

REPORT Nº 42/10
PETITION 120-07
ADMISSIBILITY
N. I. SEQUOYAH
UNITED STATES*
March 17, 2010

I. SUMMARY

1. On February 2, 2007, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Constance de la Vega, Professor, and Amy Lifson-Leu, Danielle Tizol, Anna Ciesielski and Elisabeth Hanowsky, interns, of the Frank C. Newman International Human Rights Law Clinic of the University of San Francisco (the "petitioners") against the Government of the United States of America ("the United States" or the "State"). The petition was presented on behalf of Nvwtohiyada Ideshedi Sequoyah, born Billy Ray Waldon ("Mr. Sequoyah", "N.I. Sequoyah" or the "alleged victim"), an inmate on death row at the San Quentin State Prison in California, United States (the "San Quentin Prison").

2. The petition indicates that in February 1992, Mr. Sequoyah was sentenced to death and that since then he has been waiting for his direct appeal to be heard. The petitioners claim that the reason for this delay is the deficiency of the trial transcripts, which have required an exceptionally long period of time to put in order and reconstruct, a problem they attribute to the State. They complain principally of the violation of Mr. Sequoyah's rights to due process of law and to be tried without undue delay. The petitioners also complain that the medical situation of Mr. Sequoyah has been deteriorating very seriously since he was placed on death row, and that the prison authorities refuse to provide him with adequate care. Consequently, the petitioners allege that the State is responsible for violating Mr. Sequoyah's rights under Articles I, XVIII, XXIV, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (the "American Declaration").

3. The State argues that the petition is inadmissible because Mr. Sequoyah failed to exhaust domestic remedies and because it fails to state facts which tend to demonstrate a violation of the American Declaration. As such, the State submits that the delay in Mr. Sequoyah's case is imputable to his own counsel, who requested and received 26 extensions of time. The State argues that one cannot constantly request such extensions and then complain that the time before the hearing of his appeal is delayed in violation of his fundamental rights.

4. 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 Inter-American Commission concludes that the present case is admissible regarding claims concerning the alleged undue delay in the process of Mr. Sequoyah's appeal and the related prolonged period of incarceration on death row, as it meets the requirements provided in Articles 31 to 34 of the IACHR's Rules of Procedure (the "Rules" or the "Rules of Procedure"). However, the IACHR concludes that the allegation in connection with the lack of medical treatment is inadmissible, because the petitioners did not show exhaustion of domestic remedies with respect to these facts. Based on the foregoing, the IACHR decides to notify the parties of its decision and to continue with its analysis of the merits as regards alleged violations of Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration.

* Commissioner Dinah Shelton did not take part in the discussion or voting on this case, pursuant to Article 17(2) of the Inter-American Commission's Rules of Procedure.

II. PROCESSING BEFORE THE COMMISSION

5. The petition, dated January 31, 2007, was received by the IACHR on February 2, 2007. On February 7, the IACHR acknowledged receipt and informed the petitioners that the petition had been assigned the number P-120-07. Subsequently, on May 9 and May 29, 2007, May 27, 2008 and May 1, 2009,¹ the petitioners submitted additional information.

6. On May 29, 2008 the IACHR transmitted the pertinent parts of the petition to the State, with a request that it provide information within two months and informed the petitioners thereof on the same day. On April 13, 2009, the IACHR received the State's observations, dated April 10, 2009. On June 2, 2009, it acknowledged receipt and transmitted the pertinent parts thereof to the petitioners, with a request that they submit their observations within one month.

7. On June 26, 2009, the petitioners requested an extension of one month to submit their observations on the State's response to their petition. By means of a note of July 1, 2009, the IACHR informed the petitioners and the State that it granted the petitioners until August 2, 2009 to submit their observations. On July 29, 2009, the IACHR received the petitioners' observations, transmitted them to the State on August 13, 2009, and acknowledged receipt on the same date.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. According to the petition, N.I. Sequoyah is a U.S. citizen who is incarcerated on death row at the San Quentin Prison since February 1992. The petition revolves mainly around two issues: the alleged undue delay in the process of Mr. Sequoyah's appeal; and the alleged lack of medical treatment while incarcerated.

