



**FINAL WRITTEN ARGUMENTS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON
MERITS AND POSSIBLE COSTS AND REPARATIONS**

IN THE CASE OF:

WINSTON CAESAR

AGAINST

THE REPUBLIC OF TRINIDAD AND TOBAGO

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (the "Commission") submits these final written allegations to the Inter-American Court of Human Rights (the "Honorable Court") in the case of Winston Caesar v. Republic of Trinidad and Tobago. The allegations are filed in response to the October 19, 2004 communication of the Honorable Court, CDH-12.147/043, received by the Commission on October 20, 2004, providing the Commission with a copy of the October 20, 2004 Order of the President of the Honorable Court which, *inter alia*, required the Commission to submit its final written arguments on merits and possible reparations and costs no later than December 16, 2004. Accordingly, these submissions summarize the Commission's claims on the merits and reparations in Mr. Caesar's case in light of the documentary and expert evidence presented to the Honorable Court in the Commission's Application and during the November 15, 2004 hearing before the Honorable Court.

2. In summary, it is the Commission's submission that according to the evidence presented in this case, the Republic of Trinidad and Tobago has subjected the victim, Mr. Winston Caesar, to egregious violations of his right to humane treatment, including his right not to be subjected to torture, his right to be tried within a reasonable time, and his right to judicial protection contrary to Articles 5, 8 and 25 of the American Convention. Most alarming, the State subjected Mr. Caesar to flogging by a cat-o-nine tails, a brutal form of corporal punishment that has been widely recognized as contrary to fundamental standards of humane treatment under international and domestic law. The damaging impact of this punishment was exacerbated by Mr. Caesar's age and medical condition, the prolonged 15-year delay in his criminal proceedings, and his incarceration in substandard prison conditions. Not only did these violations result from conduct attributable to the State, they were perpetrated through measures sanctioned and institutionalized under the State's laws and practices. Moreover, Mr. Caesar is unable to challenge before the domestic courts in Trinidad the punishment imposed upon him or the delay in his criminal proceedings because of deficiencies in the State's constitutional protections, leaving this Honorable Court as his only recourse for protection of his fundamental rights.

3. As a consequence of these serious infringements of Mr. Caesar's rights, the State must provide appropriate reparations. The Commission submits that remedial measures by the State should include legislative or other measures necessary to bring the deficient aspects of its legal system into conformity with modern standards and thereby ensure that similar violations will never again occur in the future. In particular, Trinidad and Tobago should be compelled to derogate its Corporal Punishment (Offenders Over Eighteen) Act and the savings clause under Section 6 of its Constitution, modifying the conditions of its prison system to conform to the relevant international norms of human rights protection on the matter, and provide domestic legal effect to the right to be tried within a reasonable time.

II. PRELIMINARY CONSIDERATIONS

4. Although the State has not raised any preliminary objections to the Honorable Court's jurisdiction in this case, the Commission respectfully reiterates its position that the State's denunciation of the American Convention in 1998 has in no way affected the Court's jurisdiction to consider this case. Nor has the denunciation relieved the Republic of Trinidad and Tobago of its international legal responsibility violations of Mr. Caesar's rights under the American Convention as particularized in the present case, or its obligation to repair those violations.

5. Specifically, by the terms of Article 78 of the American Convention,¹ a denunciation by a state party shall have effect one year after the date of notification of

¹ American Convention on Human Rights, Art. 78 (providing: "1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties. 2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation").

the denunciation. Also according to Article 78, a denunciation will not release the denouncing state from its obligations under the Convention with respect to acts taken by that state prior to the effective date of the denunciation that may constitute a violation of the Convention. These obligations include the provisions of the Convention governing the jurisdiction and procedures of the Commission and the Court. Therefore, notwithstanding Trinidad and Tobago's denunciation of the Convention on May 26, 1998, the Court retains jurisdiction over complaints of violations of the Convention by Trinidad and Tobago in respect of acts taken by the State prior to May 26, 1999 and Trinidad and Tobago remains internationally legally responsible for any corresponding violations of the Convention.

6. In the present case, all of the pertinent events concerning Mr. Caesar's criminal proceedings and punishment occurred prior to May 26, 1999, the effective date of Trinidad's denunciation. Accordingly, the Commission respectfully submits that the Trinidad and Tobago is bound by the terms of the Convention, including those governing the jurisdiction of the Honorable Court, insofar as they apply to the issues raised in the Commission's Application. Trinidad will also remain bound under Article 68 of the Convention to comply with the Court's final judgment in the matter.

7. As a further preliminary consideration, the Commission notes that the State failed to deliver an answer to the Commission's Application in this case and has not presented any evidence or arguments in the course of the proceedings before the Honorable Court. Accordingly, the Commission invites the Honorable Court to apply the terms of Article 38(2) of its Rules of Procedure in adjudicating upon this case by considering that the State has accepted the facts and claims raised by the Commission. Article 38(2) provides:

2. In its answer, the respondent must state whether it accepts the facts and claims or whether it *contradicts* them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested.

III. CLAIMS ON THE MERITS

A. **The State is responsible for violating Mr. Caesar's right to humane treatment under Article 5(1) and 5(2) of the Convention, including the prohibition of torture, by subjecting him to the corporal punishment of flogging**

8. The Commission submits that the evidence presented to the Honorable Court illustrates that the Republic of Trinidad and Tobago subjected Mr. Caesar to a form of punishment that violated his right to humane treatment under Article 5 of the American Convention and, in all of the circumstances, constituted torture as prohibited under paragraph 2 of that Article.

