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Title/Style of Cause: Philip Workman v. United States
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Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Victor E. Abramovich.
Commission Member Professor Paolo Carozza 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: 14 March 2006
Citation: Workman v. United States, Petition 12.261, Inter-Am. C.H.R., Report No. 33/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANTS: the International Human Rights Law Clinic at American University and the Tennessee Office of the Federal Public Defender

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I. SUMMARY

1. On April 3, 2000, the Inter-American Commission on Human Rights (the “Commission”) received a petition and a request for precautionary measures from the International Human Rights Law Clinic at American University and the Tennessee Office of the Federal Public Defender (the “Petitioners”) against the Government of the United States (the “State” or “U.S.”). The petition was presented on behalf of Mr. Philip Ray Workman, a U.S. national incarcerated on death row in the State of Tennessee. The petition stated that Mr. Workman was convicted and sentenced to death in March 1982 and alleged that the United States was responsible for violations of Articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man (the “American Declaration”) because U.S. courts had not provided Mr. Workman with an opportunity to present new exculpatory evidence which the Petitioners claim proves Mr. Workman’s innocence and because Tennessee had not executed any one in 40 years. The petition also indicated that Mr. Workman was scheduled to be executed on April 6, 2000.

2. Following the initial filing of the petition, Mr. Workman pursued additional proceedings before the courts in the United States, during which time his execution was stayed. According to the most recent information available Mr. Workman’s last proceeding was dismissed by the Tennessee Supreme Court on May 19, 2003 and his execution was rescheduled to take place on

September 22, 2004 but was again subsequently stayed by the U.S. District Court for the Western District of Tennessee.

3. During a hearing convened before the Commission on March 3, 2005 and in subsequent written submissions, the Petitioners raised several additional allegations, some of which related to the proceedings that took place after the initial filing of Mr. Workman's petition. In particular, the Petitioners claimed further violations of Mr. Workman's rights under Articles I, XVIII and XXVI of the American Declaration on the basis that error coram nobis proceedings which permitted Mr. Workman to present his new evidence before the Tennessee courts do not amount to adequate due process under the American Declaration, that Mr. Workman's clemency proceedings did not safeguard his the rights of due process articulated in the American Declaration, that felony murder does not qualify as a "most serious" crime to which capital punishment can properly be applied under Article 4 of the American Convention on Human Rights, and that Mr. Workman's time, conditions and treatment on death row have amounted to cruel, infamous and unusual punishment.

4. In their initial petition and subsequent communications, the Petitioners argue that Mr. Workman has exhausted domestic remedies in respect of the claims raised before the Commission. They also contend that that petition has been filed in a timely manner, and that the claims raised in the petition disclose arguable violations of the American Declaration.

5. The State opposed the petition on the basis that the claims made by the Petitioners would place the Commission in the role of an appeals court contrary to the Commission's "fourth instance formula", and because the petition fails to state facts that tend to establish a violation of the American Declaration and is manifestly groundless. In addition, regarding the allegations raised by the Petitioners during and after the March 3, 2005 hearing before the Commission, the State argues that the Petitioners did not make the claims in a timely fashion.

6. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to declare the petition inadmissible with respect to the Petitioners' claims under Articles I and XXVI of the American Declaration in respect of the conduct of Mr. Workman's clemency proceedings and the alleged de facto abolition of the death penalty in Tennessee, to declare the petition admissible with respect to the Petitioners' claims under Article I, XVIII and XXVI of the American Declaration concerning the consideration of new evidence in Mr. Workman's case, the classification of Mr. Workman's felony murder conviction as a "most serious" subject to the death penalty, and Mr. Workman's time, conditions and treatment on death row, to continue with the analysis of the merits of the case, to transmit the report to the parties, and to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

7. Subsequent to the receipt of the Petitioner's petition and request for precautionary measures both dated April 3, 2000, the Commission received information from the Tennessee Office of the Post Conviction Defender that the U.S. Court of Appeals for the Sixth Circuit had

ruled to stay Mr. Workman's execution, pending his habeas petition before that Court. In addition, the Commission was informed that Mr. Workman's execution would most likely be delayed for at least one month.

8. In an April 4, 2000 letter, the Commission informed the Petitioners of the Commission's receipt of additional information regarding the stay of execution granted to Mr. Workman. The Commission also informed the Petitioners that in light of this information, it would hold the Petitioner's petition in abeyance pending the determination of Mr. Workman's proceedings before the domestic courts.

9. By means of a January 17, 2001 letter, the Petitioners informed the Commission that Mr. Workman had been unsuccessful in his proceedings before the U. S. Court of Appeals for the Sixth Circuit, and that his execution date was scheduled for January 31, 2001. Accordingly the Petitioners requested that the Commission commence action on their April 3, 2000 request for precautionary measures.

10. By means of a note dated January 22, 2001, the Commission transmitted the pertinent parts of Mr. Workman's petition to the State, and requested that the State provide its response to the petition within 90 days. In addition, pursuant to Article 29.2 of its former Regulations, the Commission requested that the State adopt the precautionary measures necessary to preserve Mr. Workman's life and physical integrity so as not to hinder the processing of his case before the Inter-American system. In a further letter of the same date, the Commission informed the Petitioners of its communication to the State.

11. In a January 25, 2001 letter, the State responded to the Commission's January 22, 2001 communication, and informed the Commission that the U.S. Court of Appeals for the Sixth Circuit was reviewing Mr. Workman's application for a stay of execution. Further, the State informed the Commission that after that Court's disposition of Mr. Workman's application, the U.S. Supreme Court would address Mr. Workman's petition for certiorari and his original writ of habeas corpus. In notes dated January 29, 2001, the Commission acknowledged receipt of the State's January 25, 2001 communication, and transmitted the State's January 25, 2001 communication to the Petitioners, with a request for a reply to the State's communication by 3:00 p.m. on January 30, 2001.

12. The Petitioners responded to the Commission's January 29, 2001 request by means of a letter of the same date, in which they indicated that as of January 29, 2001, the stay of execution granted by the U.S. Court of Appeals remained in effect, and that the U.S. Supreme Court had not ruled on whether to uphold or remove the stay of execution. However, the Petitioners further stated that if the U.S. Supreme Court were to lift the stay prior to January 31, 2001, the State of Tennessee could proceed with Mr. Workman's execution as scheduled. Further, the Petitioners informed the Commission that Mr. Workman had been removed from his normal death row cell to a "deathwatch" cell adjacent to the execution chamber.

13. By means of a communication dated January 30, 2001, the Commission provided the State with the pertinent parts of the Petitioner's January 29, 2001 communication. In addition, the Commission reiterated its January 22, 2001 request for precautionary measures.

14. In a letter dated January 30, 2001, the Petitioners informed the Commission that the U.S. Supreme Court upheld the stay of execution granted to Mr. Workman by the U.S. Court of Appeals for the Sixth Circuit on January 27, 2001. In addition, the Petitioners stated that the U.S. Supreme Court was not scheduled to officially begin its session until February 16, 2001.

15. By note dated February 5, 2001, the State similarly informed the Commission that on January 26, 2001, the U.S. Court of Appeals for the Sixth Circuit granted Mr. Workman a stay of execution, and that on January 30, 2001, the U.S. Supreme Court denied a motion to vacate the stay of execution. In addition, the State informed the Commission that Mr. Workman's petition for certiorari and his writ of habeas corpus were scheduled for conference on February 16, 2001, and that a ruling on both of those requests was expected on or about February 20, 2001. On February 6, 2001, the Commission transmitted the pertinent parts of the State's February 5, 2001 communication to the Petitioners, with a request for a response within 10 days.

16. By means of a letter dated February 15, 2001, the Petitioners responded to the State's February 5, 2001 note, and informed the Commission that if the U.S. Supreme Court denied Mr. Workman's petition for certiorari and his writ of habeas corpus, the stay of execution granted by the U.S. Court of Appeals for the Sixth Circuit would be effectively lifted. The Petitioners further stated that in that event, the rescheduling of Mr. Workman's execution could occur as soon as a week after the decision of the U.S. Supreme Court. Accordingly, the Petitioners requested that the Commission hold Mr. Workman's case in abeyance pending the U.S. Supreme Court's ruling. On February 16, 2001, the Commission acknowledged receipt of the Petitioner's February 15, 2001 letter, and requested that the Petitioners keep the Commission apprised on an urgent basis of the status of Mr. Workman's proceedings before the domestic courts, as well as the scheduling of a new execution date.