9. The information submitted to the IACHR indicates the following sequence of events:

- Following his arrest in June 1986, Mr. Sequoyah asked to represent himself in March 1987 and this request was granted in November 1989;
- Mr. Sequoyah's trial started in May 1991, and on November 18, 1991, he was convicted of 24 counts ranging from robbery to murder with special circumstances, rendering him eligible for the death penalty under California law;²
- On February 28, 1992, Mr. Sequoyah was sentenced to death, subsequent to which he was transferred to San Quentin Prison;
- For three years and nine months, N.I. Sequoyah remained on death row without counsel or any assistance to appeal his case;
- In December 1995, the State Public Defender was appointed as Mr. Sequoyah's counsel. When the counsel received the initial appellate record of the trial court, he realized that it lacked numerous documents and evidence of proceedings, so he filed several motions requiring the State to correct the situation;³
- In March 2000, the trial court ordered the clerks to reassemble the transcript correctly and redeliver it to Mr. Sequoyah's counsel, who renewed the motion on the basis that this new record was still deficient;

¹ On June 3, 2009, the IACHR acknowledged receipt and forwarded this updated information to the State.

² Under allegedly, *inter alia*, CAL. PENAL CODE §187.

³ According to the petition, the transcript was badly scrambled, disorganized, not in chronological order and many documents were fragmented and scattered dozens or hundreds of pages apart.

- In August 2002, Sequoyah's counsel received additional records, totaling 35,000 pages. He had to prepare proposed settled statements to fill in the blanks in the record proceedings, which were either not transcribed or for which the court reporter's notes were lost or destroyed;
- In March 2003, Mr. Sequoyah's counsel underwent chemotherapy and was not able to do much work until February 2004, when he continued to work on completing the record of proceedings; and
- As of the date of the petition, the record remained incomplete and undelivered to the appellate court for its consideration.

10. The petitioners submit that this period of twenty years since N.I. Sequoyah's arrest and more than fifteen since his sentencing is due to the State's disorganization⁴ and has had devastating psychological and physical effects on Mr. Sequoyah. They maintain that Mr. Sequoyah's competency was questioned on many occasions during his criminal proceedings, implying that it was already fragile and that the State was on notice of his vulnerability. Relying in part upon affidavits signed by people alleging having occasional contacts with Mr. Sequoyah, the petitioners claim that since Mr. Sequoyah has been on death row, his mental health has continuously worsened: he has become increasingly panicky and nervous; during meetings, he is unable to sit still or to make eye contact; and he appears to be having an increasingly difficult time controlling his emotions. Furthermore, the petitioners allege that Mr. Sequoyah does not understand the passage of time and has become increasingly focused on the notion that he is the victim of various conspiracies.⁵ Besides his mental condition, the petitioners allege that Mr. Sequoyah suffers from severe and recurring colds, pain in his lungs and a skin problem, a condition that worsens over the years and which causes visible infections.⁶ The petitioners claim that the prison authorities have failed to take appropriate measures and that they have denied Mr. Sequoyah adequate care, despite the deterioration of his health.

11. The petitioners stress that this situation has to be considered within the broader problem of the California prison health system, for which two lawsuits have already been filed.⁷ They further indicate that such lawsuits have resulted in settlement agreements in which the state of California agreed to make significant changes to the health care provided to prisoners. However, the petitioners contend that the system remains highly unsatisfactory and that as a result Mr. Sequoyah suffers from a total lack of effective medical treatment.⁸

12. With regard to admissibility, the petitioners allege that because the hearing of his appeal is constantly delayed, Mr. Sequoyah is being denied access to domestic remedies and prevented from exhausting them. Further, the petitioners argue that domestic legislation cannot afford Mr. Sequoyah due process of law because he has no adequate remedy by which to raise his claims until the California Supreme Court hears his direct appeal, which the petitioners estimate to be in at least another five years. They similarly claim that the period of fifteen years elapsed since Sequoyah's sentencing, while waiting for his appeal to be heard constitutes unwarranted delay. Therefore, the petitioners submit that Mr.

⁴ The petitioners underscore that the state of California has one of the worst practices related to the execution of the death penalty in the U.S. Allegedly, the average time spent on death row in California for those executed in 2003 was 17 and a half years.

⁵ For example, the petitioners claim that Mr. Sequoyah is under the delusion that he is being persecuted as part of a grand conspiracy to prevent him from preaching the gospel.

⁶ The petition contains a medical report dated March 2003, in which the examining doctor confirms the skin condition. The IACHR notes that the examining doctor agrees with the current regimen of therapy to treat the skin problem.

