Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh v. Trinidad and Tobago
Doc. Type:	Judgment (Merits, Reparations and Costs)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Alirio Abreu-Burelli; Judges: Hernan Salgado-Pesantes; Oliver Jackman; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo Judge Maximo Pacheco-Gomez informed the Court that by reason of force majeure, he was unable to attend the LV Regular Period of Sessions of the Tribunal, and as a result he did not participate in the deliberation and signing of the present Judgment.
Dated:	21 June 2002
Citation:	Hilaire v. Trinidad and Tobago, Judgment (IACtHR, 21 Jun. 2002)
Represented by:	APPLICANT: Yasmin Waljee
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In the Hilaire, Constantine and Benjamin et al. Case,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), pursuant to Articles 29, 55, and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Rules"), [FN1] delivers the present Judgment, which is structured according to the following order:

[FN1] In accordance with the Court's Order of March 13, 2001, regarding the Transitory Provisions of the Court's Rules of Procedure, the present Judgment is delivered according to the terms of the Rules of Procedure that entered into force on June 1, 2001.

I. INTRODUCTION OF THE CASE

1) The present Case is the result of a joinder of the Hilaire, Constantine et al., and Benjamin et al. Cases, [FN2] that were submitted to the Court separately by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") against the State of Trinidad and Tobago (hereinafter "the State" or "Trinidad and Tobago") on May 25, 1999, February 22, 2000, and October 5, 2000, respectively.

[FN2] The Inter-American Court, pursuant to Article 28 of its Rules of Procedure, ordered the joinder on November 30, 2001. In said Order, the Court took into account, inter alia, that the parties to the Hilaire, Constantine et al. and Benjamin et al. Cases were the same, that is, the Inter-American Commission on Human Rights and the State of Trinidad and Tobago. Likewise, the Court considered that the purpose of the action was virtually identical in the three cases, in the sense that they all involved the issue of due process guarantees in cases where the "mandatory death penalty" is applied to all persons convicted of murder in Trinidad and Tobago, the only differences being the particular circumstances of each case. And finally, the Articles of the American Convention alleged to have been violated in each case were fundamentally the

same. Cf. I/A Court H.R., Hilaire, Constantine et al., and Benjamin et al. Cases, Order of November 30, 2001.

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2) The Commission's Applications are based on petitions numbered 11,816 (Haniff Hilaire), 11,787 (George Constantine), 11,814 (Wenceslaus James), 11,840 (Denny Baptiste), 11,851 (Clarence Charles), 11,853 (Keiron Thomas), 11,855 (Anthony Garcia), 12,005 (Wilson Prince), 12,021 (Darrin Roger Thomas), 12,042 (Mervyn Edmund), 12,043 (Samuel Winchester), 12,052 (Martin Reid), 12,072 (Rodney Davis), 12,073 (Gangadeen Tahaloo), 12,075 (Noel Seepersad), 12,076 (Wayne Matthews), 12,082 (Alfred Frederick), 12,093 (Natasha De Leon), 12,111 (Vijay Mungroo), 12,112 (Phillip Chotalal), 12,129 (Naresh Boodram and Joey Ramiah), 12,137 (Nigel Mark), 12,140 (Wilberforce Bernard), 12,141 (Steve Mungroo), 12,148 (Peter Benjamin), 12,149 (Krishendath Seepersad), 12,151 (Allan Phillip), 12,152 (Narine Sooklal), 12,153 (Amir Mowlah), 12,156 (Mervyn Parris), and 12,157 (Francis Mansingh), received at its Secretariat between July 1997 and May 1999.

3) Below, the Court provides a chart, which summarizes the allegations made by the Commission in its Applications relating to the rights of the American Convention allegedly violated with respect to each of the alleged victims:

	Alleged Victim	Case No.	Violations alleged
1	Haniff Hilaire	11,816	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 5(6)) Delay (Arts. 1(1), 2, 7(5), 25)
2	George Constantine	11,787	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
3	Wenceslaus James	11,814	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6))
4	Denny Baptiste	11,840	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25)
5	Clarence Charles	11,851	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25)
6	Keiron Thomas	11,853	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Fair Trial (Arts. 1(1),8(2)(d), 8(2)(e))
7	Anthony Garcia	11,855	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Prison Conditions (Arts. 1(1), 5(1), 5(2))
8	Wilson Prince	12,005	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1))

			Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
9	Darrin Roger Thomas	12,021	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
10	Mervyn Edmund	12,042	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
11	Samuel Winchester	12,043	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Prison Conditions (Arts. 1(1), 5(1), 5(2))
12	Martin Reid	12,052	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Fair Trial (Arts. 1(1), 8(2)(c)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
13	Rodney Davis	12,072	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
14	Gangadeen Tahaloo	12,073	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
15	Noel Seepersad	12,075	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
16	Wayne Matthews	12,076	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
17	Alfred Frederick	12,082	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))

18	Natasha De Leon	12,093	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
19	Vijay Mungroo	12,111	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
20	Phillip Chotalal	12,112	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
21	Naresh Boodram	12,129	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Prison Conditions (Arts. 1(1), 5(1), 5(2))
22	Joey Ramiah	12,129	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Prison Conditions (Arts. 1(1), 5(1), 5(2))
23	Nigel Mark	12,137	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
24	Wilberforce Bernard	12,140	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
25	Steve Mungroo	12,141	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
26	Peter Benjamin	12,148	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Fair Trial (Arts. 1(1), 8(1))
27	Krishendath Seepersad	12,149	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2), 5(6))
28	Allan Phillip	12,151	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25)

29	Narine Sooklal	12,152	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 8(2)(d), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2))
30	Amir Mowlah	12,153	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
31	Mervyn Parris	12,156	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2)) Unavailability of Legal Aid for Constitutional Motions (Arts. 1(1), 8, 25)
32	Francis Mansingh	12,157	Mandatory Death Penalty (Arts. 1(1), 4(1), 5(1), 5(2), 8(1)) Prerogative of Mercy (Arts. 1(1), 4(6)) Delay and Fair Trial (Arts. 1(1), 2, 7(5), 8(1), 25) Prison Conditions (Arts. 1(1), 5(1), 5(2), 5(4))

4) The Commission divided its submission of final allegations according to six principal issues in connection with the criminal proceedings of some or all of the alleged victims, as a result of their murder conviction in Trinidad and Tobago. These issues are: the "mandatory nature of the death penalty"; the process for granting amnesty, pardon or commutation of sentence in Trinidad and Tobago; the delays in certain alleged victims' criminal proceedings; the deficiencies in the treatment and conditions of detention of certain alleged victims; the due process violations during some of the alleged victims' pre-trial, trial and appeal phases; and finally, for certain alleged victims, the denial of access to legal aid for the purpose of pursuing domestic remedies for the violations of their rights.

5) Likewise, in its closing arguments the Commission requested that the Court declare the international responsibility of the State of Trinidad and Tobago, by reason of the following:

a) violation of Articles 4(1), 5(1), 5(2) and 8(1), in relation to the violation of Article 1(1), all of the American Convention, by sentencing all the alleged victims [FN3] to a "mandatory death penalty";
b) violation of the rights of Joey Ramiah (Case No. 12,129) protected under Articles 4(1), 5(1) and 5(2) of the Convention, in relation to a violation of Article 1(1) of the same, by executing Joey Ramiah pursuant to a "mandatory death penalty" while his petition to obtain the protection of his rights was pending before the inter-American human rights system;
c) violation of the rights protected under Article 4(6) in relation to Article 1(1) of the Convention, by failing to provide the thirty-two alleged victims [FN4] with an effective right to apply for amnesty, pardon or commutation of sentence;

d) violation of the right to be tried within a reasonable time and the right to a fair trial under Articles 7(5) and 8(1) of the Convention, in relation to Article 1(1), by reason of delays in the criminal proceedings of twenty-four of the alleged victims; [FN5]

e) violation of the rights of twenty-three alleged victims [FN6] under Articles 25, 2 and 1(1) of the Convention for failing to adopt legislative or other measures necessary to make effective the right to be tried within a reasonable time under Articles 7(5) and 8(1) of the Convention;

f) violation of the rights under Article 5(1) and 5(2) of the Convention, in relation to Article 1(1), by reason of the twenty-one alleged victims' [FN7] treatment and conditions of detention during their criminal proceedings;

g) violation of the right of Francis Mansingh (Case No. 12,157) prior to being convicted, to be detained separately from convicted inmates under Articles 5(4) and 1(1) of the Convention, and of Krishendath Seepersad (Case No. 12,149) and Haniff Hilaire (Case No. 11,816) under Articles 5(6) and 1(1) of the Convention, to have as an essential aim of their punishment their reform and social re-adaptation;

h) violation of the rights of Martin Reid (Case No. 12,052) under Articles 8(1), 8(2)(c), and 1(1) of the Convention, and of Peter Benjamin (Case No. 12,148) under Articles 8(1) and 1(1) of the Convention, as a consequence of the defects in the fairness of the trials that led to their convictions;

i) violation of the rights of Keiron Thomas (Case No. 11,853) and Narine Sooklal (Case No. 12,152) under Article 8(1) and 8(2), in relation to the violation of Article 1(1) of the Convention, due to errors committed in their pre-trial and appeal proceedings; and

j) violation of the rights of eleven of the alleged victims [FN8] under Articles 8 and 25 of the Convention, in relation to Article 1(1) of the same, by failing to provide effective legal aid for the purpose of pursuing constitutional motions to protect their rights.

[FN3] The 32 alleged victims are: Haniff Hilaire (Case No. 11,816), George Constantine (Case No. 11,787), Wenceslaus James (Case No. 11,814), Denny Baptiste (Case No. 11,840), Clarence Charles (Case No. 11,851), Keiron Thomas (Case No. 11,853), Anthony Garcia (Case No. 11,855), Wilson Prince (Case No. 12,005), Darrin Roger Thomas (Case No. 12,021), Mervyn Edmund (Case No. 12,042), Samuel Winchester (Case No. 12,043), Martin Reid (Case No. 12,052), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Natasha De Leon (Case No. 12,093), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Naresh Boodram (Case No. 12,129), Joey Ramiah (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Peter Benjamin (Case No. 12,148), Krishendath Seepersad (Case No. 12,149), Allan Phillip (Case No. 12,151), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).

[FN4] Supra note 3.

[FN5] The twenty-four alleged victims are: Haniff Hilaire (Case No. 11,816), George Constantine (Case No. 11,787), Denny Baptiste (Case No. 11,840), Clarence Charles (Case No. 11,851), Wilson Prince (Case No. 12,005), Darrin Roger Thomas (Case No. 12,021), Mervyn Edmund (Case No. 12,042), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Natasha De Leon (Case No. 12,093), Vijay Mungroo (Case No.

12,111), Phillip Chotalal (Case No. 12,112), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Allan Phillip (Case No. 12,151), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).
[FN6] The twenty-three alleged victims are: George Constantine (Case No. 11,787), Denny Baptiste (Case No. 11,840), Clarence Charles (Case No. 11,851), Wilson Prince (Case No. 12,005), Darrin Roger Thomas (Case No. 12,021), Mervyn Edmund (Case No. 12,042), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Natasha De Leon (Case No. 12,093), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Allan Phillip (Case No. 12,151), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).
[FN7] The twenty-one alleged victims are: Keiron Thomas (Case No. 11,853), Anthony Garcia (Case No. 11,855), Darrin Roger Thomas (Case No. 12,021), Samuel Winchester (Case No. 12,043), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Naresh Boodram and Joey Ramiah (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).
[FN8] The eleven alleged victims are: George Constantine (Case No. 11,787), Wilson Prince (Case No. 12,005), Mervyn Edmund (Case No. 12,042), Martin Reid (Case No. 12,052), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Natasha De Leon (Case No. 12,093), Phillip Chotalal (Case No. 12,112), Wilberforce Bernard (Case No. 12,140), Amir Mowlah (Case No. 12,153), and Mervyn Parris (Case No. 12,156).
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6) In its final written submissions on the merits and eventual reparations, the Commission reiterated its request for a declaration of the international responsibility of the State for the alleged violations mentioned in the previous paragraph and requested that the Court order the following "other forms of reparation":

i) that Trinidad and Tobago commute the death sentences of twenty-eight of the alleged victims, [FN9] and verify that the death sentence of Wayne Matthews (Case No. 12,076) has been effectively commuted as previously undertaken by the State;
ii) that Trinidad and Tobago grant Martin Reid (Case No. 12,052) and Peter Benjamin (Case No. 12,148) effective remedies to refer their cases to the Court of Appeal, in order that their convictions may be reviewed in full accordance with due process guarantees;
iii) that Trinidad and Tobago provide adequate compensation to the next of kin of Joey Ramiah (Case No. 12,129) by reason of his execution on June 4, 1999;
iv) that the State adopt such legislative or other measures as may be necessary to ensure respect for the Convention's guarantees when imposing the death penalty: an effective right to apply for amnesty, pardon or commutation of sentence; respect for the minimum standards

governing the humane treatment of prisoners; the right to be tried within a reasonable time; the right to fair trial guarantees; and the right to judicial protection; and

v) that Trinidad and Tobago pay reasonable compensation to the representatives of the alleged victims (hereinafter "the representatives of the alleged victims" or "the representatives") for the expenses generated by presenting and processing the case before the Inter-American Court.

[FN9] The twenty-eight cases refer to: Haniff Hilaire (Case No. 11,816), George Constantine (Case No. 11,787), Wenceslaus James (Case No. 11,814), Denny Baptiste (Case No. 11,840), Clarence Charles (Case No. 11,851), Keiron Thomas (Case No. 11,853), Anthony Garcia (Case No. 11,855), Wilson Prince (Case No. 12,005), Darrin Roger Thomas (Case No. 12,021), Mervyn Edmund (Case No. 12,042), Samuel Winchester (Case No. 12,043), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Alfred Frederick (Case No. 12,082), Natasha De Leon (Case No. 12,093), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Naresh Boodram (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Allan Phillip (Case No. 12,151), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).

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7) Finally, both in its Application and its written submission on final allegations, the Commission requested that the State be ordered to pay the costs of the proceedings.

Representatives of the Alleged Victims

8) In their final written submissions, the representatives of the alleged victims argued that the State has failed to respect the rights and freedoms recognised under the American Convention of the persons included in the present Case. In general terms, the aforementioned representatives grouped their claims as follows: a) "mandatory death penalty"; b) classification of degrees of criminal culpability; c) individualised sentencing; d) commutation or mercy procedure; e) delay in the processing of the cases; f) prison conditions; and g) due process guarantees.

9) The representatives also stated that they agreed with the Commission’s pleadings and requested that in the case of Joey Ramiah (supra para. 5(b)), the Court declare a gross violation of his rights and order just and appropriate compensation to his next of kin.

10) In relation to eventual reparations, the representatives of the alleged victims primarily seek commutation of the death sentences due to the "mandatory" nature of its imposition and/or the "mandatory" nature of its imposition together with other breaches of the American Convention, such as the State’s delay in bringing the alleged victims to trial and the "appalling" pre and post-conviction detention conditions to which they have been subjected.

11) As a basis for their claims, both the representatives of the alleged victims and the Commission alleged a series of acts and omissions of the State of Trinidad and Tobago, that the Court will address and assess the probative evidentiary value thereof.

II. JURISDICTION OF THE COURT

12) Trinidad and Tobago deposited its instrument of ratification of the American Convention on May 28, 1991. On that same day, the State recognised the compulsory jurisdiction of the Court.

13) On May 26, 1998, Trinidad and Tobago denounced the Convention and the denunciation became effective one year later, as of May 26, 1999, pursuant to Article 78 of the Convention. The facts referred to in the present Case occurred before the State's denunciation took effect.

14) The State of Trinidad and Tobago challenged the Court's jurisdiction to hear the present Case by way of the submission of a preliminary objection in the Hilaire, Constantine et al., and Benjamin et al. Cases, which were being processed separately at that time (infra para. 37). This preliminary objection was dismissed by the Court in its judgments of September 1, 2001 (infra para. 40).

15) In this way, the Court held in its judgments on preliminary objections that:

[…] Trinidad and Tobago cannot prevail in the limitation included in its instrument of acceptance of the optional clause of the mandatory jurisdiction of the Inter-American Court of Human Rights in virtue of what has been established in Article 62 of the American Convention, because this limitation is incompatible with the object and purpose of the Convention. [FN10]

[FN10] I/A Court H.R., Hilaire Case. Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, para. 98; I/A Court H.R., Benjamin et al. Case. Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, para. 89; and I/A Court H.R., Constantine et al. Case. Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, para. 89.

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16) Notwithstanding the fact that the Inter-American Court is fully competent to hear the present Case, as it indicated in the judgments on preliminary objections mentioned above (supra para. 14), the State of Trinidad and Tobago refused to recognise the jurisdiction of this Tribunal to continue processing this case. Accordingly, on February 8, 2002, the State announced that it would not attend the public hearing convened by the Court (infra paras. 47 and 49) and indicated the following:

The Government of the Republic of Trinidad and Tobago must decline the invitation of the Court to participate at the public hearing and the preliminary meeting to be held on 20-21 February, 2002 […] In taking this decision the Government of Trinidad and Tobago does not intend any discourtesy towards the Court or its distinguished and learned President. It reflects the belief of the State that, in the absence of any special agreement by the Republic of Trinidad and Tobago

recognising the jurisdiction of the Court in this matter, the Inter-American Court of Human Rights has no jurisdiction in respect of these cases.

17) The Inter-American Court does not agree with the reason given by the State for not appearing before this Tribunal and for not participating in the proceedings (infra paras. 38, 46, 49, 53 and 83); as it has been well established in this case, the Court, as with any other international organ with jurisdictional functions, has the inherent authority to determine the scope of its own competence (compétence de la compétence/Kompetenz-Kompetez). [FN11]

[FN11] Cf. I/A Court H.R., Hilaire Case. Preliminary Objections, supra note 10, para. 78; I/A Court H.R., Benjamin et al. Case. Preliminary Objections, supra note 10, para. 69; and I/A Court H.R., Constantine et al. Case. Preliminary Objections, supra note 10, para. 69.

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18) As this Tribunal has indicated in its judgments on jurisdiction in the Constitutional Court and Ivcher Bronstein Cases,

[t]he jurisdiction of the Court cannot be contingent upon events extraneous to its own actions. The instruments consenting to the optional clause concerning recognition of the Court's binding jurisdiction (Article 62(1) of the Convention) presuppose that the States submitting them accept the Court's right to settle any controversy relative to its jurisdiction. An objection or any other action taken by the State for the purpose of somehow affecting the Court's jurisdiction has no consequence whatever, as the Court retains the compétence de la compétence, as it is master of its own jurisdiction. [FN12]

[FN12] I/A Court H.R., Constitutional Court Case. Competence. Judgment of September 24, 1999. Series C No. 55, para. 33; and I/A Court H.R., Ivcher Bronstein Case. Competence. Judgment of September 24, 1999. Series C No. 54, para. 34.

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19) Likewise, the Inter-American Court reiterates that when interpreting the American Convention in accordance with the general rules of treaty interpretation enshrined in Article 31(1) of the United Nations Convention on the Law of Treaties (hereinafter "the Vienna Convention"), and considering the object and purpose of the American Convention, the Tribunal, in the exercise of the authority conferred on it by Article 62(3) of the Convention, must act in a manner that preserves the integrity of the provisions of Article 62(1) of the Convention. It would be unacceptable to subordinate these provisions to restrictions that would render inoperative the Court's jurisdictional role, and consequently, the human rights protection system established in the Convention. [FN13] The Court has the inherent authority consistent with the imperative of judicial certainty to determine the scope of its own jurisdiction.

[FN13] Cf. I/A Court H.R., Hilaire Case. Preliminary Objections, supra note 10, paras. 82 and 84; I/A Court H.R., Benjamin et al. Case. Preliminary Objections, supra note 10, paras. 73 and

75; and I/A Court H.R., Constantine et al. Case. Preliminary Objections, supra note 10, paras. 73 and 75.

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20) Given that the arguments submitted by Trinidad and Tobago in the Hilaire, Constantine et al. and Benjamin et al. Cases, with respect to the jurisdiction of this Tribunal to hear each case, were already resolved by the Court at the appropriate procedural stage [FN14] (infra para. 40), and that the facts alleged in the Applications submitted in the present Case pre-date the entry into force of the State's denunciation (supra para. 13), and taking into account the considerations set out in the preceding paragraphs, the Court reaffirms that it is fully competent according to the terms of Articles 62(3) and 78(2) of the Convention, to hear the present Case and render judgment.

[FN14] Cf. I/A Court H.R., Hilaire Case. Preliminary Objections, supra note 10; I/A Court H.R., Benjamin et al. Case. Preliminary Objections, supra note 10; and I/A Court H.R., Constantine et al. Case. Preliminary Objections, supra note 10.

III. PROCEEDINGS BEFORE THE COMMISSION

21) Between July 1997 and May 1999, the Commission received the 31 petitions that comprise the present Case from several British firms of Solicitors (supra para. 2). The Commission began to examine the facts set forth in the petitions on various dates between August 1997 and June 1999, and subsequently opened the cases and remitted the pertinent parts of the petitions to the State with a request for its observations.

22) The Commission received responses from the State in relation to certain cases [FN15] on various dates between December 1997 and September 1999. The responses, replies and rejoinders received were duly transmitted to the relevant parties.

[FN15] The cases in which the State provided a response are: 11,816 (Haniff Hilaire), 11,787 (George Constantine), 11,814 (Wenceslaus James), 11,840 (Denny Baptiste), 11,851 (Clarence Charles), 11,853 (Keiron Thomas), 11,855 (Anthony Garcia), 12,005 (Wilson Prince), 12,042 (Mervyn Edmund), 12,052 (Martin Reid), 12,072 (Rodney Davis), 12,073 (Gangadeen Tahaloo), 12,075 (Noel Seepersad), 12,082 (Alfred Frederick), 12,093 (Natasha De Leon), 12,111 (Vijay Mungroo), 12,112 (Phillip Chotalal), 12,129 (Naresh Boodram and Joey Ramiah), 12,137 (Nigel Mark), 12,140 (Wilberforce Bernard), 12,149 (Krishendath Seepersad), and 12,151 (Allan Phillip). The cases in which the State did not provide any response are: 12,021 (Darrin Roger Thomas), 12,043 (Samuel Winchester), 12,076 (Wayne Matthews), 12,141 (Steve Mungroo), 12,148 (Peter Benjamin), 12,152 (Narine Sooklal), 12,153 (Amir Mowlah), 12,156 (Mervyn Parris) and 12,157 (Francis Mansingh).

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23) On April 21, 1999, the Commission adopted Report No. 66/99 on the merits in the Hilaire Case, which it transmitted to the State on April 26, 1999. On May 18, 1999, the State sent the Commission its response to said Report, and on May 23, 1999, the Inter-American Commission, pursuant to Article 51 of the American Convention, decided to refer the case to the Court.

24) On November 19, 1999, the Commission adopted Report No. 128/99, in connection with the twenty-three cases that comprise the Constantine et al. Case. [FN16] This Report was transmitted to the State on November 22, 1999. On January 22, 2000, the State sent its response to the Report, and on February 22, 2000, the Inter-American Commission, pursuant to Article 51 of the Convention, decided to refer the case to the Court.

[FN16] The twenty-three cases are the following: 11,787 (George Constantine), 11,814 (Wenceslaus James), 11,840 (Denny Baptiste), 11,851 (Clarence Charles), 11,853 (Keiron Thomas), 11,855 (Anthony Garcia), 12,005 (Wilson Prince), 12,021 (Darrin Roger Thomas), 12,042 (Mervyn Edmund), 12,043 (Samuel Winchester), 12,052 (Martin Reid), 12,072 (Rodney Davis), 12,073 (Gangadeen Tahaloo), 12,075 (Noel Seepersad), 12,076 (Wayne Matthews), 12,082 (Alfred Frederick), 12,093 (Natasha De Leon), 12,111 (Vijay Mungroo), 12,112 (Phillip Chotalal), 12,129 (Naresh Boodram and Joey Ramiah), 12,137 (Nigel Mark), 12,140 (Wilberforce Bernard), and 12,141 (Steve Mungroo).

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25) On June 13, 2000, the Commission adopted Report No. 53/00 in connection with the seven cases that comprise the Benjamin et al. Case, [FN17] and transmitted it to the State on July 5 of the same year. The State did not provide the Commission with a response, nor did it provide any information relating to any measures it might have taken to comply with the Commission's recommendations. On October 4, 2000, the Inter-American Commission, pursuant to Article 51 of the Convention, decided to refer the case to the Court.

[FN17] The seven cases are: 12,148 (Peter Benjamin), 12,149 (Krishendath Seepersad), 12,151 (Allan Phillip), 12,152 (Narine Sooklal), 12,153 (Amir Mowlah), 12,156 (Mervyn Parris), and 12,157 (Francis Mansingh).

IV. PROVISIONAL MEASURES

26) On May 22, 1998, the Commission requested that the Court adopt provisional measures to preserve the life and physical integrity of Wenceslaus James and Anthony Garcia, among others, [FN18] who were being detained awaiting execution in Trinidad and Tobago. This request was based on the ground that executing these persons before the Commission had an opportunity to examine their petitions would cause them irreparable harm and render moot the Commission's eventual decisions in the matter.

[FN18] The remaining persons mentioned by the Commission in its request (Anthony Briggs, Anderson Noel and Christopher Bethel) are not included in the Applications comprising the present Case.

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27) By Order of May 27, 1998, the President of the Court (hereinafter "the President") ordered the adoption of urgent measures in what was later named the James et al. matter, and on June 14 of the same year, the Court ratified the President's decision, issued the provisional measures requested and summoned the parties to a public hearing to be held on August 28, 1998. The hearing was held on the date indicated and the State did not appear.

28) On August 29, 1998, the Court expanded the provisional measures in the James et al. matter to include: Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste. [FN19]

[FN19] On June 26, July 10, and July 21, 1998, the Commission requested that the Court expand the provisional measures ordered in the James et al. matter to include Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste, respectively. The Commission considered that the circumstances of these persons were similar to those of the other inmates for whom the Court had already ordered provisional measures, and added that their execution was imminent, and therefore they were particularly vulnerable to irreparable harm.
On June 29, July 13, and July 22, 1998, the President of the Court ordered the State, inter alia, to take all measures necessary to preserve the lives of Darrin Roger Thomas, Haniff Hilaire, and Denny Baptiste, respectively, so that the Court could examine the merit of the Commission's request.

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29) On May 25, 1999, the Court ordered the expansion of the aforementioned provisional measures to include: Wilberforce Bernard, Naresh Boodram, Joey Ramiah, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangadeen Tahaloo, Keiron Thomas, and Samuel Winchester. [FN20]

[FN20] By means of a communication dated May 3, 1999, received in the Secretariat of the Court on the 7th of the same month and year, the Commission requested that the Court amplify the provisional measures ordered in the matter of James et al. to include twenty additional persons. The Commission's arguments were identical to those made in its earlier requests for amplification (supra note 19). On May 11, 1999, the President of the Court ordered the State, inter alia, to take all measures necessary to preserve the lives of the alleged victims, so that the Court could examine the merit of the Commission's request.

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30) On May 27, 1999, the Court ordered the State, inter alia, to take all measures necessary to preserve the lives of Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, and

Amir Mowlah, among others, so as not to impede the processing of their cases before the inter-American system. [FN21]

[FN21] On May 25, 1999, the Commission requested that the Court expand the provisional measures in the matter of James et al. to include eight more persons, three of whom are not included in the Applications of the present Case (Kevin Dial, Andrew Dottin, and Anthony Johnson). The Commission considered that the execution of these eight persons was imminent and that they were therefore vulnerable to irreparable harm and that their circumstances were similar to those of the inmates for which the Court had already ordered provisional measures.

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31) On September 25, 1999, the Court ordered, as in the previous cases (supra paras. 28-30) the amplification of the provisional measures and directed the State, inter alia, to take all measures necessary to preserve the lives of Mervyn Parris and Francis Mansingh. [FN22]

[FN22] On June 18, 1999, the Commission transmitted to the Court a request to further expand the provisional measures issued by the Court in the James et al. matter, to include Mervyn Parris and Francis Mansingh. The Commission considered that the circumstances were similar to those of the other inmates for whom the existing Order for provisional measures applied in Trinidad and Tobago, that the executions of these two persons were imminent and that they were therefore vulnerable to irreparable harm. On June 19, 1999, the President of the Court decided to expand the provisional measures in the James et al. matter to include Mervyn Parris and Francis Mansingh.

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32) Despite the Court's requests on multiple occasions that the State provide information in relation to the provisional measures, [FN23] Trinidad and Tobago has failed to submit any information regarding the situation of the alleged victims.

[FN23] Cf. Orders of the President of the Court and of the Inter-American Court dated: May 27, June 14, June 29, July 13, July 22 and August 29, 1998; May 11, May 25, May 27, June 19, and September 25, 1999; August 16 and November 24, 2000; October 25, and November 26, 2001.

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33) On June 4, 1999, Trinidad and Tobago executed Joey Ramiah, who was among those protected by the provisional measures ordered by this Court (supra paras. 5(b) and 6(iii), infra paras. 190-200).

V. PROCEEDINGS BEFORE THE COURT

34) The Applications in the Hilaire, Constantine et al. and Benjamin et al. Cases were submitted by the Commission on May 25, 1999, February 22, 2000, and October 5, 2000, respectively (supra para. 1).

