

2001

## The Legal Implications of Trinidad & Tobago's Withdrawal from the American Convention on Human Rights

Natasha Parassram Concepcion

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

---

### Recommended Citation

Concepcion, Natasha Parassram. "The Legal Implications of Trinidad & Tobago's Withdrawal from the American Convention on Human Rights." *American University International Law Review* 16, no. 3 (2001): 847-890.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University International Law Review* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).

# THE LEGAL IMPLICATIONS OF TRINIDAD & TOBAGO'S WITHDRAWAL FROM THE AMERICAN CONVENTION ON HUMAN RIGHTS

NATASHA PARASSRAM CONCEPCION\*

INTRODUCTION .....	848
I. BACKGROUND: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM .....	852
A. THE RIGHT OF THE INDIVIDUAL TO PETITION THE IACHR AND THE IACTHR .....	854
B. STATE OBLIGATIONS UNDER THE INTER-AMERICAN SYSTEM THE AMERICAN DECLARATION V. THE AMERICAN CONVENTION .....	857
II. CONTINUING TRINIDADIAN OBLIGATIONS WITHIN THE INTER-AMERICAN SYSTEM .....	858
A. IACHR COMPETENCE .....	859
B. IACTHR COMPETENCE .....	862
III. THE DEATH PENALTY IN THE INTER-AMERICAN SYSTEM .....	864
A. THE STANDARD FOR REVIEWING DEATH PENALTY CASES ..	865
B. THE DEATH PENALTY IN TRINIDAD AND TOBAGO .....	866
IV. ANALYSIS OF CASE LAW WITHIN THE INTER-AMERICAN SYSTEM AND ITS APPLICATION TO THE TRINIDAD AND TOBAGO CASES .....	870
A. THE TRINIDADIAN CASES BEFORE THE IACHR .....	870

---

\* J.D. candidate, May 2002, American University, Washington College of Law; M.A., Politics/International Relations, 1999, New York University; B.A., Political Science and History, 1997, Alma College. I would like to extend my heartfelt thanks to the entire staff of the *American University International Law Review* for all their help in preparing this piece for publication. Thanks also to my husband, Kristian, for his endless love and support, and to my mother for all her sacrifices.

B. THE CASE BEFORE THE IACTHR: PRELIMINARY PROJECTIONS .....	873
V. IMPLICATIONS FOLLOWING TRINIDAD AND TOBAGO'S WITHDRAWAL FROM THE AMERICAN CONVENTION .....	878
A. DUE PROCESS GUARANTEES AND THE IMPLICATIONS FOR TRINIDADIAN CITIZENS .....	879
B. IMPLICATIONS FOR THE INTER-AMERICAN SYSTEM .....	882
VI. RECOMMENDATIONS FOR TRINIDAD AND THE INTER-AMERICAN SYSTEM .....	885
A. FOR THE TRINIDADIAN GOVERNMENT .....	885
B. FOR STRENGTHENING THE INTER-AMERICAN SYSTEM .....	886
CONCLUSION .....	889

## INTRODUCTION

On May 26, 1998, the government of Trinidad and Tobago ("Trinidad") notified the Secretary General of the Organization of American States ("OAS") that it was withdrawing its ratification of the American Convention on Human Rights ("American Convention").<sup>1</sup> That withdrawal became effective one year later.<sup>2</sup> With the

---

1. See Trinidad and Tobago: Notice to Denounce the American Convention on Human Rights (May 26, 1998) [hereinafter Notice to Denounce], *reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, Signatures & Current Status of Ratifications of the American Convention*, OAS/ser. L./V/I.4, doc. rev. 7, available at <http://www.cidh.oas.org.basic.htm> (Feb. 2, 2000) [hereinafter *Basic Documents*] (arguing that because the Inter-American Commission on Human Rights could not expedite petitions to the Commission on capital cases, the resulting delay would subject those sentenced to death in Trinidad and Tobago to cruel and unusual punishment, in contravention of Article 5(2)(b) of the country's Constitution). The government asserted that it would not "allow the inability of the [Inter-American] Commission [on Human Rights] 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." *Id.*

2. See American Convention on Human Rights, Nov. 22, 1969, art. 78, O.A.S.T.S. No. 36 at 1, OEA/ser. L./V/II.23 doc. rev. 2 (entered into force July 18, 1978) [hereinafter American Convention], *reprinted in Basic Documents, supra* note 1 (providing that "States Parties may denounce [the] Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance.").

denunciation effective, Trinidad continued its rigorous campaign to implement the death sentences of several convicted murderers, despite the fact that many of them were still awaiting a ruling by an international organization on the alleged human rights abuses they suffered at the hands of the Trinidadian government.<sup>3</sup>

Unfortunately, in its attempt to speed up the process of carrying out local executions, Trinidad has virtually eliminated a significant mechanism that guarantees due process of law, namely the ability of its citizens to make complaints of human rights abuses to international bodies.<sup>4</sup> In fact, the Trinidadian government is now attempting to pass new legislation that would allow executions to take place before petitions to international bodies, such as the OAS, are resolved or decided.<sup>5</sup> This course of action not only jeopardizes due process

---

3. See Tony Thompson, *No Mercy for Trinidad's Ruthless Gang Bosses: Caribbean Gallows Fever Reflects a Society Sick to Death of Violent Crime*, THE OBSERVER, May 30, 1999, 1999 WL 13403710 (discussing support for the death penalty in Trinidad as a deterrent to rising crime rates). Opinion polls in Trinidad show that nearly 95% of the population support the death penalty. See *id.*; see also *Trinidad Survey: Capital Punishment Will Reduce Crime*, EFE NEWS SERV., June 15, 1999, WL ALLNEWSPLUS file (announcing that seventy-seven percent of Trinidadians support capital punishment as a means to deter murder and crime); Stephen Breen, *Trinidad Begins Executing Killers*, THE SCOTSMAN, June 5, 1999, 1999 WL 18798193 (reporting on the first three of nine hangings in Trinidad since 1994); ANN. REP. OF THE INTER-AM. COMM'N ON H.R. (OAS) 1364 (1999), available at <http://www.cidh.oas.org/annualreports.htm> [hereinafter IACHR ANN. REP. 1999] (denouncing the fact that Trinidad had executed three additional applicants with cases before the Commission - Naresh Boodram, Joey Ramiah, and Anthony Briggs).

4. See AMNESTY INT'L ANN. REP. (1999) [hereinafter AI ANN. REP. 1999] (discussing specific cases of executions in Trinidad and the government's attempts to boycott the appeals process available through international institutions such as the OAS and the United Nations); see also Peter Richards, *Trinidad and Tobago: Nation Withdraws from Human Rights Pact*, INTER PRESS SERV., Apr. 18, 2000, LEXIS, News Library, Inter Press Serv. File (announcing that Trinidad and Tobago had notified the United Nations that it intended to withdraw from the Optional Protocol to the United Nations International Covenant on Civil and Political Rights). Such a move significantly limits the possibility of appealing to the United Nations Human Rights Committee for review of death penalty executions and sentences because it withdraws the right of the individual to petition the Human Rights Committee. See *id.* See generally Natalia Schiffrin, *Jamaica Withdraws the Right of Individual Petition Under the International Covenant on Civil and Political Rights*, 92 AM. J. INT'L L. 563 (1998) (discussing the implications of withdrawal from the Optional Protocol on human rights).

5. See Peter Richards, *Rights - Trinidad and Tobago. Gov't Pushes to Speed*

rights of Trinidadian citizens, but also threatens the further development and strengthening of the Inter-American human rights system.<sup>6</sup>

This Comment analyzes the implications of the Trinidadian government's decision to withdraw from the American Convention, specifically with respect to due process guarantees.<sup>7</sup> Part I briefly outlines the Inter-American system for protecting human rights, the rights available to individual citizens to petition the Inter-American Commission on Human Rights ("IACHR") for redress of human rights violations, and the obligations of States Parties to its citizens.<sup>8</sup> Part II discusses the breadth of Trinidadian obligations in the aftermath of its withdrawal from the American Convention, if any. Specifically, it addresses whether the IACHR and the Inter-American

---

*Executions*, INTER PRESS SERV., May 17, 2000, available at LEXIS, News Library, Inter Press Serv. File (noting the reintroduction of Constitution Amendment No. 2 Bill in Parliament, also known as the Hanging Bill, which states that the High Court would have "no jurisdiction to hear an application against the execution of the death warrant" after the time for appeal had passed or after the Privy Council had dismissed or refused a petition). This amendment would have the effect of allowing executions to occur even if the offenders had petitions before the Inter-American Commission on Human Rights or the United Nations Human Rights Commission. See *id.*; cf. Leonard E. Birdsong, *Is There a Rush to the Death Penalty in the Caribbean: The Bahamas Says No*, 13 TEMP. INT'L & COMP. L.J. 285, 295 (1999) (discussing the ruling of the highest court of appeal for Trinidad - the Privy Council in England- that the Trinidadian government must wait for the decision of the IACHR before it can constitutionally execute anyone); Order of the Inter-American Court of Human Rights of August 29, 1998: Provisional Measures Adopted by the Inter-American Court of Human Rights in the Matter of the Republic of Trinidad and Tobago - The James *et al.* Case, [hereinafter IACtHR Court Order], in ANN. REP. OF THE INTER-AM. CT. ON H.R. TO THE GEN. ASSEMB., 317 OEA/ser. G CP/doc.3169/99 (1999) [hereinafter IACtHR REP. TO GEN. ASSEMB. 1999] (noting Trinidad and Tobago's refusal to recognize the IACtHR's decisions as binding, and ordering the Trinidadian government to stay the executions of the individuals who had been sentenced to death and who still had petitions before the IACHR).

6. See AI ANN. REP. 1999, *supra* note 4 (noting that Trinidad's decision to withdraw from the American Convention would have a detrimental effect on the Inter-American human rights system because it precludes international investigation of alleged human rights abuses); *infra* notes 204-205 (discussing the impact of Trinidad's withdrawal from the American Convention on other Caribbean nations).

7. See *infra* Part V (discussing the due process implications of the Trinidadian government's actions).

8. See *infra* Parts I.A-I.B (discussing the legal avenues available within the Inter-American system to individuals complaining of human rights abuses, and a state's legal obligations to protect certain human rights).

Court on Human Rights (“IACtHR”) possess the jurisdiction to hear cases against Trinidad.<sup>9</sup> Part III focuses on the scope of the death penalty as practiced within the Inter-American system, and then looks specifically at its application in Trinidad and Tobago. Part IV analyzes particular cases before the IACHR that have been lodged by Trinidadian citizens in order to highlight which state obligations are being met and which ones are not being met by the Trinidadian government. Part V discusses the impact of the Trinidadian government’s actions on the due process rights of Trinidadian citizens, and its impact within the Inter-American system.<sup>10</sup> Finally, Part VI provides specific recommendations to the Trinidadian government on how to bring its domestic policies in conformity with its international obligations. More significantly, it recommends ways for members of the Inter-American community to strengthen the Inter-American framework for the protection of human rights.<sup>11</sup>

---

9. See *infra* Parts II.A-II.B (arguing that since the withdrawal from the American Convention was not immediate, petitions lodged before May 28, 1999 fall within IACHR and IACtHR jurisdiction). Part II further asserts that the IACHR remains competent to hear claims by Trinidadian citizens based on violations of the American Declaration. See *id.*

10. See *infra* Parts V.A-V.B (noting the failure of the Trinidadian government to comply with regional standards on human rights, and analyzing the effect this has on due process guarantees).

11. See *infra* Parts VI.A-VI.B (arguing for the need of a stronger regional human rights system); see also *Dialogue on the Inter-American System for the Promotion and Protection of Human Rights*, OEA/ser. G CP/CAJP-1610/00 rev. 2 (Apr. 24, 2000) [hereinafter *Dialogue on the Inter-American System*] (observing the need for strengthening the Inter-American human rights system, and calling for measures that would achieve wider ratification of the region’s most important human rights instruments—the American Convention and its two Protocols; the Convention on Forced Disappearances of Persons; the Convention to Prevent and Punish Torture; the Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará); and the Convention on the Elimination of Discrimination Against Persons With Disabilities); *Report of the Inter-American Court of Human Rights to the Special Committee on Inter-American Summits Management*, OEA/ser. G CE/GCI-134/98 (May 7, 1998), available at <http://www.summit-americas.org/CEGCI%20Docs/ce-gci-134-98-English.htm> (on file with AU ILR) (discussing the current contributions of the IACtHR to the protection of human rights, including its mandate to apply and interpret the American Convention, the power to issue advisory opinions to clarify the status of the law within the Inter-American system, and the ability to adopt provisional measures to prevent a state from taking any action that would cause “irreparable harm” to an individual whose case is either before the IACHR or the

## I. BACKGROUND: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

In 1948, during the Ninth International Conference of American States, the members of the Pan American Union<sup>12</sup> adopted the American Declaration of the Rights and Duties of Man ("American Declaration"),<sup>13</sup> the first of two major instruments that protect and define human rights principles within the Inter-American system.<sup>14</sup> The second and more important of the two instruments, the American Convention,<sup>15</sup> was adopted in 1969.<sup>16</sup>

---

Court itself); *see also* IACHR ANN. REP. 1999, *supra* note 3, at 52 (discussing the IACHR's authority to request that the IACtHR adopt precautionary measures). This Comment argues, however, that ratification of the relevant human rights instruments, and the current powers of the court, are not enough to guarantee protection of human rights, and that the IACtHR's jurisdiction must be expanded in order to establish a stronger mechanism. *See infra* Parts VI.A-VI.B.

