

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 25/99; Cases 12.018, 12.022, 12.024, 12.022, 12.026, 12.027, 12.029
Session:	Hundred and Second Regular Session (22 February – 12 March 1999)
Title/Style of Cause:	Steve Shaw, Desmond Taylor, Beresford Whyte, Silbert Daley, Deon McTaggart, Andrew Perkins and Everton Morrison v. Jamiaca
Doc. Type:	Decision
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated:	9 March 1999
Citation:	Shaw v. Jamiaca, Case 12.018, Inter-Am. C.H.R., Report No. 25/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANTS: Simon Muirhead, Clifford Chance, Ashurst Morris Crisp, Allen & Overy, and S J Berwin & Co.,
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. This report concerns capital punishment petitions brought against the State of Jamaica (hereinafter referred to as "the State") and pertain to alleged violations of the American Convention on Human Rights (hereinafter referred to as "the American Convention"). They were presented to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") on behalf of seven condemned men on death row, at St. Catherine District Prison, Jamaica, by the firms of Solicitors (hereinafter referred to as "the Petitioners") in London, United Kingdom. This report addresses the issues of the admissibility of the petitions pursuant to Articles 46 and 47 of the American Convention and duplication of procedures, because petitions were presented to the United Nations Human Rights Committee (hereinafter referred to as "the UNHRC") on behalf of the same condemned persons, and the UNHRC rendered decisions in respect of each of them in 1998.

2. The petitions were presented to the Commission on behalf of the seven condemned men:

Steve Shaw, Case N° 12.018, Messrs. Simon Muirhead, (June 3, 1998).
Desmond Taylor, Case N° 12.022, Messrs. Clifford Chance, (June 5, 1998).
Beresford Whyte, Case N° 12.024, Messrs. Ashurst Morris Crisp, (June 9, 1998).
Silbert Daley, Case N° 12.025, Messrs. Allen & Overy, (June 9, 1998).
Deon McTaggart, Case N° 12.026, Messrs. S J Berwin & Co., (June 8, 1998).
Andrew Perkins, Case N° 12.027, Messrs. Allen & Overy, (June 9, 1998).

Everton Morrison, Case N° 12.029, Messrs. Allen & Overy, (June 9, 1998).

3. Since 1992 the State's law governing this issue is the Offences Against the Person (Amendment) Act 1992 (hereinafter referred to as "the Act"). The Act makes a distinction between different categories of murder in Jamaica. Some murders are classified as "capital" and others as "non capital." [FN1] Pursuant to Section 3(a) (I) of the Act "every person who is convicted of capital murder shall be sentenced to death and upon every such conviction." By Section 3(b) of the Act, "a person who is convicted of non-capital murder shall be sentenced to death if before that conviction he has (a) whether before or after the date of commencement of the Offences Against the Person (Amendment) Act, 1992, been convicted in Jamaica of another murder done on a different occasion or (b) been convicted of another murder done on the same occasion."

[FN1] Section 2(1) (a) to 2(1)(c) of the Act" defines "capital murder" as murder committed against the following persons in the execution of his or her duties: law enforcement officials, judicial officers, justices of the peace, members of the security forces, correctional officers, jurors, witnesses in both civil and criminal cases. Section 2(1)(d) to 2(1) (f)(2) of the Act defines the other categories of capital murder. Section 2(1)(d) defines "capital murder" as any murder committed b a person in the course or furtherance of (1) robbery; (ii) burglary or housebreaking; (iii) arson in relation to a dwelling house; or (iv) any sexual offence. Section 2(1)(f) of the Act also defines "capital murder" as "any murder committed by a person in the course or furtherance of an act of terrorism, that is to say, an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public." Pursuant to Section 2(2) of the Act: "If in the case of any murder referred to in subsection (1) (not being a murder referred to in paragraph (e) of that subsection), two or more persons are guilty of that murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on the person murdered, or who himself used violence on that person in the course or furtherance of an attack on that person; but the murder shall not be capital murder in the case of any other of the persons guilty of it. Section 2(1)(f) (3) states that "Murder not falling within subsection (1) is non-capital murder."

4. Cumulatively, the condemned men in this Report were all convicted of capital murder of witnesses in a pending civil and criminal trial, in the furtherance of an act of terrorism, in the furtherance of a burglary and robberies, and sentenced to death. (Messrs. Shaw and Taylor[FN2] on July 25, 1994, Whyte on February 17, 1995, Daley on June 10, 1992, and on October 26, 1995, after a re-trial, Morrison on July 25, 1990, and September 29, 1993, Perkins on December 12, 1994, and McTaggart on April 12, 1995.) The men appealed to the Court of Appeal in Jamaica, and the Court dismissed their appeals. (Messrs. Shaw and Taylor on July 24, 1995, Whyte on October 23, 1995, Daley on July 22, 1996, McTaggart on July 31, 1996, Perkins on June 17, 1996, and Morrison on January 20, 1992, and July 29, 1994.) The condemned men all petitioned the Privy Council for Special Leave to Appeal their convictions and sentences and the petitions were dismissed. (Messrs. Shaw and Taylor on June 6, 1996, Whyte on November 14,

1996, Daley on April 9, 1997, McTaggart on March 20, 1997, Perkins on December 16, 1996, and Morrison on May 25, 1995.)

