

OEA/Ser.L/V/II
Doc. 283
May 12, 2022
Original: English

REPORT No. 264/23

CASE 12.446

REPORT ON THE MERITS (PUBLICATION)

TRACY LEE HOUSEL
UNITED STATES OF AMERICA

Approved electronically by the Commission on May 12, 2023.

Cite as: IACHR, Report No. 264/23. Case 12.446. Merits (Publication). Tracy Lee HouseL. United States of America. May 12, 2023.

**REPORT No. 264/23
CASE 12.446
MERITS REPORT (PUBLICATION)
TRADY LEE HOUSEL
UNITED STATES¹
MAY 12, 2023**

INDEX

I. INTRODUCTION	2
II. POSITIONS OF THE PARTIES	2
A. Petitioners.....	2
B. State	3
III. FINDINGS OF FACT	4
A. Factual background, trial and death sentence	4
B. Post-conviction proceedings.....	4
C. Pre-trial confinement conditions.....	6
IV. ANALYSIS OF LAW	7
A. Preliminary considerations.....	7
B. Right to a fair trial and to due process of law.....	8
1. Ineffective assistance of court appointed counsel	8
2. Use of unadjudicated offences.....	10
C. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment.....	10
1. Pre-trial confinement conditions and prolonged solitary confinement.....	10
2. Death row confinement conditions	13
D. Right to petition	14
E. Right to life.....	15
V. REPORT No. 161/19 AND INFORMATION ABOUT COMPLIANCE.....	15
VI. ACTIONS SUBSEQUENT TO REPORT No. 335/21	16
VII. FINAL CONCLUSIONS AND RECOMMENDATIONS	16
VIII. PUBLICATION	16

¹ Pursuant to Article 17.3 of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, resident in the United States, did not participate in the discussion or decision of this report.

I. INTRODUCTION

1. On February 25, 2002, the Inter-American Commission on Human Rights (hereinafter the “Commission”) received a petition² from Adrian Fulford and Hugh Southey, Barristers with Took’s Court, London, Yasmin Waljee, Solicitor with Lovells, London, and Robert McGlasson and Elizabeth Wells with the Federal Defender Program, Atlanta, Georgia (hereinafter “the Petitioners”) against the Government of the United States of America (hereinafter the “State” or “United States”). The petition was presented on behalf of Mr. Tracy Lee Housel (hereinafter “Mr. Housel” or “Housel”), a citizen of the United States and the United Kingdom who was sentenced to death on February 7, 1986 and subsequently executed on March 12, 2002, in the state of Georgia.

2. The Commission approved its admissibility report No. 16/04 on February 27, 2004³ and on May 10, 2004 notified the report to the parties, placing itself at their disposition 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 allege that the State is responsible for violations of Mr. Housel’s rights under Articles I, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration” or the “Declaration”) based upon deficiencies in the criminal proceedings against him. In particular, the Petitioners allege violations of Articles XI, XXV, and XXVI of the Declaration relating to Mr. Housel’s treatment during his pre-trial detention, Article XVIII relating to the quality of Mr. Housel’s legal representation, Articles XVIII and XXVI relating to the use of unadjudicated offences during the sentencing phase of Mr. Housel’s trial, and Articles I, XVIII and XXVI relating to the length of time for which Mr. Housel was incarcerated on death row.

4. Relying in part upon affidavits signed by employees at the institutions in which Mr. Housel was incarcerated, the Petitioners contend that Mr. Housel suffered significant physical and mental abuse at the hands of State agents during his pre-trial detention. The Petitioners also contend that the effect of this treatment was exacerbated by the fact that Mr. Housel had suffered from severe mental health problems, for which he did not receive treatment.

5. In addition, the Petitioners contend that during the sentencing phase of Mr. Housel’s trial, the trial judge permitted the admittance of evidence of unadjudicated offences that Mr. Housel was alleged to have committed in other states, but for which he had never been tried, contrary to Mr. Housel’s right to a fair trial. The Petitioners claim in this regard that there was a real risk, that exculpatory evidence held by the prosecuting authorities, was not disclosed.

6. Moreover, the Petitioners contend that Mr. Housel’s legal representation was inadequate in the course of the legal proceedings against him. They assert in particular that Mr. Housel’s trial counsel failed to undertake sufficient investigations to uncover significant mitigating evidence concerning Mr. Housel’s mental condition and upbringing and present it during his sentencing.

7. Further, the Petitioners claim that the abuse suffered by Mr. Housel, together with the 16-year period that he spent on death row, from February 7, 1986 to March 12, 2002, violated his right to preservation of his health and well-being, his right to humane treatment while in custody, and his right not to receive cruel, infamous or unusual punishment, protected by the American Declaration. The Petitioners assert that the State is obliged to organise its legal system so that death row inmates have a proper opportunity to challenge their conviction,

² On February 27, 2002, the IACHR granted precautionary measures on behalf of Tracy Lee Housel pursuant to Article 25(1) of its Rules of Procedure and requested the United States to take the measures necessary to preserve his life and physical integrity so as not to hinder the processing of his case before the Inter-American system.

³ IACHR. Report No. 16/04. Petition P129-02. Admissibility. Tracy Lee Housel. United States. February 27, 2004.

but also in a manner whereby these challenges are considered promptly to ensure that death row inmates are not allowed to remain on death row for excessive periods.

8. Finally, the Petitioners submit that the State's failure to comply with the Commission's request for precautionary measures constitutes a further violation of Mr. Housel's rights, including his right to pursue a petition before the Commission, and that he suffered irreparable harm when he was executed by the State before the Commission had completed its consideration of his petition.

B. State

9. In its response to the Petitioner's observations on the merits, the State referred the Commission to its submission filed during the admissibility stage⁴. This section is thus based on arguments made during the admissibility stage that are related to the merits.

