



# INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

**REPORT N° 38/00**  
CASE 11.743  
RUDOLPH BAPTISTE  
GRENADA  
April 13, 2000

## **I. SUMMARY**

1. This report concerns a capital punishment petition that was presented by letter dated April 23, 1997, to the Inter-American Commission on Human Rights (hereinafter “the Commission”) on behalf of Mr. Rudolph Baptiste, by Saul Lehrfreund Esq., Solicitor of Messrs. Simon Muirhead & Burton, a firm of Solicitors in London, United Kingdom (hereinafter “the petitioners”) against the State of Grenada (hereinafter “the State” or “Grenada”) for alleged violations of Mr. Baptiste’s rights under the American Convention on Human Rights (hereinafter “the Convention”) and the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”).

2. The petitioners claim that on July 11, 1995, Rudolph Baptiste was convicted of the murder of his mother, Ms. Annie Baptiste-Lambert, (hereinafter “the deceased” or “Mr. Baptiste’s mother”) pursuant to Section 234 of the Criminal Code of Grenada.<sup>[1]</sup> The petitioners maintain that the murder of Mr. Baptiste’s mother occurred on November 19, 1993, following Mr. Baptiste’s intervention to prevent his mother from further “beating” his thirteen year old younger brother, Deverill, with a belt. Mr. Baptiste was sentenced to death by hanging, and is awaiting execution at Richmond Hill Prison, in Grenada. The petitioners claim that Mr. Baptiste appealed his conviction to the Court of Appeal in Grenada. His appeal was dismissed by the Court on November 27, 1995.

3. The petitioners argue that the State has violated Mr. Baptiste’s rights under Articles 4(1), 4(6), 5(1), 5(2), 5(6), 8, and 24 of the Convention and Articles I, II, XVIII, and XXVI of the Declaration, and request that the Commission recommend to the State that it quash Mr. Baptiste’s death sentence and release him from detention.

4. The petitioners contend that if Mr. Baptiste is executed while this petition is pending determination by the Commission, it would result in irreparable damage to him. The petitioners therefore request that the Commission issue Precautionary Measures pursuant to Article 29(2) of its Regulations against the State and ask the State to suspend Mr. Baptiste’s execution pending the determination of his petition by the Commission.

## **II. PROCEEDINGS BEFORE THE COMMISSION**

5. Upon receipt of the petition on April 23, 1997, and the parties' subsequent submissions, the Commission has complied with the procedural requirements of the American Convention and its Regulations. It has studied, examined and considered all information submitted by the parties, and has forwarded the pertinent parts of each party's submissions to the other party.

6. On April 29, 1997, the Commission opened a case in this matter and forwarded the pertinent parts of the petition to the State pursuant to Article 34 of its Regulations. The Commission requested that the State provide it with information within 90 days that would permit the Commission to process and study the petition, including determining whether domestic remedies had been exhausted. The Commission also requested that the State stay Mr. Baptiste's execution pending an investigation by it of the alleged facts.

7. By letter dated November 3, 1997, the petitioners requested that the Commission conduct an on-site visit to Grenada where Mr. Baptiste is detained. They also requested an oral hearing before the Commission.

8. By communication dated January 23, 1998, the Commission informed the petitioners and the State that a hearing in the case had been scheduled for Friday, February 27, 1998 at 10:00 a.m., during the Commission's 98<sup>th</sup> period of sessions.

9. By letter dated February 10, 1998, the Commission reiterated its request to the State that it provide the Commission within 30 days with information deemed appropriate to determine the facts alleged in the case.

10. On February 25, 1998, the Commission forwarded to the State a copy of the petitioners' arguments on admissibility and merits, which the petitioners intended to present at the hearing on February 27, 1998.

11. On February 27, 1998, a hearing was held before the Commission. The State did not attend or participate in the hearing. The petitioners were represented by Barristers of the Bar of England and Wales, namely, Nicholas Blake Barrister, Q.C., and Keir Starmer Esq., and Saul Lehrfreund Esq., an English Solicitor, who presented oral arguments on the admissibility and merits of this petition. In their presentation, the petitioners reiterated their position on the claims and arguments raised before the Commission, which are discussed in the petitioners' position in Chapter III of this Report.

12. On September 1, 1998, the Commission wrote to the State and again reiterated its request for information as contained in its letters of April 29, 1997, February 10, 1998, and February 25, 1998, asking for a response within 30 days. Again on August 18, 1999, the Commission further reiterated its request to the State for information on the claims raised in the petition, asking for a response within 30 days.

13. On September 20, 1999, the Commission wrote to both the State and the petitioners and informed them that it placed itself at their disposal with a view to reaching a friendly settlement of the case pursuant to Article 48(1)(f) of the American Convention on the basis of respect for the human rights recognized therein. The Commission also indicated that if the State and the petitioners were interested in accepting the Commission's offer, they should provide it with a response within 7 days of receipt of its communication, otherwise the Commission would

continue with the consideration of the case.

14. On September 24, 1999, in response to the Commission's offer to assist in a friendly settlement between the parties, the petitioners requested that the Commission convey to the State that "commutation of Mr. Baptiste's death sentence is the only appropriate way of reaching a friendly settlement in the case, because of the reasons set forth in the petition which constitutes violations of Articles 4, 5, 8, and 24 of the American Convention, and on the basis of respect for the human rights recognized in the American Convention." The pertinent parts of this communication were forwarded to the State on September 27, 1999.

15. To date, the State has not responded to any of the Commission's communications, nor has it presented any information to the Commission pertaining to the admissibility and merits of the petition, or the Commission's offer to facilitate a friendly settlement between the parties.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioners**

##### **1. Background of the case**

16. According to the petitioners, Mr. Baptiste is twenty two years old and is the eldest son of the deceased, Ms. Annie Baptiste-Lambert. Mr. Baptiste lived with his seventeen year old maternal brother, Anderson, his girlfriend, Bernadette Julien, and their two children, in another house in the same yard where his mother lived.

17. The petitioners state that on the morning of November 19, 1993, the deceased was in her house "beating" her thirteen year old son and Mr. Baptiste's younger brother, Deverill, with a belt. Mr. Baptiste decided to intervene to stop the abuse by "wrestling" or "fighting" with his mother, and took the belt from her. The deceased continued to "quarrel" for most of that morning, and told Mr. Baptiste that she was going to report him to the police.

18. As she was leaving the yard at approximately 12:30 p.m. on the same day, the deceased came upon Mr. Baptiste sitting on a stone outside of his house. The deceased approached Mr. Baptiste, slapped him, and said: "*Today, today, I must kill you.*" There were some shoe laces on a clothes line tied together in a "caboya or noose" in the yard, which had been present for several days prior to the incident. Mr. Baptiste pulled the shoe laces from the line, opened the noose, and tried to pass it over his mother's shoulders to tie both of her hands. While doing so, however, his mother jerked away, causing the laces to draw around her neck and strangle her. Mr. Baptiste claims that he did not intend to do anything more than tie his mother's hands to prevent her from hitting him again.

19. Mrs. Roma Findlay, a social worker who had visited the Baptiste family several times in the course of her social work, testified at trial. Based upon her experience, Mrs. Findlay indicated that Mr. Baptiste was the only one of the deceased's grown children who took an interest in his younger sister, nine-year-old Samantha, who had been living in a children's home. Mrs. Findlay also testified that Mr. Baptiste was a good brother to Samantha, that he was of "good

character,” and that he was not a “violent type of person.”

## **2. Position of the petitioners on admissibility**

20. The petitioners argue that Mr. Baptiste has exhausted the domestic remedies in Grenada because he appealed his July 11, 1995 conviction for capital murder to the Court of Appeal in Grenada, and the Court dismissed his appeal on November 27, 1995. The petitioners also claim that Mr. Baptiste decided not to petition the Judicial Committee of the Privy Council for Special Leave to Appeal, based upon written advice from Tim Owen Esq., an English Barrister that he did not have good grounds upon which to petition the Privy Council.<sup>[2]</sup> In addition, the petitioners indicate that the Privy Council has no jurisdiction to vary the sentence of death and substitute a lesser sentence, and that there are no domestic remedies available to Mr. Baptiste in respect of his sentence.

21. The petitioners also contend that failure of the State Party to provide legal aid for Constitutional Motions denies Mr. Baptiste access to a court and hence to an effective remedy for violations of the American Convention. The petitioners indicate that Section 16(1) of Grenada’s Constitution<sup>[3]</sup> gives an individual the right to apply to the High Court for redress in respect of alleged Constitutional violations by way of a Constitutional Motion. The petitioners argue, however, that Mr. Baptiste is unable to pursue a Constitutional Motion in the High Court of Grenada because the practical barriers render such a remedy illusory. In particular, the petitioners argue that the Constitution is a complex legal document, and therefore a Constitutional Motion clearly requires expert legal representation to establish a reasonable prospect of success. They also submit that Mr. Baptiste lacks private funding, and that legal aid is unavailable to pursue a Constitutional Motion. Further, the petitioners indicate that there is a dearth of Grenadian lawyers who are prepared to represent Mr. Baptiste without payment. Consequently, according to the petitioners, a Constitutional Motion is not an available remedy for Mr. Baptiste.

22. In addition, the petitioners argue that the absence of Legal Aid for an impecunious individual to pursue a Constitutional Motion is sufficient failure on the part of the State to satisfy the Commission that the remedy is not available. In support of their position, the petitioners cite the decisions of the United Nations Human Rights Committee (HRC) in Champagne, Palmer & Chisolm v. Jamaica, in which the HRC stated as follows:

With respect to the authors’ possibility of filing a Constitutional Motion, the Committee considers that, in the absence of Legal Aid, a Constitutional Motion does not constitute an available remedy in the case. In light of the above, the Committee finds that it is not precluded by Article 5(2)(b) of the Optional Protocol from considering the communication.<sup>[4]</sup>

## **3. Position of the petitioners on the merits**

### **a. Articles 4, 5, 8 and 24 of the Convention - The mandatory nature of the death penalty and the prerogative of mercy**

**i. The mandatory death penalty**

23. The petitioners claim that by imposing a mandatory death sentence on Mr. Baptiste upon his conviction for murder, the State violated his rights under Articles 4(1), 4(6), 5(1), 5(2), 5(6), 8 and 24 of the Convention, as well as his rights under Articles I, II, XVIII, and XXVI, of the American Declaration.

24. The petitioners referred to the legislative history of the death penalty in Grenada. The petitioners state that until 1974, Grenada was a British Colony whose penal law consisted of the common law and local penal codes as developed in England and Wales, and that pursuant to the (British) Offences Against the Person Act 1861, the penalty for murder was death. The petitioners claim that in the United Kingdom, Section 7 of the Homicide Act 1957 restricted the death penalty in the United Kingdom to the offence of capital murder pursuant to Section 5, or murder committed on more than one occasion under Section 6. The petitioners also indicate that Section 5 of the Homicide Act classified a capital murder as murder by shooting or explosion, murder done in the course or furtherance of theft, murder done for the purpose of resisting or preventing arrest or escaping from custody, and murders of police and prison officers acting in the execution of their duties.

25. In addition, the petitioners maintain that Section 2 of the Homicide Act contained provisions for reducing the offence of murder to one of manslaughter, when the murder was committed by a person, who at the time of the commission of crime was suffering from such abnormality of mind so as to substantially impair his mental responsibility for the acts and admission in doing, or being a party to the killing (diminished responsibility). The petitioners indicate that Section 3 of the Homicide Act 1957 extended the common law defense of provocation whereby murder may be reduced to manslaughter where there is provocation by things done or said causing a person to lose his self control. In addition, the petitioners report that the Homicide Act 1957 was not applied in Grenada before Independence and that no provision has been made for non-capital murder or the defense of diminished responsibility.

26. According to the petitioners, Grenada became an independent State on February 7, 1974, when it adopted its Constitution. They also indicate that Chapter I of Grenada's Constitution provides for the protection of fundamental rights and freedoms of the individual. Article 5 of Grenada's Constitution in particular provides:

- (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Grenada immediately before the coming into operation of this Constitution.

27. In light of the terms of Article 5 of the Constitution, the petitioners indicate that they accept that the sentence of death for murder does not violate the Constitution of Grenada, and that Article 5(2) of Grenada's Constitution precludes the Courts of Grenada or the Privy Council from interpreting the right to freedom from inhuman or degrading punishment under the Constitution as prohibiting the administration of the death penalty in every case upon a conviction for murder.<sup>[5]</sup> At the same time, the petitioners argue that imposing a mandatory death sentence on

Mr. Baptiste, without providing him with an opportunity to present evidence of mitigating circumstances relating to him or his offense, violates Mr. Baptiste's rights under Articles 4, 5, 8 and 24 of the Convention.

28. In support of their position, the petitioners refer to the practice in other states. They argue, for example, that in the case of Woodson v. North Carolina[\[6\]](#) the United States Supreme Court held that the automatic imposition of the death sentence on all those convicted of a specific offence is inconsistent with “the evolving standards of decency that are the hallmark of a maturing society.” The petitioners argue that the Supreme Court made it plain that the application of the mandatory death sentence imposed in all cases of murder without objective criteria for its application in particular cases after a fair hearing was unconstitutional. In addition, the petitioners indicate that the Supreme Court held further that:

[i]n capital cases the fundamental respect for humanity underlying the eight amendment ... requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.[\[7\]](#)

29. In addition, the petitioners contend that the South African Constitutional Court has gone further and followed the Hungarian Constitutional Court in declaring the death penalty to be unconstitutional *per se* in Decision 23/1990(X.31). Conversely, in the case of Bachan Singh v. The State of the Punjab, the Supreme Court of India determined that the death penalty is not unconstitutional *per se*.[\[8\]](#) in part because there was a judicial discretion as to whether it should be imposed. Based upon these domestic authorities, the petitioners argue that states retaining the death penalty must distinguish between capital and non-capital murder, and must provide a proper sentencing procedure for considering whether the death penalty should be imposed in capital cases.

30. In this connection, the petitioners make reference to a 1992 amendment to Jamaica's Offences Against the Person Act 1861, which distinguishes capital from non-capital murder. They contend that if Mr. Baptiste was tried in the United Kingdom or Jamaica, he would have been tried on a charge of “non capital murder,” as his offence was not a murder of such special or heinous character as to merit the death penalty. Finally, the petitioners claim that the law of Belize has introduced judicial discretion in the application of the death penalty.

31. The petitioners argue that the American Convention is a living, breathing and developing instrument reflecting contemporary standards of morality justice and decency and that it shares this quality with other international instruments such as the International Covenant on Civil and Political Rights (hereinafter the "ICCPR") and the European Convention For the Protection of Human Rights and Fundamental Freedoms (hereinafter the "European Convention").[\[9\]](#) The petitioners accept that Article 4 of the American Convention does not render the death penalty *per se* unlawful. They add, however, that according to commentators,[\[10\]](#) Article 4 of the Convention is more restrictive of the circumstances under which the death penalty can be imposed than the comparable provisions of the ICCPR and the European Convention.