[FN2] Steve Shaw and Desmond Taylor were co-defendants at trial.

5. Upon receipt of the Privy Council's decisions denying their appeals, the Petitioners submitted petitions to the UNHRC on behalf of Messrs. Shaw, (submitted June 6, 1996, decision April 2, 1998) Taylor, (submitted June 14, 1996, decision April 2, 1998) Whyte, (submitted December 23, 1996, decision July 27, 1998) Daley, (submitted April 17, 1997, decision July 31 1998) Perkins, (submitted December 20, 1996, decision July 30, 1998) Mr. Morrison (submitted June 14, 1995, decision July 27, 1998), McTaggart, (submitted on April 10, 1997, decision March 31, 1998). Cumulatively, the UNHRC held that the State violated their due process rights under the United Nations International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR), and that both pre-trial and post convictions conditions of detention also violated the ICCPR and its Optional Protocol, and stated that they were entitled to an effective remedy including compensation and commutation of their death sentences.

6. In the petitions presented to the Commission, the Petitioners claim cumulatively, that the State has violated the following human rights of Messrs. Shaw, Taylor, Whyte, Daley, Perkins, Morrison, and McTaggart: the right to life, the right to humane treatment, the right to a fair trial, to right to equal protection before the law, the right to petition, and the right to an effective remedy, pursuant to Articles 4, 5, 7, 8, 24, and 25 of the American Convention, and corresponding Articles I, II, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter referred to as the American Declaration). The Petitioners also presented arguments on the following: the effectiveness of counsel at trial and on appeal, including the assistance of counsel and adequate time for the preparation of their defenses; both pre-trial and post trial conditions of detention; the mandatory nature of the death penalty and hanging as a mode of execution in relation to Articles 4, 5, 7, 8, 24, and 25 of the American Convention, and corresponding Articles I, II, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man; and the denial of further rights protected by the American Convention upon the issuance of the Governor General's Instructions by the State.

7. The Petitioners requested that the Commission issue Precautionary Measures pursuant to Article 29.2 of its Regulations, and conduct an on-site visit to St. Catherine District Prison in Jamaica. The Petitioners also requested oral hearings on the issues raised in the petitions.

8. The Commission opened cases on all the petitions, and wrote to the State informing it of the same and requesting, inter alia, that it stay the executions of the condemned persons pending an investigation by it of the alleged facts. Pursuant to Article 40(2) of the Commission's Regulations, the Commission has consolidated all the cases for the purposes of this Report, because they concern some of the same facts and persons and pertain to the same issues presented and argued by all the Petitioners.

9. The Commission concludes that the petitions are substantially the same as those studied by the UNHRC and are therefore inadmissible pursuant to Article 47(d) of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

10. Upon receipt of the petitions and during the pendency of the same before the Commission, it processed the petitions in accordance with its Regulations. It communicated with all the parties concerned, and it studied, examined and requested information from them. The Commission also forwarded the pertinent parts of the parties' responses and additional information to the other parties.

11. After studying the petitions, the Commission opened cases and forwarded the pertinent parts of the petitions to the State in accordance with Article 34 of its Regulations, and requested that the State supply it with information in respect of the matters referred to in the petitions. The Commission also requested that the State supply it with any additional information that would enable it to determine whether the internal legal remedies and procedures have been exhausted pursuant to Article 37 of its Regulations. In addition, the Commission requested that the State stay the executions of Messrs. Shaw, (on June 30, 1998) Taylor, (on June 30, 1998) Whyte, (on July 1, 1998) Daley, (on July 1, 1998) Perkins, (on July 1, 1998) Morrison (on July 2, 1998) and McTaggart (on July 1, 1998), pending an investigation by it of the alleged facts. Cumulatively, the Petitioners have argued and referred to Articles of the American Declaration, the American Convention, and the Commission's Regulations in their petitions. The State has also presented arguments on both the American Convention and the Commission's Regulations. The Commission has considered these petitions pursuant to the Articles of the American Convention because the State is a party to the American Convention.

12. All of the petitions presented to the Commission are supported by exhibits from the Petitioners, including trial transcripts and copies of letters from the Governor General's Secretary, Mr. Geoff Madden. Mr. Madden referred the Petitioners to the Governor General's Instructions^[FN3], and advised them that the execution of the condemned men would not be further postponed, unless they informed him that they intended to submit petitions to the Commission on behalf of the men. The State took this position notwithstanding the fact that the condemned men had Communications pending before the UNHRC on the same facts and issues presented to the Commission. However, the UNHRC had not issued decisions within six months, as required by the Governor General's Instructions.

