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First Vice-President: Clare K. Roberts;
Commissioners: Julio Prado Vallejo, Susana Villaran.
Commission Member Prof. Robert K. Goldman, a national of the United States, did not take part in the discussion and voting on this case, pursuant to Article 17(2) of the Commission's Rules of Procedure.
Dated: 29 December 2003
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Represented by: APPLICANT: the International Human Rights Law Clinic at the Washington College of Law, American University
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I. SUMMARY

1. On April 26, 1993, the Inter-American Commission on Human Rights (the "Commission") received a petition from the International Human Rights Law Clinic at the Washington College of Law, American University (the "Petitioners") against the Government of the United States (the "State" or "United States"). The petition was presented on behalf of Mr. Gary Graham, who subsequently took the Muslim name Shaka Sankofa ("Mr. Sankofa" or "Sankofa"), and who was at that time incarcerated on death row in the state of Texas. The petition stated that in October 1981, Mr. Sankofa was convicted of a May 1981 homicide in Texas and sentenced to death, and that he was scheduled to be executed on April 29, 1993. Mr. Sankofa's execution was subsequently stayed on several occasions as a consequence of domestic legal proceedings. Mr. Sankofa's execution was ultimately carried out on June 22, 2000.

2. The Petitioners raise three claims. First, they allege that the State has violated Mr. Sankofa's right to a fair trial and to due process of law under Articles XVIII and XXVI of the American Declaration of the Rights and Duties of Man (the "American Declaration") because Mr. Sankofa was denied effective legal assistance as well as a forum for any legal body to review identification and other evidence that suggested that he was innocent of the crime for which he was condemned. Second, the Petitioners claim that the United States is responsible for violations of Mr. Sankofa's right not to be subjected to torture or cruel, infamous or unusual punishment under Article XXVI of the American Declaration because of the delay in his execution. Finally, the Petitioners allege that the United States is responsible for violations of Mr. Sankofa's right to life and his right to equality before the law under Articles I and II of the American Declaration,

because he was 17 years of age at the time of the offense for which he was convicted and sentenced to death.

3. The State has contested the Petitioners allegations, arguing that any alleged violations of Mr. Sankofa's human rights have been duly litigated and reviewed by multiple courts and therefore that he has been fully afforded his right to a fair trial and to due process. The State also contends that any perceived delay in carrying out a lawfully imposed capital punishment sentence does not constitute cruel, infamous or unusual punishment or torture. The State argues in particular that accepting the Petitioners' arguments in this regard would require a state to impose an arbitrary time limit on a convicted felon's opportunities to appeal a capital sentence to a higher court and would therefore have the result of reducing rather than enhancing the individual's rights. Finally, the State claims that neither international nor U.S. domestic law prohibit the use of capital punishment, generally or for persons who commit their offenses when less than 18 years of age.

4. In Report 51/00 dated June 15, 2000, the Commission decided to admit Mr. Sankofa's petition and to continue with the analysis of the merits of his case. As set forth in the present Report, having examined the information and arguments provided by the parties on the merits of the case, the Commission had concluded that the State is responsible for violations of Mr. Sankofa's rights to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration. Accordingly, by executing Mr. Sankofa pursuant to a procedure that failed to comply with the standards of due process under the American Declaration, the State arbitrarily deprived Mr. Sankofa of his life contrary to Article I of the American Declaration. The Commission also concluded that the State acted contrary to an international norm of jus cogens as encompassed in the right to life under Article I of the American Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age. Finally, the Commission considered that the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States by permitting Mr. Sankofa's execution to proceed on June 22, 2000, notwithstanding the Commission's request that the State take precautionary measures to preserve Mr. Sankofa's life pending the outcome of the proceedings before the Commission and despite the fact that the Commission had found Mr. Sankofa's claims to be admissible and had decided to proceed with its analysis of the merits of his case.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT 51/00

5. In Report 51/00 adopted on June 15, 2000, the Commission declared Mr. Sankofa's petition to be admissible in respect of Articles I, II, XVIII and XXVI of the Declaration and that it would continue with its analysis of the merits of the case. At this time, Mr. Sankofa's execution had been scheduled for June 22, 2000 in the State of Texas. Consequently, in its admissibility report, the Commission decided to reiterate its request under Article 29(2) of its former Regulations to take all necessary measures to ensure that Mr. Sankofa's execution was stayed pending the Commission's determination of the matter. Report 51/00 was transmitted to the State and to the Petitioners by note dated June 20, 2000.

6. In a communication dated June 22, 2000, the State responded to the Commission's request for observations concerning the Petitioners' March 10, 2000 submissions, in which the State reiterated its previous arguments opposing the Petitioners' complaint. By letter dated June 21, 2000 the Commission transmitted the State's observations to the Petitioners with a request for a response within 30 days.

7. Also on June 22, 2000, the Commission received information that the Texas Board of Pardons and Paroles had declined to recommend that Mr. Sankofa be granted a reprieve, commutation or pardon in respect of his death sentence and that his execution was scheduled to proceed that evening. Consequently, in a note to the State dated June 22, 2000, the Commission again reiterated its request that the State take whatever measures were deemed necessary to ensure that Mr. Sankofa's execution was stayed pending the Commission's investigation of the matter and asked for an urgent response to its request. The Commission subsequently received information that Mr. Sankofa's execution proceeded as scheduled on June 22, 2000.

III. POSITIONS OF THE PARTIES

A. POSITION OF THE PETITIONERS

8. According to the information provided by the Petitioners, Mr. Sankofa was arrested on or about May 20, 1981 and subsequently tried for the May 13, 1981 murder of Bobby Lambert. The prosecution alleged that Mr. Sankofa shot Mr. Lambert with a pistol while robbing him or attempting to rob him in a Safeway parking lot in Houston. On October 28, 1981, Mr. Sankofa was convicted of the felony offense of capital murder of Mr. Lambert. The prosecution's case was based upon the testimony of one eye-witness, Ms. Bernadine Skillern, who positively identified Mr. Sankofa as the perpetrator of the murder, in a photographic display, a police station "line up", and her open court trial testimony. The prosecution also relied upon evidence indicating that the caliber of the fatal bullet matched the caliber of the gun that Mr. Sankofa had in his possession when he was arrested. At the time of Mr. Lambert's murder, Mr. Sankofa was 17 years old. During his trial, Mr. Sankofa was represented by court-appointed attorney Ronald Mock.

