights<sup>93</sup> and other international authorities, the Commission is of the view that this delay is *prima facie* unreasonable and calls for justification by the State.<sup>94</sup> The State, however, has failed to provide any proper justification for the delay in bringing the alleged victims to trial.

76. The Commission therefore concludes that the State failed to try the alleged victims without undue delay and within a reasonable time contrary to Articles 7.5 and 8.1 of the American Convention. Given that the Commission has found that the death sentences imposed upon the victims contravene Articles 4, 5, and 8 of the Convention and are therefore unlawful, the Commission does not consider it necessary to determine whether the length of the delays in trying the victims constituted cruel, unusual or degrading punishment or treatment.

### **3. Right to judicial protection and to commutation of a death sentence<sup>95</sup>**

77. As stated by the Inter-American Court, Article 4.6 of the American Convention, when read together with Articles 8 and 1.1, places the State under the obligation to guarantee that an offender sentenced to death may effectively exercise the right to apply for amnesty, pardon, or commutation of sentence. Regarding the right to

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<sup>89</sup> I/A Court H.R., *Case of Suarez Rosero Case v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 70.

<sup>90</sup> *Id.*, para. 71.

<sup>91</sup> *Ibid.*

<sup>92</sup> IACHR. Report No 41/00, Case No 12.023, Desmond McKenzie, Case No 12.044, Andrew Downer and Alphonso Tracey, Case No 12.027, Carl Baker, Case 12.126, Dwight Fletcher, and Case 12.146 (Anthony Rose). Jamaica. April 13, 2000, at 918.

<sup>93</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, paras. 132-152, p71, para. 3.

<sup>94</sup> See e.g. Suarez Romero Case, *supra*, p. 300, para. 73 (finding that a period of delay 4 years and 2 months between the victim’s arrest and disposition of his final appeal to “far exceed” the reasonable time contemplated in the Convention and therefore to violate Articles 7(5) and 8(1) of the Convention.); I/A Comm. H.R., Report on Panama, ANNUAL REPORT 1991, at p. 485 (finding an average pre-trial delay of 2 years and 4 months to be unreasonable contrary to Article 7(5) of the Convention); Desmond Williams v. Jamaica, *supra*, para. 9.4 (finding a delay of two years between arrest and trial to be prolonged and unreasonable); U.N.H.R.C., Patrick Taylor v. Jamaica, Communication No 707/1996, U.N. Doc. CCPR/C/60/D/707/1996 (1997) (finding a delay of 28 months between arrest and trial to be a violation of the petitioner’s right to be tried without undue delay).

<sup>95</sup> Article 4 (Right to Life) of the American Convention provides:

(...) 6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

pardon, the Court has established that the State has a duty to implement a fair and transparent procedure by which an offender sentenced to death may make use of all favorable evidence deemed relevant. In this regard, in the Case of Hilaire, Constantine and Benjamin et al., the Inter-American Commission concluded that Trinidad and Tobago failed to comply with the requirements of Article 4.6 of the American Convention taking into account that the application of the procedure for granting mercy to the thirty-two victims of the case was characterized by a lack of transparency, lack of available information and lack of participation by the victims, resulting in a violation of Article 4(6), in conjunction with Articles 8 and 1(1) of the American Convention<sup>96</sup>

78. The Commission notes that in 1993 the Judicial Committee of the Privy Council, the highest court of appeal for some English-speaking Caribbean countries, held in the *Pratt and Morgan v. Jamaica* case that excessive delays between sentencing and execution of the punishment constitute inhuman or degrading punishment. The Privy Council ruled that, as the Constitution of Jamaica prohibits inhuman or degrading punishment, it was unconstitutional to execute a prisoner who has been on death row more than five years.<sup>97</sup>

79. On November 20, 2003, in the case of *Balkissoon Roodal*, the JCPC established that the mandatory sentence of death was inconsistent with the international obligations of Trinidad and Tobago under the American Declaration.<sup>98</sup> The following year, however, the Privy Council reversed its previous position regarding the mandatory death penalty in Trinidad and Tobago in the case of *Matthew*.<sup>99</sup> Nevertheless, the JCPC considered that those persons who had benefitted from its judgment in the case of *Balkissoon Roodal* had, until that time, the “expectation” that they would have the opportunity for a hearing regarding their sentence and that it was therefore fair that the death penalties imposed on these persons, be commuted to sentences of life imprisonment.<sup>100</sup>

80. The petitioners submit that, to the extent the State did not apply JCPC decisions in *Pratt and Morgan*, *Roodal*, and *Matthew* to the victims’ case, it violated their rights under Articles II<sup>101</sup> and XXVI of the American Declaration. They claim that the Privy Council’s decisions are the law and the State has undertaken that such remedies would be enforced, therefore in failing to commute the sentences the State denied the victims their fundamental rights recognized by the law (ignoring the final judicial determination rendered by a competent court) and deprived of benefits of a lower sentence as mentioned above.

