

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 78/07; Case 12.265
Session: Hundred Thirtieth Regular Session (8 – 19 October 2007)
Title/Style of Cause: Chad Roger Goodman v. Bahamas
Doc. Type: Report
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez.
Dated: 15 October 2007
Citation: Goodman v. Bahamas, Case 12.265, Inter-Am. C.H.R., Report No. 78/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: Burton Copeland
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. This report concerns a petition, which was presented on August 7, 1998, to the Inter-American Commission on Human Rights (hereinafter referred to as the "Commission") by Burton Copeland, Solicitors from London, United Kingdom (hereinafter referred to as the "Petitioners"), on behalf of Chad Roger Goodman. The Petitioners allege that the Commonwealth of The Bahamas ("The Bahamas" or the "State") violated the human rights of Mr. Goodman as established by Articles I, II, XXV, XVIII and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter referred to as "the American Declaration").

2. The Petitioners state that Mr. Goodman, a national of The Bahamas, was charged on May 6, 1993, for the offence of murder. The Petitioners indicate that Mr. Goodman's first trial for murder began on May 20, 1996. The Petitioners claim that the trial was aborted on May 28, 1996, when the Trial Judge discharged the jury as a result of the contents of television and radio news broadcasts, which made reference to Mr. Goodman's trial. The Petitioners claim that Mr. Goodman's re-trial was adjourned on October 21, 1996, at the request of his legal representatives. Mr. Goodman's second trial commenced on November 4, 1996. The Petitioners state that on November 20, 1996, Mr. Goodman was convicted of murder, kidnapping and armed robbery by the State and sentenced to a mandatory death sentence for the murder, concurrent terms of 10 years imprisonment for kidnapping, and 15 years imprisonment for armed robbery.

3. To date the State has not presented any information to the Commission concerning the admissibility and merits of the Petition, nor has the State responded to the Commission's offer of a friendly settlement.

4. The Commission, on the basis of the information presented, and the due analysis under the American Declaration, declares that the petition is admissible pursuant to its Rules of Procedure and finds that:

1. The State is responsible for violating Articles I, XXV and XXVI of the American Declaration by sentencing Mr. Goodman to a mandatory death penalty.

2. The State is not responsible for violating Mr. Goodman's right to an impartial hearing as established by Article XXVI of the American Declaration.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Mr. Goodman's petition was presented to the Commission on August 7, 1998, and included in the petition was a request for precautionary measures pursuant to Article 29[FN1] of the Commission's former Regulations. On April 6, 2000, the Commission opened Case No. 12.265 and forwarded the pertinent parts of the petition to the State pursuant to Article 34[FN2] of its former Regulations and requested that the State, within 90 days, provide the Commission with its observations, if any, with regard to the exhaustion of domestic remedies and the claims raised in the petition. The Commission also issued precautionary measures requesting that the State stay Mr. Goodman's execution pending the Commission's investigation of the alleged facts.

[FN1] At present Article 25 of the Commission's Rules of Procedure.

[FN2] At present Article 28 of the Commission's Rules of Procedure.

6. On February 29, 2000, the Petitioners contacted the Commission requesting urgent attention to the matter, due to Mr. Goodman's risk of execution. On April 5, 2000, the Petitioners presented the Commission with the supporting documentation to the petition, and informed the Commission that no execution warrant had been issued since the dismissal of Mr. Goodman's appeal by the Privy Council. On July 18 and September 15, 2000, the Commission reiterated its request for information from the State pertaining to the issue of exhaustion of domestic remedies and the merits of the Case and requested a response within 30 days. The Commission again forwarded the pertinent parts of the petition to the State.

7. On September 20, 2000, the State acknowledged receipt of the Commission's letter of September 15, 2000. On August 20, 2001, the Commission wrote to both the State and the Petitioners and informed them that it places itself at their disposal with a view to reaching a friendly settlement of the case pursuant to Article 41(1) of the Commission's Rules of Procedure, and requested a response within 7 days of receipt of its communication.

8. On May 28, 2002, the Commission informed both parties that, pursuant to Article 37.3 of its Rules of Procedure, it had decided to defer the treatment of admissibility of the case until a

decision on the merits of the case. The Commission also requested, pursuant to Article 38(1) of its Rules of Procedure, that the Petitioners submit their additional information within a period of two months from the date of its letter. On July 11, 2002, the Petitioners requested a two-month extension in order to obtain additional information from Mr. Goodman. By letter dated July 19, 2002, the Commission granted the Petitioners a one-month extension. On August 21, 2002, the Petitioners again requested a one-month extension to submit additional information. On August 23, 2002, the Commission granted the additional one month extension.

9. On December 26, 2002, the Commission wrote to the State and, pursuant to Article 38(1), requested that the State submit its observations on the case. On January 23, 2003, the State acknowledged receipt of the Commission's letter of December 26, 2002. On February 6, 2003, the Petitioners wrote to the Commission and stated that they were not yet in a position to present further submissions to the Commission. On February 13, 2003, the Commission received additional information from the Petitioners, which was forwarded to the State on February 13, 2003. On October 6, 2003, the Petitioners presented further submissions on the merits of the case to the Commission. On October 8, 2003, the Commission wrote to the State, forwarding the additional information from the Petitioners, and requested, within a period of one month, any observations on the case from the State. In a note dated June 3, 2004, the Commission wrote to the State reiterating its request for observations, if any, on the case. To date the State has not presented any arguments on the admissibility and/or merits of the petition, nor has it indicated its willingness to accept the Commission's offer to facilitate a friendly settlement.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. POSITION OF THE PETITIONERS

1. Background

10. The Petitioners claim that Mr. Goodman was interviewed in connection with the offenses of armed robbery, kidnapping, and murder on January 12, 1993, in relation to a murder which occurred some time between January 6 and 9, 1992. The Petitioners indicate that an identification parade was held on May 5, 1993, at which Mr. Goodman was identified, and he was charged on May 6, 1993 for the murder. The Petitioners maintain that Mr. Goodman was committed for trial on September 25 or 26, 1993, and he was arraigned on July 17 or 20, 1995.