⁷ The petitioners cite *Shumate v. Wilson*, No.CIV S-95-0619 (E.D.Cal. 2000); *Plata v. Davis*, 329 F.3d 1101, 1103 (9th Cir.2003).

⁸ The petitioners submit that the particularly adverse conditions of death row confinement make adjustment more difficult and more likely to aggravate pre-existing psychological problems, they point out that the conditions of stress associated with a death sentence and the long-term confinement on death row are especially likely to aggravate mental health problems: they cite Mark D. Cunningham & Mark P. Vigen, "Death Row Inmate Characteristics, Adjustment, and Confinement: A Critical Review of the Literature," 20 BEHAV. SCI. & L. 191, 204, 206. (2002).

Sequoyah should be excused from exhausting domestic remedies, pursuant to Article 31(2)(a)(b) and (c) of the IACHR Rules of Procedure.

13. With regard to the State's contention that Mr. Sequoyah could file a *habeas* petition in which he could raise the allegations of lack of medical treatment, the petitioners submit that by doing so at this stage, the alleged victim would endanger his right to raise any additional claims attacking the constitutionality of his death sentence. The petitioners explain that, under California law, an incarcerated defendant can file a petition for writ of *habeas corpus* alleging that his detention violates the state or federal constitution; however, they contend that state law limits a defendant to a single petition, and that state courts will not ordinarily consider successive petitions.⁹ The petitioners also submit that Mr. Sequoyah cannot present this recourse before a federal court because he must first give the state courts an opportunity to rule on the claim.¹⁰

14. Moreover, the petitioners claim that the U.S. Supreme Court has repeatedly rejected arguments challenging prolonged detention on death row as cruel and unusual punishment,¹¹ and therefore they contend that Sequoyah should be excused from exhausting domestic remedies on this issue as there is no serious prospect that he would succeed. They argue that the issue of prolonged delay on death row is not a claim that can be raised on appeal, because the California Supreme Court has repeatedly ruled that because it will only address claims based on what occurred at trial.¹²

15. The petitioners further argue that raising their claim of lack of medical treatment under Title 15 of the California Code of Regulations would similarly be fruitless because the Federal Court already ruled that the quality of medical care and mental health treatment in the California prison health care system was not adequate and constituted cruel and unusual punishment¹³ and it did not result in any better care for the inmates. Moreover, recent court orders allegedly indicate that the system continues to violate constitutional standards and order the State to release thousands of prisoners, which have not been complied with.¹⁴

16. Consistent with their argument of exceptions to the rule of exhaustion of domestic remedies, the petitioners contend that the petition was presented within a reasonable time, in accordance with Article 32(2) of the IACHR's Rules of Procedure.

17. With regard to the merits of the petition, the petitioners highlight that an overall period of twenty years elapsed since N.I. Sequoyah's arrest; that fifteen years have elapsed since his sentencing, without his direct appeal having been heard; and that the State lost important trial transcripts. The petitioners allege that these facts constitute breaches of Mr. Sequoyah's right to a fair trial, his right to be tried without undue delay, as well as his right to submit an appeal and to ensure that he receives a prompt decision thereon, guaranteed respectively by Articles XVIII, XXIV and XXV of the American Declaration.

18. In connection with the allegations of prolonged incarceration waiting for appeal, the petitioners argue that as a result of the so-called "death row phenomenon" Mr. Sequoyah has endured undue psychological torture, amounting to cruel punishment, as defined in Article XXVI of the American Declaration. In these circumstances, the petitioners further submit that the execution of Mr. Sequoyah

⁹ The petitioners refer to CAL. CONST, art. I, §11; and *In re Clark*, 5 Cal. 4th 750, 775 (1993).

¹⁰ The petitioners refer to 28 U.S.C. §2254(b)(1).

¹¹ The petitioners refer to *Knight v. Florida*, 528 U.S.990 (1999); *Lackey v. Texas*, 514 U.S. 1045 (1995).

¹² The petitioners refer to *People v. Carter*, 36 Cal.4th 1114, 1213; *People v. Barnett*, 17 Cal. 4th 1044, 1183 (Cal. 1998); *People v. Sanchez*, 12 Cal. 4th 1, 59 (cal. 1995); *People v. Szeto*, 29 Cal. 3d 20, 35 (Cal. 1981).

¹³ The petitioners cite *Plata v. Schwarzenegger*, 3:01-cv-01351-THE (N.D. Cal.); *Coleman v. Schwarzenegger*, 2:90-cv-00520-LKK-JFM (E.D. Cal.); and *Armstrong v. Schwarzenegger*, 4:94-cv-02307-CW (N.D.Cal.).

