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REPORT No. 224/19

PETITION 2404-12

REPORT ON ADMISSIBILITY

VICTORIA BARRIENTOS BARRIENTOS AND FAMILY
CHILE

Approved electronically by the Commission on September 11, 2019.

Cite as: IACHR, Report No. 224/19, Petition 2404-12. Admissibility. Victoria Barrientos Barrientos y familia. September 11, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Agrupación de Ex Prisioneros Políticos “Salvador Allende” de Puerto Montt (APPSAPM) y Victoria Barrientos Barrientos
Alleged victim	Victoria Barrientos Barrientos and family
Respondent State	Chile ¹
Rights invoked	No articles are specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	April 24, 2012
Additional information received during initial review	July 11, 2013; June 29, 2016
Notification of the petition	November 14, 2017
State’s first response	April 27, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Declaration on the Rights and Duties of Men ³ (ratification of OAS Charter on June 5, 1953); American Convention on Human Rights ⁴ (deposit of instrument on August 21, 1990); Inter-American Convention to Prevent and Punish Torture ⁵ (deposit of instrument of ratification on September 15, 1988); and Inter-American Convention to Prevent, Punish and Eradicate Violence against Women ⁶ (deposit of instrument of ratification on November 15, 1996).

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	Articles 5 (humane treatment), 8 (fair trial), 25 (judicial protection); Articles 1, 6 and 8 of the Convention against Torture; Article 7 of the Convention of Belém do Pará; and Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VII (protection for mothers and children), VIII (residence and movement), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), XXII (association), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration
Exhaustion or exception to the exhaustion of remedies	Yes, exceptions set forth in Article 46.2.a and b apply
Timeliness of the petition	Yes, under the terms of section VII

V. SUMMARY OF ALLEGED FACTS

1. The petitioners allege that during the civic-military dictatorship in Chile, Mrs. Barrientos Barrientos (hereinafter “the alleged victim”) was persecuted and tortured by police officers (Carabineros) on several occasions. They indicate that the alleged victim is an opponent, who actively participated in protests.

¹ In accordance with the provisions of Article 17(2)(a).a of the Commission’s Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate either in the discussions nor the decision in the present matter.

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

³ Hereinafter “American Declaration”.

⁴ Hereinafter “American Convention”.

⁵ Hereinafter “Convention against Torture”.

⁶ Hereinafter “Convention of Belém do Pará”.

They argue that on several occasions during the civic-military dictatorship she was arrested, tortured and was victim of sexual violence, while her husband, Ramón Zambrano Toledo, was also arbitrarily detained and tortured on different occasions, without a proper investigation of such crimes.

2. The petitioners allege that, in 1974, when the husband of the alleged victim was away from home because he was under the figure of “night imprisonment,” the alleged victim was constantly taken from her home by the police, who took her to another property where she was locked up, raped and released on the next day. The petitioners allege that after the release of the alleged victim’s husband they continued to be persecuted. They argue that, in 1984, agents of the National Intelligence Commission once again kidnapped the alleged victim’s husband at home, as she was subjected to sexual violence. The petitioners argue that after the arrest, the husband of the alleged victim was transferred to Mamiña, where he stayed for 3 months, during which time she had to remain alone with her two children, aged 8 and 6, in a situation of poverty and abandonment. The petitioners indicate that later, the alleged victim’s husband was again kidnapped by a police officer, and brutally beaten. The petitioner alleged that on January 20, 1986, when the alleged victim was protesting in the Plaza de Armas, carabineros arrived, took her and her companions to the police station and beat them, in addition to threatening them with detention if they protested again. Without specifying other dates, the petitioners claim that the alleged victim has been arrested and tortured on different occasions. The petitioners maintain that, due to the blows received on one of these occasions, the alleged victim lost her four-month-old fetus. The petitioners affirm that the alleged victim is in very bad psychological shape, that she cannot sleep and that she has back pain from the blows received.

