

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: HOW CAN IT BE UTILIZED IN A CAPITAL CASE?

#### *1. The Organization of American States*

The United States is one of the 35 members of the *Organisation of American States (OAS)*<sup>1</sup>, a regional agency created within the meaning of Article 52 of the United Nations Charter. The OAS is an international organization created to achieve an order of peace and justice, promote solidarity and defend their sovereignty, their territorial integrity and their independence (Article 1 of the OAS Charter). The Charter of the OAS, which entered into force in 1951, reaffirms that international law is the standard of conduct of States in their reciprocal relations.

*The Inter-American human rights system encompasses the western hemisphere and is one of the two regional systems to have adopted a convention abolishing the death penalty (Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, sub-section 2.1). The other regional system (in Europe) has adopted a similar convention.*

The OAS General Assembly has adopted, and OAS member states have ratified numerous international instruments which have become the foundation for the promotion and protection of human rights. The inter-American human rights system recognizes and defines those rights and establishes binding rules of conduct to promote and protect them, while creating organs to monitor their observance. A number of Latin American nations have abolished the death penalty and the long-term worldwide trend is towards total abolition. Conversely, the membership of the OAS also includes avid supporters of the death penalty including; Jamaica, and the United States of America.

#### *II. The Inter-American Human Rights Commission*

##### **What is the Inter-American Commission on Human Rights?**

Established in 1959, the Inter-American Commission on Human Rights (IACHR) is the principal organ of the Organization of American States (OAS) charged with promoting the observance and protection of human rights and to act as a consultative organ of the OAS in human rights matters (Charter of the OAS, Article 106). The commission is a seven member body based in Washington DC. Each member is elected by the OAS General Assembly.

One of the Commission's functions is to receive and take action on petitions and other communications lodged by any person or group of persons or any non-governmental entity legally recognized in one or more of the member states of the Organization, alleging violations of human rights. It exercises this jurisdiction in two principal respects. With respect to State Parties to the American Convention on Human Rights, the Commission is mandated to act on petitions containing denunciations or complaints of violations of the Convention by a State Party (see IACHR Statute, Art. 19). In relation to those member states of the OAS that are not parties to the American Convention, the Commission has jurisdiction to receive and examine communications that contain complaints of alleged violations of human rights set forth in the American Declaration of the Rights and Duties of Man (the "American Declaration") based

---

<sup>1</sup> **1962-** Exclusion of the Cuban government from participation in the inter-American system. Cuba remains a member of the OAS, but its government still may not vote or participate in Organization activities.

## THE INTERNATIONAL JUSTICE PROJECT

**No reprints without the express permission of the director of the International Justice Project** upon the ratification by those states of the OAS Charter (see IACHR Statute, Art. 20). Consistent with this jurisdictional framework, as the United States has not ratified the American Convention on Human Rights, it is subject to the Commissions' competence to receive complaints of violations of the American Declaration.

As discussed below, also within the Commission's competence is the authority under Article 25 of its Rules of Procedure in "serious and urgent cases" to request that states adopt precautionary measures "to prevent irreparable harm to persons." Such measures have been requested, for example, in complaints involving the death penalty where the Commission has asked states to stay an execution until the Commission has an opportunity to study the case and make a recommendation.

It is important for US litigators to use both the *Inter-American Commission on Human Rights* of the OAS (which has jurisdiction to hear complaints against the USA) and the *International Court of Justice* (where the US has become the object of two complaints). Many domestic lawyers handling death penalty cases are unacquainted with the availability of this and other international mechanisms or are unfamiliar with the rules and procedures of the tribunals. In qualifying cases of extreme gravity and urgency, the Commission issues *precautionary measures* when it becomes necessary to avoid irreparable damage to persons in the matter before them. Upon the issue of these precautionary measures, the Commission requests that the United States preserve the life of the juvenile in question, pending their investigation of the allegations forwarded in the relevant petition.

### What function does the Commission serve?

The Commission's powers and functions, including its authority to receive and consider individual human rights complaints, are derived from the OAS Charter, the American Declaration the American Convention, the Commission's Statute, and the Commission's Rules of Procedure.

