

**REPORT No. 83/11**  
PETITION 12.145  
ADMISSIBILITY  
KEVIN DIAL and ANDREW DOTTIN  
TRINIDAD AND TOBAGO  
July 21, 2011

**I. SUMMARY**

1. On April 29, 1999, the Inter-American Commission on Human Rights (hereinafter the “the Inter-American Commission” or “the IACHR”) received two petitions along with requests for precautionary measures from Herbert-Smith LLP<sup>1</sup> (“the petitioners”) against the Government of Trinidad and Tobago (“Trinidad & Tobago” or the “the State”). The petitions were presented on behalf of Kevin Dial and Andrew Dottin (“the alleged victims”), two Trinidadian nationals who at that time were inmates on death row in that country’s State Prison.<sup>2</sup>

2. The petitioners indicated that the alleged victims were tried and convicted as co-defendants for the murder of Junior Baptiste and sentenced to death on January 21, 1997 by the High Court of Justice of Trinidad & Tobago, pursuant to the country’s mandatory death penalty. The petitioners subsequently informed the IACHR that, pursuant to constitutional proceedings in the High Court of Trinidad & Tobago, the alleged victims’ death sentences were commuted to life imprisonment on August 15, 2008. The petitioners underscore that the late commutation of the death sentences does not alter the substance of the alleged due process violations during the alleged victims’ pre-trial detention and trial, nor does it resolve the alleged violations for the period the alleged victims were on death row. In that regard, the petitioners mainly complain of three related issues: violations of due process in the course of their arrest, pre-trial detention, trial, conviction and sentencing; conditions of post and pre-trial detention; and the delay in commutation of the alleged victims’ death sentences despite jurisprudence from the Judicial Committee of the Privy Council (“the JCPC”) requiring such action.

3. The petitioners note that Trinidad & Tobago’s denunciation of the American Convention on Human Rights (“the American Convention”) took effect on May 26, 1999. Therefore, they maintain that the State is responsible for violations of the American Convention with respect to those facts which took place before that date; as well as for violations of the American Declaration of the Rights and Duties of Men (“the American Declaration”) that allegedly occurred after that date: Article I of the American Declaration and Article 4 of the American Convention; Article II of the American Declaration and Article 24 of the American Convention; Article XXV of the American Declaration and Articles 5 and 7 of the American Convention; Articles XVIII and XXVI of the American Declaration and Articles 8 and 25 of the American Convention; and Articles 10 and 11 of the American Convention. With regard to Mr. Dial, the petition also alleges a violation of Articles 17 and 19 of the American Convention.

4. The State argues that the petition is inadmissible because the petitioners failed to exhaust domestic remedies. Moreover, the State denies all allegations related to the merits, principally because it considers that the petitioners failed to produce substantive evidence of violations of the American Convention. More specifically, the State contends that the existence of the mandatory sentence of death for murder is in accordance with international law; the United Nations Human Rights Committee (“the HRC”) found no breach to the right to humane treatment arising from prison conditions in Trinidad & Tobago; the IACHR has no competence to challenge the sentences imposed by the State in accordance with its domestic law; and the period between the completion of the committal proceedings and the trial was not unreasonable. Finally, the State concludes that the petitioners are merely seeking to

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<sup>1</sup> The petitions were originally presented by Slaughter and May. However, in a letter dated August 18, 1999, the IACHR was informed that effective September 1, 1999 Herbert Smith, LLP would represent Messrs. Dial and Dottin.

<sup>2</sup> The Inter-American Commission decided to join the petitions into one single file since the beginning of this procedure, on May 11, 1999, because of the great similarity in the allegations of facts and law submitted by the same petitioners.

use the Inter-American Commission as a court of appeal, since no denial of justice can be said to arise in this case. Accordingly, the State submits that the alleged victims are not entitled to compensation, because their convictions were the result of criminal procedures which respected all fair trial guarantees.

