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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 28/01; Case 12.189
Session:	Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause:	Dilcia Yean and Violeta Bosica v. Dominican Republic
Doc. Type:	Decision
Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	22 February 2001
Citation:	Yean v. Dominican Republic, Case 12.189, Inter-Am. C.H.R., Report No. 28/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by:	APPLICANTS: International Human Rights Law Clinic, the Center for Justice and International Law and the Haitian-Dominican Women's Movement, Inc.

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I. SUMMARY

1. On 28 October 1998, The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a complaint lodged by the International Human Rights Law Clinic (University of California Berkeley, School of Law, Boat Hall), the Center for Justice and International Law (Centro por la Justicia y Derecho Internacional – CEJIL) and the Haitian-Dominican Women's Movement, Inc. (MUDHA) on behalf of Dilcia Yean and Violeta Bosica. In it they maintain that the State of the Dominican Republic (hereinafter "the State" or "Dominican Republic") has denied these two girls citizenship in spite of the fact that both were born within the territory of the Dominican Republic and that the Constitution establishes the principle of jus soli.[FN1]

[FN1] Article 11 of the Political Constitution of the Dominican Republic

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2. The petitioners claim that the Dominican Republic is depriving Misses Yean and Bosica of their basic rights and exposing them to imminent and arbitrary expulsion from their native country due to the fact that they do not have any document that proves their Dominican citizenship. In addition, Violeta Bosica is not allowed to attend school for lack of a birth certificate.

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3. The petitioners allege that by not recognizing Dilcia Yean (4 years of age) and Violeta Bosica (15 years of age) as citizens and by denying them documentation that would verify their Dominican citizenship, the State is violating the right to nationality as enshrined in Article 20 of the American Convention on Human Rights and other rights if the facts as declared can be proven.

4. On 27 August 1999, the Commission adopted precautionary measures on the basis of Article 29 of its Rules of Procedure. This was done to assure that the girls not suffer any irreparable harm, such as both of them being expelled from the Dominican Republic or Violeta Bosica being denied the right to attend school and receive an education like any other child with Dominican citizenship. During the proceedings, the Commission offered its good graces to the Parties to try to reach a friendly solution. Two hearings were held with that aim, but the Parties did not reach agreement.

5. The Dominican Republic maintains that it has acted in accordance with the provisions of domestic law and the American Convention. It claims that the petitioners have not exhausted domestic remedies.

6. In its 110th Session, the Commission examined the statements of fact and of law presented by the Parties during the processing of the complaint and declared the case admissible.

II. PROCEEDINGS BEFORE THE COMMISSION

7. The Commission received the initial petition on 28 October 1998. On 13 June 1999, the petitioners submitted an amended version requesting that precautionary measures be instituted on behalf of Dilcia and Violeta. On 7 July 1999 and in accordance with Article 34 of its Rules of Procedure, the Commission begun proceedings on case 12.189 and requested the Dominican Republic to submit pertinent information within 90 days.

8. On 27 August 1999 and in accordance with Article 29 of its Rules of Procedure, the Commission requested the Dominican Republic to institute precautionary measures on behalf of Dilcia Yean and Violeta Bosica to assure that they would not be expelled from the Dominican Republic and that Violeta Bosica would be able to continue attending school. The Commission gave the State 15 days to submit all pertinent information.

9. On 17 September 1999, the Commission received a request from the State to extend the above-mentioned period. On 30 September 1999, the State submitted its comments, indicating that the petitioners had not exhausted domestic remedies. This information was passed on to the petitioners on 7 October 1999.

10. On 5 October 1999, during its 104th Regular Session, the Commission met with the parties in a hearing in which precautionary measures were discussed. The State announced that the measures requested by the Commission were being carried out. The petitioners stated that the information they had received indicated that the girls had not been deported from the Dominican Republic and that Violeta Bosica was regularly attending school.

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11. On 1 November 1999, the Commission decided to offer its good graces to help the Parties reach a friendly solution. In a letter dated 22 November 1999, the State indicated that it would be willing to undertake such a proceeding. On 11 January 2000, the petitioners also accepted to begin proceedings aimed at a friendly solution as proposed by the IACHR.

12. In a hearing on 6 March 2000, the petitioners outlined their proposals for a friendly solution. The State, however, disputed each and every fact set forth by the petitioners, distancing itself from the friendly solution framework proposed by the IACHR.