12. *See* SCOTT DAVIDSON, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM 1-3 (1997) (stating that the Pan American Union was the precursor to the Organization of American States).

13. *See* American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. res. XXX, adopted by the Ninth International Conference of American States, Bogota, Columbia, OEA/ser. L/V/II.23 doc. 21 rev. 6 (1948) [hereinafter American Declaration], *reprinted in Basic Documents, supra* note 1 (adopting the American Declaration and setting forth the full text of the Declaration). The rights of the individual are outlined in Chapter I of the American Declaration, and include the right to life, liberty and personal security (Art. I); the right to equality before the law (Art. II); the right to recognition of juridical personality and civil rights (Art. XVII); the right to a fair trial (Art. XVIII); the right to petition competent authorities and the right to a prompt decision (Art. XXIV); the right of protection from arbitrary arrest (Art. XXV); and the right to due process of law (Art. XXVI). Chapter II of the American Declaration stresses the individual's duties to society, such as the individual's duty to obey the law (Art. XXXIII), and the duty to serve the community and the nation (Art. XXXIV). *See id.*

14. *See* Inter-American Juridical Committee, *Project of Declaration of the International Rights and Duties of Man: Draft Declaration*, in 19TH CONFERENCE OF AMERICAN STATES (Pan American Union 1948) (setting forth the basic provisions of the American Declaration, and aspiring to create a general framework of human rights within the Inter-American system); SECRETARIAT FOR LEGAL AFFAIRS, GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN SYSTEM: TREATIES, CONVENTIONS AND OTHER DOCUMENTS, pt. II, 1 (F.V. García-Amador ed., 1983) [hereinafter TREATIES AND CONVENTIONS] (noting that the Inter-American human rights system began with the adoption of the American Declaration in 1948); *see also* American Declaration, *supra* note 13 (setting forth the text of the American Declaration).

15. *See* TREATIES AND CONVENTIONS, *supra* note 14, at 47-51 (discussing the

In order to further secure the rights defined in both the American Declaration and the American Convention, the newly formed OAS created two mechanisms to promote and safeguard human rights within the Inter-American system: the IACHR and the IACtHR.<sup>17</sup> The IACHR was established primarily as a consultative organ to promote and defend human rights<sup>18</sup> by creating awareness of human rights,<sup>19</sup> making recommendations to member states on domestic legislation favorable to human rights,<sup>20</sup> preparing reports,<sup>21</sup> and conducting on-site observations.<sup>22</sup> The IACtHR's main function is to interpret and apply the provisions of the American Convention.<sup>23</sup>

This section discusses one of the remedies available to individuals suffering from human rights abuses within the Inter-American system, namely, the ability to petition the IACHR for redress.<sup>24</sup> Fur-

---

preparatory work on the American Convention); American Convention, *supra* note 2 (setting forth the full text of the American Convention). The American Convention defines the civil and political rights of the individual, and includes the right to juridical personality (Art. 3); the right to life (Art. 4); the right to humane treatment (Art. 5); the right to personal liberty (Art. 7); the right to a fair trial (Art. 8); freedom from *ex post facto* laws (Art. 9); the right of reply (Art. 14); the right to equal protection (Art. 24); and the right to judicial protection (Art. 25). *See id.*

16. *See generally* David Harris, *Regional Protection of Human Rights: The Inter-American Achievement*, in *THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS* 1, 1 (David J. Harris & Stephen Livingstone eds., 1998) (examining the origins of the Inter-American human rights system and the functions of the two regional bodies in charge of administering the system).

17. *See* DAVIDSON, *supra* note 12, at 99 (detailing the history and the functions of the IACHR and the IACtHR).

18. *See* Statute of the Inter-American Commission on Human Rights, art. 1 (Oct. 1979), *reprinted in Basic Documents, supra* note 1 [hereinafter Statute of the IACHR] (discussing the purpose for creating the IACHR).

19. *See id.* art. 18(a) (authorizing the Commission to promote increased consciousness of human rights issues).

20. *See id.* art. 18(b) (empowering the Commission to suggest progressive human rights measures to States).

21. *See id.* art. 18(c) (authorizing the Commission to conduct studies and prepare reports).

22. *See id.* art. 18(g) (enabling the Commission, upon consent of the State, to conduct on-site observations).

23. *See id.* art. 1 (presenting the purpose of the IACtHR).

24. *See* Jo M. Pasqualucci, *The Inter-American Human Rights System: Establishing Precedents and Procedure in Human Rights Law*, 26 U. MIAMI INTER-AM.



thermore, it examines OAS member state obligations under both the American Declaration and the American Convention.

#### A. THE RIGHT OF THE INDIVIDUAL TO PETITION THE IACHR AND THE IACTHR

Individual petitions directly to the IACTHR are not permitted.<sup>25</sup> Instead, only the IACHR is authorized to receive petitions alleging human rights abuses by OAS member states,<sup>26</sup> in violation of either the American Declaration or the American Convention.<sup>27</sup> This right of petition extends to any individual, group of individuals, or non-governmental entity within an OAS member state.<sup>28</sup> Furthermore, there is no requirement that the petitioner(s) personally experience the human rights abuses to be able to initiate a complaint before the IACHR.<sup>29</sup>

The Regulations of the IACHR outline the conditions for admissibility of a petition.<sup>30</sup> One of the primary requirements for a petition's

---

L. REV. 297, 313-22 (1995) (reviewing the significance of the American Convention and the Inter-American human rights system for breaking with traditional principles of international law and allowing individuals to have standing in an international body to challenge the human rights record of a state).

25. See American Convention, *supra* note 2, art. 61(1) (emphasizing that only States Parties and the IACHR may submit cases to the IACTHR).

26. See Statute of the IACHR, *supra* note 18, art. 19 (empowering the Commission to take action on petitions); see also Christina Cerna, *The Inter-American Commission on Human Rights: Its Organization and Examination of Petitions and Communications*, in THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS, *supra* note 16, at 65-114 (discussing generally the functions and powers of the IACHR).

27. See Regulations of the Inter-American Commission on Human Rights, art. 26, approved Apr. 8, 1980, last modified May 3, 1996, *reprinted in Basic Documents*, *supra* note 1, at 115 [hereinafter Regulations of the IACHR] (recognizing that a violation of the American Declaration or the American Convention constitutes a human rights abuse).

28. See *id.* (defining which entities are eligible to petition the IACHR); see also American Convention, *supra* note 2, art. 44 (recognizing the ability of "any person or group of persons, or any non-governmental entity legally recognized in one or more member states" to petition the IACHR regarding human rights violations).

29. See DAVIDSON, *supra* note 12, at 157 (explaining the inclusion of various NGOs as complainants before the IACHR).

30. See Regulations of the IACHR, *supra* note 27, arts. 31-43, 51-54 (setting forth the standards for admissibility of a petition against both a party to and a non-signatory to the American Convention); see also American Convention, *supra* note

admissibility is the exhaustion of all domestic remedies before lodging a complaint with the IACHR.<sup>31</sup> The petitioner must also observe a strict time limit within which to file the complaint,<sup>32</sup> and avoid duplication of procedures.<sup>33</sup>

Once a complaint is lodged, the IACHR begins by initiating an investigation of the case, and completes its task by preparing a report of its conclusions and recommendations.<sup>34</sup> The procedures for lodging complaints, however, differ according to whether they are complaints brought under the American Convention against signatories to the American Convention, or complaints brought under the American Declaration and the OAS Charter.<sup>35</sup>

---

2, art. 46 (presenting the four requirements for lodging a petition before the IACHR); DAVIDSON, *supra* note 12, at 158 (explaining in detail the following four requirements: exhaustion of domestic remedies, a six month time limit, non-admittance of a petition at issue in another international forum, and the requirement that the petition contain the name, nationality, profession, domicile and signature of the person lodging the complaint).

31. *See, e.g.*, In re Viviana Gallardo, Decision of Nov. 13, 1981, Inter-Am. Ct. H.R. G101/81, para. 26, *reprinted in* 20 I.L.M. 1424 (1981) (emphasizing the primacy of state sovereignty in international law, and explaining the rationale for the exhaustion of domestic remedies requirement as providing the violator state with an opportunity to redress the wrong before being taken before an international body); Regulations of the IACHR, *supra* note 27, art. 37 (stating that the petitioner must pursue all domestic legal remedies, but also recognizing that when the satisfaction of this requirement becomes impossible to achieve—i.e., when the domestic law does not afford due process of law, when the petitioner has been denied access to domestic legal mechanisms and thus prevented from exhausting them, or when there has been an unwarranted delay in rendering judgment—the petitioner is no longer held to this requirement).

32. *See* Regulations of the IACHR, *supra* note 27, art. 38 (holding that after the petitioner has availed himself of all domestic legal remedies, and after the final decision has been rendered, he will have six months to petition the IACHR).

33. *See id.* art. 39 (explaining that no petitions will be allowed if the petitioner has already lodged a complaint with another international body or if a similar petition has already been lodged with the IACHR).

34. *See* Jo M. Pasqualucci, *Preliminary Objections Before the Inter-American Court of Human Rights: Legitimate Issues and Illegitimate Tactics*, 40 VA. J. INT'L L. 1, 15 (1999) (describing the procedures for processing individual applications); *see also* Regulations of the IACHR, *supra* note 27, arts. 34, 36, 44-53 (providing the procedural requirements for the initial processing of petitions, examination of the case by the IACHR through on-site investigations and fact-finding missions, and the issuance of a report on the findings).

35. *See* DAVIDSON, *supra* note 12, at 176 (stating that if the petition was lodged

A complaint based on the American Declaration does not require the IACHR to propose friendly settlement, and allows only for the limited investigation and issuance of a report containing only non-binding recommendations.<sup>36</sup> Under an American Convention complaint, however, the IACHR has an obligation to encourage the involved parties to reach a friendly settlement.<sup>37</sup> If the parties to the dispute are unable to agree to a friendly settlement, and the involved member state has consented to the contentious jurisdiction of the court,<sup>38</sup> the IACHR then has the option of referring the petition<sup>39</sup> to

---

under the American Convention, the IACHR is required to attempt friendly settlement, but if it was lodged under the Charter and the American Declaration, friendly settlement is not necessary); *see also* Regulations of the IACHR, *supra* note 27, arts. 51-53 (recognizing that, with respect to states not a party to the American Convention, the IACHR may request information from governments involved, transmit the charges lodged against a government to that government, separate or combine cases, declare the complaint inadmissible, and conduct a hearing to verify facts). After this process is completed, the IACHR shall issue and then publish a final decision with its recommendations if the accused government refuses to comply with the recommendations. *See id.* art. 53.; Statute of the IACHR, *supra* note 18, arts. 18, 20 (providing that, with respect to members of the OAS and states not a party to the American Convention, the IACHR shall have the power to develop awareness of human rights issues, make recommendations to OAS member states concerning domestic human rights legislation, issue reports in the execution of its duties, request information dealing with human rights issues from OAS member states, respond to inquiries made by the General Secretariat of any OAS member state, conduct on-site inspections and observations in any OAS member state, pay attention to the observance of human rights by OAS member states as outlined in the American Declaration, examine any communications submitted to it, and make recommendations to any member state not a party to the American Convention concerning more effective implementation of human rights policies).

36. *See* DAVIDSON, *supra* note 12, at 176 (discussing the manner in which the IACHR is to settle disputes, depending on the legal basis for the complaint).

37. *See* Regulations of the IACHR, *supra* note 27, art. 45 (outlining the applicable procedures for a friendly settlement proceeding, including the establishment of a Special Commission to oversee the proceedings).

38. *See* Statute of the IACHR, *supra* note 18, art. 19(c); *see also* American Convention, *supra* note 2, art. 62(3) (noting that the IACHR's ability to hear a case depends on whether the member state involved has consented, either conditionally or unconditionally, to the court's jurisdiction).

39. *See* DAVIDSON, *supra* note 12, at 118 (discussing the significance of the fact that Charter based petitions are resolved with the issuance of a report and no other compensation or remedy, while American Convention based petitions are either sent to the IACHR for resolution or disposed of by the IACHR itself).

the IACtHR.<sup>40</sup> The IACtHR's decision is final,<sup>41</sup> and can include appropriate remedies under Article 63(1) of the American Convention.<sup>42</sup> If, however, the state is not a party to the American Convention, the IACHR may not refer the case to the IACtHR.<sup>43</sup>

#### B. STATE OBLIGATIONS UNDER THE INTER-AMERICAN SYSTEM: THE AMERICAN DECLARATION V. THE AMERICAN CONVENTION

Although the American Declaration is not, *per se*, legally binding,<sup>44</sup> the IACtHR has held that the fundamental rights guaranteed in the OAS Charter<sup>45</sup> are those rights enshrined in the American Declaration, and that the American Declaration confers certain human rights obligations upon all OAS member states.<sup>46</sup> Under this existing legal framework, every OAS member state clearly has an obligation

40. See American Convention, *supra* note 2, art. 51 (stating that the IACHR may submit cases to the IACtHR for its consideration).

