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Decided by: First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Meléndez, Paolo G. Carozza.
Dated: 20 March 2009
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Represented by: APPLICANT: a firm of Solicitors "Collyer-Bristow"
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I. SUMMARY

1. On September 15, 1998, the Inter-American Commission on Human Rights (the “Inter-American Commission”) received a petition from Collyer-Bristow, a firm of Solicitors in London, United Kingdom (the “petitioners”) against the Government of Trinidad and Tobago (the “State” or “Trinidad and Tobago”). The petition was presented on behalf of Mr. Dexter Lendore, who had previously been detained on death row at the state prison, 103a Frederick Street, Port of Spain, Trinidad and Tobago. The petition also indicates that on May 4, 1998, Mr. Lendore’s sentence was commuted to seventy-five years imprisonment with hard labor.

2. The petition alleges that the State is responsible for violations of Mr. Lendore’s rights under Articles 5 and 8 of the American Convention on Human Rights (the “American Convention”) It is stated in particular that the conditions prevailing at Mr. Lendore’s detention, prior to his committal and trial and after his conviction, as well as the length of time that Mr. Lendore was held in custody prior to his trial and the time spent as a death row inmate awaiting his execution, violated Article 5 of the American Convention. The petitioners also claim that the State is responsible for violations of Mr. Lendore’s right to a fair trial under Article 8 of the Convention, as a result of the trial judge’s failure to order separate trials of Mr. Lendore and his co-defendants, alleged misdirections by the trial judge, inadequate legal representation provided to Mr. Lendore, and the lack of effective recourse on appeal against the trial judge’s misdirections by the invocation of a statutory provision.

3. The State did not provide any observations on the merits of the petition.

4. In Report 21/05 dated February 25, 2005, the IACHR decided to admit Mr. Lendore's petition and to continue with the analysis of the merits of his case. As set forth in the present Report, having examined the information and arguments concerning the merits of the petition, the Inter-American Commission has concluded that the State is responsible for violating Mr. Lendore's rights under Articles 1(1), 5, 8 and 25 of the American Convention, and Articles XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man ("American Declaration").

5. Based upon these conclusions, the IACHR has recommended that the State grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, as well as compensation. The Inter-American Commission has further recommended that the State take the legislative or other measures as may be necessary to ensure Mr. Lendore's right to humane treatment in relation to his conditions of detention and that the right to a fair hearing and the right to judicial protection are given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT 21/05

6. In Report N° 21/05 adopted on February 25, 2005, the IACHR declared that Mr. Lendore's petition was admissible in respect of Articles 1(1), 2, 5, 8 and 25 of the American Convention and Articles XVIII, XXIV, XXV, and XXVI of the American Declaration, and that it would continue with its analysis of the merits of these claims. Report 21/05 was transmitted to the State and to the Petitioners by note dated March 17, 2005. In the same notes, in accordance with Article 38(1) of the Inter-American Commission's Rules of Procedure, the IACHR requested that the Petitioners provide any additional observations that they may have on the merits of the case within a period of two months. Pursuant to Article 38(2) of its Rules, the Inter-American Commission also placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter and requested that the parties inform the IACHR expeditiously whether they were interested in pursuing a friendly settlement of the case.

7. On March 23, 2005, the Inter-American Commission received a communication from the Petitioners responding to the IACHR's March 17, 2005 request for information. On March 24, 2005, the pertinent parts of the Petitioner's submissions were transmitted to the State, and the Inter-American Commission requested that the Republic of Trinidad and Tobago submit any additional observations that it may have on the merits of the Petitioners' petition within a period of two months, in accordance with Article 38(1) of the IACHR's Rules.

8. As of the date of the present report, the Inter-American Commission had not received any observations from the State on the merits of the petition.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petition states that on December 8, 1993, Dexter Lendore, together with his co-defendants Andrew Andy Paul Douglas and Keith Ling, was convicted of the September 10, 1989 murder of Lall Sookdad and sentenced to death. The petition also states that on May 4, 1998, Mr. Lendore's death sentence was commuted to 75 years with hard labor.

10. It was found by the Courts that the three co-Defendants took part in a joint unlawful enterprise to rob the deceased knowing that one of them, Andrew Andy Paul Douglas, was armed with a gun, that Mr. Douglas intended to kill or cause grievous bodily harm and in fact caused Mr. Sookdad's death, and that Mr. Lendore and Mr. Ling must have foreseen the consequences.

11. With respect to the merits of their complaints against the State, the Petitioners claim that the State is responsible for violations of Mr. Lendore's rights under Articles 5 and 8 of the American Convention based upon the following grounds.