13. On 2 May 2000, the petitioners submitted additional information to the Commission, which was in turn remitted to the State on 4 May 2000. The State responded on 7 June 2000 by repeating that domestic remedies had not been exhausted and that Article 47(1)(a) of the Convention should be applied. In accordance with normal procedures, this information was passed on to the petitioners on 7 July 2000.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

14. The petitioners maintain that the Dominican Republic has refused to issue belated declarations of birth to Dilcia Yean and Violeta Bosica, both of whom were born in the territory of the Dominican Republic to Dominican women of Haitian descent.[FN2] The petitioners claim that the State has violated their right to nationality and that deprived of such legal identity, the girls are in danger of imminent expulsion from the country.

[FN2] Dilcia Yean and Violeta Bosica are girls born in the Dominican Republic and their respective mothers are Dominican. Dilcia was born on April 15, 1996 at the Maternidad del Seguro hospital in Sabana Grande de Boyá, District of Monte Plata, Dominican Republic. Dilcia's mother (Leonidas Yean) and her maternal grandmother are Dominican citizens. Violeta Bosica Cofi was born on March 13, 1985 in Sabana Grande de Boyá. Her mother, Tiramen Bosica Cofi, was born in Batey Las Charcas and is a citizen of the Dominican Republic, as is her maternal grandfather, Arnold Bosica.

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15. The petitioners also point out that deprived of the right of having their births registered, the girls are unable to obtain recognition of their legal personality and cannot enroll in school because they have no identity document.[FN3] Moreover, the petitioners maintain that upon coming of age, the girls will not be able to exercise their right to vote and will be deprived of their political rights. The petitioners go on to claim that the State has deprived the alleged victims of the right to the protection of the family, the rights of the child, the right to a name and to nationality, and the rights to private property, to freedom of movement and residence and to equal protection of the law, all enshrined in the American Convention. The petitioners argue that the plaintiffs are being deprived of their rights because of their race and their Haitian descent.

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[FN3] In 1990 at five years of age, Violeta began studies in the local school of Batey las Charcas. Six months later she moved to Batey de Palabé, Monoguayabo, National District. For the next two years she was not allowed to attend school because the school administration demanded that she submit a birth certificate. Violeta attempted to enroll in the local school several times, but was unable to for lack of a birth certificate. Finally she was allowed to attend adult education classes in a school in Palabé.

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16. The petitioners maintain that the offices in charge of processing birth registrations refused to register the girls, saying that they had orders not to register or issue birth certificates to children of Haitian descent. In this regard, the petitioners claim that the official in charge of the Civil Registry pointed out that both the first and last names of the girls were foreign and that they couldn't be registered because their parents were Haitian and thus they also were Haitian. This same official said that when the girls were born, their parents were in the country illegally and thus the girls had no right to Dominican citizenship.

17. The petitioners claim to have exhausted domestic remedies. The respective mothers went to the Civil Administration Office (Oficialía Civil) in Sabana Grande de Boyá to request belated declarations of birth. When the official there refused to issue them, the plaintiffs appealed the decision to the Procurator of the Monte Plata District, who also rejected their applications. This was the final recourse available for obtaining the belated declarations of birth.

B. POSITION OF THE STATE

18. The State holds that domestic remedies were not exhausted in the case under consideration. It adds that there was no refusal to register the girls and that they were told to redirect their efforts to comply with the provisions of the Central Electoral Board (Junta Central Electoral, hereinafter JCE), which is competent body for belated declarations. The State added that the JCE has remained open to the petitioners complying with legal requirements at any stage of the proceedings and that the order issued by the Procurator of the Monte Plata District should not be considered final and irreversible.

19. The State also holds that the girls' mothers must go before the courts of the land to comply with the requirement of exhausting domestic remedies. It maintains that an appeal to the Procurator, who is a representative of the Office of the Attorney General (Ministerio úublico) and not a judge with jurisdiction to rule over legal disputes, is insufficient.

20. The State counters the petitioners' allegations of discrimination, maintaining that the JCE, under which public employees of the Civil Administration work, has never issued instructions that children of Haitian descent are not to be registered.

21. In response to the claim that the girls are in a situation of imminent danger, the State maintains that "Currently there is no possibility of the Dominican Republic repatriating any Haitian who is in the country on a legal basis (such as those who hold legal residence, refugee status, a work permit or a current visa), or who fulfills any of the conditions for tolerance of

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illegal immigrants (such as citizenship with prolonged presence in the country or family links with Dominican nationals).”

22. The State holds that in the case under consideration, the General Office on Migration (Dirección General de Migración) ordered the pertinent departments not to repatriate minors Dilcia Yean and Violeta Bosica, both of Haitian descent and allegedly born in the Dominican Republic, until their claims could be fully checked. The State also reports that the Department of Haitian Affairs was sent orders to issue a certificate allowing the minors to temporarily remain in the country on a fully legal basis while their status was being examined.

