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CASE 12.754

REPORT ON THE MERITS (PUBLICATION)

NVWTOHIYADA IDEHESDI SEQUOYAH
UNITED STATES OF AMERICA

Approved electronically by the Inter-American Commission on April 22, 2020.

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INDEX

I.	INTRODUCTION.....	2
II.	POSITIONS OF THE PARTIES.....	2
	A. Petitioners.....	2
	B. State	3
III.	FINDINGS OF FACT	3
	A. Legal framework	4
	B. Pretrial proceedings regarding competency to stand trial and to self-represent.....	4
	C. Death sentence and automatic appeal.....	7
IV.	ANALYSIS OF LAW	8
	A. Preliminary considerations	8
	B. Right to a fair trial and to due process of law.....	10
	1. General considerations regarding the right to self-representation and its limitations.....	10
	2. The right to self-representation in death penalty cases	11
	3. Analysis of the case	11
	C. Right not to receive cruel, infamous or unusual punishment.....	12
	1. Right of every person with mental disabilities not to be subjected to the death penalty	12
	2. Analysis of the case	13
	D. Right to be tried without undue delay.....	14
	1. General considerations on the right to be tried without undue delay	14
	2. Analysis of the case	14
	E. Right of protection against cruel, infamous or unusual punishment	16
	1. The deprivation of liberty on death row.....	16
	F. The right to life and the right to protection against cruel, infamous or unusual punishment with respect to the eventual execution of Nvwtohiyada Idehesdi Sequoyah	16
V.	ACTIONS SUBSEQUENT TO REPORT No. 15/19.....	17
VI.	ACTIONS SUBSEQUENT TO REPORT 95/19.....	17
VII.	FINAL CONCLUSIONS AND RECOMMENDATIONS	17
VIII.	PUBLICATION	18

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I. INTRODUCTION

1. On February 2, 2007, the Inter-American Commission on Human Rights (the “Inter-American Commission” or “IACHR”) received a petition submitted by Constance de la Vega, from the Frank C. Newman International Human Rights Law Clinic of the University of San Francisco, and Human Rights Advocates and fos*ters (the “petitioners”), alleging the international responsibility of the United States of America (the “State” or “the United States”) for the violation of the right of Nvwtohiyada Idehesdi Sequoyah (“Mr. Sequoyah”), who has been on death row in California since 1992, to be tried without undue delay.

2. The Commission approved its admissibility report No. 42/10 on March 17, 2010.¹ On March 30, 2010, the IACHR notified the report to the parties and placed itself at the disposition of the parties to reach a friendly settlement. The parties were allocated the time periods provided for in the IACHR’s Rules of Procedure to present additional observations on the merits of the case. All of the information received by the IACHR was duly transmitted to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petitioners state that Mr. Sequoyah, born Billy Ray Waldon, is a U.S. citizen who is incarcerated on death row at the San Quentin Prison in California since February 1992. After being allowed to represent himself, he was convicted of murder in San Diego in 1991 and sentenced to death in early 1992. The petitioners allege that the United States has violated Mr. Sequoyah’s rights to be tried without undue delay, to receive humane treatment in detention, to protection of the court, as well as his right to life.

4. According to the petitioners, at the time Mr. Sequoyah was imprisoned on death row, the government was on notice of very substantial evidence that he was suffering from psychological harm. Two different judges hearing his criminal case, years apart, had independently questioned his mental stability at trial and therefore, had appointed psychiatrists to evaluate him. A full formal competency trial was conducted. Two mental health professionals testified regarding Mr. Sequoyah’s psychiatric hospitalization several years prior to his arrest, and the court received expert testimony that he was not competent to stand trial. Even after a jury found him competent to stand trial under a complex standard that does not negate the existence of mental illness but merely quantifies it, the judge who had initiated the competency procedure nonetheless found that he still suffered from a mental disorder which impaired him from perceiving the risks of representing himself. After Mr. Sequoyah’s request to represent himself was granted by a judge who, according to the petitioners, was unaware of the prior evidence of Mr. Sequoyah’s mental problems, two additional judges expressed doubts about his mental state. The first judge sought to initiate another psychiatric evaluation but was prevented by an appellate court from doing so. At trial, yet another judge questioned Mr. Sequoyah’s reasoning ability, though he did nothing to stop the proceedings.

5. The petitioners note that Mr. Sequoyah’s mental health was already in question during the trial proceedings and that it has continued to worsen during his time spent on death row. They allege that the State of California had ample evidence of psychiatric damage which made him vulnerable to further emotional

¹ IACHR. Report No 42/10. Petition 120-07. Admissibility. N.I. Sequoyah. United States. March 17, 2010. The IACHR declared inadmissible the allegations of a violation of Article XXVI of the American Declaration for lack of medical treatment due to noncompliance with the requirement of exhaustion of domestic remedies.

damage inflicted by the “death row syndrome.” This, in a context of an overall lack of health care in the California prison system.

6. The petitioners indicate that, for three years and nine months, Mr. Sequoyah remained without any counsel or assistance to appeal his case. In December 1995, he was appointed a state public defender to represent him on his appeal and habeas corpus proceeding. The record for the six years of litigation in the trial court received by the public defender lacked numerous documents, transcripts, statements, and evidence of proceedings and orders of the court. The petitioners also state that what was included was badly scrambled and disorganized. After two years of sorting through the documents, the defender filed a correction motion in December 1997 and the final record on appeal was delivered to the California Supreme Court in February 2007, fifteen years after Mr. Sequoyah was condemned to death.

7. They state that Mr. Sequoyah’s opening brief was due in September 2009 and that the due date was substantially delayed given the death of one of his attorneys. The date was subsequently changed to January 2011 following the retirement of one of the attorneys and the appointment of a new one. In their brief on the merits before the IACHR, the petitioners argued that, even if the target date was met, it was estimated that it would take at least five years for the appeal to be heard by the California Supreme Court given the immense backlog. They alleged that, under the best of circumstances, Mr. Sequoyah would have been on death row for 24 years before his first appeal would have been decided.

B. State

8. The United States submits that the petitioners failed to demonstrate any facts that would constitute a violation of Mr. Sequoyah’s rights under the American Declaration. It states that the U.S. appellate process and habeas corpus procedures afford those convicted of capital offenses a high level of internationally recognized protection.

9. Any perceived delay in the California Supreme Court’s adjudication of Mr. Sequoyah’s appeal results only from due process safeguards in place to preserve his right to legally challenge his conviction and sentencing, as well as his extension requests. Given that he has requested so many extensions of time to file his appellate brief, he cannot now claim that the consequent delay was cruel, infamous or unusual punishment. Therefore, the State submits that the petitioners failed to state a claim under Article XXVI of the Declaration. It also alleges that delays caused by thorough judicial review are not inconsistent with the Declaration but rather, according to the State, evidence of the United States’ commitment to due process of law. The State further notes that if the California Supreme Court affirms the conviction, Mr. Sequoyah may pursue federal causes of action to challenge his detention or any perceived delays.

