

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 37/01; Case 11.529
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Title/Style of Cause: Jose Sanchez Guner Espinales, Pedro Jose Valle Barrera, Reynaldo Risby Jarquin, Sabu Alvarado Aburto, Mervin Jarquin Brizuela, Leonidas Montes Ortiz, Jose Guadalupe Jarquin Jaime (known as Jaime Jarquin), Moises Antonio Munoz Lopez, Roberto Lopez Jarquin, Jose Orlando Aguilar Ponce, Feliz Humberto Lira Gonzalez, Roberto Oviedo Alvarez, Jose Martin Pena Polanco, Emiliano Marcial Martinez Vasquez, Sergio Diaz Perez, Erwin Antonio Mendoza Huete, Wilfredo Jose Pacheco Castro, Pedro Jose Valle Barrera, Luis Carlos Garcia Obando, Jose Antonio Martinez Loaisiga, Juan Antonio Meneses Velazquez, Angel de Jesús Picado Largaespada, Manuel Ignacio Gonzalez Hernandez, Denis Javier Centeno Mairena, Ernesto Baltodano Brenes, Angel Maria Perez Mendoza (known as Mendoza Perez), Alejandro Apolonio Gonzalez Serrano, Edwin Alvarez Arrieta, Jose Antonio Lopez Ortega (known as Ortega Ramos), Daniel Antonio Ramos Vetania, Edy Jose Fernandez Sanchez, Camilo Adrian Mendoza Medina, Juan Pastor Suasos Ojeda, Placido Domingo Ortiz Barrios, Octavio Antonio Diaz Perez, Reynaldo Risby Jarquin, Faustino Granados Amador, German Antonio Largaespada Jarquin, Leonidas Picado Largaespada, Wilson Socantes Lopez, Guadalupe Francisco Perez Briceno, Marcelino Mendez Gonzalez, Juan Adolfo Martinez Martinez, Rodrigo Antonio Moreno Moreno, Jose Alfredo Talavera Rodriguez, Osmin Hernandez Sanchez, Sergio Mercedes Cordoba Lopez, Rafael Alberto Maradiaga Paez, Jose Antonio Juarez Toval and Narciso Miguel Borda Borda v. Costa Rica

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Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Julio Prado Vallejo, Peter Laurie.

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I. SUMMARY

1. On February 28, 1995, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a complaint against the Republic of Costa Rica (hereinafter the “Costa Rican State,” “the State,” or “Costa Rica”), which was later supplemented

by the petitioners on August 29, 1995. Both communications reported the alleged violation, with respect to 47 Nicaraguan citizens deported from Costa Rica to Nicaragua on February 22, 1995, of rights enshrined in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”),[FN1] including the right to judicial guarantees (Article 8) and that of judicial protection (Article 25). In this report, the Commission studies the case of 46 of these deportees, since the case of Mr. Juan Ramón Chamorro Quiroz (Case N° 11.495)[FN2] was separated and subsequently declared inadmissible by the IACHR, through Report N° 89/00, approved October 5, 2000.

[FN1] Costa Rica ratified the American Convention on Human Rights on April 8, 1970.

[FN2] On August 29, 1995, the Commission separated the case of Mr. Juan Ramón Chamorro Quiroz (N° 11.495) from that of the other alleged victims, including Mr. José Sánchez Guner Espinales, Mr. Pedro José Valle Barrera, Mr. Reynaldo Risby Jarquin and Mr. Sabu Alvarado Aburto. The latter case was reclassified as N° 11.529.