¹⁴ The petitioners cite Bob Egelko & Wyatt Buchanan, "Judges tell state to free thousands in crowded prisons", San Francisco Chronicle, February 10, 2009, page A1.

would amount to cruel, infamous and inhumane treatment in violation of his right to life, under Article I of the American Declaration.

19. Finally, the petitioners claim that by not providing the medical care required by Mr. Sequoyah's mental and physical condition, the State is in violation of his right to humane treatment, guaranteed by Article XXV of the American Declaration.

B. Position of the State

20. The State submits that several avenues are available to Mr. Sequoyah to raise his claims of inadequate medical care. In this regard, it indicates that Title 15§ 3084.1 of the California Code of Regulations, an administrative complaint procedure, provides inmates, including Mr. Sequoyah, with several opportunities for reviews of their claims, including medical complaints.¹⁵ According to the State, if Mr. Sequoyah were eventually dissatisfied with the results of this procedure, he could seek relief in state or federal court.¹⁶ Although the State mentions that it is not at liberty to discuss Mr. Sequoyah's use of this procedure,¹⁷ it contends that the absence of a record of any such claim in either state or federal court suggests that the alleged victim is either satisfied with this domestic remedy, or has failed to exhaust it.

21. The State also includes among available remedies the presentation of a petition for *habeas corpus*, so that the California courts may review the conditions of Mr. Sequoyah's medical treatment, or lack thereof.¹⁸ It finally mentions the possibility of filing a complaint in U.S. federal court alleging that Sequoyah's medical treatment --or lack thereof-- violates his rights under the U.S. Constitution.¹⁹

22. The State argues that the prospect of waiting for a thorough and thoughtful determination of these procedures by the courts does not exempt or excuse Mr. Sequoyah from pursuing and exhausting them. Consequently, the State considers that claims related to the alleged lack of medical treatment in Mr. Sequoyah's case, in violation of Article XXV of the American Declaration, should be declared inadmissible by the Inter-American Commission for failure to exhaust domestic remedies.

23. Moreover, the State generally argues that the petition lacks evidence to substantiate the claims that Mr. Sequoyah is being denied access to medical care, or that the prison health system had any negative impact on his health. Because the petition does not provide any individualized facts in this regard, the State submits that the claims of alleged lack of medical treatment should be disregarded by the IACHR, pursuant to Article 34 of its Rules of Procedure.

24. With regard to the claim of undue delay in the process of his appeal, the State contends that Mr. Sequoyah still has to exhaust domestic remedies. The State argues that if the California Supreme Court affirms Mr. Sequoyah's conviction, he will then have the possibility to pursue federal causes of action to challenge any perceived delays, including a claim that his constitutional rights under the Eighth Amendment (which prohibits cruel and unusual punishment) have been violated due to the length of his detention.

¹⁵ Allegedly, CAL. CODE REGS. tit. 15, §3084 reads as follows: "any inmate or parolee under the department's jurisdiction may appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare". According to the State, an inmate must first lodge complaints with involved staff; if the complaint is not resolved through informal mechanisms, an inmate may appeal up through three formal appeal levels; and if he remains dissatisfied with the results of the appeals process, he may seek relief in state or federal court.

¹⁶ *Idem*.

¹⁷ The State submits that it is not at liberty to discuss Sequoyah's use (or lack thereof) of this complaint mechanism, unless Sequoyah consents in writing to the release of this information should he decide to discuss whether or not he made use of the complaint procedure, California's Information Practices Act of 1977, CAL. CIVIL CODE §1798.24(b).

¹⁸ The State refers to CAL. PENAL CODE § 1473.

¹⁹ Allegedly, 42 USC § 1983.

25. The State submits that none of the exceptions set in Article 31(2) of the IACHR's Rules of Procedure are applicable because both the state of California and the United States provide administrative and judicial due process to address the petitioners' claims; neither state nor federal due process has ever been denied to Mr. Sequoyah; and the alleged unwarranted delay is the result of Sequoyah's counsel's own actions in requesting constant extensions of time that cannot be attributed to the State. The State recalls that an appeal to the California Supreme Court was automatically triggered as a matter of law at the moment Mr. Sequoyah was sentenced to death, in order to safeguard due process rights.²⁰ Further, the State highlights the fact that it is Mr. Sequoyah's counsel who has requested and received 26 extensions of time to file his appeals brief to the California Supreme Court.²¹ The State argues that this is not an indication of cruel treatment or punishment, but rather evidence of due process safeguards in place to ensure Mr. Sequoyah's right to legally challenge his conviction and sentencing and to afford him sufficient time to appeal his conviction, instead of imposing an arbitrary time limit to appeal a capital sentence, including the availability of requesting extensions, of which he has taken ample advantage.