11. The Petitioners indicate that Mr. Goodman's first trial for murder commenced on May 20, 1996. The Petitioners claim that the trial was aborted on May 28, 1996, when the Trial Judge discharged the jury as a result of the contents of television broadcasts of May 24, 1996, and radio news broadcasts of May 25, 1996, referring to Mr. Goodman's trial. The Trial Judge stated in discharging the jury that "the broadcasts irremediably prejudiced the accused in this case so that a fair trial before the present jury can no longer be had." [FN3]

[FN3] Transcript of Trial Judge Hall's Ruling, 146/7/1995, page 3, para. 6.

12. The Petitioners claim that Mr. Goodman's re-trial was adjourned on October 21, 1996, at the request of his legal representatives. Mr. Goodman's second trial commenced on November 4, 1996. The Petitioners maintain that on November 20, 1996. Mr. Goodman was convicted of murder, kidnapping and armed robbery by the State and sentenced to a mandatory death sentence for the murder, concurrent terms of 10 years' imprisonment for kidnapping, and 15 years' imprisonment for armed robbery.

2. Admissibility

13. The Petitioners argue that Mr. Goodman's petition is admissible because he has exhausted the domestic remedies of The Bahamas. The Petitioners claim that Mr. Goodman appealed his conviction and sentence and it was dismissed by the Court of Appeal of The Bahamas on July 25, 1997. A warrant of execution was read to him for his execution on January 13, 1998. According to the Petitioners, Mr. Goodman's execution was stayed following notification to the relevant authorities that he wished to petition the Privy Council for special leave to appeal. The Petitioners claim that Mr. Goodman's petition to the Privy Council was dismissed on June 15, 1998.

B. STATE'S POSITION ON ADMISSIBILITY

14. The State has not addressed or presented arguments on the admissibility of the petition.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence of the Commission

15. The Petitioners have alleged violations of Articles I, II, XXV and XXVI of the Declaration. Article 23 of the Commission's Rules of Procedure provides that:

any person or group of persons, or non-governmental entity legally recognized in one or more Member States of the OAS, may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol in the Area of Economic, Social and Cultural Rights, the Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The Petitioner may designate an attorney or other person to represent him before the Commission, either in the petition itself or in another writing.

16. The petition in this case was lodged by the Petitioners on behalf of Mr. Goodman who is a national of the State of The Bahamas.

17. The Declaration became the source of legal norms for application by the Commissions[FN4] upon The Bahamas becoming a member State of the Organization of

American States in 1982. The Bahamas is not a party to the American Convention. However, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute^[FN5], and the Commission's Rules of Procedure to entertain the alleged violations of the Declaration raised by the Petitioners against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction *ratione temporis*, *ratione materiae*, and *ratione personae* to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the Petitioners' claims relating to the alleged violations of the American Declaration.

[FN4] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[FN5] Article 20 of the Commission's Statute provides;

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
- (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights;
- (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

B. Other Grounds of Admissibility

1. Exhaustion of Domestic Remedies

18. Article 31 of the Commission's Rules of Procedure provides that the admissibility of a petition submitted to the Inter-American Commission pursuant to Article 23 of the Commission's Rules of Procedure is subject to the requirement that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to have the opportunity to address the alleged violation of a protected right and where appropriate resolve it prior to any submission before an international mechanism.

19. In the present case, the Petitioners allege that they exhausted domestic remedies culminating in the dismissal of Mr. Goodman's application for special leave to appeal to the Judicial Committee of the Privy Council on June 15, 1998.

20. The State has not disputed these arguments given that it has not submitted any observations on the admissibility or merits of the petition. Accordingly, on the basis of Article 31 of the Rules of Procedure.

2. Timeliness of the Petition

21. Pursuant to Article 32(1) of the Commission's Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted.

22. The Commission notes, in reviewing the record of the case before it, that Mr. Goodman's appeal was dismissed by the Court of Appeal of The Bahamas on July 25, 1997, and his appeal to the Privy Council was dismissed on June 15, 1998. Mr. Goodman's petition was presented to the Commission on August 7, 1998. The Commission finds that the petition was filed within the six-month deadline. The Commission concludes that the petition is admissible pursuant to Article 32 of the Commission's Rules of Procedure.

3. Duplication of Procedures

23. The Petitioners state that this petition has not and is not pending settlement before another international body. The State has not provided the Commission with information concerning this requirement. This petition satisfies the requirement of Article 33 of the Commission's Rules of Procedure as the information in the record does not reveal that the subject matter of the petition is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member. Pursuant to Article 33(1) and (2) of the Commission's Rules of Procedure, this petition does not essentially duplicate any petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

4. Colorable Claim

24. The Petitioners have alleged that the State has violated Mr. Goodman's rights under Articles I, II, XXV and Article XXVI of the American Declaration. In addition, the Petitioners have provided factual allegations that, if proven, would tend to establish that the alleged violations might be well founded. The Commission therefore concludes, without prejudging the merits of the case, that the petition is not barred from consideration under Article 34 of its Rules of Procedure.[FN6]

[FN6] Article 34 of the Commission's Rules of Procedure provides that the Commission shall declare a petition inadmissible when the petition (a) does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; (b) the statements of the petitioner or the State indicate that it is manifestly groundless or out of order; or (c) supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

Article 27 of the Commission's Rules of Procedure provides that: "The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure."

25. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare that the petition is admissible pursuant to Articles 31, 32, 33, 34, and 37 of the Commission's Rules of Procedure.