17. In a February 20, 2001 letter, the Petitioners informed the Commission that the U.S. Supreme Court had rescheduled its conference on Mr. Workman's case for February 23, 2001, and consequently, that the Court would be unable to render a decision until February 26, 2001. By means of a note dated February 23, 2001, the Commission acknowledged receipt of the Petitioners' communication.

18. In a letter dated February 26, 2001, the Petitioners informed the Commission that the U.S. Supreme Court had denied Mr. Workman's petition for certiorari and his original writ of habeas corpus. Further, the Petitioners stated that the stay of execution granted by the U.S. Court of Appeals for the Sixth Circuit was effectively lifted, and that the Tennessee Attorney General would file a motion in the Tennessee Supreme Court requesting a new execution date. The Petitioners also explained that the Court would either allow Mr. Workman to respond to the motion, or simply schedule a new execution date.

19. In a February 27, 2001 letter, the State similarly informed the Commission that on February 26, 2001, the U.S. Supreme Court denied Mr. Workman's writ of certiorari and his original writ of habeas corpus. The State also informed the commission that the State of Tennessee had the option of rescheduling Mr. Workman's execution.

20. By means of a note dated February 28, 2001, the Commission reiterated to the State its January 22, 2001 request for the adoption of precautionary measures on Mr. Workman's behalf, and in a communication of the same date informed the Petitioners of the Commission's reiteration.

21. By means of a March 2, 2001 letter, the Petitioners informed the Commission that the Tennessee Supreme Court had scheduled Mr. Workman's execution for March 30, 2001. On March 12, 2001, the Commission acknowledged receipt of the Petitioner's March 2, 2001 communication.

22. In a letter dated March 8, 2001, the State informed the Commission that it had forwarded the Commission's February 28, 2001 communication to the Attorney General of the State of Tennessee for his consideration. In addition, with regard to the Commission's January 22, 2001 request for precautionary measures, the State informed the Commission that the State considered the request to be non-binding. In a March 12, 2001 letter, the Commission transmitted the pertinent parts of the State's March 8, 2001 communication to the Petitioners.

23. In letters dated March 20 and March 21, 2001, respectively, the Petitioners informed the Commission that a motion to reopen Mr. Workman's case had been filed in the U.S. Court of Appeals for the Sixth Circuit. The Petitioners stated that the Court had also been requested to appoint a Special Master to investigate whether the Tennessee Attorney General committed fraud with respect to Mr. Workman's clemency proceedings. In pertinent part, the Petitioners stated that the Tennessee Attorney General held ex parte meetings with persons associated with the Tennessee parole board as well as with the Governor's counsel, while at the same time arguing in court that the executive clemency proceeding before the Parole Board was the best remedy for Mr. Workman, as it was an impartial forum where he would be able to present new exculpatory evidence.

24. By means of a March 23, 2001 letter, the Commission transmitted the pertinent parts of the Petitioner's March 20 and 21, 2001 communications to the State, and requested, in the absence of an affirmative response by the State to the Commission's request for precautionary measures, that the State provide the Commission with all the information relevant to the case within 5 days.

25. On March 26, 2001, the Petitioners informed the Commission that the U.S. Court of Appeals for the Sixth Circuit had denied the request to reopen Mr. Workman's case and appoint a special master to investigate whether the Tennessee Attorney General committed fraud with regard to Mr. Workman's clemency hearing. Further, on March 27, 2001, the Petitioners informed the Commission that the Governor of Tennessee had denied Mr. Workman's request for clemency, and that Mr. Workman's execution was scheduled for March 30, 2001.

26. By means of a March 28, 2001 communication, the Commission provided the State with the pertinent parts of the additional information provided by the Petitioners. In addition, the Commission reiterated its January 22, 2001 request that the State adopt precautionary measures to avoid irreparable harm to Mr. Workman until the Commission's decision on his claim.

27. In a communication dated March 29, 2001, the State provided the Commission with its response to Mr. Workman's petition. The Commission, in a letter dated March 29, 2001, acknowledged receipt of the State's response, and transmitted the pertinent parts of the State's response to the Petitioners with a request for observations within 30 days.

28. In a letter dated March 29, 2001, the Petitioners informed the Commission that Mr. Workman remained scheduled to be executed at 1:00 a.m. on March 30, 2001. The Petitioners submitted a brief supporting the argument that the State should abide by the Commission's request for precautionary measures, and requested that the Commission forward the letter to the State as soon as possible. By note of the same date, the Commission transmitted the Petitioners' March 29, 2001 letter to the State.

29. In a letter dated March 30, 2001, the Petitioners informed the Commission that the Tennessee Supreme Court had granted Mr. Workman a stay of execution in connection with a petition for a writ of coram nobis filed by Mr. Workman, and had remanded the case back to the trial court for an evidentiary hearing on all of the exculpatory evidence brought to light after the original decision. The Commission acknowledged receipt of this communication in a note dated April 2, 2001.

30. On May 19, 2003, the Petitioners informed the Commission that the Tennessee Supreme Court had denied Mr. Workman's petition for a writ of error coram nobis and that the setting of an execution date was imminent. The Petitioners also stated that although his case was remanded to the Memphis trial court for a hearing, the hearing was deficient in several respects. In addition, the Petitioners asserted that the Tennessee appeal courts failed to correct the wrongs committed by the trial court. The Commission, by means of a May 23, 2003 communication, acknowledged receipt of the Petitioners May 19, 2003 letter, and requested that the Petitioners inform the Commission of any further developments in Mr. Workman's case, in light of the precautionary measures adopted by the Commission on January 22, 2001.

31. In a note dated June 2, 2003, the Petitioners informed the Commission that the State of Tennessee had set Mr. Workman's execution for September 24, 2003, and requested that the Commission expedite its review of the case.

32. By means of a letter dated June 11, 2003, the Commission informed the State of the pertinent parts of the Petitioners' June 2, 2003 communication, and reiterated the Commission's January 22, 2001 request that the State adopt the precautionary measures necessary to preserve Mr. Workman's life until the Commission had considered his complaint.

33. In a June 12, 2003 communication, the State provided the Commission with a copy of a letter dated June 13, 2003, which was sent from the U.S. Department of State to the Governor of the State of Tennessee, informing the Governor of Mr. Workman's case, and forwarding to him a copy of Mr. Workman's petition. By means of a June 18, 2003 communication, the Commission forwarded the State's June 10, 2003 communication to the Petitioners, and requested their observations on the State's communication within one month.

34. In a letter dated November 13, 2003, the Petitioners informed the Commission that although Mr. Workman's September 15, 2003 reprieve was set to expire on January 24, 2004, the U.S. District Court for the Western District of Tennessee had issued a stay of Mr. Workman's execution pending the outcome in the case of another condemned prisoner, Abu-Ali Abdur' Rahman, before the Sixth Circuit U.S. Court of Appeals. Further, the Petitioners informed the Commission that oral arguments in Mr. Abdur' Rahman's case were scheduled for December 10, 2003. The Petitioners also provided the Commission with an addendum to Mr. Workman's petition, detailing his case during the coram nobis proceedings as well as the appeals therefrom.

35. In a letter dated November 24, 2003, the Commission provided the State with the additional information provided by the Petitioners on November 13, 2003, and requested its observations within a period of one month.

36. By communication dated December 23, 2003, the State submitted a response to the Commission's November 24, 2003 request. By note dated January 5, 2004, the Commission provided the Petitioners with a copy of the State's December 23, 2003 Additional Response, with a reply requested within one month.