32. According to the petitioners, Article 4 of the Convention is expressly abolitionist in its direction and aspiration, and prescribes conditions for the implementation of the death penalty. For example, the death penalty cannot be applied to people below 18 years or over 70 years or for new offences. The petitioners contend that two conditions in particular render the

imposition of the mandatory death penalty in Mr. Baptiste's case a violation of Article 4. First, it cannot be considered to have reserved the death penalty only for the "most serious offences," as required under Article 4(2). In addition, it fails to distinguish between different cases of murder or ensure like cases are treated alike, and consequently it is arbitrary and can give rise to unjust discrimination.

33. More particularly, the petitioners assert that the drafters of the American Convention, giving due consideration to the abolitionist tendencies of the Hispanic states and the restrictionist tendencies of the United States, intended the term "only for the most serious crimes" under Article 4(2) to go beyond mere legal label and to require some categorization or opportunity to make representations as to whether a particular allegation of murder merited death. Moreover, the petitioners contend that the way in which the death penalty is administered in Grenada renders the deprivation of life arbitrary and contrary to Article 4(1) of the American Convention, and add that the fact that certain sentences of death are lawful under Article 4(2) of the American Convention does not mean that those sentences cannot be considered arbitrary under Article 4(1), or cruel, inhuman or degrading contrary to Article 5 of the American Convention.

34. The petitioners argue that similar conclusions can be reached with reference to Article 5 of the American Convention. According to the petitioners, it has long been recognized by judicial authorities that the death penalty has features that prompt the description cruel and inhuman, but that this does not make it unlawfully carried out in conformity with a state's international obligations.<sup>[11]</sup> At the same time, the petitioners argue that the death penalty can be rendered illegal because of the manner in which it is imposed. In this regard, the petitioners submit that certain factors pertaining to the manner in which Mr. Baptiste's death sentence has been imposed can be considered to violate Article 5 of the Convention, and to render his execution unlawful under Article 4 of the Convention. These factors include the lapse of time since Mr. Baptiste's sentence was imposed, the conditions of his detention on death row, and the cruelty of sentencing people to death, when there has been a moratorium on application of the death sentence in Grenada for 20 years.

35. In addition, the petitioners argue that the mandatory death sentence imposed on Mr. Baptiste violates Articles 8 and 24 of the Convention, on the basis that Grenada's Constitution does not permit Mr. Baptiste to allege that his execution is unconstitutional as being inhuman or degrading or cruel and unusual, and does not afford Mr. Baptiste a right to a hearing or a trial on the question of whether the death penalty should be either imposed or carried out. The petitioners contend further that the State has violated Mr. Baptiste's right to equal protection of the law by imposing a mandatory death sentence without any judicial proceedings to establish whether the death penalty should be imposed or carried out in the circumstances of his case.

36. The petitioners assert that the mandatory death sentence is an arbitrary and disproportionate punishment unless there is allowance for individual mitigation, and that even a short custodial sentence cannot be imposed without affording such an opportunity for mitigation to be presented before the judicial authority imposing sentence. According to the petitioners, fair and objective criteria are necessary in determining the question of whether a convicted murderer should actually be executed, and that if all murderers are executed, the death penalty would be cruel because it did not allow for any discretion. The petitioners also argue that a law which is mandatory at the sentencing stage and involves unfettered personal discretion at the commutation stage infringes both principles identified by the United States Supreme Court, and further violates the principle of equality before the law. The petitioners argue that in Grenada, not every person who is sentenced to death is executed and that the Prerogative of Mercy operates to commute a

number of sentences.

37. Finally, the petitioners suggest that the State should consider converting the moratorium on executions that has existed in Grenada since 1978 into legislative abolition. In this regard, the petitioners indicate that they accept that the State has not abolished the death penalty in its laws and has not applied the death penalty since 1978. The petitioners argue that for the past twenty years people have been sentenced to death for murder and suffer all the terrors of expectation of a hanging that confinement to the death row cells in Richmond Prison brings, without any real intention on the behalf of the authorities to carry this punishment into effect. The petitioners contend that they respect the humanitarian tendencies of the Government of Grenada that led to the moratorium in the first place, but suggest that the *de facto* moratorium should be turned into legislative abolition. The petitioners assert that if the State abolishes the death penalty through legislation, Mr. Baptiste's death sentence should be speedily commuted to life imprisonment, so that the agony of suspense relating to his possible execution does not hang over him for years.

38. With respect to the particular circumstances of Mr. Baptiste's crime, the petitioners indicate that his state of mind at the time of the offense may have been relevant in determining his punishment. In this connection, the petitioners claim that although Grenada's law has no provision for the defense of diminished responsibility, Tim Owen, the Barrister from whom Mr. Baptiste sought advice in respect of a possible appeal to the Judicial Committee of the Privy Council, expressed the view that sons rarely kill their mothers. Consequently, Mr. Owen indicated that he would have expected some medical evidence to have been sought and used at trial, if it provided any kind of support for the suggestion that in a situation of stress and upset, Mr. Baptiste snapped and inflicted fatal injuries on his mother.

## **ii. The prerogative of mercy**

39. The petitioners argue that insofar as the rigors of the mandatory death penalty are mitigated by the power of pardon and commutation exercised by the Advisory Committee on the Prerogative of Mercy, as prescribed under Articles 72, 73 and 74<sup>[12]</sup> of the Constitution of Grenada, there are no criteria for the exercise of such discretion, and no information as to whether such discretion is exercised on an accurate account of the admissible evidence as to the facts relating to the circumstances of the offence. They also claim that there is no right on the part of an offender to make either written or oral comments on the question of pardon, to see or comment on the report of the trial Judge which the Advisory Committee must consider under Article 74(1) of the Grenadian Constitution, or to comment on any reasons identified by the trial judge or others as to whether the sentence of death should be carried out.

40. The petitioners indicate in this regard that in the case of Reckley v. Minister of Public Safety N° 2,<sup>[13]</sup> the Privy Council specifically held that a condemned man has no right to make representations or attend a hearing before the Advisory Committee on the Prerogative of Mercy established pursuant to Articles 73 and 74 of Grenada's Constitution. Rather, the Privy Council held that the power of pardon is personal to the responsible Minister and is not subject to judicial review, stating as follows:

The actual exercise by this designated Minister of his discretion in a death penalty case is different. To concern with a regime, automatically applicable under the

designated Minister, having consulted with the Advisory Committee, decides, in the exercise of his own personal discretion, whether to advise the Governor General that the law should or should not take its course. Of its very nature, the Minister's discretion, if exercised in favor of the condemned man, will involve a departure from the law. Such a decision is taken as an act of mercy or as it used to be said as an act of grace.[\[14\]](#)

41. The petitioners also assert that the violation of Mr. Baptiste's right to equality before the law by reason of the mandatory death penalty is further aggravated by the fact that he has no right to be heard before the Advisory Committee on the Prerogative of Mercy, which itself is alleged to constitute a violation of Article 4(6) of the American Convention. In this regard, the petitioners argue that it may well be that poorer citizens of Grenada are less likely to receive commutation than wealthier citizens or other forms of discriminatory treatment which exist in the present arrangements, although they are unaware of any empirical studies on this issue as it pertains to Grenada. The petitioners referred to decisions of the United States Supreme Court and the South African Constitutional Court, in which a tendency of discrimination in the application of the Prerogative of Mercy has been identified. Moreover, the petitioners contend that it must be for the party seeking to deprive Mr. Baptiste of his life to establish the absence of inequality and discrimination in the operation of its penal law.

**b. Article 5 - Conditions of detention**

42. The petitioners claim that the State has violated Mr. Baptiste's rights under Articles 5(1) and 5(2) of the Convention, because of his conditions of detention, which they describe as follows:

He is locked in his cell measuring 9'x6' on his own for 23 hours a day; he is provided with a bed and mattress, but there is no other furniture whatsoever in his cell; the cell has no windows and no natural lighting, and no ventilation; the only lighting in his cell is provided by a single naked bulb situated in the corridor in front of his cell; he is deprived of adequate sanitation and therefore has to use a bucket; he is allowed one opportunity a day to slop out; he is allowed one hour exercise per day which is taken in a small exercise yard; food provided is inadequate and he is made to eat alone; he is allowed one visitor a month for a duration of 15 minutes and he is allowed to write one letter a month; all prisoners on death row at Richmond Hill Prison are not permitted access to prison services; he is not allowed to use the prison library and he is also denied access to the Chaplan and religious services; there is inadequate medical care and no psychiatric care is provided to prisoners under sentence of death; and there is no adequate complaints mechanism for dealing with prisoners' complaints.

43. According to the petitioners, since his incarceration in Richmond Hill Prison, Mr. Baptiste has been detained in conditions that have been condemned by international human rights organizations as being in violation of internationally recognized standards. The petitioners argue that non-governmental organizations have concluded that the State is in breach of a number of international instruments designed to give those detained a minimum level of protection, because of inadequate accommodations, sanitation, diet and health care. In support of their allegations, the petitioners submitted a notarized Affidavit from Mr. Baptiste dated April 11<sup>th</sup> 1997, in which Mr. Baptiste describes his treatment and conditions of his confinement since his arrest and subsequent

conviction for murder on July 11<sup>th</sup>, 1995.

44. The petitioners have also relied upon information regarding prison conditions in the Caribbean generally. In this connection, the petitioners claim that all death row prisoners in Grenada are confined in Richmond Hill Prison, which was built in the 19<sup>th</sup> century. They also claim that Richmond Hill Prison was designed to hold 130 prisoners, but that as of October 1996, the prison had a population of 330 prisoners. Further, the petitioners refer to numerous reports prepared by the non-governmental organization, "Caribbean Rights." For example, in its 1990 report "Deprived of their Liberty," Caribbean Rights made the following observations about prison conditions in the Caribbean generally, including Grenada:

In most of the Caribbean prisons visited, prisoners had to use a bucket in front of others and were locked in with the bucket for many hours, often for 15 or 16 hours a day. This was the case in the men's prison in St. Vincent, Grenada, Trinidad and South Camp Rehabilitation Centre and St. Catherine District Prison in Jamaica.[\[15\]](#)

In both St. Vincent and Grenada the men's prison uniform was a blue top and shorts, decent but not very conducive to dignity.

In Grenada, there were no separate punishment cells. Prisoners on punishment were put in the special security blocks. Corporal punishment was not available, but punishment were of two types of restricted diet and loss of remission up to 90 days, though it was reported that it was rare for a prisoner to lose that much remission. There is no appeal machinery against the imposition of punishment.[\[16\]](#)

45. Caribbean Rights' 1990 Report also indicated that in 1990, there were approximately 20 prisoners under sentence of death in Grenada, and described conditions on death row in Grenada as follows:

The prisoners under sentence of death were kept in special security blocks attended by prison officers wearing a different uniform from the prison officers in the rest of the prison, a green combat-type uniform. There were three such blocks, each with a corridor down the middle and 8 to 10 cells on each side of the door. The cell doors are solid with a rectangular aperture at eye level. The prisoners in the blocks wore the same clothes as the other prisoners, that is a blue shirt and blue shorts. Upon the arrival of the visiting party, the prison officers in the special security blocks opened the outer door, salute to the senior officer present and recited a military style statement about the numbers locked up and everything being in order. Then the officer walked down the row shouting the name of each prisoner as he passed. The prisoner then stood to attention in the middle of the cell, hands behind his back and replied, "Sir." ... The prisoners in the special security blocks are reported to get one hour of exercise a day if possible, sometimes more."[\[17\]](#)

46. Based in part upon these observations, Caribbean Rights reached several conclusions and made several recommendations in respect of the conditions of detention of condemned prisoners in the Caribbean, including the following:

The treatment of death row prisoners exacerbates a punishment that is already completely unacceptable. The exceptional inhumanity of the physical conditions as

reported in Guyana and Trinidad and seen in St. Vincent and Grenada, constitute an intolerable imposition of cruelty. It is understandable that high security must be imposed and some surveillance is necessary. But keeping death sentenced prisoners, sometimes for years, in conditions equivalent to or worse than those of punishment cells, is intolerable.[\[18\]](#)

The holding of prisoners sentenced to death in the conditions currently obtaining in the special security blocks in Grenada is inappropriate and should cease forthwith.

That subjecting prisoners under sentence of death to living with the lights on for 24 hours a day should cease forthwith.

That restricting the programme of activities of prisoners awaiting sentence of death to one hour of exercise a day, should cease forthwith.

That prisoners under sentence of death should be entitled to substantial amounts of visiting time with their families.

47. Similarly, in a December 1991 Report entitled "Improving Prison Conditions in the Caribbean," Caribbean Rights noted several concerns raised by Vivien Stern, the Secretary General of Penal Reform International, regarding the visitation rights of prisoners and their ability to send and receive letters:

In Grenada, the official visiting allowance is 15 minutes a month for convicted prisoners. It is 15 minutes a week for unconvicted prisoners. Normal civilised contact was impossible. The visit took place through grilles with a gap between the two grilles of about 18 inches, through which the visitor and the prisoner had to communicate. Probably the best they can do in these circumstances is to shout at each other. Writing letters is another way of keeping contact. Here too there were severe restrictions. In Grenada, prisoners can write and receive one letter a month. All ingoing and outgoing mail was read by censors, even for the most minor offenders.[\[19\]](#)

48. In support of their contention that Mr. Baptiste's conditions of detention violate Article 5(1) and 5(2) of the Convention, the petitioners refer to several decisions of the U.N. Human Rights Committee (hereinafter "HRC"), in which the HRC determined that conditions of detention violated Articles 7[\[20\]](#) and 10(1)[\[21\]](#) of the International Covenant on Civil and Political Rights (ICCPR). These cases include Antonaccio v. Uruguay, [\[22\]](#) in which the HRC held that detention in solitary confinement for three months and denial of medical treatment constituted a violation of the Covenant, and De Voituret v. Uruguay,[\[23\]](#) in which the HRC held that solitary confinement for three months in a cell with almost no natural light violated the applicant's rights under the Covenant. The petitioners also rely upon the decision Mukong v. Cameroon,[\[24\]](#) in which the HRC suggested that conditions of detention which do not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners violate Articles 7 and 10(1) of the ICCPR, and that minimum standards of humane treatment of prisoners apply regardless of a state's level of development:

As to the conditions of detention in general, the Committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of the State party's level of development [ i.e. the UN Standard Minimum Rules for the Treatment of Prisoners]. It should be noted that these are minimum requirements which the Committee consider should always

be observed, even if economic or budgetary conditions may make compliance with these obligations difficult.[25]

49. The petitioners similarly argue that the European Court's jurisprudence in respect of Article 3[26] of the European Convention supports their contention that Mr. Baptiste's conditions of detention violate his rights under Article 5 of the American Convention. In particular, the petitioners rely upon the Greek Case,[27] in which the Court found conditions of detention amounting to inhumane treatment to include overcrowding, poor hygiene and sleeping arrangements, and inadequate recreation and contact with the outside world. Likewise, in the Cyprus v. Turkey,[28] the Court found that conditions in which food, water, and medical treatment were withheld from detainees constituted inhuman treatment. The petitioners also argue that these cases recognized that a failure to provide adequate medical care may constitute inhuman treatment, even in the absence of any other ill treatment.

