



MEMORIAL OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON

REPARATIONS

IN THE CASE OF:

HILAIRE, CONSTANTINE AND BENJAMIN *ET AL.*

AGAINST

THE REPUBLIC OF TRINIDAD AND TOBAGO

I. INTRODUCTION AND BACKGROUND

This Memorial is submitted to the Inter-American Court of Human Rights (hereinafter the "Honorable Court") on behalf of the Inter-American Commission on Human Rights (hereinafter the "Commission") respecting the issue of reparations under Article 63(1) of the American Convention on Human Rights (hereinafter the "Convention") in the Case of Hilaire, Constantine and Benjamin *et al.* against the Republic of Trinidad and Tobago (hereinafter the "State" or "Trinidad and Tobago"). It responds to three November 16, 2001 communications of the Honorable Court, CDH-11.816/049, CDH-11.787/039, and CDH-12.148/022, received by the Commission on the same date, informing the Commission of the instructions by the President of the Honorable Court that the Commission submit its allegations on reparations in the Hilaire, Constantine *et al.*, and Benjamin *et al.* matters within 30 days of receipt of the Court's communication.

On May 25, 1999, February 22, 2000 and October 5, 2000, the Commission filed with the Honorable Court three Applications pursuant to Articles 51 and 61 of the American Convention and Articles 32 and 33 of the Rules of Procedure of the Honorable Court, in the Cases of, respectively, Haniff Hilaire v. Trinidad and Tobago, George Constantine and 23 others v. Trinidad and Tobago,¹ and Peter Benjamin and 6 others v. Trinidad and Tobago.²

¹ The 24 victims in the consolidated case of Constantine *et al.* v. Trinidad and Tobago are: George Constantine (Case No. 11.787), Wenceslaus James (Case No. 11.814), Denny Baptiste (Case No. 11.840), Clarence Charles (Case No. 11.851), Keiron Thomas (Case No. 11.853), Anthony Garcia (Case No. 11.855), Wilson Prince (Case No. 12.005), Darrin Roger Thomas (Case No. 12.021), Mervyn Edmund (Case No. 12.042), Samuel Winchester (Case No. 12.043), Martin Reid (Case No. 12.052), Rodney Davis (Case No. 12.072), Gangadeen Tahaloo (Case No. 12.073), Noel Seepersad (Case No. 12.075), Wayne Matthews (Case No. 12.076), Alfred Frederick (Case No. 12.082), Natasha De Leon (Case No. 12.093), Vijay Mungroo (Case No. 12.111), Phillip Chotalal (Case No. 12.112), Naresh Boodram and Joey Ramiah (Case No. 12.129), Nigel Mark (Case No. 12.137), Wilberforce Bernard (Case No. 12.140), and Steve Mungroo (Case No. 12.141).

These complaints were brought before the Commission by 19 firms of Solicitors in London, United Kingdom (hereinafter the "original claimants") and relate to the trials, convictions, and sentencing to mandatory death penalties of 32 condemned prisoners (hereinafter the "victims") for the crime of murder under Trinidad and Tobago's *Offences Against the Person Act*. In the interests of efficiency, the original claimants appointed six representatives for the purposes of the processes before the Inter-American Court.³

By Order dated November 30, 2001, the Honorable Court decided to join these three cases pursuant to Article 28 of its Rules of Procedure on the basis of identity of parties, subject-matter and ruling law. Accordingly the Commission has prepared this consolidated memorial to address reparations in the three formerly-separate applications. Also, as the Commission has been requested to submit its allegations on reparations prior to the determination by the Honorable Court of the merits of this case, these submissions are necessarily formulated on the assumption that the Honorable Court will find the Commission's allegations of violations of the American Convention to have been substantiated upon completion of the merits stage of the proceeding.

As the evidence proffered in support of the merits of this case will indicate, this case raises crucial issues concerning the fates of 32 living but condemned victims whose treatment throughout their criminal processes has contravened the human rights norms and principles of the inter-American system. Not only have the victims been subjected to unconscionable delays and inhumane conditions of detention, but the laws and procedures through which they have been condemned to death fail to comply with basic international norms of humanity and fairness. Further and more generally, the case reveals fundamental deficiencies in Trinidad and Tobago's obligation to give domestic legal effect to the rights and freedoms under the American Convention. Accordingly, the reparations that emerge from this proceeding concern most essentially matters of life and death for the victims concerned, as well as the future efficacy of the inter-American system of human rights protection for the people of Trinidad and Tobago more broadly.

In its Applications before the Honorable Court, the Commission raises six principal claims in connection with the criminal proceedings of some or all of the victims. These claims, particularized in Part III below, relate to the mandatory nature of the death penalty and the process for granting amnesty, pardon or commutation of sentence in Trinidad and Tobago, delays in the victims' criminal proceedings, deficiencies in the victims' treatment and conditions of detention, due process violations in the victims' trial and appeal processes, and the denial to the victims of legal aid to effectively pursue domestic remedies for violations of their rights.

In the event that the Honorable Court finds and declares the Commission's allegations of violations to have been substantiated, the Commission respectfully submits that the following reparations are appropriate:

² The 7 victims in the consolidated case of *Benjamin et al. v. Trinidad and Tobago* are: Peter Benjamin (Case No. 12.148), Krishendath Seepersad (Case No. 12.149), Allan Phillip (Case No. 12.151), Narine Sooklal (Case No. 12.152), Amir Mowlah (Case No. 12.153), Mervyn Parris (Case No. 12.156) and Francis Mansingh (Case No. 12.157).

³ See Hilaire, Constantine *et al.*, and Benjamin *et al.*, Powers of Attorney, appointing Julian Knowles, Keir Starmer, Saul Lehrfreund, Belinda Moffat, Yasmin Waljee and James Oury as representatives in the proceedings before the Inter-American Court.

1. Direct that the Republic of Trinidad and Tobago commute the death sentences of the 28 victims in 28 cases that are the subject of this proceeding, Case Nos. 11.787 (George Constantine), 11.814 (Wenceslaus James), 11.816 (Haniff Hilaire), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.043 (Samuel Winchester), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.129 (Naresh Boodram), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh), and to verify that the death sentence of the victim in Case No. 12.076 (Wayne Matthews) has been commuted as previously undertaken by the State following the proceedings before the Commission.⁴

2. Direct that the Republic of Trinidad and Tobago grant the victims in Case Nos. 12.052 (Martin Reid) and 12.148 (Peter Benjamin) effective remedies which include the exercise by the President of Trinidad and Tobago of his discretion to refer these cases to the Court of Appeal of Trinidad and Tobago to review the safety of their convictions in accordance with the due process protections prescribed under Article 8 of the Convention.

3. Direct that the Republic of Trinidad and Tobago provide appropriate and adequate compensation in connection with the execution of the victim Joey Ramiah in Case No. 12.129 (Naresh Boodram and Joey Ramiah) on June 4, 1999.

4. Direct that the Republic of Trinidad and Tobago adopt such legislative or other measures as may be necessary to ensure that

(a) the death penalty is not imposed in a manner inconsistent with the rights and freedoms guaranteed under the Convention, and in particular that it is not imposed through mandatory sentencing.

(b) the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect for condemned prisoners in Trinidad and Tobago.

(c) the conditions of detention in which the victims are held comply with the minimum standards governing the humane treatment of prisoners as required by the American Convention, and Article 5 thereof in particular.

(d) the rights to trial within a reasonable time under Articles 7(5) and 8(1) of the Convention are given effect in Trinidad and Tobago, including effective recourse to a competent court or tribunal for protection against acts that violate those rights.

