

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 99/99; Case 11.140
Session:	Hundred and Fourth Regular Session (27 September – 8 October 1999)
Title/Style of Cause:	Mary and Carrie Dann v. United States
Doc. Type:	Decision
Decided by:	First Vice-Chairman: Dr. Helio Bicudo; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia. Commissioners Robert Goldman, Chairman, and Claudio Grossman did not participate of the discussion and decision of this report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated:	27 September 1999
Citation:	Dann v. United States, Case 11.140, Inter-Am. C.H.R., Report No. 99/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANTS: Steven M. Tullberg and Robert T. Coulter
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. Summary

1. This report concerns claims pertaining to alleged violations of human rights of native Americans, Western Shoshone American Indians pursuant to Articles of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”).

2. On April 2, 1993, Messrs. Steven M. Tullberg, and Robert T. Coulter, of the Indian Law Resource Center (hereinafter “the petitioners”) presented a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission”) on behalf of Mary and Carrie Dann, sisters and American Indians (hereinafter “the Dann sisters or the Danns”) against the United States of America (hereinafter “the United States”).

3. The petitioners claim that the Dann sisters are citizens of the United States, and are members and spoke persons for the Dann Band of the Western Shoshone Nation, who live on a ranch on the Dann Band land in the small rural community of Crescent Valley, Nevada. The petitioners also claim that the Dann Band land has long been recognized by the Western Shoshone Nation as Western Shoshone Nation property occupied and used by the Dann Band, and is not part of any of the small Western Shoshone reservations and “colonies” that the Federal Government acknowledges to be Western Shoshone land in Nevada.

4. The petitioners claim that the United States acknowledges under its laws that the Western Shoshones are American Indians and has official relationship with some federally-chartered Western Shoshone tribes.[FN1] The petitioners also claim that the Dann Band and Mary and

Carrie Dann are not members of any of these tribal entities. In addition, the petitioners claim that the United States has an existing treaty relationship with the Western Shoshone pursuant to the 1863 Treaty of Ruby Valley which is a “Treaty Between the United States of America and Western Bands of Shoshone Indians, ratified by the United States in 1866, and proclaimed on October 21, 1869.”[FN2] The petitioners also claim that under United States law, the Treaty of Ruby Valley is in full force and effect, and that the United States Constitution provides that all treaties, including American Indian treaties, are part of the supreme law of the United States.

[FN1] Battle Mountain Band Council; Duckwater Shoshone Tribe; Elko Band Council; Ely Shoshone Council; South Fork Band Council; Temoak Tribal Council; Timbisha Shoshone Tribe; Wells Band Council; Yomba Tribal Council.

[FN2] US18 Stat. 689).

5. The petitioners claim that the Dann sisters have asserted both Western Shoshone aboriginal title and treaty right, and that they and their ancestors have used and occupied these lands since time immemorial. The petitioners also claim that the Dann sisters’ use of the Western Shoshone homeland was undisturbed and unchallenged until the early 1970’s when the United States Government through the Department of Interior demanded that the Dann sisters remove their “trespassing” livestock on the Dannels’ land.[FN3]

[FN3] The Western Shoshone Nation land used and occupied by the Dann sisters is referred to as the Dannels’ land.

6. The petitioners claim that the family ranch is the sole means of support for the Dann sisters. The petitioners also claim that the Dann sisters have been raising livestock on Western Shoshone lands and their own food since the 1940’s, and that all of the Dann sisters needs are met by the sale of their livestock, goods and produce to neighboring Western Shoshone and to non Indians.

7. The petitioners contend that the United States has violated the Dann sisters rights by confiscating the Western Shoshone land “through the use of a grossly unfair procedure that ‘extinguished’ the Indian title to the land for a few cents per acre.” The petitioners also contend that the Dann sisters and many others protested the United States’ claim to their lands, but they were never able to stop it. In addition, the petitioners contend that as a result of this procedure the United States has been trespassing on their lands, and has threatened to impound their livestock and property without due process of law, and without just compensation.

8. The petitioners claim that the United States through its confiscatory and racially discriminatory laws and procedures has deprived and violated the Dann sisters of their basic human and fundamental human rights pursuant to Articles of the American Declaration of the Rights, namely, Articles II, the right to equality before the law, Article XVII, the right to recognition of juridical personality and civil rights, and Article XVIII, the right to a fair trial. In

addition, the petitioners claim violations of Articles of the American Convention on Human Rights, Articles 1, 8, 21, 24, and 25, the United Nations Charter, and the Universal Declaration of Human Rights and other international instruments.

9. The Commission concludes that this case is admissible having satisfied the requirements of Articles 37 and 38 of its Regulations.

II. PROCEEDINGS BEFORE THE COMMISSION

10. Upon receipt of the petition on April 2, 1993, and the parties' subsequent submissions, the Commission has complied with the procedural requirements of its Regulations. It has studied, examined and considered all information submitted by the parties.

11. On April 7, 1993, the Commission opened a case pursuant to Article 34 of its Regulations and forwarded the pertinent parts of the petition to the United States Government by letter of the same date, and requested that the United States provide it with information within 90 days of receipt of the petition, that it deemed pertinent which would enable the Commission to determine whether the internal legal remedies and procedures of the United States have been exhausted.

12. On August 16, 1993, the petitioners wrote to the Commission and informed it that the United States published a notice (which was enclosed for the Commission's information) on August 3rd, 1993, stating that the United States Bureau of Land Management (hereinafter "the BLM") intends to impound all livestock found on the lands where the Danns have grazed their livestock for generations. The petitioners indicated that the United States probably intends to sell the livestock of the Danns and the Western Shoshone National Council that are on the land. The petitioners contended that this would be devastating to the Danns and the Western Shoshone Nation and would further compound the enormous wrongs that have already been committed against them by the Government. In addition, the petitioners requested that the Commission give the case its urgent attention and issue Precautionary Measures pursuant to Article 29(2) of its Regulations.

13. On August 27, 1993, the United States wrote to the Commission and requested that it be granted an extension of time until September 10, 1993, to submit its Reply to the petition.

