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File Number(s): Report No. 108/00; Case 11.753
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Title/Style of Cause: Ramon Martinez Villareal v. United States
Doc. Type: Decision
Decided by: Chairman: Prof. Helio Bicudo;
First Vice-Chairman: Dean Claudio Grossman;
Commissioners: Dr. Peter Laurie, Dr. Julio Prado Vallejo.
Commission Member Professor Robert Goldman did not take part in the discussion and voting on this case, pursuant to Article 19(2) of the Commission's Regulations.
Dated: 4 December 2000
Citation: Martinez Villareal v. United States, Case 11.753, Inter-Am. C.H.R., Report No. 108/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: Center for Justice and International Law
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I. SUMMARY

1. On May 16, 1997, the Inter-American Commission on Human Rights (the "Commission") received a petition from the Center for Justice and International Law (the "Petitioners") against the Government of the United States of America (the "State" or "United States"). The petition was presented on behalf of Mr. Ramón Martínez Villareal ("Mr. Martínez Villareal" or "Martínez Villareal"), a Mexican national who is incarcerated on death row in Florence Prison, in the State of Arizona. The petition and subsequently information indicate that on April 27, 1983, Mr. Martínez Villareal was convicted of two counts of first degree murder and one count of first degree burglary, and was sentenced to death on May 20, 1983 for his murder convictions. The initial petition also stated that Mr. Martínez Villareal was scheduled to be executed on May 21, 1997, although his execution has been subsequently postponed on various occasions in connection with further domestic proceedings and remains outstanding.

2. The Petitioners have alleged that Mr. Martínez Villareal has exhausted domestic remedies in relation to the claims raised before the Commission, or that he is not required to exhaust domestic remedies, as provided under Article 37 of the Commission's Regulations. Respecting the substance of their complaints, the Petitioners claim that the State has violated Mr. Martínez Villareal's rights under Articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"), because his attorney failed to provide him with effective representation, and because Mr. Martínez Villareal suffers from mental illness and was therefore incompetent to stand trial or to be sentenced to death, and remains incompetent to be executed. The Petitioners have also alleged that the State is

responsible for further violations of Mr. Martinez Villareal's rights under Articles I, XVIII and XXVI of the American Declaration because of the State's failure to comply with its obligations under Article 36 of the Vienna Convention on Consular Relations. In addition, the Petitioners have alleged further violations of Mr. Martinez Villareal's rights under Articles XVIII and XXVI as a consequence of the delay in the rendering of a final decision in his case. Finally, the Petitioners claim violations of Mr. Martinez Villareal's right to equality before the law under Article II of the American Declaration because of the manner in which the death penalty is administered by states in the United States.

3. As set forth in this Report, having examined the information provided by the parties and their contentions on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the present petition, and continue with the analysis of the merits of the case.

II. PROCEEDINGS BEFORE THE COMMISSION

4. Upon receipt of the Petitioners' petition, the Commission, by note dated May 19, 1997, advised the State that the Commission had been informed of Mr. Martinez Villareal's pending May 21, 1997 execution, and requested that the State stay the execution for humanitarian reasons until the Commission had an opportunity to investigate the matter, or alternatively to commute Mr. Martinez Villareal's death sentence to one of life imprisonment.

5. Subsequently, on May 20, 1997, the Commission decided to open Case No. 11.753 and transmitted the pertinent parts of the petition to the Government of the United States by means of a note of the same date. The Commission requested the State's observations within 90 days as established by the Commission's Regulations. Also by note dated May 20, 1997, the Commission informed the Petitioners that a case had been opened in respect of their petition, that the State had been advised of the situation set forth in their communication, and that the Commission requested that the State stay Mr. Martinez Villareal's execution until it had the opportunity to investigate the allegations in the petition, or alternatively commute his death sentence.

6. By communication dated July 8, 1997, the Petitioners delivered to the Commission further information respecting Mr. Martinez Villareal's situation. In a note dated July 22, 1997, the Commission transmitted the pertinent parts of the Petitioners' July 8, 1997 observations to the State, with a response requested within 90 days.

7. In a note dated December 18, 1997, the State responded to the Petitioners' July 8, 1997 observations, in which the State argued that Mr. Martinez Villareal had failed to exhaust domestic remedies, and accordingly that the Commission should decline to consider the case. The State also provided observations on the substance of the Petitioners' allegations. The pertinent parts of the State's response were transmitted to the Petitioners by note dated January 7, 1998, with observations requested within 30 days. By communication dated March 19, 1998, the Petitioners requested that the deadline for their observations be extended until March 29, 1998.

8. By communication dated March 30, 1998, the Petitioners delivered to the Commission observations respecting the State's December 18, 1997 communication. In a note dated March

31, 1998, the Commission transmitted the pertinent parts of the Petitioners' observations to the State, with a response requested within 30 days.

9. The State responded by note dated September 8, 1998, in which it provided additional information on the admissibility of Mr. Martinez Villareal's case. By communication dated November 25, 1998, the Commission transmitted the pertinent parts of the State's observations to the Petitioners, with a response requested within 30 days.

10. In a communication dated January 20, 1999, the Petitioners delivered to the Commission a response to the State's September 8, 1998 observations. By note dated February 5, 1999, the Commission transmitted the pertinent parts of the Petitioners' January 20, 1999 observations to the State, with a response requested within 30 days.

11. By communication dated October 6, 1999, the State submitted to the Commission observations on the Petitioners' January 20, 1999 response, in which the State reiterated that Mr. Martinez Villareal had failed to exhaust his domestic remedies. In a note dated October 20, 1999, the Commission transmitted the pertinent parts of the State's observations to the Petitioners, with a response requested within 30 days.

12. On November 19, 1999, the Petitioners delivered observations on the State's October 6, 1999 response, in which they reiterated their claim that Mr. Martinez Villareal's petition was admissible, and requested that the Commission adopt a formal report on admissibility expeditiously. The Commission transmitted the Petitioners' observations to the State in a letter dated January 31, 2000, and requested a response within 30 days.