50. Further, the petitioners argue that the conditions under which Mr. Baptiste is detained at Richmond Hill Prison constitute violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners, namely, Rules 10, 11A, 11B, 12, 13, 15, 19, 22(1), 22(2), 22(3), 24, 25(1), 25(2), 26(1), 26 (2), 35(1), 36(1), 36(2), 36(3), 36(4), 57, 71(2) 72(3) and 77.

51. Finally, the petitioners observe that Grenada failed to respond to questionnaires sent to OAS member states in connection with the Commission's efforts in 1995 to establish a working group to conduct studies of prison conditions in the Americas.

52. With respect to Article 4 of the Convention, the petitioners argue that Mr. Baptiste's detention in inhuman and degrading conditions renders unlawful the carrying out of his death sentence, and that to carry out his execution in such circumstances would constitute a violation of his rights under Articles 4 and 5 of the American Convention. In support of their position, the petitioners refer to the case of Pratt and Morgan -v- The Attorney General of Jamaica,[29] in which the Privy Council held that prolonged detention under sentence of death would violate the right under the Constitution of Jamaica not to be subjected to inhuman and degrading treatment. The petitioners argue similarly that the lawfulness of Mr. Baptiste's execution cannot be considered in isolation from the detention which preceded it, and that his conditions of detention should be considered to render his execution unlawful in the same manner as prolonged detention on death row.

### **c. Article 8 - Unavailability of legal aid for Constitutional Motions**

53. The petitioners claim that the State has violated Mr. Baptiste's rights under Article 8 of the Convention, because legal aid is not available to enable him to pursue a Constitutional Motion in the domestic courts in Grenada. The petitioners maintain that Mr. Baptiste is indigent and therefore lacks the private resources to bring a Constitutional Motion to challenge violations of his Constitutional rights. The petitioners also contend that there are a dearth of Grenadian lawyers who are willing to represent Mr. Baptiste on a *pro bono* basis. The petitioners therefore claim that the failure of the State to provide Legal Aid for Mr. Baptiste to pursue a Constitutional Motion denies Mr. Baptiste an effective remedy, which includes access to the Courts in fact as well as in law. In support of this contention, the petitioners rely upon the decisions of the European Court of Human Rights in the cases Golder v. UK,[30] and Airey v. Ireland,[31] in which the European Court held that Article 6 of the European Convention[32] imposed positive

obligations on the States concerned to provide legal aid in the interests of justice.

54. The petitioners argue that a similar interpretation of Article 8 of the American Convention is appropriate. In particular, they argue that Constitutional Motions in the circumstances of Mr. Baptiste's case should be considered criminal proceedings for the purposes of Article 8(2) of the Convention, because they arise from earlier criminal proceedings, and might serve to quash his capital sentence. Consequently, the petitioners argue that Article 8(2) of the Convention compels the State to provide legal aid to Mr. Baptiste to pursue a Constitutional Motion relating to the criminal proceedings against him. The petitioners also argue that the fact that Mr. Baptiste will be executed if his Constitutional challenge fails, also weighs in favor of this interpretation.

#### **B. The position of the State**

55. The State has not presented any information or arguments to the Commission on the issues of the admissibility and merits of the petition, despite the Commission's communications to it dated April 29, 1997, January 23, 1998, February 10, 1998, September 1, 1998, and August 18, 1999.

### **IV. ANALYSIS**

#### **A. Competence of the Commission**

56. The Commission has subject matter jurisdiction in this case, as the State deposited its instrument of accession to the American Convention on July 18, 1978,<sup>[33]</sup> and the petitioners allege that the State has violated Articles 4, 5, 8, and 24 of the Convention. The Commission also has temporal jurisdiction, as the petitioners' complaints pertain to acts or omissions that transpired after the State's accession to the Convention. Finally, the Commission has personal jurisdiction, as the victim is a citizen of Grenada and the petitioners were authorized under Article 44 of the Convention to lodge a petition on behalf of Mr. Baptiste. The Commission is therefore fully competent to examine this petition.

57. The petitioners have also alleged the violation of Articles I, II, XVIII and XXVI of the Declaration. In this regard, the Commission notes that once the Convention entered into force for the State of Grenada on July 18, 1978, the Convention, and not the Declaration became the source of legal norms for application by the Commission,<sup>[34]</sup> insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation.<sup>[35]</sup> In Mr. Baptiste's case, the rights alleged to have been violated by the State under the Declaration are similarly guaranteed in the Convention. In addition, acts or omissions to which the alleged violations relate occurred after the State manifested its consent to be bound by the Convention. Therefore, the Commission declares the petitioners' claims relating to the Declaration inadmissible, and will only consider the petitioners' claims relating to the Convention.

#### **B. Admissibility of the petition**

##### **1. Exhaustion of domestic remedies**

58. Article 46(1) of the American Convention provides that: “Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (a) that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The petitioners argue that Mr. Baptiste exhausted the domestic remedies of Grenada on November 27, 1995, when the Court of Appeal in Grenada dismissed Mr. Baptiste’s appeal against conviction and sentence. The State has failed to provide any observations with respect to the admissibility or merits of the petitioners’ petition. As a consequence, the Commission finds that the State tacitly waived its right to object to the exhaustion of domestic remedies.<sup>[36]</sup> The Commission therefore does not find the petitioners’ case to be inadmissible by reason of Article 46(1)(a) of the Convention.

## **2. Timeliness of petition**

59. In accordance with Article 46(1)(b) of the Convention, a petition must be presented within a period of six months from the date on which the complaining party was notified of the final judgment at the domestic level. Where no such judgment has been issued because it has not been possible to exhaust domestic remedies, Article 46(2) of the Convention provides that the 6-month requirement does not apply. In the present case, the State has failed to provide any observations in respect of the admissibility or merits of the petitioners’ petition and has failed to demonstrate to the Commission that the petition has not been timely filed.<sup>[37]</sup> Accordingly, the Commission does not find the petitioners’ case to be inadmissible by reason of Article 46(1)(b) of the American Convention.

## **3. Duplication of procedures**

60. The petitioners have indicated that the subject of Baptiste’s petition has not been submitted for examination under any other procedure of international investigation. The State has failed to provide any observations regarding the admissibility or merits of the petitioners’ petition, and has therefore not contested the issue of duplication. The Commission therefore finds that the petitioners’ case is not inadmissible under Articles 46(1)(c) or Article 47(d) of the Convention.

## **4. Colorable claim**

61. Articles 47(b) and 47(c) state that the Commission shall consider inadmissible any petition or communication submitted under Articles 44 and 45 if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, and that the statements of the petitioner or of the State indicate that the petition or communication is manifestly groundless or obviously out of order. The petitioners have alleged that the State has violated Mr. Baptiste’s rights under Article 4, 5, 8 and 24 of the Convention. In addition, the petitioners have provided factual allegations that tend to establish that the alleged violations may be well-founded. The Commission therefore concludes, without prejudging the merits of the case, that the petitioners’ case is not barred from consideration under Articles 47(b) or 47(c) of the Convention.

## **5. Conclusions on admissibility**

62. As noted previously, the State has not replied to the Commission's communications to it of April 29, 1997, January 23, 1998, February 10, 1998, September 1, 1998, and August 18, 1999, to provide the Commission with information that the State deemed relevant pertaining to the exhaustion of domestic remedies and the claims raised in the petition, nor has the State responded to the Commission's communications in respect of the possibility of a friendly settlement in the case. As a consequence, in determining the admissibility of this case, the Commission has presumed the facts as reported in the petition to be true, provided that the evidence does not lead to a different conclusion, in accordance with Article 42 of the Commission's Regulations.

63. In accordance with the foregoing analysis of the requirements of Articles 46 and 47 of the Convention and the applicable provisions of the Commission's Regulations, the Commission decides to declare admissible the claims relating to the Convention presented on behalf of Mr. Baptiste.

### **C. The merits of the petition**

#### **1. Standard of review**

64. Before addressing the merits of this case, the Commission deems it advisable to articulate its standard of review in capital punishment cases. In this regard, the Commission is of the view that it must apply a heightened level of scrutiny in such cases. The right to life is widely-recognized as the supreme right of the human being, and the *conditio sine qua non* to the enjoyment of all other rights.<sup>[38]</sup> The Commission therefore considers that it has an enhanced obligation to ensure that any deprivation of life perpetrated by a State Party through the death penalty complies strictly with the provisions of the Convention, including in particular the right to life provisions of Article 4, the guarantees of humane treatment under Article 5, and the due process and judicial protections guaranteed under Articles 8 and 25 of the Convention. This "heightened scrutiny" test is consistent with the restrictive approach to the death penalty provisions of human rights treaties advocated by other international authorities.<sup>[39]</sup> In particular, the Inter-American Court has concluded that the American Convention has adopted an approach in respect of the death penalty that is "incremental" in character, whereby, "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."<sup>[40]</sup>

65. The Commission also notes that the heightened scrutiny test is not precluded by the fourth instance formula adopted by the Commission. Pursuant to the "fourth instance formula," the Commission in principle will not review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees.<sup>[41]</sup> The fourth instance formula does not, however, preclude the Commission from considering a case where the petitioner's allegations entail a possible violation of any of the rights set forth in the American Convention. In the case of Clifton Wright, for example, a Jamaican citizen who alleged that a judicial error resulted in a death sentence against him, the Commission concluded that the conviction and sentence were undermined by the record in the case, but that the appeals process in Jamaica did not permit for a

correction of the situation. Consequently, the Commission found that Jamaica had violated the petitioner's right to judicial protection under Article 25 of the Convention, and recommended that the Government of Jamaica order an investigation of the matter and afford Mr. Wright a judicial remedy to have the inconsistency corrected. Because Mr. Wright had been denied effective domestic judicial protection, and was the victim of a discrete human rights violation under the American Convention, the fourth instance formula did not apply in his case.<sup>[42]</sup>

66. The Commission will therefore review Mr. Baptiste's allegations pertaining to the imposition of capital punishment with a heightened level of scrutiny, to ensure that the right to life as prescribed under the American Convention is properly respected. In addition, the fourth instance formula will not preclude the Commission from adjudicating Mr. Baptiste's rights insofar as those claims disclose possible violations of the Convention.

## **2. Alleged violations of the American Convention**

67. As detailed previously, the petitioners allege: (i) violations of Articles 4, 5, 8, and 24 of the Convention, relating to the mandatory nature of the death penalty and the process for granting amnesty, pardon or commutation of sentence in Grenada; (ii) violations of Article 5 of the Convention pertaining to Mr. Baptiste's conditions of detention; and (iii) violations of Article 8 of the Convention, relating to the unavailability of legal aid for Constitutional Motions in Grenada.

68. As noted previously, the State has not replied to the Commission's communications to it of April 29, 1997, January 23, 1998, February 10, 1998, September 1, 1998, and August 18, 1999, to provide the Commission with information that the State deemed relevant pertaining to the exhaustion of domestic remedies and the claims raised in the petition, nor has the State responded to the Commission's communications regarding the possibility of a friendly settlement in the case. As a consequence, in determining the merits of the petitioners' allegations, the Commission will presume the facts as reported in the petition to be true, provided that the evidence does not lead to a different conclusion, in accordance with Article 42 of the Commission's Regulations.

### **a. Articles 4, 5, 8 and 24 - The mandatory death penalty**

#### **i. Mr. Baptiste was sentenced to a mandatory death penalty**

69. Mr. Baptiste was convicted of murder pursuant to Section 234 of the Criminal Code of Grenada, which provides that "[w]hoever commits murder shall be liable to suffer death and sentenced to death."<sup>[43]</sup> The crime of murder in Grenada can therefore be regarded as subject to a "mandatory death penalty," namely a death sentence that the law compels the sentencing authority to impose based solely upon the category of crime for which the defendant is found responsible. Once a defendant is found guilty of the crime of murder, the death penalty must be imposed. Accordingly, mitigating circumstances cannot be taken into account by a court in imposing the death sentence.

70. As indicated in Part III of this Report, Mr. Baptiste has alleged that because he was sentenced to a mandatory death penalty for the crime of murder, the State violated his rights

pursuant to Articles 4(1), 4(2), 4(6), 5(1), 5(2), 8 and 24 of the American Convention. Mr. Baptiste has also argued that the process for granting amnesty, pardon or commutation of sentence in Grenada does not provide an adequate opportunity for considering individual circumstances, and in itself violates Article 4(6) of the Convention.

71. The Commission will first analyze the compatibility of the mandatory death sentence for the crime of murder with Articles 4, 5 and 8 of the Convention, in light of the terms of those provisions, their underlying principles, and relevant international and domestic precedents. The Commission will then determine whether the State has violated Mr. Baptiste's rights under the Convention, because of the manner in which Mr. Baptiste was sentenced to death.

## **II. Articles 4, 5, and 8 of the American Convention and the mandatory death penalty**

72. In light of the allegations raised by Mr. Baptiste, the Commission must first ascertain whether the practice of imposing the death penalty for the crime of murder through mandatory sentencing is compatible with Article 4 (right to life), Article 5 (right to humane treatment), and Article 8 (right to a fair trial) of the American Convention and the principles underlying those provisions:

Article 4 of the American Convention provides as follows:

### Article 4. Right to Life

- (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 and 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. 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.
- (5) 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 the competent authority.

73. Article 4 of the Convention permits States Parties that have not abolished the

death penalty to continue to impose it. At the same time, the Convention strictly regulates the manner in which the death penalty may be imposed by States Parties in their respective States. This restrictive approach under the Convention to the perpetuation of the death penalty mirrors the treatment of the death penalty generally under contemporary international and, as Part IV of this Report will indicate, domestic practice.