37. In a January 30, 2004 communication, the Petitioners provided their response to the State's December 23, 2003 Additional Response. The Petitioners also informed the Commission that the reprieve granted to Mr. Workman had been extended by the Governor of Tennessee for an additional three months. By means of a note dated February 2, 2004, the Commission provided the State with a copy of the additional information submitted by the Petitioners and requested that the State submit any relevant observations within a period of one month. As of the date of this report, the Commission had not received any further observations from the State.

38. In a note dated May 7, 2004, the Petitioners informed the Commission that Mr. Workman's execution had been scheduled to take place on September 22, 2004. Accordingly, by communication to the State dated May 11, 2004, the Commission reiterated its January 22, 2001 request for precautionary measures in Mr. Workman's case. In a letter dated September 17, 2004, the Petitioners informed the Commission that a stay of Mr. Workman's September 22, 2004 execution remained in place but that the State of Tennessee was attempting to have the stay vacated, and again requested a reiteration of the Commission's precautionary measures. In a note dated September 20, 2004, the Commission reminded the State of the May 11, 2004 reiteration of its measures. On September 22, 2004, the Petitioners informed the Commission that Mr. Workman's stay of execution had been upheld.

39. In a note dated September 29, 2004, the Petitioners were notified that with respect to their request for a reiteration of the precautionary measures, the Commission had, on May 11, 2004, reiterated its request to the State for such measures. The Commission also asked that the Petitioners keep the Commission informed on an urgent basis of the status of Mr. Workman's death sentence. Finally, regarding the Petitioners' request for a hearing during the Commission's period of sessions commencing October 11, 2004, the Petitioners were informed that the Commission was not able to grant their request as Article 62.2 of the Commission's Rules

requires the Petitioners for hearings to be submitted in writing at least 40 days prior to the beginning of the Sessions.

40. In a communication dated November 29, 2004 the Petitioners requested a hearing during the February 2005 sessions of the Commission regarding the admissibility and merits of Mr. Workman's case. On January 31, 2005 Commission informed the Petitioners and the State that a hearing had been granted for March 3, 2005 at the Commission's headquarters in Washington, D.C. The hearing took place as scheduled with representatives of the State and the Petitioners in attendance. During the hearing, the parties presented oral and written representations and responded to questions posed by the Commissioners.

41. On April 4, 2005, the Petitioners provided additional written submissions supplementing the oral submissions they made during the hearing on March 3, 2005. On April 12, 2005, the Commission transmitted the pertinent parts of the Petitioners' additional submissions to the State with a request for a response within one month.

42. By note dated May 19, 2005, the State requested an extension of time of one month to provide a response to the Petitioners' additional, submissions, which the Commission granted on May 23, 2005.

43. On July 24, 2005 the State provided the Commission with its response to the Petitioners' additional observations, which the Commission transmitted to the Petitioners by note dated July 5, 2005.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

44. According to the petition, Phillip Ray Workman is a citizen of the United States who is incarcerated on death row in the State of Tennessee. The petition indicates that in March 1982, Mr. Workman was convicted of the murder of a police officer and sentenced to death.

45. With regard to the admissibility of the petition, the Petitioners argue in their initial complaint and subsequent communications that Mr. Workman has exhausted available domestic remedies within the United States. In support of this allegation, the Petitioners provided information and documentation concerning the various legal proceedings pursued by Mr. Workman before the domestic courts.

46. In particular, the Petitioners indicate that Mr. Workman has pursued the following domestic proceedings:[FN1]

a. on March 30, 1982 a Shelby County Criminal Court jury convicted Mr. Workman of first-degree felony murder, and on March 31, 1982 the same jury sentenced Mr. Workman to death;

- b. on January 30, 1984, the Tennessee Supreme Court affirmed Mr. Workman's conviction and sentence on appeal, and on October 1, 1984 the U.S. Supreme Court denied a petition to review Mr. Workman's case.
- c. on February 13, 1986, the Shelby County Court denied Mr. Workman's first state-level post-conviction petition, on February 18, 1987 the Tennessee Court of Criminal Appeals affirmed the denial of post-conviction relief, and on May 11, 1987 and October 5, 1987, respectively, the Tennessee Supreme Court and the U.S. Supreme Court denied requests to review the denial of post conviction relief.
- d. Mr. Workman filed a second state petition for post conviction relief on June 22, 1989, which was dismissed by the Shelby County Criminal Court on March 30, 1992, upheld by the Tennessee Court of Criminal Appeals on April 7, 1993, and denied review by the Tennessee Supreme Court and the U.S. Supreme Court on, respectively, November 29, 1993 and February 28, 1994.
- e. Mr. Workman then pursued his first habeas corpus petition in the federal court, which was dismissed by the U.S. District Court on October 29, 1996. The U.S. Court of Appeals for the Sixth Circuit affirmed the District Court's decision on October 30, 1998, and the U.S. Supreme Court denied a petition for a writ of certiorari on October 4, 1999.
- f. Mr. Workman filed with the U.S. Court of Appeals for the Sixth Circuit a motion for leave to file a second habeas corpus petition together with a motion for a stay of execution, and on April 3, 2000 the Court granted a stay of Mr. Workman's execution. The Court subsequently dismissed his petition and Mr. Workman's execution was re-scheduled for January 31, 2001.
- g. Mr. Workman pursued clemency proceedings before the Tennessee Board of Pardons and Parole, which held a hearing in Mr. Workman's matter on January 25, 2001, following which it recommended 6-0 that the Governor of Tennessee not commute Mr. Workman's death sentence.
- h. on January 26, 2001 the U.S. Court of Appeals for the Sixth Circuit granted a further stay of execution, which was maintained by the U.S. Supreme Court on January 30, 2001, and on February 26, 2001 the U.S. Supreme Court denied Mr. Workman's petition for a writ of certiorari in respect of the denial of his habeas corpus petition. Mr. Workman's execution was again re-scheduled for March 30, 2001.
- i. on March 19, 2001, Mr. Workman filed with the Tennessee Criminal Court a motion to re-open and to appoint a special master to investigate new evidence brought to light after his conviction, known as a petition for a writ of error coram nobis.[FN2] The Tennessee Criminal Court subsequently dismissed Mr. Workman's motion and the Tennessee Court of Criminal Appeals affirmed. On March 30, 2001, the Tennessee Supreme Court granted a stay of execution and remanded the case back to the trial court for an evidentiary hearing on the additional evidence brought to light after the original trial court decision. The evidentiary hearing was held, following which the trial court denied relief, the Texas Court of Criminal Appeals affirmed, and on May 19, 2003, the Tennessee Supreme Court refused Mr. Workman's request for a discretionary appeal. A temporary reprieve was granted and extended by the Governor of Tennessee, and Mr. Workman's execution was rescheduled to take place on September 22, 2004.

[FN1] See Petitioners' petition dated April 3, 2000, Appendix, Affidavit of Christopher M. Minton.

[FN2] According to the Petitioners, a writ of error coram nobis is a process provided for under criminal procedures in the State of Tennessee whereby a judge can order a new trial in the face

of subsequently or newly discovered evidence relating to matters that were already litigated at trial “if the judge determines that such evidence may have resulted in a different judgment had it been presented at trial.” Petitioners’ written observations dated April 4, 2005, p.p. 1-2, citing Tenn. Code Ann. § 40-26-105 (2004); State v. Workman, 111 S.W. 3d 10 (Tenn. Crim. App. 2002).

47. Based upon these proceedings, the Petitioners argue that Mr. Workman has exhausted all available domestic remedies and therefore that the Commission should declare his petition admissible.

48. With respect to the merits of the complaint, the information provided by the Petitioners indicates that Mr. Workman’s March 1982 conviction and death sentence related to the murder of a police officer, Lieutenant Ronald Oliver. The Petitioners described the circumstances of the incident as follows:

On August 5, 1981, while Mr. Workman robbed a Wendy’s restaurant, an employee tripped a silent alarm. Police Officers Ronald Oliver, Aubrey Stoddard, and Stephen Parker responded. When Mr. Workman walked out of the Wendy’s Restaurant, Officer Oliver approached him. Mr. Workman attempted to run, and a struggle ensued between him and the three officers. Workman was hit over the head with a gun, and gun shots were discharged from the guns of Mr. Workman and the officers. Officer Oliver died from a gunshot wound to his chest. Mr. Workman was charged with first degree felony murder and convicted. However, the facts during the struggle are not clear.[FN3]

[FN3] See Petitioners’ petition dated April 3, 2000, pp. 2-3.