26. With respect to the petitioners' argument that a claim of prolonged delay on death row would be fruitless, the State argues that the customary international law standard for futility is such that mere likelihood of an adverse decision is insufficient to excuse exhausting domestic remedies²² and that the fact that the U.S. Supreme Court has not yet held a long period between conviction and execution to be unconstitutional does not preclude it from doing so in the future. In fact, the State submits that the U.S. Supreme Court has repeatedly granted *certiorari* in capital punishment cases to review the constitutionality of many aspects of death sentences and procedural issues in capital trials.²³ The State submits that the present case raises complex legal questions related to the Eighth Amendment and its prohibition of cruel and unusual punishment and that the domestic courts should be given the opportunity to hear these questions. It further refers to previous cases for which the IACHR found petitions alleging pre-execution delays to be admissible when a review had first been sought in U.S. courts and when the U.S. Supreme Court ultimately denied *certiorari*.²⁴ The State submits that the same should be required from Mr. Sequoyah.

27. The State also argues that concerns of "undue delay" as mentioned by Article XXV of the American Declaration only refer to pre-trial delay²⁵ --which is not challenged in this case-- and not to delay between sentence and execution. Accordingly, the State contends that the allegations concerning breaches of Articles XXIV, XXV and XXVI of the American Declaration should be rejected.

28. The State submits that the circumstances of this case are starkly different from those for which the IACHR has previously recognized violations of Article XVIII of the American Declaration, that is

²⁰ Under allegedly CAL. PENAL CODE §1239; see also *People v. Waldon*, Case No. S025520, *docket sheet* (Cal.), available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1757302&doc_no=S025520.

²¹ The State refers to the dockets of the case, where motions for extension of time requested by Sequoyah's counsel and other motions are listed, available on the California Supreme Court website, at: http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1757302&doc_no=S025520.

²² The State refers to the International Law Commission, 54th Session, Third Report on Diplomatic Protection, J. Dugard, Special Rapporteur. A/CN.4/523. 7 March 2002, which stated that "the mere likelihood of an adverse decision is insufficient: there must be 'something more than probability of defeat but less than certainty,'" and J. Paulsson, Denial of Justice in International Law (2005), at 117.

²³ Referring to *Kennedy v. Louisiana*, 128 S.Ct.2641 (2008); and *Panetti v. Quarterman*, 127 S.Ct. 2482 (2007); and *Abul-Kabir v. Quarterman*, 127 S.Ct.1654 (2007).

²⁴ IACHR Report N°16/04, P129-02, Tracy Lee Housel (United States) Feb.27, 2004; and IACHR Report N°68/04, P28-03, John Elliott (United States) Oct.14, 2004.

²⁵ Referring to IACHR Report n°48/01, Case 12.067, Michael Edwards (Bahamas) April 4, 2001, para.85; IACHR Report n°67/06, Case 12.476, Oscar Elias Biscet (Cuba) Oct.21,2006; IACHR Report n°77/02, Case 11.506, Waldemar G. Pinheiro & Jose V. Dos Santos (Paraguay) Dec.27,2002, para.72; IACHR Report n°7/02, P11.661, M.Suresh (Canada) Feb.27, 2002; IACHR, Report n°6/02, P12.071, 120 Cubans Nationals & 8 Haitians (Bahamas) Feb.27, 2002.

when all judicial review or access to fair trial has been barred or limited and no judicial recourse is available.²⁶ It argues that appellate review in the U.S. ensures that trials are fair and impartial, that convictions are based on substantial evidence, and that sentences are proportionate to the crime, and that in addition to mandatory and discretionary appeals before state courts, federal *habeas corpus* procedures enable federal courts to review the substantive and procedural merits of every death penalty handed down by state courts. The State maintains that the petitioners did not succeed in establishing facts suggesting that those safeguards failed to afford N.I. Sequoyah the “protection of the courts” referred to in Article XVIII of the American Declaration.