74. More particularly, drawing in part upon the past experience of international human rights bodies, several general principles of interpretation can be identified in respect of the death penalty provisions of international human rights instruments in general, and Article 4 of the Convention in particular. First, the supervisory bodies of international human rights instruments have subjected the death penalty provisions of their governing instruments to a rule of restrictive interpretation. In its Advisory Opinion on Restrictions to the Death Penalty under Articles 4(1) and 4(4) of the Convention, for example, the Inter-American Court of Human Rights adopted a restrictive approach to Article 4 of the Convention, finding that “the text of the article as a whole reveals a clear tendency to restrict the scope of this penalty both as far as its imposition and its application are concerned”.[\[44\]](#)

75. Other international human rights supervisory bodies have similarly afforded a strict interpretation of the death penalty provisions in human rights treaties. The U.N. Human Rights Committee has held in the context of Article 6 of the ICCPR, which parallels Article 4 of the Convention in certain respects,[\[45\]](#) that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of the state.[\[46\]](#) The Committee has accordingly determined that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of Article 6 of the Covenant. Its recommended remedies in such cases have included release,[\[47\]](#) and commutation of the death sentence.[\[48\]](#) The U.N. Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions has likewise emphasized that proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries and other strict requirements of due process.[\[49\]](#) This Commission has similarly closely scrutinized the circumstances of death penalty cases to ensure strict compliance with the requirements of due process and judicial protection.[\[50\]](#)

76. It is also generally recognized that the death penalty is a form of punishment that differs in substance as well as in degree in comparison to other forms of punishment. It is the absolute form of punishment that results in the forfeiture of the most valuable of rights, the right to life, and once implemented, is irrevocable and irreparable. As the United States Supreme Court has observed, “the penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.”[\[51\]](#) In the Commission's view, the fact that the death penalty is an exceptional form of punishment must also be considered in interpreting Article 4 of the Convention.

77. Finally, with respect to the restrictions prescribed in Article 4 of the American Convention in particular, the Inter-American Court has identified three principal limitations explicitly prescribed in Article 4 on the ability of States Parties to the Convention to impose the death penalty:

Thus, three 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.*<sup>[52]</sup> [emphasis added]

78. The Court's observations therefore accentuate the significance of strict adherence to and review of due process guarantees in implementing the death penalty in accordance with Article 4 of the Convention. Moreover, as part of that process, the Court suggests that certain circumstances of individual offenses and individual defendants may bar the imposition or application of the death penalty altogether, and therefore must be taken into account in sentencing an individual to death.

79. It is in light of the foregoing interpretive rules and principles that the Commission must determine whether the practice of imposing the death penalty through mandatory sentencing is compatible with the terms of Articles 4, 5 and 8 of the Convention and the principles underlying those provisions.

80. In the Commission's view, several aspects of imposing mandatory death penalties for the crime of murder are problematic in the context of a proper interpretation and application of the Convention. First, it is well-recognized that the crime of murder can be perpetrated in the context of a wide variety of mitigating and aggravating circumstances, with varying degrees of gravity and culpability.<sup>[53]</sup> This conclusion is illustrated by the broad definition of murder under Grenada's law, as the unlawful killing of another person with the intent to kill or to cause unlawful harm or injury.<sup>[54]</sup> It is also illustrated by the circumstances of Mr. Baptiste's case. Notwithstanding the existence of such disparities, however, the mandatory death penalty seeks to impose capital punishment in all cases of murder, without distinction. It subjects an individual who, for example, commits a murder in a spontaneous act of passion or anger, to the equivalent and exceptional punishment as an individual who executes a murder after carefully planning and premeditation.

81. Mandatory sentencing by its very nature precludes consideration by a court of whether the death penalty is an appropriate, or indeed permissible, form of punishment in the circumstances of a particular offender or offense. Moreover, by reason of its compulsory and automatic application, a mandatory sentence cannot be the subject of an effective review by a higher court. Once a mandatory sentence is imposed, all that remains for a higher court to review is whether the defendant was found guilty of a crime for which the sentence was mandated.

82. In the Commission's view, these aspects of mandatory death sentences cannot be reconciled with Article 4 of the Convention, in several respects. As noted above, the mandatory death penalty in Grenada imposes the death penalty on all individuals convicted of murder, despite the fact that the crime of murder can be committed with varying degrees of gravity and culpability. Not only does this practice fail to reflect the exceptional nature of the death penalty as a form of punishment, but, in the view of the Commission, it results in the arbitrary deprivation of life, contrary to Article 4(1) of the Convention.

83. More particularly, imposing a mandatory penalty of death for all crimes of murder prohibits a reasoned consideration of each individual case to determine the propriety of the

punishment in the circumstances, despite the fact that murder can be committed under widely-differing circumstances. By its nature, then, this process eliminates any reasoned basis for sentencing a particular individual to death and fails to allow for a rational and proportionate connection between individual offenders, their offenses, and the punishment imposed on them. Implementing the death penalty in this manner therefore results in the arbitrary deprivation of life, within the ordinary meaning of that term and in the context of the object and purpose of Article 4(1) of the Convention.

84. Accepted principles of treaty interpretation suggest that sentencing individuals to the death penalty through mandatory sentencing and absent consideration of the individual circumstances of each offender and offense leads to the arbitrary deprivation of life within the meaning of Article 4(1) of the Convention. Article 31(1) of the Vienna Convention on the Law of Treaties provides that a treaty shall be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” The ordinary meaning of the term “arbitrary” connotes an action or decision that is based on random or convenient selection or choice rather than on reason or nature.<sup>[55]</sup> The U.N. Human Rights Committee suggested a similar meaning for the term arbitrary in the context of Article 6(1) of the ICCPR, in the case *Kindler v. Canada*.<sup>[56]</sup> In that case, the complainant, a citizen of the United States, was ordered extradited from Canada to face a possible death sentence in the State of Pennsylvania for a conviction of murder. The Committee found that Canada did not violate the complainant’s right under Article 6(1) of the ICCPR not to be arbitrarily deprived of his life, by extraditing him to the United States without seeking assurances from the United States’ Government that the death penalty would not be imposed. At the same time, the Committee suggested that the decision not to refuse extradition or to seek assurances must be shown to have been based upon a reasoned consideration of the circumstances of Mr. Kindler’s case:

While States must be mindful of the possibilities for the protection of life when exercising their discretion in the application of extradition treaties, the Committee does not find that the terms of article 6 of the Covenant necessarily require Canada to refuse to extradite or to seek assurances. The Committee notes that the extradition of Mr. Kindler would have violated Canada’s obligations under article 6 of the Covenant, if the decision to extradite without assurances would have been taken arbitrarily or summarily. The evidence before the Committee reveals, however, that the Minister of Justice reached a decision after hearing argument in favor of seeking assurances. The Committee further takes note of the reasons given by Canada not to seek assurances in Mr. Kindler’s case, in particular, the absence of exceptional circumstances, the availability of due process, and the importance of not providing a safe haven for those accused of or found guilty of murder.<sup>[57]</sup>

85. The Committee has therefore suggested that an arbitrary decision includes one that is taken in the absence of a reasoned consideration of the circumstances of the case in respect of which the decision is made. In this respect, the mandatory death penalty can be regarded as arbitrary within the ordinary meaning of that term. The decision to sentence a person to death is not based upon a reasoned consideration of a particular defendant’s case, or upon objective standards that guide courts in identifying circumstances in which the death penalty may or may not be an appropriate punishment. Rather, the penalty flows automatically once the elements of the offense of murder have been established, regardless of the relative degree of gravity of the offense or culpability of the offender.

86. The mandatory death penalty cannot be reconciled with Article 4 of the

Convention in another significant respect. As noted previously, the Inter-American Court has emphasized several restrictions upon the implementation of the death penalty that flow directly from the terms of Article 4 of the Convention. These include considerations relating to the nature of a particular offense, for example whether it can be considered a political or related common offense, as well as factors relating to the circumstances of an individual offender, for example whether the offender was under the age of 18 or pregnant at the time he or she committed the crime for which the death penalty may be imposed. Article 4 of the Convention itself presumes that before capital punishment may be lawfully imposed, there must be an opportunity to consider certain of the individual circumstances of an offender or an offense. By its very nature, however, mandatory sentencing imposes the death penalty for all crimes of murder and thereby precludes consideration of these or any other circumstances of a particular offender or offense in sentencing the individual to death.

87. Similarly, by reason of its compulsory nature, the imposition of a mandatory death sentence precludes any effective review by a higher court as to the propriety of a sentence of death in the circumstances of a particular case. As indicated previously, once a mandatory death sentence is imposed, all that remains for a higher court to review is whether the defendant was properly found guilty of a crime for which the sentence of death was mandated. There is no opportunity for a reviewing tribunal to consider whether the death penalty was an appropriate punishment in the circumstances of the particular offense or offender. This consequence cannot be reconciled with the fundamental principles of due process under Articles 4 and 8 of the Convention that govern the imposition of the death penalty, which, as the Inter-American Court has recognized, include strict observance *and review* of the procedural requirements governing the imposition or application of the death penalty. The absence of effective review further illustrates the arbitrary nature of implementing the death penalty through mandatory sentencing, and lead the Commission to conclude that this practice cannot be reconciled with the terms of Article 4 of the Convention and its underlying principles.

88. The Commission is also of the view that imposing the death penalty in all cases of murder is not consistent with the terms of Article 5 of the Convention or its underlying principles. Article 5 of the Convention provides as follows:

Article 5 – Right to Humane Treatment

- (1) Every person has the right to have his physical, mental, and moral integrity respected.
- (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- (3) Punishment shall not be extended to any person other than the criminal.
- (4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
- (5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

(6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

89. Among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of their human personality.<sup>[58]</sup> From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect. Accordingly, Article 5(1) guarantees to each person the right to have his or her physical, mental, and moral integrity respected, and Article 5(2) requires all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person. These guarantees presuppose that persons protected under the Convention will be regarded and treated as individual human beings, particularly in circumstances in which a State Party proposes to limit or restrict the most basic rights and freedoms of an individual, such as the right to liberty. In the Commission's view, consideration of respect for the inherent dignity and value of individuals is especially crucial in determining whether a person should be deprived of his or her life.

90. The mandatory imposition of the death sentence, however, has both the intention and the effect of depriving a person of their right to life based solely upon the category of crime for which an offender is found guilty, without regard for the offender's personal circumstances or the circumstances of the particular offense. The Commission cannot reconcile the essential respect for the dignity of the individual that underlies Article 5(1) and (2) of the Convention, with a system that deprives an individual of the most fundamental of rights without considering whether this exceptional form of punishment is appropriate in the circumstances of the individual's case.

91. Finally, the Commission considers that the imposition of mandatory death sentences cannot be reconciled with an offender's right to due process, as contemplated in and as provided for in Articles 4 and 8 of the Convention. It is well established that proceedings leading to the imposition of capital punishment must conform to the highest standards of due process. The due process standards governing accusations of a criminal nature against an individual are prescribed in Articles 8(1) and 8(2) of the Convention, which include the right to a hearing before a competent, independent and impartial tribunal, the right of the accused to defend himself or herself, personally or by counsel, and the right to appeal the judgment to a higher court. In addition, as noted previously, Article 4 of the Convention provides that the death penalty should be imposed only for the most serious offenses, and contemplates that certain factors attributable to a particular offender or offense may bar the imposition of the death penalty altogether in the circumstances of a particular case.

92. In the Commission's view, therefore, the due process guarantees under Article 8 of the Convention, when read in conjunction with the requirements of Article 4 of the Convention, presuppose as part of an individual's defense to a capital charge an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of his or her case. This may be on the basis, for example, that the crime for which they have been convicted should be considered a political or

related common crime within the meaning of the Convention. The due process guarantees should also be interpreted to include a right of effective review or appeal from a determination that the death penalty is an appropriate sentence in a given case.

93. The mandatory imposition of the death sentence is inherently antithetical to these prerequisites. By its nature, it precludes any opportunity on the part of the offender to make, or for the Court to consider, representations or evidence as to whether the death penalty is a permissible or appropriate form of punishment, based upon the considerations in Article 4 of the Convention or otherwise. Also, as noted previously, it precludes any effective review by a higher court of a decision to sentence an individual to death.

94. Contrary to the current practice in Grenada, the Commission considers that imposing the death penalty in a manner which conforms with Articles 4, 5, and 8 of the Convention requires an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is a permissible or an appropriate form of punishment in the circumstances of their case. In the Commission's view, this includes, but is not limited to, representations and evidence as to whether any of the factors incorporated in Article 4 of the Convention may prohibit the imposition of the death penalty.

95. In this regard, as the following discussion of international and domestic jurisdictions will indicate, a principle of law has developed common to those democratic jurisdictions that have retained the death penalty, according to which the death penalty should only be implemented through "individualized" sentencing. Through this mechanism, the defendant is entitled to present submissions and evidence in respect of all potentially mitigating circumstances relating to himself and his or her offense, and the court imposing sentence is afforded discretion to consider these factors in determining whether the death penalty is a permissible or appropriate punishment.<sup>[59]</sup>

96. Mitigating factors may relate to the gravity of the particular offense or the degree of culpability of the particular offender, and may include such factors as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender. Consistent with the foregoing discussion, the Commission considers that the high standards of due process and humane treatment under Articles 4, 5 and 8 of the Convention governing the lawful imposition of the death penalty should be interpreted to require individualized sentencing in death penalty cases. In the Commission's view, this is consistent with the restrictive interpretation to be afforded to Article 4 of the Convention, and in particular the Inter-American Court's view that Article 4 of the Convention should be interpreted "as imposing restrictions designed to delimit strictly the scope and application of the death penalty, in order to reduce the application of the penalty to bring about its gradual disappearance."<sup>[60]</sup>

97. In light of the foregoing analysis, the Commission considers that the imposition of a mandatory death sentence by the State for the crime of murder, is not consistent with the terms of Article 4(1), 5(1), 5(2), 8(1) and 8(2) of the Convention and the principles underlying those

Articles.

**iii. Individualized sentencing in other international and domestic jurisdictions**

98. The experience of other international human rights authorities, as well as the high courts of various common law jurisdictions that have, at least until recently, retained the death penalty, substantiates and reinforces an interpretation of Articles 4, 5, and 8 of the Convention that prohibits the mandatory imposition of the death sentence. In this connection, it is the Commission's view, based upon a study of these various international and domestic jurisdictions, that a common precept has developed whereby the exercise of guided discretion by sentencing authorities to consider potentially mitigating circumstances of individual offenders and offenses is considered to be a condition *sine qua non* to the rational, humane and fair imposition of capital punishment. Mitigating circumstances requiring consideration have been determined to include, *inter alia*, the character and record of the offender, the subjective factors that might have influenced the offender's conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.

99. In the case of Lubuto v. Zambia,<sup>[61]</sup> for example, the complainant had received a mandatory death sentence for armed robbery. The United Nations Human Rights Committee did not address the question of whether mandatory death penalties *per se* contravened the International Covenant on Civil and Political Rights ("ICCPR"). The Committee found, however, that the absence of discretion on the part of a sentencing authority to consider the particular circumstances of an offense in determining whether the death penalty is an appropriate punishment may, in certain circumstances, contravene internationally prescribed conditions for implementing capital punishment. In this case, the Committee found that the absence of discretion contravened the requirement under Article 6(2) of the ICCPR<sup>[62]</sup> that the death penalty be imposed "only for the most serious crimes". The Committee concluded:

Considering that in this case use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence, the Committee is of the view that the mandatory imposition of the death sentence under these circumstances violates article 6, paragraph 2 of the Covenant.