41. See *id.* art. 67 (providing that IACHR decisions are final and cannot be appealed).

42. See *id.* art. 63(1) (allowing remedies such as requiring the state party to provide the aggrieved citizen his deprived rights, and requiring the state to pay fair compensation). See generally Thomas Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 AM. J. INT'L L. 1 (1985) (discussing generally the functions and powers of the IACtHR).

43. See American Convention, *supra* note 2, art. 62 (noting that the Court's jurisdiction is limited to interpretation and application of the American Convention).

44. See American Declaration, *supra* note 13, pmbl. (stressing that the principles enshrined in the Declaration were to serve only as a guide to the "evolving American law").

45. See Charter of the Organization of American States, April 30, 1948, pmbl., arts. 3(1), 17, 106, 2 U.S.T. 2394, U.N.T.S. 48, <http://www.cidh.oas.org/basic> [hereinafter OAS Charter] (referring to the fundamental rights of man and the individual). The OAS Charter, however, does not define these fundamental rights. Instead, it states in Article 106 that the Inter-American Commission on Human Rights is the primary body charged with promoting and protecting human rights. See *id.* art. 106; see also HARRIS, *supra* note 16, at 6 (asserting that the IACHR fundamentally applies the American Declaration "as an indirectly binding legal text."); Statute of the IACHR, *supra* note 18, art. 1 (defining human rights to mean those enshrined in both the American Declaration and the American Convention).

46. See 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, Advisory Opinion OC-10/90, Inter-Am. Ct. H.R. para. 45 (1989) [hereinafter Advisory Op.: American Declaration/Article 64] (explaining that the American Declaration defines human rights in the OAS Charter).

to respect the human rights of its citizens guaranteed by the American Declaration.<sup>47</sup>

The American Convention, as distinguished from the American Declaration, is a binding treaty.<sup>48</sup> Although Article 78(1) provides that States Parties may denounce the American Convention, Article 78(2) clearly holds that a state's obligations with respect to the Convention do not automatically dissipate when that state withdraws ratification.<sup>49</sup> Accordingly, all petitions submitted to the IACHR prior to a denunciation of the American Convention are valid, and a denouncing state is responsible for all of its prior obligations under the American Convention.<sup>50</sup>

## II. CONTINUING TRINIDADIAN OBLIGATIONS WITHIN THE INTER-AMERICAN SYSTEM

When Trinidad's withdrawal from the American Convention be-

---

47. See American Declaration, *supra* note 13, ch. 1 (outlining individual rights, which include the "right to a fair trial" and the right to "petition any competent authority").

48. See American Convention, *supra* note 2, art. 74 (providing that the American Convention enters into force when a state ratifies it); Vienna Convention on the Law of Treaties, May 23, 1969, art. 11, 1155 U.N.T.S. 331 [hereinafter Vienna Convention] (defining "signature" and "ratification" of a treaty to be a state's primary method of expressing its consent to be legally bound by that treaty); see also HARRIS, *supra* note 16, at 8-13 (stating that, according to the Vienna Convention Article 33(4), the interpretation of a treaty that always prevails is the one that "is most consistent with the object and purpose of the Convention," and concluding that the American Convention was intended to be binding upon States Parties to the Convention).

49. See American Convention, *supra* note 2, art. 78(2) (holding that states are not immune from obligations with respect to any actions in violation of the American Convention occurring before a denunciation).

50. See IACHR ANN. REP. 1999, *supra* note 3, at 1363-64 (noting several petitions lodged by Trinidadian citizens prior to the effective date of withdrawal from the American Convention on May 28, 1999, and concluding that because the petitions were admissible, Trinidad was liable for its obligations under the American Convention before its withdrawal). Despite Trinidad's intent to withdraw from the American Convention, the IACHR chose to continue accepting cases from Trinidadian citizens claiming violations of the American Convention, demonstrating that until May 28, 1999, Trinidad was fully liable for its obligations under the American Convention. See *id.* (stating that since Trinidad is a party to the American Convention, the Commission was competent to review petitions from Trinidadian citizens).

came effective, an important issue was whether the currently available remedies within the Inter-American system were closed off to Trinidadian citizens, denying them important due process guarantees.<sup>51</sup> This section discusses the remaining jurisdiction of the IACHR to hear petitions from Trinidadian citizens, and to refer Trinidadian cases to the IACtHR in the aftermath of the government's withdrawal from the American Convention.<sup>52</sup> It will then highlight the continuing obligations of the Trinidadian government by examining some of the current cases before the IACHR and the IACtHR.<sup>53</sup>

### A. IACHR COMPETENCE

Under its statute, the IACHR retains certain limited functions and powers with respect to states not a party to the American Convention.<sup>54</sup> While the procedures remain virtually the same for petitions involving States Parties to the American Convention, the IACHR's powers with respect to non-signatories are limited to non-binding

---

51. See American Convention, *supra* note 2, arts. 8(2)(h), 25 (defining due process guarantees to include the right to appeal to a higher court and the right to obtain judgment from "competent" authorities); *infra* note 152 and accompanying text (recognizing that judicial inefficiency and corruption are prevalent in Caribbean nations, and that these characteristics may sometimes hinder due process guarantees).

52. See *supra* Part I (discussing the jurisdiction of the IACHR and the IACtHR to hear Trinidadian petitions); see also IACtHR REP. TO GEN. ASSEMB. 1999, *supra* note 5, at 34 (describing Trinidad's denunciation of the American Convention as unprecedented, but recognizing that it does not relieve the state from its obligation to comply with provisional measures issued by the IACtHR). The IACtHR also went on to recognize that, "even when an international treaty . . . [gives] the right of denunciation, in dealing with human rights treaties, due to their special nature, a denunciation affects the respective international or regional system for the protection of human rights as a whole." *Id.* See generally Christina M. Cerna, *Symposium: International Law in the Americas - Rethinking National Sovereignty in an Age of Regional Integration - International Law and the Protection of Human Rights in the Inter-American System*, 19 HOUS. J. INT'L L. 731, 741-48 (1997) (discussing generally the "binding" effects of the American Declaration on OAS members).

53. See *infra* notes 77-79 (discussing the *Trinidad* Cases before the IACHR and the IACtHR).

54. See Pasqualucci, *supra* note 34, at 51 (explaining the effect on jurisdictional issues when States denounce the treaty).

recommendations.<sup>55</sup> Furthermore, the IACHR cannot refer such petitions alleging violations of the American Convention to the IACtHR.<sup>56</sup> In cases where the member state involved is not a signatory to the American Convention, the IACHR will only entertain claims of violations of the American Declaration.<sup>57</sup>

Although the American Declaration does not specifically protect against capital punishment, Article I provides for the right to life, liberty, and the security of person.<sup>58</sup> In interpreting the Article I "right to life" standard, however, the IACHR has applied the concept of *jus cogens*.<sup>59</sup> In a 1981 case involving the United States' application of the death penalty, the IACHR recognized the existence of the *jus cogens* principle in the Inter-American system that prohibited the

---

55. See Statute of the IACHR, *supra* note 18, art. 20 (discussing the competence of the Commission with respect to states not a party to the American Convention).

56. See *id.* art. 2 (establishing that the IACtHR's advisory and adjudicatory jurisdiction is governed by Articles 61-64 of the American Convention). Section two of the American Convention describes the jurisdiction of the IACtHR, and notes that only state parties and the IACHR are allowed to submit cases to the court. See American Convention, *supra* note 2, art. 61. Furthermore, the American Convention requires that the state party involved accept the jurisdiction of the court, and states that the court will accept only cases related to the interpretation and application of the American Convention. See *id.* arts. 62-63.

57. See Statute of the IACHR, *supra* note 18, art. 20(a) (stating that when the state party involved is not a party to the American Convention, the IACHR is empowered to consider violations of the American Declaration); see also Case 12,086, Inter-Am. C.H.R. 190, 194 (1999) (available via <http://www.oas.org>) (denying jurisdiction to address petitioners' American Convention claims because the Bahamas was not a signatory to the Convention); Case 2141, Inter-Am. C.H.R. 25, 43, OEA/ser. L./V/II.54, doc. rev. 1 (1981) (holding that since the United States is not a State party to the American Convention, it cannot be in violation of Article 4(5) of the Convention because "it would be impossible to impose upon the United States Government or that of any other State member of the OAS, by means of 'interpretation,' an international obligation based upon a treaty that such state has not duly accepted or ratified.").

58. See American Declaration, *supra* note 13, art. 1 (listing a broad range of "rights" in Articles 1-28).

59. See Case 9647, Inter-Am. Ct. H.R. para. 54, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987) (defining *jus cogens* to be a "superior order of legal norms, which the laws of man or nations may not contravene."). Basically, these legal norms are those norms that have been accepted either expressly by treaty or tacitly through customary practices, and are designed to protect public interest and public morality. See *id.*

application of the death penalty against juveniles.”<sup>60</sup> Further, the IACHR asserted that the diversity in practice within the individual states of the United States resulted in different sentencing for the commission of the same crime, and concluded that such disparate practices resulted in an arbitrary application of the death penalty.<sup>61</sup> For the reasons stated above, the IACHR held that the United States had violated the American Declaration.<sup>62</sup>

After making the determination that a particular state has violated the American Declaration, the Commission must monitor compliance.<sup>63</sup> Article 1(2)(b) of the IACHR statute states that the IACHR has the authority to administer the American Declaration with respect to all OAS member states not a party to the American Convention.<sup>64</sup> In the aftermath of its withdrawal from the American Convention, it is clear that Trinidad will continue to have certain human rights obligations under the American Declaration.<sup>65</sup>

The American Declaration guarantees every individual the right to life,<sup>66</sup> the right to a fair trial,<sup>67</sup> the right to petition competent authori-

60. *See id.* para. 55 (explaining that even the United States, in its petition to the IACHR, noted a general legal norm recognized by the member States of the OAS that the death penalty should not be applied to juveniles, and pointing to the fact that many U.S. states had in fact outlawed the death penalty as applied to juveniles).

61. *See id.* paras. 59-60 (holding that the age distinction between juveniles and adults in that case was not dispositive of the issue, and applying the general principle of *jus cogens* to the death penalty with respect to both categories).

62. *See id.* para. 62 (stating that the United States federal government’s failure to normalize the law on the death penalty in each state resulted in “a pattern of legislative arbitrariness throughout the United States which results in the arbitrary deprivation of life and inequality before the law, contrary to Articles I and II of the American Declaration . . .”).

63. *See Harris, supra* note 16, at 8 (explaining that a 1979 amendment to the IACHR statute reinforced authority to monitor compliance with the American Convention).

64. *See* Statute of the IACHR, *supra* note 18, art. 1(2)(b) (linking membership in the OAS with human rights obligations under the American Declaration).

65. *See* Advisory Op.: American Declaration Article 64, *supra* note 46, paras. 39-43 (discussing the American Declaration as having a legal effect upon OAS member states).

66. *See* American Declaration, *supra* note 13, art. 1; *see also* Case 10.675, Inter-Am. C.H.R. 295, 351-354 DEA/Ser.L./V/II.95 Doc. 7 rev. (1997) (affirming the right to life standard in Article 1 of the American Declaration, and holding the



ties,<sup>68</sup> and the right to due process of law.<sup>69</sup> As a member state of the OAS, and under the IACHR statute, an individual Trinidadian citizen has the right to lodge a complaint alleging human rights abuses against the government to the IACHR.<sup>70</sup>

## B. IACtHR COMPETENCE

The IACtHR applies and interprets the provisions of the American Convention.<sup>71</sup> It can only accept cases referred by the IACHR or submitted by a state party to the same Convention.<sup>72</sup> Once a state has accepted the jurisdiction of the IACtHR, however, the American Convention fails to supply any provisions regarding the process to withdraw that acceptance.<sup>73</sup> For example, in determining the validity of Peru's attempt to withdraw from the IACtHR's jurisdiction in 1999, the IACtHR held that the only acceptable method to accomplish such a withdrawal was to completely renounce the American Convention.<sup>74</sup> The effect of the withdrawal from the American Con-

---

United States to be in violation of the American Declaration when it refused to grant asylum to Haitian refugees who were consequently killed upon their return to Haiti).

67. *See id.* art. 18.

68. *See id.* art. 24.

69. *See id.* art. 26.

70. *See* Statute of the IACHR, *supra* note 18, arts. 18, 20 (discussing the competence of the IACHR to hear petitions from citizens of non-signatories to the American Convention).

71. *See id.* art. 1 (identifying the IACtHR as a "consultative organ" to the OAS, which advises and consults on human rights as they are defined in the American Convention and the American Declaration).

72. *See* American Convention, *supra* note 2, art. 61 (noting the parties that have standing to file a case in this court).

73. *See id.* art. 62(1) (stating that a party may submit to the court's jurisdiction only after it signs or ratifies the American Convention); *Ivcher Bronstein Case*, Judgement of Sept. 24, 1999, Inter-Am. Ct. H.R. 355, 365, OEA/Ser. GCP/doc. 3285/00 (2000) (recognizing that the only provision in the American Convention dealing specifically with the IACtHR's jurisdiction is one that describes how a state can accept jurisdiction, and pointing out that no mention is made of how to renounce the acceptance of the Court's jurisdiction).