5. 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 decides to admit the present petition with respect to the claims concerning Articles I, II, XVIII, XXV and XXVI of the American Declaration and Articles 4, 5, 7, 8, 10, 17, 19, 24 and 25 of the American Convention. By virtue of the general principle of *iura novit curia*, the IACHR also admits this petition in relation to Articles VI and VII of the American Declaration and Articles 1.1 and 2 of the American Convention. On the other hand, the IACHR declares this petition inadmissible with respect to Article 11 of the American Convention. The IACHR also decides to notify the parties, publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCEEDINGS BEFORE THE IACHR

6. The petition was received on April 29, 1999, along with requests for precautionary measures. On May 7, 1999, the petitioners submitted additional information. On May 11, 1999, the IACHR forwarded the relevant parts of the petition to the State, and set a three-month deadline in which to submit its comments. On August 19, 1999, the State submitted its response to the petition, which was duly transmitted to the petitioners.

7. The Inter-American Commission received additional information from the petitioners on the following dates: September 16, 1999, August 23, 2000, August 10, 2005, February 14, 2007, April 21, 2008 and February 6, 2009; these communications were duly forwarded to the State. On January 7, 2000, the State indicated that it would not be submitting any additional considerations regarding this petition, on the grounds that the IACHR should deem it inadmissible at its next sessions. Since then, Trinidad & Tobago has presented no further observations.

### Precautionary and provisional measures

8. On May 11, 1999, the Inter-American Commission issued precautionary measures on behalf of the alleged victims. In light of the absence of any response from the State to its request for precautionary measures, the IACHR submitted a request for provisional measures in favor of the alleged victims to the Inter-American Court of Human Rights ("the Inter-American Court"), on May 25, 1999.

9. On May 27, 1999, the Inter-American Court amplified the provisional measures previously ordered in the Matter of James *et al.* to include the alleged victims.<sup>3</sup> Trinidad & Tobago has not presented any of the periodic reports that were ordered by the Inter-American Court regarding the measures it has adopted to protect the life and personal integrity of the beneficiaries/alleged victims, despite constant requests by the Tribunal.<sup>4</sup>

10. At the request of the Inter-American Court, on March 19, 2009, the IACHR submitted a communication to the Tribunal confirming the pending status of this petition. On July 6, 2009, the IACHR also informed the Inter-American Court of the commutation of the sentences of the alleged victims.

## III. POSITIONS OF THE PARTIES

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<sup>3</sup> In this order, the Inter-American Court amplified the provisional measures ordered in the Matter of James *et al.*, and requested that Trinidad & Tobago take all necessary measures to preserve Mr. Dial's and Mr. Dottin's lives and physical integrity so as not to hinder the processing of their petition before the inter-American system. The Inter-American Court maintained these measures in subsequent orders dated August, 16, 2000, November 24, 2000, September 3, 2002, December 2, 2003, February 28, 2005 and April 3, 2009, and determined in the last order that the measures be named "Matter of Dottin *et al.*"

<sup>4</sup> I/A Court H.R., *Matter of James et. al.*, Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of April 3, 2009, para. 14.

## A. Position of the petitioners

11. According to the petitioners, the alleged victims were arrested by the police on February 24, 1995, and charged with the February 20, 1995 murder of Junior Baptiste, primarily based on the identification evidence of Junior's brother, Shawn Baptiste.<sup>5</sup> The petitioners indicate that, in their defense, Messrs. Dial and Dottin alleged an alibi and testified that the lineup identification procedure at the Besson Street Police Station was flawed, and that the lack of fingerprint evidence or firearms ballistics testing diminished the credibility of Shawn Baptiste's testimony. Notwithstanding the foregoing, the petitioners observe that on January 21, 1997, the alleged victims were convicted of murder and sentenced to death by the High Court of Justice in Port of Spain.