10. The State also alleges that the IACHR has only applied the “undue delay” provision of Article XXV of the Declaration to refer to pre-trial delay, and that it “has never held that any perceived delays between sentence and execution constitute “undue delay”, let alone those that are caused by commitment to due process or engendered in petitioner’s own actions.” It further submits that the petitioners fail to establish any facts that suggest that due process safeguards fail to afford Mr. Sequoyah the “protection of the courts” or “a prompt decision” referenced in Articles XVIII and XXIV of the Declaration. Finally, the State submits that the petitioners have not provided any facts to support an Article I claim based on “arbitrary deprivation of life.”

III. FINDINGS OF FACT

11. In application of Article 43(1) of its Rules of Procedure, the IACHR will examine the arguments and evidence provided by the petitioners and the State. Likewise, the Commission will take into account publicly available information that may be relevant to the analysis and decision of the instant case.

A. Legal framework

12. Following the United States Supreme Court's invalidation of capital punishment throughout the United States in 1972,² the death penalty was reinstated in California in 1978 and executions resumed in 1992. Among the circumstances which can warrant a death sentence are multiple murder, felony-murder, torture or killing a peace officer.³

13. A defendant who is sentenced to death is entitled to an automatic, non-waivable, direct appeal to the California Supreme Court. The record of the trial, including all of the papers filed in the trial court, the evidence presented at trial, and the written report of all the trial testimony, is compiled and filed in the Supreme Court. If the court affirms the conviction and sentence, the defendant may petition the United States Supreme Court for a writ of certiorari. If the writ is denied, the defendant's direct appeal is complete.⁴

14. A defendant sentenced to death is also entitled to seek habeas corpus review. State habeas corpus review differs from the direct appeal in that the defendant may raise claims based on facts outside the trial record. If the California Supreme Court rules against the defendant, a writ of certiorari can be filed before the United States Supreme Court. After the California Supreme Court denies relief in the direct appeal and any companion state habeas petition, the trial court sets an execution date within 60 to 90 days from the date of the order.⁵

15. Under federal law, after state claims have been reviewed, the defendant may file, generally within a year after the state proceedings ended, a petition before the United States District Court arguing that the conviction and/or sentence should be overturned because the conviction was obtained in violation of the defendant's federal constitutional rights. If the court denies relief, the defendant may appeal the district court's decision to the United States Court of Appeals for the Ninth Circuit. If the Ninth Circuit affirms the district court's decision, the defendant may seek a rehearing by the same three-judge panel of the Ninth Circuit or suggest an *en banc* hearing (review by 11 judges of the Ninth Circuit). If denied, the defendant may petition the United States Supreme Court to review the case. If the Supreme Court denies certiorari relief in the federal habeas case, the trial court sets an execution date within 30 to 60 days from the date of the order.⁶ After the appellate process is complete, a defendant may seek executive clemency before the Governor.

B. Pretrial proceedings regarding competency to stand trial and to self-represent

16. According to publicly available information, on January 3, 1986, a federal warrant charged Mr. Sequoyah with unlawful flight to avoid prosecution for murder, attempted murder, robbery, burglary, rape and arson. He was arrested in June 1986 in San Diego, California, after local police attempted to pull him over for a routine traffic citation.

17. In March 1987 Mr. Sequoyah asked to represent himself. In *Faretta v. California*, the Supreme Court of the United States held that the Sixth Amendment implied the right of self-representation in criminal prosecutions.⁷ When there is a request for self-representation, the Court conducts a pretrial hearing to determine whether the defendant is knowingly and intelligently waiving the right to counsel.

18. The Superior Court of San Diego requested Dr. Mark Kalish, physician and psychiatrist, to assess whether Mr. Sequoyah could competently waive his right to assistance of counsel and appear *pro per* to represent himself. Dr. Kalish examined Mr. Sequoyah on April 16 and 17, 1987, and concluded that he was not capable of being *pro per* and also expressed his doubt to the court as to Mr. Sequoyah's competency to stand

² *Furman v. Georgia*, 408 U.S. 238 (1972).

³ A victim's guide to the capital case process. Office of Victim's Services. California Attorney General's Office, p. 1.

⁴ A victim's guide to the capital case process. Office of Victim's Services. California Attorney General's Office, pp. 3-5.

⁵ A victim's guide to the capital case process. Office of Victim's Services. California Attorney General's Office, pp. 6 and 7.

⁶ A victim's guide to the capital case process. Office of Victim's Services. California Attorney General's Office, pp. 8-13.

⁷ *Faretta v. California*, 422 U.S. 806 (1975).

trial.⁸ The court thus ordered California Penal Code Section 1368 proceedings to establish whether Mr. Sequoyah was competent to stand trial.

19. California Penal Code Section 1368 establishes the following:

(a) If, during the pendency of an action and prior to judgment, [...] a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.

(b) If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing. Any hearing shall be held in the superior court.

(c) Except as provided in Section 1368.1, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined. If a jury has been impaneled and sworn to try the defendant, the jury shall be discharged only if it appears to the court that undue hardship to the jurors would result if the jury is retained on call. If the defendant is declared mentally incompetent, the jury shall be discharged.

20. On August 19 and 20, 1987, the Superior Court of San Diego held a hearing on mental competency, in which it received, among others, the testimonies of the following witnesses in open court:

- a. Dr. Kalish. According to his testimony, "it appeared that Mr. [Sequoyah] had a combination of an affective disorder, which is a disorder of his mood, and it also appeared that he was paranoid and had some thought disorder."⁹ Dr. Kalish concluded that "the depression and the paranoia and the thought disorder all combined to severely impair his ability to relate to his attorney and did impair his ability to think clearly and assess the proceedings against him."¹⁰
- b. Dr. Mohammed Hafee Javid (psychiatrist). Dr. Javid came in contact with Mr. Sequoyah in September 1983 at Eglin Air Force Base Hospital when he was referred for a psychiatric evaluation by the United States Navy, where Mr. Sequoyah had been working for 11 years. Dr. Javid became Mr. Sequoyah's supervising psychiatrist and saw him on a daily basis between September 1983 and January 1984. Dr. Javid testified that he diagnosed Mr. Sequoyah with "major depression with psychosis" and that Mr. Sequoyah "was having auditory hallucinations [...] hearing voices in different languages [and] the voices were telling him to hurt himself or hurt someone else."¹¹ According to a report referred to by Dr. Javid at the hearing, Dr. Masangkay, a psychiatrist who evaluated Mr. Sequoyah in September 1983, had also diagnosed Mr. Sequoyah with "major depression with psychotic features."¹² Mr. Sequoyah was finally discharged from service due to the psychiatric illness.
- c. Dr. Bruce Ebert (Air Force officer and clinical psychologist). Dr. Javid had referred Mr. Sequoyah to Dr. Ebert for psychological testing. Dr. Ebert performed the following psychological tests: the Minnesota Multiphasic Personality Inventory (M.M.P.I), a test of personality; the Shipley Institute of Living Scale, a test of intelligence; the House-Tree-Person Test; the Sentence Completion Test,

⁸ People v. Waldon Reporter's Transcript Volume 27A, p. 361. Exhibit 10 submitted with petitioners' original petition on February 2, 2007.

