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REPORT Nº 6/02

ADMISSIBILITY

PETITION 12.071

120 CUBAN NATIONALS AND
8 HAITIAN NATIONALS DETAINED IN
THE BAHAMAS
February 27, 2002

I. SUMMARY

1. This Report concerns a petition which was presented on August 13, 1998, to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") by the Center for Justice and International Law (CEJIL) and the Open Society Institute (hereinafter referred to as "the Petitioners") on behalf of 120 Cuban nationals and 8 Haitian nationals (hereinafter referred to as "the victims") who were detained by the Commonwealth of The Bahamas (hereinafter referred to as "The Bahamas" or "the State") at the Carmichael Road Detention Center, Nassau, in The Bahamas. The Petitioners alleged that the State violated the victims' rights guaranteed by the provisions of the American Declaration of the Rights and Duties of Man (hereinafter referred to as "the American Declaration" or "the Declaration").

2. The Petitioners state that many of the victims who have legitimate claims to assert their right to refugee status in The Bahamas were unable to do so because the State does not make processes available whereby the victims could present their claims of refugee status to the State. The Petitioners argue that the victims should be excused from exhausting domestic remedies, and contend that the domestic legislation of The Bahamas does not provide due process, because the victims have been denied access to domestic remedies in The Bahamas. According to the Petitioners, the State does not have domestic procedures in place whereby asylum seekers can assert their claims or pursue release while their claims to refugee status are pending.

3. The Petitioners allege that the State's failure to provide available processes to the victims to assert their claim of refugee status, and the arbitrary detention and treatment of the victims in detention constitute violations of Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article V (right to protection of honor, personal reputation and private and family life), Article VI (right to a family and protection thereof), Article XVII (right to protection for mothers and children), Article XVIII (right to recognition of juridical personality and civil rights), Article XXV (right to a fair trial, judicial protection), Article XXVII (right to protection from arbitrary arrest) and Article XXVIII (right to asylum) of the American Declaration. In addition, the Petitioners maintain that The Bahamas is also in violation of Article 33 of

the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Based on the foregoing reasons, the Petitioners requested that the Commission issue precautionary measures pursuant to the Article 29 of its former Regulations [1] against the State to prevent irreparable harm to the victims.

4. As to the admissibility of the petition, the State argues that the domestic remedies of The Bahamas have not been invoked and exhausted as required by the provisions of Article 37 of the Commission's former Regulations.

5. The Commission decides to declare Articles I, I, II, V, VI, VII, XVII, XVIII, XXV, and XXVII of the Declaration admissible pursuant to Articles 31, 32, 33, 34, and 37 of its Rules of Procedure.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The Petitioners presented the petition to the Commission on August 13, 1998, and subsequent communications which have been consolidated and is referred to as "the petition" for the purposes of this Report. In their August 13, 1998, petition, the Petitioners requested that the Commission issue precautionary measures pursuant to the former Article 29 of its Regulations[2] against the State to prevent irreparable harm to the victims. In addition, the Petitioners sought relief from the Commission by asking it to do the following:

The Commission should request that the State temporarily suspend all deportations of Cubans to Cuba;

- b. The Commission should insist that the State implement written and established procedures for determination of refugee status that comply with international standards; and
- c. The Commission should also include a time limit within which the above steps must be taken so as to avoid unnecessarily prolonged detention at the Carmichael camp, because the conditions are clearly inappropriate for prolonged detention.

7. In an August 14, 1998, communication, the Petitioners informed the Commission *inter alia* that "The Nassau Guardian," a newspaper located in The Bahamas, reported in an article that the State returned 65 Cubans to Cuba.

8. On August 14, 1998, the Commission sent a communication to the State informing it that it had received information in relation to the victims concerning the claims raised in the petition. The Commission indicated to the State that based on the information presented to it, and to avoid irreparable harm to the victims that it was issuing precautionary measures pursuant to Article 29 of its Regulations. In issuing the precautionary measures to the State, the Commission requested that the State stay the deportation of the Cuban nationals from The Bahamas to Cuba, until it has had the opportunity to investigate the claims raised in the petition. In addition, the Commission asked the State to provide it with information concerning the status of the Cuban nationals, and the allegations raised in the petition. The Commission also sent a communication to the Petitioners informing them of the precautionary measures issued and its request for information from the State.

9. On September 11, 1998, the Commission reiterated its request to The Bahamas for information concerning the precautionary measures issued and its request for information concerning the status of the victims.