12. The petitioners indicate that the alleged victims appealed their convictions and death sentences, but the Court of Appeal, in a judgment dated October 16, 1997, dismissed their appeals and affirmed their convictions. A petition to the JCPC for Special Leave to Appeal as Poor Persons was submitted on March 16, 1998; however, according to the petitioners, that petition was dismissed by the JCPC without reasons on April 28, 1999.

13. According to the petitioners, the evidence against the alleged victims was fabricated by the police, and therefore, they were sentenced through a miscarriage of justice. In this regard, they allege that, on July 9, 1999, Shawn Baptiste swore an affidavit retracting the entirety of his deposition incriminating the defendants.<sup>6</sup> The petitioners allege that since Shawn Baptiste's testimony at trial was the sole basis for the alleged victims' convictions, it is clear that the actions of the police perverted the course of justice. In addition, the petitioners informed the IACHR that, on October 15, 1999, Alicia Henry also swore an affidavit supporting the new evidence presented by Shawn Baptiste.

14. The petitioners contend that, in light of the two new affidavits sworn by the prosecution's key witnesses, the alleged victims' case was submitted to the Trinidad & Tobago Court of Appeal for a second appeal.<sup>7</sup> Nevertheless, the Court of Appeal reaffirmed the alleged victims' convictions and sentences on July 6, 2001. After that, the petitioners observe that an additional petition for Special Leave to Appeal was lodged before the JCPC on November 27, 2002, but it was dismissed on February 14, 2005.

15. Finally, with regard to the relevant domestic judicial remedies, the petitioners maintain that, following constitutional proceedings related to more than fifty death row inmates, the death sentences of the alleged victims were commuted to life imprisonment on August 15, 2008.<sup>8</sup> The petitioners underscore that the late commutation of the death sentences does not alter the alleged breaches for the period the alleged victims were on death row for what they consider to be convictions obtained through a miscarriage of justice.

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<sup>5</sup> According to the petitioners, during the joint trial which took place on January 15, 1997, the main prosecution evidence was provided by Shawn Baptiste, who testified that in the early hours of February 20, 1995, as he, his brother Junior Baptiste and his brother's girlfriend Alicia Henry slept, the alleged victims forced their way into his residence armed with guns and fired their weapons, striking Junior and Alicia. Shawn Baptiste also testified that he transported Junior and Alicia to a hospital where Junior later died from his gunshot wounds.

<sup>6</sup> Specifically, the affidavit contained the following assertions, among others: that the evidence Shawn Baptiste gave in court was false; that he was pressured by the police into providing such evidence, under threat of prosecution for possession of a firearm (the same firearm that was offered as evidence against the alleged victims at trial); that he was subject to intimidation by associates of the true assailants and felt he had to lie about what he saw due to fear for his own personal safety and the safety of his family; that the gun which the police claimed was one of the murder weapons, in fact belonged to his deceased brother; that the police officer in charge of the investigation gave him direct instructions that he should pick out the alleged victims and identify them as the assailants).

<sup>7</sup> Pursuant to Section 64 of the Supreme Court of Judicature Act.

<sup>8</sup> The petitioners cite High Court of Trinidad and Tobago, H.C.A. No. 1412 of 2005, dated August 15, 2008, entered August 19, 2008.

16. In relation to the admissibility of the petition before the Inter-American Commission, the petitioners submit that the alleged victims exhausted all available and effective domestic remedies when their petitions for special leave to appeal as poor persons were dismissed. The petitioners state that the alleged victims are indigent and do not have access to legal aid to bring a constitutional motion in respect of the specific issues raised in the petition and are thus being denied access to a legal remedy to address these complaints. In this regard, they note that the HRC 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 before the IACHR.

17. Notwithstanding the foregoing, the petitioners underscore that the constitutional motion, joined by the alleged victims, and which culminated in the commutation of the death sentence of Messrs. Dial and Dottin, in August 2008, contested strictly the constitutionality of executing the alleged victims, and therefore, did not encompass the arguments or subject matter of the petition.