V. POSITIONS OF THE PARTIES ON MERITS

A. POSITION OF THE PETITIONERS

26. The Petitioners assert that the State has violated Mr. Goodman's rights under the provisions of the Declaration, namely: Article I (the right to life), Article II (the right to equality before the law), Article XXV (the right to be tried without undue delay and to receive humane treatment while in custody), and Articles XVIII and XXVI (the right to a fair and impartial hearing). [FN7]

[FN7] Article 28 of the Commission's Rules of Procedure states that "petitions addressed to the Commission shall contain the following information (f) the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated."

1. Articles I, II, and XXVI, the Mandatory Death Penalty and the Prerogative of Mercy

27. The Petitioners argue that the mandatory death penalty for murder in The Bahamas violates Articles I, II, and XXVI of the Declaration. The Petitioners further contend that because Mr. Goodman was sentenced to death without having an opportunity to present evidence in mitigation and/or argue that he should not be executed, this violated his right to life under Article I, his right to equality before the law as established by Article II, and his right to be free from cruel, infamous or unusual punishment under Article XXVI of the Declaration. The Petitioners contend that they are relying on the recent decision of the Commission in *Hilaire v. Trinidad*, Report N° 66/99 (21st April 1999) in which the Commission held that the State of Trinidad violated Articles 4.1, 4.2, 5.1 and 5.2 of the American Convention on Human rights, the equivalent provisions of Articles I, II, and XXVI of the Declaration. In addition, the Petitioners indicate that, contrary to Article XXIV of the Declaration, Mr. Goodman did not have the opportunity to petition for commutation of his mandatory death sentence, pardon, or mercy, under the domestic law of The Bahamas.

2. Article XXV, Right to Be Tried Without Undue Delay

28. The Petitioners claim that the time period which elapsed between charging Mr. Goodman on May 6, 1993 and his trial in November 1996, violated his right under Article XXV of the Declaration "to be tried without undue delay." The Petitioners allege that Mr. Goodman was committed for trial on or about September 25 or 26, 1993, and he was not arraigned until July 17 or 20, 1995, two years and two months after being charged. The Petitioners state that Mr. Goodman's first trial did not commence until May 20, 1996, more than three years after he had been charged. The first trial was aborted for reasons unconnected with Mr. Goodman, and his retrial began on November 4, 1996, just short of three years and six months from the original date when he was charged for the murder.

3. Article XXVI, Right to an Impartial Hearing

29. The Petitioners allege that Mr. Goodman's right to a fair and impartial hearing as established by Article XXVI of the American Declaration was violated during his second trial, which commenced on November 4, 1996. The Petitioners claim that Mr. Goodman's first trial, which began on May 20, 1996, was aborted by the Trial Judge on May 28, 1996 because of negative and adverse press coverage. The Petitioners argue that the exposure to the inaccurate reports, from the Freeport Newspaper and other radio and television broadcasts during Mr. Goodman's first trial prejudiced his re-trial on November 4, 1996. These reports stated that Mr. Goodman was already serving a 45-year sentence for murder and armed robbery, and, as such, the jury was predisposed to finding Mr. Goodman guilty of further charges.

30. In addition, the Petitioners contend that after Mr. Goodman's trial was aborted on May 28, 1996, the Freeport Newspaper of Friday May 31, 1996, reported the events. This led the Trial Judge to discharge the jury empanelled during Mr. Goodman's first trial. The Petitioners contend that the Freeport Newspaper reported that the judge, prior to discharging the jury, had met with the lawyers in the case and that he had looked at the newspaper reporting, listened to and made tapes of the radio broadcasts. Moreover, the Petitioners argue that the cumulative effect of the broadcasts and the subsequent press coverage of the dismissal of the first trial, created conditions under which it was impossible for Mr. Goodman to receive an impartial hearing, as established by Article XXVI of the Declaration.

4. Article XXVI, Right To Humane Treatment

31. The Petitioners allege that the State is in violation of Mr. Goodman's right not to be subjected to degrading and inhumane treatment, protected under Article XXVI of the Declaration. The Petitioners claim that Mr. Goodman is only given 10 minutes of exercise four days per week (Monday, Tuesday, Wednesday, and Friday) and on all other days, including holidays, he is confined to his cell for the full 24 hours. The Petitioners contend that Mr. Goodman is only allowed to shower on the days when he is allowed to exercise. The Petitioners argue that this treatment and additional suffering inflicted upon Mr. Goodman was not authorized by the original sentence, and that this amounts to cruel, infamous, and unusual punishment which constitutes a violation of Article XXVI of the Declaration.

B. STATE'S POSITION ON MERITS

32. To date the State has not presented any information to the Commission concerning the merits of the Petition.

VI. ANALYSIS ON MERITS

A. Standard of Review

33. Before addressing the merits of the present case, the Commission wishes to reaffirm and reiterate its well-established doctrine that it will apply a heightened level of scrutiny in deciding capital punishment cases. As the right to life is widely-recognized as the supreme right of the human being, respect for which the enjoyment of all other rights depends, the Commission considers that it has an enhanced obligation to ensure that any deprivation of life that an OAS Member State proposes to carry out through the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration. This heightened scrutiny test is consistent with the restrictive approach taken by other international human rights authorities to the imposition of the death penalty and has been articulated and applied by the Commission in previous capital cases before it.

34. This approach requires in particular strict adherence to the rules and principles of due process and fair trials in the context of capital cases. The Commission has previously emphasized that, due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.

35. The Commission will therefore review the Petitioners' allegations in the present case with a heightened level of scrutiny, to ensure in particular that the right to life, the right to due process, and the right to a fair trial as prescribed under the American Declaration have been properly respected by the State.

B. Presumption of Facts

36. The Commission notes that the State has not disputed the Petitioners' allegations regarding the judicial proceedings culminating in the dismissal of Mr. Goodman's special leave to appeal to the Privy Council in June 1998. In this respect, the Commission has received no information or observations from the State with respect to the Petitioners' petition, despite repeated requests. Accordingly the Commission invokes Article 39 of its Rules of Procedure, which provides that:

The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

37. While the Commission acknowledges that the State is not a party to the American Convention on Human Rights, the Commission is authorized under Article 20(b) of its Statute

[...] to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights.