Articles 18 to 20 of the Commission's Statute prescribe the Commission's functions and powers as follows:

#### Article 18

The Commission shall have the following powers with respect to the member states of the Organization of American States:

- a. to develop an awareness of human rights among the peoples of the Americas;
- b. to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights;
- c. to prepare such studies or reports as it considers advisable for the performance of its duties;
- d. to request that the governments of the states provide it with reports on measures they adopt in matters of human rights;

## THE INTERNATIONAL JUSTICE PROJECT

### No reprints without the express permission of the director of the International Justice Project

- e. to respond to inquiries made by any member state through the General Secretariat of the Organization on matters related to human rights in the state and, within its possibilities, to provide those states with the advisory services they request;
- f. to submit an annual report to the General Assembly of the Organization, in which due account shall be taken of the legal regime applicable to those States Parties to the American Convention on Human Rights and of that system applicable to those that are not Parties;
- g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and
- h. to submit the program-budget of the Commission to the Secretary General, so that he may present it to the General Assembly.

### Article 19

With respect to the States Parties to the American Convention on Human Rights, the Commission shall discharge its duties in conformity with the powers granted under the Convention and in the present Statute, and shall have the following powers in addition to those designated in Article 18:

- a. to act on petitions and other communications, pursuant to the provisions of Articles 44 to 51 of the Convention;
- b. to appear before the Inter-American Court of Human Rights in cases provided for in the Convention;
- c. to request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not yet been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons;
- d. to consult the Court on the interpretation of the American Convention on Human Rights or of other treaties concerning the protection of human rights in the American states;
- e. to submit additional draft protocols to the American Convention on Human Rights to the General Assembly, in order to progressively include other rights and freedoms under the system of protection of the Convention, and
- f. to submit to the General Assembly, through the Secretary General, proposed amendments to the American Convention on Human Rights, for such action as the General Assembly deems appropriate.

### Article 20

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18:

- a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man;
- b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,

- c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

## What are “precautionary measures”?

### Article 25 of the Rule of Procedure

In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative, or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.

In qualifying cases of extreme gravity and urgency, the Commission issues precautionary measures when it becomes necessary to avoid irreparable damage to persons in the matter before them. In the case of complaints against the United States, upon the issue of these precautionary measures, the Commission requests that the United States preserve the life of the juvenile in question, pending their investigation of the allegations forwarded in the relevant petition.

Precautionary measures are granted in order to give the Commission time to make a recommendation when a person’s life is in imminent danger. **It is imperative to note in a petition that the defendant’s life is in imminent danger when filing for precautionary measures.** An attorney will file a brief requesting precautionary measures be installed in his client’s case. The Commission will then decide whether to issue the precautionary measure or not. The request for precautionary measures must contain at least a brief description of the facts and issues. A sample form that details the type of information required can be found at <http://www.cidh.org/denuncia.eng.htm> Further information on how to present a petition can be found in an OAS/IACHR resource, HUMAN RIGHTS: HOW TO PRESENT A PETITION IN THE INTER-AMERICAN SYSTEM (Organization of American States, Inter–American Commission on Human Rights).

The request can be sent by any means of communication.

#### Address

Inter-American Commission on Human Rights  
1889 F Street, N. W.  
Washington, D.C. 20006  
USA

#### Fax

(202) 458-3992

#### E-mail

[cidhoea@oas.org](mailto:cidhoea@oas.org)

#### Internet

<http://www.cidh.oas.org/denuncia.eng.htm>

**It is essential to notify the Board/Governor of the granting of precautionary measures by the IACHR. Below is a model letter to use as a outline if precautionary measures are granted in your case.** (Sections of the model letter were taken from a letter written by Constance de la Vega, Professor of Law at the University of San-Francisco.)

Chairperson

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project  
State Board address

Re: \_\_\_\_\_

Dear \_\_\_\_\_

I am/We are writing on behalf of \_\_\_\_\_. I/We represent Mr/Miss \_\_\_\_\_ in/her petition. In light of the request of the Inter-American Commission on Human Rights on \_\_\_\_\_ (attached hereto), I/we urge you to postpone the execution of Mr/Miss \_\_\_\_\_ until the Commission is able to consider the merits of the case.

The United States is a member of the Organization of American States (OAS). One of the OAS bodies charged with furthering and ensuring observation of the Inter-American human rights system is the *Inter-American Commission on Human Right*. The United States, upon ratifying the Charter of the OAS in 1951, accepted the authority of the Commission. The Inter-American Commission on Human Rights makes is extremely clear that the United States, including its component states, should not execute \_\_\_\_\_ “before the Commission has an opportunity to examine the allegations of the petition”. If the United States does not heed the request of the Commission, the execution of \_\_\_\_\_ will “emasculate[] the efficacy of the Commission’s process” and it will be “inconsistent with a member state’s fundamental human rights obligations under the OAS Charter and related instruments. “ Finally, proceeding with the execution will cause irreparable harm to \_\_\_\_\_ without full review of his/her case.