29. The State similarly discounts as unmeritorious the allegations regarding a violation of the right to life. It also notes that the American Declaration does not prohibit the death penalty and argues that the petitioners failed to provide any facts in support of their claim of arbitrary deprivation of life, in the absence of which the claim should be deemed inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the IACHR

30. Upon considering the record before it, the Inter-American Commission finds that it is competent *ratione personae* to analyze the claims in the present petition. Under Article 23 of the IACHR Rules of Procedure, the petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victim is a person whose rights are protected under that international instrument. The State is bound to respect the provisions of the American Declaration, and the IACHR is competent to receive petitions alleging violations of that instrument by the State by virtue of its ratification of the OAS Charter on June 19, 1951 and in conformity with Article 20 of the IACHR’s Statute and Article 49 of its Rules of Procedure.²⁷

31. Given that the petition alleges violations of rights protected by the American Declaration that have taken place in the territory of the United States, the IACHR concludes that it has competence *ratione loci* to take cognizance of it. Moreover, the petition is based on facts that occurred at a time at which the obligations undertaken by the State pursuant to the OAS Charter and the American Declaration were in effect, so the Inter-American Commission has competence *ratione temporis* to examine this matter.

32. Finally, inasmuch as the petitioners have filed complaints alleging violation of Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration, the IACHR is competent *ratione materiae* to examine the complaint.

33. Therefore, the Inter-American Commission finds that it is competent to address the claims raised in the petition.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

34. Pursuant to Article 31(1) of its Rules of Procedure, the Inter-American Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance

²⁶ The State refers to IACHR Report n°81/07, Case 12.504, Daniel & Kornel Vaux (Guyana) Oct.15, 2007; IACHR Report n°49/02, P12.400, Takoor Ramcharan (Trinidad & Tobago) Oct.9, 2002; IACHR Report n°89/01, Case 12.342, Balkissoon Roodal (Trinidad & Tobago) Oct.10, 2001.

²⁷ Article 20(b) of the IACHR’s Statute; Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; IACHR’s Rules of Procedure, 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," Jul.14, 1989, Ser.A n°10 (1989), paras.35-45; and IACHR, James Terry Roach and Jay Pinkerton (United States) Case 9647, Res.3/87, Sept.22, 1987, Annual Report 1986-87, paras.46-49.

with generally recognized principles of international law. Article 31(2) of its Rules of Procedure, however, specifies that this requirement does not apply 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 is prevented from exhausting them; or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

a. Alleged undue delay in the process of Mr. Sequoyah's appeal and related prolonged period of incarceration on death row

35. The State argues that the requirement of exhaustion cannot be fulfilled until Mr. Sequoyah's direct appeal is heard and until he has exhausted the remedies which would then be available to him. The petitioners do not deny that Mr. Sequoyah did not exhaust domestic remedies, but argue that the IACHR must apply the exceptions under Article 31(2) of the Rules of Procedure on the basis of the followings allegations of fact: that he is being prevented from exhausting domestic remedies until his direct appeal is decided; that the fifteen year period since his sentencing constitutes unwarranted delay; and that the argument of prolonged incarceration on death row constituting cruel and unusual punishment would have no serious prospect of success in light of existing domestic precedents on the issue.²⁸

36. The State maintains that the delay in the hearing of Mr. Sequoyah's appeal cannot be attributed to the State, since the reason for this delay is that his counsel has constantly been requesting extensions of time. The petitioners do not deny this contention, but argue that the reason for doing so is that the trial transcripts, necessary for the appeal, are deficient to the point that they are totally unusable and need to be corrected. The IACHR notes that this problematic issue was neither commented on nor contested by the State.

37. A State alleging non-exhaustion of domestic remedies must indicate the domestic remedies to be exhausted and provide evidence of their effectiveness.²⁹ In the present case, the State argues that once the California Supreme Court renders its judgment on Mr. Sequoyah's appeal, a variety of judicial remedies will then be available to raise the claims contained in the petition, including federal causes of action to challenge the detention. However, the remedies suggested by the State would only be available once Mr. Sequoyah's appeal is decided, and it is precisely the undue delay in the decision of his appeal which prevents Mr. Sequoyah from exhausting domestic remedies. The IACHR also notes that the matter of Mr. Sequoyah is not entirely analogous to the cases referred to by the State. In the instant case, a problematic trial record allegedly stands in the way of the hearing of the direct appeal, whereas in the cases cited by the State the inmate had already made recourse to all appeals and was awaiting execution.³⁰ In these circumstances, the IACHR considers that the State did not meet its burden of demonstrating the effectiveness of the remedies.

