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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 137/09; Petition 981-05
Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Reshi Bissoon and Foster Serrette v. Trinidad and Tobago
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paolo G. Carozza.
Dated: 13 November 2009
Citation: Bissoon v. Trinidad and Tobago, Petition 981-05, Inter-Am. C.H.R., Report No. 137/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: Herbert-Smith LLP
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I. SUMMARY

1. On August 29 and June 2, 2005,[FN1] the Inter-American Commission on Human Rights (the “Inter-American Commission” or the “IACHR”) received two petitions along with two requests for precautionary measures from Herbert-Smith LLP (“the petitioners”) against the Government of Trinidad and Tobago (“Trinidad & Tobago” or the “State”). The petitions were presented, respectively, on behalf of Reshi Bissoon and Foster Serrette (the “alleged victims”), two Trinidadian nationals who at that time were inmates on death row in Trinidad & Tobago’s State Prison.[FN2]

[FN1] The petitions were dated respectively August 25, 2005 and May 31, 2005.

[FN2] Given the great similarity in the allegations of facts and law submitted and the fact that the petitioners are the same, the Inter-American Commission decided to join the cases into one single file assigned the number 981-05; the IACHR advised the petitioners and the State thereof in a communication dated June 2, 2009.

2. The petitions indicate that both Messrs. Bissoon and Serrette were arrested on the charge of murder[FN3] and sentenced to the mandatory death penalty by the High Court of Trinidad & Tobago.[FN4] Their respective appeals against conviction and sentence to the Court of Appeal of Trinidad & Tobago were dismissed,[FN5] as well as their further petitions to the Judicial Committee of the Privy Council (the “JCPC”).[FN6] The petitioners further informed the IACHR that arising out of constitutional proceedings in the High Court of Trinidad & Tobago, Mr. Bissoon and Mr. Serrette’s death sentences were commuted to life imprisonment on August

15, 2008.[FN7] The petitioners underscore that the late commutation of the death sentences does not alter the substance of the alleged breaches for the period Mr. Bissoon and Mr. Serrette were on death row.

[FN3] Mr. Bissoon on December 1, 1995 and Mr. Serrette on October 13, 1998.

[FN4] Respectively, on October 29, 1999 and May 21, 2001.

[FN5] Mr. Bissoon's appeal was dismissed on May 26, 2000 and Mr. Serrette's on January 23, 2002.

[FN6] Mr. Bissoon's petition was dismissed on February 28, 2005 and Mr. Serrette's on December 13, 2004.

[FN7] High Court of Trinidad and Tobago, H.C.A. No. 1412 of 2005, dated August 15, 2008, entered August 19, 2008.

3. The petitioners complain principally of three related issues: the delay in commutation of the alleged victims' death sentences despite jurisprudence from the JCPC; violations of due process; and conditions of post and pre-trial detention.

4. The petitioners recognize that Trinidad & Tobago's denunciation of the American Convention took effect on May 26, 1999. Notwithstanding, they contend that the IACHR is competent to consider the alleged violations of the American Convention for those facts which occurred before the effective date of Trinidad and Tobago's denunciation. The petitioners otherwise rely on the American Declaration to ground the IACHR's competence to consider the complaints contained in the petition.

5. As such, the petitioners allege that the State violated Mr. Bissoon and Mr. Serrette's right to life, liberty and personal security under Article I of the American Declaration of the Rights and Duties of Man (the "American Declaration") and Article 4 of the American Convention on Human Rights (the "American Convention"); their right to equality under Article II of the American Declaration; their right to humane treatment under Article XVIII of the American Declaration and Article 5 of the American Convention; their right to an expeditious trial under Articles XVIII and XXV of the American Declaration and Article 7(5) of the American Convention; their right to protection against arbitrary arrest under Article XXV of the Declaration; their right to due process of law under Article XXVI of the American Declaration; and their right to judicial protection under Article 25 of the American Convention. The petition on behalf of Mr. Serrette also alleges a violation of his right to a fair trial under Article 8(1) and 8(2)(c)(d) and (f) of the American Convention.

6. The petitioners also submit that the alleged victims have exhausted all effective and available domestic remedies and that they are being denied access to any effective remedy under domestic law with regard to the complaints raised in the petition.

7. As of the date of this report, the Inter-American Commission has not received substantive observations from the State on the petitions presented on behalf of the alleged victims.

