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Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts,
Susana Villaran.
Dated: 27 December 2002
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Represented by: APPLICANT: Saul Lehrfreund
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I. SUMMARY

1. On November 20, 2000, the Inter-American Commission on Human Rights (the "Commission") received a petition from Mr. Saul Lehrfreund of the London, United Kingdom law firm of Simons Muirhead & Burton (the "Petitioners") on behalf of Dave Sewell, a death row inmate in the State of Jamaica ("Jamaica" or the "State").

2. The petition alleged that the State tried and convicted Mr. Sewell for the crime of capital murder and sentenced him to death by hanging on April 6, 1998 pursuant to Jamaica's Offences Against the Person Act, 1864, as amended by the Offences Against the Person (Amendment) Act 1992. The petition also alleged that the State is responsible for violating Mr. Sewell's rights under the American Convention on Human Rights (the "Convention") in connection with the criminal proceedings against him based upon the following grounds:

- (a) violations of Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the Convention, relating to the mandatory nature of the death penalty imposed upon Mr. Sewell;
- (b) violations of Articles 5(1) and 5(2) of the Convention, relating to Mr. Sewell's conditions of detention and the method of execution in Jamaica;
- (c) violations of Articles 7(5) and 8(1) of the Convention, relating to the delay in trying Mr. Sewell;
- (d) violations of Articles 24 and 25 of the American Convention, relating to Mr. Sewell's inability to pursue a Constitutional Motion in Jamaica.

3. In its response to the petition, the State denied that the manner in which the death penalty is imposed in Jamaica contravenes Article 4(2) of the Convention and contended that the

exercise of the prerogative of mercy in Jamaica is sufficient to take the individual circumstances of an offender into account in imposing a death sentence. The State also denied that conditions of detention at St. Catherine District Prison in Jamaica fail to meet international standards of humane treatment, and asserted that Articles 24 and 25 of the Convention do not place an obligation on State Parties to provide legal aid for Constitutional Motions. With respect to the Petitioners' allegations relating to the delay in trying Mr. Sewell, the State indicated that it would investigate the facts surrounding the allegation and submit the results thereof to the Commission.

4. The Commission had not previously made an admissibility determination pursuant to Articles 46 and 47 of the Convention concerning the complaints presented in Mr. Sewell's petition. After having considered the matter, the Commission has decided to declare admissible the claims presented on behalf of Mr. Sewell.

5. In addition, upon consideration of the merits of Mr. Sewell's complaint, the Commission reached the following conclusions:

(a) The State is responsible for violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty;

(b) The State is responsible for violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention;

(c) The State is responsible for violating Articles 7(5) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell;

(d) the State is responsible for violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

II. PROCEEDINGS BEFORE THE COMMISSION

A. Petition and Observations

6. Following the receipt of Mr. Sewell's petition on November 20, 2000, the Commission opened Case 12.347 and transmitted the pertinent parts of the petition to the State by communication dated December 4, 2000, with a request that the State supply information with respect to the communication within 90 days as established in the Commission's former Regulations. [FN1]

[FN1] During its 109th special session in December 2000, the Commission approved the Rules of Procedure of the Inter-American Commission on Human Rights, which replaced the Commission's prior Regulations of April 8, 1980. Pursuant to Article 78 of the Commission's Rules of Procedure, the Rules entered into force on May 1, 2001.

7. By communication dated February 2, 2001, which was received by the Commission on February 6, 2001, the Commission received information from the State respecting Mr. Sewell's petition. By note dated February 12, 2001 the Commission transmitted the pertinent parts of the State's observations to the Petitioners, with a response requested within 30 days.

8. By letter dated March 12, 2001 and received by the Commission on the same date, the Petitioners delivered a reply to the State's observations on Mr. Sewell's petition. The Petitioners' reply included a copy of an affidavit sworn by Mr. Sewell on February 6, 2001. In a note dated March 13, 2001, the Commission transmitted the pertinent parts of the Petitioners' reply to the State, with a response requested within 30 days.

9. As of the date of the present report, no further written observations had been received by the Commission from the parties in this matter.

B. Precautionary Measures

10. Contemporaneously with the transmission of the pertinent parts of the petition in this matter to the State, the Commission requested pursuant to Article 29(2) of its former Regulations that the State take precautionary measures to stay Mr. Sewell's execution pending the Commission's investigation of the allegations in the petition and the threat of irreparable harm to Mr. Sewell no longer persisted. This request was made on the basis that if the State executed Mr. Sewell before the Commission had an opportunity to examine his case, any eventual decision would be rendered moot in terms of available remedies and irreparable harm would be caused to Mr. Sewell. The Commission did not receive a response from the State to its request for precautionary measures.

C. Friendly Settlement

11. By communications dated January 15, 2002 to the Petitioners and to the State, the Commission placed itself at the disposal of the parties, with a view to reaching a friendly settlement pursuant to Article 48(1)(f) of the Convention on the basis of respect for the human rights recognized therein. The Commission also requested that the parties provide the Commission with a response to the Commission's offer within 30 days of receipt of the communication, in the absence of which the Commission would continue with consideration of the matter.

12. In a note dated February 14, 2002, which was received by the Commission on the same date, the Petitioners informed the Commission that they were not willing to enter into a friendly settlement, in view of the fact that Mr. Sewell was under sentence of death awaiting execution. Subsequently, in a communication dated February 27, 2002, which was received by the Commission on the same date, the State informed the Commission that it was of the view that there were no outstanding issues that would necessitate friendly settlement discussions, and urged the Commission to continue with its consideration of the case.

13. In light of the parties' responses to the Commission's January 15, 2002 communication, the Commission considered that a friendly settlement of the matter was not possible and decided to continue to process the matter in accordance with the provisions of the American Convention and the Commission's Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

1. Background to the Case

14. According to the record in this case, Dave Sewell was arrested and charged with the June 11, 1993 murder of Errol Cann, a businessman in Spanish Town, St. Catherine, in the course or furtherance of a robbery. Mr. Sewell was subsequently tried for the murder from March 28 to April 12, 1995, together with his co-Defendants Dean McTaggart and Kevin Geddes. On April 12, 1995, Mr. Sewell and Mr. McTaggart were convicted of capital murder and sentenced to death by hanging, while Mr. Geddes was convicted of non-capital murder and sentenced to 25 years imprisonment. All three Defendants subsequently appealed their convictions and sentences, and Mr. Sewell's appeal was allowed by the Court of Appeal of Jamaica on July 31, 1996 and a re-trial was ordered, while his co-Defendants' appeals were dismissed.

15. On April 6, 1998 in the Home Circuit Court, Kingston, Jamaica, Mr. Sewell was again convicted of the crime of capital murder and sentenced to death. Mr. Sewell again appealed his conviction and sentence, and on July 30, 1999 the Court of Appeal of Jamaica dismissed his appeal. Mr. Sewell then lodged a petition for Special Leave to Appeal as a Poor Person to the Judicial Committee of the Privy Council on May 8, 2000, and the Privy Council dismissed his petition on July 17, 2000.

16. The prosecution's case was based in part upon the evidence of one witness, Dave Morris, who claimed to have grown up with Mr. Sewell and was the only witness to implicate Mr. Sewell in the crime. In particular, Mr. Morris claimed that on the night before the murder he had been kidnapped by a friend named Tousand and taken to a one room house where he remained overnight. He also claimed that the next morning he assisted Mr. Sewell and another man named German to deliver a hard cart to Martin Street and was then told to leave. He pretended to leave but hid instead in order to view what was happening.

17. Also according to the prosecution, at some time after 9:00 am on June 11, 1993, the deceased was sitting in the front passenger seat of a motor car driven by his employee, Dorothy Shim. They were driving along Martin Street in Spanish Town on the way to the bank. A female clerk was sitting in the back of the car with a bag containing over half a million dollars. Mrs. Shim saw a boy struggling with a cart in the middle of the road and stopped the car. A man then appeared in front of the car pointing a gun in the direction of the car, and several men also appeared behind the car on its left side. One of these men, who was later identified by Mr. Morris as Mr. Sewell, drew a long gun from a shopping bag containing flowers. Blood was seen coming from the deceased's mouth, who told Mrs. Shim that he had been shot in the heart and mouth. The deceased's cause of death was a shot gun wound to the chest. Mr. Sewell then ran

from the scene while one of the accomplices pushed himself part way into the car while it was moving but eventually fell. It appears that during this period the money in the clerk's possession was stolen as it was missing by the time Mrs. Shim had driven the car to the hospital a few minutes away.

18. Following the shooting, Mr. Morris also fled the scene and the next time he saw Mr. Sewell was when he pointed him out in a cell at the Central Police Station on August 19, 1993, after Mr. Sewell's arrest on July 9, 1993. The prosecution alleged that Mr. Sewell sought to avoid being pointed out in a previous identification parade held on July 27, 1993 by arranging with another prison, Christopher Baker, to stand in his place.

19. In his defense, Mr. Sewell made an unsworn statement in which he declared that he was innocent and that he did not know the witness Morris and did not grow up with him. In addition, Mr. Sewell claimed that at the time of the incident he was engaged at work at a construction site at Naggo's Head Hellshire, that he had worked there for some minutes before 8:00 a.m. until noon and had heard the news of Cann's death on the radio just before lunch in the site canteen. Also according to Mr. Sewell, he had been on the identification parade on July 27 but had not been pointed out, and the defense called an attorney-at-law, Seymour Stewart, who said that he had watched the parade on July 27, 1993 and that both Baker and Sewell were on the parade but had changed clothes, and that Morris had failed to identify Mr. Sewell.

2. Position of the Petitioners on Admissibility

20. The Petitioners in Mr. Sewell's case contend that his petition is admissible. In particular, the Petitioners claim that Mr. Sewell has exhausted all available domestic remedies because his lack of private means and unavailability of legal aid prohibit him from pursuing a Constitutional Motion before the Supreme Court of Jamaica, and that he has otherwise pursued any remedies that may be available to him. [FN2]

[FN2] In support of their submissions, the Petitioners cite the decisions of the U.N. Human Rights Committee in *Little v. Jamaica*, Communication N° 283/1988, U.N. Doc. N° CCPR/C/43/D/283/1988, *Reid v. Jamaica*, Communication N° 725/1987, U.N. Doc. N° CCPR/PR/C/39/D/725/1987; *Collins v. Jamaica*, Communication N° 356/1989, U.N. Doc. N° CCPR/C/47/D/356/1989, *Smith v. Jamaica*, Communication N° 282/1988, U.N. Doc. CCPR/C/47/D/282/1988, *Campbell v. Jamaica*, Communication N° 248/1987, U.N. Doc. N° CCPR/C/44/D/248/1987, and *Kelly v. Jamaica*, Communication N° 253/1987, U.N. Doc. N° CCPR/C/41/D/253/1987.

21. The Petitioners also allege that the Constitution of Jamaica is drafted so as to immunize from attack laws and punishments which were lawful before independence, including legislation providing for the mandatory death penalty. As a consequence, the Petitioners claim that it is not possible to argue in any domestic court that the death penalty is unconstitutional because of its mandatory nature or because it is cruel, unless the way it is to be carried out would not have been

lawful before independence. The Petitioners make similar submissions in respect of the method of execution in Jamaica.

22. Further, according to the Petitioners, the subject matter of Mr. Sewell's case has not been submitted for examination under any other procedure of international investigation or settlement.