13. In a note dated August 14, 2000 to the Petitioners, the Commission requested that the Petitioners provide the Commission with information concerning certain aspects of Mr. Martinez Villareal's case, with a response requested within 30 days. The Commission subsequently reiterated its August 14, 2000 request for information in a further note to the Petitioners dated October 24, 2000. By letter dated November 13, 2000, the Petitioners responded to the Commission's previous requests for information.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

14. In relation to the admissibility of their complaint, the Petitioners claim that Mr. Martinez Villareal has exhausted his domestic remedies in the United States under Article 37(1) of the Commission's Regulations. The Petitioners also contend that the State has failed to demonstrate pursuant to Article 37(3) of the Commission's Regulations that remedies under domestic law have not previously been exhausted, and that Mr. Martinez Villareal's allegations fall within one or more of the exemptions to the exhaustion of domestic remedies under Article 37(2) of the Commission's Regulations.

15. In their initial petition and subsequent observations, the Petitioners have provided information concerning the procedural history of Mr. Martinez Villareal's criminal proceedings.

In this connection, they indicate that Mr. Martinez Villareal was found guilty by the Santa Cruz Superior Court of Arizona of two counts of first degree murder and one count of first degree burglary in April 1983, and was sentenced to death for the murder convictions on May 20, 1983. The Arizona Supreme Court subsequently dismissed Mr. Martinez Villareal's appeals from his conviction and sentence.

16. The Petitioners also indicate that Mr. Martinez Villareal brought several petitions for post-conviction relief in the Arizona state courts. His first such petition was summarily denied by the Santa Cruz Superior Court in April 1, 1986, his second was denied in June 1988, and his third was denied in August 1991. The Arizona Supreme Court denied all petitions for review of these decisions, in orders entered on June 9, 1986, February 9, 1989 and April 8, 1992.

17. In addition, according to the Petitioners, Mr. Martinez Villareal brought several petitions for writs of habeas corpus in the U.S. federal courts. Mr. Martinez Villareal's first three such applications were denied by the U.S. District Court for the District of Arizona in June 1986, the third such petition being the first occasion on which Mr. Martinez Villareal alleged ineffective assistance of prior counsel.

18. The Petitioners also contend that Mr. Martinez Villareal brought a fourth federal petition in U.S. District Court for a writ of habeas corpus in March 1993, which was the first occasion on which Mr. Martinez Villareal alleged that he did not have the mental capacity to appreciate the nature of his sentence. In addressing this petition, the District Court issued a writ of habeas corpus and vacated Mr. Martinez Villareal's death sentence, on the basis that Mr. Martinez Villareal did not receive effective assistance of counsel. On appeal, however, the U.S. Court of Appeals for the Ninth Circuit in 1996 reversed the District Court's decision, ordering that the petition for habeas corpus be denied due to procedural errors committed by Mr. Martinez Villareal's attorneys during his first and second post-conviction proceedings.

19. The Petitioners further indicate that a special hearing took place in the Arizona Superior Court on April 6 and May 6 to May 8, 1997 respecting Mr. Martinez Villareal's competence to be executed, and that the Court ultimately found that Mr. Martinez Villareal suffered from mental illness, mental retardation, and/or organic brain damage, but that he was competent to be executed. According to the Petitioners, Mr. Martinez Villareal petitioned the Superior Court in relation to this proceeding to allow him to obtain and admit the results of a Magnetic Resonance Image (MRI) of his brain. The Petitioners claim that an MRI is equivalent to an x-ray of soft tissue, in this case the brain, and could conclusively show whether or not Mr. Martinez Villareal is suffering from deterioration of the frontal lobe. The Petitioners allege that the Superior Court denied Mr. Martinez Villareal's request and ruled that an MRI would be inadmissible.

20. A petition for special action was subsequently filed in the Arizona Supreme Court to review the trial court's determination of competency, and the Supreme Court held in a May 16, 1997 decision that the finding was correct, although two concurring justices noted that "the evidence makes it clear that defendant is mildly retarded and seriously mentally ill" and stated that "this is a case which raises serious doubts about the propriety of the death sentence."

21. In addition, the Petitioners indicate that Mr. Martinez Villareal brought a further petition for a writ of habeas corpus in the U.S. District Court in May 1997 relating to the Arizona Supreme Court's determination on his competency to be executed, and in this connection brought a motion in District Court requesting the means to examine Mr. Martinez Villareal in preparation for his petition. In disposing of his petition, the District Court expressed, "serious concerns...as to whether Petitioner is presently capable of understanding 1) that he is to be punished by execution, and 2) why he is being punished", but nevertheless found that it did not have the jurisdiction to consider Mr. Martinez Villareal's constitutional challenge.

22. Mr. Martinez Villareal subsequently filed challenges to the District Court's decision in the Ninth Circuit U.S. Court of Appeal. On June 23, 1997, the Ninth Circuit ruled in favor of Mr. Martinez Villareal, and remanded his case to the District Court for a hearing on his competency to be executed claim. The state of Arizona sought review of the decision of the Ninth Circuit, and in May 1998 the U.S. Supreme Court affirmed the Ninth Circuit's decision on Mr. Martinez Villareal's ability to bring a successive habeas corpus petition. The U.S. District Court for Arizona subsequently considered Mr. Martinez Villareal's habeas application, and denied it in an August 6, 1999 decision. Mr. Martinez Villareal appealed this determination to the Ninth Circuit Court of Appeals, which on June 17, 2000 entered an order vacating the U.S. District Court's decision and remanding the case to the District Court for further proceedings. Subsequently, on October 30, 2000, the District Court entered an order dismissing Mr. Martinez Villareal's petition for a writ of habeas corpus without prejudice.

23. The Petitioners also indicate in their observations that on May 19, 1997, the Petitioner filed a Petition for Post-conviction Relief in the Santa Cruz Superior Court, as well as a motion to Recall Mandate, Motion to Vacate Prior Orders Denying Petitions for Review, and Motion for a Stay of Execution in the Arizona Supreme Court. According to the Petitioners in their July 1997 observations, the motions were combined and procedural directions were issued by the Supreme Court.