8. As set forth in this report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Inter-American Commission has decided to admit the claims alleged in the present petitions pertaining to Articles I, II, XVIII, XXV and XXVI of the American Declaration and Articles 1(1), 2, 4, 5, 7(5) and 8(1) and 25 of the American Convention; to continue with the analysis of the merits of the case; to transmit the report to the parties; and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

9. Following receipt of the petitions, the Inter-American Commission exchanged correspondence with the petitioners concerning their request for precautionary measures.[FN8] Thereafter, the IACHR transmitted the pertinent parts of the petitions to the State with a request for observations to be submitted within two months.[FN9] By the same communications, the IACHR issued precautionary measures in favor of the alleged victims. The Inter-American Commission also decided to schedule a hearing during its 123rd regular period of sessions, but this hearing was subsequently cancelled at the request of the petitioners.[FN10] The State acknowledged receipt of the communications, but did not submit any observation on the admissibility or the merits of the petitions, or on the requests for precautionary measures.[FN11]

[FN8] In the case of Mr. Bissoon: letter to the petitioners dated August 31, 2005; letter from the Petitioners to the Commission dated September 02, 2005; In the case of Mr. Serrette: letters to the petitioners dated June 8, 2005 and July 20, 2005.

[FN9] On September 19, 2005 in the case of Mr. Bissoon and on July 20, 2005 in the case of Mr. Serrette.

[FN10] Communications from the petitioners dated September 20 and 21, 2005; letters from the IACHR to the parties dated September 16 and 28, 2005.

[FN11] In the case of Mr. Bissoon, the IACHR received notes from the State dated September 22, 2005 and October 12, 2005 acknowledging receipt of the IACHR's communications dated September 19, 2005 and September 28, 2005, respectively; in the case of Mr. Serrette, the IACHR received notes from the State dated July 25, 2005, September 9 and 15, 2005; and October 4, 2005, acknowledging receipt of the IACHR's communications dated July 20, August 17 and September 28, 2005, respectively.

10. The petitioners subsequently presented further submissions to the IACHR,[FN12] the pertinent parts of which were transmitted to the State,[FN13] with a request to provide observations. The Inter-American Commission has received no observation from the State.

[FN12] On behalf of both the alleged victims: on September 27, 2005, January 9, 2006, February 23, 2006 and February 14, 2007. On exclusive behalf of Mr. Bissoon: on May 19, 2006, April 18, 2008 and November 28, 2008. On exclusive behalf of Mr. Serrette: on April 18, 2008 and February 18, 2009.

[FN13] Inter alia, on January 26, February 9 and February 25, 2009.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

11. According to the petitions, Mr. Bissoon was arrested on December 1, 1995 and charged with the murder of Leslie-Ann Ramsey, while Mr. Serrette was arrested on October 13, 1998, for the murders of his wife, Florence Serrette and his son, Shanie Serrette, which occurred on October 9, 1998. The trials of Mr. Bissoon and Mr. Serrette started respectively on October 8, 1998 and May 15, 2001. Mr. Bissoon was convicted of murder on October 29, 1999, and sentenced to a mandatory death penalty by the High Court of Trinidad & Tobago.[FN14] On May 21, 2001, Mr. Serrette was convicted of the murder of his son and the manslaughter of his wife.

[FN14] According to the petitioners, during Mr. Bissoon's trial, the prosecution alleged that on November 28, 1995, Mr. Bissoon and another defendant (Ramnarine), aided and abetted the murder of Leslie-Ann Ramsey by a third defendant (Sirju), while carrying out a criminal enterprise to steal a car. Mr. Bissoon stood trial with his alleged co-assailants Curtis Sirjus and Desraj Ramnarine. On October 22, shortly before the close of the Prosecution case, Ramnarine pleaded guilty to manslaughter, which plea was accepted by the State, and the jury was directed to find him not guilty of murder, but of manslaughter. On October 29, Sirju and Bissoon were both convicted of murder and sentenced to death.

12. Mr. Bissoon and Mr. Serrette both appealed against their convictions and sentences, but the Court of Appeal of Trinidad and Tobago dismissed their appeals and affirmed their convictions, respectively on May 26, 2000 and January 23, 2002. Both of them subsequently sought Special Leave to Appeal as a Poor Person to the JCPC. Following hearings which took place, respectively, for Mr. Bissoon on February 28, 2005, and for Mr. Serrette on December 13, 2004, their appeals were dismissed. Following constitutional proceedings, as will be further detailed below, Messrs. Bissoon's and Serrette's death sentences were subsequently commuted to life imprisonment on August 15, 2008.[FN15] The petitioners underscore that the late commutation of the death sentences does not alter the substance of the alleged breaches for the period Mr. Bissoon and Mr. Serrette were on death row.