1. Article 5 of the American Convention

12. According to the Petitioners, the physical conditions of Mr. Lendore's detention during the course of his criminal proceedings have violated Article 5(1) and (2) of the American Convention.[FN1] In particular, the Petitioners claim that following Mr. Lendore's arrest in 1989, he was placed in a 9" x 6" cell at the State Prison in Port of Spain with an average of 10 other prisoners, who shared a single plastic bucket for use as a toilet and were forced to defecate and urinate in the cell itself. Mr. Lendore was also forced to sleep on the floor and spent 23 hours of the day in these conditions. From his committal in January 1991 to his conviction and sentence on December 8, 1993, Mr. Lendore is alleged to have been held in similar conditions at Golden Grove Prison, Arouca, where he shared a cell with 5 to 7 inmates at a time. Further, the petition indicates that Mr. Lendore spent 4 ½ years on "death row" awaiting his execution, before his sentence was commuted to 75 years hard labor on May 4, 1998.

[FN1] Petition dated September 15, 1998, pp. 7-8 and Appendix (questionnaire of Dexter Lendore).

13. Since the commutation of his sentence, Mr. Lendore is alleged to have shared a cell at the State Prison in Port of Spain with 10 other inmates, with one slop bucket shared by all inmates that regularly overflows, resulting in grossly unhygienic conditions. The Petitioners also state that Mr. Lendore has regularly sought and been denied adequate medical care in prison. In particular, the Petitioners indicate that Mr. Lendore has seen the prison doctor only 2 or 3 times per year despite constant complaints as to the state of his eyes and back. According to the Petitioners' March 23, 2005 observations, Mr. Lendore continues to be detained on Death row at State Prison, Port of Spain serving a sentence of 75 years imprisonment with hard labor as a result of the commutation of the death sentence imposed on him at his trial.

14. The Petitioners further claim that the inordinate length of time that Mr. Lendore spent in detention between 1989 and 1993 awaiting trial, in addition to his 4 ½ years on Death row

between December 8, 1993 until May 4, 1998 awaiting his execution, both contravene Article 5 (1) and (2) of the American Convention.

15. In support of their claims, the Petitioners refer to the decision of the Judicial Committee of the Privy Council in the case of *Henfield v. A-G of the Bahamas*[FN2] in which that Court found a 3 ½ year delay following conviction and sentence of death amounted to cruel and inhuman treatment.

[FN2] Petitioners' petition dated September 15, 1998, p. 9, citing *Henfield v. A-G of the Bahamas* [1997] A.C. 413 PC.

16. Finally, the petitioners submit that the State's step in commuting Mr. Lendore's sentence in no way remedies its clear breach of Article 5(2) as to delay and conditions of detention.

2. Article 8 of the American Convention

17. The petition alleges that the State failed to promptly provide Mr. Lendore with legal counsel, and that when he was eventually provided with legal counsel appointed by the State's Legal Aid Authority, his representation at both trial and appeal was inadequate in contravention of Article 8(2)(c) and (e) of the American Convention. In particular, according to the Petitioners, Mr. Lendore did not see a lawyer until 10 days after his arrest at his preliminary hearing. The petitioners also state that at no stage prior to Mr. Lendore's trial did his counsel hold a conference with him, and that his first conference with his lawyer took place on the seventh day of the trial and lasted 20 minutes. It is similarly alleged that Mr. Lendore had no opportunity to consult with his State-appointed appeal attorney.

18. The petitioners also claim that the State is responsible for violations of Mr. Lendore's rights under Article 8(1) and (2) of the American Convention for the reason that the trial judge failed to order separate trials for Mr. Lendore and his co-defendant in circumstances where their defenses might have been prejudicial to each other. In particular, the Petitioners indicate that following their arrests the three co-defendants gave unsworn written statements in the presence of the police and a justice of the peace concerning their versions of events surrounding the crime. The Petitioners appear to assert in this respect that the reliance upon these statements by the Prosecution as well as Mr. Lendore's co-defendant, Mr. Douglas, caused severe prejudice to Mr. Lendore by permitting their use against Mr. Lendore when, according to the Petitioners, the statements would have been inadmissible had Mr. Lendore been tried separately. In these circumstances, the Petitioners argue that the trial judge, on request or by his own motion, should have ordered separate trials for the defendants.