38. The IACHR reiterates that any determination on the applicability of exceptions to the rule on exhaustion of domestic remedies must be conducted prior to and separate from an analysis of the merits of the case, since it relies on a standard of proof different from that used to determine whether there has been a violation of Articles XVIII and XXVI of the American Declaration.³¹ For the purpose of analyzing the admissibility of the petition, the IACHR considers that the fifteen year period that has

²⁸ See *supra* note 11.

²⁹ IACHR Report N° 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral *et al.*, (Guatemala) Mar.7, 2005, paras.33-35; *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999, Ser. C N°50, para.33; and *Cantoral Benavides Case. Preliminary Objections*. Judgment, Sept.3, 1998, Series C N°40, para.31.

³⁰ *Supra* note 24, in which the IACHR found that a defendant did not need to bring a "death row phenomenon" claim before the US courts in the form of an eighth amendment claim, because the U.S. Supreme Court jurisprudence was such that a claim of this nature appeared to have no reasonable prospect of success, and was therefore not an "effective" remedy under international law.

³¹ IACHR Report N°39/06, P73-03, Carlos Rafael Alfonso Martínez (Venezuela) Mar.15, 2006, para. 59; and Report N° 65/07, P415-03, Adriana Gallo, Ana María Careaga and Silvia Maluf, Argentina, July 27, 2007.

elapsed since Mr. Sequoyah's conviction represents an unwarranted delay, and that due to such delay, he is being prevented from exhausting domestic remedies. Based on the foregoing arguments, the IACHR finds that the situation complies with the necessary criteria justifying an exception to the exhaustion of domestic remedies in application of Article 31(2)(b) and (c) of the Rules of Procedure, with regard to the alleged prolonged period of incarceration before having his appeal decided. It should be clarified that the causes and effects which have prevented the exhaustion of domestic remedies in the instant case will be examined, where relevant, by the IACHR during the merits stage, in order to verify whether they in fact constitute violations of the American Declaration.

b. Alleged lack of medical treatment

39. In cases of detainees complaining of lack of medical treatment with regard to a specific illness or medical claim, the IACHR's constant practice with regard to exhaustion of domestic remedies has been to require that the complainant have attempted to file a suitable remedy, unless such remedy is proven to be inexistent, unavailable, or ineffective.³²

40. The State argues that numerous remedies are available to Mr. Sequoyah through which he could raise the allegations of inadequate medical care, but that none of them has been pursued. The petitioners do not allege that remedies are not available, but contend that raising them would either endanger Mr. Sequoyah's right to raise any additional claims attacking the constitutionality of his death sentence; or that they would be fruitless, as the courts already ruled that the California prison health care system was inadequate and this decision did not improve the care for the inmates. On the basis of such previous cases and on an affidavit from a former warden,³³ the petitioners request to be excused from exhausting domestic remedies.

41. The Inter-American Commission notes that the present claim does not depend on the alleged problematic trial record or on the so-called "death row phenomenon." It concerns the care received by Mr. Sequoyah at the San Quentin Prison, which is allegedly not adequate to treat his medical condition. There is no proof that Mr. Sequoyah has complained of the treatment he receives or initiated any type of administrative or judicial complaint to improve his medical condition. Also, the petitioners did not submit evidence that the authorities are aware of Mr. Sequoyah's dissatisfaction with his medical treatment. The IACHR considers that the fact that the system is deficient does not excuse the alleged victim from raising his claim through domestic proceedings, whether the administrative procedure suggested by the State or any other kind of proceeding.³⁴ Keeping in mind that the purpose of this requirement is to ensure that the State in question is aware of the alleged violation of a protected right, and has the opportunity to resolve controversies within its own legal framework before they are taken to an international body,³⁵ the IACHR concludes that with regard to the claim of lack of medical treatment, the petition does not satisfy the requirement of exhaustion of domestic remedies established at Article 31 of the Rules of Procedure.

42. Consequently, the IACHR will refrain from analyzing the other grounds of admissibility with regard to the claim of lack of medical treatment, but will complete its analysis on the claims of undue delay in the process of Mr. Sequoyah's appeal and of prolonged period of incarceration on death row.