3. The petitioners indicate that, on March 1, 2004, the alleged victim submitted her background to the National Commission on Political Prison and Torture (hereinafter “Valech Commission”), but did not qualify⁷. From the documentation provided, it appears that at least since June 20, 2005, the alleged victim brought her situation to the attention of the Presidency of the Republic and that she was informed that the deadline for the presentation of records such as requests for reconsideration had passed. However, the file submitted by the petitioner contains another communication by the Presidency of the Republic, dated July 14, 2005, indicating that, although she presented her background to the Valech Commission within the deadlines, she does not appear as beneficiary. It added that the Valech Commission was dissolved and that the possibility of appeal or new revision had not been contemplated. Also, in a communication dated April 20, 2007, the Presidency of the Republic informed her that it had sent her record to the Ministry of Interior for the study of her case. For its part, in a communication dated April 17, 2008, the Secretary of State of the Ministry of Interior informed the alleged victim that it was not possible to re-qualify her as a victim of prison and torture since the Valech Commission had ceased its functions in the year 2005, according to the law that regulated it. However, the Ministry mentioned the existence of a bill for the creation of the National Institute of Human Rights, in which a new qualification could be contemplated. The alleged victim would have presented her record again on April 12, 2010. Given the refusal to be qualified, on August 19, 2011 she presented her disagreement regarding the results of the report of the Valech Commission (II) before the Ministry of Interior and Public Safety, an organ that on December 1, 2011 informed her that they were not the competent to grant her the status of victim or reconsider the decisions of the Commission. In a communication dated June 29, 2016, the alleged victim reiterated to the IACHR that she was not qualified by the Valech Commission.

4. Likewise, the petitioners argue that domestic laws do not guarantee due process of law for the protection of the rights violated. They allege that there was never an investigation because there was nowhere to file a complaint, due to the military government and because the courts were unable to exercise their services.

5. For its part, the State asserts that the alleged facts do not amount to a colorable claim of human rights violations because the specific dates on which the alleged human rights violations occurred are not reported, merely informing that they would have occurred in 1974, 1975, 1984 and 1986, without indicating a date or month, nor place, contrary to that required by Article 28.4 of the Rules of Procedure of the IACHR. Additionally, it alleges that the event that generated the alleged violation is outside the competence *ratione temporis* of the Commission, since the State of Chile deposited the instrument of ratification of the

⁷ The petitioner indicates that the husband of the alleged victim was qualified by the Valech Commission.

American Convention only on August 21, 1990, with a declaration of temporary limitation, whereas the alleged facts would have happened in 1975.

6. Additionally, the State alleges that the petitioner did not exhaust domestic remedies and that it cannot be verified that the complaint has not been submitted to another international settlement procedure, in accordance with paragraphs 46.1.a. and 46.1.c of the American Convention. The State argues that the facts described in the petition do not indicate that the alleged victim has initiated any legal action against the alleged perpetrators, losing the procedural opportunity to do so. It points out that the compensatory civil actions are still open; as this could be a case involving crimes against humanity to which statute of limitations is not applicable. Thus, the procedural remedies contemplated in Chilean law were not exhausted. It is thus clear that the petitioners should not have resorted to an international mechanism.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. On March 1, 2004, the alleged victim allegedly presented her record to the Valech Commission, and again on April 12, 2010 (Valech Commission (II)). On none of the occasions was she qualified as a victim. She also presented her disagreement on the results of the report of the Valech Commission (II) before the Ministry of Interior and Public Security, on August 19, 2011, which on December 1, 2011 informed her that it was not competent to grant the status of victim or reconsider the decisions of the Commission. The petitioner alleges that she did not file a criminal complaint because there was nowhere to do so, due to the military government and that the courts were unable to exercise their jurisdiction. She indicates that internal laws do not ensure due process of law for the protection of violated rights. For its part, the State argues that the alleged victim did not initiate any legal action against the alleged perpetrators. It also points out that the compensatory civil actions are still open, but were not brought to court by the alleged victim. Therefore, the State argues that the alleged victim did not exhaust domestic remedies.

8. The Commission notes that the petitioner alleges acts of torture, arbitrary detention and sexual violence. In this context, the Inter-American Commission reiterates that, in accordance with the international standards applicable in situations as the one presented in which serious violations of human rights prosecutable *ex officio*, such as torture, are claimed, the domestic remedies that must be taken into account, for the purpose of the admissibility of the petition, are those related to the investigation, clarification and punishment of those responsible for such acts⁸, and that the State has the obligation to promote them. Additionally, the fact that the alleged victims have gone to civil jurisdiction or not in search of pecuniary compensation is not decisive for the analysis of the exhaustion of domestic remedies in the present case. It is a duty of the State to propel the remedies and ensure that the investigation is carried out in accordance with the standards of the inter-American system. Likewise, the IACHR observes that, at the time of the alleged facts, Decree Law No. 2,191, known as the Amnesty Law⁹, was in force. Additionally, the IACHR notes that, in this context, the alleged victim made her allegations known to the State on March 1, 2004, with the filing of her record with the Valech I Commission, as well as on June 20, 2005, before the Presidency of the Republic, which would have remitted its record to the Ministry of the Interior so that her case would be studied. Additionally, the Commission notes that the alleged victim presented her record again on April 12, 2010 before the Valech II Commission, as well as her disagreement about the results of such procedure, for which she was not qualified as a victim.