19. In addition, the Petitioners contend that the trial judge misdirected the jury on certain principles of domestic law. Specifically, the Petitioners claim that the trial judge misdirected the jury as to the law on murder and joint enterprise and failed to properly charge the jury in accordance with applicable domestic case law in connection with discrepancies in the admissions of Mr. Lendore's evidence at trial and the written and oral statements he is alleged to have made

to the police. The Petitioners also claim in this respect that Mr. Lendore was not properly afforded his right to appeal under Article 8(2)(h) of the American Convention because, by virtue of a stipulation in its rules, the Court of Appeal of Trinidad and Tobago was able to substitute its own construction on the verdict of the case “in the interest of justice,” in circumstances where the trial judge had misdirected the jury in law.

20. Based upon their submissions under Article 8 of the American Convention, the Petitioners ask the IACHR to exercise its powers under Article 41(b) of the American Convention to recommend to the Government of Trinidad and Tobago that:

- (a) the conviction of Lendore be set aside absolutely on the basis that it is unsafe and unsatisfactory in all the circumstances; alternatively
- (b) the conviction of Lendore be set aside and a new trial be ordered with proper legal assistance in the preparation and presentation of his defense.

B. Position of the State

21. As indicated above, as of the time of approval of the present report, the Inter-American Commission has not received any information or observations from the State respecting the merits of this case.

IV. ANALYSIS

22. At this point in its analysis, the IACHR notes that despite its requests, the State has not provided the Inter-American Commission with any observations, information or evidence concerning the merits of the Petitioners’ allegations. Consequently, in accordance with Article 39 of its Rules of Procedure, the IACHR will presume the facts alleged by the Petitioners to be true, except where the evidence may lead to a different conclusion.

23. In addition, as noted in its admissibility report in this matter,[FN3] the Inter-American Commission will evaluate the Petitioners’ claims in light of the provisions of the American Convention, except in those instances in which the IACHR finds that the acts or situations concerned occurred wholly after May 26, 1999, the effective date of Trinidad and Tobago’s denunciation of the American Convention, in which instances the Inter-American Commission will apply the provisions of the American Declaration of the Rights and Duties of Man (“American Declaration”).

[FN3] Case 12.269, Report 21/05, Dexter Lendore v. Trinidad and Tobago (Admissibility), Annual Report of the IACHR 2005, paras. 13-17.

A. Article 5 of the American Convention - conditions of detention

24. The petitioners allege in the first place that the State is responsible for violations of Mr. Lendore’s right to humane treatment contrary to Articles 5(1), 5(2) and 5(4) of the American

Convention because of his conditions of detention while in custody at the Port of Spain State Prison, and Golden Grove Prison, Arouca, and while on death row at the State Prison, Port of Spain, and because of the length of time he spent on death row.

25. Article 5 of the American Convention provides as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. 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.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

26. Articles XXV and XXVI of the American Declaration read:

Article XXV

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 he is in custody.

Article XXVI

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.

27. The record in the present complaint indicates that Mr. Lendore had been held in confined and crowded conditions with inadequate hygiene or ventilation since August 1990. Post-arrest and prior to trial, Lendore was held on remand for some 3 years. Prior to his committal in January 1991, he was held at the State Prison, Port of Spain, and shared a 9' x 6' cell with, on average, 10 other prisoners and where, on occasion, there were as many as 15 other prisoners sharing the cell. In those conditions a single plastic bucket was provided for us as a toilet and washing facility for all the prisoners in the cell. As a result prisoners were forced to defecate and urinate in the cell itself. A single bunk bed without mattress was provided which resulted in Mr.

Lendore spending most, if not all, nights sleeping on the floor. Mr. Lendore spent 23 hours of his prison day living in these conditions, without ventilation and without natural light.

28. According to the petition, from January 1991 to trial, Mr. Lendore was held at the Golden Grove Prison, Arouca under similar conditions, sharing his cell with between 5 and 7 other inmates at a time. Post conviction and up to May 4, 1998, Mr. Lendore was held on death row. On May 4, 1998, his sentence was commuted to 75 years with hard labor. At the time, he shared a cell with 10 other inmates. The cell contained one double bunk bed, and Mr. Lendore slept underneath the bed. The cell had a single slop bucket that all the inmates used and which regularly overflowed resulting in grossly unhygienic conditions. The petition also states that Mr. Lendore had regularly sought medical care in prison, which had been routinely refused, and has seen the prison doctor 2 or 3 times per year despite continued complaints as to the state of his eyes and back.