38. The Commission also notes that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the Inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN8]

[FN8] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, paras. 135 and 136.

39. The Commission and the Inter-American Court of Human Rights have also indicated that the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.[FN9]

[FN9] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 138. IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

40. The Commission therefore reminds the State of the Commonwealth of The Bahamas that it has a duty to cooperate with the organs in the inter-American human rights system for optimal fulfillment of its functions to protect human rights.

C. Application and Interpretation of the American Declaration of the Rights and Duties of Man

41. The Petitioners in the present case have alleged that the State of The Bahamas is responsible for violations of the rights of Chad Goodman under the American Declaration of the Rights and Duties of Man. As the Commission has noted on many previous occasions, the American Declaration constitutes a source of international legal obligation for all Member States

of the Organization of American States, including The Bahamas.[FN10] Moreover, the Commission is empowered under Article 20 of its Statute and Articles 49 and 50 of its Rules of Procedure to receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration in relation to OAS Member States that are not parties to the American Convention.[FN11]

[FN10] The Bahamas deposited its instrument of ratification of the OAS Charter on March 03, 1982.

[FN11] See also I/A Court H.R., Advisory Opinion OC-10/89 Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A N° 10 (1989) [hereinafter “Advisory Opinion OC-10/89”], paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49; OAS Charter, Articles 3, 16, 51, 112, and 150.

42. According to the jurisprudence of the inter-American human rights system, the provisions of its governing instruments, including the American Declaration, should be interpreted and applied in the context of developments in the field of international human rights law occurring since those instruments were first composed, and with due regard to other relevant rules of international law applicable to Member States against which complaints of human rights violations are properly lodged.[FN12]

[FN12] See Advisory Opinion OC-10/89, supra, para. 37; I/A Court H.R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Ser. A N° 16 (1999) [hereinafter “Advisory Opinion OC-16/99”], para. 114 (endorsing an interpretation of international human rights instruments that takes into account developments in the corpus juris gentium of international human rights law over time and in present-day conditions; Report N° 52/02, Case N° 11.753, Ramón Martínez Villareal (United States), Annual Report of the IACHR 2002 [hereinafter “Martínez Villareal Case”], para. 60.

43. In particular, the organs of the inter-American system have previously held that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may be drawn from the provisions of other prevailing international and regional human rights instruments.[FN13] This includes the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.[FN14] Pertinent developments have also been drawn from the provisions of other international instruments adopted inside and outside of the framework of the inter-American system, including the UN Standard Minimum Rules for the Treatment of Prisoners.[FN15]

[FN13] See Advisory Opinion OC-10/89, *supra*, para. 37; Advisory Opinion OC-16/99, *supra*, para. 115; Report N° 52/01, Case 12.243, Juan Raul Garza (United States), Annual Report of the IACHR 2000 [hereinafter “Garza Case”], para. 89.

[FN14] See IACHR, Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Doc. OEA/Ser.L/V/II.106, Doc. 40 rev. (February 28, 2000), para. 38; Garza Case, *supra*, paras. 88, 89 (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

[FN15] Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

44. Accordingly, in determining the present case the Commission will, to the extent appropriate, interpret and apply the pertinent provisions of the American Declaration in light of current developments in the field of international human rights law, as evidenced by treaties, custom and other relevant sources of international law.

1. Alleged Violations of the American Declaration

45. The Petitioners allege violations of Article I (the right to life), Article II (the right to equality before the law), Article XXV (the right to be tried without undue delay and to receive humane treatment while in custody), and Articles XVIII and XXVI (the right to a fair and impartial hearing).

a. Articles I, II, XXVI of the Declaration, Mandatory Death Sentence

46. The Petitioners argue that the mandatory death sentence imposed on Mr. Goodman is in violation of Articles I, II and XXVI of the American Declaration and the principles underlying those provisions.

47. Article I of the American Declaration provides:

Every human being has the right to life, liberty and the security of his person.

48. Article II provides:

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

49. Article XXVI provides:

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous, or unusual punishment.

50. The Commission recalls that in the cases of Michael Edwards, Omar Hall, Jeronimo Bowleg, and Brian Schroeter[FN16] (hereinafter “Michael Edwards et al case”), from the Bahamas, mandatory death sentences were imposed upon conviction for murder pursuant to Section 312 of the Penal Code of The Bahamas. This is the same provision under which Mr. Goodman was sentenced to a mandatory death penalty. The Commission concluded that the State’s domestic law did not have a procedure for individualized sentencing, nor did it allow persons under conviction to present evidence of mitigating circumstances prior to being sentenced by the Court. In those cases, the Commission found that the imposition of mandatory death sentences violated Articles I, XVIII, XXV, and XXVI of the American Declaration.

[FN16] IACHR, Report N° 48/01 Case 12.067, Michael Edwards, Case 12.068, Omar Hall, Case 12.086, Brian Schroeter & Jeronimo Bowleg, The Bahamas, April 4, 2001.

51. As the Commission also noted in the Michael Edwards et al. case, mandatory sentencing by its very nature precludes consideration by a court of whether the death penalty is an appropriate, or indeed permissible, form of punishment in the circumstances of a particular offender or offense. Moreover, by reason of its compulsory and automatic application, a mandatory sentence cannot be the subject of an effective review by a higher court. Once a mandatory sentence is imposed, all that remains for a higher court to review is whether the defendant was found guilty of a crime for which the sentence was mandated. In the Commission’s view, these aspects of mandatory death sentences cannot be reconciled with Article I of the Declaration, in several respects. As noted above, the mandatory death penalty in The Bahamas imposes the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and culpability. Not only does this practice fail to reflect the exceptional nature of the death penalty as a form of punishment, but, in the view of the Commission, it results in the arbitrary deprivation of life, contrary to Article I of the Declaration.