18. The petitioners take note that Trinidad & Tobago denounced the American Convention on May 26, 1998 and that this denunciation took effect on May 26, 1999. Therefore, they contend that the IACHR is competent to consider the alleged violations of the American Convention for those facts which occurred up to the effective date of the denunciation. The petitioners rely on the American Declaration to ground the IACHR's competence to consider the complaints related to facts that occurred after May 26, 1999.

19. With regard to the violations they attribute to the State, firstly, the petitioners contend that the alleged victims were entitled as from 2003 to have their death sentences commuted on the strength of applicable case law emanating from the JCPC, including the Cases of *Roodal*,<sup>9</sup> *Matthews*<sup>10</sup> and *Pratt & Morgan*.<sup>11</sup>

20. In this regard, the petitioners indicate that the Trinidad & Tobago Court of Appeals recognized that failure to give effect to the Pratt and Morgan decisions "may further aggravate the mental anguish on the part of the condemned man."<sup>12</sup> The petitioners further allege that in August 2005, while the Inter-American Court's Provisional Measures were in force, the State issued warrants of execution which were read to the alleged victims, following a public announcement by the Attorney General that the State intended to recommence executions of death row inmates. While the death sentences were eventually commuted to life imprisonment in August 2008, the petitioners maintain that the imposition of the death sentences, the years spent on death row, and the issuance of warrants of execution that were read to the alleged victims, gave rise to a violation of the rights to life and to personal integrity/humane treatment.

21. Secondly, the petitioners contend that during the whole course of criminal proceedings, beginning with the arrests of the alleged victims, the State failed to respect their right to personal liberty and due process guarantees. In this regard, the petitioners stress, *inter alia*: that the alleged victims were not told of the reasons for their detention at the time of their arrest, nor were they allowed to immediately contact a lawyer or a family member; they were not brought to trial within a reasonable time, since there was a delay of almost two years between their February 24, 1995 arrests and the beginning of their trial on January 15, 1997; they were not given prior notification in detail of the charges against them or the evidence on which the State was going to rely at trial; they were not provided with adequate legal representation by the State; they were not provided with adequate means for the preparation of their

<sup>9</sup> *Balkissoon Roodal v State of Trinidad & Tobago*, [2003] PC 18.

<sup>10</sup> *Charles Matthews v State of Trinidad & Tobago* [2004] PC 2.

<sup>11</sup> *Pratt & Morgan v R. (put: The Attorney General of Jamaica)* (on appeal from Jamaica), [1994] 2 AC 1.

<sup>12</sup> The petitioners refer to *The Attorney General of Trinidad and Tobago v. Angela Ramdeen* [Cv.A No.6 of 2004], para.

defense, nor could they afford adequate representation; and they were not permitted to communicate freely and privately with their counsel. The petitioners emphasize that the alleged victims' deprivation of personal liberty resulted from illegal means, namely conspiracy and fabrication of evidence by the police, as demonstrated by the 1999 affidavits of the two eyewitnesses.

22. Thirdly, the petitioners argue that the conditions of pre-conviction and post-conviction detention of the alleged victims violated their right not to be exposed to cruel, inhuman, degrading, infamous, or unusual punishment or treatment. Indeed, the petitioners contend that the alleged victims have been detained for more than a decade under inhuman conditions, for instance: there are no educational or recreational activities; they can only have one hour of exercise, while handcuffed, every 1-3 weeks; very little exposure to natural light and inadequate ventilation in their cells; no sanitation facilities; precarious conditions of hygiene; inedible food and limited access to potable water; among others.

23. The petitioners further submit that the State has failed to compensate the alleged victims for their conviction through a miscarriage of justice. They also hold that the State is responsible for a violation of the alleged victims' right to honor and dignity by the actions of the police and prison authorities. Finally, they argue that the State has failed to provide the alleged victims with equal and effective access to constitutional motions before the courts in Trinidad & Tobago for the protection of their rights. In particular, they maintain that the conditions for such recourse are discriminatory because the proceedings are extremely expensive and no legal aid is available for these motions.