29. In evaluating these conditions, the IACHR has taken into account its own previous decisions as well as judgments of the Inter-American Court of Human Rights, in which similar conditions of detention were evaluated and found to have violated Article 5 of the American Convention. In its merits judgment in the Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, for example, the Inter-American Court found that the conditions of detention of the victims in that case, who were held in the same facilities as Mr. Lendore, constituted cruel and inhumane treatment contrary to Articles 5(1) and 5(2) of the American Convention. These conditions included confinement in grossly overpopulated and unhygienic conditions that lacked sufficient ventilation and natural light and were located in close proximity to the execution chamber. The prisoners were also denied adequate nutrition, medical services or recreation, which the Court found exacerbated the state of mental anguish in which they lived.[FN4]

[FN4] I/A Court H.R., Case of Hilaire, Constantine and Benjamin et al. Judgment of 21 June 2002. Ser. C N° 94, paras. 84, 168-170. See similarly Case 12.023, Report 41/00, Desmond McKenzie et al. (Jamaica), Annual Report of the IACHR 1999, paras. 270-291; Case 11.139, Report 57/96, William Andrews (United States), Annual Report of the IACHR 1997, paras. 178-183.

30. A comparison of Mr. Lendore'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,[FN5] which the Inter-American Commission has previously indicated provide reliable benchmarks as to minimum international standards for the humane treatment of prisoners, prescribe the following basic standards in respect of accommodation, hygiene, and exercise:

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.

[FN5] 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).

31. As the Inter-American 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[FN6] and regardless of the level of development of a particular State Party to the American Convention.[FN7]

[FN6] 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.

[FN7] 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).

32. It is evident based upon the Petitioners' allegations that the State has failed to guarantee to Mr. Lendore internationally-mandated standards of proper treatment for prisoners. The

cumulative impact of such conditions, together with the length of time for which Mr. Lendore has been incarcerated in connection with his criminal proceedings, cannot be considered consistent with the basic requirements of humane treatment. The IACHR is also concerned by the Petitioner's indication in their communication of March 23, 2005 that Mr. Lendore has remained on death row despite the commutation of his death sentence.

33. The Inter-American Commission notes that Mr. Lendore was subjected to conditions and treatment of this nature during the time over which Trinidad and Tobago was bound by the American Convention, from May 28, 1991 to May 26, 1999, as well as from May 26, 1999 to the present during which time Trinidad has continued to be bound by the American Declaration.

34. Consequently, the IACHR finds that the conditions of detention to which Mr. Lendore has been subjected fail to respect his physical, mental and moral integrity, as required under Article 5(1) of the American Convention, and, in all of the circumstances, constitute cruel, inhuman and degrading treatment or punishment contrary to Article 5(2) of the American Convention. To the extent that Mr. Lendore has continued to be treated in the same manner following Trinidad's denunciation of the American Inter-American Commission, the IACHR also finds Trinidad and Tobago to be responsible for violations of his right not to be subjected to inhumane treatment as reflected in Articles XXV and XXVI of the American Declaration. In light of its conclusions regarding the cumulative effect of the conditions of Mr. Lendore's detention during his criminal proceedings, the Inter-American Commission does not consider it necessary to determine whether the time spent by Mr. Lendore on death row may in and of itself constitute a violation of his right to humane treatment.

B. Article 8 of the American Convention – right to a fair trial

35. The Petitioners also contend that the State is responsible for violations of Mr. Lendore's right to a fair trial under Article 8 of the American Convention, which provides as follows:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

36. The petitioners invoke the provisions of Article 8 on several grounds. They first argue that the trial judge erred in the manner in which he conducted the trial and instructed the jury. Second, they allege that the performance of Mr. Lendore's attorney fell far below the standard required of counsel defending a murder trial, and third, that the Court of Appeal erred by substituting its own construction on the verdict of the case "in the interest of justice", in the circumstances where the trial judge had misdirected the jury in law.

37. Regarding the conduct of the trial by the trial judge, the Petitioners claim that the trial judge erred in failing to order separate trials of the individual defendants. In this regard, the Petitioners indicate that following their arrests, all three co-defendants gave unsworn written statements in the presence of police officers and a justice of the peace concerning their versions of circumstances surrounding the crime, that the statements given by Mr. Douglas contained information prejudicial to Mr. Lendore, and that all of these statements were subsequently relied upon by the prosecution as well as by co-defendant Mr. Douglas in the course of the joint trial. The Petitioners also contend that apart from his co-defendant's written statements, the sole piece of admissible evidence against Mr. Lendore linking him with a plan to carry out any criminal activity was his written statement in which he is alleged to have said that he knew Mr. Douglas had a gun. The Petitioners note that Mr. Lendore subsequently disputed that he ever made that statement, claiming that he was provided with a document by the investigative officer to sign and was told that the content was related to an identity parade he had attended. The Petitioners also note that neither Mr. Douglas nor Mr. Ling gave evidence that there was a plan to engage in any criminal activity whatsoever or that Mr. Lendore had any physical involvement in the robbery. In these circumstances, the Petitioners argue that Mr. Lendore was the victim of prejudice because, according to the Petitioners, Mr. Douglas' written statements would have been inadmissible and could not have been used against Mr. Lendore had he been tried separately. In these circumstances, the Petitioners assert that the trial judge should have ordered separate trials for each of the co-Defendants.