49. The Petitioners raise five main claims on the merits of Mr. Workman’s petition: (1) that U.S. courts had not provided Mr. Workman with an opportunity to present new exculpatory evidence which the Petitioners claim proves Mr. Workman’s innocence, which includes the contention that error coram nobis proceedings do not amount to adequate due process under the American Declaration for this purpose; (2) that Mr. Workman’s clemency proceedings did not safeguard his due process rights articulated in the American Declaration; (3) that felony murder does not qualify as a “most serious” crime to which capital punishment can properly be applied in accordance with the object and purpose of the American Convention, including Article 4 thereof; (4) that Mr. Workman’s time, conditions and treatment on death row amount to cruel, infamous and unusual punishment; and (5) that the death penalty had been abolished de facto in Tennessee because the state had not executed any one in 40 years.

50. Concerning their first claim, the Petitioners argue that evidence has come to light since Mr. Workman’s conviction that demonstrate his innocence and render his conviction and death sentence unsound. In particular, the Petitioners assert that ballistics evidence obtained subsequent to trial indicates that the bullet that killed Officer Oliver was not fired from Mr. Workman’s gun. The Petitioners further maintain that the District Attorney’s office withheld x-

ray evidence which supports the ballistic findings, despite a June 2, 1995 subpoena requesting the production of, among other things, the x-ray of Officer Oliver's body. The Petitioners also allege that the only witness who testified to having seen the struggle between Mr. Workman and the police officers did not attend the lineup held after his capture, which was attended by every other available witness, that the crime scene diagram did not reflect that a vehicle was in the area where the witness claimed to have parked his car, and that this witness has since recanted his testimony, claiming that he did not see the incident and that he was asked to lie by the police.

51. The Petitioners argue that Mr. Workman has been denied a proper opportunity to have all of the evidence in his case, including the new evidence, considered by an impartial trier of fact. In particular, the Petitioners acknowledge that through his coram nobis proceedings Mr. Workman was ultimately permitted to present and make submissions before the domestic courts concerning the newly discovered evidence as well as additional scientific evidence that the Petitioners indicate supported the conclusion that Mr. Workman did not shoot the officer. The Petitioners argue, however, that the trial court's determination that the new evidence, if presented, was insufficient to change the outcome of the trial was "untenable." [FN4]

[FN4] Petitioners' January 30, 2004 observations regarding the Response of the United States Government of January 5, 2004, p. 3.

52. The Petitioners also argue that the coram nobis proceedings in general do not amount to adequate due process under the American Declaration, as the writ is addressed to the same court that rendered the Defendant's judgment. The Petitioners argue that inherent within this procedure is a level of bias with which the court enters the hearing. The Defendant does not have the opportunity to present the new evidence to an objective fact-finder, but rather must present the new material to an individual who may make his determination based on past encounters without even hearing the new evidence. [FN5] The Petitioners argue that Tennessee's error coram nobis hearings do not afford the Defendant this opportunity as at no point is a Defendant able to present all the evidence in its entirety to a trier of fact, a concern that they assert is heightened in death penalty cases. [FN6] The Petitioners claim that the error coram nobis proceedings do not provide for a determination of reliability that is demanded when applying the death penalty. Rather, the Petitioners argue that Mr. Workman should be given a new trial.

[FN5] Petitioners' observations dated April 4, 2005, p. 4, citing Gary T. Graham (Shaka Sankofa) v. United States, Case No. 11.193, Inter-Am. C.H.R. Report No. 97/03, OEA/ser. L/V/II.118, doc. 5 rev. 2 at 26 (December 29, 2003), para. 47 (stating that in the face of post-conviction evidence, the strict standard of due process applicable in capital cases may demand that a trier of fact be permitted to re-evaluate a defendant'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).

[FN6] Petitioners' observations dated April 4, 2005, p. 4, citing Roman Martinez Villareal v. United States, Case No. 11.753, Inter-Am. C.H.R. Report No. 52/02, OEA/ser.L/V/II.117, doc.1 rev.1 at 51 (October 10, 2002).

53. In addition, the Petitioners claim that the Tennessee Court have not awarded post-conviction relief in a capital case, whether by coram nobis or any other remedy in over two decades. The Petitioners argue that the failure of the Courts to provide any post-conviction relief suggests that the procedures in Tennessee are structured such that a legitimate claim raised after a conviction is unlikely to receive a fair and just hearing.

54. In relation to the clemency proceedings pursued by Mr. Workman, the Petitioners allege that the Tennessee Attorney General committed fraud by arguing in court that executive clemency proceedings before the Parole Board was the best remedy for Mr. Workman, while holding ex parte meetings with persons associated with the parole board as well as counsel for the Governor. They also argue that clemency proceedings in the United States are inadequate for the purpose of reevaluating and reconsidering Mr. Workman's case, in part because, as the State has admitted, they are designed to be arbitrary, allowing clemency officials complete discretion in deciding which material will be relevant.[FN7]

[FN7] Petitioners' observations dated April 4, 2005, pp. 5-7, citing Avena and other Mexican Nationals, (Mexico v. United States), 2004 I.C.J 128 (March 31) (suggesting that clemency proceedings were inadequate for the purpose of reconsidering capital convictions in light of failures to provide notice of consular assistance under the Vienna Convention on Consular Relations).

55. Third, the Petitioners claim that the classification of felony murder as one of the "most serious" crimes eligible for the death penalty violates the object and purpose of Article 4 of the American Convention. According to the Petitioners, felony murder is defined as "murder occurring during the perpetration or fleeing from a felony." [FN8] The Petitioners state that the felony murder rule does not require the prosecution to prove the mental element of murderous intent or, in some states, the participation of the felon in the actual perpetration of the murder. Accordingly, the Petitioners argue that considering felony murder to constitute a "most serious" crime will inappropriately treat felony murder convictions on the same level as intentional and aggravated murder convictions, contrary to the object and purpose of the American Convention.

[FN8] Petitioners' observations dated April 4, 2005, p. 9, citing Tenn. Code Ann § 390-13-202 (1989).

56. Fourth, the Petitioners argue that Mr. Workman's death penalty amounts to cruel, infamous and unusual punishment in violation of the American Declaration Article XXVI. The Petitioners claim that Mr. Workman has been on death row since his conviction in 1982. The

Petitioners state that in addition to the sheer length of Mr. Workman's 23 years on death row, Mr. Workman has been subjected to five scheduled execution dates. The Petitioners claim that the dehumanizing affect of the length time on death row, the fact that the execution dates were each stayed shortly before the scheduled execution time, and the death house isolation and no-contact visit procedures all constitute cruel, infamous and unusual punishment in violation of Article XXVI of the American Declaration.

57. Finally, the Petitioners allege that the State of Tennessee has not executed anyone in 40 years and that this has resulted in the de facto abolition of the death penalty in that state. The Petitioners therefore claim that Mr. Workman's execution would violate the object and purpose of the American Convention, Article 4.3 of which prevents the reestablishment of the death penalty in states that have abolished it.

58. Based on the aforementioned allegations, the Petitioners contend that the State is responsible for violating Mr. Workman's right to life, liberty, and personal security under Article I of the American Declaration, his right to a fair trial under Article XVIII of the American Declaration, and his right to due process under Article XXVI of the American Declaration.

B. Position of the State

59. In its September 23, 2002 response to the Petitioner's petition, the United States requested that the Commission declare the petition inadmissible under Articles 35 and 41.b and c of the Commission's Rules of Procedure, on the grounds that it does not state facts that tend to establish a violation of the American Declaration and that it is manifestly groundless.

