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**REPORT No. 233/19**  
**PETITION 1619-09**  
REPORT ON INADMISSIBILITY

DAVID SEALS  
GUATEMALA

Electronically approved by the Commission on December 31, 2019.

**Cite as:** IACHR, Report No. 233/19, Petition 1619-09. Inadmissibility. David Seals. Guatemala. December 31, 2019.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	David Seals
Alleged victim	David Seals
Respondent State	Guatemala
Rights invoked	Article 22 (movement and residence) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Filing of the petition	December 11, 2009
Additional information received during initial review	December 29, 2009; March 24, 2011; May 19 and June 8, 2012; June 30 and December 23, 2014
Notification of the petition	April 10, 2017
State's first response	July 5, 2017
Additional observations from the petitioner	October 17, 2017; July 10, 2019
Additional observations from the State	April 15, 2019

**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 ratification instrument on May 25, 1978)

**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	None
Exhaustion or exception to the exhaustion of remedies	Yes, exceptions in Article 46.2, paragraphs b and c, of the Convention apply
Timeliness of the petition	Yes, in the terms of Section VI

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner, an American national, applied for asylum in Guatemala in 2004.<sup>3</sup> He alleges irregularities, negligence on the part of the authorities, and delay in the processing of his application. In this regard, he claims that the authorities did not provide him with any assistance, in that the proceedings were held in a language that he did not understand, he had no free legal assistance nor interpretation services, the documents he submitted in support of his application were not translated; and that he could not afford a private attorney. He indicates that in May 2005 the National Commission for Refugees (hereinafter "CNR") dismissed his application without having considered his testimony or the documents he submitted. He asserts that considering the Guatemalan laws and the resolution by the CNR, in May 2015 he lodged an appeal with the CNR against that decision. He explains that the CNR admitted the remedy and referred the proceedings to Guatemala President's Office for a final resolution. In September 2006, the President's Office dismissed the appeal, alleging lack of competence to rule on this, and returned the proceedings.

2. According to the petitioner, he has been in administrative limbo since then, as he has lived in a state of uncertainty for more than a decade. He explains that he has had to take several buses for a three hour's trip to and from the city of Guatemala, every 10 days, to come to the Guatemalan Directorate General of Migration ("DGM") offices to apply for a Temporary Residence Permit. He asserts that throughout these years, the State of Guatemala has deprived him of a driver's license, a bank account, a smartphone, or an identity

<sup>1</sup> Hereinafter "Convention" or "American Convention."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>3</sup> For he considers himself a victim of racial discrimination in his home country.

card, rendering him unable to fulfill some formalities. He explains that all he has is his expired American driver's license. He alleges that, contrary to the State's recommendation, he cannot apply for a valid identity card at an American consulate because he is seeking asylum in Guatemala because American authorities are after him. He moreover claims that in some occasions he has had to live as an illegal migrant given that the DGM had not granted him the temporary permit on time.

3. He indicates that in 2012, a tumor developed on his skull and, having no health insurance, he went to a public hospital for treatment. He submits that his treatment involved a surgery for which two blood donors were required. A foreigner, he did not have anyone close to him that could help him; thus, he was not treated. He explains that although several times he went to the blood bank and even offered to donate his blood; he was unable to undergo the procedure. He asserts that he stopped seeking help for his treatment because he preferred to focus on obtaining a final and favorable decision on his asylum application. In addition, the petitioner reports that his provisional migratory status was extended on April 12, 2019 for a period of thirty days.

4. The State claims that the alleged victim has sought asylum in Guatemala as a refugee due to family issues in his home country after divorcing his wife. It adds that the State of Missouri had ordered him to make monthly payments of USD 700 to keep his right to visit his son under penalty of jail time if he failed to fulfill this obligation. The State indicates that as he refused to pay child support, he has been imprisoned twice. The first time for eight months and the second time for four months. It indicates that in 2004 he applied for asylum in Guatemala and that the CNR denied him refugee status because he did not meet the requirements set out in the applicable legislation. It claims that Guatemala President's Office rejected his appeal on considering that it was not competent to rule on it. It explains that the proceedings were, therefore, returned to the CNR, whose resolution on the denial of refugee status remains in force. The State moreover claims that temporary permits valid for 10 days are free of charge for the petitioner. It also claims that the authorities have already told the petitioner to apply for a valid identity card at the embassy or a consulate of his country so that he can fulfill the necessary steps in Guatemala because his driver's license has expired.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