81. According to the facts established in this report, Messrs. Dial and Dottin were sentenced to the death penalty on January 21, 1997. The Commission also notes that Trinidad and Tobago relies on the JCPC as its ultimate court of appeal and that the Constitution of Trinidad and Tobago has a provision that prohibits the imposition of cruel and unusual treatment or punishment.

82. Given that the decision in *Pratt and Morgan* was adopted in 1993, the reasoning by the Privy Council became precedence that the State could have followed to determine how to treat the sentences of death row inmates. As evidenced by the successful constitutional motion, which granted the commutation of several death sentences to life imprisonment, the ruling within *Pratt and Morgan* was sound law.

83. Therefore, according to the binding jurisprudence that existed at the time, Messrs. Dial and Dottin’s death sentence should have been commuted after they had served five years on death row or, at least, after the Roodal’s decision adopted on November 20, 2003. However, on June 6, 2005, the Attorney General made a statement outlining his intention to execute all those on death row. This, despite, a previous communication from the State Party’s London Solicitors dated January 12, 2005, confirming that the Government of Trinidad

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<sup>96</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 189.

<sup>97</sup> *Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica)* [1993] UKPC 1 (November 2, 1993).

<sup>98</sup> *Balkissoon Roodal v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 18 of 2003, judgment issued by the Judicial Committee of the Privy Council on November 20, 2003.

<sup>99</sup> *Matthew v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 12 of 2004, judgment issued by the Judicial Committee of the Privy Council on July 7, 2004.

<sup>100</sup> *Matthew v. The State (Trinidad and Tobago)*, Privy Council Appeal No. 12 of 2004, judgment issued by the Judicial Committee of the Privy Council on July 7, 2004, paras. 30-33.

<sup>101</sup> Article II of the American Declaration provides: All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

and Tobago had accepted the JCPC decision in *Charles Matthew*, and would commute the sentences of those affected, which included the alleged victims. On June 10, 2005, the Ministry of National Security informed the victims in writing of its intention to convene hearings in respect of their sentences in order to consider issuing warrants of execution, and of its intention to execute as early as June 14, 2005.

84. Following a constitutional motion filed for a declaration that execution would be unlawful, a conservatory order was granted on June 13, 2005 imposing temporary stays on executions. The constitutional motion was finally granted and on August 15, 2008, the sentences of the alleged victims were commuted to life imprisonment.

85. Therefore, the Commission concludes that during five or six years Messrs. Dial and Dottin remained on death row despite the existence of jurisprudence that allowed them to have their sentences commuted, and therefore benefit from rehabilitation programs. Trinidad and Tobago thus failed to guarantee that the victims could effectively exercise their right to have their death sentence commuted.

86. Given that these facts took place after the entry into force of the denunciation of the American Convention by Trinidad and Tobago, they constituted a violation to the victims' rights to due process and judicial protection under Articles XVIII and XXVI of the American Declaration. Such treatment, coupled with the threats to execute the victims, the prison conditions and the length of time on death row would further contribute to inhumane treatment to the detriment of the alleged victims, as shall be outlined below.

87. Regarding petitioners' allegation of a violation to the right to equality before the law protected under Article II of the Declaration, the Commission notes that there is no information before it indicating that, after the decision in *Roodal*, other death row prisoners who were in the same situation as the victims, had their sentences commuted. Accordingly, the IACHR considers that it does not have sufficient information to declare a violation of Article II of the American Declaration.

#### **D. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment<sup>102</sup>**

##### **1. Death row phenomenon<sup>103</sup>**

88. The long term deprivation of liberty on death row is referred to within both international human rights and comparative law as the "death row phenomenon", and infringes on a person's freedom from cruel, inhuman or degrading punishment. Such treatment violates the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).<sup>104</sup>

89. The Commission takes note of the concept of the death row phenomenon of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that:

(...) it consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death.<sup>105</sup> Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some

<sup>102</sup> Article XXV of the American Declaration provides: "[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody."