24. In light of this procedural history, the Petitioners claim that the five distinct violations alleged in their petition before the Commission are admissible under Article 37 of the Commission's Regulations: the failure of the State to provide notice of consular assistance under Article 36(1)(b) of the Vienna Convention on Consular Relations;^[FN1] the failure of the State to provide and guarantee effective assistance of counsel; the failure of the State to take into account Mr. Martinez Villareal's mental competence at the guilt/innocence and penalty phases of his criminal proceeding; the prohibition against executing Mr. Martinez Villareal due to his mental incompetence; and the delay in Mr. Martinez Villareal's execution.

[FN1] Article 36 of the Vienna Convention on Consular Relations provides as follows:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
 - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

25. With respect to the first alleged violation, the Petitioners have noted that the State's position, as expressed in respect of the Request for Advisory Opinion OC-16/99 before the Inter-American Court of Human Rights, has been that Article 36 of the Vienna Convention on Consular Relations does not vest a right in a detained foreign national. The Petitioners also claim that the State has demonstrated through practice that it will not recognize such a right, nor provide a remedy for its violation. Further, the Petitioners claim that Mr. Martinez Villareal attempted to raise this claim before the domestic courts as soon as he became aware of it, but that he was precluded from doing so because the claim had not been raised during his trial or his initial appeal. Accordingly, the Petitioners contend that Mr. Martinez Villareal has been denied access to remedies under domestic law or has been prevented from exhausting them as prescribed under Article 37(2) of the Commission's Regulations in relation to the alleged violation of Article 36 of the Vienna Convention on Consular Relations, and therefore that this aspect of their claim should be considered admissible.

26. In relation to the second alleged violation, the Petitioners claim that once Mr. Martinez Villareal had obtained attorneys who could adequately present his claims of ineffective assistance of counsel and the related underlying claims of mental competence, his attempts to raise these issues were barred by domestic courts on procedural grounds. In particular, the Petitioners indicate that the Arizona Supreme Court rejected Mr. Martinez Villareal's effective representation claims on the basis of procedural default, because the issue had not been raised in his previous applications for post-conviction relief. Further, the Ninth Circuit U.S. Court of Appeals subsequently endorsed this "preclusion" finding in a subsequent habeas proceeding before it. Hence, the Petitioners argue that the victim has been precluded from raising his substantive due process claim, or the corollary claim of incompetence as it relates to the guilt/innocence and sentencing phases of his proceeding, that he has no available remedy, and therefore that the domestic legislation of the state concerned does not afford due process of law

for the protection of these rights, as provided for under Article 37(2)(a) of the Commission's Regulations.

27. With respect to the third alleged violation, the Petitioners contend, as with the second issue, that the Arizona Supreme Court would not entertain the issue of the Petitioners' mental capacity and its impact on the guilt/innocence and sentencing stages of Mr. Martinez Villareal's criminal proceeding by virtue of procedural default, and that the Ninth Circuit U.S. Court of Appeals subsequently deferred to this decision. Consequently, they argue that no available domestic avenues exist for Mr. Martinez Villareal to raise this issue, and therefore that their allegations in this regard are admissible.

28. With respect to Mr. Martinez Villareal's competence to be executed, the Petitioners claim that any pending domestic proceedings concern only this issue and are not adequate to address the other issues raised before the Commission, including his due process rights at the trial and sentencing phases of his criminal proceedings. Further, the Petitioners claim that in the Arizona Supreme Court proceeding on Mr. Martinez Villareal's competence to be executed, held in April and May 1997, Mr. Martinez Villareal was precluded from obtaining objective evidence of his mental illness in the form of a Magnetic Resonance Imaging scan of his brain. Mr. Martinez Villareal's subsequent federal habeas application challenging this proceeding was denied by the U.S. District Court. While the Ninth Circuit U.S. Court of Appeals vacated the District Court's decision on appeal and remanded the matter back to the District Court, on October 30, 2000 the District Court entered an order dismissing Mr. Martinez Villareal's petition for a writ of habeas corpus without prejudice.

29. Finally, with regard to the issue of whether the delay in Mr. Martinez Villareal's proceedings constitutes cruel, infamous or unusual punishment under the American Declaration, the Petitioners indicate that in the recent case of *Knight v. Florida*, *Moore v. Nebraska*, 1999 U.S. LEXIS 7479, 68 U.S.W.L. 307 (November 8, 1999), the U.S. Supreme Court refused to address the very issue of whether the U.S. Constitution prohibits as cruel and unusual punishment the execution of prisoners who have spent extended periods of time on death row. The Petitioners therefore suggest that there is no effective domestic remedy available in respect of this alleged violation.

30. The Petitioners have recognized that the United Mexican States filed an application for a temporary restraining order and preliminary injunction in the U.S. District Court against the Attorney General of the State of Arizona and others, alleging violations of, inter alia, the Vienna Convention on Consular Relations and the International Covenant on Civil and Political Rights. They have also confirmed that the U.S. District Court found that it lacked subject matter jurisdiction to hear the case, and that the United Mexican States appealed to the Ninth Circuit Court of Appeals. The Petitioners have argued, however, that Mexico's arguments are based on treaty obligations, which can only be advanced by states and are not domestic remedies available to Mr. Martinez Villareal.

31. The Petitioners have similarly recognized that motions to re-open have been continued by the Arizona Supreme Court in respect of its orders entered on June 9, 1986, February 9, 1989 and April 8, 1992, by which that Court may reconsider aspects of Mr. Martinez Villareal's claims.

They suggest, however, that these proceedings are extraordinary, in that they require the hearing of motions on which litigation has ended, and because such mandates are rarely recalled due to a strong policy that there be an end to litigation.[FN2] Further, the Petitioners argue that, even if successful, these proceedings will not provide Mr. Martinez Villareal with effective remedies for the alleged violations of his rights, in part because he will remain precluded from introducing before a court objective evidence of his mental condition, and because his due process rights will not be restored at the trial stage by permitting him to introduce evidence that he was not competent to stand trial. Further, the Petitioners contend that the State has not demonstrated that these remedies will be effective to address Mr. Martinez Villareal's complaints before the Commission.

[FN2] Petitioner's July 8, 1997 observations, para. 5.2, citing Federal Appellate Practice Guide, Ninth Circuit, Section 9.18 at 9-44 (1994); State's May 20, 1997 response to Combined Motion to Recall Mandate, Vacate Prior Orders Denying Review, and Requesting Stay of Execution.

