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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Dated: 14 October 2004
Citation: Elliott v. United States, Petition 28/03, Inter-Am. C.H.R., Report No. 68/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: Hugh Southey and David Sergi
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I. SUMMARY

1. On January 6, 2003, the Inter-American Commission on Human Rights (the “Commission”) received a petition and a request for precautionary measures from Mr. Hugh Southey, a Barrister in London, England, and Mr. David Sergi, an attorney in the firm of Sergi and Associates in San Marcos, Texas (the Petitioners”) against the Government of the United States (the “State” or “U.S.”). The petition was presented on behalf of Mr. John Elliott, a U.S. national who is incarcerated on death row in the State of Texas. The petition stated that Mr. Elliott had been on death row since January 20, 1987, and that he was scheduled to be executed on February 4, 2003. The Petitioners alleged that the extended time for which Mr. Elliott had been on death row awaiting execution subjected him to the “death row syndrome,” contrary to Mr. Elliott’s right under Article XXVI of the American Declaration of the Rights and Duties of Man not to be subjected to cruel, infamous or unusual punishment. Despite precautionary measures adopted by the Commission on January 14, 2003 requesting that the State take the appropriate steps to avoid irreparable harm to Mr. Elliott pending the outcome of the proceedings before the Commission, Mr. Elliott’s execution was carried out on February 4, 2003.

2. In their initial petition and subsequent communications, the Petitioners acknowledge that their claim concerning the time spent by Mr. Elliott on death row had not been presented before the U.S. courts but argue that they should be excused from exhausting on the ground that there was no prospect of a United States court recognizing the right alleged in the petition. They also contend that the petition should not be considered untimely, due to the absence of effective domestic remedies and owing to the continuing nature of the violations alleged by Mr. Elliott.

3. The State opposed the petition on the basis that the petition fails to state facts that tend to establish a violation of the American Declaration.

4. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudicing the merits of the matter the Commission has decided to declare this petition admissible with respect to Articles I, XXVI and XXVI of the American Declaration, to transmit this report to the parties, to continue with the analysis of the merits of the case, and to publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Following the lodging of the Petitioners' initial petition, the Commission by note dated January 9, 2003, requested that the Petitioners provide additional information on the act or situation denounced, as well as information on whether the requirements of Article 31 and 32 of the Commission's Rules of Procedure had been complied with. In a communication dated January 9, 2003, the Petitioners responded to the Commission's request for information.

6. By note dated January 14, 2003, the Commission transmitted the pertinent parts of Mr. Elliott's petition to the State, with a request for information within two months, as established by the Commission's Rules of Procedure. In the same note, the Commission also requested pursuant to Article 25 of its Rules of Procedure[FN1] that the United States take the urgent measures necessary to preserve Mr. Elliott's life pending the Commission's investigation of the allegations in his petition. Also by note of the same date, the Commission informed the Petitioners that Mr. Elliott's petition had been transmitted to the State, and that precautionary measures had been requested on his behalf.

[FN1] Article 25(1) of the Commission's Rules of Procedure states: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, in its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

7. By communication dated January 16, 2003 and received by the Commission on January 21, 2003, the State responded to the Commission's January 14, 2003 communication, indicating that the request for precautionary measures had been forwarded to the Governor and Attorney General of the State of Texas. In a note dated January 27, 2003, the Commission transmitted the State's January 16, 2003 communication to the Petitioners.

8. By communication dated February 3, 2003 and received by the Commission on February 4, 2003, the State provided its response to Mr. Elliott's petition, which the Commission transmitted to the Petitioners on February 10, 2003.