10. The Petitioners wrote to the Commission on September 30, 1998,

informing the Commission *inter alia* that on August 18, 1998, that the State repatriated 47 Cubans who had been detained at the Carmichael Road Detention Center, and that this number was in addition to the 65 Cubans who were repatriated on August 11, 1998. The Petitioners stated that The Bahamas conducted these repatriations, notwithstanding the issuance of precautionary measures by the Commission to prevent irreparable damage to the victims, and its request for information as to the status of the victims. The Petitioners claimed that the State was ignoring the Commission's requests. The Petitioners also reported that of the initial 120 Cubans, that there were 72 Cubans still remaining at the Carmichael Road Detention Center. The Petitioners asserted that the State has not demonstrated that it has undertaken any efforts to accord these individuals due process to determine their status as refugees, and reiterated their request for precautionary measures. In addition, the Petitioners asked that the Commission request from the State the following:

- (i) To request that The Bahamas temporarily suspend all deportations.
- (ii) To reassert its request for information to the State on the status of the 120 Cuban nationals detained at the Carmichael Detention Center, in particular, Alexis Perez Ricardo, Hector Jurto Sanchez, Manuel Ramon Reyes Lamela and Lazaro de la Riva Suarez.

To ask The Bahamas for a list of the names of the 120 Cubans who were detained at the Carmichael Detention Center on August 13, 1998, including information as to whether any of them are still at the Center or, if they are no longer there, and the date and manner of their repatriations.

- (iv) To request that the State provide the Commission with a copy of the pertinent administrative and/or judicial laws, procedures and regulations in place for determining refugee status and a copy of the Treaty and Protocol between The Bahamas and Cuba regarding the expedited repatriation of Cuban nationals.
- (v) To include a time limit within which the State would comply with the Commission requests in (I) to (iv) above.

11. In a communication dated October 15, 1998, the Commission wrote to the State and referred to its communications to the State of August 14, and September 11, 1998, concerning the issuance of precautionary measures, and its request for information concerning the status of the victims. The Commission also informed the State that it had not received responses from The Bahamas in respect of these communications. In addition, the Commission requested that the State provide it within information within one week of the following:

- a. Information concerning the 120 Cuban nationals detained in The Bahamas, and in particular, information concerning Alexis Perez Ricardo, Hector Jurto Sanchez, Manuel Ramon Reyes Lamela and Lazaro de la Riva Suarez.
- b. A list of the names of the 120 Cubans who were detained at the Carmichael Road Detention Center on August 13, 1998, also information as to whether any of them are still at the Center or, if they are no longer there, information about when and how they were repatriated.

A copy of the pertinent administrative and/or judicial laws, procedures and regulations in place for determining refugee status, and a copy of the Treaty and

Protocol between The Bahamas and Cuba regarding the expedited repatriation of the Cuban nationals.

12. On October 23, 1998, the State responded to the Commission's requests for information concerning the 120 Cuban nationals who were detained at Carmichael Road Detention Centre, and provided the Commission with a list of their names, status, location, and in particular Alexis Perez Ricardo, Hector Jurto Sanchez, Manuel Ramon Reyes Lamela and Lazaro De La Riva Sanchez, and a copy of the Treaty and Protocol between The Bahamas and Cuba.

13. On October 26, 1998, the Petitioners wrote to the Commission and informed it that despite the Commission's clear mandate in issuing precautionary measures on August 14, 1998, against The Bahamas, nevertheless, the State repatriated 47 Cubans who had been detained at the Carmichael Road Detention Center. The Petitioners claimed that the repatriated victims were individuals who had been interviewed by their attorneys, and had presented colorable claims to refugee status. In addition, the Petitioners stated that the State had repatriated 89 victims from The Bahamas to Cuba on October 22, 1998, which was in complete disregard of the Commission's precautionary measures to the State to stay further deportations. The Petitioners also requested that the Commission:

Remind the Bahamian Government of its obligation to stay the deportations of the Cubans pursuant to the issuance of precautionary measures.

Reassert its request for information from the Bahaman authorities concerning the status of Individuals detained at the Carmichael Road Detention Centre including Alexis Perez Ricardo, Hector Sanchez, Manuel Ramon Reyes Lamela, and Lazaro De la Riva Suarez whom we specifically named in our Request for precautionary measures.

Request from the Bahamian government a copy of the pertinent administrative or judicial laws, procedures, and regulations in place and in practice for determining refugee status, and a copy of the Agreement and Protocol between The Bahamas and Cuba regarding the expedited repatriation of Cuban nationals, and include a time limit within which the above steps must be taken.