⁹ People v. Waldon Reporter's Transcript Volume 27A, p. 346. Exhibit 10 submitted with petitioners' original petition on February 2, 2007.

¹⁰ People v. Waldon Reporter's Transcript Volume 27A, p. 347. Exhibit 10 submitted with petitioners' original petition on February 2, 2007.

¹¹ People v. Waldon Reporter's Transcript Volume 26A, pp. 271 and 272. Exhibit 9 submitted with petitioners' original petition on February 2, 2007.

¹² People v. Waldon Reporter's Transcript Volume 26A, p. 316. Exhibit 9 submitted with petitioners' original petition on February 2, 2007.

as well as a background data sheet and direct observation from himself and from a psychiatric technician.¹³ Based on the results of those tests, Dr. Ebert concluded that Mr. Sequoyah was “mentally ill,” that he “had extreme difficulty in solving even the simplest of basic logic problems following a sequential reasoning train of thought” and that his “distrust and paranoia [...] impa[ired] his capacity to disclose to his attorney available and pertinent facts surrounding the events of the instant case.”¹⁴

21. The jury found Mr. Sequoyah competent to stand trial under California Penal Code § 1368.¹⁵

22. Mr. Sequoyah filed a motion to dismiss his counsel and a motion to represent himself before the Superior Court of San Diego. After hearing further testimony, the court dismissed both motions on March 16, 1988. With regard to the first motion, the court found that Mr. Sequoyah’s “outrageous charges against counsel are unsupported and irrelevant.”¹⁶ Regarding the motion to represent himself, the court found that Mr. Sequoyah was “incapable of voluntarily exercising an informed waiver of his right to counsel, further, his request to the court to represent himself only on certain conditions shows he does not rationally perceive his situation.” The court also found that:

“The court finds from this hearing’s testimony, especially that of Doctors Kalish and Koshkarian and the testimony at the Pen. Code Sec. 1368 hearing that is part of this record, that defendant has a mental disorder, illness or deficiency which impairs his free will to such a degree that his decision to request to represent himself is not voluntary; he has mental disorder, illness or deficiency which has adversely affected his powers of reason, judgment and communication. He does not realize the probable risks and consequences of his action. His request to waive counsel is, therefore, not an exercise of his informed free will. While [Mr. Sequoyah] has the cognitive ability to understand the proceedings, he cannot formulate and present his defense with an appropriate awareness of all ramifications.”¹⁷

23. On November 3, 1989, the Superior Court of California conducted a hearing in an appeal against the decision regarding part of Mr. Sequoyah’s second motion (to allow him to act as his own lead counsel and appoint a second counsel to work under his direction).¹⁸ At the hearing Presiding Judge Louis E. Boyle stated that “the only issue is whether the defendant is making an intelligent and knowing waiver of his right to counsel” and added:

“The Court does find that the defendant has made an intelligent and knowing request to represent himself, and I find that he is competent to make that request and that, under the law, I am required to grant that request [...] I inherited this case and was requested by the defense and Mr. Sequoyah personally to not review the file so that I would focus narrowly on this issue of his *pro per* status.”¹⁹

24. This decision to grant Mr. Sequoyah’s motion was appealed. In the appeal hearing conducted on August 30, 1990, Judge Raymond Edwards Jr. of the Supreme Court of California stated:

“all of these things, including a report that was among the files from Dr. Di Francesca, who had examined you and was of the opinion that you were not competent to proceed by representing yourself – and this is a report from March the 9th, 1988 – together with the reports of Dr. Vance Norum, M.D., PH.D, from September 17th, 1987 and August the 7th, 1987; together with the reports of Dr. Mark A. Kalish [...] June 22nd, 1987; together with an order that was entered on March 16, 1988 by Judge Elizabeth Zumwalt-Kutzner in which the judge found that you were not competent to waive counsel and represent yourself; that, together with the military health records which I have reviewed, lead this court to have some doubt as to whether or not you are mentally competent.”²⁰

¹³ People v. Waldon Reporter’s Transcript Volume 28A, p. 522. Exhibit 11 submitted with petitioners’ original petition on February 2, 2007.

¹⁴ People v. Waldon Clerk’s Transcript Volume 28A, pp. 532, 528 and 585. Exhibit 11 submitted with petitioners’ original petition on February 2, 2007.

¹⁵ People v. Waldon Clerk’s Transcript Volume 8, p. 1573. Exhibit 12 submitted with petitioners’ original petition on February 2, 2007.

¹⁶ People v. Waldon Clerk’s Transcript Volume 8, p. 1573. Exhibit 12 submitted with petitioners’ original petition on February 2, 2007.

¹⁷ People v. Waldon Reporter’s Transcript Volume 8, p. 1574. Exhibit 12 submitted with petitioners’ original petition on February 2, 2007.

¹⁸ People v. Waldon Reporter’s Transcript Volume 81A, p. 15. Exhibit 13 submitted with petitioners’ original petition on February 2, 2007.

¹⁹ People v. Waldon Reporter’s Transcript Volume 79A. Exhibit 5 submitted with petitioners’ original petition on February 2, 2007.

²⁰ People v. Waldon Reporter’s Transcript Volume 2, p. 261. Exhibit 14 submitted with petitioners’ original petition on February 2, 2007.

25. Judge Edwards Jr. sought out the transcript of a hearing before Judge Boyle to understand “what had happened between the time of Judge Kutzner’s finding that [Mr. Sequoyah was] not competent to represent [him]self and what psychological evidence was presented at the hearing [...] to cause Judge Boyle to conclude that [Mr. Sequoyah was] competent.”²¹ Judge Edwards Jr. found “no evidence of any hearing at which Judge Boyle took any evidence or testimony from psychiatrists or psychologists who had been appointed to make a determination and present information to the court as to whether Mr. [Sequoyah] was competent to represent himself.”²² Judge Edwards Jr., at the August 30, 1990 hearing, also referred to the opinion of Dr. Katherine R. Di Francesca, psychiatrist, in the following terms:

“I will share [her opinion] with you: “The question that faces the court is whether Mr. [Sequoyah] is competent to waive his right to counsel and proceed in *pro per*. In my opinion, because of Mr. [Sequoyah]’s severe borderline personality disorder, no matter if this were a murder case or a case much less serious, Mr. [Sequoyah] would not be able to rationally develop his defense if that case in any way involved an assault on his self-esteem.”²³

26. At the end of the hearing Judge Edwards Jr. ordered to have Mr. Sequoyah examined by Dr. Kalish, Dr. Di Francesca, Dr. Norum and a new expert.²⁴ The Supreme Court of California finally confirmed the decision to grant Mr. Sequoyah’s motion to represent himself and the case proceeded to trial.