[FN15] Allegedly, High Court of Trinidad and Tobago, H.C.A. No. 1412 of 2005, dated August 15, 2008, entered August 19, 2008.

13. In relation to the admissibility of the petition before the Inter-American Commission, the petitioners submit that Mr. Bissoon and Mr. Serrette have exhausted all available and effective domestic remedies, when their petitions for special leave to appeal as a poor person were dismissed. The petitioners state that Messrs. Serrette and Bissoon are indigent and do not have

access to legal aid to bring a constitutional motion in respect of the specific issues raised in the petitions and are thus being denied access to a legal remedy to address these complaints. They contend that the United Nations Human Rights Committee has consistently rejected the notion that a petitioner under the Optional Protocol to the International Covenant on Civil and Political Rights must pursue a constitutional motion before the Supreme Constitutional Court in order to exhaust domestic remedies. The petitioners argue that the same reasoning ought to be valid for applications under the American Declaration. On that basis, the petitioners submit that Mr. Bissoon and Mr. Serrette satisfy the requirements of Article 31(2)(a) and (b) of the IACHR's Rules of Procedure.

14. The petitioners underscore that the constitutional motion, joined by the alleged victims in 2005, and which culminated in August 2008 in the commutation of the death sentence of Messrs. Bissoon and Serrette, contested strictly the constitutionality of executing the alleged victims and therefore, did not encompass the arguments or subject matter of the petitions.

15. The petitioners recognize that Trinidad & Tobago denounced the American Convention on May 26, 1998 and that this denunciation took effect on May 26, 1999. Notwithstanding, the petitioners contend that the IACHR is competent to consider the alleged violations of the American Convention for those facts which occurred before the effective date of Trinidad and Tobago's denunciation. The petitioners otherwise rely on the American Declaration to ground the IACHR's competence to consider the complaints contained in the petition.

16. With respect to the merits of their complaints against the State, the petitioners' complaint focuses on three related themes: delay in commutation of the alleged victims' death sentences; violations of due process; and conditions of pre- and post-trial detention.

Alleged delay in commutation of the alleged victims' sentences

17. Firstly, the petitioners contend that the alleged victims were entitled, since 2003, to have their death sentences commuted on the strength of applicable case law emanating from the JCPC. This case law includes the Cases of Roodal,[FN16] Matthews[FN17] and Pratt & Morgan.[FN18] In this regard, the petitioners maintain that:

a. On November 20, 2003, the JCPC held in Roodal that Trinidad & Tobago's mandatory death penalty was unconstitutional. However, in July 2004, the JCPC reversed itself in Matthews, holding that Trinidad & Tobago's mandatory death penalty was not unconstitutional and therefore immune from constitutional challenge;

b. The JCPC ruled, however, that persons on death row at the date of the Matthews decision should have their sentences commuted to life imprisonment on the reasoning that such persons would have reasonably expected a review of their death sentences following the Roodal decision; and that it would be cruel to frustrate that expectation of a review and to execute them in those circumstances;

c. In Pratt & Morgan, the JCPC held that a death sentence should be commuted where a prisoner has been on death row for a period exceeding five years, as there were strong grounds for inferring that an execution after such a delay would constitute inhuman and degrading punishment.

[FN16] *Balkissoon Roodal v State of Trinidad & Tobago*, [2003] PC 18.

[FN17] *Charles Matthews v State of Trinidad & Tobago* [2004] PC 2.

[FN18] *Pratt & Morgan v R.* (put: *The Attorney General of Jamaica*) (on appeal from Jamaica), [1994] 2 AC 1.