10. The State has argued that the claims raised by the Petitioners are without merit, and the petition fails to state facts which constitute a violation of principles under the American Declaration.

11. In particular, the State asserts that there is no credible evidence to substantiate the Petitioners' claim that Mr. Housel suffered significant physical and mental abuse before or after his trial. The State argues in this respect that the evidence submitted by the Petitioners, which included affidavits from other inmates, lacked proper foundation and amounted to suspect testimony given the fact that Mr. Housel was kept in solitary confinement during the majority of his pre-trial incarceration. As regards the allegations of the length of time detained on death row constituting inhumane treatment, the State submits that the Supreme Court has not accepted this argument as a valid claim under the Eight Amendment. The State goes further to say that the lengthy process illustrates that Mr. Housel was provided ample opportunity to litigate any claims to challenge his conviction and sentence.

12. The State similarly counts as unmeritorious the Petitioners' allegations regarding Mr. Housel's mental condition. It points out, *inter alia*, that the federal habeas corpus court found that "Housel never purported to make any showing that his sanity was likely to be a significant issue at trial," and refers to a pre-trial report and psychological assessments which the State claims illustrated that Mr. Housel was "competent and suffered from no major mental illness."⁵ Further, the State submits that no evidence was presented to support the allegation of "severe health problems that required treatment"⁶ and that Mr. Housel was examined by the Director of Forensic Services at Georgia Mental Health Institute who determined that he was "fully oriented" and neither displays nor describes symptoms of a major mood disorder" (Federal District Court's Order of March 31, 1998, page 22).⁷ Further, that Mr. Housel had no symptoms of a major mental illness, but had anti-social personality disorder and that his history of head injuries did not indicate any continuing effects.

13. The State also contends that the Petitioners' arguments concerning the use of evidence of unadjudicated offences during the sentencing phase of Mr. Housel's trial were rejected by the Supreme Court of Georgia and by the federal habeas corpus court, and were found by the Eleventh Circuit Court to be barred from review under the non-retroactivity doctrine, with the U.S. Supreme Court denying certiorari on this issue on February 25, 2002. The State claims that the petition failed to state which evidence in particular would have been inadmissible and under which legal standards such evidence would have been excluded. Further, the State maintains that if the state of Georgia had been in possession of exculpatory evidence about the unadjudicated offences it would have turned over that evidence to Mr. Housel.

14. Finally, the State maintains that the Petitioners' allegation that Mr. Housel's legal representation was inadequate was expressly rejected by both the state and federal habeas corpus courts, following evidentiary hearings in which Mr. Housel's trial attorney testified. The State relies on the Eleventh Circuit Court's

⁴ State's response to the petition submitted on February 28, 2005.

⁵ State's response to the petition submitted on March 8, 2002.

⁶ State's response to the petition submitted on March 8, 2002.

⁷ State's response to the petition submitted on March 8, 2002.

conclusion that Mr. Housel's failure to show his counsel's performance was deficient was the reason the District Court denied the relief on said claim.

III. FINDINGS OF FACT

15. 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. Factual background, trial and death sentence

16. Mr. Tracy Lee Housel, a citizen of the United States and the United Kingdom, was tried and convicted of the offenses of murder and motor vehicle theft in the Superior Court of Gwinnett County in the state of Georgia and sentenced to death on February 7, 1986.

17. At trial, Mr. Housel accounted meeting the victim, Jean Drew, at a truck stop. He claimed to thereafter have sex with her and after an argument over him spitting onto her car window, lost his temper and began striking the victim with his fists. He claimed to have choked and strangled the victim, then picked up a stick and beat her face to a "bloody pulp."⁸ The petition provides that on June 4, 1985, Mr. Housel was indicted by a grand jury in the State of Georgia on charges of murder, rape, motor vehicle theft and financial transaction card theft. On February 4, 1986, following jury selection for his sentencing trial, Mr. Housel entered a plea agreement with the prosecution and, in exchange for dismissal of the rape charge, pled guilty to capital murder and automobile theft. The plea agreement did not include any undertaking to recommend leniency at sentencing. Following the plea hearing, a sentencing hearing was held before the jury.

18. At Mr. Housel's sentencing hearing, the prosecution introduced evidence indicating that Mr. Housel had cudgeled a man to death in Texas, in a dispute over cocaine, after anally sodomizing him; on another occasion repeatedly stabbed a man, pushed him down a roadside embankment, and left him for dead in single digit weather; and in a different incident, forced a woman to perform oral sex on him in New Jersey. Regarding the offense for which Mr. Housel was on trial, the prosecution introduced evidence that he had beaten and strangled Jean Drew to death, abandoning her mangled and unrecognizable body in a vacant lot.⁹

19. Mr. Housel responded and confessed to all the crimes except the sexual assault in New Jersey which he testified was consensual. The trial judge permitted the jury to consider all the evidence of the "other offenses." The jury found beyond reasonable doubt the statutory aggravating circumstance that the murder was "horrible or inhuman and [sic] involved depravity of mind and aggravated battery, torture."¹⁰

20. On February 7, 1986, the jury returned a verdict and recommended imposition of the death penalty, whereupon the trial court sentenced Mr. Housel to death by electrocution.

21. The information in the petition indicates that Mr. Housel pursued a direct appeal from his conviction and sentence to the Georgia Supreme Court, which affirmed his sentence on May 19, 1987, and that the U.S. Supreme Court denied a petition for a writ of certiorari in respect of that decision on June 30, 1988.

B. Post-conviction proceedings

22. The petition states that Mr. Housel pursued post-conviction proceedings before state and federal courts. In particular, the petition indicates that on December 16, 1988, Mr. Housel filed a petition for a writ of habeas

⁸ Tracy Lee Housel v Albert G. Thomas, Warden, Georgia Diagnostic and Classification Center, Civil Action No. 1:94-CV-1444-ODE, United States District Court, Northern District of Georgia, Atlanta Division. Exhibit 26 submitted with petitioners' original petition on February 25, 2002.