[FN3] The Governor General's Instructions were issued on August 6, 1997, and published in Vol. CXX, on Thursday, August 7, 1997, in "The Jamaica Gazette Extraordinary." The Governor General's Instructions were later amended and published in "The Jamaica Gazette Extraordinary," on Thursday, April 23, 1998, and provide that: "These Instructions and in particular paragraphs 6 and 10 shall apply mutatis mutandis in respect of any application to any of the International Human Rights Bodies before the 6th day of August, 1997, which may be pending on that date." The Governor General's Instructions imposed time limits on the processing of petitions by the Commission and the UNHRC. The Governor General's

Instructions makes reference to two international human rights bodies. Paragraph 1 of the definition Section refers to what is meant by the "first" and "second" International Human Rights Bodies, and states that "the first International Human Rights body, means the first of the Human Rights bodies, being the United Nations Rights Committee or the Inter-American Commission on Human Rights, as the case may be, to which an application from or on behalf of a prisoner under sentence of death has been made; and the "second International Human Rights body" means the second of the Human Rights bodies, being the United Nations Human Rights Committee or the Inter-American Commission on Human Rights, as the case may be, to which an application from or on behalf of a prisoner under sentence of death has been made.

Paragraph 7 of the Instructions provide that "Where the Governor-General in Privy Council receives intimation given by the prisoner or on his behalf that he intends to apply to the second International human Rights body, proof that the application has been filed in the office of the second International Human Rights body must be furnished to the Governor-General in Privy Council within 3 weeks of the receipt of that intimation." Paragraph 8 of the Instructions provide that the second International Human Rights Body must request a stay of execution within one month of receipt of the petition, otherwise the execution will not be further postponed. Paragraph 10 states that the second International Human Rights Body must issue its decision within 6 months after the State's response otherwise the execution will not be further postponed. If the decision is issued within six months, "such decision will be considered by the Jamaican Privy Council as to whether or not the Prerogative of Mercy should be exercised in the victim's favor; and if the Commission does not issue its decision within six months of receipt of the State's response to the petition, the execution of the victim will not be further postponed."

III. POSITIONS OF THE PARTIES

A. The positions of the petitioners

13. The Petitioners claim cumulatively that the condemned men have all appealed to the Court of Appeal in Jamaica and to the Privy Council in London. They argue that all effective domestic remedies have been exhausted and that the remedies offered by the UNHRC no longer constitute available domestic remedies, or are not effective remedies because the State has indicated that it will not abide by the UNHRC's decisions.

14. Cumulatively, the Petitioners argue that the petitions are admissible, and are based on events which have occurred after the UNHRC's decisions, namely, the refusal of Jamaica to consider or implement the UNHRC's decision, the refusal of the State to reconsider the Prerogative of Mercy in view of the Committee's findings, and the arbitrariness of executing the condemned persons in breach of the UNHRC's findings, having raised a legitimate expectation that the State would abide by them. In addition, the Petitioners argue that the petitions are admissible because the claims presented in the petition have been limited and are different from those presented to the UNHRC. Moreover, the Petitioners argue that the condemned persons have not pursued Constitutional Motions, because of lack of private funding and because the State does not provide Legal Aid to indigent persons to pursue such Motions.

B. The position of the State

15. The State denies the Petitioners' claims that it violated several Articles of the American Convention in relation to the condemned men. The State argues in its Replies to the petitions that the petitions are inadmissible pursuant to Article 46(1)(b) of the American Convention, because more than six months have elapsed since the dates of the final judgments in the cases. The State also argues that an application to the UNHRC, an international body, is not a domestic remedy that has to be exhausted, and that a domestic remedy is a remedy obtained and enforced by the local courts. The State also argues that the final domestic remedy which has to be pursued before an application to an international human rights body is a petition to the Privy Council.

16. The State contends that decisions of the UNHRC are not enforceable or recognized by its courts and that mechanisms exist for the implementation of the Committee's Views, but not as part of the State's domestic legal system. The State argues that the Pratt and Morgan v. Attorney General of Jamaica, ("Pratt v. Morgan") decision clearly indicates that there is a distinction between implementing the decisions of the international human rights bodies as opposed to pursuing domestic law remedies, and argues that the petitions are inadmissible pursuant to Article 47(d) of the American Convention. The State contends that legal aid is not available for Constitutional Motions and is only available in criminal proceedings, and therefore it is not in breach of the American Convention. The State also argues that the cases of Pratt and Morgan and Neville Lewis v. Attorney General of Jamaica have all addressed these Constitutional questions.

17. In addition, the State argues that it has not decided to ignore applications pending before the UNHRC as of August 6, 1997, and that the Petitioners' statements in this regard are erroneous. The State argues that its withdrawal from the Optional Protocol to the International Covenant on Civil and Political Rights became effective in January of 1998, and that all cases pending before the Committee as of that date have been addressed by the Government and will continue to be dealt with.

IV. ANALYSIS

A. Commission's competence

18. The Petitioners claim that the State has violated their rights pursuant to Articles 4, 5, 7, 8, 24, and 25 of the American Convention. The State ratified the American Convention on Human Rights on August 7, 1978. The events, which relate to the claims before the Commission, occurred subsequent to the State's ratification of the American Convention. The petitions were brought by Solicitors from London, who have standing to present petitions to the Commission pursuant to Article 44 of the American Convention. Therefore, the Commission is competent to examine these petitions pursuant to Article 44 of the American Convention and Articles 18 and 19 of its Statute.