74. *See id.* at 367-68 (declaring that a State may not release itself from the court's jurisdiction by renouncing parts of the American Convention; rather, in order to be released from the court's jurisdiction, the State must renounce the American Convention as a whole).

vention, however, is not immediate.<sup>75</sup> Subsequently, a state consenting to the jurisdiction of the IACtHR remains legally obligated to recognize the court's jurisdiction until the date that the withdrawal becomes effective.<sup>76</sup> Under this ruling, Trinidad remains bound under both the American Convention and the IACtHR's jurisdiction for cases brought before May 26, 1999 and for violations of the American Convention occurring before the effective date of withdrawal from the Convention.<sup>77</sup> As such, the Trinidadian government's continuing obligations under the American Convention include the protection of the right to life,<sup>78</sup> and the observance of restrictions on the death penalty.<sup>79</sup>

The following section is a preliminary discussion of the death penalty within the Inter-American system.<sup>80</sup> It traces death penalty jurisprudence in the Inter-American system, and outlines death penalty practices in Trinidad and Tobago in order to highlight the government's conformity, as well as nonconformity, with both its domestic law and its Inter-American obligations.<sup>81</sup>

---

75. See American Convention, *supra* note 2, art. 78 (explaining that notice of withdrawal must be given one year in advance and must be made to all parties).

76. See Vienna Convention, *supra* note 48, art. 56(2) (describing default procedures when a treaty does not provide for termination or withdrawal); *Ivcher Bronstein Case*, Judgement of Sept. 24, 1999, Inter-Am. Ct. H.R. 355, 368-69, OEA/Ser. G CP/doc. 3285/00 (2000) (remarking that the rules of international law preclude an immediate release from the IACtHR's jurisdiction because Article 56(2) of the Vienna Convention requires a state to give at least twelve months notice of its plan to withdraw from a treaty).

77. See *supra* Part II (discussing the continuing obligations of the Trinidadian government, notwithstanding its withdrawal from the American Convention).

78. See American Convention, *supra* note 2, art. 4 (defining the right to life guaranteed under the American Convention).

79. See *id.* art. 4(2) (defining the restrictions on the application of the death penalty).

80. See generally WILLIAM A. SCHABAS, *INTERNATIONAL LAW AND ABOLITION OF THE DEATH PENALTY* 800-08 (2d ed., Cambridge Univ. Press 1997) (outlining, in general, the status of death penalty law within the Inter-American system).

81. See generally *Pratt v. Att'y Gen. for Jam.*, [1994] 2 A.C. 1, 6-19 (P.C. 1993) (discussing due process requirements with respect to both Trinidad and Tobago and Jamaica); see also Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 967 (2000) (available via <http://www.oas.org>) (discussing the due process requirements under the American Convention with respect to death

### III. THE DEATH PENALTY IN THE INTER-AMERICAN SYSTEM

While the American Convention does not forbid the imposition of the death penalty,<sup>82</sup> other sections of the American Convention, as well as the jurisprudence of the IACHR and the IACtHR, demonstrate that states within the Inter-American system are strictly regulated with respect to the administration of the death penalty.<sup>83</sup> The restrictions imposed on the application of the death penalty and the standard used to review such cases reflect a strong trend within the Inter-American system toward abolition of this form of punishment.<sup>84</sup>

---

penalty cases).

82. See American Convention, *supra* note 2, art. 4(2) (providing: “[I]n 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.”).

83. See *id.* art. 4(3)-4(6) (forbidding: (1) the reinstatement of the death penalty in states that have already abolished it; (2) states from imposing capital punishment for “political offenses or related common crimes”; (3) the imposition of the death penalty on pregnant women and anyone under 18 or over 70). The Convention also restricts the imposition of the death penalty while a petition for amnesty is pending, and allows anyone on death row to apply for amnesty. See *id.*; see also 1987 INTER-AM. Y.B. ON H.R. (OAS) 492-94 [hereinafter 1987 INTER-AM. Y.B.] (noting the IACHR’s conclusion that the death penalty has been counterproductive, and expressing the intention to join the “universal trend toward abolition of the death penalty.”); Protocol to the American Convention on Human Rights to Abolish the Death Penalty [hereinafter Protocol to the American Convention], *reprinted in Basic Documents, supra* note 1, pmbl. (expressing the intention not to apply the death penalty in the Americas because it has “irrevocable consequences, forecloses the correction of judicial error, and precludes the possibility of changing or rehabilitating those convicted.”); Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. para. 55 (1983) [hereinafter Advisory Op. on the Death Penalty] (limiting those states that have not abolished the death penalty to complying with “certain procedural requirements, such as imposing the death penalty only for the most serious common crimes,” and taking into account the specific situation of each individual in applying the death penalty).

84. See generally Protocol to the American Convention, *supra* note 83, pmbl. (expressing the intention of the States Parties of the American Convention to adopt an instrument to stop the use of the death penalty in the Americas); SCHABAS, *supra* note 80, 261-62 (discussing the abolitionist movement within the Inter-American system). Schabas notes, however, that the movement is not unanimous. See *id.* at 262 (pointing to the “enthusiastic retentionist” states that refuse to abolish the death penalty, including the United States, Jamaica, and Trinidad and To-

## A. THE STANDARD FOR REVIEWING DEATH PENALTY CASES

The IACHR most recently outlined the standard for reviewing death penalty cases in *McKenzie v. Jamaica*<sup>85</sup> and *Baptiste v. Grenada*.<sup>86</sup> In these two decisions, the IACHR reaffirmed its view that the right to life is paramount.<sup>87</sup> As such, when reviewing cases dealing with the right to life or the deprivation of that right,<sup>88</sup> the Commission applies a “heightened scrutiny” test.<sup>89</sup> This test enables the IACHR to align its practices with its abolitionist beliefs, to strictly review the denial of the right to life, and to ensure strict compliance with the provisions of the American Convention.<sup>90</sup>

Even though the IACHR is competent to review alleged human rights abuses perpetrated by States Parties to the American Convention, it is not completely unrestricted when reviewing the decisions of domestic courts.<sup>91</sup> The “fourth instance formula,” developed and used in past IACHR cases, holds that the Commission may not review judgments of competent domestic courts that have accorded the

---

bago).

85. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 967-68 (2000) (available via <http://www.oas.org>) (defining the legal standard for reviewing death penalty cases).

86. See Case 11.743, Inter-Am. C.H.R. 721, 738 (2000) (available via <http://www.oas.org>) (defining the legal standard for reviewing death penalty cases as a “heightened level of scrutiny”).

87. See *id.* at 738 (recognizing that the right to life is the “supreme right of the human being.”).

88. See Case 10.675, Inter-Am. C.H.R. 295, 350-54, OEA Ser.L./V/II.95, doc. 7 rev. (1997) (reaffirming that Article I of the American Declaration confers an obligation on States Parties to the OAS to protect the right to life, and holding that the United States violated this obligation by allowing the refugees to return to Haiti).

89. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 967 n.63 (2000) (available via <http://www.oas.org>) (quoting a United Nations Human Rights Commission’s decision, *Baboheram-Adhin et al. v. Suriname*, which held that “the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State.”).

90. See Case 11.743, Inter-Am. C.H.R. 721, 739 (2000) (available via <http://www.oas.org>) (advocating a gradual approach in order to completely abolish the death penalty).

91. See, e.g., Case 11.673, Inter-Am. C.H.R. 76, 86, OEA Ser.L. V II.95, doc. 7 rev (1997) (discussing the restricting scope of the “fourth instance formula” that the IACHR is bound to apply in all cases).

complainant's proper judicial guarantees.<sup>92</sup> In both *McKenzie* and *Baptiste*, however, the IACHR specifically addressed this issue, and held that the fourth instance formula does not automatically bar the heightened scrutiny test applied to death penalty cases.<sup>93</sup> In other words, the IACHR made a distinction between the decision to impose the death penalty as part of an OAS member state's domestic law, and the application of the death penalty in conformity with the rights protected under the American Convention.<sup>94</sup>

## B. THE DEATH PENALTY IN TRINIDAD AND TOBAGO

The Trinidadian Constitution provides for the imposition of the death penalty.<sup>95</sup> In *De Freitas v. Benny*,<sup>96</sup> for example, the British Privy Council ("Privy Council" or "PC") – the highest Court of Appeal for Caribbean states – upheld the Trinidadian government's imposition of the death penalty for murder, arguing that common law traditions at the time the Constitution entered into force permitted the practice.<sup>97</sup>

In 1993, however, the Privy Council issued *Pratt v. Attorney Gen-*

92. *See id.* (defining the "fourth instance formula" and recognizing that in reviewing cases, the mere allegation of an unjust or incorrect judgment is not sufficient to allow the IACHR to consider the case). The IACHR is careful not to act as an appellate court. *See id.*

93. *See* Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 968 (2000) (available via <http://www.oas.org>) (holding that the fourth instance formula does not prevent the Commission's review of a case where the allegations present a possible violation of rights granted by the American Convention); *see also* Case 11.743, Inter-Am. C.H.R. 721, 739 (2000) (available via <http://www.oas.org>) (determining that, notwithstanding the fourth instance formula, the Commission is permitted to review cases in potential violation of the Convention).

94. *See id.* (stating that the Commission will apply a strict scrutiny analysis to capital punishment cases in order to protect the right to life as set forth in the American Convention).

95. *See* TRIN. & TOBAGO CONST. art. 4(a) (authorizing the taking of life as long as it is conducted along due process grounds).

96. [1976] A.C. 239 (P.C. 1975).

97. *See id.* at 246 (holding that death by hanging was authorized by common law at the time of the entry into force of the Trinidadian Constitution, and was thus permissible).

eral for Jamaica,<sup>98</sup> a decision that would have profound effects on the execution of death sentences in Trinidad and Tobago.<sup>99</sup> Under this decision, the Privy Council set a five-year time limit for carrying out the death penalty, and held that significant delays over that time limit amounted to cruel, inhumane and degrading punishment.<sup>100</sup> Following this decision, any prisoner who had been on death row for over five years automatically had his sentence commuted to life in prison.<sup>101</sup> Since 1993, the Trinidadian government has invoked the Privy Council's decision in *Pratt*<sup>102</sup> as its explanation for implementing death sentences against individuals with petitions before international human rights commissions.<sup>103</sup> On January 27, 1999, however, in another highly controversial and unexpected decision, the Privy Council stayed the executions of two death row inmates until the pending applications before the IACHR had been resolved.<sup>104</sup> This decision outraged the Trinidadian government, who argued that it was contrary to the time limit set forth in *Pratt* for implementing

---

98. See *Pratt v. Att'y Gen. for Jam.*, [1994] 2 A.C. 1, 33-36 (P.C. 1993).

99. See Roget V. Bryan, *Toward the Development of a Caribbean Jurisprudence: The Case for Establishing a Caribbean Court of Appeal*, 7 FLA. ST. J. TRANSNAT'L L. & POL'Y 181, 190 (1998) (observing that *Pratt v. Att'y Gen. for Jam.* had the effect of commuting the death sentences of numerous inmates to life imprisonment).

100. See *Pratt*, [1994] 2 A.C. at 33-36 (arguing that due process guarantees allow courts to permanently stay an execution when it has been delayed for too long a period, and states that those who choose to administer the death penalty have an obligation to administer it in a timely fashion).

101. See Bryan, *supra* note 99, at 190 (noting that at least fifty-three inmates had their death sentences commuted to life imprisonment); see also Birdsong, *supra* note 5, at 291 (describing the impact of the *Pratt* decision with respect to the commutation of sentences).

102. Compare *Pratt*, [1994] 2 A.C. at 33-36 (arguing against delay in implementing the death penalty), with *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (appeal taken from the Court of Appeal of Trinidad and Tobago) (staying the executions of several appellants until the IACHR had issued a ruling on their petitions).

103. See Notice to Denounce, *supra* note 1 (quoting the *Pratt* decision, which held that any 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").

104. See *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (providing the explanations for the January 1999 ruling staying the executions of Darrin Roger Thomas and Haniff Hilaire).

executions.<sup>105</sup>

A later explanation of the decision, however, revealed that the Privy Council had ruled on due process grounds and not on the cruel and unusual treatment or punishment issue in *Pratt*.<sup>106</sup> In its explanation, the Privy Council traced the history of the due process clause in the Trinidadian Constitution,<sup>107</sup> and argued that due process applies not only to the trial process, but also to the appellate process.<sup>108</sup> Furthermore, the Privy Council rejected the Trinidadian government's arguments that the American Convention provision allowing appeals to the IACHR did not apply to due process guarantees under domestic law. The Privy Council argued that the applicants were not trying to enforce the provisions of the American Convention, but were simply trying to secure their due process rights as guaranteed under the Trinidadian Constitution.<sup>109</sup> Finally, the Privy Council recognized the right of the government to withdraw rights it has granted, but stated that those rights could not be taken away retrospectively without violating due process guarantees.<sup>110</sup>

The disagreement with the Privy Council over the death penalty

---

105. See Birdsong, *supra* note 5, at 296 (quoting the Trinidadian Attorney General, who argued that the Privy Council's decision meant that the government would have to wait indefinitely for an IACHR decision before being able to carry out a lawful and constitutionally authorized exercise of state power).