14. On September 7, 1993, the Commission wrote to the United States and informed it that the Commission had received information pertaining to the BLM's notice of August 3, 1993 intending to impound the Danns' livestock. In its letter of September 7, 1993, the Commission requested that the United States stay its intention to impound all livestock belonging to the Danns until this case has been resolved. In addition, the Commission granted the United States its requested extension of time until September 10, 1993 for it to submit its Reply to the petition.

15. On September 9, 1993, the United States forwarded its Reply to the petition and argued that the case was inadmissible pursuant to Article 37 of the Commission's Regulations, and denied that it had violated the Danns' human rights. The United States also stated that it has provided a mechanism to compensate the Western Shoshone for the historical taking of their aboriginal rights and that the effort to complete this administrative process is still ongoing. In

addition, the United States stated that it is fully committed to a peaceful and equitable resolution of these matters. Moreover, the United States stated that it reserved the right to address more fully the merits of the petitioners' arguments in the event there is a need to do so.[FN4] On September 22, 1993, the Commission forwarded the pertinent parts of the United States' Reply to the petitioners, requesting that they provide the Commission with any observations to the United States' Reply within 45 days. On November 2, 1993, the petitioners wrote to the Commission and requested an extension until December 14, 1993 to respond to the United States' Reply to the petition. The Commission granted the requested extension on November 3, 1993.

[FN4] The United States argument on Admissibility of the petition can be found in Chapter III of this report under section entitled "The United States' Position on Admissibility."

16. On December 22, 1993, the petitioners forwarded their response to the United States Reply to the petition and reiterated the Danna's position, that the case was timely filed, that they had exhausted domestic remedies and that the case was admissible pursuant to Article 37 of the Commission's Regulations. The petitioners also reaffirmed their arguments pertaining to the alleged violations of the Danna's human rights pursuant to the American Declaration. In addition, the petitioners requested that the Commission inform itself about the pending plan of Interior Secretary the Hon. Bruce Babbitt to establish a Western Shoshone claims resolution process. Moreover, the petitioners requested that the Commission should encourage and monitor that claims resolution process and should take appropriate measures that may be needed to facilitate a friendly settlement upholding the human rights of the Danna and the Western Shoshone people.

17. On January 3, 1994, the petitioners wrote to the Commission and informed it that "in the introductory section of the Observations of petitioners in the above case, we note that the petition was filed within one year of the exhaustion of domestic remedies. As the text of our argument clarifies, that filing took place within six months of exhaustion. We hope that this letter clears up any misunderstanding." The Commission forwarded the pertinent parts of the petitioners' Response to the United States on January 6, 1994, and requested that the United States take whatever measures that are deemed necessary so that the Commission may receive all of the information relevant to this case within 30 days.

18. On February 4, 1994, the United States wrote to the Commission and briefly reiterated its position on the admissibility and merits and requested an extension until March 3, 1994 to reply to the petitioners' response.

19. On March 3, 1994, the United States reiterated its position that the case did not involve a human rights violation but rather it involved lengthy litigation of land title and land use questions that have been and still are subject to careful consideration by all three branches of the United States Government. The United States also reiterated its argument that the petition was inadmissible pursuant to Article 37 of the Commission's Regulations. In addition, the United States stated that it was in the process of preparing a full response to the petitioners' latest communication in consultation with knowledgeable federal authorities. Moreover, the United

States requested that the Commission grant it an extension of time pursuant to Article 34(6) of its Regulations, until April 4, 1994, in order to complete review and to provide an appropriate response.

20. On April 5, 1994, the United States wrote to the Commission and again reiterated its position on the admissibility and merits of the petition, and requested an extension until April 18, 1994 to reply to the petitioners' response of December 22, 1993. The Commission granted the United States' requests for the three extensions on February 25, and April 15, 1994. On April 18, 1994, the United States forwarded its Reply to the petitioners' response of December 22, 1993. The Commission forwarded the pertinent parts of these letters, and Reply to the petitioners on February 25, and May 13, 1994, respectively. On May 4, the petitioners requested an extension of time to respond to the United States' letters because of ongoing efforts between the Danns and the United States to resolve the case. The Commission granted the requested extension.

21. During the pendency of this case and up to the present, the Commission continued to process the case and forwarded each party's submissions to the other party.

22. On October 10, 1996 a hearing was held before the Commission on the admissibility and merits of the petition. The Danns were represented by the following persons at the hearing: Ms Carrie Dann, one of the victims who testified as to the allegations raised in the petition, Steven v. Tullberg Esq., Robert T. Coulter Esq., attorneys of record and petitioners, and Amstrong Wiggins Esq., attorney.

23. The United States was represented at the hearing on October 10, 1996 by the following persons: Tom Tonkins Esq., Senior Political Adviser to then Ambassador Harriett Babbitt at the United States Mission to the OAS, Daria Zane Esq., attorney with the Department of Justice who argued the United States' position, Mary Jane Sheppard Esq., attorney with the Division of Indian Affairs with the Department of the Interior, Peter Schwartz Esq., Legal Adviser in the Office of Human Rights and Refugees, Department of State., Kathy Ng Esq., Legal Adviser in the Office of Human Rights and Refugees, Department of State.

24. At the hearing before the Commission both parties maintained their positions concerning the admissibility and merits of the petition. In summary, the petitioners informed the Commission inter alia that the United States impounded and sold the Danns livestock on two occasions: 161 horses in March, 1992, and 269 horses in November, 1992. The petitioners also claimed that the land in question is being claimed by a gold mining company, Oro Nevada Mining Company, under a law that permits mining companies to acquire land belonging to the United States for a token payment. In addition, the petitioners claimed that the Oro Nevada has issued a formal notice that it will drill test holes in several areas on the Danns' grazing land, and that all the range land used by the Danns is now subject to actual gold mining claims. The petitioners argued that the case was admissible pursuant to Article 37 of the Commission's Regulations and that the petition was timely filed pursuant to Article 38 of the Commission's Regulations because the Danns' claim to title of their lands is ongoing.