9. The Petitioners raise three arguments in their complaint and subsequent observations to the Commission. First, they argue that the State has violated Mr. Sankofa's right to prove his innocence implicit in Articles XVIII and XXVI of the American Declaration^[FN1] and thereby denied his right to a fair trial and due process of law. In particular, they claim that the federal and state courts in the United States have denied Mr. Sankofa a fair hearing in which he could present evidence establishing his innocence.

[FN1] Articles XVIII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration provide as follows:

XVIII. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

XXVI. Every accused person is presumed to be innocent until proven guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

10. According to the Petitioners, the material that Mr. Sankofa was prevented from presenting related to the identification and alibi evidence as well as the ballistics evidence upon which Mr. Sankofa's conviction was based. The Petitioners first claim that this evidence as a whole provides overwhelming support for Mr. Sankofa's innocence. In particular, they claim that of eight eye witnesses to the crime, only three testified at trial. Of these, two did not identify Mr. Sankofa in a line up and were not asked at trial whether Mr. Sankofa was the gunman or whether they had identified him in a line up. Of the five remaining witnesses who did not testify, the Petitioners indicate that only one identified Mr. Sankofa in a line up and three are confident that Mr. Sankofa was not the gunman. Further, the Petitioners claim that six of the eight eyewitnesses estimated the height of the assailant to be under Mr. Sankofa's height of five feet, six inches. The Petitioners also refer to evidence from an investigator retained by the defense that both he and Mr. Sankofa's lawyer assumed Mr. Sankofa's guilt and therefore undertook no investigation of his guilt or innocence, as well as alibi evidence of individuals who claim that Mr. Sankofa could not have been present at the scene of the crime. Further, the Petitioners claim that notwithstanding its pertinence to Mr. Sankofa's innocence, some of this evidence was not the subject of an evidentiary hearing. This is said to include statements of two eyewitnesses to the crime who were not contacted by Mr. Sankofa's trial lawyers, an affidavit corroborating one of the alibi witnesses' affidavits that had previously been determined by the state district court not to be credible, and reports of two psychologists who had reviewed the statements and affidavits of witnesses and concluded that Bernadine Skillern's identification of Mr. Sankofa was unreliable.

11. Concerning the ballistics evidence, the Petitioners provided the Commission with a copy of a Houston Police Department Firearms Report dated May 28, 1981 which indicated that the firearm confiscated from Mr. Sankofa on his arrest was not the firearm used to shoot Bobby Lambert. According to the Petitioners, this report was also not considered in substance by the domestic courts through an evidentiary hearing or by the courts on review.[FN2]

[FN2] Petitioners' March 10, 2000 observations, p. 7.

12. The Petitioners argue that the totality of this evidence should have been presented in court but was not because of the ineffective assistance of counsel who represented Mr. Sankofa at his trial. The Petitioners also contend that the United States and Texas government subsequently barred Mr. Sankofa from presenting this evidence at an evidentiary hearing either because the new evidence presented by Mr. Sankofa failed to meet the juridical threshold of "actual innocence" necessary for the reviewing courts to intervene based on that evidence,[FN3] or due to legislation passed by the Texas and U.S. government that procedurally barred Mr. Sankofa from re-filing state or federal habeas claims.[FN4] On this basis, the Petitioners claim

that the U.S. and Texas governments violated Articles XVII and XXVI of the Declaration by denying Mr. Sankofa his right to a fair trial and due process of law.

[FN3] Petitioners' March 10, 2000 observations, p. 7, citing *Herrera v. Collins*, 113 S. Ct. 853 (1993).

[FN4] Petitioners' March 10, 2000 observations, p. 17, citing a 1995 Texas habeas law and the 1996 federal Anti-Terrorism and Effective Death Penalty Act.

13. The Petitioners also argue that the delay in Mr. Sankofa's execution in and of itself constitutes a violation of the right not to be subjected to cruel, infamous or unusual punishment under Article XXVI of the Declaration, commonly known as "death row syndrome." The Petitioners emphasize in this regard that Mr. Sankofa was sentenced at the age of seventeen years and was subsequently imprisoned on death row for nineteen years, and contend that these factors suggest that the treatment to which Mr. Sankofa has been subjected constitutes cruel, infamous or unusual punishment.

14. In support of their claim, the Petitioners rely upon this Commission's decision in the case of *William Andrews v. United States*[FN5] in which the Commission concluded that Mr. Williams's detention and treatment on death row violated his right to humane treatment under the American Declaration. The Petitioners also cite the judgment of the European Court of Human Rights in the case *Soering v. United Kingdom*,[FN6] in which that Court precluded the extradition of a German national to the United States for prosecution on a capital charge committed when the victim was eighteen years of age. The Petitioners appear to suggest that because the European Court of Human Rights concluded that prolonged detention on death row in the case of Mr. Soering would constitute cruel, inhuman or degrading treatment or punishment contrary to Article 3 of the European Convention, the same conclusion should follow under Article XXVI of the Declaration concerning Mr. Sankofa's detention for 19 years on death row.

[FN5] *Andrews v. United States*, Case 11.139, Report 57/96, Annual Report of the IACHR 1996 (19 February 1998).

[FN6] Eur. Court H.R., *Soering v. United Kingdom*, 11 E.H.R.R. 439 (1989).

15. The Petitioners also contend in this regard that Mr. Sankofa has been subjected to cruel, infamous or unusual punishment under Article XXVI of the American Declaration so severe as to be classified as torture, which the Petitioners claim is implicitly prohibited under Article XXVI of the Declaration. In particular, they contend that a condemned person suffers "undue psychological torture" awaiting execution of a death sentence, and cite judicial decisions in the United States and several other common jurisdictions in support of this proposition.[FN7]

[FN7] Petitioners' March 10, 2000 observations, p. 29, citing, inter alia, concurring opinion of Brennan J. in *Furman v. Georgia*, 408 U.S. 238 (U.S.S.C.); *Vatheeswaran v. State of Tamil Nadu*, 2 S.C.R. 348 (India 1983).