60. According to the State, on the evening of August 5, 1981, Philip Workman killed a police officer, Lieutenant Ronald Oliver, during the commission of an armed robbery at a Wendy's restaurant in Memphis, Tennessee. The State described the circumstances of the murder as follows:

Three Memphis police officers initially responded to the robbery – Lieutenant Ronald Oliver and Officers Stoddard and Parker. As Workman fell, Stoddard and Oliver caught up to Workman and wrestled with him across the Wendy's parking lot and into an adjacent parking lot. Workman shot Stoddard in the right arm, knocking him to the ground. While falling to the ground, Stoddard heard several more shots. When Stoddard looked up, he saw Oliver down on the ground and Workman running away.

Eyewitness Harold Davis heard Oliver tell Workman to "hold it", and then saw the two men struggling while he was in the restaurant parking lot. He saw Stoddard come to Oliver's assistance and Workman struggling with the two officers. Davis observed Workman shoot Stoddard and then, holding the gun at chest or stomach height, shoot Oliver. As Oliver fell, he was firing at Workman, Workman fired back and fled.

Parker, who has been on the other side of the restaurant building, ran to the north side after hearing shots fired. He saw Oliver falling to the ground and then checked on Stoddard. Parker noticed Workman running through the parking lot. When Workman saw Parker, Workman fired

a shot at him. Parker attempted to return fire, but Workman spun away before Parker could shoot. Workman then fled, and Parker pursued. Neither Stoddard nor Parker ever fired a shot.

Workman was apprehended in the wooded area to which he fled. He told officers that he had thrown his gun into the woods. His .45 Caliber gun was soon located and in a condition indicating that all its rounds has been fired. Oliver's service revolver was found by his feet with six spent shell casings in the cylinder. An autopsy of Oliver revealed that he had died as a result of a single gunshot wound which caused internal injuries to his diaphragm, stomach, both lungs and heart. The medical examiner, Dr. James Bell, testified that Oliver's wounds were consistent with his having been shot with a high-caliber bullet.

During his own testimony, Workman admitted to the robbery and the murder, claiming he was a drug addict under the influence of drugs at the time.[FN9]

[FN9] State's observations dated March 29, 2001, pp. 1-2.

61. In March 1982, after a trial by jury, Philip Workman was convicted of the first degree felony murder of Lieutenant Oliver, and at a separate sentencing hearing, the same jury sentenced Mr. Workman to death after having found five aggravating circumstances pursuant to the applicable legislation, Tenn. Code Ann. § 39-2-203(g) (1982).[FN10]

[FN10] State's observations dated March 29, 2001, pp. 1-2.

62. With respect to the issue of exhaustion of domestic remedies, the State does not allege that Mr. Workman has failed to pursue available remedies, but rather acknowledges that Mr. Workman has pursued a variety of proceedings before the Courts in the United States, in the course of which he has raised the issues raised before the Commission concerning evidence discovered since his conviction in 1982. The State's accounting of Mr. Workman's domestic proceedings, which essentially paralleled that of the Petitioners, included the following:

a. after the conclusion of two state post-conviction proceedings in 1986 and 1992, Mr. Workman filed a petition for a writ of habeas corpus, which was unsuccessful up to and including the U.S. Court of Appeals for the Sixth Circuit[FN11] and the U.S. Supreme Court,[FN12] and Mr. Workman's execution was scheduled for April 6, 2000.

b. On January 27, 2000, Mr. Workman filed an application for commutation to the Governor of the State of Tennessee. A hearing was scheduled on that application for March 9, 2000, when Mr. Workman filed a motion to re-open his habeas corpus case with the Court of Appeals and withdrew his application for commutation on March 82, 2000. On March 24, 2000, Mr. Workman filed a motion for leave to file a second habeas corpus petition, a "Motion for Declaration that 28 U.S.C. § 2244 Does not Apply to Specified Claims", and a motion for a stay of execution, and on March 31, 2000 a panel of the Court of Appeals denied all of Mr.

Workman's pending motions, but subsequently granted Mr. Workman's motion to rehear on April 4, 2000 and stayed his execution until further order of the Court.

c. The Court of Appeals, en banc, then rejected Mr. Workman's motion to re-open and dissolved the previously-entered stay of execution and refused re-hearing on the panel's denial of Mr. Workman's motion for leave to file a second habeas corpus petition, and on October 5, 2000 the Tennessee Supreme Court set a new execution date of January 31, 2001. On January 26, 2001, the Court of Appeals granted another stay of execution and affirmed the District Court's denial of the petition before it, and on January 30, 2001 the U.S. Supreme Court denied an application to vacate the new stay. Mr. Workman had filed a petition for certiorari and an original writ of habeas corpus before the Supreme Court focusing on the issue of re-opening the case or allowing for an evidentiary hearing on newly discovered evidence and the Court denied certiorari on February 26, 2001.

d. Mr. Workman then filed motions to stay his execution and to reopen his appeal in the U.S. Court of Appeals for the Sixth Circuit, and requested that the Court appoint a special master to investigate allegations of fraud during his clemency proceedings. The Sixth Circuit denied the motions as well as a motion for rehearing on March 23 and 28, 2001,[FN13] and the U.S. Supreme Court denied certiorari on March 29, 2001.[FN14]

e. Mr. Workman also filed a motion for a temporary restraining order in the District Court for the Middle District of Tennessee, in which he sought to stay his scheduled execution pending resolution of a civil rights action challenging his clemency proceedings. The District Court denied the motion on March 28, 2001[FN15] and the Court of Appeals for the Sixth Circuit affirmed on March 29, 2001.[FN16]

f. Mr. Workman then filed a petition for a writ of error coram nobis in the Tennessee Criminal Court for the Thirteenth Judicial District. Although the Court dismissed the petition because it did not satisfy the statute of limitations and the Tennessee Court of Criminal Appeals affirmed, the Supreme Court of Tennessee remanded the trial for a hearing on the merits.[FN17] The State district court then denied the petition on its merits on January 1, 2002[FN18] and the Texas Court of Criminal Appeals affirmed the judgment on December 30, 2002.[FN19]

[FN11] Workman v. Bell, 160 F.3d 276 (6th Cir. 1998), republished at 178 F.3d 759 (6th Cir. 1998).

[FN12] Workman v. Bell, 528 U.S. 913 (1999), petition for rehearing denied 528 U.S. 1040 (1999).

[FN13] Workman v. Bell, 245 F.3d 849 (6th Cir. 2001); Workman v. Bell, 2001 U.S. App. LEXIS 6224 (6th Cir. 2001).

[FN14] Workman v. Bell, 160 532 U.S. 955 (2001).

[FN15] Workman v. Summers, 136 F. Supp. 2d 896 (M.D. Tenn. 2001).

[FN16] Workman v. Summers, 8 Fed. Appx 371 (6th Cir. 2001).

[FN17] Workman v. State, 41 S.W. 3d 100 (Tenn. 2001).

[FN18] Workman v. State, No. B-S1209 (Tenn. Dist. Ct. 2002).

[FN19] Workman v. State, 2002 Tenn. Crim. App. LEXIS 1124 (Tenn. Crim. App. 2002).

63. In light of this procedural history, the State contends that Mr. Workman's petition should be rejected as inadmissible on the basis that it fails to state a violation of the American

Declaration, is manifestly groundless, and would place the Commission in the role of an appeals court of fourth instance.

64. In particular, the State notes that according to the Petitioners, newly-discovered evidence admitted for review would exculpate him from the crime for which he was convicted and sentenced to death. The State argues, however, that these claims are wholly unsubstantiated, that the petition is devoid of any factual allegations sufficient to establish a violation of international law, and that Mr. Workman has received ample due process with more than 20 judgments issued with respect to him at both the state and federal levels.

65. The State contends in this connection that the Petitioners fail to acknowledge that Mr. Workman's conviction was for felony murder and therefore that the evidence that he raises in neither exculpatory nor mitigating. In particular, the State asserts that Mr. Workman's conviction for felony murder was based upon a finding that a police officer died because of the direct corollary between the actions of Mr. Workman and the firing of the fatal gun shot, and therefore that the additional evidence Mr. Workman seeks to present concerning a 1981 autopsy x-ray and the 1999 recantation of Harold Davis' 1982 trial testimony would not exonerate him of this crime or be considered mitigating circumstances for the purposes of sentencing. The State also argues that the Petitioners have failed to meet the domestic legal standards for the admission of this new evidence, as they have not shown that this evidence could not have been obtained with due diligence and that no reasonable fact-finder would have found him guilty with this evidence even if it had been admitted.[FN20]

[FN20] State's observations dated March 29, 2001, pp. 7-8, citing 28 U.S.C. § 2244(b)(2)(B)(i)-(ii).