106. See *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (staying the executions on due process grounds, but denying the applicants' request for a commutation of sentence). The Privy Council held that the length of time the applicants had been imprisoned did not exceed the time limit defined in *Pratt*, and that the applicants' pre-trial delay in the instant case was not unreasonable. *See id.*

107. See TRIN. & TOBAGO CONST. art. 5(2) (guaranteeing the right to a fair hearing).

108. See *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (holding that due process allows for a convicted individual to participate in a legal process that has the capability of commuting or reducing his sentence before an executive decision is made).

109. *See id.* (recognizing the principle that treaties do not become binding unless they are incorporated into the domestic law of a country). The Privy Council, however, opined: "[b]y ratifying a treaty which provides for individual access to an international body, the government made that process . . . a part of the domestic criminal justice system and thereby . . . extended the scope of the due process clause in the Constitution." *Id.*

110. *See id.* (noting that section 4(a) of the Trinidadian Constitution prevented the government from curtailing rights retrospectively).

issue has spurred the Caribbean nations, led by the Trinidadian government, to develop their own Caribbean Court of Appeal to bypass the Privy Council.<sup>111</sup> Trinidad's withdrawal from the American Convention, combined with the fact that review by the IACtHR is no longer possible, makes it more than likely that the establishment of such a court will work to the detriment of those citizens wishing to appeal their cases to international bodies if that court becomes the court of final appeal.<sup>112</sup>

The next section of this Comment examines the reports, cases, and decisions of both the IACHR and the IACtHR to highlight the rights guaranteed to Trinidadian citizens on death row under the American Convention.<sup>113</sup>

---

111. *See Caribbean Leaders to Create Regional Criminal Court*, DOW JONES INT'L NEWS SERV., July 3, 1999, WL, ALLNEWSPLUS file (supporting the establishment of a Caribbean Appeals Court); *see also* Bryan, *supra* note 99, at 181 (detailing the reasons behind the move for a Caribbean Criminal Court, but noting that judicial independence is not necessarily guaranteed and that the cost of access if the Court were located in one country would be a significant obstacle for litigants).

112. *But see* Bryan, *supra* note 99, at 188 (arguing against the maintenance of the Privy Council as the court of last resort in the Caribbean because the decisions of the Council are insensitive to the needs and the local practices of the Caribbean countries). Bryan also explains that the movement toward the establishment of the Caribbean Court of Appeals has prompted some countries, such as Trinidad, to opt out of international human rights commissions. *See id.* at 212. Notwithstanding the important implications the Caribbean Court of Appeals has to the sovereign independence of Caribbean nations, however, the establishment of such a regional Court could significantly increase the use of the death penalty in the Caribbean. *See* Birdsong, *supra* note 5, at 288 (noting that the establishment of a Caribbean Court of Appeals could result in more liberal and unrestricted administration of capital punishment).

113. *See generally* Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918 (2000) (available via <http://www.oas.org>) (discussing several court cases dealing with Trinidadian citizens on death row); Case 11.743, Inter-Am. C.H.R. 721 (2000) (available via <http://www.oas.org>) (discussing claims of American Convention violations with respect to the application of the death penalty and the rights of death row "victims").



#### IV. ANALYSIS OF CASE LAW WITHIN THE INTER-AMERICAN SYSTEM AND ITS APPLICATION TO THE TRINIDAD AND TOBAGO CASES

Between 1998 and May 28, 1999, over twenty Trinidadian citizens petitioned the IACHR, complaining that Trinidad had violated their rights under the American Convention (at the time, still in force).<sup>114</sup> In each of those cases, the IACHR claimed jurisdiction and determined that the petitions were admissible.<sup>115</sup> The following sections analyze the petitions of the Trinidadian citizens in light of past IACHR and IACtHR jurisprudence, to determine whether the Trinidadian government has violated its continuing obligations under the American Convention.<sup>116</sup>

##### A. THE TRINIDADIAN CASES BEFORE THE IACHR

Although the IACHR's reports and pleadings are kept secret initially,<sup>117</sup> analysis of past IACHR reports shows that when the Commission scrutinizes death penalty cases, it pays special attention to the requirements of due process and judicial protection in death penalty cases.<sup>118</sup> Recently, the Commission held that an individual's due

---

114. See Cases 12.005, 12.042, 12.052, 11.815, 11.854, 11.837, 11.816, 11.855, Inter-Am. C.H.R. (1998, 1999) (available via <http://www.oas.org>) (alleging violations of Article 4 (the right to life), Article 5 (the right to humane treatment), Article 7 (the right to personal liberty), Article 8 (the right to a fair trial), Article 24 (the right to equal protection before the law), and Article 25 (the right to judicial protection) of the American Convention).

115. See generally *id.* (analyzing the different criteria for admissibility, and determining that, in all cases, the petitions demonstrated exhaustion of domestic remedies, timely filing, and lack of duplication).

116. See *supra* Part II (discussing the continuing obligations that the Trinidadian government has under the American Convention).

117. See American Convention, *supra* note 2, art. 50 (stating that the IACHR report is first transmitted to the state party concerned, and that the report may not be published). Only after the IACHR has made its recommendations available to the state party concerned, and given the state three months to comply, can the Commission make the decision to publish the report. See *id.* art. 51.

118. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 967 (2000) (available via <http://www.oas.org>) (stating that the IACHR must apply a heightened level of scrutiny in capital punishment cases). Furthermore, the IACHR follows the principle that any State Party that applies the death penalty "[must] comply strictly with the provisions of the Convention, including . . . the

process guarantees under Article 8 of the Convention permit that individual to question the appropriateness of his or her sentence.<sup>119</sup> Furthermore, the Commission defines an individual's due process guarantees under Article 25 of the American Convention (the right to recourse) as the right to petition an international tribunal for an objective and neutral judicial investigation.<sup>120</sup>

In the case of Trinidadian petitioners to the IACHR, it is significant to note that the Trinidadian Constitution does not forbid the imposition of the death penalty.<sup>121</sup> In such cases, the Commission must also decide whether the death penalty, as administered in each of the cases submitted, is consistent with the provisions of the American Convention.<sup>122</sup> According to the IACHR, the imposition of a mandatory death penalty sentence violates Article 4(1) of the American Convention because it does not allow review<sup>123</sup> or consideration of an individual's specific circumstances before sentencing.<sup>124</sup> When the

right to life . . . , the guarantees of humane treatment . . . , and the due process and judicial protections guaranteed under Articles 8 and 25 of the Convention." *Id.*; see also American Convention, *supra* note 2, art. 25 (holding that all individuals have a right to a remedy in court when his or her fundamental rights have been violated, regardless of whether these violations were committed by individuals acting within their official duties).

119. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 980-81 (2000) (available via <http://www.oas.org>) (stating that due process also includes the right of effective review of a death sentence).

120. See Case 11.743, Inter-Am. C.H.R. 721, 767 (2000) (available via <http://www.oas.org>) (defining the right to recourse under Article 25 of the American Convention to include petitions to tribunals).

121. See TRIN. & TOBAGO CONST. art. 4(a) (guaranteeing the right to life and the right not to be deprived of that right *except* by due process of law).

122. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 975 (2000) (available via <http://www.oas.org>) (stating 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."); see also *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (noting that Section 4 of Trinidad's Offences Against the Person Act establishes a mandatory death sentence for murder).

123. See Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 979 (2000) (available via <http://www.oas.org>) (emphasizing that the imposition of mandatory death sentences effectively bars higher courts from reviewing the appropriateness of each sentence).

124. See *id.* at 977 (arguing that a mandatory death sentence prohibits case-by-case review when determining whether a death sentence is an appropriate punish-

death penalty is applied in this manner, an individual may be arbitrarily deprived of life, in violation of Article 4(1) of the American Convention.<sup>125</sup> Under this reasoning, the IACHR could conclude that Trinidad is in violation of the American Convention.

While the individual petitions by the Trinidadian citizens were being considered by the IACHR, the Commission requested that the IACtHR adopt certain provisional measures<sup>126</sup> to refrain from executing those people who had petitions before the IACHR.<sup>127</sup> Despite the resulting IACtHR order,<sup>128</sup> the Trinidadian government executed at least three of the petitioners.<sup>129</sup> Following Trinidad's continuing defiance of the IACtHR order and its obligations under the American Convention, the IACHR submitted twenty-three different cases, including *Hilaire*<sup>130</sup> and *Constantine*<sup>131</sup> ("the Trinidad cases") to the

---

ment).

125. *See id.*

126. *See* American Convention, *supra* note 2, art. 63(2) (stating that in certain situations of "extreme gravity and urgency, and when necessary to avoid irreparable damage . . .," the court is authorized to "adopt such provisional measures as it deems pertinent in matters it has under consideration."). If, however, the case is not yet before the IACtHR, the IACHR may request the adoption of provisional measures. *See id.*

127. *See, e.g.*, IACtHR Court Order, *supra* note 5, at 317-27 (ordering Trinidad to stay the executions of petitioners to the IACHR and submit proof of compliance, and summoning Trinidad to a public hearing on the issue).

128. *See supra* Part II.B (discussing the jurisdiction of the IACtHR over the Trinidadian government, and noting the continuing Trinidadian obligations to respect IACtHR decisions and rulings).

129. *See supra* note 3 and accompanying text (discussing the various executions carried out by the Trinidadian government in violation of the IACtHR Order to stay the executions).

130. *See* IACHR ANN. REP. 1999, *supra* note 3, at 1375-76 (noting that Case 11.816, Inter-Am. C.H.R. 1375 (1999), was submitted to the IACtHR on May 26, 1999).

131. *See id.* at 1376 (stating that the IACHR had submitted to the IACtHR twenty-three consolidated cases against Trinidad for violations of Articles 4, 5, and 8 of the American Convention). The consolidated cases are Cases 11.787 (George Constantine), 11.814 (Wenceslaus James), 11.840 (Denny Baptiste), 11.851 (Clarence Charles), 11.853 (Keiron Thomas), 11.855 (Anthony Garcia), 12.005 (Wilson Prince), 12.021 (Darrin Roger Thomas), 12.042 (Mervyn Edmund), 12.043 (Samuel Winchester), 12.052 (Martin Reid), 12.072 (Rodney Davis), 12.073 (Gangadeen Tahaloo), 12.075 (Noel Seepersad), 12.076 (Wayne Matthews), 12.082 (Alfred Frederick), 12.093 (Natasha De Leon), 12.111 (Vijay Mun-

IACtHR.<sup>132</sup> The IACHR took this action only after considering the individual petitions in full, and after efforts to reach friendly settlement had failed.<sup>133</sup> A decision is not expected on those case until late 2001 or early 2002.<sup>134</sup>

## B. THE CASE BEFORE THE IACtHR: PRELIMINARY PROJECTIONS

In addition to being a party to the American Convention when the petitions were filed, Trinidad also submitted itself to the IACtHR's compulsory jurisdiction under Article 62 of the American Convention.<sup>135</sup> As such, the IACtHR must resolve the issue of whether Trinidad's procedures for arrest, detention, conviction and imposition of a mandatory death sentence violate Articles 4, 5, 7, 8 and 25 of the American Convention.<sup>136</sup> Before the IACtHR can proceed to the

---

groo), 12.112 (Philip Chotalal), 12.129 (Naresh Boodram and Joey Ramiah), 12.137 (Nigel Mark), 12.140 (Wilberforce Bernard), and 12.141 (Steve Mungroo). *See id.*

132. *See* e-mail from the Secretariat of the Inter-American Commission on Human Rights, (June 20, 2000, 07:30 EST) (on file with author) [hereinafter e-mail Correspondence with IACHR] (disclosing that the IACHR had taken the Trinidadian petitions to the IACtHR, but noting that all pleadings and documents were to be kept private under order by the Court); *see also* IACHR ANN. REP. 1999, *supra* note 3, at 25 (listing the cases submitted in that year to the IACtHR).

133. *See* Letter from Hernán Salgado-Pesantes, President of the Inter-American Court of Human Rights to Basdeo Panday, Prime Minister of Trinidad and Tobago, (Aug. 19, 1998) [hereinafter Letter to Panday], *reprinted in* ANN. REP. OF THE INTER-AM. CT. ON H.R. (1998) [hereinafter IACtHR ANN. REP. 1998] (highlighting one of the many refusals of the Trinidadian government to respond to efforts by the IACHR and the IACtHR to settle death penalty cases before the IACHR).

134. *See* e-mail Correspondence with IACHR, *supra* note 132 (stating that while it is difficult to estimate, the Commission does not expect the court to issue a decision until the fall of 2001 or the spring of 2002).

135. *See* American Convention, *supra* note 2 (noting the reservations made at the time of accession, and recognizing the compulsory jurisdiction of the IACtHR with the limitation that the acceptance is valid only when the Court's decisions are not inconsistent with Trinidadian laws).