2. The petitioners claim that the 46[FN3] Nicaraguan citizens were captured and immediately deported from Costa Rica to Nicaragua for lack of immigration documents, which in fact prevented them from lodging a complaint or invoking domestic legal remedies before the competent Costa Rican authorities. Moreover, because they were undocumented immigrants, they were unable to return to the country to lodge a complaint regarding the mistreatment to which some of them were allegedly subject and/or to challenge their deportation through judicial channels. According to the petitioners, two of the deportees, José Sánchez Guner Espinales and Sabu Alvarado Aburto, were carrying no documents. In addition, two persons whose names were on the list of those deported (Pedro José Barrera and Reynaldo Risby Jarquin), and who according to some of their companions were severely beaten by the Costa Rican authorities, did not arrive in Nicaragua with the rest of the group, and their current whereabouts are unknown.

[FN3] Mervin Jarquin Brizuela, Leonidas Montes Ortiz, José Guadalupe Jarquin Jaime (known as Jaime Jarquin), Moises Antonio Muñoz López, Roberto López Jarquin, José Orlando Aguilar Ponce, Feliz Humberto Lira González, Roberto Oviedo Alvarez, José Martín Peña Polanco, Emiliano Marcial Martínez Vasquez, Sergio Díaz Pérez, Erwin Antonio Mendoza Huete, Wilfredo José Pacheco Castro, Pedro José Valle Barrera, Luis Carlos García Obando, José Antonio Martínez Loaisiga, Juan Antonio Meneses Velázquez, Angel de Jesús Picado Largaespada, Manuel Ignacio González Hernandez, Denis Javier Centeno Mairena, Ernesto Baltodano Brenes, Angel María Pérez Mendoza (known as Mendoza Pérez), Alejandro Apolonio González Serrano, Edwin Alvarez Arrieta, José Antonio López Ortega (known as Ortega Ramos), Daniel Antonio Ramos Vetania, Edy José Fernández Sánchez, Camilo Adrian Mendoza Medina, Juan Pastor Suasos Ojeda, Placido Domingo Ortiz Barrios, Octavio Antonio Díaz Pérez, Reynaldo Risby Jarquin, Faustino Granados Amador, German Antonio Largaespada Jarquin, Leonidas Picado Largaespada, Wilson Socantes López, Guadalupe Francisco Pérez Briceño, Marcelino Méndez González, Juan Adolfo Martínez Martínez, Rodrigo Antonio Moreno Moreno, José Alfredo Talavera Rodríguez, Osmin Hernandez Sánchez, Sergio Mercedes

Córdoba López, Rafael Alberto Maradiaga Paez, José Antonio Juárez Toval, Narciso Miguel Borda Borda.

3. The State maintains that the petition is inadmissible because Costa Rica's domestic legal remedies have not been exhausted, and holds that in the deportation operation, all applicable domestic and international rules were followed. The State adds that the Nicaraguan citizens who were deported could have challenged the deportation decision by seeking a writ of annulment, filing an appeal, or invoking habeas corpus proceedings, for which Costa Rican law provides ample opportunities. Moreover, the alleged victims could have reported the mistreatment to the competent authorities but did not do so. Nothing prevented the deportees, once in their country of origin, from requesting, through legally established channels, readmission into Costa Rica in order to take the steps necessary to report the incident. The State denies that the Costa Rican authorities assaulted Mr. Pedro José Barrera and Mr. Reynaldo Risby Jarquin and prevented the deportees from collecting their wages and gathering their belongings prior to being deported.

4. Costa Rica also maintains that all questions related to immigration status are matters of national sovereignty.

5. The Commission concludes that it is competent to hear this case and that the petition is admissible under Articles 46(2)(b) and 47 of the Convention.

II. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners report that the Costa Rican State has instituted a practice of deporting undocumented immigrants—particularly those of Nicaraguan nationality—in a manner that violates human rights. The petitioners indicate that on February 22, 1995, in accordance with this practice, Costa Rica deported 47 Nicaraguan citizens, three of whom—Mr. José Sánchez Guner Espinales, Mr. Sabú Alvarado Aburto and Mr. Juan Ramón Chamorro Quiroz,[FN4] had no deportation order. The complainants indicate that the whereabouts of two other Nicaraguans (Pedro José Valle Barrera and Reynaldo Risby Jarquin) whose deportation was reported by the Costa Rican authorities and who, according to some of their companions, had been severely beaten by State agents, are unknown.