25. The United States argued before the Commission inter alia that the case was inadmissible pursuant to Article 37 of the Commission's Regulations because the Danns had not exhausted

domestic remedies and the case was untimely filed pursuant to Article 38 of the Commission's Regulations. The United States also argued that the Danns' title to the lands had been extinguished by the lengthy litigation in the case in the United States' Courts including the Supreme Court's decision in 1985. In addition, the United States stated that money had been placed in a trust fund for the Danns. The United States argued that the date of final exhaustion of domestic remedies and the final ruling in this case was the date of the dismissal of the Danns' claims by the United States District Court with prejudice on June 6, 1991.

26. At the hearing, the Commission raised a series of questions concerning the case which is reflected in the United States Reply dated February 28, 1997, to the questions. The following questions were asked by the Commissioners to the United States at the hearing held on October 10, 1996:

Question # 1: What is the current status of the award to the Western Shoshones?

27. United States' Reply:[FN5]The United States replied that at the time of final judgment (August 1977) in the Indian Claims Commission matter, the statute provided that the award would be deposited in the registry where it would earn interest until a distribution plan is agreed upon and approved by either the Department of the Interior, if reached within six months, or by Congress, if reached in more than six months. The United States stated that to date no distribution plan has been developed due to the lack of agreement among the various participants and that the issue of distribution has not been any outright rejection of distribution by all participants. The United States maintained that in the meantime, the money is being held in an interest bearing account, and that once a plan is developed, it will be presented to the United States Congress for approval, and once approved, the award including the interest, will be distributed.

[FN5] United States Reply dated February 28, 1997.

Question # 2: What procedure is there in United States law for a taking of property? What is the justification for the taking?

28. United States Reply: The United States replied that under United States law, there are two methods wherein the United States obtains title to property through the exercise of sovereign powers. First, there is what is called a direct condemnation, whereby the United States files a lawsuit to condemn the property of an individual. The United States stated that the condemnation must serve a public purpose, such as a building or a road.

29. The United States maintained that there is also what is called an "inverse condemnation," which occurs when some action by the United States, other than the filing of a lawsuit, results in depriving a private individual of the use of his or her property. The United States stated that this can be caused for instance by the flooding of property in connection with the building and filling of a dam, and that such action of the United States is an official action for a public purpose. The United States claimed that in both instances, just compensation is awarded.

30. The United States contended that the Indian Claims Commission was specifically established to litigate and decide Indian Claims for what amounted to inverse condemnations of tribal property, which occurred during the period when there was a westward movement in the United States. The United States also contended that the United States' Government encouraged individuals to move west, settle on vacant lands and begin to develop the lands agriculturally, and that such action was for the public purpose of encouraging settlement and agricultural development. In addition, the United States claimed that at the same time, with regard to the Western Shoshone, the Indian Claim Commission found that the United States' actions constituted a deprivation of use of lands used by the Western Shoshone which required just compensation and which was awarded.

31. The United States stated that although the Western Shoshones were not able to argue in the Indian Claims Commission's proceeding that the land "should be quieted" in the tribe's name and that the tribe still owned the land, such a bar was not unique to claims by the Native Americans at that time, and that non Native Americans bringing actions claiming an interference with their property faced the same dilemma. The United States argued that it had simply not waived its sovereign immunity and subjected itself to jurisdiction on the title issue, rather, the Danns were required to acknowledge that the lands had been taken and therefore could merely seek compensation. The United States stated that today, it does permit actions to be brought against the United States to quiet title to lands, however, those claims are still subject to limitations and even then, lands of Native Americans are specifically exempted. The United States maintained that even if it does not prevail in such actions it may still choose to retain the lands and pay just compensation.

Question # 3: What is the status of the petitioners' land now? What is the present situation?

32. United States Reply: The United States replied that as set forth above, the petitioners have title, ownership and possession of the lands constituting their ranch patented to their father and additionally, as long as they comply with requirements of the BLM, they are still eligible for a permit to graze their livestock on the public lands. The United States maintained that there has never been an effort by it to remove the Danns from their ranch, and that they are able to maintain the status that was maintained by their father as long as they comply with the permit provisions.

33. The parties' arguments pertaining to the merits of the petition will be included in the report on the merits of the case.

34. On December 9, 1997, attorney Thomas E. Luebben Esq., requested permission to intervene in support of the Danns' case on behalf of the Yomba Shoshone Tribe.

35. On February 6, 1998, the petitioners informed the Commission that S. James Anaya Esq., of the Indian Law Resource Center in Albuquerque, New Mexico has been added as an attorney of record in this case.

36. On February 27, 1998, the petitioners wrote to the Commission and requested a hearing and Precautionary Measures pursuant to Article 29 of the Commissions' Regulations to avoid immediate, grave, and irreparable harm to the Danns. The petitioners stated that the United States' Bureau of Land Management (BLM) issued a series of notices and orders on February 19, 1998, which declared that the Danns and other Western Shoshone people were trespassing on lands, ordered them to remove their livestock and property from the lands and threatened them with fines, imprisonment, impoundment of cattle, and confiscation of property if they failed to comply with the orders. The petitioners claimed that there was an urgent need for the Commission to issue Precautionary Measures because this aggressive Government action enhances the threat to the economic and cultural survival of the Danns and other Western Shoshone.

37. On March 17, 1998, petitioners requested that the Commission permit the Yomba Shoshone Tribe to intervene in support of the Danns' case as a co-petitioner.

38. On March 6, 1998, in response to the petitioners' request for Precautionary Measures, the Commission wrote to the United States and reiterated its request that the United States stay such action pending an investigation by it of the alleged facts.

39. On July 16, 1998, the petitioners wrote to the Commission and informed it that despite the reiteration of its request to the United States the BLM has continued with its trespass actions against the Danns and other Western Shoshone Nation. The petitioners stated that on April 2, 1998, the BLM issued additional orders and decisions against the Danns (copies enclosed for the Commission's information) which demanded and directed them to remove their livestock from the disputed lands and to pay a fine of \$288,191.78 for alleged unauthorized grazing. The petitioners requested that the Commission issue Precautionary Measures pursuant to Article 29(2) of its Regulations.