C. Death sentence and automatic appeal

27. On May 6, 1991, Mr. Sequoyah entered a plea of not guilty to each of the charges and on May 10, 1991, the trial began.²⁵ In a hearing conducted on October 29, 1991, the judge stated, with regard to Mr. Sequoyah, “not that I have any question for a moment about your competency, but I think it’s obvious that you have some disabilities that you’re contending with that I think get in the way of rational thought on your part.”²⁶

28. On November 1991, Mr. Sequoyah was convicted of murder with special circumstances and on March 2, 1992, he was sentenced to death. On December 1, 1995, the Supreme Court of California appointed a State Public Defender to represent Mr. Sequoyah in his automatic appeal, including any habeas proceedings.²⁷

29. On December 11, 1997, the State Public Defender filed a request for correction of the Clerk’s and Reporter’s transcripts with the Superior Court of San Diego. Defense counsel stated that “it [was] important that the record on appeal, particularly in a capital case, be accurate and complete [...] because a reviewing court will rely on the record as certified and may not go behind the testimony as it appears in the certified transcripts.”²⁸ Defense counsel further indicated that neither transcript followed Rule 9(d) of the California Rules of Court in its organization and indexing. He also stated that “in many instances throughout the CT, there are documents with multiple parts which have not been kept together. Instead, they are separated by other unrelated documents within the same volume or they appear in totally separate volumes of the CT.”²⁹

30. On February 6, 2001, defense counsel filed a renewed request for correction of record, an application to augment the record on appeal, and a request for correction of Court Reporter’s certificates, asserting that:

²¹ People v. Waldon Reporter’s Transcript Volume 2, p. 264. Exhibit 14 submitted with petitioners’ original petition on February 2, 2007.

²² People v. Waldon Reporter’s Transcript Volume 2, p. 266. Exhibit 14 submitted with petitioners’ original petition on February 2, 2007.

²³ People v. Waldon Reporter’s Transcript Volume 2, p. 270. Exhibit 14 submitted with petitioners’ original petition on February 2, 2007.

²⁴ People v. Waldon Reporter’s Transcript Volume 2, p. 295. Exhibit 14 submitted with petitioners’ original petition on February 2, 2007.

²⁵ People v. Waldon Reporter’s Transcript Volume 13. Exhibit 6 submitted with petitioners’ original petition on February 2, 2007.

²⁶ People v. Waldon Reporter’s Transcript Volume 66, pp. 13529-13530. Exhibit 15 submitted with petitioners’ original petition on February 2, 2007.

²⁷ People v. Waldon Superior Court of California, County of San Diego Order #04715. Exhibit 8 submitted with petitioners’ original petition on February 2, 2007.

²⁸ People v. Waldon Appellants Request for Correction of Record dated December 11, 1997, p. 1. Exhibit 16 submitted with petitioners’ original petition on February 2, 2007.

²⁹ People v. Waldon Appellants Request for Correction of Record dated December 11, 1997, p. 6. Exhibit 16 submitted with petitioners’ original petition on February 2, 2007.

“Appellant’s initial record correction and augmentations motion was filed in December 1997. That motion was 230 pages long, with approximately 220 pages of exhibits. On or about March 15, 1999, Respondent responded thereto. On March 3, 2000, this Court entered its Order Granting in Part and Denying In Part Appellant’s Application to Augment and Correct the Record. That Order generally granted Appellant’s requests that the Clerk’s Transcript be reorganized and indices prepared, and generally denied most of Appellant’s other requests, in most cases without prejudice to them being reasserted after delivery of the reorganized Clerk’s Transcript. Appellate counsel has now completed his review of that partially corrected Clerk’s Transcript and, pursuant to California Rules of Court, rule 35(c), submits the following Renewed Request for Correction of the transcripts and Application to Augment the record on appeal.”³⁰

31. On November 20, 2001, the Superior Court of San Diego entered an order granting the request for time to prepare proposed settled statements. On August 9, 2002, defense counsel received three boxes full of additional and corrected record. On May 8, 2003, the Court extended the deadline to August 4, 2003. On August 18, 2003, defense counsel submitted an additional “request of time to prepare proposed settled statements and file pleadings” for medical reasons.³¹ On July 23, 2004, in a new request of time, counsel stated that he was “continuing the necessary inventory of the thousands of pages of records previously received from [the] Court, as well as tens of thousands of pages gathered from other sources” and that the process was “extremely time-consuming because [he had] to review each of these documents for content relevant to these settled statements and/or further requests for additions to the record on appeal.”³² According to the petitioners, the final record on appeal was delivered to the California Supreme Court in February 2007. The State did not contradict this allegation.

32. The appellant’s opening brief consisting of 849 pages was filed on October 25, 2012.³³ According to publicly available information, on June 9, 2015, the 4th District Court of Appeal, Division One, of California denied a petition for writ of mandate and request for stay.³⁴ A petition for review was denied by the Supreme Court of California on August 12, 2015. On February 22, 2016, a habeas petition was filed with the Supreme Court of California. According to publicly available information, at the date of adoption of this report, the petition is pending a decision.³⁵

33. Mr. Sequoyah has been incarcerated on death row at the San Quentin Prison in California for 27 years.

IV. ANALYSIS OF LAW

A. Preliminary considerations

34. Before embarking on its analysis of the merits in the case of Nvwtohiyada Idehesdi Sequoyah, the Inter-American Commission believes it should reiterate its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a *sine qua non* for the enjoyment of all other rights.

35. That gives rise to the particular importance of the IACHR’s obligation to ensure that any denial of life that may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the

³⁰ People v. Waldon Renewed request for Corrections of Record, Application to Augment the Record on Appeal and Request for Correction of Court Reporter’s Certificates dated February 6, 2001, p. 2. Exhibit 17 submitted with petitioners’ original petition on February 2, 2007.

³¹ People v. Waldon Appellants Request for Time to Prepare Proposed Settled Statements and File Pleadings dated August 18, 2003, pp. 1 and 2. Exhibit 18 submitted with petitioners’ original petition on February 2, 2007.

³² People v. Waldon Appellants Request for Time to Prepare Proposed Settled Statements dated May 24, 2005, p.2. Exhibit 20 submitted with petitioners’ original petition on February 2, 2007.

³³ Petitioners’ brief filed on August 6, 2013, p. 4.

³⁴ California Courts. Appellate Court Case Information. 4th Appellate District Division 1. The People v. The Superior Court of San Diego County/Waldon. Case Number D068054. Available at: http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=2108923&doc_no=D068054&request_token=NiLwLSikXkg9W1BBSCM9WEIUDg6UkxbJSBeRz9SMCAgCg%3D%3D. Court data last updated: December 23, 2018.

³⁵ California Courts. Appellate Courts Case Information. Supreme Court. People v. Waldon (Billy Ray). Supreme Court Case S232568. Available at: http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2133772&doc_no=S232568&request_token=NiLwLSikXkg9W1BBSCM9WEIUDg6UkxbJSBeRz9SMCAgCg%3D%3D. Court data last updated: December 23, 2018.

applicable instruments of the Inter-American human rights system, including the American Declaration. That heightened scrutiny is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,³⁶ and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.³⁷ As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees, among others.³⁸ In the words of the Commission:

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore, warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.³⁹

36. The Inter-American Commission will therefore review the petitioners' allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, due process, and to a fair trial as prescribed under the American Declaration have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:

[t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.⁴⁰

37. Finally, the Commission recalls that its review does not consist of determining that the death penalty in and of itself violates the American Declaration. What this section addresses is the standard of review of the alleged human rights violations in the context of a trial culminating in the death penalty.