5. The petitioner alleges his inability to exhaust domestic remedies because of the following reasons: i) the President's Office declined to rule on a remedy under its competence of jurisdiction, leaving his case in administrative limbo since then; ii) the proceedings were riddled with irregularities as he did not have an attorney or interpreter; iii) there has been a delay in the authorities' issuing of a final resolution on his application; and iv) because of Guatemala President's Office denial to decide on his appeal, he filed remedies with several authorities such as the President of the Congress, the Human Rights Ombudsman's Office, and the Supreme Court; yet no one has settled the issue. The State contends that after exhausting the administrative jurisdiction by means of the appeal, the petitioner should have resorted to the contentious-administrative jurisdiction or submitted an action for the protection of fundamental rights (*amparo*), which is now impossible because of the statute of limitations.

6. The Commission notes that under the notification of the CNR asylum denial the petitioner had "five days, following the date of this notification to appeal before the National Commission for Refugees." The IACHR also notes that based on data submitted by the parties, the Rules for Protecting and Deciding on Refugee Status in Guatemalan Territory, in Governmental Agreement No. 383 of September 14, 2001, indicate in article 33 that "within five days as of the date subsequent to the notification, applicants may file an appeal with the [CNR] to have it refer the file, along with a detailed report, to Guatemala President's Office, which shall pass a final decision by the President's Office Secretariat-General. This decision will exhaust the administrative venue." In view of this, and considering that both parties agree that the petitioner filed an appeal with the CNR and that this was sent to the President's Office, the IACHR believes that the petitioner submitted the adequate remedy and that the authority competent to decide on it refused to do so and returned the proceedings to the CNR. Consequently, a final resolution on his case has been pending since then and it appears that it is impossible to file other legal remedies because the deadlines are due. As a result and considering that the proceedings were held in a language that the petitioner did not master then and that he had no defense counsel or interpreter, the IACHR believes that the petitioner has been deprived of exhausting domestic remedies. Therefore, exceptions in Article 46.2, paragraphs b and c, of the American Convention apply to this matter. The exceptions apply because the petition indicates *prima facie* as follows: i) the

petitioner was allegedly unable to exhaust remedies given the competent authority's refusal to hear his appeal and ii) a final resolution on his asylum request filed in 2004 has been pending for over 15 years.

7. In addition, given the dismissal of the appeal in 2006, the petitioner has resorted to several authorities since then, including the Supreme Court in 2009. A month after the Supreme Court passed its decision, he filed a petition to the IACHR. Therefore, the Commission considers that the petition was filed on time and meets the requirement in Article 32.2 of the IACHR Rules of Procedure.

## VII. COLORABLE CLAIM

8. The alleged victim claims that the State is responsible for the violation of his human rights in that it did not provide him with any assistance in the asylum proceedings and has kept his case in administrative limbo since 2006. He claims that this situation has prevented him from fulfilling other rights in Guatemala. In turn, the State affirms that the alleged facts do not establish human rights violations because i) the asylum denial is in accordance with the national legislation and ii) the fact that the alleged victim has no identity documents results from his own failure to file for his passport at the embassy of his country.

9. For purposes of admissibility, the Commission must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph c of that article. The criterion for evaluating these requirements is different from that used to pronounce on the merits of the petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the legal grounds for a possible or potential violation of a right enshrined by the Convention, but not to establish the actual existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply a prejudgment of the merits of the matter.<sup>4</sup>

10. In the case at bar, the Commission observes that, according to information provided by the State, the rejection of the request for refuge presented by the alleged victim was based on the fact that Mr. Seals would not have fulfilled the requirements established in the norm, since his departure from the United States was due to the lack of payment of family assistance. Likewise, it takes into account that the alleged victim would preliminarily have conditions to circulate and reside in Guatemala, and that he could resort to requests for Temporary Permanence Permits in the country, at no cost. For that reason, the IACHR considers that there are no elements that, *prima facie*, allow to conclude facts that characterize any violation of the right to movement and residence contained in Article 22 of the American Convention.

## VIII. DECISION

1. To find the instant petition inadmissible in relation to Article 22 of the American Convention;
2. To notify the parties of the decision; to publish this decision and to 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 24<sup>th</sup> day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

<sup>4</sup> IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.