35) In the three Applications, the Commission appointed as delegates, Messrs. Robert K. Goldman and Nicholas Blake, and solely for the Hilaire Case, also included Mr. Jean Joseph Exumé. Likewise, the Commission accredited Messrs. David J. Padilla and Brian D. Tittemore as legal advisors for all three cases. In the Hilaire Case, the Commission designated Messrs. Peter Carter, Owen Davies, and Andrea Dahlberg as legal assistants; in the Constantine et al. and Benjamin et al. Cases, it designated as assistants Messrs. Julian Knowles, Keir Starmer, Saul Lehrfreund, Belinda Moffat, Yasmin Waljee and James Oury, and in the Benjamin et al. Case, it also designated Mr. Ivan Krolick (infra para. 41).

36) Following a preliminary examination of the Applications in the Hilaire, Constantine et al., and Benjamin et al. Cases, the Secretariat of the Court (hereinafter "the Secretariat"), sent notifications to the State on June 11, 1999, April 14, 2000, and October 19, 2000, respectively. These notifications set out the deadlines for the State's responses, submission of preliminary objections and appointment of representation. The State was also invited to designate an ad hoc judge in each case pursuant to Article 18 of the current Rules of Procedure, and Article 10(3) of the Statute of the Court (hereinafter "the Statute").

37) On August 16, 1999, June 14, 2000, and December 9, 2000, respectively, Trinidad and Tobago submitted a preliminary objection to the compulsory jurisdiction of the Court in the Hilaire, [FN24] Constantine et al., and Benjamin et al. Cases.

[FN24] The preliminary objection in the Hilaire Case was submitted on August 16, 1999; however, with its submission, the State requested a two-month extension to file its legal arguments. It also requested the Court to convene a special hearing on the preliminary objection in accordance with Article 36(6) of the Rules of Procedure and to postpone the proceedings on the merits until the Court issued a decision in relation to the preliminary objection. Said request was rejected by the Court via an Order dated October 1, 1999.

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38) It should be noted that throughout the proceedings before the Court, the State did not respond to the Applications, appoint representatives or designate an ad hoc judge.

39) The Commission delivered its observations on the preliminary objections submitted by the State on November 19, 1999 for the Hilaire Case, on July 15, 2000 for the Constantine et al. Case, and on January 11, 2001 for the Benjamin et al. Case.

40) On September 1, 2001, during its LII Regular Period of Sessions, the Court deliberated and rendered judgment on the preliminary objections submitted in each of the three cases. [FN25]

[FN25] Cf. I/A Court H.R., Hilaire Case. Preliminary Objections, supra note 10; I/A Court H.R., Benjamin et al. Case. Preliminary Objections, supra note 10; and I/A Court H.R., Constantine et al. Case. Preliminary Objections, supra note 10.

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41) By way of communications dated May 31, 2000, and November 2, 2001, the representatives of the alleged victims reported their designation of Mrs. Yasmin Waljee as the sole representative in the present Case.

42) On November 16, 2001, the Secretariat, as instructed by the President of the Court, and pursuant to Article 44 of its Rules of Procedure, requested that the Inter-American Commission and the representatives of the alleged victims submit arguments concerning reparations, costs and expenses, to be considered in the event that the Court should find violations of the Convention in the three cases.

43) On November 30, 2001, the Court ordered the joinder of the Hilaire, Constantine et al. and Benjamin et al. Cases and their respective proceedings and stated that the now consolidated Case would henceforth be referred to as the Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case. [FN26]

[FN26] Supra note 2.

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44) On December 14, 2001, the Inter-American Commission submitted its pleadings on eventual reparations in the recently joined case and provided the Court with its final list of expert witnesses who would participate in an eventual public hearing on the case. [FN27]

[FN27] The following persons were proposed by the Commission as expert witnesses for the public hearing: Desmond Allum, Gaietry Pargass and Nigel Eastman. Likewise, it offered written expert reports from Vivien Stern and Andrew Coyle, Scharlette Holdman and Thomas Warlow.

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45) On December 17, 2001, the representatives of the alleged victims submitted their arguments on eventual reparations.

46) On December 28, 2001, the Court requested comments from the State on the pleadings submitted by the Commission and by the representatives of the alleged victims within thirty days from the date of receipt of the communication. These observations were never submitted by the State.

47) On January 18, 2002, the President of the Court issued an Order convening the parties to a public hearing on the merits and eventual reparations in the Hilaire, Constantine and Benjamin et al. Case.

48) On January 22, 2002, the Court received the written reports of experts Desmond Allum (infra para. 77(a)), Gaietry Pargass (infra para. 77(c)), and Vivien Stern and Andrew Coyle (infra

para. 76(b)). Likewise, on January 23, 2002, the Court received the expert report of Scharlette Holdman (infra para. 76(c)).

49) On February 8, 2002, the State informed that it would not attend the public hearing convened by the Court (supra para. 16).

50) On February 11, 2002, the Court received the written expert report of Nigel Eastman (infra para. 77(b)).

51) On February 19, 2002, Messrs. Vaughan Lowe and Guy Goodwin-Gill jointly submitted an amicus curiae brief.

52) On February 20 and 21, 2002, at a public hearing, the Court heard the testimony of the three expert witnesses called by the Inter-American Commission, as well as the final arguments on the merits and eventual reparations from the Commission and the representatives of the alleged victims.

Appearing before the Court:

for the alleged victims:

Julian Knowles, representative;
Keir Starmer, representative;
Yasmin Waljee, representative;
Parvais Jabber, representative;
Julie Morris, representative;

for the Inter-American Commission on Human Rights:

Robert Goldman, delegate;
Nicholas Blake, delegate;
Brian Tittemore, advisor; and

expert witnesses offered by the Inter-American Commission on Human Rights:

Desmond Allum;
Nigel Eastman; and
Gaietry Pargass.

53) As previously indicated (supra paras. 16 and 49), the State did not appear in the public hearing. The hearing was held pursuant to Article 27 of the Court's Rules of Procedure, which was read by the President at the beginning of the hearing and states the following:

Article 27. Default Procedure
1. When a party fails to appear in or continue with a case, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case.

2. When a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that stage.

54) During the public hearing, the Commission provided additional documentation. [FN28] This documentation was sent to the State and to the representatives of the alleged victims on March 4, 2002.

[FN28] The Inter-American Commission on Human Rights submitted the following documents: Summary of Individual Petitioners; Procurator Fiscal, Linlithgow v. John Watson and Paul Burrows, Judgment of the Lords of the Judicial Committee of the Privy Council, delivered the 29th January 2002; and Mithu v. State of Punjab, Supreme Court Report: V.Y. Chandrachud, C.J., S. Murtaza Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy and A. Varadarajan, JJ.

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55) On February 21, 2002, the Court requested that the parties send their final written submissions on the merits and eventual reparations in the present Case.

56) On March 15, 2002, the Inter-American Commission submitted copies of various judgments issued by the Judicial Committee of the Privy Council [FN29] dated March 11, 2002. [FN30]

[FN29] The Judicial Committee of the Privy Council is the court of last resort for those Commonwealth countries that have chosen to retain it, as is the case with Trinidad and Tobago.
[FN30] Cf. Patrick Reyes v. The Queen, Privy Council Appeal No. 64 of 2001, Judgment of March 11, 2002; The Queen v. Peter Hughes, Privy Council Appeal No. 91 of 2001, Judgment of March 11, 2002; and Berthill Fox v. The Queen, Privy Council Appeal No. 66 of 2000, Judgment of March 11, 2002.

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57) On March 22, 2002, the Commission and the representatives of the alleged victims presented their final written submissions separately.

58) On April 8, 2002, the Court requested clarification of the dates of arrest and conviction, as well as additional information from the Inter-American Commission and the representatives of the alleged victims in relation to the 32 alleged victims in the present Case.

59) On April 17 and April 19, 2002, respectively, the representatives of the alleged victims and the Commission submitted explanatory notes containing the clarifications requested by the Court (supra para. 58).

VI. FACTS SET FORTH

60) The Commission alleged that all of the alleged victims (supra para. 2) were tried and convicted of murder in Trinidad and Tobago pursuant to the Offences Against the Person Act,

[FN31] and that they were also sentenced to death by hanging. Below, the Court presents a summary of the legal proceedings that led to each conviction:

a) Haniff Hilaire (Case No. 11,816) was charged, along with his co-defendants Denny Baptiste and Indravani Ramjattan, with the murder of Alexander Jordan, which occurred between February 12 and 13, 1991. Haniff Hilaire was arrested on February 14, of the same year, and was tried, convicted, and sentenced to death on May 29, 1995. The same day, he applied for leave to appeal to the Court of Appeal of Trinidad and Tobago and on March 10, 1997, his appeal was dismissed. On October 30, 1997, Haniff Hilaire filed a petition for special leave to appeal to the Judicial Committee of the Privy Council and on November 6, 1997, said petition was dismissed. [FN32]

b) George Constantine (Case No. 11,787) was charged with the December 1991 murder of his mother, Elsa Constantine. George Constantine was arrested on December 25, 1991, and was tried, convicted, and sentenced to death on February 17, 1995. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 1, 1996. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on July 29, 1997. [FN33]

c) Wenceslaus James (Case No. 11,814) was charged together with his co-defendant Anthony Briggs with the August 5, 1992 murder of Siewdath Ramkissoon. Wenceslaus James was arrested on August 21, 1992, and was tried, convicted, and sentenced to death on June 21, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on March 6, 1997. James then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on October 2, 1997. [FN34]

d) Denny Baptiste (Case No. 11,840) was charged, together with his co-defendants Haniff Hilaire (supra para. 60(a)) and Indravani Ramjattan, with the murder of Alexander Jordan, which occurred between February 12 and 13, 1991. Denny Baptiste was arrested on February 16, 1991, and was tried, convicted, and sentenced to death on May 29, 1995. He appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on March 10, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal his conviction, and the his petition was dismissed on November 7, 1997. [FN35]

e) Clarence Charles (Case No. 11,851) was charged with the April 26, 1986 murder of Roger Charles. Clarence Charles was arrested on June 5, 1986, and was tried, convicted, and sentenced to death and on March 16, 1989. On December 8, 1993, he successfully appealed against his conviction. His re-trial commenced on April 4, 1995. On April 19, 1995, Clarence Charles was again convicted of murder and sentenced to death. Clarence Charles again appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 5, 1996. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal his conviction, and his petition was dismissed on December 4, 1997. [FN36]

f) Keiron Thomas (Case No. 11,853) was charged with the August 7, 1991 murder of Wayne Gerry Williams. He was arrested on August 9, 1991, and was tried, convicted and sentenced to death on July 27, 1994. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on May 9, 1996. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on November 6, 1997. [FN37]

g) Anthony Garcia (Case No. 11,855) was charged with murder of Cyril Roberts. He was arrested on September 14, 1994, and was tried, convicted and sentenced to death on October 30, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on May 22, 1997. Anthony Garcia then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and the his petition was dismissed on December 4, 1997. [FN38]

h) Wilson Prince (Case No. 12,005) was charged with the November 6, 1993 murder of Ida Sebastien Richardson. He was arrested on December 24, 1993, and was tried, convicted and sentenced to death on November 25, 1996. He appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on October 14, 1997. Wilson Prince then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and the his petition was dismissed on March 11, 1998. [FN39]

i) Darrin Roger Thomas (Case No. 12,021) was charged together with his common law wife Natasha De Leon (infra para. 60(r)) with the murder of Chandranath Maharaj, which took place between February 6 and 12 of 1993. He was arrested on March 12, 1993, and was tried, convicted, and sentenced to death on November 9, 1995. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on June 20, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on March 11, 1998. [FN40]

[FN31] Cf. Offences Against the Person Act of Trinidad and Tobago (April 3, 1925). Legislation of Trinidad and Tobago, section 4 in the following files archived in the Secretariat of the Court: "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 9, Vol. II, pp. 766-769; "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission,"Exhibit 24, Vol. VII, pp. 3784-3787; and "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 8, Vol. IV, pp. 1242-1257.

[FN32] Cf. "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibits 1-5, Vols. I and II, pp. 1-709.

[FN33] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 1(a), 1(b) and 1(c), Vol. I, pp. 10-40.

[FN34] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 2(a), 2(b) and 2(c), Vol. I, pp. 160-240.

[FN35] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 3(a), 3(b) and 3(c), Vol. I, pp. 349-427.

[FN36] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 4(a), 4(b) and 4(c), Vol. I, pp. 433-466.

[FN37] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 5(a), 5(b) and 5(c), Vol. II, pp. 517-652.

[FN38] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 6(a), 6(b) and 6(c), Vol. II, pp. 733-777.

[FN39] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 7(a), 7(b) and 7(c), Vol. II, pp. 799-868.

[FN40] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 8(a), 8(b) and 8(c), Vol. II, pp. 938-1124.

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j) Mervyn Edmund (Case No. 12,042) was charged with the December 28, 1987 murder of Minerva Sampson. He was arrested on December 30, 1987, and was tried, convicted and sentenced to death on December 10, 1990. He subsequently successfully appealed his conviction to the Trinidad and Tobago Court of Appeal, which ordered a new trial. He was tried for a second time on March 14, 1995, and on March 21, 1995 was again convicted of murder and sentenced to death. He appealed his second conviction and his appeal was dismissed on September 17, 1996. Finally he petitioned the Judicial Committee of the Privy Council for special leave to appeal from the Court of Appeal's decision, and his petition was dismissed on July 16, 1998. [FN41]

k) Samuel Winchester (Case No. 12,043) was charged with the September 15, 1995 murder of Esma Darlington. He was arrested on September 23, 1995, and was tried, convicted and sentenced to death on March 4, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on October 22, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on June 4, 1998. [FN42]

l) Martin Reid (Case No. 12,052) was charged with the April 13, 1994 murder of Fabrina Alleyne. He was arrested on June 13, 1994, and was tried, convicted and sentenced to death on November 15, 1995. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 27, 1996. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on July 30, 1998. [FN43]

m) Rodney Davis (Case No. 12,072) was charged with the March 20, 1992 murder of Nicole Bristol. He voluntarily turned himself in to the police on March 26, 1992, and was tried, convicted and sentenced to death on January 31, 1997. He subsequently applied for leave to appeal against his conviction to the Trinidad and Tobago Court of Appeal, and his application was dismissed on December 2, 1997. Rodney Davis then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on November 2, 1998. [FN44]

n) Gangadeen Tahaloo (Case No. 12,073) was charged with the November 10, 1991 murder of his wife, Janetta Peters. He was arrested on November 10, 1991, and was tried, convicted and sentenced to death on May 26, 1995. He successfully appealed to the Trinidad and Tobago Court of Appeal and a new trial was ordered. On November 19, 1997, he was again convicted of murder and sentenced to death. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on February 4, 1998. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on November 2, 1998. [FN45]

o) Noel Seepersad (Case No. 12,075) and his co-defendant Chuck Attin were charged with the July 11, 1994 murders of Candace Scott and Karen Sa Gomes. Noel Seepersad was arrested on July 11, 1994, and was tried, convicted and sentenced to death on February 7, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 25, 1997. He petitioned the Judicial Committee of the Privy

Council for special leave to appeal the Court of Appeal's decision, and the his petition was dismissed on December 10, 1998. [FN46]

p) Wayne Matthews (Case No. 12,076) was charged with the murder of Norris Yorke, which took place between February 3 and 4, 1987. He was arrested on February 6, 1987, and was tried, convicted and sentenced to death on November 16, 1988. He successfully appealed his conviction to the Trinidad and Tobago Court of Appeal, which ordered a re-trial. On October 29, 1993, Wayne Matthews was again convicted of murder and sentenced to death. He appealed his second conviction to the Trinidad and Tobago Court of Appeal, and his appeal was denied on January 25, 1996. Wayne Matthews then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on November 26, 1998. [FN47]

q) Alfred Frederick (Case No. 12,082) was charged with the murder of Rahiman Gopaul, which occurred sometime between January 11 and 14, 1991. He was arrested on January 17, 1991, and was tried, convicted and sentenced to death on September 29, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was rejected on March 31, 1998. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on December 17, 1998. [FN48]

r) Natasha De Leon (Case No. 12,093) was charged, together with her common law husband Darrin Roger Thomas (supra para. 60(i)), with the murder of Chandranath Maharaj, which took place between February 6 and 12, 1993.She was arrested on March 10, 1993, and was tried, convicted and sentenced to death on November 9, 1995. She subsequently appealed her conviction to the Trinidad and Tobago Court of Appeal, and her appeal was dismissed on June 20, 1997. She sought special leave to appeal the Court of Appeal's decision and on March 11, 1998, the Privy Council accepted her petition and remitted the case back to the Trinidad and Tobago Court of Appeal. On September 23, 1998 the Court of Appeal dismissed the victim's remitted appeal. [FN49]

s) Vijay Mungroo (Case No. 12,111) was charged together with his co-defendants Steve Mungroo (infra para. 60(x)) and Phillip Chotalal (infra para. 60(t)) with the January 10, 1990 murder of Edmund Mitchell. He was arrested on January 24, 1990, and was tried, convicted and sentenced to death on December 13, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 28, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal, and his petition was dismissed on February 2, 1999. [FN50]

[FN41] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 9(a), 9(b) and 9(c), Vol. III, pp. 1231-1400.

[FN42] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 10(a), 10(b) and 10(c), Vol. III, pp. 1490-1528.

[FN43] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 11(a), 11(b) and 11(c), Vol. III, pp. 1589-1731.

[FN44] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 12(a), 12(b) and 12(c), Vol. IV, pp. 1926-1967.

[FN45] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 13(a), 13(b) and 13(c), Vol. IV, pp. 2036-2062.

[FN46] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 14(a), 14(b) and 14(c), Vol. IV, pp. 2135-2422.
[FN47] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 15(a), 15(b) and 15(c), Vol. V, pp. 2500-2576.
[FN48] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 16(a), 16(b) and 16(c), Vol. V, pp. 2643-2692.
[FN49] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 8(a), 8(b) and 8(c), supra note 40.
[FN50] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 18(a), 18(b) and 18(c), Vol. V, pp. 2779-3171.
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t) Phillip Chotalal (Case No. 12,112) was charged together with his co-defendants Steve Mungroo (infra para. 60(x)) and Vijay Mungroo (supra para. 60(s)) with the January 10, 1990 murder of Edmund Mitchell. He was arrested on January 11, 1990, was tried and convicted on December 13, 1996, and was sentenced to death on December 17, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 28, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal, and his petition was dismissed on February 2, 1999. [FN51]

u) Naresh Boodram and Joey Ramiah (Case No. 12,129) were both charged with the June 14, 1992 murders of Anthony Curtis Greenridge and Steven Sandy. They were arrested on May 25 and May 14, 1994, respectively, and both were tried, convicted and sentenced to death on November 27, 1996. They subsequently appealed their convictions to the Trinidad and Tobago Court of Appeal, and their appeals were dismissed on December 16, 1997. Boodram and Ramiah then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and their petitions were dismissed on October 29, 1998. [FN52]

v) Nigel Mark (Case No. 12,137) was charged with the April 28, 1992 murder of Bhagirath Singh. He was arrested on April 29, 1992, was tried, convicted and sentenced to death on November 11, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on July 16, 1998. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on February 2, 1999. [FN53]

w) Wilberforce Bernard (Case No. 12,140) was charged with the February 4, 1990 murder of Ramnarine Saroop. He was arrested on February 22, 1990, and was tried, convicted and sentenced to death on January 22, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on September 24, 1997. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on October 22, 1998. [FN54]

x) Steve Mungroo (Case No. 12,141) was charged, together with his co-defendants Vijay Mungroo (supra para. 60(s)) and Phillip Chotalal (supra para. 60(t)), with the January 10, 1990 murder of Edmund Mitchell. He was arrested on January 24, 1990, and was tried, convicted and sentenced to death on December 13, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on November 28, 1997. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on February 2, 1999. [FN55]

y) Peter Benjamin (Case No. 12,148) was charged with the January 21, 1995 murder of Kanhai Deodath. He was arrested on January 21, 1995, and was tried, convicted and sentenced to death on October 27, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on April 28, 1998. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and the Privy Council dismissed his petition on January 21, 1999. [FN56]

z) Krishendath Seepersad (Case No. 12,149) was charged with the September 28, 1993 murder of Shazard Ghany. He was arrested on October 10, 1993, was tried, convicted and sentenced to death on May 29, 1996. He subsequently successfully appealed his conviction to the Trinidad and Tobago Court of Appeal and a new trial was ordered for October 17, 1997. He was again convicted of murder and sentenced to death on May 29, 1998. He again appealed his conviction to the Trinidad and Tobago Court of Appeal and this appeal was dismissed on October 8, 1998. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on May 6, 1999. [FN57]

aa) Allan Phillip (Case No. 12,151) was charged with the May 16, 1992 murder of Brian Barrow. He was arrested on May 16, 1992, was tried, convicted, and sentenced to death on November 17, 1995. He later appealed to the Trinidad and Tobago Court of Appeal, and this appeal was dismissed on June 12, 1996. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and the petition was dismissed on April 15, 1999. [FN58]

bb) Narine Sooklal (Case No. 12,152) was charged together with his co-defendants, Sharma Sooklal and Francis Mansingh (infra para. 60(ee)), with the December 10, 1992 murder of Mobina Ali. He was arrested on December 13, 1992, and was tried, convicted and sentenced to death on May 24, 1996. He subsequently appealed to the Trinidad and Tobago Court of Appeal, and this appeal was dismissed on September 26, 1997. He petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and on February 23, 1998, special Leave was granted and his petition was dismissed on July 21, 1999. [FN59]

cc) Amir Mowlah (Case No. 12,153) was charged with the February 6, 1991 murder of his wife, Shaffina Mowlah. He was arrested on February 6, 1991, and was tried, convicted and sentenced to death on October 27, 1997. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on June 17, 1998. He then petitioned the Judicial Committee of the Privy Council for special leave to appeal the Court of Appeal's decision, and his petition was dismissed on May 25, 1999. [FN60]

dd) Mervyn Parris (Case No. 12,156) was charged with the November 9, 1989 murder of Anthony Gittens. He was arrested on February 21, 1990, and was tried, convicted and sentenced to death on February 17, 1995. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, which dismissed his appeal on February 6, 1998. He sought special leave to appeal the Court of Appeal's decision to the Judicial Committee of the Privy Council, which dismissed his petition on December 2, 1999. [FN61]

ee) Francis Mansingh (Case No. 12.157) was charged with his co-defendants Sharma Sooklal and Narine Sooklal (supra para. 60(bb)) with the December 10, 1992 murder of Mobina Ali. He was arrested on December 16, 1992, and was tried, convicted and sentenced to death on May 24, 1996. He subsequently appealed his conviction to the Trinidad and Tobago Court of Appeal, and his appeal was dismissed on September 26, 1996. He petitioned the Judicial Committee of the Privy Council for special leave to appeal from the Court of Appeal's decision, leave was granted and finally, the Privy Council dismissed his appeal on July 21, 1999. [FN62]

[FN51] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 18(a), 18(b) and 18(c), supra note 50.
[FN52] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 20(a), 20(b) and 20(c), Vol. VI, pp. 3339-3497.
[FN53] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 21(a), 21(b) and 21(c), Vol. VI, pp. 3526-3566.
[FN54] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 22(a), 22(b) and 22(c), Vol. VI, pp. 3694-3764.
[FN55] Cf. "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 18(a), 18(b) and 18(c), supra note 50.
[FN56] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 1(a), 1(b) and 1(c), Vol. I, pp. 6-158.
[FN57] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 2(a), 2(b) and 2(c), Vol. II, pp. 355-707.
[FN58] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 3(a), 3(b) and 3(c), Vol. III, pp. 725-811.
[FN59] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 4(a), 4(b) and 4(c), Vol. III, pp. 822-968.
[FN60] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 5(a), 5(b) and 5(c), Vol. III, pp. 988-1065.
[FN61] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 6(a), 6(b) and 6(c), Vol. IV, pp. 1113-1220.
[FN62] Cf. "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 4(a), 4(b) and 4(c), supra note 59.

VII. EVIDENCE

61) Before turning to the analysis of the evidence received, in this chapter the Court will specify the general guidelines for assessing evidence and make reference to certain general considerations applicable to the specific case, the majority of which have been previously expounded in the jurisprudence of this Tribunal.

62) Article 43 of the Court's Rules of Procedure provides that:

1. Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, when appropriate, in the document setting out the preliminary objections and in the answer thereto.
2. Evidence tendered to the Commission shall form part of the file, provided that it has been received in a procedure with the presence of both parties, unless the Court considers it essential that such evidence should be repeated.
3. Should any of the parties allege force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that

particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.
4. In the case of the alleged victim, his next of kin or his duly accredited representatives, the admission of evidence shall also be governed by the provisions of Articles 23, 35(4) and 36(5) of the Rules of Procedure.

63) Likewise, Article 44 states the following:

The Court may, at any stage of the proceedings:

1. Obtain, on its own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant.
2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful.
3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.
4. Commission one or more of its members to conduct measures in order to gather evidence.

64) According to the consistent practice of this Court, at the commencement of each procedural stage, the parties are required to state in writing, at the first available opportunity, the evidence they will be presenting. Furthermore, in the exercise of the judicial discretion conferred upon the Court by Article 44 of the Rules of Procedure (supra para. 63), the Court may request additional evidence from the parties for the purpose of clarification, without allowing, however, an opportunity for the parties to expand upon or complement existing arguments, or to offer new evidence, unless so permitted by the Tribunal. [FN63]

[FN63] Cf. I/A Court H.R., Trujillo Oroza Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 36; I/A Court H.R., Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 14; and I/A Court H.R., Cantoral Benavides Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, para. 21.

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65) The Court has previously stated that its procedure relating to the admission and evaluation of evidence is not subject to the same formalities as domestic judicial procedures, and that the admission of certain pieces of evidence to the general body of evidence must be carried out with careful attention to the circumstances of the particular case, while bearing in mind the limits imposed by due respect for judicial certainty and procedural equality as between the parties. In taking into account that, according to international jurisprudence, international tribunals have the authority to evaluate and assess evidence according to the rules of "competent analysis," the Court has always avoided adopting a rigid standard for the quantum of evidence necessary to justify a decision. [FN64] This principle is especially applicable to international

human rights tribunals, which enjoy greater flexibility in assessing the evidence presented before them, in accordance with the rules of logic and on the basis of experience, for the purpose of determining the international responsibility of a State for the violation of a person's rights. [FN65]

[FN64] Cf. I/A Court H.R., Trujillo Oroza Case. Reparations, supra note 63, para. 37; I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 22; and I/A Court H.R., Cesti Hurtado Case. Reparations (Article 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para. 21.
[FN65] Cf. I/A Court H.R., Castillo Páez Case. Judgment of November 3, 1997. Series C No. 34, para. 39; and I/A Court H.R., Loayza Tamayo Case. Judgment of September 17, 1997. Series C No. 33, para. 42.

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66) On the other hand, it is necessary to bear in mind that international human rights protection should not be confused with criminal justice. In cases where States appear before this Tribunal, they do not appear as defendants in a criminal action, as the Court does not impose punishments on individuals found guilty of human rights violations. The function of this Tribunal is to protect the victims, determine when their rights have been violated and order reparation of the damage caused by the States responsible for such acts. [FN66] Thus,

[t]he sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations […]. [FN67]

[FN66] Cf. I/A Court H.R., Castillo Petruzzi et al. Case. Judgment of May 30, 1999. Series C No. 52, para. 90; I/A Court H.R., The "Panel Blanca" Case (Paniagua Morales et al.). Judgment of March 8, 1998. Series C No. 37, para. 71; and I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 37.
[FN67] I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 75; and I/A Court H.R., The "Panel Blanca" Case (Paniagua Morales et al.), supra note 66, para. 91.

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67) It should be emphasized that in this case, the State failed to discharge its procedural responsibility of presenting evidence in the course of the procedural stages set out in Article 43 of the Rules of Procedure (supra para. 62). The Court considers, as it has in other cases, that when the State does not specifically contest the application, the facts on which it remains silent are presumed to be true, provided that the existing evidence leads to conclusions consistent with those facts. [FN68]

[FN68] Cf. I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.), supra note 67, para. 68; I/A Court H.R., Godínez Cruz Case. Judgment of January 20, 1989. Series C No. 5, para. 144; and I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 138.

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68) Applying the above principles, before reaching a conclusion, the Court must proceed to take into account the evidence before it, the arguments made by the Commission and the representatives of the alleged victims and any documentary or other evidence which has been requested by Court and might be relevant in the present Case.

69) Therefore, in the exercise of its jurisdictional function, the Court will proceed to examine and evaluate all the elements that comprise the corpus of evidence in the case, guided by the rules of "competent analysis," so that the judges may be in a position to arrive at conclusions consistent with the facts, upon which they will have to base their decisions in the present Judgment.

a) DOCUMENTARY EVIDENCE

70) In the Hilaire Case Application, the Inter-American Commission submitted a copy of thirty-four documents contained in twenty-one exhibits (supra paras. 1 and 34). [FN69]

[FN69] Cf. Filed as "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission", archived in the Secretariat of the Inter-American Court of Human Rights, Vols. I (pp. 1-355), II (pp. 356-837), and III (pp. 838-1275).

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71) In the Constantine et al. Case Application, the Inter-American Commission submitted a copy of 120 documents contained in forty-four exhibits (supra paras. 1 and 34). [FN70]

[FN70] Cf. Filed as "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission", archived in the Secretariat of the Inter-American Court of Human Rights, Vols. I (pp. 1-507), II (pp. 508-1221), III (pp. 1222-1916), IV (pp. 1917-2490), V (pp. 2491-3189), VI (pp. 3190-3783), VII (pp. 3784-4040), and VIII (pp. 4041-4515).