IV. ANALYSIS OF ADMISSIBILITY AND COMPETENCE

23. As stipulated in Article 44 of the American Convention on Human Rights (ratione materiae), the Commission has prima facie competence to examine the petitioners’ complaint since the alleged acts concern the right to nationality enshrined in Article 20 of the Convention. The Commission has ratione loci competence since the alleged acts occurred in the jurisdiction of the Dominican Republic, which has been a State Party to the Convention since 7 September 1978. The Commission has ratione temporis competence since the alleged acts were carried out during a period in which the Dominican Republic was under obligation to respect and guarantee the rights enshrined in the Convention.

24. The Commission will now examine if the petition meets the admissibility requirements set out in Articles 46 and 47 of the American Convention.

B. Requirements for Admissibility

a. Exhaustion of domestic remedies

25.Article 46(1)(a) of the Convention stipulates that:

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

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

26. The Commission has repeatedly referred to the “supplemental or complementary” nature of the inter-American human rights protection system. This rule allows states to resolve matters within their own legal framework before being faced with any international proceedings.

27. In the case under consideration, the petitioners claim to have reported the human rights violations to the competent authorities. Nonetheless, the attempted use of domestic remedies did not prove fruitful.

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28. The State, on the other hand, disputes the facts as presented by the petitioners in regard to exhaustion of domestic remedies. The State claims that domestic procedures are still available and thus domestic remedies have not been exhausted.

29. The petitioners claim to have exhausted all remedies available domestically once they applied for belated declarations of birth for Dilcia Yean and Violeta Bosica in Sabana Grande de Boyá, province of Monte Plata, on 5 May 1997. They point out that in order to register the minors, both mothers submitted their identity cards and proof that the girls were born in the Dominican Republic. The petitioners state that after the Civil Registry official refused to authorize issuance of belated declarations of birth for the minors, they appealed the case to the Procurator of the Monte Plata District, requesting him to order that the girls' births be entered in the Civil Registry. On 20 July 1998, the Procurator denied their request, saying that proper documentation had not been provided and that proper procedures had not been followed.

30. The petitioners state that during their attempts to register the girls, they were asked to submit a number of documents that in their opinion were irrelevant to showing that the girls were in fact born in the Dominican Republic. Moreover, they maintain that most Haitian-Dominicans would find it impossible to produce all the documents required.[FN4]

[FN4] The documents that the JCE requires for a belated declaration of birth are:

1. A statement from the mayor (if born in a rural area) or a certificate from the clinic or hospital in which the child was born.
2. A certificate from a church or parish stating that child was or was not baptized.
3. A school certificate if the person is pursuing studies.
4. A certificate from the Civil Administration Offices corresponding to the place of birth.
5. Copies of the identity and voter registration cards of the parents (and if deceased, copies of the death certificates).
6. If the parents are married, copy of their marriage certificate.
7. A sworn statement (Form OC-25) signed by three witnesses over 50 years of age, who have identity and voter registration cards (new identity card) and are capable of signing their names.
8. Copies of the identity and voter registration cards of the witnesses.
9. A letter addressed to the President of the JCE requesting a belated declaration of birth.
10. A letter addressed to the President of the JCE requesting a certificate stating whether or not the person has an identity card. If the person in question has reached 20 years of age, another certificate stating whether or not an identity card has been issued must be obtained at the El Huacalito Building, National District (Old identity card, 2nd floor).
11. Two 2x2 photographs.

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31. The petitioners claim that both mothers are Dominican citizens, as proven by their respective identity and voter registration cards. But they affirm that they cannot meet the requirement of supplying identification for the girls' fathers, both of whom are Haitian and have no contact with them. The petitioners add that the requirement of presenting witnesses over 50 years of age with an identity card and who also know how to read and write is impossible to

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meet. Both girls were born in the "bateyes" where people do not possess identity cards and most are illiterate. In addition, the petitioners claim that the State considers Haitian and Haitian-Dominican workers to fall under the "in transit" category of people established by the Constitution, a category which denies Dominican nationality to their children.[FN5]

[FN5] Article 11 of the Dominican Constitution stipulates that "All persons born in the territory of the Republic are Dominicans, except the legitimate children of foreigners residing in the country as diplomatic representatives or of foreigners in transit."