100. The United Nations Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions has suggested more generally that the due process standards applicable in death penalty proceedings require, *inter alia*, that all mitigating factors be taken into account in imposing sentence:

Proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the full guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has

been proven without leaving any room for reasonable doubt, in application of the highest standards for the gathering and assessment of evidence. *All mitigating factors must be taken into account.* A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal composed of judges other than those who dealt with the case at the first instance. In addition, the defendant's right to seek pardon, commutation of sentence or clemency must be guaranteed.[\[63\]](#)[emphasis added]

101. The highest courts of various common law jurisdictions in which the death penalty has, at least until recently, been retained have similarly considered the rational, humane and fair imposition of the death penalty to require guided discretion on the part of the sentencing authority to consider mitigating circumstances of individual offenders and offenses. The United States Supreme Court in the case of Woodson v. State of North Carolina[\[64\]](#) found that a mandatory death sentence for first degree murder under the law of North Carolina violated the Eighth[\[65\]](#) and Fourteenth[\[66\]](#) Amendments to the U.S. Constitution. Among the grounds for the Court's decision was a finding that the mandatory death penalty did not satisfy a basic constitutional requirement, and that the process for imposing a death sentence should not be arbitrary, but rather incorporate "objective standards" that guide and regularize the process and make it amenable to judicial review.[\[67\]](#) The Court also found that the mandatory death penalty failed to allow the particularized consideration of relevant aspects of the character and record of each convicted defendant before imposing a death sentence upon him, and was therefore inconsistent with the fundamental respect for humanity underlying the prohibition of cruel and unusual punishment under the Eighth Amendment. In respect of the latter ground, the Court made the following compelling observations:

In *Furman*, members of the Court acknowledged what cannot be fairly denied – that death is a punishment different from all other sanctions in kind rather than degree.[\[68\]](#) A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It 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 penalty of death.

This Court has previously recognized that "[f]or the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender"[\[69\]](#). Consideration of both the offender and the offense in order to arrive at a just and appropriate sentence has been viewed as a progressive and humanizing development[\[70\]](#). While the prevailing practice of individualizing sentencing determinations generally reflects simply an enlightened policy rather than a constitutional imperative, we believe that in capital cases the fundamental respect

for humanity underlying the Eighth Amendment,[\[71\]](#) requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.

This conclusion rests squarely on the predicate that the penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100 year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.[\[72\]](#)

102. In the case of The State v. Makwanyane and McHunu,[\[73\]](#) the Constitutional Court of South Africa struck down the death penalty provision of the Criminal Procedure Act N° 51[\[74\]](#) as inconsistent with South Africa's 1993 Constitution. As part of its analysis, that Court also suggested that the guided discretion provided to South African judges to consider the personal circumstances and subjective factors of a defendant in applying the death penalty satisfied in part the requirement that the death penalty not be imposed arbitrarily or capriciously; the Court reasoned as follows [footnotes included]:

Basing his argument on the reasons which found favour with the majority of the United States Supreme Court in Furman v. Georgia, Mr. Trengove contended on behalf of the accused that the imprecise language of section 277, and the unbounded discretion vested by it in the Courts, make its provisions unconstitutional. [\[75\]](#)

[...]

Under our court system questions of guilt and innocence, and the proper sentence to be imposed on those found guilty of crimes, are not decided by juries. In capital cases, where it is likely that the death sentence may be imposed, judges sit with two assessors who have an equal vote with the judge on the issue of guilt and on any mitigating or aggravating factors relevant to sentence; but sentencing is the prerogative of the judge alone. The Criminal Procedure Act allows a full right of appeal of persons sentenced to death, including a right to dispute the sentence without having to establish an irregularity or misdirection on the part of the trial judge. The Appellate Division is empowered to set the sentence aside if it would not have imposed such a sentence itself, and it has laid down criteria for the exercise of this power by itself and other courts.[\[76\]](#) If the person sentenced to death does not appeal, the Appellate Division is nevertheless required to review the case and to set

aside the death sentence if it is of the opinion that it is not a proper sentence.<sup>[77]</sup>

Mitigating 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, and to negate beyond a reasonable doubt the presence of any mitigating factors relied upon by the accused.<sup>[78]</sup> Due regard must be paid to personal circumstances and subjective factors which might have influenced the accused person's conduct,<sup>[79]</sup> and these factors must then be weighed with the main objects of punishment, which have been held to be: deterrence, prevention, reformation, and retribution.<sup>[80]</sup> In this process "[e]very relevant consideration should receive the most scrupulous care and attention,"<sup>[81]</sup> and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence. <sup>[82]</sup>

There seems to me to be little difference between the guided discretion required for the death sentence in the United States, and the criteria laid down by the Appellate Division for the imposition of the death sentence. The fact that the Appellate Division, a court of experienced judges, takes the final decision in all cases is, in my view, more likely to result in consistency of sentencing, than will be the case where sentencing is in the hands of jurors who are offered statutory guidance as to how that discretion should be exercised.<sup>[83]</sup>

103. Similarly, in the case of Bachan Singh v. State of Punjab,<sup>[84]</sup> the appellant argued before the Supreme Court of India that section 354(3) of the Indian Criminal Procedure Code, 1973 contravened the requirement under Article 21 of the Indian Constitution that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law," because the provision provided judges with too much discretion in determining whether offenders should be sentenced to death.<sup>[85]</sup> The Indian Supreme Court rejected the appellant's contention, because in the Court's view, it was consistent with the requirements of Article 21 for the legislation to leave the imposition of the death penalty to "the judicial discretion of the Courts which are manned by persons of reason, experience and standing in the profession" who exercise their sentencing discretion "judicially in accordance with well-recognized principles crystallised by judicial decisions directed along the broad contours of legislative policy towards the signposts enacted in section 354(3)."<sup>[86]</sup> In reaching this conclusion, the Court articulated the following propositions intended to guide Indian judges in exercising their sentencing discretion relating to the death penalty:

- (a) the normal rule is that the offense of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only if there are special reasons for doing so.

Such reasons must be recorded in writing before imposing the death sentence.

- (b) while considering the question of sentence to be imposed for the offense of murder under section 302, Penal Code, the Court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the Court finds, but not otherwise, that the offense is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the Court may impose the death sentence.[\[87\]](#)

104. The Court also emphasized the crucial role that mitigating factors play in the humane imposition of capital punishment. The Court stated 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 written in section 354(3),” and opined that:

[a] real and abiding concern for the dignity of human life postulates resistance to taking a life through law’s instrumentality. That should not be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.[\[88\]](#)

105. The experience in other international and domestic jurisdictions therefore suggests that a Court must have the discretion to take into account the individual circumstances of an individual offender and offense must be taken into account by a court in determining whether the death penalty can and should be imposed, if the sentencing is to be considered rational, humane and rendered in accordance with the requirements of due process. The individual circumstances to be considered have been determined to include the character and record of the offender, the subjective factors that might have influenced the offender’s conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.

106. Authorities in these jurisdictions have also suggested that, in order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicially-prescribed principles and standards, and should be subject to effective judicial review, all with a view to ensuring that the death penalty is imposed in only the most exceptional and appropriate circumstances. The Commission considers that these principles should also be considered in interpreting and applying Articles 4, 5 and 8 of the Convention, so as to require individualized sentencing in implementing the death penalty. To accept any lesser standard would, in the Commission’s view, fail to afford sufficient protection to the most fundamental of rights under the American Convention.

#### **iv. The case before the Commission**

##### **a. Mandatory death penalty**

107. As indicated previously, Mr. Baptiste was found guilty of murder pursuant to Section 234 of the Criminal Code of Grenada and was sentenced to a mandatory death sentence by hanging. Section 234 of the Criminal Code specifically states that “whoever commits murder shall be liable to suffer death.” With respect to the elements of the crime of murder in Grenada, the Trial Judge instructed the Jury “that the prosecution have to prove that the accused man did the act intentionally and that that act which accused man did intentionally caused the death of Annie Baptiste- Lambert by unlawful harm contrary to Section 234 of the Criminal Code.”[\[89\]](#)

108. Consequently, the Commission concludes that once Mr. Baptiste was found guilty of the crime of murder, the law in Grenada did not permit a hearing by the courts as to whether the death penalty was a permissible or appropriate penalty for Mr. Baptiste. There was no opportunity for the trial judge or the jury to consider such factors as Mr. Baptiste's character or record, the nature or gravity of the offense, or the subjective factors that may have motivated Mr. Baptiste's conduct. Mr. Baptiste was likewise precluded from making representations on these matters. The Court sentenced Mr. Baptiste based solely upon the category of crime for which he had been found responsible.

109. Moreover, the record before the Commission indicates that there may have been mitigating circumstances pertaining to Mr. Baptiste that could have been taken into account during sentencing, and which may be considered to illustrate the necessity of individualized sentencing. More particularly, the record suggests that Mr. Baptiste's conduct was motivated by his desire to prevent his mother from inflicting further harm on him or his younger brother. For example, in an unsworn statement from the dock during his trial, Mr. Baptiste stated as follows:

My mother beat Deverill for a long time and did not stop. I went across by my mother. I hold on to the belt which she was beating my brother with. I release my brother and I send him outside in the yard. I take the belt from my mother because the belt belong to my girlfriend Bernadette and I went back in the house together with the belt where I live.[\[90\]](#)

110. Mr. Baptiste continued:

About ten past twelve my mother leave her house and she was coming to me. She had on a yellow hat on her head. She did not had anything in her hand. I did not had anything in my hand either. When she reach in front of me she slapped my face ... When she reach in front of me she say “today! Today! I must kill you” and she slapped me in my face. I pull down the lace from the line. I open the cabouya in it. I try to pass it over my mother head and then pass it over her shoulder to tie her both hands. Whilst doing so, my mother jerked away then the lace draw in her neck. She fell to the ground. I let out the lace the same time. I rush for a cutlass and I cut off the lace from my mother neck. . . I did not want to do anything to my mother more than to tie her hands because she hit me in my face. I only wanted to prevent her from hitting me again or do anything to me.[\[91\]](#)

111. Mr. Baptiste's statements therefore suggest that his mother's threats and abuse constituted a significant motivating factor behind his crime.

112. In addition, according to Mr. Baptiste's unsworn statement, he had not planned to inflict harm on his mother. It was only upon being slapped by his mother with the accompanying words; "Today, today, I must kill you," that he removed the laces from the line and passed them over her head to stop her from slapping him. He stated that he did not intend to do anything more to his mother than tie both of her hands. While the jury may not have been satisfied that this evidence negated the mental element for the crime of murder, his state of mind may have been a mitigating circumstance in determining whether the circumstances of Mr. Baptiste's crime warranted imposition of the death penalty.

113. The Commission does consider the death of Mr. Baptiste's mother to be a serious matter. The evidence on the record also suggests, however, that Mr. Baptiste's offense constituted a spontaneous reaction to threats and acts of abuse previously perpetrated by his mother. In the Commission's view, these circumstances are pertinent in determining whether Mr. Baptiste's offense warrants punishment by the death penalty.

114. The record before the Commission also reveals other mitigating factors in this case pertaining to the character and disposition of Mr. Baptiste, and his relationship in dealing with his other siblings. For example, Mrs. Roma Findlay, a State social worker who had previously worked with Mr. Baptiste's family, testified as follows regarding Mr. Baptiste's relationship with his younger sister, Samantha:

I am a social worker. I am the Director of the Sapodilla Children's Home. I am attached to the Ministry of Social Services St. George's as a Child Welfare Officer. I live at Westerhall, St. David. The Sapodilla Home is situated at Westerhall, St. David.[\[92\]](#)

I know the witness Samantha Baptiste. At present she lives at the Sapodilla Children's Home. She is now 11 years old. I first became acquainted with Samantha Baptiste in 1989. She was 5 years old at the time. She was living with her mother in St. David's at that time. I had occasion to visit the mother's home and Samantha at that time. I removed Samantha from her mother's home for medical attention. I took her to Dr. Noah and to the General Hospital. She spent 10 days at the General Hospital. I then took her to the Sapodilla Home at that time. After 3 years her mother Annie Baptiste requested that she come home. I then released Samantha Baptiste from the Sapodilla home. The same year of her release, 1992 I then asked that Samantha be sent back to the Sapodilla Home because I had observed upon follow up visits that Samantha was being kept away from school to look after her younger sisters and brothers. I took her to the Sapodilla Home for approximately 11 months. Samantha left the Sapodialla Home again at the request of

her mother Annie Baptiste and went back home.[\[93\]](#)

In December 1992 I received a report concerning Samantha. I dealt with the case. Following this report Samantha's natural father was charged. He was then the boyfriend of Annie Baptiste. I then removed Samantha once again to the Sapodilla Home. This was for the third time. Annie Baptiste had 4 other children by her boyfriend. In my capacity as Social Worker I had to deal with 3 of Annie Baptiste's other children. I had to take the 3 other children away from the care of Annie Baptiste. Following the report of 1992 and Samantha's being taken into the Sapodilla Home she was again send back home some time in 1993. When her father was sent to prison in 1993, Samantha was sent back home. When her mother died in 1993, Samantha was then living at her mother's residence.[\[94\]](#)

I have been dealing with the Baptiste family since 1989. I have met the accused about 6 times. I first met him in the yard where he was living. I also saw him visiting Samantha and his other brothers and sisters who were then living at the Sapodilla Home. The accused assisted financially in the support of the children at the Sapodilla Home. Sometimes he would ask for Samantha's book list and assist in getting her books and her medication.[\[95\]](#)

Annie Baptiste had about 9 children in all. As far as I know no other child of Annie Baptiste besides the accused ever visited her children in the Sapodilla Home or make any contribution towards their up keep.[\[96\]](#)

The accused was of a quiet disposition. He was very sympathetic about Samantha. I never noticed any friction between the accused and his mother. Samantha now lives at the Sapodilla Home. I saw the accused at the prison during my visit to the prison last year and earlier this year. I spoke with the accused on those visits. He continued to ask how Samantha was doing. Two other Baptiste children besides Samantha are still at the Sapodilla Home. The accused was a bus conductor. The children of the accused are in Grenville. I visited them to see the condition in which they lived.[\[97\]](#)

115. Mrs. Findlay's testimony therefore indicated that Mr. Baptiste was of good character, and was a caring and nurturing brother to his siblings. He took an interest in their well being and also provided financial support for the members of his family. Mrs. Findlay's testimony also suggested that due to Mr. Baptiste's character, disposition and concern for his family members, it was likely that he would intervene to prevent his mother from inflicting harm on his younger brother. In the Commission's view, these factors pertaining to Mr. Baptiste's character are also pertinent in determining whether the death penalty is an appropriate punishment in the

circumstances of Mr. Baptiste's offense.