52. The Commission reaffirms that imposing a mandatory penalty of death for all crimes of murder prohibits a reasoned consideration of each individual case to determine the propriety of the punishment in the circumstances, despite the fact that murder can be committed under widely-differing circumstances. By its nature, then, this process eliminates any reasoned basis, for sentencing a particular individual to death and fails to allow for a rational and proportionate connection between individual offenders, their offenses, and the punishment imposed on them. Implementing the death penalty in this manner therefore results in the arbitrary deprivation of life, within the ordinary meaning of that term and in the context of the object and purpose of Article I of the Declaration.

53. By reason of its compulsory nature, the imposition of a mandatory death sentence precludes any effective review by a higher court as to the propriety of a sentence of death in the

circumstances of a particular case. As indicated previously, once a mandatory death sentence is imposed, all that remains for a higher court to review is whether the defendant was properly found guilty of a crime for which the sentence of death was mandated. There is no opportunity for a reviewing tribunal to consider whether the death penalty was an appropriate punishment in the circumstances of the particular offense or offender. This consequence cannot be reconciled with the fundamental principles of due process provisions underlying Articles I, XXIV, and XXVI of the Declaration that govern the imposition of the death penalty.

54. With reference to Mr. Goodman, the Commission finds that he was sentenced to a mandatory death penalty based solely upon the category of crime for which he was convicted. Therefore, for the foregoing reasons, the Commission concludes that the State violated Mr. Goodman's rights under Articles I, XXIV, and XXVI of the American Declaration because it imposed a mandatory death sentence on him upon his conviction for murder, without providing him with individualized sentencing and the opportunity to present mitigating evidence prior to that sentence being imposed.

b. Advisory Committee on the Prerogative of Mercy

55. The authority of the Executive in The Bahamas to exercise the Prerogative of Mercy is prescribed in Sections 90, 91, and 92 of the Constitution of The Bahamas which provide as follows:

90 (1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf –

- (a) Grant to any person convicted of any offense against the law of The Bahamas a pardon, either free or subject to lawful conditions;
- (b) Grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;
- (c) Substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) Remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) The powers of the Governor-General under paragraph (1) of this Article shall be exercised by him in accordance with the advice of a Minister designated by him, acting in accordance with the advice of the Prime Minister.

91. There shall be an Advisory Committee on the Prerogative of Mercy, which shall consist of –

- (a) The Minister referred to in paragraph (2) of Article 90 of this Constitution who shall be the Chairman;
- (b) The Attorney General; and
- (c) Not less than three or more than five other members appointed by the Governor-General.

92. (1) Where an offender has been sentenced to death by any court for an offence, against the law of The Bahamas, the Minister shall cause a written report of the case from the trial Justice of the Supreme Court, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.

(2) The Minister may consult with the Advisory Committee on the Prerogative of Mercy before tendering any advice to the Governor-General under paragraph (2) of Article 90 of this Constitution in any case not falling within paragraph (1) of this Article.

(3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.

(4) The Advisory Committee may regulate its own procedure.

(5)

56. The law in The Bahamas therefore provides for a process by which the Executive may exercise the authority to grant amnesties, pardons, or commutations of sentences. The Commission is not, however, aware of any prescribed criteria that are applied in the exercise of the functions or discretion of the Advisory Committee, save for the requirement in death penalty cases that the Minister cause a written report of the case from the trial judge, and possibly other information in the Minister's discretion, to be taken into consideration at the meeting of the Advisory Committee. Nor is the Commission aware of any right on the part of an offender to apply to the Advisory Committee, to be informed of the time when the Advisory Committee will meet to discuss the offender's case, to make oral or written submissions to the Advisory Committee or to present, receive or challenge evidence considered by the Advisory Committee.

57. As the Commission observed in the Michael Edwards et al. case[FN17], the Commission does not consider that the State's Advisory Committee on the Prerogative of Mercy ("the Advisory Committee"), that was established pursuant to Articles 91 and 92 of the Constitution of The Bahamas, can provide an adequate opportunity consistent with the requirements of the Articles I, XVIII, XXIV, XXIV, and XXVI of the American Declaration for the proper implementation of the death penalty through individualized sentencing.

[FN17] IACHR, Report N° 48/01 Case 12.067, Michael Edwards, Case 12.068, Omar Hall, Case 12.086, Brian Schroeter & Jeronimo Bowleg, The Bahamas, April 4, 2001, at para.166.

58. The Petitioners have indicated that Mr. Goodman has no right to make submissions to the Advisory Committee. Whether, and to what extent, prisoners may apply for amnesty, pardon or commutation of sentence remains entirely at the discretion of the Advisory Committee. Further, no procedure or mechanism is provided for that specifies the manner in which prisoners may file an application for amnesty, pardon or commutation of sentence, submit representations in support of his or her application, or receive a decision. Nor is there a procedure for informing the condemned person of the date, time, place and the opportunity to present mitigating evidence before the Advisory Committee. Consequently, the Commission finds that, in light of its

previous jurisprudence, the State does not have an effective procedure for a condemned person to petition for amnesty, pardon, or commutation of a death sentence.

59. This process is not consistent with the standards prescribed under Articles I, XVIII, XXIV, XXV, and XXVI of the Declaration that are applicable to the imposition of mandatory death sentences. As outlined previously, these standards 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 The Bahamas clearly does not satisfy these standards, and therefore cannot serve as a substitute for individualized sentencing in death penalty prosecutions.

