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First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 15 April 1999
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Represented by: APPLICANT: Paula Hodges
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I. SUMMARY

Precautionary Measures

1. By letter dated October 7, 1997, Ms. Paula Hodges of the British firm of Solicitors, Herbert Smith, presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad") on behalf of Mr. Anthony Briggs. The petition stated that on June 21, 1996, in the High Court of Trinidad at the Port of Spain Assizes, the petitioner was convicted with his co-defendant, Wenceslaus James, of the murder of Siewdath Ramkissoon, and sentenced to death. The petition alleged that the circumstances of Mr. Briggs' conviction violated Articles 5, 7 and 8 of the American Convention on Human Rights (hereinafter "the Convention"). Simultaneous with the presentation of the complaint, the petitioner requested the Commission to issue precautionary measures, pursuant to Article 29 of its Regulations, and to seek a stay of execution pending a merits determination of the complaint by the Commission.

2. On October 16, 1997, the Commission requested the State to stay Mr. Briggs' execution "until such time as the Commission has had the opportunity to consider this case and issue its decision." The Commission requested "an immediate consent to the above request." The State of Trinidad and Tobago did not respond to this request for precautionary measures. On January 27, 1999, the Judicial Committee of the Privy Council in the cases of Darren Roger Thomas and Haniff Hilaire v. Trinidad and Tobago, a case that affects all Trinidad and Tobago death penalty cases pending before the Commission, stated that: "... to carry out the death sentences imposed on the appellants before the final disposal of their respective applications to the Inter American

Commission and Court of Human Rights would be a breach of their constitutional rights and order that the carrying out of the said death sentences be stayed accordingly."[FN1]

[FN1] The full name of this case is: Darren Roger Thomas and Haniff Hilaire v. Cipriani Baptiste (Commissioner of Prisons), Evelyn Ann Peterson (Registrar of the Supreme Court), The Attorney-General of Trinidad and Tobago (Privy Council Appeal N° 60 of 1998).-----

3. The Commission held in this case that the State is responsible for failing to bring the petitioner to trial within a reasonable time or to release him, without prejudice to the continuation of the proceedings, in violation of Article 7(5) of the Convention, read in conjunction with Article 1(1).

II. PROCEEDINGS BEFORE THE COMMISSION AND THE COURT

4. The Inter-American Commission on Human Rights, at the request of the State, held a meeting on February 20, 1998, during its 98th period of sessions, with Mr. Ralph Maraj, Minister of Foreign Affairs of the Republic of Trinidad and Tobago and Mr. Ramesh L. Maharaj, the Attorney General of that State. In his statement, the Attorney General affirmed categorically that the "Commission has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago." The argument of the State is as follows:

Under the Convention, the Commission has the power to make recommendations to the State Party, but in so far as those recommendations relate to a sentence imposed by the courts of the State Party it would be acting ultra vires if it attempted to alter by its recommendations the domestic law of the State in respect of sentencing. The Commission therefore has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago.

The Constitution of Trinidad and Tobago mandates all arms of the State, including the Judicial arm, to uphold the law of Trinidad and Tobago. The State of Trinidad and Tobago therefore has a mandatory obligation to ensure that its Constitution and laws are not undermined, subverted or frustrated in their operation. It was for this reason that the Government of Trinidad and Tobago, by its reservation entered when accepting the compulsory jurisdiction of the Inter American Court of Human Rights, stated that the Court can only have jurisdiction to the extent that it is consistent with the Constitution of Trinidad and Tobago. The Commission therefore does not have jurisdiction either by its acts or omissions to prevent in any way a sentence, authorized by the Constitution and laws of Trinidad and Tobago and pronounced by a court of competent jurisdiction, from being carried into effect. It is therefore open for the Government of Trinidad and Tobago, whilst a petition is pending before the Commission, to carry out the sentence of death once the time stipulated in accordance with the Constitution and laws of Trinidad and Tobago has expired. The Commission may recommend the award of compensation to a victim. It may recommend that the State Party correct those matters which gave rise to a substantive breach so that others do not suffer the same violation in future. However it is submitted that the

Commission, either directly or by its recommendation, has no power to alter the lawful sentence imposed by a court of a State Party.

5. Following this February 20th meeting, the Commission decided to request provisional measures from the Court in five cases, the instant case being one of the five.[FN2] The Commission, during its 99th (extraordinary) meeting approved the text of the request.

[FN2] The Commission requested provisional measures from the Court in the following five Trinidad & Tobago cases: Case 11.814 (Wenceslaus James), Case 11.815 (Anthony Briggs), Case 11.854 (Anderson Noel), Case 11.855 (Anthony Garcia) and Case 11.857 (Christopher Bethel).

6. On March 2, 1998, the Commission received the petitioner's observations on the response of the Government which were transmitted by the Commission to the Government on March 18, 1998, requesting any observations within 30 days of receipt, so that the case "may be considered by the Commission at its next period of session."

Friendly settlement

7. On May 7, 1998, during its 99th meeting the Commission adopted Report No. 37/98 (Admissibility) on this case and convened the parties to appear at a friendly settlement hearing at the headquarters of the Commission in Washington, D.C. on June 26, 1998 at 2:00 p.m. The Commission transmitted the admissibility report to the petitioners and to the State on May 21, 1998. In the admissibility report the Commission requested the State to maintain in effect the precautionary measures issued by the Commission on April 1, 1998, pursuant to Article 29(2) of its Regulations.

8. The State subsequently informed the Commission that it would not appear at the friendly settlement hearing and consequently it was canceled.