9. In particular, the evidence before the Honorable Court indicates that Mr. Caesar was tried at Port of Spain Assizes on January 10, 1992 and convicted of attempted rape under Trinidad and Tobago's *Offences Against the Person Act*.² As his

² *Offences Against the Person Act*, Ch. 11:08, Laws of Trinidad and Tobago (Commission's Application, Annex 6).

punishment for this crime, he was sentenced to serve 20 years in a penitentiary with hard labor and to receive 15 strokes of the cat-o-nine tails.³ The latter sentence was imposed pursuant to the Corporal Punishment (Offenders Over Sixteen) Act of 1953 of Trinidad and Tobago,⁴ which was amended in 2000 to abolish corporal punishment for persons under 18 years of age and renamed the Corporal Punishment (Offenders Over Eighteen) Act.⁵ According to this legislation, corporal punishment can be imposed for certain offenses specified in the schedule to the Act, including attempted rape. Section 7 of the Act provides that the instrument to be used for carrying out a sentence of flogging shall be an "ordinary cat-o-nine tails."⁶ Further, according to Section 6 of the Act as it read at the time of Mr. Caesar's conviction, a sentence of corporal punishment shall in no case be carried out after the expiration of six months from the passing of the sentence.⁷

10. The evidence before the Honorable Court indicates that a cat-o-nine tails consists of a plaited rope instrument made up of nine knotted thongs of cotton cord approximately 30 inches long, less than one quarter of an inch in diameter, which are attached to a handle. The nine cotton thongs are lashed across the back of the subject, between the shoulders and the lower area of the spine, resulting in a stinging sensation.⁸ The instrument is designed to bruise and lacerate the skin of the person on which the instrument is used.⁹

11. According to the record, on at least three separate occasions between November 1996 and February 1998, Mr. Caesar was taken to a special cell in the prison together with other prisoners where they were kept overnight, and on each subsequent morning the other prisoners were taken one by one to be subjected to corporal punishment. Each of them returned to the cell severely injured. On these occasions, referred to in the evidence as "false starts," Mr. Caesar himself was not taken to receive

³ Summing-up before Mr. Justice Deyalsingh, *The State against Winston Caesar*, In the High Court of Trinidad and Tobago, No. 157 of 1987, 10 January 1992, p. 45 (Commission's Application, Annex 7).

⁴ Corporal Punishment (Offenders Over Sixteen) Act of 1953 of Trinidad and Tobago, Chapter 13:04 Laws of Trinidad and Tobago, Section 6 (Commission's Application, Annex 9).

⁵ Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, p. 1 and Annex 1.

⁶ Corporal Punishment (Offenders Over Sixteen) Act of 1953 of Trinidad and Tobago, Chapter 13:04 Laws of Trinidad and Tobago, Section 7 (Commission's Application, Annex 9).

⁷ Corporal Punishment (Offenders Over Sixteen) Act of 1953 of Trinidad and Tobago, Chapter 13:04 Laws of Trinidad and Tobago, Section 6 (Commission's Application, Annex 9). In 1994, section 6(2) of the Act was amended to take into account sentencing appeals as follows: "Where a person who has been sentenced to flogging appeals the decision of the Court, the sentence of flogging shall be suspended until the determination of the appeal." Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, p. 1 and Annex 2 (Corporal Punishment (Offenders Over Sixteen)(Amendment) Act No. 9 of 1994, section 2).

⁸ G. Anthony McLaren, *The return of the tamarind switch*, Inter Press Service English News Wire, 14 May 1998, on the internet at <http://www.corpun.com>, last visited 25 February 2003 (Commission's Application, Annex 11).

⁹ See Shelley Emling, *Caribbean islands try flogging to deter crime, Rights groups object; U.S. takes no stand*, Cox News Service, Charlotte Observer, 17 February 1997, on the internet at <http://www.corpun.com/ttju9702.htm>, last visited on 25 February 2003 (Commission's Application, Annex 12).

the 15 strokes of the cat-o-nine tails to which he had been previously sentenced, but rather was returned to his cell.¹⁰

12. On February 5, 1998, more than 6 years after his sentencing and 23 months after the date on which the Trinidad and Tobago Court of Appeal dismissed his appeal, Mr. Caesar's sentence of corporal punishment was finally carried out when he was subjected to 15 strokes of the cat-o-nine tails. By this time, Mr. Caesar was 49 years of age. In addition, in December 1997, less than two months prior to the punishment, Mr. Caesar was admitted to hospital for a medical condition. While there is some ambiguity in the available medical records as to the precise nature of Mr. Caesar's treatment in December 1997,¹¹ Mr. Caesar has consistently asserted that on this occasion he underwent an operation for his hemorrhoid condition.¹²

13. Mr. Caesar has described the infliction of the cat-o-nine tails upon him in the following way:

I was then made to lie spread eagled and naked on a metal contraption, know among the prisoners as the "Merry Sandy." It had that kind of spread-eagled shape. I could not turn my head. I could only stare straight ahead. The two prison officers strapped me on to the Merry Sandy. They tied my hands and feet tightly to it. They then covered my head with a sheet. I was scared. I was nauseous. My body was shaking. I then felt a terrible painful lash to my shoulder. My body tensed. I heard a male voice say "one." This was the man beating me. I did not know who he was. The man beating me waited for my muscles to relax, brought the cat-o-nine down on my back again and said two. Each time he waited for my muscles to become less tense before hitting me. Each time he said out loud the number of lashes I had already received. The pain was unbearable. All this time he was lashing me I was screaming in pain, becoming hysterical, screaming that they were trying to kill me. I cannot remember how many blows I received when I began to feel faint. I heard someone come in the room. I heard a voice ask why were they beating me, if they did not know that I just had surgery. [...] The beating nevertheless continued and I passed out. When I awoke I was lying on a stretcher in the same room. The Superintendent said that I was to be taken to the infirmary.¹³

14. The physical, mental and emotional impact of this punishment upon Mr. Caesar, as revealed by the evidence presented to the Honorable Court, has included the following:

¹⁰ Affidavit of Winston Caesar dated October 23, 2002, para. 7; Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 49.

¹¹ Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 77 (indicating that according to the notes from Mr. Caesar's Hospital medical records, he underwent his hemorrhoid operation in January 1997, and was again admitted to hospital on December 27, 1997 with a diagnosis of left-sided ureteric ulcer, which causes acute and very severe pain in the lower abdomen, most often due to a kidney stone).

¹² Affidavit of Winston Caesar dated October 23, 2002, para. 7; Second affidavit of Winston Caesar dated August 23, 2004, para. 5; Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 51, 77.

¹³ Affidavit of Winston Caesar dated October 23, 2002, para. 7.7. See similarly Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 53-55.