3. Position of the Petitioners on the Merits

a. Articles 4 and 5 of the Convention - Mandatory Nature of the Death Penalty

23. The Petitioners allege that the State acted contrary to Articles 4(1), 4(2), 5(1), 5(2) and 8(1) of the American Convention by sentencing Mr. Sewell to a mandatory death penalty for the crime of capital murder. In particular, the Petitioners argue that the imposition of the death penalty in Mr. Sewell's case violates the American Convention because it is not reserved for the most serious offenses as required by Article 4(2) of the Convention and is contrary to Article 4(1) of the Convention, and because executing an individual without an individualized sentencing hearing is cruel and violates his rights under Articles 5(1) and 5(2) of the Convention.

24. In making these submissions, the Petitioners emphasize that, while the Convention does not prohibit the death penalty, and that while their argument is not intended to constitute an attack upon the legality of the death penalty under domestic or international law, this does not relieve a State of its obligation to administer capital punishment in a way that is neither arbitrary nor cruel.

25. The Petitioners first argue that the requirement under Article 4(2) of the Convention that the death penalty be imposed only for the most "serious offenses" should be interpreted so as to encompass more than the elements of a criminal offense, and in particular should be interpreted to require consideration of all factors of a criminal offense, including those referable to an individual applicant. In this regard, the Petitioners submit that as matter of common sense, it is not possible to say that the murder of a prison officer is more serious than and will always be more serious than, for example, the murder of a child. It therefore follows, argue the Petitioners, that the mandatory death penalty produces arbitrary results, as there is no mechanism whereby like cases are treated alike and unlike cases distinguished. .

26. In addition, it is argued on behalf of Mr. Sewell that the mandatory death penalty violates the prohibition against cruel and unusual punishment or treatment under Article 5 of the Convention. The Petitioners suggest in this respect that Article 5 of the Convention is based on the idea that each human being has rights that must be respected even when punishment is to be inflicted, and that to order the execution of a person without consideration of an individual's status violates these principles.

27. In support of their position that the mandatory death penalty for capital murder contravenes the American Convention, the Petitioners refer to decisions of the highest courts of several common law countries, including the United States of America [FN3] and India, [FN4] where the death penalty has been retained. They also rely upon previous decisions by this Commission in cases such as *Haniff Hilaire v. Republic of Trinidad and Tobago*, Report N°

66/99 (21 April 1999) and Rudolph Baptiste v. Grenada, Report N° 38/00 (April 13, 2000). According to the Petitioners, these authorities support the proposition that Mr. Sewell's rights under Articles 4(1), 5(1), 5(2) and 8 of the Convention are contravened because his right to life has been interfered with by a sentence of death imposed automatically as a consequence of his conviction for capital murder irrespective of the circumstances. Mr. Sewell's sentence of death is accordingly cruel, inhuman and degrading and an arbitrary and disproportionate punishment which cannot be a justification for depriving some one of their life.

[FN3] Woodson V. North Carolina, 428 U.S. 280 (1976) (U.S. Supreme Court).

[FN4] Bachan Singh V. State of Punjab, (1980) S.C.C. 475 (Supreme Court of India).

28. In their March 12, 2001 reply to the State's February 2, 2001 observations, the Petitioners made several additional arguments. They submitted in particular that the onus is not on Mr. Sewell to demonstrate an acceptable form of execution, but rather that if Mr. Sewell succeeds on this ground, the duty is on the State Party to carry out the sentence of the Court in such a way that it is compatible with the rights under the Convention.

b. Article 5 of the Convention - Conditions of Detention and Method of Execution in Jamaica

i. Conditions of Detention

29. The Petitioners allege that the conditions in which Mr. Sewell has been detained by the State constitute a violation of his rights under Article 5 of the Convention to be free from cruel, inhuman or degrading punishment or treatment. In their submissions, the Petitioners provide information as to the general conditions of detention facilities in Jamaica, as well as information regarding the particular conditions of detention experienced by Mr. Sewell

30. With respect to the conditions of detention facilities in Jamaica generally, the Petitioners refer to reports prepared by various governmental and non-governmental organizations respecting the State's prison conditions. These include Americas Watch: Prison Conditions in Jamaica (1990); Jamaica Prison Ombudsman: Prison and Lock Ups (1983); Americas Watch: Death Penalty, Prison Conditions and Prison Violence (1993); Jamaica Council for Human Rights: A Report on the Role of the Parliamentary Ombudsman in Jamaica (Summer 1994); and Amnesty International: Proposal for an Inquiry into Death and Ill-treatment of Prisoners in St. Catherine's District Prison (1993). These reports provide information regarding the physical conditions of the prisons and prisoners, the treatment of prisoners by prison staff, and the status of medical, educational and work facilities and programs in various prisons and lock up facilities in Jamaica.

31. According to the Petitioners, these reports indicate that detention facilities in Jamaica are poor and have not been remedied by the Jamaican government. They cite, for example, the conclusion by Americas Watch in 1993 that "[t]he conditions in the prisons and lock ups have

continued to be extremely poor and in violation of international standards for as long as Americas Watch have been investigating them...”

32. With respect to the conditions of capital prisoners in particular, the Petitioners indicate that all death row inmates in Jamaica are situated on death row in St. Catherine’s District Prison, which was built in the 18th Century and was formerly a slave market. The Petitioners submit that generally speaking, death row inmates are deprived of a mattress or other bedding or furniture, that inmates’ cells suffer from inadequate sanitation, ventilation and light, and that prisoners experience poor standards of personal hygiene and are given diets with substandard levels of protein. In addition, the Petitioners claim that inadequate health and psychiatric care is available to prisoners, and that inmates condemned to death spend long periods in their cells, have no work or education facilities, and are often the subject of threats, beating and other ill-treatment by prison guards. The Petitioners further claim that any complaint mechanisms that exist in the facilities do not adequately address prisoners’ grievances.

33. With respect to the conditions of detention alleged to have been experienced by Mr. Sewell personally, the Petitioners claim, based in part on an affidavit sworn by Mr. Sewell on February 6, 2001, that his post-conviction detention on death row has subjected him to cruel, inhuman or degrading punishment or treatment contrary to Article 5 of the Convention.

34. In particular, Mr. Sewell claims that he has been on death row for a total of 3 years and 10 months in an 8 foot by 5 foot cell where he is constantly held in solitary confinement. He has no furniture except for a water jug and a bucket which he uses as a toilet and for all other sanitary purposes and which is only emptied once a day. He also claims that there is a gutter in front of his cell that is constantly full of stagnant water and that he sleeps and eats in unhygienic conditions. Moreover, Mr. Sewell claims that he is locked in his cell for 23 ½ hours per day and is only allowed out of his cell for approximately 30 minutes per day when he is expected to empty his slop pail, bathe and take exercise. His cell is also said to have inadequate ventilation and is therefore hot and uncomfortable, and the food provided to him is “deplorable and inadequate.”

35. In light of these conditions of detention, the Petitioners contend that the State is responsible for violations of Mr. Sewell’s rights under Article 5 of the Convention. The Petitioners rely in this connection upon several provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners. These include Article 10, which states that all accommodation provided for the use of prisoners shall “meet all requirements of health, due regard being paid to climatic conditions and particularly cubic content of air, minimum floor space, lighting, heating and ventilation.” [FN5] The Petitioners also cite several comments and decisions of the UN Human Rights Committee and the European Court of Human Rights regarding humane treatment in the context of prison conditions. These include the UN Human Rights Committee’s General Comment on Article 10(1) of the International Covenant on Civil and Political Rights, which states in part that the “humane treatment and respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources.” The Petitioners refer additionally to the Greek Case, [FN6] in which the European Court of Human Rights found that detention conditions may

amount to inhuman treatment, where those conditions involve overcrowding, inadequate toilet and sleeping arrangements, inadequate food and recreation, and incommunicado detention.

[FN5] The Petitioners additionally allege violations of Articles 11(a), 11(b), 12, 13, 15, 19, 22(1), 22(2), 22(3), 24, 25(1), 25(2), 26(1), 26(2), 35(1), 36(1), 36(2), 36(3), 36(4), 57, 71(2), 72(3) and 77 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

[FN6] Eur. Court H.R., Greek Case 12 Y.B. 1 (1969).

36. Based upon these submissions, the Petitioners argue that Mr. Sewell's treatment has violated his right under Article 5 of the Convention to be free from cruel, inhuman or degrading treatment or punishment.

37. In their March 12, 2001 response to the State's February 2, 2001 observations in this matter, the Petitioners contend that the affidavits relied upon by the State are the same affidavits relied upon by Jamaica in the case of Neville Lewis before the domestic courts in Jamaica. The Petitioners argue that the affidavits do not specifically respond to Mr. Sewell's complaint as set out in his affidavit of February 6, 2001. In particular, they note that the affidavits relied upon by Jamaica are the same affidavits relied upon by Jamaica in the case of Neville Lewis before the Judicial Committee of the Privy Council, and claim that the Judicial Committee of the Privy Council did not accept the affidavits to refute the Appellants' allegations that the treatment in prison and the prison conditions in which the Appellants were detained amounted to inhumane or degrading treatment. According to the Petitioners, the Privy Council held that the allegations of inhuman prison conditions should have been determined by the Supreme Court and Court of Appeal in Jamaica by hearing oral evidence and that it was not open to the courts to reject the allegations and disbelieve the appellants based upon affidavit alone. The Petitioners therefore argue that the evidence relied upon by the State does not refute Mr. Sewell's complaint that his rights under Article 5 of the Convention have been and are being violated.

ii. Method of Execution in Jamaica

38. The Petitioners argue that the execution of the death sentence by hanging, as provided for under Jamaican law, constitutes cruel and inhuman treatment or punishment per se in violation of Articles 5(1) and 5(2) of the Convention. In this regard, the Petitioners submit that whereas Article 4(2) of the Convention allows for the imposition of the death penalty under certain limited circumstances, any method of execution provided by law must be designed in such a way as to avoid conflict with Article 5 of the Convention. [FN7]

[FN7] The Petitioners cite in this regard the decision of the UN Human Rights Committee in the case *Ng v. Canada*, Communication N° 469/1991, in which the Committee stated that when imposing capital punishment in accordance with Article 7 of the International Covenant on Civil and Political Rights, the execution of the sentence "must be carried out in such a way as to cause the least possible physical and mental suffering."

39. In support of their arguments, the Petitioners provided detailed accounts of the physical, physiological and psychological effects of hanging upon a condemned prisoner, as described in the affidavits of Dr. Harold Hillman dated April 28, 1999, Dr. Albert Hunt dated July 1, 1997 and Dr. Francis Smith dated March 24, 1996. Based upon this evidence, the Petitioners allege that the execution of Mr. Sewell's death sentence by hanging would violate Article 5(2) of the Convention because:

- (a) death by hanging constitutes inhuman and degrading treatment because it does not result in instantaneous death, and there is an impermissibly high risk that Mr. Sewell will suffer an unnecessarily painful and tortuous death by strangulation;
- (b) the pressure in the brain will increase and this is normally accompanied by severe headaches. The increased pressure can be seen as engorgement of the face, eyes and tongue;
- (c) the obstruction of the windpipe raises the carbon dioxide concentration in the blood which makes the person want to inspire, but he cannot do so, due to the obstruction of the windpipe itself. This causes great distress, as occurs during strangulation. However, the person cannot cry out nor can he react normally to distress and pain by moving his limbs violently as they are tied;
- (d) the skin beneath the rope in the neck is stretched by the fall and this will be painful; and
- (e) the humiliating effects of hanging on the body clearly amount to degrading treatment and punishment.