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72) In the Benjamin et al. Case Application, the Inter-American Commission submitted a copy of fifty-three documents contained in thirty exhibits (supra paras. 1 and 34). [FN71]

[FN71] Cf. Filed as "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," archived in the Secretariat of the Inter-American Court of

Human Rights, Vols. I (pp. 1-349), II (pp. 350-719), III (pp. 720-1107), IV (pp. 1108-1487), and V (pp. 1488-1859).

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73) During the public hearing, the Commission submitted three documents related to the case (supra para. 54) and later sent a copy of three judgments issued by the Privy Council (supra para. 56).

74) Likewise, on March 22, 2002, the representatives of the alleged victims submitted various documents as exhibits to their final written arguments (supra para. 57). [FN72]

[FN72] Cf. Filed as "Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Supporting Bundle of Authorities," archived in the Secretariat of the Inter-American Court of Human Rights, Exhibits 1-18, Vol. I, pp. 1-867.

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75) The Court also received the written expert reports submitted by seven experts, namely: Thomas Alfred Warlow; [FN73] Desmond Allum; [FN74] Gaietry Pargass; [FN75] Vivien Stern and Andrew Coyle; [FN76] Scharlette Holdman; [FN77] and Nigel Eastman, [FN78] offered by the Commission in its final written submissions on eventual reparations (supra paras. 44, 48 and 50). [FN79]

[FN73] Thomas Alfred Warlow's expert witness report was submitted to the Court as part of the body of evidence in the Application corresponding to the Benjamin et al. Case, and is filed as "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Vol. I, pp. 344-349.

[FN74] Cf. Filed as "Expert Witness Report on the Criminal Justice System of Trinidad and Tobago," archived in the Secretariat of the Inter-American Court of Human Rights, Vol. I (pp. 1-345), Vol. II (pp. 1-700), and Vol. III (pp. 701-1274).

[FN75] Cf. Filed as "Expert Witness Report from Gaietry Pargass on Conditions of Detention in Trinidad and Tobago," archived in the Secretariat of the Inter-American Court of Human Rights, Vol. I, pp. 1-72.

[FN76] Cf. Filed as "Expert Witness Report from Vivien Stern and Andrew Coyle on Conditions of Detention," archived in the Secretariat of the Inter-American Court of Human Rights, Vol. I, pp. 73-88.

[FN77] Cf. Filed as "Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits," archived in the Secretariat of the Inter-American Court of Human Rights, Vol. I, pp. 59-97.

[FN78] Cf. Filed as "Expert Witness Report from Nigel Eastman," archived in the Secretariat of the Inter-American Court of Human Rights, Vol. I, pp. 1-121.

[FN79] Three of these experts also testified at the public hearing for this case (supra note 27 and supra para. 52).

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76) Below, the Court includes a summary of the three expert witness reports that were received only in writing (one of them prepared by two experts), in the order in which they were submitted:

a) Expert Witness Report of Thomas Alfred Warlow on the evidence available in the case of Peter Benjamin (Case No. 12,148) and on whether the shotgun which is alleged to have been used to kill the deceased could have fired the lethal bullet

The expert report of Thomas Alfred Warlow [FN80] contains an analysis of two separate documents related to the proceedings in the specific case of Peter Benjamin before the domestic courts of Trinidad and Tobago. [FN81] The first is a post mortem study of the corpse and the second is comprised of two reports prepared by an official from the Scientific-Forensic Centre in Trinidad and Tobago.
Thomas Warlow established that a 16-bore shotgun, the shotgun allegedly found on Mr. Benjamin, cannot chamber or fire 12-bore shotgun cartridges of the kind used in the murder and found at the crime scene. Consequently, Mr. Warlow concluded that the shotgun allegedly belonging to Peter Benjamin could not have been used in the murder for which he has been found guilty.

[FN80] Thomas Alfred Warlow stated in his expert report that he is a Chartered Chemist and Member of the Royal Society of Chemistry of the United Kingdom, and of the International Wound Ballistics Association. He has written several scientific reports on firearms published in the United Kingdom and the United States of America, as an expert and professional in the area. Cf. Filed as "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," supra note 73.
[FN81] The Inter-American Commission indicated in its Application that Peter Benjamin (Case No. 12,148) was convicted of the murder of Kanhai Deodath on October 27, 1999. The Commission added that, in his defence at the domestic level, Peter Benjamin claimed that he was not involved in the murder or the owner of the murder weapon, and that he did not make the statement that was submitted as evidence against him.
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b) Expert Witness Report of Vivien Stern and Andrew Coyle on conditions of detention

Vivien Stern and Andrew Coyle [FN82] submitted a joint expert report on the conditions of detention in Port of Spain, Trinidad and Tobago, in relation to all the persons comprised in the present Case.
In their report, the expert witnesses indicated that prisoners remain in detention for excessively long periods, and that inmates in Port of Spain who are sentenced to death do not receive adequate medical care, are at times subjected to cruel treatment, live in conditions that are degrading and dangerous to their health and are deprived of proper access to fresh air and exercise.
Expert witnesses Coyle and Stern argued that the combination of all of these aspects of prison treatment, routinely applied to prisoners for long periods, constitutes cruel, inhuman or degrading treatment in violation Article 5(2) of the American Convention on Human Rights.

[FN82] The Inter-American Commission submitted the expert report of Baroness Vivien Stern, Honorary Secretary General of Penal Reform International and Honorary Fellow of the London School of Economics and of Andrew Coyle, criminologist with 25 years experience at the senior level of the prison services of the United Kingdom. In addition, they are Researcher and Director, respectively, of the International Centre for Prison Studies in London, Cf. Filed as "Expert Witness Report from Vivien Stern and Andrew Coyle on Conditions of Detention," supra note 76.

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c) Expert Witness Report of Scharlette Holdman on the nature and role of mitigating factors in capital cases in the United States of America

The expert report of Scharlette Holdman [FN83] discusses mitigating factors of criminal responsibility and the preparation of evidence to demonstrate mitigating circumstances for cases involving crimes that formally may carry the death penalty. It also describes the qualifications and responsibilities of mitigation specialists, the relevance of mitigating evidence at the various stages of criminal proceedings and provides examples of cases in which mitigation has affected the outcome of a criminal proceeding.

Dr. Holdman explained that the main purpose of mitigation is to provide explanations for an offender's behaviour. It is based on "factors that were formative in the offender's development, behavior and functioning." However, it also reflects the nature and circumstances of the offence under the theory that punishment should be proportionate to the crime.

The expert witness further stated that mitigating evidence seeks to establish the degree of individual responsibility for certain kinds of conduct, analysing certain aspects of the offender such as family dynamics, neurological deficits, mental and physical developmental disabilities, medical and psychiatric illnesses, mental retardation, intellectual functioning, cultural and ethnic influences, situations of extreme poverty; community environment, child maltreatment, character, and chronological age, among others.

Theories of mitigation are governed by principles of respect for the uniqueness of each individual and require an examination of the character and record of the offender, thereby minimizing the risk that the death penalty will be imposed without taking into account factors that may support the imposition of a less severe penalty.

[FN83] Scharlette Holdman indicated in her written report that she is the Executive Director of the Center for Capital Assistance in San Francisco, California and a specialist in the research, development, and presentation of mitigating evidence in capital cases, pre and post conviction. Cf. Filed as "Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits," supra note 77.

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b) EXPERT EVIDENCE

77) During the public hearing held on February 20 and 21, 2002, the Court heard testimony from three expert witnesses presented by the Inter-American Commission (supra para. 52). The reports of their testimony are summarized below in the order they were submitted. [FN84]

a) Attorney Desmond Allum [FN85] addressed the nature of the "mandatory death penalty," the exercise of the prerogative of mercy in Trinidad and Tobago, and other aspects of the State's domestic criminal law, including the evolution and current status of the law of prosecutorial disclosure.

The expert witness found that there was no uniform practice in Trinidad and Tobago as to how long a person might be detained after being arrested and added that there is no "culture of keeping any written record in relation to persons taken to the police station." As a result, it is unclear exactly when the arrests took place.
He added that there is no provision in Trinidad and Tobago requiring the State to provide legal aid in anticipation of defence immediately upon arrest. Instead, the accused may only request representation when first brought before a judge. Often it can take up to six weeks before the first meeting with a lawyer.
He stated that there are different lawyers for the trial and appellate proceedings, which tends to cause an additional delay given that the appellate lawyer often is not informed of what occurred in the trial phase. In addition, Trinidad and Tobago does not recognise the right to be tried within a reasonable time.
The expert witness stated that the imposition of the "mandatory death penalty" on a person accused of intentionally taking another's life may be the result of a confession made by the accused prior to having had access to a lawyer or being informed of his trial rights. Furthermore, there may not be a written statement or any other evidence to corroborate what the accused said.
In his testimony, Desmond Allum asserted that Courts should have discretion to take into account the circumstances of each individual offender in deciding whether or not the death penalty should be imposed. He stated that there should be individualised sentencing in death penalty cases and that this penalty should only be applied in exceptional cases.

[FN84] The footnotes in the following pages refer to some of the information presented in the written reports submitted by these three experts.
[FN85] Desmond Allum, S. C., indicated in his written expert witness report presented to the Court on January 22, 2002 (supra para. 48), that is he an attorney-at-law and member of the Bar Association of Trinidad and Tobago and London. He has practiced law in the criminal system in Trinidad and Tobago over the past thirty-five years in numerous capital and drug trafficking cases. He was the President of the Bar Association in Trinidad and Tobago and is an expert on legislation related to the death penalty in Trinidad and Tobago. In addition, his report presents an analysis of the constitutional history and sources of law in Trinidad and Tobago, the law concerning murder in the State, criminal procedure, the stages of criminal procedure in murder cases, the "mandatory death penalty," and the prerogative of mercy. He indicated that the reforms to the death penalty carried out in England and in other jurisdictions of the Caribbean have not been made in Trinidad and Tobago, since it retains an inflexible system of sentencing all defendants to death. Furthermore, he stated that defence counsel lack experience and are

inadequately remunerated, which results in defendants being poorly represented. In the early stages after arrest, lawyers are not present and the accused are often coerced into confessing. The expert witness also stated that particular difficulties exist in obtaining expert evidence, even though such evidence is presented by the prosecution with increasing frequency. The non-disclosure and/or destruction of relevant evidence by the prosecution and/or police is commonplace, and there are substantial delays inherent in the system, especially during the pre-trial phase. Cf. Filed as "Expert Witness Report on the Criminal Justice System of Trinidad and Tobago," supra note 74, pp. 26-27.

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b) Forensic Psychiatrist Nigel Eastman [FN86] addressed Amir Mowlah's (Case No. 12,153) psychiatric condition and the possible psychiatric affliction he was suffering from at the time of the murder, as well as the adequacy of the psychiatric assessment conducted at trial.

He indicated that there is a grave shortage of psychiatric assistance (general and forensic) in Trinidad and Tobago. There is lack of experience and training in legal analysis for psychiatrists and most prefer not to work in this area due to the political climate favouring the death penalty. He stated that there is no law providing an opportunity for an individual accused of a capital offence to be assessed by a psychiatrist. Moreover, there are no available facilities to carry out psychiatric counselling, interviews and basic medical examinations.
The expert recommended that the State implement improved strategies for the medical and psychological examination and investigation of criminal offenders in Trinidad and Tobago, especially in death penalty cases, in view of the fact that mental disorders or problems can be extremely relevant to the determination of culpability.

[FN86] The expert witness report of Nigel Eastman was submitted by the Inter-American Commission in virtue of Mr. Eastman being a Consultant and Senior Lecturer in Forensic Psychiatry at St. George's Hospital Medical School, University of London. In his written report, received by the Court on February 11, 2002 (supra para. 50), the expert indicated that he has five years experience in cases related to Trinidad and Tobago, Saint Vincent and the Grenadines, and Jamaica, as well as working with the Privy Council, the Eastern Caribbean Appeal Court and the Court of Appeal of Trinidad and Tobago. Nigel Eastman's written report examines the following issues: the relevance of psychiatry to the criminal justice process in determining guilt and sentencing, specifically in relation to murder trials in the Caribbean; the psychiatric assessment process; legal provisions related to performing psychiatric assessments in Trinidad and Tobago; a comparative analysis of legal provisions related to psychiatric assessments in Trinidad and Tobago and the United Kingdom; practical recommendations for reform; and mental disorders specifically related to the "mandatory imposition of the death penalty." The expert witness concluded that the facilities and available personnel in Trinidad and Tobago as well as in other Caribbean Islands are inadequate for carrying out assessments of those accused of capital offences and appellants that have already been convicted. Cf. Filed as "Expert Witness Report from Nigel Eastman," supra note 78.

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c) Barrister Gaietry Pargass [FN87] spoke of the conditions of detention in the prisons of Trinidad and Tobago, reforms which should be made to the procedure for requesting legal aid and the conditions surrounding the execution of convicted persons in Trinidad in Tobago.

With respect to the conditions of detention in the remand prison of Port of Spain in Trinidad and Tobago, there is extreme overcrowding with up to fourteen prisoners per cell, measuring ten by nine feet. In certain cases there is not enough space to lie down to sleep, thus forcing some prisoners to sleep sitting or standing up. They remain in these conditions for a period of two to six years, which is the average time spent in pre-trial detention.
In addition, she stated that in that particular prison, instead of proper toilet facilities, there is a single bucket (slop pail) for an entire cell, which is emptied twice a day. Moreover, prisoners spend twenty-three hours in their cells except for a few minutes when they leave to eat. They are only allowed to go outside for exercise approximately three times a week due to the shortage of prison officers to supervise.
The expert witness clarified that the situation for those sentenced to death is somewhat different since they are assigned one cell per person. According to the rules of the prison, these prisoners should be allowed out of their cells to get fresh air and exercise for one hour a day; however, in practice this never happens. Also, there have been complaints regarding the poor quality of food and the lack of ventilation in the cells, as well as a lack of light that leads to vision complications, eye pain, and a general deterioration in the prisoners' vision.
With respect to pre-execution procedure, the prison superintendent reads the prisoners the death warrants. They are then taken to other cells in a section called "F2" that is very close to the execution chamber. On the wall and door of the execution chamber there are drawings of a figure with a rope around its neck and a message that reads: "You have come here to be executed." This both terrorizes and depresses the prisoners—others cannot sleep due to nightmares, much less eat. In addition, there are periodic checks of the prisoners' weight and they are asked about their favourite meals as part of their last wishes.
The expert witness stated that prisoners awaiting execution are permitted two visits by family and friends per week for fifteen minutes each. They must request all visits in writing using special forms that are made available every ten days. This procedure makes it extremely difficult for prisoners to see their lawyer in the event of an emergency. In the case of inmates detained awaiting trial, they are allowed even fewer visits and are only given request forms once a month. These forms are checked and censored by the relevant prison officials before being sent by mail to the person the prisoner wishes to see.
With respect to medical services for prisoners, Gaietry Pargass stated that there is only one doctor available to treat the entire prison population. For those prisoners awaiting execution, there is a prison official available with basic nursing training, who visits once in the morning and once in the evening to administer medication for minor pains and illnesses like headaches.
The expert witness concluded that prisoners live in overcrowded conditions during approximately two to six years between arrest and conviction. Although they often complain about the conditions, very little can be done since there is not enough space in Trinidad and Tobago’s prisons.

[FN87] In her written expert report submitted to the Court on January 22, 2002 (supra para. 48), Gaietry Pargass indicated that her report is based on her personal experience as an attorney-at-

law and as representative of the London Panel in Trinidad and Tobago, as well as on interviews with death row inmates, prison personnel and others, mainly from the Golden Grove Prison in Arouca. In her report, expert Pargass analysed the prison system in Trinidad and Tobago, access to prisoners by their attorneys, and the detention conditions of both prisoners on death row and other inmates generally, mainly in relation to the State Prison in Port of Spain and the Golden Grove Prison in Arouca. Cf. Filed as "Expert Witness Report from Gaietry Pargass on Conditions of Detention in Trinidad and Tobago," supra note 75, pp. 1-72.

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c) ASSESSMENT OF THE EVIDENCE

78) The Court will now assess the probative value of the documents and expert reports submitted to it. The evidence presented during all stages of the proceedings in the three cases has been integrated into a single body of evidence and will be assessed en bloc. [FN88]

[FN88] Cf. I/A Court H.R., Bámaca Velásquez Case. Reparations, supra note 63, para. 22; I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 34; and I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Judgment of August 31, 2001. Series C No. 79, para. 98.

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79) With respect to the evidence submitted by the Inter-American Commission in the three cases, the Court considers that:

a) As regards the documents related to the trial, judgment and appeal before the domestic tribunals, attached as exhibits to the Commission's Applications in each case, the Court has confirmed that they possess the requisite authenticity, as they contain no inconsistencies and meet the minimum standard of admissibility, inasmuch as they originate from reliable sources, and therefore possess clear probative value.
b) In regard to the relevant domestic legislation of Trinidad and Tobago, this Court considers that it is admissible as documentary evidence and that it can serve as a useful means to corroborate, where relevant, the facts established in the Applications and the contentions of the parties in the present Case.
c) In relation to jurisprudence from the tribunals of Trinidad and Tobago, the Privy Council and other jurisdictions, submitted by the Commission with the Applications, it should likewise be incorporated into the body of evidence, as indicated in the previous paragraph, to be considered in this case, for the purpose of verifying the truth of the facts set forth.

80) Therefore, the Court admits the probative value of those documents presented by the parties in due time, the authenticity of which was not challenged or questioned.

81) In regard to the expert testimony given during the public hearing by Desmond Allum, Nigel Eastman, and Gaietry Pargass (supra para. 52), as well as the written reports and their

exhibits presented by experts Thomas A. Warlow, Desmond Allum, Gaietry Pargass, Vivien Stern and Andrew Coyle, Scharlette Holdman, and Nigel Eastman (supra paras. 48 and 50), the Court holds them to be valid and accords probative value to all evidence that is consistent with the object and purpose of each of the cases.

82) Upon examining the expert reports together with the remaining evidence, in accordance with the rules of "competent analysis" and experience, the Court considers that it is possible to infer conclusions consistent with the facts. In accordance with this criterion, the Court attributes high probative value to the experts' statements, within the diverse contexts and circumstances that correspond to each of the alleged victims, since each statement reveals essential evidence for the purposes of this case.

83) It is relevant to reiterate that the State had the opportunity to submit its own witnesses and experts and to contest the evidence brought by the parties at the different procedural stages of this case, but failed to do so.

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VIII. PROVEN FACTS

84) The Court now proceeds to consider the relevant facts that it deems to be proven and which result from the analysis of the proceedings, as well as the documentary evidence (which highlights the domestic legislation of Trinidad and Tobago) and expert testimonial evidence provided.

a) All the alleged victims were tried and convicted of murder in Trinidad and Tobago, and sentenced to death pursuant to the Offences Against the Person Act in force in the State since April 3, 1925. [FN89]
b) The Offences Against the Person Act prescribes the death penalty as the only applicable sentence for the crime of murder. [FN90]
c) Section 3 of the Offences Against the Person Act adopts the English common law definition of murder, which in turn provides that a defendant may be convicted of murder if it is established that he unlawfully caused the death of another person with the intention to kill or to cause serious bodily injury. [FN91]
d) The Offences Against the Person Act permits the jury to consider certain determinative circumstances of the killing for the purpose of establishing whether the accused should be found guilty of murder or of a lesser crime. [FN92]
e) Once an offender is found guilty of murder, the Offences Against the Person Act does not permit the judge or jury to consider the particular circumstances of the offence or offender for the purpose of determining the appropriate penalty. [FN93]
f) Article 6 of the Constitution of the Republic of Trinidad and Tobago precludes individuals from challenging, under Sections 4 and 5 of the Constitution, all laws or acts carried out pursuant to any law in force in Trinidad and Tobago before 1976, the year the Constitution entered into force. [FN94]
g) The 32 persons comprised in this case all invoked the appropriate domestic recourses for the review of their convictions (supra para. 60).

h) In accordance with the Constitution of the Republic of Trinidad and Tobago, the President of the Republic retains a discretionary power to pardon those sentenced to death. [FN95]

i) The Constitution of the Republic of Trinidad and Tobago provides for an Advisory Committee on the Power of Pardon, which is charged with considering and making recommendations to the relevant Minister as to whether an offender sentenced to death should benefit from discretionary pardon. [FN96]

j) In the cases of several of the alleged victims (infra para. 152(a) and 152(b)), due process guarantees before trial, during trial, and on appeal were not respected by reason of various factors such as unjustified delay of the proceedings and the unavailability of legal aid, experts and other kinds of specialized assistance.

k) The Constitution of the Republic of Trinidad and Tobago does not stipulate trial within a reasonable time as part of due process guarantees. [FN97]

l) The victims in thirty cases [FN98] were detained by the authorities of Trinidad and Tobago for periods lasting from a minimum of four years (Peter Benjamin) up to a maximum period of eleven years and nine months (Wayne Matthews) from the time of their arrest to the resolution of their final appeal (supra para. 60 and infra para. 152(a)).

m) All of the victims' pre and post trial detention took place in grossly overpopulated and unhygienic conditions. As to pre-trial detention conditions, their cells, referred to as "F2" cells, lack sufficient ventilation and natural light. Along with the showers used by the victims, they are located in close proximity to the execution chamber (gallows). The prisoners do not have adequate nutrition, medical services or recreation, which only exacerbates the state of mental anguish in which they live (supra paras. 76(b) and 77(c)).

n) Only twenty-one of the alleged victims in this case [FN99] have maintained that they were imprisoned under conditions of overcrowding, inadequate hygiene and other deficient detention conditions since the time of their arrest. Nevertheless, on the basis of the evidence, this Court accepts as fact that these conditions are typical of Trinidad and Tobago's prison system and therefore concludes that all of the alleged victims in the present Case have been subjected to those same conditions indicated in the previous paragraph.

o) The detention conditions described above only exacerbate the intrinsic suffering that the alleged victims already endure due to the impending imposition of their death penalty.

p) Of the 32 victims in this case, thirty are currently detained in the prisons of Trinidad and Tobago awaiting their execution by hanging, the only exceptions being Joey Ramiah (Case No. 12,129), who was executed, and Wayne Matthews (Case No. 12,076), whose sentence was commuted.

q) On January 27, 1999, the Judicial Committee of the Privy Council ordered that all executions in Trinidad and Tobago be stayed pending the decision of the Commission and the Court as to appropriate recourse for these persons under the American Convention. It also held that carrying out these sentences prior to the determination of their petitions before the Commission and the Court would constitute a breach of the constitutional rights [FN100] of the alleged victims in this case.

r) On June 4, 1999, the State of Trinidad and Tobago executed Joey Ramiah after he had been found guilty of murder and sentenced to death by hanging (infr¬a paras. 190-200), despite the existence of provisional measures in his favour, whereby the Court had ordered the State to stay his execution.

s) On February 7, 2000, Wayne Matthews was informed that his death sentence had been commuted to 75 years in prison.
t) The representatives of the alleged victims have incurred costs in the course of the processing of these cases before the inter-American system.

[FN89] Cf. Offences Against the Person Act (3 April, 1925), Laws of Trinidad and Tobago, Section 4, supra note 31.
[FN90] Ibid.
[FN91] Ibid., Section 3, supra note 31.
[FN92] Ibid., Section 4(a) and 4(b), supra note 31.
[FN93] Ibid., Section 4, supra note 31.
[FN94] Sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago include the individual rights and freedoms of persons in the State. Cf. Constitution of Trinidad and Tobago, in "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 10, Vol. II, pp. 770-816; "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 25, Vol. VII, pp. 3797-3843; and "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 9, Vol. IV, pp. 1258-1304.
[FN95] Cf. Constitution of the Republic of Trinidad and Tobago, Section 87, supra note 94.
[FN96] Ibid., Section 88, supra note 94.
[FN97] Ibid., Section 4, supra note 94 and Expert Witness Testimony of Desmond Allum, supra para. 77(a). See also analysis of Thomas and Hilaire vs. Baptiste et al., Privy Council Appeal No. 60 of 1998 in "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 8, Vol. II, pp. 726-765; "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 30, Vol. VII, pp. 3892-3925; and "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibit 14, Vol. IV, pp. 1357-1391.
[FN98] The thirty alleged victims whom this concerns are: Haniff Hilaire (Case No. 11,816), George Constantine (Case No. 11,787), Wenceslaus James (Case No. 11,814), Denny Baptiste (Case No. 11,840), Clarence Charles (Case No. 11,851), Keiron Thomas (Case No. 11,853), Wilson Prince (Case No. 12,005), Darrin Roger Thomas (Case No. 12,021), Mervyn Edmund (Case No. 12,042), Martin Reid (Case No. 12,052), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Natasha de Leon (Case No. 12,093), Vijay Mungroo (Case No. 12,111), Philip Chotalal (Case No. 12,112), Naresh Boodram (Case No. 12,129), Joey Ramiah (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Peter Benjamin (Case No. 12,148), Krishendath Seepersad (Case No. 12,149), Allan Phillip (Case No. 12,151), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156) and Francis Mansingh (Case No. 12,157).
[FN99] The twenty-one alleged victims are: Keiron Thomas (Case No. 11,853), Anthony Garcia (Case No. 11,855), Darrin Roger Thomas (Case No. 12,021), Samuel Winchester (Case No. 12,043), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Naresh

Boodram and Joey Ramiah (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156) and Francis Mansingh (Case No. 12,157).
[FN100] Cf. Thomas and Hilaire v. Baptiste et al., Privy Council Appeal No. 60 of 1998, supra note 97.

IX. VIOLATION OF ARTICLE 4(1) and 4(2), IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERCIAN CONVENTION (Mandatory Death Penalty)

Contentions of the Commission

85) The Commission contended that the State is responsible for violating the American Convention through the arrest, detention, trial, conviction and sentencing to death by hanging of the thirty-two victims included in the present Case (supra para. 2), pursuant to the Offences Against the Person Act of Trinidad and Tobago, enacted in 1925.

86) It added that, in accordance with Section 4 of the Offences Against the Person Act, once the offender is found guilty of murder, the death penalty is "mandatorily imposed" because that section provides that "every person found guilty of murder shall suffer death." [FN101]

[FN101] Section 3 of the Offences Against the Person Act adopts a definition of murder provided by English law, which states that the offender may be convicted of murder if it is proven that he intended to cause death or serious bodily harm, or when the offender has acted with one or more persons with a common design to cause death or serious bodily harm of another and has committed the act according to this common design, regardless of whether he was the principle author of the murder. Cf. Offences Against the Person Act of Trinidad and Tobago (April 3, 1925). Laws of Trinidad and Tobago, Section 3, supra note 31.
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87) In addition, the Commission pointed out that the law of Trinidad and Tobago does not allow the courts to consider the personal circumstances of the offender or his crime in murder cases. Among the circumstances mentioned were the prior criminal record of the offender, the subjective factors that could have motivated his conduct, the degree of his participation in the criminal act and the probability that the offender could be reformed and socially readapted. The courts also cannot assess whether the death penalty is the appropriate punishment or not for the specific case in light of the particular circumstances of the offender’s conduct.

88) The Commission added that the use of the "mandatory death penalty" by Trinidad and Tobago results in its imposition on all persons convicted of murder, without taking into account the mitigating and aggravating circumstances of the case or the varying degrees of culpability. In the Commission’s opinion, the foregoing contravenes the inherent dignity of the human being and the right to humane treatment protected in Article 5(1) and 5(2) of the American Convention.

89) The Commission added that the "mandatory imposition of the death penalty," that is, where the death penalty is the only imposable punishment for murder cases, eliminates the possibility of determining individualised sentences and prevents a rational and proportional relation between the offender, the crime and the punishment imposed and does not allow judicial review of the judgment, according to the terms of the American Convention.

90) In light of this, the Inter-American Commission pointed out in its final allegations that the imposition of the "mandatory death penalty" for all persons convicted of murder, without analysing the individual characteristics of the offender and the crime and without considering whether the death penalty was the appropriate punishment for that case, renders it an inhuman and unjust punishment, constituting a violation of Articles 4(1), 4(2), 5(1), 5(2), and 8(1) in relation to Article 1(1) of the American Convention.

91) The Commission maintained that Articles 4, 5 and 8 of the Convention should be interpreted as obligating courts to dictate "individualised sentences," or rather, to exercise certain discretion, even if it is a limited discretion, for the purpose of taking into account the mitigating and aggravating circumstances in play for each particular case.

92) Finally, the Commission indicated that the "mandatory death penalty" is incompatible with the safeguards of the most fundamental human rights. This finding is consistent with the conclusions reached by supervisory domestic and international bodies that have considered the matter, including the Inter-American Court and the Judicial Committee of the Privy Council, who recently addressed the issue in Reyes v. The Queen. The Commission stated that, according to this jurisprudence, the death penalty is subject to rigorous application of judicial guarantees and procedural requirements, whose observance should be strictly respected and scrutinized by the highest domestic judicial bodies.

Contentions of the Representatives of the Alleged Victims

93) The representatives of the alleged victims indicated that the victims were convicted of murder and automatically sentenced to death by hanging, pursuant to the Offences Against the Person Act of 1925, without any examination of the particular circumstances of the crime or the background or personal characteristics of the accused. In this way, each one of the 32 victims was tried under a legal system that did not permit a charge of non-capital murder and did not permit judicial discretion to impose a lesser sentence. This implies a violation of Articles 4(1), 4(2), 5(1), 5(2) and 8(1), in relation to Article 1(1) of the American Convention.