⁹ Tracy Lee Housel v Frederick J Head, no. 98-8830, United States Court of Appeals, Eleventh Circuit, January 18, 2001. Exhibit 25, submitted with petitioners' original petition on February 25, 2002.

¹⁰ Tracy Lee Housel v Frederick J Head, no. 98-8830, United States Court of Appeals, Eleventh Circuit, January 18, 2001. Exhibit 25, submitted with petitioners' original petition on February 25, 2002.

corpus in the Superior Court of Butts County, Georgia, and filed an amended petition on August 16, 1990. Mr. Housel claimed that his court-appointed counsel did not pursue constitutionally adequate investigation into his mental health, drug abuse history and abusive upbringing.¹¹ On December 21, 1990, the State court entered an order denying relief on all claims on the merits. On March 1, 1991 the Georgia Supreme Court denied a Certificate of Probable Cause, without opinion, and the U.S. Supreme Court denied certiorari in respect of that decision on November 15, 1991.

23. Mr. Housel then pursued habeas corpus relief before the federal courts. In this federal habeas corpus petition Mr. Housel presented the affidavits of James Merikangas (“Mr. Merikangas”), a psychiatrist and neurologist, and Brad Fisher (“Mr. Fisher”), a licensed clinical psychologist.

24. Mr. Merikangas examined Mr. Housel’s psychiatric condition at the time of the offenses and concluded that he had peripheral neuropathy probably from alcohol abuse. He concluded that Mr. Housel had been depressed since childhood and that his abuse of alcohol and drugs had been a reaction both to congenital brain damage that left him with attention deficit hyperactivity disorder and to his severe depression. Mr. Merikangas also concluded that Mr. Housel had a reduced capacity to control his impulses as a direct consequence of his disordered and damaged brain.¹²

25. Mr. Fisher conducted an evaluation of Mr. Housel on September 11, 1990, administering neuropsychological tests recommended by Mr. Merikangas. Mr. Fisher concluded that Mr. Housel suffered from significant neurological impairment, that his neurological deficits were present from childhood and were exacerbated by several instances of brain trauma throughout development. He stated that Mr. Housel suffered from neurological deficits at a significant level, and expressed that there was an appearance that overall neurological functioning could be nearly normal in many areas in the absence of use of alcohol and/or controlled substances. Mr. Fisher noted that the evaluation conducted pre-trial was inadequate, as the evaluation did not address sanity, brain damage, intoxication, but only competence, and as examiner did not follow procedure normally which includes diagnostic testing, review of full and complete medical and school histories, and other investigation in addition to a mental status examination.¹³

26. The U.S. Court of Appeals for the Eleventh Circuit denied relief on January 18, 2001, as well as a request for rehearing on April 6, 2001. On the matter of ineffective assistance by State appointed Counsel, the United States Court of Appeal ruled that counsel was not unconstitutionally ineffective in:¹⁴

- a. failing to present at sentencing phase testimony of witnesses to Defendant’s difficult childhood and adolescence; where counsel asked defendant to prepare a life history to help with the investigation, counsel could reasonably rely on defendant’s representations to him;
- b. failing to present evidence of defendant’s brain damage and hypoglycemia, as counsel knew enough after two psychological evaluations failed to offer any encouragement to proceed further; and
- c. in failing to present defendant’s intoxication on the night of the offence as lawyer could decide such evidence could hurt as much as help the defense, as defendant’s post murder behavior was not inconsistent with uncontrollable intoxication and in consideration of the jury’s possible disapproval of drunkenness.

27. The court further expressed that if counsel had made a strategic decision not to pursue a particular defense after a thorough investigation of the relevant facts and law, such a decision was “virtually unchallengeable”, making reference to Strickland, 466 U.S. at 691. Accord *Middleton v Dugger*, 849 F. 2d 491, 493 911th circuit. 1988) (tactical decisions afforded “strong presumption of correctness”).¹⁵

¹¹ Tracy Lee Housel v Frederick J Head, no. 98-8830, United States Court of Appeals, Eleventh Circuit, January 18, 2001. Exhibit 25, submitted with petitioners’ original petition on February 25, 2002.

¹² Affidavit of Dr. James Merikangas, sworn under notary public August 1990. Exhibit 27, submitted with petitioners’ original petition on February 25, 2002.

¹³ Affidavit of Brad Fisher, Ph. D, sworn under notary public, September 1990. Exhibit 28, submitted with petitioners’ original petition on February 25, 2002.

¹⁴ Tracy Lee Housel v Frederick J Head, no. 98-8830, United States Court of Appeals, Eleventh Circuit, January 18, 2001. Exhibit 25, submitted with petitioners’ original petition on February 25, 2002.

¹⁵ Tracy Lee Housel v Albert G. Thomas, Warden, Georgia Diagnostic and Classification Center, Civil Action No. 1:94-CV-1444-ODE, United States District Court, Northern District of Georgia, Atlanta Division. Habeas Corpus. Exhibit 26, submitted with petitioners’ original petition on February 25, 2002.

28. With respect to general admissibility at capital sentencing of evidence about unadjudicated crimes, the court held that admitting such evidence does not violate the Constitution as long as the evidence is reliable – making reference to the evidence available for two of three crimes which involved Mr. Housel’s confessions along with corroborating evidence, and for the third which involved a victim’s testimony¹⁶ as the reliable factors.