60. Moreover, based upon the information before it, the Commission finds that the procedure for granting mercy in The Bahamas does not guarantee condemned prisoners with an effective or adequate opportunity to participate in the mercy process, and therefore does not properly ensure Mr. Goodman's rights under Article XXIV of the Declaration to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

61. In the Commission's view, the right to petition under Article XXIV of the Declaration, when read together with the State's obligations under the Declaration, must be read to encompass certain minimum procedural protections for condemned prisoners if the right is to be effectively respected and enjoyed. These protections include the right on the part of condemned prisoners to apply for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations in person or by counsel to the competent authority and, to receive a decision from that authority within a reasonable period of time prior to his or her execution. It also entails the right not to have capital punishment imposed while such a petition is pending decision by the competent authority. In order to provide condemned persons with an effective opportunity to exercise this right, a procedure should be prescribed and made available by the State through which prisoners may file an application for amnesty, pardon or commutation of sentence, and submit representations in support of his or her application. In the absence of minimal protections and procedures of this nature, Article XXIV of the American Declaration is rendered meaningless, a right without a remedy. Such an interpretation cannot be sustained in light of the object and purpose of the American Declaration.

62. The Commission finds that the State has failed to respect Mr. Goodman's right under Article XXIV of the American Declaration to petition for amnesty, pardon or commutation of sentence, and to obtain a prompt decision thereon.

63. In the premises, the Commission finds that the State violated the rights of Mr. Goodman under Articles I, XXV, and XXVI of the American Declaration by failing to guarantee him with an effective or adequate opportunity to participate in the mercy process.

c. Conclusion

64. The Commission's heightened scrutiny test obliges the State to strictly adhere to the rules and principles of due process when dealing with capital cases. In the Commission's view, the State failed to meet this test, by imposing a mandatory death penalty on Mr. Goodman and by failing to guarantee condemned prisoners with an effective or adequate opportunity to participate in the mercy process.

65. Having regard for its heightened scrutiny test and other jurisprudence cited, the Commission finds that by imposing a mandatory death sentence on Mr. Goodman without individualized sentencing, and the opportunity to present mitigating evidence, the State violated Mr. Goodman's right not to be arbitrarily deprived of his life, his right not to be subjected to cruel, inhuman or degrading treatment pursuant to Articles I, and XXVI, of the Declaration. Given its conclusions that the mandatory death sentence imposed on Mr. Goodman contravenes Articles I, and XXVI of the Declaration and is therefore unlawful, the Commission does not consider it necessary to determine whether Mr. Goodman's right to equality before the law pursuant to Article II of the Declaration, was violated by the State.

66. Similarly, the Commission concludes that the State has violated Mr. Goodman's rights to a hearing with due guarantees by a competent, independent and impartial tribunal as established under Article XXVI, of the American Declaration. Mr. Goodman was not provided with an opportunity to make representations and present evidence to the trial judge as to whether his crime warranted the ultimate penalty of death, and was therefore denied the right to fully, answer and defend the criminal accusation against him.

67. It follows from the Commission's findings that, should the State execute Mr. Goodman pursuant to his mandatory death sentence, this would constitute further egregious and irreparable violations of Articles I and XXVI of the Declaration.

d. Article XXV of the Declaration, Right to Trial without Undue Delay

68. The Petitioners indicate that the deceased's death occurred between January 6 and January 9, 1992, and that an identification parade was held on May 5, 1993, at which Mr. Goodman was identified, and he was charged on May 6, 1993 for the murder. The Petitioners maintain that Mr. Goodman was committed for trial on September 25 or 26, 1993, and he was arraigned on July 17 or 20, 1995, two years and two months after being charged. The Petitioners argue that the period of time which elapsed between charging Mr. Goodman on May 6, 1993 and his first trial on May 20, 1996, a period of over three years, violated his right under Article XXV of the Declaration "to be tried without undue delay". The Petitioners contend that Mr. Goodman's first trial was aborted for reasons unconnected with Mr. Goodman, and his retrial began on November 4, 1996, just short of three years and six months from the original date when he was charged for the murder.

69. The State has not responded to the merits of Mr. Goodman's petition relating to a violation of Article XXV of the Declaration.

70. Article XXV of the Declaration provides:

No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time that he is in custody.

71. 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 disposed of promptly.[FN18] 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.[FN19]

[FN18] I/A Court H.R., Suarez Rosero Case. Judgment, 12 November 1997, Annual Report 1997, p. 283, para. 70.

[FN19] *Id.*, para. 71.

72. 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.[FN20] 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.[FN21]

[FN20] *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 N° 9, p. 40.

[FN21] See Report No. 2/97, Cases 11.205, 11.236, et al. (Argentina), *supra*.

73. 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." [FN22]

[FN22] Report N° 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 N° 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.').

74. In Mr. Goodman's case, he has been subjected to a pre-trial delay of more than three years from May 6, 1993, the date on which he was charged, to the date of his first trial on May 20, 1996. In light of the Commission's prior jurisprudence [FN23] and that of the Inter-American Court of Human rights [FN24], and other international authorities, the Commission is of the view that the delay in Mr. Goodman's case from the date of his arrest in 1993, to the date of his first trial in 1996, is prima facie unreasonable and calls for justification by the State. [FN25] In addition, the State has failed to respond to the issue of "delay" and has failed to provide any proper justification for the delay in bringing Mr. Goodman to trial. There is also no indication that the case involved a complicated investigation or complex evidence.

[FN23] Id. See Report No. 41/00, Case 12.023, *Desmond McKenzie*, Case 12.044, *Andrew Downer and A/phonso Tracey*, Case 12.027, *Carl Baker*, Case N° 12.126, *Dwight Fletcher*. Inter-American Commission's Report at 918.

[FN24] Id. June of June 21, 2002, pp., 50-55, paras. 132-152, p. 71, para. 3.

[FN25] See e.g. I/A Court H.R., *Suarez Romero Case*, supra, p. 300, para. 73 (finding that 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).

