

REPORT Nº 60/09
CASE 12.706
ADMISSIBILITY
FRANK ENWONWU
UNITED STATES
July 20, 2009

I. SUMMARY

1. On January 18, 2008 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a complaint filed against the United States of America (“the United States” or “the State”) by American University Washington College of Law (“the petitioners”) on behalf of the alleged victim, Frank Enwonwu, a national of Nigeria residing in the United States since 1986. They report that the State was seeking his imminent deportation to his native Nigeria, because he had been criminally convicted of smuggling five ounces of heroin when he entered the United States in 1986. The petitioners allege that, if deported, Mr. Enwonwu will likely be persecuted in his native Nigeria and will be permanently separated from his US citizen son.

2. Upon being arrested for importing heroin, the petitioners allege that Mr. Enwonwu agreed to be an informant for United States Drug Enforcement Agency (“DEA”), in exchange for protection and a reduced sentence. The petitioners contend that Mr. Enwonwu acted as an informant to the DEA for 10 months and is credited with securing the conviction of at least two other drug traffickers. The petitioners allege that during this time and for approximately a decade afterward the Immigration and Nationality Service (“INS”) permitted Mr. Enwonwu to reside in the United States and provided him a work visa. During this time, Mr. Enwonwu had a son who is a US citizen and is currently 13 years old.

3. Then in 1997, the petitioners report that the State initiated deportation proceedings against Mr. Enwonwu. The petitioners state that Mr. Enwonwu sought withholding of removal (*non-refoulement*) because he feared he would be persecuted and tortured if he was sent back to Nigeria. The petitioners report that, while the immigration judge granted Mr. Enwonwu withholding of removal, this order was ultimately reversed on appeal.

4. Pursuant to a request from the petitioners, on March 27, 2008, the Commission granted precautionary measures, under Article 25 of the Commission’s Rules of Procedure, because of the urgency, seriousness, and irreparable harm that could potentially be caused to the alleged victim if deported to Nigeria. Those precautionary measures are still in effect in this case.

5. The petition alleges that the State has violated and continues to violate Mr. Enwonwu’s rights enshrined under Articles XXVII (right to seek asylum), XVIII (right to a fair trial), XXVI (right to due process of law), V (right to family life), and VI (right to family and protection thereof) of the American Declaration of the Rights and Duties of Man (the “American Declaration”), along with other principles of international human rights, principally *non-refoulement* (Article 3 of the U.N. Convention Against Torture (hereinafter “CAT”) and Article 33 of the U.N. Refugee Convention) and Article 24 of the U.N. Convention Against Transnational Organized Crime. The petitioners claim to have satisfied the admissibility requirements established in Articles 23, 28, 31, 32, 33, and 34 of the IACHR Rules of Procedure.

6. The State responds that the petition does not present a colorable claim of a violation of any of the articles of the American Declaration, and review of alleged violations of other international instruments is beyond the scope of the Commission’s competence. Therefore, the State concludes the Commission should deem the petition inadmissible under Article 34 of the IACHR Rules of Procedure.

7. In the present report, the IACHR examines the information available and the contentions on admissibility and --without prejudging the merits of the matter-- decides to admit the claims relating to violations of Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration. The Inter-American

Commission further decides to notify the parties of this decision, continue with the analysis of the merits of this case, and publish this decision and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

8. On March 23, 2007, the Commission received a request for precautionary measures from the petitioners for the alleged victim, Mr. Frank Enwonwu, to prevent the imminent deportation of Mr. Enwonwu to his native Nigeria from the United States. Due to the urgency, seriousness, and irreparable harm Mr. Enwonwu potentially faced if deported, as alleged by the petitioners, the Commission granted precautionary measures on March 27, 2007. Those precautionary measures are still in effect.¹

9. On January 18, 2008 the petitioners submitted their petition and brief alleging the United States violated a number of Mr. Enwonwu's rights under the American Declaration and other applicable international instruments. On February 15, 2008, the Commission transmitted the pertinent parts of the petitioners' submission to the State.

10. On October 24, 2008, during its 133rd period of ordinary sessions, the Commission held a working meeting with the parties to discuss the current status of the precautionary measures and for the parties to provide any developments on the petition.