[FN4] Given that, as indicated supra, the case of Mr. Chamorro (N° 11.495) was separated and later declared inadmissible through Report N° 89/00, the Commission will, hereafter, refer only to the situation of the other 46 deportees.

7. The petitioners maintain that illegal immigrants captured by the Costa Rican authorities are kept under arrest for several hours before being deported, and that this detention is an administrative measure against which no relief is admitted, not even habeas corpus. In addition, the undocumented immigrants are directly taken from the place of their arrest to the location

where they will be deported, a procedure which is exceedingly summary, takes place almost automatically, and does not allow them access to justice (a material impossibility) to contest their deportation and/or report alleged attacks by State agents.

8. With respect to the argument of the Costa Rican State that the persons allegedly assaulted by its agents did not report these acts—that these are categorized as offenses warranting a public right of action and that a mere report would have been sufficient to initiate action by the Costa Rican criminal justice system—the complainants maintain that,[FN5] no matter how well codified the criminal conduct may be in Costa Rican law, this is of no avail if accessing justice is a “material impossibility.” With respect to the State’s claim that the deportees could have sought reentry to Costa Rica to lodge the relevant complaint, the petitioners indicate that it must be borne in mind that this involves “undocumented” immigrants who, precisely because of a lack of economic means, travel without passports and enter the country illegally.

[FN5] Additional written information from the petitioner, of September 10, 1996, received September 11, 1996.

9. In regard to the State’s argument that the immigration police do not wear uniforms nor are they authorized to carry weapons, the claimants state that the police (rural police, Civil Guard, etc.) who assist the immigration authorities in the capture, detention and expulsion of undocumented immigrants do indeed “wear khaki and carry weapons,” thus there is active participation and, therefore, responsibility, on the part of various State authorities that are not necessarily immigration or police officials. They add that the complaint is based on the violence and attacks by the rural police and on the violations and abuse of power by immigration authorities.

10. The complainants also maintain that Captain Carlos Valverde, a Costa Rican immigration agent, who participated in the deportation operation, did not allow the deportees to gather together their belongings or to collect the wages they were owed prior to being deported. The petitioners add that this is part of Costa Rica’s practice, as mentioned previously, of failing to provide sufficient resources to feed them during the time they are in the process of being deported, not providing transportation to make their deportation more expeditious, and failing to take measures to ensure that they receive their wages and gather their belongings prior to being deported.

11. The petitioners also state that the Head of the Nicaraguan Directorate of Immigration and Nationality made a written protest to the Head of Immigration of Piedras Blancas, Costa Rica, for having failed to request the support of Nicaraguan consular authorities for the entry of the Nicaraguan citizens deported February 22, 1995, pursuant to the relevant agreements signed between the two countries.[FN6]

[FN6] Note of February 22, 1995, from Subcommander Francisco Manuel Alonso, Head of Immigration and Nationality, Region IV, to Mr. Nicolás Talavera, Head of Immigration in Peñas Blancas, Costa Rica.

12. Based on the above arguments, the petitioners maintain that the Costa Rican State violated, with respect to the 46 Nicaraguan citizens deported February 22, 1995, the rights of due process (Article 8(1)), judicial protection (Article 25) and, in the case of two of the deportees (Pedro José Barrera and Reynaldo Risby Jarquin) the right to humane treatment (Article 5) protected by the American Convention on Human Rights.

B. The State

13. The Costa Rican State indicates that on February 22, 1995, in compliance with Article 118 of the General Law on Immigration and Nationality, its authorities carried out an operation to detect and deport all foreigners who had clandestinely entered the country. According to Costa Rica, operations of this kind are conducted in accordance with national and international rules and established procedures. A file is opened for each detainee, who is informed of the deportation order. In addition, notice is given to the consular officials of the countries of origin so they can record the entry of each deportee into their national territory.