32. The Petitioners have also alleged more generally that there has been an unwarranted delay in rendering final judgment on domestic remedies within the meaning of Article 37(2)(c) of the Commission's Regulations, and for this reason that the requirement of exhaustion should not in any event apply to bar his case from consideration. In this regard, the Petitioners note in their March 30, 1998 observations that as of that date, appellate proceedings had continued for nearly 15 years with no resolution in the near future, and that the delay was due to the failure of judicial authorities to take action in Mr. Martinez Villareal's case in a timely manner. Evidence cited by the Petitioners in this connection include a delay of more than two years in the Arizona Supreme Court's determination of Mr. Martinez Villareal's appeal from his sentence and conviction, a further delay of nearly two years in appointing another attorney to represent Mr. Martinez Villareal following the withdrawal of his first attorney in June 1986, and the fact that the federal habeas corpus petition filed by Mr. Martinez Villareal in federal District Court in March 1993 was not finally determined by the Ninth Circuit U.S. Court of Appeals until 1996.

33. In support of their position, the Petitioners cite the decision of the Inter-American Court of Human Rights in the Suarez Rosero Case,[FN3] in which the Court found six years to be an unwarranted length of time for the conclusion of all proceedings in the circumstances of that case. They also refer to the case of Myrna Mack,[FN4] in which the Commission found unreasonable delay and admitted the case over the objection of the Guatemalan government, and claim that the delays in Mr. Martinez Villareal's case share several of the same characteristics.[FN5]

[FN3] I/A Court H.R., Suarez Rosero Case, Judgment, 12 November 1997.

[FN4] Report No. 10/96 (Myrna Mack v. Guatemala), Annual Report of the IACHR 1995.

[FN5] In their March 30, 1998 observations, the Petitioners refer to several factors in the Myrna Mack Case, including the fact that the proceedings had remained inactive for almost one year due to failure to appoint opposing counsel, that the proceedings continued for six years which was found to be unwarranted given the facts of the case, that there was no indication that a

resolution was coming in respect of pending actions, and that it was reasonable to expect that, in light of the way that previous proceedings had developed, the pending proceeding would not achieve an affirmative result.

34. With respect to the substance of their complaints, as indicated previously, the Petitioners raise five principal claims in respect of Mr. Martinez Villareal's trial, sentencing, and pending execution. In summary, the Petitioners allege first that in its Advisory Opinion OC-16/99 of October 1, 1999, the Inter-American Court of Human Rights determined that Article 36(1)(b) of the Vienna Convention on Consular Relations vests an individual right in a detained foreign national to information concerning consular assistance. The Court concluded further that a State's failure in its obligations in this regard affects the guarantees of due process, and that the application of the death penalty under such conditions would constitute an arbitrary taking of an individual's life. The Petitioners also claim that the State has not denied that it failed to provide Mr. Martinez Villareal with notice of his rights under Article 36 of the Vienna Convention on Consular Relations, and further allege particular prejudice in Mr. Martinez Villareal's case, as he did not speak or understand English at the time of his trial, was represented by counsel who was, by admission, seriously incompetent, and was not provided with translation during his initial hearings. As a consequence, the Petitioners allege that the State has violated Articles I, XVIII and XXVI of the American Declaration in respect of Mr. Martinez Villareal.

35. The Petitioners also claim that Mr. Martinez Villareal received ineffective assistance of counsel during his criminal proceedings, contrary to Articles I, II, XVIII and XXVI of the American Declaration. Their claim is based in part upon the fact that his trial attorney was inexperienced and failed to investigate Mr. Martinez Villareal's mental competence, despite prevailing evidence that he may be mentally ill. The Petitioners also refer in this regard to the failure of Mr. Martinez Villareal's attorney to seek a change of venue for his trial and thereby ensure him an impartial trial, despite the publicity and other potentially prejudicial circumstances surrounding his prosecution. According to the Petitioners, these deficiencies in representation precluded Mr. Martinez Villareal from raising before domestic courts his corollary claims of mental illness or incompetence in respect of the guilt/innocence and sentencing phases of his proceeding, also in violation of Articles I, II, XVIII and XXVI of the American Declaration.

36. In respect of Mr. Martinez Villareal's competency for execution, the Petitioners allege that he has been precluded from obtaining in domestic proceedings evidence of his mental illness in the form of a Magnetic Resonance Imaging scan of his brain, also in violation of his due process rights under the American Declaration. Further, the Petitioners indicate that this evidence could conclusively show whether or not the victim is suffering from deterioration of the frontal lobe and therefore is mentally ill and has been since birth. The Petitioners argue in this regard that a binding norm of international law has developed among the member states of the OAS and domestically within the United States whereby states are obliged to refrain from executing the mentally incompetent, and that the United States is bound by this norm.

37. Further, the Petitioners allege that there has been unwarranted delay in the rendering of a final decision in Mr. Martinez Villareal's case, which in turn has led to a violation of Mr. Martinez Villareal's right to be free from cruel, infamous or unusual punishment contrary to

Articles XVIII and XXVI of the American Declaration. The Petitioners contend in this regard that the prolonged delay in Mr. Martinez Villareal's case is not attributable to him, but rather to the court system in which he has been engaged.

38. Finally, the Petitioners allege that the application of the death penalty in circumstances in which Mr. Martinez Villareal's rights under Articles XVIII and XXVI have been violated would violate his right to life under Article I of the American Declaration, as well as his right to equality before the law under Article II of the Declaration. According to the Petitioners, this is in part because in the United States, individual states regulate whether and the manner in which the death penalty is implemented, and therefore the penalty is not equally applied in the United States.

B. Position of the State

39. With respect to the admissibility of the Petitioners' petition, the State claims that the Petitioners have failed to exhaust domestic remedies in accordance with Article 37 of the Commission's Regulations. In this connection, in its December 18, 1997 observations, the State provided a detailed overview of the history of Mr. Martinez Villareal's criminal proceedings, which included the following observations.

40. In May 1983, Mr. Martinez Villareal was convicted and sentenced to death for two murders perpetrated in Arizona in October 1982. Mr. Martinez Villareal pursued a direct appeal in respect of his convictions and sentences, which were all affirmed by the Arizona Supreme Court in 1985. He was represented by an attorney, William Rothstein, at these stages, as well as during his first state and first and second federal petitions for post-conviction relief.