B. Admissibility of petitions: Duplication of procedures

19. Article 46 of the American Convention establishes the criteria for the admission of a petition by the Commission, whereas Article 47 establishes the criteria for the inadmissibility of a petition. Article 46(1) of the American Convention provides that:

Admission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (c) that the subject of the petition or communication is not pending in another international proceeding for settlement.

20. Article 47 of the American Convention provides that:

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: (d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

21. The Commission refers to its decisions in Peter Blaine and Neville Lewis, two cases from Jamaica which address the issue of whether "a petition is substantially the same as one previously studied by another international organization" pursuant to Article 47(d) of the American Convention.[FN4] These Reports have been published in the Commission's Annual Report of 1998 and should be consulted for the Commission's analysis of the subject.

[FN4] Peter Blaine, Case 11.827, Report N° 96/98, and Neville Lewis Case 11.825, Report N° 97/98.

22. In the two Reports, the Commission stated that: "While the Commission has had on occasion to apply Articles 46(c) and 47(d) in its practice, ... and consistent with its own past practice, the Commission observes that a prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof. This essentially means that a petitioner cannot file a petition before the UNHRC complaining of the violation of a protected right or rights based on a factual predicate, and then present a complaint before this Commission involving identical or integrally related rights and facts which were or could have been raised before the UNHRC." [FN5] Claims brought regarding the same individual, but concerning facts and guarantees not previously presented, and which are not reformulations, do not raise issues with respect to *res judicata*, and will not in principle be barred by the prohibition of duplication of claims. Expressed in positive terms, newly presented claims not challenging the effect of a previous decision as *res judicata* would, assuming compliance with other requirements, be admissible.[FN6]

[FN5] *Id.* Peter Blaine Report N° 96/98, Neville Lewis Report N° 97/98, para. 43.

[FN6] *Id.* Peter Blaine, Report N° 96/98, Neville Lewis Report N° 97/98, para 45.

23. The European Commission of Human Rights and the United Nations Human Rights Committee have construed similar provisions in their treaties with regard to the terms "substantially the same" or studied "by another international organization." [FN7] In construing Article 27(1)(b) of the European Convention, the European Commission has interpreted these terms in petitions presented to it as being "substantially the same" and "studied by another

international organization," if the petitions refer to the same facts and complaints or contain reformulated arguments on the same facts, and were previously examined by it or another international organization, and a decision was rendered on them.[FN8] The European Commission has held that: "where an application is substantially the same as" a previous application which was rejected under Article 26 of the Convention for non-exhaustion of domestic remedies, the applicant's subsequent exhaustion of those remedies constitutes "relevant new information," and has found the application admissible for its consideration.[FN9]

[FN7] Article 27 (1) of the European Convention addresses the same issue and provides that: "The Commission shall not deal with any petition submitted under Article 25 which: (b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information."

[FN8] Application No. 10243/83, *Times Newspapers Ltd. And Others v. United Kingdom*, D & R 41 (1985), p. 123, p. 129; *Id.* Application No. 8206/78, in *X v. The United Kingdom*. D & R. 25,(1982), p. 147 (150).; Application No. 13365/87, *Oladeinde Ajinaja v. The United Kingdom* Application, D & R 55, (1988), p. 294 (296). No. 17512/90, *Leoncio Calcerrada Fornieles and Luis Cabeza Mato v. Spain*. 73 D & R (1992), p. 214, (223).

[FN9] Application No. 21962/93, *A.D. v. The Netherlands*, D & R 76-A (1994), p. 157 (161).

24. The United Nations Human Rights Committee has applied Article 5(2)(a) of the Optional Protocol to the ICCPR[FN10] in petitions presented to it for consideration, to ascertain whether communications are not pending international investigation or settlement by another international organization. In Communication N° 20/1997, the UNHRC concluded that the same matter was being examined by the Inter-American Commission on Human Rights (IACHR).[FN11] Similarly, the UNHRC found Communication N° 121/1982 inadmissible because the same matter had already been examined by the European Commission of Human Rights.[FN12] On the other hand, the UNHRC proceeded to examine Communication No. 11/1977, which was before the IACHR, because it considered that the concept of "the same matter" within the meaning of Article 5(2)(a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body. The UNHRC has also concluded that Article 5(2)(a) of the Optional Protocol to the ICCPR does not preclude it from considering communications which are pending before another international organization, provided it has received proof from the authors of the communications that they have withdrawn their communications from being examined by the other international organization.

[FN10] Article 5(2)(a) of the Optional Protocol to the ICCPR states:

The Committee shall not consider any communication from an individual unless it has ascertained that:

The same matter is not being examined under another procedure of international investigation or settlement;

[FN11] *Id.* M.A. Communication No. 20/1977, 24 April, 1979 (sixth session), p. 20.

[FN12] Id. A.M. Communication N° 121/1982, 23 July 1982 (sixteenth session, p. 32; Id. Communication N° 75/1980, p.100, para. 7.2.

