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REPORT No. 172/19
PETITION 2430-12
REPORT ON ADMISSIBILITY

DOMINGO SEGUNDO HUERTA HERNÁNDEZ AND FAMILY
CHILE

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 172/19, Petition 2430-12. Admissibility. Domingo Segundo Huerta Hernández and family. Chile. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

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| Petitioner | Domingo Segundo Huerta Hernández |
| Alleged victim | Domingo Segundo Huerta Hernández and family |
| Respondent State | Chile ¹ |
| Rights invoked | No specific provisions invoked |

II. PROCEEDINGS BEFORE THE IACHR²

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|---|--------------------------------|
| Filing of the petition | April 24, 2012 |
| Additional information received during initial review | January 7, 2013, June 30, 2016 |
| Notification of the petition to State | October 5, 2017 |
| State's first response | March 22, 2018 |

III. COMPETENCE

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| <i>Ratione personae:</i> | Yes |
| <i>Ratione loci:</i> | Yes |
| <i>Ratione temporis:</i> | Yes |
| <i>Ratione materiae:</i> | Yes; Yes, American Declaration on the Rights and Duties of Man ³ (ratification of the Charter of the OAS on June 5, 1953); and American Convention on Human Rights ⁴ (deposit of instrument of ratification: August 21, 1990) |

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

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| Duplication of procedures and international <i>res judicata</i> | No |
| Rights declared admissible | Articles I (Right to life, liberty and personal security) XVIII (Right to due process) and XXV (Right of protection from arbitrary arrest) of the American Declaration; and Articles 5 (physical integrity), 8 (Right to fair trial) and 25 (Right to Judicial Protection) of the American Convention in relation to its Articles 1.1. and 2 |
| Exhaustion or exception to the exhaustion of remedies | Yes, under the terms of Section VI |
| Timeliness of the petition | Yes, under the terms of Section VI |

V. SUMMARY OF ALLEGED FACTS

1. The petitioner (and alleged victim) claims that in September 1973, he was detained on two occasions during which he was subjected to torture. He claims that he was detained by military and a unit of the "Comisaria de Carabineros de Puerto Aysen", which was a part of the then military dictatorship under Augusto Pinochet. According to the petitioner, he was initially detained on September 13, released on September 20, then re-arrested on September 21 and detained until he was released on December 31, 1973.

2. According to the petitioner, there were no internal remedies available to redress the human rights violations that he suffered⁵, nor was there any investigation into the circumstances under which he was allegedly detained and torture (electric shocks, waterboarding and beating). However, the petitioner submits that in 2005 he was recognized as a political detainee and as a victim of torture by the National

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in either the discussions or the decision in the present case.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereafter "the American Declaration" or "the Declaration".

⁴ Hereafter "the American Convention" or "the Convention".

⁵ However, in a note from the petitioner's wife (Maria Eduvina Alvarado Chavez) received on June 30, 2016 she stated that a lawsuit had been initiated in 2009, but gave no details as to its nature or outcome. The petitioner's wife also indicated that he is now deceased (but gave no date of his death).

Commission on Political Imprisonment and Torture⁶. According to the file, despite being recognized as a victim, the petitioner was never awarded any compensation by the State.

3. The State, for its part, points out that the petition is inadmissible because the facts outlined occurred prior to the ratification of the American Convention and its deposit with the Organization of American States. The State also contends that the Commission is only competent to examine, under the Convention, events that occurred after March 11, 1990. The State also contends that the petitioner failed to initiate or exhaust any available domestic remedies. Finally, the State submits that the petition is inadmissible because of the impossibility of determining whether the petition has been submitted to another international tribunal.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

4. The Commission observes that this petition is based on the alleged detention and torture of the petitioner, together with the alleged failure of the State to investigate the circumstances of the detention and torture and/or to provide reparation. In this context, Commission reiterates, first, that where there are allegations of illegal detention and torture, the internal remedies that must be taken into account for the purposes of admissibility of the petition are the criminal investigation, resolution, and punishment of the perpetrators. Along these lines, whether or not the alleged victim has sought pecuniary compensation from civil courts has no bearing on the analysis of exhaustion of domestic remedies in this case. The Commission also notes that the State was made aware of the situation described in the petition through the 2005 National Commission on Political Imprisonment and Torture (Valech Commission), but appears to have taken no steps to undertake an investigation into the claims of detention and torture made by the petitioner.

5. Regarding the deadline for presenting the petition, the Commission observes that (a) the facts alleged took place starting in 1973; (b) that the alleged victim is recognized in the 2005 Report of the Valech Commission; and (c) the consequences of the facts, including the alleged failure to investigate and punish those responsible and, continues to the present day. Thus, taking into account that this petition was filed on April 24, 2012, the Inter-American Commission finds that the petition was filed within a reasonable period of time, in the terms of Article 32(2) of the Rules of Procedure of the IACHR, pursuant to Article 46(2) of the American Convention.

VII. COLORABLE CLAIM

6. With regard to the claim of the alleged detention and torture of the alleged victim, the Commission observes that the facts supporting these allegations would have taken place prior to August 21, 1990, the date on which the Chilean State deposited the ratification instrument for the American Convention. Therefore, with regard to the alleged facts that took place prior to that date, the Commission will apply the American Declaration. Accordingly, the Commission considers that the allegations of detention and torture could describe prima facie violations of the rights established in Articles I (life, liberty and personal security), XXV (protection from arbitrary arrest), and XVIII (judicial protection) of the American Declaration, to the detriment of the alleged victim. With respect to the allegations relating to failure to investigate and punish those responsible or to provide reparation, these continue until the present day; and accordingly, constitute prima facie violations of Articles 5 (physical integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XVIII and XXV, of the American Declaration and Articles 5, 8 and 25 of the American Convention in relation to its Articles 1.1. and 2; and;

⁶ This Commission was headed by Bishop Sergio Valech, and is generally known as the "Valech Commission".

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.