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Session: Hundred and Fourth Regular Session (27 September – 8 October 1999)  
Title/Style of Cause: Brian Schroeter and Jeronimo Bowleg v. Bahamas  
Doc. Type: Decision  
Decided by: Chairman: Professor Robert K. Goldman;  
First Vice-Chairman: Dr. Helio Bicudo;  
Second-Vice Chairman: Dean Claudio Grossman;  
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.  
Dated: 27 September 1999  
Citation: Schroeter v. Bahamas, Case 12.086, Inter-Am. C.H.R., Report No. 123/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)  
Represented by: APPLICANT: Anthony Kenny Esq.  
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## I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter “the Commission”) by Anthony Kenny Esq., Solicitor, of Messrs. Lovell White Durant, Solicitors, in London, United Kingdom, (hereinafter as “the petitioners”) by letter dated January 7, 1999, on behalf of Messrs. Brian Schroeter and Jeronimo Bowleg (hereinafter “the victims”). The petition alleges that the Commonwealth of The Bahamas (hereinafter “the State” or “The Bahamas”) violated the victims' rights under the American Convention on Human Rights (hereinafter “the Convention”) and the American Declaration on the Rights and Duties of Man (hereinafter “the Declaration”).

2. The petitioners state that the victims, who are nationals of The Bahamas, were convicted of murder on June 17, 1994, and a mandatory death sentence was imposed on them. According to the petitioners, the victims appealed to the Court of Appeal of The Bahamas on September 4, 1996. The Court dismissed their appeals on July 23, 1997. The victims then petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal their convictions, and the Privy Council dismissed their petitions on June 3, 1998.

3. The petitioners argue that the petition is admissible because the victims have satisfied the requirements of Articles 46(1) of the Convention and 37(1) and 38(2) of the Commission’s Regulations. The petitioners also argue that the State has violated the victims’ rights under Articles 4(1) 4(2), 4(6) 5, 7(5), 8 (1), 8(2), 24 and 25 of the Convention and Articles I, II , XVII, XVIII, XI, XXV, and XXVI of the Declaration.

4. In their petition, the petitioners requested that the Commission issue Precautionary Measures pursuant to Article 29(2) of its Regulations against the State, and ask that the State take no steps to execute the victims to avoid irreparable damage to them while their cases are pending determination before the Commission. The petitioners also requested that the Commission declare that the State violated the victims' rights under the Convention and the Declaration, and that they be provided with an effective remedy entailing their release from detention. Moreover, the petitioners requested that the Commission schedule an oral hearing in the case, and conduct an on-site visit to death row at Fox Hill Prison, The Bahamas, to investigate the victims' conditions of detention.

5. In this report, the Commission concludes that the petitioners' claims relating to violations of the Declaration satisfy the requirements of Articles 37 and 38 of the Commission's Regulations and are therefore admissible. The Commission also concludes that the petitioners' claims relating to violations of the Convention are inadmissible.

## II. PROCEEDINGS BEFORE THE COMMISSION

6. Upon receipt of the petition and submissions of the parties, the Commission complied with the requirements of its Regulations. The Commission studied the petition, requested information from the parties, and forwarded the pertinent parts of each party's submissions to the other party.

7. On January 19, 1999, the Commission forwarded the pertinent parts of the petition to the State and requested observations within 90 days regarding exhaustion of domestic remedies and the claims raised in the petition. The Commission also requested that the State stay the victims' executions pending the Commission's investigation of the alleged facts.

8. On January 25, 1999, the petitioners forwarded additional information to the Commission on the issue of timeliness of the petition, and argued that the rules of both the Convention and the Declaration should apply in this case. The pertinent parts of this information were forwarded to the State on the same date.

9. Throughout the processing of this case before the Commission, the petitioners have requested that the Commission provide it with time limits as to when the Commission will issue a decision in the matter. On April 27, 1999, the Commission informed the petitioners that pursuant to the Commission's mandate, it processes cases and issues decisions in accordance with its Regulations and was therefore unable to provide the petitioners with a time limit for its decision in this case.