(e) the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Trinidad and Tobago in appropriate cases through access to legal aid to pursue Constitutional Motions.

5. Direct that the Republic of Trinidad and Tobago pay reasonable compensation to the representatives of the victims for the expenses generated by the presentation of the victims' cases before the Inter-American Court, as the representatives have requested in their allegations on reparations.

⁴ See Commission's Application in *Constantine et al.*, p. 73.

II. GENERAL PRINCIPLES GOVERNING REPARATIONS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Honorable Court's jurisdiction to determine reparations and expenses flows from Articles 62 and 63(1) of the Convention.⁵ Article 63(1) of the Convention, which specifically addresses the matter of reparations, prescribes that

[i]f the Court finds there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

This Honorable Court has stated that Article 63(1) of the Convention codifies a rule of customary law that is also one of the fundamental principles of customary law, namely that every violation of an international obligation which results in harm creates a duty to make adequate reparation and to put an end to the consequences of the violation.⁶

In addition, this Honorable Court has declared that the reparation of harm brought about by the violation of an international obligation consists of full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.⁷ The Honorable Court has further noted the specific requirement under Article 63(1) of the Convention that the injured party shall be ensured the future enjoyment of the right or freedom that is found to have been violated.⁸

With regard to the various forms and modalities of effecting reparations for human rights violations, the Honorable Court has indicated that the rule of *restitutio in integrum* is only one of the means by which an international unlawful act may be redressed, as such reparation may not be possible, sufficient or appropriate in certain cases.⁹

Consistent with this approach, the Court has in past cases ordered reparations in a variety of form. These have included judgments of condemnation,¹⁰ orders to reinstate victims in employment and to reimburse lost salaries and other benefits,¹¹ and orders for the payment of

⁵ I/A Court H.R., Blake Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, para. 1.

⁶ I/A Court H.R., Velásquez Rodríguez Case, Compensatory Damages Judgment of July 21, 1989, Series C No. 7, para. 25, citing *Factory at Chorzów*, Jurisdiction, Judgment No. 8. 1927, P.C.I.J., Series A No. 9, p. 21. See also I/A Court H.R., Aloeboetoe *et al.* Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 10, 1993, Series C No. 15, para. 43; Blake Case, Reparations Judgment, *supra* note 5, para. 33.

⁷ Velásquez Rodríguez Case, Compensatory Damages Judgment, *supra* note 6, para. 26.

⁸ Aloeboetoe *et al.* Case, Reparations Judgment, *supra* note 6, para. 46.

⁹ Aloeboetoe *et al.* Case, Reparations Judgment, *supra*, note 6, paras. 43-49; Blake Case, Reparations Judgment, *supra* note 5, para. 42.

¹⁰ See e.g. Blake Case, Reparations Judgment, *supra* note 5, para. 55.

¹¹ See e.g. Loayza Tamayo Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 17, 1997, Series C No. 33, paras. 113-117.

compensatory damages including material and moral damages.¹² Other modes of reparation have included orders directing the investigation, prosecution and punishment of individuals responsible for human rights violations,¹³ the re-trial or release of individuals convicted of crimes through defective proceedings,¹⁴ and the adoption of internal legal measures necessary to adapt domestic laws to the American Convention on Human Rights.¹⁵

The Honorable Court has also ordered compensation to victims' representatives for the costs and expenses generated by the presentation of the victim's case in the domestic courts and before the organs of the inter-American system for the protection of human rights.¹⁶

III. APPROPRIATE REPARATIONS IN THE CASE OF HILAIRE, BENJAMIN AND CONSTANTINE *ET AL.* V. TRINIDAD AND TOBAGO

Applying the above principles to the present case, the Commission respectfully submits that several forms of reparations are appropriate in the event that the Court finds the violations of rights alleged as against the Republic of Trinidad and Tobago to have been substantiated. These include: declarations of the State's responsibility for the violations; orders directing the State to commute or verify the commutation of the death sentences of 29 victims, to re-try or release two victims, and to pay compensation in connection with the execution of one victim; orders directing the State to adopt such legislative or other measures as may be necessary to ensure that the rights and freedoms under the American Convention are given effect in Trinidad and Tobago; and an order directing the State to pay reasonable compensation to the victims' representatives for the expenses generated by the presentation of the victims' cases before the Inter-American Court.

A. Declarations of Violations

Article 63(1) of the American Convention predicates the determination of reparations upon a finding by the Honorable Court that there has been a violation of a right or freedom protected by the Convention. A declaration or judgment of condemnation may also in and of itself constitute a form of reparation.¹⁷

¹² See e.g. Loayza Tamayo Case, Reparations Judgment, *supra* note 11, paras. 133, 142-143; Blake Case, Reparations Judgment, *supra* note 5, paras. 55-58; I/A Court H.R., El Amparo Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 14, 1996, Series C No. 28, para. 35; I/A Court H.R., Castillo Páez Case, Reparations, (Art. 63(1) American Convention Human Rights), Judgment of November 27, 1998, Series C No. 43, para. 84.

¹³ See e.g. I/A Court H.R., Paniagua Morales *et al.* Case, Judgment of March 8, 1998, Series C No. 37, para. 173; Blake Case, Reparations Judgment, *supra* note 5, paras. 64-65; Loayza Tamayo Case, Reparations Judgment, *supra* note 11, paras. 170-171.

¹⁴ See e.g. I/A Court H.R., Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, Series C No. 52, para. 226(13); I/A Court H.R., Loayza Tamayo Case, Judgment of September 17, 1997, Series C No. 33, paras. 83-84.

¹⁵ See e.g. Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 222; Loayza Tamayo Case, Reparations Judgment, *supra* note 11, para. 162-164.

¹⁶ See e.g. Loayza Tamayo Case, Reparations Judgment, *supra* note 11, paras. 178-180; I/A Court H.R., Villagrán Morales *et al.* Case ("The Street Children" Case), Reparations (Art. 63(1) American Convention on Human Rights), Judgment of May 26, 2001, Series C No. 77, para. 108.

¹⁷ See e.g. Blake Case, Reparations Judgment, *supra* note 5, para. 55; Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 225; Villagrán Morales Case, Reparations Judgment *supra* note 16, para. 88. See *similarly* Eur. Court H.R., Silver v. United Kingdom, (1988) 13 E.H.R.R. 582.