³⁶ See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, para. 136; United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3; *Report of the United Nations Special Rapporteur on Extrajudicial Executions*, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994), para. 378.

³⁷ IACHR, Report No. 57/96, *Andrews, United States*, IACHR Annual Report 1997, para. 170-171; Report No. 38/00 *Baptiste, Grenada*, IACHR Annual Report 1999, paras. 64-66; Report No. 41/00, *McKenzie et al., Jamaica*, IACHR Annual Report 1999, paras. 169-171.

³⁸ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

³⁹ IACHR, Report No. 78/07, Case 12,265, *Merits (Publication)*, Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

⁴⁰ IACHR, Report No. 44/14, Case 12,873, *Report on Merits (Publication)*, Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

B. Right to a fair trial⁴¹ and to due process of law⁴²

1. General considerations regarding the right to self-representation and its limitations

38. The right of an accused to represent himself or herself has been widely recognized at the international and national levels. Although Article XXVI of the American Declaration does not expressly provide for self-representation among the rights of the accused, this right is set out in Article 8.2(d) of the American Convention on Human Rights as one of the minimum guarantees in criminal proceedings. Articles 6.3(c) of the European Convention on Human Rights, 14.3(d) of the International Covenant on Civil and Political Rights, 67 of the Rome Statute of the International Criminal Court, 21.4(d) of the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and 17 of the Statute of the Special Court for Sierra Leone (SCSL) also set out this right as one of the minimal guarantees of a fair trial.

39. At the national level, in *Faretta v. California*, the Supreme Court of the United States recognized a defendant's constitutional right to represent himself or herself at trial under the Sixth Amendment.⁴³ The Court held that forcing a lawyer upon an accused who is literate, competent, and understanding, and who voluntarily exercises his/her informed free will to represent himself or herself by waiving the right to assistance of counsel, would be a breach of the constitutional right to conduct his/her own defense. The Court also stated that, in order to represent himself or herself, the accused must "knowingly and intelligently" forgo many of the relinquished benefits associated with the right to counsel.

40. The right to represent oneself, however, is not absolute. There are circumstances in which the right must yield to the overarching right to a fair trial. The Inter-American Court of Human Rights, when considering the right to counsel, has established that "the circumstances of a particular case or proceeding -its significance, its legal character, and its context in a particular legal system- are among the factors that bear on the determination of whether legal representation is or is not necessary for a fair hearing."⁴⁴

41. In *Faretta v. California*, the Court recognized that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct" and "a State may – even over objection by the accused – appoint 'standby counsel' to aid the accused if and when the accused requests help, and to be able to represent the accused in the event that termination of the defendant's self-representation is necessary".⁴⁵ In *Martinez v. Court of Appeal of California*, the Supreme Court weighed the right to self-representation against other interests of justice and held that a defendant did not have a constitutional right to represent himself or herself on appeal. In this decision the Court reasoned that, "the right to self-representation is not absolute" and that, even at the trial level, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer."⁴⁶

⁴¹ Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

⁴² Article XXVI of the American Declaration provides: "Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment."

⁴³ *Faretta v. California*, 422 U.S. 806 (1975).

⁴⁴ I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No.11, para. 28.

⁴⁵ *Faretta v. California*, 422 U.S. 806 (1975) at 834.

⁴⁶ *Martinez v. Court of Appeal of California*, Fourth Appellate District, 528 U.S. 152, 154 (2000), at 161 and 162.

42. The ICTY has recognized that the wording of Article 21 of its Statute “leave[s] open the possibility of assigning counsel to an accused on a case by case basis in the interests of justice.”⁴⁷ The Tribunal has ruled that “in the event that self-representation gives rise to the risk of unfairness to the accused [...] steps must be taken [...]; otherwise, the purpose of securing for the accused the right to a defense will be nullified”.⁴⁸ Also, according to the ICTY, the Trial Chamber is not obliged “to indulge the wish of an accused to conduct his own defense where his capacity to do so is so impaired that, were he to continue to do so, there would be a material risk that he would not receive a fair trial.”⁴⁹ The Trial Chamber has decided that “standby counsel” should be appointed with various responsibilities, including the possibility of taking over the conduct of the defense case against the will of the accused.⁵⁰ The SCSL has also held that the right to self-representation enshrined in its Statute “is not absolute but rather, a qualified right.”⁵¹

2. The right to self-representation in death penalty cases

43. As previously established, the right to self-representation is an internationally recognized human right that can be limited in the interest of justice and a fair trial. In this section, the IACHR will make some considerations regarding the application of this right in death penalty cases.

44. The Inter-American Commission has not ruled on the applicability of the right to self-representation in death penalty cases. However, it has established that “the fundamental due process requirements for capital trials include the obligation to afford a defendant a full and fair opportunity to present mitigating evidence for consideration in determining whether the death penalty is the appropriate punishment in the circumstances of his or her case.”⁵² It has also held that “the right to due process and to a fair trial includes the right to adequate means for the preparation of a defense, assisted by adequate legal counsel” and that “adequate legal representation is a fundamental component of the right to a fair trial.”⁵³ The IACHR has further highlighted the importance of penalty phase preparation in capital cases which requires extensive and generally unparalleled investigation.⁵⁴

45. Therefore, the right to self-representation might be in tension with the heightened scrutiny used in cases involving the death penalty given their generally complex nature and the interests at stake. In order to safeguard the right to an adequate defense, which is an essential component of the right to a fair trial, the State has a reinforced obligation to apply a heightened scrutiny when deciding whether an accused is able to adequately and effectively represent himself or herself in a death penalty case.

3. Analysis of the case

46. According to the facts established in this report, after being charged, Mr. Sequoyah asked to represent himself and the Superior Court of San Diego requested Dr. Kalish, a psychiatrist, to assess him. Dr. Kalish concluded that Mr. Sequoyah was not capable of being *pro per* and also expressed his doubt as to his competency to stand trial. The court thus ordered proceedings to establish whether Mr. Sequoyah was competent to stand trial. During these proceedings, some considerations regarding Mr. Sequoyah’s ability to represent himself were made. Dr. Kalish concluded that Mr. Sequoyah’s “ability to relate to his attorney” and “to think clearly and assess the proceedings against him” were impaired. Dr. Ebert, a clinical psychologist, considered that Mr. Sequoyah’s “distrust and paranoia [...] impa[ired] his capacity to disclose to his attorney

⁴⁷ ICTY. *Prosecutor v. Slobodan Milosevic*. Trial Chamber, “Reasons for Decision on Assignment of Counsel,” 22 September 2004, para. 41 (citing *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, “Decision on Prosecution’s Motion for Order Appointing Counsel to Assist Vojislav Šešelj with His Defence”, 9 May 2003, para. 20).

⁴⁸ ICTY. *Prosecutor v. Slobodan Milosevic*. Trial Chamber, “Reasons for Decision on Assignment of Counsel,” 22 September 2004, para. 32.