41. In March 1986, Mr. Martinez Villareal filed a state post-conviction relief, or "Rule 32", petition, asserting five claims, all relating to his death sentences. The trial court denied the petition, ruling that all of the claims had already been considered and ruled upon by the Arizona Supreme Court. A motion for rehearing was denied by the trial court in May 1986.

42. In June 1986, Mr. Martinez Villareal filed a total of three petitions for habeas corpus in the Federal District Court.[FN6] The District Court denied Mr. Martinez Villareal's first petition, with leave to file a petition after all claims had been exhausted in state court or if an amended petition was filed containing only claims that had been so exhausted. Mr. Martinez Villareal's second petition, which purported to pursue allegations raised before the state courts, contained five claims, three of which the Court found had not been exhausted and the remaining two of which were rejected on the merits. In respect of Mr. Martinez Villareal's third petition, which was filed by Mr. Martinez Villareal's new counsel and alleged ineffective assistance on the part of Mr. Rothstein, the District Court granted a stay of execution and ordered that another petition for post-conviction relief be filed in the state courts.

[FN6] According to the State's observations, a habeas corpus petition is a special petition that an individual can file to challenge the constitutionality of his or her sentence or incarceration.

43. Subsequently, a new attorney was appointed for Mr. Martinez Villareal in October 1987, and an assistant for his counsel was appointed in April 1988. In June 1988, Mr. Martinez Villareal then filed an amended petition for post-conviction relief in the state courts alleging, inter alia, ineffective assistance of counsel. The trial court denied the claims in the amended petition, many of which were barred from consideration because of procedural default, and review was denied by the Arizona Supreme Court in February 1989, and by the U.S. Supreme Court in October 1989.

44. In November 1990, the Arizona Supreme Court gave notice of intent to issue a warrant of execution. Another defense attorney was subsequently appointed for Mr. Martinez Villareal, and in February 1991, Mr. Martinez Villareal filed a "Motion for Discover" in the U.S. District Court, which suggested for the first time that Mr. Martinez Villareal might be mentally incompetent to be executed. The District Court ordered that the pending habeas application be dismissed without prejudice so that the matter could be litigated in the state courts, and in June 1991, Mr. Martinez Villareal filed another state petition for post-conviction relief in the Santa Cruz County Superior Court raising approximately 31 claims. The petition was subsequently dismissed, all but three of the claims because of previous procedural defaults, and the remaining three because they presented nothing upon which relief could be granted. No relief was available for the claims of mental competency for execution because the Arizona Statutes had a special procedure for addressing claims of this nature that Mr. Martinez Villareal never attempted to invoke. A motion for reconsideration was denied by the trial court, the Arizona Supreme Court denied review in April 1992, and the U.S. Supreme Court denied certiorari later in 1992.

45. Mr. Martinez Villareal subsequently filed an amended petition for habeas corpus in the federal District Court, and on June 22 and 23, 1994, the District Court held an evidentiary hearing concerning Mr. Martinez Villareal's mental competency to be tried, sentenced and executed. Most of Mr. Martinez Villareal's claims were rejected as either procedurally barred or meritless, specifically finding that no facts existed at the time of trial that would have given Mr. Martinez Villareal's trial attorney, Mr. Rothstein, or the trial court reason to believe that Mr. Martinez Villareal was not competent to be tried. Nevertheless, the District Court ordered a re-sentencing on the basis that Mr. Martinez Villareal had ineffective legal representation in his sentencing hearing by failing to adduce mitigating evidence of his mental condition. On appeal, however, the Ninth Circuit U.S. Court of Appeals found that the District Court erred in considering the issue of Mr. Martinez Villareal's representation, but rather found that the District Court should have honored the previous finding by the state courts that Mr. Martinez Villareal's claim of improper representation was procedurally precluded because it had not been presented in Mr. Martinez Villareal's initial Rule 32 petition with no acceptable cause for the default. This finding was upheld on review by the full Court of Appeals.

46. According to the State, following the proceedings described above, the only issue left unresolved was Mr. Martinez Villareal's competence to be executed. Following several procedural events, a hearing was held in the Pinal County Superior Court in May 1997 to address the existence and degree of mental retardation, mental illness or organic brain damage on the part of Mr. Martinez Villareal. Following a four day hearing, which included testimony from psychiatrists and psychologists, the Court found credible evidence on both sides of the issue, but

ultimately concluded that Mr. Martinez Villareal was aware of his crime and his punishment and was competent to be executed under the laws of the state of Arizona. The Arizona Supreme Court upheld the Superior Court's determination and the U.S. Supreme Court denied certiorari in May 1997. The Arizona Board of Clemency then heard two days of testimony, including claims regarding Mr. Martinez Villareal's mental condition and effectiveness of trial counsel, but was not persuaded that there were grounds to grant Mr. Martinez Villareal a reprieve or commutation.

47. Finally, the State indicates that in May 1997, Mr. Martinez Villareal filed another habeas corpus petition in the federal District Court. The District Court in turn found that it could not consider the petition due to amendments to relevant statutes enacted in 1996, but on review, the Ninth Circuit U.S. Court of Appeals reversed, construing the relevant legislation so as not to preclude Mr. Martinez Villareal's claim, and in May 1998 the U.S. Supreme Court upheld the Ninth Circuit's determination. As a consequence, Mr. Martinez Villareal sought habeas review in the federal District Court of the Arizona Supreme Court's determination on his mental competency for execution, and the District Court rejected Mr. Martinez Villareal's claim in an August 1999 decision. The District Court concluded that the Superior Court did not err in finding Mr. Martinez Villareal competent to be executed, and that he failed to establish that he was denied a full and fair hearing on the issue of his competency.

48. In addition to the above proceedings, the State notes that Mr. Martinez Villareal filed motions in the Arizona Supreme Court seeking to have the Court re-open its review of Mr. Martinez Villareal's direct appeal and the three previous state Rule 32 proceedings. The Arizona Supreme Court declined to reopen the direct appeal, but held that the determinations of the Rule 32 petitions on June 9, 1986, February 9, 1989 and April 8, 1992 would be "continued" until the proceedings in the federal courts were completed. The State also indicated that Mr. Martinez Villareal filed a fourth post-conviction review petition in the Santa Cruz Superior Court of Arizona claiming treaty violations and changes in the law regarding the execution of mentally retarded persons, and that in October 1997 the Court directed that the proceedings continue with regard to all of the claims except those alleging treaty violations.