- (a) It caused Mr. Caesar intense and excruciating fear, pain and humiliation. The pain was severe enough to cause him to faint before all of the lashes had been inflicted.¹⁴
- (b) The three "false starts" caused Mr. Caesar severe fear and anxiety, by exposing him to the fright and suffering of other inmates and resulting in feelings of fear and apprehension as well as a frequent preoccupation with the punishment to come. According to Dr. Robert Ferris,

the inevitable and intense mental suffering resulting from the sentence of corporal punishment would be greatly exacerbated first by the long delay in its being carried out but second and even more so, by the repeated [...] "false starts" [...] This would have led to feelings of immediate relief followed by a heightened return of fear and apprehension continuing to the next "false start" occasion. Mr. Caesar was aware of the time cycles associated with the punishment and his feelings would naturally have fluctuated in accordance with his knowledge of these.¹⁵

- (c) The anticipation of the punishment and the punishment itself caused increased fear and suffering due to Mr. Caesar's age and medical condition. The evidence indicates, for example, that other inmates taunted Mr. Caesar as to whether some one of his age could withstand the punishment¹⁶ and a prison official who was present during the flogging expressed concern regarding the fact that Mr. Caesar had "just had surgery."¹⁷
- (d) The punishment was imposed in a manner that severely humiliated, degraded and frightened Mr. Caesar, as he was stripped, a sheet was placed over his head, and he was flogged in the presence of several other people.¹⁸
- (e) There is no evidence indicating that Mr. Caesar was provided with a proper medical examination and treatment prior to or following his flogging.¹⁹ The

¹⁴ Affidavit of Winston Caesar dated October 23, 2002, para. 7.7. See similarly Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 55, 87.

¹⁵ Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 56, 57, 85-86. See also Affidavit of Winston Caesar dated October 23, 2002, paras. 7.1-7.4.

¹⁶ Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 52.

¹⁷ Affidavit of Winston Caesar dated October 23, 2002, paras. 7.6, 7.7.

¹⁸ Affidavit of Winston Caesar dated October 23, 2002, paras. 7.6, 7.7; Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 55.

¹⁹ See, in this regard, Corporal Punishment (Offenders Over Sixteen) Act, *supra*, Sections 8(3), 9 (permitting the Medical Officer or practitioner present during a flogging to intervene and suspend the flogging in any case in which he considers the offender to be physically unfit to undergo the punishment, and requiring the Medical Officer or practitioner to report to the President of Trinidad and Tobago on the condition of the prisoner in writing within 2 days of the execution of the punishment).

record only indicates that the prison doctor permitted the punishment to proceed despite knowing that Mr. Caesar had recently received surgery, and that Mr. Caesar was taken to the infirmary and given painkillers after the punishment was imposed.²⁰

- (f) The best expert evidence available indicates that Mr. Caesar may have suffered from post-traumatic stress disorder within the year or two after the punishment was imposed. Even today, Mr. Caesar continues to experience some after-effects from the punishment including depression, intrusive recollections of the punishment, and regular involuntary twitches on his back accompanied by sudden sensations as if something had struck him.²¹

15. The Commission submits that by imposing upon Mr. Caesar a sentence of 15 strokes of the cat-o-nine tails, in the circumstances and with the effects noted above, the State committed egregious violations of Mr. Caesar's right to respect for his physical, mental and moral integrity under Article 5(1) of the Convention and his non-derogable right not to be subjected to torture under Article 5(2) of the Convention. In particular, the Commission submits that the treatment to which Mr. Caesar was subjected satisfies the criteria recognized under international law to characterize torture.²² Not only did Mr. Caesar's flogging caused unjustified and severe mental and physical suffering, but it was greatly aggravated by a series of factors attributable to or otherwise within the knowledge of the State, including the "false starts" to which Mr. Caesar was subjected and his age and precarious medical condition at the time the punishment was imposed. Further, the flogging was imposed for one of the purposes associated with the international legal definition of torture, namely as a form of punishment. Indeed, the State

²⁰ Affidavit of Winston Caesar dated October 23, 2002, paras. 7.6, 7.7, 7.8; Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 56, 90. See, in this respect, the United Nations' Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, annex, 37 U.N. GAOR Supp. (No. 51) at 211, U.N. Doc. A/37/51 (1982).

²¹ Affidavit of Winston Caesar dated October 23, 2002, para. 7.9; Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, paras. 62-63.

²² See e.g. Eur. Court H.R., Ireland v. United Kingdom, Judgment of January 18, 1978, Series A, No. 25 (1979-80) 3 E.H.R.R. 25, paras. 162-163 (indicating that inhumane treatment should be considered that which causes unjustified and severe mental or physical suffering, and that torture is an aggravated form of inhuman treatment perpetrated with a purpose, namely to obtain information or confessions or to inflict punishment). See also Inter-American Convention to Prevent and Punish Torture, Art. 2 (stating: "For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this Article"); United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), Art. 1(1) (stating "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions").

has designed the punishment with the very intention that it be brutal and cruel. As Dr. Robert Ferris observed in his expert report, the feelings of intense fear, humiliation and pain described by Mr. Caesar

seem to me to be entirely normal reactions to the circumstances and indeed it seems that the punishment devised and carried out in a way designed to engender just such feelings in the victim.²³

16. Therefore, taking into account the peculiarities of Mr. Caesar situation as substantiated by the evidence before the Honorable Court, including his age and medical condition, the prolonged period of time leading up to his punishment and the "false starts" to which he was exposed during this period, as well as the severe physical and mental pain and suffering caused by this punishment and the purpose for which the State imposed the punishment, the Commission submits that Trinidad and Tobago subjected Mr. Caesar to torture within the meaning of Article 5(2) of the Convention.

17. Finally, the Commission respectfully submits that the fact that this treatment was imposed as a form of criminal punishment prescribed under domestic law does not affect the State's obligation to refrain from conduct that falls within the parameters of Articles 5(1) and 5(2) of the Convention. The prohibition of torture or other cruel, inhuman or degrading punishment or treatment is absolute and without qualification, condition or exemption,²⁴ and it is well-established that a state may not invoke provisions of its internal law as justification for its failure to perform a treaty.²⁵

B. The State is responsible for violating Article 2 of the Convention, in conjunction with Articles 5(1) and 5(2) of the Convention, by providing for the punishment of flogging under its Corporal Punishment (Offenders Over Sixteen) Act of 1953 (now the Corporal Punishment (Offenders Over Eighteen) Act of 1953)

18. The fact that the punishment imposed upon Mr. Caesar was sanctioned under the State's internal law not only fails to justify the State's conduct, but, in the Commission's submission, constitutes a further violation of the American Convention attributable to Trinidad and Tobago.