40. On August 5, 1998, the United States responded to the Commission's letter of March 6, 1998, and inter alia stated that "out of respect for the Commission, the State Department has initiated an interagency dialogue with the relevant Federal agencies to consider further the Commission's request. In the meantime, however, the United States will not hold in abeyance the normal operation of its laws."

41. On June 3, 1999, the petitioners wrote to the Commission and informed it inter alia, that despite earlier requests by the Commission for the United States to stay its actions against the Danns, that Federal officials continued trespass actions against the Danns and other Western Shoshone by issuing additional orders and decisions against them. The petitioners stated that in an effort to defend themselves against the United States' aggressive actions, the Danns appealed the BLM's decisions against them, invoking the relevant domestic administrative procedure. The petitioners stated that on December 18, 1998, the BLM ruled against them.

42. In addition, the petitioners stated that because the Danns were facing the imminent threat of the impoundment of their livestock without further notice, the Danns initiated discussions with the BLM in an attempt to reach an agreement regarding the Danns' use and management of the lands described in the trespass notices. The petitioners stated that the Danns and the BLM

officials had a meeting on January 28, 1999, and the Danns were invited to submit a proposed interim measures agreement which the Danns presented to the BLM on March 28, 1999. The petitioners stated that the Danns proposal to resolve the situation was rejected by the BLM and their proposal was countered with terms that essentially restate the BLM's position, that the Western Shoshone people no longer have rights to their ancestral lands.

43. Moreover, the petitioners stated that on May 28, 1999, only two days after the Danns received the BLM's response to their proposal, it issued a "Notice of Intent to Impound" any "unauthorized livestock grazing upon public land" and that the Notice provided that any impoundment may occur without further notice at any time after five days from delivery of the Notice within a twelve month period. The petitioners requested that the Commission issue Precautionary Measures and stated inter alia that the Notice affects the Dann sisters and most other Western Shoshone communities, and demonstrates the intention of the United States to deprive them of access to and use of their ancestral lands.

44. On June 28, 1999, the Commission forwarded the pertinent parts of the petitioners' Communication dated June 3, 1999, and issued Precautionary Measures against the United States Government pursuant to Article 29(2) of its Regulations. The Commission requested that the United States take the appropriate measures to stay its intention to impound the Dann sister's livestock, until it has had the opportunity to fully investigate the claims raised in the petition.

45. On September 22, 1998, the Yomba Shoshone Tribe forwarded a brief to the Commission which they claim supports the Danns' petition. On September 27, 1999, the Commission was informed that the Yomba Shoshone Tribe wished to intervene as amicus curiae. On September 24, and 27, 1999, the Ely Shoshone Tribe wrote to the Commission and requested to intervene in this case as amicus curiae. On September 24, 1999, the petitioners, on behalf of the Mary and Carrie informed the Commission that they consented to the intervention of the Yomba and Ely Tribes in the case as that of amicus curiae.

III. PARTIES' POSITIONS ON ADMISSIBILITY

A. The petitioners' position

46. The petitioners argue that the petition is admissible. They argue that the Dann sisters have exhausted the domestic remedies of the United States including administrative and judicial appellate processes pursuant to Article 37 of the Commission's Regulations and that the Petition is timely filed pursuant to Article 38 of the Commission's Regulations. In support of their position on admissibility the petitioners claim the following: In 1974, the United States brought a legal action against the Danns in Federal Court in the State of Nevada claiming that it owns the Dann Band lands. The United States asked the Federal Court to require the Danns to pay damages for trespass and requested an injunction to evict the Dann sisters from the Western Shoshone lands where they graze their livestock.

47. The petitioners claim that in the Federal suit against the Danns, the United States argued that Western Shoshone aboriginal and treaty rights to land had been lawfully extinguished by gradual encroachment. The petitioners also claim that the United States argued that the Western

Shoshone aboriginal land rights had been extinguished by another proceeding, an Indian Claims Commission case that was ongoing at the time. In addition, the petitioners claim that in the Indian Claims Commission's case, the United States and the lawyer purporting to represent the Western Shoshone conceded and formally stipulated with the United States that Western Shoshone land rights had been extinguished in 1872. In the Dann's case the United States Government argued that the stipulation reached between the Government and the lawyer in the Indian Claims Commission case was binding against the Dann sisters.

48. The petitioners maintain that the Danns did not authorize and participate in the Indian Claims Commission case, and that many other Western Shoshones attempted for years to be heard in that claim and to stop the extinguishment of their title. The petitioners claim that the Danns mounted a serious legal defense and made a clear record of the injustice and human rights abuses that they are suffering. The petitioners also claim that the Trial judge in the Nevada Federal Court adopted the United States Government's argument. In addition, the petitioners' claim that on appeal to the Federal Court of Appeals, the three judge Federal Court of Appeal rejected it. The Appeal Court ruled that the Danns could not be adversely affected by an Indian Claims Commission case which was ongoing and in which no decision had been reached.

49. The petitioners claim that in 1978, the Federal Court of Appeals[FN6] remanded the Danns' case to the trial court for trial and the Court took no action for four years, and that it seemed to be waiting for the Indian Claims Commission's case to be finally decided. The petitioners maintain that there was a final ruling in the Indian Claims Commission's case on December 12, 1979, and four months later the trial court issued a summary ruling that Western Shoshone title to their aboriginal lands had been extinguished on December 12, 1979 by the same Indian Claims Commission's final judgment. The petitioners also maintain that according to this ruling, the United States Government did not extinguish and acquire title to the Danns' land until five years after it brought the case against the Danns.

[FN6] United States of America v. Mary Dann and Carrie Dann, No. 77-1696, United States Court of Appeals, Ninth Circuit, March 15, 1978.

50. The petitioners maintain that the Danns did not accept the validity of this ruling and appealed to the Court of Appeal, and in 1983, the Court of Appeal once again reversed the trial court's decision and ruled in favor of the Danns[FN7]. The Court of Appeal ruled that Western Shoshone title could not have been extinguished, because even though the Indian Claims Commission case had gone to final judgment, the Western Shoshones had not been paid the money award. The petitioners claim that it took almost ten years of litigation and two rounds of appeals for the ruling in favor of the Danns. However, the United States Government appealed to the Supreme Court of the United States.