116. As the foregoing analysis indicates, however, the law in Grenada does not permit mitigating circumstances of this nature to be considered by a court in sentencing an individual to death. The Commission recognizes that, had the court in this case been provided with the discretion under law to consider factors of this nature in determining an appropriate sentence, it may well have still imposed the death penalty. The Commission cannot, and indeed should not, speculate as to what the outcome may have been. This determination properly falls to the domestic court. What is crucial to the Commission's determination that Mr. Baptiste's death sentence contravenes the Convention, however, is the fact that Mr. Baptiste was not provided with an opportunity to present these and other mitigating factors in the context of sentencing, nor was the Court permitted to consider evidence of this nature in determining whether the death penalty was an appropriate punishment in the circumstances of Mr. Baptiste's case.

**b. Advisory Committee on the Prerogative of Mercy**

117. The Commission does not consider that the State's Advisory Committee on the Prerogative of Mercy, which was established pursuant to Articles 73 and 74 of Grenada's Constitution, can provide an adequate opportunity consistent with the requirements of the Articles 4, 5, and 8 of the American Convention for the proper implementation of the death penalty through individualized sentencing. The authority of the Executive in Grenada to exercise the Prerogative of Mercy is prescribed in Sections 72, 73 and 74 of the Constitution of Grenada, which provide as follows:

72(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf.-

- (a) grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on a person for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence."

(2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of such Minister as may for the time being be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

73 (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of –

- (a) the Minister for the time being designated under Section 72(2) of this

Constitution who shall be the Chairman;

- (b) the Attorney General;
- (c) the chief medical officer of the Government of Grenada; and
- (d) three other members appointed by the Governor-General, by instrument in writing under his hand.

(2) A member of the Committee appointed under subsection (1)(d) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed: Provided that his seat shall become vacant –

- (a) in the case of a person who, at the date of his appointment was a Minister, if he ceases to be a Minister; or
- (b) if the Governor-General by instrument in writing under his hand, so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or absence of any member and its proceedings shall not to be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.

74(1) Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Minister for the time being designated under section 72(2) of this Constitution shall cause a written report of the case from the trial judge (or, if a report cannot be obtained from the judge, a report on the case from the Chief Justice), together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own deliberate judgment whether to advise the Governor-General to exercise any of his powers under section 72(1) of this Constitution.

(2) The Minister for the time being designated under section 72(2) of this Constitution may consult with the Advisory Committee on the Prerogative of Mercy before tendering advice to the Governor-General under section 72(1) of this Constitution in any case not falling within subsection (1) of this section but he shall not be obliged to act in accordance with the recommendation of the Committee.

118. The law in Grenada therefore provides for a process by which the Executive may exercise the authority to grant amnesties, pardons, or commutations of sentences. The Commission is not, however, aware of any prescribed criteria that are applied in the exercise of the functions or discretion of the Advisory Committee, save for the requirement in death penalty cases that the Minister cause a written report of the case from the trial judge, and possibly other information in the Minister's discretion, to be taken into consideration at the meeting of the Advisory Committee. Nor is the Commission aware of any right on the part of an offender to apply to the Advisory

Committee, to be informed of the time when the Committee will meet to discuss the offender's case, to make oral or written submissions to the Privy Council or to present, receive or challenge evidence considered by the Privy Council. The submissions of the petitioners confirm that the exercise of the power of pardon in Grenada involves an act of mercy that is not the subject of legal rights and therefore is not subject to judicial review.[\[98\]](#)

119. This process is not consistent with the standards prescribed under Articles 4, 5 and 8 of the Convention, that are applicable to the imposition of mandatory death sentences. As outlined previously, these standards include legislative or judicially-prescribed principles and standards to guide courts in determining the propriety of death penalties in individual cases, and an effective right of appeal or judicial review in respect of the sentence imposed. The Prerogative of Mercy process in Grenada clearly does not satisfy these standards, and therefore cannot serve as a substitute for individualized sentencing in death penalty prosecutions.

120. Moreover, based upon the information before it, the Commission finds that the procedure for granting mercy in Grenada does not guarantee condemned prisoners with an effective or adequate opportunity to participate in the mercy process, and therefore does not properly ensure the victims' right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence.

121. In the Commission's view, the right to apply for amnesty, pardon or commutation of sentence under Article 4(6) of the Convention, when read together with the State's obligations under Article 1(1) of the Convention, must be read to encompass certain minimum procedural protections for condemned prisoners, if the right is to be effectively respected and enjoyed. These protections include the right on the part of condemned prisoners to apply for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations, in person or by counsel, to the competent authority, and to receive a decision from that authority within a reasonable period of time prior to his or her execution. It also entails the right not to have capital punishment imposed while such a petition is pending decision by the competent authority. In order to provide condemned prisoners with an effective opportunity to exercise this right, a procedure should be prescribed and made available by the State through which prisoners may file an application for amnesty, pardon or commutation of sentence, and submit representations in support of his or her application. In the absence of minimal protections and procedures of this nature, Article 4(6) of the American Convention is rendered meaningless, a right without a remedy. Such an interpretation cannot be sustained in light of the object and purpose of the American Convention.

122. In this respect, the right to apply for amnesty, pardon or commutation of sentence under Article 4(6) of the Convention may be regarded as similar to the right under Article XXVII of the American Declaration of every person "to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements," and the corresponding Article 22(7) of the Convention, which provides for the right to "seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common

crimes."[\[99\]](#) The Commission has interpreted the former provision, in conjunction with the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, as giving rise to a right under international law of a person seeking refuge to a hearing in order to determine whether that person qualifies for refugee status.[\[100\]](#) Other internationally-articulated requirements governing the right to seek asylum reflect similar minimum standards, namely the right of an individual to apply to appropriate authorities for asylum, to make representations in support of their application, and to receive a decision.[\[101\]](#)

123. Consistent with the interpretation of the right to seek asylum by the Commission and other international authorities, the Commission finds that Article 4(6) of the Convention must be interpreted to encompass certain minimum procedural guarantees for condemned prisoners, in order for the right to be effectively respected and enjoyed. The Commission notes in this regard that some common law jurisdictions retaining the death penalty have prescribed procedures through which condemned prisoners can engage and participate in the amnesty, pardon or commutation process.[\[102\]](#)

124. The information before the Commission indicates that the process in Grenada for granting amnesty, pardon or commutation of sentence does not guarantee Mr. Baptiste any procedural protections. By its terms, Section 74 of Grenada's Constitution does not provide condemned prisoners with any role in the mercy process.

125. The petitioners have claimed that Mr. Baptiste has no right to make submissions to the Advisory Committee. Whether and to what extent prisoners may apply for amnesty, pardon or commutation of sentence remains entirely at the discretion of the Advisory Committee, and no procedure or mechanism is provided for that specifies the manner in which prisoners may file an application for amnesty, pardon or commutation of sentence, submit representations in support of his or her application, or receive a decision. Consequently, the Commission finds that the State has failed to respect the right of Mr. Baptiste under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence.

### **c. Conclusion**

126. Based upon the foregoing facts and the interpretive principles outlined above, the Commission finds that by imposing a mandatory death sentence on Mr. Baptiste, the State violated his rights pursuant to Articles 4(1), 5(1), 5(2), and 8(1) of the Convention.

127. More particularly, the Commission concludes that the trial judge imposed the mandatory death penalty on Mr. Baptiste, in the absence of any guided discretion to consider his personal characteristics and the particular circumstances of his offense to determine whether death was an appropriate punishment which violated his rights as established by Articles 4(1), 5(1), 5(2), and 8(1) of the American Convention. Mr. Baptiste was also not provided with an opportunity to present representations and evidence as to whether the death penalty was an appropriate punishment in the circumstances of his case. Rather, the death penalty was imposed upon him based upon the category of crime for which he was convicted and without any principled

distinction or rationalization based upon the particular circumstances of his personality or his crime. Moreover, the propriety of the sentence imposed was not susceptible to any effective form of judicial review, and his execution is now imminent, his conviction for murder having been upheld on appeal by the Appellate Court in Grenada. The Commission therefore concludes that the State has violated Mr. Baptiste's rights under Article 4(1) of the Convention not to be arbitrarily deprived of his life, and therefore, his mandatory death sentence is unlawful.

128. The Commission further concludes that the State, by sentencing Mr. Baptiste to a mandatory penalty of death absent consideration of his individual circumstances, has failed to respect his right to physical, mental and moral integrity contrary to Article 5(1) of the American Convention, and has subjected him to cruel, inhuman, or degrading punishment or treatment in violation of Article 5(2). The State sentenced Mr. Baptiste to death solely because he was convicted of a predetermined category of crime. Accordingly, the process to which he has been subjected, would deprive him of his most fundamental right, his right to life, without consideration of his personal circumstances and his offense. Treating Mr. Baptiste in this manner abrogates the fundamental respect for humanity that underlies the rights protected under the Convention, and Articles 5(1) and 5(2) in particular.

129. The Commission also concludes that the State has violated Mr. Baptiste's right pursuant to Article 4(6) of the American Convention by failing to guarantee him an effective right to apply for amnesty, pardon or commutation of sentence, to make representations, in person or by counsel, to the Advisory Committee on the Prerogative of Mercy, and to receive a decision from the Advisory Committee within a reasonable time prior to his execution.

130. Finally, the Commission concludes that the State has violated Mr. Baptiste's right to a hearing with due guarantees by a competent, independent and impartial tribunal, as established under Article 8 of the American Convention. Mr. Baptiste was not provided with an opportunity to make representations and present evidence to the trial judge as to whether his crime warranted the ultimate penalty of death, and was therefore denied the right to fully answer and defend the criminal accusation against him.

131. It follows from the Commission's findings that, should the State execute Mr. Baptiste pursuant to his mandatory death sentence, this would constitute further egregious and irreparable violations of Articles 4 and 5 of the Convention.

132. Given its foregoing conclusions as to the legality of Mr. Baptiste's death sentence under Articles 4, 5 and 8 of the Convention, the Commission does not consider it necessary to determine whether sentencing Mr. Baptiste to a mandatory death penalty violated his rights to equal protection of the law contrary to Article 24 of the Convention.

**b. Articles 4 and 5 – conditions of detention**

133. The petitioners allege that the State has violated Mr. Baptiste's right to have his physical, mental and moral integrity respected, as well as his right not to be subjected to cruel, unusual or degrading punishment or treatment pursuant to Article 5(1) and 5(2) of the American Convention, because of the conditions of detention to which he has been subjected. They argue

further that these conditions render his execution unlawful under Article 4 of the Convention.

134. In support of their allegations, the petitioners have provided the Commission with an affidavit sworn by Mr. Baptiste on April 11<sup>th</sup> 1997, in which he describes his conditions of detention since his arrest and subsequent conviction for murder on July 11<sup>th</sup>, 1995, as follows:

I am presently incarcerated on death row which consist of a number of cells each containing one inmate. The cells on death row are situated underneath the main prison building in an area called "Jonestown" (named after the Jonestown Massacre in Guyana in South America some years ago.)

My cell is approximately 9 feet by 6 feet (9ft. x 6ft.) and I spend approximately 23 hours a day in my cell alone. I am provided with a bed and mattress to sleep on, but there is no other furniture in my cell. I am provided with a bucket which I use as a toilet. I am permitted to slop out the contents of the bucket once a day. Once it has been used, I am forced to endure the smell and unhygienic conditions until I am able to empty it.

The lighting in my cell is insufficient. The cell has no windows and no natural lighting, and accordingly has no ventilation. Any lighting in my cell is provided by a single bulb situated in the corridor in front of my cell.

I am provided with three meals a day. Sometimes food is brought to me in my cell where I am made to eat alone. The food is generally of a poor quality. I am provided with drinking water.

I am allowed one hour of exercise per day. There are no exercise facilities and my hour is usually spent standing in the yard.

I am allowed one visitor per month for a period of 15 minutes. I am allowed to write and receive one letter a month.

As a prisoner on death row, I am not permitted access to the prison services. I am not allowed to use the prison library, nor am I allowed access to the chaplain and religious services.

I receive inadequate medical care. Visits by the doctor are not regular and it is not always clear whether I will be able to see a doctor when necessary.

There are no adequate complaints mechanism or procedure for dealing with any complaints I may have.

135. As described in Part III of this Report, the petitioners also rely upon general sources of information regarding prison conditions in Grenada and other Caribbean countries. These include reports prepared in 1990 and 1991 by the non-governmental organization “Caribbean Rights.” While somewhat outdated, the Reports tend to support Mr. Baptiste’s allegations in respect of the conditions in which he has been incarcerated since his arrest.

136. The Commission considers that the petitioners’ allegations should be evaluated in light of minimum standards articulated by international authorities for the treatment of prisoners, including those prescribed by the United Nations. More particularly, Rules 10, 11, 12, 15, 21, 24, 26, 40, and 41 of the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>[103]</sup> (UN Minimum Rules) provide for minimum basic standards in respect of accommodation, hygiene, exercise, medical treatment, religious services and library facilities for prisoners, as follows:

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
11. In all places where prisoners are required to live or work,
  - (a) the windows shall be large enough to enable prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
  - (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.  
(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.
24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to

the discovery of physical and mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

26. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should see daily all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
- (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.
40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.
41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
- (2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.
- (3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.
42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

137. It is evident, based upon the information provided by the petitioners that the conditions of detention to which Mr. Baptiste has been subjected fail to meet several of these minimum standards of treatment of prisoners, in such areas as hygiene, exercise and medical care. For example, Mr. Baptiste claims that his cell has no windows, no natural lighting, and no ventilation, and that the lighting in his cell is insufficient. He claims that he is provided with a bucket to use as a toilet, and that he is only entitled to empty the bucket once a day and is therefore forced to ensure unpleasant smells and unhygienic conditions once the bucket is used. Mr. Baptiste also claims that he is not allowed to use the prison library, nor is he allowed access to the chaplain or religious services. Further, Mr. Baptiste states that he receives inadequate medical care, as visits from the doctor are not regular and it is not clear whether he will be able to see a doctor when necessary. Finally, Mr. Baptiste contends that there are no adequate mechanisms or procedures in the prison for dealing with his complaints.

138. The State has failed to provide any information in respect of prison conditions in Grenada, generally or as they pertain to Mr. Baptiste. Based upon the information on the record

before it, the Commission concludes that the State has failed to treat Mr. Baptiste with respect for his physical, mental or moral integrity, and has therefore violated Article 5(1) of the Convention.