49. The above overview indicates that the State's procedural history is largely consistent with that provided by the Petitioners, with two principal exceptions. First, the State claims that Mr. Martinez Villareal's fourth post-conviction petition filed in Santa Cruz Superior Court was not, as the Petitioners suggested, combined with the Arizona Supreme Court re-opening applications. Rather, the State claims that this constitutes a wholly separate action that will be considered by the superior court, and can be reviewed by the Arizona Supreme Court and possibly by the U.S. Supreme Court. The State also contends, contrary to the Petitioners' contentions, that the Pinal County Superior Court hearing in 1997 on Mr. Martinez Villareal's competence to be executed did not find that the victim suffered from a mental illness, mental retardation, and/or organic brain damage, but rather found that credible evidence had been offered on both sides of the issue, including credible evidence negating the existence of a legally significant mental problem. The State also argues that litigation on this issue continues in the domestic courts as evidenced in part by the District Court's August 1999 decision dismissing Mr. Martinez Villareal's challenge to the Arizona Supreme Court's competency proceeding and further possible review by the federal and Supreme Courts.

50. The State also contends that additional state remedies remain unexhausted, as the Arizona Supreme Court explicitly continued its consideration of whether to re-open three prior post-conviction proceedings pending federal proceedings, including issues of effectiveness of prior representation.

51. In any event, the State claims that even if all remedies are exhausted, Mr. Martinez Villareal's execution could not occur until 35 days after the Arizona Supreme Court issues a warrant of execution.

52. With respect to the substance of the Petitioners' contentions, the State raises several arguments. Regarding the Petitioners' claim respecting the Vienna Convention on Consular Relations, the State indicates that the Vienna Convention does not vest any private rights in a criminal defendant and therefore that reliance on this instrument by Mr. Martinez Villareal is misplaced. It also contends that the Mexican Government was in a position to know about the case from news media and other sources, and that Mr. Martinez Villareal was in fact visited by someone from the Mexican consulate on the first day of his trial.

53. Regarding the Petitioners' claims pertaining to the fairness of Mr. Martinez Villareal's proceedings, the State argues that the petition is manifestly groundless because the Petitioners have failed to articulate any international "due process" standard that has allegedly been violated, and that the record shows that Mr. Martinez Villareal has been afforded due process consistent with the U.S. Constitution and applicable international norms. In relation to the Petitioners' contentions respecting Mr. Martinez Villareal's mental state in particular, the State argues that the allegations are flawed because they assume as true a fact which has never been proven, namely that Mr. Martinez Villareal had mental problems around the time of his trial, which the State claims is nothing more than unsupported extrapolation from testimony that he may have mental problems now. Indeed, the State contends that not even the existence of significant current problems has been satisfactorily proved.

54. In this regard, the State emphasizes that the Pinal County Superior Court, after conducting the 1997 hearing concerning Mr. Martinez Villareal's competence for execution, did not find that Mr. Martinez Villareal actually suffered from mental illness, mental retardation, or organic brain damage, but rather found credible evidence on both sides of the issue, including credible evidence negating the existence of a legally-significant mental problem. Further, with respect to the Petitioners' complaints regarding a change of venue for Mr. Martinez Villareal's trial, the State contends that these arguments ignore the fact that the trial court expended an entire day in the jury selection process, and that exposure to news accounts and contacts with the families of the victims was part of the voir dire process which in turn has not been proved to be inadequate.

55. With respect to the Petitioners' allegations respecting the delay in Mr. Martinez Villareal's criminal proceedings, the State contends that such delays are attributable to Mr. Martinez Villareal, and that in any event, arguments that he suffered unduly from delays in his case cannot be grounded in U.S. law. The State relies in this regard upon jurisprudence from the U.S. courts holding that the existence of appellate delay designed to provide an appellant with

procedural safeguards does not violate fundamental human rights, under the Sixth, Eighth or Fourteenth Amendments to the U.S. Constitution or otherwise.

56. The State also contends in respect of the Petitioners' alleged violations of the right to equality under Article II of the Declaration that this demonstrates a misunderstanding of the American legal system, as all states in the United States that choose to utilize capital punishment are equally bound to meet the standards for such cases established by the U.S. Supreme Court. These include decisions applying the Fourteenth Amendment to the U.S. Constitution respecting due process of law, and the Eighth Amendment prohibiting cruel and unusual punishment.

IV. ANALYSIS

A. Competence of the Commission

57. The Petitioners claim that the State has violated Mr. Martinez Villareal's rights under Articles I, II, XVIII and XXVI of the American Declaration of the Rights and Duties of Man. The State is a member state of the Organization of American States that is not a party to the American Convention on Human Rights, as provided for in Article 20 of the Commission's Statute and Article 51 of the Commission's Regulations, and deposited its instrument of ratification of the OAS Charter on June 19, 1951.[FN7] The events that relate to the Petitioners' claim occurred subsequent to the State's ratification of the OAS Charter. The alleged victim is a natural person, and the petition was lodged by CEJIL, an organization authorized to lodge petitions with the Commission under Article 26 of the Commission's Regulations. The Commission is therefore competent to examine this petition.

[FN7] The Inter-American Court of Human Rights and this Commission have previously determined that the American Declaration of the Rights and Duties of Man is a source of international obligation for the United States and other OAS member states that are not parties to the American Convention on Human Rights, as a consequence of Articles 3, 16, 51, 112, and 150 of the OAS Charter. See 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, July 14, 1989, Ser. A No. 10 (1989), paras. 35-45; Res. 3/87 (Roach and Pinkerton v. US), Annual Report of the IACHR 1986-87, paras. 46-49. See also Statute of the Inter-American Commission on Human Rights, Art. 20.