14. On December 10, 1998, the Petitioners submitted additional information, and their arguments in relation to the admissibility of the petition including exhaustion of domestic remedies and the alleged violations of the American Declaration, including supporting authorities to substantiate their arguments.

15. On December 16, 1998, the Commission opened a case and forwarded the pertinent parts of the petition to the State pursuant to Article 34 of its former Regulations.[3]The Commission also requested that the State provide it with information concerning the exhaustion of domestic remedies as established by Article 37 of its former Regulations, and the allegations raised in the petition within 90 days.

16. On March 31, 1999, the Petitioners wrote to the Commission and stated that since the State has failed to provide information as requested by the Commission within 90 days, that the Commission should apply Article 42 of the Commission's former Regulations[4]and presume the veracity of the facts as presented in the petition. The Petitioners also requested a hearing before the Commission at its 104th Regular Session which was to be held from September to October 1999. The Commission forwarded the pertinent parts of the Petitioners' communication to the State for its comments and observations, if any, within 30 days.

17. The State requested a 30 day extension from the Commission to respond to the petition on April 7, 1999. On April 12, 1999, the Commission granted

The Bahamas the 30 day requested extension. The Commission also informed the Petitioners that it had granted the State at its request, an extension of 30 days to respond to the petition.

18. On July 26, 1999, the State forwarded its Reply to the petition pertaining to the issue of exhaustion of domestic remedies as required by Article 37 of the Commission's former Regulations, and did not address the issue of the merits of the petition. The Commission forwarded the pertinent parts of the State's Reply to the Petitioners on August 23, 1999, and requested that the Petitioners provide the Commission with its observations or comments, if any, within 30 days of receipt of its communication. On August 23, 1999, the Petitioners wrote to the Commission and reiterated their request for a hearing at the Commission's 104th Regular Session.

19. On August 30, 1999, the Commission wrote to both the State and the Petitioners informing them that a Hearing had been granted for them to appear before it at the Commission's 104th Regular Session on Friday October 1, 1999.

20. The Hearing was held before the Commission on August 30, 1999, and both the Petitioners^[5] and the State were represented.^[6] At the hearing the Petitioners addressed the issue of exhaustion of the domestic remedies of The Bahamas and the merits of the petition. The State addressed the issue of exhaustion of domestic remedies and denied the allegations raised in the petition.

21. On August 24, 2000, the Petitioners requested a hearing from the Commission at its 108th Regular Session because they claimed that the State had not provided the Commission with the pertinent information and that the situation faced by the refugees continued to be worrisome. On September 12, 2000, the Commission informed both parties that it had granted a Hearing on the admissibility and merits of the petition at its 108th Regular Session, on October 12, 2000.

22. On September 20, 2000, the State forwarded its Reply on the merits of the petition and other documentation, pertaining to its procedures in assessing refugee claims and status. The Commission sent the pertinent parts of the State's Reply and pertinent documentation relating to the State's procedures for evaluating claims from persons claiming refugee status to the Petitioners on September 21, 2000, and requested that they provide it with their observations and comments, if any, within 30 days.

23. On October 11, 2000, The Bahamas sent a communication to the Commission informing it that it would not be represented at the Hearing scheduled for October 12, 2000. The State also requested that the Commission forward to it the Petitioners response to its Reply on the merits of petition.

24. On October 12, 2000, a Hearing was held before the Commission at which the Petitioners were present. The State did not appear at the Hearing. The Petitioners presented their response to the State's Reply to the merits of the petition. At the Hearing the Commission offered to use its good offices to facilitate friendly settlement negotiations between the parties. The Commission forwarded the Petitioners' response to the State's Reply to the petition, on October 24, 2000, and requested that it provide its observations or comments, if any, within 30 days of receipt of the same.

25. On November 20, 2000, the Commission wrote to both the State and the Petitioners informing them that it wished to place itself at the disposal of the parties concerned with a view to reaching a friendly settlement in the case on the basis of respect for the human rights recognized in the American Declaration and the Rights of Duties of Man.

26. The Petitioners wrote to the Commission on December 19, 2000, informing it that it wished to accept the Commission's offer to initiate friendly settlement negotiations between the parties. The pertinent parts of the Petitioners' communication concerning its willingness to enter into friendly settlement negotiations with the State were forwarded to The Bahamas.