94) The representatives considered that when a State maintains the death penalty, it should implement a classification system for murder with varying degrees of culpability, thus ensuring that this punishment is only imposed for the most serious crimes.

95) Likewise, they indicated that the classification or qualification of the crime alone is not sufficient for the determination of the penalty. It is also necessary to consider the particular circumstances of the crime, such as the prior criminal record and character of the offender, before imposing the most severe punishment, in order that the crime committed and the punishment be proportional.

96) In relation to the above, the representatives of the alleged victims added that, according to the Royal Commission on Capital Punishment [FN102]

[y]et there is perhaps no single class of offences which varies so widely both in character and in culpability as the class comprising those that may fall within the comprehensive common law definition of murder […] we may see the multifarious variety of the crimes for which death is the uniform sentence. Convicted persons may be men, or they may be women, youths, girls, or hardly older than children. They may be normal or they may be feeble-minded, neurotic, epileptic, borderline cases, or insane; and in each case the mentally abnormal may be differently affected by their abnormality […]. [FN103]

[FN102] The Royal Commission on Capital Punishment was set up though the initiative of the British Parliament by command of the Queen of England between 1949 and 1950, for the purpose of considering whether the death penalty should be limited or modified as a punishment.
[FN103] Royal Commission on Capital Punishment, September 1953, Cmnd 8932 (United Kingdom), p. 6, para. 21.

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97) The aforementioned representatives indicated that in other countries [FN104] of the Commonwealth, a distinction has been made between capital or first degree murder, and non-capital or second degree murder. Capital murder [FN105] at times carries the "mandatory death penalty" as a punishment, while second-degree murder does not. In Trinidad and Tobago, there have been attempts to introduce this distinction through a reform of the Offences Against the Person Act, [FN106] which in spite of being approved by the Senate has still not been promulgated.

[FN104] Here the Representatives specifically mentioned the United Kingdom, Jamaica and Belize.
[FN105] Under common law, reference to the term "capital" is made in relation to a capital crime or a capital case, in the sense that it is susceptible to the most severe punished with the most severe punishment, in other words, punishable with death.
[FN106] Republic of Trinidad and Tobago, Offences Against the Person Act (Amendment) (No.2) (2000).

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Assessment of the Court

98) After considering the arguments of the parties, the Court will reach a decision concerning the "mandatory death penalty," for which it is relevant to reiterate that Article 4 of the American Convention stipulates that:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offenses or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by a competent authority.

99) In spite of the fact the Convention does not expressly prohibit the application of the death penalty, the Court has affirmed that the conventional rules concerning the death penalty should be interpreted as "imposing restrictions designed to delimit strictly its application and scope, in order to reduce the application of the death penalty to bring about its gradual disappearance." [FN107]

[FN107] I/A Court H.R., Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 57.

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100) In light of the general spirit evident in Article 4 of the American Convention, considered in its entirety, the Court has found that:

[t]hree types of limitations can be seen to be applicable to States Parties which have not abolished the death penalty. First, the imposition or application of this sanction is subject to certain procedural requirements whose compliance must be strictly observed and reviewed. Second, the application of the death penalty must be limited to the most serious common crimes not related to political offenses. Finally, certain considerations involving the person of the defendant, which may bar the imposition or application of the death penalty, must be taken into account. [FN108]

[FN108] I/A Court H.R., Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83, supra note 107, para. 55. Likewise, the United Nations Human Rights Committee found that Article 6 (sections 2-6) of the International Covenant on Civil and Political Rights implies that States Parties must limit the use of the death penalty, abolish it for all but the most serious crimes, and consider amending their

criminal code in light of this purpose. Cf. Human Rights Committee, General Comment No. 6 (Sixteenth Session, 1982), para. 6, in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

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101) The Court is aware of the pain and suffering inflicted upon the direct victims and their next of kin by the perpetrators in murder cases, and is cognizant of the State's duty to protect potential victims of this crime, punish those responsible and generally maintain public order, which may be affected by the proliferation of these types of crimes. The Court also considers that the State's struggle against murder should be carried out with the utmost respect for the human rights of the persons under their jurisdiction and in compliance with the applicable human rights treaties. [FN109]

[FN109] Cf. I/A Court H.R., Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 174; I/A Court H.R., Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, para. 69; and I/A Court H.R., Castillo Petruzzi et al. Case, supra note 66, paras. 89 and 204.

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102) The intentional and illicit deprivation of another's life (intentional or premeditated murder, in the broad sense) can and must be recognised and addressed in criminal law under various categories (criminal classes) that correspond with the wide range of gravity of the surrounding facts, taking into account the different facets that can come into play: a special relationship between the offender and the victim, motives for the behaviour, the circumstances under which the crime is committed, the means employed by the offender, etc. This approach allows for a graduated assessment of the gravity of the offence, so that it will bear an appropriate relation to the graduated levels of gravity of the applicable punishment.

103) The Court finds that the Offences Against the Person Act of 1925 of Trinidad and Tobago automatically and generically mandates the application of the death penalty for murder and disregards the fact that murder may have varying degrees of seriousness. Consequently, this Act prevents the judge from considering the basic circumstances in establishing the degree of culpability and individualising the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different. In light of Article 4 of the American Convention, this is exceptionally grave, as it puts at risk the most cherished possession, namely, human life, and is arbitrary according to the terms of Article 4(1) of the Convention. [FN110]

[FN110] Cf. Lubuto v. Zambia, United Nations Human Rights Committee (No. 390/1990) U.N. Doc. CCPR/C/55/D/390/1990/Rev. 1 (Oct. 1995), para. 7.2 (recognising the importance of enabling the competent sentencing authority to exercise discretion in the imposition of sentences and indicating that, according to Article 6(2) of the International Covenant on Civil and Political Rights, the death penalty may only be applied for the "most serious crimes"); Ndiaye Report, 1994/82, para. 377, U.N. Doc. E/CN.4/1995/61 (14 December 1994) (holding that due process

requires the consideration of all mitigating factors in proceedings that result in the imposition of the death penalty); Bachan Singh v. State of Punjab (1980) 2 S.C.C. 475, 534 (the Supreme Court of India held that the "scope and concept of mitigating factors in the area of the death penalty must receive a liberal and expansive construction by the Courts in accord with the sentencing policy writ large... "); The State v. Makwanyane and McHunu. Judgment, Case No. CCT/3/94 (June 6, 1995) (the Constitutional Court of South Africa struck down the death penalty provision of the Criminal Procedure Act No. 51 as inconsistent with South Africa's 1993 Constitution and declared in part that "[M]itigating and aggravating factors must be identified by the Court, bearing in mind that the onus is on the State to prove beyond a reasonable doubt the existence of aggravating factors [...] Due regard must be paid to personal circumstances and subjective factors that might have influenced the accused person's conduct, and these factors must then be weighed with the main objects of punishment [...]."
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104) The Court finds that the Offences Against the Person Act has two principal aspects: a) in the determination of criminal responsibility, it only authorizes the competent judicial authority to find a person guilty of murder solely based on the categorization of the crime, without taking into account the personal conditions of the defendant or the individual circumstances of the crime; and b) in the determination of punishment, it mechanically and generically imposes the death penalty for all persons found guilty of murder and prevents the modification of the punishment through a process of judicial review.

105) The Court concurs with the view that to consider all persons responsible for murder as deserving of the death penalty, "treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty." [FN111]

[FN111] The Supreme Court of the United States of America held that the mandatory death penalty constituted a violation of the due process guarantees of the Fourteenth Amendment and the right to not be subjected to cruel and unusual punishment of the Eighth Amendment of the Constitution of the United States of America. The Court also indicated that the imposition of the death penalty generally necessitates a consideration of the relevant facets of the character and record of the individual offender and the circumstances of the particular offence. Woodson v. North Carolina, 428 U.S. 280, 304 (1976).
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106) In countries where the death penalty still exists, one of the ways in which the deprivation of life can be arbitrary under Article 4(1) of the Convention is when it is used, as is the case in Trinidad and Tobago due to the Offences Against the Person Act, to punish crimes that do not exhibit characteristics of utmost seriousness, in other words, when the application of this punishment is contrary to the provisions of Article 4(2) of the American Convention.

107) It is the view of this Court that although a violation of Article 4(2) of the Convention was not specifically alleged by the Commission in its Applications (supra para. 3), but rather only in its final arguments (supra para. 90), the Tribunal is not prevented from examining that issue, by

virtue of the general principle of law iura novit curia, "on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them." [FN112]

[FN112] I/A Court H.R., Godínez Cruz Case, supra note 68, para. 172. Cf. I/A Court H.R., Durand and Ugarte Case., supra note 109, para. 76; and I/A Court H.R., Castillo Petruzzi et al. Case. Judgment of May 30, 1999, supra note 66, para. 166.

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108) In light of these facts, the Court concludes that because the Offences Against the Person Act submits all persons charged with murder to a judicial process in which the individual circumstances of the accused and the crime are not considered, the aforementioned Act violates the prohibition against the arbitrary deprivation of life, in contravention of Article 4(1) and 4(2) of the Convention.

109) Therefore, the Court considers that Trinidad and Tobago has violated Article 4(1) and 4(2) in conjunction with Article 1(1) of the Convention, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.

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110) Similarly, even though the Commission did not specifically allege a violation of Article 2 in relation to Article 4 of the American Convention, the issue may still be examined by the Tribunal, by virtue of the established general legal principle of iura novit curia (supra para. 107). [FN113]

[FN113] I/A Court H.R., Godínez Cruz Case, supra note 68, para. 172. Cf. I/A Court H.R., Durand and Ugarte Case., supra note 109, para. 76; and I/A Court H.R., Castillo Petruzzi et al. Case. Judgment of May 30, 1999, supra note 66, para. 166.

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111) Article 2 of the American Convention provides that

[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

112) Based on the above provision, the Court has consistently held that the American Convention establishes the general obligation of States Parties to bring their domestic law into compliance with the norms of the Convention, in order to guarantee the rights set out therein. The provisions of domestic law that are adopted must be effective (principle of effet utile). That is to say that the State has the obligation to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice. [FN114]

[FN114] Cf. I/A Court H.R., "The Last Temptation of Christ" Case (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, para. 87.

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113) If the States, pursuant to Article 2 of the American Convention, have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognised in the Convention, it follows, then, that they also must refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them. These acts would likewise constitute a violation of Article 2 of the Convention.

114) In this sense, in the Suárez Rosero Case, this Court has held a legislative act of a State to be per se in violation of Article 2 of the American Convention (the law in question left persons charged under the Law on Narcotic Drugs and Psychotropic Substances without any legal protections of their right to personal liberty). In this respect, the Court stated that

[…] this [provision] deprives a part of the prison population of a fundamental right, on the basis of the crime of which it is accused and, hence, intrinsically injures everyone in that category. This rule has been applied in the specific case of Mr. Suárez Rosero and has caused him undue harm. The Court further observes that, in its opinion, this law violates per se Article 2 of the American Convention, whether or not it was enforced in the […] case. [FN115]

[FN115] I/A Court H.R., Suárez Rosero Case, supra note 66, para. 98.

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115) In the Barrios Altos Case, the Court likewise established that due to the adoption of laws incompatible with the Convention, the State failed to comply with the obligation to conform its domestic law to Article 2 of the Convention. [FN116]

[FN116] I/A Court H.R., Barrios Altos Case. Judgment of March 14, 2001. Series C No. 75, para. 42.

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116) The Court considers that even though thirty-one of the alleged victims in this case have not yet been executed, it is appropriate to find that there has been a violation of Article 2 of the

Convention, by virtue of the fact that the mere existence of the Offences Against the Person Act in itself constitutes a per se violation of that provision of the Convention. [FN117] This assertion is consistent with Advisory Opinion OC-14/94, which states that, "[i]n the case of self-executing laws, […] the violation of human rights, whether individual or collective, occurs upon their promulgation." [FN118]

[FN117] Cf. I/A Court H.R., Suárez Rosero Case, supra note 66, para. 98.
[FN118] I/A Court H.R., International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 43.

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117) From the preceding, it can be inferred that, by virtue of the fact that Trinidad and Tobago has not brought its laws into compliance with the Convention, it has not fulfilled the obligation imposed on States Parties by Article 2.

118) Therefore, the Court concludes that the State of Trinidad and Tobago failed to fulfil the obligation established in Article 2 of the American Convention, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.

X. VIOLATION OF ARTICLES 7(5), 8 AND 25 IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION (Right to Trial within a Reasonable Time, Right to Fair Trial and Judicial Protection)

Contentions of the Commission

119) The Inter-American Commission contended that Trinidad and Tobago violated the right to be tried within a reasonable time, the right to a fair trial and the right to judicial protection to the detriment of several of the victims. The Court summarizes these contentions below.

120) The Commission contended that the State is responsible for the violation of Articles 7(5) and 8(1) of the Convention in relation to Article 2, by virtue of the unjustified delays in bringing twenty-four of the victims in the present Case to trial. [FN119] The following table sets forth the information presented by the Commission with respect to these victims. [FN120]

	NAME	Date of arrest	Date of conviction New Trial (N)	Court of Appeal Decision (D) [FN121] Judgment (J)	Date of Decision by the Privy Council

				[FN122]	
1	Haniff Hilaire	02/14/91	05/29/95	03/10/97 (J)	11/06/97
2	George Constantine	12/25/91	02/17/95	11/01/96 (D) 11/25/96 (J)	07/29/97
3	Denny Baptiste	02/16/91	05/29/95	03/10/97 (J)	11/07/97
4	Clarence Charles	06/05/86	03/16/89 04/19/95 (N)	12/08/93 11/05/96 (J)	12/04/97
5	Wilson Prince	12/24/93	11/25/96	10/14/97 (J)	03/11/98
6	Darrin Roger Thomas	03/12/93	11/09/95	06/20/97 (J)	03/11/98
7	Mervyn Edmund	12/30/87	12/10/90 03/21/95 (N)	04/12/94 (J) 09/17/96 (J) (N)	07/16/98
8	Rodney Davis	03/26/92	01/31/97	12/02/97 (J)	11/02/98
9	Gangadeen Tahaloo	11/10/91	05/26/95 11/19/97 (N)	02/04/98 (J)	11/02/98
10	Noel Seepersad	07/11/94	02/07/97	11/25/97 (D) 02/05/98 (J)	12/10/98
11	Wayne Matthews	02/06/87	11/16/88 10/29/93 (N)	01/21/92 (J) 01/25/96 (D) 03/24/98 (J)	11/26/98
12	Alfred Frederick	01/17/91	09/29/97	03/31/98	12/17/98
13	Natasha De Leon	03/10/93	11/09/95	06/20/97 09/23/98 (N)	03/11/98 07/16/98
14	Vijay Mungroo	01/24/90	12/13/96	11/28/97	02/02/99
15	Phillip Chotalal	01/11/90	12/13/96	11/28/97	02/02/99
16	Nigel Mark	04/29/92	11/11/97	07/16/98	02/02/99
17	Wilberforce Bernard	02/22/90	03/17/95 01/22/96 (N)	09/24/97	10/22/98
18	Steve Mungroo	01/24/90	12/13/96	11/28/97	02/02/99
19	Krishendath Seepersad	10/10/93	05/29/96 05/29/98 (N)	10/17/97 (D) 10/08/98 (J)	05/06/99
20	Allan Phillip	05/16/92	11/17/95	06/12/96 (J)	04/15/99
21	Narine Sooklal	12/13/92	05/24/96	09/26/97 (J)	07/21/99
22	Amir Mowlah	02/06/91	10/27/97	06/17/98 (D) 09/30/98 (J)	05/25/99
23	Mervyn Parris	02/21/90	02/17/95	02/06/98	12/02/99
24	Francis Mansingh	12/16/92	05/24/96	09/26/96	07/21/99

[FN119] The twenty-four persons are: Haniff Hilaire, George Constantine, Denny Baptiste, Clarence Charles, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Nigel Mark, Wilberforce Bernard, Steve Mungroo,

Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.
[FN120] Cf. Filed as "Haniff Hilaire (11,816) v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibits 3-7, Vol. II, pp. 682-725; "George Constantine et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibits 1-23, Vols. I-VIII, pp. 29-3776; and "Peter Benjamin et al. v. Trinidad and Tobago, Exhibits to the Application of the Inter-American Commission," Exhibits 1-7, Vols. I-IV, pp. 139-1239.
[FN121] "Decision" refers to a decision to admit or deny the request for appeal before the Trinidad and Tobago Court of Appeal.
[FN122] "Judgment" refers to the legal analysis supporting a decision on the merits to admit or deny a request for appeal.
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121) The Commission argued in general terms that each one of these cases resulted in an unjustified delay by virtue of the fact that no case was decided in less than four years from the date of arrest to the appellate decision; it added that some of the victims were detained in prison awaiting trial for nearly seven years and consequently experienced delays of approximately twelve years between their arrest and final appeal (supra para. 120).

122) The Commission indicated that in cases of unacceptable delay, the burden of proof falls on the State to justify the delay, and that Trinidad and Tobago failed to adduce any evidence whatsoever during the proceedings before the Court.

123) Likewise, the Commission stated that Section 4 of the Constitution of the Republic of Trinidad and Tobago guarantees the right to a fair trial, but not to a speedy trial or a trial within a reasonable period of time. Consequently, a prolonged pre-trial delay does not in itself violate the Constitution, although it must be taken into account by the judge in deciding whether the delay may adversely affect the Court’s capacity to arrive at a decision consonant with the facts of the case.

124) The delays caused by Trinidad and Tobago throughout the judicial proceedings of the twenty-four mentioned victims (supra para. 120) constitute a violation of the right to trial within a reasonable time, guaranteed in Articles 7(5) and 8(1) of the American Convention. Such delays likewise violate Article 2 since the State did not adopt the necessary measures in its domestic law to make effective the guarantees protected in these provisions.

125) The Commission contended that, in relation to the criminal proceedings of eleven victims, [FN123] Trinidad and Tobago is responsible for the violation of Articles 8 and 25 of the Convention, in conjunction with Article 1(1), by reason of its failure to effectively provide legal aid to permit accused persons to bring constitutional motions before the domestic tribunals. [FN124]

[FN123] Supra note 8.

[FN124] The Commission stated that judicial review of criminal sentences in Trinidad and Tobago may take two forms: a criminal appeal of the sentence or a constitutional motion pursuant to Section 14 of the Constitution of the Republic of Trinidad and Tobago. For both procedures, the appeal proceeds from the trial court, to the High Court of Trinidad and Tobago, to the Court of Appeal of Trinidad and Tobago, and then in criminal cases that are granted special leave to appeal, to the Judicial Committee of the Privy Council in London.

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126) In this regard, the Commission indicated that although free legal representation should be available to all persons for the presentation of constitutional motions in Trinidad and Tobago, in practice it is rarely granted to those sentenced to death. Furthermore, there is a practical obstacle to the presentation of these motions, namely that the execution orders are read a few days before they are to be carried out, which makes the introduction of constitutional motions considerably more difficult.

127) The Commission claimed that, in light of Articles 8, 25 and 1(1) of the Convention, the State is obligated to effectively provide legal representation for all persons that wish to present a constitutional motion. In cases of persons sentenced to death, this obligation becomes even more crucial.

128) With respect to the availability of legal assistance, the Commission specifically alleged that Narine Sooklal (Case No. 12,152) was denied permission on six occasions to make telephone calls to obtain legal representation. For this reason, he did not benefit from legal counsel until immediately before the preliminary inquiry, which took place six months after his arrest. Consequently, the Commission argued that in his specific case, Article 8(2)(d) of the American Convention was violated.

129) Likewise, the Commission specifically alleged in the case of Keiron Thomas (Case No. 11,853), that during the appeal requested by the victim, the lawyer appointed by the State to represent him informed the Court of Appeal that, in his opinion, the appeal was unfounded and would not succeed. As a result, the victim dismissed his lawyer and requested that he have the opportunity to obtain another lawyer or defend himself personally. The Court of Appeal refused his petition and ordered that Keiron Thomas continue to be represented by the lawyer that he had objected to. In light of these facts, the Commission claimed that the State is responsible for violating Article 8(2)(d) and 8(2)(e) of the Convention.

130) The Commission argued that the victim in Case No. 12,052, Martin Reid, was found guilty of murder solely on the basis of the positive identification made by of one witness for the prosecution. However, after his conviction, the State provided the victim's lawyers with a copy of a statement made by the witness prior to the aforementioned testimony, containing information that contradicted the trial testimony that led to Martin Reid's conviction. The Commission therefore claimed that, with respect to this victim, Trinidad and Tobago violated Article 8(2)(c) of the Convention.

131) Similarly, in the case of Peter Benjamin (Case No. 12,148), the Commission claimed that the weapon allegedly used by Benjamin to commit the murder was 16-gague while the weapon

that killed the murder victim was 12-gague. Thus, Benjamin could not have committed this murder. The Commission added that although this information was available at trial, its due significance and scope was not brought to light. In the opinion of the Commission, this constitutes a violation of Article 8(1) of the American Convention.

Contentions of the Representatives of the Alleged Victims

132) In regard to the violation of Articles 7(5) and 8(1) of the Convention, the representatives of the victims concurred with the contentions of the Inter-American Commission and asked the Court to commute the death sentences by virtue of the delay in the proceedings (supra para. 120). Below, the Court presents a summary of their allegations.

133) The representatives stated that international jurisprudence establishes that a conviction issued pursuant to a trial where there were unjustified delays may be quashed. The Court, therefore, should order the State to commute the sentences imposed.

134) The representatives also claimed that there was a violation of Article 2 of the Convention because the State had not adopted the necessary measures to give full effect to the rights protected therein. They added that Trinidad and Tobago has not revised its criminal statutes to allow the exercise of discretion in sentencing, has not amended its Constitution to guarantee the right to a fair trial within a reasonable time, and has preserved immunity from constitutional challenge of "existing laws," which were in force before the enactment of the Trinidadian Constitution.

135) In regard to the violation of Articles 8 and 25 of the Convention, in conjunction with Article 1(1), the victims' representatives adopt the same reasoning as the Commission in relation to the right of every individual to present constitutional motions, which permit, to some extent, further consideration of their cases and sentences.

136) Moreover, the representatives of the victims alleged that Article 8 of the American Convention was violated in four specific cases: 1) Narine Sooklal was not allowed to contact a lawyer after his arrest, which constitutes a violation of Article 8(2)(d) of the Convention; 2) Keiron Thomas was represented in his appeal by a lawyer whom he had expressly dismissed, leading to a violation of Article 8(2)(d) and 8(2)(e); 3) in the trial of Martin Reid, certain evidence favourable to the victim's defence was not disclosed, in violation of Article 8(2)(c) of the Convention; and 4) in the case of Peter Benjamin, there was a discrepancy between the gauge of Benjamin's weapon and the gauge of the murder weapon; the failure to give this evidence due consideration constitutes a violation of Article 8(2)(d).

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Assessment of the Court

137) Article 8 of the Convention provides that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
[…]
c. adequate time and means for the preparation of his defense;
d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
[…]

138) Likewise, Article 7(5) of the American Convention provides that

[a]ny person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

139) Article 25 of the American Convention, concerning the right to judicial protection, states that

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

140) Article 2 similarly stipulates that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

141) Article 1(1) the Convention creates an obligation for the State to respect and guarantee the exercise of rights enshrined therein, by providing that:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

142) In relation to the duration of domestic proceedings, the Court has previously established that they are deemed to be at an end

[w]hen a final and firm judgment is delivered and the jurisdiction thereby ceases and that, particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed. [FN125]

[FN125] I/A Court H.R., Suárez Rosero Case, supra note 66, para. 71.

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143) With respect to the right to trial within reasonable time, addressed in Article 8(1), this Tribunal has previously held that three factors should be considered in determining the reasonableness of the time in which a proceeding takes place: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities. [FN126]

[FN126] Cf. I/A Court H.R., Suárez Rosero Case, supra note 66, para. 72; I/A Court H.R., Genie Lacayo Case. Judgment of January 29, 1997. Series C No. 30, para. 77; European Court of Human Rights, Motta v. Italy. Judgment of February 19, 1991, Series A No. 195-A, para. 30; European Court of Human Rights, Ruiz-Mateos v. Spain. Judgment of June 23, 1993, Series A No. 262, para. 30.

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144) In the Suárez Rosero Case, the Court found that a period of delay of four years and two months between the victim's arrest and resolution of the final appeal "far exceeds the reasonable time contemplated in the American Convention." [FN127]

[FN127] I/A Court H.R., Suárez Rosero Case, supra note 66, para. 73.

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145) It is the view of this Court that in certain cases a prolonged delay in itself can constitute a violation of the right to fair trial. In these situations, the State must provide, according to the above criteria (supra para. 143), an explanation and proof as to why it has needed more time than normally required to issue a final judgment in a particular case.

146) The Court ruled in its Advisory Opinion OC-16/99 that "for 'the due process of law' a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants." [FN128]

[FN128] Likewise, in the aforementioned Advisory Opinion (OC-16/99) the Court found that

[t]o accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. Absent those countervailing measures, widely recognized in various stages of the proceeding, one could hardly say that those who have the disadvantages enjoy a true opportunity for justice and the benefit of the due process of law equal to those who do not have those disadvantages.
I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 117 and 119.

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147) In this context, the Court has said that in order to ensure a veritable guarantee of the right to a fair trial, the proceedings must adhere to all the requirements that "are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof," [FN129] or rather, "the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination." [FN130]

[FN129] I/A Court H.R., Habeas Corpus in Judicial Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 25.
[FN130] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 28; and I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, supra note 128, para. 118.

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148) In order to protect the right to effective recourse, established in Article 25 of the Convention, it is crucial that the recourse be exercised in conformity with the rules of due process, protected in Article 8 of the Convention, which include access to legal aid. Taking into account the exceptionally serious and irreparable nature of the death penalty, the observance of due process, with its bundle of rights and guarantees, becomes all the more important when human life is at stake. [FN131]

[FN131] Cf. I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99, supra note 128, paras. 134 and 135.

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149) With respect to the right to effective recourse in this case, the Court considers that, according to the evidence presented by the Commission, it is evident that the filing of

constitutional motions is complicated and difficult without the assistance of an attorney, and that in practice, there is no effective means to present constitutional motions in Trinidad and Tobago. [FN132]

[FN132] Cf. Expert Witness Report of Desmond Allum, supra para. 77(a); Cf. also: United Nations Human Rights Committee, Currie v. Jamaica, Communication No. 377/1989, U.N. Doc. No. CCPR/C/50/D/377/1989 (1994), para. 13(4) (concluding that in cases where a convicted person wishes to present a constitutional motion due to irregularities in his criminal trial and lacks the means to pay for legal counsel, if the interests of justice so require, Article 14(1) of the International Covenant on Civil and Political Rights demands that the State provide free legal representation); United Nations Human Rights Committee, Willard Collins v. Jamaica, Communication No. 240/1987, U.N. Doc. No. CCPR/C/43/D/240/1987 (1991), para. 7(6) (holding that in cases of capital punishment, legal aid should not merely be available, but that the defence counsel should be able to prepare his client's case under circumstances that will guarantee justice); European Court of Human Rights, Benham v. United Kingdom. Judgment of May 24, 1996, Case No. 7/1995/513/597, para. 64 (the European Court concluded that in view of the gravity of the punishment that the petitioner could be given and the complexity of the applicable laws, the interests of justice demanded that the petitioner be provided free legal representation in order to guarantee a fair trial); and European Court of Human Rights, Artico Case. Judgment of May 13, 1980, Petition No. 00006694/74, para. 35 (establishing that it is not necessary to prove actual prejudice to establish a violation of the right protected in Article 6(3)(c) of the European Convention, but rather that it is sufficient to simply show that the victim was denied legal aid).

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150) With regard to this same issue, this Court has reiterated that it is not enough that legal recourse exist in theory, [FN133] if such recourses do not prove effective in preventing violations of the rights protected in the Convention. The guarantee of an effective recourse "constitutes one of the basic pillars, not only of the American Convention, but also the Rule of Law in a democratic society as per the Convention." [FN134]

[FN133] Cf. I/A Court H.R., Cesti Hurtado Case. Judgment of September 29, 1999. Series C No. 56, para. 125; I/A Court H.R., The "Panel Blanca Case" (Paniagua Morales et al.). Judgment of March 8, 1998, supra note 66, para. 164; I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997, supra note 66, para. 63. In addition, this Tribunal also stated that "[a] remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective." I/A Court H.R., Judicial Guaranties in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987, supra note 130, para. 24.
[FN134] I/A Court H.R., Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, para. 163. Cf. I/A Court H.R., Durand and Ugarte Case, supra note 109, para. 101; and I/A Court H.R., The "Street Children" Case (Villagrán Morales et. al), supra note 67, para. 234.

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151) This Tribunal has also indicated that within the general obligations of States, there exists a positive duty to guarantee the rights of all individuals within their jurisdiction. This includes the duty

> to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the Convention. [FN135]

[FN135] I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 34.