19. In particular, the Commission submits that the practice of corporal punishment as provided for under Corporal Punishment (Offenders Over Eighteen) Act is, in and of itself, inconsistent with the standards of humane treatment under Articles 5(1) and 5(2) of the American Convention and constitutes a *per se* violation of those provisions, and therefore that the State has violated its obligations under Article 2 of the Convention by failing to derogate this law. The Commission submits that the documents and testimony before the Honorable Court concerning the nature, intent and effect of the treatment authorized under the Corporal Punishment (Offenders Over Eighteen) Act, which are

²³ Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 87. See also Testimony of Dr. Robert Ferris during November 15, 2004 hearing before the Inter-American Court of Human Rights.

²⁴ See, e.g., American Convention on Human Rights, Art. 27(2).

²⁵ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Art. 27.

consistent with Mr. Caesar's account of his experience,²⁶ provide forceful and compelling evidence that these practices cannot be reconciled with the standards of humane treatment prescribed under Article 5 of the American Convention under any circumstances.

20. Moreover, international human rights and humanitarian law instruments²⁷ as well as the decisions of international and domestic courts, tribunals and other authorities overwhelmingly indicate that the use of corporal punishment as disciplinary or criminal sanctions is inconsistent with basic standards of humane treatment. The United Nations Human Rights Committee, for example, has concluded that the prohibition of torture and cruel treatment or punishment contained in Article 7 of the International Covenant on Civil and Political Rights²⁸ extends to corporal punishment.²⁹ The Committee has also proclaimed the impermissibility of forms of corporal punishment such as flogging and whipping in its concluding observations on periodic reports of states and in its decisions on individual complaints, including those relating to Trinidad and Tobago.³⁰ The United Nations

²⁶ See Affidavit of Winston Caesar dated October 23, 2002, para. 7; Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, Annexes 10, 11 (describing accounts by individuals subjected to the corporal punishment with the cat-o-nine tails and a birch in Trinidad and Tobago); Affidavit of Dr. Robert Ferris dated October 5, 2004, Exhibit RF1, para. 87.

²⁷ UN Standard Minimum Rules for the Treatment of Prisoners, United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), Rule 31 (providing that "[c]orporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences"; Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, entered into force Oct. 21, 1950, Art. 89; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force Oct. 21, 1950, Art. 32. See also Art. 118 and 119; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force Dec. 7, 1978, Art. 75 (2) (b); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force Dec. 7, 1978, Art. 4.

²⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR (Supp. No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

²⁹ UNHRC, General Comment 20, Article 7 (44th sess., 1992), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UPDATE: U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 5. See also UNHRC, General Comment 21, Article 10 (44th sess., 1992), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UPDATE: U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), para. 3; *Matthews v. Trinidad and Tobago*, (569/1993) Report of the Human Rights Committee, 29 May 1998, CCPR/C/62/D/569/1993, para. 7.2.

³⁰ UNHRC, Consideration of reports submitted by states parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee: Trinidad and Tobago, Seventieth session, 3 November 2000, CCPR/CO/70/TTO, para. 12. (specifying in its Concluding Observations on a report submitted by Trinidad and Tobago under Article 40 of the Covenant that it was "disturbed to learn that apart from prohibiting corporal punishment for persons under 18 years of age, the State party is still practicing the punishments of flogging and whipping which are cruel and inhuman punishments prohibited by article 7" and recommending that all sentences of flogging or whipping be immediately abolished); *Boodlal Sooklal v. Trinidad and Tobago*, Communication No. 928/2000, Report of the Human Rights Committee, 8 November 2001, CCPR/C/73/928/2000 (ruling that the imposition of the corporal punishment of whipping as a judicial sanction by Trinidad and Tobago constitutes cruel, inhuman or degrading treatment or punishment contrary to Article 7 of the Covenant). See similarly UNHRC, *Osbourne v. Jamaica*, Communication No. 759/1997, Report of the Human Rights Committee, 13 April 2000, CCPR/C/68/D/759/1997.

Special Rapporteur on Torture³¹ and the European Court of Human Rights,³² as well as the highest courts of numerous states,³³ have reached similar conclusions.³⁴

21. The Commission respectfully submits that the human rights standards under the American Convention should be interpreted consistent with the foregoing authorities, and that, in light of the evidence submitted in the present case, the punishment prescribed under Trinidad and Tobago's Corporal Punishment (Offenders over Eighteen) Act is, by its nature, inconsistent with the right of every person under Article 5(1) of the American Convention to have his physical, mental and moral integrity respected, as well as the right under Article 5(2) not to be subjected to cruel, inhuman or degrading punishment or treatment. Accordingly, the Commission submits that Trinidad and Tobago, by maintaining and applying this legislation, has contravened its obligation under Article 2 of the American Convention on Human Rights to ensure that it gives domestic legal effect to the rights and freedoms under the American Convention on Human Rights, including the right to humane treatment under Article 5(1) and 5(2) thereof.

C. The State is responsible for further violations of Mr. Caesar's right to humane treatment under Articles 5(1) and 5(2) of the Convention because of the conditions in which he has been detained

22. The Commission contends that Mr. Caesar was the victim of further violations of his right to humane treatment because of the conditions in which he has been detained in Trinidad and Tobago. According to the evidence submitted to the Honorable

³¹ "Questions of the Human Right of all Persons subjected to any form of detention or imprisonment, in particular: torture and other Cruel, Inhuman or Degrading Treatment or Punishment", Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights res. 1995/37 B, 10 January 1997, E/CN.4/1997/7 (stating that "corporal punishment is inconsistent with the prohibition of torture, cruel, inhumane or degrading treatment or punishment enshrined, *inter alia*, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture, Cruel, Inhumane or Degrading Treatment or Punishment, and the Convention against Torture, Cruel, Inhumane or Degrading Treatment or Punishment").