24. Specifically with respect to Mr. Dial, the petitioners allege that because he is the father of a minor child (he was expecting the child's birth at the moment of his arrest), the State committed further violations to his detriment. The petitioners argue that, because of its arbitrary refusal to ever allow Mr. Dial to see his child after his arrest, the State destroyed Mr. Dial's family life and effectively failed to protect the rights of his family and the rights of his minor child.

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

25. The State requested that the IACHR declare the petition inadmissible under the non-exhaustion of domestic remedies rule, given that the alleged victims had not filed a constitutional motion before the domestic courts in Trinidad & Tobago. Moreover, the State broadly denies all the violations alleged by the petitioners.

26. In particular, the State argues that the existence of a mandatory death penalty for all convictions of murder is in accordance with international law and the American Convention. According to the State, the trial judge, through his instructions to the jury, is able to ensure a sentence which reflects the individual circumstances of each case.

27. With respect to the right to humane treatment, the State contends that the HRC found no breach of Article 10 (right to humane treatment) of the International Covenant on Civil and Political Rights arising from prison conditions in Trinidad & Tobago.<sup>13</sup> Furthermore, the State points out the case of Thomas and Hilaire, in which the JCPC upheld the finding of the Court of Appeal of Trinidad & Tobago that the prison conditions did not amount to cruel and unusual treatment in violation of the State Constitution. In response to the contention that the conditions of detention may render unlawful the carrying out of a death sentence, the State submits that the IACHR has no competence to challenge the sentence imposed by the State in accordance with its domestic law.

28. The State argues that the 12-month period that elapsed between the completion of the committal proceedings and the trial was not unreasonable; however, it offers no explanation of the difference between that period and the two-year delay alleged by the petitioners. In addition, the State submits that the petitioners are merely seeking to use the IACHR as a final court of appeal, since the

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<sup>13</sup> The State cites HRC, *Dole Chadee et. al*, Views adopted on 29 July 1998.

matters complained of in the petition are substantially the same as those included in their grounds of appeal, which went to both the Court of Appeal and the JCPC, and were subsequently dismissed. The State claims that no denial of justice, restrictions to legal aid or miscarriage of justice can be said to arise in this case, since all due process guarantees of the alleged victims were respected.

29. Finally, with regard to the allegations regarding the right to honor and dignity, the rights of the family and the rights of the child, Trinidad & Tobago denies them on the basis that the petitioners failed to present any substantial evidence in support of those contentions.

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

##### **A. Competence**

30. The petitioners have standing to lodge petitions with the Inter-American Commission pursuant to Article 44 of the American Convention. The alleged victims, Messrs. Dial and Dottin, are persons regarding whom the State agreed to respect and ensure the rights enshrined in the American Convention. As regards the State, Trinidad & Tobago became a party to the American Convention when it deposited its instrument of ratification on May 28, 1991. Consequently, the IACHR is competent *ratione personae* to examine the petition.

31. Trinidad & Tobago subsequently denounced the American Convention by notice given on May 26, 1998, which then took effect one year later, in accordance with Article 78 of the American Convention. As a Member State of the OAS since 1967, 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 international human rights obligations arising from the American Declaration and the OAS Charter, and to the Inter-American Commission's authority to supervise the State's compliance with those obligations.<sup>14</sup> The allegations presented in this petition took place from the alleged victims' arrest on February 24, 1995, encompassing their trial which resulted in their conviction and sentence to death on January 21, 1997 — after the State's ratification of the American Convention and when that instrument was still in force for Trinidad & Tobago— and continue to this date.

