

**REPORT Nº 153/10**  
PETITION 43-05  
ADMISSIBILITY  
HAROON KHAN  
TRINIDAD AND TOBAGO  
November 1, 2010

**I. SUMMARY**

1. On January 19, 2005, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Russell, Jones and Walker (the "petitioners") against the State of Trinidad and Tobago ("Trinidad & Tobago" or the "State"). The petition was presented on behalf of Haroon Khan ("Mr. Khan", or the "alleged victim"), an inmate at the Golden Grove Prison, Port of Spain, Trinidad & Tobago.

2. The petition indicates that Mr. Khan was arrested on October 10, 1998, subsequently tried and convicted for the crime of murder under Section 2A of the Criminal Law Act, and sentenced to the mandatory death penalty on May 18, 2000. Mr. Khan's subsequent appeal to the High Court of Trinidad & Tobago was dismissed on January 30, 2001. The Judicial Committee of the Privy Council (the "JCPC") later confirmed Mr. Khan's conviction, but upheld his appeal on sentence on November 20, 2003. The JCPC quashed his death sentence, on the basis that the mandatory death penalty was unconstitutional, and ordered that he be re-sentenced. However, the petitioners submit that as of December 3, 2008, Mr. Khan has still not appeared before a court for re-sentencing.

3. The petitioners allege violations of due process and fair trial; undue delay before re-sentencing; and inhumane conditions of detention. They recognize that Trinidad & Tobago's denunciation of the American Convention on Human Rights (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 the State's denunciation. The petitioners otherwise rely on the American Declaration of the Rights and Duties of Man (the "American Declaration") to ground the IACHR's competence to consider the claims of the petition. Ultimately, they allege that the State violated Mr. Khan's right to humane treatment and to a fair trial, under Articles 5 and 8 of the American Convention; as well as his right to fair trial, protection from arbitrary arrest and due process of law, under Articles XVIII, XXV, and XXVI of the American Declaration. The petitioners also submit that the alleged victim has exhausted all effective and available domestic remedies with respect to the conduct of this trial, and that he is being denied access to any effective remedy under domestic law with regard to the other complaints raised in the petition.

4. As of the date of this report, the IACHR has not received observations from the State regarding the petition presented on behalf of Mr. Khan.

5. As set forth in this report, having examined the contentions of the petitioners on admissibility --in the absence of any contentions from the State-- and without prejudging the merits of the matter, the IACHR concludes that the case is admissible with respect to the alleged undue delay before re-sentencing, related questions of due process, and with respect to the presumed detention conditions, as it meets the requirements provided in Articles 31 to 34 of its Rules of Procedure. Based on the foregoing, the Inter-American Commission decides to notify the parties of its decision and to continue with its analysis of the merits as regards alleged violations of Articles 1.1, 2 and 5 of the American Convention and Articles XVIII, XXV and XXVI of the American Declaration; to publish this report; and to include it in its Annual Report to the General Assembly of the OAS.

**II. PROCEEDINGS BEFORE THE IACHR**

6. Following receipt of the petition, the IACHR transmitted its pertinent parts to the State on June 27, 2005, with a request for observations to be submitted within two months. By note of July 5,

2005, the State acknowledged receipt, but offered no observations on the petition. Between September 2005 and October 2005, the Inter-American Commission exchanged correspondence with the parties with regard to the petitioners' request for a hearing during the IACHR's 123<sup>rd</sup> regular period of sessions, which was later cancelled, at their request.