10. By letter dated July 30, 1999, the petitioners informed the Commission as follows: "As you are aware, in compliance with the decision of Her Majesty's Privy Council, The Bahamas will take its final decision before the five (5) year period has expired. It is therefore essential that we receive a decision by 2 January 2000. As the time is fast approaching I would be extremely grateful if you could inform us of the present position and whether this case has progressed further."

11. By communication dated August 13, 1999, the petitioners informed the Commission that “[w]e have noted that the Commission has yet to reach a decision regarding this case. In light of this we would like to draw your attention to a ruling of the Judicial Committee of the Privy Council in October of 1998 on a Constitutional Motion brought by death row prisoner Trevor Fisher. It was decided that it was not unconstitutional to execute a person whose petition had been pending before the IACHR for more than 18 months. Trevor Fisher and Richard Woods were hanged on 16 October 1998, even though the IACHR had informed the government of the Bahamas it would issue its decision on both cases within two weeks. We would ask you to recognise our concern in relation to the case of Schroeter and Bowleg, as their petitions have now been under consideration for some time.” The Commission acknowledged receipt of this letter on September 7, 1999.

12. The Commission has not received any response from the State in respect of the petitioners' petition, despite the Commission's requests for information dated January 19, 1999 and January 25, 1999.

### III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

#### A. Position of the petitioners

##### a. Claims by the petitioners

13. The petitioners allege violations of Articles 4(1), 4(2), 4(6), 5, 7(5), 8 (1) 8(2), 24 and 25 of the American Convention, and Articles I, II, XVII, XVIII, XI, XXV, and XXVI, of the American Declaration, in connection with the trial, conviction and sentencing of the victims for the crime of murder in The Bahamas. More particularly, the petitioners argue that the mandatory death sentence imposed by the State pursuant to its penal law on every person convicted of murder violates the victims' rights to life under Article 4(1) of the Convention and Article I of the Declaration, and their rights to humane treatment under Article 5 of the Convention and Article XXVI of the Declaration.

14. In addition, the petitioners allege that the State has violated the victims' rights to apply for amnesty, pardon or commutation of sentence under Article 4(6) of the Convention, their rights to be promptly notified of the charges against them and to be brought promptly before a judge or judicial officer under Article 7 of the Convention, the right to a fair trial under Article 8 of the Convention, and the right to equality before the law under Article 24 of the Convention, together with violations of the corresponding rights under Articles II, XVIII, XXV and XXVI of the Declaration.

15. With respect to their alleged violations of Articles 4 and 24 of the Convention and the corresponding provisions of the Declaration, the petitioners argue that the domestic law of The Bahamas does not provide the victims with the right to make representations to the Advisory Committee on the Prerogative of Mercy, the body in The Bahamas with authority to grant amnesties, pardons and commutations of sentences. In addition, the petitioners argue that the absence of a hearing before the Advisory Committee or any other procedure regulated by law to enable an objective and proportionate decision on whether the death penalty is an appropriate

punishment in the circumstances of the victims' cases violates Articles 4 and 24 of the Convention and Article II of the Declaration. In this regard, the petitioners also argue that the Advisory Committee's discretion is too broad, arbitrary, and unaccountable to accord with human rights norms, and that it is for the party seeking to deprive the victims of their lives to refute the absence of inequality and discrimination in the operation of its penal law.

16. With respect to the petitioners' alleged violations of Articles 7 and 8 of the Convention and the corresponding provisions of the Declaration, the petitioners claim that the victims were tried approximately 26 months after they were arrested, and therefore were not brought to trial promptly and within a reasonable time and were deprived of a fair trial, contrary to Articles 7(5) and 8(1) of the Convention and Articles XXV and XXVI of the Declaration. They also allege violations of the victims' rights to a fair trial because they were coerced through violence into signing written confessions. The petitioners also allege violations of Articles 8 and 25 of the Convention in relation to the unavailability of legal aid for Constitutional Motions in The Bahamas.