³² See e.g. Eur. Court H. R., *Tyrer v. United Kingdom*, Judgment of 25 April 1978, Series A, No. 26 (1978), at 14 and following (concluding that the treatment of a minor who had been subjected to three strokes of the birch pursuant to domestic legislation in the Isle of Man was degrading and as such violated Article 3 of the European Convention); Eur. Court H.R., *A v. United Kingdom*, (100/1997/884/1096), Judgment of 23 September 1998 (finding that the beating of a nine year old boy with a garden cane, which had been applied with considerable force on more than one occasion, constituted a violation of Article 3 of the European Convention).

³³ See, e.g., *State v. Ncube* 1987 (2) ZLR 246 (SC); 1988 (2) SA 702 (Zimbabwe Supreme Court) (acknowledging that the administration of a sentence of whipping as a judicial sanction was unconstitutional because it violated Article 15 (1) of the Constitution, prohibiting inhumane or degrading treatment); *Jackson v. Bishop*, 404 F.2d 571, 1968 U.S. App. 9 December 1968 (considering that the practice existing in Arkansas prisons of striking prisoners with a strap as a disciplinary punishment violated the Eighth Amendment to the U.S. Constitution); *Gates v. Collier* 501 F. 2d 1292 at 1306 (5th Cir.) (considering that several types of corporal punishment ran "a foul of the Eighth Amendment, offend contemporary concepts of decency, human dignity, and precepts of civilization").

³⁴ See also Amicus curiae brief submitted to the Inter-American Court of Human Rights by Interights, p. 24 (concluding that "judicially sanctioned corporal punishment, of the sort at issue in the case presently before the Court, amounts to an inhuman and degrading form of punishment, prohibited by treaty and customary law. There can be no justification or excuse for such punishment, whatever the circumstances of the particular case, the situation of the particular state, or the provisions of internal law. Judicially sanctioned corporal punishment is the subject of harsh and unequivocal condemnation at the international - and increasingly at the national constitutional - level").

Court, Mr. Caesar was incarcerated at several institutions in Trinidad and Tobago during the course of his criminal proceedings, including the Port of Spain Prison, the Golden Grove Prison in Arouca, and the Carrera Convict Prison.³⁵ In all of these facilities, his conditions were appalling. For example, for most of the period between September 10, 1991 and February 28, 1996, Mr. Caesar was detained at Golden Grove Prison where he shared a cell with four to five men and slept on the floor on a thin mat. The cell was hot and uncomfortable. There were no toilet facilities and instead a "slop pail" was to be used by everyone in the cell. From approximately July 1996 to November 1999, Mr. Caesar was detained at Carrera Convict Prison where he was subjected to similar conditions.³⁶

23. Since his incarceration, Mr. Caesar has also suffered from serious health problems that have not been properly treated by authorities. He appears to have contracted tuberculosis while in prison and has suffered from chronic hemorrhoids, for which he has failed to receive adequate and timely medical treatment.³⁷ Further, the poor conditions in which Mr. Caesar was incarcerated likely exacerbated his medical problems by, for example, inhibiting Mr. Caesar's proper recovery from surgery.³⁸

24. Independent expert evidence submitted to the Honorable Court corroborates Mr. Caesar's account of the conditions in the facilities in which he has been held. For example, the expert affidavit of Trinidadian attorney Desmond Allum includes the following observations concerning detention conditions in Trinidad and Tobago's prisons:

Extreme overcrowding has been a problem at the remand section of the Port of Spain Prison for several years and continues to be a critical problem. The average number of prisoners detained in a single cell of dimensions of about 10 ft x 9 ft hovers around 12 and this can rise to up to 14 to 16 persons during the week-end when there usually a dramatic increase in the remand population.

[...]

There is a lack of proper ventilation in the cells at the Port of Spain prison which are consequently very hot and uncomfortable. The hot conditions are exacerbated by the overcrowding in the cells. Prisoners on remand at the Port of Spain Prison remain locked in their cells for up to 23 hours or more. They are given no formal exercise and are allowed out of their cells for a brief period in the mornings at have a "bath" (which means being sprayed with water from a fire hose) and to collect their breakfast.

[...]

Generally throughout the prison system there are no proper toilet facilities. Inmates are provided with a plastic bucket (slop pail) for this purpose. I have heard on many occasions inmates complain that to be forced to use a slop pail is both humiliating and degrading. The pail has to be used in the cell and no privacy is afforded the prisoners. In order to be able to

³⁵ See Affidavit of Winston Caesar dated October 23, 2002, paras. 1.1-5.

³⁶ See Affidavit of Winston Caesar dated October 23, 2002, paras. 4, 6.

³⁷ See Affidavit of Winston Caesar dated October 23, 2002, paras. 1.3, 7.5, 7.6, 8, 8.1, 9; Affidavit of Winston Caesar dated August 23, 2004, paras. 2-22; Affidavit of Dr. Robert Ferris dated October 5, 2004, para. 29.

³⁸ Testimony of Dr. Robert Ferris at November 15, 2004 hearing before the Inter-American Court of Human Rights.

use the pail in private, inmates may tie a sheet across the front of the cell. However, the sheet may be removed by the prison officers on duty.

[...]

Follow up specialist treatment including x-rays, blood tests etc is usually at the Port of Spain General Hospital which is less than 1 km away, or at the Eric Williams Medical Complex (the Mount Hope Hospital) which is about 10-12 km from the prison. There are frequently long delays before the inmate is taken for recommended follow-up treatment or investigation and this is due to unavailability of staff or lack of transport or both. Inmates complain that scheduled appointments are often missed because of a shortage of staff to attend clinics at the Port of Spain General Hospital.

[...]