I/We thank for your immediate attention on this matter.

Sincerely,

### **How is the United States bound by the precautionary measures in death penalty cases?**

*The Commission has found that in death penalty complaints, member states are subject to an international legal obligation not to proceed with an execution until the Commission has had an opportunity to investigate and decide upon the complaint. In the case of Juan Raul Garza v. United States, for example, the Commission stated as follows:*

With respect to the State's submissions on the non-binding nature of the Commission's precautionary measures, the Commission previously expressed in this Report its profound concern regarding the fact that its ability to effectively investigate and determine capital cases has frequently been undermined when states have scheduled and proceeded with the execution of condemned persons, despite the fact that those individuals have proceedings pending before the Commission. It is for this reason that in capital cases the Commission requests precautionary measures from states to stay a condemned prisoner's execution until the Commission has had an opportunity to investigate his or her claims. Moreover, in the Commission's view, OAS member

## THE INTERNATIONAL JUSTICE PROJECT

**No reprints without the express permission of the director of the International Justice Project** states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate. Particularly in capital cases, the failure of a member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint emasculates the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals,<sup>2</sup> and accordingly is inconsistent with the state's human rights obligations.

(Juan Raul Garza v. United States, Case No. 12.243, Report No. 52/01, Annual Report of the IACHR 2000, para. 117).

Accordingly, to ignore the granting of precautionary measures in a death penalty case causes irreparable damage on the party and thus the case under consideration. For the United States to disregard precautionary measures would defeat the purpose of the OAS Charter. When signing international documents, the signing party is obligated not to "defeat the purpose" of the document.

### What are the rules on the exhaustion of domestic remedies?

The American Convention and the Commission's Rules of Procedure provide that in order for a petition to be considered by the Commission, remedies of the domestic legal system of the state concerned must have been pursued and exhausted in accordance with the generally recognized principles of international law. Therefore, petitioners may not lodge a petition, until all available domestic remedies have been exhausted. **The petition must note that all available domestic remedies have been exhausted. The petition should also note what the claimant has done in order to exhaust available domestic remedies.**

#### Art. 31 of the Rules of Procedure - Exhaustion of Domestic Remedies

1. In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.
2. The provisions of the preceding paragraph shall not apply when:
  - a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
  - b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or,
  - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
3. When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

### When must the petition be filed?

Within six months of exhausting available domestic remedies.

#### Article 32 of the Rules of Procedure

---

<sup>2</sup> Other international tribunals have similarly recognized interim stays of execution as fundamental prerequisites to the efficacy of proceedings pertaining to the imposition of capital punishment. *See e.g.* I/A Court H.R., James *et al.* Case, Order for Provisional Measures of 29 August 1998; Annual Report 1998, p. 317; Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America), Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, N° 104, paras. 22-28; Eur. Court H.R., Ocalan v. Turkey, Indication of Interim Measures Pursuant to Rule 39 of the Rules of the European Court of Human Rights, 30 November 1999; UNHRC, Dante Piandiong and others v. The Philippines, Communication N° 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4.

## THE INTERNATIONAL JUSTICE PROJECT

### No reprints without the express permission of the director of the International Justice Project

1. The Commission shall consider those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.
2. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

### Who can present a petition?

Article 23 of the Commission's Rules of Procedure provides that "[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their own behalf or on behalf of third persons". Therefore, a petitioner does not have to be a member of any specific bar and does not even have to be an attorney.

### What violations can be claimed?

#### Article 1 of the Statute of the Inter-American Commission of Human Rights

1. The Inter-American Commission on Human Rights is an organ of the Organization of the American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.
2. For the purposes of the present Statute, human rights are understood to be:
  - a. The rights set forth in the American Convention on Human Rights, in relation to the States Parties thereto;
  - b. The rights set forth in the American Declaration of the Rights and Duties of Man, in relation to the other member states.

Claims can be filed under Art I of the American Declaration (right to life), Article II (Right to equal protection under the law), Article XVIII (right to a fair trial), and Article XXVI (right to due process).