29. Mr. Housel’s trial attorney, Walt M. Britt (“Mr. Britt”), signed an affidavit indicating the following:¹⁷

I did not consult with any doctor, nor did I seek funds to hire a private medical or psychological expert, to investigate either the symptoms that Mr. Housel reported to me, or any other medical or psychological conditions which might have been factor in explaining Mr. Housel’s conduct in this case. My failure to seek such funds or hire an expert was not in any way a part of my tactics or strategy in the case. [...]

That I should have sought funds for expert assistance is made clear by the reports of Drs. Buris Boshell, James Merikangas, and Brad Fisher, which are appendices to the petitioner’s federal petition of writ of habeas corpus. I have recently reviewed the contents on these reports. They contain evidence about Mr. Housel and his mental and medical condition which I should have developed at the time of trial and which I would have presented on his behalf to the jury. Had I developed this information, I believe I would have conducted the case quite differently.

30. On February 25, 2002, the U.S. Supreme Court refused Mr. Housel’s final petition for a writ of certiorari. Mr. Housel was executed on March 12, 2002.¹⁸

C. Pre-trial confinement conditions

31. According to the information on the record, Mr. Housel spent pre-trial detention at Gwinnet County Jail, which was in 1985 the subject of a federal lawsuit on living conditions. As a response, and to reduce the jail’s overcrowding, in 1989 modular housing units were added to the Correctional Institute to house pre-trial detainees until a new jail opened in 1991.¹⁹

32. Mr. Housel’s detention was similarly described within several affidavits presented by two past employees of Gwinnett County Jail, as well as four inmates detained during Mr. Housel’s detention at Gwinnett County Jail.²⁰ Mr. Housel’s detention was described as “rigid solitary confinement” immediately upon booking, in conditions that were “cruel and were intended to forcibly break him.” There were three or four inmates in C House, where Mr. Housel was detained, called “the hole.” The cellblock was described as being “like a dungeon,” with no shower, overpopulated, and inmates sleeping on the floor on occasions.

33. According to these affidavits, Mr. Housel was detained for at least his first eight weeks at the jail in a very small cell with no sunlight; during which he was not allowed to shower, to exercise or to breathe fresh, outdoor air. He was allegedly not allowed to fraternize or even communicate with other inmates, use the phone, or have contact with the outside, to attend religious services or to leave the cell for any reason. In one occasion in which

¹⁶ Tracy Lee Housel v Albert G. Thomas, Warden, Georgia Diagnostic and Classification Center, Civil Action No. 1:94-CV-1444-ODE, United States District Court, Northern District of Georgia, Atlanta Division. Exhibit 26, submitted with petitioners’ original petition on February 25, 2002.

¹⁷ Affidavit of Walt M. Britt, sworn under notary public June 13, 1996. Exhibit 29, submitted with petitioners’ original petition on February 25, 2002.

¹⁸ Petitioners’ observations to the State submitted on May 10, 2002

¹⁹ Department of Corrections, Gwinnett County Jail, Annual Report of 2009 and 2010. https://www.gwinnettcountry.com/static/departments/corrections/pdf/2009_corrections_annual_report.pdf

https://www.gwinnettcountry.com/static/departments/corrections/pdf/2010%20Corrections%20Annual%20Report_FINAL.pdf

²⁰ Affidavits of: Dee Williams, sworn before notary seal, August 8, 1990, State of California (worked within Booking Department of Gwinnett County Jail of the Gwinnett County Sheriff’s Department for approximately 10 months from 1985 to 1986); Charles Seabolt, sworn before notary public January 25, 1995, State of Georgia (housed at Gwinnett County Jail in the same cell block as Mr. Housel); Ceils Smith, sworn before notary public January 27, 1995 (confined at Gwinnett County Jail in 1985 in C House); James Ard, sworn before notary public January 23, 1995 (detained at Gwinnett County Jail in 1985 and 1986); Samuel Jackson Bell, sworn before notary public January 24, 1995 (inmate at Gwinnett County Jail, D Block in April 1985); and declaration of Kathy Rape Waddell, September 9, 1997. (worked with the Gwinnett County Jail as a Correctional Officer in 1985 and 1986). Exhibit 21, 22 and 23 submitted with petitioners’ original petition on February 25, 2002.

Mr. Housel was allowed to go to church he was allegedly placed in “leg irons and waist chains.” The food, which was slipped under the door, was sometimes impossible to eat. Mr. Housel was once allegedly hit with a Taser by a guard.

34. Mr. Housel’s inmates indicated that they frequently heard Mr. Housel screaming, which was described as “unsolicited and irrational,” kicking his cell door, and making hysterical noises. They stated that no medical personnel ever examined Mr. Housel to determine why his behavior was “out of control.” They recalled periods where Mr. Housel would cry and yell, scream and bang on the bars.

35. One of the inmates attested that Mr. Housel’s attorney was not present for any of the police interrogations of which he had knowledge of. Another inmate similarly declared that Mr. Housel’s attorney never came to see him during the time he was housed with Mr. Housel.

36. Mr. Housel was transferred to Douglas County Jail for approximately 20 days beginning in late June, 1985, and upon his return, he was placed in solitary confinement with “ameliorated” conditions due to a consent order signed by the superior court judge.²¹

IV. ANALYSIS OF LAW

A. Preliminary considerations

37. Before embarking on its analysis of the merits in the case of Housel, the Inter-American Commission considers it relevant to 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.

38. That gives rise to the particular importance of the IACHR’s obligation to ensure that any deprivation of life may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American Human Rights System, including the American Declaration.²² That “heightened scrutiny test is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,²³ and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.²⁴

39. 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 guarantees²⁵:

²¹ Affidavit of Dee Williams, sworn before notary seal, August 8, 1990, State of California. Exhibit 21, submitted with petitioners’ original petition on February 25, 2002.

²² See, in this respect, 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.