[FN7] United States of America v. Nary Dann and Carrie Dann, Nos. 80-4298, 80-4345, United States Court of Appeals, Ninth Circuit, decided May 19, 1983.

51. The petitioners claim that the Supreme Court of the United States ruled[FN8] and upheld the Government's argument that the Western Shoshone had been "paid" the money award from the Indian Claims Commission case, and that this "payment" took place when the Congress appropriated the money and placed it in a U.S. Treasury account controlled by the Secretary of the Interior. The petitioners maintain that the Supreme Court declined to address the Danns' constitutional claims, that there was widespread Western Shoshone opposition to acceptance of the money, and none of the money has been in Western Shoshone hands.

[FN8] 470 U.S. 39 (1985).

52. The petitioners claim that the Supreme Court remanded the case to the trial court for further proceedings. The petitioners maintain that the trial court for the third time adopted the Government's argument that as a result of the 1979 payment of the Indian Claims Commission award, the Danns are precluded from asserting Western Shoshone Indian title. The Danns appealed the ruling to the Federal Court of Appeals. The Court of Appeals affirmed the trial court's decision and adopted the lawyers stipulated 1872 extinguishment date from the Indian Claims Commission case. The Court of Appeals also held that even though the tribal rights of the Western Shoshone could not be further litigated, the Danns might be able to assert "individual aboriginal rights" under United States laws that were in effect before 1934, when the United States promoted homesteading by non-Indians in Nevada. The Court of Appeals returned the case to the trial court once again.

53. The petitioners claim that because the trial court had ruled against the Danns three times and had precluded them from asserting their Western Shoshone national rights, including Western Shoshone treaty rights, which they maintain are the paramount issue, and concluding that their assertion of individual rights would be futile and would undercut the very objectives they had been fighting for, the Danns decided to withdraw all defenses based on individual title claims. The petitioners also claim that the Danns made a statement to the trial court in which they expressed their profound disappointment with the unfairness of the United States courts after sixteen years of mostly unsuccessful efforts to obtain a hearing on their historic Indian rights' claims. In addition, the petitioners claim that the Danns informed the Court and the United States that they would continue to occupy and use their land, despite the courts apparent conclusion that the Danns were now trespassers on the land of their Western Shoshone ancestors.

54. The petitioners maintain that the Western Shoshone National Council and several individual Western Shoshones brought a hunting and fishing rights case raising issues directly related to the legal issues raised by the Danns. The petitioners claim in that case, the Western Shoshone plaintiffs argued that the award and payment in the Indian Claims Commission case could not result in the broad extinguishment of Western Shoshone rights that the United States was asserting. The petitioners maintain that under settled rules of Federal preclusion, the Western Shoshone plaintiffs argued that there should be a right to further litigation of all issues except those matters that were specifically addressed in the Indian Claims Commission's proceedings and award, because the Indian Claims Commission proceeding did not address the

issue of “continuing” Western Shoshone treaty rights, and that issue should not be precluded from litigation in another case.

55. The petitioners maintain that Federal Trial Court ruled against the Western Shoshone plaintiffs in a summary judgment on July 19, 1990. On appeal, the Court of Appeals affirmed that decision. The Western Shoshone plaintiffs petitioned the Supreme Court of the United States for the Courts’ decisions, the Supreme Court denied the petition for review on October 5, 1992. The petitioners argue that the Supreme Court’s denial of the Western Shoshone’s petition, effectively precluded legal redress for all Western Shoshone, including the Danns.

56. The petitioners argue that exhaustion of domestic remedies was completed at the conclusion of *Western Shoshone National Council v. Molini*,[FN9] on October 5, 1992, pursuant to Article 37 of the Commission’s Regulations. The petitioners also argue that the petition is timely filed within six months pursuant to Article 38 of the Commissions Regulations and that the denial of certiorari by the Supreme Court on October 5, 1992, was the date of the final exhaustion in the case and that the Danns situation is “ongoing.”

[FN9] 951 F.2d 200 (9th Cir. 1991), ert. Denied (1992).

57. The petitioners argue that other domestic remedies have been pursued and exhausted. In a letter to the Commission dated June 3, 1999,[FN10] the petitioners maintain that the Danns appealed the United States Bureau of Land Management (BLM) letters and Notices on December 18, 1998, the United States Department of the Interior, the Interior Board of Land Appeals[FN11] ruled against them and held that the BLM may proceed to impound the Danns’ livestock and confiscate their property. The Judgment of the Interior Board of Land Appeals held that “the Decisions of May 26, 1998, and April 2, 1998, finding the Danns, the appellants were ‘in trespass,’ demanding that removal of livestock and improvements, and assessing damages are affirmed.”

[FN10] The pertinent parts of this letter were enclosed and forwarded to the United States Government by the Commission on June 28, 1999, and the Commission issued Precautionary Measures pursuant to Article 29(2) of its Regulations. See Chapter II, of this report entitled “Proceedings Before the Commission.”

[FN11] Interior Board of Land Appeals Decision, December 18, IBLA 98-372.

58. The petitioners claim that the Danns have sought a resolution to this case over the years with representatives from the United States Government. Particularly, petitioners maintain that the Department of the Interior Secretary, the Hon. Bruce Babbitt initiated settlement talks and called a meeting in Denver on January 19, 1994 with Western Shoshone representatives. The petitioners also claim that subsequent meetings took place in Salt Lake City, Utah on March 8, June 28, and September 22, 1994.

59. The petitioners maintain that on January 26, 1999, the Danns were encouraged to meet with the BLM and submit a proposed interim measures agreement, which the BLM rejected, and countered their proposal with terms that essentially restate that the Western Shoshone people no longer have rights to their ancestral lands.[FN12] In addition, the petitioners maintain that on May 28, 1999, only two days after the Danns received the BLM's response to their proposal, the BLM issued a "Notice of Intent to Impound" any "unauthorized livestock grazing upon public land" which may occur without further notice within a twelve month period.