⁴⁹ ICTY. *Prosecutor v. Slobodan Milosevic*. Trial Chamber, “Reasons for Decision on Assignment of Counsel,” 22 September 2004, para. 32.

⁵⁰ ICTY. *Prosecutor v. Slobodan Milosevic*. Trial Chamber, “Reasons for Decision on Assignment of Counsel,” 22 September 2004, para. 41 (citing *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, “Decision on Prosecution’s Motion for Order Appointing Counsel to Assist Vojislav Šešelj with His Defence”, 9 May 2003, paras. 27 and 30).

⁵¹ SCSL. *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, “Decision on the Application of Samuel Hinga Norman for Self Representation Under Article 17(4)(d) of the Statute of the Special Court,” 8 June 2004, para. 8

⁵² IACHR, Report No. 44/14. Case 12.873. Merits (Publication). Edgar Tamayo Arias. United States. July 17, 2014, para. 147.

⁵³ IACHR, *The death penalty in the Inter-American System of Human Rights: From restrictions to abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

⁵⁴ IACHR, Report No. 79/15. Case 12.994. Merits (Publication). Bernardo Aban Tercero. United States. October 28, 2015, para. 115.

available and pertinent facts surrounding the events” of the case. The jury, however, found him competent to stand trial.

47. Later, Mr. Sequoyah filed a motion to represent himself, which was denied. The court found that Mr. Sequoyah was “incapable of voluntarily exercising an informed waiver of his right to counsel, further, his request to the court to represent himself only on certain conditions shows he does not rationally perceive his situation.” After an appeal was filed, the motion was granted. According to the presiding appeal judge, he had “inherited th[e] case and was requested by the defense and Mr. Sequoyah personally to not review the file so that [he] would focus narrowly on [the] issue of his *pro per* status.” An appeal against the decision to grant the motion was denied. However, in the appeal hearing, the judge expressed doubts “as to whether or not [Mr. Sequoyah was] mentally competent.”

48. Based on the facts described above, the IACHR notes that at several stages of the proceedings doubts arouse regarding the ability of Mr. Sequoyah to represent himself. These doubts were expressed by jurors, psychiatrists and judges. However, the motion was finally granted without a thorough review of the file and focusing “narrowly” on the issue of self-representation. The United States has not demonstrated that national courts rigorously substantiated their decision to allow Mr. Sequoyah to represent himself. The IACHR notes that the State did not demonstrate that in the present case, which required a more rigorous motivation due to the possible application of the death penalty, the courts applied a differentiated standard regarding the right to self-representation, that is, distinguishing the analysis in the present case from other cases that do not involve the death penalty.

49. As previously established, a heightened and rigorous scrutiny must be applied when deciding whether an accused is able to adequately and effectively represent himself or herself in a death penalty case. A motion for self-representation cannot be granted when there are important doubts as to the capacity of the accused to adequately and effectively represent himself or herself in a case in which his/her life is at stake. Therefore, the IACHR finds that the lack of rigorous scrutiny at the time of deciding on the motion for self-representation amounts to a violation of the right to a fair trial and to due process of law.

C. Right not to receive cruel, infamous or unusual punishment⁵⁵

1. Right of every person with mental disabilities not to be subjected to the death penalty

50. The IACHR has established that, while the American Declaration does not expressly prohibit the imposition of the death penalty in the case of persons with mental and intellectual disabilities, such a practice is in violation of the rights and basic principles recognized in Articles I and XXVI of the American Declaration.⁵⁶ The IACHR has also ruled that:

States have a special duty to protect persons with mental and intellectual disabilities, a duty that is reinforced in the case of persons under State custody. Moreover, it is a principle of international law that persons with mental and intellectual disabilities, either at the time of the commission of the crime or during trial, cannot be sentenced to the death penalty. Likewise, international law also prohibits the execution of a person sentenced to death if that person has a mental or intellectual disability at the time of the execution.⁵⁷

51. In a case involving Trinidad and Tobago, the Human Rights Committee held that the reading of a death warrant to a person with a mental disability, even if that person had been competent at the time of his or her conviction, is a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁵⁸ The United Nations “Safeguards Guaranteeing Protection of the Rights of Those Facing the

⁵⁵ Article XXVI of the American Declaration provides: “[...] Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.” Also, Article I of the American Declaration provides: “Every human being has the right to life, liberty and the security of his person.”

⁵⁶ IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 152.

⁵⁷ IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 109.

⁵⁸ Human Rights Committee, Sahadath v. Trinidad and Tobago, Communication No. 684/1996, April 2, 2002, CCPR/C/74/D/684/1996, para. 7.2.

Death Penalty” provide that a death sentence shall not be carried out on [...] “persons who have become insane.”⁵⁹ The United Nations Commission on Human Rights called upon all States that still have the death penalty “[n]ot to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person.”⁶⁰

52. Also, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment indicated that international law considers the imposition and enforcement of the death penalty in the case of persons with mental disabilities as particularly cruel, inhuman and degrading, and in violation of Article 7 of the International Covenant on Civil and Political Rights and Articles 1 and 16 of the Convention against Torture.⁶¹ Likewise, the U.N. Special Rapporteur on arbitrary executions stated that “[i]t is a violation of death penalty safeguards to impose capital punishment on individuals suffering from psychosocial disabilities.”⁶²

53. In *Atkins v. Virginia*,⁶³ the United States Supreme Court held that “executions of mentally retarded criminals are cruel and unusual punishments prohibited by the Eighth Amendment” of the U.S. Constitution. In its ruling, the Supreme Court traced the history of the concept of “excessive” sanctions and underscored the fact that the consensus today unquestionably reflects widespread judgment about the relative culpability of “mentally retarded offenders.”⁶⁴

2. Analysis of the case

54. The Superior Court of San Diego ordered proceedings under California Penal Code Section 1368 after Dr. Kalish expressed his doubt as to Mr. Sequoyah’s competency to stand trial. In the hearing held on August 19 and 20, 1987, Dr. Kalish testified that Mr. Sequoyah appeared to be “paranoid and had some thought disorder.” Dr. Javid, Mr. Sequoyah’s supervising psychiatrist at the U.S. Navy, testified that in 1984 he diagnosed Mr. Sequoyah with “major depression with psychosis” and that he “was having auditory hallucinations [...] hearing voices in different languages [and] the voices were telling him to hurt himself or hurt someone else.” Dr. Ebert, clinical psychologist at the Air Force who at the time performed various psychological tests on Mr. Sequoyah, testified that he was “mentally ill” and “had extreme difficulty in solving even the simplest of basic logic problems following a sequential reasoning train of thought.” Mr. Sequoyah was finally discharged from the Navy due to his mental condition.

55. There is no information in the file before the IACHR regarding the reasons that led the jury to conclude that Mr. Sequoyah was competent to stand trial. However, the Commission notes that Mr. Sequoyah was discharged from service due to his mental condition in 1984 and the crime for which he was convicted took place in 1985. Further, at the August 1987 hearing, in addition to the testimonies regarding Mr. Sequoyah’s mental health during his time in the Navy, the Court received information about his condition at the time of the hearing. As established above, Dr. Kalish considered that Mr. Sequoyah’s depression, paranoia and thought disorder “severely impair[ed] his ability to relate to his attorney.” Dr. Ebert reached a similar conclusion.