18. The petitioners submit that the State failed to commute Mr. Bissoon's and Mr. Serrette's death sentences as prescribed by this jurisprudence from the JCPC, until August 2008. They contend that the Trinidad & Tobago Court of Appeals recognized that failure to give effect to the Pratt and Morgan Decision "may further aggravate the mental anguish on the part of the condemned man".[FN19] The petitioners further allege that in early June 2005 the State even issued execution warrants for a number of prisoners on death row,[FN20] following a public announcement by the Attorney General that the State intended to recommence executions of death row inmates. No warrant was read to Mr. Bissoon or Mr. Serrette, but according to the petitioners, Mr. Serrette witnessed the reading of execution warrants to five other death row inmates, including one Lester Pitman, the occupant of a cell opposite Mr. Serrette. The petitioners state that Mr. Serrette was terrified by this experience, resulting in an inability to sleep or eat for an extended period following this event. On June 13, 2005, a number of death row inmates lodged a constitutional motion in the High Court of Justice of Trinidad & Tobago to challenge the constitutionality of issuing these warrants, having regard for the jurisprudence of the JCPC. Messrs. Bissoon and Serrette, along with a number of other death row inmates, later joined this constitutional motion. The petitioners indicate that the State opposed the motion, but the High Court of Trinidad & Tobago issued conservatory orders on June 13, 2005, barring the execution of any of the warrants, pending the hearing of the Motion.

[FN19] The petitioners refer to *The Attorney General of Trinidad and Tobago v. Angela Ramdeen* [Cv.A No.6 of 2004], para. 39.

[FN20] According to the petition, all were eligible for commutation pursuant to the JCPC jurisprudence.

19. On August 15, 2008, following a hearing, the High Court issued an order commuting the death sentences of 52 prisoners, including the alleged victims.[FN21] Ultimately, the petitioners argue that the State's conduct in respect of the delay in commuting their sentence, the Attorney General's commencement of steps to carry out the death penalty and the State's opposition to the constitutional motion, resulted in multiple violations of Mr. Bissoon and Mr. Serrette's rights, including the right to life, liberty, and personal security; the right to equality before the law; and the right to judicial protection under Articles I, II, XVIII and XXVI of the American Declaration and Articles 4 and 25 of the American Convention.

[FN21] High Court of Trinidad & Tobago, HCA No.1412 of 2005, dated August 15, 2008, entered on August 19, 2008.

Alleged violations of due process

20. Secondly, the petitioners contend that during the criminal proceedings, the State failed to respect the alleged victims' due process rights in certain material respects.

21. With regard to Mr. Bissoon, the petitioners allege undue delay on the part of the State in bringing Mr. Bissoon to trial, given, for example, an almost four-year interval between Mr. Bissoon's arrest in 1995 and the commencement of his trial in October 1999.

22. With respect to the trial itself, the petitioners submit that the presiding judge wrongly permitted a dock identification (by a prosecution witness); failed to discharge the jury following a co-defendant's guilty plea of manslaughter; misdirected the jury with regard to joint enterprise and the liability of a secondary party; and commented improperly on the witness' evidence regarding an identity parade. The petitioners contend that these allegations amount to violations of Articles XVIII, XXV and XXVI of the American Declaration and Article 7(5) of the American Convention.

23. Concerning Mr. Serrette, the petition claims that the State is responsible for violating Mr. Serrette's rights under Articles XVIII and XXV of the Declaration and Articles 7(5) and 8 of the American Convention, to be brought to trial in a reasonable period of time. Specifically, the petitioners contend that the period of two years and seven months between his arrest on October 13, 1998 and his trial, which took place from May 15 to 21, 2001, was unreasonably lengthened and constitutes a violation of his right to a fair and speedy trial.

24. The petitioners also submit that the State is responsible for violating Mr. Serrette's rights to a fair trial and impartial hearing under Articles XVIII and XXVI of the American Declaration. The petitioners contend in particular that the trial judge misdirected the jury with regard to the issue of provocation; that the trial judge made remarks to the jury that were inaccurate and unfair and that those remarks resulted in inconsistent verdicts with regards to the two victims; that necessary psychological evidence was not obtained; that Mr. Serrette received insufficient and inadequate legal representation before and during his trial and his appeal; that Mr. Serrette was denied the right to be assisted by legal counsel of his own choosing; and that Mr. Serrette's request to appeal his manslaughter conviction was ignored. In addition, police refusal to facilitate a psychological analysis of Mr. Serrette prior to his trial is alleged to violate Articles 8(2)(c) and (f) of the American Convention.

25. Finally, the petitioners allege that the State is responsible for violations of Articles XXV and XXVI of the American Declaration and Article 8(2)(d) of the American Convention because Mr. Serrette was denied the right to be assisted by legal counsel of his choosing during his appeal, as the Legal Aid Authority purportedly assigned him the same attorney who represented him at trial, despite Mr. Serrette's request for a different counsel.