38. The IACHR notes in this regard that according to the record, the Court of Appeal of Trinidad and Tobago considered Mr. Lendore's written statement as well as his oral testimony at trial and concluded that, based upon this evidence and without any consideration of the statements given by Mr. Lendore's co-defendants, there was sufficient basis to support his conviction. The Court stated as follows:

The second Appellant [Lendore] when confronted orally stated that he was not there, however in his written statement he said that he told the third appellant while in the taxi that “it did make no sense leh we leave the man”. Counsel conceded that from his written statement and evidence as a whole that there was a plan but that in the taxi the second appellant signified his intention to withdraw from the plan, and that he had requested the driver to stop and ran from the car when he heard an explosion but that the boys called him and said “it is this way” and he turned around and ran in their direction, all three finally returned to the home of the “Boss” in Tunapuna and shared in the money taken from the deceased. While in this evidence at the trial he stated that he did not now [sic] that anyone had a gun, in his statement he said that the third named appellant [Douglas] told him that he had a gun. We find that there is abundant evidence that this appellant participated in the joint venture and could have foreseen the use of the weapon and consequently grievous bodily harm. He did not distance himself as his counsel has suggested, because he eventually ran in the same direction as the other two appellants and shred in money taken from the deceased. We find there is no merit in his appeal.[FN8]

[FN8] Petitioners’ petition dated September 15, 1998, pp. 6-7, citing Judgment of the Court of Appeal of Trinidad and Tobago dated February 5, 1998.

39. With regard to the trial judge’s charge to the jury, the Petitioners contend that the trial judge misdirected the jury as to the law on murder and joint enterprise insofar as he failed to properly articulate the mens rea requirement necessary to establish Mr. Lendore’s liability as a secondary party to the principal offense and, moreover, should have directed the jury as to the possibility that the death came about as a result of an accident.[FN9] Further, the Petitioners argue that the trial judge misdirected the jury on the issue of “lies”, in that he should have given a more extensive direction in accordance with applicable domestic law as to resolving discrepancies in the admissions of Mr. Lendore’s evidence at trial and the written and oral statements he is alleged to have made to the police.[FN10]

[FN9] Petitioners’ petition dated September 15, 1998, p. 14, citing, inter alia, R. v. Hyde [1991] Q.B. 134 C.A.; Chan Wing-Sui v. R. [1985] A.C. 168 P.C.).

[FN10] Petitioners’ petition dated September 15, 1998, pp. 16-17, citing R. v. Goodway, 98 Cr. App. R. 11; R. v. Lucas (R.) [1981] Q.B. 720 C.A.

40. According to the record, these allegations were raised before the Court of Appeal and that Court dismissed the arguments in the following terms, noting in particular that significant evidence was present to substantiate the mens rea necessary to support the convictions notwithstanding any misdirections that may have been made by the trial judge:

The main thrust of the appeal argued before us by Counsel for the appellants dealt with the felony murder principle of constructive malice which had been effectively abolished by the Law Revision (Miscellaneous Amendments) N° 1 Act 1979 but which went unnoticed until the delivery of the judgment in Andrew Moses v. The State on July 29, 2996 (1996) 3 W.L.R. 534. It

was argued on behalf of the appellants that the trial judge erred in law when he directed the jury that they could convict the appellants if they concluded they were parties to a joint enterprise to rob and the victim died in pursuance of that joint enterprise. It was also argued by Counsel for the first appellant that the trial judge failed to give to the jury any further directions on the doctrine of common design thus there was a risk of a substantial miscarriage of justice.

No doubt based on the aforementioned misconception of the law, there were misdirections which we do not propose to reproduce in this judgment. However all Counsel were invited to address the Court on the exercise of the proviso having regard to the overwhelming evidence in the case that the three appellants took part in a joint unlawful enterprise to rob the deceased knowing that one was armed with a gun and therefore he intended to kill or cause grievous bodily harm and in fact death ensued, the other two appellants must have foreseen the consequences. The case for the prosecution rested entirely on the statements given by the appellants, both written and oral.[FN11]

[FN11] Petitioners' petition dated September 15, 1998, pp. 18-19, citing Judgment of the Court of Appeal of Trinidad and Tobago dated February 5, 1998.