7. The petitioners submitted additional updated information on December 3, 2008, the pertinent parts of which were transmitted to the State on January 26, 2009, with a request that it submit its observations on the matter within a month. At the time of this report, the State has not responded to this request for observations.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioners

8. The petitioners state that Haroon Khan was arrested on October 10, 1998 and charged jointly with three other persons for the murder of Mr. Lau Hing Young. This murder occurred in the course of a robbery in which Mr. Khan was accused of participating along with three co-assailants. Mr. Khan was tried from May 4 to 18, 2000. Although he purportedly presented a defense of alibi, claiming that he was at home, building a shed with his father at the moment of the crime, on the basis of two confessions - one verbal and one written-- as well as the testimony of one of the co-assailants, Mr. Khan was convicted of murder and sentenced to Trinidad & Tobago's mandatory death penalty (the "murder/felony rule").<sup>1</sup> Mr. Khan was the only one of the co-accused who was convicted for murder; according to the petition, two of the co-accused pleaded guilty to manslaughter during a joint trial, while the fourth was granted immunity from prosecution in exchange for giving evidence against the three others. The petition indicates that Mr. Khan's subsequent appeal to the Court of Appeal of Trinidad & Tobago was heard and dismissed on January 30, 2001.

9. The petition further states that on December 11, 2002, the JCPC dismissed Mr. Khan's appeal on his conviction, but granted him leave to appeal his sentence, on the issue of the constitutionality of the mandatory death penalty as set by the murder/felony rule. On November 20, 2003, Mr. Khan's appeal was upheld and the JCPC accordingly quashed the sentence of death and remitted his matter to the High Court to pass an appropriate sentence, ruling that the mandatory death penalty was unconstitutional.<sup>2</sup> The petition indicates that Mr. Khan was then removed from death row; however, as of 2009, he had not yet benefited from the ordered re-sentencing hearing before the High Court and is still waiting.

10. The petitioners note that Mr. Khan's appeal before the JCPC was heard at the same time as the case of *Roodal v. Trinidad & Tobago*,<sup>3</sup> which also challenged the constitutionality of the State's mandatory death penalty law (murder/felony rule), and in which the JCPC reached the same conclusion (the "Roodal decision"). However, the petitioners underscore that this conclusion was later overturned in *Matthews v. Trinidad & Tobago* (the "Matthews decision"),<sup>4</sup> in which the JCPC held that the State's mandatory death penalty predated the Constitution and was therefore immune from constitutional challenge. In this same decision the JCPC ruled, however, that all persons on death row at the date of the Matthews decision should have their sentences commuted to life imprisonment on the reasoning that

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<sup>1</sup> Section 2A of the Criminal Law Act, as amended by the Criminal Law (Amendment) Act 1997, provides that:

2A.(1) Where a person embarks upon the commission of an arrestable offence involving violence and someone is killed in the course or furtherance of that offence (or any other arrestable offence involving violence), he and all other persons engaged in the course or furtherance of the commission of that arrestable offence (or any other arrestable offence involving violence) are liable to be convicted of murder even if the killing was done without intent to kill or to cause grievous bodily harm.

<sup>2</sup> [2003] AC UKPC 79 (the "JCPC November 2003 decision").

<sup>3</sup> [2003] AC UKPC 78 [2004] 2WLR 652.

<sup>4</sup> *Charles Matthews v State of Trinidad & Tobago* [2004] PC 2.

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.

11. With respect to the merits of their complaints against the State, the petition focuses on three aspects: the conduct of Mr. Khan's arrest and trial and related alleged violations of due process and fair trial; the alleged undue delay in obtaining re-sentencing in accordance with the JCPC decision; and the conditions of Mr. Khan's pre and post-trial detention.