9. In a February 13, 2003 communication, the Petitioner's notified the Commission that in light of Mr. Elliott's execution, they intended to update their petition, and in a communication

dated May 3, 2003, the Petitioner's submitted their additional observations on Mr. Elliott's complaint. The pertinent parts of the Petitioner's May 3, 2003 observations were transmitted to the State by note dated May 20, 2003 with a request for a response within one month. The Commission did not receive a response from the State to its request for information.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

10. According to the information submitted by the Petitioners, John Elliott is a national of the United Kingdom. The Petitioners allege that in January 1987, Mr. Elliott was convicted and sentenced to death for the June 13, 1986 murder of 18 year old Joyce Munguia. The Petitioners further allege that Mr. Elliott has been on death row since January 1987.

11. In relation to the admissibility of their complaint, the Petitioners acknowledge that they have not pursued claims before the domestic courts concerning the issues raised in their petition. They argue, however, that there is no prospect that courts in the United States will find a violation of his rights as a consequence of the "death row syndrome." The Petitioners point out in this respect that the U.S. Supreme court has consistently refused to consider the issue.[FN2] Accordingly, the Petitioners contend that Mr. Elliott should be excused from exhausting domestic remedies.

[FN2] See Petitioner's communication dated January 9, 2003, p. 2.

12. With regard to the time limit established in Article 32 of the Commission's Rules of Procedure, the Petitioners argue that because there has been no decision notifying Mr. Elliott that he has exhausted his domestic remedies, it is impossible to know when the limitation period should begin to run. Specifically, the Petitioners point out that the time period cannot begin to run from the date of Mr. Elliott's conviction, because at that point it would not have been possible to argue that he had spent an inhumane period of time on death row. Accordingly, the Petitioners claim that only on October 25, 2002, when Mr. Elliott's execution was scheduled, did it become clear how long Mr. Elliott would spend on death row.[FN3]

[FN3] See Petitioner's communication dated January 9, 2003, p. 2.

13. In addition and in the alternative, the Petitioners argue that this is a situation in which a continued violation of the American Declaration has taken place, due to the fact that at the time his petition was filed, Mr. Elliott remained on death row. Consequently, the Petitioners submit that the Commission should adopt the approach of the European Court of Human Rights on this issue by finding that the six month time limit does not apply.[FN4]

[FN4] See Petitioner's communication dated January 9, 2003, p. 2, citing specific examples of the approach of the European Court of Human Rights in *Dudgeon v. United Kingdom* 4 E.H.R.R. 149 (1989) and *McFeeley v. United Kingdom* 20 D.R. 44.

14. With respect to the substance of their complaints against the State, the Petitioners argue that the length of time for which Mr. Elliott has been on death row constitutes inhumane treatment and, consequently, a violation of the right not to be subjected to cruel, infamous or unusual punishment under Article XXVI of the American Declaration.[FN5] In support of their position, the Petitioners cite the jurisprudence of the Judicial Committee of the Privy Council in *Pratt and Morgan v. Jamaica*,[FN6] in which that Court ruled that in any case where execution is to take place more than five years after the sentence is passed, there is a presumption that the delay constitutes inhuman or degrading punishment or treatment. Similarly, the Petitioners cite the judgment of the European Court of Human Rights in the case of *Soering v. United Kingdom*,[FN7] in which the European Court recognized the "death row phenomenon" and held that a long period of delay on death row might go beyond the threshold of humane treatment provided by Article 3 of the European Convention on Human Rights.[FN8] In addition, the Petitioners point out that several other jurisdictions have adopted a similar approach.[FN9]

[FN5] See Petitioner's communication dated January 6, 2003, p. 1.

[FN6] Judicial Committee of the Privy Council, *Pratt and Morgan v. Jamaica*, 2 A.C. 1 (1994).

[FN7] Eur. Court H.R., *Soering v. United Kingdom*, 11 E.H.R.R. 439 (1989).

[FN8] Article 3 of the European Convention on Human Rights provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[FN9] The examples cited by the Petitioners include *Sher Singh v. State of Punjab* (1983) 2 S.C.R. 582 and *India and Catholic IACHR for Justice and Peace in Zimbabwe v. AG* (24 June 1993) unreported Zim S.C.