[FN12] Id. See petitioners letter dated June 3, 1999, Proceedings Before the Commission.

60. Moreover, the petitioners argue that the Danns have exhausted the domestic remedies of the United States pursuant to Article 37 of the Commission's Regulations, and that the petition is timely filed pursuant to Article 38 of the Commissions Regulations because it is an "ongoing" situation.

B. The State's position

61. In the United States' Reply to the petition dated September 9, 1993, and its subsequent responses, the United States denies that it has violated the Danns' or the Western Shoshones' human rights pursuant to Articles II, XVII, and XVIII of the American Declaration by taking, or expropriating the Dann band land.[FN13] The United States claims that the Danns' claims do not involve a human rights violation at all, rather, they involve lengthy litigation over land title and land use questions which have been carefully considered by all three branches of the United States Government.

[FN13] These arguments will be included in the report on the merits of the petition.

62. The United States maintains that the Western Shoshone Native Americans did occupy and area that covers a large part of the what is now the State of Nevada. The United Sates claims that historically, the Western Shoshones traveled throughout a large area during the summer months but camped during the winter months. The United States also claim that in the 1800s, more persons in the United States began to move westward to new areas and settle, and that the area within the State of Nevada that was occupied by the Western Shoshones was among these western areas being settled.

63. The United States claims that the title to the land in question was ceded to the United States by Mexico in 1848, subject to occupancy by the Native Americans. The United States maintains that in 1863, it signed a treaty with the Western Shoshone, referred to as the Treaty of Ruby Valley, and that under the Treaty the United States and the Western Shoshones agreed to end hostilities between them and live amicably. The United States claims that subsequent to the treaty with the Western Shoshones it treated certain lands within the area at issue as lands of the United States.

64. The United States claims that the movement westward that had started in the 1800s continued, and that it encouraged settlement and agricultural development of this western part of the United States which includes the State of Nevada. The United States maintains that it encouraged this settlement by giving lands to persons who went to one of these western areas and settled, taking up permanent residence and establishing a farm or ranch and that if the person met certain requirements the United States would give them a patent to the lands, an instrument granting or conveying the public lands to the person.

65. The United States claims that the Danns' father, Dewey Dann, a non Native American, settled in an area of Nevada, established a ranch on the land, and acquired the title to his land from the United States through a patent and used the ranch to raise cattle for sale of beef. The United States maintains that it gave Dewey Dann a permit to graze his cattle on public lands until his death in the 1960s', and that he complied with the permit. The United States claims that it did not interfere with the Danns' grazing of cows under the permit which was originally issued to the father and that the Danns' ranch is located on this patented land. The United States maintains that following the Danns' father's death, the Danns began to graze a greater number of cows than allowed under their father's permit. The United States maintains that this excessive grazing damaged the range and interfered with other ranchers' use of the public lands.

66. The United States argues that the petitioners have not exhausted the domestic remedies of the United States and that the Dann's petition is inadmissible pursuant to Article 37 of the Commission's Regulation. The United States maintains that the BLM tried to work the matter out administratively with the Danns, and that the BLM sent letters and discussed the matter with the Danns, but they refused to remove the excess number of cows. The United States claims that the seizure of the Danns' horses was a law enforcement action aimed at enforcing grazing regulations, not a "taking" which would involve constitutional questions.

67. The United States maintains that as a result of the Danns' continued unauthorized grazing, the BLM, after giving the Danns formal notice of their intention to take action, twice impounded those horses which were in excess of those that were properly permitted. In addition, the United States claims that the Bureau of Land Management impounded 161 horses in March 1992 and 269 horses in November, 1992, all of which belonged to the Danns and that federal grazing regulations allowed the Danns to recover these animals by paying fines, which the Danns have refused to pay. Moreover, the United States maintains that the animals have since been sold in accordance with the regulations.

68. The United States maintains that attempts to resolve the matter were unsuccessful, and as a result it filed a judicial action against the petitioners, the purpose of which was to make the Danns remove the excess numbers of livestock. The United States argues that the United States Supreme Court ruled[FN14] that although the award money had not been distributed, that establishment of the trust account constituted payment and a full discharge of the obligations of the United States for all matters touching the controversy. The United States claims that the Court's opinion made clear that the issue of tribal original title to the lands in question had been resolved by the Indian Claims Commission, however, the opinion specifically stated the Indian

Claims Commission did not resolve questions regarding any individual aboriginal rights the Danns might have.

[FN14] See *United States v. Dann*, 470 U.S. 30 (1985), and 873 F.2d 1189, 1200 (9th Cir.) (“Dann III”), cert. Denied, 493 U.S. 890 (1989).

69. The United States argues that the Danns could still pursue their claims to the land in question in the United States’ Courts based on “individual tribal aboriginal title.” The United States also argues that the petitioners voluntarily chose not to invoke and exhaust the avenue of recourse available to them, which they now seek to exhaust before the Commission.

70. The United States argues that the Danns have failed to exhaust domestic remedies and that the petition is time barred pursuant to Article 38(1) of the Commission’s Regulations, because it was filed more than six months after the final ruling in the case[FN15] which was more than seven years before they filed their petition, and is therefore inadmissible. The United States also argues that the petitioners cannot circumvent the timeliness requirement by alleging a continuing violation of their alleged rights, since they have failed to pursue, much less exhaust domestic remedies on the issue.

[FN15] See *United States v. Dann* 470 U.S. 39 (1985).

71. The United States argues that the petitioners cannot rely on the case of *Western Shoshone National Council v. Molini*,[FN16] to avoid the application of Article 38(1) of the Commission’s Regulations, because that case involved an assertion by the Western Shoshone National Council that their aboriginal and treaty rights to hunt and fish should survive extinguishment of their title to such lands. The United States contend that the “Molini” case is not relevant to the claims of aboriginal title that the Danns asserted but decided to drop, before the United States’ Courts. In addition, the United States contends that even were the “Molini” case or another case was relevant, it would not change the fact that the Danns had an available avenue of recourse – a claim of “individual aboriginal title – that they chose not to exhaust.”