75. The Commission finds that Mr. Goodman's prosecution does not appear to have been particularly complex, and there is also no indication that the prosecution's case consisted of complex evidence that might assist in explaining such a delay. The State has failed to provide the Commission with any information suggesting otherwise. Similarly, there is no information before the Commission concerning the procedural activity relating to, or the conduct of the judicial authorities that explains or justifies, a delay of almost three years between Mr.

Goodman's arrest and his first trial. The Commission concludes that the State failed to try Mr. Goodman without undue delay and within a reasonable time contrary to Article XXV of the American Declaration. Therefore, the Commission finds that the State has violated Mr. Goodman's right to be tried without undue delay and within a reasonable time, pursuant to Article XXV of the Declaration in relation to his first trial.

e. Article XXVI Of The Declaration, Right To An Impartial Hearing

76. The Petitioners allege that the adverse press coverage violated Mr. Goodman's right to an impartial hearing as provided by Article XXVI of the Declaration. The Petitioners claim that the Freeport Newspaper on Friday May 31, 1996, reported events which led the Trial Judge to discharge the jury empanelled during Mr. Goodman's first trial on May 20, 1996. The Petitioners contend that the Freeport Newspaper reported that the judge had met with the lawyers in the case, had listened to and made tapes of the radio broadcasts and read the newspaper reports prior to discharging the jury.

77. The Petitioners argue that the exposure to the Freeport Newspaper's inaccurate reporting, and other radio and television broadcasts, during Mr. Goodman's first trial, prejudiced his re-trial on November 4, 1996, and that the jury was predisposed to finding Mr. Goodman guilty of further charges. These reports and broadcasts stated that Goodman was already serving a 45-year sentence for murder and armed robbery, before he was even convicted. Moreover, the Petitioners argue that the cumulative effect of the broadcasts and the subsequent press coverage of the dismissal of the first trial, created conditions under which it was impossible for Mr. Goodman to receive an impartial hearing as established by Article XXVI of the Declaration.

78. Article XXVI of the Declaration states:

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive, cruel, infamous or unusual punishment.

79. The Commission is of the view that, in respect of the manner in which Mr. Goodman's trial was conducted, these are matters which are more appropriately left to the domestic courts of States Parties to the American Declaration. The Commission considers that it is generally for the courts of States Parties to the Declaration to review the factual evidence in a given case and give directions as to the applicable domestic law. Similarly, it is for the appellate courts of States Parties, and not the Commission, to review the manner in which a trial was conducted, unless it is clear that the judge's conduct was arbitrary or amounted to a denial of justice or that the judge manifestly violated his obligation of impartiality.

80. In the William Andrews case[FN26], in construing Article XXVI of the Declaration, the Commission opined that an accused has the right to an impartial hearing. In that case the Commission stated that the issue of "impartiality" on the part of the judge and jury is based on an objective test of reasonableness, and the appearance of impartiality.[FN27]

[FN26] Report No. 57/96, Case 11.139 William Andrews, United States, December 6, 1996, p. 570 at p. 611.

[FN27] See also *Piarsack v. Belgium*. Judgment of 1 Oct. 1982, Series A, No. 53; (1983) 5 EHRR 169; (Article 50), Judgment of 26 OCT. 1984, Series A, No. 85; (1985) 7 EHRR 251, *Gregory v. United Kingdom*, App. N. 22299/93 19 EHRR CD 82.

81. The Commission notes that Mr. Goodman's first trial was discontinued by the trial judge on May 20, 1996, because of inaccurate and adverse reporting of the proceedings in the press and in radio and television broadcasts. The comments of Mr. Justice Hall, the Trial Judge, that the news reports and broadcasts, "have irremediably prejudiced the accused in this case so that a fair trial before the present jury can no longer be had", demonstrate that he clearly did not want to prejudice Mr. Goodman's right to a fair and impartial trial. The second trial commenced on November 4, 1996. The Commission notes the Petitioners have argued that the close time frame between the dismissal of Mr. Goodman's first trial and the beginning of the second trial was clearly prejudicial to him. The Petitioners further claim that "it was no longer possible for Mr. Goodman to receive an impartial hearing in accordance with his right under Article XXVI," because of the adverse and inaccurate reporting in the press and in radio and television broadcasts.

82. After carefully reviewing the Petitioners' allegations and the information in the records before it, the Commission is of the view that the submissions in the above case in respect of the manner in which Mr. Goodman's trials were conducted are matters which are more appropriately left to the domestic courts of States Parties to the American Declaration. While the Commission's heightened scrutiny test is generally applicable to judicial processes in death penalty cases, the Commission considers that it is generally for the courts of States Parties to the Declaration to review the factual evidence in a given case and give directions as to the applicable domestic law. Similarly, it is for the appellate courts of States Parties, and not the Commission, to review the manner in which a trial was conducted, unless it is clear that the judge's conduct was arbitrary or amounted to a denial of justice or that the judge manifestly violated his obligation of impartiality. In the present case, the Petitioners have failed to demonstrate that the manner in which their criminal proceedings were conducted warrants interference by this Commission.

f. Article XXVI of the Declaration, Right to Humane Treatment

83. The Petitioners allege that the State is in violation of Mr. Goodman's right not to be subjected to degrading and inhumane treatment, protected under Article XXVI of the Declaration. The Petitioners claim that Mr. Goodman is only given 10 minutes of exercise four days per week (Monday, Tuesday, Wednesday, and Friday) and on all other days, including holidays, he is confined to his cell for the full 24 hours. The Petitioners claim that Mr. Goodman is only allowed to shower on the days when he is allowed to exercise. The Petitioners argue that this treatment and additional suffering inflicted upon Mr. Goodman was not authorized by the original sentence. The Petitioners contend that, since Mr. Goodman's conviction and death

sentence, he has been detained on death row in conditions which constitute inhuman and degrading treatment in violation of Article XXVI of the Declaration.