56. Therefore, there is evidence that, the year before the crime, Mr. Sequoyah had been diagnosed with a psychiatric illness and that at the beginning of the criminal proceedings there were indications that the condition persisted. The State has not demonstrated otherwise. Further, Mr. Sequoyah was not only declared competent to stand trial but later convicted and sentenced to death despite available information regarding his mental condition. Based on the above considerations, the available information, and given the heightened

⁵⁹ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984).

⁶⁰ United Nations Commission on Human Rights, Promotion and Protection of Human Rights, The question of the death penalty, E/CN.4/2005/L.77, April 14, 2005, paragraph 7(c).

⁶¹ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, August 9, 2012, para. 58.

⁶² Office of the High Commissioner for Human Rights, “Death row: U.N. expert urges U.S. authorities to stop execution of two persons with psychosocial disabilities”, July 17, 2012.

⁶³ *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁶⁴ *Atkins v. Virginia*, 536 U.S. 304 (2002) at 311-317.

degree of scrutiny that it has applied in death penalty cases, the IACHR concludes that the United States violated Articles I and XXVI of the American Declaration to the detriment of Mr. Sequoyah.

D. Right to be tried without undue delay⁶⁵

1. General considerations on the right to be tried without undue delay

57. According to the standards developed by the Inter-American human rights system, a remedy must be effective, i.e., it must provide results or responses consistent with the objectives that it was intended to serve, which is to avoid the consolidation of an unjust situation. Also, the right of access to justice requires that the facts investigated in criminal proceedings be resolved within a reasonable period of time, since a prolonged delay may, in certain cases, constitute in itself a violation of judicial guarantees.⁶⁶

58. The IACHR has also considered that the burden of proof ought to be on the State to justify the delay in light of the following elements: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities; and d) the impact of the legal situation on the person involved in the proceedings.⁶⁷

2. Analysis of the case

59. In this section, the IACHR will assess the four elements mentioned above in order to establish whether Mr. Sequoyah's right to be tried without undue delay was respected.

60. According to the facts established in this report, Mr. Sequoyah was arrested in June 1986, and on May 6, 1991, he entered a plea of not guilty and the trial began. On November 1991, Mr. Sequoyah was convicted and on March 2, 1992 was sentenced to death. On December 1, 1995, the Supreme Court of California appointed a State Public Defender to represent him on his automatic appeal. On December 11, 1997 and February 6, 2001, defense counsel filed a request and renewed request for correction of the Clerk's and Reporter's transcripts, respectively. On August 9, 2002, defense counsel received three boxes full of additional and corrected record. The final record on appeal was delivered in February 2007. After some requests of time extensions, the appellant's opening brief was filed on October 25, 2012. The parties did not inform the IACHR of the outcome of the appeal. However, according to publicly available information, on June 9, 2015, the 4th District Court of Appeal denied a petition for writ of mandate and request for stay, and a petition for review was denied by the Supreme Court of California on August 12, 2015. A petition filed with the Supreme Court of California on February 22, 2016 appears to be pending a decision.

61. With regard to the first element, the criteria to determine the complexity of the case include the complexity of the evidence; the plurality of subjects in the proceedings or the number of victims; the time elapsed since the facts; the characteristics of the remedies provided for in domestic legislation; and the context in which the facts occurred. The IACHR observes that Mr. Sequoyah was the only person charged and convicted in the criminal proceedings, that the crimes for which he was convicted and sentenced, according to publicly available information, occurred just months before the arrest and involved the death of three persons in two different incidents. The State does not refer to the existence of some kind of complexity related to the case or the evidence. Therefore, there are no elements to conclude that the delay in the proceedings was due to the complexity of the matter.

⁶⁵ Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

Article XXIV of the American Declaration provides: "Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."

⁶⁶ IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 205.

⁶⁷ IACHR. Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the Case of Hilaire v. Trinidad and Tobago. May 25, 1999, p. 45; and IACHR, Report No. 130/17, Case 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, para. 138.

62. Regarding the procedural activity of the defense and the conduct of the judicial authorities (second and third elements), the IACHR notes that Mr. Sequoyah was sentenced to death on March 2, 1992, and that appellate defense counsel was only appointed by the court on December 1, 1995. Therefore, Mr. Sequoyah spent three years and nine months on death row without legal representation to file an appeal of his conviction and sentence. The State has provided no justification for this extensive delay. The IACHR finds that this constitutes a grossly unreasonable delay and also a violation of the right to counsel throughout this critical stage in the appellate proceedings.

63. The Commission also notes that the appellant's opening brief was filed five years and eight months after defense counsel received the additional and corrected record. In this regard, the State submits that, given the many extensions of time requested by the defense to file the appellate brief, Mr. Sequoyah cannot now claim undue delay. The IACHR must then analyze the reasons for the delay in the filing of the appellant's brief and whether they were attributable to the defense or to the State.

64. The IACHR notes in this regard that, as stated by defense counsel in the request for correction of transcripts, a reviewing court "relies on the court record as certified and may not go behind the testimony as it appears in the certified transcripts." According to the defense, the organization and indexing of the record on appeal did not follow the California Rules of Court and in many instances throughout the Clerk's transcripts there were documents with multiple parts which had not been kept together. The initial correction and augmentations motion filed on December 11, 1997 was 230 pages long with approximately 220 pages of exhibits. Once this initial motion was partially granted on March 3, 2000, counsel completed the review of the partially corrected transcripts and filed a renewed request for correction of transcripts. Defense counsel had to request time extensions to prepare the appellant's brief either for medical reasons or because of the need to inventory thousands of pages of records received from the court as well as thousands of pages gathered from other sources. The final record on appeal was delivered in February 2007.

65. The information available shows that the delay in the filing of the appellant's brief was mainly due to the loss and improper care of documentation by the trial court. Defense counsel had to file several requests to correct important deficiencies in the trial court record, a record comprising six years of litigation. The final record was delivered ten years after the initial motion for corrected transcripts was filed. The delay was also partly due to a serious illness of the defense attorney, who, according to the available information, died during the appellate proceedings. None of these facts was Mr. Sequoyah's responsibility.

66. Finally, regarding the fourth element, the IACHR finds that the fact that Mr. Sequoyah waited more than 20 years from his death sentence to the filing of the first appeal's brief, constitutes, *per se*, a violation of his right to be tried without undue delay, which had a severe impact on his possibility of having a timely defense. In addition, as it will be discussed below, the length of the proceedings since the conviction and sentence had an impact on the configuration of the death row phenomenon, aggravated by Mr. Sequoyah's underlying mental condition.