136. *See* Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918, 933 (2000) (available via <http://www.oas.org>) (arguing that the death penalty constitutes an "arbitrary and disproportionate punishment" that violates an individual's right to a fair trial). In this case, the petitioner alleged that Jamaica had violated Articles 1 (the obligation of each state to respect the rights enshrined in the American Convention), Article 4 (the right to life), Article 5 (the right to humane treatment), Article 7 (the right to personal liberty), Article 8 (the right to a fair trial), Article 24 (the right to equal protection) and Article 25 (the right to judicial

merits of the case, however, it must first determine whether it has jurisdiction to hear the case.<sup>137</sup> To ensure that the IACtHR has proper jurisdiction to hear a specific case, the IACHR must follow specific procedures before it submits a case to the court. Otherwise, it risks having the case dismissed for not conforming to the procedural requirements.<sup>138</sup> When a petition is submitted, the IACHR must first determine whether the case is admissible.<sup>139</sup> Second, it must request certain information from the state that is accused of human rights abuses.<sup>140</sup> In turn, the IACHR is required to furnish the state with the relevant portions of the complaint against it.<sup>141</sup> Next, the accused

---

protection) of the American Convention. Although some of the cases involving Trinidad citizens are not yet open for public review, the issues presented in these cases are basically the same as those raised in Cases 12.023, 12.044, 12.107, 12.126, and 12.146, Inter-Am. C.H.R. 918 (2000) (available via <http://www.oas.org>). See Cases 12.005, 12.042, 12.052, 11.815, 11.854, 11.837, 11.816, 11.855, Inter-Am. C.H.R. 1375-76 (1998, 1999) (available via <http://www.oas.org>) (setting forth Trinidad's alleged violations of Articles 5 (the right to humane treatment), Article 7 (the right to personal liberty), and Article 8 (the right to a fair trial) of the American Convention); see also Case 11.743, Inter-Am. C.H.R. 721 (2000) (available via <http://www.oas.org>) (alleging that Grenada had violated petitioner's rights under Articles 4(1) (the right not to be arbitrarily deprived of life), Article 4(6) (the right of a death row inmate to apply for amnesty, pardon, or commutation of sentence, and to have his sentence stayed until all pending decisions have been resolved), Article 5(1) (the right to have physical, moral and mental integrity respected), Article 5(2) (the right not to be subjected to torture, or to cruel, inhumane, or degrading punishment or treatment), Article 5(6) (the right to have reform and social re-adaptation as part of any punishment that involves deprivation of liberty), Article 8 (the right to a fair trial) and Article 24 (the right to equal protection) of the American Convention).

137. See American Convention, *supra* note 2, art. 64(1) (defining the IACtHR's jurisdiction and competence to hear a case); see also Pasqualucci, *supra* note 34, at 19-54 (describing the practice of preliminary objections before the IACtHR, which is essentially a motion to dismiss the case). Under these proceedings, a state may argue that the case was initially inadmissible, that the court has no jurisdiction to hear the case, or that the petitioner(s) failed to observe the proper procedural requirements, thereby making the case inadmissible. See *id.*

138. See American Convention, *supra* note 2, art. 61 (stating that in order for the Court to hear a case, the specific procedures outlined in Articles 48 and 50 of the Convention must be followed).

139. See *supra* Part I.A (discussing the requirements for admissibility before the IACHR).

140. See American Convention, *supra* note 2, art. 48(1)(a).

141. See *id.* (setting forth the procedures the IACHR must follow when it determines a case is admissible).

state is given a reasonable period of time to comply with the Commission's requests.<sup>142</sup> At some designated time, the record is closed and no further information is accepted.<sup>143</sup> After gathering the information, the IACHR must determine whether the petition is still admissible based on the evidence it has received.<sup>144</sup> The final procedural requirement is that the IACHR place itself at the disposal of the parties so that they may reach a "friendly settlement."<sup>145</sup> If that fails, the IACHR must draft a report stating the facts of the case and its findings, and make recommendations to the state party involved.<sup>146</sup>

Based on the IACHR reports outlining the procedural action taken with respect to the Trinidad cases, the petitioners will most likely be found to have fulfilled all of the necessary procedural requirements for admissibility before the IACHR.<sup>147</sup> Furthermore, after the petitions were lodged, the IACHR followed standard procedures and attempted friendly settlement with the Trinidadian government on a number of the cases, but had no success.<sup>148</sup> Only if the IACtHR finds

---

142. See Regulations of the IACHR, *supra* note 27, art. 34(5) (establishing a timeframe of ninety days for states to respond to IACHR requests for information). A state may also request, for "justifiable cause," a thirty day extension in order to provide the requested information, but extensions may not be granted if the timeframe will exceed 180 days. See *id.* art. 34(6).

143. See American Convention, *supra* note 2, art. 48(1)(b). If the record has not been closed, however, the IACHR is authorized to verify facts, conduct an investigation, and request more information from the alleged offending state. See *id.* arts. 48(1)(d)-(e).

144. See *id.* art. 48(1)(c) (authorizing the IACHR to "declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received").

145. See *id.* art. 48(1)(f) (stating that the "Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this [American] Convention").

146. See *id.* art. 50 (1)(2) (providing that the Commission's report be sent to the state(s) concerned, but forbidding the report to be published).

147. See Cases 12.005, 12.042, 12.052, 11.815, 11.854, 11.837, 11.816, 11.855, Inter-Am. C.H.R. (1998, 1999) (available via <http://www.oas.org>) (noting that the petitioners had fulfilled the exhaustion of domestic remedies requirement, filed their applications in a timely manner, and did not have any petitions pending before other international bodies); see also American Convention, *supra* note 2 (discussing the requirements for admissibility of a petition before the IACHR).

148. See Cases 12.005, 12.042, 12.052, 11.815, 11.854, 11.837, 11.816, 11.855,

that the procedural requirements are met is it then allowed to rule on the merits.<sup>149</sup>

In addition to challenging the procedural requirements discussed above, Trinidad may seek to challenge the IACtHR's jurisdictional competence to hear death penalty cases based on a reservation it made when it initially ratified the American Convention.<sup>150</sup> According to this reservation, the Trinidadian government recognizes the competence of the IACtHR only with respect to matters not contravening its Constitution or any of its domestic laws.<sup>151</sup> The American Convention allows states to make certain reservations to their treaty obligations.<sup>152</sup> The IACtHR has held, however, that these reservations must remain compatible with the fundamental principles of the Convention.<sup>153</sup> While the court did not determine specifically what constituted an incompatible reservation,<sup>154</sup> its interpretation of the right

---

Inter-Am. C.H.R. (1998, 1999) (available via <http://www.oas.org>) (describing various attempts at friendly settlements, and noting that Trinidad refused to attend hearings).

149. See American Convention, *supra* note 2, art. 61(2) (stating that the procedures in Articles 48 and 50 must be completed before the IACtHR can hear the case). Articles 48 and 50 outline the specific procedures the IACHR must take when it has received a complaint. See *id.* arts. 48, 50.

150. See American Convention, *supra* note 2 (examining the reservations to the American Convention made by the Trinidadian government); Pasqualucci, *supra* note 34, at 29 (examining the Court's jurisdiction, or lack thereof, in cases where states have made reservations to the American Convention).

151. See American Convention, *supra* note 2 (stating that the Trinidadian government recognizes the competence of the IACtHR only as long as it does not "infringe, create or abolish any existing rights or duties of any private citizen.").

152. See *id.* art. 75 (providing that all reservations to the Convention must conform to the provisions of the Vienna Convention); Vienna Convention, *supra* note 48, art. 19 (holding that reservations are acceptable except when "(a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) . . . the reservation is incompatible with the object and purpose of the treaty.").

153. See The Effect of Reservations on the Entry Into Force of the American Convention (Arts. 74 and 75), Advisory Opinion OC-2/82 of Sept. 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 2, para. 22 (1982) (concluding that the reservations which do not violate the principles of the American Convention are not subject to approval by either the OAS or other member states in order for them to become effective).

154. See *id.* para. 39 (declining to rule on issues that "might arise in the future in connection with the interpretation and application of Article 4 of the [American]

to life provisions of the American Convention<sup>155</sup> denounces a reservation that would effectively allow a state party to circumvent treaty obligations.<sup>156</sup>

Since Article 4(2) of the American Convention provides for the death penalty in certain circumstances,<sup>157</sup> and Trinidad's practice of imposing the death penalty existed when the state ratified the American Convention,<sup>158</sup> current IACtHR jurisprudence indicates that Trinidad is not in violation of its treaty obligations by simply imposing the death penalty for certain crimes.<sup>159</sup> The manner in which the death sentence is imposed is still restricted, however, and the Trinidadian government is obligated to comply with such restrictions.<sup>160</sup>

---

Convention . . .").

155. See American Convention, *supra* note 2, art. 4 (defining the right to life standards and placing restrictions on the administration of the death penalty); Advisory Op. on the Death Penalty, *supra* note 83, para. 47 (holding Guatemala's reservation to Article 4 of the American Convention invalid because, although it was not prohibited by the Convention, it significantly "weaken[ed] the system of protection established by that instrument.").

156. See Advisory Op. on the Death Penalty, *supra* note 83, paras. 63- 64 (suggesting that a reservation would be invalid if a state, acting on its own, wished to interpret that reservation in a way that would clearly violate the fundamental principles of the American Convention). The IACtHR also held that a reservation must be "interpreted by examining its text in accordance with the ordinary meaning which must be attributed to [it] . . . [and that] this approach must be followed except when the resultant interpretation . . . is manifestly absurd or unreasonable." *Id.*

157. See American Convention, *supra* note 2, art. 4(2) (outlining one of the restrictions on the death penalty, which states that "in countries that have not abolished the death penalty, it may be imposed only for the most serious crimes . . .").

158. See *id.* (setting forth Trinidad and Tobago's reservations to the American Convention and the jurisdiction of the IACtHR). At the time of accession, Trinidad lodged a reservation that allowed for the imposition of the death sentence on anyone over seventy years of age, and recognized the jurisdiction of the Court as long as it did not "infringe, create or abolish any existing rights or duties of any private citizen." *Id.*

159. See Advisory Op. on the Death Penalty, *supra* note 83, para. 70 (allowing for the continued imposition of the death penalty for crimes to which it applied at the signing and making of reservations). The IACtHR specifically held that no state may extend the death penalty to "crimes for which such a penalty was not previously provided for under domestic law" or "extend by subsequent legislation the application of the death penalty to crimes for which this penalty was not previously provided." *Id.*

160. See IACtHR Court Order, *supra* note 5 (discussing the fact that Trinidad



While the above sections focused solely on existing obligations under the American Convention, the following sections will examine the implications of the Trinidadian government's actions both before and after the period of continuing obligations expires.<sup>161</sup>

## V. IMPLICATIONS FOLLOWING TRINIDAD AND TOBAGO'S WITHDRAWAL FROM THE AMERICAN CONVENTION

The decision of the Trinidadian government to withdraw from the American Convention threatens to have a detrimental effect on the rights of Trinidadian citizens on death row, and within the Inter-American system in general.<sup>162</sup> Although Trinidadian citizens will still be allowed to submit petitions to the IACHR in the post-withdrawal period,<sup>163</sup> they will be denied the opportunity to seek relief under the American Convention, which is not only binding,<sup>164</sup> but also offers the most comprehensive and extensive list of rights protected in the Inter-American system.<sup>165</sup> As such, Trinidadian citizens will only be able to seek relief through the American Declaration, which is a much narrower definition of human rights in the region.<sup>166</sup>

---

has continuing obligations under the Inter-American system, despite having withdrawn from the American Convention).

161. See *supra* notes 54-79 and accompanying text (discussing the continuing obligations of the Trinidadian government under the American Convention despite its withdrawal, but also recognizing that these obligations would not last for an indefinite period of time).

162. See *infra* note 205 and accompanying text (discussing the fact that other Caribbean nations are poised to follow Trinidad and Tobago's lead on the death penalty issue); AI ANN. REP. 1999, *supra* note 4 (arguing that Trinidad's decision to withdraw from the American Convention would have a detrimental effect on the Inter-American human rights system because it precludes international investigation of alleged human rights abuses).

163. See Regulations of the IACHR, *supra* note 27, arts. 51-54 (describing the procedures for petitions concerning states that are not a party to the American Convention).

164. See *supra* Part I.B (discussing the binding nature of the American Convention).

165. See Case 2141, Inter-Am. C.H.R. 25, 35, OEA/Ser.L./V/II.54, doc. rev. 1 (1981) (holding that a State that is not a party to the American Convention can not be found to be in violation of any of the rights enshrined therein).

166. See Case 9647, Inter-Am. Ct. H.R. paras. 43, 47, OEA/Ser. L./V/II.71, doc.

Finally, because other Caribbean nations are poised to follow Trinidad's lead, the system for protecting human rights within the Inter-American region will be similarly curtailed for many others.<sup>167</sup>

#### A. DUE PROCESS GUARANTEES AND THE IMPLICATIONS FOR TRINIDADIAN CITIZENS

For now, the Trinidadian government still has existing obligations under the American Convention.<sup>168</sup> Although it may be in compliance with treaty obligations even as it practices capital punishment, the Trinidadian government is not relieved of its obligation under the American Convention to provide due process.<sup>169</sup> The complaints against the Trinidadian government allege that the state is in violation of the American Convention for the following reasons: imposing a mandatory death sentence, failing to allow opportunity to petition for amnesty, cruel and inhumane treatment of prisoners, failing to try the petitioners within a reasonable amount of time, depriving its citizens the right to a fair trial, and failing to provide adequate legal

---

9 rev. 1 (1987) (stressing that even though Article 1 of the American Declaration does not specifically mention the death penalty, certain provisions of the OAS Charter give the American Declaration at least some binding force).