The Commission therefore first respectfully requests that the Honorable Court declare the international responsibility of the Republic of Trinidad and Tobago for the following violations of the American Convention on Human Rights in respect of some or all of the victims in the present cases:

1. violating the rights of the 32 victims in Case Nos. 11.787 (George Constantine), 11.814 (Wenceslaus James), 11.816 (Haniff Hilaire),¹⁸ 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.043 (Samuel Winchester), 12.052 (Martin Reid), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne Matthews), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.129 (Naresh Boodram and Joey Ramiah), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.148 (Peter Benjamin), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh) under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by sentencing these victims to mandatory death penalties.
2. further violating the rights of victim Joey Ramiah in Case No. 12.129 (Naresh Boodram and Joey Ramiah) under Articles 4(1), 5(1) and 5(2) of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by executing Mr. Ramiah pursuant to a mandatory death sentence and while his complaint was pending before the Inter-American human rights system.
3. violating the rights of the 32 victims in Case Nos. 11.787 (George Constantine), 11.814 (Wenceslaus James), 11.816 (Haniff Hilaire), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.043 (Samuel Winchester), 12.052 (Martin Reid), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne Matthews), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.129 (Naresh Boodram and Joey Ramiah), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.148 (Peter Benjamin), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh) under Article 4(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide these victims with an effective right to apply for amnesty, pardon or commutation of sentence.
4. violating the rights of the 24 victims in Case Nos. 11.787 (George Constantine), 11.816 (Haniff Hilaire), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne Matthews), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh) to be tried within a reasonable time and to a fair trial under Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delays in the victims' criminal proceedings.
5. violating the rights of the 24 victims in Case Nos. 11.787 (George Constantine), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne

¹⁸ Owing to the expedited, complex and evolutive procedural history of these cases, in its reports under Article 50 of the Convention the Commission determined certain violations in relation to the victims in the Constantine *et al.* and Benjamin *et al.* Cases that it did not find regarding parallel issues in its first Hilaire Case. These included in particular a violation of Article 8(1) of the Convention in relation to the mandatory nature of the death penalty in Trinidad and Tobago, a violation of Article 4(6) of the Convention in relation to the absence of an effective right to apply for amnesty, pardon or commutation of sentence in Trinidad and Tobago, and a violation of Article 8(1) of the Convention in relation to the delay in bringing Mr. Hilaire to trial.

The Commission is aware of the requirement under Article 61(2) of the Convention prescribing completion of the procedures set forth in Articles 48 to 50 of the Convention as a precondition to the Court's authority to hear a case. For reasons to be elaborated upon during the hearing in this matter, however, the Commission submits that Article 61(2) of the Convention, when interpreted in light of the object and purpose of the processes under Articles 48 to 50 of the Convention, should not in the circumstances of this case be applied so as to preclude the Honorable Court from considering these additional violations of Article 4(6) and 8 in respect of Mr. Hilaire as with the other similarly-situated victims in these consolidated complaints.

Matthews), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh) under Article 25 of the Convention, together with the State's obligations under Article 2 of the Convention, all in conjunction with violations of Article 1(1) of the Convention, by failing to adopt legislative or other measures necessary to give effect to the right to be tried within a reasonable time under Articles 7(5) and 8(1) of the Convention.

6. violating the rights of the 21 victims in Case Nos. 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.021 (Darrin Roger Thomas), 12.043 (Samuel Winchester), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne Matthews), 12.082 (Alfred Frederick), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.129 (Naresh Boodram and Joey Ramiah), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.149 (Krishendath Seepersad), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh) under Articles 5(1) and 5(2) of the Convention, the rights of the victim in Case No. 12.157 (Francis Mansingh) under Article 5(4) of the Convention, and the rights of the victims in Case Nos. 12.149 (Krishendath Seepersad) and 11.816 (Haniff Hilaire) under Article 5(6) of the Convention, all in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' treatment and conditions of detention during their criminal proceedings.
7. violating the rights of the victims in Case No. 12.052 (Martin Reid) under Articles 8(1) and 8(2)(c) of the Convention and Case No. 12.148 (Peter Benjamin) under Article 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, as a consequence of serious defects in the fairness of the trials that led to their convictions.
8. violating the rights of the victims in Case Nos. 11.853 (Keiron Thomas) and 12.152 (Narine Sooklal) under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, based upon errors in their pre-trial or appeal proceedings.
9. violating the rights of the 11 victims in Case Nos. 11.787 (George Constantine), 12.005 (Wilson Prince), 12.042 (Mervyn Edmund), 12.052 (Martin Reid), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.093 (Natasha De Leon), 12.112 (Phillip Chotalal), 12.140 (Wilberforce Bernard), 12.153 (Amir Mowlah) and 12.156 (Mervyn Parris) under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to make legal aid effectively available to these victims to pursue Constitutional Motions in the domestic courts in connection with their criminal proceedings.

B. Commutation of Death Sentences

In the present proceeding before the Honorable Court, the Commission alleges that the State is responsible for violating the rights of all 32 victims under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, by sentencing them to mandatory death penalties.

In particular, the Commission contends that once the victims were found guilty of the crime of murder, the law in Trinidad and Tobago imposed the death penalty automatically, without any judicial determination of whether the death penalty was a permissible or appropriate punishment, in light of such factors as the victim's character or record, the nature or gravity of the particular offense, or the subjective factors which may have motivated the victim's conduct. In this manner, the process to which the victims have been subjected would deprive them of their most fundamental right, their right to life, without any consideration of their personal circumstances or those of their offenses.¹⁹ It is the Commission's submission that imposing the death penalty in this manner is both inhumane and unfair and results in the arbitrary deprivation of life.

¹⁹ See Commission's Application in Hilaire, pp. 9, 30; Commission's Application in Constantine *et al.*, pp. 42-43, 76-77; Commission's Application in Benjamin *et al.*, pp. 28-29, 46-47.

In determining the appropriate reparations for these violations, the Commission first submits that consideration must be given to the exceptional, irreparable and permanent nature of the death penalty as a form of punishment and the limited circumstances in which this punishment may be imposed under the American Convention. As this Honorable Court has recognized previously, the text of Article 4 of the American Convention as a whole reveals a clear tendency to restrict the scope of the death penalty both as far as its imposition and its application are concerned.²⁰ In the context of due process protections in particular, the Court has emphasized that States must exercise the most rigorous control for observance of judicial guarantees in death penalty cases given the exceptionally grave and irreparable nature of the penalty that jeopardizes the supreme right to life.²¹ Consistent with these fundamental precepts, the Commission submits that that in the face of a death sentence that has been imposed in violation of the basic protections under the Convention, any effective reparation must first and foremost prevent the implementation of that sentence. Owing to the irreparable and permanent consequences of this form of punishment, any lesser remedy could not be considered effective or equitable.

As to the specific remedy of commutation of sentence, the Commission's relies by analogy upon the previous findings of this Honorable Court concerning the legal effects of defects in processes that lead to criminal convictions. The Court has held that a serious flaw in the process underlying a judgment nullifies the judgment and may require the issuance of a new judgment following a further trial in which the guarantees of due process of law are assured.²² In reaching this conclusion, the Court has made the following pertinent observations:

If the proceedings upon which the judgment rests have serious defects that strip them of the efficacy they must have under normal circumstances, then the judgment will not stand. It will not have the necessary underpinning, which is litigation conducted by law. The concept of nullification of a proceeding is a familiar one. With it, certain acts are invalidated and any proceedings that followed the proceeding which the violation that caused the invalidation occurred, are repeated. This, in turn, means that a new judgment is handed down. The legitimacy of the judgment rests upon the legitimacy of the process.²³

In the circumstances of all of the present cases, with the exception of Case Nos. 12.052 (Martin Reid) and 12.148 (Peter Benjamin) as discussed below, the alleged violations of the American Convention pertain not to the proceedings underlying the victims' convictions for the crime of murder, but rather the process by which the victims were sentenced to death following their convictions. Applying the principles articulated by the Honorable Court as set out above, the Commission respectfully submits that the appropriate remedy in order to repair the consequences of the violations alleged in respect of the victims' death sentences is commutation of those sentences to a non-capital punishment where such a remedy is still possible. This form of reparation may be considered effective, in that it ensures that the victims benefit from the remedies granted in respect of these and other human rights violations that they have suffered, and takes due account of the exceptional and permanent nature of the

²⁰ I/A Court H.R., Advisory Opinion OC-3/83 of September 8, 1983 "Restrictions to the Death Penalty (Articles 4(2) and 4(4) of the American Convention on Human Rights)", Ser. A No. 3 (1983), para. 52.