15. Further, in respect of Mr. Elliott's circumstances in particular, the Petitioners claim that the repressive regime imposed on death row inmates by the Texas Department of Corrections is "characterized by the inmates being provided with limited facilities for social interaction and being subjected to brutality".[FN10]

[FN10] See Petitioners' communication dated January 9, 2003, p. 1.

16. Finally, the Petitioners claim that prior to his execution, Mr. Elliott brought a Motion for Forensic DNA Testing, Stay of Execution and Appointment of Counsel before the Texas courts in which he sought DNA testing pursuant to Article 64 of the Texas Code of Criminal Procedure of evidence that was secured by the state in relation to the offense for which Mr. Elliott was sentenced to death.[FN11] The Petitioners also allege that Mr. Elliott was executed on February 4, 2003 while his application for DNA testing was pending. The Petitioners argue that the action of the State in executing Mr. Elliott prior to the resolution of his domestic requests for DNA

testing and despite the precautionary measures issued by the Commission on January 14, 2003 constituted a violation of his right to life and his right to a fair trial under Articles I and XVIII of the American Declaration.

[FN11] According to the Petitioners, this request for “Forensic DNA Testing, Stay of Execution, and Appointment of Counsel”, was filed in the Texas District Court, and was based on an April 2001 amendment to the Texas Code of Criminal Procedure, which allows convicted persons to seek exoneration through the testing of previously untested DNA evidence, or through the retesting of previously tested evidence through the use of newer testing techniques. In particular, Mr. Elliott sought to have semen collected from two other men that were present on the night in question compared with semen found on the victim, in order to establish that he was wrongly convicted.

B. Position of the State

17. With respect to the admissibility of the Petitioners’ petition, the State has argued that the petition fails to state facts that tend to establish a violation of the American Declaration, and that consequently, the Commission should declare the petition inadmissible pursuant to Article 34 of its Rules of Procedure.[FN12]

[FN12] See February 3, 2004 Reply of the Government of the United States, p. 1.

18. In this regard, the State provided certain information respecting the history of Mr. Elliott’s criminal proceedings. In particular, in its February 3, 2002 response to Mr. Elliott’s petition, the State set forth the factual and procedural history of Mr. Elliott’s criminal proceedings, including the following:[FN13]

- a. In June 1986, Mr. Elliott sexually assaulted Joyce Munguia and then bludgeoned her to death. In January 1987, Mr. Elliott was convicted of the crime of “murder in the course of an aggravated sexual assault” and subsequently sentenced to death.
- b. In 1993, following a direct appeal, the Texas Court of Criminal Appeals affirmed Mr. Elliott’s conviction and death sentence and also denied a request for rehearing.[FN14]
- c. Later that same year, the U.S. Supreme Court denied certiorari review.[FN15]
- d. The trial court subsequently scheduled Mr. Elliott’s execution for August 24, 1994. Mr. Elliott then filed a request to stay his execution on August 2, 1994, which was granted.
- e. The Court of Criminal appeals denied Mr. Elliott’s application for state habeas corpus relief in September 1999, and the Federal District Court denied his habeas corpus relief in September 2001. In July 2002, the Fifth Circuit Court of Appeals affirmed the decision taken by the Federal District Court.
- f. In October 2002, the trial court signed a second order of execution for Mr. Elliott, setting the date for February 4, 2003.
- g. On January 13, 2003, the Supreme Court denied Mr. Elliott’s petition for certiorari.

[FN13] See February 3, 2003 Reply of the Government of the United States, pp. 1-2.

[FN14] See *Elliott v. State*, 858 S.W. 2d 478 (Tex. Crim. App. 1993).

[FN15] See *Elliott v. Texas*, 510 U.S. 997, 114 S. Ct. 563 (1993).