**c. Articles 8 and 25, – unavailability of legal aid for Constitutional Motions**

139. The petitioners argue that legal aid is not effectively available for Constitutional Motions before the courts in Grenada, and that this constitutes a violation of the right to a fair trial under Article 8 of the Convention. Although the petitioners have not specifically referred to Article 25 of the American Convention, the right to an effective remedy, the Commission considers that their allegations relating to the denial of an effective remedy at law also encompass Article 25 of the Convention. Therefore, the Commission has also analyzed their claims relating to the unavailability of legal aid for Constitutional Motions under Article 25 of the Convention, in conformity with Article 32(c) of the Commission's Regulations.[\[104\]](#)

140. The petitioners contend that the failure of the State to provide legal aid denies Mr. Baptiste access to the Court in fact as well as in law. The petitioners argue that to bring a Constitutional Motion before the domestic courts often involve sophisticated and complex questions of law that require the assistance of Counsel. In addition, the petitioners claim that Mr. Baptiste is indigent, and that legal aid is effectively not available to him to pursue a Constitutional Motion in the courts in Grenada. They also contend that there is a dearth of Grenadian lawyers who are prepared to represent Mr. Baptiste *pro bono*.

141. Based upon the material before it, the Commission is satisfied that Constitutional Motions dealing with legal issues of the nature raised by Mr. Baptiste in his petition, such as the right to due process and the adequacy of his prison conditions, are procedurally and substantively complex and cannot be effectively raised or presented by a prisoner in the absence of legal representation. The Commission also finds that the State does not provide legal aid to individuals in Grenada to bring Constitutional Motions, and that Mr. Baptiste is indigent and is therefore not otherwise able to secure legal representation to bring a Constitutional Motion.

142. The Commission considers that in the circumstances of Mr. Baptiste's case, the State's obligations regarding legal assistance for Constitutional Motions flow from both Article 8 and Article 25 of the Convention. In particular, the determination of rights through a Constitutional Motion in the High Court must conform with the requirements of a fair hearing in accordance with Article 8(1) of the Convention. In the circumstances of Mr. Baptiste's case, the High Court of Grenada would be called upon to determine whether the victim's conviction in a criminal trial violated rights under the Grenada's Constitution. In such cases, the application of a requirement of a fair hearing in the High Court should be consistent with the principles in Article 8(2) of the Convention.[\[105\]](#) Accordingly, when a convicted person seeking Constitutional review of the irregularities in a criminal trial lacks the means to retain legal assistance to pursue a Constitutional Motion and where the interests of justice so require, legal assistance should be provided by the State.

143. Due to the unavailability of legal aid, Mr. Baptiste has effectively been denied the opportunity to challenge the circumstances of his conviction under Grenada's Constitution in a fair hearing. This in turn constitutes a violation of his right under Article 8(1) of the American Convention.[\[106\]](#)

144. Moreover, Article 25 of the Convention provides individuals with the right to simple and prompt 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 the Convention. The Commission has stated that the right to recourse under section 25 when read together with the obligation in Article 1(1) and the provisions of Article 8(1), "must be understood as the right of every individual to go to a tribunal when any of his rights have been violated (whether a right protected by the Convention, the Constitution, or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation."[\[107\]](#) In addition, the Inter-American Court has held that if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized and a person is unable to obtain such services because of his indigence, then that person is exempted from the requirement under the Convention to exhaust domestic remedies.[\[108\]](#) While the Court rendered this finding in the context of the admissibility provisions of the Convention, the Commission considers that the Court's comments are also illuminating in the context of Article 25 of the Convention in the circumstances of the present case.

145. By failing to make legal aid available to Mr. Baptiste to pursue a Constitutional Motion in relation to his criminal proceedings, the State has effectively barred recourse for Mr. Baptiste to a competent court or tribunal in Grenada for protection against acts that potentially violate his fundamental rights under Grenada's Constitution and under the American Convention. Moreover, in capital cases, where Constitutional Motions relate to the procedures and conditions through which the death penalty has been imposed and therefore relate directly to the right to life and to humane treatment of a defendant, it is the Commission's view that the effective protection of those rights cannot properly be left to the random prospect as to whether an attorney may be willing or available to represent the defendant without charge. The right to judicial protection of these most fundamental rights must be guaranteed through the effective provision of legal aid for Constitutional Motions.[\[109\]](#) The State cannot be said to have afforded such protection to Mr. Baptiste. As a consequence, the State has failed to fulfil its obligations under Article 25 of the American Convention in respect of Mr. Baptiste.

146. Accordingly, the Commission concludes that the State has failed to respect Mr. Baptiste's rights under Article 8(1) of the Convention by denying him an opportunity to challenge the circumstances of his conviction under the Constitution of Grenada in a fair hearing. The Commission also concludes that the State has failed to provide Mr. Baptiste with simple and prompt recourse to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of Grenada or by the Convention, and has therefore violated the rights of Mr. Baptiste to judicial protection under Article 25 of the

American Convention.

## **PRECAUTIONARY MEASURES**

147. In light of the Commission's findings that the State has committed several serious violations of Mr. Baptiste's fundamental human rights under Articles 4, 5, 8, and 25 of the Convention, the Commission hereby issues Precautionary Measures pursuant to Article 29(2) of its Regulations. The Commission hereby requests that the State take all the appropriate measures to stay Mr. Baptiste's execution to avoid irreparable harm to him, and ensure that Mr. Baptiste is not arbitrarily deprived of his life.

### **V. PROCEEDINGS SUBSEQUENT TO REPORT N° 126/99**

148. On September 27, 1999, the IACHR, at its 104<sup>th</sup> Period of Sessions, approved Report N° 126/99 in this case on the basis of Article 50 of the Convention, and forwarded it to the State with its Conclusions and Recommendations, on November 30, 1999. In its Recommendations to the State, the Commission requested that the State inform it within two months of the measures that it had taken to comply with the Commission's Recommendations. So that the Commission could have all the necessary information to decide whether the measures taken are adequate and whether to publish its Report pursuant to Article 51 of the American Convention. The period of two months has elapsed and the Commission has not received a response from the State of Grenada in respect of its Recommendations in this case.

### **VI. FINAL CONCLUSIONS**

Consequently, the Commission, on the basis of the information presented, and the due analysis under the American Convention, reiterates its conclusions that the State of Grenada is liable as follows:

149. The State is responsible for violating Mr. Baptiste's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Baptiste to a mandatory death penalty.

150. The State is responsible for violating Mr. Baptiste's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Baptiste with an effective right to apply for amnesty, pardon or commutation of sentence.

151. The State is responsible for violating Mr. Baptiste's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American

Convention, because of Mr. Baptiste's conditions of detention.

152. The State is responsible for violating Mr. Baptiste's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

## **VII. RECOMMENDATIONS**

Based on the analysis and the conclusions in this Report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS

THAT THE STATE OF GRENADA:

1. Grant Mr. Baptiste an effective remedy which includes commutation of sentence and compensation.

2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Convention, including and in particular Articles 4,5, and 8.

3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.

4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.

5. Pursuant to Article 29(2) of the Commission's Regulations take all the appropriate measures to stay the execution of Mr. Baptiste to avoid irreparable harm to him, and ensure that he is not arbitrarily deprived of his life.

## **VIII. PUBLICATION**

153. On March 1, 2000, in conformity with Article 51(1) and 51 (2) of the American Convention, the Commission sent Report N° 6/00, which was adopted in this case on February 24, 2000 to the State of Grenada, and granted the State a period of one month for it to adopt the necessary measures to comply with the foregoing recommendations and to resolve the situation under analysis. The period of one month has elapsed and the Commission has not received a response from

the State of Grenada in respect of its Recommendations in this case.

## IX. FINAL ANALYSIS AND CONCLUSIONS

For these reasons, the Commission decides that the State has not taken all of the appropriate measures to comply with the recommendations set forth in this report.

Based on the foregoing and pursuant to Article 51(3) of the American Convention and Article 48 of the Commission's Regulations, the Commission decides to reiterate the conclusions and recommendations contained in Report N° 4/00. The Commission further decides to make public this report and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 13th day of the month of April, 2000 (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.

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[1] (Cap. 76) of the 1958 Revised Laws of Grenada.

[2] The petitioners appended to their petition a copy of the March 15, 1996 written advice from Tim Owen Esq.

[3] Section 16(1) of the Constitution of Grenada states: "if any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or other person) may apply to the High Court for redress."

[4] U.N.H.R.C., Champagnie, Palmer & Chisolm v. Jamaica, Communication N° 445/1991. Article 5(2) of the United Nations Optional Protocol provides in part: "The Committee shall not consider any communication from an individual unless it has ascertained that: (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged."

[5] In this regard, see Guerra v. Baptiste and others [1995] 4 All E.R. 583 (P.C.). In this case, the appellant, who had been convicted of murder in Trinidad and Tobago and sentenced to death, argued, *inter alia*, that to execute him after the period of time that he spent on death row would constitute a breach of his rights under the Constitution of Trinidad and Tobago and the principles established by the Privy Council in the case Pratt and Morgan v. A.G. for Jamaica. In finding that the Court had jurisdiction to entertain the appellant's constitutional argument, the Judicial Committee of the Privy Council relied upon its determination in Pratt and Morgan and found that judges in Trinidad and Tobago would as a matter of common law have the power to stay a long delayed execution as not being in accordance with the due process of law, and therefore that a long delayed execution was not barred from challenge as cruel and unusual punishment under the Constitution. At the same time, the Court confirmed that the death penalty itself could not be challenged under the Constitution of Trinidad and Tobago:

Before the coming into force of the Constitution of Trinidad and Tobago 1976 (and indeed the 1982 Constitution) capital punishment was accepted as a punishment which could lawfully be imposed, so that execution pursuant to a lawful sentence of death could amount to depriving a person of his life by due process of law, and could not itself amount to cruel and unusual punishment contrary to s. 5(2)(b).

[6] Woodson v. North Carolina, 49 L Ed 2d 944(1976).

[7] *Id.*, at 961.

[8] Bachan Singh v. the State of the Punjab, (1980) 2 SCC 684).

[9] See e.g. Soering v. UK (1989) 11 EHHR 439.

[10] See William Schabas, Abolition of the Death Penalty in International Law (1993), pp. 263-279.

[11] See State v. Makwanyane and McHunu, Judgment, Case N° CCT/3/94 (6 June 1995) (Constitutional

Court of South Africa). See also U.N.H.R.C., Ng v. Canada, Communication N° 469/1991, at p. 21 (suggesting that every execution of a sentence of death may be considered to be cruel and inhuman treatment within Article 7 of the ICCPR).

[12] Articles 72, 73 and 74 of the Constitution of Grenada read as follows:

72(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf- (a) grant a pardon, either free or subject to lawful conditions, to any person convicted of any offence; (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence; (c) substitute a less severe form of punishment for any punishment imposed on a person for any offence; or (d) remit the whole or any part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of such Minister as may for the time being be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

73 (1) There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of – (a) the Minister for the time being designated under Section 72(2) of this Constitution who shall be the Chairman; (b) the Attorney General; (c) the chief medical officer of the Government of Grenada; and (d) three other members appointed by the Governor-General, by instrument in writing under his hand.

(2) A member of the Committee appointed under subsection (1)(d) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed: Provided that his seat shall become vacant – (a) in the case of a person who, at the date of his appointment was a Minister, if he ceases to be a Minister; or (b) if the Governor-General by instrument in writing under his hand, so directs.

(3) The Committee may act notwithstanding any vacancy in its membership or absence of any member and its proceedings shall not to be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

(5) In the exercise of his functions under this section, the Governor-General shall act in accordance with the advice of the Prime Minister.

74(1) Where any person has been sentenced to death (otherwise than by a court-martial) for an offence, the Minister for the time being designated under section 72(2) of this Constitution shall cause a written report of the case from the trial judge (or, if a report cannot be obtained from the judge, a report on the case from the Chief Justice), together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide in his own deliberate judgment whether to advise the Governor-General to exercise any of his powers under section 72(1) of this Constitution.

(2) The Minister for the time being designated under section 72(2) of this Constitution may consult with the Advisory Committee on the Prerogative of Mercy before tendering advice to the Governor-General under section 72(1) of this Constitution in any case not falling within subsection (1) of this section but he shall not be obliged to act in accordance with the recommendation of the Committee.

[13] Reckley v. Minister of Public Safety (No. 2) (1996) 2 WLR 281.

[14] Id., pp. 290 d- f.

[15] Caribbean Rights Report 1990, p. 40.

[16] Id., pp.62-63.

[17] Id. p. 80.

[18] Id. p. 81.

[19] Caribbean Rights Report 1991, p.30.

[20] Article 7 of the ICCPR provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

[21] Article 10(1) of the ICCPR provides: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

[22] U.N.H.R.C., Antonaccio v. Uruguay, U.N. Doc. A/37/40.

[23] U.N.H.R.C., De Voituret v. Uruguay, U.N. Doc. A/39/40.

[24] U.N.H.R.C., Mukong v. Cameroon, Communication N° 458/1991.

[25] Id.

[26] Article 3 of the European Convention provides: "No one shall be subjected to torture or to inhuman and degrading treatment or punishment."

[27] Eur. Court H.R., Greek Case, 12 YB 1 (1969);

[28] Eur. Court H.R., Cyprus v. Turkey, Application nos. 6780/74 and 6950/75.

[29] Pratt and Morgan –v- The Attorney General of Jamaica [1994] 2 AC 1.

[30] Golder v. UK (1975) Series A N° 18.

[31] Airey v. Ireland (1979) Series A N° 32.

[32] Article 6(3) of the European Convention provides: “Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

[33] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/ii.92 doc.31 rev.3 (3May 1996), p. 53.

[34] The Inter-American Court of Human Rights in its Advisory Opinion OC-10/89, (interpretation of *the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*.) July 14, 1989, para. 46, stated that “For the States Parties to the Convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the Convention itself.”

[35] The Commission has established that it can find violations both of the Declaration and the Convention when there is a continuous situation, such as a denial of justice, which begins before and persists after the state concerned has ratified the American Convention. See: Inter-American Commission on Human Rights, Annual Report 1987-1988. Resolution 28/88 Case 10.109 (Argentina), September 13, 1988.

[36] I/A Court H.R., Viviana Gallardo et al. Judgment of November 13, 1981, N° G 101/81. Series A, para. 26.

[37] I/A Court H.R., Neira Alegria Case, Preliminary Objections, Judgment, 11 December 1991 pp. 44-45, at paras. 25-31.

[38] See U.N.H.R.C., Baboheram-Adhin et al. v. Suriname, Communications Nos. 148-154/1983, Adopted 4 April 1985, para. 14.3 (observing that the right to life under Article 6(1) of the International Covenant on Civil and Political Rights is the “supreme right of the human being”).

[39] Id., para. 14.3 (finding that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of the state); Report by the U.N. Special Rapporteur on Extra-judicial Executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, U.N. Doc.E/CN.4/1995/61 (14 December 1994) (hereinafter “Ndiaye Report”), para. 378, commenting upon fair trial standards relating to capital punishment as follows:

While in many countries the law in force takes account of the standards of fair trials as contained in the pertinent international instruments, this alone does not exclude that a death sentence may constitute an extra-judicial, summary or arbitrary execution. It is the application of these standards to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violation of the right to life.