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152) Based on the foregoing, the Court makes the following findings:

a) Trinidad and Tobago's domestic law does not recognise the right to trial within a reasonable period of time, and therefore, does not conform to the dictates of the Convention. In light of the evidence available in the present Case, found in the information contained in the "Facts Set Forth" section above (supra para. 60), and in accordance with the established principle of iura novit curia, the Court concludes that the State of Trinidad and Tobago violated the right, enshrined in Articles 7(5) and 8(1) in conjunction with Articles 1(1) and 2 of the American Convention, to be tried within a reasonable time, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.

b) Similarly, this Tribunal finds sufficient evidence to conclude that in practice, persons convicted of murder do not have access to adequate legal assistance for the effective presentation of constitutional motions. Even though the right to present constitutional motions is protected in the legal system of Trinidad and Tobago, in the case of George Constantine, Wilson Prince, Mervyn Edmund, Martin Reid, Gangadeen Tahaloo, Noel Seepersad, Natasha De Leon, Phillip Chotalal, Wilberforce Bernard, Amir Mowlah and Mervyn Parris, the State impeded the use of this recourse by not providing the accused with the proper legal aid that would have allowed them to effectively exercise it, and the recourse was consequently rendered illusory. Thus, Articles 8 and 25 in relation to Article 1(1) of the American Convention were violated.

c) The Court draws attention to the fact that Section 6 of the Constitution of the Republic of Trinidad and Tobago of 1976 establishes that no law in effect prior to the date the Constitution entered into force may be the object of constitutional challenge under Sections 4 and 5 (supra para. 84(f)). The Offences Against the Person Act is incompatible with the American Convention and thus any provision that establishes that Act's immunity from challenge is likewise incompatible, by virtue of the fact that Trinidad and Tobago, as a party to the Convention at the

time that the acts took place, cannot invoke provisions of its domestic law as justification for failure to comply with its international obligations.

d) Finally, the Court does not consider it necessary to pronounce judgment on allegations by the Commission and the representatives of the victims of specific violations in certain cases in light of the fact that they are included within the broad nature of the violations already found of the American Convention.

XI. VIOLATION OF ARTICLE 5(1) AND 5(2) IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION (Detention Conditions)

Contentions of the Commission

153) The Inter-American Commission alleged that the detention conditions to which twenty-one victims [FN136] in this case have been subjected to demonstrates a lack of respect for their physical, mental and moral integrity, and that the victims have additionally been subjected to cruel, inhuman or degrading treatment or punishment, in violation of Article 5(1) and 5(2) of the Convention in conjunction with Article 1(1).

[FN136] The twenty-one victims referred to are: Keiron Thomas (Case No. 11,853), Anthony Garcia (Case No. 11,855), Darrin Roger Thomas (Case No. 12,021), Rodney Davis (Case No. 12,072), Gangadeen Tahaloo (Case No. 12,073), Noel Seepersad (Case No. 12,075), Wayne Matthews (Case No. 12,076), Alfred Frederick (Case No. 12,082), Natasha De Leon (Case No. 12,093), Vijay Mungroo (Case No. 12,111), Phillip Chotalal (Case No. 12,112), Naresh Boodram and Joey Ramiah (Case No. 12,129), Nigel Mark (Case No. 12,137), Wilberforce Bernard (Case No. 12,140), Steve Mungroo (Case No. 12,141), Krishendath Seepersad (Case No. 12,149), Narine Sooklal (Case No. 12,152), Amir Mowlah (Case No. 12,153), Mervyn Parris (Case No. 12,156), and Francis Mansingh (Case No. 12,157).

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154) The Commission stated that, during their pre-trial detention, the victims suffered from serious overcrowding, which forced them to sleep sitting or standing up. Moreover, the cells lacked adequate hygiene, natural light and sufficient ventilation, aggravated by the fact that the victims were confined in these conditions for at least twenty-three hours a day.

155) With respect to their post-conviction detention, the Commission stated that the victims have been kept in solitary confinement and that opportunities to leave to get fresh air or exercise are rare. In these circumstances, the victims have no educational or recreational facilities. Access to medical and dental services for some of the victims has been inadequate since visits by medical and dental personnel are rare and requests for attention have often not been met.

156) The Inter-American Commission stated that the victims have suffered these conditions for extensive periods of time, and therefore the State has failed to ensure respect for the dignity inherent to all human beings in all circumstances, as well as their right not to be subjected to cruel, inhuman or degrading treatment or punishment.

157) The Commission also alleged that the State of Trinidad and Tobago violated Article 5(4) with respect to Francis Mansingh due to the fact that before his trial, he was held in a cell with prisoners who had already been convicted of murder and were awaiting the resolution of their appeals.

158) Finally, the Commission alleged that the State did not make any attempt to reform or socially readapt Haniff Hilaire and Krishendath Seepersad, which constitutes a violation of Article 5(6) of the Convention. Specifically, they were not taught to read or write, nor were they given any training on violence prevention and control. The Commission stated that for persons sentenced to death, the possibility of the death sentence being revoked or commuted continues until all appeals have been exhausted. Therefore, it stated that during this transitional period, there should be no discrimination in providing opportunities for reform or social re-adaptation based solely on the fact that these prisoners were sentenced to death.

Contentions of the Representatives of the Alleged Victims

159) The representatives agreed with the Commission's arguments and stated that the cells receive little or no natural light, the sanitation facilities are primitive and degrading, the accused in pre-trial detention are kept in overcrowded, tiny cells, there is no opportunity for those awaiting the death penalty to work, time for exercise is very limited, and medical facilities are virtually nonexistent.

160) The representatives pointed out that, in accordance with the evidence presented in the case, one can conclude that all the victims have been exposed to terrible detention conditions over a substantial period of time. Moreover, given that the evidence presented to the Court has not been contested by the State, the Tribunal should accept it in full.

161) Based on the above, the representatives concluded that detention conditions in Trinidad and Tobago are "completely unacceptable in a civilized society," and this is sufficient to constitute a violation of Article 5(1) and 5(2) of the Convention.

162) The representatives agree with the arguments of the Commission with respect to the specific violations committed to the detriment of Francis Mansingh, Haniff Hilaire, and Krishendath Seepersad (supra paras. 157 and 158).

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Assessment of the Court

163) The relevant portions of Article 5 provide that

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
[…]

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
[…]
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

164) The Court held in the Cantoral Benavides Case that, "holding a person incommunicado, […] isolation in a small cell, without ventilation or natural light, […] restriction of visiting rights […], constitute forms of cruel, inhuman and degrading treatment as per Article 5(2) of the American Convention." [FN137]

[FN137] I/A Court H.R., Cantoral Benavides Case, supra note 134, para. 89.
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165) Likewise, the Inter-American Court has stated that any person deprived of his liberty has the right to be treated with dignity and the State has the responsibility and duty to guarantee his personal integrity while detained. As a result, the State, being responsible for detention facilities, is the guarantor of the rights of detainees. [FN138]

[FN138] Cf. I/A Court H.R., Neira Alegría et al. Case. Judgment of January 19, 1995. Series C No. 20, para. 60; and I/A Court H.R., Cantoral Benavides Case, supra note 134, para. 87.
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166) In addition, the United Nations Human Rights Committee has stated that the detention of a prisoner with other persons, in conditions that present a serious health danger, constitutes a violation of Article 7 of the International Covenant on Civil and Political Rights, which stipulates that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. [FN139]

[FN139] I/A Court H.R., Cantoral Benavides Case, supra note 134, para. 86, citing: United Nations Human Rights Committee, Moriana Hernández Valentini de Bazzano v. Uruguay, No. 5/1977 of 15 August 1979, paras. 9-10.
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167) Likewise, in Soering v. United Kingdom, the European Court found that the "death row phenomenon" is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety in addition to other circumstances, including, among others: the way in which the sentence was imposed; lack of consideration of the personal characteristics of the accused; the disproportionality between the punishment and the crime committed; the detention conditions while awaiting execution; delays in the appeal process or in reviewing the death sentence during which time the individual experiences extreme psychological tension and

trauma; the fact that the judge does not take into consideration the age or mental state of the condemned person; as well as continuous anticipation about what practices their execution may entail. [FN140]

[FN140] Cf. European Court of Human Rights, Soering v. United Kingdom. Judgment of July 7, 1989. Series A, Vol. 161. Likewise, the Supreme Court of the United States of America recognised in Furman v. Georgia that the time spent awaiting the execution of a death sentence destroys the human spirit and constitutes psychological torture that often leads to insanity. Cf. Furman v. Georgia, 408 U.S. 238, 287-288 (1972).

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168) In the present Case, as a result of legislation and judicial procedures that are contrary to the American Convention, all of the victims in the present Case live under the constant threat that they may be taken to be hanged at any moment. According to the report submitted by the expert Gaietry Pargass, the procedures leading up to the death by hanging of those convicted of murder terrorize and depress the prisoners; others cannot sleep due to nightmares, much less eat (supra para. 77(c)).

169) After considering the expert testimony offered on the subject, [FN141] the Court finds that the detention conditions that all the victims in this case (supra para. 2) have experienced and continue to endure compel the victims to live under circumstances that impinge on their physical and psychological integrity and therefore constitute cruel, inhuman and degrading treatment.

[FN141] Cf. Expert reports of Gaietry Pargass, and Vivien Stern and Andrew Coyle, supra paras. 76(b) and 77(c).

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170) The Court holds that despite the fact that a violation of Article 5 of the Convention was alleged by the Commission for only twenty-one of the victims in the present Case, this does not preclude the ability this Tribunal, pursuant to the general principle of iura novit curia (supra para. 107), to find, on the basis of the evidence presented throughout the proceedings and especially on that given by the experts on detention conditions, that the conditions described are in fact indicative of the general conditions in Trinidad and Tobago's prison system, and as such, constitute a violation of that Article to the detriment of all the victims in the present Case.

171) Conversely, the Court does not consider it necessary to pronounce judgment on the allegations by the Commission and the representatives of specific violations of the American Convention concerning the detention conditions of particular victims, in light of the fact that these violations are encompassed by the broad nature of those already found in the present Judgment.

172) In light of the foregoing, the Court declares that Trinidad and Tobago violated the provisions of Article 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1), to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste,

Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh.

XII. VIOLATION OF ARTICLES 4(6) AND 8 IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION (Amnesty, Pardon or Commutation of Sentence)

Contentions of the Commission

173) The Inter-American Commission considered that, in the case of the thirty-two victims sentenced to death in the present Case, the State did not guarantee an effective procedure for granting amnesty, pardon or commutation of sentence, thus failing to comply with the requirements of Article 4(6) of the Convention and the obligations of the State stipulated in Article 1(1).

174) The Inter-American Commission indicated that Section 88 of the Constitution of the Republic of Trinidad and Tobago provides for an Advisory Committee on the Power of Pardon. This committee is charged with considering and making recommendations to the Minister of National Security as to whether a person sentenced to death should benefit from the President's discretionary power of amnesty, pardon or commutation of sentence.

175) It added that the law does not prescribe guidelines for the exercise of the Committee's functions or the President's discretion, and that the victims in the present Case had no right to apply for amnesty, pardon or commutation of sentence, to be informed of the date on which the Committee would consider their case, to present oral or written arguments before the Committee or to receive its decision within a reasonable time.

176) Consequently, the Commission asserted that the procedure for granting amnesty, pardon or commutation of sentence in Trinidad and Tobago does not guarantee offenders an effective opportunity to participate in the process, and therefore does not constitute an adequate guarantee in accordance with Article 4(6) of the American Convention.

177) The Commission stated that according to recent jurisprudence of the Judicial Committee of the Privy Council, [FN142] individual mercy petitions based on the constitution may be subject to judicial review and that the prerogative of mercy must be exercised fairly and adequately. It likewise indicated that these conclusions appear to apply to all jurisdictions where a prerogative of mercy exists for death penalty cases, including Trinidad and Tobago.

[FN142] Cf. Neville Lewis et al. v. Attorney General of Jamaica. Judgment of the Judicial Committee of the Privy Council of September 12, 2000.

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178) The Commission finally argued that in order to provide the offenders with an effective opportunity to exercise this right, the State must establish and offer a procedure through which offenders can formulate and present arguments in support of their petitions. The Commission stated that in the absence of these minimum protections and procedures, Article 4(6) of the Convention is rendered meaningless, having no effective means by which it may be exercised.

Contentions of the Representatives of the Alleged Victims

179) The representatives claimed that the prerogative of mercy in itself is not enough to comply with the totality of requirements established in Articles 4(1), 4(2), 5(1), 5(2) and 8 of the American Convention, due to the fact that the Advisory Committee on the Power of Pardon is not a judicial but an executive body without any pre-established guidelines for the exercise of the prerogative of mercy. The Committee meets and advises the Minister of National Security in secret and there is no mechanism to ensure that offenders receive a reasoned explanation for a mercy decision, as the Minister is free to disregard any recommendations made by the Committee.

180) They added that, in light of the above, under the domestic law applied to all the persons in this case, there were no guidelines for the granting of amnesty, pardon or commutation of sentence, there was no right to present written or oral arguments, and the proceedings were marked by a general lack of available information, such that none of the victims had a right to a fair hearing before the Advisory Committee on the Power of Pardon.

181) The representatives argued that each victim should be notified of the date on which the Committee will consider their case, should be provided with the materials to be presented before the Committee, should have a right to present arguments at an oral hearing, and should be able to submit for the Committee's consideration the findings and recommendations of international bodies. While a petition of this nature is pending, the victim ought not to be executed.

182) They considered that in order to make a reliable determination as to what crimes are "the most serious," the Advisory Committee should have access to all the relevant mitigating evidence in order that the amnesty, pardon or commutation procedures are consistent with the requirements of Article 4(2) of the Convention.

183) Finally, the representatives argued that all the persons included in the present Case are victims, some because they were read their execution order, others because they were in danger of being executed, and finally, in the case of Joey Ramiah, because the execution was carried out. In every case, the victims had no effective recourse to amnesty, pardon or commutation procedures.

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Assessment of the Court

184) The Court observes that Article 4 of the American Convention is based on the principle that the death penalty should be applied only for the most serious crimes and in exceptional

circumstances, and grants to those sentenced to death the additional right to seek amnesty, pardon or commutation of sentence before the competent authority.

185) Article 1(1) of the Convention establishes the State's duty to respect and guarantee the exercise of the rights protected therein (supra para. 141) and Article 4(6) states that

[e]very person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

186) In the present Case, the Court finds that the individual mercy petitions provided for in the Constitution should be exercised though fair and adequate procedures, in conformity with Article 4(6) of the Convention [FN143] and in conjunction with the relevant due process guarantees established in Article 8. In other words, it is not enough merely to be able to submit a petition; rather, the petition must be treated in accordance with procedural standards that make this right effective.

[FN143] In this respect, the Privy Council stated the following:
[the prerogative of mercy] should [i]n the light of the [S]tate's international obligations, be exercised by procedures which were fair and proper and amenable to judicial review; that in considering what natural justice required it was relevant to have regard to international human rights norms laid down in treaties to which the state was a party, whether or not they were independently enforceable in domestic law; that, therefore, the condemned man was entitled to sufficient notice of the date when the [Jamaican Privy Council] was bound to consider before taking a decision, when a report by an international human rights body was available the [Jamaican Privy Council] should consider it and give an explanation if it did not accept the report's recommendations, and the condemned man should normally be given an explanation when it did not accept the report's recommendations, and the condemned man should normally be given a copy of all the documents available to the [Jamaican Privy Council] and not merely the gist of them; that the defects in the procedures adopted in relation to the applicants' petitions for mercy had resulted in a breach of the rules of fairness and of natural justice; and that, accordingly, they had been deprived of the protection of the law to which they were entitled […]. Cf. Neville Lewis et al. v. Attorney General of Jamaica. Judgment of the Judicial Committee of the Privy
Council of September 12, 2000, p. 1786.

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187) The Court deems that although a violation of Article 4(6) of the Convention was not specifically alleged by the Commission in the Hilaire Case Application, appearing only in its final arguments, the Tribunal is not prevented from examining the issue by virtue of the aforementioned general legal principle of iura novit curia (supra para. 107). [FN144]

[FN144] Cf. I/A Court H.R., Durand and Ugarte Case, supra note 109, para. 76; I/A Court H.R., Castillo Petruzzi et al. Case, supra note 66, para. 166; and I/A Court H.R., Godínez Cruz Case, supra note 68, para. 172.

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188) Article 4(6) of the American Convention, when read together with Articles 8 and 1(1), places the State under the obligation to guarantee that an offender sentenced to death may effectively exercise this right. Accordingly, the State has a duty to implement a fair and transparent procedure by which an offender sentenced to death may make use of all favourable evidence deemed relevant to the granting of mercy.

189) The Court considers that the application of the procedure for granting mercy to the thirty-two victims of the present Case was characterized by a lack of transparency, lack of available information and lack of participation by the victims, resulting in a violation of Article 4(6), in conjunction with Articles 8 and 1(1) of the American Convention. Therefore the Court finds violations to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.

XIII. VIOLATION OF ARTICLE 4 OF THE AMERICAN CONVENTION (Non-compliance with the Provisional Measures ordered by the Court with respect to Joey Ramiah, Case No. 12,129)

Contentions of the Commission

190) The Inter-American Commission distinguished the situation of Joey Ramiah in Case No. 12,129 (Naresh Boodram and Joey Ramiah), who was declared guilty of murder and sentenced to the "mandatory death penalty" under Trinidad and Tobago's Offences Against the Person Act.

191) The Commission indicated that despite the fact that the Court expanded its provisional measures in the James et. al Case on May 25, 1999 to include Joey Ramiah, the State executed him on June 4, 1999, while his case was pending before the inter-American human rights system.

192) The Commission states that by executing Joey Ramiah, the State is responsible for grave violations of Articles 4(1), 5(1), and 5(2) of the Convention by virtue of arbitrarily depriving him of his life without due respect for his mental, physical or moral integrity and by subjecting him to cruel, inhuman or degrading punishment or treatment.

Contentions of the Representatives of the Alleged Victims

193) The victims' representatives argued that if at the time the crime was committed, Trinidad and Tobago had a classification system for murder similar to that adopted in Jamaica under its

Amendment to the Offences Against the Person Act of 1992, Joey Ramiah would not have faced capital punishment, but rather would have been sentenced for a lesser crime.

194) In addition, the representatives stated that before being condemned to death, Joey Ramiah did not have an opportunity to present evidence of mitigating factors to any court, tribunal or other body with jurisdiction to grant him amnesty, pardon or commutation of sentence according to the dictates of Article 4(6) of the Convention.

195) Finally, the representatives stated that the automatic imposition of the "mandatory death penalty" in the case of Joey Ramiah constitutes a violation of Articles 2, 4(1), 4(2), 4(6), 5(1), 5(2), 7(5) and 8(1) of the American Convention.

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Assessment of the Court

196) In an Order dated May 25, 1999, the Court directed Trinidad and Tobago to take all necessary measures to preserve the life of Joey Ramiah, among others (supra para. 29), so that his case could continue being processed before the inter-American system, specifically before the Commission. [FN145] This request was reiterated by the Court and its President in later Orders. [FN146]

[FN145] Cf. I/A Court H.R., James et al. Provisional Measures. Order of May 25, 1999. Series E No. 2, Operative Paragraph 2(b).
[FN146] Cf. I/A Court H.R., James et al. Provisional Measures. Order of June 14, 1998, August 29, 1998 and May 25, 1999. Series E No. 2.
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197) Despite the Provisional Measures expressly ordered by the Court, the State executed Joey Ramiah on June 4, 1999. On June 7, 1999, the Commission advised the Court of this execution. [FN147] Despite having been duly notified by the Court, the State claimed that it had not received any order related to the adoption of protective measures in favour of Joey Ramiah. [FN148]

[FN147] Cf. I/A Court H.R., James et al. Provisional Measures. Order of August 16, 2000. Series E No. 3, having seen 1 and 4.
[FN148] Statement from the State of September 4, 2000, in which it presented information about the circumstances that led to the execution of Joey Ramiah, Cf. I/A Court H.R., James et al. Provisional Measures. Order of November 24, 2000. Series E No. 3, having seen 3.
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198) The Court finds that the execution of Joey Ramiah by Trinidad and Tobago constitutes an arbitrary deprivation of the right to life. This situation is aggravated because the victim was protected by Provisional Measures ordered by this Tribunal, which expressly indicated that his

execution should be stayed pending the resolution of the case by the inter-American human rights system.

199) The State of Trinidad and Tobago has caused irreparable harm to the detriment of Joey Ramiah, by reason of its disregard of a direct order of the Court and its deliberate decision to order the execution of this victim.

200) The Court reiterates that the State of Trinidad and Tobago arbitrarily deprived Joey Ramiah of the right to life (supra paras. 197 and 198). This Tribunal emphasizes the seriousness of the State's non-compliance in virtue of the execution of the victim despite the existence of Provisional Measures in his favour, and as such finds the State responsible for violating Article 4 of the American Convention.

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XIV. REPARATIONS (Application of Article 63(1) of the American Convention)

Obligation to Make Reparations

201) In accordance with the analysis set forth in previous chapters, the Court finds, based on the facts of the case, violations of Articles 4(1), 4(2), 4(6), 5(1), 5(2), 7(5), 8, and 25 of the American Convention, all in relation to Articles 1(1) and 2. The Court has held, on a number of occasions, that any violation of an international obligation resulting in harm carries with it an obligation to make adequate reparations for this harm. For this purpose, the Court has based its findings on Article 63(1) of the American Convention states that,

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. (emphasis added)

202) As the Court has indicated, Article 63(1) of the American Convention contains arule of customary law that constitutes one of the fundamental principles of contemporary international law on State responsibility. Thus, when an illicit act is imputed to the State, there immediately arises a responsibility on the part of the State for its breach of the international norm involved, together with the subsequent duty to make reparations and put an end to the consequences of said violation. [FN149]

[FN149] Cf. I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 40; I/A Court H.R., Cesti Hurtado Case. Reparations, supra note 64, para. 35; and I/A Court H.R., The "Street Children" Case (Villagrán Morales et. al). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 62.

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203) Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists of restoring the situation that existed before the violation occurred. When this is not possible, as in the present Case, it is the task of this international Tribunal to order the adoption a series of measures that, in addition to guaranteeing respect for the rights violated, ensure that the damage resulting from the infractions is repaired, and order the payment of an indemnity as compensation for the harm caused in that case. [FN150] The obligation to make reparations, which is regulated in all its aspects (scope, nature, modalities, and designation of beneficiaries) by international law, cannot be tempered or breached by the violating State through the invocation of provisions of its domestic law. [FN151]

[FN150] Cf. I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 41; I/A Court H.R., Durand and Ugarte. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 89, para. 25; and I/A Court H.R., Barrios Altos Case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, para. 25.

[FN151] Cf. I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 41; I/A Court H.R., Cesti Hurtado Case. Reparations, supra note 64, para. 35; and I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Reparations, supra note 149, para. 61.

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204) With respect to violations of the right to life and other rights, where restitutio in integrum is not possible given the nature of the interest affected, it is the practice in international law that reparations should take the form, inter alia, of a fair indemnity or monetary compensation where appropriate, together with a requirement that the State should adopt such positive measures as will ensure that harmful acts such as those committed in the present Case are not repeated. [FN152]

[FN152] Cf. I/A Court H.R., The "Panel Blanca" Case (Paniagua Morales et al.). Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 80; I/A Court H.R., Castillo Páez Case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 52; and I/A Court H.R., Garrido and Baigorria Case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 41.

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205) Reparations, as the term indicates, consist of those measures necessary to make the effects of the violations committed disappear. The nature and amount of the reparations depend on the damage caused in both material and non-material realms. Reparations cannot, in any case, entail either the enrichment or the impoverishment of the victim or his next of kin. [FN153]

[FN153] Cf. I/A Court H.R., Cantoral Benavides Case. Reparations, supra note 63, para. 36; I/A Court H.R., Cesti Hurtado Case. Reparations, supra note 64, para. 36; and I/A Court H.R. The "Street Children" Case (Villagrán Morales et. al). Reparations, supra note 149, para. 63.
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206) In the next section, the Court summarizes the arguments presented by the Inter-American Commission and the representatives of the victims on the subject of reparations.

Contentions of the Commission

207) As previously mentioned (supra para. 6), the Commission argued that as a consequence of the alleged violations, the following forms of reparations are appropriate and necessary in some or all of the victims' cases: enforcement of the commutation of Wayne Matthews' sentence as already ordered by the domestic judicial authorities; remission of the cases of two other alleged victims to the Court of Appeal of Trinidad and Tobago; compensation for the harm caused by the execution of the death penalty of Joey Ramiah; commutation of the death sentence in the cases of the remaining victims; adoption of legislative or other measures necessary to bring the domestic law into compliance with the Convention; and reimbursement of expenses reasonably incurred by the representatives of the victims in the course of the proceedings in the case.

Arguments of the Representatives of the victims

208) The representatives of the victims maintained that, according to the wording of Article 63(1) of the Convention, the Court has the power to order measures that ensure future respect for the rights or freedoms that were violated, remedy the consequences produced by the violation and compensate for the harm suffered.

209) In general terms, the representatives maintained that in the cases which comprise the present Case, one appropriate reparation this Court could order would be a commutation of the sentences to 75 years in prison.

210) In the specific case of Joey Ramiah (Case No. 12,129), the victims' representatives requested that this Court order the State to award compensation deemed to be fair and appropriate to his next of kin.

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Assessment of the Court

211) The Court has observed that the way in which the crime of murder is penalized in the Offences Against the Person Act is in and of itself a violation of the American Convention on Human Rights.

212) This finding leads the Court to hold that the State of Trinidad and Tobago should refrain from future application of the aforementioned Act, and, within a reasonable time, bring the law

into compliance with the American Convention and other international human rights norms, in accordance with Article 2, so that the respect and enjoyment of the rights to life, personal integrity, a fair trial and due process embodied in the Convention are guaranteed. The legislative reforms contemplated should include the introduction of different categories (criminal classes) of murder, in keeping with the wide range of differences in the gravity of the act, so as to take into account the particular circumstances of both the crime and the offender. A system of graduated levels should be introduced to ensure that the severity of the punishment is commensurate with the gravity of the act and the criminal culpability of the accused.

213) The foregoing is consistent with the position which this Court has taken in the past, to the effect that:

[…] the general obligations of the State, established in Article 2 of the Convention, include the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees.
[…]
In international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted, and is supported by jurisprudence. The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights that it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of effet utile). This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention's rules on protection. [FN154]

[FN154] Cf. I/A Court H.R., "The Last Temptation of Christ" Case (Olmedo Bustos et al.), supra note 114, paras. 85 and 87.

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214) In light of this, the Court finds that the State should order a retrial for the criminal charges brought against the victims of the present Case and apply the aforementioned legislative reforms in the new trial of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh. In addition, the Advisory Committee on the Power of Pardon must resubmit the victims' cases to the executive authority competent to render a decision regarding that mercy procedure. This should be carried out in accordance with the restrictions contained in the American Convention concerning the right to life and in strict compliance with the norms of due process stipulated therein. [FN155]

[FN155] Cf. also the jurisprudence of the Privy Council in Neville Lewis v. Jamaica, supra note 142.

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215) For the purposes of reparations, the Court must take into account the fact that the State, to the detriment of all or some of the victims in this case, has violated the rights embodied in Articles 4(1), 4(2) and 4(6), 5(1) and 5(2), 7(5), 8(1) and 25, in relation with Articles 1(1) and 2 of the Convention, due to the totality of circumstances described in this judgment, including the fact that the victims have been sentenced under a law that is incompatible with the American Convention. The Court, in the exercise of the authority conferred upon it by Article 63(1) of the Convention, holds, on the grounds of equity, that the State, regardless of the outcome of the new trials mentioned in the last paragraph, and independently of whether the new trials are actually carried out, should refrain from executing Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris and Francis Mansingh.

216) Given that the State arbitrarily and deliberately deprived Joey Ramiah of his life, despite the existence of protective provisional measures ordered by the Court in his favour for the purpose of staying the execution until the organs of the inter-American human rights system rendered a final decision in this case, and given the fact that it may be presumed that this caused detriment to Mrs. Carol Ramcharan, and their son, Joanus Ramiah, the Court finds, on grounds of equity, that it is appropriate to direct Trinidad and Tobago to grant an indemnity of US $50,000 (fifty-thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) for the support and education of Joanus Ramiah. The Court likewise deems appropriate, on grounds of equity, to direct Trinidad and Tobago to grant an indemnity of US $10,000 (ten-thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) to Mrs. Moonia Ramiah, the mother of Joey Ramiah, to make reparations for the non-pecuniary damage that she may be presumed to have suffered as a result of the execution of her son.

217) Finally, the Court considers it pertinent and necessary to direct the State to bring its prison conditions into compliance with the relevant international human rights norms on the matter.

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218) In regard to the reimbursement of costs and expenses, this Tribunal takes note of the submissions of the representatives of the victims, which request compensation solely for expenses due to the fact that they litigated the case before the inter-American system pro bono. It therefore is the duty of this Tribunal to prudently assess the scope of the expenses incurred by

the representatives of the victims through the inquiries made in anticipation of litigation before the Inter-American Court. This assessment can be carried out according to the principles of equity. [FN156]

[FN156] Cf. I/A Court H.R., Cesti Hurtado Case. Reparations, supra note 64, para. 72; I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Reparations, supra note 149, para. 109; and The "Panel Blanca" Case (Paniagua Morales et al.). Reparations, supra note 152, para. 213.

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219) In light of this, the Court finds that it is equitable to award, through the intermediary of the Inter-American Commission on Human Rights, the total sum of US $13,000 (thirteen-thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) for the expenses incurred by the representatives of the victims in the course of the international proceedings before the Inter-American Court of Human Rights. The State may fulfil the foregoing obligation by rendering the respective payment within six months of the pronouncement of the present Judgment.