19. In the context of this procedural background, and in support of its argument that the petition does not raise a colorable claim, the State maintains that Mr. Elliott spent 15 years on death row because he voluntarily appealed his sentence at both the state and federal level. Further, the State argues that Mr. Elliott spent 15 years on death row precisely because he received due process as well as the benefit of all available safeguards, and indeed, claims that the Petitioners are arguing that Mr. Elliott received too much due process. Specifically, the State alleges that the Petitioners' basic argument is that because the State afforded Mr. Elliott with various opportunities to have his case reviewed by the courts, the State has deprived itself of the very criminal sanction imposed on Mr. Elliott for a particularly brutish crime. Consequently, the State argues that Mr. Elliott's own actions have delayed his execution and that he cannot therefore rely on the time spent on death row as evidence of a violation of the American Declaration.[FN16]

[FN16] See the February 3, 2003 Reply of the Government of the United States, at pp. 2 to 3.

20. The State contends further that the constitutional protections afforded to criminal defendants are consistent with international human rights instruments, and notes in this regard that upon its ratification of the International Covenant on Civil and Political Rights, the United States entered the following reservation:

The United States considers itself bound by article 7[FN17] to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the fifth, eighth, and/or fourteenth amendments to the Constitution of the United States. [FN18]

[FN17] Article 7 of the International Covenant on Civil and Political Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

[FN18] See February 3, 2003 Reply of the Government of the United States, p. 4.

21. With respect to the Petitioners' arguments that an extended time on death row is a violation of the American Declaration, the State notes that the judicial and quasi-judicial bodies that the Petitioners have relied on for support are outside of the Inter-American System of Human Rights and do not interpret nor apply the American Declaration.[FN19]

[FN19] See February 3, 2004 Reply of the Government of the United States, p. 4.

22. In addition, the State contends that both the facts and the ratio in the case of *Soering v. United Kingdom* are distinguishable from Mr. Elliott's case. In pertinent part, the State argues that the *Soering* case concerned a perceived conflict in treaty obligations and that the decision of the European Court turned on the term "degrading treatment", as provided in the European Convention on Human Rights. The State points out that there is not counterpart to this language in the American Declaration. The State further articulates that the other cases cited by the Petitioners are also inapplicable to the present situation.[FN20]

[FN20] See February 3, 2004 Reply of the Government of the United States, pp. 4-5.

23. Further, concerning the jurisprudence of the inter-American System, the State argues that the Commission has never held that a certain period of time on death row constitutes a per se violation of the American Declaration. In particular, the State cites *Andrews v. United States*,[FN21] where the State claims that the Commission concluded that a number of factors, taken together, constituted a violation of the prohibition on "cruel, infamous or unusual punishment" set forth in Article XXVI of the American Declaration. These factors included the amount of time spent on death row, a jury allegedly tainted by racial bias, at least eight scheduled execution dates, and inadequate prison conditions. The State stresses that in *Andrews*, the Commission did not find a violation based solely on the time spent on death row.[FN22]

[FN21] See Case N° 11.139, Report N° 57/96, *William Andrews (United States)*, Annual Report of the IACHR 1997.

[FN22] See February 3, 2003 Reply of the Government of the United States, p. 6.

24. With respect to the Petitioners' allegations that Mr. Elliott was subject to "limited facilities" and "brutality", the State responds that having limited facilities for social interaction is an inherent characteristic of lawful punishment, and that no supporting facts have been presented to support the claim that Mr. Elliott was subject to brutality.[FN23]

[FN23] See February 3, 2004 Reply of the Government of the United States, p. 4.

25. Finally, as to Mr. Elliott's execution in the face of the Commission's precautionary measures, the State noted that the U.S. Department of State had communicated the Commission's request to the Texas State Attorney General's Office, but submitted that in any event, the Commission's request only constitutes a non-binding recommendation of which the United States had taken note.[FN24]

[FN24] See February 3, 2003 Reply of the Government of the United States, p. 6.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*.

26. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. Under Article 23 of the Commission's Rules of Procedure, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. The alleged victim, John Elliott, is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commissions Statute and Article 49 of the Commissions Rules of Procedure. The United States has been subject to the jurisdiction of the Commission since the Commission's creation, as a Member State of the OAS that deposited its instrument of ratification of the OAS Charter in June 19, 1951.[FN25]

[FN25] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendation to such states, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Articles 3, 16, 51, 112, 150; Rules of Procedure of the Inter-American Commission on Human Rights, Articles 49, 50; I/A Court H.R., Advisory Opinion OC-10/88 "Interpretation of the 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 N° 10 (1989), paras. 35-45; I.A. Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

27. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man that have taken place in the territory of the United States, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

28. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1986, at which time the obligations undertaken by the State pursuant to the OAS Charter and the American Declaration were in effect.

29. Finally, inasmuch as the Petitioners have filed complaints alleging violation of Articles I, XI, XVIII, XXV and XXVI of the American Declaration, the Commission is competent *ratione materiae* to examine the complaint.

B. Duplication of Procedures

30. There is no information on the record indicating that the subject of this petition is pending settlement in another procedure under an international government 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 another international governmental organization of which the State is a member. The State has not opposed the petition on the ground of duplication. The Commission therefore finds no bar to the admissibility of the Petitioner's claims under Article 33 of the Commission's Rules of Procedure.

C. Exhaustion of Domestic Remedies

31. Article 31(1) of the Commission's Rules of Procedure specifies that in order for a case to be admitted, "remedies of the domestic legal system [must] have been pursued and exhausted in accordance with the generally recognized 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 31(2) of the Commission's Rules of Procedure 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 rendering a final judgment under the domestic remedies.

32. In addition, the Inter-American Court of Human Rights has observed that domestic remedies, in order to accord with generally accepted 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.[FN26]

[FN26] I/A. Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. N° 4, (1988), paras. 64-66.

33. Further, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the Commission's Rules of Procedure provides that it shall be up to the State to demonstrate that the remedies under domestic law have not been exhausted.

34. In the instant case, Mr. Elliott has pursued numerous domestic avenues of redress since his conviction and sentencing to death in January 1987. These proceedings have been described in the observations of the Petitioners and the State, and are set forth in Section III of this Report, as well as in Mr. Elliott's Petition for Post Conviction Relief, and include the following:

- a. Mr. Elliott was convicted on January 13, 1987 of murder in the course of an aggravated sexual assault and sentenced to death on January 15, 1987. Mr. Elliott appealed his capital conviction and death sentence, which were both affirmed by the Texas Court of Criminal Appeals on April 14, 1993.[FN27] Mr. Elliott then presented a petition for a writ of certiorari to the U.S. Supreme Court, which was denied on November 29, 1993.[FN28]
- b. Beginning on April 23, 1997, Mr. Elliott filed applications for writs of habeas corpus in the Texas State courts, which were denied by the state trial court as well as the Texas Court of Criminal Appeals on, respectively, August 7, 1998 and September 2, 1999.
- c. On February 14, 2000, Mr. Elliott filed an application for a writ of habeas corpus in the United States District Court for the Western District of Texas, which was denied on September 21, 2001. Mr. Elliott's application for a certificate of appealability presented to the Fifth Circuit Court of Appeals was denied in July 2002, and on January 13, 2003 the U.S. Supreme Court denied his petition for a writ of certiorari.
- d. Also in January 2003, the Petitioners began proceedings in the Texas Courts, requesting forensic DNA testing, a stay of execution and appointment of counsel. Mr. Elliott was executed on February 4, 2003 while his application for DNA testing was pending before the Texas Court of Criminal Appeals.

[FN27] Elliott v. State, 858 S.W. 2d 478 (Tex. Crim. App. 1993).

[FN28] Elliott v. Texas, 510 U.S. 997 (1993).