67. The United States submits that the "undue delay" provision of the American Declaration only applies to "pre-trial delay" and that "any perceived delays between sentence and execution" do not constitute undue delay. In this regard, the Commission reiterates that, according to the Inter-American human rights standards, the reasonable period of time must be assessed in relation to the total duration of the proceedings, from the first procedural act until the enforcement of the judgment.⁶⁸

68. In light of the above considerations, the IACHR concludes that the unwarranted delay in the appointment of the appellate defense counsel as well as the delay caused by serious deficiencies in the trial court record, amount to a violation of Mr. Sequoyah's rights under Articles XVIII and XXIV of the Declaration.

⁶⁸ I/A Court H.R., *Case of I.V. v. Bolivia*. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330, par. 157.

E. Right of protection against cruel, infamous or unusual punishment⁶⁹

1. The deprivation of liberty on death row

69. In both international human rights law and comparative law, the issue of long term deprivation of liberty on death row, known as the “death row phenomenon,” has been developed for decades, in light of the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).⁷⁰ Based on those standards, in the case of Russell Bucklew the IACHR found that “the very fact of spending 20 years on death row is, by any account, excessive and inhuman.”⁷¹

70. As established in this report, Mr. Sequoyah has been deprived of his liberty on death row for 27 years. The Commission notes that the time spent on death row greatly exceeds the length of time that other international and domestic courts have characterized as cruel, inhuman and degrading treatment. The very fact of spending 27 years on death row is, by any account, excessive and inhuman, and is aggravated by the prolonged expectation that the death sentence could be executed. Consequently, the United States is responsible for violating, to the detriment of Mr. Sequoyah, the right to humane treatment, and not to receive cruel, infamous or unusual punishment established in the American Declaration.

F. The right to life⁷² and the right to protection against cruel, infamous or unusual punishment with respect to the eventual execution of Nvwtohiyada Idehesdi Sequoyah

71. The Commission reiterates that it is not competent to review judgments handed down by domestic courts acting within their spheres of competence and with due judicial guarantees. In principle that is because the IACHR does not have the authority to superimpose its own interpretations on the assessment of facts made by national courts. The fourth instance formula, however, does not preclude the Commission from considering a case in which the petitioner’s allegations entail a possible violation of any of the rights set forth in the Declaration.⁷³ This authority is heightened in cases involving imposition of the death penalty, given its irreversibility.

72. As indicated above, the Inter-American Commission considers that it is incumbent upon the national courts, not the Commission, to interpret and apply national law. Nevertheless, the IACHR must ensure that any deprivation of life resulting from imposition of the death penalty complies with the requirements of the American Declaration.⁷⁴

73. Throughout this report, the Commission established that there was a lack of rigorous scrutiny by the courts at the time of deciding on the motion for self-representation, that there were doubts as to Mr. Sequoyah’s competency to stand trial, and that there was unwarranted delay in the appointment of the appellate defense counsel, as well as in the appellate proceedings. The Commission also established that the 27 years that Mr. Sequoyah has been on death row constitute cruel and inhuman treatment.

74. Under these circumstances, the IACHR has maintained that executing a person after proceedings that were conducted in violation of his rights would be extremely grave and constitute a deliberate violation of the right to life established in Article I of the American Declaration.⁷⁵ Further, based on the conclusions regarding the deprivation of liberty on death row, the eventual execution of Mr. Sequoyah would constitute, by any

⁶⁹ Article XXV of the American Declaration provides: “[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody.”

Article XXVI of the American Declaration provides: “[...] Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.”

⁷⁰ IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.

⁷¹ IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, para. 83.

⁷² Article I of the American Declaration provides: “Every human being has the right to life, liberty and the security of his person.”

⁷³ See, *mutatis mutandis*, IACHR, Report No. 57/96, Case 11.139, William Andrews, United States, December 6, 1996.

⁷⁴ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 129.

⁷⁵ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Félix Rocha Díaz, United States, March 23, 2015, para. 106.

account, a violation of the right to protection against cruel, infamous or unusual punishment. In light of the foregoing and taking into account the determinations made throughout this report, the IACHR concludes that the execution of Mr. Sequoyah would constitute a serious violation of his right to life established in Articles I of the American Declaration.

V. ACTIONS SUBSEQUENT TO REPORT No. 15/19

75. On February 12, 2019, the Commission approved Report No. 15/19 on the merits of the instant case, which encompasses paragraphs 1 to 74 *supra*, and issued the following recommendations to the State:

1. Grant Nvwtohiyada Idehesdi Sequoyah effective relief, including the review of his trial and sentence in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, XXIV, XXV and XXVI of the American Declaration. Taking into account the conclusions of the IACHR on the time Nvwtohiyada Idehesdi Sequoyah has been held on death row, the Commission recommends that his sentence be commuted.
2. Review its laws, procedures, and practices to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXIV, XXV and XXVI thereof, and, in particular, that no one with a mental or intellectual disability at the time of the commission of the crime or execution of the death sentence receives the death penalty or is executed.
3. Review its laws, procedures, and practices to ensure that a differentiated and more rigorous standard is applied when assessing a defendant's competence to self-represent in death penalty cases.
4. Review its laws, procedures, and practices to ensure that death penalty conviction and post-conviction proceedings fully comply with the right to be tried without undue delay.
5. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.⁷⁶

76. On April 5, 2019, the Commission transmitted the report to the State with a time period of two months to inform the Inter-American Commission on the measures taken to comply with its recommendations. On that same date the IACHR notified the petitioners about the adoption of the report. To date, the IACHR has not received any response from the United States regarding Report No. 15/19.

VI. ACTIONS SUBSEQUENT TO REPORT 95/19

77. On June 14, 2019, the Commission approved Final Merits Report No. 95/19, which encompasses paragraphs 1 to 76 *supra*, and issued its final conclusions and recommendations to the State. On July 3, 2019, the Commission transmitted the report to the State and the petitioners with a time period of two months to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States or the petitioners regarding Report No. 95/19.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

78. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles I (life, liberty, and security), XVIII (fair trial), XXIV (right of petition), XXV (protection from arbitrary detention), and XXVI (due process) of the American Declaration.

⁷⁶ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE UNITED STATES OF AMERICA,

1. Grant Nvwtohiyada Idehesdi Sequoyah effective relief, including the review of his trial and sentence in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, XXIV, XXV and XXVI of the American Declaration. Taking into account the conclusions of the IACHR on the time Nvwtohiyada Idehesdi Sequoyah has been held on death row, the Commission recommends that his sentence be commuted.
2. Review its laws, procedures, and practices to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXIV, XXV and XXVI thereof, and, in particular, that no one with a mental or intellectual disability at the time of the commission of the crime or execution of the death sentence receives the death penalty or is executed.
3. Review its laws, procedures, and practices to ensure that a differentiated and more rigorous standard is applied when assessing a defendant's competence to self-represent in death penalty cases.
4. Review its laws, procedures, and practices to ensure that death penalty conviction and post-conviction proceedings fully comply with the right to be tried without undue delay.
5. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.⁷⁷

VIII. PUBLICATION

79. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 22 days of the month of April 2020. (Signed): Joel Hernández García, President; Antonia Urrejola Noguera, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño and Julissa Mantilla Falcón, Commissioners.

⁷⁷ See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.