In the September 23rd, 1999 edition of the Express newspaper, it was reported that tuberculosis was rampant in the prisons. Some prisoners on death row have been tested for tuberculosis but others have complained that they have not been tested despite repeated requests to be tested.³⁹

25. Similar accounts have been provided in two additional expert reports before the Honorable Court, which were also submitted by the Commission in the course of proceedings before this Court in the Hilaire, Constantine and Benjamin *et al.* Case.⁴⁰

26. The Commission submits that the conditions of detention described in the above evidence fail to satisfy minimum requirements of humanity and decency when evaluated against international standards of treatment as articulated in international instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners⁴¹ and the jurisprudence of this Court and other tribunals.⁴² Indeed, the Honorable Court has previously proclaimed the conditions in the facilities in which Mr. Caesar has been detained to violate the rights of prisoners in those institutions under Article 5(1) and 5(2) of the American Convention based upon such considerations as overcrowding, inadequate sanitation, and poor hygiene and medical care.⁴³ The Commission contends that

³⁹ Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, pp. 4-7.

⁴⁰ See, e.g., Expert witness report from Vivian Stern and Andrew Coyle on conditions of detention (7 January 2002) (Commission's Application, Annex 17); Expert report of Gaietry Pargass on conditions of detention (14 January 2002) (Commission's Application, Annex 18) (indicating that conditions in various State institutions in Trinidad, including the State Prison in Port of Spain and the Golden Grove Prison, were characterized by serious overcrowding, poor sanitation, light and ventilation, inadequate medical treatment and, in some instances, violence at the hands of prison officials).

⁴¹ United Nations Standard Minimum Rules for the Treatment of Prisoners, *supra*, Rules 11, 12, 15, 21, 24 and 25.

⁴² See, e.g., I/A Court H.R., Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 89 (finding that "holding a person incommunicado, [...] isolation in a small cell, without ventilation or natural light, [...] restriction of visiting rights [...], constitute forms of cruel, inhuman and degrading treatment as per Article 5(2) of the American Convention"); United Nations Human Rights Committee, Moriana Hernández Valentini de Bazzano v. Uruguay, No. 5/1977 of 15 August 1979, paras. 9-10 (finding that the detention of a prisoner with other persons in conditions that present a serious health danger constitutes a violation of the right to humane treatment under Article 7 of the International Covenant on Civil and Political Rights).

⁴³ Hilaire, Constantine and Benjamin *et al.* Case, *supra*, para. 170, referring to the evidence presented in the expert witness report of Vivian Stern and Andrew Coyle on conditions of detention (Annex 17, referred to at para. 76 of the judgment), and to Gaietry Pargass' expert testimony and report of January 22, 2002 (Annex 18, referred to at para. 77 of the judgment). With respect to the Court's assessment of the evidence's probative value, see paras. 81-82.

the same conclusion is warranted based upon the evidence presented in Mr. Caesar's case.

D. The State is responsible for violating Winton Caesar's right to be tried within a reasonable time under Article 8(1) of the Convention because of the delay in the criminal proceedings against him

27. The Commission submits that Trinidad and Tobago is also responsible for violating Mr. Caesar's right under Article 8(1) of the Convention to be tried within a reasonable time.⁴⁴ According to the evidence submitted to the Honorable Court, Mr. Caesar was subjected to a delay of 15 years between his initial arrest on November 11, 1983⁴⁵ and the resolution of his attempt to pursue his final appeal to the Judicial Committee of the Privy Council on November 9, 1998.⁴⁶ In its final judgment in the Suarez Rosero Case, the Honorable Court opined that the calculation of a reasonable time for the purposes of Articles 7(5) and 8(1) of the American Convention must include the entire proceeding, including any appeals that may be filed.⁴⁷ The Court also concluded that in determining the reasonableness of the time in which a proceeding must take place, three factors must be taken into account: (a) the complexity of the case; (b) the procedural activity of the interested party; and (c) the conduct of the judicial authorities.⁴⁸

28. Based upon this jurisprudence, the Commission submits that Mr. Caesar has been subjected to a patently unreasonable delay that is equivalent to or exceeds the delays in past cases in which the Court has found violations of Article 8(1) of the Convention, such as the Suarez Rosero Case and the Hilaire, Constantine and Benjamin *et al.* Case. The State has not provided any explanation for this delay, nor do any facts appear from the record that might account for the excessive period of time expended to complete Mr. Caesar's criminal proceedings. Accordingly, the Commission submits that the State is responsible for violating Mr. Caesar's right to be tried within a reasonable time protected under Article 8(1) of the American Convention.

⁴⁴ As Mr. Caesar was not held in detention for the entire period between his arrest and trial, the Commission has not alleged a violation of Mr. Caesar's right to liberty under Article 7(5) in connection with the delay in his criminal proceedings. See Affidavit of Winston Caesar dated October 23, 2002, para. 2 (Commission's Application, Annex 4).

⁴⁵ Affidavit of Winston Caesar dated October 23, 2002, para. 2 (Commission's Application, Annex 4). See also information by Sgt. Winston Michael (11 November 1983) (hereinafter "Information"), contained in Prosecutor's Case, Indictment by the Director of Public Prosecutions, Sgt. Winton Michael v. Winton Caesar, (hereinafter "Prosecutor's Case"), pp. 1-2 (Commission's Application, Annex 5); Deposition of Ahmad Khan P.C. made on September 16, 1985, contained in Prosecutor's Case, *supra*, at 16 (Commission's Application, Annex 5).

⁴⁶ Note for Instructing Solicitors, Winston Caesar, Intended Petitioner, and The Republic of Trinidad and Tobago, Intended Respondent (2 November 1998), at 8 (Commission's Application, Annex 9) (indicating that Mr. Caesar was not considered to have a reasonable prospect of succeeding in an application for Special Leave to Appeal to the Privy Council or that the case merited the necessary certificate from counsel to allow Mr. Caesar to proceed with an application for Special Leave to Appeal to the Privy Council as a Poor Person). Mr. Caesar's representatives informed Mr. Caesar of this decision on November 9, 1998.

⁴⁷ I/A Court H.R., Suárez Rosero Case, Judgment, 12 November 1997, ANNUAL REPORT 1997, para. 71. See also I/A Court H.R., Hilaire, Constantine and Benjamin *et al.* Case, Judgment of June 21, 2002, Ser. C No 94, para. 142.

⁴⁸ I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, Ser. C No. 35, para. 72, citing Stogmuller v. Austria judgment of 10 November 1969, Series A no. 9, p. 40. See also I/A Court H.R., Hilaire, Constantine and Benjamin *et al.* Case, *supra*, para 143.