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32. The petitioners hold that the girls' mothers took the initiative to present their request directly to the Procurator since his function is to oversee and report on errors made by Civil Registry officials.[FN6]

[FN6] Article 9 of Law 659 on Acts of the Civil Administration states that officials of the Civil Administration must follow the instructions of the JCE and the Civil Administration Office, and that they are under the immediate and direct oversight of the Procurators.

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33. The petitioners claim that in domestic law there is no provision allowing a private party to appeal a decision of the Procurator to a Court of First Instance. According to Law 659 on Acts of the Civil Administration, it is the Procurator who is charged with presenting belated declarations to the Court of First Instance and in the case under consideration, that was never done.

34. In regard to possibly appealing to the JCE, the petitioners maintain that in domestic law there is no procedure for applicants to file individual cases before the JCE in regard to denial of a belated declaration of birth. Moreover, petitioners hold that an appeal to the JCE is not an effective recourse since the JCE has made its opinion known[FN7] by declaring that the documents submitted by the mothers were not sufficient and for that reason they had not granted the birth certificates. Lastly, the petitioners hold that they are not required to appeal to the JCE since it is not a body of judicial recourse.

[FN7] In response to a request for information submitted by the Office of the Secretary of State for Foreign Affairs, the JCE stated on 27 September 2000 that it was not in charge of the case during the complaint procedure and that the documents submitted to the Civil Administration Office were not sufficient to proceed with the issuance of belated declarations. They added that the applicants could redirect their efforts by complying with the JCE provision establishing the requirements for belated declarations of birth.

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35. The petitioners maintain that the JCE and the Dominican courts do not offer effective remedy. They hold that any appeal to the JCE is a purely illusory remedy since that body will not

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consider registration requests that do not include the mandatory documentation, which the petitioners claim is impossible to provide. The petitioners maintain that domestic legislation does not confer the JCE with jurisdiction to hear individual cases previously handled by the Offices of Civil Administration. They add that the impossibility of appealing a decision of the JCE, which denied the girls their request for birth certificates, effectively means that all domestic remedies have been exhausted. [FN8]

[FN8] Article 6 of the Elections Law specifies that decisions of the JCE cannot be appealed. In addition, the Supreme Court of Justice has said that JCE decisions cannot be annulled, modified or substituted through actions undertaken by any other State institution. Only the JCE itself can do so.

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36. The State holds that the documents required for the issuance of a belated declaration of birth apply equally to all persons and that there is no discrimination on the basis of the parents' heritage. In this regard, the State maintains that the affected parties were informed at all times of the requirements for obtaining the kind of declaration they wanted. The State notes that when applying for a belated declaration of birth in the Office of Civil Administration in Sabana Grande de Boyá, the mother of Violeta submitted only a certification of birth issued by the mayor of Batey Las Charcas and her own identity and voter registration cards, while Dilcia's mother submitted only a certification of birth issued by the Sabana Grande de Boyá health clinic and her own identity card. The State considers such documentation to be insufficient to issue a declaration.

37. The State maintains that the JCE has still not issued a final decision, that the case is still open, and that the plaintiffs can still register the minors in question by complying with the requirements established by law.

38. The State also maintains that the plaintiffs have not sought remedy before the regular courts and that the Procurator, to whom they went to apply for a belated declaration of birth, is a representative of the Office of the Attorney General and not a judge. They thus argue that domestic remedies have not been exhausted. Moreover, the State holds that the Procurator incurred in a procedural error when accepting the appeal filed by the mothers of the alleged victims. They point to Article 41 of Law 659 which stipulates that it is the Civil Registry official who shall send a certified copy of the file to the Procurator of the Court District.[FN9] The State argues that the Procurator rejected the application for a belated declaration of birth on the basis of documental and procedural shortcomings. The State thus maintains that the JCE has not yet made any final decision in this case.

[FN9] Article 41 of Law 659 on Acts of the Civil Administration stipulates that, "The Civil Administration official who has received a belated declaration of birth will immediately send a certified copy of the file to the Procurator of the corresponding Court District, who shall investigate the case and then remit it to the Court of First Instance. In his investigation, the Procurator may seek any and all evidence. He may consult books and registries, request papers

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pertaining to the parents (even if deceased), hear witnesses and summon the concerned parties to appear before him in order to decide whether or not to grant the belated declaration. The Procurator will remit a copy of his decision to the Civil Administration official …"
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39. An examination of Dominican legislation in the possession of the Commission shows that the petitioners lack the authentication needed to initiate a court case since they must request the Procurator to do so according to Article 41 of Law 659. Moreover, examination of submissions shows that the Procurator did not authorize the judge of first instance to initiate an investigation on whether belated declarations of birth should be issued to Dilcia Yean and Violeta Bosica, as stipulated in Article 41 of law 659.