25. For the foregoing reasons, the Commission states that the guiding principle for determining whether a claim is "substantially the same" and has been studied by "another international organization," as established in Article 47(d) of the American Convention, is whether, when the claim was initially presented for examination to the other international organization, here the UNHRC, it pertained to the same rights, facts, persons and issues as presented to the Commission, and the same arguments which are now being made before the Commission were made, or could have been made, before the UNHRC.

26. The Commission wishes to emphasize that it is not its practice to open cases for processing of petitions presented to it while similar petitions are still pending before the UNHRC, or subsequent to the UNHRC's decisions, and this is consistent with the practice and jurisprudence of the UNHRC and the European Commission on Human Rights. However, all of the cases in question were opened for examination and study because of the State's issuance of the Governor General's Instructions on August 6, 1997, amended April 23, 1998, which refer to time limits and deal with matters relating to condemned persons, and the State's submission to the United Nations of its Instrument of Intention to Denounce the Optional Protocol to the United Nations Covenant on the Civil and Political Rights on October 23, 1997.[FN13]

[FN13] United Nations Telegraph dated 24 October 1997, and two United Nations Press Releases on the morning and afternoon of October 23, 1997, Nos. HRCT97/25/ and HR/CT/97/26.

27. The Governor General's Instructions, and in particular its Amendment in April of 1998, and the State's Instrument of Intention to Denounce the Optional Protocol, presented a degree of uncertainty to the members of the Bar in both Jamaica and the United Kingdom who had Communications pending before the UNHRC as to the status of those Communications.[FN14] It was unclear how the State would deal with their Communications, because six months had elapsed since the presentation of their Communications to the UNHRC, and the UNHRC had not issued any decisions in respect of them. This uncertainty was also compounded by the fact that the Governor General's Secretary, Mr. Geoff Madden, referred the Petitioners to the Governor General's Instructions and informed them that he required "intimation" and proof that they intended to petition the Commission, because of the reference to the Commission as the second International Human Rights Body in the Governor General's Instructions dated August 6, 1997.

[FN14] See footnote 3 supra.

28. The Commission will now proceed to examine the claims cumulatively in the petitions presented by the condemned men, to ascertain whether their claims are admissible pursuant to

Article 46 of the American Convention, or are duplicative of those presented to the UNHRC and are therefore inadmissible pursuant to Article 47(d) of the Commission's Regulations. Cumulatively, the Petitioners argue that the reason for seeking the Commission's intervention is because the State has not honored and complied with the UNHRC's recommendations. In addition, the Petitioners argue that no effective remedies could be obtained in Jamaica in respect of the men because of the State's refusal to reconsider the Prerogative of Mercy in view of the UNHRC's findings. Therefore, the Petitioners have sought redress from the Commission by re-litigating and arguing the same claims and issues presented to the UNHRC, and have also included new arguments relating to the same claims.

29. The Petitioners argue cumulatively that the condemned men's human rights, which are protected by the American Convention, were violated by the State namely, Articles 4, the right to life, 5, the right to humane treatment, 7, the right to liberty and to be brought promptly before a judge or judicial officer, and tried without undue delay, 8, the right to a fair trial and counsel, 11, the right to privacy, 21, the right to property, 24, the right to equality before the law, and 25, the right to judicial protection. A summary of their arguments is presented below.

30. With regard to Article 4 of the American Convention, the Petitioners argue that if the condemned men are executed, their executions will also constitute a violation of their right to life pursuant to Article 4(1), and a violation of Article 4(2) because of due process violations committed by the State in relation to the condemned men, upon their arrests and convictions for capital murder. The Petitioners also argue that the imposition of the death sentence on the men constitutes a re-establishment of the death penalty, prohibited by Article 4(3), because the State declared a moratorium on executions and has not executed anyone since 1988.

31. The Petitioners argue that the State violated the rights of the condemned men under Article 4(6), to seek clemency, mercy, pardon and commutation of sentence. The Petitioners claim that condemned men have no right to a hearing or the notification of the date of any hearing. The Petitioners also claim that they are not permitted to present oral arguments before the Jamaican Privy Council, which considers their cases and recommends to the Governor General whether the Prerogative of Mercy should be granted in a particular case. They argue that the Jamaican Privy Council operates in an unequal and discretionary manner in the recommendation of the Prerogative of Mercy, and that this constitutes a violation of Article 24 of the American Convention.

32. The Petitioners argue that the mandatory nature of the death penalty, and "hanging" as a mode of implementing the death penalty, violate the right to humane treatment pursuant to Article 5 of the American Convention, because mitigating factors are not taken into account in the sentencing phase upon a conviction of capital murder. In addition, the Petitioners contend that the Privy Council's decision in the case of *Reckley v. Minister of Public Safety* (No.2)[FN15] upholds the mandatory nature of the death penalty and hanging as a permissible mode of execution in Jamaica, thereby prohibiting further challenges to those issues in the domestic courts of Jamaica.

[FN15] [1966] 2 WLR 281.

33. With regard to Article 7, the Petitioners argue that the condemned men rights to liberty and to be brought promptly before a judge or judicial officer, and to be tried without undue delay, were violated by the State. They also argue that the State violated the rights of the condemned men pursuant to Article 8, because it did not provide them with legal aid to pursue Constitutional Motions, because of pre-trial delay, and because they were not provided with adequate time to prepare their defenses. The Petitioners also allege that they did not have effective assistance of counsel at trial and their appeals, and that counsel failed to take their instructions and to call alibi witnesses, also contrary to Article 8.