14. Costa Rica indicates that the reports given to Nicaragua regarding deportations of Nicaraguan citizens are intended to assist that country's immigration controls, but this does not mean that its authorities are empowered to intervene in Costa Rica's immigration affairs. Moreover, the General Directorate of Immigration and Nationality works closely with the Costa Rican Red Cross in order that the organization can send witnesses to monitor that, in its deportation operations, Costa Rica does indeed respect the deportees' human rights.

15. The State indicates that only some of the names of the alleged victims are mentioned in the complaint, and in no case is the identity card number or any other identifying document provided, making it impossible to correctly identify the individuals. Nor is their occupation, domicile and other descriptive information given that would make it possible to accurately carry out an investigation and analysis of the current circumstances of these persons in regard to the reported actions.

16. As for the remedies available in regard to the deportation decision, the Costa Rican State cites annulment and appeal (Articles 107 through 112 of the General Law on Immigration and Nationality). It adds that these apply:

... in all deportation cases, with the obvious exception of those in which the foreigner entered our territory clandestinely, without observing the rules governing his entry or admission, or when his entry into or continued presence within the country was obtained through false declarations or documents.[FN7]

[FN7] State's written reply of April 25, 1995, page 3. See, in this regard, Article 107 of the General Law on Immigration and Nationality.

17. Costa Rica adds that the remedy of habeas corpus, under Article 48 of the Costa Rican Constitution, which guarantees a person's freedom and physical integrity, was also available. The remedy can be sought by any person, by means of a note, telegram, or other written means of communication, which does not require authentication, and must be substantiated promptly (Articles 18 and 19 of the Law of Constitutional Jurisdiction, Law N° 7135 of October 11, 1989). The State claims that although domestic remedies were available to the alleged victims and although Costa Rican law makes it very easy to seek habeas corpus relief, none of the deportees initiated action before the courts of Costa Rica either on a personal basis, by means of an attorney, or through the Costa Rican consulates operating in Nicaragua, as they could well have done.[FN8] Consequently, the petition is inadmissible, since the alleged incidents can not be considered human rights violations until they have been investigated, judged, and punished by means of the mechanisms available under domestic law which, in this case, have not been exhausted.

[FN8] Under Article 5(f) of the Vienna Convention on Consular Relations, which governs consular functions, the Nicaraguan citizens who were allegedly affected could have filed a complaint at any of Costa Rica's consular offices in Nicaragua. In accordance with that same provision, it would then have fallen to the consular office, acting as an administrative office of the government, to transmit the complaint to the Costa Rican authorities. (See communication of the Government of Costa Rica of February 21, 1997, in reply to a request for information made by the Executive Secretariat.)

18. With respect to the two deportees who were allegedly assaulted by State agents and who, according to the petitioners, have not appeared, the State indicates: (1) that Pedro José Valle Barrera was notified of his deportation at the Immigration offices and left those facilities by his own means; and (2) that Reynaldo Risby Jarquin was also notified at the Immigration facilities, but that upon confirming that he was in the process of regularizing his situation, the deportation proceeding against him was suspended. That person also left the Immigration offices by his own means. In other words, adds the State, both left the custody of the Costa Rican authorities of their own free will and are most likely in Costa Rican territory, though without having resolved their irregular situation or returned to their country of origin.

19. The State indicates that these persons were not even those who referred to the alleged attacks, but rather the accusations were attributed to "some companions," i.e., to unidentified third parties. Moreover, there is not the slightest circumstantial connection with such acts; there is no indication of the authorities responsible for the acts, nor is any evidence offered to lead to a conclusion and corresponding investigation.