167. See *infra* note 205 (suggesting that Trinidad's withdrawal from the American Convention could cause a chain reaction within the region).

168. See IACtHR Court Order, *supra* note 5 (detailing the continuing obligations of the Trinidadian government).

169. See American Convention, *supra* note 2, arts. 8, 24-25 (outlining due process guarantees); see also *id.* art. 27(1) (noting that the only time a state can suspend certain guarantees is "[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party . . ."). Suspension of the following articles, however, as well as the "judicial guarantees essential for the protection of such rights," is not permitted: Art. 3 (the right to juridical personality), Art. 4 (the right to life), Art. 5 (the right to humane treatment), Art. 6 (freedom from slavery), Art. 9 (freedom from ex post facto laws), Art. 12 (freedom of conscience and religion), Art. 17 (the rights of the family), Art. 18 (the right to a name), Art. 19 (the rights of the child), Art. 20 (the right to nationality), and Art. 23 (the right to participate in government). See *id.*; see also Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, Jan. 30, 1987, Inter-Am. Ct. H.R. (Ser. A) (1987), reprinted in 1987 INTER-AM. Y.B., *supra* note 83, at 750, 770 (arguing that the legal remedies afforded by Articles 7(6) and 25(1) of the American Convention cannot be suspended because "they are judicial guarantees essential for the protection of the rights and freedoms whose suspension Article 27(2) prohibits").

aid.<sup>170</sup>

In interpreting Article 5 of the American Convention, the IACtHR has held that a prisoner's right to humane treatment includes the right to a minimum standard of living conditions.<sup>171</sup> In cases where there is no substantive proof or where there is uncorroborated or conflicting testimony, however, the court has refrained from charging the state with a violation of the American Convention.<sup>172</sup> In the case of the Trinidadian petitioners, if the IACtHR is not able to gather more evidence during the course of the trial,<sup>173</sup> the IACHR findings that there were no violations of Article 5 in the Trinidadian prisons will stand.<sup>174</sup>

Another alleged violation of the American Convention concerns the right of Trinidadian citizens to go before a competent, independent and impartial tribunal.<sup>175</sup> Significantly, the only issue that the IACtHR has addressed thus far is the effect of separation of powers on the independence and impartiality of any judicial system.<sup>176</sup> While

---

170. See *Petitions and Cases Before the Inter-American Court of Human Rights, Provisional Measures and Legal Proceedings*, reprinted in IACHR ANN. REP. 1999, *supra* note 3, at 1376 (providing a general list of the allegations against the Trinidadian government).

171. See *Neira Alegria et al. Case*, Decision of Jan. 19, 1995, Inter-Am. Ct. H.R. para. 60 (1995), reprinted in 1995 INTER-AM. Y.B. ON H.R. (OAS) 684, 722 [hereinafter 1995 INTER-AM. Y.B.] (holding that anyone "deprived of his or her liberty has the right to live in detention conditions compatible with his or her personal dignity.").

172. See *id.* at 736 (stating that Peru had not violated Article 5 because there was no proof of inhumane treatment or of anyone offending the prisoners' dignity while the prisoner was in custody).

173. See Verónica Gómez, *The Interaction Between the Political Actors of the OAS, the Commission, and the Court*, in *The INTER-AMERICAN SYSTEM OF HUMAN RIGHTS*, *supra* note 16, at 201-09 (highlighting the IACtHR's limited financial resources, and indicating that fact finding missions are difficult for the Court to undertake).

174. See, e.g., Case 11.815, Inter-Am. C.H.R. para. 45, OEA/Ser.L./V/II.102 Doc. 6 rev. (1999) (detailing Trinidadian prison conditions in general and finding no evidence of cruel and inhumane treatment). *But cf. Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (describing prison conditions as "hot, stuffy and cramped").

175. See American Convention, *supra* note 2, art. 8(1) (stating that every person has the right to a hearing before a "competent, independent, and impartial tribunal, previously established by law").

176. See Case 11.006, Inter-Am. C.H.R. (1995), reprinted in 1995 INTER-AM.

confidence in the Trinidadian judiciary is low,<sup>177</sup> the sheer extent of judicial corruption and incompetence that the IACtHR envisaged in past cases simply does not exist on a massive scale in Trinidad.<sup>178</sup>

In terms of providing the petitioners with other due process guarantees,<sup>179</sup> however, the IACHR has determined that each case must be evaluated with respect to its own circumstances,<sup>180</sup> thus making it difficult to predict how the court will rule on the complaints against Trinidad.<sup>181</sup> In such cases, the IACtHR has interpreted the state's obligations with respect to Article 1(1) of the American Convention, and held the state responsible for the denial of any of the rights as defined within the Convention.<sup>182</sup>

Trinidadian obligations under the American Convention will continue until there are no more cases alleging violations of the American Convention during the period that the state was still a signatory.<sup>183</sup> At that time, Trinidadian citizens will need to rely mainly on

---

Y.B., *supra* note 171, at 232, 276 (quoting the Commission, who asserted: "effective observance of [judicial] guarantees is based on the independence of the judiciary.").

177. *See infra* notes 216-217 and accompanying text (discussing the lack of confidence in the Trinidadian judiciary).

178. *See* Case 11.006, Inter-Am. C.H.R. (1995), in 1995 INTER-AM. Y.B., *supra* note 171, at 232 (discussing the significant impact of the reorganization of the Peruvian judicial system on due process guarantees).

179. *See, e.g.*, Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a)-(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of Aug. 10, 1990, Inter-Am. Ct. H.R. (Ser. A) No. 11, para. 28 (1990) [hereinafter Advisory Op.: Exhaustion of Domestic Remedies] (implying that the right to legal representation is a "due guarantee").

180. *See* Case 11.815, Inter-Am. C.H.R. para. 48, OEA/Ser.L/V/II.102 doc. 6 rev. (1999) (declining to accept petitioner's argument that a specific amount of time between arrest and adjudication is an *ipso facto* violation of his rights).

181. *See supra* note 117 (noting that IACHR reports and pleadings submitted to the IACtHR are kept secret, thus making it even more difficult to verify the facts of each case until after the Court publishes its rulings).

182. *See, e.g.*, Godinez Cruz Case, Decision of Jan. 20, 1989, Inter-Am. Ct. H.R. (1989), in 1989 INTER-AM. Y.B. ON H.R. (OAS) 656, 726-40 [hereinafter 1989 INTER-AM. Y.B.] (emphasizing that an allegation of abuse in violation of any provision of the American Convention results in an alleged violation of Article 1(1) of the Convention).

183. *See* Ivcher Bronstein Case, Judgment of Sept. 24, 1999, Inter-Am. Ct. H.R. 355, 368-69, OEA/Ser. GCP/ doc. 3285/00 (2000) (holding that a state may only

the IACHR's interpretation and application of the American Declaration in order to safeguard their rights.<sup>184</sup> The next section discusses the IACHR's approach to the death penalty under the American Declaration, and focuses on the impact that the Trinidadian government's decision to withdraw from the American Convention will have on the Inter-American system as a whole.<sup>185</sup>

## B. IMPLICATIONS FOR THE INTER-AMERICAN SYSTEM

The IACHR addressed the Article 1 right to life standard under the American Declaration in two major cases—the Roach and Pinkerton case, decided in 1987,<sup>186</sup> and the Celestine case, decided in 1989.<sup>187</sup> In its adjudication of the Roach and Pinkerton case, the IACHR addressed the question of whether the United States could execute a person who had committed murder, but who was under eighteen years of age.<sup>188</sup> After reiterating the United States' obligations under the American Declaration,<sup>189</sup> the IACHR sought to define the exact

---

be released from its obligations under the American Convention if it has given the appropriate notice, but noting that the release from obligations is not immediate).

184. See SCHABAS, *supra* note 80, at 266-73 (noting that countries that have not passed the American Convention into law are still bound to a petition protocol before the IACHR, and outlining two landmark IACHR capital punishment cases reviewed under such a petition protocol).

185. See *id.* (discussing the IACHR's interpretation of the American Declaration with respect to death penalty cases brought against states not a party to the American Convention).

186. See Case 9647, Inter-Am. Ct. H.R. para. 6, OEA/Ser.L./V/II.71, Doc. 9 rev. 1 (1987) (alleging that the United States had violated Article 1's (the right to life), Article 7's (the special protection for children), and Article 26's (the prohibition against cruel and unusual punishment) provisions under the American Declaration).

187. See Case 10.031, Inter-Am. C.H.R. 62, 63, OEA/Ser.L./V/II.77 rev.1, Doc. 7 (1989) (alleging that the United States had violated Article 1 (the right to life), Article 2 (equality before the law without distinction as to race), and Article 26 (the right to be given an impartial and public hearing) of the American Declaration).

188. See Case 9647, Inter-Am. Ct. H.R. para. 42, OEA/Ser.L./V/II.71, Doc. 9 rev.1 (1987) (defining the issue as whether sentencing minors under eighteen years of age to death is contrary to the human rights standards with which the United States must comply).

189. See *id.* at paras. 45-48 (noting that the United States had signed the OAS Charter, and was consequently bound to the American Declaration and the IACHR

scope and meaning of the American Declaration's right to life provision.<sup>190</sup> In its determination, the IACHR examined whether customary international law prohibited the execution of persons under eighteen years of age, and concluded that it did.<sup>191</sup>

In the Celestine case, the IACHR faced the issue of whether the death penalty - applied in a racially discriminatory and partial manner - denied the petitioner's right to life under the American Declaration.<sup>192</sup> The petitioner was an African-American man from Louisiana, sentenced to death for raping and murdering a white woman.<sup>193</sup> Petitioner claimed that the victim's race was the most significant factor in determining whether to impose the death penalty, and provided various statistical studies as evidence of the racial discrimination that occurred during sentencing.<sup>194</sup> The IACHR, however, agreed with the United States government that the presentation of mere statistical studies alone does not constitute sufficient proof of racial discrimination.<sup>195</sup>

To date, the IACHR's explication of the right to life provision of

Statute). The IACHR then held that Articles 3(j), 16, 51(e), 112 and 150 of the OAS Charter, as well as the other instruments signed by the United States government, served to make the American Declaration binding. *See id.*; *see also supra* Part I.B (discussing the binding force of the American Declaration).

190. *See id.* at para. 43 (stressing the fact that the American Declaration does not explicitly state a position on the death penalty, thus forcing the IACHR to determine the scope of the provision, i.e., whether the provision meant to abolish the death penalty in member states or to place a restriction on the application of the death penalty with respect to juveniles).

191. *See id.* at paras. 50-54 (discussing the role of *jus cogens*, and defining it as a set of mores that is either expressly or implicitly accepted - by law or through tradition - as a group of rules that help define and shape "international public policy"). The IACHR concluded that the accepted norm within the Inter-American system precluded the execution of juveniles. *See id.* at 302.

192. *See* Case 10.031, Inter-Am. C.H.R. 62, OEA Ser.L. V II.77 rev.1 Doc.7 (1989) (stating the main issue of the case to be determined).

193. *See id.* (setting forth the facts of the case and the petitioner's complaint).

194. *See id.* at 63-66 (discussing the bases of the petitioner's claims).

195. *See id.* at 72 (holding that the petitioner failed to persuade the IACHR that statistical evidence alone was sufficient to show an intent to discriminate). The IACHR then concluded that the United States was not in violation of the American Declaration for not accepting this insufficient piece of evidence as proof of racial bias. *See id.*

the American Declaration remains limited in scope.<sup>196</sup> Furthermore, because the American Declaration fails to mention the issue of the death penalty anywhere in its provisions, death row inmates have greater difficulty articulating their complaints.<sup>197</sup> Finally, since only the IACtHR can issue binding decisions or provisional measures,<sup>198</sup> under the American Declaration, there is no meaningful opportunity for relief,<sup>199</sup> or a stay of execution while the application is pending before the IACHR.<sup>200</sup>

These observances are significant in terms of impact on the Inter-American system. If more countries follow Trinidad's lead, as is expected to happen, then the purpose of the Inter-American system - the protection of human rights - will be undermined.<sup>201</sup>

---

196. See SCHABAS, *supra* note 80, at 266-70 (explaining that the IACHR rejected the broad "customary international law" argument asserted in the *Roach & Pinkerton* Case, with respect to death sentences for offenders under the age of eighteen).

197. Compare American Convention, *supra* note 2, with American Declaration, *supra* note 13 (suggesting that death penalty claims under the American Convention are easier because they provide a list of enumerated rights and restrictions upon the application of the death penalty, while the American Declaration's broad statement regarding the right to life leaves much for future definition and interpretation).

198. See American Convention, *supra* note 2, arts. 62.1, 63.2 (declaring that once a country has recognized the IACtHR's jurisdiction, the court is authorized to make binding decisions on all cases that come before it, and require analysis of the American Convention); see also *supra* Part II.A (emphasizing that the American Declaration has no similar provisions, and that claims arising under it may not be referred to the IACtHR).

199. See *id.* art. 63 (stating that if a violation of the American Convention has occurred, the IACtHR has the authority to order the State Party involved to allow the petitioner the enjoyment of the right or freedom that was violated). The American Convention also authorizes the IACtHR to order that fair compensation be paid to the injured party. See *id.* While the Regulations of the Inter-American Commission on Human Rights authorize the IACHR to hear petitions against states not a party to the American Convention, it does not provide for any type of relief other than non-binding recommendations and reports. See Regulations of the IACHR, *supra* note 27, arts. 51-54 (outlining specific procedures for countries that are not parties to the American Convention).