Conditions of pre- and post-trial detention

26. Lastly, the petitioners argue that Messrs. Bissoon and Serrette's conditions of pre-conviction and post-conviction detention violated their right under Articles XXV and XXVI of the American Declaration not to be exposed to cruel, infamous, or unusual punishment and their right under Article 5 of the American Convention not to be subjected to cruel, inhumane or degrading punishment or treatment. The petitioners allege that, during the period the alleged victims were in pre-trial detention, they were subjected to, inter alia, the following conditions:

- a. Forced to sleep on a piece of newspaper as a mattress;
- b. No sanitation facilities;^[FN22]
- c. Inadequate and inedible food;
- d. Limited lightning and ventilation which made breathing difficult; and
- e. Denial of visits from family.

[FN22] The petition presented on behalf of Mr. Bissoon also claims that he was forced to share old newspapers with other inmates to perform excretory functions.

27. Moreover, the petitioners allege that Mr. Bissoon was beaten by several officers on his first day of detention and that Mr. Serrette was told by the police that he would have no food until he provide a statement, which he did after three days spent without eating.

28. Following their convictions, the petitioners allege that the alleged victims were consigned to death row at the State Prison in Port-of-Spain, Trinidad & Tobago. During their incarceration on death row (between 1999 and 2008 for Mr. Bissoon and between 2001 and 2008 for Mr. Serrette) the petitioners claim that the alleged victims have been subjected (inter alia) to:

- a. No sanitation facilities, save for plastic pails;
- b. Infestation of mosquitoes, cockroaches, sand-flies and pigeons;
- c. Lack of natural lighting;
- d. Limited exercise, being allowed out only twice monthly for exercise;
- e. Inadequate , inedible and no available food to fit the alleged victims' vegetarian diet; and
- f. Lack of medical attention.

29. Moreover, it is alleged in the petitions, respectively, that Mr. Bissoon was beaten by a prison officer and subjected to a pattern of persecution by two other prison officers^[FN23] and that Mr. Serrette was handcuffed whilst in his cell, which represented 22 to 23 hours per day.

[FN23] As evidence of this allegation, the petitioners provided a letter written by the alleged victim in which he details the incident and states that he advised the infirmary officer as well as a certain Mr. Pantin, whom he refers to as "the chief", as well as a letter written by a fellow inmate of Mr. Bissoon, in which the incident of beating is described, Petition dated August 25, 2005, Appendice 20.

30. The petitioners contend that the prison authorities were aware of the situation and voluntarily did not take action.[FN24] They allege that the special diet recommended to Mr. Bissoon and to Mr. Serrette by the Prison Medical Officer has been overruled by the Superintendent. Similarly, the petitioners contend that prescriptions and recommendations made by the Prison Medical Officer are arbitrary overruled by the prison authorities.[FN25]

[FN24] In addition, the petitioners allege that a group of prisoners undertook a hunger strike in 2005 to protest about the way in which they were being treated, although the alleged victims did not associate with this strike. The petitioners further refer to the 2005 and 2006 Amnesty International Reports which supposedly state that conditions in the State Prison of Trinidad and Tobago were often unsanitary and medical care was inadequate. They also refer to the U.S. State Department's 2005 Annual Country Report on Trinidad and Tobago, which states that prison conditions "continued to be harsh".

[FN25] The petitioners provided copies of letters addressed to the Commissioner of Prisons, dated August 31, 2005, October 24, 2005, March 2, 2006, December 13, 2007 and March 18, 2008, September 19, 2006, July 19, 2007, and September 17, 2007, as well as letters to the Ministry of National Security dated March 2, 2006, July 10, 2006, September 6, 2006, September 19, 2006, and January 14, 2008, in which they complain of the treatment endured by Mr. Bissoon and underscore the need for Mr. Bissoon to be provided with medications related to his eyes problems and to attend the eye clinic urgently, in Revised petition dated April 18, 2008, Appendices 2 and 3.

31. The petitioners submit that Mr. Bissoon's legal representatives have formally requested that he be allowed to enroll on educational courses or that he be provided with written materials, such as note pads, but this has allegedly been ignored by the authorities.[FN26] They also indicate that Mr. Bissoon's representatives have corresponded with various officials to try to secure adequate treatment,[FN27] but the State allegedly failed to fund and arrange for such treatment.

[FN26] Copies provided of letters addressed to the Commissioner of Prisons dated December 13, 2007 and March 18, 2008, in Revised petition dated April 18, 2008, Appendix 2.