17. Finally, the petitioners argue that the State has violated the victims' rights to humane treatment under Article 5(1), 5 (2), and 5(6) of the Convention and Article XXVI of the Declaration, because of their conditions of detention on death row, and allege that these violations also render the implementation of the victims' death sentences unlawful.

b. Exhaustion of domestic remedies

18. The petitioners argue that the victims have exhausted the domestic remedies available in The Bahamas because they appealed their convictions and sentences to the Court of Appeal of The Bahamas, and the Court dismissed their appeals on July 23, 1997. The victims then petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal as Poor Persons, which dismissed their petitions on June 3, 1998.

19. The petitioners also argue that the victims are unable to pursue Constitutional Motions in The Bahamas to challenge their mandatory death sentences as being inhuman or degrading punishment or treatment because they are indigent, and the State's domestic law does not provide private funds nor legal aid to indigent persons to pursue such Motions. The petitioners claim further that the legal complexity of a Constitutional Motion clearly requires expert legal representation to establish a reasonable prospect of success, and that the lack of private funding and the unavailability of Legal Aid inhibit the pursuit of such a Motion. Finally, the petitioners allege that there is a dearth of local lawyers who are prepared to represent the victims without payment. As a consequence, the petitioners argue that the failure of the State to provide legal aid for Constitutional Motions denies the victims an effective and available domestic remedy.

20. In support of their position, the petitioners rely upon jurisprudence of the United Nations Human Rights Committee (HRC), in particular its decision in the case *Champagnie, Palmer & Chisolm v. Jamaica*,<sup>[FN1]</sup> in which the Committee stated as follows:

With respect to the authors' possibility of filing a Constitutional Motion, the Committee considers that, in the absence of Legal Aid, a Constitutional Motion does not constitute an

available remedy in the case. In light of the above, the Committee finds that it is not precluded by Article 5(2)(b) of the Optional Protocol from considering the communication.[FN2]

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[FN1] U.N.H.R.C., *Champagnie, Palmer & Chisolm v. Jamaica*, Communication N° 445/1991.

[FN2] Article 5(2) of the United Nations Optional Protocol provides: "The Committee shall not consider any communication from an individual unless it has ascertained that: (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged."

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21. The petitioners therefore argue that the victims have satisfied the admissibility requirements of Article 46(1) of the Convention and Article 37(1) of the Commission's Regulations.

c. Timeliness

22. The petitioners argue that the petition was filed within a reasonable time pursuant to Article 38(2) of the Commission's Regulations. In this connection, the petitioners argue that the victims exhausted domestic remedies on June 3, 1998, when the Privy Council dismissed their petitions for Special Leave to Appeal. The petitioners claim that the petition was lodged with the Commission on January 7, 1999 and therefore within a reasonable time.

B. The position of the State

23. The State has not provided the Commission with observations respecting the admissibility or merits of the petition, despite the Commission's communications to the State dated January 19 and 25, 1999.

IV. ANALYSIS

A. Commission's competence

24. In their petition, the petitioners allege violations of Articles 4, 5, 7, 8, 24 and 25 of the Convention, and Articles I, II, XVIII, XI, XXV, and XXVI of the Declaration. With respect to the alleged violations of the Convention, the Commission notes that The Bahamas has not ratified the American Convention and is therefore not a State Party to the same. Rather, the Declaration became the source of legal norms for application by the Commission[FN3] upon The Bahamas' entry into the inter-American system in 1982, and became a Member State of the Organization of American States. Therefore, the Commission declares that it is competent to address only the petitioners' claims relating to violations of the Declaration. It is not competent to address those claims relating to violations of the Convention, which are accordingly inadmissible.

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[FN3] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

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25. Article 26 of the Commission's Regulations provides that "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may submit petitions to the Commission, in accordance with these Regulations, on one's own behalf or on behalf of third persons, with regard to alleged violations of a human right recognized, as the case may be, in the American Convention on Human Rights or in the American Declaration of the Rights and Duties of Man." The petition in this matter was lodged by the petitioners, Solicitors from London, United Kingdom, on behalf of the victims, who are nationals of the State of The Bahamas. In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,[FN4] and the Commission's Regulations to entertain the alleged violations of the Declaration raised by the petitioners against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has subject matter, temporal and personal jurisdiction to consider the violations of the Declaration alleged in this case.