200. See Case 9647, Inter-Am. Ct. H.R. para. 9, OEA/Ser.L./V/II.71, doc. 9 rev.1 (1987) (demonstrating that the IACHR requested the United States government to stay the execution of the petitioners "in the spirit of major human rights instruments," but noting that the government flatly refused this request).

201. See generally Davidson, *supra* note 12, ch. 1 (discussing the birth of, and

## VI. RECOMMENDATIONS FOR TRINIDAD AND THE INTER-AMERICAN SYSTEM

In April 2000, the Committee on Juridical and Political Affairs within the OAS emphasized the continuing need to evaluate and strengthen the Inter-American human rights system.<sup>202</sup> This section recognizes some of the weaknesses in the system, and makes recommendations for strengthening the protection of human rights within both Trinidad and the Inter-American system.<sup>203</sup>

### A. FOR THE TRINIDADIAN GOVERNMENT

For Trinidad, re-accession to the American Convention should be a priority.<sup>204</sup> The unprecedented action taken by the government in withdrawing from the American Convention threatens to have significant and detrimental consequences for human rights in the Caribbean, as other Caribbean nations are now positioned to follow Trinidad's lead.<sup>205</sup> As the most practical alternative to complete withdrawal from the Inter-American system, Trinidad should follow, the Privy Council's decision in *Thomas v. Baptiste*.<sup>206</sup> By disallowing

impetus behind, the establishment of the Inter-American human rights system).

202. See *Dialogue on the Inter-American System*, *supra* note 11 (reporting efforts by the OAS General Assembly to "promote dialogue and cooperation" among the various human rights entities within the Inter-American system).

203. See *id.* (discussing the ways in which the IACHR seeks to strengthen the Inter-American system, such as being more efficient when processing complaints, and instituting better follow-up procedures after the IACHR has issued its recommendations, including hearings).

204. See AI ANN. REP. 1999, *supra* note 4 (deploring the Trinidadian government's decision to withdraw ratification of the American Convention); see also *Continuing of Obligations Under International Human Rights Treaties*, Economic and Social Council, E/CN.4/SUB.2/RES/1995/5 (1999) (urging the Trinidadian government to resume its obligations under the American Convention).

205. See *St. Lucia - Capital Punishment: Prime Minister Backs Resumption of Punishment*, EFE NEWS SERV., June 10, 1999, WL, ALLNEWSPLUS file (expressing the intention of the government of St. Lucia to resume carrying out capital punishment at an "appropriate time."); see also Schiffrin, *supra* note 4, at 565 (expressing concern that Trinidad and Tobago's withdrawal from the American Convention, coupled with Jamaica's withdrawal from the Optional Protocol to the International Covenant on Civil and Political Rights, would "serve as a catalyst for other countries in the Commonwealth Caribbean . . . to follow suit.").

206. See *Thomas v. Baptiste*, [2000] 2 A.C. 1 (P.C. 1999) (holding that a delay



the time spent petitioning international commissions to count toward the *Pratt* time limit, Trinidad will not be forced to eliminate the death penalty by having to commute the death sentences of those who appeal and those whose appeals are delayed.<sup>207</sup> Although this option is not the most expedient, it is the most practical.<sup>208</sup> Consequently, this option also allows for the review of procedural safeguards that have been instituted to protect human rights, even if decisions are not legally binding on the Trinidadian government.<sup>209</sup>

## B. FOR STRENGTHENING THE INTER-AMERICAN SYSTEM

A major problem inherent in the Inter-American system, as with any other system, is the issue of state compliance with treaty obligations and court decisions.<sup>210</sup> Part of the problem stems from states' efforts to protect their sovereignty from international encroachment into its domestic affairs.<sup>211</sup> Within the last decade, however, the OAS

---

caused by application to an international commission shall not hinder the implementation of the sentence; thus, the time spent appealing shall not be counted as part of *Pratt's* two-year time limit for carrying out executions).

207. See *Pratt v. Att'y Gen. for Jam.*, [1994] 2 A.C.1, 34 (P.C. 1993) (holding that if the time limit set to implement an execution has passed, the death sentence shall be commuted); see also Schiffirin, *supra* note 4, at 565-68 (discussing the implications of the *Pratt* case, as it affects Caribbean nations' efforts to resume or expedite the death penalty).

208. Cf. Pasqualucci, *supra* note 34, at 7 (pointing out that even if some petitioners appeal their cases in the hope of delaying the process and commuting their sentences, countries also seek to delay international tribunals' consideration of a case by lodging preliminary objections to prolong the process).

209. See Claudio Grossman, *Moving Toward Improved Human Rights Enforcement in the Americas*, 27 HUM. RTS. 16, 16-18 (2000) (discussing the importance of in-country visits, fact-finding missions, and even non-binding reports in bringing human rights violations to the forefront of international attention). Grossman suggests that exposure of human rights violations to the international community could lessen or even lead to the curtailment of human rights abuses within a particular country. See *id.*; see also Regulations of the IACHR, *supra* note 27, arts. 51-54 (recognizing that, with respect to states not parties to the American Convention, the IACHR may request information from governments involved, transmit the charges lodged against a government to that government, separate or combine cases, declare the complaint inadmissible, and conduct a hearing to verify facts).

210. See Cerna, *supra* note 52, at 740 (suggesting that compliance affects the efficacy of the system because states comply only when it is convenient to do so).

211. See generally OAS Charter, *supra* note 45, arts. 1, 3(e) (emphasizing the sovereignty and independence of OAS member states).

has moved from a relatively non-interventionist policy toward a more aggressive one.<sup>212</sup> One step in making the Inter-American human rights system more effective would be to authorize the OAS General Assembly to take action when a country is in gross violation of the American Convention and other Inter-American human rights principles. Effective restraints may include the suspension of voting rights in the General Assembly, sanctions, or even suspension of membership in the OAS until the human rights abuses have been remedied.

A second problem relates to the issue of individual participation in the Commission's proceedings. Unlike the European system, petitioners in the Inter-American system are not allowed to participate in proceedings before the IACtHR.<sup>213</sup> Although one must recognize that many of the petitioners to the IACtHR are prisoners and are prohibited from participating directly in the proceedings, allowing the petitioners' lawyers to participate directly in the proceedings<sup>214</sup> would better serve the interests of all concerned. Counsel for the petitioners are better equipped to handle the cases in an efficient manner. This would only lighten the burdens placed on the IACHR's limited resources.<sup>215</sup>

The requirement that petitioners exhaust domestic remedies is an-

---

212. See Gómez, *supra* note 173, at 191 (citing the Washington Protocol and Resolution 1080 as two instruments which vest in the General Assembly of the OAS the authority to take action with respect to "interruptions" of democratic governing in member states).

213. See José Miguel Vivanco & Lisa L. Bhansali, *Procedural Shortcomings, in THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS*, *supra* note 16, at 421, 435 (describing the current Inter-American system as one that creates inequity between the defendant State Party and the individual petitioner).

214. See *id.* at 436 (highlighting recent procedural amendments in the IACtHR that now permit the petitioner's attorney to submit a brief at the compensation phase of the trial, if the court deems it necessary).

215. See Cerna, *supra* note 52, at 736 (pointing out that the Inter-American system has not yet been able to institute a system that can effectively monitor and promote human rights similar to the one adopted by the United Nations Human Rights Committee). Recent downsizing by the OAS also leads to the conclusion that the IACHR simply does not possess the capabilities and resources for establishing such an expensive system of monitoring. See Gómez, *supra* note 173, at 202 (suggesting that sporadic augmentation of the Commission's budget is a major reason that it has been so inefficient and relatively ineffective in achieving its wide-ranging goals).

other obstacle to overcome. Even in the more democratic societies of the Caribbean, judicial systems are in fact unable to administer justice in a fair and impartial manner.<sup>216</sup> Although there are exceptions to the domestic remedies requirement,<sup>217</sup> the current system is ill-adapted to consider the nuances of each country's judicial system and of each specific case. Of course, the petitioners should not be allowed to bypass domestic remedies. Granting the IACHR or even the OAS General Assembly more interventionist powers might force States Parties to comply with their international obligations.

Furthermore, the IACHR has limited powers and can only consider whether state national courts follow the procedures, or whether the decision infringes on the right to a fair trial or other guarantees in the American Convention.<sup>218</sup> In such cases, domestic laws that deny individuals their rights, as guaranteed by the American Convention, are not as open to review as they should be. It is necessary to provide the IACHR with a more powerful mandate in interpreting the do-

---

216. See Vivanco & Bhansali, *supra* note 213, at 430 (remarking that "inefficiency, corruption, and lack of material and human resources" plague the judicial systems of some countries, and thus hamper the ability of petitioners to truly take advantage of all available domestic remedies); see also Richards, *supra* note 4 (stating that more than half of Trinidadians have no faith in their local judicial system).

217. See American Convention, *supra* note 2, arts. 46(1)(a), 46(2) (asserting that the exhaustion of domestic remedies requirement does not apply when that state's laws do not provide ample due process to the petitioner, the petitioner has been denied access to all local remedies, and there has been unwarranted delay in reaching a decision on the petitioner's case); see also Advisory Op.: Exhaustion of Domestic Remedies, *supra* note 179, paras. 31-32, 35 (concluding that if the petitioner is indigent and unable to afford legal fees, or if he is not afforded counsel due to fear in the local legal community, he is exempt from the exhaustion of domestic remedies requirement and can petition the IACHR directly). *But see* In re Viviana Gallardo, Decision of Nov. 13, 1981, Inter-Am. Ct. H.R. G 101/81, para. 25, *reprinted in* 20 I.L.M. 1424 (1981) (holding that even if the exhaustion of domestic remedies requirement has been met, the petitioner is also required to exhaust all remedies available through the IACHR before the IACtHR can hear the case).

218. See American Convention, *supra* note 2, art. 46(2) (providing for certain jurisdictional requirements to be waived when the "domestic legislation of the State concerned does not afford due process of law for protection of the rights that have allegedly been violated," but not providing any enforcement mechanisms to ensure State compliance with IACHR decisions); see also American Convention, *supra* note 2, arts. 48-51 (outlining the procedure for considering and resolving petitions).

mestic legislation of States Parties in accordance with the letter and spirit of regional human rights instruments.

To ensure greater compliance with treaty obligations and international human rights standards, the IACtHR's limited jurisdiction should be expanded to allow the court to consider violations of the American Declaration. This expansion will guarantee protection for citizens of states not a party to the American Convention.

While the current approach under the Inter-American system is not without its merits, the purpose of establishing the Inter-American human rights system was to guarantee that states, acting outside of the regional norms, do not violate the individual liberties guaranteed in the American Convention.<sup>219</sup> Because of this limitation, the IACtHR is precluded from "calling" states on their domestic legislation or forcing them to bring the legislation into compliance with international or regional norms. Hopefully, allowing the IACtHR more power will achieve this goal.

## CONCLUSION

Although the American Convention does not preclude Trinidad and Tobago from applying the death penalty, it restricts the way in which the death penalty is administered and guarantees certain due process rights to Trinidadian citizens.<sup>220</sup> Furthermore, the highest Court of Appeal for Caribbean states, the British Privy Council, has held that as long as Trinidad and Tobago remains bound by the American Convention, its citizens must be allowed to have their petitions heard by the IACHR before the implementation of their death sentences.<sup>221</sup> Trinidad and Tobago has thus violated the due process rights of those executed prisoners with cases pending before the

---

219. See Advisory Op. on the Death Penalty, *supra* note 83, paras. 63-64 (denouncing efforts by States Parties to define their own obligations with respect to the American Convention, and noting that such practices conflict with the Vienna Convention on the Law of Treaties).

220. See *supra* Parts II, III (discussing continuing obligations of the Trinidadian government under the American Convention and the continuing rights of Trinidadian citizens).

221. See *supra* Part III.B (explaining that due process under the Trinidadian Constitution included due process rights accorded by the government when it signed the American Convention).

IACHR.

In addition to these blatant violations of the American Convention, the withdrawal of Trinidad and Tobago from the American Convention also threatens to have a significant detrimental effect on the due process rights of Trinidadian citizens, as well as on the advancement of human rights in the region.<sup>222</sup> For one, Trinidadians may now rely only on the IACHR's interpretation and application of the limited rights guaranteed under the American Declaration in order to safeguard their rights. Furthermore, because many other Caribbean states are poised to follow Trinidad and Tobago's lead, many more citizens of other Caribbean states are in line to lose the right to hold their countries to the human rights standards as accepted within the inter-American system. As such, the Trinidadian government is urged to take the necessary steps for re-accession to the respective treaties and to allow its citizens the opportunity for due process of law in accordance with the American Convention and the Trinidadian Constitution.<sup>223</sup>

---

222. See Birdsong, *supra* note 5, at 308 (stressing that due process is denied to death row inmates who are either read death warrants or are executed before their appeal before international human rights bodies are decided); *see also supra* Part V (discussing the due process implications for Trinidadian citizens as well as within the inter-American system).

223. See TRIN. & TOBAGO CONST. art. 4(a) (defining the right of the individual to life liberty and security of person).