²¹ I/A Court H.R., Advisory Opinion OC-16/99 of October 1, 1999 "The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law", Ser. A No. 16 (1999), paras. 135, 136.

²² Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 221.

²³ Castillo Petruzzi *et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 219.

death penalty as a form of punishment. An order for commutation is also consistent with the reparations directed by other international human rights tribunals in similar circumstances.²⁴

Finally, the Commission submits that any alternative punishment to which the victims' death sentences are commuted must itself comply with the provisions of the American Convention and with Article 5 thereof in particular. In this regard, the Commission refers to and endorses the representatives' submission in their allegations on reparations that the appropriate remedy in the present cases is commutation of the death sentences to life imprisonment in accordance with Trinidad and Tobago law.

C. Re-Trial or Release of Victims in Case Nos. 12.052 (Martin Reid) and 12.148 (Peter Benjamin)

As alluded to above, the Honorable Court has previously recognized that all litigation is a series of juridical proceedings that are chronologically, logically and teleologically interlinked, and that the validity of each juridical proceeding influences the validity of the whole, since each is built on the one that preceded it, and will in turn be the foundation of the one that follows it.²⁵ On this basis, the Court has determined that a serious flaw in the process underlying a judgment nullifies the judgment and may require the issuance of a new judgment following a further trial in which the guarantees of due process of law are assured.²⁶

The Court has also suggested that where the violation of the rights enshrined in the Convention to the detriment of a particular victim include the prohibition of double jeopardy, the appropriate reparation entails requiring the State to order the victim's release within a reasonable time.²⁷

In the cases of Martin Reid (Case No. 12.052) and Peter Benjamin (Case No. 12.148), the Commission contends that the State is responsible for serious violations of the victims' rights to due process under Article 8 of the American Convention in connection with the trials that resulted in their convictions, and that these violations may have had an impact on the determination of the victims' guilt or innocence.

In particular, the Commission submits that the Republic of Trinidad and Tobago is responsible for violating Mr. Reid's right under Article 8(2)(c) of the Convention to adequate time and means for the preparation of his defense by failing to disclose a highly probative witness statement to the victim prior to or during his trial.²⁸ The Commission also contends that in the case of Peter Benjamin, the Republic of Trinidad and Tobago is responsible for violating Mr.

²⁴ See e.g. UNHRC, *Eversley Thompson v. St. Vincent & the Grenadines*, Communication No. 806/1998, U.N. Doc. CCPR/C/70/D/806/1998 (5 December 2000) (finding the imposition of the death penalty through mandatory sentencing to have violated the victim's rights under Article 6(1) of the ICCPR and that as a consequence "the State party is under an obligation to provide Mr. Thompson an effective and appropriate remedy, including commutation. The State party is under an obligation to take measures to prevent similar violations in the future."); UNHRC, *Lubuto v. Zambia*, Communication No. 390/1990, U.N. Doc. CCPR/C/55/D/390/1990/Rev. 1 (October 1995) (finding the death penalty to have been imposed for a crime that did not constitute a "most serious" crime for the purposes of Article 6 of the ICCPR and specifying commutation of sentence as the appropriate and effective remedy).

²⁵ *Castillo Petrucci et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 218.

²⁶ *Castillo Petrucci et al.* Case, Judgment of May 30, 1999, *supra* note 14, para. 221.

²⁷ *Loayza Tamayo Case*, Judgment of September 17, 1997, *supra*, para. 84.

²⁸ See Commission's Application in *Constantine et al.*, pp. 109-110.

Benjamin's right to a fair trial under Article 8(1) of the Convention by failing to provide him with an adequate opportunity to challenge his conviction based upon highly probative and potentially exculpatory ballistics evidence.²⁹

In these circumstances, the Commission argues that the violations alleged have deprived the victims' convictions and sentences of their validity and should result in their nullification. Further, in accordance with the Court's jurisprudence, the Commission contends that this should also ordinarily result in new trials in which the requirements of due process of law are guaranteed. Where, however, such trials are not possible, for example where re-trials will result in a violation of the *non-bis-in-idem* principle, the appropriate reparation should be the victims' release.

Accordingly, the Commission respectfully requests that the Honorable Court direct the Republic of Trinidad and Tobago to guarantee the victims in Case Nos. 12.052 (Martin Reid) and 12.148 (Peter Benjamin) effective remedies, which include procedures in which the due guarantees of due process of law are assured. The Commission endorses the representatives' submission in their allegations on reparations that the Honorable Court direct that the State provide an effective remedy by requiring the exercise of the President's discretion to refer the cases to the Court of Appeal of Trinidad and Tobago to review the safety of the convictions and quash the convictions or order a re-trial as necessary.

D. Compensation for the Execution of the Victim Joey Ramiah in Case No. 12.129 (Naresh Boodram and Joey Ramiah)

As the Commission has submitted in its Application in the Constantine *et al.* matter,³⁰ and as the Honorable Court is aware through its provisional measures proceedings in the James *et al.* Case, the Republic of Trinidad and Tobago executed the victim Joey Ramiah in Case No. 12.129 by hanging on June 4, 1999. The State perpetrated this execution despite the fact that Mr. Ramiah's case was pending before the inter-American human rights system. It also did so notwithstanding the amplification by the Honorable Court on May 25, 1999 of its provisional measures in the James *et al.* Case to require the State to take all necessary measures to preserve Mr. Ramiah's life so as not to hinder the processing of his case before the Inter-American system. In granting the provisional measures in the James *et al.* case, the Honorable Court specifically considered that

should the State execute the alleged victims, it would create an irremediable situation incompatible with the object and purpose of the Convention, would amount to a disavowal of the authority of the Commission, and would adversely affect the very essence of the Inter-American system.³¹

The Commission therefore submits that, by executing Mr. Ramiah in open contempt of the Court's order, the State is responsible for further serious violations of Articles 4(1), 5(1) and 5(2) of the Convention in respect of Mr. Ramiah, by failing to respect his life and arbitrarily depriving him of his life contrary to Article 4(1) of the Convention, failing to respect his mental, physical and moral integrity contrary to Article 5(1) of the Convention, and subjecting him to cruel, inhuman or degrading punishment or treatment contrary to Article 5(2) of the Convention.

²⁹ See Commission's Application in Benjamin *et al.*, pp. 79-80.

³⁰ See Commission's Application in Constantine *et al.* v. Trinidad and Tobago, p. 96 and Exhibit 20(e).

³¹ I/A Court H.R., James *et al.* Cases, Order for Provisional Measures of 25 May 1999, Series E No. 2.

Of pertinence in these circumstances, the Honorable Court has held that in as much as the rule *restitutio in integrum* cannot be enforced in cases in which an individual is found to have been arbitrarily deprived of his or her life contrary to Article 4 of the American Convention, reparation to the victim's next of kin and dependents must take alternative forms, such as pecuniary compensation. Further, while the Court has held that each case must be examined individually as to damages, it has also indicated that in particularly grave circumstances where a judgment of condemnation is not considered adequate *per se*, the Court may award compensation for moral damages.³²

Moral damages in turn have been considered by the Honorable Court to incorporate such impairment as physical, mental and emotional harm and suffering resulting to the victim and his or her next of kin from the determined violations and their effects.³³

In the circumstances of Joey Ramiah's case, the Commission submits that the nature of the violation committed against Mr. Ramiah may be considered to have resulted in physical, mental and emotional suffering, both to Mr. Ramiah through his unlawful execution by hanging, and to his next of kin. In this regard, as noted in the representatives' allegations on reparations, Mr. Ramiah's only known relative is an elderly mother who became a recluse following Mr. Ramiah's execution and with whom the victims' representatives have thus far been unable to communicate.³⁴ This Honorable Court has held, however, that moral damage may be presumed in case of a parent who loses a child, on the basis that "it is essentially human for all persons to feel pain at the torment of their child."³⁵ Therefore, in light of the circumstances of the present case, the Commission submits that it would be appropriate for the Honorable Court to find that both Mr. Ramiah and his mother have suffered moral damage as a result of Mr. Ramiah's unlawful execution by the State, and to direct the Republic of Trinidad and Tobago to pay fair compensation as reparation for that damage.