Article XXVI of the American Declaration provides: "[...] Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment."

<sup>103</sup> Article XI of the American Declaration provides: "The right to the preservation of health and well-being – every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

<sup>104</sup> IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.

<sup>105</sup> United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 9 August 2012. A/67/279, para 42. Citing: Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.<sup>106</sup>

90. In the case of *Soering vs. The United Kingdom*, the European Court of Human Rights, in its interpretation of the norm banning cruel, inhuman, and unusual punishment and in reference to the death penalty, pointed out that:

The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3.<sup>107</sup>

91. The European Court found that the "death row phenomenon" is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety, extreme psychological tension and trauma.<sup>108</sup>

92. The European Court was referring to an average of six to eight years on death row from imposition of the penalty to execution and it mentioned how proceedings and appeals subsequent to the imposition of the death penalty themselves have a bearing on the aforementioned wait time on death row. The court referenced the lapse of time between sentence and execution is inevitable however, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.<sup>109</sup>

93. The court further recognized that some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable and considered elements like, the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, which brought the delay into the realm of exposed real risk of treatment going beyond the threshold set by Article 3.<sup>110</sup>

94. Furthermore, in a comparative law context, the Commission notes that in the *Pratt and Morgan v. Jamaica* case cited above the Privy Council considered the issue of the death row phenomenon, and held that:

In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.

(...)

These considerations lead their Lordships to the conclusion that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment."<sup>111</sup>

95. In the same vein, the Supreme Court of Uganda considered in 2009 that "to execute a person after a delay of three years in conditions that were not acceptable by Ugandan standards would amount to cruel, inhuman

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<sup>106</sup> United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 42.

<sup>107</sup> ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 104.

<sup>108</sup> European Court of Human Rights, *Soering v. United Kingdom*. Judgment of July 7, 1989. Series A, Vol. 161. Likewise, the Supreme Court of the United States of America recognised in *Furman v. Georgia* that the time spent awaiting the execution of a death sentence destroys the human spirit and constitutes psychological torture that often leads to insanity. Cf. *Furman v. Georgia*, 408 U.S. 238, 287-288 (197).

<sup>109</sup> ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 106.

<sup>110</sup> ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989. para. 111.

<sup>111</sup> *Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica)* [1993] UKPC 1 (2nd November, 1993), paras. 73-75 and 84.

punishment.”<sup>112</sup> For its part, the Supreme Court of Zimbabwe has pointed out since 1993 that “having regard to judicial and academic consensus concerning the death row phenomenon, the prolonged delays and the harsh conditions of incarceration, a sufficient degree of seriousness had been attained to entitle the applicant to invoke the protection concerning the prohibition of torture and inhuman or degrading punishment.” That Supreme Court maintained that “52 and 72 months, respectively, on death row constituted a violation of the prohibition of torture and would render an actual execution unconstitutional.”<sup>113</sup>

96. The petitioners submit that the inherent cruelty of the mandatory death penalty is aggravated by the prison conditions on death row, given the restrictive regime for death row inmates and in particular close confinement, lack of exercise and the absence of facilities.<sup>114</sup>

97. The Commission notes that Messrs. Dial and Dottin were on death row from 1997 to August, 2008. The victims were therefore on death row for nearly eleven years, a period the Commission considers constitutes inhumane treatment and therefore violates the rights protected under Articles XXV and XXVI of the American Declaration.

## **2. Conditions on Death Row<sup>115</sup>**

98. In the Case of Hilaire, Constantine and Benjamin et al., the Inter-American Court received expert reports about the conditions in Trinidad and Tobago’s prisons, including conditions on death row at the State prison, where Messrs. Dial and Dottin were detained while on death row.<sup>116</sup> In its judgment, the Court noted that, according to an expert report “the procedures leading up to the death by hanging of those convicted of murder terrorize and depress the prisoners; others cannot sleep due to nightmares, much less eat.”<sup>117</sup> After considering the expert testimony offered on the subject, the Court found that the detention conditions compelled the victims to live under circumstances that impinged on their physical and psychological integrity and therefore constituted cruel, inhuman and degrading treatment.<sup>118</sup>

99. According to the facts established in this report, not contested by the State, the victims were subject to the following conditions of detention: deprivation of daily exercise and of regular fresh air; no sanitation; no natural lighting; infestation of insects in the cells; unacceptable levels of air pollution caused by fumes from vehicles parked in the prison yard; lack of basic hygienic; inadequate and almost inedible food; and restrictive diets imposed as punishment for breaches of prison discipline.