2. Timeliness of the petition

³² See, for example, IACHR Report No. 8/08, Case 11.426, Marcela Alejandro Porco (Bolivia), Admissibility, March 4, 2008, para.62, where the IACHR recognized that the suitable remedy to address the petitioners' claim of inadequate detention conditions would have been the recourse of habeas corpus, but that because the law in force at that time did not offer the possibility of access to this recourse, the petitioners were excused from complying with the requirement of exhaustion of domestic remedies.

³³ Exhibit 22 of the petition, which is an affidavit signed by Daniel B. Vasquez, former warden at San Quentin State Prison, in support of a petition for clemency of another inmate, which attests of the prison's medical care problems.

³⁴ Title 15§ 3084.1 of the California Code of Regulations, see Section III.B above.

³⁵ *Inter alia*, IACHR Report n°51/08, P299-07, Robert Ignacio Díaz Loreto *et al.* (Venezuela), Jul.24, 2008, para.42.

43. Article 32(1) of the Rules of Procedure requires that for a petition or communication to be admitted, it must be lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment. That same article states that in those cases in which the exception to the requirement of prior exhaustion of domestic remedies is applicable, the petition must be lodged within a reasonable period, as determined by the Inter-American Commission, which “shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

44. In the present case, the IACHR found that the unwarranted delay in the processing of the alleged victim’s appeal prevented N.I. Sequoyah from exhausting domestic remedies. Therefore, the IACHR must determine whether the petition was filed within a reasonable period. In this regard, the record of this matter before the Inter-American Commission reveals that during the period of time since the conviction, the alleged victim’s representatives have been actively pursuing remedies in order to seek justice at the domestic level.³⁶ The procedural activity of the petitioners, in the context of the instant case, together with the ongoing nature of the facts alleged to constitute a denial of justice, leads the Inter-American Commission to conclude that the petition was presented within a reasonable time as required by Article 32(1) of its Rules of Procedure.

3. Duplication of proceedings and *res judicata*

45. There is no information on the record indicating that the subject matter of this petition has been previously submitted to the Inter-American Commission or to any other intergovernmental organization of which the United States is a member. The State has not opposed the petition on the ground of duplication of procedures. The IACHR therefore finds no bar to the admissibility of the petitioners’ claims under Article 33 of its Rules of Procedure.

4. Colorable claim

46. Article 27 of the IACHR Rules of Procedure mandates that petitions state facts “regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments.” In addition, Article 34(a) of its Rules of Procedure requires the Inter-American 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.

47. In the present case, the petitioners allege that the State is responsible for violations of Mr. Sequoyah’s rights under Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration, in connection with the time spent on death row by Mr. Sequoyah before having his appeal decided and the alleged consequences thereof. They affirm that the deficiencies in the transcripts, attributable to the State, are what have delayed the process. The State argues that the facts do not tend to establish a violation of the American Declaration and that the claims are meritless. In particular, the State argues that the petition lacks evidence and does not provide individualized facts. Further, the State maintains that the alleged undue delay is in fact the result of due process safeguards, caused by Mr. Sequoyah’s own counsel who takes advantage of every opportunity to request further extensions.

48. The Inter-American Commission emphasizes that the purpose 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 Rules of Procedure. Whether the alleged delay constitutes a violation of the State’s obligations under the American Declaration is a matter that will be analyzed in the determination of the merits of the case.

49. Based upon the foregoing, the IACHR considers that the claims regarding the undue delay in the process of Mr. Sequoyah’s appeal and the related prolonged period of incarceration on death

³⁶ For example, between March and July 2009 only, three requests for extension of time have been filed by Mr. Sequoyah’s attorney and granted by the California Supreme Court, see *supra* note 20.

row are not manifestly groundless or out of order. Accordingly, the IACHR concludes, under Article 34 of its Rules of Procedure, that they should be declared admissible with regard to alleged violations of Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration.

V. CONCLUSION

50. 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 TO:

1. Declare the petition admissible as regards the allegations in connection with the undue delay in the process of Mr. Sequoyah's appeal and related prolonged period of incarceration on death row, with respect to Articles I, XVIII, XXIV, XXV and XXVI of the American Declaration;

2. Declare the petition inadmissible as regards the allegations of violation of Article XXVI of the American Declaration for lack of medical treatment, due to noncompliance with the requirements of exhaustion of domestic remedies;

3. Notify the parties of this decision;

4. Continue with the analysis of the merits of the case; and

5. Publish this report and include it in the Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 17th day of the month of March, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).