²³ 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 (finding that “because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life is not arbitrarily taken as a result”); United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3 (observing that “the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State”); *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) (“the Ndiaye Report”), para. 378 (emphasizing that in capital cases, it is the application of the standards of fair trial to each and every case that needs to be ensured and, in case of indications to the contrary, verified, in accordance with the obligation under international law to conduct exhaustive and impartial investigations into all allegations of violation of the right to life).

²⁴ IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Felix Rocha Diaz, United States, March 23, 2015, para. 54; Report No. 44/14, Case 12.873, Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 127; Report No. 57/96, Andrews, United States, IACHR Annual Report 1997, para. 170-171.

²⁵ 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.

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.²⁶

40. The Inter-American Commission will therefore review the petitioner's allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, the prohibition of cruel, infamous or unusual punishment, right to 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."²⁷

B. Right to a fair trial²⁸ and to due process of law²⁹

1. Ineffective assistance of court appointed counsel

41. Adequate legal representation is a fundamental component of the right to a fair trial. The IACHR has found that "[t]he 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."³⁰ According to the Commission, "[t]he State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel. National authorities are, however, required [...] to intervene if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention. Rigorous compliance with the defendant's right to competent counsel is compelled by the possibility of the application of the death penalty."³¹

42. The appointment of an attorney by the state does not, in and of itself, ensure effective assistance of counsel. At the same time, while the State is responsible for ensuring that such assistance is effective, it is not responsible for what may be understood as decisions of strategy or for every possible shortcoming. Rather, the Commission must evaluate whether the assistance of counsel was effective in the overall context of the process and taking into account the specific interests at stake.³²

43. The Commission 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."³³ The Commission has also indicated that due process protections, under the Declaration:

²⁶ IACHR, Report No. 78/07, Case 12.265, Merits (Publication), Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

²⁷ IACHR, Report No. 44/14, Case 12,873, Report on Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

²⁸ 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."

²⁹ 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."

³⁰ 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.

³¹ 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.

³² IACHR, Report No. 79/15, Case 12.994, Merits (Publication), Bernardo Aban Tercero, United States, October 28, 2015, para. 111.

³³ IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

guarantee an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of the defendant's case, in light of such considerations as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.³⁴

44. It may be noted that the fundamental nature of this guarantee has been reflected in practice guidelines for lawyers. The American Bar Association has prepared and adopted guidelines and related commentaries that emphasize the importance of investigating and presenting mitigating evidence in death penalty cases.³⁵ According to these guidelines, the duty of counsel in the United States to investigate and present mitigating evidence is now well-established and "[b]ecause the sentencer in a capital case must consider in mitigation, anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant," penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history.³⁶ The Guidelines also emphasize that the "mitigation investigation should begin as quickly as possible, because it may affect the investigation of first phase defenses (e.g., by suggesting additional areas for questioning police officers or other witnesses), decisions about the need for expert evaluations (including competency, mental retardation, or insanity), motion practice, and plea negotiations."³⁷

45. In the instant case, the Commission must evaluate whether the assistance of counsel was effective; taking into account the specific interests at stake. In the present case, the interests at stake included the application of the death penalty, and the assistance of counsel must be evaluated in that context.

46. The Petitioners contend that trial counsel failed to undertake sufficient investigation to uncover significant mitigating evidence concerning Mr. Housel's mental condition and upbringing and present it during his sentencing. The State, for its part, argues that Petitioner's allegation of inadequate legal representation was expressly rejected by both the state and federal habeas corpus courts.

47. The Commission notes that the information on the record shows that an examination conducted by a psychiatrist and neurologist concluded that Mr. Housel had a reduced capacity to control his impulses as a direct consequence of a disordered and damaged brain. Also, an evaluation conducted by a clinical psychologist concluded that Mr. Housel suffered from neurological deficits at a significant level and that there was an appearance that overall neurological functioning could be nearly normal in the absence of use of alcohol and/or controlled substances. Mr. Housel's trial attorney admitted he did not consult with any doctor; and did not seek funds to hire an expert to investigate either the symptoms Mr. Housel reported to counsel or any other medical or psychological conditions which might have been factors in explaining his conduct. He further indicated that this failure was not part of tactics or case strategy.

48. As previously established, 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 the specific case. In the instant case, failure to request expert evidence resulted in an omission of possibly similar findings of actual mental health problems that were discovered by psychological and mental experts during post-conviction. As indicated, trial counsel admitted that it would have been helpful to have presented the evidence submitted in the federal petition about how intoxication at the time of the crime exacerbated the effects of Mr. Housel's existing medical condition and affected the ability to control his impulses. He further expressed that this failure was not part of tactics or case strategy.

³⁴ IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

³⁵ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation. Available at: <http://www.abanet.org/legal/services/downloads/sclaid/deathpenaltyguidelines.pdf>.

³⁶ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 82.

³⁷ American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 83.

49. Considering that the fundamental due process and fair trial requirements for capital trials include the obligation to afford adequate legal representation, and that failure to present mitigating evidence constitute inadequate representation, the Inter-American Commission concludes that the United States violated Mr. Robinson's right to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration.

2. Use of unadjudicated offences

50. In the case of Juan Raul Garza, who was sentenced to the death penalty, the IACHR found that the State's conduct in introducing evidence of unadjudicated crimes during the capital sentencing hearing was contrary to Mr. Garza's right to a fair trial, as well as his right to due process of law under Articles XVIII and XXVI of the American Declaration.³⁸ This was the first case in which the Commission considered the compatibility with the American Declaration of the use of evidence of unadjudicated offenses during the punishment phase of capital proceedings.