B. Admissibility of Petition

1. Duplication of Procedures

58. There is no information on the record indicating that the subject of this petition is pending settlement in another procedure under an international governmental organization of which the State is a member, or that the case essentially duplicates a petition pending or already examined and settled by the Commission or other international governmental organization of which the State is a member, as provided for under Article 39 of the Commission's

Regulations.[FN8] The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under Article 39 of the Commission's Regulations.

[FN8] Article 39(1) of the Commission's Regulations provides: "The Commission shall not consider a petition in cases where the subject of the petition: a) is pending settlement in another procedure under an international governmental organization of which the State concerned is a member; b) 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."

2. Exhaustion of Domestic Remedies

59. Article 37(1) of the Commission's Regulations specifies that, in order for a case to be admitted, "remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law." When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted may be excused. Article 37(2) of the Commission's Regulations specifies that this exception applies if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

60. In addition, the Inter-American Court of Human Rights has observed that domestic remedies, in order to accord with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.[FN9]

[FN9] I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, (1988), paras. 64-66.

61. Further, when a petitioner alleges that he or she is unable to prove exhaustion, Article 37(3) of the Commission's Regulations provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not previously been exhausted.

62. The observations of the Petitioners and the State respecting the procedural history of Mr. Martinez Villareal's criminal proceedings, as outlined in Part III of this Report, suggest the following conclusions respecting the exhaustion of domestic remedies, in relation to each of the claims raised by the Petitioners.

63. With respect to the Petitioners' complaints that Mr. Martinez Villareal received ineffective assistance of counsel during the guilt/innocence and sentencing phases of his trial, this complaint relates to the conduct of Mr. Martinez Villareal's first attorney, who represented him during his trial, his direct appeal, and his first two state petitions for post-conviction relief. According to the State and the Petitioners, Mr. Martinez Villareal's concerns respecting the effectiveness of his representation were first raised during his third federal petition in District Court for post-conviction relief in June 1986, and subsequently on the direction of the District Court, his June 1988 amended petition for post-conviction relief in the Arizona Superior Court. Also according to both parties, the Superior Court rejected Mr. Martinez Villareal's amended petition, on the basis that Mr. Martinez Villareal failed to raise the claims in his earlier proceedings and was therefore procedurally precluded from pursuing them. This determination was maintained by the Arizona Supreme Court, and the U.S. Supreme Court declined to review the decision.

64. Similarly, Mr. Martinez Villareal raised the issue of the effectiveness of his representation in his March 1993 federal habeas corpus application before the U.S. District Court, and the U.S. Court of Appeals for the Ninth Circuit ultimately held that the District Court was bound to honor the state court's preclusion finding on this issue. Consequently, Mr. Martinez Villareal has exhausted domestic remedies in relation to this claim, or alternatively has been prevented from pursuing remedies on procedural grounds.

65. The parties indicate that the Arizona Supreme Court has, since September 1997, continued motions to reopen Mr. Martinez Villareal's previous state petitions for post-conviction relief, pending the completion of federal proceedings. However, based upon the information provided by the parties, the Commission cannot find that these proceedings constitute effective domestic remedies within the meaning of the Commission's Regulations and under general principles of international law. In particular, it appears from the record that these proceedings are of an exceptional nature, in that they require a court to re-open a procedure that was previously completed and are rarely recalled due to the strong policy that there be an end to litigation.[FN10] Moreover, the Petitioners have alleged that these motions, even if successful, will not provide them with the relief they seek, in part because they will not repair the prejudice caused during Mr. Villareal's trial and sentencing proceedings, and the State has not presented information or evidence to the contrary. These factors, together with the length of time for which these proceedings have been pending, lead the Commission to conclude that it need not await the outcome of these pending motions pursuant to Article 37 of its Regulations in order to exercise its competence in the present case.

[FN10] See similarly *Eur. Comm. H.R., X and Church of Scientology v. Sweden*, 7805/77, May 5, 1979, 16 D.R. 68 (observing that a procedure which is directed towards a re-opening of a case or a re-trial of its merits is not normally a remedy which need be exhausted for the purposes of the European Convention); *G. v. United Kingdom*, 11932/86, May 9, 1988, 56 D.R. 199 (considering that the possibility of requesting an authority to reconsider a decision taken by it will not generally constitute an effective remedy for the purposes of Article 26 of the European Convention); *Karaduman v. Turkey*, 16278/90, (Dec.) May 3, 1993, 74 D.R. 93 (finding that a

request for a court to reconsider a previous judgment was not an effective remedy that required exhaustion in the circumstances of the petitioner's complaint).

66. With respect to the alleged failure of Mr. Martinez Villareal's attorney to investigate his mental competence in the context of the guilt/innocence and sentencing phases of his criminal proceeding, according to the State Mr. Martinez Villareal was precluded from raising this issue in the context of his June 1991 state petition for post-conviction relief, because the Arizona statutes provided for a special procedure for addressing claims of this nature that Mr. Martinez Villareal had never attempted to invoke. Further, while Mr. Martinez Villareal also raised the matter in his March 1993 habeas corpus petition before the federal District Court, as noted above the Ninth Circuit Court of Appeals determined on appeal in 1996 that the District Court was bound to honor the state court's preclusion findings. Consequently, as with his claim on effectiveness of counsel, Mr. Martinez Villareal appears to have exhausted domestic remedies in relation to this claim, or alternatively has been prevented from pursuing domestic remedies on procedural grounds.

67. With respect to Mr. Martinez Villareal's claim that he is mentally incompetent to be executed, according to the parties this claim has also been the subject of proceedings in the state and federal courts. In particular, according to the State, after a four day hearing in May 1997, the Pinal County Superior Court of Arizona found credible evidence on both sides of the issue but ultimately concluded that Mr. Martinez Villareal was competent to be executed. This decision was upheld in the Arizona Supreme Court and the U.S. Supreme Court ultimately denied review. The record further indicates that the Arizona state courts' findings on Mr. Martinez Villareal's competence to be executed were also the subject of review proceedings before the U.S. District Court, which in an August 1999 decision ultimately confirmed the findings of the state courts on this issue. The record therefore indicates that Mr. Martinez Villareal has exhausted domestic remedies regarding his competence to be executed.