100. Further, according to the information provided, Mr. Dial was denied a special diet required to treat an ulcer, had not been taken to medical appointment since August 2005, and experienced difficulties in obtaining prescription tablets for his condition via the prison superintendent.

101. A comparison of the alleged victims’ prison conditions with international standards for the treatment of prisoners suggests that his treatment has failed to respect minimum requirements of humane treatment. In particular, Rules 13, 14, 15, 18 and 23 of the United Nations Standard Minimum Rules for the Treatment of Prisoners,<sup>119</sup> which the Inter- American Commission has previously indicated provide reliable benchmarks as to minimum international standards for the humane treatment of prisoners, prescribe the following basic standards in respect of accommodation, hygiene, and exercise:<sup>120</sup>

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<sup>112</sup> Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009.

<sup>113</sup> Judgment of the Supreme Court of Zimbabwe of 24 June 1993 in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS).

<sup>114</sup> Written submissions of the Petitioner – October 18, 2005 – Saul Lehrfreund, Parvais Jabber, Simons Muirhead & Burton.

<sup>115</sup> Article XI (Right to the preservation of health and to well-being) of the American Declaration provides: “The right to the preservation of health and well-being – every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

<sup>116</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 77.

<sup>117</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 168.

<sup>118</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 169.

<sup>119</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), General Assembly Resolution 70/175, A/RES/70/175, 17 December 2015.

<sup>120</sup> IACHR. Report No. 28/09, Case 12.269, Dexter Lendore. Merits. Trinidad and Tobago. March 20, 2009, para 30.

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

14. In all places where prisoners are required to live or work,

(a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

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

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

23. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

102. As the Inter-American Commission has observed in previous cases, these standards apply irrespective of the nature of the conduct for which the person in question has been imprisoned and regardless of the level of development of a particular State Party to the American Convention or Declaration.<sup>121</sup>

103. The Commission therefore concludes that the State of Trinidad and Tobago has failed to guarantee the internationally-mandated standards of proper treatment for prisoners. The cumulative impact of such conditions, together with the length of time for which the victims have been incarcerated, cannot be considered consistent with the basic requirements of humane treatment.

104. Based on the foregoing considerations, the Commission concludes that the deprivation of liberty on death row for more than 11 years under the conditions listed above constituted a violation to the detriment of Messrs. Dial and Dottin, to the right to humane treatment, and not to receive cruel, infamous or unusual punishment established in Articles 5.1 and 5.2 of the American Convention in relation to the obligations established in its Article 1.1, and Articles XXV and XXVI of the American Declaration. Further, the IACHR concludes that the denial of proper medical care constituted a violation of Article XI of the American Declaration to the detriment of Mr. Dial.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

105. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles 4.1, 4.2, 4.6, 5.1, 5.2, 7.5, 8.1, 8.2 and 25.1 of the American Convention, in relation with its obligations established in Articles 1.1 and 2, and Articles I (life), XI (health and wellbeing), XVIII (fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration.

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT TRINIDAD AND TOBAGO,**

1. Grant Kevin Dial and Andrew Dottin effective relief, including the review of their trials and sentences in accordance with the guarantees of fair trial and due process set forth in Articles XVIII and XXVI of the American Declaration, and the payment of pecuniary compensation.
2. Review its laws, procedures, and practices to ensure that persons accused of capital crimes are tried within a reasonable time after their arrest and, if convicted, sentenced in accordance with the rights established

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<sup>121</sup> See e.g. McKenzie et al. Case, *supra*, para. 288, citing Eur. Court H.R., Ahmed v. Austria, Judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 220, para. 38.

in the American Declaration, including Articles specific to fair trial, due process and humane treatment during custody.

3. Ensure that prisons conditions are compatible with international human rights standards in accordance with the right of protection against cruel, infamous or unusual punishment.
4. Given the violations of the American Declaration and the American Convention, the Inter-American Commission also recommends to Trinidad and Tobago that it abolishes the death penalty, including the mandatory death penalty.<sup>122</sup>

Approved by the Inter-American Commission on Human Rights on the 19 day of the month of November, 2020. (Signed): Joel Hernández García, President; Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, Julissa Mantilla Falcón and Edgar Stuardo Ralón Orellana, Commissioners.

The undersigned, Marisol Blanchard, Assistant Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 49 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.



Marisol Blanchard  
Assistant Executive Secretary

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<sup>122</sup> See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.