9. The precedents established by the Commission indicate that, whenever crimes of this nature are committed, the State has the obligation to initiate the criminal process and that, in those cases, this constitutes the suitable way to clarify the facts, judge those responsible and establish the corresponding criminal sanctions. On the other hand, the Commission notes that the alleged victim, despite having presented her antecedents before the Valech Commission on two occasions, she was not qualified, denying her access to the domestic jurisdiction¹⁰. Therefore, and in accordance with its precedents, the Commission considers the application of the exceptions contemplated in Articles 46.2.a and b of the American Convention appropriate.

⁸ IACHR, Report N. 84/17. Admissibility. Petition 188-11. Marcos Luis Abarca Zamonaro and others. Chile. July 7, 2017, par. 13.

⁹ Based on which amnesty was granted to "all persons that as authors, accomplices, accessories after the fact have committed crimes during the state of emergency established between September 11, 1973 and March 10, 1978 provided they are not currently under investigation or condemned", according to art. 1.

¹⁰ IACHR, Report N. 84/17. Admissibility. Petition 188-11. Marcos Luis Abarca Zamonaro and others. Chile. July 7, 2017, par. 13.

10. With regard to the timeliness requirement, the Commission notes that the facts reported would have occurred as of 1974; that the alleged victim filed a complaint with the Valech Commission on March 1, 2004 and again on April 12, 2010; and that the consequences of such events, such as the alleged lack of investigation and punishment of those responsible, as well as the consequences on the alleged victim's health, would continue until now. Thus, taking into account that this petition was filed on April 24, 2012, the Inter-American Commission considers that the petition was presented within a reasonable period of time, in accordance with Article 32.2 of the Rules of Procedure of the IACHR.

VII. COLORABLE CLAIM

11. In relation to the competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the present case in the light of the obligations established in the American Convention, in the Convention against Torture and in the Convention of Belém do Pará, regarding those events that occurred after their entry into force or whose execution continued after the entry into force of said instruments for the State of Chile. The Commission will analyze the facts completed prior to the entry into force of the American Convention for that State in the light of the obligations arising from the American Declaration.

12. The Commission considers that, if proven, the lack of investigation and prosecution of the acts of torture, such as the subsequent effects on the personal integrity of the alleged victim, as well as the lack of adequate and accessible judicial remedies and lack of qualification as a victim in the Valech Commission, could amount to possible violations of Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, and Article 7 of the Convention of Belém do Pará. Likewise, with respect to the events that occurred before the date of deposit of the instrument of ratification of the Convention against Torture, as regards the alleged continuity and lack of clarification of the crime of torture, the Commission considers that the alleged facts could amount to possible violations of Article 1, 6 and 8 of said instrument. The Commission also observes that certain of the alleged facts would have happened prior to August 21, 1990, the date on which the Chilean State deposited the instrument of ratification of the American Convention. Therefore, in relation to the alleged events that occurred before that date, the Commission will apply the American Declaration. In that regard, the Commission considers that the allegations related to the acts of torture, arbitrary detention and sexual violence, which would have resulted in the loss of the four-month-old fetus of the alleged victim, and violations of due process, could amount to prima facie violations of the rights established in Articles I (life, liberty and personal security), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VII (protection for mothers and children), VIII (residence and movement), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), XXII (association), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, and 25 of the American Convention, Article 7 of the Convention of Belém do Pará, Articles 1, 6 and 8 of the Convention against Torture regarding those events that occurred after their entry into force or whose execution continued after the entry into force of said instruments for the State of Chile; and Articles I, IV, V, VII, VIII, XVII, XVIII, XXII, XXV and XXVI of the American Declaration; and

2. To notify the parties of the decision; to continue with the analysis on the merits and 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 11th day of the month of September, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.