16. Finally, the Petitioners argue that the State has violated Mr. Sankofa's right to life, his right to liberty and security of the person, and his right to equality before the law under Articles I and II of the Declaration,[FN8] based upon the fact that Mr. Sankofa was under eighteen years of age at the time of the commission of the crime for which he was convicted and sentenced. The Petitioners cite in support of this argument this Commission's decision in the case *Roach and Pinkerton v. United States*,[FN9] in which the Commission found that the diversity of state practice in the United States results in very different sentences for juvenile offenders for the commission of the same crimes, and therefore violated Articles I and II of the Declaration. The Petitioners contend that the U.S. and Texas governments have not made reforms in the disparate application of the death penalty to juveniles since the *Roach and Pinkerton* decision, and that in Mr. Sankofa's case, as in *Roach and Pinkerton*, the failure of the U.S. Government to preempt the states in regard to protection of the right to life for juveniles under sentence of death results in a pattern of arbitrary deprivation of life and inequality before the law.

[FN8] Articles I (right to life, liberty and personal security) and II (right to equality before law) provide as follows:

- I. Every human being has the right to life, liberty and the security of his person.
- II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

[FN9] *Roach and Pinkerton v. United States*, Case 9647, Res. 3/87, Annual Report of the IACHR 1986-87 (22 September 1987).

B. POSITION OF THE STATE

17. As suggested in the admissibility report in this matter,[FN10] the State's accounting of the procedural history to Mr. Sankofa's prosecution does not differ materially from the background provided by the Petitioners. The State disputes the legal claims raised by the Petitioners, however, based upon several arguments, directly or through reliance on the written observations of the Office of the Attorney General of the State of Texas. The State first contends that Mr. Sankofa received full and fair reviews of his case through judicial review on dozens of occasions and therefore that any alleged violations of his human rights have been duly litigated and reviewed by multiple courts.

[FN10] Gary Graham, n.k.a. Shaka Sankofa v. United States, Case 11.193, Report 51/00, Annual Report of the IACHR 2000.

18. Specifically with regard to the newly acquired evidence that the Petitioners claim was not presented at trial or considered by domestic courts in their review of Mr. Sankofa's case, the State makes several claims. With regard to the new eyewitness evidence, the State argues that the claims of these witnesses should be viewed with suspicion, in light of the dearth of useful eyewitness evidence at the time of the crime and the subsequent police investigation as well as inconsistencies and implausibilities in the statements that these witnesses had previously given to police and their current allegations. The State also points in this regard to inconsistencies and implausibilities in the observations and affidavits of the additional eyewitnesses relied upon by the Petitioners. The State notes, for example, that one eye-witness who was not called at trial, Sherian Etuk, who was operating a checkout stand in the grocery store, originally stated that she could not sufficiently see the assailant through the store windows because of the glare on the windows, but now states that she was able to observe the assailant after he shot Mr. Lambert and described the assailant as being shorter than Mr. Sankofa. Another witness, Wilma Amos, originally described the assailant as "medium height" and now describes him as short, approximately 5' 4". The State raised similar discrepancies in the evidence of witnesses Richard Hubbard, Leodis Wilkerson, and Malcolm and Loretta Stephens.[FN11]

[FN11] Observations of the Office of the Attorney General of the State of Texas dated September 21, 1993, pp. 3-5.

19. With respect to the alleged misidentification of Mr. Sankofa by Bernadine Skillern, the State argues that all of the evidence and information available indicates that Ms. Skillern did not misidentify any one. In this regard, the State refers to the length of time available to Ms. Skillern to identify Mr. Sankofa, and the fact that she was unequivocal in identifying Mr. Sankofa in a line up and at trial.[FN12]

[FN12] Observations of the Office of the Attorney General of the State of Texas dated September 21, 1993, p. 3.

20. Regarding Mr. Sankofa's claim of alibi, the State argues that this argument was raised in the context of claims of insufficient assistance of counsel and was considered on numerous occasions by state and federal district and appellate courts, beginning with an evidentiary hearing held by the Texas District Court on these issues and its subsequent decision dated February 8, 1988. The State claims that the District Court rejected these claims, based upon its finding that Mr. Sankofa failed to provide his trial attorney with the names of any alibi witnesses at the time of his trial, because Mr. Sankofa's trial attorney had hired an investigator to assist in investigating possible defense witnesses, and because the court did not find the testimonies of the new alibi witnesses to be credible. Upon raising these arguments in further habeas corpus proceedings before the state and federal courts, those courts essentially found no proper grounds to interfere with the Texas District Court's determinations on these points.

21. The State argues further that the Commission should defer from reaching different findings on these matters. Citing the Commission's decisions in the cases of *Marzioni v. Argentina*[FN13] and *Wright v. Jamaica*,[FN14] the State argues that any examination of alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction are not for the Commission's review unless those mistakes entail a possible violation of any of the rights under applicable inter-American instruments. The State also argues that the domestic courts' determinations respecting Mr. Sankofa's claims of alibi constitutes factual determinations made through a process that complied with international standards,[FN15] and therefore that Mr. Sankofa's complaint is not that his evidence has never been reviewed, but rather that he disagrees with the conclusions reached by the bodies that have reviewed it.

[FN13] *Marzioni v. Argentina*, Case 11.673, Report N° 39/96, Annual Report of the IACHR 1997 (March 14, 1997).

[FN14] *Clifton Wright v. Jamaica*, Case 9260, Resolution 29/88, Annual Report of the IACHR 1987-88 (September 14, 1988).

[FN15] State's observations of June 22, 2002, p. 2.

22. Regarding the Petitioners' arguments respecting Mr. Sankofa's age at the time that he committed the offense, the State contends that there has been no violation of Mr. Sankofa's right to life because international law does not proscribe the use of capital punishment generally nor does it prohibit its application to persons who commit offenses when under eighteen years of age.

23. More particularly, the State argues that international law permits capital punishment when it is duly prescribed for the commission of the most serious offenses and carried out by a state in accordance with due process of law and stringent procedural safeguards, and that the United States is not precluded from imposing capital punishment on convicted individuals, either by treaty or by customary international law. The State notes in this regard that the citizens in many U.S. States have decided that the most serious crimes, even when committed by persons under 18, deserve punishment no less than death, and that the U.S. Supreme Court in the case *Stanford v. Kentucky*[FN16] has ruled that the Eighth Amendment to the U.S. Constitution does not prohibit the death penalty for crimes committed at age 16 or 17.

[FN16] *Stanford v. Kentucky*, 492 U.S. 361 (1989).