In determining the nature and amount of any compensation that should be paid in relation to Mr. Ramiah's execution, the Commission also submits that consideration should be given to the particularly deliberate and egregious nature of the State's conduct. Trinidad and Tobago intentionally deprived Mr. Ramiah of his most fundamental right, his right to life, in direct contravention of a binding Order of this Honorable Court. In so doing, the State denied Mr. Ramiah the protection to which he was entitled under the inter-American human rights system, including the right to have his complaint finally determined by the organs of the system and in the interim to preserve his ability to receive a decision from the Court that could be effectively implemented.

The Commission refers in this regard to previous judicial opinions by the President of this Honorable Court, Judge Antônio A. Cançado Trindade, in which Judge Cançado has emphasized that in the context of international human rights treaties, the determination of state

³² See e.g. Blake Case, Reparations Judgment, *supra* note 5, para. 55; Aloeboetoe *et al.* Case, Reparations Judgment, *supra* note 6, paras. 47, 49; El Amparo Case, Reparations Judgment, *supra* note 12, para. 16.

³³ See e.g. Velásquez Rodríguez Case, Compensatory Damages, *supra* note 6, para. 27; El Amparo Case, Reparations Judgment, *supra* note 12, paras. 33-37; Blake Case, Reparations Judgment, *supra* note 5, paras. 56-57.

³⁴ It is anticipated that further evidence regarding efforts to communicate with Mr. Ramiah's mother will be presented during the merits hearing in this case.

³⁵ See e.g. Aloeboetoe *et al.* Case, Reparations Judgment, *supra* note 6, para. 76; Loayza Tamayo Case, Reparations Judgment, *supra* note 11, para. 142; Paniagua Morales Case, Reparations Judgment, *supra* note 13, para. 108.

responsibility and reparations for violations of those treaties cannot be divorced from the totality and gravity of the nature of violations involved in a case, particularly those involving such gross violations as forced disappearances or extra-judicial, arbitrary or summary executions.³⁶ Similarly, in the present case, the Commission submits that the issue of reparations should not be determined absent consideration of the totality and gravity of the violation committed in respect of Mr. Ramiah. Not only did Joey Ramiah's execution constitute a deliberate, irreparable and permanent violation of Mr. Ramiah's most fundamental rights, it amounted to a blatant attempt to undermine the efficacy of the inter-American system for the protection of human rights.

Based upon these particular circumstances, the Commission respectfully requests that any compensation awarded by the Honorable Court reflects the exceptional harm that the State's conduct caused to Mr. Ramiah and to the efficacy of the inter-American human rights system.

As to the beneficiaries of such reparations, the Honorable Court has recognized that compensation for moral damage is appropriately awarded to a victim of violations and, in certain circumstances, injured third parties, including parents of victims. With regard to succession, the Court has observed, without establishing rules that are necessarily applicable or appropriate in all cases, that where there is no spouse or children private common law recognizes the ascendants as heirs.³⁷ In Mr. Ramiah's circumstances his only known successor is his mother who, as argued above, is also entitled to compensation based upon the moral damage she has suffered.

In these circumstances, the Commission submits that the appropriate reparation is for the Honorable Court to direct Trinidad and Tobago to pay any compensation to the benefit of Mrs. Ramiah, to inform Mrs. Ramiah of the compensation award, and to provide her with an reasonable opportunity to claim that compensation.

E. Adoption of Necessary Legislative Measures

It is a fundamental principle that every violation of an international obligation which results in harm creates a duty to make adequate reparation and to put an end to the consequences of the violation.³⁸ Accordingly, the Honorable Court has held that a State may be obliged 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.³⁹

Also according to the case law of the Honorable Court, States Parties to the American Convention may not order measures that violate the rights and freedoms recognized therein.⁴⁰

³⁶ See e.g. Blake Case, Reparations Judgment, *supra* note 5, Separate Opinion of Judge A.A. Cançado-Trinidade, paras. 1, 4, 36-44; Villagrán Morales Case, Reparations Judgment, *supra* note 16, Separate Opinion of Judge A.A. Cançado-Trinidade, para. 36.

³⁷ Aloeboetoe Case Reparations Judgment, *supra* note 6, paras. 54, 62, 76.

³⁸ Velásquez Rodríguez Case, Compensatory Damages Judgment, *supra* note 6, para. 25.

³⁹ Castillo Petruzzi Case, Judgment of May 30, 1999, *supra* note 14, para. 222.

⁴⁰ I/A Court H.R., Suarez Rosero Case, Judgment of November 12, 1997, Series C No. 35, para. 97. See also I/A Court H.R., Advisory Opinion OC-14/94 of December 9, 1994 "International Responsibility for the Promulgation of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)," Series A No. 14, para. 36.

To the contrary, Article 2 of the American Convention places a positive obligation on State Parties to give domestic legal effect to the Convention's protections, by adopting "such legislative or other measures as may be necessary to give effect to those rights or freedoms."

Consistent with the above doctrine, the Honorable Court has specifically held that the promulgation of a law that manifestly violates the obligations assumed by a State upon ratifying or acceding to the American Convention constitutes a violation of that treaty and, if such violation affects the guaranteed rights and liberties of specific individuals, gives rise to international responsibility for the State in question.⁴¹ The Court has likewise determined 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 above requirements 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.⁴²

In this context, the Commission respectfully submits that reparation through legislative or other measures in Trinidad and Tobago is appropriate, and indeed crucial, in respect of four claims presented to the Court in this case in order to remedy past violations and prevent the repetition of similar violations in the future and thereby ensure the efficacy of the inter-American human rights system. These claims are: the mandatory nature of the death penalty under the law in Trinidad and Tobago; the absence in Trinidad and Tobago of an effective right to apply for amnesty, pardon or commutation of sentence; the absence under the law in Trinidad and Tobago of the right to trial within a reasonable time; and the absence in Trinidad and Tobago of effective access to legal aid in appropriate cases to pursue Constitutional Motions.

1. Mandatory Nature of the Death Penalty

As elaborated upon above, the Commission contends that the Republic of Trinidad and Tobago has violated the rights of the 32 victims in all 31 cases presently before the Court under Articles 4, 5 and 8 of the American Convention by sentencing those victims to mandatory death penalties.

These violations in turn arise from the application to the victims of particular legislation in Trinidad and Tobago, namely section 4 of Trinidad and Tobago's *Offences Against the Person Act*,⁴³ which prescribes death as the automatic and mandatory punishment when an individual is found guilty of murder.

The Commission therefore submits that an appropriate form of reparation in the circumstances of the present case is to order the Republic of Trinidad and Tobago, in compliance with its obligation under Article 2 of the Convention, to take such legislative or other measures as may be necessary, including amending pertinent provisions of the *Offences Against the Persons Act*, to end the imposition of the death penalty through mandatory

⁴¹ OC-14/94, *supra* note 40, para. 50.