[FN16] 951 F.2d 200 (9th Cir. 1991), cert. Denied, 113 S.Ct. 74 1992.

IV. ANALYSIS

A. Commission’s competence

72. The petitioners claim that the United States has violated their rights pursuant to Articles II, XVII, and XVIII, of the American Declaration. The petition was brought by the petitioners, the Indian Law Resource Center, and Messrs. Steven M. Tullberg Esq., Robert T. Coulter Esq,

and S. James Anaya Esq, attorneys of record, all of whom have standing to present a petition to the Commission pursuant to Article 26 of the Commission's Regulations.[FN17] Therefore, the Commission is competent to examine these petitions pursuant to Article 26 of its Regulations and Articles 18 and 20 of its Statute. [FN18]

[FN17] Article 26(1) of the Commission's Regulations provides: "Any person or group of persons or nongovernmental entity legally recognized in one or more of the member states of the Organization may submit petitions to the Commission, in accordance with these Regulations, on one's own behalf or on behalf of third persons, with regard to alleged violations of a human right recognized, as the case may be, in the American Convention on Human Rights or in the American Declaration of the Rights and Duties of Man."

[FN18] Article 18 of the Commission's Statute refers to the Functions and Powers of the Commission. Article 20 of the Commission's Statute provides: "in relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18:

(a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, AND XXVI of the American Declaration of the Rights and Duties of Man;

(b) to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,

(c) to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

B. Exhaustion of domestic remedies

73. The Commission notes that prior to its communication of June 28, 1999 to the United States, it has argued in its submissions that the Danns could still pursue individual claims of aboriginal title to their lands and chose not to do so. The United States have also argued that the Danns have recast their land title questions as a human rights violation in effort to relitigate issues which have been and should be addressed in a process created by the United States Congress to compensate American Indians for historical wrongs which had been done to them. In addition, the United States has argued that the various allegations raised by the Danns and other Western Shoshone groups regarding this process have been repeatedly reviewed and rejected by the United States Courts, and that the United States Supreme Court ruled unanimously in 1985 that although the award money had not been distributed, establishment of the trust account constituted payment and a full discharge of the obligations of the United States for all matters touching the controversy.

74. The United States has argued that final exhaustion in the Danns case was dismissal of their case with prejudice by the United States District Court in Nevada, upon withdrawal of their claims on June 6, 1991. The United States has also argued that the Danns have not exhausted

domestic remedies pursuant to Article 37 of the Commission's Regulations, and that the Danns cannot rely on the "Molini" case which was decided on October 5, 1992, because it did not pertain to the Danns , since they were not parties to the case.

75. Article 37 of the Commission's Regulations provides:

(1) For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law.

(2) The provisions of the preceding paragraph shall not be applicable when:

(a) the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;

(b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them;

(c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

(3) When the petitioner contends that he is unable to prove exhaustion as indicated in this Article, it shall be up to the government against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition.

76. For the purposes of analysis, the Commission refers to the Inter-American Court of Human Rights Advisory Opinion OC-11/90 on the issue of exhaustion of domestic remedies, in which the Court in construing Article 46(1)(a) and 46(2) of the American Convention[FN19]which is similar to Article 37(1) and 37(2) of the Commission's Regulations stated the following:

Under Article 46(1) of the Convention and in accordance with general principles of international law, it is for the state asserting non-exhaustion of domestic remedies to prove that such remedies in fact exist and that they have not been exhausted (Velásquez Rodríguez Case, Preliminary Objections, supra 39, para. 88; Fairen Garbi and Solis Corrales Case, Preliminary Objections, supra 39, para. 87, and Godinez Cruz Case, Preliminary Objections, supra 39, para. 90.) [FN20]

[FN19] The United States is not a party to the American Convention. Article 46 Article 46 (1) of the American Convention provides that:

Admission by the Commission if a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

(a) that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international Law."

Article 46 (2) of the American Convention provides:

The Provisions of the paragraphs 1(a) and 1(b) of this Article shall not be applicable when:

(a) The domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(b) The party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

(c) There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

[FN20] Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2) and 46(2)(b) American Convention on Human Rights, at 32, para. 41. Advisory Opinion OC -11/90, Series A. Judgments and Opinions, No. 11.

77. The Inter-American Court of Human Rights in the Case of Godinez Cruz Case opined the following on the issue of exhaustion of domestic remedies:

Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the state having the right to invoke it, as this Court has already recognized (see Viviana Gallardo et al. Judgment of November 13, 1981, no. G 101/81. Series A, para. 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective. [FN21]

[FN21] Preliminary Objections, (Judgment of June 28, 1987, Decisions and Judgments No. 3.

78. The Commission notes that the Dann sisters have invoked and exhausted the domestic remedies of the United States both administratively and judicially. This commenced in 1978 when the Danns contested and appealed the denial of their claims by the Federal Trial Court to the Federal Court of Appeals who decided in their favor and which the United States appealed to the Supreme Court, who ruled against the Danns in 1985 and remanded the case back to the United States District Court. The Commission notes that based on the Supreme Court's ruling against the Danns in 1985, the United States District Court entered its judgment against the Danns in 1991 on the trespass charges, because they withdrew all claims to individual aboriginal rights on June 6, 1991, and instead chose to pursue claims based on the aboriginal rights of the Western Shoshone tribe.

79. The Commission notes the lengthy litigation and history of this case in the domestic courts of the United States which can be found in both parties submissions, and also the Supreme Court's decision in the case of Western Shoshone National Council v. Molini.[FN22] The Danns have argued that the final decision of "Molini" was October 5, 1992, and that was the date of final exhaustion of domestic remedies because this was date the United States Supreme Court denial of review of the case occurred. The petitioners have argued that the decision in the "Molini" case effectively foreclosed judicial redress for the treaty claims of the Danns and other Western Shoshones.