24. The State also argues that the United States has not undertaken any treaty obligations prohibiting the execution of juveniles, and that customary international law does not prohibit the execution of persons who were 16 or 17 at the time of the crime when they are judged competent to be tried as adults. Even if such a legal norm was held to exist, the State contends that the U.S. would not be bound by it, as its long-standing practice in the area, including its position in proceedings before the Commission, represents a consistent pattern of dissent.[FN17] The State

refers in this regard to this Commission's decision in the case of James Roach and Jay Pinkerton,[FN18] in which the Commission found that, in light of the persistency with which the U.S. had objected to the development of this norm, the United States could not be considered bound by any customary international rule that had developed. Further, the State points out that Mr. Sankofa's youth was properly considered by the jury in mitigation of punishment.

[FN17] Observations of the State dated June 21, 2000, p. 5, citing, inter alia, Fisheries Case (U.K. v. Norway), 1951 I.C.J. 116, 131.

[FN18] Case of James Roach and Jay Pinkerton, Case 9647, Report N° 3/87, Annual Report of the IACHR 1986-87 (Inter-Am. C.H.R. 61, para. 38, OEA/Ser.L/VII.71, doc. 9 rev. 1.)

25. Finally, with regard to the Petitioners' arguments concerning the consequences of Mr. Sankofa's time on death row, the State argues that any perceived delay in the carrying out of a lawfully-imposed capital punishment sentence does not constitute "cruel, infamous or unusual punishment" or torture. In particular, the State argues that the Commission's decision in the Case of William Andrews v. United States[FN19] does not support the Petitioners' contention that the American Declaration may be violated based solely upon the time spent by a petitioner on death row. According to the State, the Petitioners' argument that a condemned person suffers undue psychological torture awaiting the execution of a death sentence lacks international or domestic support and suggests that a state should impose an arbitrary time limit on a convicted felon's opportunities to appeal a capital sentence to a higher court. This, in the State's view, would have the result of providing that individual with fewer rather than greater procedural rights. In the present case, the United States claims that it has acted appropriately in affording Mr. Sankofa his full procedural rights of appeal.

[FN19] William Andrews v. United States, supra.

IV. ANALYSIS

A. Standard of Review

26. Before addressing the merits of the present case, the Commission wishes to reaffirm and reiterate its well-established doctrine that it will apply a heightened level of scrutiny in deciding capital punishment cases. As the right to life is widely-recognized as the supreme right of the human being, respect for which the enjoyment of all other rights depends, the Commission considers that it has an enhanced obligation to ensure that any deprivation of life that occurs through application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration. This heightened scrutiny test is consistent with the restrictive approach taken by other international human rights authorities to the imposition of the death penalty,[FN20] and has been articulated and applied by the Commission in previous capital cases before it.[FN21]

[FN20] See, e.g., I/A Court H.R., Advisory Opinion OC-16/99 (1 October 1999) "The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law", Ser. A N° 16 (October 1, 1999), para. 136 (finding that "[b]ecause execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result"); UNHRC, Baboheram-Adhin et al. v. Suriname, Communication nos. 148-154/1983, adopted 4 April 1985, para. 14.3; Report by the U.N. Special Rapporteur on Extrajudicial Executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, U.N. Doc.E/CN.4/1995/61 (14 December 1994).

[FN21] See e.g. William Andrews v. United States, supra, paras. 170-171; Case 11.743, Report N° 38/00 (Baptiste v. Grenada), Annual Report of the IACHR 1999, paras. 64-66; Case 12.023, Report N° 41/00 (McKenzie et al. v. Jamaica), Annual Report of the IACHR 1999, paras. 169-171.

27. This approach requires, in particular, strict adherence to the rules and principles of due process and fair trials in the context of capital cases. The Commission has previously emphasized that the irrevocable and irreversible nature of the death penalty renders it a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.[FN22]

[FN22] See e.g. McKenzie et al. v. US, supra, para. 188, citing, inter alia, Woodson v. North Carolina, 449 L Ed 944, 961 (U.S.S.C.).

28. The Commission also notes that this heightened scrutiny test applicable to death penalty cases is not precluded by the Commission's fourth instance formula. According to this formula, the Commission in principle will not review the judgments issued by domestic courts acting within their competence and with due judicial guarantees.[FN23] Where a possible violation of an individual's rights under applicable inter-American human rights instruments is involved, however, the Commission has consistently held that the fourth instance formula has no application and the Commission may consider the matter.[FN24]

[FN23] See Report N° 39/96 (Santiago Marzioni v. Argentina), Annual Report of the IACHR 1996, p. 76, paras. 48-52. See also Report N° 29/88 (Clifton Wright v. Jamaica), Annual Report of the IACHR 1987-88, p. 154.

[FN24] See e.g. Marzioni v. Argentina, supra; Wright v. Jamaica, supra; Baptiste v. Grenada, supra, para. 65; McKenzie et al. v. Jamaica, supra, para. 170.

29. The Commission will therefore review the Petitioners' allegations in the present case with a heightened level of scrutiny, to ensure in particular that the right to life, the right to due process, and the right to a fair trial as prescribed under the American Declaration have been properly respected by the State.

B. Precautionary Measures

30. During its 84th regular period of sessions in October 1993, the Commission decided to request precautionary measures from the State in Mr. Sankofa's case, pursuant to Article 29(2) of the Commission's former Regulations. In its request, the Commission noted that Mr. Sankofa was 17 years of age at the time of the commission of the offense for which he was sentenced to death, that Mr. Sankofa's case dealt with the most important right, the right to life, and that a mistake on the part of authorities could result in irreparable harm. On this basis, and without prejudice to the final decision in the case, the Commission called upon the United States to take the necessary measures to ensure that Mr. Sankofa was afforded a hearing before the Texas Board of Pardons and Paroles. The Commission also requested that the Governor of Texas and the State ensure that the death sentence not be carried out on Mr. Sankofa, for humanitarian reasons and to avoid irreparable harm. The Commission transmitted the precautionary measures to the State and to the Petitioners by communications dated, respectively, October 27, 1993 and October 29, 1993. Owing to additional domestic proceedings, Mr. Sankofa's execution was subsequently postponed.