⁴² See e.g. I/A Court H.R., "The Last Temptation of Christ Case" (Olmedo Bustos *et al.* v. Chile), Judgment of February 5, 2001, Series C No. 73, paras. 98-99; Loayza Tamayo Case, Reparations Judgment, *supra* note 11, paras. 162-164, 192(5). See similarly UNHRC, Fals Borda v. Colombia, Communication No. 11/46 (27 July 1982), U.N. GAOR, 37th Sess., Supp. No. 40 (A/37/40), p. 193, para. 15.

⁴³ *Offences Against the Person Act*, (3 April 1925), Laws of Trinidad and Tobago, Ch. 11:08, Commission's Application in Hilaire, Exh. 9; Commission's Application in Constantine *et al.*, Exh. 7; Commission's Application in Benjamin *et al.*, Exh. 8.

sentences. As argued in the Commission's Applications, this also necessarily requires the State to provide for a method of individualized sentencing in determining whether the death penalty is a permissible or appropriate punishment in particular cases.⁴⁴

Also in this regard, the Commission supports the submission by the victims' representatives that in order to ensure that the right to individualized sentencing and, as discussed below, the right to apply for amnesty, pardon or commutation of sentence, are real and effective rights, Trinidad and Tobago must also take the legislative or other measures necessary to ensure properly funded legal representation to enable indigent prisoners to prepare and present their cases to the appropriate authorities.

2. Right to Apply for Amnesty, Pardon or Commutation of Sentence

The Commission argues in the merits of this case that the Republic of Trinidad and Tobago has violated the rights of the victims in all 31 cases presently before the Court under Article 4(6) of the American Convention by failing to provide these victims with effective or adequate opportunities to apply for amnesty, pardon or commutation of sentence in Trinidad and Tobago.

These violations in turn arise from the application to the victims of specific legislation in Trinidad and Tobago, in particular sections 88 to 89 of the Constitution of Trinidad and Tobago and judicial interpretations of those provisions which govern the application of the Prerogative of Mercy in Trinidad and Tobago.⁴⁵

In particular, the Commission has argued that under the Constitution of the Republic of Trinidad and Tobago, the Advisory Committee on the Power of Pardon is charged with considering and making recommendations to the Minister of National Security as to whether an offender sentenced to death ought to benefit from the President's discretionary power of pardon under Section 87 of the Constitution. According to the law prevailing at the times relevant to the victims' complaints, condemned prisoners had no right to apply for amnesty, pardon or commutation of sentence, to be informed of the time when the Committee would meet to discuss his or her case, to make oral or written submissions to the Committee, or to receive a decision from the Committee within a reasonable time prior to his or her execution. Moreover, the exercise of the power of pardon was not the subject of legal rights under domestic law and therefore could not be the subject of judicial review. The Commission has therefore argued that such circumstances failed to afford the victims an effective right to apply for amnesty, pardon or commutation of sentence in violation of Article 4(6) of the Convention.⁴⁶

The Commission therefore respectfully submits that an appropriate form of reparation in the circumstances of the present case is to direct the Republic of Trinidad and Tobago, in compliance with its obligation under Article 2 of that Convention, to adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Trinidad and Tobago. In light of the recent decision of the Judicial Committee of the Privy

⁴⁴ See e.g. Commission's Application in *Constantine et al.*, pp. 61-69.

⁴⁵ See *Constitution of Trinidad and Tobago, Enacted as the Schedule to the Constitution of the Republic of Trinidad and Tobago Act* (Ch. 1:01). See Commission's Application in *Hilaire*, Exh. 10; Commission's Application in *Constantine et al.*, Exh. 25; Commission's Application in *Benjamin et al.*, Exh. 9.

⁴⁶ See Commission's Application in *Constantine et al.*, p. 97; Commission's Application in *Benjamin et al.*, p. 66-69.

Council in the case *Neville Lewis et al. v. Attorney General of Jamaica*, discussed in the Commission's Application in the *Benjamin et al.* matter,⁴⁷ in which that Court appears to have departed from its prior precedents by finding that the procedure for mercy must be exercised by procedures that are fair and proper, compliance with this form of reparation may involve ascertaining what measures Trinidad and Tobago has taken to comply with the Privy Council's decision.

3. Provision of Adequate Conditions of Detention

The Commission has alleged in its application that the Republic of Trinidad and Tobago is responsible for violating the rights of 22 victims under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' treatment and conditions of detention in connection with the criminal proceedings against them. The Commission emphasizes in this regard that these violations are by their nature ongoing and therefore require appropriate reparation not only to address past injury but to prevent further similar violations in the future.

The Commission intends to demonstrate, through documentary and testimonial evidence presented during the merits phase of this proceeding, that the treatment and conditions to which the victims have been subjected manifestly violate the standards of humane treatment under Article 5 of the Convention. The evidence will illustrate, *inter alia*, that during their pre-trial detention, the victims suffered serious overcrowding, having been incarcerated in cells approximately nine feet by six feet in size with five or more other prisoners. During this time, the victims were often forced to sleep standing up or on the floor due to overcrowding. In addition, during both their pre-trial and post-conviction detention, the cells in which the victims were incarcerated had no integral sanitation, and as a consequence the victims were forced to use a plastic bucket, or "slop pail", as a toilet as well as for personal hygiene purposes, for example to brush their teeth. No natural light has been provided in the cells, and any artificial lighting has been dim and illuminated 24 hours per day. The cells have been poorly ventilated and the victims have been locked in their cells for 23 or more hours per day. In respect of their post-conviction detention in particular, the victims have been held in solitary confinement, and are given outings for fresh air and exercise infrequently, some only once or twice per month. There are no educational or recreational facilities available to the victims, and certain victims' access to medical and dental treatment has been inadequate, as visits by medical and dental personnel are infrequent and requests for medical assistance have been ignored. Several victims, including those in Case Nos. 12.075 (Noel Seepersad), 12.141 (Steve Mungroo) and 12.157 (Francis Mansingh) also suffered violence at the hands of prison officials. Moreover, as particularized below, the victims have been required to endure these conditions for prolonged periods of time pending the final determinations of their criminal proceedings.⁴⁸

It is anticipated that the testimonial evidence presented during the merits hearing in this matter will elaborate upon the generally inadequate nature of conditions within the Trinidad and Tobago prison system, and will also address in particular the devastating impact that

⁴⁷ See Commission's Application in *Benjamin et al.*, pp. 66-67 and Exhibit 30.

⁴⁸ See Application in *Constantine et al.*, pp. 105-106, Exhs. 1(d)-23(d); Application in *Benjamin et al.*, pp. 73-74, Exhs. 2(d), 4(d), 5(d), 6(d), 7(d).

prolonged exposure to these conditions has upon the physical and mental health of prisoners.⁴⁹

This Honorable Court has emphasized in respect of the issue of conditions of detention that a state, as the authority responsible for the facilities within which prisoners are detained, must guarantee to those prisoners the right to life and the right to humane treatment, including the right to live in conditions that are compatible with their personal dignity.⁵⁰ The Commission submits that Trinidad and Tobago has manifestly failed in this obligation, a submission that is consistent with the findings of other international human rights bodies.⁵¹ In light of the fact that the relief of commutation requested by the Commission, if granted, will potentially result in the continued detention of 27 of the victims in the present cases, the Commission submits that it is both appropriate and critical for the Republic of Trinidad and Tobago to take the necessary measures to ensure that the conditions in which the victims are detained comply with the minimum standards for the humane treatment of prisoners as required by the American Convention and other modern international instruments.⁵² Other international governmental supervisory bodies, including the European Commission on Human Rights,⁵³ the U.N. Human Rights Committee,⁵⁴ and the Council of Europe's Committee of Ministers,⁵⁵ have taken similar approaches in responding to determined inadequacies in conditions of detention. Indeed, it is only by improving present conditions that Trinidad and Tobago can be considered to fulfill its obligation to prevent similar violations in the future.