20. In terms of the domestic remedies available to Mr. Pedro José Valle Barrera and Mr. Reynaldo Risby Jarquin for the alleged attack, the State maintains that they had the right to

report the incident to the Costa Rican authorities, since all individuals under the State's jurisdiction can, irrespective of their nationality or status (including illegal immigrants), report crimes committed against them or against others, enabling the competent authorities to start an investigation. The actions reported in this case constitute criminal acts, classified as bodily harm and abuse of authority (Articles 329, 123, 124, and 125 of the Costa Rican Penal Code) and should be prosecuted on an ex officio basis. Hence, had the alleged victim simply filed a complaint, either in person or through a representative (Article 153 of the Code of Criminal Procedure), the perpetrators would not have gone unpunished because criminal proceedings would have been begun, the exercise of which is the exclusive domain of the Department of Public Prosecutions and which cannot be interrupted, suspended, or halted until a final judgment is handed down.

21. The Costa Rican State adds that the alleged victims, however, did not report the bodily harm or abuse of authority committed by State agents while they were still in Costa Rica. And, although they were entitled to do so, neither did they request reentry into the country through established legal channels in order to take the steps necessary to report those criminal acts to the competent authorities.

22. As to the costs which could have arisen from this, the State indicates that access to criminal justice in Costa Rica is free and that the associated expense can ultimately be covered through the awarding of procedural and personal costs at trial, in accordance with Articles 543 and 546 of the Code of Criminal Procedure.

23. Regarding the alleged involvement of Captain Carlos Valverde in the deportation, the State indicates that that person does not belong to the country's border police.

24. Costa Rica adds that the Nicaraguan citizens deported on February 22, 1995 had entered that State's territory without proper authorization, without immigration papers, and having eluded the checkpoints located along its border with the Republic of Nicaragua. According to the State, these individuals:

did not meet the minimum requirements set for entry into Costa Rica, and had certainly not acquired one of the immigration statuses granted by the responsible authorities; thus, their situation was one of absolute illegality.[FN9]

[FN9] The Costa Rican State points out that Articles 33 et seq. of the General Law on Immigration and Nationality (Nº. 7033, of August 4, 1986, as amended) regulate the different immigration statuses or classifications under which foreigners can be allowed to stay in the country, either as residents (on a permanent or temporary basis) or as nonresidents. The temporary nonresidents include, inter alia, foreign citizens whose presence has been authorized by the competent authorities in light of particular circumstances; e.g., to perform temporary work on farms or in industry, where the domestic work force is in short supply; such arrangements are formalized by means of special permits or authorizations. The State notes that the alleged victims were not admitted under any such circumstances.

In cases in which the deported foreigner has entered Costa Rican territory illegitimately, clandestinely, and with total disrespect toward our country's laws and sovereignty, the only possible action is his immediate deportation. This government does not recognize the usefulness of beginning proceedings in such cases.

25. The State further holds that all matters relating to immigration status belong to the realm of its national sovereignty, as has been recognized on repeated occasions by domestic and international jurisprudence.

III. PROCESSING BY THE COMMISSION

26. On February 28, 1995, the Inter-American Commission on Human Rights received the corresponding petition, which was later elaborated upon by the petitioners on August 29, 1995. The relevant part of the petition was transmitted to the State on June 15, 1995, giving it a period of 90 days to reply. The case was assigned N° 11.495.

27. On June 29, 1995, the Commission received a note from the Costa Rican State dated April 25, 1995, responding to the complaint. This information was transmitted to the petitioner on July 17, 1995.

28. On August 17, 1995, the Commission received written observations from the petitioner dated August 14 of the same year, the relevant parts of which were transmitted to the State on August 29, 1995.

29. On August 29, 1995, the Commission separated the case of Mr. Juan Ramón Chamorro Quiroz from that of the other deportees, including Mr. José Sánchez Guner Espinales, Mr. Sabu Alvarado Aburto, Mr. Pedro José Valle Barrera and Mr. Reynaldo Risby. The case of Mr. Chamorro continued to be identified as N° 11.495, while the other was duly identified as N° 11.529.