68. Moreover, according to the information available at this stage, Mr. Martinez Villareal was denied the ability during his Arizona Superior Court hearing in April and May 1997 to obtain and adduce evidence of a Magnetic Resonance Imaging scan of his brain, which he claims will constitute significant evidence pertaining to his mental competence to be executed. The information also indicates that Mr. Martinez Villareal has unsuccessfully pursued habeas corpus petitions respecting this matter, such that no effective domestic remedies remain available.

69. In relation to Mr. Martinez Villareal's complaint regarding Article 36 of the Vienna Convention on Consular Relations, the Petitioners note that the State's position, generally and in the context of the request for Advisory Opinion OC-16 before the Inter-American Court of Human Rights, has been that Article 36 of the Vienna Convention does not vest any rights in a detained foreign national, and that the State has demonstrated through practice that it will not recognize such a right, nor provide a remedy for its violation. The State confirmed this position in its observations, and has not contested nor demonstrated the existence of effective domestic remedies in respect of this aspect of the Petitioners' petition. The Commission therefore concludes that the Petitioners' claim respecting the State's failure to comply with Article 36 of

the Vienna Convention on Consular Relations is not precluded by Article 37 of the Commission's Regulations.

70. With respect to the Petitioners allegation that the delay in Mr. Martinez Villareal's criminal proceedings constitutes cruel, infamous or unusual punishment contrary to Articles XVIII and XXVI of the American Declaration, the Petitioners claim that no effective remedies exist with respect to such claims under existing domestic jurisprudence. In this regard, the Petitioners refer to the dismissal by the U.S. Supreme Court in November 1999 of applications for writs of certiorari in the cases Knight v. Florida and Moore v. Nebraska,[FN11] in which the applicants raised the very question of whether the U.S. Constitution prohibits as cruel and unusual punishment the execution of prisoners who have spent nearly 20 years or more on death row. In its observations, the State has confirmed the status of U.S. law in this regard, stating that arguments that a condemned prisoner has suffered unduly from delays in his or her case cannot be grounded in U.S. law. Based upon this information, therefore, the Commission finds that any proceedings raising these claims before domestic courts would appear to have no reasonable prospect of success, would not be effective in accordance with general principles of international law, and accordingly need not be exhausted in accordance with Article 37 of the Commission's Regulations.[FN12]

[FN11] Knight v. Florida and Moore v. Nebraska, 1999 U.S. West Law 7479; 68 U.S.L.W. 3307 (U.S. Sup. Ct., 8 November 1999).

[FN12] See similarly Report No. 51/00 (Graham v. US), June 15, 2000 (IACHR), para. 60; Eur. Court H.R., De Wilde, Oomas and Versyp Cases, June 10, 1971, Publ. E.C.H.R. Ser. A, Vol.12, p. 34, paras. 37, 62 (suggesting that domestic remedies need not be exhausted in circumstances in which an applicant believes that there is no reasonable chance of success and where that doubt is supported by the jurisprudence of the state's highest court); Eur. Court H.R., Avan Oosterwijck v. Belgium, Judgment (Preliminary Objections), November 6, 1980, Case No. 7654/76, para. 37.

71. Finally, in respect of the Petitioners' contention that the death penalty is applied in the United States in a manner inconsistent with Mr. Martinez Villareal's right to equal protection of the law under Article II of the American Declaration, the Petitioners have suggested that no effective domestic remedies exist in relation to this allegation, but rather have indicated that the State has failed to remedy a similar violation determined by the Commission in its decision in the Roach and Pinkerton Case.[FN13] The State has not specifically contested the admissibility of this aspect of the Petitioners' case, but has only contended that this argument demonstrates a profound misunderstanding of the American legal system. Consequently, the Commission considers that the Petitioners' complaint is not barred by the requirement of exhaustion of domestic remedies in this respect.

[FN13] Roach and Pinkerton v. US, supra.

72. Based upon the information presented, the Commission therefore finds that the Petitioners' claims, as articulated above, are not barred from consideration under Article 37 of the Commission's Regulations.

3. Timeliness of the Petition

73. In accordance with Article 38(1) of the Commission's Regulations, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted.

74. In the present case, the Petitioners' petition was not lodged beyond six months from the date on which Mr. Martinez Villareal was notified of any of the final rulings on the issues raised before the Commission in his case, in those instances in which domestic remedies were available. The State has not specifically contested the timeliness of the Petitioners' petition. Consequently, the Commission concludes that the Petitioners' petition is not barred from consideration under Article 38 of the Commission's Regulations.

4. Colorable Claim

75. Article 41(c) of the Commission's Regulations requires the Commission to declare inadmissible any petition when the petition is manifestly groundless or inadmissible on the basis of a statement by the petitioners or the government.

76. The Commission has outlined in Part III of this Report the substantive allegations of the Petitioners, as well as the State's responses to those allegations. After carefully reviewing the extensive and complex information and arguments provided by the parties on the matters raised in this case, and in light of the heightened scrutiny test applied by the Commission in capital punishment cases,[FN14] the Commission does not find the Petitioners' allegations to be manifestly groundless or inadmissible. Accordingly, the Commission concludes that the Petitioners' petition is not inadmissible under Article 41(c) of the Commission's Regulations.

[FN14] According to the Commission's established jurisprudence, it will review and decide capital punishment cases with a heightened level of scrutiny, to ensure that any deprivation of life that an OAS member state proposes to perpetrate through the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments. See Report No. 57/96 (*Andrews v. United States*), Annual Report of the IACHR 1997, paras. 170-171; Report No. 38/00 (*Baptiste v. Grenada*), Annual Report of the IACHR 1999, paras. 64-66; Report No. 41/00 (*McKenzie et al. v. Jamaica*), Annual Report of the IACHR 1999, paras. 169-171.

V. CONCLUSIONS

77. The Commission concludes that it has the competence to examine the Petitioners' allegations, and that the petition is admissible in accordance with the Commission's Regulations.

78. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the present case admissible, in respect of Articles I, II, XVIII and XXVI of the American Declaration.
2. Transmit this Report to the Parties.
3. Continue with the analysis of the merits of the case.
4. Publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 4th day of the month of December, 2000. (Signed): Prof. Hélio Bicudo, Chairman; Dean Claudio Grossman, First Vice-Chairman; Dr. Peter Laurie, Dr. Julio Prado Vallejo, Commissioners.