66. In addition, the State contends that Tennessee cannot be said to have violated Mr. Workman's right to due process in connection with his clemency proceedings because clemency is a wholly collateral proceeding with minimal procedural process where the substantive merits of the decision are not subject to review by the courts, where U.S. courts have consistently ruled against the notion of due process for clemency proceedings, and where the courts in Mr. Workman's case nevertheless did analyze relevant legal standards and found no grounds to open the matter on the basis of fraud or otherwise.[FN21] The State therefore argues that the Petitioners claims are manifestly groundless.

[FN21] State's observations dated March 29, 2001, pp. 9-10, citing *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998); State's observations dated December 23, 2003, pp. 2-4.

67. Further, the State argues that it is not within the Commission's jurisdiction to assume the role of an appeals court of fourth instance to review alleged errors of internal fact and law.[FN22] In the present case, the State asserts that the Petitioners' claims have been repeatedly reviewed by the upper echelons of the States' judicial system and none of the courts, including

the highest court in the nation, has found merit in his claims. By entertaining these claims, the State contends that the Commission would be examining alleged errors of internal law or fact that may have been committed by domestic courts acting within their jurisdiction and which cannot be considered violations of international law.

[FN22] State's observations dated March 29, 2001, p. 3, citing Case 11.673, Santiago Marzioni (Argentina), Inter-Am. C.H.R., 86, para. 51, OEA/Ser.L/V/II.95, doc. 7 rev. (1996).

68. With respect to the alleged violations of the right to life, the State argues that the United States cannot be in violation of the right to life when a jury imposes the death penalty upon a person convicted of a capital crime because the death penalty is not prohibited by international law. Moreover, the State asserts that it is not the case that Tennessee has refrained from carrying out any executions in the past 40 years as Robert Glen Coe was executed by lethal injection in Tennessee on April 19, 2000,[FN23] and that, in any event, the non-performance of executions does not constitute "non-use" of the death penalty or mean that there has been de facto abolition of the death penalty.

[FN23] State's observations dated March 29, 2001, p. 5.

69. Finally, in its June 24, 2005 observations, the State referred to the written submissions that it had previously filed with the Commission and indicated that it would not respond to new arguments presented by the Petitioners for the reason that they "were not raised in a timely fashion."

IV. ANALYSIS OF ADMISSIBILITY

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

70. Upon considering the record before it, the Commission finds 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, Mr. Philip Ray Workman, is a person whose rights are protected under the American Declaration. The State is bound to respect the provisions of the American Declaration and the Commission is competent to receive petitions alleging violations of that instrument by the State by virtue of the United States' ratification of the OAS Charter on June 19, 1951 and in conformity with Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure.[FN24]

[FN24] 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 recommendations 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, Arts. 3, 16, 51, 112, 150; Rules of Procedure of the Inter-American Commission on Human Rights, Arts. 49, 50; I/A. Court H.R., Advisory Opinion OC-10/8 "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.

71. 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.

72. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1982, at which time the obligations undertaken by the State pursuant to the OAS Charter and the American Declaration were in effect.

73. 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.

74. The State has specifically contended that the Commission is precluded from entertaining Mr. Workman's petition based upon the fourth instance formula, asserting that it is not within the Commission's jurisdiction to assume the role of an appeals court on fourth instance to examine alleged errors of internal law or fact.

75. In addressing this objection, the Commission notes that according to the fourth instance formula, the Commission in principle will not review the judgments issued by domestic courts acting within their competence and with due judicial guarantees.[FN25] Consequently, a petition will be dismissed pursuant to the fourth instance formula where it contains nothing but the allegation that a domestic judicial decision was wrong or unjust in itself. The doctrine does not apply, however, where a petitioner's allegations entail a possible violation of any of the rights set forth in applicable inter-American human rights instruments. Further, the Commission has consistently held that in capital punishment cases, it will subject the parties' allegations to an enhanced level of scrutiny in order to ensure that any deprivation of life carried out by a State pursuant to a death sentence complies strictly with applicable international human rights protections. The Commission has also specifically ruled that this heightened scrutiny test is not precluded by the fourth instance formula.[FN26]

[FN25] See Case 11.673, Report 39/96, *Santiago Marzioni v. Argentina*, Annual Report of the IACHR 1996, p. 76, paras. 48-52, citing, inter alia, Eur. Comm. H.R., *Alvaro Baragiola v. Switzerland*, Application 17625/90, Yearbook of the European Convention on Human Rights 1992; Eur. Comm. H.R., *Gudmundsson v. Iceland*, Application No. 511/59, Yearbook of the European Convention on Human Rights 1960. See also Case 9260, Res. 29/88, *Clifton Wright v. Jamaica*, Annual Report of the IACHR 1987-88, p. 154.

[FN26] See, e.g., Case 12.183, Report 127/01, *Joseph Thomas v. Jamaica*, Annual Report of the IACHR 2002, para. 90; Case 12.067, Report 48/01, *Michael Edwards et al. v. The Bahamas*, Annual Report of the IACHR 2000, paras. 109-112; Case 11.193, Report 97/03, Annual Report of the IACHR 2003, paras. 26-29.

76. In the present petition, the Petitioners have alleged that the United States is responsible for violations of the right to life, the right to due process and the right to a fair trial under Articles I, XVIII and XXVI of the American Declaration, based upon the alleged failure of the domestic courts to properly consider evidence arising since Mr. Workman's conviction that calls into question his responsibility for the crime at issue. Accordingly, the Petitioners' complaint does not simply allege that the decisions of the domestic courts are erroneous in and of themselves, but rather purports to challenge the circumstances of Mr. Workman's criminal proceedings pursuant to the standards under the American Declaration.

77. Therefore, the Commission finds that the fourth instance formula does not apply in the present case and that it is competent to address the claims raised in the Petitioners' petition.

B. Duplication of Procedures

78. 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 Petitioners' claims under Article 33 of the Commission's Rules of Procedure.

C. Exhaustion of Domestic Remedies

79. 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.

80. 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.

81. In the present complaint, the observations of both the State and the Petitioners, as described in Part III of this report, indicate that Mr. Workman has pursued numerous domestic avenues of redress since his conviction and sentencing to death in March 1982. In particular, the information presented indicates that Mr. Workman pursued a direct appeal from his conviction and sentence up to and including the U.S. Supreme Court.[FN27] The information also indicates that Mr. Workman pursued several post-conviction proceedings before the state courts in Tennessee[FN28] and the U.S. federal courts[FN29] and participated in clemency proceedings before the Tennessee Board of Probation and Parole and the Governor of Tennessee.[FN30] In the course of these proceedings, Mr. Workman raised numerous procedural and substantive allegations relating to the criminal proceedings against him, including complaints that the only witness that testified against him at trial had recanted his testimony, that x-ray evidence in the possession of the Attorney General's office indicated that the bullet that killed the police officer did not come from Mr. Workman's gun, and that the Tennessee Attorney General had engaged in misconduct in connection with Mr. Workman's clemency proceedings.

[FN27] State v. Workman, 667 S.W. 2d 44 (Tenn.), cert. denied Workman v. Tennessee, 469 U.S. 873.

[FN28] Workman v. State, CCA No. 111, 1987 WL 6724 (Tenn. Crim. App. Feb. 18, 1987), Workman v. Tennessee, 484 U.S. 873; Workman v. State, 868 S.W. 2d 705, cert. denied Workman v. Tennessee, 510 U.S. 1171.