40. In the Petitioners' submission, the execution of Mr. Sewell by hanging in these circumstances would not meet the test of "least possible physical and mental suffering," and would therefore constitute cruel and inhuman treatment in violation of Article 5 of the Convention.

c. Articles 7(5) and 8(1) of the Convention - Right to be Tried within a Reasonable Time

41. The Petitioners allege violations of Articles 7(5) and 8(1) of the Convention on the ground that Mr. Sewell was denied the right to be tried within a reasonable time. They claim that Mr. Sewell was detained by authorities in Jamaica from the date of his arrest until the date of his final appeal to the Judicial Committee of the Privy Council. In this regard, the Petitioners provided the following chronology of events in Mr. Sewell's criminal proceedings:

June 11, 1993	Death of Errol Cann
July 9, 1993	Mr. Sewell was arrested
August 19, 1993	Mr. Sewell was charged
March 28-April 12, 1995	Mr. Sewell was tried before Panton J. in the Circuit Division of the Gun Court in Kingston
July 15, 1996	Mr. Sewell's first appeal was argued before the Judicial Committee of the Privy Council
July 31, 1996	Privy Council delivered its judgment in Mr. Sewell's first appeal
January 13, 20, 1997	Mr. Sewell's second trial was listed but the case was not reached

March 3, 1997	Mr. Sewell's second trial was listed again but again was not reached and was adjourned to April 28, 1997
April 28, 1997	Mr. Sewell's second trial did not commence because "representation to be settled."
May 9, 1997	Mr. Sewell's case was listed for mention; representation was now to be Mr. Delano Harrison and July 21, 1997 was proposed as the trial date
July 21, 1997	Mr. Sewell's second trial was listed but defense counsel was "absent"
November 18, 1997	Trial date was set for December 17, 1997
December 17, 1997	Although counsel and witnesses were present, Mr. Sewell was not produced and the trial was adjourned to January 16, 1998
January 16, 1998	Mr. Sewell's second trial was postponed at the request of the defense so that witnesses could be secured
March 24, 1998	Mr. Sewell's second trial commenced and concluded on April 6, 1998 at the Home Circuit Court before McIntosh J.

42. Based upon this chronology, the Petitioners allege that Mr. Sewell was subjected to a 4 year and 9 month delay in being brought to trial and that this period was unreasonable. They also submit that even subtracting the timing for the adjournment in February 1999 because of difficulties over defense witnesses, the overall delay was still unconscionable in light of international standards and that Mr. Sewell has been denied the right to be tried within a reasonable time.

43. The Petitioners also submit that the preponderance delay in Mr. Sewell's case is attributable to the State and suggest that the evidence in Mr. Sewell's case was not particularly complex. In this regard, the Petitioners argue that the State has not offered any adequate explanation for the delay in bringing Mr. Sewell to trial. They also allege that, while the right to a fair hearing can be substantiated by delay without proof of specific prejudice, the delay in Mr. Sewell's case resulted in prejudice given that the conviction depended critically upon the evidence of an eye witness who would inevitably have had problems with his memory.

d. Articles 24 and 25 of the Convention – Denial of Access to Constitutional Motions

44. The Petitioners argue that the State does not provide legal aid for Constitutional Motions, and that this resulted in a denial to Mr. Sewell of access to court and a denial of effective remedies in violation of Articles 24 and 25 of the Convention.

45. The Petitioners recognize that Article 25(1) of the Constitution of Jamaica provides individuals with the legal right to bring a Constitutional Motion before the Jamaican Supreme Court. [FN8] They argue, however, that notwithstanding this legal right, the remedy is not an

effective one in all of the circumstances of the case because the costs of the proceedings are extremely high and beyond Mr. Sewell's financial means, and because no legal aid is available for these motions. Consequently, the Petitioners submit that the State's failure to provide legal aid for Constitutional Motions denies the victims access to the courts and hence to an effective remedy for violations of the Constitution or of the American Convention. The Petitioners also submit in this regard that the principle of effective access to courts is even more indispensable in capital cases, where a defendant's life and liberty are at stake.

[FN8] According to the Petitioners' submissions, Article 25(1) of the Jamaican Constitution provides that "if any person alleges that any of the provisions of Section 14-24 (inclusive) of the Constitution has been, is being, or is likely to be contravened in relation to him, then, without prejudice to any other action in respect of the same matter which is lawfully available, that person may apply to the Supreme Court for redress."

46. In support of their arguments, the Petitioners cite decisions of other international human rights tribunals, such as the decision of the European Court of Human Rights in *Airey v. Ireland* [FN9] and the U.N. Human Rights Committee in *Curry v. Jamaica*, [FN10] for the proposition that individuals must be guaranteed effective access to courts in fact as well as in law, which may require legal assistance in the provision of legal aid. The Petitioners claim that the unavailability of legal aid in Jamaica in fact deprives the victims of effective access to the courts, and that as a consequence the State is responsible for violations of Articles 24 and 25 of the Convention in respect of Mr. Sewell.

[FN9] *Airey v. Ireland* [1979] 2 E.H.R.R. 305.

[FN10] *Curry v. Jamaica*, Communication N° 377/1989, at p. 5, paras. 13.3, 13.4.

B. Position of the State

1. Position of the State on Admissibility

47. As of the date of this report, the Commission had not received any observations from the State on the admissibility of Mr. Sewell's complaint. As a consequence, the State may properly be considered to have implicitly or tacitly waived its right to object to the admissibility of the Petitioners' claims.

2. Position of the State on the Merits

a. Articles 4 and 5 of the Convention - Mandatory Nature of the Death Penalty

48. The State denies that the imposition of the death penalty in Jamaica is not reserved for the most serious offenses as provided for under Article 4(2) of the Convention. Rather, the State argues that a conviction for murder is one of the most serious crimes and is precisely the reason

why it attracts one of the most serious penalties and moreover notes that section 2 of the Offenses Against the Person Act restricts capital murder only to certain categories of murder.

49. The State also contends that the death penalty for murder has been universally recognized in countries that imposed that penalty both before the Convention and after, and represents a “classic” example of the most serious crimes under Article 4(2) of the Convention. The State therefore characterizes the Petitioners’ argument in this regard as, at best, a “specious” attempt to challenge the validity of capital punishment in Jamaica. The State contends that the Petitioners have failed to discharge the heavy burden of proof to show that capital murder is not a most serious crime, and that once an applicant has been given an opportunity to establish his or her innocence and fails then that person should, subject to the exercise of the prerogative of mercy, face the full consequences of the law.

50. The State also denies the Petitioners’ contention that the deprivation of individualized sentencing for Mr. Sewell amounts to cruel treatment or punishment contrary to Article 5(2) of the Convention. In this connection, the State contends that a legislature is vested with the authority to assess the situations which have arisen or which may arise and must form a judgment as to what laws are necessary and desirable for the purpose of maintaining peace, order and good government. The State therefore argues that it cannot be for the courts or the Commission, without possessing the evidence on which a decision of the legislature has been based, to overrule and nullify the decision.

51. With respect to the issue of individualized sentencing, the State indicates that the Constitution has vested in the Jamaican Privy Council the power to determine whether the death penalty will be carried out in an individual case, and that the individual circumstances of an applicant are among the factors taken into account in determining whether the sentence should be implemented. In particular, relying upon sections 90 and 91 of the Constitution of Jamaica, the State alleges that during the process of determining whether to exercise the Prerogative of Mercy, the Jamaican Privy Council has before them a written report of the case from the trial judge together with such other information derived from the case or elsewhere as the Governor General may require, and that the sentence of death is stayed during this process. Accordingly, the State submits that there is no basis for the assertion that because of the mandatory nature of the death penalty in Jamaica, the alleged victim could be deprived of consideration based upon his personal circumstances and the circumstances of his particular case.

b. Article 5 of the Convention - Conditions of Detention and Method of Execution in Jamaica

52. The State raises several arguments in relation to the Petitioners’ allegations regarding Mr. Sewell’s conditions of detention. First, the State contends that notwithstanding the contents of the reports from International and Domestic Monitoring Bodies, a generalized position cannot be adopted each time a complaint is lodged by an inmate. Rather, complaints must be dealt with individually and each case must be considered on its individual merits.

53. The State also notes in this connection that some of the reports relied upon by the Petitioners date back as far as 1983, with the most recent being 1993, and contends that, without

accepting the content of the report, St Catherine District Prison has undergone improvements since 1993 rendering reliance on the reports questionable.

54. Further, the States denies the Petitioners' allegation as to Mr. Sewell's particular conditions of detention, based upon three affidavits, one dated November 11, 1998 by Zepheniah Page, a warder employed at St. Catherine District Prison, a second dated November 11, 1998 by Melbourne Jones, a Superintendent employed at the same prison, and a third dated November 26, 1998 by Dr. Raymoth Notice, a medical doctor also employed at the prison. The contents of the affidavits indicate, as suggested by the Petitioners, that they were prepared for use in litigation before the Supreme Court of Jamaica in the matter of Neville Lewis v. The Attorney General of Jamaica and the Superintendent of the St. Catherine District Prison. The affidavits provide information concerning the conditions of detention of the applicant in that case, Neville Lewis, on death row at St. Catherine District Prison in Jamaica.

55. Based upon these affidavits, the State contends that the conditions of detention of death row prisoners at St. Catherine District Prison include the following:

(a) On admission to the Facility each prisoner convicted of capital murder and sentenced to death is given a slop pail, a jug for holding water, a drinking cup and a blanket and then taken to a cell block where condemned prisoners are kept.

(b) Each prisoner is kept in a separate cell. Each cell is approximately 9 feet long, 6 feet wide and 10 feet high. The walls and floor of the cells are made of concrete. The floor is very smooth. The walls are painted but the inmates paste pictures from magazines and newspaper on the walls. Inside each cell is a covered mattress made from foam like any mattress, which can be bought in any department store. In the cell there is a concrete elevation on which the mattress is placed.

(c) Each prisoner on death row is issued monthly with toilet paper, bath soap and toothpaste. On request, each prisoner is entitled to a bible, other reading material and stationary.

(d) The cells are in rows and they face each other and are separated by a corridor approximately 13 feet wide. There are bright florescent lamps in the ceiling along the corridor. These lights are never turned off. Each cell has a socket above the door on the outside of the cells. Some inmates place wires inside the sockets to light bulbs inside their cells and others attach the wires to hot plates, which they use for cooking.

(e) There are open spaces at the two sides of the building where the inmates are housed. The space on one side is about 9 feet x 120 feet and on the other side is about 36 feet x 110 feet. At the front there is an open space 27 feet x 45 feet. The ventilation in the cells is very good as air flows freely through the doors of the cells.

(f) Each prisoner cleans his cell daily under the supervision of a warder. The prisoners are supplied with disinfectant. Cleaning the cells entails wiping the floor clean with a sponge or a cloth. The prisoners sweep the corridor, which runs along the cells, daily.

(g) The slop pail, which is issued to the prisoners, has a cover. If a prisoner uses the pail during the day, he requests permission from a warder on duty and is allowed to empty the pail in a general area provided for that purpose. A pipe with running water is at the place where pails are emptied and each prisoner is given disinfectant to wash his bucket when he empties it. If a prisoner uses the pail in the night, he is allowed to empty it the following morning when the warder arrives on duty.

(h) Condemned men are allowed to keep radios in their cells, provided the radio is operated with batteries. The light reflecting in the cells is adequate for prisoners to read during the day or at nights.

(i) There is a daily routine for each prisoner on the condemned cells. At approximately 8:30 am the warder unlocks the cell door and allows the prisoner to empty his slop pail. He is allowed to wash his face and brush his teeth. He is then returned to his cell and he is given breakfast. After breakfast, he is allowed to exercise in the open area at the side of the building and take his bath. He may also, if he wishes, be allowed to see the doctor, attend at the administrative office, his attorney-at-law, religious adviser or any other visitor. The time spent varies depending on the circumstances. He is then returned to his cell, where he is given lunch. In the afternoon the cell is unlocked and the process is repeated, (i.e. empty slop pail, exercise, etc.). He is then returned to his cell and given another meal. The cell is then locked until the following morning.