11. On February 12, 2009, the State submitted its response to the petitioner's submission. In April 2009, the petitioners informed the Commission that they did not intend to respond to the State's contentions at the admissibility stage.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

12. According to the petitioners, on January 20, 1986, Frank Enwonwu was recruited by a Nigerian military officer, a Lieutenant Charles, to smuggle heroin into the United States.² Upon his arrival into the United States, Mr. Enwonwu was arrested by customs official for attempting to smuggle five ounces of heroin into the United States. At the time of his arrest, the petitioners' submissions state a DEA agent, named Herbert Lemon, ran a criminal background check that revealed that Mr. Enwonwu had no criminal record. The petitioners assert that Agent Lemon offered Mr. Enwonwu the opportunity to serve as a DEA informant in efforts to apprehend other drug traffickers affiliated with Lieutenant Charles. In exchange, the petitioners allege that Mr. Enwonwu was assured protection from Lieutenant Charles and his associates, and told him he would receive leniency on his criminal charges, and would not be sent back to Nigeria.

13. The petitioners report that on March 21, 1986 Mr. Enwonwu pled guilty to one charge of importing heroin and received a five year suspended sentence and was placed on three years probation. The petitioners allege that this was a lenient sentence based on his cooperation as an informant. The petitioners assert that Mr. Enwonwu served no prison time. As a condition of his probation, Mr. Enwonwu was prohibited from continuing his informant work for the DEA. Despite the terms of his probation, the petitioners assert that the DEA continued to use Mr. Enwonwu as an informant.

14. Petitioners claim that Mr. Enwonwu served as a DEA informant for approximately ten months. As an informant for the DEA, the petitioners claim that Mr. Enwonwu was instrumental in the apprehension of three Nigerian drug traffickers, testified at a grand jury that indicted two individuals in New York, and provided names of other Nigerians known to be in the drug trade. During this time, the petitioners allege Agent Lemon placed Mr. Enwonwu in touch with the U.S. Immigration and

¹ IACHR, MC 44/07, Frank Enwonwu (United States, March 27, 2007).

² Petitioners' submission dated Jan. 18, 2008, p. 6; Petitioners' request for Precautionary Measures dated March 23, 2007, Ex. 1, *Enwonwu v. Chertoff*, 376 F.Supp.2d 42 (D. Mass. 2005).

Nationalization Service (“INS”) to serve as an informant for the INS and to facilitate Mr. Enwonwu obtaining a work visa, which was to expire at the end of 1986. The petitioners’ submissions state that during Mr. Enwonwu’s time as an informant, Agent Lemon provided him with a 24-hour hotline number in case he felt endangered due to his work as an informant. The petitioners assert that Mr. Enwonwu was periodically paid by Agent Lemon for his informant work. Ultimately, the petitioners state that once Mr. Enwonwu’s probation officer discovered that he had continued working as an informant, the officer advised him to immediately stop. The petitioners’ submissions state that Mr. Enwonwu terminated his status as an informant in November 1986.

15. For the next several years, the petitioners report that Mr. Enwonwu worked as a taxi driver under an INS work visa.³ In 1991, after completing his probation, the petitioners report that Mr. Enwonwu started a new career as a nursing assistant. Around this time, the petitioners’ submissions state that Mr. Enwonwu petitioned INS for a green card (legal permanent resident status), but he never received a response.

16. In April 1997, the petitioners note that the INS started to implement the 1996 amendments to U.S. immigration laws, which the petitioners claim retroactively classified Mr. Enwonwu’s drug conviction as an “aggravated felony,” a deportable offense. After becoming injured in 1997, the petitioners’ submissions state that Mr. Enwonwu sought to obtain legal permanent resident status with the INS again. Upon presenting himself, the petitioners state that the INS arrested Mr. Enwonwu and initiated deportation proceedings based on his previous drug conviction. The petitioners report that Mr. Enwonwu wrote multiple letters to the DEA and INS, requesting that they honor their agreement to protect him.

17. In the course of his deportation proceedings, the petitioners state that Mr. Enwonwu sought withholding of removal protection (*non-refoulement*) under Article 3 of CAT, because he feared he would be tortured if returned to Nigeria. The petitioners emphasize that Mr. Enwonwu did not qualify for asylum under U.S. immigration law, because the 1996 changes to the law required that he file for asylum within one year of entering the United States and his drug conviction created an automatic bar to asylum.