51. The IACHR established that "a significant and substantive distinction exists between the introduction of evidence of mitigating and aggravating factors concerning the circumstances of an offender or his or her offense" and the introduction of evidence designed to demonstrate dangerousness based on culpability for prior offenses that were never adjudicated.³⁹ The Commission recommended the United States to prohibit the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials. In the cases of Javier Suarez Medina, Humberto Leal Garcia, and Bernardo Aban Tercero, the IACHR reached the same conclusion.⁴⁰

52. In the instant case, Petitioners claim that the trial judge permitted the admittance of evidence of unadjudicated offenses during the sentencing phase. The State alleged that this claim was rejected by the Supreme Court of Georgia and in federal habeas corpus.

53. According to the information available, at the sentencing hearing the prosecution introduced evidence of three unadjudicated offenses that Mr. Housel was alleged to have committed. Mr. Housel confessed to two of the three offenses. The U.S. Court of Appeal in post-conviction held that the admittance of such evidence was constitutional as long as it was reliable and pointed to Mr. Housel's confession.

54. The Commission notes that, according to the above-mentioned jurisprudence, the introduction of evidence of unadjudicated crimes during a capital sentencing hearing is contrary to the rights to a fair trial and to due process of law. This, regardless of the reliability or credibility of such evidence, given that the violation is due to the fact that the intent and consequence of using evidence of unadjudicated crimes is to determine the defendant's guilt and punishment for the other unadjudicated crimes but through a sentencing hearing rather than a proper and fair trial process.⁴¹ Therefore, the IACHR concludes that the United States violated Mr. Robinson's rights set forth in Articles XVIII and XXVI of the American Declaration.

C. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment⁴²

1. Pre-trial confinement conditions and prolonged solitary confinement

³⁸ IACHR. Report No. 52/01. Case 12.243. Juan Raul Garza. United States. April 4, 2001, para. 110.

³⁹ IACHR. Report No. 52/01. Case 12.243. Juan Raul Garza. United States. April 4, 2001, para. 103-112.

⁴⁰ IACHR. Report No. 91/05. Case 12.421. Javier Suarez Medina. United States. October 24, 2005; IACHR. Report No. 90/09. Case 12.644. Admissibility and Merits (Publication), Medellín, Ramírez Cardenas and Leal García, United States, August 7, 2009; and IACHR. Report No. 79/15. Case 12.994. Bernardo Aban Tercero. United States. October 28, 2015.

⁴¹ IACHR, The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition, December 31, 2011, page 118

⁴² 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."

55. The Inter-American Commission has determined that deprivation of liberty under certain conditions on death row, including solitary confinement for four years, constituted inhuman treatment.⁴³ According to international human rights standards, persons deprived of liberty on death row should not be subjected to solitary confinement as a regular condition of imprisonment, but only in exceptional circumstances and solely as a disciplinary punishment in those instances and under the same conditions in which these measures apply to the rest of the inmates.⁴⁴

56. The IACHR has established that solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort.⁴⁵ The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas underscore the exceptional nature of the practice of solitary confinement:⁴⁶

Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.

57. In assessing whether solitary confinement falls within the ambit of Article 3 (Prohibition of torture) in a particular case, the European Court of Human Rights will consider “the stringency of the measure, its duration, the objective pursued and its effects on the person concerned.”⁴⁷ At the same time, it has found that “where conditions of detention comply with the Convention and the detainee has contact with the outside world, through visits and contact with prison staff, the prohibition of contact with other prisoners will not breach Article 3 provided that the regime is proportional to the aim to be achieved, and the period of solitary detention is not excessive.”⁴⁸ Similarly, the United Nations Human Rights Committee has concluded that solitary confinement is justifiable only in case of urgent need, in exceptional circumstances and for limited periods of time.⁴⁹

58. On October 18, 2011, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called for the prohibition of indefinite solitary confinement and prolonged solitary confinement, which he defined as for any period in excess of 15 days.⁵⁰ The Special Rapporteur concluded that 15 days “is the limit between ‘solitary confinement’ and ‘prolonged solitary confinement’ because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.” The U.N. Special Rapporteur also observed that “even a few days of solitary confinement will shift an individual’s brain activity towards an abnormal pattern characteristic of stupor and delirium.”⁵¹ Also, the Rapporteur has stated that, consistent with human rights standards, “no prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.”⁵²

59. With regard to the cell size, the U.N. Special Rapporteur indicates that, while there is no universal instrument that specifies a minimum acceptable size, domestic and regional jurisdictions have sometimes ruled on the matter. According to the European Court of Human Rights in *Ramírez Sanchez v. France*, a cell measuring 6.84 square meters (73.6 square feet) is “large enough” for single occupancy. However, the Special Rapporteur

⁴³ CIDH, Report No. 58/02. Merits. Case 12.275. Denton Aitken. Jamaica. October 21, 2000, paragraphs 133 and 134

⁴⁴ IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64., December 31, 2011, paragraph 517.

⁴⁵ IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64., December 31, 2011, paragraph 411.

⁴⁶ IACHR, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXII (3).

⁴⁷ European Commission of Human Rights, *Dhoest v Belgium*, Application No. 10448/83, May 14, 1987, para. 118.

⁴⁸ *Torture in International Law: a guide to jurisprudence*, APT and CEJIL, 2008, p. 81.

⁴⁹ Human Rights Committee, Concluding Observations on Denmark, UN Doc. CCPR/CO/70/DNK, 2000, para. 12.

⁵⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, January 18, 2010, A/HRC/19/61, para. 26.

⁵¹ United Nations, General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, A/66/268, paragraphs 26 and 55.