12. With respect to Mr. Khan's arrest and the conduct of his trial, the petitioners allege the following:

- Upon Mr. Khan's arrest, his wife was also arrested for no reason; during his first interrogation, Mr. Khan was assaulted by a police officer and signed a piece of paper which he was told would allow the release of his wife but was in fact a confession, in violation of Articles 5 and 8 of the American Convention and XXVI of the American Declaration;
- When he was in police custody Mr. Khan asked to speak to a lawyer but was told there was no need, in violation of Article XXVI of the American Declaration;
- The period between the time he was arrested and the time he was tried (1 year and 7 months, from October 1998 until May 2000) without any reason justifying this long time period, constitutes a violation of his right to a fair and expeditious trial, under Articles 8 of the American Convention and XXV of the American Declaration;
- By failing to accord him adequate time and means for the preparation of his defense and by failing to ensure that he would be assisted by the counsel of his choice,<sup>5</sup> the State violated Articles 8.2 of the American Convention and XVIII of the American Declaration;
- The fact that two of Mr. Khan's co-accused pleaded guilty before the same jury who tried him prejudiced the jury's ability to presume that he was innocent until proven guilty, depriving him of both his presumption of innocence and an impartial hearing, in violation of Articles XVIII and XXVI of the American Declaration;
- By virtue of Section 2A of Trinidad & Tobago's Criminal Law Act of 1997, Mr. Khan was liable to being convicted of murder without the Prosecution having the burden to prove his specific intent, depriving him of his right to presumption of innocence, in violation of his due process rights under Article XXVI of the American Declaration; and
- The mandatory imposition of the death penalty as set by the murder/felony rule violated Mr. Khan's right not to be subjected to cruel, infamous or unusual punishment, under Article 5 of the American Convention and Article XXVI of the American Declaration.

13. In addition, the petitioners claim that because he still has not received a re-sentencing hearing following the JCPC November 2003 decision to that effect, Mr. Khan's rights to due process and to be tried without undue delay have been violated under Articles XXV and XXVI of the American Declaration.

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<sup>5</sup> The petition alleges that the preparation of Mr. Khan's defense was undermined by the fact that he was permitted to speak with his attorney for the preliminary inquiry (Mr. Sinanan) only 5 minutes, in presence of the police, that there was no opportunity for Mr. Sinanan to make any investigation into the matters raised by Mr. Khan and that his subsequent trial counsel (Mr. Frank) failed to properly defend Mr. Khan because he did not visit him in prison, did not go through the witness statements with him and conducted no investigation of his alibi, among other omissions. Moreover, the petition contends that although Mr. Khan requested a number of lawyers to represent him for the appeals proceedings, none of them was appointed to him, and the counsel who was appointed to represent him never visited him in prison, and did not respond to his request to be present at the hearing of his appeal either.

14. Finally, the petitioners argue that the conditions in which the alleged victim was kept --in police custody, in pretrial detention, on death row, and at the moment-- are so poor that they amount to breaches of Article 5 of the American Convention (for the period prior to May 26, 1999) and Article XXVI of the American Declaration (for the period since May 26, 1999).

15. According to the petition, when Mr. Khan was in police custody he only had dry bread and water, and was denied the food brought by his family; his cell was filthy, covered with urine; there was no mattress, no ventilation and only a dim light. The petition indicates that Mr. Khan was subsequently taken to the Golden Grove Prison, where he shared, until his trial, an unhygienic cell of 9 by 6 feet with 9 other people, in which there was only one bed, a bucket that served as a toilet, little ventilation and inadequate food.

16. For the three-year period Mr. Khan was held on death row, the petitioners submit that the conditions were even worse because he was detained in solitary confinement in a cell containing only a steel bed, a table bench and a water-jug. The petition also states that sanitation was inexistent; Mr. Khan was provided a plastic pail for use as a toilet which he was allowed to empty twice a day; there was no natural lighting; food was almost inedible; and his doctor or dentist requests were rarely granted. Since the JCPC November 2003 decision, Mr. Khan is not on death row anymore but he is still held at the Golden Grove Prison, and the petitioners submit that the same conditions apply, except for solitary confinement.

17. In support of their claim, the petitioners refer to a statement from the Secretary of the Prison Officers' Association who acknowledged that the detention conditions are highly deplorable, unacceptable and pose a threat hazard.<sup>6</sup> The petitioners also refer to the Inter-American Court, which already considered that the conditions in which detainees were held in Trinidad & Tobago amounted to cruel, inhuman and degrading treatment.<sup>7</sup> Finally, the petitioners argue that by failing to provide legal aid to Mr. Khan to allow him to seek redress for the violation of his rights by way of a constitutional motion, the State violates Article XVIII of the American Declaration.