18. The petitioners state that on December 16, 1999 an immigration judge granted Mr. Enwonwu withholding of removal (*non-refoulement*). According to the petitioners’ submissions, the immigration judge found that it would be “more likely than not” that Mr. Enwonwu would be tortured if deported to Nigeria. The petitioners report that the judge granted Mr. Enwonwu protection on two grounds: (1) Mr. Enwonwu would be subjected to a mandatory prison sentence under Nigerian law and would likely face human rights abuses in Nigeria’s notorious prison system⁴ and (2) Mr. Enwonwu would likely be subjected to retaliation by Nigerian drug traffickers and their government accomplices for his cooperation with DEA agents. The petitioners underscore that Mr. Enwonwu’s cooperation with the DEA has been the subject of multiple media reports. Because of this decision, the petitioners note that Mr. Enwonwu was able to renew his work permit, which he was required to do on an annual basis.

19. The petitioners state that the U.S. Government appealed the immigration judge’s decision and sent notices of appeal to Mr. Enwonwu and his attorney’s last known addresses. The petitioners claim that soon after the immigration judge’s decision, Mr. Enwonwu’s attorney moved his practice to Arizona and either did not receive the appeal notice or failed to notify Mr. Enwonwu. The petitioners, likewise, claim that Mr. Enwonwu never received the notice of appeal because the State failed to mail the notice to the proper address.⁵

³ Neither the Petitioners nor the State explain how Mr. Enwonwu was able to renew his work visa after the initial work visa reportedly expired at the end of 1986.

⁴ Mr. Enwonwu testifies that during the State’s aborted attempt to deport him that a red tag was placed on his wrist, which he claims demonstrated the U.S. Government’s cooperation with Nigerian officials to identify those deportees with drug convictions. See Petitioners’ submission on Precautionary Measures dated Jan. 18, 2008, Ex. K.

⁵ The petitioners’ submission state that the State failed to mail the notice “c/o Rose O. Mgbojikwe,” Mr. Enwonwu’s sister, where he was staying at the time. Consequently, the notice of appeal was returned to the Government.

20. Consequently, the petitioners claim that Mr. Enwonwu was unable to defend his case on appeal at the Board of Immigration Appeals (hereinafter "BIA"). According to the petitioners' submissions, on May 30, 2003 the BIA reversed the immigration judge's ruling of protection under Article 3 of the CAT, ordering Mr. Enwonwu deported to Nigeria. Petitioners claim that Mr. Enwonwu was unaware of the BIA's decision and was subsequently arrested on September 13, 2004 when he went to the INS's office to renew his work authorization.

21. After exhausting administrative remedies, the petitioners state that Mr. Enwonwu filed a habeas corpus petition in U.S. federal court. The petitioners note that the U.S. federal district court judge made factual findings and contend the federal district judge agreed with the immigration judge's conclusion that it was "more likely than not" Mr. Enwonwu would be tortured if deported to Nigeria. The petitioners inform the Commission, however, that before the U.S. federal district court judge could enter a decision on Mr. Enwonwu's habeas corpus petition, the U.S. Congress passed the REAL ID Act,⁶ which stripped the federal district courts of jurisdiction over habeas petitions of criminally-convicted noncitizens, such as Mr. Enwonwu. Under the REAL ID Act, the petitioners state that jurisdiction for Mr. Enwonwu's habeas petition was transferred to the U.S. federal court of appeals. Petitioners contend that with the passage of the REAL ID Act, Mr. Enwonwu was prevented from presenting evidence on his habeas petition; that the federal court of appeals could only consider the record as presented in the administrative proceedings; and could only consider questions of law.

22. According to the petitioners' submissions, the U.S. federal court of appeals remanded Mr. Enwonwu's case to the BIA, because the BIA failed to address both grounds by which the immigration judge granted Mr. Enwonwu protection under Article 3 of the CAT (*non-refoulement*). On remand from the U.S. federal court of appeals, the petitioners contend the BIA violated Mr. Enwonwu's rights by reversing some of the immigration judge's factual findings and again reversed the immigration judge's decision of protection under the CAT. The petitioners report that Mr. Enwonwu's further appeals to the U.S. federal court of appeals were denied.

