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April 12, 2014

**Ref.: Case No. 12.500**  
***Omar Humberto Maldonado Vargas et al.***  
**Chile**

Dear Mr. Secretary,

I am pleased to write to you on behalf of the Inter-American Commission on Human Rights to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights Case No. 12.500, *Omar Humberto Maldonado Vargas et al.* in respect of the Republic of Chile (hereinafter “the State of Chile,” “the Chilean State,” or “Chile”). The instant case involves denial of justice to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Ovanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza, and Ivar Onoldo Rojas Ravanal; stemming from the failure to investigate ex officio and diligently, acts of torture inflicted upon the victims in the context of the military dictatorship. Additionally, in denying the motion to reopen the case and the motion for reconsideration of judgment filed, respectively, on September 10, 2001, and September 7, 2002, the State breached its obligation to provide for an effective remedy for the victims to invalidate a criminal proceeding, which was based on evidence obtained by torture. Consequently, there was no mechanism available to the victims to assert the exclusionary rule as a fundamental corollary to the absolute prohibition of torture.

The State ratified the American Convention on Human Rights on August 21, 1990, and accepted the contentious jurisdiction of the Inter-American Court on the same date. Similarly, it ratified the Inter-American Convention to Prevent and Punish Torture on September 30, 1988.

The instant case focuses specifically on the persistent failure to comply with the obligation to investigate and on the denial of justice stemming from the State’s response to the motion to reopen the case, filed on September 10, 2001. In this connection, all of the facts of the case fall within the temporal jurisdiction of the Court.

Mr. Pablo Saavedra Alessandri, Secretary  
Inter-American Court of Human Rights  
P.O. Box 6906-1000  
San José, Costa Rica

Attachments

The Commission has designated Commissioner Rose Marie B. Antoine and the Executive Secretary of the IACHR, Emilio Álvarez Icaza L., as its delegates. Likewise, Elizabeth Abi-Mershed, Assistant Executive Secretary, and Silvia Serrano Guzmán, María Claudia Pulido, and Norma Colledani, attorneys of the Executive Secretariat of the IACHR, will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission has attached hereto a copy of Report 119/13, prepared in compliance with Article 50 of the Convention, together with a copy of the complete record of the case before the Inter-American Commission (Appendix I) and the documents used in the preparation of Report 119/13 (Annexes). Said report on the merits was notified to the State of Chile in a communication dated November 12, 2013, and transmitted to it on November 13 of the same year. The report gave the State two months to report on compliance with the recommendations. On January 7, 2014, the State requested a two-month extension, which the Commission granted. On March 27 and April 11, 2014, the Chilean State submitted reports that did not show any substantive progress in the implementation of recommendations.

Thus, the information provided on the two criminal proceedings predates the report on the merits. As concerns the cases not yet brought to trial, the State indicated that proceedings must be set in motion by the petitioners themselves which, in the Commission's view, constitutes a continuing breach of the obligation to investigate acts of torture *ex officio*. With regard to the duty to investigate the officials who failed to launch investigations, the State simply noted that, in making said recommendation, the Commission was ignoring that individual liability could not be established. As regards the key recommendation in the case, i.e., that there must be an effective remedy concerning convictions that would enable the exclusionary rule to be enforced in respect of evidence obtained under torture, the State merely indicated that the victims could file a "new motion to reopen the case," without making specific comments on the fact that the violation determined by the Commission stemmed specifically from the fact that the Supreme Court of Justice had declared itself incompetent to nullify the Court Martial's decisions. Lastly, with respect to reparations, the State reported on reparations received under the national program on reparations for torture victims, a matter that is not the subject of the case. The State did not report on reparation measures implemented as a result of violations in the case, specifically the various components of the denial of justice as described in the report on the merits.

The State did not request a new extension to fulfill with the recommendations. Under those circumstances, and in view of the need to obtain justice for the victims in the case, the Commission decided to submit it to the Inter-American Court.