18. In relation to the admissibility of the petition before the IACHR, the petitioners submit that the November 20, 2003 decision by the JCPC dismissing Mr. Khan's appeal on conviction exhausted all available and effective domestic remedies with respect to the claims pertaining to his arrest and the conduct of his trial.

19. Concerning the allegations of undue delay before re-sentencing, the petitioners contend that Mr. Khan has been expecting his re-sentencing hearing since 2003, and that this unwarranted delay prevents him from exhausting remedies in this regard.

20. With regard to the claims of inhuman detention conditions, the petitioners claim that Mr. Khan cannot bring a constitutional motion to address these complaints because of his lack of private means and the unavailability of legal aid for such motions in Trinidad & Tobago. They contend that the U.N. 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,<sup>8</sup> and they argue that the same reasoning ought to be valid for applications under the American Declaration. On that basis, they

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<sup>6</sup> Allegedly, on March 5, 1995, the General Secretary of the Prison Officer's Association was quoted in a national newspaper of Trinidad (no more detail) stating that: "The majority empathise [*sic*] with the inmates because we have to work in the same conditions in which they live. We have a duty to patrol these areas four hours... making periodic checks and walk the pathways that are sticky with filth (...) The conditions are highly deplorable, unacceptable and pose a health hazard (...) It is not easy when there are eleven human beings in a 9' x 6' cell with a five gallon pigtail bucket for a toilet in one corner. It is not a lie when they say you have to sit on the pail or stand up and sleep. It is terrible and it really, really stinks. I won't put my animals in there."

<sup>7</sup> Referring to I/A Court H.R., Hilaire, Constantine and Benjamin *et al.* v. Trinidad and Tobago, Judgment of June 21, 2002, Merits, Reparations and Costs, Ser.C n°94.

<sup>8</sup> Referring to U.N. Human Rights Committee, Currie v. Jamaica, Communication No 377/1989, paras. 13.4-13.5.

claim that Mr. Khan is being denied access to a legal remedy to raise this complaint and that he should be excused from exhausting domestic remedies, as he satisfies the requirements of Article 31.2.b of the IACHR Rules of Procedure.

## **B. Position of the State**

21. As indicated above, the Inter-American Commission transmitted the pertinent parts of the petition to the State on June 27, 2005 with a request that it provide the relevant information within two months. Despite this request, as of the date of this report, the IACHR has not received any information or observations from the State regarding Mr. Khan's petition.

## **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

### **A. Preliminary considerations**

22. The IACHR notes that the State at no time has responded to the petition's allegations or questioned its admissibility. As will be discussed below, although it denounced the American Convention on May 26, 1998,<sup>9</sup> Trinidad & Tobago is still a member of the Organization of American States ("OAS") and as such, is subject to the competence of the IACHR with respect to the human rights enunciated in the American Declaration.<sup>10</sup> When Trinidad & Tobago signed the OAS Charter in 1967, it undertook various international obligations, including those provided for in Article 112 therein,<sup>11</sup> which authorizes the IACHR to protect those human rights enunciated in the American Declaration.<sup>12</sup> Moreover, the IACHR Statute adopted by the OAS General Assembly includes among the powers and functions of the IACHR 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" 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."<sup>13</sup>

23. 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. As indicated by the Inter-American Court of Human Rights, cooperation by the States is an essential obligation in international proceedings in the inter-American system.

### **B. Competence**

24. Trinidad & Tobago became a party to the American Convention on May 28, 1991, when it deposited its instrument of ratification of that treaty. The State subsequently denounced the American Convention by notice given on May 26, 1998 in accordance with Article 78 of that instrument, 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 wholly before May 28, 1991 or wholly

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<sup>9</sup> Pursuant to Article 78 of the American Convention, the denunciation entered in force on May 26, 1999.

<sup>10</sup> 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 N° 9647, James Terry Roach and Jay Pinkerton (United States), Annual Report 1986-87, paras. 46-49.