23. The petitioners assert that throughout Mr. Enwonwu's deportation proceedings there was never the opportunity for consideration of equitable factors against his deportation. In particular, the petitioners assert that the adjudicators never considered the detrimental impact Mr. Enwonwu's deportation would have on his 13 year old U.S. citizen son. The petitioners, likewise, allege that the adjudicators never considered Mr. Enwonwu's 20-plus years of living in the United States, his positive contributions to the community, and the community ties developed over that time. The petitioners underscore that both the UN Human Rights Committee, which oversees implementation of the International Covenant for Civil and Political Rights ("ICCPR"), and the European Court of Human Rights have both recognized the due process and family right to have such factors substantively considered in deportation proceedings. The petitioners urge the Commission to adopt the same position.

24. Because of the foregoing, the petitioners allege that the State has violated Mr. Enwonwu's rights enshrined under Articles XXVII (right to seek asylum), XVIII (right to a fair trial), XXVI (right to due process of law), V (right to family life), and VI (right to family and protection thereof) of the American Declaration, along with other principles of international human rights, principally *non-refoulement* in Article 3 of the CAT and Article 33 of the U.N. Refugee Convention) and Article 24 of the U.N. Convention Against Transnational Organized Crime.

B. Position of the State

⁶ The REAL ID Act is a federal law passed in 2005 that principally imposes certain security, authentication, and issuance procedures standards for state driver's licenses and identification cards in order for them to be accepted as a form of identification for purposes under federal jurisdiction, such as boarding commercial airplanes. In addition, the REAL ID Act included a provision that removed jurisdiction for habeas corpus review of final orders of removal (deportation) from U.S. federal district courts to the U.S. federal courts of appeal. See Department of Homeland Security, "http://www.dhs.gov/xprevprot/programs/gc_1200062053842.shtm"; see also REAL ID Act of 2005, available at <http://thomas.loc.gov/cgi-bin/query/F?c109:6:./temp/~c109Ae5fsB:e209236>:

25. The State responds that Mr. Enwonwu has received ample effective due process both from the U.S. administrative immigration courts and the U.S. federal court. Since 1997, the State emphasizes that Mr. Enwonwu has received two full hearings before an immigration judge, been in proceedings before the BIA eight times, three times before the U.S. federal court of appeals, foregone at least four opportunities to seek judicial review of BIA decisions, and initiated at least five habeas corpus proceedings in U.S. federal district court. The State notes that Mr. Enwonwu was represented by counsel throughout these proceedings. The State claims that, while Mr. Enwonwu may not have received his desired outcome, he has received a full and fair hearing of his case and these are the legal consequences for his actions.

26. The State recalls that Mr. Enwonwu was arrested for trying to smuggle heroin inside his body into the United States and pleaded guilty to the charge of importing heroin.

27. The State presented specific responses to further allegations. First, with regards to the allegations concerning the notification of the Government's notice of appeal to the order withholding removal in 1999, the State asserts that it sent notices of appeal to the addresses Mr. Enwonwu and his attorney provided the court.

28. Second, the State contends that the REAL ID Act changed jurisdiction over Mr. Enwonwu's habeas corpus petition but did not materially impact his due process rights. The State emphasizes that the habeas petition was fully briefed before the U.S. federal court of appeals. The State notes that the federal court of appeals rejected Mr. Enwonwu's claim that the REAL ID Act diminished his procedural and substantive rights.

29. The State argues generally that the Commission should find the petition inadmissible in all respects for failure to make a colorable claim as required under Article 34 of the Commission's Rules of Procedure. The State then raises more specific objections. First, the State maintains that the Commission should not consider the petitioners' claims of violations of the U.N. Convention on Refugees, U.N. Convention Against Torture, or the U.N. Convention Against Transnational Organized Crime, because those instruments fall outside the Commission's competence. Second, in accordance with Article 1(2)(b) of the Inter-American Commission's Statute, the State contends that the rights enshrined under the American Declaration must be strictly interpreted, without interpretation pursuant to broader principles and rights found in other international instruments.