31. On or about May 23, 2000, the Commission received information that Mr. Sankofa's application for a writ of certiorari before the U.S. Supreme Court had been dismissed on May 1, 2000, and that his execution had been scheduled for June 22, 2000. Consequently, in its admissibility Report 51/00 adopted on June 15, 2000, the Commission decided to reiterate its request to the State under Article 29(2) of its former Regulations to take all necessary measures to ensure that Mr. Sankofa's execution was stayed pending the Commission's determination of the matter.

32. On June 22, 2000, the Commission was informed of the decision by the Texas Board of Pardons and Paroles of the same date not to recommend that Mr. Sankofa be granted a reprieve, commutation or pardon in respect of his death sentence. In light of this decision, in a note dated June 22, 2000 the Commission again reiterated its request that the State take whatever measures were deemed necessary to ensure that Mr. Sankofa's execution was stayed pending the Commission's investigation of the matter and asked for an urgent response to its request. The Commission subsequently received information that Mr. Sankofa's execution proceeded as scheduled on June 22, 2000.

33. In this connection, the Commission recalls its jurisprudence concerning the legal effect of its precautionary measures in the context of capital punishment cases. As the Commission has previously observed, its ability to effectively investigate and determine capital cases has frequently been undermined when states have scheduled and proceeded with the execution of condemned persons, despite the fact that those individuals have proceedings pending before the Commission. In an effort to avoid this dilemma, the Commission requests precautionary measures from states in capital cases to stay a condemned prisoner's execution until the

Commission has had an opportunity to investigate his or her claims. The Commission has expressed the view in this regard that OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate. As the Commission has emphasized on numerous occasions, it is beyond question that the failure of an OAS member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals. For these reasons, the Commission has determined that a member state disregards its fundamental human rights obligations under the OAS Charter and related instruments when it fails to implement precautionary measures issued by the Commission in these circumstances.[FN25]

[FN25] See Case 12.243, Report N° 52/01, Juan Raul Garza v. United States, Annual Report of the IACHR 2000, para. 117; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72. See similarly International Court of Justice, Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America), Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, N° 104, paras. 22-28; United Nations Human Rights Committee, Dante Piandiong and others v. The Philippines, Communication N° 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4; Eur. Court H.R., *Affaire Mamatkulov et Abdurasulovic c. Turkey*, Reqs. Nos. 46827/99, 46951/99 (6 February 2003), paras. 104-107.

34. In the present case, Mr. Sankofa's execution was carried out, notwithstanding the Commission's request for precautionary measures and despite the fact that the Commission has found Mr. Sankofa's claims to be admissible and had decided to proceed with its analysis of the merits of his case. By permitting Mr. Sankofa's execution to proceed in these circumstances, the Commission considers that the United States undermined the efficacy of the Commission's process to fully address Mr. Sankofa's complaint, deprived Mr. Sankofa of his right to petition effectively in the inter-American human rights system, and caused Mr. Sankofa serious and irreparable harm, and consequently failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States. The Commission views the State's omissions in this regard as extremely grave and calls upon the United States to take all steps necessary to comply with the Commission's requests for precautionary measures in other present and future complaints before the inter-American system.

C. Procedural History

35. The information before the Commission indicates that on October 28, 1981, Mr. Sankofa was convicted of the felony offense of capital murder of Bobby Lambert. Mr. Sankofa was found to have intentionally killed Mr. Lambert by shooting him with a pistol while robbing him or attempting to rob him in a Safeway parking lot in Houston at approximately 9:30 p.m. on May

13, 1981. Mr. Sankofa was arrested approximately one week after the murder, after allegedly committing 10 aggravated robberies between May 14 and May 20, 1981 following the Lambert murder. At the time of the crime, Mr. Sankofa was 17 years old.

36. The prosecution's case was based upon the testimony of one eye-witness, Ms. Bernadine Skillern, who positively identified Mr. Sankofa as the perpetrator of the murder, in a photographic display, a police station line-up, and her open court trial testimony. The only other evidence of guilt was information indicating that the caliber of the fatal bullet matched the caliber of the gun that Mr. Sankofa had in his possession when he was arrested. The defense argued that this was a case of mistaken identity and challenged Ms. Skillern's identification through cross-examination and by emphasizing the failure of other eye-witnesses, at least one of whom was closer to the events in question, to make an identification. The defense did not present any evidence during the guilt phase of Mr. Sankofa's trial.

37. Subsequent to his conviction, Mr. Sankofa pursued direct appeal proceedings through the state courts, as well as habeas corpus proceedings in the state and federal courts, the particulars of which were canvassed in detail in the Commission's admissibility report in this matter. In the course of his various post-conviction proceedings, Mr. Sankofa raised several issues, including the allegation that he was provided with ineffective assistance of counsel and the claim that he was innocent of the crime for which he was convicted. In support of these allegations, Mr. Sankofa presented evidence that included affidavits of alibi witnesses, affidavits of eyewitnesses who disputed Bernadine Skillern's identification of Mr. Sankofa as the shooter, and an affidavit from an investigator retained by Mr. Sankofa's trial counsel suggesting that his trial counsel did not conduct a thorough factual investigation or present the exculpatory testimony of witnesses. Mr. Sankofa also submitted reports by psychologists who had reviewed the statements and affidavits of witnesses and concluded that Ms. Skillern's identification of Mr. Sankofa was unreliable, and a Houston Police Department Firearms Report of May 1981 which indicated that the firearm confiscated from Mr. Sankofa upon his arrest was not the firearm used to shoot Mr. Lambert.

38. As indicated in the Commission's admissibility report in this matter,[FN26] some of this evidence was considered and evaluated by the domestic courts on habeas corpus review with or without an evidentiary hearing while other evidence was not considered in substance by any of the reviewing courts. More particularly, during his first habeas corpus application before the state courts, which was denied in February 1988, the court conducted an evidentiary hearing on Mr. Sankofa's allegation of ineffectiveness of trial counsel, in which it considered testimony from Mr. Sankofa's two trial attorneys and two of Mr. Sankofa's alibi witnesses. Following the hearing, the Court concluded that the alibi witnesses were not credible, that Mr. Sankofa did not inform his lawyers of the alibi witnesses, and that his counsel provided effective assistance.[FN27]

[FN26] Gary Graham, n.k.a. Shaka Sankofa v. United States, Case 11.193, Report 51/00, Annual Report of the IACHR 2000, para. 58.