The Commission's competence is limited to interpreting and applying the human rights instruments of the inter-American system, although in deciding upon complaints of violations of relevant inter-American instruments the Commission has held that it may give due regard to other relevant rules of international law applicable to member states against which complaints of violations of inter-American instruments are properly lodged – these rules of international law may include the provisions of other prevailing international and regional human rights instruments (see e.g. *Juan Raul Garza v. United States*, Case No. 12.243, Report No. 52/01, Annual Report of the IACHR 2000, paras. 88-89). In the event that the Commission finds a member state responsible for violations of its human rights obligations, the Commission is empowered to make proposal and recommendations with respect to those violations that it deems appropriate. (see IACHR Statute, Art. 43). ADD art 43

### What must be included in a petition?

The petition must include a description of the facts that led to the claim. A summary of how available domestic remedies have been exhausted. A notation that the petitioner's life is in imminent danger must also be included.

#### Article 28. Requirements for the Consideration of Petitions

Petitions addressed to the Commission shall contain the following information:

- a. the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, the name and signature of its legal representative(s);

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project

- b. whether the petitioner wishes that his or her identity be withheld from the State;
- c. the address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
- d. an account of the act or situation that is denounced, specifying the place and date of the alleged violations;
- e. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;
- f. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;
- g. compliance with the time period provided for in Article 32 of these Rules of Procedure;
- h. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure; and,
- i. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure.

### Why file with the Commission and not the Inter-American Court on Human Rights?

In accordance with Article 62 of the American Convention on Human Right, the contentious jurisdiction of the Inter-American Court of Human Rights is limited to those states that have explicitly recognized the Court's competence to entertain cases concerning the interpretation and application of the provisions of the American Convention in respect of that state. The United States has not recognized the Inter-American Court's jurisdiction under Article 62 of the American Convention and therefore cannot be the subject of a contentious case before the Court.

**NOTE: It is important for US litigators to use both the *Inter-American Commission on Human Rights of the OAS* (which has jurisdiction to hear complaints against the USA) and the *International Court of Justice* (where the US has become the object of two complaints).** Many domestic lawyers handling death penalty cases are unacquainted with the availability of this and other international mechanisms or are unfamiliar with the rules and procedures of the tribunals. Contact the *International Justice Project* immediately for more information, or the OAS directly.

[Click here to see the entire text of THE STATUTE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS](#)

[Click here to see the entire text of THE RULES OF PROCEDURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS](#)

### III. STATISTICS

All statistical information is taken from the OAS website, click here

### Membership

21 Original OAS Members (1948)

Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba [[participation in OAS suspended since 1962](#)], Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, Venezuela

14 Subsequent Members

Barbados, Trinidad and Tobago (1967);

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project

Jamaica (1969);  
 Grenada (1975);  
 Suriname (1977);  
 Dominica, Saint Lucia (1979);  
 Antigua and Barbuda, Saint Vincent and the Grenadines (1981);  
 The Bahamas (1982);  
 St. Kitts and Nevis (1984);  
 Canada (1990);  
 Belize, Guyana (1991).

### Signing of the ACHR

COUNTRY	SIGNATURE	RATIFICATION/ACCESSION	DEPOSIT
Antigua and Barbados	-	-	-
Argentina	02/02/84	08/14/84	09/05/84 RA
The Bahamas	-	-	-
Barbados	06/20/78	11/05/81	11/27/82 RA
Belize	-	-	-
Bolivia	-	06/20/79	07/19/79 AD
Brazil	-	07/09/92	09/25/92 AD
Canada	-	-	-
Chile	11/22/69	08/10/90	08/21/90 RA
Colombia	11/22/69	05/28/73	07/31/73 RA
Costa Rica	11/22/69	03/02/70	04/08/70 RA
Dominica	-	06/03/93	06/11/93 RA
Dominican Republic	09/07/77	01/21/78	04/19/78 RA
Ecuador	11/22/69	12/08/77	12/28/77 RA
El Salvador	11/22/69	06/20/78	06/23/78 RA
Grenada	07/14/78	07/14/78	07/18/78 RA
Guatemala	11/22/69	04/27/78	05/25/78 RA
Guyana	-	-	-
Haiti	-	09/14/77	09/27/77 AD
Honduras	11/22/69	09/05/77	09/08/77 RA
Jamaica	09/16/77	07/19/78	08/07/78 RA
Mexico	-	03/02/81	03/24/81 AD
Nicaragua	11/22/69	09/25/79	09/25/79 RA
Panama	11/22/69	05/08/78	06/22/78 RA
Paraguay	11/22/69	08/18/89	08/24/89 RA
Peru	07/27/77	07/12/78	07/28/78 RA
St. Christopher and Nevis	-	-	-
Saint Lucia	-	-	-
St. Vicent & Grenadines	-	-	-