35. The State has not raised any issues with respect to the inadmissibility of the Petitioners' petition related to non-exhaustion of the domestic remedies, nor has the State sought to contest the Petitioners' reliance on the exception to exhaustion contained in Article 31(2)(a) of the Commission's Rules of Procedure. The record also shows that Mr. Elliott pursued claims regarding his conviction and sentence before the state and federal courts, up to and including the U.S. Supreme Court. In addition, the Petitioners have claimed, and the State has not contested, that there is no prospect that courts in the United States will find a violation of his rights as a consequence of the "death row syndrome," and refer in this respect to decisions of the State's highest appellate court in which it has consistently refused to consider the issue.[FN29]

[FN29] See Petitioner's communication dated January 9, 2003, p. 2, citing Lackey v. Texas, 514 U.S. 1045 (1995) and subsequent cases leading up to and including Foster v. Florida, 154 L.Ed. 359 (2002).

36. With respect to the Petitioner's alleged violations of Articles I and XVIII of the American Declaration relating to the fact that Mr. Elliott was executed while his request for DNA testing was pending, the Commission considers that he was, by his execution, in effect precluded from exhausting any further remedies on this issue. Accordingly, the Commission finds that Mr. Elliott's petition is admissible under Article 31 of the Commission's Rules of Procedure.

37. Based upon the information before it, therefore, the Commission finds that Mr. Elliott has exhausted the domestic remedies, or that any available domestic proceedings would provide no reasonable prospect of success, in respect of his claims before the Commission. Consequently, the Petitioner's petition is not barred under Article 37 of the Commission's Rules of Procedure.

D. Timeliness of the Petition

38. Pursuant to Article 32(1) of the Commission's Rules of Procedure, 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. In the present case, the Petitioners' petition was lodged on January 6, 2003 and therefore not beyond six months from the date of the denial by his final petition for a writ of certiorari by the U.S. Supreme Court on January 13, 2003. 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 32 of the Commission's Rules of Procedure.

E. Colorable Claim

39. Article 34(b) of the Commission's Rules of Procedure requires the Commission to declare inadmissible any petition when the petition is manifestly groundless or out of order on the basis of a statement by the petitioners or the government.

40. The Petitioner's allege that the State is responsible for violations of Articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man, in connection with the criminal proceeding against Mr. Elliott, based upon the length of time for which he has been held on death row and his alleged inability to pursue additional domestic remedies concerning DNA testing prior to his execution. The Commission has outlined in Part III of this Report the substantive allegations of the Petitioners, as well as information submitted by the Petitioners in support of those allegations. The State has argued that the facts alleged do not tend to establish a violation of the American Declaration, and that the Petitioner's claims are otherwise without merit. Further, the State maintains that Mr. Elliott has received all of the due process to which he is entitled, and that the years that he has spent on death row are a result of his taking advantage of every opportunity to appeal his conviction and sentence.

41. After carefully reviewing the allegations in light of the information provided by both parties, the Commission does not find the allegations to be manifestly groundless or out of order. In this respect, the Commission emphasizes that its task at this stage of the process is not to evaluate whether the Petitioners' claims have been substantiated, but rather to determine whether the petition satisfies the threshold requirements under Article 34 of the Commission's Rules of Procedure. Based upon the circumstances in the present case and in light of existing domestic and international jurisprudence pertinent to the issues raised by the Petitioners, the Commission considers that the claims raised by the Petitioners are not manifestly groundless or out of order and ought to be evaluated on the merits of the case. In the Commission's view, these claims include the implications, within the framework of the State's obligations in the inter-American

system, of the State's failure to comply with the Commission's request for precautionary measures in this matter and Mr. Elliott's consequent execution.

42. Accordingly, the Commission concludes that the Petitioners' petition should not be declared inadmissible under the terms of Article 34 of the Commission's Rules of Procedure.

V. CONCLUSIONS

43. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with the Commission's Rules of Procedure.

44. 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:

1. To declare the present case admissible, in respect of Articles I, XVIII, XXVI, and XVIII of the American Declaration.
2. To transmit this Report to the Parties.
3. To continue with the analysis of the merits of the case.
4. To 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 14th day of the month of October, 2004.
(Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, Freddy Gutiérrez and Florentín Meléndez, Commissioners.