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[FN4] Article 20 of the Commission's Statute provides as follows:

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

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
  - (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
  - (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.
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## B. Admissibility of the petition

### a. Exhaustion of domestic remedies

26. The petitioners argue that the victims exhausted domestic remedies in The Bahamas on June 3, 1998, when the Privy Council dismissed their petitions seeking Special Leave to Appeal their convictions and sentences. The State has not provided any observations with respect to the issue of exhaustion of domestic remedies. In accordance with generally recognized principles of international law,[FN5] the Commission finds that the State tacitly waived its right to object to the admissibility of the petition based upon the exhaustion of domestic remedies rule.

Consequently, the Commission finds that the petition is admissible under Article 37(1) of the Commission's Regulations.[FN6]

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[FN5] See I/A Court H.R., Viviana Gallarado et al., Judgment of November 13, 1981, N° G 101/81. Series A, para. 26.

[FN6] Article 37(1) of the Commission's Regulations provides that: "For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law."

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b. Timeliness of petition

27. The petitioners argue that the petition has been timely filed in accordance with Article 38 of the Commission's Regulations.[FN7] The State has not contested the admissibility of the petition on the ground of timeliness or otherwise demonstrate that the petition was not timely filed.[FN8] Therefore, the Commission finds that the petition is not inadmissible under Article 38 of the Commission's Regulations.

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[FN7] Article 38 of the Commission's Regulations provide as follows: (1) The Commission shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted; (2) In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.

[FN8] See I/A Court H.R., Neira Alegria Case, Preliminary Objections, Judgment, December 11, 1991 pp. 44-45, at paras. 25-31.

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c. Duplication of procedures

28. The record before the Commission does not indicate that the subject of the petitioners' claims is pending in another international procedure, or duplicates a petition pending or already examined by the Commission or another international organization. The State has not provided any observations on the issue of duplication of procedures. The Commission therefore finds that the petition is not inadmissible under Article 39(1) of its Regulations.[FN9]

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[FN9] Article 39(1) of the Commission's Regulations provides that the Commission shall not consider a petition in cases where the subject of the petition is not pending in another international procedure under an international governmental organization of which the State concerned is a member, or essentially duplicates a petition pending or already examined and

settled by the Commission or by another international governmental organization of which the state concerned is a member.

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d. Colorable claim

29. The petitioners have alleged that the State has violated the victims' rights under Articles I, II, XVIII, XI, XXV and XXVI of the Declaration. In addition, the petitioners have provided factual allegations that tend to establish that the alleged violations may be well-founded. The Commission therefore concludes, without prejudging the merits of the case, that the petitioners' petition is not barred from consideration under Article 41(c) of the Commission's Regulations.[FN10]

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[FN10] Article 41(c) of the Commission's Regulations provides that the Commission shall declare a petition inadmissible if the petition is manifestly groundless or inadmissible on the basis of the statement by the petitioner himself or the government.

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e. Conclusion on admissibility

30. As noted previously, the State has not replied to the Commission's communications to it of January 19 and 25, 1999, to provide the Commission with information that the State deemed relevant pertaining to the exhaustion of domestic remedies and the claims raised in the petition. As a consequence, in determining the admissibility of this case, the Commission has presumed the facts as reported in the petition to be true, provided that the evidence does not lead to a different conclusion, in accordance with Article 42 of the Commission's Regulations.[FN11]

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[FN11] Article 42 of the Commission's Regulations provides that "[t]he facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion." Article 34(5) of the Commission Regulations provides that "[t]he Commission shall request the affected government to provide the information requested within 90 days after the date on which the request is sent."

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V. CONCLUSION

31. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare admissible the alleged violations of the Declaration presented on behalf of the victims, and to declare inadmissible the alleged violations of the Convention presented on behalf of the victims.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the violations of the Declaration alleged in the petition admissible.
2. Declare the violations of the Convention alleged in the petition inadmissible.
3. Transmit this report to the State of The Bahamas and to the petitioners.
4. Place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.
5. Maintain in effect the precautionary measures issued on January 19, 1999.
6. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of September, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners: Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.