[FN27] Supra, footnote 25.

B. Position of the State

32. As previously mentioned, the Inter-American Commission transmitted the pertinent parts of the petitions to the State, as well as the pertinent parts of the subsequent communications, with a request that it provide relevant information. Despite these repeated requests, as of the date of this report, the IACHR has not received any substantive observations or information regarding the admissibility, the merits or the events alleged in the petitions.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary considerations

33. The Inter-American Commission notes that the State at no time has responded to the petitioner's allegations or questioned the petitions' admissibility. As will be discussed below, although it denounced the American Convention on May 26, 1998,[FN28] Trinidad & Tobago is still a member of the Organization of American States and as such, is subject to the competence of the IACHR with respect to the human rights enunciated in the American Declaration.[FN29] When the Government of Trinidad & Tobago signed the Charter of the Organization of American States in 1967, it undertook various international obligations, including those provided for in Article 112 therein,[FN30] which authorizes the IACHR to protect those human rights enunciated in the American Declaration.[FN31] Moreover, the Statute of the IACHR adopted by the OAS General Assembly includes among the powers and functions of the Inter-American Commission with respect to the member states "to request that the governments of the states provide it with reports on measures they adopt in matters of human rights" (Article 18.d) and "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" (Article 20.b).[FN32]

[FN28] Pursuant to Article 78 of the American Convention, the denunciation entered in force on May 26, 1999.

[FN29] See I/A Court of Human Rights, Advisory Opinion, OC-10/89, July 14, 1989, paras.40 to 45; IACHR, Report N° 3/87, Case No. 9647, James Terry Roach and Jay Pinkerton (United States), Annual Report 1986-87, paras. 46-49.

[FN30] The content of Article 112 of the OAS Charter, as amended, is currently in Article 106 of that document.

[FN31] I/A Court of Human Rights, Advisory Opinion, OC-10/89, July 14, 1989, paras. 40-41; IACHR, Report N° 3/87, Case No. 9647, James Terry Roach and Jay Pinkerton (United States), Annual Report 1986-87, paras. 46-49; see also Brian D. Tittmore, *The Mandatory Death Penalty in the Commonwealth Caribbean and the Inter-American Human Rights System: An Evolution in the Development and Implementation of International Human Rights Protections*, 13 WM. & MARY BILL RTS. J. 445 (2004) at page 456, which states that "the human rights commitments of Member States that have not ratified the American Convention and the Commission's jurisdiction in respect of those States flow from the OAS Charter and the American Declaration".

[FN32] Resolution No. 447, adopted by the General Assembly of the OAS at its Ninth Regular Period of Session, La Paz, Bolivia, October 31, 1979. Article 18 of the Statute concerns all Member States of the OAS, while and Article 20 refers specifically to those Member States that are not parties to the American Convention.

34. It must also be indicated that, when a case is submitted to the Inter-American Commission, the information requested from the State is information that would enable the IACHR to reach a decision. 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.

B. Jurisdiction

35. Trinidad & Tobago became a party to the American Convention when it deposited its instrument of ratification of that treaty on May 28, 1991.[FN33] Trinidad & Tobago subsequently denounced the American Convention by notice given on May 26, 1998 in accordance with Article 78 of the American Convention, which then took effect one year later. Moreover, as mentioned above, Trinidad & Tobago deposited its instrument of ratification of the OAS Charter on March 17, 1967, and accordingly, is a Member State of this Organization since this date. As such, with respect to acts done by the State wholly before May 28, 1991 or wholly after May 26, 1999, Trinidad & Tobago is subject to the allegations set forth in the American Declaration of the Rights and Duties of Man and the OAS Charter, and subject to the Inter-American Commission's authority to supervise the State's compliance with that instrument.[FN34] The Inter-American Commission will analyze the facts that occurred after May 28, 1991 and prior to May 26, 1999, under the American Convention.

[FN33] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/I.4 rev.8 (22 May 2001), p. 48.

[FN34] See Articles 18 and 20 of the Statute of the Inter-American Commission on Human Rights; 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, paras. 35-45; I/A Comm. H.R., Res. 3/87, Case 9647, James Terry Roach and Jay Pinkerton, United States, 22 September 1987, Annual Report 1986-87, paras. 46-49; see also Brian D. Tittmore, *The Mandatory Death Penalty in the Commonwealth Caribbean and the Inter-American Human Rights System: An Evolution in the Development and Implementation of International Human Rights Protections*, 13 WM. & MARY BILL RTS. J. 445 (2004) at page 456".