30. With this context, the State argues that the petitioners' claims of violation of Article XXVI (right to due process of law) fail because by its own terms Article XXVI only applies to criminal proceedings. Because only Mr. Enwonwu's civil immigration proceedings are at issue in this petition, the State argues that Article XXVI of the American Declaration does not apply.

31. With regards to Article XVIII (right to a fair trial), the State argues that Mr. Enwonwu has had numerous opportunities to present his case to multiple tribunals, both administrative and judicial. While Mr. Enwonwu may not be satisfied with the outcome, the State emphasizes that he has not presented any facts that establish that those proceedings were in and of themselves substantively unfair or unreasonable. Therefore, the State claims there is no basis for finding a violation of Article XVIII of the American Declaration.

32. Next, the State argues that the petitioners' claims of violation of Article XXVII (right to seek asylum) are also without basis. The State underscores that the right to seek asylum is not absolute under Article XXVII of the American Declaration or other international instruments. The State contends that one well-recognized exception to the right to seek asylum is an individual's criminal record. Likewise, the State emphasizes that Mr. Enwonwu's immigration proceedings ultimately concluded that he did not qualify for protection under the principle of *non-refoulement*. Consequently, the State concludes the petitioners have no basis for claiming a violation of Article XXVII of the American Declaration.

33. Finally, the State addresses the petitioners' claims of violations of Articles V (right to family life) and VI (right to family and protection thereof) of the American Declaration. The State argues

that Articles V and VI are intended to protect individuals from a State's conscious, direct attacks on the family unit. The State contends that Articles V and VI should not be interpreted to include the derivative consequences to the family due to legitimate, reasonable State action. Indeed, the State urges that such a broad interpretations of Articles V and VI could have serious consequences for a State's ability to provide security and promote the general welfare. For example, the State argues that if the Commission were to accept the petitioners' interpretation of Articles V and VI, then every criminal noncitizen could avoid deportation by simply starting a family in a host country, and the State would be paralyzed from doing anything to protect its citizens even if the noncitizen is in fact a danger to the general welfare of the society. Therefore, the State urges the Commission to reject what it describes as the petitioners' unreasonable interpretation of Articles V and VI of the American Declaration and find these alleged violations baseless.

34. The State requests that the Commission find the petitioners' claims inadmissible under Article 34 of the Commission's Rules of Procedure for failure to make a colorable claim of violation of the rights protected under the American Declaration.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

35. Upon considering the record before it, the IACHR considers that it has competence *ratione personae* to entertain the claims presented in the petition. Under Article 23 of the Commission's Rules of Procedure, the petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victims are persons whose rights are protected under the American Declaration. The American Declaration protects the rights of all human beings under a Member State's jurisdiction.

36. The United States is bound by the obligations under the American Declaration in conformity with the OAS Charter, Articles 1(2)(b) and 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure. The United States has been subject to the jurisdiction of the Inter-American Commission since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter.⁷

37. The Inter-American Commission also considers that it is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred subsequent to the date on which the United States' obligations under the American Declaration took effect.

38. In addition, the Inter-American Commission finds that it is competent *ratione loci*, given that the petition indicates that the alleged victim was under the jurisdiction of the United States at the time the alleged events occurred, which reportedly took place within the territory of that State.

39. Finally, the Inter-American Commission has competence *ratione materiae* to examine the petitioners' claim that the State violated Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration.

B. Exhaustion of domestic remedies

40. Article 31(1) of the Commission's Rules of Procedure provides that for a petition to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to give the domestic authorities an opportunity to look into the alleged violation of a protected right and, if appropriate, resolve it before it is taken up by an international forum.

⁷ See also I/A Court H.R., 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, OC-10/89, para. 45 (July 14, 1989).

41. On November 19, 2007, the U.S. First Circuit Court of Appeals denied Mr. Enwonwu's final appeal, exhausting domestic remedies in his case. The State does not dispute that the alleged victim has exhausted all available domestic remedies.

C. Timeliness of petition

42. Article 32 of the Commission's Rules of Procedure requires that a petition be filed within six months of an alleged victim being notified of the decision that exhausted domestic remedies. In the present matter, petitioners filed a request for precautionary measures on March 23, 2007 because they claimed that the State was trying to deport Mr. Enwonwu prior to a final decision from the U.S. federal court of appeals.