30. On January 17, 1996, the State's comments on the petitioner's observations of January 4 were received. The relevant parts of this communication were sent to the petitioner on January 24, 1996.

31. The petitioners submitted additional information in documents dated February 26 and September 11, 1996. The State also sent additional information on June 13, 1996, and February 21, 1997.

32. On September 9, 1998, the Commission asked the State to supply the 47 deportees' administrative files, together with a copy of a letter sent on February 22, 1995, to the Head of Immigration in Sapoá, Nicaragua, by Mr. Nicolás Talavera, Head of Immigration and Nationality in Peñas Blancas, Costa Rica, containing a list of the names of the individuals deported on that date.

33. On December 24, 1998, the Costa Rican State reported, inter alia, that it had been unable to obtain the alleged deportees' administrative files since the complaint did not provide their names and the General Directorate of Immigration's records did not contain deportation files by date, but only by name. Regarding the request to submit a copy of Mr. Talavera's letter, as described in the previous paragraph, the State reported that it was not possible because Mr. Nicolás Talavera, Head of Immigration in Peñas Blancas, did not keep records of the letters he signed. The relevant parts of this information were transmitted to the petitioners on January 5, 1999, together with a request for their comments. This request was repeated on September 12, 2000.

34. In a letter dated September 19, 2000, received by the Commission on September 20, the petitioners reported that they had reached an agreement with the Nicaraguan Human Rights Center (CENIDH), under which the Center would serve as a joint petitioner before the IACHR in this case. At the Commission's request, the petitioners included a copy of the letter from Nicolás Talavera, Head of Immigration in Peñas Blancas, Costa Rica (which the State had been unable to provide), together with its annex, the list of deportations carried out on February 22, 1995. On September 26, 2000, the Commission sent the State the relevant parts of this document and its annex, giving it a period of 15 days to return its comments on the matter. In that same communication, the Costa Rican State was informed that the Commission had accepted the involvement of the CENIDH as joint petitioner in the case N° 11.529.

35. On September 20, 2000, after receiving the list of Nicaraguan citizens deported on February 22, 1995, the Commission once again asked the State to submit copies of those individuals' administrative files. To this end the State was furnished with a copy of the letter sent on that same date by Mr. Nicolás Talavera, Head of Immigration and Nationality in Peñas Blancas, Costa Rica, to the Head of Immigration in Sapoá, Nicaragua, under which he was sending "45 Nicaraguan citizens, traveling as deportees," together with a list of their full names. The State was provided with this list so it could consult its deportation records which, as it had already reported, were filed by name and not by date, and present the files of the 46 persons deported on February 22, 1995.

36. On November 20, 2000, the State asked the Commission for an extension for submitting the information requested by the Commission on September 9, 1998, a request that was repeated on September 20, 2000. The Commission granted the State an extension of 15 days from November 28, 2000 to submit the information. As of the date on which the Commission approved this report, the State had not submitted the requested information.

IV. ANALYSIS

A. The Commission's Competence *Ratione Loci*, *Ratione Personae*, *Ratione Temporis*, and *Ratione Materiae*

37. The Commission has competence *ratione loci* to examine this petition, inasmuch as it alleges violations of rights protected under the American Convention and occurring within the territory of a State Party.

38. The Commission has competence *ratione personae*, based on the fact that there is legal basis for bringing the complaint against the State, inasmuch as the complaint is directed against a State Party, as envisaged, in a generic fashion, in Articles 44 and 45 of the Convention. This competence derives from the very nature of the inter-American system of human rights protection, by which the State Parties, undertake to respect and ensure the rights and liberties recognized in the Convention (Article 1). At the same time, the Commission has competence *ratione personae*, based on the standing of the petitioners in this case to bring a complaint, under Article 44 of the Convention, which “establishes that any legally recognized non-governmental entity in one or more of the Organization’s member States” may submit to the Commission petitions containing reports or complaints of violation of the Convention on the part of a State Party.