[40] 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, (8 September 1983), ANNUAL REPORT 1984, p. 31, para. 57.

[41] I/A Comm. H.R., Santiago Marzioni, Report N° 39/96, Case N° 11.673 (Argentina), 15 October 1996, ANNUAL REPORT 1996, p. 76.

[42] See also William Andrews, 1997 Annual Report p. 614.

[43] Section 234 of the Criminal Code, Title XVIII, Cap. 76 , p. 790, contains a proviso to the death penalty for a crime of murder. The proviso states:

Provided that the sentence of death shall not be pronounced or recorded against a person convicted of murder if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years; but, in lieu of such punishment, the Court shall sentence the juvenile offender to be detained during Her Majesty’s pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of any other Law or Ordinance, be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

[44] Advisory Opinion OC-3/83, supra, at 31, para. 52.

[45] Article 6 of the ICCPR provides as follows:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this

article shall authorize any State Party to the present Convention to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[46] See e.g. Baboheram-Adhin et al. v. Suriname, *supra*, para. 14.3.

[47] See e.g. U.N.H.R.C., Anthony McLeod v. Jamaica, Communication N° 734/1997, U.N. Doc. N° CCPR/C/62/734/1997.

[48] See e.g. U.N.H.R.C., Patrick Taylor v. Jamaica, Communication N° 707/1996, U.N. Doc. N° CCPR/C/60/D/707/1996.

[49] Ndiaye Report, *supra*, para. 377. With respect to international sentencing standards more generally, the International Criminal Tribunal for the former Yugoslavia provides one of the few modern examples of an international tribunal adjudicating serious violations of international humanitarian law, including genocide. While the penalty imposed by the Tribunal is limited to imprisonment, the Tribunal's governing statute specifically provides that "[i]n imposing the sentences, the Trial Chambers should take into account such matters as the gravity of the offence and the individual circumstances of the convicted person." Statute for the International Criminal Tribunal for the former Yugoslavia, Annex to the Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, U.N., Doc. S/25704/Add.1/Corr.1 (1993), Art. 24. See *similarly* Statute for the International Criminal Tribunal for Rwanda, Annex to Security Council Resolution 955, U.N. SCOR, 49<sup>th</sup> Sess., 3453 mtg., U.N. Doc. S/RES/955 (1994), Art. 23.

[50] See e.g. Clifton Wright *supra*.

[51] Woodson v. North Carolina 49 L Ed 2d 944 (U.S.S.C.).

[52] *Id.* at 31, para. 55.

[53] In 1953, the British Commission on Capital Punishment noted that "there is perhaps no single class of offenses that varies so widely both in character and culpability as the class comprising those which may fall within the comprehensive common law definition of murder...no one would now dispute that for many of these crimes it would be monstrous to inflict the death penalty. The view is widely accepted that this penalty should be reserved for the more heinous offenses of murder." Royal Commission on Capital Punishment, September 1953 Cmnd 8932, Exh. 20. Even in those jurisdictions in which a distinction has been drawn between capital and non-capital murder, experience indicates that varying degrees of culpability exist within categories of capital murder which may warrant discriminate application of the death penalty. See e.g. Woodson v. North Carolina, 49 L ED 2d 944, 956, n. 31 (indicating that data compiled on discretionary jury sentencing of persons convicted of capital murder in the United States reveal that the penalty of death is generally imposed in less than 20% of the cases.).

[54] See e.g. R. v. Cunningham [1982] A.C. 566 (P.C.).

[55] Webster's Third International Dictionary.

[56] U.N.H.R.C., Kindler v. Canada, Communication N° 470/1991, U.N. Doc. CPR/C/48/D/470/1991 (1993).

[57] *Id.*, para. 14.6.

[58] The Preamble to the Convention recognizes that "the essential rights of man are not derived from one's being a national of a certain state, but are based upon the attributes of the human personality."

[59] The Commission refers in this regard to the interpretative approach advocated by the European Court of Human Rights, that its governing Convention is "a living instrument which...must be interpreted in light of present-day conditions." See Eur. Court H.R., Tyrer v. United Kingdom (1978) 3 E.H.R.R. 1 at para. 31.

[60] Advisory Opinion on the Death Penalty, *supra*, at para. 57.

[61] U.N.H.R.C., Lubuto v. Zambia, Communication N° 390/1990, U.N. Doc. CCPR/C/55/D/390/1990/Rev. 1, para. 7.2.

[62] ICCPR, Article 6, *supra*.

[63] Ndiaye Report, *supra*, para. 377. With respect to international sentencing standards more generally, the International Criminal Tribunal for the former Yugoslavia provides one of the few modern examples of an international tribunal adjudicating serious violations of international humanitarian law. While the penalty imposed by the Tribunal is limited to imprisonment, the Tribunal's governing statute specifically provides that "[i]n imposing the sentences, the

Trial Chambers should take into account such matters as the gravity of the offence and the individual circumstances of the convicted person.” Statute for the International Criminal Tribunal for the former Yugoslavia, Annex to the Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, U.N., Doc. S/25704/Add.1/Corr.1 (1993), Art. 24. See similarly Statute for the International Criminal Tribunal for Rwanda, Annex to Security Council Resolution 955, U.N. SCOR, 49<sup>th</sup> Sess., 3453 mtg., U.N. Doc. S/RES/955 (1994), Art. 23.

[64] Woodson v. North Carolina 49 L Ed 2d. 944.

[65] The Constitution of the United States, Amendment VIII (1791) (providing “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).

[66] Id. Amendment XIV, Section I (providing “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

[67] Id. at 960. In its decision in the case Furman v. Georgia, 408 U.S. 238, the Supreme Court declared the vesting of standardless sentencing discretion in the jury in imposing capital sentences as contrary to the Eighth and Fourteenth Amendments. In rejecting North Carolina’s contention in Woodson that the inadequacies identified in Furman were remedied by withdrawing all sentencing discretion from juries in capital cases, the Court suggested that the mandatory sentencing scheme was no more rational, as the statute provided “no standards to guide the jury in its inevitable exercise of the power to determine which first-degree murderers shall live and which shall die,” and provided no way for the judiciary to “check arbitrary and capricious exercise of that power through a review of death sentences.”

[68] See 408 US, at 286-291, 33 L Ed 2d 346, 92 S Ct 2726 (Brennan J. concurring); id., at 306, 33 L Ed 2d 346, 92 S Ct 2726 (Stewart, J., concurring).

[69] Pennsylvania ex rel. Sullivan v. Ashe, 302 US 51, 55, 82 L Ed43, 58 S Ct 59 (1937).

[70] See Williams v. New York, 337 US, at 247-249, 93 L Ed 1337, 69 S Ct 1079; Furman v. Georgia, 408 US, at 402-3, 33 L Ed 2d 346, 92 S Ct 2726 (Burger C.J., dissenting).

[71] See Trop v. Dulles, 356 US, at 100, 2 L Ed 2d 630, 78 S Ct 590 (plurality opinion).

[72] Id. at 961. See also Roberts (Stanislaus) v. Louisiana, 428 U.S., 325, 333, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976).

[73] The State v. Makwanyane and McHunu, Judgment, Case N° CCT/3/94 (6 June 1995) (Constitutional Court of the Republic of South Africa).

[74] Section 277 of the *Criminal Procedure Act N° 51* provided:

#### Sentence of Death

- (1) The sentence of death may be passed by a superior court only and only in the case of a conviction for:
  - (a) murder;
  - (b) treason committed when the Republic is in a state of war;
  - (c) robbery or attempted robbery, if the court finds aggravating circumstances to have been present;
  - (d) kidnapping;
  - (e) child-stealing;
  - (f) rape.

- (2) The sentence of death shall be imposed
- (a) after the presiding judge conjointly with the assessors (if any), subject to the provisions of s. 145(4)(a), or, in the case of a trial by a special superior court, that court, with due regard to any evidence and argument on sentence in terms of section 274, has made a finding on the presence or absence of any mitigating or aggravating factors; and
  - (b) if the presiding judge or court, as the case may be, with due regard to that finding, is satisfied that the sentence of death is the proper sentence.

[75] *Id.* pp. 32-36. The Court went on to conclude that additional factors such as discrimination and the “imperfection” inherent in criminal trials may also lead to arbitrary results in the imposition of the death penalty, and determined further that such arbitrary results could not be appropriately remedied through strict due process, as had been endeavored in the United States. *Id.* at 36-43.

[76] Criminal Procedure Act N° 51 of 1977, section 322(2A) (as amended by section 13 of Act N° 107 of 1990).

[77] *Id.* section 316A(4)(a).

[78] S. v Nkwanyana and Others 1990 (4) SA 735 (A) at 743E-745A.

[79] S v. Masina and Others 1990 (4) SA 709 (A) at 718G-H.

[80] S v. J 1989 (1) SA 669 (A) at 682G. “Generally speaking, however, retribution has tended to yield ground to the aspects of correction and prevention, and it is deterrence (including prevention) which has been described as the ‘essential’, ‘all important’, ‘paramount’, and ‘universally admitted’ object of punishment.” *Id.* at 682I-J (cited with approval in S v P 1991 (1) SA 517 (A) at 523G-H. CF. R. v Swanepoel 1945 AD 444 at 453-455.

[81] Per Holmes JA in S v Letsolo 1970 (3) SA 476 (A) at 477B (cited with approval by Nicholas AJA in S v Dlamini 1992 (1) SA 18 (A) at 31I-32A in the context of the approach to sentencing under section 322(2A)(b) of the Criminal Procedure Act N° 51 of 1977).

[82] S v Senonohi 1990 (4) SA 727 (A) at 734F-G; S v Nkwanyana, *supra* at 749A-D.

[83] *Id.* at 35-36.

[84] Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 475.

[85] *Id.* at 509-510.

[86] *Id.* at 516.

[87] *Id.* at 515.

[88] *Id.* at 534.

[89] *Id.* Trial Transcript p. 1, (10).

[90] Unsworn Statement of Mr. Baptiste from the dock, 10<sup>th</sup> July, 1995, 9:10 a.m. pp. 72- 73, (30) Trial Transcript, Case N° 181 of 1994, Regina and Rudolph Baptiste.

[91] *Id.*, pp. 73-74 (20).

[92] *Id.*, p. 74,

[93] *Id.*

[94] Id., pp. 74-75.

[95] Id., p. 75.

[96] Id.

[97] Id.

[98] See Reckley v. Minister of Public Safety (N° 2) [1996] 2 W.L.R. 281 at 289-291 (finding that the exercise of the Prerogative of Mercy by the Minister of Public Safety in The Bahamas involved an act of mercy that was not the subject of legal rights and was therefore not judicable); de Freitas v. Benny [1976] 2 A.C. 239.

[99] See similarly Universal Declaration on Human Rights, Article 14 (providing for the right of every individual to "seek and to enjoy in other countries asylum from persecution.").

[100] I/A. Comm. H.R., Haitian Center for Human Rights and others (United States), Case N° 10.675 (13 March 1997), Annual Report 1996, para. 155.

[101] See e.g. Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, paras. 189-219 (prescribing basic requirements for the procedures for determining refugee status, including the right of an applicant to be given the necessary facilities for submitting his case to the authorities concerned, and that the applicant be permitted to remain in the country pending a decision on his initial request for refugee status); Council of Europe, Resolution on minimum guarantees for asylum procedures, Brussels, 21 June 1995, Articles 10, 12, 14, 15, 23 (prescribing common procedural guarantees to be provided by Member States of the European Union in processing asylum application, including the right of an asylum-seeker, at the border or otherwise, to have an opportunity to lodge his asylum application as early as possible, to remain in the territory of the state in which his application has been lodged or is being examined as long as the application has not been decided upon, to be given the opportunity of a personal interview with an official qualified under national law before a final decision is taken on the asylum application, and to have the decision on the asylum application communicated to the asylum-seeker in writing.).

[102] In the State of Ohio, for example, clemency review has been delegated in large part to the Ohio Adult Parole Authority (OAPA). In the case of an inmate under sentence of death, the OAPA must conduct a clemency hearing within 45 days of the scheduled date of execution. Prior to the hearing, the inmate may request an interview with one or more parole board members. The OAPA holds a hearing, completes its clemency review, and makes a recommendation to the Governor. If additional information later becomes available, the OAPA may in its discretion hold another hearing or alter its recommendation. See Ohio Constitution, Art. III, s. 2, Ohio Revised Code Ann., s. 2967.07 (1993). See also Ohio Adult Parole Authority v. Woodward, Court File N° 96-1769 (25 March 1998)(U.S.S.C.) (finding that Ohio's clemency procedures do not violate the U.S. Constitution's Due Process Clause).

[103] United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (N° 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (N° 1) at 35, U.N. Doc E/5988 (1977).

[104] Article 32 of the Commission's Regulations provides that: "Petitions addressed to the Commission shall include (c) an indication of the state in question which the petitioner considers responsible, by commission or omission, for the violation of a human right recognized in the American Convention on Human Rights in the case of States Parties thereto, even if no specific reference is made to the article alleged to have been violated."

[105] See 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, ANNUAL REPORT 1991, para. 28 (interpreting Article 8(1) of the Convention as follows:

For cases which concern the determination of a person's rights and obligations of a civil, labor, fiscal or any other nature, Article 8 does not specify any minimum guarantees similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for due guarantees; consequently, the individual here

also has the right to the fair hearing provided for in criminal cases.

See also I/A Comm. H.R., Loren Laroye Riebe Star and others v. Mexico, Report N° 49/99 (13 April 1999), ANNUAL REPORT 1998, para. 70 (interpreting Article 8(1) in the context of administrative proceedings leading to the expulsion of foreigners as requiring certain minimal procedural guarantees, including the opportunity to be assisted by counsel or other representative, sufficient time to consider and refute the charges against them and to seek and adduce corresponding evidence).

[106] See similarly Currie v. Jamaica, Communication N° 377/1989, U.N.Doc. N° CCPR/C/50/D/377/1989 (1994), para. 13.4 (concluding that where a convicted person seeking Constitutional review of irregularities in a criminal trial has not sufficient means to meet the costs of legal assistance in order to pursue his Constitutional remedy and where the interests of justice so require, Article 14(1) of the International Covenant on Civil and Political Rights required the State to provide legal assistance).

[107] See Peru Case, supra, pp. 190-191.

[108] I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies, supra, para. 30.

[109] See similarly U.N.H.R.C., William Collins v. Jamaica, Communication N° 240/1987, U.N. Doc. N° CCPR/C/43/D/240/1987 (1991), para. 7.6 (finding that in capital punishment cases, legal aid should not only be made available, it should enable counsel to prepare his client's defense in circumstances that can ensure justice).