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220) The State can fulfil its pecuniary obligations through payment in dollars of the United States of America or in the equivalent amount in Trinidad and Tobago dollars, calculated on the basis of the exchange rate in effect on the New York Stock Exchange of the United States of America, on the day prior to the date of payment.

221) Payment of the sum due for non-pecuniary damages as well as the costs and expenses established in this Judgment cannot be subject to any tax currently in force or any that may be decreed in the future. In addition, if the State does not pay within the stipulated period, it shall pay interest on the amount owed, calculated according to the standard bank rate of interest in Trinidad and Tobago. Finally, if for any reason the beneficiaries fail to receive their respective payments within a period of twelve months, the State shall assign those payments in their name to an account or certificate of deposit in a solvent financial institution, in United States of America dollars or its equivalent in Trinidad and Tobago dollars, under the most favourable financial terms permitted by law and banking practice. If the payment is not claimed after ten years, the amount shall revert, together with the accrued interest, to the State.

222) In accordance with its practice, the Court reserves the right to supervise due compliance with the present Judgment. The process will be deemed complete when the State has fully complied with the present decision.

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XV. OPERATIVE PARAGRAPHS

223) Now therefore,

THE COURT

declares with respect to the merits

unanimously,

1. that the State violated the right to life enshrined in Article 4(1) and 4(2), in conjunction with Article 1(1) of the American Convention on Human Rights, for reasons stated in paragraph 109 of the present Judgment, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

2. that the State breached its obligation established in Article 2 of the American Convention on Human Rights for the reasons stated in paragraph 118 of the present Judgment to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

3. that the State violated the right to be tried within a reasonable time protected in Articles 7(5) and 8(1) in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights for the reasons stated in the paragraph 152(a) of the present Judgment, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

4. that the State violated the right to an effective recourse established in Articles 8 and 25 in conjunction with Article 1(1) of the American Convention on Human Rights for the reasons stated in the paragraph 152(b) of the present Judgment, to the detriment of George Constantine,

Wilson Prince, Mervyn Edmund, Martin Reid, Gangadeen Tahaloo, Noel Seepersad, Natasha De Leon, Phillip Chotalal, Wilberforce Bernard, Amir Mowlah, and Mervyn Parris;

unanimously,

5. that the State violated the right to humane treatment enshrined in Article 5(1) and 5(2), in conjunction with Article 1(1) of the American Convention on Human Rights, for reasons stated in paragraph 172 of the present Judgment, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

6. that the State violated the right of all persons sentenced to the death penalty to apply for amnesty, pardon or commutation of their sentence enshrined in Article 4(6) in conjunction with Articles 8 and 1(1) of the American Convention on Human Rights, for reasons stated in paragraph 189 of the present Judgment, to the detriment of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Joey Ramiah, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

7. that the State arbitrarily deprived Joey Ramiah of his right to life in violation of Article 4 of the American Convention on Human Rights, for reasons stated in paragraph 200 of the present Judgment.

With respect to reparations the Court holds

unanimously,

8. that the State should abstain from applying the Offences Against the Person Act of 1925 and within a reasonable period of time should modify said Act to comply with international norms of human rights protection for the reasons stated in paragraph 212 of the present Judgment;

unanimously,

9. that the State should order a retrial in which the new criminal legislation resulting from the reforms to the Offences Against the Person Act of 1925 will be applied, for the reasons stated in paragraph 214 of the present Judgment, in the criminal proceedings in relation to the crimes imputed to Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

10. that the State should submit before the competent authority and by means of the Advisory Committee on the Power of Pardon, for the reasons stated in paragraph 214 of the present Judgment, the review of the cases of Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

11. on grounds of equity, that the State should abstain from executing, in all cases, regardless of the results of the new trials, for the reasons stated in paragraph 215 of the present Judgment, Haniff Hilaire, George Constantine, Wenceslaus James, Denny Baptiste, Clarence Charles, Keiron Thomas, Anthony Garcia, Wilson Prince, Darrin Roger Thomas, Mervyn Edmund, Samuel Winchester, Martin Reid, Rodney Davis, Gangadeen Tahaloo, Noel Seepersad, Wayne Matthews, Alfred Frederick, Natasha De Leon, Vijay Mungroo, Phillip Chotalal, Naresh Boodram, Nigel Mark, Wilberforce Bernard, Steve Mungroo, Peter Benjamin, Krishendath Seepersad, Allan Phillip, Narine Sooklal, Amir Mowlah, Mervyn Parris, and Francis Mansingh;

unanimously,

12. on grounds of equity, that the State should pay for non-pecuniary damage to the wife of Joey Ramiah, Carol Ramcharan, the sum of US $50,000 (fifty thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) to support and educate their child, Joanus Ramiah, for the reasons stated in paragraph 216 of the present Judgment;

unanimously,

13. on grounds of equity, that the State pay Joey Ramiah’s mother, Moonia Ramiah, the sum of US $10,000 (ten thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) for non-pecuniary damage, for the reasons stated in paragraph 216 of the present Judgment;

unanimously,

14. that the State should modify the conditions of its prison system to conform to the relevant international norms of human rights protection on the matter, for the reasons stated in paragraph 217 of the present Judgment;

unanimously,

15. on grounds of equity, that the State should pay the representatives of the victims the sum of US $13,000 (thirteen thousand United States of America dollars) or its equivalent in Trinidad and Tobago dollars (TTD) as reimbursement for the expenses they have incurred in bringing this case before the Inter-American Court of Human Rights, for the reasons stated in paragraph 219 of the present Judgment;

unanimously,

16. that the State, from the date of notification of the present Judgment, shall provide the Inter-American Court of Human Rights with a report every six months regarding the measures taken to implement the present Judgment, and

unanimously,

17. that the Court shall oversee implementation of this Judgment and will deem the case to be closed once the State has duly complied with the terms of the present Judgment.

Judge Cançado Trindade advises the Court of his Concurring Opinion, and Judges García-Ramírez and de Roux-Rengifo of their Separate Opinions, which are attached to this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, the 21st day of June 2002.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli
Hernán Salgado-Pesantes
Oliver Jackman
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE [FN1]

[FN1] This opinion was written in Spanish language and translated into English by the Secretariat of the Inter-American Court of Human Rights.

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1. I vote in favour of the adoption, by the Inter-American Court of Human Rights, of the present Judgment on the merits and reparations in the Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case, which is consistent with the relevant provisions and the spirit of the American Convention on Human Rights. This is the first time that an international tribunal finds that the "mandatory" death penalty violates a human rights treaty such as the American Convention, that the right to life is violated by the generic and automatic application of the death penalty, without individualization and without due process guarantees, and that, among the reparations, the violating State should modify its penal legislation to bring it into compliance with the dictates of international human rights protection and abstain, in all cases, from executing those sentenced to death.

2. Given the transcendental importance of the issue considered in this landmark Judgment of the Inter-American Court, I feel compelled to present my personal reflections on the matter, in the present Concurring Opinion. In reality, it is hard to avoid the sensation that everything one could say about the imposition of capital punishment has been written: there are, in fact, whole libraries of materials on the subject. However, a universally accepted solution to the main dilemmas regarding the termination of life in certain circumstances has yet to be achieved. I fear that it will be difficult to find a solution in the limited realm of Law, and even less so in the realm of positive rights. It is not my intention to address the many facets of this complex issue in the context of the cas d'espèce in this Concurring Opinion, but rather to make known my marked concerns about questions of fundamental importance that have gone unaddressed for over two centuries by those who insist on retaining capital punishment. These issues become even more important when its application is carried out, as in the present case of Hilaire, Constantine and Benjamin et al., in the so-called "mandatory" manner.

I. Law and Death: Jus Talionis and the Arbitrary Deprivation of Life

3. Arbitrary deprivation of life is commonly associated with the crime of murder. But there are different ways to arbitrarily deprive a person of life according to the terms of the prohibition found in Article 4(1) of the American Convention: when death is a direct consequence of an illicit act of murder, as well as when circumstances (such as misery) that impede access to conditions necessary for a dignified life are not avoided. [FN2] The present Case, Hilaire, Constantine and Benjamin et al., reveals that arbitrary deprivation of life can occur through

"legal" actions by State actors pursuant to a law that is a source of arbitrariness, and, as such, is incompatible with the American Convention; in other words, the arbitrary deprivation of life can occur via actions or omissions not only of individuals (in inter-personal relationships), but also of the State itself as demonstrated by the cas d'espèce.

[FN2] Cf. On this issue see the I/A Court of H. R., The"Street Children" Case (Villagrán Morales et al. v. Guatemala, Merits). Judgment of November 19, 1999. Series C No. 63, pp. 64-65, para. 144.

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4. Trinidad and Tobago's Offences Against the Person Act of 1925, which requires the application of the "mandatory" death penalty for the crime of murder, as the Inter-American Court has stated in the present Judgment, [FN3] violates the American Convention in its mere existence; this is aggravated by that fact that the Act has been effectively applied (through the imposition of death sentences) in the present case of Hilaire, Constantine and Benjamin et al. Indeed, the very law that applies the death penalty results in the extreme violence that it purports to prevent; [FN4] by applying the age-old law of an eye for an eye, the government itself resorts to violence, disposing of – under a judicially totalitarian vision [FN5] – a person's life, [FN6] just as the individual deprived another of his life – and all in spite of the historic evolution of the idea, also age-old, that justice should prevail over revenge (public and private).

[FN3] Cf. paras. 103-104, 106, and 108 of the present Judgment.

[FN4] In his book Dernier jour d'un condamne (1829), one of the greatest writers of the nineteenth century, Victor Hugo, referred to judicially-mandated executions and indicated that they were recognized as "public crimes," which affect "all members of the social community." Also in the realm of Law, in his classic monograph La Lucha por el Derecho (1872), Rudolph von Ihering, upon referring to capital punishment, stated that "judicial murder, as it is appropriately called in our German language, is law's true mortal sin;" R. von Ihering, La Lucha por el Derecho, Madrid, Ed. Civitas, 1989 (reprint), p. 110. (Translation by the Secretariat of the Court).

[FN5] Even in the nineteenth century, another universal writer, Fyodor Dostoievski, in his Souvenirs de la maison des morts (1862) eloquently took a stance against the "unlimited power" of certain individuals over others, which generates brutality or perversion, thereby infecting society as a whole; in the opinion of the great Russian writer, such is the case with corporal punishment, applied with the plain indifference of the "already infected" society and in a state of decomposition. In the book Recuerdos de la Casa de los Muertos, Dostoievski warns that the degree of civilization that any society can reach could be determined upon evaluating its prisons; F. Dostoievski, Souvenirs de la maison des morts, Paris, Gallimard, 1997 (reprint), pp. 35-416. Based on this type of evaluation, few countries, even nowadays in the beginning of the twenty-first century would be classified as "civilized."

[FN6] It does not cease to be a paradox that, in our times, a universal consensus has already reached with regards to the absolute prohibition against torture, forced disappearance of persons and summary, extra-judicial or arbitrary executions, but not with respect to the uninfringeable, unconditional human life; C.K. Boyle, "the Concept of Arbitrary Deprivation of Life" in The

Right to Life in International Law (ed. B.G. Ramcharan). Dordrecht, Nijhoff, 1985, p. 233, and cf. 241; N.S. Rodley, The Treatment of Prisoners under International Law, 2a. ed., Oxford, University Press, 2000 (reprint) p. 206.

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5. Justice that requires killing presumes that certain people have no possibility of redemption, and that the respective society has reached a degree of perfection that requires the elimination of such people, — something that to me cannot be substantiated. In effect, a legal system that requires killing, employing the same methods that it condemns in acts of murder, lacks credibility. In my opinion, the fact that such means are validated by positive law, when used by the government, does not justify it in the least; positivism has always been a slave to established power, independently of its orientation. One cannot lose sight of the fact that legal norms inevitably reflect the underlying value systems, [FN7] a fact which no true legal scholar can ignore.

[FN7] Punishments also reflect the range of values that prevail in a given society. R. von Ihering, El Fin en el Derecho, Buenos Aires, Omeba Ed., 1960, p. 236.

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6. It is important to recall that, even in the eighteenth century, in his classic work Dei Diritti e delle Pene (1764), Cesar Beccaria stated: "what right can they claim for themselves [men] in order to tear apart their fellow men? (…) What kind of person has wanted to leave the decision whether to make him die to the whim of other men? (…) The death penalty is not useful because it gives men an example of atrocity. (…) The rules governing the conduct of these men [who commit murder], should not include this savage law, made more atrocious because legalized murder is carried out according to deliberate procedures. It seems odd that the law, in other words, the expression of popular will, which detests and punishes murder, would commit the act itself, and do so in order to deter citizens from committing murder by ordering a public execution." [FN8]

[FN8] C. Beccaria, De los Delitos y de las Penas, Madrid, Alianza Ed., 2000 (new edition) chapter 28, pp. 81 and 86-87 (Translation by the Secretariat of the Court). In his 1776 commentary on the aforementioned work of Beccaria, Voltaire emphasized that "much worse than death" – was the uncertainty and waiting and observed that "refined executions that human reason has invented to make death horrible seem to have been invented more by tyranny than by justice;" Ibid. pp. 129 and 149. In another essay, The Price of Justice (1777), Voltaire again referred to prison as "torture" and added that murder should not be punished with another murder since "death repairs nothing;" Voltaire, O Preço da Justiça São Paulo, Martins Fontes, 2001 pp. 17-19 and 101; for him the raison d'Etat did not go beyond an "invented expression to serve as an excuse for the tyrants;" ibid. p. 80.

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7. The subject has received attention in the philosophy of Law for the last two centuries. In the twentieth century, L. Racaséns Siches, for example, confessed, in the 1960s, his anguish with

respect to the doctrine of retribution used to justify the penalty, in other words, the understanding that "undeserved harm that an individual inflicts on another should be inflicted on that person" (jus talionis); thus, the central objective of legal retribution (or retributive justice) is the reestablishment or the restoration of the act perpetrated by the crime; [FN9] however, he conceded that even with this response to the law violated (expression of social censure of the crime), in the context of reintegration of the established legal regime (which does not fail to express a "vindictive side"), it is necessary to be watchful for the failings of human justice and the irreparable nature of judicial error. [FN10]

[FN9] L. Ricanséns Siches, "La Pena de Muerte, Grave Problema con Múltiples Facetas," in A Pena de Morte (Coloquio Internacional de Coimbra of 1967), vol. II, Coimbra, University of Coimbra, 1967, pp. 12 and 14-16 (Translation by the Secretariat of the Court).
[FN10] Ibid., pp. 17, 19-20.

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8. In one of his works, Recaséns Siches went further, discarding the "objective idea" of retribution in the following way:

> The degree of guilt cannot be determined by taking into account only objective prejudices; but rather it should also depend on the level of premeditated intent and ill will. The purpose of considering subjective factors, including the motive and all the circumstances of the offender does not in any way diminish the primary purpose of punishment, as fitting or proper; on the contrary, it only reinforces this purpose. Finding the person guilty is clearly consistent with the norm of retribution, precisely because punishment is only symbolic compensation or restoration of the prior state, and consequently, should also depend on subjective factors. In the place of simple mathematical equality, proportional equality enters into the equation: for an equal crime, equal punishment according to the measure of the interior inequality which lies under external equality, or according to the extent of internal equality, which lies under exterior inequality. [FN11]

[FN11] L. Recaséns Siches, Panorana del Pensamiento Jurídico en el Siglo XX, vol. II (1a. ed.), Mexico, Editorial Porrúa, 1963, p. 796 (Translation by the Secretariat of the Court).

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9. This is a very persuasive argument in support of the need for the individualization of sentences, as a capability intrinsic to the exercise of judicial power. In addition, in the 1960s, Marc Ancel pointed out the then discernible tendency, of gradual abandonment of the so-called "mandatory nature" of the death penalty, [FN12] which today only exists in a small number of countries (above all former British colonies). This is due, in part, to the growing influence of the French concept of "mitigating factors," which has recognized the discretional power of national tribunals to impose sentences other than capital punishment, [FN13] upon determining the different levels of criminal responsibility.

[FN12] Capital Punishment, N.Y., United Nations, 1962, p. 11, para. 14, cited in R. Hood, infra note 13, p.85.
[FN13] R. Hood, The Death Penalty: A Worldwide Perspective (A Report to the United National Committee on Crime Prevention and Control), Oxford, Clarendon Press, 1990 (reprint), p. 87.
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10. In the present Judgment on the merits and reparations in the Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case, the Court has correctly resolved this question in the circumstances of the cas d'espece, [FN14] upon finding that the Offences Against the Person Act of 1925 of Trinidad and Tobago orders the automatic and generic imposition of the death penalty for the crime of murder and fails to recognize that murder can have varying degrees of severity, which should be duly taken into account and evaluated by the judge, especially when the most valuable legal right, the right to life, is at risk.

[FN14] As developed in paragraphs 103-104, 106, and 108.
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11. The arbitrary nature of the aforementioned Offences Against the Person Act in particular, and of Trinidad and Tobago's domestic law in general, [FN15] is manifested in different phases of the judicial process, such as the determination of criminal responsibility (without taking into account the particular circumstances of the criminal), and sentencing (with the "requirement" that capital punishment be imposed in murder cases – paras. 103 and 104), as well as blocking the effective reconsideration or review (paras. 186, 188, and 189). It consists of an arbitrary Act that is fons et origo of further arbitrary acts. As the Inter-American Court correctly and categorically affirms in the present Judgment, "the way in which the crime of murder is punished in the Offences Against the Person Act is in and of itself a violation of the American Convention on Human Rights." (para. 211)

[FN15] With respect to petitions for amnesty, pardon or commutation.
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12. Indeed, arbitrariness is found whenever a legal procedure does not conform to the dictates of reason – as determined by the rectae rationis – but rather is issued only by the will of power (and the unlimited use of it). It is, thus, perfectly possible that an order is arbitrary, even though it is based on a positive law. This occurs when the dictates of said law are allowing to trump reason, obeying only "the fortunate whim of the person in power." [FN16] Acting with discretion (duly accounting for the circumstances of a specific case) is not the same as acting arbitrarily; acting with discretion means "being guided by general principles, applying them to the particularities of each concrete case, and evaluating the consequences," [FN17] which is an inherent attribute of the judicial process.

[FN16] L. Recanséns Siches, Tratado General de Filosofía del Derecho, 7th Edition, México, Editorial Porrúa, 1981, p. 216 (Translation by the Secretariat of the Court).

[FN17] Ibid. p. 217 (Translation by the Secretariat of the Court).
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13. In its Judgment on the merits in the Suárez Rosero v. Ecuador Case (1997), the Inter-American Court established, inter alia, that a certain provision of the Ecuadorian Penal Code constituted a per se violation of Article 2 of the American Convention, independently of whether or not it was applied in the particular case (para. 98). Later, in its Judgment on the merits in "The Last Temptation of Christ" (Olmedo Bustos et al. v. Chile Merits, 2001), the Inter-American Court made clear that the mere existence and applicability of a norm of domestic law (whether constitutional or other) can per se compromise the State responsibility under a human rights treaty (para. 72).

14. In my Dissenting Opinion in the Genie Lacayo v. Nicaragua Case (Application for judicial review of the Judgment, 1997) [FN18], I expressed my understanding in the sense that the very existence of a norm of internal law "legitimises the victims of the violations of the rights protected by the American Convention to require its compatibility with the provisions of the Convention, (…) without having to wait for further harm to be done" from the norm (para. 10). [FN19] In the present case, Hilaire, Constantine and Benjamin et al., this additional harm would result from carrying out the death sentences.

[FN18] I/A Court H.R., Genie Lacayo Case. Application for judicial review of the Judgment of January 29, 1997. Order of the Court of September 13, 1997. Series C No. 45.
[FN19] I also took the same position in my Dissenting Opinion (para. 21) in the Caballero Delgado and Santana v. Colombia Case (Reparations, 1997). For jurisprudence on the concept of the "potential victim," cf. A.A. Cançado Trinidade, "Co-Existence and Co-Ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)", p. 202 Recueil des Cours de l'Académie de Droit International de La Haye (1987) pp. 271-283.
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15. Indeed, in the present Judgment, the Court has correctly ordered, as a means to make reparations, [FN20] that the respondent State abstain from continuing to apply the aforementioned Act, reform it to the standards of international human rights law (para. 212) and in addition that it abstain from executing those sentenced to death (para. 215). These non-monetary reparations comply with the objective of making the effects of the violations of the American Convention committed by the State cease, in accordance with the findings of the Inter-American Court in the present Judgment.

[FN20] From the Latin repartio, derived from reparare, "prepare or arrange again."
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16. Furthermore, in my Concurring Opinion in the Barrios Altos v. Perú Case (Merits, Judgment of March 14, 2001) I observed that a law can, by its very existence, constitute a source (fons et origo) of an illicit international act, beginning

as from their own adoption (tempus commisi delicti), and irrespective of their subsequent application, they engage the international responsibility of the State. Their being in force creates per se a situation which affects in a continuing way non-derogable rights, which as I have already indicated, belong to the domain of jus cogens. Once established, by the adoption of such laws, the international responsibility of the State, this is under the duty to put an end to such situation in violation of the fundamental rights of the human person (with the prompt derogation of those laws), as well as, given the circumstances of each case, to provide reparation for the consequences of the wrongful situation created (para. 11).

17. Also in my Concurring Opinion in the above-cited cases Barrios Altos (para. 9) and "The Last Temptation of Christ" (paras. 96-98), as well as in my earlier Dissenting Opinion in the Caballero Delgado y Santana Case (Reparations, 1997, paras, 13, 14, and 20), I insisted in modifying the domestic laws as necessary to bring them into accordance with the system of protection established in the American Convention as part of the non-monetary reparations under Article 63(1) of the Convention. The Court has established the same reparation, in my opinion correctly, in the present Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. The violation incurred by the very existence of the Offences Against the Person Act (for the way in which it punishes the crime of murder) is aggravated by its application via death sentences. Suspending the execution of capital punishment, in addition to a form of reparation, avoids incurring an additional violation of the Convention.

18. Recall that the Human Rights Committee (under the United Nations International Covenant on Civil and Political Rights) has consistently maintained that the imposition of the death penalty following a trial without legal due process guarantees, and without the possibility of a review mechanism to challenge the sentence, constitutes a per se violation of the right to life (in violation of Article 6 of the Covenant). [FN21] Said violation exists independently of whether the death sentence is carried out, even if those sentenced to death are still alive. It intends to avoid additional harm.

[FN21] Cf. See its decisions in the following cases: C. Wright v. Jamaica (1992, para. 8.7), L. Simminds v. Jamaica (1992, para. 8.5), A. Little v. Jamaica (1991, para. 8.6), and R. Henry v. Jamaica (1991, para. 8.5).

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19. There is no way, based solely on examining the circumstances of the crime, to separate those into factors that aggravate, mitigate or discharge criminal responsibility. The consideration of said circumstances is inherent in the exercise of judicial power. Accordingly, it has been thought that legality and equity are two distinct, but inseparable, aspects of judicial consideration; and so much so that legality is impossible without equity, and equity is likewise impossible without legality. [FN22] It is not surprising that the most articulate contemporary doctrine has distanced itself from the theory of retribution (central to the supposed objective of the death penalty), which is inconsistent with the social aim of punishment (which, in addition, should be limited by the degree of criminal responsibility of the perpetrator). [FN23]

[FN22] L. Ferrajoli, Derecho y Razón – Teoría del Garantismo Penal, 5th ed., Madrid, Editorial Trotta, 2001 p. 162 and cf. pp. 158 and 160.
[FN23] The punishment (in general) also attempts to achieve the objective of judicial certainty. But the death penalty (or legalized murder) goes beyond degrees of guilt, completely excluding social readaptation (of the convict); moreover, it is the most radical form of corporal punishment, which is applied to the body of the convicted.
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20. More important than its radical nature, as Beccaria has already indicated, is the certainty or inevitability of the punishment, [FN24] which should be used to prevent crime and avoid impunity, without necessarily resorting to cruel and inhuman methods (for humanitarian reasons, such as the "modification of punishments", as well as judicial reasons, such as the limits of the "social contract"). Indeed, the retributive theory seems to assume, erroneously, that the only possible equivalent to death is death itself, forgetting that the State has the ability to impose other punishments; it is undeniable that "violence generates violence in a chain without end" and also in criminal matters, it is necessary to search for "a break in this chain." [FN25] In the poignant reflection by Karl Jaspers, moderation, in general, "creates a space for reflection, for examination, for clarification and also through it a more clear consciousness of the permanent significance of violence itself." [FN26]

[FN24] Cf. C. Beccaria, De los Delitos y de las Penas, supra note 7, chapter 28, p. 83. This same argument, in the sense that "the real deterrent is not the level of punishment, but its inevitability," has been, in our times, invoked by the Italian Delegation to the United Nations Commission on Human Rights in the debates of 1997-1998, since the adoption of resolution 1997/12 of April 4, 1997, presented and co-sponsored by forty-five other countries, proposing the suspension of the execution of death sentences with the aim of complete abolition. Cf. R. Toscano, "The United Nations and the Abolition of the Death Penalty," in The Death Penalty – Abolition in Europe, Strasbourg, Council of Europe, 1999, pp. 95-99 and 101.
[FN25] N. Bobbio, El Tiempo de los Derechos, Madrid, Editorial Sistema, 1991, pp. 222, 230-231, 234, and 241 (Translation by the Secretariat).
[FN26] K. Jaspers, El Problema de la Culpa, Barcelona, Editorial Piados, 1998 (new edition) p.77 (Translation by the Secretariat of the Court).

II. LAW AND DEATH: THE PREMEDITATED DEPRIVATION OF LIFE

21. As I have previously reflected on time and the law in several of my other Concurring Opinions for the Inter-American Court, it would be difficult for me here to refrain from embarking on another central issue in the present case. In regard to the relation between the end of temporal human existence- death- and the law, allow me to weave together some brief comments on specific facets of death when it is directed, planned and carried out by man, and regulated by positive law. As I pointed out at the beginning of this Concurring Opinion, contrary to the beliefs of proponents of legal positivism, law is not wholly independent of other areas of human knowledge. When one tries to infringe upon or regulate the end of a human being's life, and above all when it occurs through the application of an existing law, the deficiencies of the

law are evident. [FN27] We are prisoners of our own conceptual universe; if, in the present context, we look to other areas of human knowledge, we still will not find satisfactory answers to the question at hand.

[FN27] In reality, the final frontier of human existence – death – has always presented questions and challenges for all jurists, which are intensified by the transformation of cultural models and advances in scientific and technological knowledge. A great responsibility therefore falls on jurists to not merely limit themselves to the norms of positive law, but rather to also be cognizant of contemporary value systems and the evolution of human knowledge. Cf. S Rodotá, "Law and Moral Dilemmas Affecting Life and Death- A General Presentation of the Issues," Law and Moral Dilemmas Affecting Life and Death (Proceeding of the Glasgow Colloquy on European Law, 1990), Strasbourg, Council of Europe, 1992, p.14, and cf., pp. 11 and 25.

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22. My Concurring Opinions in the Bámaca Velásquez v. Guatemala Case (Merits, 2000, paras. 6-23 and 40; and Reparations, 2002, paras. 2-7, 11-15, 18-19 and 25-26), and in the "Street Children Case," (Villagrán Morales et al. v. Guatemala, Reparations, 2001, para. 25), underscore the ties of solidarity between the dead and the living through the unity of all humankind, in the temporal sense. In my opinion, this point deserves greater attention from the International Law of Human Rights, since until now it has focused almost exclusively on the living (as the holders of those protected rights), without sufficiently considering the suffering of the dead (except for establishing reparations), which, in turn, is inevitably projected onto the living.

23. This temporal dimension helps us to always keep the victims, including the victims of the crime, in mind. The search for and attainment of justice should be carried out with the recognition of the central position of the victims (all of them) in the conceptual universe of International Human Rights Law. The current debate surrounding this issue does not distance itself from the victims of the crime at any point. On the contrary, the suffering of the victim assumes a central position in the search for justice. [FN28] In the present Judgment of the Hilaire, Constantine and Benjamin et al. Case, the Inter-American Court has properly taken into account, and indeed could not have refrained from doing so, the need to bear in mind the suffering of the murder victims and their families (para. 101).

[FN28] Cf. P. Hodgkinson, "Victims of Crime and the Death Penalty," in The Death Penalty-Abolition in Europe, Strasbourg, Council of Europe, 1999, pp. 37 and 47-53.

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24. The Court has also recognized the need that justice be served, by means of the trial (with its due process guarantees) and punishment of those responsible (para. 102). But the attainment of justice is not related to vengeance (public or private), contrary to the underlying assumption of morbid acts or rituals (with a clearly vengeful purpose) with "witnesses" to the execution of the death penalty. [FN29] These acts or rituals can be viewed as disrespectful to the memory of

those victimized and the values of their families. In sum, the State cannot resort to violence and the same methods employed in the murders.

[FN29] Ibid. pp. 47 and 51.

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25. Always bearing in mind the suffering of the family and dependents of the deceased victims of the crime, the great dilemma between determinism (or predestination) and freedom (including the freedom to do wrong) persists without any definitive answers to be found, not even within Philosophy or Theology. In the face of the existence of evil, the resolution of this dilemma cannot be found in vengeance (public or private). We live, in effect, surrounded by the mysteries inherent to human existence from its beginning to its end, motivated by the hope that we perhaps may find answers to some of them; however, the means or resources that we rely upon to confront wrongdoing, which is part of the human condition, are limited. If we persevere in the search for some way to live with these mysteries, it is more likely that we will find it in the humanities, in literature or the arts, or in religion, than in the law, much less in positive law.