<sup>11</sup> The content of Article 112 of the OAS Charter, as amended, is currently in Article 106 of that document.

<sup>12</sup> I/A Court H.R., Advisory Opinion, OC-10/89, July 14, 1989, paras.40-41; IACHR, Report N°3/87, Case N°9647, James Terry Roach and Jay Pinkerton (United States), Annual Report 1986-87, paras.46-49; and 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 456.

<sup>13</sup> 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 and Article 20 refers specifically to those Member States that are not parties to the American Convention.

after May 26, 1999, Trinidad & Tobago is subject to the allegations set forth in the American Declaration and the OAS Charter, and subject to the IACHR authority to supervise its compliance with that instrument.<sup>14</sup> The IACHR will analyze the facts that occurred after May 28, 1991 and prior to May 26, 1999, under the American Convention.

25. 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. Exhaustion of domestic remedies**

26. 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, pursuant to with Article 31.1 of its Rules of Procedure. Article 31.2 of the Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

27. The petitioners submit that Mr. Khan has exhausted all post-conviction appeals before the domestic courts, which culminated, with respect to his conviction, in the JCPC December 11, 2002 decision dismissing his appeal; and with respect to his sentence, in the JCPC November 2003 decision to quash his sentence and remit his case to the High Court of Appeal, the step they allege has not been completed. The State has failed to provide any observations or information concerning the admissibility of Mr. Khan's claims. Therefore, the IACHR is satisfied that Mr. Khan interposed the domestic remedies applicable to a criminal case in Trinidad & Tobago.

28. With specific regard to the claim that Mr. Khan still has not received re-sentencing, the IACHR notes that since November 2003, Mr. Khan has been reasonably expecting that his matter would be heard before the High Court of Appeal, in accordance with the JCPC's decision to that effect, but over six years have elapsed, and he has still not appeared for re-sentencing. In absence of any justification from the State, the IACHR considers that this six-year period represents undue delay for the purposes of admissibility, and accordingly excuses Mr. Khan from exhausting domestic remedies in this regard, pursuant to Article 31.2.c of its Rules of Procedure.

29. Concerning the allegations of poor detention conditions, the petitioners argue that Mr. Khan is not able to pursue a constitutional motion to raise these claims through domestic remedies because of his lack of private means and the unavailability of legal aid for such motions in Trinidad & Tobago. The State did not provide observations or evidence rebutting these contentions.

30. The Inter-American Commission's practice with regard to exhaustion of domestic remedies has been to require the complainant to previously attempt to file a suitable remedy, unless such remedy is proven to be inexistent, unavailable, or ineffective.<sup>15</sup> According to its prior jurisprudence, the IACHR considers that the legal complexity of a constitutional motion, combined with the alleged victim's indigence, makes it unrealistic and unfair to expect him to present such a motion without professional

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<sup>14</sup> Articles 18 and 20 of the IACHR Statute.

<sup>15</sup> For example, IACHR Report N° 8/08, Case 11.426, Marcela Alejandro Porco (Bolivia), Admissibility, March 4, 2008, para.62, where the IACHR recognized that the suitable remedy to address the petitioners' claim of inadequate detention conditions would have been the recourse of habeas corpus, but that because the law in force at that time did not offer the possibility of access to this recourse, the petitioners were excused from complying with the requirement of exhaustion of domestic remedies.

legal assistance.<sup>16</sup> 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 has 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.”<sup>17</sup> In these circumstances, the IACHR considers that the applicant cannot be required to file a constitutional motion as a condition of admissibility.

31. Therefore, the Inter-American Commission finds that Mr. Khan’s claims are not barred from consideration under Article 31.1 of its Rules of Procedure.

#### **D. Timeliness of the petition**

32. Article 32.1 of the IACHR Rules of Procedure requires 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 31.2 of the Rules of Procedure, Article 32 of the Rules states that the petition must be presented within a reasonable period of time as determined by the IACHR, which has to consider the circumstances of each case.