41. In evaluating the Petitioners' contentions concerning the conduct of the trial judge, the Inter-American Commission must take into account its approach, as articulated in previous cases, that it is generally for the appellate courts of States Parties, and not the IACHR, 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.[FN12]

[FN12] McKenzie et al. Case, supra, para. 298. See also Case 12.417, Report 41/04, Whitley Myrie (Jamaica), Annual Report of the IACHR 2004, para. 55.

42. After careful review of the facts submitted by the Petitioners, the Inter-American Commission is unable to conclude that the judge's decision not to order separate trials for the Mr. Lendore and his co-accused or his instructions or charge to the jury constitute circumstances that warrant intervention. A review of the record in respect of these matters does not indicate that the judge's conduct was arbitrary or amounted to a denial of justice or that the judge manifestly violated his obligation of impartiality. Further, it is apparent from the record that these issues formed part of the case considered by the Court of Appeal of Trinidad and Tobago in the matter, which found based upon the record as a whole that Mr. Lendore's conviction was well-founded and should not be overturned, and the IACHR sees no grounds in the manner in which the Court of Appeal addressed the issues that would give rise to violations of rights protected under the American Convention. Accordingly, the Inter-American Commission does not find that the manner in which the trial judge conducted Mr. Lendore's trial to give rise to violations of the due process protections prescribed under Article 8 of the American Convention.

43. The IACHR has also considered the Petitioners' allegations concerning the competence of Mr. Lendore's trial attorney. In this respect, the Inter-American Commission notes that according to Article 8(2)(d) of the American Convention, every person accused of a criminal offense has the right to defend himself personally or to be assisted by legal counsel of his own choosing. Article 8(2)(e) of the American Convention provides every such person the inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time limit established by law. The IACHR also considers that these rights apply at all stages of a defendant's criminal proceedings, including the preliminary process, if one exists, leading to his committal for trial, and at all stages of the trial itself.[FN13]

[FN13] See McKenzie et al. (Jamaica), Annual Report of the IACHR 1999, paras. 304-305. See similarly U.N.H.R.C., Paul Kelly v. Jamaica, Communication N° 253/1987 (1991).

44. Concerning the conduct of Mr. Lendore's attorney and his right to an attorney, the Petitioners have claimed that for his 4 to 5 days of detention following his arrest, Mr. Lendore was never advised of his right to consult a lawyer, and that his first contact with a legal adviser in relation to this offence was some further 10 days later at a preliminary hearing. Moreover, at no stage prior to the trial did Mr. Lendore's lawyer appointed by Legal Aid Authority visit or hold a conference with him. The first conference held by his trial lawyer lasted for approximately 20 minutes and took place on or about the seventh day of the trial. Thereafter, Mr. Lendore was able to see his lawyer for 1 or 2 minutes on occasional days. Furthermore, prior to his appeal hearing, in which he was represented by another lawyer, Mr. Lendore claims to have had no opportunity to consult with his attorney despite his efforts to communicate in writing. The State has not provided any observations in respect of these allegations and therefore, as with the issue of conditions of detention, the Inter-American Commission will accept the facts alleged as having been proved.

45. In the present case, the IACHR notes that the State provided Mr. Lendore with legal representation for the criminal proceedings against him. As with all rights under the American Convention, however, the right to legal representation must be guaranteed in a manner that renders it effective and therefore requires not only that counsel be provided, but that defense counsel be competent in representing the defendant. The Inter-American Commission has also recognized that the State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel, owing to the independence of the legal profession from the State and the State's corresponding lack of knowledge or control over the manner in which a defense attorney may represent his or her client.[FN14] National authorities are, however, required under Article 8(2)(c) of the American Convention to intervene if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention. [FN15]

[FN14] See Leroy Lamey et al. (Jamaica), Case N° 11.826, Report N° 49/01, Annual Report of the IACHR 2000, paras. 216-217. See similarly Eur. Court H.R., Kamasinski v. Austria, 19

December 1989, Series A. N° 168 para. 65; U.N.H.R.C., *Young v. Jamaica*, Communication N° 615/1995 (1997).