26. As such, and always conscious of our limitations, I will now refer to some of the provoking words of Reflections on the Guillotine (1957) by Albert Camus. According to this insightful author- one of the most influential of the 20th century, - "retribution derives from nature and instinct," and not the law, which, "by definition, cannot obey the same laws as nature. If the act of murder is found in the nature of man, the law is not made to imitate or reproduce this nature," but rather to correct it. Although it applies arithmetic compensation of one life (that of the victim) for another (that of the criminal), the execution of the death penalty is not simply death, as it carries with it certain rules of procedure, organization and a "public premeditation," which are "the source of a moral suffering that is more terrible than death," and therefore is not equal to other forms of death. Knowing, with great anxiety, that he will be executed (everything is "out of his hands") and powerless before the public coalition that wills his death, the condemned is "kept in an inevitable state of inaction, but with a conscience that is his principal enemy." In this way, the condemned is destroyed by the anticipation of the execution of the death penalty long before actually dying: "two deaths are inflicted upon him," the first "worse than the other. (…) Compared to this torture, the punishment of an eye for an eye appears civilized." [FN30]

[FN30] A. Camus, "Réflexions sur la guillotine," in A. Camus y A.A. Koestler, Réflexions sur la peine capitale, Paris, Calmann-Lévy, 1979 (reprinted 1997), pp. 140-141, 143 and 146 (Translation by the Secretariat of the Court).

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27. More than three decades had passed since the original publication of these thoughts, when an international human rights tribunal, the European Court in Strasbourg, held, in the July 7, 1989 judgment of Soering v. United Kingdom, that the respondent State was barred from extraditing the petitioner (a German national) to the United States, due to the possibility of being sentenced to the death penalty and subjected to the "intense and prolonged suffering" of awaiting

execution (the so-called “death row phenomenon”); therefore, if he is extradited to the United States, the Court added, the United Kingdom would incur a violation of Article 3 of the European Convention on Human Rights, due to the “real risk” of “inhuman treatment,” which is understood, within the context of the jurisprudential interpretation of Article 3, as treatment that “deliberately causes serious physical or mental suffering.” [FN31]

[FN31] European Court of Human Rights, Soering v. United Kingdom case, Judgment of 07/07/1989, Strasbourg, Council of Europe, pp.1-42, esp. paras. 88-92, 99, 104, 106, 109 and 111.

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28. The European Court, in declaring that the European Convention is a “living instrument” to be interpreted in light of contemporary conditions, took into account the evolution of national criminal systems of States Parties to the Convention towards the de facto abolition of the death penalty, as reflected in Protocol No. 6 (of 1983) of the European Convention, which revealed a virtual consensus that, due to the changing times, the death penalty was no longer consistent with “regional standards of justice.” [FN32] Under the circumstances – as, inter alia, with a case of extradition, an example of cas d’espèce – in which the death penalty could pose an issue under Article 3 of the European Convention (inhuman or degrading punishment), the Court stated the following:

The manner in which it [a death sentence] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment of punishment received by the condemned person within the proscription under Article 3. (para. 104)

[FN32] Id. at p. 31, para. 102.

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29. In the Soering Case, the European Court indicated the circumstances in which the imposition of the death penalty (or its probability) could bring about a violation of Article 3 of the European Convention (prohibiting inhuman or degrading treatment), but did not affirm that the death penalty per se violated Article 3 of the Convention. [FN33] The Inter-American Court of Human Rights, bearing in mind the circumstances surrounding the Hilaire, Constantine and Benjamin et al. Case, has gone even farther in the present Judgment on the merits and reparations, in establishing the incompatibility of the “mandatory” death penalty with the American Convention, and ordering, as one of the means of reparation, the stay of the execution of this penalty.

[FN33] For a general overview of the application of this provision of the European Convention, cf., H. Fourteau, L’application de l’article 3 de la Convention Européenne des Droits de l’Homme dans le droit interne des Etats members, Paris, LGDJ, 1996, pp. 1ss.

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30. In addition to the aforementioned considerations, it would be difficult to avoid the assertion that there is no method of carrying out the death penalty that would not be cruel, inhuman and degrading. In its landmark sixteenth Advisory Opinion on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (1999) – which serves as guidance and inspiration in statu nascendi for this matter, - the Inter-American Court cautioned that, in a case that leads to the application of the death penalty in the absence of due process guarantees, the violation of the right to not be arbitrarily deprived of life [FN34] will be added to the violation of the due process guarantees and becomes a premeditated, government-sanctioned judicial murder.

[FN34] For a general overview of this issue in relation to the death penalty, cf., e.g., W.A. Schabas, op. cit. infra n. (44), pp. 3-303, esp. pp. 126, 138, 144, 229; A. Salado Osuna, La Pena de Muerte en Derecho Internacional- Una Excepción al Derecho a la Vida, Madrid, Tecnos, 1999, pp. 1-278; Amnesty International, When the State Kills… The Death Penalty v. Human Rights, London, A.I., 1989, pp.68-70.

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31. Such a violation raises questions, which, once again, transcend the sphere of positive law. An entire value system naturally underlies the wide debate that is sparked by these questions. [FN35] To affirm, in the name of society, that a person should be executed, that his life should be put to an end for being entirely evil, leads to the assumption – which no person with common sense would agree with today – that society is entirely good. As Camus stated, where nothing authorizes the government to “definitively legitimate” or “produce something irreparable”; he who judges absolutely condemns himself absolutely. The great writer wisely added that this may be explained by the assertion that

Ill n’y a pas de justes, mais seulement des coeurs plus ou moins pauvres en justice. Vivre, du moins, nous permet de le savoir et d’ajouter à la somme de nos actions un peu du bien qui compensera, en partie, le mal que nous avons jeté dans le monde. Ce droit de vivre que coincide avec la chance de réparation est le droit naturel de tout homme, même le pire. (..) Sans ce droit, la vie morale est strictement impossible. (…) Ni dans le coeur des individus ni dans les moeurs des sociétés, il n’y aura de paix durable tan que la mort ne sera pas mise hors la loi. [FN36]

[FN35] Paragraph 137 and resolving point No. 7 in the aforementioned Advisory Opinion.
[FN36] A. Camus, op. cit. supra n. ( ), pp. 159-160, 164, 166 and 170. [Translation: There are no just persons, only hearts that are more or less impoverished in justice. Living, at the very least, allows us to recognize and aggregate to the sum of our actions the little bit of good that will compensate, in part, for the evil that we have unleashed into the world. This right to life that coincides with the opportunity for reparation is the natural right of every man, even the worst. (…) Without this right, a moral life is strictly impossible. (…) Neither the heart, nor individuals, nor societal practices will have lasting peace while death is not placed outside the grasp of the law. (Translation by the Secretariat)

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32. The basic concern for safeguarding the rights of the victims continues to be surrounded by debates about when these rights are transferred to the criminal authority. [FN37] A parallel concern has arisen by virtue of the fact that, in any national society, the criminal punishment system is based on justice and not on vengeance. [FN38] With respect to this matter, real advances have also been made through restrictions on the death penalty with the purpose of reducing its application until it is eventually abolished. [FN39] These advances have been manifested in International Human Rights Law [FN40] as well as International Humanitarian Law [FN41] and International Criminal Law. [FN42]

[FN37] Cf. e.g., Council of Europe, Serious Crime and the Requirement of Respect for Human Rights in European Democracies (Seminar of Taomina, Italy, November 1996), Strassborg, Council of Europe, 1997, pp.7-199, esp. pp. 91-92 (Intervention of J. Mayer-Ladewig)
[FN38] Ibid. p. 194 (Intervention of B. Geremek)
[FN39] Cf. e.g. I/A Court H.R., Restrictions on the Death Penalty, Advisory Opinion OC-3/83 of August 9, 1983. pp.3-45, paras. 1-76.
[FN40] This tendency toward abolishing the death penalty is expressed in the [Second] Protocol of the American Convention on Human Rights on the Abolition of the Death Penalty (1990); the [Second] Optional Protocol of the International Covenant on Civil and Political Rights of the United Nations on the Abolition of the Death Penalty (1989), and in Protocol No. 6 of the European Convention on Human Rights on the Abolition of the Death Penalty (1983). These Protocols strengthen the commitments already assumed in prior treaties and conventions on human rights protection.
[FN41] For example, the pertinent humanitarian norms of the four Geneva Conventions of 1949 on International Humanitarian Law (Convention III, Article 101; Convention IV, Article 68(1) and (4), and Article 75(1), (2) and (3); and Article 3(1)(1)(d) of all four Geneva Conventions), and the two Optional Protocols of 1977 of those Conventions (e.g., Protocol I, Articles 77(5) and 76(3); Protocol II, Article 6(2), (4) and (5)), imposing prohibitions and restrictions on the death penalty. The International Committee of the Red Cross has adopted this practice (Cf. Le CICR condemnations à mort, 1982, rev. 1987) of interventions to stay the executions of persons in certain categories or in certain circumstances.
[FN42] It should not go unnoticed that the ad hoc International Criminal Tribunals for the former Yugoslavia (1993) and for Rwanda (1994) do not apply the death penalty, nor is it provided for in the Statute of Rome (of 1998) of the permanent International Criminal Tribunal.
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33. The understanding that the application of the death penalty per se constitutes cruel, inhuman and degrading treatment has been articulated in international practice. [FN43] For every possible case (even in the countries that still maintain the death penalty), due process guarantees must be enforced, without which the application of the death penalty constitutes a summary and illegal execution or government-sanctioned, premeditated murder, in violation of the right to life. [FN44] In sum, it has been convincingly demonstrated [FN45] that there is no method of applying the death penalty that is not cruel, inhuman and degrading.

[FN43] Cf. e.g. Human Rights Committee (under Article 7 of the United Nations International Covenant on Civil and Political Rights); cf., W.A. Schabas, op. cit. infra n. (44), p. 138 and cf., p.140.

[FN44] W.A. Schabas, The Abolition of the Death Penalty in International Law, 2a. ed., Cambridge University Press, 1997, pp. 110, 119 and 295, and c.f. p. 303. In addition, the deterrent effect of the death penalty was never actually proven. Furthermore, the death penalty, once applied, creates an irreversible situation in the face of the inevitable occurrence of judicial errors. Ibid., p. 188l R. Sapienza, "International Legal Standards on Capital Punishment," in The Right to Life in International Law (ed. B.G. Ramcharan), Dordrecht, Nijhoff/Kluwer, 1985, pp. 284-296.

[FN45] Cf. A. Camus and A. Koestler, Réflexions sur la peine capitale, Paris, Calmann-Lévy, 1997 (reprinted), pp.22-286.

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34. In my opinion, given the encouraging intersection of purpose between domestic and international legal systems in regard to safeguarding human rights, there is no reason why domestic public law should not take into account the application of international norms of human rights protection. In a Seminar for Caribbean judicial officers in Barbados ten years ago, the participants specifically emphasized the need to reduce the décalage between the considerable evolution of International Human Rights Law in the past decades and the "narrower perspective" of contemporary Caribbean constitutionalism. [FN46] The foundation for bridging this gap appears to be already established, as in the last years, Caribbean legal doctrine has directed its attention towards the advancements made in the normative and hermeneutic realms of human rights protection at the international level; [FN47] this trend should continue in the same direction.

[FN46] Cf. Derrick McKoy, "Capital and Corporal Punishment in Human Rights Law," in Seminar for Caribbean Judicial Officers on International Human Rights Norms and the Judicial Function (Proceedings of the 1993 Barbados Seminar, eds. O. Jackman and A.A. Cançado Trindade), San José, Bridgetown, 1995, p.51-76.

[FN47] Cf. e.g., Lloyd Barnett, "Human Rights and the Machinery of Justice- Caribbean Judicial Approach to Constitutional and Conventional Human Rights Provisions," in Seminar for Caribbean Judicial Officers…, op. cit. supra n. (24), pp. 31-49; and cf., M. Demerieux, Fundamental Rights in Commonwealth Caribbean Counstitutions, Bridgetown, University of the West Indies, 1992, pp. 115-123, 134-135, 144, 152 and 301.

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35. In an era such as the present, in today's overcrowded, mechanized world, in which fewer and fewer people actually stop to think, it seems to be the opportune moment to refer to the insight of the German jurist Gustav Radbruch, who, in his last years of teaching in Heidelburg (in the middle of the 20th century), formulated an eloquent defence of natural law, which delves into both international and criminal law. For Radbruch, the "entrance" of international law into the sphere of legal science was brought about "thanks to natural law." [FN48] According to his vision, the resources provided by natural law "are immense," namely

[Natural law] opened up the eyes of humanity to reveal its chains, thus teaching humanity to shed itself of them. In the name of the inalienable human right to freedom, it struggled against slavery (…); undermined the absolutism of government (…), It safeguarded individuality from the arbitrariness of police abuses and proclaimed the idea of the Republic of Law; it fundamentally corrected criminal law, by opposing justice that is based on arbitrariness and establishing specific categories of crimes; it eliminated the corporal punishment of mutilation as incompatible with human dignity, it abolished criminal procedures employing torture and persecuted the persecutors of witches.
(…) Without the any reservations whatsoever, we should thank the proponents of natural law, particularly those that brought freedom to the 19th century, not only through the influence that they exercised over the legislative process, but also through the influence that they exercised over its practice, such as the shame brought about by the insistence to continue applying the letter of the law in applying practices of corporal punishment and torture provided for in a judicial ordinance from the times of Carlos V. [FN49]

[FN48] Cf. e.g., Association Internationale Vitoria-Suárez, Vitoria et Suárez- Contribution des théologiens au droit international moderne, Paris , Pédone, 1939, pp. 3-170; L. Le Fur, "La theorie du droit naturel depuis le XVIIe. siècle et la doctrine moderne," 18 Recueil de Cours de l'Académie de Droit International de La Haye (1927) pp. 297-399; J. Puente Egido, "Natural Law," in Encyclopedia of Public International Law (ed. R. Bernhardt, Max Plack Institute), vol. 7, Amsterdam, North-Holland, 1984, pp. 344-349; A.A. Cancado Trindade, O Direito Internacional em um Mundo em Trasformação, Rio de Janerio, Ed. Renovar, 2002, pp. 540-550 and 1048-1109.
[FN49] G. Radbruch, Introducción a la Filosofía del Derecho, 3a ed., Mexico/ Buenos Aires, Fondo de Cultura Económica, 1965, p. 112-113 (Translation by the Secretariat of the Court).
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36. The learned author added that one must ask himself

what punishment signifies for those in charge of imposing it and carrying it out, and for society as a whole, as the imposition of inhuman punishments could fracture the values that it espouses. (…) The death penalty, as with other corporal punishments, (…) is reprehensible from the human point of the view to the extent that it is degrading to man by virtue of being a purely corporal punishment.
(…) In the history of the Law, landmark changes have always been initiated, more than any other factor in legal thought, by the transformations experienced in the image of man as conceived of by the law-maker. (…) Every legal system must necessarily detach itself from the general image, from a kind of average man. (…) The respect of subjective rights is almost as important for the legal system as the fulfilment of legal duties. [FN50]

[FN50] Ibid, p.156. For the author, the death penalty historically was the "end point" of a series of punishments, particularly corporal punishments (including the punishment of mutilation), and today is a requirement of these punishments, which "is separated from other forms of

punishment by an insurmountable abyss"; G. Radbruch, Introducão à Ciência do Direito, São Paolo, Martins Fontes, 1999; pp. 111-112. (Translation by the Secretariat of the Court)

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37. It has already been established that the history of punishment is equally "horrendous and infamous to humanity" as the history of crime itself; as with crime, certain punishments are "cruel," and engender additional violence, being that "the violence inflicted by punishment is always planned, conscious, organized by the many against one." It also may be deemed that

[h]umankind has paid for the conglomeration of punishments that have been threatened throughout history in blood, lives and suffering that is immeasurably greater than that produced by the sum of all crimes. (…) If the history of punishment is shameful, then the history of legal and philosophical thought on the issue of punishment is no less shameful, (…) for never having seriously spoken out against the inhumanity of certain punishments until the Age of Enlightenment. (…) [FN51]

If the debate over punishment was driven by principles, founded on the societal conviction of the unconditional inviolability of human life, and not simply utilitarian, [FN52] perhaps the universal legal conscience would have already have taken a definitive stand through the complete abolition of all corporal punishment, of which the death penalty constitutes a historical relic or remnant. [FN53]

[FN51] L. Ferrajoli, Derecho y Razón…, op. cit. supra n. ( ), pp. 385-387 (Translation by the Secretariat of the Court).
[FN52] Rather, on one side, with the defenders of the death penalty invoking arguments concerning the theory of retribution, or intimidation, or social defense or "the idea of society as an organism that should amputate the injured limb;" and, on the other side, the critics of the death penalty invoking its inefficacy as a deterrent, or the "absence of benefit" derived from its application, or its irreversible nature, or its "anti-educative" effect;" ibid, p. 387.
[FN53] Cf. ibid, pp. 390-411.

III. Epilogue: Pacta Sunt Servanda

38. The fact that Trinidad and Tobago denounced the American Convention on Human Rights and is no longer a Party could not be invoked by the respondent State in order to evade the duty to faithfully comply with the present Judgment of the Inter-American Court. In the case of D.R. Thomas and H. Hilaire (Appeal No. 60 of 1998) the Judicial Committee of the Privy Council held on January 1, 1999, inter alia, that, upon the ratification of the American Convention, which "provides for individual access to an international body," Trinidad and Tobago "made that process for the time being part of the domestic criminal justice system and thereby temporarily at least extended the scope of the due process clause in the Constitution." [FN54] The Judicial Committee of the Privy Council continued that, with its denouncement of the American Convention, Trinidad and Tobago "is entitled to curtail such rights of access or prescribe conditions for their exercise for the future. But (…) section 4(a) of the Constitution

prevents the government from doing so retrospectively so as to affect existing applications." [FN55]

[FN54] Privy Council Office/Judicial Committee, Privy Council Appeal No. 60 of 1998- D.R. Thomas and H. Hilaire (Trinidad and Tobago), Decision of January 27, 1999, p.12.
[FN55] Ibid. pp. 12-13.

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39. In other words, the rights protected in the American Convention, whose violation was established in the present Judgment on the merits and reparations in the Hilaire, Constantine and Benjamin et al. Case, are not affected in any way by Trinidad and Tobago's denouncement of the American Convention. From the perspective of an international human rights tribunal such as the Inter-American Court of Human Rights, this is true not only by virtue of what the Judicial Committee of the Privy Council (the argument of the authority) correctly recognized, but rather can also be inferred from the provisions of the American Convention and from the general principles of international law (the authority for the argument).

40. In any case, the prior question concerning the jurisdiction of the Inter-American Court was definitively resolved by the Judgments on the preliminary objections of September 1, 2001 in the Hilaire, Constantine et al. and Benjamin et al. cases (which were then joined). In those Judgments, the Court, making use of the abilities inherent to it (due to the imperative of juridical certainty), determined the scope of its own jurisdiction, and, preserving the integrity of the protection mechanisms of the American Convention, retained jurisdiction over the present Case. [FN56] The respondent State, therefore, finds itself bound (pact sunt servanda) by the holdings of the present Judgment on the merits and reparations.

[FN56] On the basis of the applicable provisions of the American Convention (Articles 62(3) and 78(2)).

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41. The rule of pacta sunt servanda, enshrined in the Vienna Convention of the Law of Treaties of 1969 (Article 26 and Preamble), likewise cannot be diminished by the fact that Trinidad and Tobago has not ratified this Convention, as the Convention merely articulated existing norms of international customary law. The rule of pacta sunt servanda, which incorporates the concept of good faith (bona fides) [FN57] effectively transcends the law of treaties, being characterized by doctrine, whether as a norm of customary law [FN58] or as a general principle of international law. [FN59]

[FN57] M. Lachs, "Some Thoughts on the Role of Good Faith in International Law," in Declarations on Principles, a Quest for Universal Peace- Liber Amicorum Discipulorumque B.V.A. Roling, Leyden, Sijthoff, 1977, pp. 47-55, M.K. Yassen, "L'Interprétation des traits d'après de la Convention de Vienne sur le Droit des Traités," 151 Recueil des Cours de l'Académiede Droit International de La Haye (1976) p.20; Clive Parry, "Derecho de los

Tratados," in Manual de Derecho Público (ed. M. Sorensen), 5th edition, Mexico, Fondo de Cultura Económica, 1994, pp. 229 and 200-201.
[FN58] See, e.g., B. Conforti, Derecho Internacional, Buenos Aires, Zavalía Ed., 1995, p. 67; also H. Mosler, "The International Society as a Legal Community," 140 Recueil des Cours de l'Académiede Droit International de La Haye (1974) pp. 115-116 – Rules (such as the pacta sunt servanda) enshrined in treaties can very well be evidence of international customary law; R.R. Baxter, "Treaties and Custom," 129 Recueil des Cours de l'Académiede Droit International de La Haye (1970) pp.31, 43, 57 and 102-103.
[FN59] Ian Brownlie, Principles of Public International Law, 5th edition, Oxford University Press, 1998, p. 620.
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42. Its inclusion in the Vienna Convention reconstituted the pacta sunt servanda as an axiomatic paradigm: it came to form part of a convention on codification, which undeniably established its broad scope. However, long before the enshrinement of the pact sunt servanda in the Vienna Convention of 1969, [FN60] it had become, more than a general rule of treaty interpretation, a norm of customary international law or a veritable general principle of international law, endowed with wide jurisprudential recognition. [FN61]

[FN60] Cf. Lord McNair, The Law of Treaties, Oxford, Clarendon Press, 1961, pp. 493 and 505; and, for the historical and doctrinal evolution of the rule of pacta sunt servanda, cf., e.g. M. Sibert, "The Pact Sunt Servanda Rule: From the Middle Ages to the Beginning of Modern Times," 5 Indian Yearbook of International Affairs (1956) pp. 219-226; J.B. Whitton, "La règle pacta sunt servanda," 49 Recueil des Cours de l'Académiede Droit International de La Haye (1934) pp. 151-268.
[FN61] E. de la Guardia and M. Delpech, El Derecho de los Tratados y la Convención de Viena, Buenos Aires, La Ley, 1970, p. 276.
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43. Treaty law is closely related to the tenets of International Law, including the area of law concerning the international responsibility of States. [FN62] The scope of the pacta sunt servanda rule, as with the previous issue of the validity of International Law norms, transcends the sphere of treaty law. [FN63] Regardless, the pacta sunt servanda rule finds itself profoundly rooted in the system of International Law as a whole. [FN64] I trust that Trinidad and Tobago will know, in light of the international obligations that it has assumed, and bearing in mind the established principle of international law pact sunt servanda, to fulfil, in good faith, the obligations of the present Judgment of the Inter-American Court of Human Rights on the merits and reparations in the Hilaire, Constantine and Benjamin et al Case.

[FN62] Paul Reuter, Introduciton au droit des traits, 2nd edition, Paris, PUF, 1985, p.32.
[FN63] Perhaps the ultimate foundation for international obligations is of metalegal origin; J.L. Brierly, The Basis of Obligation in International Law, Oxford, Clarendon Press, 1958, p. 65; J.L. Brierly, The Law of Nations, 6th edition, Oxford, Clarendon Press, 1963, p. 54.

[FN64] M. Lachs, “Pact Sunt Servanda,” in Encyclopedia of Public International Law, (edited by R. Bernhardt), vol. 7, Amsterdam, North-Hollarnd/ Max Planck Institut, 1984, pp. 364-371.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING SEPARATE OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE HILAIRE, CONSTANTINE AND BENJAMIN ET AL. CASE VS. TRINIDAD AND TOBAGO OF JUNE 21, 2002 [FN1]

[FN1] This Opinion was written in Spanish language and translated into English by the Secretariat of the Inter-American Court of Human Rights.
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1. The most relevant and complex issue in this case concerns the incompatibility of the Offences Against the Person Act of Trinidad and Tobago, of April 3, 1925 - referred to in the Judgment as the Offences Against the Person Act [FN2] - with the American Convention on Human Rights. In this respect, the Court unanimously held - together with the concurrence of this Separate Opinion - that the above domestic law is incompatible with Article 4, paragraphs 1 and 2, of said Convention. This implies, in light of Article 2 of the Pact of San José, that the State must adopt the pertinent measures - in these circumstances, of a legislative character, given that the violation results from a legislative act, which in turn governs other actions under it - in order to bring its domestic legal order in conformance with the stipulations of the American Convention.

[FN2] Offences Against the Person Act, of April 3, 1925, applied by the State's domestic courts in considering and resolving various murder cases subject to the death penalty, joined - for the purpose of the present judgment by the Inter-American Court - in the Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case.
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2. The foregoing conclusion is reached, notwithstanding any of the following: a) that Trinidad and Tobago would have become a State party to the Convention and would have accepted the Court's compulsory jurisdiction subject to certain reservations or limiting declarations with respect to its jurisdiction; b) that the State would have denounced the Convention on May 26, 1998; and c) that the Constitution of Trinidad and Tobago, of 1976, would prevent any norm preceding its entry into force - like the Offences Against the Person Act, of 1925 - from constitutional challenge.

In effect, the Court has examined and dismissed - in part - the effectiveness of the reservation or limiting declaration formulated by Trinidad and Tobago, finding that due to its excessively general character [FN3] it runs contrary to the object and purpose of the Convention, and broadly subordinates the jurisdictional function of the Court to domestic norms and to the decisions of national organs, thereby contravening principles of international law. [FN4] The Tribunal has likewise resolved - in part - that the State has obligated itself to observe the Convention with respect to sub judice case, even as it denounced the Treaty on May 26, 1998, taking effect May 26, 1999 - pursuant to Article 78 of the Convention - given that the violations of the Pact took place before this last date. [FN5] Finally, the Court has demonstrated, in this same Judgment to which I attach my Separate Opinion, that the State cannot invoke provisions of its domestic law to avoid fulfilling its international treaty obligations. [FN6] It is important to note, as well, that Trinidad and Tobago ratified the Pact of San José on May 28, 1991, long after promulgating its Constitution.

[FN3] In this respect, the reservation made by the State was conceived in the following terms: "As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that such recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen."

[FN4] Cf. I/A Court H.R., Hilaire Case. Preliminary Objections. Judgment of September 1, 2001(corresponding to the judgments on preliminary objections, from the same date, rendered in the Constantine et al. and Benjamin et al. Cases), paras. 78 and ff. I issued a separate Concurring Opinion with respect to each of these judgments, on the date on which they were delivered.

[FN5] Cf. id., paras. 27-28.

[FN6] This principle, found in Article 27 of the Vienna Convention on the Law of Treaties of 1969 (to which Trinidad and Trinidad and Tobago is not a party), constitutes a rule of customary international law. Article 27 "goes to the very foundation of international law, and for which there exist significant precedents." (translation of the Secretariat) De la Guardia, Ernesto, and Delpech, Marcelo, El Derecho de los tratados y la Convención de Viena, Buenos Aires, La Ley, 1970, p. 286. The Vienna Convention is in itself, in essence, a codification of preexisting international law, and as such affects even those states that have not ratified it. Cf. Harris, D. J., Cases and materials on International Law, London, Sweet & Maxwell, 1998, p.765; Van Hoof, G.J.H., Rethinking the sources of International Law, Deventer, The Netherlands, Kluwer Law and Taxation Publishers, 1983, No. 464; in a similar sense, Tunkin, Grigory, "Is general International Law Customary Law only?", European Journal of International Law, vol. 4, No. 4, 1993, pp. 534 and ff. With respect to the jurisprudence of the Inter-American Court in regard to the non-opposability of domestic law to the fulfillment of international obligations, cf. I/A Court H.R., International responsibility for the promulgation and enforcement of laws in violation of the Convention (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14; and I/A Court H.R., Castillo Petruzzi et al. Case. Compliance with Judgment. Order of November 17, 1999. Series C No. 59, considering 4.

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3. The incompatibility of the Offences Against the Person Act with the American Convention, that I now propose to examine, and which has already been analysed and resolved by the Court in its Judgment, arises from the lack of agreement between the terms in which the Act prevents and sanctions murder, ordering the mandatory penalty of death penalty in the process, and the two provisions formulated under Article 4 of the American Convention concerning the death penalty. This implies a violation of Article 2 of the Pact of San José, in relation to Article 4, paragraphs 1 and 2 (to which could be added - as it will be shown below - paragraph 6 of this same precept).

The relevant portion of paragraph 1 of Article 4 indicates that "[n]o one shall be arbitrarily deprived of his life" (emphasis added); and the relevant portion of paragraph 2 stipulates that "[i]n countries which have not abolished the death penalty, it may be imposed only for the most serious crimes" (emphasis added). There are, therefore, two definite restrictions on the imposition of the death penalty: One, which concerns the extreme seriousness of the crimes to which it may relate, and the other, the prohibition of arbitrariness in the deprivation of life. In my mind, the Offences Against the Person Act fails to respect these restrictions and as a result offends the American Convention that the State adopted and accepted as binding the respective obligations emanating from it, when it became a party to this international treaty.