## THE INTERNATIONAL JUSTICE PROJECT

### No reprints without the express permission of the director of the International Justice Project

Suriname	-	11/12/87	11/12/87 AD
Trinidad & Tobago	-	04/03/91	05/28/91 AD
United States	06/01/77	-	-
Uruguay	11/22/69	03/26/85	04/19/85 RA
Venezuela	11/22/69	06/23/77	08/09/77 RA

### Notes

#### **Dominican Republic:**

(Declaration made at the time of signature)

The Dominican Republic, upon signing the American Convention on Human Rights, aspires that the principle pertaining to abolition of the death penalty shall become purely and simply that, with general application throughout the states of the American region, and likewise maintains the observations and comments made on the aforementioned

Draft Convention which it distributed to the delegations to the Council of the Organization of American States on June 20, 1969.

#### **Barbados:**

(Reservations made at the time of ratification)

The instrument of ratification was received at the General Secretariat of the OAS on November 5, 1981, with reservations. Notification of the reservations submitted was given in conformity with the Vienna Convention on the Law of Treaties, signed on May 23, 1969. The twelve-month period from the notification of said reservations expired on November 26, 1982, without any objection being raised to the reservations.

The text of the reservations with respect to Articles 4(4), 4(5) and 8(2) (e), is the following:

In respect of 4(4) the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4).

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape.

#### **Guatemala:**

(Reservation made at the time of ratification)

The Government of the Republic of Guatemala ratifies the American Convention on Human Rights, signed at San José, Costa Rica, on November 22, 1969, with a reservation as to Article 4, paragraph 4 thereof,

## THE INTERNATIONAL JUSTICE PROJECT

**No reprints without the express permission of the director of the International Justice Project** since the Constitution of the Republic of Guatemala, in its Article 54, only excludes the application of the death penalty to political crimes, but not to common crimes related to political crimes.

The instrument of ratification was received at the General Secretariat of the OAS on May 25, 1978, with a reservation. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on May 23, 1969.

*Withdrawal of Guatemala's reservation:*

The Government of Guatemala, by Government Agreement No. 281-86, dated May 20 1986, has withdrawn the above-mentioned reservation, which was included in its instrument of ratification dated April 27, 1978, considering that it is no longer supported by the Constitution in the light of the new legal system in force. The withdrawal of the reservation will become effective as of August 12, 1986, in conformity with Article 22 of the Vienna Convention on the Law of Treaties of 1969, in application of Article 75 of the American Convention on Human Rights.

### **Trinidad and Tobago:**

*(Reservations made at the time of adhesion)*

As regards Article 4(5) of the Convention the Government of the Republic of Trinidad and Tobago makes a reservation in that under the laws of Trinidad and Tobago there is no prohibition against the carrying out a sentence of death on a person over seventy (70) years of age.

**Denunciation** notified May 26, 1998

Text of the denunciation:

MINISTRY OF FOREIGN AFFAIRS  
REPUBLIC OF TRINIDAD AND TOBAGO  
His Excellency Cesar Gaviria Trujillo  
Secretary General  
Organization of American States  
Washington D.C.

26 May, 1998

Excellency,

#### NOTICE TO DENOUNCE THE AMERICAN CONVENTION ON HUMAN RIGHTS

By its decision in *Pratt and Morgan v. Attorney General for Jamaica* (2.A.C.1, 1994) the Judicial Committee of the Privy Council decided that strict guidelines must be observed by states in the hearing and determination of appeals from convicted murderers who have been condemned to death. In any case in which execution was to take place more than five years after the sentence of death there would be strong grounds for believing that the delay was such as to constitute "inhuman or degrading punishment or other treatment". A State that wished to retain capital punishment must accept the responsibility of ensuring that execution followed as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. Capital appeals must be expedited. The aim should be to hear capital appeals within twelve months of conviction. It should be possible to complete the entire domestic appeal process (including an appeal to the Privy Council) within approximately two years. It should be possible for the International Human Rights bodies, such as the United Nations Human Rights Committee and the Inter-American Commission on Human Rights, to dispose of complaints to them in death penalty cases at most within eighteen months.