36. In light of the nature of the petitioners' allegations, the Inter-American Commission considers that it is only through the analysis of the merits of the petitioners' claims that it may properly determine the nature and extent of any acts for which the State may be responsible under the American Convention or the American Declaration. The IACHR therefore has competence to consider the petitioners' claims under both instruments and will leave to the merits of the case a determination of the specific applicability of either or both the American Convention or Declaration to each claim raised by the petitioners.

C. Admissibility requirements

1. Exhaustion of domestic remedies

37. Article 46(1)(a) of the American Convention and Article 31(1) of the IACHR's Rules of Procedure specify that in order to decide on the admissibility of a matter, the Inter-American

Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law or whether to apply the exceptions contemplated in Article 46(2) of the American Convention and/or Article 31(2) of the Rules of Procedure. The jurisprudence of the Inter- American system makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means.

38. In the present case, the State has failed to provide any observations or information concerning the admissibility of Mr. Bissoon and Mr. Serrette's claims; it merely acknowledged receipt of some communications.

39. The petitioners submit that the alleged victims have pursued all post-conviction appeals before the domestic courts. Following their respective convictions and appeals, Messrs. Bissoon and Serrette's petitions to the JCPC for special leave to appeal as a poor person were dismissed, respectively, on February 28, 2005 and December 13, 2004.

40. Concerning the allegations regarding detention conditions, as detailed in paragraphs 32 and 33, the petitioners argue that the prison authorities were made aware of the alleged victims' situation and did not take action. The petitioners provided numerous communications between them and the Commissioner of Prisons, in which they complained of lack of medical treatment, but the authorities allegedly failed to resolve the situation.[FN35] The State did not provide observations or evidence rebutting these allegations. In these circumstances, the IACHR is satisfied that the authorities were aware of the situation of the alleged victims.

[FN35] Supra, footnote 25.

41. While the legal system in Trinidad and Tobago offers the possibility of filing constitutional motions to challenge certain issues raised in the present matter, the petitioners argue that Messrs. Bissoon and Serrette are indigent and that they do not have access to legal aid to bring a constitutional motion in respect of the issues raised in the petitions and therefore are being denied access to a legal remedy. They underscore that the constitutional motion joined by Messrs. Serrette and Bissoon in June 2005, which culminated in the commutation of their death sentence in August 2008, did not encompass the subject matters comprised in the petition.[FN36]

[FN36] The claimants in this case were provided pro bono representation in that constitutional motion by the present petitioner. The petitioner is based in London, and does not represent them in other kinds of legal actions.

42. According to its prior jurisprudence, the Commission considers that the legal complexity of a constitutional motion, combined with the alleged victims' indigence, makes it unrealistic

and unfair to expect them to present such a motion without professional legal assistance.[FN37] Though technically still an available option, such a motion bears a sufficient level of complexity that it requires legal assistance and such assistance is not provided by Trinidad & Tobago. The IACHR already stated that: “For an indigent prisoner, who has exhausted all judicial appeals including recourse to the Judicial Committee of the Privy Council in London, to be expected to file a constitutional motion, the burden of proof lies with the State to show that this remedy is effective and capable of producing the result which would make it worthwhile for the prisoner to pursue.”[FN38] In these circumstances, the IACHR considers that the applicants cannot be required to file a constitutional motion as a condition of admissibility.

[FN37] Inter alia, IACHR Report No.21/05, Petition 12.269, Dexter Lendore (Trinidad & Tobago) February 25, 2005; IACHR Report No.66/05, Petition 12.260, Franklyn Villaroel, (Trinidad & Tobago) October 13, 2005; and I I/A Court H.R., Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case. Judgment of June 21, 2002. Series C No. 94, para.152b.

[FN38] See IACHR Report N° 43/98, Case 11.816, Haniff Hilaire (Trinidad and Tobago), Annual Report 1998, at para. 17.

43. Therefore, the Inter-American Commission finds that Mr. Bissoon and Mr. Serrette’s claims are not barred from consideration under Article 46(1)(a) of the American Convention or Article 31(1) of the Inter-American Commission’s Rules of Procedure.