39. The Commission has competence *ratione temporis*, inasmuch as the acts alleged in the petition took place at a time when the obligation of respecting and guaranteeing the rights enshrined in the Convention were in force in Costa Rica, which ratified it on April 8, 1970.

40. Finally, the Commission is competent *ratione materiae* since the petition contains reports of acts which, if proved, constitute violations of Articles 5, 8(1), and 25 of the American Convention.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

41. Article 46(1)(a) of the Convention stipulates that one requirement for a petition to be admitted is that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

42. In the first stage of the processing of this case, the State sought to have it ruled inadmissible on the grounds that domestic remedies had not been exhausted, arguing that there was no proceeding or antecedent to indicate that the alleged victims had tried to exhaust the remedies offered by domestic law or had presented the corresponding complaint.

43. Although the State claimed, at the onset of this case, that the remedies of annulment and appeal were available to the Nicaraguan citizens deported on February 22, 1995, it later made it clear that they had no such right, pursuant to Article 107(b) of the General Law on Immigration and Nationality, since their situation was absolutely illegal—in other words, because they had entered the State’s territory without proper authorization, without immigration papers, and having eluded the checkpoints located along its border with the Republic of Nicaragua.

44. The petitioners’ position is that the alleged victims were not “materially” able to invoke domestic legal remedies or lodge a complaint before leaving the country because they were taken directly from where they were captured to the place where they were deported. According to the petitioners, detaining undocumented immigrants for several hours before deporting them is an administrative measure, taken within highly summary, almost automatic proceedings, that does not allow them the opportunity of filing or attempting to seek any domestic remedy, including

habeas corpus. In addition, since they had no papers and no means of economic support, they were unable to reenter Costa Rica to formulate complaints or invoke the applicable legal remedies, as claimed by the State.

45. Based on the above, and considering the State's own claims as set forth in paragraph 24 of this report, the Commission believes that the victim is exempted from the requirement of exhausting the internal legal remedies of Costa Rica, given the existence of the exception set forth in Article 46(2)(b) of the Convention, which stipulates that paragraphs 1(a) and 1(b) thereof do not apply when:

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

b. Filing Period

46. Article 46(1)(b) of the American Convention states that for a petition to be admitted, it must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

47. However, under Article 46(2)(b), the six-month rule does not apply when the alleged victim has not had access to domestic legal remedies, as happened in the case at hand. Thus, pursuant to Article 46(2)(b) and Article 38(2) of its Rules of Procedure, the IACHR holds that the petition was submitted within a reasonable period of time following the date upon which the alleged rights violation took place.

c. Duplication of Proceedings and Res Judicata

48. Articles 46(1)(c) and 47(d) of the Convention, respectively, set the following requirements for admissibility: that the subject of the petition or communication is not pending in another international proceeding for settlement, and that it is not substantially the same as one previously studied by the Commission or by another international body.

49. The Commission understands that the complaint is not the same as any other petition already examined by it or by any other international body. The Commission therefore concludes that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Nature of the Alleged Incident

50. Article 47(b) of the Convention provides that any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" shall be inadmissible.

51. The Commission believes that the alleged actions, if proven true, could constitute violations of the rights enshrined in Articles 5, 8(1) and 25 of the Convention, in conjunction with the terms of Article 1(1) thereof.

52. Based on the above, the Commission concludes that the requirement stipulated in Article 47(b) of the American Convention has been met.

V. CONCLUSIONS

53. The Commission concludes that it is competent to hear this case and that the petition is admissible under the terms of Articles 46(2)(b) and 47 of the Convention.

54. Based on the foregoing considerations of fact and law, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible, in that it addresses alleged violations, by the State, of Articles 5, 8 (1) and 25 of the Convention, in conjunction with the terms of Article 1 (1) thereof.
2. To give notice of the decision to the parties.
3. To continue with its analysis of the merits of the complaint, and,
4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the twenty-second day of February, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Commissioners: Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo and Peter Laurie.