27. On June 13, 2001, the Petitioners wrote to the Commission and stated that because the State appeared not to be interested in pursuing friendly settlement negotiations in the case, they were requesting that the Commission admit the petition and declare that The Bahamas has violated Articles of the American Declaration, namely, Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article V (right to protection of honor, personal reputation and private and family life), Article VI (right to a family and protection thereof), Article XVII (right to protection for mothers and children), Article XVIII (right to recognition of juridical personality and civil rights), Article XIX (right to a fair trial), Article XXV (right to protection from arbitrary arrest) and Article XXVII (right to asylum).

III. PARTIES POSITIONS ON THE ADMISSIBILITY OF THE PETITION

1. The Petitioners' Position

a. Petitioners Claims[7]

28. The Petitioners indicate that The Bahamas is a small island country with approximately 260,000 citizens, and that over the years, because of its geographic location, The Bahamas has experienced an increasing influx of hundreds of asylum seekers from several countries, primarily Haiti and Cuba. The Petitioners maintain that the majority of these asylum seekers are intercepted at sea, either by the United States Coast Guard sometimes in United States' waters, or by the Bahamian Coast Guard and thereafter are sent to Nassau where they are arbitrarily detained at the Carmichael Road Detention Center.

29. The Petitioners claim that during the second week of July of 1998, they (CEJIL) conducted a fact-finding mission in The Bahamas to learn more about the plight of these asylum seekers. The Petitioners state that at the time of their visit there were approximately 300 persons detained at the Carmichael Road Detention Centre, and that among the 300 persons, approximately 120 were Cubans, 100 were Haitians, and 80 were of varying other nationalities from Africa, Central, South, and North America. The Petitioners inform that they were able to secure information on 38 Cubans and 8 Haitians either orally, or through a written questionnaire. The Petitioners allege that all of the Cubans interviewed cited their opposition to the Castro regime and/or their desire for freedom as reasons for leaving. The Petitioners identified the 38 Cubans as follow:

- | | |
|---------------------------------|-----------------------------------|
| 1. Manuel Ramon Reyes Lamela | 20. Felix Infante Garcia |
| 2. Hector Jurjo Sanchez | 21. Manuel Vazquez Lopez |
| 3. Alexis Perez Ricardo[8] | 22. Ayle Machado Machado |
| 4. Julio Oscar Bacallao Cristin | 23. Iran Machado Machado |
| 5. Benedicto Graz Cuenca[9] | 24. Cesar Leon Ramos |
| 6. Irel Broche Noa | 25. Juan Manuel Ramos Rodriguez |
| 7. Misnel Concepcion Portal | 26. Lazaro de La Riva Suarez |
| 8. Osbel Valle Hernandez | 27. Juan F. Osatorres Aviles |
| 9. Misael Santana Escobar | 28. Armando Veliz Ramos |
| 10. Luis Bu Jimenes[10] | 29. Fidel Pastor Narango Guevara |
| 11. Julian Noa Gonzalez | 30. Pedro Antonio Comos Rodriguez |

- | | |
|--|---------------------------------|
| 12. Alfredo Pinero Benavides ^[11] | 31. Yosvany Cartay Feria |
| 13. Helmer Rodriguez Sanchez | 32. Orlando Cartay Feria |
| 14. Osmaidy Garcia Tamayo | 33. Geraldo Miguel Sales |
| 15. Jesus Cabrera Mas | 34. Jorge L. Sotolongo Cordovas |
| 16. Jesus Perez Torna | 35. Orlando J. Castro Rodon |
| 17. Ricardo Garrido Hortas | 36. Juan Uzatorres |
| 18. Osvaldo Raimundo de Leon
Alpizar | 37. Amilkar Lopez |
| 19. Demetrio O. Rivero Cuetaja | 38. Junior Lopez Reyes |

30. The Petitioners claim that many of the victims who were interviewed have legitimate claims to assert their right to refugee status in The Bahamas, however, they were unable to do so. The Petitioners maintain that the State does not make processes available whereby the victims could present their claims of refugee status to the State. According to the Petitioners, they conducted 38 interviews with the victims and that 18^[12] of the 38 Cubans made specific references to political persecution as their reason for fleeing Cuba and had strong and well-substantiated claims for refugee status since they feared torture or death if they were returned to Cuba based on their defense of human rights and their involvement in an opposition party. The Petitioners report that many of the victims who were interviewed traveled with family members, including small children.