[FN27] Ex Parte Graham, N° 335378-A (182d Dist. Ct., Harris County, Tex., February 9, 1988).

39. During his second state habeas corpus application in April 1993, Mr. Sankofa again raised his allegation of ineffectiveness of counsel, as well as a claim of actual innocence. In support, he presented several new affidavits of eyewitnesses who disputed Bernadine Skillern's identification evidence, as well as an affidavit from Merv West, an investigator retained by Mr. Sankofa's trial counsel, in which Mr. West suggested that Mr. Sankofa's trial counsel did not conduct a thorough factual investigation or present the exculpatory testimony of witnesses. The Court declined to hold an evidentiary hearing and dismissed the application based upon its examination of the affidavit evidence filed, finding that the new evidence presented was not credible and was refuted by the record as a whole. [FN28]

[FN28] See Ex Parte Graham, 853 S.W. 2d 564 (Tex. Crim. App. 1993).

40. During his third application for a writ of habeas corpus in the federal courts, Mr. Sankofa again raised the claims of ineffective assistance and actual innocence, and in support of these claims submitted further new evidence. This included affidavits of two eyewitnesses who were never contacted by Mr. Sankofa's trial lawyers, an affidavit corroborating the affidavit of one of the alibi witnesses previously found by the state court not to be credible, two reports by psychologists who had reviewed the statements and affidavits of witnesses and concluded that Ms. Skillern's identification of Mr. Sankofa was unreliable, and a Houston Police Department Firearms Report of May 1981 which indicated that the firearm confiscated from Mr. Sankofa upon his arrest was not the firearm used to shoot Mr. Lambert. The federal district court reviewed the evidence without an evidentiary hearing and concluded in an August 13, 1993 decision that the evidence did not substantiate his claims of actual innocence and ineffective assistance of counsel.[FN29] In reaching this conclusion, the Court found that the new evidence presented did not demonstrate that the state courts' determinations rejecting Mr. Sankofa's ineffective assistance of counsel allegations were erroneous. The Court acknowledged that, of the new evidence presented, the state courts had not considered the affidavits of two of the eyewitnesses, the affidavits of two alibi witnesses, and the Houston Police Department Firearms Report, but concluded that presentation of this evidence at trial would not have been required in order to guarantee Mr. Sankofa the constitutional right to effective assistance of counsel.

[FN29] Graham v. Collins, 829 F. Supp. 204 (S.D. Tex. 1993).

41. Mr. Sankofa made further attempts to present the same issues in subsequent habeas corpus applications before the state and federal courts, but these applications were rejected on the basis of newly enacted legislation in the state of Texas and the federal Anti-Terrorism and Effective Death Penalty Act of 1996, which effectively precluded Mr. Sankofa from raising claims that were or could have been raised in previous habeas corpus proceedings.[FN30]

[FN30] See, e.g., *Graham v. Johnson*, 1999 W.L. 98513 (5th Cir.(Tex.)), Case N° 99-20014, U.S. Court of Appeals for the Fifth Circuit (February 25, 1999).

D. Right to Due Process and to a Fair Trial

42. In light of the procedural background summarized above, the Petitioners contend that the United States and the Texas governments failed to guarantee Mr. Sankofa the right to a fair trial or due process of law because of the denial of a fair hearing in which Mr. Sankofa could present exculpatory evidence. They contend that the evidence of the eye witnesses other than Bernadine Skillern together with the alibi witnesses constituted overwhelming evidence exonerating Mr. Sankofa and that this evidence should have been presented in Court but was not due to the assistance of ineffective counsel who represented Mr. Sankofa at trial. The Petitioners also argue that the state and federal courts procedurally barred Mr. Sankofa from presenting any evidence of innocence at an evidentiary hearing, either because of the threshold necessary under applicable case law for a reviewing court to consider new evidence or because applicable state or federal legislation precluded the courts from entertaining successive habeas corpus applications.

43. In addressing this aspect of the Petitioners' complaint, the Commission must consider its previous jurisprudence according to which it is generally for the courts of member states to review the factual evidence in a given case.[FN31] Similarly, it is for the appellate courts of states, and not the Commission, to review the conduct of a trial, including such matters as the weight to be given to evidence and the propriety of instructions to a jury, unless it is clear that the judge's conduct was arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality.[FN32] At the same time, States are obliged to ensure that criminal proceedings comply with the minimum standards of due process encompassed by Articles XVIII and XXVI of the American Declaration, which apply to all stages of a criminal proceeding[FN33] and, as noted above, are subject to a heightened level of scrutiny in capital cases. In light of these applicable standards, the Commission must determine whether the arguments raised by the Petitioners warrant intervention by this Commission in the manner in which the domestic courts considered and treated the evidence raised on Mr. Sankofa's behalf.

[FN31] See, e.g., *McKenzie v. Jamaica*, supra, para. 298.

[FN32] *Id.*

[FN33] See, e.g., *Juan Raul Garza v. United States*, Case 12.243, Report N° 52/01, Annual Report of the IACHR 2000, para. 102.

44. In evaluating the information on the record in light of applicable principles, the Commission concludes that the manner in which certain evidence directly pertinent to the basis for Mr. Sankofa's capital conviction was treated in the course of his criminal proceedings failed to meet the rigorous standard of due process applicable in capital cases and consequently amounted to a denial of justice contrary to the fair trial and due process standards under the American Declaration. This includes in particular the identification evidence pertaining to Mr.

Lambert's murder as well as the ballistics evidence concerning the firearm found on Mr. Sankofa at the time of his arrest.

45. With respect to the identification evidence in Mr. Sankofa's case, the Commission notes that according to the record, at least eight witnesses were present at the time of or shortly after Mr. Lambert's murder. Of these, only three testified at trial, Bernadine Skillern, who was the only witness to identify Mr. Sankofa as the killer, and Wilma Amos and Daniel Grady, who were unable to do so because they did not get a good enough look at, or did not sufficiently recall, the perpetrator's face.[FN34] In the course of Mr. Sankofa's second habeas corpus review to the state district court, affidavits sworn by four of the witnesses, Wilma Amos,[FN35] Malcolm Stephens, Lorna Stephens[FN36] and Ronald Hubbard,[FN37] were provided to the court in support of Mr. Sankofa's claim of innocence by disputing Ms. Skillern's identification of Mr. Sankofa as the shooter, but the Court determined without an evidentiary hearing that the evidence either lacked credibility on the record as a whole or did not undermine Ms. Skillern's identification evidence.[FN38] Affidavits of two further eyewitnesses, Sherian Etuk[FN39] and Leodis Wilkerson,[FN40] were presented to the federal district court during Mr. Sankofa's first habeas corpus application before the federal district court but that court denied Mr. Graham's application without an evidentiary hearing and without considering the substance of these additional affidavits.[FN41]

[FN34] For an overview of the evidence presented in Mr. Sankofa's post-conviction habeas corpus proceedings, see *Graham v. Johnson*, supra.

[FN35] In an affidavit dated April 15, 1993, Wilma Amos stated, inter alia, that the shooter was no taller than 5'5" (a line up chart had shown Mr. Sankofa to be 5'9"), that defense counsel had never contacted her, and that she had examined two photographs of Mr. Sankofa as he appeared in 1981 and was "certain" that Mr. Sankofa was not the person who shot Mr. Lambert.

[FN36] In affidavits dated April 17, 1993, Malcolm and Lorna Stephens stated that they had arrived at the crime scene shortly after the shooting took place and had seen a young black man running away, and that the man had been approximately 5'5" tall.

[FN37] In an affidavit dated April 15, 1993, Ronald Hubbard, a Safeway employee who had been present at the scene of the crime, described the shooter as 5'6" tall and claimed that no one with Mr. Sankofa's defense team had contacted him.

[FN38] *Graham v. Johnson*, supra. See also *Graham v. Collins*, Civil Action N° H-93-2217, U.S. District Court for the Southern District of Texas, Houston Division (August 13, 1993).

[FN39] In an affidavit dated July 10, 1993, Sherian Etuk, who stated that she had been working at Safeway on the evening of Mr. Lambert's murder, indicated that the perpetrator was a young black man not taller than 5'6" with a light build and a very narrow face. She also claimed that no one had contacted her on behalf of Mr. Sankofa and that when the police showed her photographs of Mr. Graham, none of the pictures depicted the person who she had seen commit the crime on May 13, 1981.

[FN40] In an affidavit dated May 25, 1993, Leodis Wilkerson, who was 12 years of age in 1981, indicated that he had not been contacted by anyone on Mr. Graham's behalf. He also described the shooter as a short, young, clean-shaven black man and that photographs of Mr. Sankofa from 1981 did not look anything like the person he witnessed commit the offense in 1981.

[FN41] See *Graham v. Johnson*, supra; *Graham v Collins*, supra.

46. With respect to the ballistics evidence, the record indicates that the Houston Police Department Firearms Report of May 1981 according to which the firearm confiscated from Mr. Sankofa upon his arrest was not the firearm used to shoot Mr. Lambert was not considered in substance by any court as part of the evidence pertinent to Mr. Sankofa's guilt or innocence for the crime at issue.

47. As noted above, the only evidence upon which Mr. Sankofa's conviction was based was the identification evidence of one eyewitness to the crime as well as evidence that the caliber of the lethal bullet matched that of a gun found in Mr. Sankofa's possession at the time of his arrest. Consequently, the evidence of the additional witnesses to the crime who did not testify at trial as well as the ballistics evidence were highly relevant to the soundness of Mr. Sankofa's conviction for the crime at issue, and, on the information available, could very well raise a reasonable doubt as to Mr. Sankofa's guilt. In these circumstances, the Commission considers that the strict standard of due process applicable in capital cases demand that a trier of fact be permitted to re-evaluate Mr. Sankofa's responsibility for the crime at issue based upon the entirety of pertinent evidence through a procedure that incorporates the fundamental fair trial protections under the Declaration, including the right to present and examine witnesses. In the Commission's view, the review procedures applied in Mr. Sankofa's case failed to meet this standard, as they permitted certain of this evidence to be rejected without an evidentiary hearing, and other evidence to be rejected without any substantive consideration. The Commission therefore considers at a minimum that the whole of the identification and ballistics evidence raised in Mr. Sankofa's case should have been the subject of re-evaluation through a trial procedure satisfying the requirements of Articles XVIII and XXVI of the American Declaration in order to determine whether the totality of pertinent evidence supported Mr. Sankofa's guilt for Mr. Lambert's murder.

48. Based upon the foregoing, the Commission finds that the State is responsible for violations of Mr. Sankofa's right to a fair trial and to due process under Articles XVIII and XXVI in respect of the criminal proceedings against him.

49. The Commission also finds that these serious violations of due process should be considered to have deprived Mr. Sankofa's criminal proceedings of their efficacy from the outset and thereby invalidate his conviction and sentence.[FN42] Consequently, by executing Mr. Sankofa on June 22, 2000 pursuant to these flawed criminal proceedings, the Commission considers that the United States arbitrarily deprived Mr. Graham of his life and is thereby responsible for a serious violation of his right to life under Article I of the American Declaration.

[FN42] See similarly *Joseph Thomas v. Jamaica*, Case 12.183, Report N° 127/01, Annual Report of the IACHR 2001, para. 146, citing *I/A Court H.R., Castillo Petruzzi et al.*, Judgment of May 30, 1999, para. 219.

E. Right to Life and Mr. Sankofa's Age at the Time of the Crime at Issue

50. The Petitioners also contend that the United States is responsible for violations of Articles I and II of the American Declaration, by reason of the fact that Mr. Sankofa was seventeen years old at the time of the crime for which he has been convicted and sentenced to death. The Petitioners rely in this regard upon the Commission's decision in the case of Roach and Pinkerton v. United States, in which the Commission determined that the diversity of state practice in the United States concerning the application of capital punishment resulted in very different sentences for the commission of the same crimes, and that the failure of the United States to preempt the states in regard to the protection of the right to life of juveniles under sentence of death results in a pattern of arbitrary deprivation of life and inequality before the law.

51. The Petitioners further contend that the United States and Texas governments have made no reform in the disparate application of the death penalty to juveniles since the decision in Roach and Pinkerton, and accordingly that the State is also responsible for violations of Articles I and II of the American Declaration in respect of Mr. Sankofa.

52. The Commission recalls in this respect that in its recent decision in the case of Michael Domingues v. United States,[FN43] it found that the state of international law had evolved since the Commission's determination in 1987 of the case of Roach and Pinkerton, so as to prohibit as a jus cogens norm the execution of persons who were under 18 years of age at the time of their crimes. In reaching this conclusion, the Commission canvassed evidence of state practice over the 14 year period between 1987 and 2001 concerning the execution of juveniles. This evidence included treaties, United Nations resolutions and standards, domestic practice of states, and the practice of the United States. Based upon these developments, the Commission concluded as follows:

[FN43] Michael Domingues v. United States, Case 12.285, Report 62/02, Annual Report of the IACHR 2002, available on the IACHR web site at <http://www.cidh.org/annualrep/2002eng/USA.12285.htm>.

84. In the Commission's view, the evidence canvassed above clearly illustrates that by persisting in the practice of executing offenders under age 18, the U.S. stands alone amongst the traditional developed world nations and those of the inter-American system, and has also become increasingly isolated within the entire global community. The overwhelming evidence of global state practice as set out above displays a consistency and generality amongst world states indicating that the world community considers the execution of offenders aged below 18 years at the time of their offence to be inconsistent with prevailing standards of decency. The Commission is therefore of the view that a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime.

85. Moreover, the Commission is satisfied, based upon the information before it, that this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of jus cogens, a development anticipated by the Commission in its Roach and Pinkerton decision. As noted above, nearly every nation state has rejected the imposition of capital punishment to

individuals under the age of 18. They have done so through ratification of the ICCPR, U.N. Convention on the Rights of the Child, and the American Convention on Human Rights, treaties in which this proscription is recognized as non-derogable, as well as through corresponding amendments to their domestic laws. The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards. Indeed, it may be said that the United States itself, rather than persistently objecting to the standard, has in several significant respects recognized the propriety of this norm by, for example, prescribing the age of 18 as the federal standard for the application of capital punishment and by ratifying the Fourth Geneva Convention without reservation to this standard. On this basis, the Commission considers that the United States is bound by a norm of jus cogens not to impose capital punishment on individuals who committed their crimes when they had not yet reached 18 years of age. As a jus cogens norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise.[FN44]

[FN44] Id., paras. 84, 85.

53. In the present case, Mr. Graham was executed by the state of Texas on June 22, 2000, 16 months prior to the Commission's preliminary report in the Domingues Case. A preponderance of the evidence canvassed by the Commission in the Domingues Case related to international and state practice manifested before Mr. Sankofa's execution on June 22, 2000.[FN45] The Commission therefore adopts for the purposes of this report its findings in the Domingues Case, and concludes that at the time of Mr. Sankofa's execution, the United States was likewise bound by a norm of jus cogens prohibiting the carrying out of the death penalty on individuals who committed their crimes when they had not yet reached 18 years of age.

[FN45] The Commission relied, for example, upon the fact that 191 states had ratified the UN Convention on the Rights of the Child as of September 2001. Of these, only one succeeded to the Convention subsequent to June 2000, Yugoslavia on March 12, 2001.

54. Consequently, the Commission finds that by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age, the United States is responsible for violating Mr. Sankofa's right to life under Article I of the American Declaration.

55. In light of the Commission's finding that Mr. Sankofa's conviction, sentence and execution lacked the juridical basis demanded by the strict standard of due process applicable in capital cases under Articles I, XVIII and XXVI of the American Declaration and that his execution was also prohibited due to his age at the time he is alleged to have committed the crime in question, the Commission does not consider it necessary to address whether the length of time for which Mr. Sankofa was incarcerated on death row might additionally have rendered his execution invalid.

V. PROCEEDINGS SUBSEQUENT TO REPORT 26/03

56. The Commission examined this case in the course of its 117th regular session and on March 6, 2003 adopted Report N° 26/03 pursuant to Article 43(2) of the Commission's Rules of Procedure.

57. By note dated March 10, 2003, the Commission transmitted Report N° 26/03 to the State, and requested that the Government of the United States inform the Commission within two months as to the measures adopted to comply with the recommendations made to resolve the situation denounced.

58. The Commission did not receive a response from the State within the time period specified on the Commission's March 10, 2003 note.

VI. CONCLUSIONS

59. The Commission, based on the foregoing considerations of fact and law, and in light of the State's response to Report N° 26/03, ratifies the following conclusions.

60. The Commission hereby concludes that the State is responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Shaka Sankofa. The Commission also concludes that, by executing Mr. Sankofa based upon these criminal proceedings, the State is responsible for a violation of Mr. Sankofa's fundamental right to life under Article I of the American Declaration; and

61. The Commission hereby concludes that the State has acted contrary to an international norm of jus cogens as encompassed in the right to life under Article I of the American Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age.

VII. RECOMMENDATIONS

62. In accordance with the analysis and conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HEREBY REITERATES ITS RECOMMENDATIONS TO THE UNITED STATES THAT IT:

1. Provide the next-of-kin of Shaka Sankofa with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that violations similar to those in Mr. Sankofa's case do not occur in future capital proceedings.
3. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

VIII. PUBLICATION

63. By communication dated October 29, 2003, the Commission transmitted this report, adopted as Report N° 55/03 pursuant to Article 45(1) of the Commission's Rules of Procedure, to the State and to the Petitioners in accordance with Rule 45(2) of the Commission's Rules and requested information within 30 days as to measures adopted by the State to implement the Commission's recommendations.

64. In a communication dated December 23, 2003, the State responded to the Commission's request, in which it indicated that it disagreed with the Commission's conclusions and recommendations in Report N° 55/03. In particular, the State indicated that it rejected the first and third recommendations, based upon its observations in Case 12.185 (Michael Domingues), a summary of which has been published on the Commission's website. The State also indicated that it disagreed with the Commission's second recommendation, on the basis that Mr. Sankofa had every possibility of receiving a full and fair review of his case during the preceding 19 years and that any alleged violation of Mr. Sankofa's human rights were duly litigated and reviewed by multiple courts.

65. In light of the above, and upon considering the State's response to Report N° 55/03, the Commission, in conformity with Article 45(3) of its Rules of Procedure, decides to ratify the conclusions and reiterate the recommendations in this Report, to make this Report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until they have been complied with by the United States.

Approved on the 29th day of the month of December, 2003: José Zalaquett, First Vice-President; Clare K. Roberts, Second Vice-President; Julio Prado Vallejo, and Susana Villarán, Commissioners.