32. Therefore, the Inter-American Commission has competence *ratione materiae* and *ratione temporis* and will examine the State's obligations under the American Convention for facts which occurred wholly before May 26, 1999, as well as its obligations under the American Declaration for facts occurring wholly after May 26, 1999. The IACHR will leave to the merits of the case a determination of the specific applicability of either/both the American Convention or/and the American Declaration to each claim of the petitioners.<sup>15</sup> The IACHR also has competence *ratione loci* to entertain the petition, inasmuch as it alleges violations of human rights that are protected in the American Declaration and in the American Convention, which supposedly have taken place within the territory of Trinidad & Tobago.

##### **B. Exhaustion of domestic remedies**

33. 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.

<sup>14</sup> See Articles 1.2.b and 20 of the IACHR's Statute. See also I/A Court H.R., Advisory Opinion OC-10/89 Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser A N° 10, 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; Brian D. Titemore, *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".

<sup>15</sup> See *mutatis mutandi* IACHR. Report N. 137/09, Admissibility, Reshi Bisoon and Foster Serrete, Trinidad and Tobago, November 13, 2009, para. 36.

34. In the present case, the State requested that the IACHR declare the petition inadmissible under the non-exhaustion of domestic remedies rule, because the alleged victims had not filed a constitutional motion before the domestic courts in Trinidad & Tobago. For their part, the petitioners submit that the alleged victims have pursued all post-conviction appeals before the domestic courts. In this regard, the petitioners emphasize that they invoked post-conviction remedies both prior to and after the 1999 affidavits of the eyewitnesses. The IACHR observes that, according to the information available in the file, following their conviction, the appeals of the alleged victims were dismissed and their convictions affirmed on October 16, 1997 and July 6, 2001. Likewise, following the decisions on their appeals, the alleged victims' petitions to the JCPC for special leave to appeal were dismissed on April 28, 1999 and February 14, 2005.

35. With respect to constitutional motions, the legal system in Trinidad & Tobago offers the possibility of filing constitutional motions to challenge certain issues raised in the present matter, such as the applicability of commutation of the sentence. However, the petitioners argue that the alleged victims 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 petition and therefore are being denied access to a legal remedy. Moreover, they underscore that the constitutional motion joined by the alleged victims, which culminated in the commutation of their death sentence in August 2008, did not encompass the subject matter of the petition, e.g., the alleged fabrication of evidence against them, their wrongful conviction through a miscarriage of justice, the due process violations, inhuman conditions of their detention and the prohibition imposed on Mr. Dial regarding contact with his minor child, among others.<sup>16</sup> They maintain that the scope of constitutional motions is limited to the constitutional validity of the State's attempt to execute the alleged victims.

36. The IACHR has consistently found, and the Inter-American Court has confirmed that the legal complexity of a constitutional motion, combined with an alleged victim's indigence, makes it unrealistic and unfair to expect him or her to present such a motion without professional legal assistance, thus rendering this recourse illusory.<sup>17</sup> Indeed, though technically still an available option, such a motion bears a sufficient level of complexity that it requires legal assistance which was supposedly not provided by Trinidad & Tobago to the alleged victims. In these circumstances, the IACHR considers that the applicants cannot be required to file a constitutional motion as a condition of admissibility.

37. Therefore, the Inter-American Commission decides that domestic remedies were duly exhausted by means of the post-conviction appeals presented before the Court of Appeal, which were dismissed on October 16, 1997 and subsequently on July 6, 2001 (*supra* paras. 12 and 14, respectively); followed by the petitions for special leave to appeal presented before the JCPC, which were dismissed on April 28, 1999 and subsequently on February 14, 2005 (*supra* paras. 12 and 14, respectively). In conclusion, the IACHR finds that this petition is 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.

### **C. Timeliness of the petition**

38. 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. The petition was lodged on April 29, 1999, prior to the exhaustion at issue, that is to say, prior to the decisions regarding the second post-conviction appeal and the second petition of special leave to appeal.

<sup>16</sup> See *mutatis mutandi* IACHR. Report N. 137/09, Admissibility, Reshi Bisoon and Foster Serrete, Trinidad and Tobago, November 13, 2009, para. 41.