33. With respect to the claims related to the arrest of Mr. Khan and the conduct of his trial, the IACHR notes that the JCPC decision dismissing his appeal and confirming his conviction is dated December 11, 2002; and the JCPC decision quashing his sentence and remitting the matter to the High Court for re-sentencing is dated November 20, 2003. Since November 2003, Mr. Khan has reasonably been expecting that his matter be heard before the High Court of Appeal for purposes of re-sentencing, and already determined in the present report that the elapsed period of more than six years excused Mr. Khan from exhausting domestic remedies on this point. Therefore, the IACHR considers that concerning the allegations of undue delay before having access to a re-sentencing hearing, and related denial of due process, the petition was presented within a reasonable time.

34. The IACHR also determined that Mr. Khan was excused from exhausting domestic remedies with respect to the allegations concerning the conditions of his pre and post-trial detention. These violations are allegedly of an ongoing nature, as they began with his arrest, on October 10, 1998 and arguably continue to the present. Therefore, the IACHR concludes that the claims pertaining to detention conditions were lodged within a reasonable period of time. The same reasoning applies to the petitioners’ allegation that by failing to provide legal aid to Mr. Khan to allow him to seek redress for the violation of his rights, the State violates Article XVIII of the American Declaration.

#### **E. Duplication of proceedings and *res judicata***

35. There is no information in the record indicating that the subject of this petition is pending settlement in another procedure under an international government organization of which the State is a member, or that the case essentially duplicates a petition pending or already examined and settled by the IACHR or another international governmental organization of which the State is a member. The Inter-American Commission therefore finds no bar to the admissibility of the petitioners’ claims under Article 33 of its Rules of Procedure.

#### **F. Colorable claim**

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<sup>16</sup> *Inter alia*, IACHR Report n° 21/05, Petition 12.269, Dexter Lendore (Trinidad & Tobago) February 25, 2005; IACHR Report n° 66/05, Petition 12.260, Franklyn Villaroel, (Trinidad & Tobago) October 13, 2005; and I/A Court H.R. Case of Hilaire, Constantine and Benjamin *et al.* v. Trinidad and Tobago, Judgment of June 21, 2002, Ser. C n°94, para.152b.

<sup>17</sup> See IACHR Report n°43/98, Case 11.816, Haniff Hilaire (Trinidad and Tobago), Annual Report 1998, para. 17.

36. Article 27 of the IACHR's Rules of Procedure mandates that petitions state facts "regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments". In addition, Article 34 of its Rules of Procedure requires the Inter-American Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules or where statements of the petitioner or of the State indicate that it is manifestly groundless or out of order.

37. The IACHR notes that the petition contains factual allegations concerning the undue delay before complying with the JCPC November 2003 decision and providing Mr. Khan with a re-sentencing hearing, the conditions of his pre- and post-trial detention, and the related failure to provide legal aid to seek redress for the violations of his rights which, if proved, could characterize possible violations of the rights guaranteed by Article 5 of the American Convention and XVIII, XXV and XXVI of the American Declaration, to the extent applicable under the analysis of this report.

38. Furthermore, while not alleged by the petitioners, by virtue of the general principle of *iura novit curia*,<sup>18</sup> the Inter-American Commission finds that the circumstances alleged may also disclose infringements of the State's obligations under Articles 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.

## V. CONCLUSION

39. 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 TO:

1. Declare the claims in the petition admissible with respect to Articles 1.1, 2, and 5 of the American Convention until the denunciation became effective; and Articles XVIII, XXV and XXVI of the American Declaration for those events after May 26, 1999;
2. Notify the parties of this decision;
3. Continue with the analysis of the merits of the case; and
4. Publish this Report and include it in the Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 1<sup>st</sup> day of the month of November, 2010.  
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, Commissioners.

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<sup>18</sup> See e.g. I/A Court H.R., Hilaire, Constantine and Benjamin *et al.* v. Trinidad and Tobago, Judgment of June 21, 2002, Ser.C N° 94, para. 107.