31. The Petitioners contend that the 8 Haitian nationals who were interviewed came from rural areas of Haiti where government entities such as police forces and court systems, and other necessary infrastructure have either ceased to exist or exist on an ad hoc basis. The Petitioners also maintain that the 8 Haitian nationals cited the lack of government protection and intervention as the reason for their departure from Haiti. The names of the 8 Haitian nationals interviewed are:

1. Jean Eli
2. Girard Jean-Jacques
3. Joseph Timothe
4. Walner Florestal
5. Serandieu Massillon
6. Abadi George
7. Natusha Joseph
8. San Voir Jean-Baptise

32. The Petitioners allege that the State's failure to provide available processes to the victims to assert their claim of refugee status, and the arbitrary detention and treatment of the victims in detention constitute violations of, Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article V (right to protection of honor, personal reputation and private and family life), Article VI (right to a family and protection thereof), Article XVII (right to protection for mothers and children), Article XVII (right to recognition of juridical personality and civil rights), Article XVIII (right to a fair trial, judicial protection), Article XXV (right to protection from arbitrary arrest) and Article XXVII (right to asylum) of the American Declaration.

33. In addition, the Petitioners maintain that The Bahamas is also in violation of Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol because irreparable harm will occur if the victims are returned to Cuba where their lives, freedom and/or personal security would be in jeopardy based on their political opinion or membership in a social group. Such involuntary return would vitiate the principle of non-refoulement enshrined in these instruments.

34. On the issue of the admissibility of the petition, the Petitioners cite

Article 37(1)(a) of the Commission's former Regulations, at present Article 31(2)(a)[13] and argue that the exception to the exhaustion of domestic remedies rule should apply in this case as established by the Rule. The Petitioners contend that the domestic legislation of The Bahamas does not provide due process, because the victims have been denied access to domestic remedies. According to the Petitioners the State does not have domestic procedures in place whereby asylum seekers can assert their claims or pursue release while their claims to refugee status are pending. The Petitioners conclude by asking the Commission to admit the case and adopt a Report on the merits.

2. The State's Position[14]

35. As to the admissibility of the petition, the State argues that the domestic remedies of The Bahamas have not been invoked and exhausted as required by the provisions of Article 37 of the Commission's former Regulations.

36. The State indicated that the Commonwealth of The Bahamas is an archipelago of several hundred islands which spread over thousands of miles of ocean between the North American Florida peninsula and the islands of Cuba and Hispaniola. The State informs "that given its geographical location to the North American continent, The Bahamas has a legitimate fear of illegal immigrants in large numbers using The Bahamas as a gateway to the continent. In addition, the State maintains that the Government of The Bahamas is particularly sensitive to large numbers of undocumented persons within its territorial waters." The State contends that entry into The Bahamas is governed by the Immigration Act, Chapter 179 of the Revised statute Law of The Bahamas 1987. The State reports that Section 47 of the Act states:

Where any officer of the Defence Force or any customs officer or police officer has reasonable grounds for believing that any person on board any vessel which is in the territorial waters of The Bahamas is landing or preparing to land in The Bahamas in contravention of the provisions of this Act, he may board such vessel and exercise the powers conferred on an immigration Officer under Section 8.

Section 8 of the Immigration Act provides:

(1) For the purpose of exercising his powers and functions and carrying out his duties under this Act, any Immigration Officer may-

- (a) board any ship within the territorial waters of The Bahamas or any aircraft which has landed in The Bahamas;
- (b) without a search warrant, search any such ship or aircraft or anything contained therein or any vehicle being landed in The Bahamas from any such ship or aircraft;
- (c) interrogate any person reasonably supposed not to be a citizen of The Bahamas or to be a permanent resident who-
 - (i) desires to enter or leave The Bahamas
 - (ii) being in The Bahamas, is reasonably suspected of having entered without leave in contravention of section 18;

(2) Any Immigration Officer may, in writing, summon for the purposes of interrogation any person whom he is empowered by paragraph (c) of subsection (1) of this section to interrogate, and may require any such person to produce any document in his custody or possession or under his control relating to any matter upon which he may be interrogated...