9. By letter dated May 18, 1998, the petitioner advised the Commission that she had received a letter from Mr. Briggs advising her that "he has contracted tuberculosis." This information was transmitted to the State on June 25, 1998.

Provisional Measures from the Court

10. On May 22, 1998, the Commission requested provisional measures of the Court on behalf of five death row prisoners. The Commission cited a number of newspaper articles that had appeared in the press of Trinidad and Tobago which indicated that the State was planning to hang the five death row inmates imminently, disregarding the Commission's request for a stay of execution until such time as it could examine and decide these cases.[FN3]

[FN3] For example, the Trinidad Express, in an article dated March 16, 1998 stated that: "On Friday the Express listed two of five prisoners who are listed to hang: Anthony Briggs and Wenceslaus James as the first to be executed by the hangman."

11. The American Convention specifically provides for provisional measures. Article 63.2 of the Convention provides that: "In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration." The purpose of such measures is to prevent irreparable harm from reaching the victim while the case is in process. When this provision is read together with Article 68 of the American Convention, it is clear that this obligation is legally binding. Article 68 provides that: "1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." If the State party executes the victim before the Commission or the Court has the opportunity to render its decision, then any decision or judgment is rendered moot.

12. On May 26, 1998, the State gave notice to the Secretary General of the Organization of American States of its intention to denounce the American Convention on Human Rights.[FN4] Pursuant to Article 78 of the Convention this denunciation takes effect at the end of one year.[FN5]

[FN4] The American Convention on Human Rights entered into force on July 18, 1978. Trinidad and Tobago is the first State to have expressed its intention to denounce the Convention.

[FN5] Article 78 state that: "1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties. 2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation."

13. On May 27, 1998, the President of the Court, Judge Hernán Salgado-Pesantes ordered Provisional Measures in the five Trinidad and Tobago cases, which required the State "to take all measures necessary to preserve the lives of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel so that the Court may examine the pertinence of the provisional measures requested by the Inter-American Commission on Human Rights." In addition, the Court required the State to inform the Court "on the measures taken in compliance with this Order, as well as its observations on the measures requested by the Inter-American Commission on Human Rights so that this information can be studied by the Court."

14. On June 3, 1998, Mr. Carl Francis of the Permanent Mission of the Republic of Trinidad and Tobago to the OAS, informed Ambassador Jorge E. Taiana, Executive Secretary of the Commission, that further to Trinidad and Tobago's Notice of Denunciation of the American Convention on Human Rights that all correspondence, proceedings and related materials in

respect of applications before the Commission should be forwarded directly to the Attorney General of Trinidad and Tobago.

15. On June 9, 1998 the Court transmitted to the Commission the Observations of the State on the "measures requested by the Commission" rather than the measures taken in compliance with the Court's Order, as requested by the Court. The State explained that it failed to respond to the Commission's request to adopt precautionary measures because in Trinidad and Tobago "the death penalty can only be lawfully carried out following the issue of a Warrant of Execution" signed by the President. The Warrant is issued on the advice of the Minister of National Security following consultations with the Advisory Committee on the Power of Pardon under section 89 of the [Trinidadian] Constitution."

16. The State, in its Observations, asserted that the applications of the five death row inmates are subject to the Instructions Relating to Applications from Persons Under Sentence of Death approved by the Government on October 13, 1997. The State by means of these "Instructions" unilaterally attempted to impose a six months time frame on the Commission within which the latter is obliged to issue a decision on the merits which then will be taken into consideration by the Advisory Committee on the Power of Pardon in its recommendation to the President as to whether or not the death penalty should be implemented in the specific case. The State argued that until the Warrant of Execution is signed by the President, there can be no execution and that consequently "it is therefore premature" for the Commission to request precautionary measures before a Warrant of Execution is issued. The State, in its Observations, reiterated the arguments made on February 20, 1998 (*supra*) to the effect that the Commission would be acting *ultra vires* "if it attempted to alter by its recommendations the domestic law of the State in respect of sentencing" and that the Commission "does not have the jurisdiction to prevent in any way a sentence, authorized by the Constitution and laws of Trinidad and Tobago and pronounced by a court of competent jurisdiction, from being carried into effect."

17. The State argued further in its Observations that: "[A]ll the necessary safeguards exist in the judicial system of Trinidad and Tobago to protect the rights of accused persons and guarantee fair trial. The due process of law has been observed in each case." The State considered it "unacceptable" for the Commission to be suggesting friendly settlement six months after it submitted its response to the Briggs case on December 11, 1997. It stated that: "If a stay of execution is granted to permit the Commission to complete its protracted procedures there is no doubt that the time frame stipulated in Pratt and Morgan would be breached in these cases." The State placed in conflict compliance with its own Instructions and its obligations under the Convention, and opted for the former, concluding that since no execution warrants had been issued that "the State considers a response to be constitutionally inappropriate" and that the State "can give no undertaking that will cause the laws of Trinidad and Tobago to be breached." Further, the State emphasized that its recognition of the Court's jurisdiction was subject to a reservation which provided that it accepted the Court's jurisdiction only insofar as it is consistent with the Constitution of Trinidad and Tobago. Consequently, for the State, any order of the Court which results in delaying the execution of a prisoner violates Article 5(2)(b) of the Trinidadian Constitution and consequently is null and void.

18. On June 14, 1998, the Court, in plenary, ratified the Provisional Measures granted by the President of the Court on May 22, 1998 and requested the State to submit a report by June 30, 1998 on the measures taken in compliance with the Order and requested the Commission to submit its observations on the report within 15 days of receipt of the State's response.

19. On June 25, 1998 the State informed the Commission that the "six months time period for consideration of the application of Anthony Briggs" by the Commission, as stipulated in the Instructions expired on June 11, 1998. Further, "[I]n accordance with the Instructions the case of Anthony Briggs has now been referred to the Advisory Committee on the Power of Pardon." Consequently, according to the State, any recommendation which the Commission may make in this case will no longer be taken into consideration since it is would be issued at the expiration of the six month time period which the State has unilaterally established.

20. On July 1, 1998 the State's Report on the Measures taken in compliance with the Order of the Court was transmitted to the Commission. The State stated that "it cannot comply" with the Court's order of June 14, 1998 and reiterated its position that due process of law had been applied in all the cases and that the appellate tribunals "found no fault in any of the convictions." Further, the State argued that the procedures of the Commission and the UN Human Rights Committee "were likely to result in many cases in the lapse of more than five years between the passing of sentence and the decision of these bodies," and that following the adoption of the Pratt and Morgan decision by the Privy Council, the State "found itself obliged to issue the Instructions of 13 October 1997." It stated that "it did not issue these Instructions out of any disrespect" for the Commission, but rather that they "represent an attempt to reconcile the obligation to allow access to the Commission with the duty of the State to protect the public peace and security of Trinidad and Tobago by carrying out sentences lawfully imposed by the courts. The State party cannot accept a position in which its performance of that duty may be frustrated merely by the procedure of the Inter-American Commission."

21. On August 28, 1998 a public hearing was held before the Court on these issues.

III. POSITIONS OF THE PARTIES

The position of the petitioner

22. The complaint charges that the Applicant was arrested by the Trinidadian police and charged with the murder of Mr. Siewdath Ramkissoon on March 17, 1993. From that date until June 21, 1996, when he was convicted and sentenced, Mr. Briggs was detained on remand at the State Prison in Frederick Street, Port of Spain. The complaint alleges that the conditions at the State Prison violate Articles 5(1), 5(2), 5(4) and 5(6) of the American Convention. Following his conviction for murder, the petitioner was incarcerated on Death Row at the State Prison in Frederick Street and submits that the period of 15 months which he has spent on Death Row in the conditions set forth below, violate Article 5 of the American Convention. The conditions of which the petitioner complains are the following:

- the petitioner is locked in his cell for a period of 23 hours a day;

- the petitioner shares a 6' by 8' cell with 10 other inmates and alleges that the overcrowded conditions are extremely stressful and claustrophobic and lead to violent confrontations over minor infringements;
- that the sanitary conditions are degrading; a plastic pail is used for this purpose;
- that there is poor natural lighting and ventilation in the petitioner's cell;
- that there is inadequate exercise, recreational and educational provision, and no opportunity for useful employment;
- that the food provided is substandard and does not meet the petitioner's nutritional requirements;
- that the complaints mechanism is inadequate; the applicant lodged a complaint after spending over 2 years on remand with the Ombudsman concerning the delay in bringing him to trial; despite his complaint, the petitioner spent another full year on remand before being brought to trial.

23. The petitioner submits that his rights under Articles 7(5) and 8(1) of the American Convention were violated by the failure of the State to bring him to trial within a reasonable time.[FN6] Specifically, the petitioner states that:

- he was arrested and charged on March 17, 1993, 7 months after the murder of Siewdath Ramkissoon which occurred sometime between August 5-9, 1992;
- he was detained in custody for a period of 3 years and 3 months from the time of his initial arrest until his trial before a jury;
- that the cumulative 3 ? year delay in bringing the petitioner to trial was unreasonable and constituted a violation under Articles 7(5) and 8(1) of the American Convention on Human Rights.

Following his conviction, the petitioner states that:

- he spent a total 4 ? years in custody from his initial arrest on March 17, 1993 to the present date (October 1997).

[FN6] The petitioner makes an additional argument alleging violation of Article 7(3) of the Convention which the Commission does not consider sufficiently serious to warrant examination. [The petitioner suggests that the Applicant was subject to arbitrary arrest because he never admitted to the offense upon being arrested and that there was no forensic evidence to link the Applicant to the offense.]

24. The petitioner submits that his rights under Article 8(2)(b), 8(2)(d) and 8(2)(f) of the American Convention were violated by failure to receive sufficient and adequate representation from his Trinidadian lawyers. Specifically, the petitioner alleges that:

- He never met with Mr. Khan, his counsel, either before or during the committal at the Magistrates Court.

- In the period between his committal and trial, he met with Mr. Ken Wright , his trial attorney, on only one occasion. During the meeting he was not afforded an opportunity to give instructions to his counsel, hence his case was not properly put to the Court.
- At trial he had no opportunity to consult with Mr. Wright, despite numerous requests to do so. At no stage did counsel seek the petitioner's comments on the prosecution evidence, nor inform him of the contents of the prosecution witness's statements.
- Had he known the full extent of the prosecution's case at the outset, he would have called several witnesses to give evidence in his defense at trial.
- Considering that this was a capital case, the petitioner received insufficient and inadequate legal representation. In these circumstances, a genuine prejudice has been caused to the petitioner which violates Article 8 of the American Convention.

25. The petitioner also alleges that he did not receive a fair trial within the meaning of Article 8(1) of the American Convention due to the following:

- The Trial Judge erred in his directions to the Jury. At the conclusion of the trial, the Judge (at pages 280-1 of the Transcript at Appendix 1) directed the Jury on the "felony/murder rule" despite the fact that the rule had ceased to apply in Trinidad and Tobago. Later in his summing up (at page 317), the Trial Judge directed the jury as follows: "The State is asking you, looking at all the circumstances, to find that these two men planned to either murder Siewdath Ramkissoon or to rob him using personal violence on him and killed him in the process and that therefore they are guilty of murder." His direction to the Jury was clearly a misdirection and it is submitted that, in consequence thereof, the verdict of the Jury is unsafe and unsatisfactory;
- The Court of Appeal failed of its own motion to address the correctness of the Trial Judge's direction to the Jury on the "felony/murder rule," despite the fact that it had ceased to apply in Trinidad and Tobago. The petitioner submits that this was a grave omission by the Court of Appeal in view of the public importance of the issues at stake;
- The petitioner received insufficient and inadequate representation from Mr. Ravi Rajoomar, his Trinidadian lawyer on Appeal to the Trinidad and Tobago Court of Appeal;
- The petitioner never met Mr. Rajoomar, either before, during or after the appeal;
- Mr. Rajoomar was negligent and in breach of Counsel's duty in that he failed to put forward as a ground of appeal the fact that the Trial Judge had misdirected the Jury on the "felony/murder rule";
- But for the Trial Judge's misdirection to the Jury, the petitioner may well have been acquitted for lack of any substantial evidence against him.

Supplementary petition

26. By letter dated February 4, 1998, the petitioners submitted a supplementary application on behalf of Mr. Briggs alleging the following additional violations of the American Convention:

- that the petitioner suffers from hemorrhoids since 1995 (whilst he was on remand) and was allowed to see a doctor in January 1997 who recommended surgery; no arrangements were made for this surgery; a second doctor in August and October 1997 recommended that he be placed on a special diet for his condition; no steps were taken to place him on the diet

recommended by the doctor; the petitioner reports that the situation has deteriorated and that he is now passing blood in his stools and experiences severe pain and difficulty in the process;

- it is submitted that the above treatment amounts to cruel, inhuman and degrading treatment in violation of Article 5(1) and 5(2) of the American Convention.

27. The petitioner was moved to a new cell on October 31, 1997 (after the submission of his case to the IACHR) where he is the sole occupant. Previously he shared a 6' x 8' cell with ten other inmates. The petitioner states that he was moved to this cell because the prison authorities alleged that he was in possession of a hacksaw although no investigation was ever carried out despite his assertions to the contrary.

28. The petitioner reiterates his complaints concerning prison conditions, he is locked in his cell now for a period of 24 hours per day, he is allowed an inadequate amount of exercise (one hour per week), poor ventilation, degrading sanitary conditions, substandard food and inadequate complaints procedure. The petitioner also informs that his cell is opposite a prisoner (Ramsingh Jairam) who has been diagnosed with tuberculosis and that the petitioner fears that he too will contract tuberculosis. The petitioner's requests to be tested for tuberculosis have been denied. The petitioner also informs that he is searched four times a day at 5am, 7am, 1pm and 9pm. He alleges that he is often rudely awakened in order to be searched and finds it difficult to get back to sleep again.

29. The petitioner complains about the Instructions issued by the Government which impose a timetable to ensure prompt recourse to the IACHR by prisoners under sentence of death and prompt disposition of the case by the Commission; the petitioner alleges that the Instructions do not apply to him since his original application was made on October 7, 1997, two days before the Instructions were issued.

30. In the alternative, the petitioner submits that the Instructions breach Articles 4 and 5 of the American Convention for the following reasons:

- To proceed to the execution of a prisoners whilst an application is pending before the IACHR is arbitrary and contrary to Article 4(1) of the Convention;

- The right of every condemned person to apply for amnesty, pardon, commutation of sentence, set forth in Article 4(6) of the Convention, is violated where the body charged with making these decisions is unable to take into account the findings, conclusion and recommendations of the Commission;

- To proceed to execution of a prisoner under sentence of death whilst he has an application pending before the Commission because the Commission has failed to request a response and a stay of execution, or has failed to complete the process, is arbitrary, cruel and inhuman contrary to Articles 4(1), 5(1) and (2), and violates the rights to a fair trial and an effective recourse contrary to Articles 8 and 25.

31. In addition, the petitioner submits that the time-limits imposed by the Government of Trinidad and Tobago in the Instructions directly conflict with the time limits set out in the Convention in that they make no provision for:

- i) the Commission to carry out fact-finding under Reg. 44(1);
- ii) the petitioner to comment on documents provided by the Government under Reg. 37(7)(a);
- iii) an oral hearing, or the provision of written statements under Reg. 48(1)(e);
- iv) a friendly settlement under Reg. 48(1)(f) and 49;
- v) a request for reconsideration of the Commission's findings and recommendations in the light of new facts or legal arguments by the applicant under Reg. 54(1).

32. The Supplementary petition was transmitted to the Government of Trinidad and Tobago by the Commission on March 16, 1998.

Relief Sought

33. The petitioner requested the Commission to:

- i) declare a breach of Articles 5, 7 and 8 of the American Convention;
- ii) declare that by reason of these violations and the denial of the petitioner's rights to a fair trial, he be released;
- iii) request that the Government of Trinidad and Tobago refrain from ordering any new trial since no trial could possibly be fair after so prolonged a period;
- iv) request that the Government of Trinidad and Tobago compensate the petitioner for suffering caused as a result of 4 ? years in detention, part thereof under sentence of death.

The position of the State

34. The State of Trinidad and Tobago responded to the Commission's request for information on this case by Note dated December 15, 1997. In its response the State made the following points:

- The Exhaustion of Domestic Remedies Rule

The State maintained that the petitioner failed to exhaust domestic remedies by not pursuing a Constitutional Motion. It informed that legal aid is available for indigents by first applying to the Legal Aid and Advice Authority. The State requested the Commission to declare the complaint inadmissible for failure to comply with Article 46(1) of the American Convention.[FN7]

[FN7] Article 46(1)(a) states "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law" for a petition to be declared admissible.

- Article 5 of the American Convention

35. As regards the alleged violation of Article 5, the State alleged that: the petitioner failed to produce any evidence to substantiate the allegation of a breach of Article 5(1) of the Convention.

As regards a possible breach of Article 5(2), the complaint sets out several allegations against the State party which are largely unsubstantiated and, as pointed out above, are in many cases factually incorrect. None of the allegations set out, it is submitted, amount to torture, cruel, inhuman or degrading punishment or treatment. As regards a possible breach of Article 5(4), the information given by or on behalf [of] the petitioner about his incarceration whilst on remand is erroneous. He was detained together with other remand prisoners and afforded treatment appropriate to his status as an unconvicted person. Only when convicted of murder was he moved to a Condemned Division at the State Prison, Port of Spain. As regards the possible breach of Article 6(6), it is submitted that the punishment to be inflicted on the petitioner under the laws of Trinidad and Tobago does not consist of deprivation of liberty, but death by hanging. Accordingly, the reform and social readaptation of the petitioner is irrelevant at this time.

- Article 7 of the American Convention

36. As regards the alleged violation of Article 7(5) of the American Convention, in that the petitioner was detained for over 3 years before being brought to trial and that such delay is unreasonable, the State argued that: "The [petitioner] did not seek to challenge the delay in bringing his case to trial either before the domestic courts or before the Commission." And further, "that the nature of the alleged breach is such that the [petitioner] was aware of a possible breach at the latest by the date of his trial. It is not in the nature of a continuing breach and neither was it an issue in the appeal of the petitioner to the Court of Appeal and the Judicial Committee of the Privy Council. The State requested the Commission to consider this part of the complaint inadmissible, and concluded that: In the interests of fairness to the State party some limitation period must be set on such allegations of breach. It is respectfully submitted that having failed to raise the issue of his pre-trial detention within a reasonable period the [petitioner] is now estopped from so doing and must be taken to have waived his right to complain."

37. The State argued that this case falls within the guidelines set forth in 1993 by the Judicial Committee of the Privy Council in the case of *Pratt and Morgan v Attorney General for Jamaica*. The *Pratt and Morgan* case established that if an execution were to take place more than five years after the sentence of death then such a delay would constitute "inhuman or degrading punishment or other treatment." *Pratt and Morgan* held that the entire domestic appeals process (including an appeal to the Privy Council) should be completed within approximately two years from conviction. In this case, the State pointed out that the petitioner's "appeal was heard within 9 months of conviction and the entire domestic appeal process, including an appeal to the Privy Council, has taken approximately 15 months," well within the period set by the Privy Council.

- Article 8 of the American Convention

38. As regards the alleged violation of Article 8, the State submits that the petitioner failed to substantiate the allegations of violations of Article 8(2)(b),(c), (d) and (f), and that therefore this part of the communication should be held inadmissible.

39. The State maintained that the petitioner failed to advance any evidence in support of the allegations that he was denied detailed prior notification of the charges against him, or adequate

time and means for the preparation of his defense. The petitioner was provided with legal representation and afforded the right to communicate freely with counsel, and the defense was free to call and examine witnesses. The State submits that the petitioner had adequate opportunity to consult with his lawyers at all stages of the trial and that he failed to evidence any occasion on which the State denied him the right to communicate with counsel or hindered him in any way with the preparation of his defense. At no time during the proceedings did the petitioner raise his dissatisfaction with the way that he was being represented and the case conducted.

40. As regards the alleged violation of Article 8(1), the State maintained that the petitioner is seeking to use the Commission as a final court of appeal. The State maintains that "[I]t is a well established and generally recognized principle that it is not for the Commission but for the Appellate Courts of State parties, to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice." The State refutes the notion that there was a denial of justice in this case.

41. As regards the alleged misdirection by the judge to the jury on the "felony/murder rule", the State did not explicitly admit that the direction to the jury was wrong. Instead, the State maintained that "this does not however necessarily mean that the conviction would have been quashed had the misdirection been ventilated before the Court of Appeal" because in many cases "the abolition of the felony/murder rule has left the outcome of murder trials unaltered."

42. The State maintained that it is the role of the Courts of Appeal to consider the facts and evidence of a case, and submitted that "on the facts, if the jury had been properly directed on the issue of intent to kill or cause grievous bodily harm as being an ingredient in murder rather than on the "felony/murder rule," they would have come to the same conclusion and returned the same verdict. Indeed, on the facts and evidence before them, the Court of Appeal and the Judicial Committee of the Privy Council upheld the conviction for murder."

IV. ANALYSIS

A. Admissibility

43. The Commission considered the issues of admissibility during its Ninety-ninth Extraordinary Session and issued Report No. 36/98 (Admissibility) on May 7, 1998.

B. The Merits

The proven facts

44. The violations alleged by the petitioner can be grouped into the following categories: 1) violations of Article 5 of the Convention, having to do with prison conditions; 2) violations of Article 7(5) of the Convention, having to do with length of pre-trial detention; 3) violations of Article 8(2) of the Convention, having to do with the quality of the petitioner's legal representation and 4) violations of Article 8(1) of the Convention, having to do with the trial judge's alleged misdirections to the jury. Since the issues raised in the petitioner's

Supplementary petition were not responded to by the State, and principally address procedural issues relating to the ?Instructions relating to applications from persons under sentence of death? published by the State on October 13, 1997, (Instructions), in light of the fact that these Instructions are currently under consideration by the Privy Council in the Darren Roger Thomas and Haniff Hilaire cases, and that any favorable decision by the Privy Council on these issues would affect the instant case, the Commission considers that by means of the constitutional motion which brought these issues before the Privy Council, that domestic remedies have not been exhausted in this case with regard to these issues.