40. Jurisprudence in the inter-American system has established that a State claiming that domestic remedies have not been exhausted must show that suitable and effective remedies exist (onus probandis incumbit actoris) for reparation of the alleged violations,[FN10] or failing that, the State must explain what remedies should be exhausted or why they have not been effective. In the case under consideration, the State has not clearly shown what suitable and effective remedy or remedies exist that should have been exhausted by the petitioners.

[FN10] In this regard the Inter-American Court of Human Rights, in the Preliminary Exceptions of the Velásquez Rodríguez Case, said, "A State claiming non-exhaustion is responsible for pointing to what domestic remedies should be exhausted and their effectiveness." Judgment of 26 June 1987, Paragraph 88.
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41. The Commission notes that, in effect, the State has not proven that there is a suitable remedy capable of changing administrative decisions handed down by the Procurator or by the JCE. Neither has the State countered the petitioners' claims that there are no mechanisms that would allow the plaintiffs to proceed with a direct appeal.

42. For the above-mentioned reasons, the Commission considers the petitioners to have exhausted the remedies expressly provided for in current domestic law, in accordance with Article 46(1) of the American Convention. Moreover, there are no suitable domestic remedies available that need to be exhausted before resorting to the international level and thus the exception to exhaustion of domestic remedies provided for in Article 46(2)(a) is to be applied in this case.

43. In this regard, the Inter-American Court of Human Rights has pointed out:

When certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the remedies not being effective or due process of law not being afforded, the implication is not only that the harmed party is not obligated to file for such remedies, but that the State is violating anew the obligations it has under the Convention. In such circumstances, the question of domestic remedies draws very close to the merits.[FN11]

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[FN11] Inter-American Court of Human Rights, Preliminary Exceptions, Velásquez Rodríguez Case, Judgment of 26 June 1987, Paragraph 91.
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44. The Commission believes that in the case under consideration, exhaustion of domestic remedies is closely linked to the merits since the State has the obligation to provide for effective judicial remedies, in accordance with the American Convention. Thus the aspects of this case related to the effectiveness of domestic remedies will be examined along with the merits.

45. Taking into consideration all the elements examined, the Commission deems that the admissibility requirement on exhaustion of domestic remedies as stipulated in Article 46(1)(a) of the American Convention has been met.

b. Timeliness of Petition

46. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible, 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. The Commission notes that the petitioners appeared before the Commission within the period stipulated in Article 46(1)(b) of the Convention. The Procurator's decision was made on 20 July 1998 and the petition was lodged with the Commission on 28 October1998.

48. In consequence, the Commission deems that the admissibility requirement contained in Article 46(1)(b) of the Convention stipulating that a petition must be lodged within six months has been met.

c. Duplication of Procedures and Res Judicata

49. Article 46(1)(c) stipulates that for a petition or communication to be admitted by the Commission, the subject of it cannot be pending in another international proceeding. Article 47(d) stipulates that the Commission shall declare inadmissible any petition or communication that is substantially the same as one previously studied by the Commission or by another international organization.

50. From the submissions of the parties and documents on file it can be ascertained that the petition is not pending in another international proceeding or settlement, and that it is not substantially the same as one previously studied by the Commission or by another international organization. The Commission thus deems that the admissibility requirements contained in Article 46(1)(c) and 47(d) of the American Convention on Human Rights have been met.

d. Characterization of the Alleged Facts

51. The Commission deems that, in principle, the acts outlined in the petitioners' statement of fact, if proven, could be characterized as a violation of the rights guaranteed by the American

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Convention. The Commission believes that the allegations of violation of the right to nationality and the lack of suitable and effective domestic remedies must be examined during consideration of the merits of the case.

V. CONCLUSIONS

52. In virtue of the above considerations, the Commission concludes that the petition complies with the requirements of admissibility set forth in Articles 46 and 47 of the American Convention on Human Rights. Thus the Commission is competent to hear case No. 12,189.

53. Based on the arguments of fact and of law outlined above, and, without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare this case admissible with regard to the alleged violation of the right enshrined in Article 20 of the American Convention on Human Rights.
2. Defer consideration of the other rights invoked by the petitioners until examination of the merits of the case, if the facts are proven.
3. Notify the parties of this decision.
4. Continue with the analysis of the merits of the case.
5. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights on the 22nd day of February 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairwoman; Commissioners: Hélio Bicudo, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.