[FN15] *Id.*

46. The record in this matter does not indicate that Mr. Lendore explicitly made it known to State officials that he considered his legal representation to be inadequate, prior to or during his trial. At the same time, the IACHR considers that in designing and implementing a legal aid system, states are responsible for ensuring that attorneys who are retained or designated to act for indigent defendants are properly qualified and trained. As a fundamental component of this obligation, States must provide a mechanism for supervising the performance of legal aid attorneys that, while not interfering with the attorney-client relationship in particular cases, is capable of ensuring that the legal representation provided through the legal aid system satisfies minimum international standards.[FN16] This is especially significant in capital cases where the Inter-American Commission and other international human rights bodies have required a particularly strict and rigorous application of fair trial standards. The IACHR notes in this regard that at the time of Mr. Lendore's trial, he was, in fact, being tried for a crime for which he was ultimately sentenced to death.

[FN16] See Case 12.430, Report 1/05, Roberto Moreno Ramos (United States), Annual Report of the IACHR 2005, paras. 56, 57 (expressing concern over the absence in the state of Texas of effective oversight for public defender services provided in capital cases). See also Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), Principle 9 (providing that "Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law"); Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984), Article 5 (providing that "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings").

47. In the present case, the Inter-American Commission considers that degree and pattern of inadequacies in the quality of legal representation provided to Mr. Lendore, which occurred throughout his proceedings and amounted to breaches of the most basic and fundamental services necessary in order for an attorney to adequately prepare and present a client's case, were manifest and should reasonably had been apparent through an effective legal aid supervisory mechanism. The IACHR therefore considers that the State is responsible for failing to provide Mr. Lendore with effective legal representation in the criminal proceedings against him.

48. In these circumstances, the Inter-American Commission finds that there has been a violation of Articles 8(1), 8(2), and 1(1), and a violation of Article XVIII of the American Declaration based upon Mr. Lendore's legal representation during his criminal proceedings.

C. Articles 8 and 25 of the American Convention – right to judicial protection

49. As indicated in its admissibility report in this case, the IACHR considered that Mr. Lendore was not required to pursue a Constitutional Motion as a component of the exhaustion of domestic remedies rule, on the basis that his status as an indigent precluded him from doing so.[FN17]

[FN17] Case 12.269, Report 21/05, Dexter Lendore (Trinidad and Tobago) (Admissibility), Annual Report of the IACHR 2005, paras. 13-17. See similarly Case 11.816, Report 43/98, Haniff Hilaire (Trinidad & Tobago), Annual Report of the IACHR, 1998, paras. 15-17.

50. As in past cases, the Inter-American Commission considers that the inability to pursue a Constitutional Motion gives rise not only to an exception of the exhaustion rule, but also a potential violation of the rights to due process and judicial protection provided for under Articles 8 and 25 of the American Convention. Although the Petitioners did not explicitly include these claims in their petition, the IACHR is competent to apply the juridical provisions relevant to a proceeding even where the parties do not expressly invoke them, by reason of the general principle of law *iura novit curia*. [FN18]

[FN18] See I/A Court H.R., Velasquez Rodriguez Case. Judgment of July 29, 1988. Ser. S No. 4 (1988), para. 163.

51. In particular, the Inter-American Commission has held that 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 a State pursuant to its obligations under Articles 8 and 25 in conjunction with Article 1(1) of the American Convention as well as Articles XVIII and XXVI of the Declaration.[FN19] Both the IACHR and Inter-American Court have also previously recognized that Trinidad and Tobago does not provide legal aid to individuals to bring Constitutional Motions before the courts in that State.[FN20]

[FN19] See McKenzie et al. Case, supra; Case 12.067, Report 48/01, Michael Edwards et al. (The Bahamas), Annual Report of the IACHR 2000, paras. 201-207. See also 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.).

[FN20] See Case 11.816, Report 43/98, Haniff Hilaire (Trinidad & Tobago), Annual Report of the IACHR, 1998, paras. 15-17; Hilaire, Constantine and Benjamin et al. Case, supra, para. 148.

52. In the present case, the Inter-American Commission is satisfied that Constitutional Motions dealing with legal issues of the nature raised by Mr. Lendore in his proceeding before the IACHR, such as the propriety of his conditions of detention and the adequacy of his legal representation, are procedurally and substantively complex and cannot be effectively raised or presented before a domestic court in the absence of legal representation. The Inter-American Commission also finds, in the absence of evidence to the contrary, that Mr. Lendore lacks the financial means to bring a Constitutional Motion on his own and that legal aid is not available to him to pursue such a motion. Accordingly, the State has effectively barred his recourse to a competent court or tribunal in Trinidad and Tobago for protection against acts that potentially violate his fundamental rights under the Constitution of Trinidad and Tobago and under the Convention.[FN21] To the extent that Mr. Lendore has continued to be denied access to these remedies from May 26, 1999 to the present, the circumstances give rise to violations of his rights under the American Declaration. As a consequence, the State has violated Mr. Lendore's rights under Articles 25 and 8 in relation to Article 1(1) of the American Convention, as well as his corresponding rights under Articles XVIII and XXVI of the American Declaration.