<sup>17</sup> See, *inter alia*, IACHR Report No.21/05, Petition 12.269, Dexter Lendore (Trinidad & Tobago) February 25, 2005, para. 21; IACHR Report No.66/05, Petition 12.260, Franklyn Villaroel, (Trinidad & Tobago) October 13, 2005, para. 22; and IACHR Report N° 43/98, Case 11.816, Haniff Hilaire (Trinidad and Tobago), Annual Report 1998, para. 17. See also 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.152.b.

In this regard, the IACHR understands that the admissibility requirements must be met at the time of approval of the admissibility report. Consequently, it concludes that the requirements of Articles 46.1.b of the American Convention and 32.1 of the Rules of Procedure have been fulfilled.

#### **D. Duplication of proceedings and international *res judicata***

39. Nothing in the present file indicates that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention, as well as in Article 33.1 of the IACHR's Rules of Procedure, have been met.

#### **E. Colorable claim**

40. Article 47.b and 47.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.

41. In this regard, the IACHR notes that the petition primarily contains allegations concerning the alleged victims' right to life; to humane treatment and the conditions of their pre and post-trial detention; to equality before the law with respect to their indigence and access to remedies; to a fair trial; and the right to due process of law and compensation for miscarriage of justice. 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 allegations tend to establish possible violations of the rights guaranteed by Articles I, II, XVIII, XXV and XXVI of the American Declaration and/or Articles 4, 5, 7, 8, 10, 24 and 25 of the American Convention, taking into account the considerations set forth in paragraph 32 (*supra*).<sup>18</sup>

42. Concerning the alleged refusal by the State to allow Mr. Dial to see his child and the resulting impact on his right to protection of family and the rights of the child, the IACHR considers that, if proved, these allegations may tend to disclose a breach of Articles 17 and 19 of the American Convention; as well as, by virtue of the general principle of *iura novit curia*, a potential violation of Articles VI and VII of the American Declaration, in line with the considerations set forth in paragraph 32 (*supra*). Furthermore, while not alleged by the petitioners, the Inter-American Commission finds, also by virtue of the general principle of *iura novit curia*,<sup>19</sup> that the circumstances alleged may also disclose an infringement of the State's obligations under Articles 1.1 and 2 of the American Convention, concerning the general obligation to respect rights and the obligation to adopt legislative or other measures to give effect to those rights.

43. On the other hand, the IACHR observes that the petitioners have not presented sufficient elements that would allow the Inter-American Commission to determine, for the effects of the admissibility of this petition, that the facts tend *prima facie* to establish violations of Article 11 of the American Convention. With respect to this provision, the IACHR considers that this petition is inadmissible, in conformity with Articles 34.a and 34.b of the Inter-American Commission's Rules of Procedure.

<sup>18</sup> See *mutatis mutandi* IACHR. Report N. 137/09, Admissibility, Reshi Bisoon and Foster Serrete, Trinidad and Tobago, November 13, 2009, paras. 49 and 50.

<sup>19</sup> 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.

## V. CONCLUSION

44. The IACHR concludes that it is competent to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention and Article 34 of its Rules of Procedure, with the exception of the allegations regarding Article 11 of the American Convention. Based on the findings of fact and law set forth above, and without prejudging the merits of the matter,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### DECIDES:

1. To declare the claims in the petition admissible with respect to Articles 1.1, 2, 4, 5, 7, 8, 10, 17, 19, 24 and 25 of the American Convention and Articles I, II, VI, VII, XVIII, XXV and XXVI of the American Declaration;
2. To declare the claims in the petition inadmissible with respect to Article 11 of the American Convention;
3. To notify this decision to the State and to the petitioners;
4. To continue with the analysis of the merits of the case; and
5. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21<sup>st</sup> day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice President; Rodrigo Escobar Gil, Second Vice President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.