2. Timeliness of the petition

44. Article 46(1)(b) of the American Convention and Article 32(1) of the IACHR’s Rules of Procedure require that for a petition or communication to be admitted, it must be lodged within a period of six months from the date on which the party alleging a rights violation was notified of the final judgment. Nonetheless, when the Inter-American Commission admits an exception to the requirement of exhaustion of domestic remedies in accordance with Article 46(2) of the American Convention or Article 31(2) of the Rules of Procedure, Article 32 of the Rules of Procedure states that the petition must be presented within a reasonable period of time as determined by the Inter-American Commission. For that purpose, the IACHR has to consider the date on which the alleged violation occurred and the circumstances of each case.

45. The alleged violations in the cases of Mr. Bissoon and Mr. Serrette’s human rights are of an ongoing nature, as they began with their arrests, respectively, in December 1995 and October 1998 and continued at least up to the time of the commutation of their death sentences in August 2008. Therefore, since the petitions were presented respectively in August and June 2005, the IACHR concludes that the petitions were lodged within a reasonable period of time and that the admissibility requirement has been satisfied.

3. Duplication of proceedings and res judicata

46. Article 46(1)(c) of the American Convention and Article 33(1) of the IACHR’s Rules of Procedure provide that the admissibility of a petition by the Inter-American Commission requires

that the subject of the petition is not pending in another international proceeding for settlement. Article 47(d) of that international instrument also stipulates that the IACHR shall declare inadmissible any petition that is substantially the same as one previously studied by this organ or by another international organization. Based on the information provided to the IACHR in the petition, and the silence of the State, it appears that this matter has not been submitted previously or simultaneously for examination by any other international organization. The Inter-American Commission therefore finds no bar to the admissibility of the petition under Articles 46(1)(c) or 47(d) of the American Convention or Article 33 of the IACHR's Rules of Procedure.

4. Colorable claim

47. Article 47(b) and (c) of the American Convention and Article 34 of the Rules of Procedure require the IACHR to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention or other applicable instruments, or if the statements of the petitioner or of the State indicate that the petition is manifestly groundless or obviously out of order. In doing so, the Inter-American Commission undertakes only a prima facie evaluation of the alleged facts with respect to admissibility and does not consider or judge the merits of the claim.

48. The petitioners allege that the State is responsible for violations of Messrs. Bissoon and Serrette's rights to life, equality before the law, fair trial, humane treatment, due process of law and judicial protection, under both the American Convention and the American Declaration. The State has failed to provide any observations or information on the alleged violations.

49. The IACHR notes that the petition contains factual allegations concerning the trial and sentencing procedures; the alleged delay in the commutation of the sentences during which they were housed on death row and reportedly heard warrants of execution read to other prisoners; and the conditions of their pre and post-trial detention. Based upon the information provided by the petitioners, and without prejudging the merits of the matter, the Inter-American Commission finds that, if proved, these factual allegations tend to establish possible violations of the rights guaranteed by Articles I, II, XVIII, XXV and XXVI of the American Declaration and Articles 4, 5, 7(5), 8 and 25 of the American Convention, to the extent applicable under the analysis of part IV (B) of this report.

50. Furthermore, while not alleged by the petitioners, by virtue of the general principle of *iura novit curia*,^[FN39] the Inter-American Commission finds that the circumstances alleged may also disclose infringements of the State's obligations under Article 1(1) and 2 of the American Convention, which relate to the general obligation to respect rights and the obligation to adopt legislative or other measures to give effects to those rights, respectively.

[FN39] See e.g. I/A Court H.R., Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case. Judgment of June 21, 2002. Series C No. 94, para. 107.

51. Consequently, the Inter-American Commission finds that the petition is not manifestly groundless or out of order and concludes, under Article 34 of its Rules of Procedure, that it should declare it admissible with regard to alleged violations of Articles I, II, XVIII, XXV and XXVI of the American Declaration and Articles 1(1), 2, 4, 5, 7(5), 8 and 25 of the American Convention.

V. CONCLUSION

52. The IACHR concludes that it is competent to hear this case and that the petitions are admissible according to Articles 46 and 47 of the American Convention.

53. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the claims in the petition admissible with respect to Articles I, II, XVIII, XXV and XXVI of the American Declaration and Articles 1(1), 2, 4, 5, 7(5), 8 and 25 of the American Convention;
2. To give notice of this decision to the State and to the petitioners;
3. To continue with the analysis of the merits of the case; and
4. To publish this report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 11th day of the month of November, 2009. (Signed): Luz Patricia Mejía, President; Victor E. Abramovich, First Vice-Chairman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts and Paolo G. Carozza, Commissioners.