⁵² Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 9, 2013, A/68/295, para. 61.

disagrees, “especially if the single cell should also contain, at a minimum, toilet and washing facilities, bedding and a desk”.⁵³

60. Solitary confinement can have serious psychological effects, ranging from depression to paranoia and psychosis, as well as physiological effects such as cardiovascular problems and profound fatigue.⁵⁴ The European Court has held that protracted sensory isolation, coupled with social isolation, can destroy the personality and constitutes a form of inhuman treatment.⁵⁵ The United Nations Human Rights Committee has expressed its concern over the practice in some maximum security prisons in the United States “to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment.”⁵⁶ For its part, in a death penalty case in which the victims were held in solitary confinement for protracted periods, the Inter-American Commission established that the State failed to ensure respect for the inherent dignity of the human person, regardless of the circumstance, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.⁵⁷

61. The Inter-American Commission reaffirms that all persons deprived of liberty must receive humane treatment, commensurate with respect for their inherent dignity. This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards that apply in general to persons deprived of liberty. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under its jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty.⁵⁸

62. According to several affidavits signed by inmates and employees working at the institutions in which Mr. Housel was incarcerated, during pre-trial detention Mr. Housel’s was incarcerated in “rigid solitary confinement” in a cellblock called “the hole.” This information indicates that he was detained for at least the first eight weeks in a very small cell with no sunlight; during which he was not allowed to have contact with the outside, to shower, to exercise or to breathe fresh, outdoor air. Mr. Housel’s inmates indicated that they frequently heard Mr. Housel screaming, kicking his cell door, and making hysterical noises. However, according to the inmates, no medical personnel ever examined him.

63. The Commission notes that, according to the State, domestic courts considered that these affidavits lacked proper foundation and amounted to suspect testimony. The IACHR notes in this regard that the affidavits were signed not only by inmates but also by employees working at the jail. Further, that the jail in which Mr. Housel spent pre-trial detention was the subject of a federal lawsuit on living conditions. The Commission also notes that, in its response to the petition, the State admits that Mr. Housel was kept in solitary confinement during the majority of his pre-trial incarceration. The record before the Commission also shows that in late June, 1985, Mr. Housel was transferred to Douglas County Jail for approximately 20 days and upon his return, he was placed in solitary confinement with “ameliorated” conditions due to a consent order.

64. Therefore, based on the information available, the IACHR considers that the conditions in which Mr. Housel was incarcerated during pre-trial detention, the lack of adequate medical care, as well as the prolonged solitary confinement to which he was subjected, constituted inhumane treatment, a cruel, infamous and unusual punishment, and an infringement to his right to health, in violation of Articles XI, XXV and XXVI of the American Declaration.

⁵³ United Nations, General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, A/66/268, para. 49.

⁵⁴ Shalev, Sharon, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, LSE, 2008, pp. 15 and 16. Available at: http://solitaryconfinement.org/uploads/sourcebook_web.pdf, cited in IACHR, Report on the human rights of persons deprived of liberty in the Americas, OEA/Ser.L/V/II.Doc.64., December 31, 2011, para. 492.

⁵⁵ *European Court of Human Rights, Case of Ramírez Sánchez v. France*, (Application no. 59450/00), Judgment of July 4, 2006, Grand Chamber, para. 120-123.

⁵⁶ United Nations, Human Rights Committee, CCPR/C/USA/CO/3, September 15, 2006, para. 32.

⁵⁷ I/A Court H.R., *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case*. Judgment of June 21, 2002. Series C No. 94, paragraphs 154-156.

⁵⁸ IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64. December 31, 2011, para. 513.

2. Death row confinement conditions

65. The Commission takes note of the concept of the *death row phenomenon* of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that:

(...) it consists of a combination of circumstances that produce severe mental trauma and physical deterioration in prisoners under sentence of death.⁵⁹ Those circumstances include the lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held. Death row conditions are often worse than those for the rest of the prison population, and prisoners on death row are denied many basic human necessities.⁶⁰

66. In the case of *Soering vs. The United Kingdom*, the European Court of Human Rights, in its interpretation of the norm banning cruel, inhuman, and unusual punishment and in reference to the death penalty, pointed out that:

The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3.⁶¹

67. The European Court found that the "death row phenomenon" is a cruel, inhuman and degrading treatment, and is characterized by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety, extreme psychological tension and trauma.⁶²

68. The European Court was referring to an average of six to eight years on death row from imposition of the penalty to execution and it mentioned how proceedings and appeals subsequent to the imposition of the death penalty themselves have a bearing on the aforementioned wait time on death row. The court referenced the lapse of time between sentence and execution is inevitable however, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.⁶³

69. The court further recognized that some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable and considered elements like, the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, which brought the delay into the realm of exposed real risk of treatment going beyond the threshold set by Article 3.⁶⁴

70. Furthermore, in a comparative law context, the Commission notes that the Privy Council of the British House of Lords considered in 1993 on the issue of the *death row phenomenon* in the *Pratt and Morgan v. Jamaica* case, that:

In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such

⁵⁹ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 9 August 2012. A/67/279, para 42. Citing: Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

⁶⁰ United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. 9 August 2012. A/67/279, para 42.

⁶¹ ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989, para. 104.

⁶² Cf. European Court of Human Rights, *Soering v. United Kingdom*. Judgment of July 7, 1989. Series A, Vol. 161. Likewise, the Supreme Court of the United States of America recognised in *Furman v. Georgia* that the time spent awaiting the execution of a death sentence destroys the human spirit and constitutes psychological torture that often leads to insanity. Cf. *Furman v. Georgia*, 408 U.S. 238, 287-288 (197).

⁶³ ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989, para. 106.

⁶⁴ ECtHR. Case of *Soering v. The United Kingdom*. Report No. 14038/88. Judgment, July 7, 1989, para. 111.

delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.

(...)