[FN22] Id. 951 F.2d 200 (9th Cir. 1991), cert. Denied, 113 S.Ct. (1992)

80. The Commission notes that the petitioners have argued that the petition was filed before the Commission on April 2, 1993, and was therefore timely filed. The petitioners have also invoked and pursued other domestic remedies administratively to enter into negotiations with the United States' Bureau of Land Management throughout the years. This was done in on January 19, 1994, March 8, June 28, and September 22, 1994, and more recently on January 26, 1999. The petitioners have maintained that the Danns and other Western Shoshones are still pursuing political remedies and that the Commission should oversee that process and help to encourage it, pursuant to the Commission's authority to promote a friendly settlement.

81. The Commission notes that the Danns appealed the Bureau of Land Management (BLM) orders and decisions against them and that on December 18, 1998, the United States Interior Board of Land Appeals ruled that the BLM may proceed to impound the Danns' livestock and confiscate their property.[FN23] This information was contained in the petitioners' letter dated June 3, 1999, and the pertinent parts of which were forwarded and included in the Commission's letter to the United States on June 28, 1999, in which the Commission issued Precautionary Measures against the United States pursuant to Article 29(2) of its Regulations.[FN24] The case record does not reflect any submission by the United States in respect of the petitioners' claims which was forwarded to the United States on June 28, 1999 concerning the issue of exhaustion of domestic remedies in respect of the judgment of the Interior Board of Land Appeals, December 18, 1998, [FN25] and renewed attempts made by the Danns on January 26, 1999 to resolve this case.

[FN23] Interior Board of Land Appeals Decision, December 18, IBLA 98-372.

[FN24] See Chapter II Proceedings before the Commission.

[FN25] Id. IBLA 98-372.

82. Moreover, the Commission notes that the Danns initiated discussions with the BLM in an attempt to reach agreement regarding the Danns' use and management of the lands described in the trespass notices, and that subsequent to a meeting on January 26, 1999, the petitioners stated that the Danns were encouraged to present a proposal towards resolving the claims. The Commission notes that on March 28, 1999, based on the petitioners' June 3rd 1999, submissions that the BLM rejected the Danns' proposal to resolve this case, and issued a "Notice of Intent to Impound any unauthorized livestock grazing upon public land which may occur without Notice within a twelve month period."

83. The Commission therefore concludes that based on the foregoing the Danns have invoked and exhausted the domestic remedies of the United States pursuant to Article 37 of its Regulations throughout the years including 1991, 1992, and more recently on December 18, 1998, when the Interior Board of Land Appeals ruled against the Danns when they appealed the BLM'S orders and notices, and on May 28, 1999, when the Danns received a "Notice of Intent to

Impound their livestock” only two days after the Danns’ received the BLM’s response to their proposal of March 28, 1999.

C. Timeliness of petition

84. Article 38 of the Commission’s Regulations provides:

1. The Commission shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted.

85. The Commission notes the parties’ argument concerning the issue of “timeliness” which can be found in Part III of this report in which the petitioners have stated that the decision in the case of “Molini” in 1992, should be taken as the date of the final decision in the Danns’ case. The petitioners have also submitted additional information to the Commission in which it shows the further attempts they made to exhaust domestic remedies by appealing to the Interior Board of Land Appeals which issued its final decision on December 18, 1998. In addition, the petitioners claim that the Danns met with, and submitted a proposal to the representatives of the BLM in order to resolve this case, and that their proposal was rejected in May of 1999. Moreover, the petitioners claim that the situation complained of is “ongoing” and that the Danns have made various attempts to invoke and exhaust domestic remedies.

86. The Commission notes the United States’ argument on the issue of “timeliness” of the petition, prior to the Commission’s communication to the United States of June 28, 1999. The United States has argued in its prior submissions, that the date of the final ruling in the Danns’ case was in 1991, when the United States District Court ruled against the Danns on Trespass charges, after the case was remanded by the United States Supreme Court in 1985 to the District Court. The United States has argued that the Danns’ petition was untimely filed pursuant to Article 38(1) of the Commission’s Regulations, and that the petitioners cannot rely on the case of “Molini,” which did not pertain to the Danns because they were not parties to that case.

87. The Commission refers to several dates which could be taken as the dates when the final ruling occurred. Moreover, the situation complained of in this case is “continuing” and “ongoing.” First, 1991, second on October 5, 1992 , and third on December 18, 1998, when the Interior Board of Land Appeals ruled against the Danns when they appealed the BLM’S orders and notices. Second on May 28, 1999, when the Danns received a “Notice of Intent to Impound their livestock” only two days after the Danns received the BLM’s response to their proposal of March 28, 1999.

88. The Commission therefore concludes in light of the foregoing, that this petition is timely filed pursuant to Article 38(1) of the Commission’s Regulations, based on the Court’s decision, specifically in 1992. The Commission also concludes that the Danns’ complaints, since the decision of 1992, are “continuing” and are “on going” and are not inadmissible by reason of the six-month rule as established by Article 38(1) of its Regulations.

D. Duplication of procedure

89. This petition satisfies the requirement of Article 37 of its Regulations because the information in the record does not reveal that a settlement is pending in another procedure under an international governmental organization of which the State concerned is a member; nor does it essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member, pursuant to Article 39(1)(a) and (b) of its Regulations.

90. Since the exhaustion of domestic remedies and the issue of timeliness of the petition in this case may both involve matters that are related to the merits of the case, the Commission will make a final determination of them when it has the opportunity of deciding the merits report on the present case.

V. CONCLUSION

91. The Commission concludes that this petition is admissible, having satisfied the requirements of Articles 37 and 38 of its Regulations, and that it raises a prima facie violation of a human right, namely Articles II, XVII, XVIII, of the American Declaration of the Rights and Duties of Man. Without prejudging the merits of the petition and the allegations of human rights violations made by the petitioners on behalf of the Dann sisters, the Commission will assess the validity of these claims in the merits phase of its decision.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible pursuant to Articles 37 and 38 of its Regulations.
2. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement in this case.
3. To maintain in effect the Precautionary Measures issued on June 28, 1999.
4. To transmit this report to the United States of America and the petitioners.
5. To make public this report and publish it in its Annual report to the General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 27th day of the month of September, 1999. (Signed): Hélio Bicudo, First Vice-Chairman; Commissioners: Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.