84. In considering Mr. Goodman's claim relating to his inhumane treatment and conditions of detention, to which he was subjected, the Commission is of the view that these conditions of detention, when considered in light of the periods of time for which he has been held in detention prior to trial and the final disposition of his appeals, fail to satisfy the standard of humane treatment prescribed under Article XXVI of the Declaration. Mr. Goodman has been held in confined conditions for 24 hours a day, and is only allowed 10 minutes of exercise four days a week (Monday, Tuesday, Wednesday, and Friday). On all other days, including holidays, he is confined to his cell for the full 24 hours. In addition, Mr. Goodman is only allowed to shower on the days he is allowed to exercise.

85. These observations, together with the length of time over which Mr. Goodman has been held in these conditions, from May 6, 1993, to the present time, suggest that the treatment of him has failed to meet the minimum standards under Article XXVI of the Declaration, which apply irrespective of the nature of the conduct for which the person in question has been imprisoned[FN28] and regardless of the level of development of a particular State.[FN29]

[FN28] See e.g. Eur. Court H.R., *Ahmed v. Austria*, Judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 220, para. 38.

[FN29] See similarly 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).

86. The Commission considers that Mr. Goodman's claims, in relation to his post conviction conditions of detention, should be evaluated in light of minimum standards articulated by international authorities for the treatment of prisoners, including those prescribed by the United Nations. More particularly, Rules 10, 11, 12, 15, and 21, of the United Nations Standard Minimum Rules for the Treatment of Prisoners[FN30] (UN Minimum Rules) provide for minimum basic standards for prisoners in respect of accommodation, hygiene, exercise, and their treatment and punishment during detention and incarceration. These rules state as follows:

[FN30] 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 1, 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 accommodation shall meet all requirements of health, due regard being paid to climatic 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 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.

87. It is evident, based upon the information provided by the Petitioners, that the conditions of detention to which Mr. Goodman has been subjected fail to meet several of these minimum standards of treatment of prisoners, in such areas as accommodation, ventilation, hygiene, medical treatment and exercise. The Commission finds that the post-trial conditions of detention of Mr. Goodman are similar to those documented in the Michael Edwards, et al. case[FN31] where the Commission found that those conditions constituted violations of Articles XI, XXV, and XXVI of the American Declaration. The Inter-American Court of Human Rights adjudicated on conditions of detention which were similar to those alleged by Mr. Goodman and concluded that they constituted a violation of the right to humane treatment pursuant to Article 5(1) and 5(2) of the American Convention.[FN32]

[FN31] See the Commission's decisions in the cases in Report N° 48/01 (The Bahamas), Case 12.067 Michael Edwards, Case 12.068 Omar Hall, and Case N° 12.086 Brian Schroeter and Jeronimo Bowleg IACHR Annual Report 2000, Vol.1, p. 620, and pp. 677-682; Report N° 38/00.

[FN32] Id. Judgment of June 21, 2002, pp. 57-59, paras. 159-172, p. 71, para. 5.

Article 5(1) of the American Convention provides: Every person has the right to have his physical, mental, and moral integrity respected.

Article 5(2) of the Convention states: No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

88. Therefore, the Commission concludes that, in relation to his conditions of detention, the State has violated Mr. Goodman's right to humane treatment, namely, his right not to receive cruel, infamous, or unusual punishment, pursuant to Article XXVI of the Declaration.

VII. FINAL CONCLUSIONS

89. The Commission, on the basis of the information presented, and the due analysis under the American Declaration, reiterates its conclusions as follows:

1. The State is responsible for violating Articles I, XXV, and XXVI of the American Declaration by sentencing Mr. Goodman to a mandatory death penalty.
2. The State is responsible for violating Mr. Goodman's right under Articles I, XXV, and XXVI of the American Declaration, by failing to provide Mr. Goodman with an effective remedy to petition for amnesty, pardon or commutation of sentence.
3. The State is responsible for violation of Mr. Goodman's right to be tried without undue delay under Article XXV of the American Declaration.
4. The State is responsible for violating Mr. Goodman's right to humane treatment under Articles XXV, and XXVI of the American Declaration, namely, his right not to receive cruel, infamous or unusual punishment.
5. The State is not responsible for violating Mr. Goodman's right to an impartial hearing under Article XXVI of the American Declaration.

VIII. RECOMMENDATIONS

90. Based on the analysis and the conclusions in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE COMMONWEALTH OF THE BAHAMAS:

1. Grant Mr. Goodman, an effective remedy, which includes commutation of sentence and compensation for the violations of Articles I, XVIII, XXIV, XXV, and XXVI of the American Declaration.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration, including and in particular Articles I, XXV, and XXVI, and to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in The Bahamas.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article XXV of the American Declaration to be tried without undue delay is given effect in The Bahamas.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment and the right not to receive cruel, infamous, or unusual punishment under Articles XI, XXV, and XXVI of the American Declaration are given effect in The Bahamas in relation to conditions of detention.

5. Pursuant to Article 43.2 of its Rules of Procedure, the Commission decides to transmit this Report to the State of The Commonwealth of The Bahamas and requests that the State inform it, within 2 months of the transmittal of this Report, of the measures which the State has taken to comply with the Commission's Recommendations, herein adopted in the Report.

IX. PUBLICATION

91. In accordance with Article 43 of the Commission's Rules of Procedure, the Commission, the Commission transmitted the content of this report, adopted as Report N° 16/07 to the State and to the Petitioners by communications dated April 02, 2007. The State was granted a period of two months within which to inform the Commission of the measures taken to comply with the Commission's recommendations. The State failed to present a response within the time limit prescribed by the Commission.

92. Based upon the foregoing considerations, and in the absence of a response by the State to Report N° 16/07, the Commission in conformity 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 the Commonwealth of The Bahamas with respect to the above recommendations until they have been complied with by the State.

Done and signed in the city of Washington, D.C., on the 15th day of the month of October, 2007.
Signed: Florentín Méndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts, and Freddy Gutiérrez, members of the Commission.