34. The Petitioners argue that the rights of the condemned men not to be subjected to cruel, inhuman and degrading punishment pursuant to Article 5 of the American Convention were violated because of ill treatment by police officers upon their arrests, and by prison wardens subsequent to their convictions and sentences, coupled with the conditions under which they were detained both prior to trial and subsequent to their convictions for capital murder. The Petitioners argue that this treatment also constituted a violation of the right to privacy pursuant to Article 11, and a violation of Article 21, the right to property.

35. The Petitioners argue that the Governor General's Instructions violate their rights to petition the Commission pursuant to Article 44 because of the rigid time limits imposed therein, as well as their rights to life pursuant to Article 4, their rights not to receive cruel, inhuman and degrading punishment or treatment pursuant to Article 5, the right to fair trial under Article 8, their right to equality before the law under Article 24, and their rights to judicial protection under Article 25.

36. The Commission notes that on the issue of admissibility, the State argues that the petitions of the condemned men were untimely as they were filed more than six months after the Privy Council rendered its decisions in their cases, and that the petitions are inadmissible pursuant to Article 47(d) of the American Convention. In addition, the State argues that it "has not decided to ignore applications pending before the UNHRC as of August 6, 1997, and that the Petitioners' statements are erroneous."

37. The Commission finds that the arguments presented by the Petitioners on behalf of the condemned men relating to Article 5, the right to humane treatment, (pre-trial conditions of detention), Article 7, the right to personal liberty, and Article 8, the right to a fair trial, concern prior and new arguments on due process issues, pre-trial conditions of detention and sentences for capital murder, which were litigated, examined and adjudicated by the UNHRC. Moreover, the claims fall within the ambit of the principle of res judicata, and are illustrated by the UNHRC's decisions in the cases.

38. The UNHRC decided Steve Shaw's Communication on April 2, 1998 and held the following: The conditions under which he was detained prior to trial violated his right to humane treatment pursuant to Articles 7 and 10(1) of the ICCPR. His detention for 9 days prior to his being formally charged and brought promptly before a judicial officer violated his right under Article 9(3) of the ICCPR. The delay of 27 months between Mr. Shaw's arrest and trial

constituted a violation of his right to be tried without undue delay under Articles 9(3) and 14(3)(c) of the ICCPR. The failure of the State to provide Mr. Shaw with legal aid to obtain legal representation in order to pursue a Constitutional Motion to determine whether his conviction in a criminal case violated guarantees of a fair hearing constituted a violation of Article 14 of the ICCPR.

39. The UNHRC reviewed Desmond Taylor's Communication on April 2, 1998, and decided the following: The State could not be held accountable for Mr. Taylor's claim of insufficient opportunity to prepare his defense, and the failure of his retained Counsel, a Queen's Counsel, to consult more frequently with him and to take his instructions because Counsel was privately retained, and his action did not constitute a violation under the ICCPR, unless it was manifest to the trial judge that the lawyer's behavior was incompatible with the interests of justice. Counsel was acting in his professional judgment, and the claim was inadmissible pursuant to Article 2 of the Optional Protocol. With regard to the remainder of Mr. Taylor's claims, the UNHRC found that a period of 27 months between arrest and trial constituted a violation of Mr. Taylor's right to be tried without undue delay, or within a reasonable time or to be released, pursuant to Articles 9(3), 14 (3)(c) of the ICCPR. The UNHRC found a violation of his right to a fair hearing pursuant to Article 14 of the ICCPR, because the State did not provide legal aid for him to pursue a Constitutional Motion.

40. With regard to Beresford Whyte's Communication the UNHRC held on July 27, 1998 that Mr. Whyte's claim that he was denied access to a lawyer for the first year of his detention was not substantiated by him for purposes of admissibility, and that the claim was inadmissible under Article 2 of the Optional Protocol. The UNHRC held that Mr. Whyte's claim of having being beaten by two police officers in order to make him sign a confession was not raised at trial nor in any domestic proceeding, and was therefore inadmissible pursuant to Article 5(2)(b) of the Optional Protocol because he failed to exhaust domestic remedies available to him. The UNHRC held that Mr. Whyte's claim that the judge's instructions to the jury were inadequate was inadmissible under Article 2 of the Optional Protocol because his submissions did not indicate that the trial was manifestly tainted by arbitrariness or amounted to a denial of justice. The UNHRC stated that Mr. Whyte had failed to substantiate his claim relating to the granting of pardon by the Governor-General, and was therefore inadmissible pursuant to Article 2 of the Optional Protocol. With regard to the remainder of Mr. Whyte's claims, the UNHRC found violations of Articles 9(3) and 14(3)(c) of the ICCPR because there was a delay of three weeks before he was brought promptly before a judge, and a delay of three years before he was brought to trial. The UNHRC did not find a violation of Mr. Whyte's claim to ineffective legal representation under the ICCPR. The UNHRC also found a violation of Mr. Whyte's right to humane treatment because of pre-trial conditions of detention pursuant to Article 10(1) of the ICCPR.