The Inter-American Commission requests that the Court conclude and declare that:

1. The Chilean State is responsible for violation of its obligation to investigate torture in accordance with the provisions of articles 8 and 25 of the American Convention, read in conjunction with Article 1(1) thereof and to the detriment of the victims and their next of kin. In application of the principle of *iura novit curiae*, the Commission also finds that the State is responsible for violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and for violation of its obligation under the American Convention to adopt domestic legal measures (Article 2), to the detriment of the victims and their next of kin.

2. The Chilean State is responsible for failing to adopt the domestic legal provisions to ensure the existence of an effective remedy by which to enforce the exclusionary rule in respect of confessions made under torture, pursuant to the provisions of Article 25 and, in application of the principle of *iura novit curiae*, Article 2 of the American Convention read in conjunction with its Article 1(1) and Article 10 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the victims and their next of kin.

Therefore, the Commission requests that the Inter-American Court order the following reparation measures:

1. Investigate, prosecute, and punish the alleged torture committed against the victims in this case.
2. Establish any criminal and/or administrative blame there may be for the failure to investigate the torture suffered by the victims in the present case, which was brought to the attention of the Chilean judicial authorities.
3. Adopt the measures necessary to afford an effective judicial recourse for the protection of the violated rights of the victims and their next of kin, particularly with respect to the evidentiary value attached to the confessions made under torture.
4. Make full reparations to the victims and their next of kin, which shall include pecuniary and non-pecuniary damages for the human rights violations herein established.
5. Adopt the legislative, administrative, and other measures necessary to make Chile's laws and practices conform to the inter-American standards on the subject of torture and judicial protection.
6. Take measures to prevent a repetition of acts similar to those at issue in the present case.

In addition to the need to obtain justice because of noncompliance with the recommendations made in the report on the merits, the Commission considers that the case involves issues of inter-American public order (*ordre public*). Specifically, the instant case will offer the Honorable Court the opportunity to rule on State obligations regarding judicial protection to guarantee that victims have an effective remedy to ensure that past incidents of torture, even those outside the jurisdiction of the Inter-American Court, no longer have consequences, specifically, the judicial means a State should provide so that protection under the exclusionary rule is indeed effective.

Because these matters have an important impact on inter-American public order (*ordre public*), the Commission, pursuant to Article 35.1(f) of the Rules of Procedure of the Inter-American Court, would like to offer the following expert testimony:

1. An expert, whose name shall be provided shortly, who will testify about the obligation to investigate and punish acts of torture. The expert will refer in particular to the ongoing nature of said obligation. Likewise, he/she will examine compliance with said obligation in the case of acts of torture committed during the dictatorship in Chile.

2. An expert, whose name shall be provided shortly, who will testify about international standards applicable to the exclusionary rule. The expert will refer to the scope and content of this rule as well to the State obligations it entails. In particular, he/she will elaborate on the judicial remedies that should exist to guarantee that said rule is applied in all types of proceedings, especially criminal proceedings in which a final judgment has already been rendered. The expert will consider the evolution of this subject matter in other human rights systems and, as pertinent, will offer a comparative law perspective.

The curricula vitae of the proposed experts will be included in the annexes to the report on the merits, No. 119/13.

The Commission hereby provides the Honorable Court with the following information on those who will act as petitioners during the proceedings:

CODEPU - Boris Paredes

[REDACTED]  
Santiago Centro, Chile  
[REDACTED]

International Federation for  
Human Rights - Jimena Reyes

[REDACTED]  
Ernesto Galaz Cañas  
Soledad Rojas Zepeda

Paula Donoso Vergara  
Montiglio, Rojas, Donoso y Galaz  
Abogados y Cía Limitada  
[REDACTED]

Santiago, Chile

Finally, the Commission wishes to inform you that, by a note dated April 2, 2014, the petitioners announced that the following persons would be additional representatives in the proceedings before the Inter-American Court:

Ciro Corombara López  
Branislav Marelic Rokov



I would like to take this opportunity to convey my highest regards.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Elizabeth'.

Elizabeth Abi-Mershed  
Assistant Executive Secretary