4. Before examining these incompatibilities, it is important to recall that the Pact of San José does not abolish the death penalty. That widely demanded possibility derives from other national and international acts. [FN7] The American Convention likewise recognizes and shares this abolitionist proclivity, and in its proper moment and circumstances introduces rigorous restrictions - like that contained in Article 4(1) - creating obstacles to the reinstatement of the penalty and opening the way for the reconsideration of corresponding sentences. [FN8] Therefore, any interpretation of the Pact of San José on this subject must take into account the general inclination of the Treaty - the spirit, clearly manifested in the letter - and to assume, by this, the utmost rigor. This demands the strictest interpretation of the conventional norms that govern this area.

It should be made clear, that the foregoing does not imply that the Convention in this case is to be interpreted so as to abolish the death penalty. This is not the intention of the Judgment or of my Concurring Opinion, both of which are directed solely at the terms by which the Convention regulates the matter and independent of any personal views held on a subject where it is admittedly difficult to maintain a neutral position for the purpose of the lege ferenda. [FN9] However, at the time of judicially applying a specific norm - in this case, the American Convention - it is important to follow the lege lata, as the Court has effectively done in carrying out its jurisdictional functions, and as I do in the present Opinion. Accordingly, I will not discuss the question of the death penalty's legitimacy and utility.

[FN7] Among the most recent are, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, June 8, 1990, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the General Assembly of the United Nations on December 15, 1989.

[FN8] Fourteen signatory States to the American Convention made explicit their desire that the death penalty be abolished, through a future additional Protocol to the Convention. Cf. Inter-American Conference on Human Rights, San José, Costa Rica, 22 November 1969, Records and Documents, OAS/Ser. K/XVI/1.2, Washington, D.C., 1973, p. 467. The Court noted for the record, on another occasion, that Article 4 of the Pact of San José "reveals a clear tendency to restrict the scope of [the death] penalty both as far as its imposition and its application"; and that "[o]n this entire subject, the Convention adopts an approach that is clearly incremental in character. That is, without going so far as to abolish the death penalty, the Convention imposes restrictions designed to delimit strictly its application and scope, in order to reduce the application of the penalty to bring about its gradual disappearance." I/A Court H.R., Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 52 and 57.
[FN9] Antonio Beristáin states that the death penalty is "a radical issue" in criminal law; it influences the system as a whole and all the decisions taken in this respect. Cf. "Pro y contra de la muerte en la política contemporánea", in Cuestiones penales y criminológicas, Madrid, Reus, 1979, p. 579.
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5. It is also important to observe that the conclusions reached in this case, as in others involving crimes that have been perpetrated on innocent persons and shocked society, do not suggest an indifference or lack of understanding of the need to act with rigor, energy, and efficiency in the fight against crime. The State has the duty - a principal obligation, nuclear, and essential - to provide its citizens with security and justice, which are seriously compromised when crime increases. In such circumstances, the very least which must be expressed is solidarity with the aggrieved society - in particular with the victims of the crimes - and support for the legitimate measures undertaken for its protection. It has often been shown that elimination of impunity and the consequent assurance of punishment would allow for further advances in the fight against crime rather than the mere imposition of harsher penalties. This idea of our forefathers continues in contemporary thinking. [FN10]

[FN10] "It is not the cruelty of the penalties which is one of the greatest deterrents of crimes, rather it is their infallibility […] The certainty of the punishment […] will always have a greater impact than the fear of one more terrible, this coupled with the hope of impunity," as it was taught centuries ago, by the reformer César Beccaria, De los delitos y las penas, trad. Juan Antonio de las Casas, Madrid, Alianza Editorial, 1982, pp. 71-72. (translation of the Secretariat)
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6. Evidently, there may be a violation of the right to life even whilst the victims have not yet been deprived of theirs. The right to life - like any other right - can be viewed as affected in an iter that moves through various stages, named and identified, all of which, by a common design conferred by nature and sense terminate the life of an individual. The last phase in this iter culminates in the deprivation of the life itself, object of the maximum affection of this right. Before, there may be other moments: all of which, in conformance with the circumstances, aspire and lead to this end. Such is the case of a general norm that runs contrary to the American Convention (or to the State Constitution, where domestic issues are at stake): the norm may be

challenged on jurisdictional grounds before its implementation produces consequences which may give rise to a concrete case.

It has been maintained that a law contrary to the Convention cannot in itself be impugned (as is often possible in the case of unconstitutional laws in the domestic sphere), before it has actually been applied and the threat it poses is realized in fact. The Inter-American Court held at one time that its jurisdictional authority in litigious cases extends to acts of the State carried out on specific persons, [FN11] but it has also stated - and explained - that a law may per se violate the international pact. [FN12]

It is pertinent to observe that a law may in itself constitute a threat to the right to life, in the same way as it may contravene the right to nationality, to juridical personality, to property, to family, to integrity, etc., although it has yet to be applied in a concrete case. The mere existence of the law - once in force - leaves the protected interest (life) exposed, compromised, and in danger. [FN13] Consider that the judicial protection accorded can and often does anticipate the case where someone fears the application of the law in question and seeks to take precautions against it: it is not only the act perpetrated which is impugned but that norm which authorizes its future execution as well. These are the parameters within which constitutional justice operates. The inter-American system moves in this direction when it opens the door to adopting provisional measures, whether preventative or precautionary, to avoid irreparable damage from being inflicted on people.

Now, in the present case there does not merely exist a law which in itself contravenes the American Convention, which would invoke the considerations that I have referred to above and could justify - from a certain doctrinal perspective - the deliberation and judgment of the international tribunal. One more stage in the iter has been completed: the law was applied by way of judgment; [FN14] it was already decided, individually and imperatively, that the lives of certain persons must be taken. The accused's right, regarded as potentially jeopardized by the law, in the end was in fact affected by the judgment. For the accused, the deprivation of life is not merely a possibility, rather it is an imminent reality to which the punitive power of the State is directed, formally and explicitly.

[FN11] Cf. I/A Court H.R., Genie Lacayo Case. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, para. 50.

[FN12] In OC-13, the Court made reference to types of violations of the American Convention: omitting to dictate binding norms under Article 2 of this pact or to list norms that contravene the Convention. I/A Court H.R., Certain attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights). Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26. In OC-14, the Tribunal distinguished between laws which do not necessarily affect the legal sphere of specific individuals, because they may require subsequent normative measures, compliance with additional conditions or implementation by state authorities and "self-executing laws", where "the violation of human rights, whether individual or collective, occurs upon their promulgation." I/A Court H.R., International responsibility for the promulgation and enforcement of laws in violation of the Convention (Arts. 1 and 2 American Convention on

Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, paras. 41-43 and 49. In a litigious case, the Tribunal established that a penal norm that denies a category of the prisoners certain rights that are enjoyed conferred on others, "violates per se Article 2 of the American Convention, whether or not it was enforced in the instant case." I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 95 and operative paragraph 5. In the same sense, cf. I/A Court H.R., Castillo Petruzzi et al. Case. Judgment of May 30, 1999. Series C No. 52, para. 205.

[FN13] It is useful to recall the lesson taught by criminal law in this respect, having its own titular practice for judicially protected interests: not only is the deprivation of life sanctioned, but the attempt to murder, and in some cases conspiracy to murder as well. Punishment appears at diverse moments of the iter criminis.

[FN14] In various cases, the United Nations Human Rights Committee has found a violation to the right to life of an offender sentenced to death - not yet executed - when the sentence was dictated without due observance of due process guarantees. Wright v. Jamaica, Communication No. 349/1989; Simmonds v. Jamaica, Communication No. 338/1988; Daniel Monguya Mbenge v. Zaire, Communication No. 230/1987.

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7. The first issue I propose to examine with respect to the incongruity between the Offences Against the Person Act and the American Convention concerns the limitation in the application of the death penalty to only the "most serious crimes" as stated in Article 4(2) of that international instrument. It is important therefore to identify those crimes that are "the most serious" in a determinate time and space within criminal law. These must be identified and the natural result of a classification of this category - diverse sanctions - be speedily adopted to be able to inform criminal legislation, the reason and intention being two-fold: justice and effectiveness. The same classical thinker whom I cited above best summarized this concern in stating: "If the same punishment is meted out for crimes which unequally offend society, men will not encounter a very significant obstacle in committing the more depraved crime, where they perceive in it a greater advantage." [FN15]

[FN15] (Translation of the Secretariat) Beccaria, De los delitos y de las penas, cit., p. 37. The same author cautions that the threat of harsher penalties for many crimes, in fact impedes "the essential proportionality between crime and punishment" (translation of the Secretariat) Id., p. 73. Included in this edition, annotated by Juan Antonio Delval, are some relevant observations of Montesquieu. In one of these, Montesquieu expresses his amazement that there exist "one hundred and sixty (acts) declared capital crimes by act of Parliament, that is, crimes that must be punished by sentence of death", (translation of the Secretariat) amongst which there exist behaviors of varying degrees of severity (Oberservations d'un voyageur anglais sur Bicêtre, 1788).

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8. I would like to address an idea now, rather than later, that has been presented on occasion and which proposes that the "most serious" crimes be identified as those which are sanctioned by capital punishment, the most severe of all penalties. [FN16] This characterization is unsatisfactory, and for the purposes of this Opinion, it is also tautological. It is easy to caution,

that if such a criteria were adopted a determination as to gravity - which entails a determination as well as to protected interests and basic rights - would remain subject to a vacillating discretion. Instead of relating the seriousness of a crime to its corresponding penalty, the severity should be linked to the intrinsic gravity of the crime. It is not the seriousness of the punishment that determines the seriousness of the crime, but it is the latter which justifies the former. In sum, it is necessary to place the terms of the issue in their proper order: in particular, in the order that most benefits the protection of human rights. In this sense, it is necessary to read beyond the criminal code to understand which forms of illicit behaviour may be classified as the most serious, so that when transferred to the criminal code, they merit the highest penalty provided for in law.

[FN16] With respect to this argument, cf. the opinions included by Rodley, Nigel S., The treatment of prisoners under International Law, Oxford University Press, 2nd.ed., 1999, p.219.

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9. The modern criminal regime, rooted in democracy and in the idea of the State as guarantor, impedes the protection of the most valuable interests from attack or from even greater dangers. The judicially protected interest of the highest rank is human life, and murder - deprivation of the life of another - its most powerful form of attack. The American Convention not only refers to "serious crimes" - of which murder certainly forms part - but to the "most serious crimes", that is, those crimes to be found at the tip of the pyramid, those which deserve the most severe reproach, those that affect in the most grave way individual and social interests, in sum, those that because of their unsurpassable gravity are able to carry an equally unsurpassable punishment: capital punishment.

This leads one to question, whether it is possible that some alleged murders are more serious than others, not as a function of the result of this type of criminal behaviour - which is the same in every case: deprivation of life - but rather in virtue of the behaviour entailing specific characteristics or because persons with a certain condition may be predisposed it. The idea in sum would be to establish a gradation in the gravity of facts that might at first glance appear identical.

10. A non-evolved criminal system could sanction diverse conduct with the same penalty. It would indiscriminately administer the most severe punishments as a response to illicit acts of varying depravity. Instead, a developed system identifies with greater precision - a precaution which provides in essence an individual and societal guarantee - the diverse extremes of illicit conduct meriting criminal sanction and adapting the punishment, as much as possible, to the individual circumstances of the crime and the offender who carries it out. This is accomplished through two channels recently opened in modern criminal law: a) the organization of diverse and specific categories of crime designed to differentiate criminal behaviour based on specific characteristics rather than by its consequences, with a corresponding view to imposing different kinds of punishment; and b) giving the trier of fact the authority to individualize the sentence in conformity with information of the offence and the offender tendered, certified and valued in the process, within the parameters - maximum and minimum - of punishment that corresponds to the crime.

11. Murder always entails the deprivation of human life, however not all murder theories are equivalent, nor is the culpability of its authors. In fact, the taking of a life is often carried out or manifested in diverse ways, which fall into different categories of severity. This then leads to the creation of varied categories of crimes that correspondingly describe acts of varying degrees of gravity.

In light of the above, the intentional deprivation of life (intentional homicide) does not fall into a single category of crime, instead it extends over various categories, associated with different levels of punishment. There exists one basic category of homicide and a diverse set of complementary categories which contain mitigating elements that reduce the gravity and moderate the penalty, as well as aggravating elements which increase the gravity and increase the penalty. [FN17]

Indeed, criminal legislation usually foresees - as it has for a long-time, and continues to a greater extent today - other classes of homicide involving aggravating elements, beyond basic homicide: such as, the relation between author and victim (parricide), the situation in which the actor placed himself in order to take the victim's life (homicide qualified by advantage or betrayal), the motive which provoked the author's conduct (homicide qualified by the purpose of obtaining remuneration or the satisfaction of immoral desires), the means employed (homicide qualified by the use of explosives or other destructive instruments), etc.

It is clear that in all the above cases we are faced with a homicide, but it is also perfectly possible, as well as necessary and justified, to recommend - within the context of criminal matters - diverse levels of gravity for behaviours where the life of another is taken. This definition of seriousness implies a direct consequence in the penal response: punitive diversity. The trier of fact considers 1) the objective difference that lies in the classification of the act, as much as, 2) the degree of culpability of the actor, another relevant question for this case and which must be kept in mind when individualizing a sentence, where a punishable act - generically foreseeable - becomes an actual punishment - a specific aspect of the sentence. [FN18] The sanction is built on both factors.

[FN17] "According to the extent of the encumbrance on the protected interest the categories are classified as fundamental or basic and qualified. Those that are fundamental or basic always relate to other interests: they are those that found the basic concept of the conduct which is to be sanctioned, while qualified interests delineate a mode of conduct which may be more or less serious. If it is more serious, due to degree of encumbrance or immorality (…) it will be qualified as aggravated, to the same extent that it would be qualified as mitigated had the circumstances been the contrary." (translation of the Secretariat) Zaffaroni, E. Raúl, Tratado de Derecho penal, Parte general, Buenos Aires, EDIAR, t. III, 1981.

[FN18] The following reflection of Ihering is largely applicable: "To the objective element of the interest threatened in society, the delinquent adds the subjective element of the danger posed to society, by reason of his willingness to harm and the process by which he elected to carry out his crime. All delinquents guilty of the same crime do not jeopardize society to the same extent."

(translation of the Secretariat) El fin en el Derecho, Buenos Aires, Bibliográfica Omeba, 1960, p. 237.

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12. It is useful to consider some examples in this respect, taken from the legislation of those American countries that maintain the death penalty. In these countries the gradation according to gravity of each theory of deprivation of life is well recognized: from homicide to parricide. In all of these countries, there exists a diversity of penalties corresponding to the diversity in gravity. [FN19] In such cases [FN20] there is nothing comparable to a mandatory death penalty, in the sense it has been given in the matter to which this Opinion refers.

He who kills another will be imprisoned for one to ten years, according to Article 251 of the Criminal Code of Bolivia; and will be punished by sentence of death - orders Article 252 - he who kills his descendents, takes a life with premeditation, malice aforethought or brutality, he who does so for a price, gifts or promises or by means of poisonous or other like substances etc. In conformance with the Criminal Code of Chile, the penalty for categorical homicide is maximum imprisonment for minimum to medium degrees of gravity; he who takes the life of another with certain aggravating factors (malice aforethought, for reward or remunerative promise, with poison, brutality, premeditation), will suffer maximum imprisonment for medium gravity to life imprisonment (Article 391, paragraphs 2 and 1, respectively); and he who kills his father, mother, or child, will suffer maximum imprisonment for a maximum degree of gravity or death (Article 390). Under the Criminal Code of Guatemala, imprisonment for fifteen to forty years will be imposed for causing the death of a person (Article 123); and will punish - under the title of aggravated homicide - with imprisonment of twenty-five to fifty years parricide and murder (homicide aggravated by various elements), however the death penalty will apply to both categories "if by the circumstances of the act, the way in which it was committed and the motives which provoked it, it is revealed that the actor present a great and particular danger" (Articles 131 and 132). (Translation of the Secretariat of the Court.)

[FN19] "Traditionally parricide has been considered to be the gravest crime committed against life, followed by murder and simple homicide. That is why they appear in this order, from most to least severe, in our penal codes" (referring to Spanish legislation)(translation of the Secretariat). Ortego Costales, José, Teoría de la parte especial del Derecho penal, Salamanca, Ed. Dykinson, 1988, p. 240.

[FN20] Evidently, I do not pretend to discuss all the cases that could be invoked on this issue. In the presenting these examples I summarize the circumstances corresponding to criminal categories and I omit those details that would unnecessarily extend the descriptions provided without affecting their value. I cite the legal rules in the terms in which they currently appear in the texts of the Library of the Inter-American Court-Institute of Human Rights at the time of writing this separate Opinion. If those texts were to be modified in the future, the reforms would not affect the essence of the problem or the intrinsic value of the examples.

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13. Having formulated the preceding considerations, it should be recalled that Article 4 of the Offences Against the Person Act, of Trinidad and Tobago, orders that "[e]very person convicted

of murder shall suffer death". That is how the so-called mandatory death penalty is ordered for a broad - and heterogeneous - range of homicidal behavior, in which it would be objectively possible to identify - as the previously cited codes have done, as well as have many other ancient and modern regimes - different degrees of gravity. With this, the rule that the death penalty "may be only imposed for the most serious crimes" (Article 4(2) of the Convention) is neglected, that is, only for those crimes located at the tip of the pyramid which rises from the least grave to the most severe.

Clearly, in structuring the general punishment for murder in this way, the direction domestic criminal proceedings may take remains predetermined: the tribunals lack the possibility of assessing the particularities of homicides to order, as a logical and juridical consequence of such differences, sanctions which are equally diverse. The negative aspects of criminal homogeneity ordered where there exist a heterogeneity of acts, meriting proportionality and individualization, have been extensively examined - from its own perspective - in the jurisprudence of the Judicial Committee of the Privy Council. [FN21]

[FN21] In this respect, the judgment in Patrick Reyes v. The Queen, of March 11, 2002, is interesting and significant. This case was previously considered by the Belize Court of Appeal. Cf., esp., paras. 29, 30, 32, 34, 36, and 40-43.

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14. A legislator from Trinidad and Tobago itself has advised of the need to classify the sentence in relation to the gravity of the crimes of murder, clearly overriding the old formulation of the Offences Against the Person Act. In effect, the State's Legislature approved the Offences against the Person (Amendment) Act, 2000, which reforms the Offences Against the Person Act but has yet to come into force. [FN22] According to the terms of this amendment, there would be three categories of murder, namely: capital murder or murder 1, murder 2, and murder 3. The first comprises circumstances of a greater severity: aggravated murder with elements that usually bring, as it has been observed in comparative law, the maximum penalty and which class of crime is punished by the death; murder of a lesser degree, having other characteristics, punished by life imprisonment, and culpable homicide. [FN23] This kind of regulation already appears in the corresponding laws of other States in the region, which categorize in detail diverse theories in which life may be taken. [FN24]

[FN22] This reform was approved by the House of Representatives on October 13, 2000 and by the Senate on the 24th of the same month and year, and will come into force when the President of the Republic promulgates it.

[FN23] Within the qualifying element that aggravate the murder and intensify the sentence, are: that the victim was part of the security forces, a prison or judicial official; that the life taken was that of a participant as witness or juror in a criminal proceeding; that the crime was committed using bombs or explosives; that the crime is carried out in the expectation of reward; that the brutality in the commission of the crime causes an exceptional loss; that the murder is committed with motives related to race, religion, nationality or national origin, etc. (Sections 4D and following)

[FN24] Cf., in what refers to Jamaica, the Act to amend the Offences Against the Person Act (October 14, 1992), which distinguishes between capital murder, punishable by death, and non-capital murder, punishable by life in prison.

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15. Having examined the incompatibility that exists between the criminal legislation in Trinidad and Tobago and Article 4(2) of the Pact of San José, it is fitting to study the disparity between that legislation and Article 4(1), which prohibits the "arbitrary" deprivation of life. For this purpose it is pertinent to recapture in a broad sense the concept of arbitrariness - not only existing, as the circumstances now under consideration will show, in the context of extra-judicial executions, while these may be its most flagrant manifestation - and project it onto the issue with which we are now concerned.

The Court has previously understood that "[t]he expression 'arbitrarily' excludes, as is obvious, the legal proceedings applicable in those countries that still maintain the death penalty." [FN25] Nevertheless, it is necessary to delimit the scope of such a broad affirmation that may extend to situations which merit clarification. Evidently, in the terms of the Convention, death imposed or inflicted on a person in conformance with norms of substance and form adjusted to those principles which must inform them, and by means of a trial before a competent authority in accordance with due process guarantees, may not be classified as arbitrary. This defence appears inadequate however, when the above has not occurred, even though the case does not involve an extra-judicial execution or the excessive use of force at the margins of judicial orders.

[FN25] Corte I.D.H., Caso Neira Alegría y otros. Sentencia de 19 de enero de 1995. Serie C No. 20, para. 74.

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16. If we limited ourselves to superficially considering only, the fact that the death penalty provided for in law and applied to concrete cases comes from a judgment issued by a competent tribunal, the classification of the case at bar as arbitrary might seem excessive. However, this charge is justified if certain statements approved before the Inter-American Court and articulated in the judgment issued by this Court are invoked, namely: a) the prevention of the death penalty, tabula rasa, for all murders, without consideration of the diverse characteristics which they embody, as previously stated in this Opinion: this fact - the existence of an arbitrary law - renders the sentences, and clearly, the eventual executions arbitrary; b) the application of the death penalty by means of trials that fail to satisfy, in any way, certain due process exigencies, [FN26] such as those concerning the resolution of the dispute within a reasonable time and the provision of adequate legal aid; c) the real ineffectiveness, in concrete cases, of the right to apply for - and, it is understood, to participate and advocate for - amnesty, pardon or commutation of sentence; and d) the execution of one person - Joey Ramiah - who was protected under the provisional measures ordered by the Court; execution prior to there being a decision by the organs of the inter-American human rights protection system constitutes - as stated by the Judicial Committee of the Privy Council - a "violation of the constitutional rights" the petitioners. [FN27]

[FN26] In OC-16, the Court made it clear that when due process guarantees are affected that the "imposition of the death penalty is a violation of the right not to be "arbitrarily" deprived of one's life, in the terms of the relevant provisions of the human rights treaties (eg. The American Convention on Human Rights, Article 4…) with the juridical consequences inherent in a violation of this nature i.e., those pertaining to the international responsibility of the State and the duty to make reparations." I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 137.

[FN27] In Darrin Roger Thomas and Haniff Hilaire v. Cipriani Baptiste (Commissioner of Prisons), Evelyn Ann Peterson (Registrar of the Supreme Court) and The Attorney General of Trinidad and Tobago, Privy Council Appeal No. 60 of 1998 (Decision of January 27, 1999), the tribunal held: "Their Lordships declare (…) that to carry out the death sentences imposed on the appellants before the final disposal of their respective applications to the Inter-American Commission and Court of Human Rights would be a breach of their constitutional rights and order that the carrying out of the said death sentences be stayed accordingly."

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17. In this of line thought, I would like to comment on the violation of Article 4(6) of the Convention that is also established in the judgment. This norm, found under the "Right to Life" heading - the protected subject of the entire article made up of six paragraphs - indicates that "[e]very person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases […]."

Such a right - to truly be a right and not merely a declaration - assumes that the bearer of the right will have an expedited and authentic possibility to apply for and receive the revision and modification of the juridical situation created by the condemnatory judgment. It would not make sense that such a right be instituted as a pure formality, what in this case would be a trivial: a mere power to request, exhausted by the request itself. The right must possess reasonable substance and meaning. This implies that the rights-bearer must enjoy the juridical and material possibility of submitting his petition - which is a claim - to be resolved on the merits before a competent authority, and to present supporting material capable of - while it remains difficult and uncertain - a favourable outcome. This did not occur in the sub judice case, because the inmates did not have the opportunity to plead their cause using elements from trial that supported and favoured their case, or benefit from indispensable legal assistance in the processing of their case; moreover, their claims were predestined to failure: inevitably coming up against the unshakeable wall of the "mandatory" death penalty.

In the situation that concerns us, the absolute ineffectiveness of the petition for amnesty, pardon or commutation may be analysed from two perspectives, equally valid: in one sense, as a violation of the right to life according to the terms of the principle contained in the right; and in another sense, as a due process violation, as there was no due process in the processing of the claim: nor was there a hearing, evidence or argumentation that opened even a minor possibility that the request would be granted. It is from this that the Court deems, rightly in my opinion, that there has been a multiple violation: of Articles 4(6) and 8 in relation to 1(1).

18. Another issue, to which I would like now to refer, corresponds to the detention system that in the circumstances of this case constitutes a violation of Article 5, paragraphs 1 and 2, of the American Convention. In this framework it must be noted that the State as guarantor of the rights of the detained, is directly and wholly answerable for situation of its prisoners. [FN28] The position of guarantor, held in this case by the State, is derived from the fact that prisoners detained, awaiting execution or carrying out a sentence, are the subject of a carefully regulated regime, applied and supervised by the State itself, in a manner that is likely more rigorous than could otherwise be applied to any other category of persons.

In these cases, which correspond to the entire institution that is prison, the condition of the State as guarantor originates in the duties contingent upon it in respect of arrest orders - or its equivalents - and sentencing judgments. Both authoritative acts imply the removal of the subject from the free environment in which he has developed and his placement in a completely different environment where his every act is subject to the control of the public authority. The title of guarantor implies: a) avoiding all that which may inflict further suffering on the subject than is strictly necessary for the purposes of the detention or the fulfilment of the sentence, on the one hand, and b) providing all that is relevant - pursuant to the applicable law - to meet the aim of the imprisonment: security and social re-adaptation, regularly, on the other.

[FN28] This has been affirmed by the Court in I/A Court H.R., Neira Alegría et al. Judgment of January 19, 1995. Series C, No. 20, para. 60, referred to in the judgment to which this Opinion is attached. Mention is also made of the criteria of the United Nations Human Rights Committee, in Moriana Hernández Valenti de Bazzano v. Uruguay, No. 5/1977 of August 15, 1979, paras. 9-10.

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19. The is no lack of international material on the subject of the treatment of prisoners, where detainment is legally foreseen; in this literature a line is drawn between what is due and undue, between what is admissible and inadmissible. These materials provide a starting point from which to delineate the space in which the State acts and the features of its mission as guarantor. [FN29] A comparison of what is foreseen in the literature and the reality of the prison system could provide an understanding of the degree to which public duties have been fulfilled, duties which may not be neglected simply because those who are detained have seriously failed to comply with - and are thereby deserving of their sentence - their societal obligations.

Indeed, imprisonment implies severe restrictions. I do not question their relevance. I leave this question outside the scope of my present considerations. However, it is important to take into account that said restrictions have their limits: beyond which, they become - as has effectively occurred - cruel, inhuman or degrading treatment. As well, it is necessary to distinguish between a regime of deprivation (precautionary or provisional) of liberty corresponding to a person not yet convicted and a convicted criminal. The former, in whose favour there exists a presumption of innocence, which must be reflected in the detention conditions, where the deprivation of liberty, while their case is processed is considered indispensable.

[FN29] Therefore - and only referring to the best known instruments - I will mention the Standard Minimum Rules for the Treatment of Prisoners (Geneva, 1955), approved by the United Nations Economic and Social Council on July 31, 1957, and reformed on May 13, 1977 by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly on December 9, 1988 (Res. 43/173), and the Basic Principles for the Treatment of Prisoners, adopted by the United Nations General Assembly on December 14, 1990 (Res. 45/111).

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

Concurring Opinion of Judge de Roux-Rengifo [FN1]

[FN1] This Opinion was written in Spanish language and translated into English by the Secretariat of the Inter-American Court of Human Rights.

The legal crux of the present case centers on Article 4(2) of the American Convention, which provides that "the death penalty […] may only be imposed for the most serious crimes." Thirty-one of the thirty-two victims have not been—and hopefully will not be—executed. In other words, they have not yet been deprived of their lives. However, the right that they have been granted by Article 4(2) has nevertheless been breached because of the application of a law (the Offences Against the Person Act of Trinidad and Tobago) that leads to the imposition of the death penalty for crimes that do not fall into the category of "most serious." The Court has avoided examining the personal situation of every victim, or rather, abstained from evaluating the possibility that some of those condemned to death could have committed crimes which are considered the "most serious," because the aforementioned law has been applied to all of them, and this necessitates, without question, a declaration of a violation of Article 2 of the Convention. Therefore, in order to declare with certainty that the State violated Article 4(2) with respect to all thirty-two victims in this case, the Court had to link the violation of that norm to Article 2.

I find, on the other hand, that the violation of Article 4(1) occurred in close connection with that of Article 4(2). The State violated the first of these provisions precisely because it violated the second, and the manner in which it did so.

Article 4(1) establishes that "no one shall be arbitrarily deprived of his life." Consequently, if it is found that a State has infringed the aforementioned right, it is necessary to show in what way the deprivation of life of the person or persons involved was arbitrary.

The arbitrariness of the State's conduct in this case consisted of the fact that it violated Article 4(2) of the Convention, in conjunction with Article 2, as stated above. It was therefore a violation of Article 4(2), which rendered the death penalty arbitrary and led to the infringement of Article 4(1).

It would have been relevant that the so-called "considerations" section of the judgment would explicitly address all of the relationships described between the provisions referred to above (the fact is that the judgment preferred to mention only some of these relationships, and only tangentially). Above all, this would have required the merging of paragraphs 1 and 2 of the resolving section into a single section, declaring that the State violated, to the detriment of the victims in the case, Article 4(1) in conjunction with Article 4(2), and both of those in conjunction with Article 2 of the American Convention.

Carlos Vicente de Roux Rengifo
Judge

Manuel E.Ventura Robles
Secretary