41. The UNHRC decided Silbert Daley's Communication, on July 31, 1998, and held that there was a violation of Mr. Daley's right pursuant to Article 9(3) of the ICCPR, because he was not brought before a judge until six weeks after his arrest. The UNHRC also found a violation of Mr. Daley's right pursuant to Article 14(3)(c) and 14(5) of the ICCPR because there was a delay of two years and seven months between his first conviction and the hearing of his appeal. The UNHRC did not find a violation of Mr. Daley's claim that he was represented by an ineffective

counsel at trial pursuant to Article 14(3) of the ICCPR. The UNHRC held that the state violated Mr. Daley's right to Counsel pursuant to Article 14(3)(d) of the ICCPR because he was not effectively represented on appeal due to the failure of counsel and the Court to inform him that Counsel found no merit to appeal his case. The UNHRC stated that the Court should have informed him of counsel's views and given him an opportunity to have retained other counsel. The UNHRC found that the State violated Mr. Daley's right pursuant to Articles 7 and 10(1) of the ICCPR because of the beatings he was subjected to, and also the inhumane pre-trial conditions of detention.

42. The UNHRC decided Deon McTaggart's Communication on July 30, 1998, and stated that Mr. McTaggart's claim that he was not properly represented by his legal aid counsel at trial, did not constitute a claim under Article 2 of the Protocol because it was not for the UNHRC to question counsel's professional judgment, unless it was clear or should have been manifest to the judge that the lawyer's behavior was incompatible with the interests of justice. The Committee also found that Mr. McTaggart's claims concerning the judge's improper instructions to the jury on evidence and witnesses and his lack of impartiality were inadmissible under Article 3 of the Optional Protocol. The UNHRC did not find a violation pursuant to Article 9(2) of the ICCPR concerning Mr. McTaggart's claim that he was not brought promptly before a judge after his arrest. Likewise, the UNHRC did not find that a twelve month delay between his arrest and trial violated his right to be tried without undue delay pursuant to Articles 9(3) and 14(3)(a) of the ICCPR. Nor did the UNHRC find that his rights to a fair trial, including lack of legal representation at his preliminary hearing prior to trial and the media coverage he received upon his arrest in Canada prior to being returned to Jamaica for trial, were violated pursuant to Articles 14(1) and 14(3) of the ICCPR. The UNHRC did find that the State violated Mr. McTaggart's right to humane treatment pursuant to Article 10(1) of the ICCPR.

43. With regard to Mr. Everton Morrison's Communication, the UNHRC decided on July 27, 1998 that Mr. Morrison's claim concerning the conduct of the judge during trial, including his instructions to the jury and his findings regarding Mr. Morrison's fitness to stand trial, were inadmissible and incompatible with the provisions of the Covenant, pursuant to Article 3 of the Optional Protocol, because the judge's conduct did not amount to arbitrariness or a denial of justice, and his decision to allow Mr. Morrison to stand trial was based on a medical examination. The UNHRC found that Mr. Morrison's claim that he was beaten after he was arrested by police officers for the murder of Baugh-Dujon was unsubstantiated. The UNHRC held that a delay of three or four weeks before charging Mr. Morrison with capital murder constituted a violation of Article 9(2)(3) of the ICCPR. The UNHRC did not find that a delay of one and a half years before bringing Mr. Morrison to trial constituted a violation of the ICCPR. With regard to the murder of Hunter, the UNHRC found that Mr. Morrison's claim that he was threatened by the police to admit to the murder was unsubstantiated. The UNHRC found a violation of Article 9(2)(3) of the ICCPR because of the delay in formally charging Mr. Morrison and bringing him promptly before a judge. The UNHRC held that a delay of two and a half years in bringing Mr. Morrison to trial in the Hunter case constituted a violation of Article 14(3)(c) of the ICCPR. The UNHRC did not find a violation of the ICCPR pertaining to Mr. Morrison's claim that he objected to being represented by the same defense counsel at the beginning of the retrial in the Hunter murder. The UNHRC did not find a violation of Mr. Morrison's right to humane treatment pertaining to his pre-trial conditions of detention, which he claimed affected

his asthma, and his claim that he did not receive proper medical treatment for his deteriorating eyesight.

44. The UNHRC decided Andrew Perkin's Communication on July 30, 1998. The UNHRC did not find that Mr. Perkin's claim that he was beaten and threatened by the police to make and sign a statement constituted a violation of the ICCPR because the issue was dealt with *on voir dire* by the trial judge. The UNHRC found that the delay of one year and nine months after Mr. Perkin's arrest before he was brought to trial constituted a violation of Article 9(3) of the ICCPR. The UNHRC held that Mr. Perkin's right to humane treatment guaranteed by Article 10(1) of the ICCPR was violated because he was kept in deplorable conditions prior to and after his trial, and the same constituted a violation of Article 10(1) of the ICCPR. The UNHRC did not find a violation of the ICCPR based on Mr. Perkins's claim of not having enough time to prepare his defense and meet his lawyer. The UNHRC did not find that Mr. Perkin's claim of being a minor and under 18 years (17 years and six months) old at the time of his arrest constituted a violation of the ICCPR, because it was unsubstantiated by him, after reviewing his birth certificate and supporting documentation.