37. The State refutes the Petitioners allegations raised in the petition. The State denies that it is in violation of its international obligations in relation to the victims. The Bahamas contends *inter alia* that it is a party to the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol, and accordingly applies the procedures and standards pursuant to that international Convention. The State argues that its procedures are consistent with its obligations under the 1951 Convention. The State maintains that for the purposes of satisfying its treaty obligations, it seeks the guidance of the officials of the United Nations high Commissioner for Refugees (UNHCR). In response to the petition, The Bahamas stated that:

We wish to point out that the four individuals to which the inquiry relates were not at the Centre on August 14, 1998. They were repatriated on August 11, 1998, after determination that their cases did not meet the 1951 Convention requirements for consideration as political refugees. A list containing the names of the Cuban nationals who were repatriated on August 11, 1998, is attached. There were two subsequent repatriation exercises, these occurred on August 18, 1998, and October 20, 1998. On those occasions, 49 and 66 persons, respectively, were repatriated. Lists containing the names of the persons repatriated on those dates are also attached. All repatriations were effected by air at the expense of the Government of The Bahamas.

38. With regard to the Commission's requesting a copy of the pertinent administrative and/or judicial laws, procedures and regulations in place for determining refugee status, and a copy of the Treaty and Protocol between The Bahamas and Cuba regarding the expedited repatriation of the Cuban nationals. The Bahamas provided the Commission with the requested information and stated the following:

There is not yet in place laws as regards the determination of refugee status.

Rather, there is an administrative procedure. Bahamian officials in conjunction with officials from UNHCR conduct individual interviews. Those persons who meet the Convention's requirements are recommended to the Executive for favourable consideration. On no occasion has the Executive not acted favourably to a recommendation. Since becoming a party to the 1951 Convention and its 1967 Protocol, The Bahamas has granted refugee status to 78 Cuban nationals. The Bahamas fulfills its obligations pursuant to the Convention to which it is a party. As requested, we provide herewith a copy of the Repatriation Agreement with the Government of Cuba and the Protocol to the same.

The Ministry wishes to advert to paragraph 1 of page 2 of the letter of August 14, 1998, which states that the **"Petitioner alleges that some of the Cuban nationals have valid claims for refugee status but are unable to make those claims because Your Excellency's Government does not make available processes whereby the Cubans can assert their requests for refugee status."** While the Ministry has not had the benefit of sight of the petition, grave exception is taken to this allegation, as all would-be refugees are extensively interviewed.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence of the Commission

39. In this petition, the Petitioners allege violations of Article I (right to life, liberty and personal security), Article II (right to equality before the law), Article V (right

to protection of honor, personal reputation and private and family life), Article VI (right to a family and protection thereof), Article XVII (right to protection for mothers and children), Article XVIII (right to recognition of juridical personality and civil rights), Article XXV (right to protection from arbitrary arrest) and Article XXVII (right to asylum) of the American Declaration. In addition, the Petitioners maintain that The Bahamas is also in violation of Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol of the Declaration. Article 23 of the Commission's Rules of Procedure provides that:

[a]ny person or group of persons, or non-governmental entity legally recognized in one or more Member States of the OAS, may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol in the Area of Economic, Social and Cultural Rights, the Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The Petitioner may designate an attorney or other person to represent him before the Commission, either in the petition itself or in another writing.

40. The petition in this case was lodged on behalf of the victims, Cuban and Haitian nationals of the Member States of the OAS, by the Petitioners, nongovernmental entities legally recognized in one or more of the Member States of the OAS as provided by Article 23 of the Commission's Rules of Procedure.

41. The Declaration became the source of legal norms for application by the Commission^[15] upon The Bahamas becoming a member State of the Organization of American States in 1982. In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,^[16] and the Commission's Rules of Procedure to entertain the alleged violations of the Declaration raised by the Petitioners against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction *ratione temporis*, *ratione materiae*, and *ratione personae* to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the Petitioners' claims relating to the alleged violations of the American Declaration.

42. With regard to the Petitioners' claims concerning Article 33 of the United Nations 1951 Convention Relating to the Status of Refugees and its Protocol of 1967, the Commission refers to the Advisory Opinion of the Inter-American Court of Human Rights in which it opined that:

The need of the regional system to be complemented by the universal finds expression in the practice of the Inter-American Commission on Human rights and is entirely consistent with the object and purpose of the Convention, the American Declaration and the Statute of the Commission.

43. In keeping in line with international human rights jurisprudence including that of the Inter-American Court of Human Rights the Commission will refer to those international human rights instruments for the purpose of assisting it in its interpretation of Article XXVII of the American Declaration which addresses the right to seek and receive asylum. Likewise, in this matter before the Commission, the Commission will refer to Article 33 of the Treaty and Protocol in the merits phase of the petition under study.