- E. The State is responsible for violating Winston Caesar's right to judicial protection under Article 25 of the Convention, as well as its obligations under Article 2 of the Convention, by failing to provide under its domestic law for the right to be tried within a reasonable time under Articles 7(5) and 8(1) of the Convention, and by precluding domestic courts from invalidating the State's corporal punishment legislation under the domestic Constitution's human rights protections

29. The Commission submits that Trinidad and Tobago is responsible for further violations of Article 2 of the Convention, as well as Mr. Caesar's right to judicial protection under Article 25 of the Convention, in two respects. First, Trinidad and Tobago has failed to give domestic legal effect to the right to trial within a reasonable time under Articles 7(5) and 8(1) of the Convention. In this connection, the evidence submitted to the Honorable Court indicates that the Constitution of Trinidad and Tobago does not include among its prescribed fundamental rights and freedoms the right to a trial within a reasonable time.⁴⁹ The Judicial Committee of the Privy Council, the highest appellate court in Trinidad and Tobago, has also confirmed in numerous judgments that the Constitution of Trinidad and Tobago does not provide for a right to a speedy trial or trial within a reasonable time.⁵⁰ Indeed, this Honorable Court already concluded in the *Hilaire, Constantine and Benjamin et al.* Case that Trinidad and Tobago's domestic law does not recognize the right to trial within a reasonable period of time and therefore does not conform to the dictates of the Convention.⁵¹ The Commission notes that the State has not provided any evidence refuting the Commission's observations on this issue, and, to the Commission's knowledge, has not remedied the same deficiency identified by the Honorable Court in the *Hilaire, Constantine and Benjamin et al.* Case. The Commission therefore respectfully submits that the same conclusion is warranted in Mr. Caesar's case.

30. In particular, the Commission contends that by failing to provide guarantees for the right to be tried within a reasonable time under domestic law, the State has violated its obligations under Article 2 of the Convention, in relation to Articles 7(5) and 8(1) of the Convention. In addition, as illustrated by the jurisprudence of the Judicial Committee of the Privy Council referred to above, Mr. Caesar and others in his position are deprived of effective recourse before the courts in Trinidad and Tobago for the protection of their right to be tried within a reasonable time because of the State's failure to include

⁴⁹ Constitution of the Republic of Trinidad and Tobago, Enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act (Chapter 1:01, Laws of Trinidad and Tobago) (Commission's Application, Annex 14).

⁵⁰ See e.g. *Darren Roger Thomas and Haniff Hilaire v. Cipriani Baptiste* (Commissioner of Prisons), Evelyn Ann Peterson (Registrar of the Supreme Court), The Attorney-General of Trinidad and Tobago (Privy Council Appeal No. 60 of 1998), at 15 (Commission's Application, Annex 16), where the Judicial Committee of the Privy Council reaffirmed its finding that the Constitution in Trinidad and Tobago protects the right to a fair trial but not the right to a speedy trial, and therefore that, absent substantiating that a delay rendered a trial unfair, an individual cannot challenge pre-trial delay under domestic law in Trinidad and Tobago. See also *Director of Prosecutions v. Jaikaran Tokai* [1996] AC 856, at p. 862 E (Commission's Application, Annex 15).

⁵¹ *Hilaire, Constantine and Benjamin et al. Case*, *supra*, para. 152.

this right under its Constitution. Consequently, the Commission submits that the State is responsible for violating Mr. Caesar's right under Article 25 of the American Convention to effective recourse to a competent court or tribunal for protection against acts that violate his right to be tried within a reasonable time under the Convention.

31. In the Commission's submission, the evidence presented to the Honorable Court discloses a second violation of the State's obligations under Article 2 of the Convention, as well as Mr. Caesar's right to judicial protection under Article 25 of the Convention, based upon a legislative provision that prevents domestic courts from invalidating corporal punishment and similar pre-Independence laws under the Constitution of Trinidad and Tobago's human rights protections.

32. As Mr. Caesar's representatives argued during the November 15, 2004 hearing on merits and possible reparations and costs in this matter, and as corroborated by the affidavit of Desmond Allum dated October 26, 2004,⁵² Section 6 of the State's Constitution, known as the "savings clause," prevents the Courts in Trinidad and Tobago from declaring invalid under the human rights provisions of the Constitution any laws that pre-dated the coming into force of the 1976 Constitution.⁵³ The Judicial Committee of the Privy Council recently upheld the validity of this provision in the context of a challenge to the mandatory death penalty under Trinidad's law.⁵⁴ As the evidence before the Honorable Court indicates, the corporal punishment imposed upon Mr. Caesar was prescribed under a law, the Corporal Punishment (Offenders Over Sixteen) Act, which was enacted in 1953 and therefore prior to the commencement of Trinidad's Constitution in 1976. Accordingly, Section 6 of Trinidad's Constitution precludes Mr. Caesar and similarly-situated persons from obtaining an effective remedy before the Courts for violations of their constitutional rights resulting from the application of the Corporal Punishment (Offenders Over Sixteen) Act. It is notable in this regard that the Honorable Court has already pronounced in its judgment in the *Hilaire, Constantine and Benjamin et al/ Case* that, insofar as Section 6 of the States' Constitution immunizes invalid legislation from constitutional challenge, this provision is also incompatible with the American Convention because Trinidad cannot rely upon provisions of its domestic law to justify its failure to comply with its international obligations.⁵⁵

33. The Commission therefore submits that Trinidad and Tobago is responsible for a further violation of Mr. Caesar's right to judicial protection under Article 25 of the Convention, together with the State's obligations under Article 2 of the Convention, by

⁵² Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, p. 2.

⁵³ Constitution of the Republic of Trinidad and Tobago, Enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act (Chapter 1:01, Laws of Trinidad and Tobago), section 6 (Commission's Application, Annex 14) (providing: "6(1) Nothing in sections 4 and 5 [prescribing fundamental rights and freedoms in Trinidad and Tobago] shall invalidate: (a) an existing law; [...] (3) In this section - [...] "existing law" means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of this Constitution, and includes any enactment referred to in subsection (1)").