These considerations lead their Lordships to the conclusion that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment".⁶⁵

71. In the same vein, the Supreme Court of Uganda considered in 2009 that "to execute a person after a delay of three years in conditions that were not acceptable by Ugandan standards would amount to cruel, inhuman punishment."⁶⁶ For its part, the Supreme Court of Zimbabwe has pointed out since 1993 that "having regard to judicial and academic consensus concerning the death row phenomenon, the prolonged delays and the harsh conditions of incarceration, a sufficient degree of seriousness had been attained to entitle the applicant to invoke the protection concerning the prohibition of torture and inhuman or degrading punishment." That Supreme Court maintained that "52 and 72 months, respectively, on death row constituted a violation of the prohibition of torture and would render an actual execution unconstitutional."⁶⁷

72. It is noted that at the time the petition was lodged, Mr. Housel was sentenced to death on February 7, 1986 and was thereafter executed on March 12, 2002. Housel was therefore on death row for nearly sixteen (16) years. The long term of his deprivation of liberty on death row is referred to within both international human rights and comparative law as the "death row phenomenon," and infringes on a person's freedom from cruel, inhuman or degrading punishment. Such treatment violates the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).⁶⁸

D. Right to petition ⁶⁹

73. The State's denial of a stay of execution in the face of a precautionary measure by the Commission in order to evaluate any human rights breaches and its failure to preserve a condemned prisoner's life pending the completion of the proceedings, including implementation of the Commission's final recommendations, undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition, and results in serious and irreparable harm to those individuals. An execution under those circumstances obstructs the Commission's or Court's ability to effectively investigate and issue determinations on capital cases.

74. Both the Commission and the Inter-American Court have indicated that the execution of a person under precautionary or provisional measures respectively, constitutes an aggravated violation of the rights to life. The Commission has consistently and emphatically condemned the practice by certain States of executing persons sentenced to death in violation of precautionary measures issued by it, including in instances where the Commission had before it a pending petition presenting allegations of due process or other violations in the prosecution that produced the sentence.

⁶⁵ Pratt and Morgan v. The Attorney General for Jamaica and another (Jamaica) [1993] UKPC 1 (2nd November, 1993), paragraphs 73, 74, 75, and 84.

⁶⁶ Supreme Court of Uganda in *Attorney General v. Susan Kigula and 417 others* (Constitutional Appeal No. 3 of 2006), 2009.

⁶⁷ Judgment of the Supreme Court of Zimbabwe of 24 June 1993 in *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General* (4) SA 239 (ZS).

⁶⁸ 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.

⁶⁹ 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."

75. The execution of the death sentence against Mr. Housel represents a failure on the part of the State to implement the precautionary measure and a violation of the rights of Mr. Housel established in Articles XXIV of the American Declaration. By permitting Housel's execution to proceed in these circumstances, the Commission considers that the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States. The Commission calls upon the United States to take all steps necessary to comply in any future matter with the Commission's request for precautionary measures.

E. Right to life⁷⁰

76. As noted in this report, the right to life is widely recognized as the supreme right of the human being. The Inter-American Court has similarly confirmed that "[b]ecause execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result."⁷¹

77. This right was violated upon Mr. Housel's execution following post-conviction proceedings that did not comply with a fair trial. Further, this right was violated upon Mr. Housel's execution in light of his exposure to death row syndrome, having been detained for longer than the acceptable term on death row in conditions that have been described as cruel and inhumane.

V. REPORT No. 161/19 AND INFORMATION ABOUT COMPLIANCE

78. On November 9, 2019, the Commission approved Report No. 161/19 on the merits of the instant case, which encompasses paragraphs 1 to 77 supra, and issued the following recommendations to the State:

1. Provide reparations to the family of Tracy Lee Housel as a consequence of the violations established in this report.
2. Review its laws, procedures, and practices at the federal and state level to ensure compliance with the provisions of the American Declaration, specifically to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration,⁷² including Articles I, XI, XVIII, XXV and XXVI thereof, and, in particular that:
 - a. trial court-appointed counsel provide adequate legal representation in death penalty cases, including the presentation of mitigating evidence; and
 - b. evidence of unadjudicated offenses are not introduced during capital sentencing.
3. Ensure that solitary confinement is only used in exceptional circumstances, for the shortest period possible.
4. Ensure compliance with the precautionary measures granted by the IACHR for persons facing the death penalty.
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.⁷³

⁷⁰ Article I of the American Declaration provides: "Every human being has the right to life, liberty and the security of his person."

⁷¹ I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 136.

⁷² 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.

⁷³ 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.

79. On December 5, 2019 the IACHR transmitted the report to the State with a time period of two months to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 161/19.

VI. ACTIONS SUBSEQUENT TO REPORT No. 335/21

80. On November 22, 2021, the Commission approved Final Merits Report No. 335/21, which encompasses paragraphs 1 to 79 *supra*, and issued its final conclusions and recommendations to the State. On December 7, 2021, the Commission transmitted the report to the State and the petitioners with a time period of three weeks 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. 335/21.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

81. 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), XI (health), XVIII (fair trial), XXIV (petition), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration.

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

1. Provide reparations to the family of Tracy Lee Housel as a consequence of the violations established in this report.
2. Review its laws, procedures, and practices at the federal and state level to ensure compliance with the provisions of the American Declaration, specifically to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration,⁷⁴ including Articles I, XI, XVIII, XXV and XXVI thereof, and, in particular that:
 - a. trial court-appointed counsel provide adequate legal representation in death penalty cases, including the presentation of mitigating evidence; and
 - b. evidence of unadjudicated offenses are not introduced during capital sentencing.
3. Ensure that solitary confinement is only used in exceptional circumstances, for the shortest period possible.
4. Ensure compliance with the precautionary measures granted by the IACHR for persons facing the death penalty.
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.⁷⁵

VIII. PUBLICATION

82. 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.

⁷⁴ 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.

⁷⁵ 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.

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of May 2023.
(Signed): Margarete May Macaulay, Chair; Esmeralda Arosemena de Troitiño, First Vice-Chair; Joel Hernández García and Julissa Mantilla Falcón, members of the Commission.