B. OTHER GROUNDS OF ADMISSIBILITY

a. Exhaustion Of Domestic Remedies And Timeliness Of Petition

44. The issue which this petition presents is whether the Petitioners have pursued and exhausted the domestic remedies of The Bahamas or that the exception to the exhaustion of domestic remedies rule should apply. The issue of exhaustion of domestic remedies is governed by Article 31 of the Commission's Rules of Procedure. That Article provides: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of domestic legal system have been pursued and exhausted in accordance with the general principles of international law." Article 31(2) states that the preceding paragraph shall not apply 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; or
- c. There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

45. The Petitioners argue that the State does not have available procedures in place in The Bahamas for an individual to seek and receive asylum in that State pursuant to the cited Articles of the American Declaration. The Petitioners argue because of this lack of available procedures the victims are unable to invoke and exhaust domestic remedies as required by the Commission's Rules of Procedure referred to above. In addition, the Petitioners indicated that many of the victims were repatriated before their claims to refugee status could be adequately determined by the State. Moreover, the Petitioners assert that the exception to the exhaustion of domestic remedies should be applied in this matter as provided by Article 31(2)(a) because The Bahamas does not afford due process of law for protection of the right or rights that have allegedly been violated.

46. The State contends that the Petitioners have not invoked and exhausted domestic remedies. The State maintains that although "there is not yet in place laws as regards the determination of refugee status, there is an administrative procedure in place whereby Bahamian officials in conjunction with officials from the UNHCR conduct extensive interviews with individuals, and that those persons who meet the requirements of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are recommended to the Executive for favourable consideration." In addition, the State asserts that "on no occasion has the Executive not acted favourably to a recommendation since becoming a party to the 1951 Convention and its 1967 Protocol," and that The Bahamas fulfills its obligations pursuant to the Convention to which it is a party.

47. It is well established that generally recognized principles of international law and Article 31(1) of the Commission's Rules of Procedure, indicate that there is a rule of prior exhaustion of domestic remedies. This rule has been applied by international human rights adjudicating bodies including the Commission, the United Nations Human Rights Committee, and in the European System for the Protection of Human Rights both by the former European Commission, and the European Court of Human Rights. Pursuant to this rule, the State is given the opportunity to address and remedy the wrong done to the complaining party. However, there are exceptions to this universal rule of prior exhaustion of domestic remedies as provided by Article 31(2)(a) of

the Commission Rules of Procedure and which the Petitioners are relying on. The Petitioners have argued that the Commission should excuse them from exhausting the domestic remedies of The Bahamas, because 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.

48. The Bahamas is not a party to the American Convention, however, for purposes of analysis the Commission refers to the Velasquez Rodriguez Case^[17] in which the Inter-American Court construed Article 46 of the American Convention on the issue of exhaustion of domestic remedies, which provisions are similar to Article 31 of the Commission's Rules of Procedure. In the Velasquez case the Inter-American Court stated that for the rule of prior exhaustion of domestic remedies to be applicable, the domestic remedies of the State concerned must be available, adequate and effective in order to be exhausted. The Court also opined that upon the party raising that allegation of non exhaustion because of the unavailability of due process in the State, the burden of proof shifts to "the State claiming non-exhaustion and it has an obligation to prove that domestic remedies remain to be exhausted and that they are effective."^[18]

49. The Commission finds that in the State's Reply to the petition and in response to the Commission's request for information of its laws relating to refugees, it admitted that "there is not yet in place laws as regards the determination of refugee status." However, the State contends that there available administrative procedures in place in The Bahamas and persons claiming to be refugees are subject to these procedures. In addition, the State maintains that the refugee determination process is conducted in accordance with its international obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in conjunction with the UNHCR's officials, and that 78 persons have been granted refugee status since becoming a party to the Convention and its Protocol.

50. It is important to note that Article 31(2) of the Commission's Rules of Procedure provides for an exception to the exhaustion of domestic remedies requirement under Article 31(1) of the Rules when "the "domestic legislation" of the State concerned does not afford due process of law for protection of the rights that have allegedly been violated." The Commission notes that by its own admission, the State has indicated that laws are not yet in place in The Bahamas as regards the determination of refugee status, but rather that such status is determined through an administrative procedure, followed by a recommendation to the Executive for favorable consideration. The Commission finds that there is a close connection between the question of exhaustion of domestic remedies and the violations alleged on the merits of the petition pertaining to the non-availability of processes to the victims to assert their claims of refugee status. Accordingly, the Commission decides to join the issue of exhaustion of domestic remedies, and the timeliness of the petition to the merits of the case.