⁴⁹ The Commission anticipates presenting the evidence of three witnesses in particular on the issue of prison conditions in Trinidad and Tobago, one through oral testimony (Ms. Gaiety Pargass, Barrister and London Panel Representative in Trinidad and Tobago) and two through written testimony in a joint expert report (Baroness Vivien Stern, Honorary Secretary General of Penal Reform International and honorary Fellow of the London School of Economics, and Andrew Coyle, a criminologist with 25 years' experience at a senior level in the prison services of the United Kingdom).

⁵⁰ I/A Court H.R., Case of Neira Alegria and Others, Judgment of 19 January 1995, Ser. C No. 20, para. 60.

⁵¹ See e.g. UNHRC, Concluding Observations and Comments on the Joint Third and Fourth Periodic Report Submitted by Trinidad and Tobago Under Article 40 of the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/CO/70/TTO (3 November 2000), para. 17 (finding prison conditions in out-dated establishments in Trinidad and Tobago to be incompatible with article 10 of the ICCPR).

⁵² With regard to indicia of contemporary international requirements for the conditions of prisoners, the Commission notes that the recent Rome Statute for an International Criminal Court explicitly recognizes the entitlement of all convicted prisoners to minimum standards of humane treatment in their conditions of detention regardless of the seriousness of the crimes for which they are incarcerated. According to Article 106 of the Rome Statute, the conditions of imprisonment of individuals sentenced by the International Criminal Court to terms of imprisonment "shall be consistent with widely accepted international treaty standards governing treatment of prisoners." By ratifying the Rome Statute on April 6, 1999, the Republic of Trinidad and Tobago appears to have acknowledged the necessity of compliance with these minimum international standards. Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (1998).

⁵³ See e.g. Eur. Comm. H.R., The Greek Case, (1969) Yearbook of the European Convention on Human Rights, pp. 505, 514-515 (concluding that conditions of detention imposed upon political prisoners in Greece in the mid to late-1960's violated article 3 of the European Convention on Human Rights and proposing, *inter alia*, that certain detention facilities be monitored, corrected or discontinued).

⁵⁴ See e.g. UNHRC, Barbato v. Uruguay, Communication No. 84/1981 (21 October 1982), U.N. GAOR, 38th Sess., Supp. No. 40 (A/38/40), p. 124, para. 11 (finding violations of a detained victim's rights under article 9 and 14 of the ICCPR and concluding further that the State party was under an obligation in respect of the victim to "ensure strict observance of all the procedural guarantees prescribed by article 14 of the Covenant as well as the rights of detained persons set forth in articles 7, 9 and 10 of the Covenant."); UNHRC, Estradet v. Uruguay, Communication No. 105/1981, para. 10.2.

⁵⁵ See e.g. Council of Europe, Committee of Ministers, Recommendation No. R(99) 22 of the Committee of Ministers to Member States Concerning Prison Overcrowding and Prison Population Inflation, adopted by the Committee of Ministers on 30 September 1999, 681st meeting of the Ministers' Deputies (recommending, *inter alia*, that the governments of Council of Europe member states take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply principles set out in an appendix to the Recommendation. These principles include, for example, the need to set a maximum capacity for penal institutions in order to avoid excessive levels of overcrowding).

4. Right to Trial Within a Reasonable Time

The Commission has argued before the Honorable Court that the State is responsible for several violations of the American Convention in relation to the delay in bringing the victims in 24 of the cases presently before the Court to trial on the murder charges against them. The Commission submits in particular that the State is responsible for violating the victims' rights under Articles 7(5) and 8(1) of the Convention due to the lengths of the delays in the victims' criminal processes. It has also argued that the State has failed to provide under its domestic law for the right to trial within a reasonable time, which omission violates the State's obligations under Article 2 of the Convention, as well as the victims' rights under Article 25 of the American Convention to effective recourse to a competent court or tribunal for protection against acts that violate Articles 7(5) and 8(1) of the Convention.

As the Commission's allegations and evidence in this proceeding will indicate, each of the cases in which the issue of delay has been raised involved a cumulative pre-trial delay of more than two years and none of the cases has been disposed of between arrest and final appeal in less than four years. Moreover, some of the victims were held in pre-trial detention for close to seven years and experienced delays of almost 12 years between their arrests and their final appeals.⁵⁶

These inexcusable and unjustified delays are in turn intimately connected with the absence of any law in Trinidad and Tobago prohibiting such delays in criminal proceedings.⁵⁷

The Commission therefore respectfully requests an order compelling the Republic of Trinidad and Tobago, in compliance with its obligation under Article 2 of the Convention, to take such legislative or other measures as may be necessary to ensure that the rights under Articles 7(5) and 8(1) of the Convention to trial within a reasonable time are ensured and respected in Trinidad and Tobago, including effective recourse to a competent court or tribunal for protection against acts that violate those rights.

5. Right to a Fair Trial and to Judicial Protection Through Access to Constitutional Motions

Finally, the Commission has contended that the Republic of Trinidad and Tobago is responsible for violations of the rights of the victims in 11 cases presently before the Court under Articles 8(1) and 25 of the Convention by failing to make legal aid effectively available to the victims to pursue Constitutional Motions in the domestic courts in connection with the criminal proceedings against them.

More specifically, the documentary and testimonial evidence presented during the merits phase of this proceeding will illustrate that, while legal aid appears to be potentially available in Trinidad and Tobago to pursue Constitutional Motions as a matter of law, as a matter of fact legal aid is rarely, if ever, granted to condemned prisoners to pursue Constitutional Motions in death penalty cases. It will also indicate that in some circumstances

⁵⁶ See Commission's Application in *Hilaire*, pp. 4-46; Commission's Application in *Constantine et al.*, pp. 99-100; Commission's Application in *Benjamin et al.*, p. 69.

⁵⁷ See e.g. *Director of Public Prosecutions v. Tokai* [1996] A.C. 856 (J.C.P.C.) (confirming that the Constitution of Trinidad and Tobago does not provide for a right to a speedy trial or trial within a reasonable time.). Commission's Application in *Constantine et al.*, Exh. 34; Commission's Application in *Benjamin et al.*, Exh. 18.

applications for legal aid have not been responded to, and that the timing of warrants of execution provides a further obstacle to effective access to Constitutional Motions, whereby the State reads warrants of execution on the late afternoon of Thursday for execution the following Tuesday.⁵⁸

As with the violations relating to the right to be tried within a reasonable time, the above violations arise from the State's failure to take the appropriate legislative or other measures necessary to ensure that legal aid is effectively available to these victims and others to pursue Constitutional Motions, in circumstances where the victims are indigent and where such legal assistance is necessary to pursue those motions.

The Commission therefore respectfully submits that a further appropriate form of reparation in the circumstances of the present case is to direct that the Republic of Trinidad and Tobago, in compliance with its obligation under Article 2 of the Convention, to adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Trinidad and Tobago in appropriate cases through access to legal aid to pursue Constitutional Motions.