## THE INTERNATIONAL JUSTICE PROJECT

### No reprints without the express permission of the director of the International Justice Project

The effect of the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan is that, notwithstanding the fact that the death penalty is the punishment for the crime of murder in Trinidad and Tobago, inordinate delay in carrying out the death penalty constitutes cruel and unusual punishment and is accordingly a contravention of section 5(2)(b) of the Constitution of Trinidad and Tobago. As the Court's ruling represents the constitutional standard for Trinidad and Tobago, the Government is mandated to ensure that the appellate process is expedited by the elimination of delays within the system in order that capital sentences imposed in accordance with the laws of Trinidad and Tobago can be enforced.

In the circumstances, and wishing to uphold its domestic law to subject no one to inhuman or degrading punishment or treatment and thereby to observe its obligations under article 5 of the American Convention on Human Rights, the Attorney General and Minister of Foreign Affairs, as representatives of the Government of Trinidad and Tobago, met with the Assistant Secretary-General of the Organization of American States and with the Inter-American Commission on Human Rights. The Attorney General and the Minister of Foreign Affairs presented to the Commission its case detailing the problems facing Trinidad and Tobago in complying with the timeframes laid down by the Judicial Committee of the Privy Council for the consideration of petitions by the International Human Rights Bodies in capital cases. The Attorney General sought the cooperation of the Commission in implementing the relevant timeframes for completion of the consideration of petitions to the Commission in capital cases so that the mandatory sentence of death for convicted murderers can be carried into effect. The Commission indicated that whilst it was sympathetic to the problem facing Trinidad and Tobago, the Commission had its own established procedures for the termination of Petitions. Accordingly for reasons which the Government of Trinidad and Tobago respects, the Commission was unable to give any assurances that capital cases would be completed within the timeframe sought.

The Government of Trinidad and Tobago is unable to allow the inability of the Commission to deal with applications in respect of capital cases expeditiously to frustrate the implementation of the lawful penalty for the crime of murder in Trinidad and Tobago. Persons convicted and sentenced to death after due process of law can have the constitutionality of their death sentence determined before the Courts of Trinidad and Tobago. Sufficient safeguards therefore exist for the protection of the human and fundamental rights of condemned prisoners.

Accordingly, the Government of Trinidad and Tobago pursuant to article 78 of the American Convention on Human Rights, hereby gives notice to the Secretary-General of the Organization of American States of the withdrawal of its ratification of the said American Convention on Human Rights.

Please accept, Excellency, the renewed assurances of my highest consideration.

Ralph Maraj  
Minister of Foreign Affairs

## **Signing of Protocol to the American Convention on Human Rights to Abolish the Death Penalty**

<i>Signatory Country</i>	<i>Signed</i>	<i>Ratified</i>	<i>Deposited</i>
Brazil*	06/07/94	07/31/96	08/13/96
Chile	09/10/01		
Costa Rica	10/28/91	03/30/98	05/26/98
Ecuador	08/27/90	02/05/98	04/15/98
Nicaragua	08/30/90	03/24/99	11/09/99
Panama	11/26/90	06/27/91	08/28/91
Paraguay	06/08/99	10/31/00	12/07/00
Uruguay	10/02/90	02/08/94	04/04/94
Venezuela	09/25/90	08/24/92	10/06/93

## THE INTERNATIONAL JUSTICE PROJECT

No reprints without the express permission of the director of the International Justice Project

\* Brazil holds the following reservation:

*"In ratifying the Protocol to Abolish the Death Penalty, adopted in Asunción on June 8, 1990, I make hereby, in compliance with constitutional requirements, a reservation under the terms of Article 2 of the said Protocol, which guarantees states parties the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature."*

### ***III. Sources of more information about the OAS and the Commission:***

#### **BOOKS**

THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS, (David J. Harris & Stephen Livingstone eds., 1998)

THOMAS BUERGENTHAL AND DINAH SHELTON, PROTECTING HUMAN RIGHTS IN THE AMERICAS – CASES AND MATERIALS (4<sup>th</sup> ed. 1995).

#### **PUBLISHED BY THE OAS/IACHR:**

HUMAN RIGHTS: HOW TO PRESENT A PETITION IN THE INTER-AMERICAN SYSTEM (Organization of American States, Inter –American Commission on Human Rights)

BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM (Organization of American States, Inter –American Commission on Human Rights)

#### **WEBPAGES:**

The website for the Organization of American States:

<http://oas.org>

The website for the Inter-American Commission on Human Rights

<http://www.cidh.org/DefaultE.htm>