⁵⁴ Affidavit of Desmond Allum dated October 26, 2004, Exhibit DA1, p. 2, Annex 13 (*Charles Matthew v. The State*, Appeal No. 12 of 2004, 7 July 2004 (Judicial Committee of the Privy Council)).

⁵⁵ *Hilaire, Constantine and Benjamin et al.* Judgment, *supra*, para. 152(c).

maintaining within its Constitution a provision that prevents Mr. Caesar from obtaining an effective remedy from the domestic courts for violations of his rights under the Trinidad Constitution perpetrated through the application of corporal punishment under the Corporal Punishment (Offenders Over Sixteen) Act.

IV. REPARATIONS AND COSTS

34. In keeping with general principles of international law, a violation of international norms binding on a State gives rise to the international responsibility of that State, and, consequently, the duty to make reparation.⁵⁶ As this Honorable Court has recognized on numerous occasions, the essential objective of reparations is to provide, to the extent possible, full restitution for the injury suffered.⁵⁷ Reparations have the additional and no less fundamental objective of deterring future violations.

35. When, as in Mr. Caesar's case, it is not possible to fully enforce the rule of *restitutio in integrum* due to the irreversible nature of certain damages suffered, the quantification of losses in pecuniary or other appropriate terms becomes the necessary alternative. In this regard, the Commission takes no objection to the submission by the representatives of Mr. Caesar that, in the circumstances of the present case, an appropriate remedy would entail Mr. Caesar's early release from imprisonment.⁵⁸

36. The Commission also submits that an important consideration for determining reparations in this case is the fact that the alleged violations of Mr. Caesar's fundamental rights were sanctioned and institutionalized by the State's laws and practices. This in turn raises the distinct possibility that similar violations may be perpetrated by the State in the future, through the application of the same laws and regulations to others convicted of crimes to which corporal punishment is an available sanction, and through the ongoing denial to persons of the ability to enforce their right to be tried within a reasonable time and to challenge the compatibility of corporal punishment with the rights and freedoms protected under Trinidad and Tobago's Constitution.

37. Accordingly, in the Commission's submission, an essential component of appropriate remedies in Mr. Caesar's case relates to the State's obligation to take such measures as may be necessary to ensure that violations of the nature determined by the Court never again occur in its jurisdiction. In this connection, the Honorable Court has previously held that where a State's laws are found to be incompatible with provisions of the American Convention and were invoked or applied in a manner that caused injury to a victim, compliance with the requirement of non-repetition oblige the State Party to adopt the internal legal measures necessary to adapt the law at issue to conform to the American Convention on Human Rights.⁵⁹

⁵⁶ See I/A Court H.R., Villagrán Morales et al. Case (The "Street Children" Case), Reparations, Judgment of May 26, 2001, Ser. C No. 77 (2001), para. 59.

⁵⁷ I/A Court H.R., Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990, Ser. C No. 9, para. 27.

⁵⁸ Representatives of Mr. Caesar, Outline of Submissions from November 15, 2004 hearing, para. 11.

⁵⁹ See e.g. I/A Court H.R., Loayza Tamayo Case, Reparations Judgment of November 27, 1998, Series C No. 42, paras. 162-164, 192(5); Hilaire, Constantine and Benjamin et al., *supra*, paras. 212, 213.

38. Consistent with the foregoing considerations and jurisprudence, the Commission submits that measures to ensure non-repetition of the egregious violations suffered by Mr. Caesar are crucial to a just and effective resolution of the matter before the Court. In particular, the State must be compelled to:

- a) Adopt such legislative or other measures as may be necessary to abrogate or otherwise prohibit corporal punishment as provided for under its Corporal Punishment (Offenders Over Eighteen) Act;
- b) Adopt such legislative or other measures as may be necessary to abrogate the savings clause under Section 6 of Trinidad and Tobago's Constitution insofar as that provision denies persons effective recourse to a competent court or tribunal for protection against acts that violate their fundamental rights recognized by Trinidad's Constitution;
- c) Adopt such legislative or other measures as may be necessary to ensure that conditions of detention in prisons in Trinidad and Tobago, including those of Mr. Caesar, comply with the standards of humane treatment mandated by Article 5 of the Convention; and
- d) Adopt such legislative or other measures as may be necessary to give effect to the right to a trial within a reasonable time under Articles 7(5) and 8(1) of the Convention.

39. As Mr. Caesar's representatives have claimed no costs or expenses before the Honorable Court, the Commission has no substantive observations on this issue. The Commission does wish to acknowledge, however, the substantial work and expertise that the Mr. Caesar's representatives have provided *pro bono* in litigating Mr. Caesar's complaint before the inter-American human rights system.

V. CONCLUSION

40. As revealed by the evidence proffered in support of the merits and possible reparations and costs in this case, Winston Caesar has been the victim of multiple and egregious violations of his rights under the American Convention. In the Commission's submission, the most notorious infringement stems from the infliction upon Mr. Caesar of the corporal punishment of flogging, which, in all of the circumstances of the case, contravened the fundamental prohibition against torture. This violation was exacerbated by several additional human rights violations attributable to Trinidad and Tobago, including an unjustified and prolonged delay in Mr. Caesar's criminal proceedings, his confinement in conditions that failed to satisfy minimal standards of humane treatment, and the denial of effective recourse to the courts in Trinidad and Tobago to protect him against violations of his fundamental rights under the State's Constitution and the American Convention. These violations are particularly serious in light of the fact that they were sanctioned and institutionalized under the State's laws and practices, and the

fact that this Honorable Court has already pronounced Trinidad and Tobago's responsibility for several of these systemic violations in the case of Hilaire, Constantine and Benjamin *et al.* v. Trinidad and Tobago, where the State has yet to comply with the Court's final judgment.

41. In light of these considerations, the Commission submits that this case presents the Honorable Court with an important opportunity to condemn the practice of corporal punishment as inherently incompatible with the principles and standards of the inter-American human rights system, to provide Winston Caesar with the protection of his fundamental rights that he has been unable to attain at the domestic level, and to once again demand that Trinidad and Tobago reform its legal system to comply with contemporary international human rights standards and thereby preclude similar grave violations from occurring within its jurisdiction in the future.