F. Costs and Expenses

This Honorable Court has previously held that costs and expenses may be considered an element of the reparation of which Article 63(1) of the Convention speaks, as they are a natural consequence of the actions taken by the victim, his or her heirs, or his or her representatives to obtain a Court resolution recognizing the violations of rights committed and establishing the legal consequences. It has also held that the concept of costs examined under Article 63(1) may include the costs involved in proceedings before the domestic courts and those seeking justice on an international plane before the Inter-American Commission and the Inter-American Court.⁵⁹

Also according to the Honorable Court, the costs and expenses for which compensation may be ordered as part of reparations in a case refer to those that are necessary and reasonable, according to the particularities of the case and that are effectively made or pledged by the victim or his or her representatives, and are determined on the basis of equity.⁶⁰ In previous judgments, the Honorable Court's awards for costs and expenses have incorporated such items as long distance telephone expenses, airfare and subsistence expenses for victims and their representatives, and the costs of mail, fax and courier services, where those expenses are generated by the presentation of the victim's case before the relevant domestic and international tribunals.⁶¹ The Commission therefore submits that it is appropriate for victims or their representatives to receive compensation for costs and expenses of this nature if they so request.

⁵⁸ See Commission's Application in *Constantine et al.*, p. 112 and Exh. 41, 42, Commission's Application in *Benjamin et al.*, pp. 81-82, Exh. 25, 26.

⁵⁹ See e.g. *Villagrán Morales Case*, Reparations Judgment, *supra* note 16, paras. 108, 109; *Loayza Tamayo Case*, Reparations Judgment, *supra* note 11, paras. 177-180; *I/A Court H.R., Gariddo and Baigorria Case*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 29, 1997, Series C No. 31, paras. 80-82.

⁶⁰ *Loayza Tamayo Case*, Reparations Judgment, *supra* note 11, para. 178; *Gariddo and Baigorria Case*, Reparations Judgment, *supra* note 59, paras. 80, 82.

⁶¹ See e.g. *Villagrán Morales Case*, Reparations Judgment, *supra* note 16, para. 104, 109; *Blake Case*, Reparations Judgment, *supra* note 5, para. 66; *Loayza Tamayo Case*, Reparations Judgment, *supra* note 11, para. 173.

In the present case, the 32 victims were represented or otherwise assisted by two attorneys in the Republic of Trinidad and Tobago and 19 solicitor law firms in London, United Kingdom, in the victim's domestic proceedings and in their proceedings before the inter-American human rights system. As indicated previously, in the interests of efficiency, the original claimants appointed six representatives for the purposes of the processes before the Inter-American Court. At the domestic and international levels, all of these claimants and representatives assisted the victims gratuitously or *pro bono* and have not received compensation for their professional services.

As the allegations of the victims' representatives on reparations indicate, they have limited their claims before the Court to expenses, and then only to those expenses connected to the proceedings before the Honorable Court to the extent that those expenses are not covered by the Commission. Their allegations also indicate that the expenses claimed encompass such items as airfare and accommodation related to the presentation of the victims' cases before the Court. The Commission hereby adopts the submissions of the victims' representatives in this regard and respectfully requests that the Honorable Court order the Republic of Trinidad and Tobago to pay appropriate compensation for these expenses.

IV. MANNER OF COMPLIANCE

With regard to the State's required manner of compliance with the Honorable Court's judgment on reparations, the Commission respectfully submits that the following terms are consistent with the Court's past practice and would be appropriate in the circumstances of the present cases:

- A. With respect to non-compensatory reparations ordered by the Honorable Court, that the Republic of Trinidad and Tobago take the measures necessary to comply with the requirements of the Court's judgment and inform the Court within a reasonable period from the date of notification of judgment, and thereafter on a regular basis, of the measures taken to comply with the Court's judgment. With respect to the remedy of commutation of sentence in particular, the Commission submits that the serious implications that flow from the imposition of a death sentence warrant an expedited process whereby the State would be directed to commute the victims' capital sentences and remove them from death row in an abbreviated period of time, for example within two months of the date of notification of the Court's judgment.
- B. With respect to compensatory reparations ordered by the Honorable Court that:
 - 1. the Republic of Trinidad and Tobago pay any compensation ordered by the Honorable Court within six months of the date of notification of judgment;
 - 2. any such compensation shall be exempt from any existing or future taxes or duties;
 - 3. Should the State be in arrears with its payment of any judgment of compensation, it shall pay interest on the amount owed at the interest rate in effect in the Republic of Trinidad and Tobago.

V. CONCLUSION

As the Commission submitted at the outset of these allegations, the issues in this case, raising as they do fundamental questions of due process, humane treatment and, ultimately, protection of the right to life in the context of Trinidad and Tobago's criminal justice system, render the reparations in this proceeding a matter of life and death for the victims concerned.

They also present the challenge of ensuring the efficacy of the inter-American system for the protection of human rights more broadly in the Republic of Trinidad and Tobago.

In this context, should the Honorable Court find and declare the Commission's allegations of violations to have been substantiated, the Commission respectfully submits that the following reparations are appropriate:

1. Direct that the Republic of Trinidad and Tobago commute the death sentences of the victims in 28 cases that are the subject of this proceeding, Case Nos. 11.787 (George Constantine), 11.814 (Wenceslaus James), 11.816 (Haniff Hilaire), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.043 (Samuel Winchester), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mungroo), 12.112 (Phillip Chotalal), 12.129 (Naresh Boodram), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), 12.141 (Steve Mungroo), 12.149 (Krishendath Seepersad), 12.151 (Allan Phillip), 12.152 (Narine Sooklal), 12.153 (Amir Mowlah), 12.156 (Mervyn Parris) and 12.157 (Francis Mansingh), and to verify that the death sentence of the victim in Case No. 12.076 (Wayne Matthews) has been commuted as previously undertaken by the State following the proceedings before the Commission.

2. Direct that the Republic of Trinidad and Tobago grant the victims in Case Nos. 12.052 (Martin Reid) and 12.148 (Peter Benjamin) effective remedies which include the exercise by the President of Trinidad and Tobago of his discretion to refer these cases to the Court of Appeal of Trinidad and Tobago to review the safety of their convictions in accordance with the due process protections prescribed under Article 8 of the Convention.

3. Direct that the Republic of Trinidad and Tobago provide appropriate and adequate compensation in connection with the execution of the victim Joey Ramiah in Case No. 12.129 (Naresh Boodram and Joey Ramiah) on June 4, 1999.

4. Direct that the Republic of Trinidad and Tobago adopt such legislative or other measures as may be necessary to ensure that

(a) the death penalty is not imposed in a manner inconsistent with the rights and freedoms guaranteed under the Convention, and in particular that it is not imposed through mandatory sentencing.

(b) the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect for condemned prisoners in Trinidad and Tobago.

(c) the conditions of detention in which the victims are held comply with the minimum standards governing the humane treatment of prisoners as required by the American Convention, and Article 5 thereof in particular.

(d) the rights to trial within a reasonable time under Articles 7(5) and 8(1) of the Convention are given effect in Trinidad and Tobago, including effective recourse to a competent court or tribunal for protection against acts that violate those rights.

(e) the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Trinidad and Tobago in appropriate cases through access to legal aid to pursue Constitutional Motions.

5. Direct that the Republic of Trinidad and Tobago pay reasonable compensation to the representatives of the victims for the expenses generated by the presentation of the victims' cases before the Inter-American Court, as the representatives have requested in their allegations on reparations.