43. The petitioners state that Mr. Enwonwu's final appeal to the federal court of appeals was denied on November 19, 2007. The petition was filed on January 18, 2008, within the six month timeframe. The State does not dispute that the petitioners' petition was timely, in accordance with Article 32 of the Commission's Rules of Procedure.

D. Duplication

44. Article 33(1)(a) stipulates that for a petition to be admitted by the Inter-American Commission, the subject of it cannot be pending in another international proceeding. Article 33(1)(b) stipulates that the Inter-American Commission shall declare inadmissible any petition or communication that is substantially the same as one previously studied by the IACHR or another international organization.

45. From the submissions of the parties and documents on file it can be ascertained that the subject of 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 Inter-American Commission or by another international organization. The Inter-American Commission thus deems that the admissibility requirements contained in Article 33(1)(a) & (b) have been met.

E. Colorable claim

46. For the purposes of admissibility, Article 34(a) of the Commission's Rules of Procedure provides that petitions lodged with the IACHR must state facts that tend to establish a violation of the rights referred to in Article 27 thereof, otherwise the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 34(b) of the Rules.

47. The standard for assessing admissibility differs from the one used to decide the merits of a petition. For admissibility purposes, the Inter-American Commission need only make a *prima facie* analysis whether the petitioners establish the apparent or potential violation of a right guaranteed under the American Declaration. Such an examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits.

48. In addition to violations of the American Declaration, the petitioners allege violations of the principle of *non-refoulement* contained in Article 3 of the Convention Against Torture and Article 24 of the U.N. Convention Against Transnational Organized Crime. In the context of considering the contours of the rights contained in Article XXVII (right to seek asylum), the Commission has followed the Inter-American Court of Human Rights' guidance in its advisory opinion OC-1/82:

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 Statue of the Commission.⁸

In keeping with its established practice in earlier jurisprudence, the Commission will refer to these other 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.⁹

49. The petitioners allege the State has violated Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration. The Inter-American Commission has outlined in Part III of this report the substantive allegations of the petitioners, as well as information submitted by them in support of those allegations. The State's response to the petition does not render the petitioners' claims "manifestly groundless or out of order."¹⁰ After carefully reviewing the information and arguments provided by the petitioners and the State and without prejudging the merits of the matter, the Inter-American Commission considers that the petition states facts that, if proven, tend to establish possible violations of Articles V, VI,

⁸ IACHR, 120 Cuban Nationals and 8 Haitian Nationals detained in the Bahamas, Admissibility report No. 6/02, Petition No. 12.071, para. 42 (Feb. 27, 2002) (citing I/A Court H.R., Advisory Opinion OC-1/82 "Other treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights), para. 43 (Sept. 24, 1982)).

⁹ IACHR, 120 Cuban Nationals and 8 Haitian Nationals Detained in the Bahamas, Admissibility report No. 6/02, Petition No. 12.071, para. 43 (Feb. 27, 2002).

¹⁰ Article 34(b) of the Commission's Rules of Procedure.

XVIII, XXVI, and XXVII of the American Declaration. In accordance with its precedents, the Commission will consider the petitioners' claims of violation of the universal principle of *non-refoulement* in the context of alleged violations of Article XXVII of the American Declaration at the merits stage.¹¹

50. Accordingly, the Inter-American Commission concludes that the petitioners' claims of the State's violation of Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration should not be declared inadmissible under Article 34 of the Commission's Rules of Procedure.

V. CONCLUSION

51. By virtue of the above considerations, the IACHR concludes that the petition complies with the requirements of admissibility set forth in Articles 23, 28, and 31-34 of its Rules of Procedure with regards to alleged violations of Mr. Enwonwu' rights under Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare this case admissible with regards to alleged violations of Mr. Enwonwu's rights under Articles V, VI, XVIII, XXVI, and XXVII of the American Declaration.
2. Notify the parties of this decision.
3. Continue with the analysis of the merits of the case.
4. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Commission on the 20th day of the month of July, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Victor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Florentín Meléndez, Commissioner.

¹¹ IACHR, 120 Cuban Nationals and 8 Haitian Nationals Detained in the Bahamas, Admissibility Report No. 6/02, Petition No. 12.071, para. 52 (Feb. 27, 2002)