(j) The inmates are given special care and attention. The warders develop special relationships with them and there is no rigid enforcement of any rules regarding the time spent in activities outside their cells.

(k) They are allowed to play football in the open space on a regular basis, although there is an unwritten rule that no more than two prisoners should be unlocked at any one time.

(l) There is a senior officer at the Facility who communicates with the prisoners on a daily basis to take note of any complaints which they may have and to assess the general conditions of the cells and the working areas. Reports are submitted to the Superintendent who has responsibility for the Facility and for the welfare of the prisoners. This process is carried out not only to ensure that prisoners are taken care of but also to ensure that warders are performing their duties.

(m) All complaints made by prisoners are dealt with promptly.

(n) If a prisoner is abused he sometimes refuses to leave his cell and demands that he see the Superintendent who has responsibility for the prison. In any such circumstance, the Superintendent goes to see the prisoner, takes his complaint, and takes appropriate actions against the offender, generally to the satisfaction of the complaining prisoner.

(o) the St. Catherine District Prison houses a Medical Center that is staffed by two registered medical practitioners, a general practitioner and a psychiatrist. There is also a registered dentist. A matron who is also a registered nurse, a qualified social worker and several medical orderlies assist these doctors.

(p) The general practitioner attends the Medical Center daily and when he is not on duty, he is on call. The dentist attends at the medical Center three days every week.

(q) when a prisoner makes a complaint of a medical nature, arrangements are made with the medical orderly for that person to be taken to see the doctor at the very earliest opportunity. If the complaint is of a serious nature and a doctor is not on duty at the time or cannot be located, the prisoner is immediately dispatched to the Spanish Town General Hospital, which is located in the vicinity of the prison.

56. Further, the State argues that even if the Petitioners' allegations are proven to be true, they could not by themselves result in the commutation of Mr. Sewell's death sentence. The State relies in this regard on the decision of the Judicial Committee of the Privy Council in the Thomas and Hilaire Case in which the applicants alleged that they had been detained in cramped and foul smelling cells and deprived of exercise or access to the open air for long periods of time. According to the State, the Judicial Committee of the Privy Council held in this case that

even if the conditions of detention alleged by those applicants constituted cruel and unusual treatment or punishment, commutation of sentence would not be the appropriate remedy.

57. Also on the issue of prison conditions, the State relies upon the decision of the Jamaican Court of Appeal in the Patrick Taylor et al. Case in which the applicant is said to have alleged the following conditions of detention: when he was first arrested he was assaulted; when he was re-arrested he remained in handcuffs for three days; he was beaten while in lock up; while awaiting trial he shared a cell with 25 other men; there was no light in his cell and his exercise each day was limited to 42 minutes; although he was supplied with soap and toilet tissue, neither toothbrush nor toothpaste was provided for use; he was given food and drink in plastic bags; and the food consisted of very small rations and was poorly cooked.

58. According to the State, the Jamaican Court of Appeal held that Mr. Taylor's conditions did not amount to torture, or to inhuman or degrading punishment or other treatment and therefore that the prison conditions as alleged did not present any matter for argument to secure a commutation of death sentence.

59. The State similarly relies upon the views of the UN Human Rights Committee in the case *F. Deidrick v. Jamaica*, [FN11] in which the Committee is said to have determined that the conditions of detention alleged by the complainant did not raise an issue under Article 7 or 10(1) of the International Covenant on Civil and Political Rights and were therefore inadmissible. According to the State, the conditions of detention alleged by the applicant in that case included the fact that he was held on death row for 8 years, confined to his cell for 22 hours per day, spent most of his waking hours isolated from other people with nothing whatsoever to keep him occupied, and was forced to spend much of his time in enforced darkness. As some of Mr. Sewell's allegations as to his conditions of detention are similar to those in the Deidrick Case, the State denies that the Petitioners' claims constitute a breach of Article 5 of the Convention or of the UN Minimum Standard Rules for the Treatment of Prisoners.

[FN11] *F. Deidrick v. Jamaica*, Communication N° 619/1995.

60. With respect to the Petitioners' contentions regarding the method of execution in Jamaica, the State argues that Article 5 of the Convention must be read subject to Article 4(2), which provides for the imposition of the death penalty. According to the State, the inclusion of Article 4(2) clearly demonstrates that the Convention must contemplate that a person will suffer some form of ill treatment when carrying out a sentence of death and that it is unaware of any form of execution that does not involve some form of ill-treatment.

61. The State also argues that the Petitioners have failed to identify an acceptable form of execution that would not be considered to conflict with Article 5 of the Convention and therefore that the Petitioners' argument must fail. On this basis, the State denies that the carrying out of the death penalty by hanging conflicts or breaches the provisions of Article 5 of the Convention.
[FN12]

[FN12] The State indicated in this regard that it adopts the decisions of the Judicial Committee of the Privy Council in Pratt and Morgan and Larry Raymond Jones and states that as Mr. Sewell was duly convicted of capital murder and sentenced to death by hanging, his sentence is not arbitrary, cruel, inhuman, degrading or in breach of Articles 5(1) or 5(2) of the Convention.

c. Articles 7(5) and 8(1) – Trial within a Reasonable Time

62. In respect of the Petitioners’ allegations regarding the delay in trying Mr. Sewell, the State indicated in its response to the petition that it “undertakes to immediately investigate the facts surrounding the applicant’s trial and submit the results to the Commission as soon as they are complete.” As of the date of the present report, the Commission has not received any information from the State concerning the Petitioners’ allegations on this issue.

d. Articles 8, 24 and 25 – Denial of Access to Court

63. The State argues that Articles 24 and 25 of the Convention dealing with the right to equal protection and the right to judicial protection do not place an obligation on State Parties to provide legal aid for Constitutional Motions. Rather, the State argues that Article 8(2)(e) of the Convention only places an obligation on State Parties to provide legal aid for criminal proceedings, and as a Constitutional Motion is not a criminal proceeding, the State denies that there has been a breach of the Convention.

64. The State also notes that by virtue of section 3 of the Poor Prisoners’ Defense Act, a Resident Magistrate or a Judge of the Supreme Court is obliged to grant an accused who is financially unable to retain counsel a legal aid certificate which entitles him to free legal aid in the preparation and conduct of his defense. [FN13]

[FN13] In its observations, the State describes Section 3 of the Poor Prisoners’ Defense Act as follows: “Where it appears to a certifying authority, (certifying authority is defined as a Resident Magistrate or a Judge of the Supreme Court), that the means of a person charged with or as the case may be convicted of a scheduled offense are insufficient to enable that person to obtain legal aid, the certifying authority shall grant in respect of that person a legal aid certificate which shall entitle him to free legal aid in the preparation and conduct of his defense in the appropriate proceedings or in such of the appropriate proceedings as may be specified in the legal aid certificate and to have counsel or solicitor assigned to him for that purpose in the prescribed manner.”

IV. ANALYSIS

A. Competence of the Commission

65. The State deposited its instrument of accession to the American Convention on August 7, 1978. [FN14] The Petitioners allege that the State has violated Articles 4, 5, 8, 24 and 25 of the American Convention, in respect of acts or omissions that transpired after the State's accession to the Convention. Mr. Sewell is a natural person, and the Petitioners were authorized under Article 44 of the Convention to lodge a petition on his behalf with the Commission. The Commission therefore finds that it is competent to consider Mr. Sewell's complaint.

[FN14] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.8 (22 May 2001), p. 48.

B. Admissibility

66. As indicated in Part III(A)(2), the Commission has not previously determined the admissibility of the complaints in Mr. Sewell's petition. Rather, in light of the exceptional circumstances of this matter as a death penalty case and the fact that the parties have had numerous opportunities to present observations on the admissibility and merits of the Petitioners' claims, and consistent with its past practice in petitions of this nature, [FN15] the Commission decided to consider the admissibility of the Petitioners' claims together with the merits.

[FN15] See e.g. Desmond McKenzie et al. v. Jamaica, Case 12.023, Annual Report of the IACHR 1999; Juan Raul Garza v. United States, Case 12.243, Report N° 52/01, Annual Report of the IACHR 2000.

1. Duplication

67. According to Articles 46(1)(c) and 47(d) of the Convention and Article 33 of the Commission's Rules of Procedure, the admissibility of a petition is subject to the requirement that the subject of the petition is not pending in another international proceeding for settlement and is not substantially the same as one previously studied by the Commission or by another international organization. The Petitioners in Mr. Sewell's case have indicated that the subject of their complaint has not been submitted for examination by any other procedure of international investigation or settlement. The State has not contested the issue of duplication. The Commission therefore finds no bar to consideration of this case under Articles 46(1)(c) or 47(d) of the Convention.

2. Exhaustion of Domestic Remedies

68. Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure specify that, in order for a case to be admitted, remedies of the domestic legal system must have been pursued and exhausted in accordance with generally accepted principles of international law.

69. Exhaustion of domestic remedies need not be demonstrated by a victim, however, in the event that the State against which the complaint is lodged waives this requirement. In this regard, the Inter-American Court of Human Rights has held that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Court, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable. [FN16]

[FN16] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C N° 25, para. 40.

70. Given the absence of any observations from the State on the issue of exhaustion of domestic remedies in this case, the Commission finds that Jamaica implicitly or tacitly waived any challenge with regard to the exhaustion of remedies by Mr. Sewell in domestic proceedings. The Commission therefore does not consider the present case to be inadmissible by reason of Article 46(1)(a) of the Convention or Article 31 of its Rules of Procedure.

3. Timeliness of the Petition

71. Article 46(1)(b) of the Convention and Article 32 of the Commission's Rules of Procedure provide that the admission of a petition is subject to the requirement that the petition be lodged with the Commission in a timely manner, namely within a period of six months from the date on which the party alleging violations of his rights was notified of the decision that exhausted domestic remedies.

72. In the instant case, the Commission has established that the State of Jamaica waived its right to argue that domestic remedies were not exhausted, and so the requirement contained in Article 46(1)(b) of the American Convention does not apply. However, the Convention's requirement that domestic remedies be exhausted is independent of the requirement that the petition be lodged within six months following the judgment exhausting domestic remedies. The Commission must therefore decide whether this petition was submitted within a reasonable time. In this regard, the Commission notes that the Judicial Committee of the Privy Council dismissed Mr. Sewell's petition for Special Leave to Appeal on July 17, 2000 and that the Petitioners lodged the present petition with the Commission on November 20, 2000. In light of the particular circumstances of this petition, the Commission holds that it was submitted within a reasonable period of time.

4. Colorable Claim

73. Article 47(b) of the Convention and Article 34(a) of the Commission's Rules of Procedure require a petition to be declared inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention or other applicable instruments. Article 47(d) of the Convention and Article 34(b) of the Commission's Rules of Procedure deem

inadmissible any communication where the statements of the petitioner or the State indicate that the petition is manifestly groundless or out of order.

74. The Petitioners in the present case have alleged that the State has violated Mr. Sewell's rights under Articles 4, 5, 8, 24 and 25 of the Convention. In addition, the Petitioners have provided factual allegations, described in Part III(A)(1) of this Report, that, in the Commission's view, tend to establish that these alleged violations may be well-founded.

75. The Commission therefore finds that the Petitioners have presented colorable claims of violations of Mr. Sewell's rights under the Convention for the purposes of Articles 47(b) and 47(c) of the Convention and Articles 34(a) and (b) of the Commission's Rules of Procedure.

5. Conclusions on Admissibility

76. In accordance with the foregoing analysis of the requirements of Articles 46 and 47 of the Convention and Articles 31 to 34 of the Commission's Rules of Procedure, and without prejudging the merits of the matter, the Commission decides to declare as admissible the claims presented on behalf of Dave Sewell in respect of Articles 4, 5, 8, 24 and 25 of the Convention.

C. The Merits

77. As detailed in Part III(A)(1) of this Report, the Petitioners in the present case have alleged the following violations of the Convention in respect of Mr. Sewell:

(a) The State is responsible for violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty.

(b) The State is responsible for violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention.

(c) The State is responsible for violating Articles 7(5) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell;

(d) the State is responsible for violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

1. Standard of Review

78. In response to the various standards that the parties have suggested should guide the Commission in determining the issues before it, the Commission wishes to clarify that it will undertake its review of the merits of the Petitioners' claims in accordance with the Commission's heightened scrutiny test. According to this standard of review, the Commission will subject the parties' allegations to an enhanced level of scrutiny in order to ensure that any deprivation of life effected by a State Party pursuant to a death sentence complies strictly with the provisions of the

Convention, including in particular Articles 4, 5 and 8 of the Convention. [FN17] This heightened scrutiny test is, as the Commission has previously recognized, consistent with the restrictive approach to the death penalty provisions of human rights treaties taken by the Commission and other international authorities. [FN18]

[FN17] See *Baptiste v. Grenada*, Report N° 38/00, Annual Report of the IACHR 1999, p. 721, at p. 738; *McKenzie et al. v. Jamaica*, Report N° 41/00, Annual Report of the IACHR 1999, p. 918, at p. 967.

[FN18] See e.g. *McKenzie et al. Case*, supra, para. 169.

79. The Commission also wishes to note that its application of a heightened level of scrutiny in capital cases is not precluded by the Commission's fourth instance formula. According to this formula, the Commission in principle will not review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless a petitioner's allegations entail a possible violation of any of the rights set forth in the Convention. [FN19] As the Petitioners' allegations entail independent violations of Articles 4, 5, 8, 24 and 25 of the American Convention in respect of Mr. Sewell, the fourth instance formula has no application in the present matter.

[FN19] See *Santiago Marzioni v. Argentina*, Report N° 39/96, Annual Report of the IACHR 1996, p. 76, paras. 48-52. See also *Clifton Wright v. Jamaica*, Case 9260, Annual Report of the IACHR 1987-88, p. 154.

2. Articles 4, 5 and 8 of the Convention - The Mandatory Nature of the Death Penalty

a. Mr. Sewell has been Sentenced to a Mandatory Death Penalty

80. The record in the present case indicates that Mr. Sewell was convicted of capital murder in Jamaica and sentenced to death. It also indicates that the death sentence was imposed pursuant to legislation in Jamaica that prescribes the death penalty as the only punishment available when a defendant is found guilty of capital murder.

81. More particularly, as indicated in Part I of this Report and confirmed by the State in its observations, Mr. Sewell was convicted of the crime of capital murder under Jamaica's Offences Against the Person Act, as amended by the Offences Against the Person (Amendment) Act, 1992. [FN20] Section 2(1)(d)(i) of this Act defines capital murder as including the following:

[FN20] Offences Against the Person Act, as amended by the Offences Against the Person (Amendment) Act, 1992 (13 October 1992), N° 14.

2.(1) Subject to subsection (2), murder committed in the following circumstances is capital murder, that is to say-

[. . .]

(d) any murder committed by a person in the course or furtherance of-

(i) robbery;

82. Section 3(1) of the Act in turn prescribes the death penalty as the mandatory punishment for any person convicted of a capital offence as defined under Section 2 the Act:

2(1) Every person who is convicted of capital murder shall be sentenced to death and upon every such conviction the court shall pronounce sentence of death, and the same may be carried into execution as heretofore has been the practice; and every person so convicted or sentenced pursuant to subsection (1A), shall, after sentence, be confined in some safe place within the prison, apart from all other prisoners.

Where by virtue of this section a person is sentenced to death, the form of the sentence shall be to the effect only that he is to "suffer death in the manner authorized by law."

83. The Act therefore prescribes death as the mandatory punishment for all individuals convicted of capital murder. Capital murder in turn includes murder committed in the course or furtherance of certain other offences, including robbery, burglary, housebreaking, and arson in relation to a dwelling house. Accordingly, once the jury found Mr. Sewell guilty of capital murder, the death penalty was the only available punishment. The Commission notes that the State has not denied the mandatory nature of Mr. Sewell's punishment, but rather argues that the exercise of the Prerogative of Mercy is sufficient to take into account the individual circumstances of Mr. Sewell's case.

84. Therefore, as the Commission has determined in previous cases, [FN21] the crimes of capital murder in Jamaica can be regarded as being subject to a "mandatory death penalty," namely a death sentence that the law compels the sentencing authority to impose based solely upon the category of crime for which the defendant is found responsible. Once a defendant is found guilty of the crime of capital murder, the death penalty must be imposed. Accordingly, mitigating circumstances cannot be taken into account by a court in sentencing an individual to death once a conviction for capital murder has been rendered. The Commission notes, however, that there is one exception to this rule under Jamaican law. Section 3(2) of the Act specifically exempts from the death penalty female offenders who are convicted of offenses punishable with death, but who are found by a jury to be pregnant. [FN22]

[FN21] See e.g. McKenzie et al. Case, supra, para. 178.

[FN22] See Offences Against the Person Act, sections 3(1) to 3(6).

85. Therefore, the penalty for a female offender who is convicted of capital murder, but who is found by a jury to be pregnant, is a sentence of imprisonment with or without hard labor for life rather than a sentence of death.

86. As indicated in Part III(A)(3)(a), the Petitioners have alleged that Mr. Sewell's sentencing to a mandatory death penalty violates one or more of Articles 4(1), 4(2), and 5(2) of the American Convention, principally because the sentencing process in Jamaica does not provide an opportunity for offenders to present mitigating factors concerning their personal circumstances or those of their offense in determining whether the death penalty is an appropriate punishment.

b. Mr. Sewell's Mandatory Death Sentence under Articles 4, 5 and 8 of the Convention

87. In previous cases involving the application of capital punishment under the Offenses Against the Person Act in Jamaica, the Commission has evaluated the mandatory nature of the death penalty under that legislation in light of Article 4 (right to life), Article 5 (right to humane treatment) and Article 8 (right to a fair trial) of the Convention and the principles underlying those provisions. It has also considered the mandatory death penalty in light of pertinent authorities in other international and domestic jurisdictions, to the extent that those authorities may inform the appropriate standards to be applied under the American Convention. Based upon these considerations and analysis, the Commission has reached the following conclusions.

88. The Commission has found that the supervisory bodies of international human rights instruments have subjected the death penalty provisions of their governing instruments to a rule of restrictive interpretation, to ensure that the law strictly controls and limits the circumstances in which a person may be deprived of his life by authorities of the state. This includes strict compliance with standards of due process. [FN23]

[FN23] McKenzie et al. Case, supra, para. 186-187, citing I/A Court H.R., Advisory Opinion OC-3/83 of September 8, 1983, Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights), Annual Report 1984, p. 31, para. 52 (finding that the text of Article 4 of the Convention as a whole reveals a clear tendency to restrict the scope of the death penalty both as far as its imposition and its application are concerned.); Anthony McLeod v. Jamaica, Communication N° 734/1997, U.N.Doc CCPR/C/62/734/1997. See similarly Baptiste Case, supra, paras. 74-75.

89. In addition, the Commission has identified a general recognition by domestic and international authorities that the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment. It is the absolute form of punishment that results in the forfeiture of the most valuable of rights, the right to life and, once implemented, is irrevocable and irreparable. The Commission has accordingly determined that the fact that the death penalty is an exceptional form of punishment must also be considered in interpreting Article 4 of the American Convention. [FN24]

[FN24] McKenzie et al. Case, *supra*, para. 188, citing, *inter alia*, Woodson v. North Carolina 49 L Ed 2d 944, 961 (finding that “the penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.”).

90. Finally, the Commission has noted and relied upon the determination by the Inter-American Court of Human Rights in its Advisory Opinion OC-3/83 that under the terms of Article 4 of the Convention, “certain considerations involving the person of the defendant, which may bar the imposition or application of the death penalty, must be taken into account” by States Parties that have not abolished the death penalty. [FN25]

[FN25] *Id.*, para. 189, citing Advisory Opinion OC-3/83, *supra*, para. 55 (observing with regard to Article 4 of the Convention that “three types of limitations can be seen to be applicable to States Parties which have not abolished the death penalty. First, the imposition or application of this sanction is subject to certain procedural requirements whose compliance must be strictly observed and reviewed. Second, the application of the death penalty must be limited to the most serious common crimes not related to political offenses. Finally, certain considerations involving the person of the defendant, which may bar the imposition or application of the death penalty, must be taken into account.”).

91. In the context of these interpretive rules and principles, the Commission has evaluated mandatory death penalty legislation under Articles 4, 5 and 8 of the Convention and has concluded that imposing the death penalty through mandatory sentencing, as Jamaica has done in respect of crime of capital murder, is not consistent with the terms of Articles 4(1), 5(1), 5(2), 8(1) and 8(2) of the Convention and the principles underlying those provisions. [FN26] The Commission observes in this regard that since its determination in the case of Haniff Hilaire v. Trinidad and Tobago [FN27] in 1999 that the mandatory death penalty was inconsistent with the rights protected in the inter-American system, other international and regional tribunals have reached similar conclusions. A majority in the UN Human Rights Committee, for example, has found the implementation of a death sentenced based upon a mandatory sentencing law to violate the right not to be arbitrarily deprived of one’s life under Article 6(1) of the International Covenant on Civil and Political Rights. [FN28] In addition, a majority of the Eastern Caribbean Court of Appeal determined in April of 2001 that the mandatory death penalty in Saint Vincent and Saint Lucia constitutes inhuman or degrading punishment or other treatment contrary to the constitutions of those states. [FN29]

[FN26] *Id.*, paras. 193-207. See similarly Baptiste Case, *supra*, paras. 80-94.

[FN27] Haniff Hilaire v. Trinidad and Tobago, Report N° 66/99, Case N° 11.816 (April 1999).

[FN28] UNHRC, *Eversley Thompson v. St. Vincent and the Grenadines*, Communication N° 806/1998 (October 18, 2000).

[FN29] Eastern Caribbean Court of Appeal, *Newton Spence v. The Queen*, *Peter Hughes v. The Queen*, Criminal Appeal Nos. 20 of 1998 and 14 of 1997, Judgment, 2 April 2001.

92. In light of these inherent deficiencies in the mandatory death penalty, the Commission has determined that imposing the death penalty in a manner that conforms with Articles 4, 5 and 8 of the Convention requires an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is a permissible or appropriate form of punishment in the circumstances of his case. In the Commission's view, this includes, but is not limited to, representations and evidence as to whether any of the factors incorporated in Article 4 of the Convention may prohibit the imposition of the death penalty. [FN30]

[FN30] *McKenzie et al. Case*, supra, para. 207.

93. In reaching this conclusion, the Commission has identified a principle common to those democratic jurisdictions that have retained the death penalty, according to which the death penalty should only be implemented through "individualized" sentencing. [FN31] Through this mechanism, the defendant is entitled to present submissions and evidence in respect of all potentially mitigating circumstances relating to his or her person or offense, and the court imposing sentence is afforded discretion to consider these factors in determining whether the death penalty is a permissible or appropriate punishment. Mitigating factors may relate to the gravity of the particular offense or the degree of culpability of the particular offender, and may include such factors as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.

[FN31] *McKenzie et al. Case*, supra, paras. 208, 212-219, citing *Woodson v. North Carolina* 49 L Ed 2d 944 (U.S.S.C.); *The State v. Makwanyane and McHunu*, Judgment, Case N° CCT/3/94 (6 June 1995) (Constitutional Court of the Republic of South Africa); *Bachan Singh v. State of Punjab* (1980) 2 S.C.C. 475 (Supreme Court of India). See also *Baptiste Case*, supra.

94. The Commission has also previously observed that Jamaica has already considered it appropriate to prescribe in its legislation a mechanism by which a jury may determine whether an individual female offender should be spared the death penalty because she is pregnant. [FN32] The Commission has therefore considered that the foundation already exists under Jamaican law to extend this mechanism, or to develop a comparable mechanism, to permit a jury to consider other potentially mitigating factors pertaining to an offender in determining whether the death penalty should be imposed in the circumstances of the offender's case. [FN33]

[FN32] As noted above, sections 3(2) to 3(6) of the Act prescribe a specific procedure by which a jury is to determine whether a defendant is pregnant for the purposes of section 3(1) of the Act: 3(2) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment with or without hard labour for life instead of sentence of death.

(3) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom a woman is so convicted thinks fit to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury.

(4) Subject to the provisions of this subsection, the said jury shall be the trial jury, that is to say the jury to whom she was given in charge to be tried for the offence, and the members of the jury need not be re-sworn:

Provided that-

(a) if any member of the trial jury, after the conviction, dies or is discharged by the court as being through illness incapable of continuing to act for any other cause, the inquiry as to whether or not the woman is pregnant shall proceed without him; and

(b) where there is no trial jury, or where a jury have disagreed as to whether the woman is or is not pregnant, or have been discharged by the court without giving a verdict on that question, the jury shall be constituted as if to try whether or not she was fit to plead, and shall be sworn in such manner as the court may direct.

(5) The question whether the woman is pregnant or not shall be determined by the jury on such evidence as may be laid before them either on the part of the woman or on the part of the Crown, and the jury shall find that the woman is not pregnant unless it is proved affirmatively to their satisfaction that she is pregnant.

(6) Where in proceedings under this section the jury finds that the woman in question is not pregnant the woman may appeal under the Judicature (Appellate Jurisdiction) Act, to the Court of Appeal and that Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment with or without hard labour for life:

Provided that the operation of the provisions of this subsection shall be deemed to be coincident with the operation of the Judicature (Appellate Jurisdiction) Act.

[FN33] McKenzie et al. Case, supra, para. 210.

95. Applying these findings in the context of the case presently before it, the Commission has confirmed that Mr. Sewell was convicted of the offense of capital murder under Jamaica's Offences Against the Person Act. Once an offender is found guilty of capital murder under that Act, section 3(1) of the Act requires a court to impose the death penalty. With the exception of the provisions in sections 3(2) to 3(6) of the Act governing pregnant offenders, no provisions in the Act have been identified that permit a judge or jury to consider the personal circumstances of an offender or his or her offense, such as the offender's record or character, in determining whether the death penalty is an appropriate penalty for a particular offender in the circumstances of his or her case. Upon satisfying the elements of section 3(1) of the Act, death is the automatic penalty.

96. Consequently, the Commission concludes that once Mr. Sewell was found guilty of his crimes, the law in Jamaica did not permit a hearing by the courts as to whether the death penalty was a permissible or appropriate penalty. There was no opportunity for the trial judge or the jury to consider such factors as Mr. Sewell's character or record, the nature or gravity of Mr. Sewell's, or the subjective factors that may have motivated his conduct, in determining whether the death penalty was an appropriate punishment. Mr. Sewell was likewise precluded from making representations on these matters, as a consequence of which there is no information on the record as to potential mitigating factors that might have been presented to the trial court in Mr. Sewell's circumstances. The court sentenced Mr. Sewell based solely upon the category of crime for which he had been found responsible.

97. In this context, and in light of the Commission's prior analysis of mandatory death penalties under the Convention, the Commission concludes that the State violated Mr. Sewell's rights under Articles 4(1), 5(1), 5(2), and 8(1) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty.

98. With respect to Article 4(1) of the Convention, the Commission concludes that the trial court was compelled under the State's legislation to impose a death sentence upon Mr. Sewell, with no discretion to consider Mr. Sewell's personal characteristics and the particular circumstances of his offenses to determine whether death was an appropriate punishment. Likewise, Mr. Sewell was not provided with an opportunity to present representations and evidence as to whether the death penalty was an appropriate punishment in the circumstances of his case. Rather, the death penalty was imposed upon Mr. Sewell automatically and without principled distinction or rationalization as to whether it was an appropriate form of punishment in the particular circumstances of his case. Moreover, the propriety of the sentence imposed was not susceptible to any effective form of judicial review, and Mr. Sewell's execution and death at the hands of the State are imminent, his conviction having been upheld on appeal to the highest court in Jamaica. The Commission therefore concludes that the State has by this conduct violated Mr. Sewell's right under Article 4(1) of the Convention to have his life respected and not to be arbitrarily deprived of his life. [FN34]

[FN34] See similarly McKenzie et al. Case, supra, para. 234; Baptiste Case, supra, para. 127.

99. The Commission further concludes that the State, by sentencing Mr. Sewell to a mandatory penalty of death absent consideration of his individual circumstances, has failed to respect Mr. Sewell's physical, mental and moral integrity contrary to Article 5(1) of the Convention, and has subjected him to cruel, inhuman, or degrading punishment or treatment in violation of Article 5(2). The State sentenced Mr. Sewell to death solely because he was convicted of a predetermined category of crime. Accordingly, the process to which Mr. Sewell has been subjected would deprive him of his most fundamental right, his right to life, without considering his personal circumstances and the particular circumstances of his offense. Not only does this treatment fail to recognize and respect Mr. Sewell's integrity as an individual human being, but in all of the circumstances has subjected him to treatment of an inhuman or degrading

nature. Consequently, the State has violated Article 5(1) and 5(2) of the Convention in respect of Mr. Sewell. [FN35]

[FN35] See similarly McKenzie et al. Case, supra, para. 235; Baptiste Case, supra, para. 128.

100. Finally, the Commission concludes that the State has violated Article 8(1) of the Convention, when read in conjunction with the requirements of Article 4 of the Convention, by subjecting him to a mandatory death sentence. By denying Mr. Sewell an opportunity to make representations and present evidence to the trial judge as to whether his crime permitted or warranted the ultimate penalty of death, under the terms of Article 4 of the Convention or otherwise, the State also denied Mr. Sewell the right to fully answer and defend the criminal accusations against him, contrary to Article 8(1) of the Convention. [FN36]

[FN36] See similarly McKenzie et al. Case, supra, para. 237; Baptiste Case, supra, para. 130.

101. Also consistent with its previous findings, and contrary to the State's submissions, the Commission considers that the exercise of the Prerogative of Mercy by the Jamaican Privy Council is not consistent with, and therefore cannot serve as a substitute for, the standards prescribed under Articles 4, 5 and 8 of the Convention that are applicable to the imposition of mandatory death sentences. As explained above, these requirements include legislative or judicially-prescribed principles and standards to guide courts in determining the propriety of death penalties in individual cases, and an effective right of appeal or judicial review in respect of the sentence imposed. The Prerogative of Mercy process in Jamaica, even as informed by the minimal requirements of fairness prescribed in the Judicial Committee of the Privy Council's Neville Lewis et al. judgment, [FN37] does not satisfy these standards and therefore cannot serve as an alternative for individualized sentencing in death penalty prosecutions.

[FN37] On September 12, 2000, the Judicial Committee of the Privy Council issued its judgment in the case Neville Lewis et al. v. The Attorney General of Jamaica, in which it found that an individual's petition for mercy under the Jamaican Constitution is open to judicial review. The Judicial Committee of the Privy Council also found that the procedure for mercy must be exercised by procedures that are fair and proper, which require, for example, that a condemned individual be given sufficient notice of the date on which the Jamaican Privy Council will consider his or her case, to be afforded an opportunity to make representations in support of his or her case, and to receive copies of the documents that will be considered by the Jamaican Privy Council in making its decision. Neville Lewis et al. v. The Attorney General of Jamaica and The Superintendent of St. Catherine District Prison, Privy Council Appeals Nos. 60 of 1999, 65 of 1999, 69 of 1999 and 10 of 2000 (12 September 2000)(J.C.P.C.), at p. 23.

102. It follows from the Commission's findings that, should the State execute Mr. Sewell pursuant to his death sentence, this would constitute further egregious and irreparable violations of his rights under Article 4 of the Convention.

3. Articles 4 and 5 of the Convention – Conditions of Detention/Method of Execution

103. The Petitioners have alleged that the conditions in which Mr. Sewell has been detained by the State constitute a violation of his rights under Article 5(1) of the Convention to have his physical, mental and moral integrity respected, as well as his right under Article 5(2) of the Convention not to be subjected to cruel, unusual or degrading punishment or treatment.

104. As described in Part III(A)(3)(c) of this Report, the Petitioners have made numerous allegations respecting Mr. Sewell's conditions of detention on death row, based in part upon an affidavit sworn by Mr. Sewell on February 6, 2001. The Petitioners claim further that their allegations are corroborated by more general sources of information concerning prison conditions in Jamaica. These include an April 1993 report prepared by Americas Watch in respect of the death penalty, prison conditions and prison violence in Jamaica, and a December 1993 report by Amnesty International proposing an inquiry into death and ill-treatment of prisoners in St. Catherine's District Prison.

105. The State has contended that notwithstanding the content of these reports, a generalized position should not be adopted every time a complaint is lodged with the Commission, but rather each complaint must be considered individually.

106. Moreover, the State has provided a significantly different version of conditions of detention on death row in St. Catherine's District Prison, by reference to affidavits sworn in November 1998 respecting the conditions of detention of another death row inmate, Neville Lewis. Based upon these affidavits, the State disputes Mr. Sewell's characterization of his conditions of detention. The State contends, for example, that death row inmates are provided with foam mattresses, that they are permitted to place light bulbs inside of their cells, that the ventilation in the cells is very good, and that the prisoners clean their cells every day under the supervision of a warder.

107. The State also contends that a senior officer at the prison is charged with communicating with prisoners on a daily basis to take note of any complaints, that complaints made by prisoners are dealt with promptly, and that on some occasions the Superintendent will hear a prisoner's complaint and take appropriate actions to remedy it. Concerning medical conditions, the State contends that St. Catherine District Prison houses a medical center that is staffed by two registered medical practitioners, a general practitioner and a psychiatrist, and that the general practitioner attends at the medical center daily and when he is not on duty he is on call. The Commission notes, however, that the State has not provided any information pertaining specifically to Mr. Sewell's treatment or conditions of detention.

108. Based upon the record before it, the Commission is faced with contradictory versions of Mr. Sewell's conditions of detention. The Commission must therefore determine which characterization of Mr. Sewell's detention conditions is more reliable and therefore should be

accepted as accurate. The Commission observes in this regard that the Petitioners have provided the Commission with specific details concerning Mr. Sewell's personal situation in detention both before and following his two convictions, and have supported those details through evidence from Mr. Sewell. In response the State has submitted general affidavit evidence that does not specifically address Mr. Sewell's situation, but rather provides details concerning the general and specific circumstances of another death row inmate, Neville Lewis and does not address the issue of pre-trial conditions of detention, generally or in Mr. Sewell's case.

109. While it appears that Mr. Sewell is detained in the same facility as Mr. Lewis during a portion of his incarceration, the Commission should, as the State itself has pointed out, avoid taking a generalized approach when it comes to the issue of prison conditions in the context of individual cases. Rather, the Commission should endeavor to determine each complaint on its individual circumstances. In the present case, the State has not provided any evidence specifically rebutting or otherwise addressing Mr. Sewell's treatment during his pre-trial or post-conviction detention. Rather, the State has provided information concerning the general and specific death row conditions of another inmate, without specific evidence relating to the alleged victim's situation.

110. Weighing this information on the record, and in the absence of contradictory evidence from the State relating specifically to Mr. Sewell's treatment, the Commission accepts as established the Petitioners' allegations with respect to Mr. Sewell's post-conviction conditions of detention. According to Mr. Sewell, prior to his trial and re-trial, he was held for a total of 3 years and 6 months in crowded cells with no basic or proper bedding or furniture and poor ventilation. The conditions of the facility were unhygienic, the food was meager and substandard, and Mr. Sewell was not afforded any opportunities to exercise.

111. Also according to Mr. Sewell, during the 1 year and 9 months between his first appeal and second trial, and since his second conviction on April 6, 1998, his conditions of detention included the following:

- (a) he has been locked in a cell on death row at St. Catherine District Prison in solitary confinement for 23 ½ hours per day;
- (b) he has been deprived of a mattress and sleeps on a concrete bunk;
- (c) he has no furniture except for a water jug and a bucket that he must use as a toilet and for all other sanitary purposes and that he is only permitted to empty once a day;
- (d) his cell has inadequate ventilation and is therefore hot and uncomfortable;
- (e) the standards of health and hygiene on death row are poor, including a gutter of stagnant waste water in front of his cell that is always full;
- (f) the food provided to him is inadequate and he is often ill after eating it. Despite numerous requests, he has not had access to a doctor or dentist since his conviction in October 1997;
- (g) he is provided with inadequate food;
- (h) he does not have access to an adequate mechanism for dealing with prisoner complaints.

[FN38]

[FN38] Affidavit of Dave Sewell, sworn on February 6, 2001, paras. 9-18.

112. Mr. Sewell's characterization of his conditions of detention is corroborated by more general sources of information provided by the Petitioners concerning prison conditions in Jamaica. These include an April 1993 report prepared by Americas Watch in respect of the death penalty, prison conditions and prison violence in Jamaica, and a December 1993 report by Amnesty International proposing an inquiry into death and ill-treatment of prisoners in St. Catherine's District Prison. The reports provide information regarding such matters as the ill-treatment of prisoners by warders and the absence of effective complaint mechanisms concerning conditions and treatment in detention facilities in Jamaica. In the 1993 Americas Watch Report, for example, the following observations are made in respect of conditions of detention in Jamaica:

Past reports by Americas Watch have found the prisons squalid: "overcrowded, filthy and unsanitary cells, insect infestation, inadequate or no light in cells, insufficient ventilation...". A Jamaican cabinet task force of 1989 was "shocked at the appalling conditions."

Unfortunately, there is no substantial improvement to report. The equivalent of about fifty cents a day is budgeted for food for each inmate. St. Catherine's District Prison, which houses 1300 inmates in a space built for 800, has had prison riots between 1990 and 1992 arising out of conditions there. The sanitary conditions, due to inadequate plumbing and garbage disposal, are dreadful. The conditions at the General Penitentiary are substantially similar. Recent studies have reiterated the findings of earlier studies that the situation has not improved. [FN39]

[FN39] Americas Watch, Human Rights in Jamaica: Death Penalty, Prison Conditions and Police Violence, News from Americas Watch, April 1993, Vol. 5, N° 3, p. 3

113. The Commission must next determine whether Mr. Sewell's conditions of detention, as determined by the Commission, are inconsistent with Articles 5(1) or 5(2) of the Convention. After carefully considering the information available, the Commission has found that Mr. Sewell's detention conditions, when considered in light of the period of nearly 5 years that he spent on remand or in death row in the trial process, fail to satisfy the standards of humane treatment under Articles 5(1) and 5(2) of the Convention.

114. In reaching this conclusion, the Commission has evaluated Mr. Sewell's conditions in light of previous decisions of this Commission and by the Inter-American Court of Human Rights, in which similar conditions of detention were found to violate Article 5 of the Convention. [FN40] As in these previous cases, the record in the present case indicates that Mr. Sewell has been held in overcrowded conditions on remand and in solitary confinement on death row. The cells have had inadequate hygiene and ventilation, and Mr. Sewell has been allowed out of his cell infrequently. These observations, together with the length of time over which Mr. Sewell has been held in detention, indicate that Mr. Sewell's treatment has failed to meet the minimum standards under Articles 5(1) and 5(2) of the Convention. As the Commission has observed in previous cases, these standards apply irrespective of the nature of the conduct for

which the person in question has been imprisoned [FN41] and regardless of the level of development of a particular State Party to the Convention. [FN42]

[FN40] In its merits judgment in the Suarez Rosero Case, for example, the Inter-American Court found that the treatment of the victim, who had been held incommunicado for over one month in a damp and poorly ventilated cell measuring five meters by three, together with sixteen other persons, without necessary hygiene facilities, constituted cruel, inhuman or degrading treatment or punishment contrary to Article 5(2) of the Convention. I/A Court H.R., Suarez Rosero Case, Judgment, 12 November 1997, Annual Report 1997, at p. 283. See similarly McKenzie et al. Case, supra, paras. 270-291.

[FN41] See e.g. McKenzie et al. Case, supra, para. 288, citing Eur. Court H.R., Ahmed v. Austria, Judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 220, para. 38.

[FN42] Id., citing U.N.H.R.C., Mukong v. Cameroon, Communication N° 458/1991, U.N. Doc. N° CCPR/C/51/D/458/1991 (1994), para. 9.3 (observing that certain minimum standards governing conditions of detention for prisoners, as prescribed by the International Covenant on Civil and Political Rights and reflected in the U.N. Standard Minimum Rules for the Treatment of Prisoners, must be observed regardless of a state party's level of development).

115. A comparison of Mr. Sewell's prison conditions with international standards for the treatment of prisoners also suggests that his treatment has failed to respect minimum requirements of humane treatment. In particular, Rules 10, 11, 12, 15, and 21 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, [FN43] which in the Commission's view provide reliable benchmarks as to minimal international standards for the humane treatment of prisoners, prescribe for the following basic standards in respect of accommodation, hygiene, medical treatment and exercise:

[FN43] United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (N° 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. Res. 2076, 62 U.N. ESCOR Supp. (N° 1) at 35, U.N. Doc E/5988 (1977).

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

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

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

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

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

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

21(1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

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

116. It is evident based upon the Petitioners' allegations that the State has failed to satisfy these minimum standards of proper treatment of prisoners. The cumulative impact of such conditions, together with the length of time for which Mr. Sewell has been incarcerated in connection with his criminal proceedings, cannot be considered consistent with the right to humane treatment under Article 5 of the Convention. [FN44]

[FN44] See similarly European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Second General Report on the CPT's Activities Covering the Period 1 January to 31 December 1991, Ref. CPT/Inf. (92) 3 (13 April 1992), paras. 44-50 (criticizing prison conditions involving overcrowding, the absence of at least one hour of exercise in the open air every day for prisoners, and the practice of prisoners discharging human waste in buckets, and stating that the Committee is "particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.").

117. Consequently, the Commission finds that the conditions of detention to which Mr. Sewell has been subjected fail to respect the physical, mental and moral integrity of the victims as required under Article 5(1) of the Convention, and, in all of the circumstances, constitute cruel, inhuman or degrading treatment or punishment contrary to Article 5(2) of the Convention. The Commission therefore finds the State responsible for violations of these provisions of the Convention in respect of these victims, in conjunction with the State's obligations under Article 1(1) of the Convention.

118. The Petitioners have also contended that execution by hanging constitutes cruel, unusual or degrading punishment or treatment contrary to Article 5(2) of the Convention and claim that hanging is therefore inconsistent with the requirements under Article 4(2) of the Convention governing the implementation of capital punishment. Given its conclusions in Part IV(C)(2) of

this Report that Mr. Sewell's death sentence contravenes Articles 4, 5 and 8 of the Convention so as to render any subsequent execution unlawful, the Commission does not consider it necessary to determine for the purpose of this complaint whether the method of execution employed in Jamaica constitutes cruel, inhuman or degrading punishment or treatment contrary to Article 5(2) of the Convention. The Commission nevertheless reserves its competence to determine in an appropriate case in the future whether hanging is a particularly cruel, inhuman or degrading punishment or treatment in comparison with other methods of execution.

4. Articles 7(5) and 8(1) of the Convention - Right to Trial within a Reasonable Time

119. The Petitioners have alleged that the State failed to try Mr. Sewell within a reasonable time contrary to Articles 7(5) and 8(1) of the Convention. In this regard, the Petitioners refer specifically to the 4 year and 9 month delay between his initial arrest in August 1993 and his second conviction in April 1998. According to the evidence before the Commission, this, together with the 2 year and 2 month delay between his second conviction and the dismissal of his petition to the Judicial Committee of the Privy Council in July 2000, has resulted in a total delay of 6 years and 11 months in Mr. Sewell's criminal proceedings.

120. In its observations of February 2, 2001, the State did not dispute the period of delay alleged by the Petitioners, but rather indicated that it "undertakes to immediately investigate the facts surrounding the applicant's trial and submit the results thereof to the Commission as soon as they are complete." As of the date of this report, no further information has been received by the Commission from the State concerning the issue of the delay in Mr. Sewell's criminal proceedings.

121. The State responded to the allegations relating to the delay in trying the victims in these cases by recognizing that the delays had been "longer than desirable". It suggested, however, that the delays were justified due to the fact that preliminary inquiries had been held in each case, and owing to the complexities of the issues in the cases.

122. In addressing the issue of a "reasonable time" under Articles 7(5) and 8(1) of the Convention, the Inter-American Court has confirmed that the purpose of the reasonable time requirement is to prevent accused persons from remaining in that situation for a protracted period and to ensure that a charge is promptly disposed of. [FN45] The Inter-American Court has also considered that the point from which a reasonable time is to be calculated is the first act of the criminal proceedings, such as the arrest of the defendant, and that the proceeding is at an end when a final and firm judgment is delivered and the jurisdiction thereby ceases. According to the Inter-American Court, the calculation of a reasonable time must, particularly in criminal matters, encompass the entire proceeding, including any appeals that may be filed. [FN46]

[FN45] I/A Court H.R., Suarez Rosero Case, Judgment, 12 November 1997, Annual Report 1997, p. 283, para. 70.

[FN46] Id., para. 71.

123. In determining the reasonableness of the time in which a proceeding must take place, the Inter-American Court has shared the view of the European Court of Human Rights that three points must be taken into account: (a) the complexity of the case; (b) the procedural activity of the Interested party; and (c) the conduct of the judicial authorities. [FN47] This Commission has likewise suggested that the reasonableness of a pre-trial delay should not be viewed exclusively from a theoretical point of view, but must be evaluated on a case by case basis. [FN48]

[FN47] *Id.*, para. 72. See also I/A Court H.R., *Genie Lacayo Case*, Judgment of January 29, 1997, Annual Report 1997, para. 77. See also Report 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.

[FN48] See Report 2/97, Cases 11.205, 11.236, et al. (Argentina), *supra*.

124. In addition to its case by case analysis of the reasonableness of the pre-trial delay, the Inter-American Commission has established that the burden of proof is on the state to present evidence justifying any prolongation of a delay in trying a defendant. 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 State to adduce specific reasons for the delay. In such cases, the Commission will subject these reasons to the Commission's "closest scrutiny." [FN49]

[FN49] Report No. 12/96, Case 11.245 (Argentina), March 1, 1996, Annual Report 1995, at 33, See similarly U.N.H.R.C., *Desmond Williams v. Jamaica*, Communication No. 561/1993, U.N. Doc. CCPR/C/59/D/561/1993 (1997) (holding 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.").

125. In the present case, Mr. Sewell was subjected to a total delay of 6 years and 11 months between his arrest and his final appeal, nearly 5 years of which occurred prior to his final conviction. In light of the past jurisprudence of this Commission and other international authorities, the Commission is of the view that the delay in this case is *prima facie* unreasonable and calls for justification by the State. [FN50]

[FN50] See e.g. *Suarez Romero Case*, *supra*, p. 300, para. 73 (finding a period of delay 4 years and 2 months between the victim's arrest and disposition of his final appeal to "far exceed" the reasonable time contemplated in the Convention and therefore to violate Articles 7(5) and 8(1) of the Convention.); I/A Comm. H.R., Report on Panama, Annual Report 1991, at p. 485 (finding an average pre-trial delay of 2 years and 4 months to be unreasonable contrary to Article 7(5) of the Convention); *Desmond Williams v. Jamaica*, *supra*, para. 9.4 (finding a delay of two years

between arrest and trial to be prolonged and unreasonable); U.N.H.R.C., Patrick Taylor v. Jamaica, Communication N° 707/1996, U.N. Doc. CCPR/C/60/D/707/1996 (1997) (finding a delay of 28 months between arrest and trial to be a violation of the Petitioner's right to be tried without undue delay).

126. In addition, while the record indicates that a portion of this delay is attributable to the fact that Mr. Sewell was tried twice for his crime, the Commission considers that responsibility for the resulting delay should not fall upon Mr. Sewell. Rather, as the need for a further trial resulted from errors attributable to the State in Mr. Sewell's first trial, the State should bear responsibility for the delay occasioned by the need for a second trial.

127. In addition, upon having reviewed the records in these cases, the Commission is not satisfied, based upon the materials available, that the delay is adequately explained based upon the nature of the prosecutions. As the Petitioners point out, Mr. Sewell's conviction was based principally upon the evidence of one eye witness, David Morris, who claimed to have been present at the scene of the crime. The State has failed to point to any particular aspect of the case that would explain why over five years was required to properly try Mr. Sewell for his crime. There is also no evidence of procedural activity on the part of the alleged victim that would adequately explain or justify the delay.

128. After considering the information before the Commission in this case in light of pertinent jurisprudence as outlined above, the Commission concludes that the delay in trying Mr. Sewell was unreasonable contrary to Articles 7(5) and 8(1) of the Convention, and therefore that the State is responsible for violations of Mr. Sewell's rights under these provisions.

5. Articles 8, 24 and 25 of the Convention – Denial of Access to Constitutional Motions

129. The Petitioners argue that Mr. Sewell has been denied recourse to domestic protection against acts that violate his fundamental rights contrary to Articles 24 and Article 25 of the Convention because he does not have the financial means to pursue a Constitutional Motion before the Jamaican Supreme Court in respect of violations of his rights under the Constitution of Jamaica, and legal aid is not effectively available for Constitutional Motions before the courts in Jamaica. Articles 24 and 25 of the Convention provide as follows:

24 All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

25(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

(2) The States Parties undertake:

- (a) To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- (b) To develop the possibilities of judicial remedy; and
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

130. As noted previously, the Petitioners suggest that the effective pursuit of Constitutional Motions before the domestic courts in Jamaica require the assistance of counsel. The Petitioners also claim that Mr. Sewell is indigent and that the State does not provide legal aid to pursue Constitutional Motions in Jamaica. As a consequence, the Petitioners contend that notwithstanding the legal right that the Jamaican Constitution confers on Mr. Sewell to pursue a Constitutional Motion, the remedy is not an effective one in all of the circumstances of his case.

131. In its response to this contention, the State argues that Articles 24 and 25 of the Convention do not place an obligation on State Parties to provide legal aid for Constitutional Motions. Rather, the State argues that Article 8(2)(e) of the Convention only places an obligation on State Parties to provide legal aid for criminal proceedings, and as a Constitutional Motion is not a criminal proceeding, the State denies that there has been a breach of the Convention.

132. In light of the material before it, the Commission is satisfied that Constitutional Motions dealing with legal issues of the nature raised by Mr. Sewell in his proceeding before the Commission, such as the mandatory nature of his death sentence and his right to due process, are procedurally and substantively complex and cannot be effectively raised or presented by a victim in the absence of legal representation. The Commission also finds, in the absence of evidence to the contrary, that Mr. Sewell lacks the financial means to bring a Constitutional Motion on his own, and, based upon the observations of both the Petitioners and the State, that Jamaica does not provide legal aid to individuals in Jamaica to bring such motions.

133. Based upon these submissions and the Commission's existing jurisprudence, the Commission considers that the State is subject to an obligation under the American Convention to provide individuals with effective access to Constitutional Motions, which may in certain circumstances require the provision of legal assistance. In particular, the Commission considers that a Constitutional Motion in the Supreme Court of Jamaica must, as a proceeding for the determination of an individual's rights, conform with the requirements of a fair hearing in accordance with Article 8(1) of the Convention. Moreover, in the circumstances of the present case where the Supreme Court would be called upon to determine Mr. Sewell's rights in the context of his trial, conviction and sentencing for a criminal offense, the Commission considers that the requirements of a fair hearing mandated by Article 8(1) of the Convention should be interpreted in a manner consistent with the principles in Article 8(2) of the Convention, including the right under Article 8(2)(e) to the effective assistance of counsel. [FN51] Accordingly, when a convicted person seeking constitutional review of the irregularities in a criminal trial lacks the means to retain legal assistance to pursue a Constitutional Motion and where the interests of justice so require, legal assistance should be provided by the State. In the present case, the effective unavailability of legal aid has denied Mr. Sewell the opportunity to challenge the circumstances of his criminal conviction under the Constitution of Jamaica in a fair hearing, and therefore has contravened his right to a fair hearing under Article 8(1). [FN52]

[FN51] See I/A Court H.R., Constitutional Court Case, Judgment of January 31, 2001, Ser. C N° 7, paras. 69, 70 (finding that the minimum guarantees established under Article 8(2) of the Convention are not limited to judicial proceedings in a strict sense, but also apply to proceedings involving the determination of rights and obligations of a civil, labor, fiscal or other nature.). See also I/A Comm. H.R., *Loren Laroye Riebe Star and others v. Mexico*, Report N° 49/99 (13 April 1999), Annual Report 1998, para. 70 (interpreting Article 8(1) in the context of administrative proceedings leading to the expulsion of foreigners as requiring certain minimal procedural guarantees, including the opportunity to be assisted by counsel or other representative, sufficient time to consider and refute the charges against them and to seek and adduce corresponding evidence.).

[FN52] See similarly *Currie v. Jamaica*, supra, para. 13.4 (concluding that where a convicted person seeking Constitutional review of irregularities in a criminal trial has not sufficient means to meet the costs of legal assistance in order to pursue his Constitutional remedy and where the interests of justice so require, Article 14(1) of the International Covenant on Civil and Political Rights required the State to provide legal assistance).

134. Moreover, Article 25 of the Convention provides individuals with the right to simple and prompt recourse to a competent court or tribunal for protection against acts that violate his or her fundamental rights recognized by the constitution or laws of the State concerned or by the Convention. The Commission has stated that the right to recourse under Article 25, when read together with the obligation under Article 1(1) and the provisions of Article 8(1), “must be understood as the right of every individual to go to a tribunal when any of his rights have been violated (whether a right protected by the Convention, the constitution, or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.” [FN53] In addition, the Inter-American Court has held that if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized, and a person is unable to obtain such services because of his indigence, then that person is exempted from the requirement under the Convention to exhaust domestic remedies. [FN54] While the Court rendered this finding in the context of the admissibility provisions of the Convention, the Commission considers that the Court's comments are also illuminating in the context of Article 25 of the Convention in the circumstances of the present cases.

[FN53] See Case 10.970 (*Mejia v. Peru*), Annual Report of the IACHR 1995, pp. 190-191.

[FN54] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Annual Report 1991, para. 30.

135. By failing to make legal aid available to Mr. Sewell to pursue a Constitutional Motion in relation to his criminal proceedings, the State has effectively barred his recourse to a competent court or tribunal in Jamaica for protection against acts that potentially violate his fundamental

rights under the Constitution of Jamaica and under the Convention. As a consequence, the State has failed to fulfill its obligations under Article 25 of the Convention in respect of Mr. Sewell. The Commission likewise concludes that the State has failed to respect Mr. Sewell's rights under Article 8(1) of the Convention by denying him an opportunity to challenge the circumstances of his trial, conviction and sentencing under the Constitution of Jamaica in a fair hearing.

136. In light of the above conclusions, the Commission does not consider it necessary to determine whether the State is responsible for a violation of Article 24 of the Convention in relation to Mr. Sewell's denial of recourse to a Constitutional Motion in Jamaica.

V. PROCEEDINGS SUBSEQUENT TO REPORT 34/02

137. The Commission examined this case in the course of its 114th regular session and on February 28, 2002 adopted Report N° 34/02 pursuant to Article 50 of the American Convention.

138. On March 18, 2002, the Commission transmitted Report N° 34/02 to the State, and requested that the Government of Jamaica inform the Commission within two months as to the measures adopted to comply with the recommendations made to resolve the situation denounced.

139. As of May 18, 2002, the date of expiration of the prescribed two-month period, the Commission had not received a response from the State to Report N° 34/02.

140. Of pertinence to the issues raised in the present case, on June 21, 2002 the Inter-American Court of Human Rights issued its judgment in the Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. [FN55] In its judgment, the Court found, inter alia, that the mandatory death penalty under Trinidad and Tobago's Offenses Against the Person Act of 1925 violated the victims' right to life under Articles 4(1) and 4(2) in conjunction with Article 1(1) of the Convention, because it "automatically and generically mandates the application of the death penalty for murder and disregards the fact that murder may have varying degrees of seriousness," and "prevents a judge from considering the basic circumstances in establishing the degree of culpability and individualizing the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different." [FN56]

[FN55] I/A Court H.R., Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Judgment of June 21, 2002, available at <http://www.corteidh.or.cr/T_y_t/Serie_c_94_ing.doc>.

[FN56] Id., para. 103.

VI. CONCLUSIONS

The Commission, based on the foregoing considerations of fact and law, and in the absence of a response from the State to Report N° 41/01, ratifies its conclusions that:

141. The Commission is competent to consider the Petitioners' petition, and the claims in the petition are admissible in respect of Articles 4, 5, 8, 24 and 25 of the American Convention.

142. The State is responsible for violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty.

143. The State is responsible for violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his treatment and conditions in detention.

144. The State is responsible for violating Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell.

145. The State is responsible for violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

VII. RECOMMENDATIONS

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF JAMAICA:

1. Grant Mr. Sewell an effective remedy which includes commutation of sentence in relation to the mandatory death sentence imposed upon Mr. Sewell, and compensation in respect of the remaining violations of Mr. Sewell's rights under the American Convention as concluded above.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Sewell is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

VIII. PUBLICATION

146. By communication dated October 30, 2002, the Commission transmitted the content of this report, adopted as Report N° 59/02 pursuant to Article 51(1) of the Convention, to the State

and to the Petitioners in accordance with Article 51(2) of the Convention and granted a period of one month within which to inform the Commission of the measures taken to comply with the Commission's recommendations. The parties did not present responses within the time limit prescribed by the Commission.

147. Based upon the foregoing considerations, and in the absence of a response by the State to Report N° 59/02, the Commission in conformity with Article 51(3) of the American Convention and Article 45(3) of its Rules of Procedure decides to ratify the conclusions and reiterate the recommendations 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, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the State of Jamaica with respect to the above recommendations until they have been complied with by Jamaica.

Done on the 27th day of the month of December, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vicepresident; José Zalaquett, Second Vicepresident; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán, Commissioners.