- Article 5

45. As regards the allegations of violations of Article 5 of the Convention, the Commission is confronted with contradictory versions of the conditions of detention. The allegations set forth in the complaint are reproduced above. The State, on the other hand, alleges that: "The [petitioner] (...) enjoys a cell by himself. The cell measures 9 feet by 7 feet and is furnished with a bed, mattress, bench, table and slop pail. The latter is emptied at least three times a day. He is allowed one hour of exercise per day, except on weekends and during inclement weather. He is also afforded half an hour to bathe. Cells are constructed to allow for natural light. Ventilation is more than adequate and is provided in the form of air vents at the top and bottom of each cell. The door of the cell is constructed with bars and this allows the unrestricted flow of air. Circulation of air throughout the prison is also maintained by the use of electric fans."[FN8] The two parties have presented widely differing versions of the facts, such as, for example, the petitioner's allegation that he is permitted "one hour of exercise, once a week in the Airing Yard," and the State's response that he is allowed one hour of exercise per day. These diverse versions of the facts cannot be reconciled and neither party has presented any supporting documentation or information to corroborate his position. In the opinion of the Commission, a questionnaire filled out by the petitioner has no more corroborative weight than an allegation made by the State unsupported by any documentation or other proof, and lack of sufficient information presented by either party renders the Commission unable to find the facts as regards the alleged violations of Article 5.

[FN8] Response of the State of Trinidad and Tobago dated December 15, 1997.

- Article 7(5)

46. It is alleged that the petitioner is a victim of a violation of Article 7(5) of the American Convention in that the Respondent failed to bring him to trial within a "reasonable time." [FN9] Specifically he alleges that: 1) he was arrested and charged on March 17, 1993, seven months after the murder which occurred in August 1992 and 2) he was detained in custody for a period of 3 years and 3 months from his initial arrest until his trial.

[FN9] Article 7(5) of the American Convention provides that: "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and

shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.?

47. The State argues that the petitioner did not seek to challenge the delay in bringing his case to trial either before the domestic courts or before the Inter-American Commission. The State argues that this challenge is out of time and therefore inadmissible. The State alleges that the petitioner was aware of a possible breach at the latest by the date of his trial and in the interest of fairness some limitation period must be set on such allegations of breach. Having failed to raise the issue of his pre-trial detention within a reasonable period, the petitioner is now estopped from doing so and must be taken to have waived his right to complain.

48. Pursuant to the jurisprudence of the Inter-American Commission, the issue of the alleged unreasonable pre-trial delay should not be viewed exclusively from a theoretical point of view, taking account solely the period from the date of arrest of the accused until his conviction and sentence. The Commission is of the opinion that the reasonableness of the delay cannot be judged in the abstract but must be evaluated on a case by case basis.[FN10] Consequently, it is not sufficient for a petitioner to argue that three years and three months have expired from the date of the arrest as in the instant case and that therefore a breach has occurred *ipso facto*.

[FN10] See Report N° 2/97, Cases 11.205, 11.236, et al. (Argentina) March 11, 1997, ANNUAL REPORT 1997 at 241, 245-6. This reasoning was set forth in the leading European Court case on this issue, the *Stogmuller v. Austria* judgment of 10 November 1969, Series A no. 9, p. 40.

49. In this context, the leading case considered by the Inter-American Commission is that of Mario Firmenich, a member of the armed political dissident group, *Movimiento Montoneros*, in Argentina, who was detained at the time of his complaint for over three and a half years, in spite of a provision in the Argentine Code of Criminal Procedure which provided that "all trials must be completed within two years.[FN11] In that case the Commission held that the definition of a reasonable length of time? involves weighing the objective assessment of the characteristics of the event and the personal characteristics of the accused.[FN12] Consequently, the Commission referred to three factors: a) the actual duration of the imprisonment; b) the nature of the acts which led to proceedings and c) the difficulties or judicial problems encountered when conducting said trials.[FN13] Upon consideration of these factors, the Commission found no violation of Article 7(5) of the Convention in that case.

[FN11] See Report N° 17/89, Case 10.037 (Argentina), April 13, 1989, ANNUAL REPORT 1988-1989, at p. 6 et seq.

[FN12] *Id.* at p. 62.

[FN13] *Id.* at p. 63.

50. This analysis is consistent with the jurisprudence on this issue of the European Court. In a 1993 case involving pre-trial detention of four years and three days, the European Court rejected the European Commission's opinion that there existed "a maximum length of pre-trial detention" and stated that "the reasonableness of an accused person's continued detention must be assessed in each case according to its special features."^[FN14] The test established by the European Court is the following: "The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices: the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were 'relevant' and 'sufficient', the Court must also ascertain whether the competent national authorities displayed 'special diligence' in the conduct of the proceedings (...)."

[FN14] *W. v. Switzerland*, 26 January 1993, Series A, no. 254-A, at para. 30.

51. The U.N. Human Rights Committee in a case involving an individual on death row in Jamaica held that a delay of 28 months between arrest and trial was a violation of the petitioner's right to be tried without undue delay:

As regards the author's claim that he was not tried without undue delay because of the unreasonably long period, 28 months, between arrest and trial, the Committee is of the opinion that a delay of two years and four months was a violation of his right to be tried within a reasonable time or to be released. The period in question is also such as to amount to a violation of the author's right to be tried without undue delay. The Committee therefore finds that there has been a violation of Articles 9, paragraph 3, and 14, paragraph 3 (c). Communication No. 707/1996, Patrick Taylor (Jamaica), CCPR/C/60/D/707/1996, 15 August 1997.

52. In another U.N. Human Rights Committee case, the delay between arrest and trial added up to two years.^[FN15] The State party argued that a preliminary inquiry was held during the period of pre-trial detention, and that there was no evidence that the delay was prejudicial to the author. The Committee held that by rejecting the author's allegation in general terms, the State party has failed to discharge the burden of proof that the delays between arrest and trial in the instant case was compatible with Article 14, paragraph 3(c); it would have been incumbent upon the State party to demonstrate that the particular circumstances of the case justified prolonged pre-trial detention. The Committee concluded that in the circumstances of the case there had been a violation of Article 14, paragraph 3(c).^[FN16]

[FN15] Communication N° 561/1993, *Desmond Williams (Jamaica)*, CCPR/C/59/D/561/1993, 24 April 1997 para. 9.4.

[FN16] Article 14 (3)(c) of the ICCPR states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... to be tried without undue delay."

53. The Inter-American Commission, simultaneous with its case by case analysis of the reasonableness of the pre-trial delay, has established that the burden of proof is on the State to present evidence justifying the prolongation of the delay. In assessing what is a reasonable time period, the Commission, in cases of prima facie unacceptable duration has placed the burden of proof on the respondent government to adduce specific reasons for the delay, and in such cases, the Commission will subject these reasons to the Commission's closest scrutiny.[FN17]

[FN17] Report N° 12/96, Case 11.245 (Argentina), March 1, 1996, ANNUAL REPORT 1995, at 33, 51.

54. In the instant case the State party did not attempt to demonstrate that the particular circumstances of the case justified prolonged pre-trial detention. On the contrary, the State party placed the burden of proof on the petitioner alleging that the petitioner was estopped from raising the issue of his pre-trial detention since he had not raised it during trial.

55. In the present case the delay between arrest and trial is a period of three years and three months. Given the allegations of the petitioner that he had no opportunity to consult with Counsel during the preliminary stage of the trial, the Commission cannot find that petitioner is estopped from raising the issue of his pre-trial detention at this stage. Consequently, the Commission finds a delay of three years and three months was a violation of the petitioner's right to be tried within a reasonable time or to be released. The period in question is such as to amount to a violation of the petitioner's right to be tried within a reasonable time. The Commission, therefore, finds that there has been a breach of Article 7(5) of the American Convention in this case.

- Article 8(2)

56. The petitioner alleges that the deplorable quality of his legal representation violated Article 8(2) of the Convention in that "he had extremely limited opportunities to speak with his counsel either before, during or after the trial." [FN18] The complaint states that: "There was no opportunity at all to consult with Counsel before or during the preliminary stage of the Trial. At the trial itself the [petitioner] had a different Attorney who visited him once at the State Prison some two months before the trial started but never spoke to him afterwards. The Appeal itself was led by yet another Attorney, who never spoke to or visited the [petitioner] or responded to a letter written by the Petitioner, yet visited other prisoners on death row." [FN19]

[FN18] Observations of the Petitioner on the Response of the Trinidad and Tobago Government .
[FN19] Ibidem.

57. The complaint is accompanied by questionnaire filled out by the petitioner. Although the Commission does not consider the questionnaire a totally reliable source of information

regarding prison conditions, it does consider it so as regards information concerning the petitioner's contact with his attorneys. In the questionnaire presented by the petitioner, which was forwarded to the Government of Trinidad and Tobago on March 18, 1998, the petitioner states that: "At the trial I had another attorney that is Mr. Winfield Wright and the prison records will show that we'd only spoken once." As regards his contact with the lawyer who conducted the appeal, the petitioner states: "Attorney for the appeal was Mr. Ravi Rajoomar and I had no conference with him whatsoever nor did I sign the grounds. The prosecution became known to me within the course of the trial." The State, in its response dated December 15, 1997, stated that: "It is the submission of the State Party that the [petitioner] had adequate opportunity to consult with his lawyers at all stages of his trial. The [petitioner] has failed to evidence any occasion on which the State denied him the right to communicate with counsel or hindered him in any way with the preparation of his defense."

58. The petitioner has presented information that he only met once with his trial attorney and never met with the attorney for the appeal, however, there is no information to show that the petitioner protested this lack of contact during the trial or the appeal and how he was prejudiced by this lack of contact. The State in this case fulfilled its burden of providing the petitioner with legal assistance. If the petitioner does not make it known to the State that he considers that legal assistance to be inadequate in some way, during the trial or during the appeal, then this Commission cannot hold the State responsible for actions of which it has no knowledge since the petitioner failed to bring it to its attention. The Commission follows the jurisprudence of the European Court in this area, which has held that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. Instead, the competent national authorities are required under Article 6 (3)(c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention.[FN20] Consequently, the Commission finds no violation of Article 8(2) as regards inadequate legal representation.

[FN20] Kaminski v. Austria, 19 December 1989, Series A. N° 168 para. 65.

- Article 8(1)

59. The petitioner alleges further that but for the Trial Judge's misdirection to the Jury, he may well have been acquitted for lack of any substantial evidence against him, in violation of Article 8(1) of the American Convention. The Commission considers that it is generally for the appellate courts of States parties, and not for the Commission, to review the facts and the evidence in a particular case. Similarly, it is for the appellate courts of States parties and not for the Commission to review the judge's instructions to the jury or the conduct of the trial, unless it is clear that the judge's instructions to the jury were manifestly arbitrary or amounted to a denial of justice.

