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REPORT No. 370/20
PETITION 1282-11
REPORT ON ADMISSIBILITY

MANUEL SEGUNDO MALDONADO MIRANDA AND VÍCTOR
JOAQUÍN MALDONADO GATICA AND FAMILIES
CHILE

Approved electronically by the Commission on December 10, 2020.

Cite as: IACHR, Report No. 370/20, Petition 1282-11. Admissibility. Manuel Segundo Maldonado Miranda and Víctor Joaquín Maldonado Gatica and families. Chile. December 10, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira, Franz Möller Morris ¹ , and Manuel Antonio Maldonado Gatica
Alleged victim	Manuel Segundo Maldonado Miranda and Víctor Joaquín Maldonado Gatica
Respondent State	Chile ²
Rights invoked	Articles 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), and 25 (Judicial Protection) of the American Convention on Human Rights ³ in connection with its Article 1.1 (obligation to respect rights) and Article 2 (domestic legal effects).

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	September 16, 2011
Notification of the petition	May 25, 2016
State's first response	August 23, 2016
Additional observations from the petitioner	September 8, 26, 2017

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument on August 21, 1990)

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

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention in connection with its Article 1.1 (obligation to respect rights) and Article 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, in the terms of Section VI
Timeliness of the petition	Yes, in the terms of Section VI

V. SUMMARY OF ALLEGED FACTS

1. This petition deals with the detention and extrajudicial killing of the alleged victims by state agents during the regime of Augusto Pinochet.

2. The petitioners allege that the alleged victims, Manuel Segundo Maldonado Miranda ("Mr. Miranda") and Víctor Joaquín Maldonado Gatica ("Mr. Gatica") were both detained and murdered by military state agents in 1973; and that the State has so far failed to take any steps to redress the right to reparation on the part of their families. According to the petition, between September 17 and 18, 1973, the alleged victims were taken from their homes in El Esfuerzo Campesino", Lampa, Santiago, Chile by a military patrol of the Parachute Regiment and Special Forces of Peldehue. These events took place during the dictatorship of Augusto Pinochet.

3. With respect to Mr. Miranda, the petitioners allege that the military patrol took him to their headquarters where he was detained, until September 20, 1973 when his lifeless body was found on a public

¹ By letter dated September 25, 2017, Franz Möller Morris withdrew as a petitioner.

² Pursuant to the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola, a Chilean national, did not participate in the discussion or decision of the present case. .

³ Hereinafter "Convention" or "American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

road with bullet wounds to his head, chest and abdomen. The petitioners also note that the killing of Mr. Miranda was documented by the Rettig Report⁵. With regard to Mr. Gatica, the petitioners allege that on or about September 19, 1973 he was taken (together with others) to the Rotunda Grecia (in Santiago) where he was shot and killed by military personnel. The petitioners assert that Mr. Gatica sustained fatal wounds to his head and chest.

4. According to the petitioners, suit was filed (on behalf of the alleged victims and their families) for civil redress before the *17^o Juzgado Civil de Santiago*. This suit was filed in 2000, and was ultimately dismissed in December 2003. On appeal to the *Corte de Apelaciones de Santiago*, the court reversed the decision of first instance, and, in 2008, granted compensation to the alleged victims and their families. This decision of the *Corte de Apelaciones de Santiago* was subsequently reversed by the *Corte Suprema* on January 27, 2011, principally on the ground that the claim for compensation was now time-barred pursuant to the law of Chile. An order of compliance was subsequently issued on March 16, 2011 by the court of first instance.

5. With respect to the petition, the State argues that the allegations contained therein occurred in 1973; and accordingly, preceded Chile's ratification of the American Convention on August 21, 1990. Accordingly, the State concluded that that the Commission is not competent to adjudicate the petition. In response, the petitioners contend that it is not asking the Commission to adjudicate on the original allegations of illegal detention and extrajudicial killings, *per se*, but on the failure of the State to provide judicial redress, including reparations.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. According to the petitioner, adequate and effective domestic remedies were exhausted with the judgment issued by the *Corte Suprema* on January 27, 2011 (which held that the right to civil reparation had lapsed under the statute of limitations) together with the order of compliance issued on March 16, 2011 by the *17^o Juzgado Civil de Santiago*. The Commission received the petition on September 16, 2011.

7. The Commission notes that the subject of the petition is the failure to pay compensation to the alleged victims, the family members of person who were executed extra-judicially in 1973 during the dictatorship of Augusto Pinochet. In view of these considerations and the fact that the petition was filed within a period of six months from the date of notification of the final judgment, the Inter-American Commission finds that the instant petition does meet the requirement of prior exhaustion of domestic remedies in accordance with Article 46.1.a of the Convention.

VII. COLORABLE CLAIM

8. The Commission notes that the petition alleges the failure of the State to provide adequate due process/compensation to redress the claims raised by the petitioners. In view of the elements of fact and law presented by the parties and the nature of the matter brought to their attention, and of the context in which the allegations are framed, the IACHR considers that that the claims of the petitioners are not manifestly groundless, and that, if proven, the alleged facts related to the lack of compensation for the events that occurred, in judicial application of the prescription in civil matters, could characterize possible violations of the rights protected in the Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said instrument to the detriment of the alleged victims, as well as any immediate family members who may be identified in the merits stage.

9. With respect to the allegation raised by the State regarding the Inter-American Commission's lack of competence to hear cases on events taking place prior to the ratification of the American Convention by Chile, the Commission reiterates that the petition is about the failure to pay compensation, in particular, the judgments of the *17^o Juzgado Civil de Santiago* in December 2003 and of the *Corte Suprema* on January 27, 2011, both issued when the Convention was already in effect on Chile. Accordingly, the IACHR concludes that despite the fact that the initial allegations (of extrajudicial killing) preceded the ratification of the American

⁵ Officially known as The National Commission for Truth and Reconciliation Report, this report was issued in 1991 and dealt with encompassing human rights abuses resulting in death or disappearance that occurred in Chile during the years of military dictatorship under Augusto Pinochet. The Commission was chaired by Raúl Rettig, a Chilean lawyer and politician.

Convention by Chile, the IACHR has the competence to examine the alleged violations of due process rights, especially, the right to full reparation.

VIII. DECISION

1. To find the instant petition admissible with regard to Article 8 and 25 of the American Convention, in connection with Article 1.1 and 2 of this instrument;

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 10th day of the month of December, 2020. (Signed): Joel Hernández (dissenting opinion), President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.