[FN29] Workman v. Bell, 160 F.3d 276 (6th Cir. 1998), republished at 178 F.3d 759 (6th Cir. 1998), cert. denied Workman v. Bell, 528 U.S. 913 (1999); Workman v. Bell, 227 F.3d 331 (6th Cir. 2000); cert. denied Bell v. Workman, 2001 U.S. LEXIS 1752 (February 26, 2001).

[FN30] See Workman v. Bell, 245 F.3d 849 (6th Cir. 2001).

82. According to the most recent information presented by the Petitioners, on May 19, 2003 the Tennessee Supreme Court denied Mr. Workman permission to appeal from the determinations on his coram nobis proceedings, and his execution was scheduled to take place on September 22, 2004 but had since been further postponed.[FN31]

[FN31] Petitioners' observations dated January 30, 2004, Annex 1 (State of Tennessee v. Phillip Workman, No. W2002-00300-SC-R11-CD (May 19, 2003) (Supreme Court of Tennessee), Opinion of Justice Birch respecting the denial of the application for permission to appeal.

83. The Commission also notes that the State has not raised any issues with respect to the inadmissibility of the Petitioners' petition related to non-exhaustion of the domestic remedies.

84. Based upon the information before it, therefore, the Commission finds that Mr. Workman has exhausted available domestic remedies, and therefore that the petition is not barred under Article 37 of the Commission's Rules of Procedure.

D. Timeliness of the Petition

85. 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 April 3, 2000 and therefore not beyond six months from the date of the denial of permission to appeal by the Tennessee Supreme Court on May 19, 2003.

86. With respect to the claims raised by the Petitioners during the March 3, 2005 hearing before the Commission and their subsequent written observations dated April 4, 2005, namely those relating to his coram nobis proceedings, the characterization of felony murder as a "most serious" crime, and Mr. Workman's time, conditions and treatment on death row, the State objects to these claims on the ground that they were not raised in a timely fashion.

87. In this regard, the Commission notes that there is no specific requirement in its procedures that obliges petitioners to articulate all of their legal arguments in their initial petition.[FN32] Rather, the Commission's Rules require a petition to include an account of the act or situation denounced without placing explicit conditions upon the nature or timing of specific legal claims. This flexibility afforded to the form of petitions is consistent with an interpretative approach that seeks to give practical effect to the Convention's safeguards where, for example, developments relevant to the situation denounced in the original petition arise after the petition has initially been filed with the Commission. It is also consistent with the Commission's authority to determine violations of Articles of the Convention based upon acts or situations denounced by petitioners in their original petitions, in circumstances where a petitioner has not specifically alleged violations of those rights or raised those violations after the six-month period under the Convention expired.[FN33] At the same time, the Commission ultimately retains the authority to limit the ability of parties to present new claims or arguments where such measures are necessary to ensure the effectiveness of the Commissions procedures or to maintain procedural fairness between the parties, for example where additional arguments unnecessarily prolong the determination of or effectively change the nature of the complaint.

[FN32] See similarly Eur. Comm. H.R., *Isabel Hilton v. United Kingdom*, Application No. 12015/86, 57 D.R. 108 (October 1988), at pp. 114-115.

[FN33] See I/A Court H.R., *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Ser. S No. 4 (1988), para. 163 (citing the general principle of law, *iura novit curia*, under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them).

88. In the present case, the Commission notes that the additional arguments raised by the Petitioners at and following the March 3, 2005 hearing relate to developments that have occurred in connection with the situation initially presented in Mr. Workman's petition since it was first lodged with the Commission in 2000. In addition, the Commission has taken into account the fact that the State has been provided with opportunities to respond to the Petitioners' additional arguments during the admissibility stage of the process, at the March 3, 2005 hearing and in responding to the Petitioners' April 4, 2005 written observations. Further, should these claims be admitted, the State will have a further opportunity to respond to them on the merits in accordance with Article 38.1 of the Commission's Rules.

89. In these circumstances, the Commission does not consider that the claims raised by the Petitioners in their initial petition and subsequent observations are barred from consideration under Article 32 of the Commission's Rules of Procedure.

E. Colorable Claims

90. Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations enshrined in the American Convention on Human Rights and other applicable instruments". In addition, Article 34.a of the Commission's Rules of Procedure requires the Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules, and Article 34.b of the Rules provides that the Commission shall declare any petition inadmissible where statements of the petitioner or of the State indicate that it is manifestly groundless or out of order.

91. The Petitioners 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 proceedings against Mr. Workman. In particular, the Petitioners have raised five main claims under Articles I, XVIII and XXVI of the American Declaration. (1) that U.S. courts had not provided Mr. Workman with an opportunity to present new exculpatory evidence which the Petitioners claim proves Mr. Workman's innocence, which includes the contention that error coram nobis proceedings do not amount to adequate due process under the American Declaration for this purpose; (2) that Mr. Workman's clemency proceedings did not safeguard his due process rights articulated in the American Declaration; (3) that felony murder does not qualify as a "most serious" crime to which capital punishment can properly be applied in accordance with the object and purpose of the American Convention, including Article 4 thereof; (4) that Mr. Workman's time, conditions and treatment on death row have amounted to cruel, infamous and unusual punishment; and (5) that the death penalty had been abolished de facto in Tennessee because the state had not executed any one in 40 years.

92. The State opposes the Petitioners' first claim on the ground that federal and state courts in the United States have provided Mr. Workman with many opportunities to prove his claims or newly-discovered evidence and that the domestic courts have satisfied the requirements of due process. The State also argues in this connection that the domestic courts, applying established rules under internal law, concluded that the additional evidence raised by the Petitioners, including the allegedly recanted testimony of Harold Davis and the x-ray of the murder victim that was not available to Mr. Workman at trial, could not be said to satisfy the standard

applicable to a successive petitioner claiming actual innocence before a federal court based on newly-discovered evidence, namely that no reasonable fact-finder would have found him guilty with the evidence if it had been admitted. The State therefore asserts that the facts alleged by the Petitioners fail to characterize a violation of the American Declaration. With regard to the Petitioners' third claim, the State argues that Tennessee cannot be said to have violated Mr. Workman's right to due process in connection with his clemency proceedings because clemency is a wholly collateral proceeding with minimal due process where the substantive merits of the decision are not subject to review by the courts, and where the courts nevertheless did analyze relevant legal standards and found no grounds to open the matter on the basis of fraud or otherwise. With regard to the Petitioners' fifth claim, the State has asserted, and the Petitioners have not contested, that the execution of a condemned prisoner, Robert Glen Coe, was carried out in Tennessee on April 19, 2000 and therefore that it is not the case that Tennessee has refrained from carrying out any executions in the past 40 years. The State did not provide submissions on the Petitioners' third and fourth claims.

93. With regard to the Petitioners' first claim, the Commission notes that according to the record, the Petitioners succeeded in having the trial court in Tennessee convene an evidentiary hearing to consider the subsequently and newly discovered evidence in this case, when the Tennessee Supreme Court overturned the trial court's decision to dismiss Mr. Workman's petition for a writ of error coram nobis based upon the statute of limitations and remanded the matter to the trial court for a hearing on the merits.[FN34] This hearing was held and Mr. Workman was permitted to present testimonial and documentary evidence, including the recanted testimony and the newly-discovered x-ray evidence. After considering the evidence presented, the trial court, in a twenty-three page order, found that it could not reasonably conclude that the additional evidence may have resulted in a different judgment in Mr. Workman's case.[FN35] This decision was then reviewed by the Tennessee Court of Criminal Appeals Supreme Court, which affirmed the decision of the trial court,[FN36] and the Tennessee Supreme Court denied a further appeal from this decision.[FN37]

[FN34] Workman v. State, 41 S.W. 3d 100 (Tenn. 2001).

[FN35] Petitioners' observations dated January 30, 2004, Annex 1 (State of Tennessee v. Phillip Workman, No. W2002-00300-SC-R11-CD (May 19, 2003) (Supreme Court of Tennessee), Opinion of Justice Birch respecting the denial of the application for permission to appeal.