45. The Commission finds that the violations of Articles 5, 11, and 21 of the American Convention alleged by the Petitioners before this Commission, relating to their post convictions conditions of detention concern facts and events that were also litigated, examined and adjudicated by the UNHRC, and thus fall under the principle of *res judicata*. All of these claims, including the post conviction claims, are substantially the same as those presented to the UNHRC and are duplicative of those presented to the Commission. In Steve Shaw's case, the UNHRC found that his post conviction conditions of detention had been violated pursuant to Articles 7 and 10(1) of the ICCPR. In Desmond Taylor's case, the UNHRC found a violation of Mr. Taylor's right to humane treatment because of post conviction conditions of detention pursuant to Article 10(1) of the ICCPR.

46. With regard to Beresford Whyte, the UNHRC found a violation of his post conviction conditions of detention pursuant to Articles 7 and 10(1) of the ICCPR, based on the physical conditions of the facility, his medical condition, and the fact that he was beaten on March 5 and 7, 1997, by prison warders after an attempted escape by other prisoners. In Silbert Daley's case the UNHRC found that his post conviction conditions of detention violated his right to be treated with humanity and respect for the inherent dignity of his person pursuant to Article 10(1) of the ICCPR. Similarly, in Deon McTaggart's case the UNHRC held that Mr. McTaggart's post conviction conditions of detention constituted violations of Article 10(1) of the ICCPR. The UNHRC also found that his right to humane treatment had been violated, pursuant to Articles 7 and 10 (1) of the ICCPR because of the beatings he received on March 4, 1997, and the burning of his personal property and letters from his legal representatives by prison wardens. In Everton Morrison's case, the UNHRC found that Mr. Morrison's claim that he was ill-treated by wardens on March 5, and August 12, 1997, and that his belongings were destroyed, constituted violations of Articles 7 and 10(1) of the ICCPR. In Andrew Perkins's case, the UNHRC held that Mr. Perkin's right to humane treatment was violated because he was kept in deplorable conditions both prior to and after his trial.

47. In addition, the Commission finds that the Petitioners claimed violations of Article 4(1), (2), the right to life, Article 4(3), the prohibition against re-establishment of the death penalty, and Article 4(6), the right to apply for clemency, pardon and commutation of the death sentences, relate to facts and events surrounding their arrests and convictions and which they could have raised in their Communications to the UNHRC. In fact, these arguments were raised in Beresford Whyte's Communication to the UNHRC,[FN16] and do not relate to new facts and events occurring subsequent to the convictions and sentencing of the men.

[FN16] The UNHRC held that claim inadmissible pursuant to Article 2 of the Optional Protocol, because it was not substantiated.

48. The Commission held in the cases of Peter Blaine and Neville Lewis that claims based on post conviction conditions of detention arising from new facts which have not been examined by another international organization could be examined by it, but this is not the case here. The Petitioners' claims that the Governor General's Instructions violate Articles 4, 5, 8, 24, and 25 of the American Convention relate to the arrests, trials and convictions of the condemned men. These claims are not based on new facts, and could have been included in the Communications submitted to the UNHRC.

49. The Commission notes that the UNHRC recommended that the State commute the death sentences of six of the condemned men, namely, Messrs. Shaw, Daley (early release also recommended), Taylor, Whyte, Perkins, and Morrison. (Deon McTaggart excepted) The UNHRC also recommended that the State provide the seven condemned men with compensation, investigate the allegations of physical abuse committed by prison officials and, where appropriate, identify the perpetrators and punish them accordingly, and ensure that similar violations do not occur in the future.

50. The Commission notes, based on the information provided to it by the Petitioners, that the State has only commuted the death sentence of Mr. Everton Morrison to life imprisonment. It has otherwise not implemented any of the adopted recommendations of the UNHRC to remedy violations found in the cases of the other four condemned men.

V. CONCLUSION

51. For the foregoing reasons, the Commission concludes that the claims and arguments of the condemned men, namely, Steve Shaw, Desmond Taylor, Beresford Whyte, Silbert Daley, Everton Morrison, Deon McTaggart, and Andrew Perkins, referred to in their petitions, and which relate to alleged violations by the State of Articles 4, 5, 7, 8, 11, 21, 24, and 25 of the American Convention, are substantially the same as those presented to, and studied by, the UNHRC, and therefore finds their petitions inadmissible pursuant to Article 47(d) of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare that the petitions of Steve Shaw, Desmond Taylor, Beresford Whyte, Silbert Daley, Everton Morrison, Deon McTaggart, and Andrew Perkins are inadmissible pursuant to Article 47(d) of the American Convention, considering that the United Nations Human Rights Committee recommended that the State commute the death sentences of six of the condemned men, and provide them with compensation.
2. To transmit this Report to the State of Jamaica and the Petitioners.
3. To publish this Report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9th day of the month of March, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía and Carlos Ayala Corao.