[FN21] See also Hilaire, Constantine and Benjamin et al. Case, supra, para. 148. See similarly *Currie v. Jamaica*, Communication No. 377/1989, U.N. Doc. No. CCPR/C/50/D/377/1989 (1994), 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).

V. ACTIONS SUBSEQUENT TO REPORT N° 13/06

53. On March 2, 2006, during its 124th Period of Sessions, the IACHR adopted Report No. 13/06, in keeping with Article 50 of the American Convention. On March 22, 2006, the State of Trinidad and Tobago was informed of Report N° 13/06 and was granted a period of two months to comply with the recommendations.

54. Also on March 22, 2006, the Inter-American Commission informed the Petitioners of the adoption of Report 13/06 and requested that they present, within one month, their position on the referral of the case to the Court, the position of the victim, the personal data relative to the victim, the power of attorney accrediting them as the victim's representative and any available documentary, testimonial or expert evidence in addition to that already presented to the IACHR, including an affidavit from the victim attesting to the facts in his petition and copies of the transcripts and/or decisions from his trial and appeal proceedings.

55. By note of March 23, 2006, the State acknowledged receipt of the communication of March 22, 2006. The Inter-American Commission has received no further communications from the State.

56. By note of April 11, 2006, the IACHR forwarded to the Petitioners considerations made by the Inter-American Commission during its examination of case 12.269.

57. On May 3, 2006, the Petitioners notified the IACHR that they were unable to provide the documents and information requested. By note of May 31, 2006, the Inter-American Commission sent a note to Mr. Lendore directly at the State Prison in Port-of-Spain, informing him of the contents of the communications with his legal representatives of March 22 and April 11, 2006 and his representatives' reply of May 3, 2006. The IACHR requested that Mr. Lendore inform the Executive Secretariat of his position regarding the possible referral of his case to the Inter-American Court. Attempts were also made to communicate this information to Mr. Lendore via his legal representatives in his domestic case on May 30 and June 7, 2006. No response from Mr. Lendore was received.

58. Considering the above and taking into account the terms of Article 44.2, pursuant to Article 44.1 of the Inter-American Commission's Rules of Procedure, the IACHR decided on June 13, 2006, not to refer the case to the Inter-American Court.

59. In accordance with the above and with Article 51.1 and 51.2 of the American Convention, the Inter-American Commission has decided to reiterate the conclusions and recommendations set forth in Report N° 13/06 and to request the state to comply with the recommendations issued in this case within the three months following notification of this report.

VI. CONCLUSIONS

60. The IACHR, based on the foregoing considerations of fact and law, ratifies its conclusions that:

61. The State is responsible for violating Mr. Lendore's rights under Articles 5(1) and 5(2) of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XXV and XXVI of the American Declaration, because of his conditions of detention.

62. The State is responsible for violating Mr. Lendore's rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide him with the assistance of competent and effective counsel during his criminal proceedings.

63. The State is responsible for violating Mr. Lendore's rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights.

VII. RECOMMENDATIONS

64. 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 TRINIDAD AND TOBAGO:

1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore's conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

VIII. PUBLICATION

65. On August 05, 2008, a copy of report N° 13/06, adopted by the IACHR under Article 51 of the American Convention, was sent to the State, pursuant to Article 51(2) of the American Convention. The Inter-American Commission granted the State a period of one month to advise of the measures it had taken to comply with the recommendations in the report. On August 5, 2008 a copy of report N° 13/06 was also sent to the Petitioners, in keeping with Article 45 of the Rules of Procedure of the IACHR. By note N° 188/2008 dated August 11, 2008, the State acknowledged receipt of the IACHR's correspondence. However, the State has not made any submissions about measures taken to comply with the Inter-American Commission's recommendations.

66. Given the foregoing, the IACHR, acting pursuant to 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 set forth in this report, to publish it, and to include it in its annual report to the General Assembly of the Organization of American States. The Inter-American Commission, in keeping with the rules established by the instruments governing its mandate, will continue to evaluate the measures taken by the State of Trinidad & Tobago in response to the recommendations until such time as they have been fully implemented.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March, 2009.
(Signed): Victor E. Abramovich, First Vice-Chairman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Meléndez and Paolo G. Carozza, Commissioners.