60. In the instant case, the petitioner alleges that "but for the Trial Judge's misdirection to the Jury, the Petitioner may well have been acquitted for lack of any substantial evidence against

him." The State, however, in its response to the petition dated December 15, 1997, limited itself to denying the petitioner's allegation without providing any proof that the contrary was true:

Accordingly, the State party, without wishing to involve the Commission in the consideration of facts and evidence which fall properly within the jurisdiction of the Courts of appeal of the State party in accordance with recognized principles of international law, respectfully submits that on the facts, if the jury had been properly directed on the issue of intent to kill or cause grievous bodily harm as being an ingredient in murder rather than on the felony/murder rule, they would have come to the same conclusion and returned the same verdict. Indeed on the facts and evidence before them the Court of Appeal and the Judicial Committee of the Privy Council upheld the conviction for murder.

61. In the petition of Mr. Briggs for special leave to appeal in forma pauperis to the Judicial Committee of the Privy Council, the issue of the Judge's misdirections to the jury is raised. In the appeal, the petitioners argue that had his appeal been determined in the light of the correct applicable law, the proper verdict would have been one of Not Guilty to murder.

In the State's response to the petition, it was alleged that as stated in *Moses v The State* 1997 AC 53 at Sec. 43 at 67 G-H there are many situation where a conviction after a felony/murder direction could just as well have been reached if the judge had chosen to explain the law in orthodox terms of intent, and in such cases the proviso to section 44(1) of the Supreme Court of Judicature At may properly be applied. In spite of the fact that the State's allegation that the conviction could have been reached, the Privy Council on the evidence before it, upheld the conviction. Consequently, the Commission, as stated above, does not consider its role to be one of second guessing the lower courts as regards the evaluation of the evidence, and concludes that the petitioners have had sufficient judicial review on this issue. Consequently, the Commission finds no violation of the fair trial guarantees of Article 8(2) of the American Convention.

Obligation of States to guarantee and respect rights

62. In this case it has been demonstrated that the State of Trinidad and Tobago has not complied with the provision of Article 1(1) that States Parties undertake "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." For that reason the State of Trinidad and Tobago is deemed to have violated Article 1(1) of the American Convention.

63. States Parties to the American Convention assume, under Article 1(1), the obligation to ensure free and full exercise of the rights and freedoms recognized in the Convention. The jurisprudence of the Inter American Court of Human Rights established that: "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which State power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights." (*Velásquez Rodríguez Case*, Judgment of July 29, 1988, paragraph 166).

64. Consequently, the Commission concludes that the State of Trinidad and Tobago has violated Article 1(1), because it failed to safeguard the exercise of the rights of Anthony Briggs.

V. CONSIDERATIONS REGARDING THE RESPONSE OF THE STATE

65. The Commission approved Report N° 64/98 (Article 50) on the present case on November 3, 1998, during its one hundredth period of sessions. The Report was transmitted to the State with the recommendations of the Commission, by fax, on November 25, 1998, and the State was requested to take the necessary measures in order to comply with the recommendations within a period of two months from the date of transmittal.

66. By means of a Note dated February 3, 1999 from the Attorney General's Office to the Executive Secretary of the Commission, the State acknowledged receipt of Report No. 64/98. The Note further indicated that:

The Report has been submitted to the Advisory Committee on the Power of pardon. The Committee will consider at its next meeting the recommendation of the Commission concerning compensation and consideration of the early release or commutation of sentence in respect of Anthony Briggs. Notice of the Committee's decision in these matters will be communicated to the Commission in due course.

67. In spite of the fact that the Commission requested the State to inform it of the measures taken to implement its recommendations by January 25, 1999, the State did not respond until February 3, 1999, and indicated that it was submitting the Commission's report an internal procedure, the Advisory Committee on the Power of Pardon, for possible compliance. The Commission, by the initial date of approval of this report, March 8, 1999, had not received information from the State concerning the meeting of this Advisory Committee or any further activity undertaken in order to comply with this decision.

VI. CONCLUSION

68. The Commission, on the basis of the information presented reiterates the Conclusion stated in its Article 50 Report:

(I) That the State of Trinidad and Tobago is responsible for violating the right of the petitioner, who had been accused of a capital criminal offense, to "trial within a reasonable time or to be released without prejudice to the continuation of the proceedings" in violation of Article 7(5) of the American Convention, read in conjunction with the State's overall obligation to respect and ensure the exercise of these rights, set forth in Article 1(1), enshrined in the American Convention. The Commission finds no violations of Articles 5 or 8 of the Convention in this case.

VII. RECOMMENDATION

Based on the analysis and the conclusion in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATION TO THE STATE OF TRINIDAD AND TOBAGO:

(I) The petitioner is entitled to an effective remedy which includes compensation and consideration for an early release or commutation of sentence.

VIII. PUBLICATION

69. On March 15, 1999, the Commission transmitted Report 44/99 adopted in the present case to the State pursuant to Article 51(1) and (2) of the American Convention, granting it an additional period of one month to take all necessary measures in order to comply with the Commission's recommendation. The State failed to present a response within the time limit.

70. Based on the foregoing consideration, and in conformity with Article 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to reiterate its conclusion and recommendation in this Report, to make this Report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Commission, pursuant to its mandate, shall continue evaluating the measures taken by the State of Trinidad and Tobago with respect to the recommendation at issue, until it has been fully complied with.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the fifteenth day of the month of April in the year 1999. (Signed) Robert K. Goldman, Chairman; Helio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Jean Joseph Exumé, Carlos Ayala Corao and Alvaro Tirado Mejía, Commissioners.