[FN36] State of Tennessee v. Philip R. Workman, Opinion dated December 30, 2002, Case No. W2002-00300-R3-PD (Tennessee Court of Criminal Appeals); Petitioners' observations dated January 30, 2004, Annex 1 (State of Tennessee v. Phillip Workman, No. W2002-00300-SC-R11-CD (May 19, 2003) (Supreme Court of Tennessee), Opinion of Justice Birch respecting the denial of the application for permission to appeal.

[FN37] State of Tennessee v. Phillip Workman, No. W2002-00300-SC-R11-CD (May 19, 2003) (Supreme Court of Tennessee).

94. The Commission also observes, however, that the Petitioners have challenged the procedures through which Mr. Workman's new evidence was considered as inadequate in light of the standards of due process applicable in death penalty cases. The Commission has

previously held that there may be circumstances in which evidence that is discovered following a capital trial and that may call into question the reliability of a defendant's conviction must be the subject of re-evaluation by a trier of fact through a procedure that incorporates the fundamental due process protections under the American Declaration, including the right to present and examine witnesses.[FN38] Without determining at this stage whether the procedures followed in Mr. Workman's case satisfied prevailing standards in the inter-American human rights system, the Commission considers that the facts alleged by the Petitioners in respect of this claim could tend to establish violations of Articles I, XVIII and XXVI of the American Declaration and warrant an analysis on the merits of the complaint.

[FN38] See, e.g., Case 11.193, Report 97/03, Gary Graham, now know as Shaka Sankofa v. United States, Annual Report of the IACHR 2003, para. 44-47.

95. With respect to their second claim, the Petitioners have argued that the Tennessee Attorney General committed fraud by arguing in court that executive clemency proceedings before the Parole Board was the best remedy for Mr. Workman, while holding ex parte meetings with persons associated with the Tennessee parole board as well as counsel for the Governor in order to ensure that Mr. Workman would not succeed in his clemency proceeding. In this respect, the Commission has previously held that right to apply for amnesty, pardon or commutation of sentence under inter-American human rights instruments, while not necessarily subject to full due process protections, is subject to certain minimal fairness guarantees for condemned prisoners in order for the right to be effectively respected and enjoyed. These procedural protections have been held to include the right on the part of condemned prisoners to submit a request for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations, in person or by counsel, to the competent authority, and to receive a decision from that authority within a reasonable period of time prior to his or her execution.[FN39] In the present case, the Commission is not satisfied that the facts alleged by the Petitioners relating to the manner in which his clemency proceedings were conducted, if true, violate applicable requirements of procedural fairness, and accordingly does not find the petition to characterize violations of Articles XVIII or XXVI of the Declaration in this respect.

[FN39] See, e.g., Desmond McKenzie et al. v. Jamaica, Case N° 12.023, Annual Report of the IACHR 1999, para. 228; Michael Edwards et al. V. The Bahamas, Case N° 12.067, Annual Report of the IACHR 2000, para. 170.

96. With respect to the Petitioners' third claim concerning the classification of felony murder as one of the "most serious" crimes eligible for the death penalty under applicable international standards, the Commission notes that a review of pertinent international human rights jurisprudence, including its own case law under the American Convention and the American Declaration, indicates that in order to comply with the condition limiting capital punishment to only the most serious crimes, consideration must be given to the individual circumstances of the

offender and his or her offense in order to determine whether the death penalty is a permissible punishment in each individual case.[FN40] The Commission has previously held that the factors pertinent to determining whether a crime is one of exceptional gravity include the motives for the behavior and the circumstances under which the crime is committed which, in the Commission's view, encompass consideration of the state of mind of the offender as well as his or her proximity to the principal crime.[FN41]

[FN40] See, e.g., Case I/A Court H.R., Hilaire, Constantine and Benjamin et al. Case, Judgment of June 21, 2002, Series C No. 94, para. 102; I/A Court H.R., Raxcacó Reyes case, Judgment of September 15, 2005, Series C No. 133, paras. 79-82; Case 12.067, Report 48/01, Michael Edwards et al. v. The Bahamas, Annual Report of the IACHR 2000; UNHRC, Communication No. 390/1990, Lubuto (Zambia), UN Doc. CCRP/C/55/D/390/1990 (November 17, 1995).

[FN41] See, e.g., Petition P396/2004, Report 79/05, Marlin Gray v. United States, Annual Report of the IACHR 2005, paras. 36-39; I/A Court H.R., Hilaire Case, Judgment of June 21, 2002, Series C No. 94, paras. 102-108; I/A Court H.R., Raxcacó Reyes case, Judgment of September 15, 2005, Series C No. 133, para. 81; UNHRC, Communication No. 390/1990, Lubuto (Zambia), UN Doc. CCRP/C/55/D/390/1990 (November 17, 1995), para. 7.2.

97. In the present case, the Petitioners argue that the felony murder rule does not require the prosecution to prove the mental element of murderous intent or, in some states, the participation of the felon in the actual perpetration of the murder, and therefore that it inappropriately treats circumstances involving a lesser mental state, such as "reckless disregard", at the same level as intentional or aggravated murder convictions. The State has not provided observations on this claim. Based upon the Petitioners' submissions in light of applicable international principles, the Commission considers that it is only through a consideration of the merits of the Petitioners' petition that a determination can be made as to whether Mr. Workman's death sentence for a felony murder conviction is consistent with applicable international standards under Articles I and XXVI of the American Declaration in light of his circumstances and those of his crime.

98. Regarding the Petitioners claims concerning the time, conditions and treatment of Mr. Workman on death row, the Commission is satisfied that the facts, if true, tend to characterize violations of Articles XVIII and XXVI of the American Declaration when viewed in light of the existing jurisprudence of the inter-American Human Rights system.[FN42]

[FN42] I/A Court H.R., Hilaire, Constantine and Benjamin et al. (Trinidad and Tobago), Judgment of 21 June 2002, Ser. C N° 94, paras. 84, 168-170. See similarly Case 12.023, Report 41/00, Desmond McKenzie et al. v. Jamaica, Annual Report of the IACHR 1999, paras. 270-291; Case 11.139, Report 57/96, William Andrews v. United States, Annual Report of the IACHR 1997, paras. 178-183.

99. Finally, in respect of the Petitioners' submissions regarding the de facto abolition of the death penalty in the State of Tennessee, the State has argued, and the Petitioners have not

contested, that the execution of a condemned prisoner, Robert Glen Coe, was carried out in Tennessee on April 19, 2000 and therefore that it is not the case that Tennessee has refrained from carrying out any executions in the past 40 years. Consequently, without expressing an opinion as to the legal merits of the Petitioners' arguments in this regard, the Commission finds that the evidence presented does not support the admissibility of the Petitioners' claim.

V. CONCLUSIONS

100. The Commission concludes that it has the competence to examine the Petitioners' petition.

101. The Commission concludes that the Petitioners' claims under Articles I and XXVI of the American Declaration in respect of the conduct of his clemency proceedings and the alleged de facto abolition of the death penalty in Tennessee and inadmissible for failure to characterize a violation of the American Declaration.

102. The Commission concludes that the Petitioners' claims under Article I, XVIII and XXVI of the American Declaration in respect of the consideration of new evidence in Mr. Workman's case, the classification of Mr. Workman's felony murder conviction as a "most serious" subject to the death penalty, and Mr. Workman's time, conditions and treatment on death row are admissible pursuant to Articles 31 to 34 of the Commission's Rules of Procedure.

103. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case inadmissible with respect to the alleged violations of Articles I and XXVI of the American Declaration of the Rights and Duties of Man concerning the conduct of Mr. Workman's clemency proceedings and the alleged de facto abolition of the death penalty in Tennessee.
2. To declare the present case admissible with respect to the alleged violations of Articles I, XVIII and XXVI of the American Declaration of the Rights and Duties of Man concerning the consideration of new evidence in Mr. Workman's case, the classification of Mr. Workman's felony murder conviction as a "most serious" subject to the death penalty, and Mr. Workman's time, conditions and treatment on death row.
3. To notify the parties of this decision.
4. To continue with the analysis of the merits of the case.
5. To make this report public, and publish 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 March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio, Pinheiro, First Vice-President;

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Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo and Víctor E. Abramovich, Members of the Commission.