c. Duplication of Procedures

51. This petition satisfies the requirement of Article 33 of the Commission's Rules of Procedure because the information in the record does not reveal that the subject matter of the petition is pending settlement pursuant to another procedure before 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 33 (1) and (2) of the Commission's Rules of Procedure.

d. Colorable claim

52. The Petitioners have alleged that the State has violated the victims'

rights under Articles I, II, V, VI, VII, XVII, XVIII, XXV, and XXVII of the American Declaration. In addition, the Petitioners have provided factual allegations that if proven would tend to establish that the alleged violations might be well founded. The Commission therefore concludes, without prejudging the merits of the case, that the petition is not barred from consideration under Article 34 of its Rules of Procedure.^[19] In addition, the Commission will consider the Petitioners claims relating to Article 33 (non-refoulement) of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees in the merits phase of the petition.

53. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare Articles I, II, V, VI, VII, XVII, XVIII, XXV, and XXVII of the American Declaration, admissible pursuant to Articles 34, of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare that the petition is admissible with respect to the claimed violations of Articles I, II, , V, VI, VII, XVII, XVIII, XXV, and XXVII of the American Declaration.

2. Join the issue of exhaustion of domestic remedies and the timeliness of the petition to the merits of the case.

3. Transmit this Report to the State of The Commonwealth of The Bahamas and to the Petitioner.

Done and signed in the city of Washington, D.C., on the 27th day of the month of February, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, and Clare K. Roberts, Commissioners.

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[1] Article 29, is at present Article 25 of the Commission's new Rules of Procedure.

[2] Article 29, is at present Article 25 of the Commission's new Rules of Procedure.

[3] Article 34, has been reformulated and is now Article 31 of the Commission's new Rules of Procedure.

[4] Article 42, now Article 39 of the Commission's new Rules of Procedure.

[5] The Center for Justice and International Law (CEJIL), and the Open Society.

[6] Keva Bain Esq., Counsel in the Attorney General's Office, and Mrs. Edda Dumont Adolph, First Secretary/Legal Attache at the Embassy of The Bahamas.

[7] The Petitioners claims and arguments on the merits are summarized below, and will be referred to and addressed in the Report on the merits of the petition.

[8] Traveled with his wife Maritza Morejohn Aday and their two daughters Middrey Días Morejon (17) and Yusleidy Dias Morejon (15).

[9] Traveled with his 4 siblings Ameltran Lopez, Yuneon Lopez, Gerardo Miguel Solis, and Elmer Rodriguez (5).

[10] Traveled with his father Luis Bu Escobar, his wife Lourdes Pelaez Montenegro, and their son Yoeny Machado Pelaez (12).

[11] Traveled with his wife Maria F. Cabrales Santos, their daughter Lisset Perez Cabrales (16), and their son

Yunielky's de Leon, their daughter Marilys Gomez, and his in-laws (mother and father in law and their brother and sisters in law.)

[12] Manuel Ramon Reyes Lamela, Hector Jurjo Sanchez, Alexis Perez Ricardo, Benedicto Graz Cuenca, Irel Broche Noa, Misnel concepcion Portal, Osbel Valle Hernandez, Misael Santan Escobar, Luis Bu Jimenes, Julian Noa Gonzalez, Alfredo Pinero Benavides, Helmer Rodriguez Sanchez, Osmaily Garcia Tamayo, Jesus Cabrera Mas, Jesus Perez Torna, Ricardo Garrido Hortas, Osvaldo Raimundo de Leon Alpizar, and Juan Manuel Ramos Rodriguez.

[13] Article 31(1) of the Commission's Rules of Procedure provides that: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.

Article 31(2) states that the provisions of the preceding paragraph shall not apply 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 or her 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.

[14] The State arguments on the merits are summarized below, and will be referred to and addressed in the Report on the merits of the petition.

[15] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[16] Article 20 of the Commission's Statute provides as follows:

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.

[17] Judgment of July 29, 1988 pages 112-113, paras 56-67citing (Velasquez Rodríguez Case Preliminary Objections, supra 23, para.88), Series C: Decisions and Judgments N°4.

[18] Id. Supra para 59-60.

[19] Article 34 of the Commission's Rules of Procedure provide that the Commission shall declare a petition inadmissible when the petition (a) does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; (b) the statements of the petitioner or the State indicate that it is manifestly groundless or out of order' or, (c) supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

Article 27 of the Commission's Rules of Procedure provides that: "The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure.