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REPORT No. 52/16
CASE 12.521

REPORT ON THE MERITS

MARIA LAURA ORDENES GUERRA ET AL
CHILE

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I. SUMMARY

1. On July 14, September 3, and October 24, 2003 and on January 22, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received four petitions presented by attorney Nelson Caucoto (hereinafter "the petitioner"), against the Republic of Chile (hereinafter "the State", "the Chilean State" or "Chile"), for failure to make reparation or compensate for the harm done to Maria Laura Órdenes Guerra, Ariel Luis Antonio, Marta Elizabeth, Augusto Oscar, Gloria Laura Astris, and Maria Laura Elena Alcayaga Órdenes[1]; Lucía Morales Compagnon, Jorge Roberto, Carolina Andrea, Lucía Odette, and María Teresa Morales Osorio[2]; Alina María Barraza Codoceo, Eduardo Patricio, Marcia Alejandra, Patricia Auristela, Nora Isabel, Hernán Alejandro Cortés Barraza[3]; Mario Melo Acuña, Ilia María Pradenas Pérez, and Carlos Gustavo Melo[4]; Pamela Adriana Vivanco[5]; Elena Alejandrina Vargas[6]; and Magdalena Mercedes Navarrete, Alberto, Patricio Hernán, and Víctor Eduardo Reyes Navarrete[7], as a result of the kidnapping, murder, or disappearance of their next of kin, allegedly perpetrated by State agents in 1973 and 1974, during the military dictatorship.

2. The petitioner argues that application of the statute of limitations by Chilean courts to lawsuits for damages brought by the alleged victims is a breach of the State's obligations under the American Convention, since those actions or suits do not prescribe. He asserts that comprehensive reparation for a serious human rights violation is a right, while the financial compensation received by some next of kin through the administrative program for reparation established by the State amounts to welfare assistance and does not constitute comprehensive reparation for the specific harm caused by the human rights violations that were committed. He adds that, under the American Convention, family members are entitled to a judicial assessment of damages, especially considering that the benefits awarded do not meet inter-American standards for reparation in similar cases.

3. For its part, the State argues that it has made an effort to make reparation to the victims of political violence during the dictatorship, focusing on individual, collective, material and moral indemnification, along with social welfare assistance and remembrance. It lists the corresponding laws and programs enacted. It argues that the Inter-American Court of Human Rights assessed and Chilean reparation policy and deemed it sufficient. It points out that in these cases the next of kin benefited from such reparation.

4. After examining the evidence and arguments of the parties, the Commission concludes in this report that the Chilean State is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in conjunction with the obligations established in Articles 1.1 and 2 of the same instrument. Consequently, the Inter-American Commission made the following recommendations to the Chilean State.

[1] Next of kin of Augusto Alcayaga.

[2] Next of kin of Hipólito Cortés.

[3] Next of kin of Hipólito Cortés.

[4] Next of kin of Mario Melo.

[5] Next of kin of Ramón Vivanco.

[6] Next of kin of Rodolfo Espejo.

[7] Next of kin of Sergio Reyes.

II. II.PROCEEDING BEFORE THE COMMISSION AFTER THE REPORTS ON ADMISSIBILITY

5. The initial petitions were received on July 14, September 3, and October 24, 2003 and on January 22, 2004. On October 12, 2005, the Commission issued its reports on admissibility: No. 60/05[8], 61/05[9], 62/05,[10] and 59/05[11]. The proceedings between reception of the petitions and the decision on admissibility are specified in the respective reports. The parties were notified of the admissibility reports on December 5, 2005 (Reports 59/05 and 61/05); on November 3, 2005 (Report 60/05); and on November 14, 2005 (Report 62/05). The Commission informed the parties that the cases had been registered as Cases 12.520, 12.521, 12.522, and 12.523, respectively and, pursuant to Article 38.1 of its Rules of Procedure, it gave the petitioners two months to present additional observations on the merits in each of the cases. Furthermore, pursuant to Article 48.1.f) of the American Convention, the Commission placed itself at the disposal of the Parties with a view to reaching a friendly settlement of each matter.

6. Between January 2006 and June 2007, the parties expressed willingness to take part in a friendly settlement procedure. However, as pointed out below and given the lack of concrete information regarding progress with respect to that procedure, the Commission decided to continue processing the merits of the case.

7. On April 8, 2008, the Commission decided to join cases No. 12.522 (Lucía Morales Compagnon et al.) and No. 12.523 (Alina María Barraza et al) to case No. 12.521 (María Laura Órdenes Guerra et al), pursuant to Article 29.1.d of its Rules of Procedure in force at that time, given that they address similar facts.

8. On May 29, 2008, the Commission again asked the petitioners for additional observations on the merits. On June 17, 2008, the petitioner asked the IACHR to proceed with its examination of the merits. On November 21, 2008, the State submitted its observations on the four cases, which were conveyed to the petitioners. The petitioner presented her comments on February 23, 2009.

9. On March 21, 2009, during the 134th period of sessions of the IACHR, a hearing was conducted on cases No. 12.520 and 12.521, in which the parties presented additional observations on the merits of the case and the petitioner submitted additional information, which was forwarded to the State on April 6, 2009.

10. On April 30, 2009, the Commission notified the parties of its decision to join case No. 12.529 (Mario Melo Pradenas et al) to case No. 12.521 (María Órdenes Guerra et al.), based on Article 29.1.d of its Rules of Procedure, since they address similar facts.

11. On January 4, 2012, the IACHR received information regarding two of the children of Hipólito Pedro Cortés Álvarez, with a request that they be included in the claim proceedings before the IACHR.

12. On February 21, 2013, the Commission asked the petitioner to remit information concerning the next of kin of the alleged victims. On March 21, 2013, the petitioner asked for an extension in order to be able to submit the data on the next of kin of María Órdenes Guerra. On July 9, 2013, the Commission granted a one-month extension.

[8] IACHR, Report No. 60/05 (Admissibility), Petition 511-03, María Ordenes Guerra; Chile, October 12, 2005.

[9] IACHR, Report No. 61/05 (Admissibility), Petition 698-03, Lucía Morales Compagnon et al.; Chile, October 12, 2005.

[10] IACHR, Report No. 62/05 (Admissibility), Petition 862-03, Alina María Barraza Codoceo et al.; Chile, October 12, 2005.

[11] IACHR, Report No. 59/05 (Admissibility), Petition 381-04, Mercedes Magdalena Navarrete et al.; Chile, October 12, 2005.

III. POSITIONS OF THE PARTIES ON MERITS

A. Position of the petitioner

General arguments

13. The petitioner alleges that in all the cases crimes against humanity were committed -- kidnapping followed by murder or forced disappearance -- by State security forces during the military dictatorship. He indicates that civil suits for financial compensation were brought against the State, which were rejected on the statute of limitations grounds established in the Civil Code.

14. The petitioner argues that the cases presented in the petitions are crimes against humanity, for which, under international law, civil and criminal actions do not prescribe. In that regard, he argued that letting crimes against humanity prescribe violated the rights to judicial protection and judicial guarantees. He further argues that applying the statute of limitations (prescription) contravenes the obligation to adopt domestic legal measures established in Article 2 of the American Convention. On this he argues that customary law establishes that a State that signs a treaty must adopt domestic legal measures to adjust its own laws in line with its international obligations. In a similar vein, he argues that allowing prescription disregards Article 27 of the Vienna Convention on the Law of Treaties, which establishes that States may not invoke the provisions of their internal law as justification for their failure to perform an international treaty.

15. In relation to the obligation to make reparation contemplated in Article 1.1 of the American Convention, the petitioner argues that the pensions and compensation awards (*bonos de compensación*) granted to the alleged victims are welfare payments that could not be considered an authentic settlement of damages. Accordingly, he points out that Chilean courts have explicitly ruled that such benefits amount only to welfare relief. In addition, he points out that, pursuant to Law No. 19.123, pensions are compatible with other forms of reparation and that the amounts of the pensions and reparation awards are insufficient and below international standards for damages in cases of grave human rights violations.

16. The petitioner argues that compensation for damages must include reparation for consequential damages, loss of earnings, moral prejudice and destruction of a life plan or career. He adds that such factors can only be assessed by a court that can analyze the particular and concrete circumstances of each victim's situation.

17. The petitioner complains that applying civil law standards meant to govern relations between private persons to a conflict of public law governed by the Constitution and international human rights treaties is "an extraordinary error, detrimental to the interests of victims and their family members, and a violation of international human rights law." Thus, when judges apply civil law provisions they deny the right to reparation and involve the State in a flagrant breach of the American Convention because, under Article 2 thereof, States must adapt domestic law to the provisions of said Convention.

Case 12.521 – Specific arguments – María Laura Órdenes Guerra and children (next of kin of Augusto Andino Alcalaya Aldunate)

18. The petitioner argues that, in the quest for judicially ordered comprehensive reparation, in 1997 María Órdenes filed a claim for damages (*demanda de indemnización*) with the Eighth Civil Court of Santiago, Chile (hereinafter "the 8th Civil Court") on account of moral prejudice brought about by the State agents who kidnapped and murdered her husband Augusto Alcayaga in 1973 and by denial of justice and the lack of information regarding those facts; thereby initiating the "Órdenes María with Chilean Treasury" proceedings. The petitioner points out that the suit was filed on the basis of the report of the National Truth and Reconciliation Commission (hereinafter "the Rettig Commission"), which recognized Augusto Alcayaga as a victim of kidnapping and murder during the military dictatorship.

19. He states that. on January 28, 1999, the 8th Civil Court dismissed the claim because it considered that "the deed on which the claim for damages was based occurred on a given date in 1973, and between then and the date of notification of the claim in the instant case, far more time had elapsed than the five years for prescription of the case that the Court deems applicable in the case at hand." The petitioner points out that this means that María Órdenes should have sued the State in 1977, during the very same dictatorship, for her application to have been heard. He states that the plaintiff filed an appeal against that judgment, which was dismissed on October 24, 2002 by the Fourth Division of the Court of Appeals of Santiago (hereinafter "the CAS"), which repeated the argument of the lower court that the case had prescribed due to the statute of limitations. The petitioner went on to say that an appeal for annulment on the merits was filed against that decision and declared "lapsed" (*desierto*) by the Supreme Court of Justice (hereinafter "the CSI") on January 7, 2003, so that the file was returned to the first instance court, which issued a "Let the Judgment be Executed" ("cúmplase") resolution on March 17, 2003: the last to be issued in this case.

Case 12.522 – Specific Arguments – Lucía Morales Compagnon et al. (next of kin of Jorge Ovidio Osorio Zamora)

20. The petitioner states that, in the quest for judicially ordered comprehensive reparation, in 1997 the wife and children of Jorge Osorio brought a civil action for damages before the 8th Civil Court (thereby initiating the "Morales with Treasury of Chile" proceedings, Case Record No. 4720-97), on account of his arrest and execution in 1973 by State security agents, as acknowledged by the report of the Rettig Commission. The petitioner indicates that on January 27, 1999, the 8th Civil Court denied the reparation claim on the grounds that, under civil law provisions, the action for reparation had prescribed. He points out that the plaintiffs appealed that ruling before the CAS, which conformed to the lower court's decision on December 10, 2002. He mentions that the plaintiffs filed an appeal for annulment of that judgment before the CSL, which declared it "lapsed" on March 25, 2003, for failure to have paid for some photocopies, so that the file was returned to the original court. The petitioner states that, on April 2, 2003, the "Let the Judgment be Executed" ("cúmplase") resolution was issued: the last to be issued in this case.

Case 12.523 – Specific Arguments – Alina Barraza Codeceo et al. (next of kin of Hipólito Cortés Alvarez)

21. The petitioner states that, in the quest for judicially ordered comprehensive reparation, in 1999 the wife and children of Jorge Cortés brought an action for damages before the Second Civil Court of "La Serena" (hereinafter "the 2nd Civil Court) (thereby initiating the "Cortés with Treasury of Chile" proceedings, Case Record No. 1122-99), on account of his arrest and execution in 1973, as acknowledged by the report of the Rettig Commission. He indicates that, on March 9, 2001, the 2nd Civil Court admitted the claim and sentenced the State to pay each of the plaintiffs fifteen million pesos. He states that the Chilean Treasury appealed that judgment before the CAS of "La Serena", which revoked the lower court's judgment on April 9, 2002 after accepting the State's argument that the case had prescribed. The petitioner points out that the plaintiffs filed an appeal for annulment of that ruling with the CSJ, which dismissed it on May 7, 2003, thereby rendering definitive judgment denying reparation to the plaintiffs. He states that the case file was returned to the court of origin, which, in June 2003, apparently issued the "Let the Judgment be Executed" ("cúmplase") resolution: the last to be issued in this case, putting an end to the proceedings and ordering the case to be archived.

Case 12.520 – Specific Arguments – Magdalena Mercedes Navarrete et al. (next of kin of Mario Melo Pradenas, Ramón Luis Vivanco, Rodolfo Alejandro Espejo Gómez, and Sergio Alfonso Reyes Navarrete)

22. The petitioner states that, in the quest for judicially ordered comprehensive reparation, the wife and siblings of Sergio Reyes - Magdalena Mercedes Navarrete, Alberto Reyes Navarrete, Víctor Eduardo Reyes Navarrete, and Patricio Hernán Reyes Navarrete - filed for reparation for moral prejudice on account of his kidnapping and disappearance in 1974, as acknowledged by the report of the Rettig Commission, and that on June 19, 2002, in the "Navarrete with Treasury of Chile" proceedings, Case Record No. 3118-2000, the

Seventeenth Civil Court of Santiago (hereinafter the 17th Civil Court) denied said reparation on the grounds that the case had prescribed. The petitioner points out that, on November 7, 2002, the plaintiffs filed an appeal, which was declared "lapsed" by the CAS, which returned the file on the case to the court of first instance. He indicates that, on June 26, 2003, the "Let the Judgment be Executed" ("cúmplase") resolution was issued: the last to be issued in this case.

23. He points out that in the case of Ramón Luís Vivanco, his daughter Pamela Adriana Vivanco Medida filed for compensation for the harm done by the arrest and execution of her father -- as acknowledged by the report of the Rettig Commission -- before the Sixteenth Civil Court of Santiago (hereinafter "the 16th Civil Court"), thereby initiating the "Vivanco Medina with Treasury of Chile" proceedings, Case Record No. 3245-2000. The petitioner indicates that on October 4, 2004, she was denied reparation by the court of first instance, on the grounds that the case had prescribed. He adds that the appeal against that judgment was declared "lapsed." The petitioner points out that the file was returned to the court of first instance, which issued the "Let the Judgment be Executed" ("cúmplase") resolution on June 3, 2003.

24. The petitioner states that in the case of Rodolfo Alejandro Espejo Gómez, his sister, Katia Espejo Gómez and his mother, Elena Alejandrina Varga, brought an action for moral prejudice caused by the kidnapping and disappearance of their family member, as acknowledged by the report of the Rettig Commission, thereby initiating the "Espejo Gómez with Treasury of Chile" proceedings, Case record No. 2918-2000. The petitioner indicates that on June 19, 2002 the 17thCivil Court denied their application for reparation, on the grounds that the case had prescribed. He adds that the appeals against that judgment was declared "lapsed" and returned to the 17th Civil Court, which issued the "Let the Judgment be Executed" ("cúmplase") resolution on July 9, 2003, terminating the proceedings.

25. He points out that in the case of Mario Melo Pradenas, his brother, Carlos Gustavo Melo Pradenas, and his parents, Mario Melo Acuña and Ilia María Pradenas Pérez, filed an action for damages for the harm done by the kidnapping and disappearance of their family member -- as acknowledged by the report of the Rettig Commission -- thereby initiating the "Melo Acuña with Treasury of Chile" proceedings, Case Record No. 3830-2001. The petitioner states that on September 27, 2002, the 8thCivil Court dismissed the plaintiffs' claims because it considered that they had not proved the facts of the case and due to prescription. He points out that the appeal against that judgment was declared "lapsed." According to the petitioner, the file was returned to the court of first instance, which issued the "Let the Judgment be Executed" ("cúmplase") resolution on January 23, 2003, terminating the proceedings.

B. Position of the State

26. The State alleges that since the restoration of democracy it has been committed to seeking truth and justice regarding the human rights violations perpetrated between 1973 and 1990. It pointed out that, as a result of that commitment, the Rettig Commission was established and issued a report documenting grave human rights violations under the military regime. It also points out that in 1991, the President of the Republic, asked the family members of the victims for forgiveness.

27. The State points out that in 1992 Law No. 19.123 established the National Corporation for Reparation and Reconciliation (hereinafter "the CNRR"), with a view to analyzing cases that the Rettig Commission was unable to investigate in depth, as well as new cases submitted to it. The State also points out that CNRR was to lend social and legal assistance to the victims' next of kin, specifying that the aforementioned Commission [sic] crafted the following six lines of action, i.e., programs to: a) classify victims; b) investigate their final whereabouts; c) provide social and legal assistance to the victims' next of kin and support for actions brought for reparation; d) promote education and culture; e) foster research and legal investigations; and f) develop the corporation's documentation and archives. The State points out that in 1996, the CNRR delivered its report on "Classification of the Victims of Human Rights Violations and of Political Violence."

28. It adds that in 1997, in a new effort to locate persons arrested and disappeared and political prisoners who were executed, the Government issued Supreme Decree No. 1005, establishing the

"Continuation of the Law No. 19.1213 Program of the Ministry of the Interior", with a view to intervening in the judicial proceedings relating to violations committed during the dictatorship, either directly, by filing complaints or acting as a third party, or indirectly, by providing information requested by judges.

29. The State maintains that in 2003, the Government and representatives of groups of family members of victims signed a Memorandum of Agreement to construct works of symbolic reparation in several parts of the country. It adds that toward the end of that year, the Government proceeded to establish the National Commission on Political Imprisonment and Torture (hereinafter "the Valech Commission"), which received 35,000 witnesses' statements and identified more than 28,000 people as victims.

30. The State indicates that, within that framework, it stepped up its efforts in 2004 and two reparation laws were promulgated. The first was Law No. 19.980 which amended Law No. 19.123 and established or expanded benefits for family members of victims of execution or forced disappearance. The State stresses that said law included, inter alia, the following benefits: (i) a single reparation award for children who were not granted a reparation pension; and (ii) the granting of 200 government aid pensions (*pensiones de gracia)* for families in special situations defined in the law. It adds that the aforementioned law also made special resources available for health care through the Reparation and Comprehensive Health Care Program (PRAIS) and that it increased the resources allocated by the Ministry of the Interior for building and improving memorials and historic sites for remembering the victims.

31. It maintains that the second reparation law, No. 19.992, established a reparation pension and granted other education, health, and housing benefits for persons classified as victims of imprisonment and torture for political reasons, at the hands of State agents, between September 11, 1973 and March 10, 1990.

32. Regarding the above reparation measures, the State claims that they addressed four core areas: (i) collective and individual reparation; (ii) material and moral reparation; (iii) social aid programs; and (iv) remembrance. The State also points out that the reparation policy implemented to those ends was the subject of a review by the Inter-American Court, which expressed appreciation of that State policy in its judgment in the *Almonacid v. Chile* case.

33. In addition, the State points out that Law 19.123, amended by Law 19.980, established reparation benefits for family members of disappeared and executed political prisoners in the cases under review that were classified as such by the Rettig Commission and the CNRR. It further alleges that health care was provided to the whole family group through PRAIS; scholarships were awarded to children under 35 years of age, along with exemption from mandatory military service, and a reparation pension. The State points out that the monthly reparation pension amount delivered to alleged victims or family members of victims of the dictatorship varies according to the number of beneficiaries. It indicates that when there is only one beneficiary the amount is 360,674 Chilean pesos; if there is more than one, the amount paid out is 504,903 Chilean pesos.

34. As for social security benefits, the State points out that the alleged victims in this case received reparation pensions and awards. In that connection, it asserts that in the "Codoceo et al" case, the spouse of Hipólito Cortés, Alina Barraza Codoceo, has been receiving a monthly pension since July 1991;[12] and her seven children received reparation awards of between eight and ten million Chilean pesos. During the public hearing before the IACHR on March 21, 2009, the representative of the State specified that Alina Barraza Codoceo continued to receive a pension (currently US$600) and that since 1991 she had received US$25,000 in all. He said that her children had received total reparation of approximately US$6,000.[13] He

[12] The State indicates that the monthly amount received between July 1991 and November 2007 was 36,626,798 Chilean pesos. State's brief of November 21, 2008.

[13] Public hearing before the IACHR during its 134th period of sessions. Cases 12.529 Katia Ximena del Carmen Espejo Gómez et al, and 12.521 Alina María Barraza Codoceo et al (Chile), March 21, 2009.

added that the family had been incorporated into the PRAIS program and received a monthly subsidy of US$35 to US$40 to continue secondary and higher education studies.

35. It indicates that in the "Morales Compagnon et al" case, the spouse of Jorge Osorio, Lucia Morales Compagnon, has been receiving a monthly pension since July 1991;[14] and each of her four children received reparation awards of between seven and ten million Chilean pesos.

36. The State indicates that in the "Órdenes Guerra et al" case, the spouse of Augusto Alcayaga, María Laura Órdenes Guerra, has been receiving a monthly pension of 360,674 Chilean pesos since July 1, 1991; and that each of her five children were entitled to receive 15 percent of the total amount of the pension until they are 25 years old. The State points out that in November 2005, the children not entitled to a pension because of their age were granted a one-off reparation award of 10,000,000 Chilean pesos. It further specifies that the children whose age entitled them to receive reparation pensions were granted the difference between what they had received in the form of a pension and the amount of the one-off award.

37. According to the State, in the "Melo Pradenas, Vivanco, Espejo Gómez, and Reyes Navarrete" case, the mother of Mario Melo, Ilia María Pradenas Pérez, had been receiving a monthly compensation allowance equivalent to 40 percent of the monthly allowance corresponding to more than one beneficiary from July 1, 1991 until the day she died, on May 29, 2006. The State adds that Mario Melo's father, Mario Melo Acuña, has been receiving a reparation pension since August 1, 2006, in the amount corresponding to a single beneficiary, namely 360,674 Chilean pesos.

38. It points out that the daughter of Ramón Luis Vivanco, Pamela Adriana Vivanco, received a pension from July 1, 1991 until December 31, 1993; and a compensation award of 10,000,000 Chilean pesos, a, in accordance with the law.

39. According to the State, the mother of Rodolfo Alejandro Espejo Gómez, Alejandrina Gómez, received both the compensation award and, since July 1, 1991, a monthly pension in the amount of 360,674 Chilean pesos.

40. The State adds that the mother of Sergio Alonso Reyes Navarrete, María Elisa Zepeda Rojas, has been receiving a monthly pension since July 1, 1991, equivalent to 30 percent of 504,943 Chilean pesos; that his spouse, Magdalena Mercedes Navarrete Faroldo, received the compensation award and, since July 1 1991, a monthly pension equivalent to 40 percent of 504,943 Chilean pesos, while her son had access to both the pension and reparation award.

41. With respect to educational grants, the State points out that they amount to a monthly subsidy equivalent to approximately US35 to help pay for secondary and higher education. It adds that children of victims accepted into universities, professional institutes, or technical training centers recognized by the State are entitled to payment of their enrollment and tuition fees. It points out that this benefit runs until age 35.

42. As regards health benefits, the State points out that, pursuant to Law No. 19.123, family members of victims are entitled to cost-free public health care in primary health care clinics, State-run hospitals, and emergency rooms. It adds that no fees are charged for these services and that the principal channel for benefiting from them is the PRAIS, a program open to the spouses, children, parents, and siblings of victims.

43. In short, the State argues that the psychological, physical and moral suffering experienced by the victims of human rights violations and their next of kin cannot be remedied in a material sense, so that State policy should be directed toward comprehensive reparation encompassing remembrance, justice, and

[14] The State indicates that the monthly amount received between July 1991 and November 2007 was 36,175,000 Chilean pesos. State's brief of November 21, 2008.

reparation, with social benefits for the family members of victims and financial compensation for victims. The State concludes that any measure adopted on behalf victims of imprisonment and torture for political reasons must be universal, because special and differentiated benefits favoring some to the detriment of others would distort Chilean public policy with respect to reparation. The State did not pronounce on the application of the civil law statute of limitations to the lawsuits in these cases.

IV. PROVEN FACTS

44. In its analysis, and pursuant to Article 43.1 of its Rules of Procedure, the Commission bases its conclusion on the arguments and evidence presented by the parties, the information related to this case obtained during the hearing before the IACHR in its 134th period of sessions,[15] and on information that is a matter of public knowledge.[16] In addition, the Commission will take into account the official reports of the Rettig Commission and the Valech Commission.[17]

45. It is worth pointing out that in its admissibility reports regarding the cases under review, the Commission made it clear that the complaint was not about the criminal investigation of the acts that took place during the military dictatorship but rather about "the refusal of the Chilean courts to grant compensation"[18] to the victims in the instant case, above all after the Rettig Commission had recognized the State's liability for the serious violations of the human rights of family members. Likewise, the Commission considered that in the case at hand, "the allegations refer only to the judgments handed down by the Chilean courts between 1999 and 2003."[19] Therefore, the facts addressed in what follows deal only with judicial proceedings brought by the alleged victims in this case for the purpose of obtaining reparation and the responses they received.

A. The Chilean State's rules on reparation

46. Following the end of the military dictatorship, on April 25, 1990, President Patricio Aylwin Azocar issued Supreme Decree (D.S.) No. 355, which established the Rettig Commission based on the fact that "the moral conscience of the nation demands that the truth about the grave violations of human rights committed in our country between September 11, 1973 and March 11, 1990 be brought to light."[20]. That Commission's tasks were: "1.To establish as complete a picture as possible of those grave events, as well as their antecedents and circumstances; 2. To gather evidence that may make it possible to identify the victims by name and determine their fate or whereabouts; 3. To recommend such measures of reparation and reinstatement as it regards as just; and 4. To recommend the legal and administrative measures which in its judgment should be adopted in order to prevent actions such as those mentioned in this article from being committed."[21]

[15] IACHR, Hearing, 131st Period of Sessions, Cases "Comuna 13", 12.596 – Luz Dary Ospina Bastidas, 12.595 – Miriam Eugenia Rúa Figueroa, and 12.621 – Teresa Yarce, Mery Naranjo and Socorro Mosquera, Colombia, March 12, 2008, available at: http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=12&page=2.

[16] Article 43.1 of the IACHR Rules of Procedure: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

[17] I/A Court H.R., Case of Almonacid-Arellano et al v. Chile. Judgment of September 26, 2006. Series C No. 154, par. 82.

[18] IACHR. Reports of October 12, 2005: No. 60/05, Petition 511-03, María Ordenes Guerra (Chile), par. 20; No. 61/05, Petition 698-03, Lucía Morales Compagnon et al. (Chile), par.19; No. 62/05, Petition 862-03, Alina María Barraza Codoceo et al, (Chile), par. 17; and No. 59/05, Petition 381-04, Mercedes Magdalena Navarrete et al. (Chile), par. 19.

[19] IACHR. Reports of October 12, 2005: No. 60/05, Petition 511-03, María Ordenes Guerra (Chile), par. 23; No. 61/05, Petition 698-03, Lucía Morales Compagnon et al. (Chile), par.20; No. 62/05, Petition 862-03, Alina María Barraza Codoceo et al.; (Chile), par. 20; and No. 59/05, Petition 381-04, Mercedes Magdalena Navarrete et al. (Chile), par. 22.

[20] First Whereas Clause in Supreme Decree (D.S.) No. 355 of April 25, 1990. In: Report of the Rettig Commission, Volume I, pp. XI to XIV.

[21] First Whereas Clause in Supreme Decree (D.S.) No. 355 of April 25, 1990. In: Report of the Rettig Commission, Volume I, pp. XI to XIV.

47. Supreme Decree No. 355 construed serious violations as[22] "situations of those persons who disappeared after arrest, who were executed, or who were tortured to death, in which the moral responsibility of the state is compromised as a result of actions by its agents or persons in its service, as well as kidnappings and attempts on the life of persons committed by private citizens for political purposes."[23]

48. Having completed it task, the Rettig Commission issued its report, which was approved unanimously. It was delivered to President Aylwin on February 8, 1991[24] and released by him on March 4, 1991, when he asked for forgiveness by the victims of those violations. On that occasion, the President said:

> As President of the Republic, I dare to take it upon myself to represent the entire nation in order, on its behalf, to ask forgiveness from the family members of the victims [...] publicly and solemnly [restore] the good name of the victims who were accused of crimes which were never proven and who were never given the opportunity or adequate means to defend themselves."[25]

49. This Commission made recommendations for restoring the good name of people and making symbolic reparation[26]; legal and administrative recommendations[27]; and recommendations in the area of social welfare[28]. On February 8, 1992, Law No. 19.123 established the CNRR, to "coordinate, execute, and promote the actions needed to comply with the recommendations contained in the Report of the national Truth and Reconciliation Commission."[29] This Law also stipulated that the functions of the CNRR shall include promoting reparation of the moral prejudice done to the victims and granting the social and legal assistance required by the family members of the victims in order to access the benefits contemplated in the law.[30]

50. To that end, a monthly pension was established for the next of kin of the victims of human rights violations and of political violence[31]; they were granted the right receive certain medical benefits free of charge[32] as well as educational benefits[33]; and the children of victims were exempted from mandatory military service, if they so requested.[34] It is to be noted, moreover, that Article 24 of the aforementioned Law

[22] I/A Court H.R., Case of Almonacid-Arellano et al. Judgment of September 26, 2006. Series C No. 154, par. 82.26.

[23] Article 1 of Supreme Decree (D.S.) No. 355 of April 25, 1990. In: Report of the Rettig Commission, Volume I, pp. XI to XIV. In: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[24] Message to the Nation from President Patricio Aylwin upon releasing the Report of the Rettig Commission on March 4, 1991, Volume II, pp. 887 to 894. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[25] Message to the Nation from President Patricio Aylwin upon releasing the Report of the Rettig Commission on March 4, 1991, Volume II, pp. 887 to 894. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[26] Report of the Rettig Commission, Volume II, pp. 1254-1256. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[27] Report of the Rettig Commission, Volume II, pp. 1256 to 1257. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[28] Report of the Rettig Commission, Volume II, pp. 1258 to 1266. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[29] Article 1 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

[30] Article 2.1 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

[31] Articles 17 to 27 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

[32] Article 28 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

[33] Articles 29 to 31 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

[34] Article 32 of Law No. 19.123, published in the Official Gazette on February 8, 1993.

establishes that the reparation pension shall be compatible with any other reparation of any kind that the respective beneficiary is enjoying or could be entitled to.

51. In addition, on November 11, 2003, the Government established the Valech Commission through Supreme Decree No. 1.040. Its task was to identify the persons imprisoned and tortured for political reasons during the military dictatorship and to propose austere and symbolic reparation measures for the victims.[35] The Valech Commission's final report was published on November 29, 2004.[36]

52. On October 29, 2004, Law No. 19.980 was promulgated, amending Law No. 19.123. It expanded benefits and established new ones for family members of victims, including in particular: a 50 percent increase in the amount of the monthly reparation pension, the granting of a reparation award,[37] empowerment of the President of the Republic to grant up to 200 government aid pensions (*pensiones de gracia)*; and more extensive health care benefits.[38]

53. In addition to the above-mentioned reparation measures, the State established and implemented: i) The Program to Support Political Prisoners who were deprived of their liberty at March 11, 1990; ii) the PRAIS; iii) the Ministry of the Interior's Human Rights Program; iv) technological improvements for the Forensic Medicine Service; v) The National Office for the Return of Exiled Persons; vi) the Political Exoneration Program; vii) Restitution or compensation for good confiscated or acquired by the State; viii) The Round-table Dialogue on Human Rights; and ix) President Ricardo Lagos's "There is no tomorrow without yesterday" presidential initiative.[39]

B. Relevant provisions of the Civil Code.

54. Chile's Civil Code (Book Four, Obligations in General and Contracts, Title XXXV, Offenses and Quasi Offenses, Article 2332) establishes that "the actions allowed under this Title for damages or fraud shall prescribe in four years from the date the deed was perpetrated."[40]

55. Likewise, Article 2514 in Title XLII, Prescription, establishes that "prescription terminating actions and rights of others shall only require that said actions not be exercised for a given period of time. That time is counted from the moment the obligation became enforceable (*exigible).*"

56. Article 2525 adds that "this period to time is generally three years for actions to initiate a summary lawsuit (*acciones ejecutivas*) and five years for ordinary actions. An action to initiate a summary lawsuit shall be converted into an ordinary action for three years and once converted into an ordinary action shall last only two more years."

C. Situation of María Órdenes and children and their case against the Chilean Treasury

[35] Cf. Articles 1 and 2 of Supreme Decree No. 1.040 of September 26, 2003. At: http://www.indh.cl/wp-content/uploads/2010/10/ds1040.pdf.

[36] I/A Court H.R., Case of Almonacid-Arellano et al. v. Chile. Judgment of September 26, 2006. Series C No. 154, par. 82.30.

[37] Article 5: This right is conferred on children alive on the date of publication of this law who are not benefiting from the reparation pension referred to in Article 17 of Law No. 19.123, provided that they apply for it within one year from the date this Law is published. Children in receipt of a lifelong reparation pension as persons with disabilities shall not be entitled to this benefit. Law No.19.980 of 2004.

[38] I/A Court H.R., Case of Almonacid-Arellano et al. v. Chile. Judgment of Tuesday, September 26, 2006. Series C No. 154, par. 82.31.

[39] The State's brief, presented on November 21, 2008, and not contested by the petitioner.

[40] Legally binding Decree 1. Published on May 30, 2000.

57. According to the Report of the Rettig Commission, on September 17, 1973, Augusto Alcayaga, an active member of the Partido Radical and President of the Empresa Elecmetal trade union was arrested inside the company by a mixed contingent of police (*carabineros*) and military personnel and executed by State agents on September 18. His corpse with bullet wounds was found on a street.[41] In February 1991, the Rettig Commission deemed that those facts constituted a violation of fundamental rights without any due process of law or any justification.[42]

58. Under Law 19.123 of 1992, María Órdenes has been receiving a monthly pension of 360, 674 Chilean pesos since July 1, 1991 (hereinafter, amounts in Chilean pesos are at the rate of US$1=550 Chilean pesos).[43] Each of her five children was entitled to 15% of the total amount of the pension until they turned 25.[44]

59. In 1997 María Órdenes filed a claim for damages (*demanda de indemnización*) with the Eighth Civil Court on account of moral prejudice brought about by the State agents who kidnapped and murdered her husband Augusto Alcayaga and by denial of justice and the lack of information regarding those facts; thereby initiating the "Órdenes María with Chilean Treasury" proceedings.[45]

60. On January 28, 1999 declared that it had been proved that the extrajudicial execution of Augusto Alcayaga had been committed by State agents, but declared that the action had prescribed because it had been brought after the five years allowed for under Article 2.515 of the Civil Code,[46]counted from the date of the victim's death in 1973[47] and due to incompatibility with Law 19.123.[48] The Court considered that "the deed on which the claim for damages was based occurred on a given date in 1973, and between then and the date of notification of the claim in the instant case, far more time had elapsed than the five years for prescription of the case that the Court deems applicable in the case at hand."[49] The plaintiff filed an appeal against that judgment, which was dismissed on October 24, 2002, by the Fourth Division of the CAS, which upheld the lower court's decision.[50] The plaintiff then filed an appeal for annulment of that decision on the merits, which was declared "lapsed" by the CSJ on January 7, 2003,[51] so that the file was returned to the original court, which issued a "Let it be Executed" resolution on March 17, 2003.[52]

[41] Report of the Rettig Commission, Volume I, pp. 144. (English text. p. 220) At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf. Likewise, the judgment of the 8th Civil Court in Ordenes María against the Chilean Treasury, on January 28, 1999, Case Record No. 4954-97. Sixth Whereas Clause, p. 111.

[42] Report of the Rettig Commission, Volume I, pp. 144 (English 220). At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[43] The State's brief of November 21, 2008, which was not contested by the petitioner.

[44] That amount was 504,943 Chilean pesos at November 21, 2008. The State's brief of November 21, 2008, which was not contested by the petitioner.

[45] Cf. 8th Civil Court. Judgment of January 28, 1999.

[46] 8th Civil Court, Ordenes María against the Chilean Treasury, Judgment of January 28, 1999. Case Record No. C-4954-1997. Eleventh Whereas Clause.

[47] 8th Civil Court, Ordenes María against the Chilean Treasury, Judgment of January 28, 1999. Case Record No. C-4954-1997. Twelfth Whereas Clause. Enclosed with the petition presented on July 14, 2003.

[48] 8th Civil Court, Ordenes María against the Chilean Treasury, Judgment of January 28, 1999. Case Record No. C-4954-1997. Fifteenth Whereas Clause.

[49] Cf. 8th Civil Court. Judgment of January 28, 1999. Fifteenth Whereas Clause.

[50] CAS, Judgment of October 24, 2002. Attached to the petition of July 14, 2003.

[51] CSJ, Resolution of January 7, 2003, Attached to the petition of July 14, 2003.

[52] 8th Civil Court, "Let it be Executed" resolution. May 17, 2003.

61. In November 2005, under Law 19.980 of 2004, August Alcayaga's children not entitled to a pension because of their age were granted a one-off reparation award of 10,000,000 Chilean pesos; while the children who, based on their age, did receive reparation pensions were granted the difference between what they had received in the form of the pension and the amount of the one-off award.[53]

D. Situation of the next of kin of Lucía Morales and Patricia Cortés and their proceedings against the Chilean Treasury

62. According to the Rettig Commission, on September 17, 1973, Jorge Osorio, a socialist activist and university lecturer, was detained by Investigations personnel in facilities pertaining to the Tire Manufacturers Company, MANESA, and taken to "La Serena" prison.[54] Hipólito Cortés, a worker, municipal office, one of the leaders of the Construction Workers trade union and a Communist Party activist was detained at his workplace by Ovalle policemen and also taken to "La Serena" prison.[55] Hipólito Cortés was drugged and beaten during his detention.[56]

63. On October 16, 1973, Jorge Osorio and Hipólito Cortés were executed together with 13 other individuals in the Arica Military Regiment, "as ordered by military courts in time of war."[57] These executions were carried out by State agents without any due process of law and the bodies were buried in a common grave in the La Serena cemetery.[58]

64. Under Law 19.123 of 1992, the wife of Jorge Osorio, Lucia Morales, has been receiving a monthly pension since July 1991,[59] and the wife of Hipólito Cortés, Alina Barraza, has also been receiving a monthly pension since July 1991.[60]

65. In 1997, the wife and children of Jorge Osorio filed a civil suit for compensation for damages with the 8th Civil Court, thereby initiating the "Morales Lucía with the Chilean Treasury" proceedings, Case Record No. 4720-97, on account of his arrest and execution in 1973.

66. In 1998, the remains of both victims were exhumed, whereby the findings showed that they had also been tortured prior to their extrajudicial executions.[61] These victims are not included in the list of persons recognized as victims by the Valech Commission.[62]

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[53] The State's brief of November 21, 2008, which was not contested by the petitioner.

[54] Report of the Rettig Commission, Volume I, pp. 274. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf. Cf. 8th Civil Court of Santiago. Judgment of January 27, 1999. Appended to the initial petition received on September 3, 2003.

[55] Report of the Rettig Commission, Volume I, pp. 273. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[56] Judgment of the 2nd Civil Court of La Serena. Patricia Cortés against the Chilean Treasury, March 9, 2002. Second Whereas Clause Sixth Whereas Clause. Testimony of Nicolás Emilio Fuentes Rivera. Attached to the petition of Thursday, October 16, 2003.

[57] Cf. Report of the Rettig Commission, Volume I, pp. 274. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[58] Report of the Rettig Commission, Volume I, pp. 274. At: http://www.ddhh.gov.cl/ddhh_rettig.html and Cf. 8th Civil Court of Santiago, Judgment of January 27, 1999.

[59] The monthly amount received between July 1991 and November 2007 was 36,175,000 Chilean pesos. She continues to receive the pension. State's brief of November 21, 2008.

[60] The monthly amount received between July 1991 and November 2007 was 36.627.798 Chilean pesos. She continues to receive the pension. State's brief of Friday, November 21, 2008.

[61] Cf. Judgment of the 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, March 9, 2001. Fifth Whereas Clause. Enclosed with the petition presented on October 16, 2003.

[62] Valech Commission. List of Persons Recognized as Victims. At: http://www.indh.cl/wp-content/uploads/2011/10/ds1040.pdf.

67. On January 27, 1999, the 8th Civil Court denied the request for reparation in the Morales proceedings, since it considered that under civil law provisions the action for compensation had prescribed and was incompatible with Law 19.123[63]. The plaintiffs appealed that ruling before the CAS, which conformed to the lower court's decision on December 10, 2002.[64] On December 18, 2002, the plaintiffs filed an appeal for annulment of that judgment before the CSL, which declared it "lapsed" on March 25, 2003,[65] for failure to have paid for some photocopies, so that the file was returned to the original court.

68. In 1999, the wide and children of Hipólito Cortés filed a civil law suit for reparation of damages causes by his death with the 2nd Civil Court in La Serena (Case Record No. 1122-99).[66] On March 9, 2001, the judge in the case deemed the extrajudicial execution proven and considered that the reparation pensions and awards granted under Law 19.123 did not exclude compensation for moral prejudice.[67] Furthermore, that Court deemed that

> the second paragraph in Article 38 of the Political Constitution of the State provides that "Any person whose rights should have been adversely affected by the Administration of the State, the Bodies thereof or the Municipalities, is entitled to file complaint in courts established by law [...], without prejudice to the responsibility which might affect the officer who should have caused harm." Therefore, since it is a question of the State's non-contractual liability which, in light of what was correctly adduced, has not prescribed, it should be determined that the petition formulated by the respondent is, on the contrary, admissible.[68]

69. Consequently, the aforementioned court decided to admit the claim and to order compensation for moral prejudice in the amount of fifteen million pesos for the spouse and each of the children.[69] It also ordered that amounts granted in the form of compensation awards and pensions be deducted from that amount.[70]

70. On April 9, 2002, ruling on an appeal filed by the Chilean Treasury, the Court of Appeals of La Serena decided to revoke the judgment of the first instance court, because it considered that the five year prescription period had elapsed, since the events had occurred in 1973. It therefore upheld the Treasury's argument that the action had prescribed and the compensation requested was incompatible with enforcement of Law 19.123.[71]

71. On May 7, 2003, the CSJ rejected the appeal for annulment filed by the plaintiff and the request that the judgment be quashed, because it considered that the action had been brought after the four-

[63] 8th Civil Court. Judgment of January 27, 1999, Morales Lucía/Chilean Treasury, Case Record No. 4720-97, Twelfth and Fifteenth Whereas Clauses. Attached to the petition of September 1, 2003.

[64] CAS, Judgment of Tuesday, December 10, 2002. Attached to the petition of September 1, 2003.

[65] Resolution of March 25, 2003. Attached to the petition presented on September 3, 2003.

[66] 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, Judgment of March 9, 2001. Second Whereas Clause. Attached to the petition presented on September 3, 2003.

[67] 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, Judgment of March 9, 2001. Eleventh and Twentieth Whereas Clauses. Attached to the petition of September 3, 2003.

[68] 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, Judgment of March 9, 2001. Sixteenth Whereas Clause. Attached to the petition of September 3, 2003.

[69] 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, Judgment of March 9, 2001. Twenty-first Whereas Clause. Attached to the petition of September 3, 2003.

[70] 2nd Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, Judgment of March 9, 2001. First Declarative Clause. Attached to the petition of September 3, 2003.

[71] Court of Appeals of La Serena. Judgment of April 9, 2002, Eighth Whereas Clause.

year statute of limitations period, provided for in Article 2.332[72] of the Civil Code,[73] had elapsed. Faced with the request for annulment, the CSJ considered that the contested judgment had not committed any mistakes, since, as had already been pointed out, Articles 130 and 131 of the Geneva Convention regarding the treatment of prisoners of war, adduced by the family members of the victims as the legal basis for the contention that actions against war crimes are not subject to any statute of limitations, are not provisions that state that actions of a financial or proprietary nature do not prescribe. Therefore the CSJ considered that, in Chile's legal system there was no impediment to prescription of actions that would have meant that the Treasury was effectively liable to make reparation for other than criminal damages.[74]

72. The CSJ considered that the idea of applying the statute of limitations terminating an action for compensation contained in the Civil Code to actions addressing the non-contractual liability of the State "does not contradict its special nature, if one considers that they (such actions) affect the financial implications (*ámbito patrimonial)* of that responsibility"[75] and that, for lack of positive provisions rendering them non-prescriptible, it was appropriate to go by Ordinary Law rules that refer specifically to the subject, including Article 2332 of the Civil Code, which refers directly to the matter.[76]

73. Under Law 19.980 of 2004, the victim's four children received reparation awards: Carolina Andrea Osorio Morales (7,700,317 Chilean pesos), Jorge Osorio Morales (6,163,383 Chilean pesos), Lucía Osorio Morales (10,000,000 Chilean pesos) and María Teresa Osorio Morales (10,000,000 Chilean pesos)[77].

74. The seven children of Hipólito Cortés also received reparation awards: Marcia Alejandra Cortés Barraza (10,000,000 Chilean pesos) Nora Isabel Cortés Barraza (8,230,371 Chilean pesos), Hernán Alejandro Cortés Barraza (9,207,049 Chilean pesos), Eduardo Patricio Cortés Barraza (10,000,000 Chilean pesos), Miriam del Rosario Cortés Barraza (10,000,000Chilean pesos), Patricio Cortés Barraza (10,000,000 Chilean pesos), and Jorge Cortés Barraza (10,000,000 Chilean pesos)[78].

E. Situation of Pamela Vivanco and her case against the Chilean Treasury

75. According to the Rettig Commission report, on September 28, 1973, Ramón Vivanco, an active member of the Communist party and worker at the San Bernardo de Ferrocarriles machine shop was arrested along with 10 other people in a military operation carried out in that workplace.[79] The detainees were executed by soldiers on October 6, 1973 at the Cerro Chena detention center and their corpses were sent to the Institute for Forensic Medicine.[80] The Rettig Commission concluded that the death of the victims constituted a human rights violation, brought about without due process of law by State agents.[81]

[72] Article 2332: "The actions allowed in this Title on account of damages or fraud shall prescribe in four years from the date on which the deed was perpetrated."

[73] CSJ. Judgment of May 7, 2003. Fourth Whereas Clause. Attached to the petition of September 3, 2003.

[74] Cf. CSJ. Judgment of May 7, 2003. Fourth Whereas Clause.

[75] Cf. CSJ. Judgment of May 7, 2003. Eighth Whereas Clause.

[76] CSJ. Judgment of May 7, 2003. Eighth Whereas Clause.

[77] State's brief of Friday, November 21, 2008.

[78] The State's brief of November 21, 2008, which was not contested by the petitioner.

[79] Report of the Rettig Commission, Volume I, pp. 225 and 226. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[80] Report of the Rettig Commission, Volume I, pp. 226. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[81] Report of the Rettig Commission, Volume I, pp. 226. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

76. Under Law 19.123 of 1992, the victim's daughter, Pamela Vivanco, received a compensation award and her pension lasted from July 1, 1991 until December 31, 1993 when, by reason of her age, she became ineligible.[82]

77. On August 30, 2000, Pamela Vivanco filed a civil suit for damages the 16th Civil Court, against the Chilean Treasury because of the moral prejudice caused by the death of her father.[83] On October 4, 2002, the Court dismissed the claim due to application of the five-year prescription period for actions under ordinary law established in Articles 2.514[84] and 2.515[85] of the Civil Code[86]. The judge considered that the action had been brought more than five years after the date on which it became enforceable, namely March 4, 1991m the date on which the Rettig Commission's report was published.[87] On January 22, 2003, Pamela Vivanco appealed that judgment before the CAS, which declared the appeal void on May 6, 2003, because the appellant did not appear.[88]

78. Under Law 19.980 of 2004, the daughter of the victim received a reparation award consisting of the difference between what she had received in the form of a pension and the amount of the award, which was 10,000,000 Chilean pesos.[89]

F. Situation of the Carlos Melo family group and their case against the Chilean Treasury

79. According to the report of the Rettig Commission, on September 29, 1973, Mario Ramiro Melo Pradenas, a retired Army officer, private secretary and member of President Salvador Allende's security guard, and an active Socialist was detained by a Chilean Air Forces (FACH) patrol and taken to the Ministry of Defense. He was last seen at the military base in Peldehue.[90]

80. The Commission "came to the conviction that his status is that of having disappeared at the hands of government agents in a violation of his human rights [...] and that since that time there has been no information on his whereabouts or his fate, nor is there any record of his death or of any dealings with the government that might indicate he is alive."[91]

81. Under Law 19.123 of 1992, María Ilia Pradenas Pérez received a compensation award equal to 40 percent of (504,943 Chilean pesos) the monthly amount when more than one beneficiary is involved.[92] She received her pension from July 1, 1991 until her death on May 29, 2006.[93]

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[82] The State's brief of November 21, 2008, which was not contested by the petitioner.

[83] Action filed by Pamela Vivanco against the Chilean Treasury. Attached to the petition of January 22, 2004.

[84] Article 2514: Prescription terminating the suits and right of third parties requires only a given amount of time in which said actions have not been exercised. That time is counted from the moment the obligation became enforceable (*exigible).*"

[85] Article 2515: This period to time is generally three years for actions to initiate a summary lawsuit (*acciones ejecutivas*) and five years for ordinary actions. An action to initiate a summary lawsuit shall be converted into an ordinary action for three years and once converted into an ordinary action shall last only two more years.

[86] 16th Civil Court, Vivanco/Medina/Chilean Treasury, Judgment of October 4, 2002, Court Record Case Number: C 3545-2000. Ninth Whereas Clause. Attached to the petition of January 22, 2004.

[87] 16th Civil Court, Vivanco/Medina/Chilean Treasury, Judgment of October 4, 2002, Court Record Case Number: C 3545-2000. Ninth Whereas Clause. Attached to the petition of Friday, January 02, 2004.

[88] CAS. Decision of May 6, 2003. Attached to the petition presented on January 22, 2004.

[89] The State's brief of November 21, 2008, which was not contested by the petitioner.

[90] Report of the Rettig Commission, Volume I, pp. 165. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[91] Report of the Rettig Commission, Volume I, pp. 166. [English: p. 249]. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[92] The State's brief of November 21, 2008, which was not contested by the petitioner.

82. On August 17, 2001, Carlos Melo Pradenas, Mario Melo Acuña, and María Ilia Pradenas, the brother and parents of the victim filed a civil suit against the State before the 8th Civil Court for damages on account of moral prejudice.[94] On September 27, 2002, the Court dismissed the suit as it considered that the facts of the case had not been proven and the action had prescribed.[95] It also deemed that the plaintiffs had already received compensation under Law 19.123. That judgment was appealed before the CAS and the appeal declared void on June 12, 2003.[96]

83. The father of the victim has been receiving a monthly reparation pension since August 1, 2006, in the amount corresponding to a single beneficiary (360, 674 Chilean pesos).[97] The parties did not report whether the brother of the victim receives reparation benefits.

G. Situation of Katia Ximena Espejo and her mother and their case against the Chilean Treasury

84. According to the report of the Rettig Commission, on August 15, 1974, 18-year-old Rodolfo Espejo, a secondary school student and active member of the Socialist Party, was arrested[98] by members of the National Intelligence Directorate (DINA).[99] In response to judicial inquiries as to his whereabouts, the authorities denied that he was being held.[100] Thanks to witnesses' testimony, it was established that he had been held in Londres No. 38 and Cuatro Alamos.[101] The Rettig Commission reached the conviction that he was disappeared by State agents, who violated his human rights.[102]

85. Under Law 19.123, Rodolfo Espejo's mother, Elena Alejandrina Gómez, has been receiving a monthly pension in the amount of 360,674 Chilean pesos since July 1, 1991.[103] She also received a compensation award.[104] The parties did not report whether the sister of the victim receives reparation benefits.

86. On July 19, 2000, Katia Espejo and her mother filed a civil suit for damages on account of Rodolfo's death with the 17th Civil Court.[105] On June 19, 2002, the 17th Civil Court declared that it had been proved that Rodolfo Espejo had been detained and disappeared by State agents, but denied the claim because

[... continuation]

[93] The State's brief of November 21, 2008, which was not contested by the petitioner.

[94] Action filed by Carlos Melo et al. before the 8th Civil Court against the Chilean Treasury. Attached to the petition of January 22, 2004.

[95] 8th Civil Court, Judgment of September 27, 2002, Melo et al. against the Chilean Treasury. Seventh and Eighth Whereas Clauses. Attached to the petition of January 22, 2004.

[96] Judicial Branch of the Republic of Chile. Inquiry into status of cases, breakdown of developments. Case C-2918/2000.

[97] The State's brief of November 21, 2008, which was not contested by the petitioner.

[98] Report of the Rettig Commission, Volume II, pp. 840 and 841. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[99] Report of the Rettig Commission, Volume II, pp. 840 and 841. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[100] Report of the Rettig Commission, Volume II, p. 841. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[101] Report of the Rettig Commission, Volume II, pp. 841. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[102] Report of the Rettig Commission, Volume II, p. 841. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[103] The State's brief of November 21, 2008, which was not contested by the petitioner.

[104] The State's brief of November 21, 2008, which was not contested by the petitioner.

[105] Actions for damages brought by Katia Ximena Espejo et al. Attached to the petition of October 16, 2003.

it considered that the action had prescribed.[106] The judge pointed out that the facts occurred on August 15, 1974, so that far more time had elapsed than the four-year statute of limitations established in Article 2332 of the Civil Code.[107] On June 12, 2003, the CAS declared the appeal against that ruling void.[108]

H. Situation of the Magdalena Navarrete family group and their case against the Chilean Treasury

87. According to the report of the Rettig Commission, on November 16, 1974, Sergio Reyes, an active member of the Movimiento de Izquierda Revolucionaria (MIR), was arrested at his home by DINA agents.[109] From that moment on, the detainee disappeared, without there being any certain evidence of his having been held at detention centers.[110] The Retting Commission reached the conviction that the victim was disappeared by State agents in violation of his human rights.[111]

88. Under Law 19.123 of 1992, Magdalena Navarrete, the victim's mother, received a compensation award and has received a monthly pension in the amount of 360,674 Chilean pesos since July 1, 1991.[112] Likewise, María Elisa Zepeda Rojas, the victim's wife, received a compensation award and has received a monthly pension in the amount 40 percent of 504,945 Chilean pesos since July 1, 1991. The victim's son received both a compensation award and a pension.[113] The parties did not report whether Alberto, Patricio Hernán, and Víctor Eduardo Reyes Navarrete, brothers of the victim, received reparation benefits.

89. On July 28, 2000, the mother and Jorge Alberto, Víctor Eduardo, and Patricio Hernán Reyes Navarrete, brothers of the victim, filed a civil suit for moral prejudice caused by the arrest and disappearance of Sergio Reyes.[114] On June 19, 2002, the 17th Civil Court declared it proven that he had been arrested and disappeared by State agents but that the statute of limitation has been running since 1074, exceeding the four years for prescription established in Article 2332 of the Civil Code.[115] That ruling was appealed[116] and the appeal declared void by the CAS. The "Let Judgment be Executed" ("cúmplase") resolution was issued on June 26, 2003.[117]

[106] Judgment of the 17th Civil Court, Espejo Gómez against the Chilean Treasury, Case Record No. C-2918-2000. Attached to the petition of October 16, 2003.

[107] Judgment of the 17th Civil Court, Espejo Gómez against the Chilean Treasury, Case Record No. C-2918-2000, Seventh Whereas Clause. Attached to the petition of October 16, 2003.

[108] Case Record No. 2918-200, p.185. Attached to the petition of October 16, 2003.

[109] Report of the Rettig Commission, Volume II, p. 790. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[110] Report of the Rettig Commission, Volume II, p. 791. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[111] Report of the Rettig Commission, Volume II, p. 791. At: http://www.ddhh.gov.cl/ddhh_rettig.html.English taken from: http://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf.

[112] The State's brief of November 21, 2008, which was not contested by the petitioner.

[113] The State's brief of November 21, 2008, which was not contested by the petitioner.

[114] Action brought before the 17th Civil Court. Attached to the petition of January 22, 2004.

[115] 17th Civil Court, Navarrete against the Chilean Treasury, Judgment of June 19, 2002, Court Record Case Number: C-3118-2000. Attached to the petition of January 22, 2004.

[116] Appeal of November 7, 2002. Attached to the petition of January 22, 2004.

[117] Judicial Branch of the Republic of Chile. Inquiry into status of cases, breakdown of developments.

V. ANALYSIS OF LAW

A. Right to a Fair Trial and Judicial Protection (Articles 8.1 and 25.1 of the American Convention in conjunction with Articles 1.1 and 2 thereof)

90. Article 8.1 of the Convention stipulates:

> [E]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

91. For its part, Article 25.1 of the American Convention reads as follows:

> [E]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

92. Article 1.1 provides that:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

93. Article 2 of the American Convention provides:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

1. Prior issue regarding administrative and judicial reparation and specification of the scope of the instant case

94. The Commission notes that the defense presented by the Chilean State focused on reporting in detail on its administrative reparation program and the benefits received by victims in the case. In that regard, the Commission notes that what the petitioners want is not to request an abstract assessment of the extent to which the administrative reparation program meets the requirements of the American Convention. Nor did the petitioners contest the fact that the alleged victims received some benefits from the State within the framework of that program. From the start, the petitioners' arguments focused on what they consider to be a denial of justice due to the application of civil prescription rules to judicial proceedings for reparation, From the proven facts it transpires that the dismissal of the aforementioned judicial actions was based precisely on application of the civil statute of limitations and no reference was made to the participation of the alleged victims in the administrative reparations program.

95. Without prejudice to the above, the Commission deems it appropriate to conduct a preliminary assessment of the State's arguments in order to define the object of the analysis of the merits carried out in subsequent sections of this report.

96. The Inter-American Court has indicated that " “if domestic mechanisms exist to determine forms of reparation, these procedures and [their] results must be assessed” and that, to this end, it should be

considered whether they "are objective, reasonable and effective."[118] Specifically referring to Chile's administrative reparation program, in the *Almonacid Arellano et al. v. Chile* case, the Court states that "it makes a positive assessment of the policy of reparation of human rights violations advanced by the State."[119]

97. Now, beyond that generic acknowledgment that has no concrete legal consequences in the aforementioned case, subsequently, in the case of *García Lucero et al. v. Chile*, the Inter-American Court noted that:

> (...) the existence of administrative programs of reparation must be compatible with the State's obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State's duty to ensure the "free and full exercise" of the rights to judicial guarantees and protection, in keeping with Articles 1(1), 25(1) and 8(1) of the Convention, respectively. In other words, the administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs, cannot result in an obstruction of the possibility of the victims, pursuant to the rights to judicial guarantees and protection, filing actions to claim reparations.[120]

98. As the Court states in the same case, according to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent the victims from filing actions to claim measures of reparation.[121]

99. In a similar vein, the Commission has pronounced on the existence of different ways of making reparation to victims in situations involving grave violations of human rights. On this, the IACHR has indicated that in its view, "the adoption of an administrative reparations program ought not to preclude other judicial avenues to access comprehensive reparations, and victims should be able to choose the avenue that they consider best to ensure, in the end, that they receive reparations. The IACHR is of the view that the State could establish and put into operation the proper institutional mechanisms to observe victims' right to have recourse to various avenues of reparations, without risk to the public purse."[122]

100. Referring to the relationship between both types of reparation in reference to the Colombian case, the Commission pointed out that:

> [...] the administrative reparations proceeding ought not to preclude a contentious-administrative legal action that seeks to establish the legal responsibility of the State, nor should it involve abandonment of the action for reparations under the Justice and Peace Law. Accordingly, victims' right to bring legal action in the contentious-administrative forum to determine the responsibility of the State for gross violations committed by paramilitary ought to be preserved, as has been the finding in precedents of the Council of State. In addition, the State could always include in the award the compensation it would pay under the administrative reparations program. [123]

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[118] I/A Court HR. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267 par. 189. Citing I/A Court HR. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, par. 303.

[119] I/A Court HR. Case of Almonacid-Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, par. 161.

[120] I/A Court HR. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 190.

[121] I/A Court HR. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 192.

[122] IACHR. Principal Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, par. 5.

[123] IACHR. Principal Guidelines for a Comprehensive Reparations Policy. February 19, 2008. par. 7. Available at: http://www.cidh.org/pdf%20files/Lineamientos%20principales%20para%20una%20pol%C3%ADtica%20integral%20de%20reparaci

[continues ...]

101. Along the same lines and with respect to torture -- which constitutes a grave violation of human rights comparable precisely because of their gravity to those that occurred in the instant case -- the Committee against Torture pointed out that:

> [...] States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right and ensure their access to a judicial remedy. While collective reparation and administrative reparation programs may be acceptable as a form of redress, such programs may not render ineffective the individual right to a remedy and to obtain redress.[124]

102. In light of the above, it is fair to say that both organs of the Inter-American system that the avenues of administrative and judicial reparation are complementary and non-exclusive. Both may apply with the possibility discounting or offsetting in the judicial avenue what was already granted through the administrative channel. Furthermore it transpires from Articles 8.1 and 25.1 of the American Convention that victims of grave human rights violation must be able to access justice in order to request a judicial declaration of the State's responsibility; for an individual assessment to be made of the impact of the violation; or to question the adequacy of previously received reparations. By the standards described above, this right should not be curtailed by prior participation in an administrative reparations program.

103. By virtue of the foregoing considerations, the Commission establishes that the object of review in the instance case is limited to determination of whether the application of the statute of limitations (prescription) to the judicial proceedings for reparation constitutes a violation of the American Convention, in particular the right to access justice with guarantees of due process to obtain reparation for grave violations of human rights which, in addition, in the instant case, constituted crimes against humanity.

104. The Commission will conduct that analysis in the following order: i) General considerations on access to justice and the duty to adopt domestic legal provisions; ii) Inter-American standards with respect to prescription in criminal matters involving certain violations of human rights; iii) Considerations regarding the prescription of judicial actions brought to obtain reparation for certain human rights violations; and iv) Analysis of the instant case.

2. General considerations General considerations on access to justice and the duty to adopt domestic legal provisions

105. On the right to judicial protection, the Court has found that the States Parties have an obligation to provide effective judicial remedies to persons who claim to be victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention (Article 1(1)).[125] The Commission has further established that Article 25 of the American Convention relates directly to Article 8.1, which establishes the right of every person to a hearing, with due guarantees and within a reasonable time, by an independent and impartial tribunal[126] and

[… continuation]
ones.pdf. [English taken from: http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf

[124] Committee against Torture. General Comment Nº 3 (2012). par. 20.

[125] Cf. I/A Court H.R., Case of Torres Millacura et al. v. Argentina. Judgment of August 26, 2011. Series C No. 229, par. 113.

[126] IACHR, Report No. 26/09, Case 12.440, Wallace de Almeida, Brazil, March 20, 2009, par. 119.

confers upon the family members of victims the right to receive reparation for the harm done by the death of their loved ones.[127]

106. In addition, the right to effective judicial protection is established in Article 25 of the American Convention. Here, the Court has determined that "the formal existence of remedies is not enough, if they are not effective; they must provide a solution or an answer to the violation of the rights embodied in the Convention, in the Constitution or in the laws."[128] Thus, the Court has stressed that that for there to be an effective remedy it is not enough for it to be established in the Constitution or the law or for it to be formally admissible, instead it is required that it be fit to establish if there has been a violation to human rights and provide what is necessary to correct that situation.[129]

107. Likewise, the Court has established that "Any law or measure that obstructs or prevents persons from availing themselves of the recourse in question is a violation of the right of access to the courts, in the manner upheld in Article 25 of the American Convention.[130]

108. As regards Article 2 of the American Convention, the Court has indicated that this principle establishes the general obligation of each State Party to bring its domestic laws into line with the provisions of the Convention, in order to guarantee the rights established therein,[131] which implies that domestic legal measures have to be effective (the *effet utile* principle).[132]

109. As the jurisprudence of the Court has consistently established, Article 2 of the Convention entails the adoption of measures along two main lines, namely: i) the annulment of norms and practices of any kind whatsoever that may imply the violation of the guarantees protected by the Convention, or fail to recognize or else obstruct the rights recognized therein and ii) the passing of laws and the development of practices conducive to effective observance of such guarantees.[133] The Court has understood that the first set of obligations are not fulfilled when the practice violating the Convention is maintained in the legal system[134] and, therefore, that they are fulfilled by amending,[135] repealing, or in some manner annulling[136] or reforming[137] the norms or practices that have such effects, as the case may be.[138]

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[127] IACHR, Report No. 62/01, Case 11.564, Massacre of Riofrío, Colombia, April 6, 2001, par. 44.

[128] I/A Court H.R., Case of Acevedo Buendía et al v. Peru. Judgment of July 1, 2008. Series C No. 198, par. 69.

[129] I/A Court H.R., Case of Reverón Trujillo v. Venezuela. Judgment of June 30, 2009. Series C No. 197, par. 61.

[130] I/A Court H.R., Case of Cantos v. Argentina. Judgment of November 28, 2002. Series C No. 97, par. 52.

[131] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Case of La Cantuta Judgment of November 29, 2006. Series C No. 162, par. 171, and Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, par. 117.

[132] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Case of La Cantuta. Judgment of November 29, 2006. Series C No. 162, par. 171; and Case of the "Juvenile Reeducation Institute." Judgment of September 2, 2004. Series C No. 112, par. 205.

[133] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Case of La Cantuta. Judgment of November 29, 2006. Series C No. 162, par. 172, and Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, par. 118.

[134] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; "The Last Temptation of Christ" Case (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, par. 172.

[135] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, paragraphs 97 and 130.

[136] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Yatama Case. Judgment of June 23, 2005. Series C No. 127, par. 254.

[137] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of Sunday, July 04, 2004. Series C No. 166, par. 56; Case of Raxcacó Reyes. Judgment of September 15, 2005. Series C No. 133, paragraphs 87 and 125.

[138] I/A Court H.R., Case of Zambrano-Vélez et al. Judgment of July 4, 2004. Series C No. 166, par. 56; Case of La Cantuta. Judgment of November 29, 2006. Series C No. 162, par. 172.

3. Inter-American standards with respect to prescription in criminal matters involving certain violations of human rights

110. The Inter-American Court has pointed out that "In criminal cases, the statute of limitations causes the lapse of time to terminate the right to bring action for punishment and, as a general rule, it sets a restriction on the punishing authority of the State to prosecute and punish defendants for unlawful conduct."[139] It has also indicated that he statute of limitations should be duly observed by the judge for all accused of a crime.[140] However, both the Commission and the Inter-American Court have pronounced on the inapplicability, under certain circumstances, of the statute of limitations in criminal cases: i) in situations in which justice is clearly being obstructed; and ii) when grave human rights violations are involved.

111. As regards the first circumstance, the Court has indicated that invoking and applying the statute of limitations:

> is unacceptable when it has been clearly proven that the passage of time has been determined by procedural actions or omissions, in bad faith or negligence, to encourage or allow impunity. Thus, the Court reiterates what it has noted on other occasions, in that "[t]he right to effective judicial protection requires [...] the judges to direct the process so as to prevent undue delays and obstruction which will lead to impunity, thereby agitating [Tr. thwarting?] the judicial protection of human rights."[141] The Court has further noted that "when a State has ratified an international treaty such as the American Convention, its judges, as part of the State apparatus, are also bound to it, obligating them to ensure that the effects of the provisions of the Convention are not diminished."[142] That is, that the statute of limitations yields to the rights of victims when there is an obstruction of the obligation to identify, prosecute, and punish the perpetrators of a crime.[143]

112. As regards the second circumstance, which is the one that may turn out to be relevant for the analysis of the controversy raised in the instant case, both the Court[144] and the Commission[145] have found that apply the statute of limitations in criminal cases violates the American Convention in cases of grave human rights violations, such as the forced disappearance of persons, extrajudicial execution, and torture, which does not necessarily imply that such acts took place in the context of massive and systematic violations.[146]

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[139] I/A Court H.R., Case of Albán Cornejo et al. v. Ecuador. Judgment of November 22, 2007. Series C No. 171, par. 111.

[140] I/A Court HR. Monitoring of Compliance with Judgment. Loayza Tamayo Case. July 1, 2011. par. 40. Citing: Cf. Barrios Altos Case v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75, par. 41; Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, par. 171; and Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011, Series C No. 221, par. 225.

[141] I/A Court HR. Monitoring of Compliance with Judgment. Loayza Tamayo Case v. July 1, 2011. par. 40. Citing: Cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, par. 115; Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, par. 116; Case of Carpio Nicolle et al. v. Guatemala. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 1, 2009, Fourteenth Whereas Clause, and Case of Ivcher Bronstein v. Peru. Monitoring of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 24, 2009, Seventeenth Whereas Clause.

[142] I/A Court HR. Monitoring of Compliance with Judgment. Loayza Tamayo Case v. Friday, July 01, 2011. par. 40. Citing. Cf. Case of Almonacid-Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, par. 124; Case of Gomes Lund et al. ("Guerrilha do Araguaia"). See note 15 above, par. 176; and Case of Gelman v. Argentina, note 15 above, par. 193.

[143] I/A Court HR. Monitoring of Compliance with Judgment. Loayza Tamayo Case v. July 1, 2011. par. 40.

[144] I/A Court H.R., Barrios Altos Case v. Peru. Judgment of March 14, 2001. Series C No. 75, par. 41.

[145] Cf. IACHR, Report No. 35/98, Case 12.019, Antonio Ferreira Braga, Brazil, July 19, 2008.

[146] I/A Court HR. Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 19, 2011. Series C No. 226. par. 117.

113. In the case of *Cárdenas and Ibsen Peña* v. *Bolivia*, that criterion is reiterated when it is established that " in certain circumstances, international law considers statutes of limitations to be inadmissible and inapplicable[,] along with amnesty laws and exemptions from liability, so as to maintain the State's punitive power in effect for actions which, because of their seriousness, must be stopped and also to avoid their repetition."[147]

114. Subsequently, in the cases of Gomes Lund et al. ("Guerrilha do Araguaia") v. *Brazil and Gelman v.* Uruguay, regarding grave human rights violations committed under military dictatorships, the Court reiterates its jurisprudence that "[...] the statute of limitation provisions [...] intended to prevent the investigation and punishment of those responsible for serious violations to human rights such as torture, summary, extrajudicial, or arbitrary executions, and enforced disappearance are not admissible, all of which are prohibited for contravening irrevocable rights recognized by International Law of Human Rights."[148]

115. This position on the prohibition of prescription in criminal cases involving grave human rights violations has also been maintained by the Court in cases in which said violations occurred within the framework of internal armed conflicts.[149]

4. Considerations regarding the prescription of judicial actions brought to obtain reparation for certain human rights violations

116. The Commission notes that there have been major developments on this topic in both international and comparative law.

117. With regard to the victims of forced disappearance -- as is the case of three of the matters examined in this report -- the Working Group on Enforced or Involuntary Disappearances pointed out already in 1989, in its General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance that " civil claims for compensation shall not be [...] made subject to statutes of limitation. [150]

118. In line with that and without restricting it to cases of forced disappearance, the then U.N. Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Theo van Boven pointed out that:

> (...) the application of statutory limitations often deprives victims of gross violations of human rights of the reparations that are due to them. The principle should prevail that claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations. In this connection, it should be taken into account that the effects of gross violations of human rights are linked to the most serious crimes to which, according to authoritative legal opinion, statutory limitations shall not apply. Moreover, it is well established that for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in

[147] I/A Court HR. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010, Series C No. 217, par. 207.

[148] I/A Court HR. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, par. 171; and I/A Court H.R., Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. 225.

[149] See, for example, I/A Court HR. Case of the Massacres of El Mozote and Nearby Places v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012, Series C No. 252, par. par. 283.

[150] Working Group on Enforced or Involuntary Disappearances, General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, E/CN.4/1998/43, para. 73.

post-traumatic stress, requiring all necessary material, medical, psychological and social assistance and support over a long period of time.[151]

119. Subsequently, the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, adopted by the United Nations Commission on Human Rights in 2005, included the following in its Principles 23 and 32 regarding the link between claims for reparation measures and the prescription of civil actions in respect of grave human rights violations.

> Principle 23: Restrictions on prescription
>
> Prescription - of prosecution or penalty - in criminal cases shall not run for such period as no effective remedy is available.
> Prescription shall not apply to crimes under international law that are by their nature imprescriptible.
> When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries.
>
> Principle 32: Reparation procedures
>
> All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings subject to the restrictions on prescription set forth in principle 23. (...).[152]

120. In 2006, the United Nations General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Principles 6 and 7 of that instrument indicate that:

> 6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.
>
> 7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.[153]

121. The Commission also notes some developments in comparative law.

122. Thus, in the case of Colombia, in connection with direct reparation actions against the State, the Council of State has handed down multiple judgments disregarding the two-year prescription period for such actions in cases of damages causes by the commission of a crime against humanity. That conclusion was the result of an exercise to balance the legal certainty sought by statutes of limitation and the imperative of making reparation for the harm wrought by these types of crime.

123. In the words of the Council of State:

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[151] United Nations Commission on Human Rights (UNCHR), Final Report presented by the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. E/CN.4/Sub.2/1993/8, July 2, 1993, para. 135.

[152] UNCHR, Diane Orentlicher, Report of the independent expert to update the Set of principles to combat impunity.

[153] General Assembly (GA) A/RES/60/147, 21 March 2006. Resolution adopting the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."

From this point of view, prescription is institutionalized as a temporal, peremptory and preclusive concept of order, stability, the general interest, and legal certainty for those associated and the administration from a procedural perspective, generating certainty and triggering the reasonable and proportional exercise that every person enjoys to assert his or her rights before the judicial authorities.

(...)
All of which is without prejudice to the exceptions formulated in this Council's jurisprudence when it has pointed out that the facts giving rise to the means of control over direct reparation allow it to be addressed as an act against humanity (...).

Thus, acts against humanity are construed as "those ominous acts that deny the existence and imperative validity of human rights in society by attacking human dignity through actions that degrade the human condition of persons, thereby affecting not just those who have suffered physically from those acts but attacking the conscience of humanity as a whole" (...).

(...)

Now, the importance of the notion of crimes against humanity as far as the liability of the State is concerned is that it predicates non-application of the statute of limitations in those cases involving such factors, because, consistent with the gravity and magnitude of such acts which are degrading for human dignity, there is a case for acknowledging that the passage of time does not generate negative consequences for those who (directly) were victims of such conduct and who seek a declaration of the State's liability for the unlawful harm inflicted on them, because it is evident that there the interests at stake are not merely private or subjective, but also general because they involve the whole community and humanity as a whole.

Consequently, this Council considers that in cases where the elements of an act against humanity are found or give rise to the possibility that an act be treated as such, there shall be grounds for not applying prescription of the means for overseeing direct reparation, as has been shown.[154]

(References omitted)

124. At the same time, in the case of Argentina, the Commission notes that Article 2561 of the Civil and Commercial Code was amended to allow the provision on prescription and "special deadlines" to establish that "civil suits for crimes against humanity shall not prescribe"[155].

125. In addition, in the case of the State of Chile itself there have been recent judgments which have indicated that the statute of limitations shall not apply for civil actions on account of these kinds of violations of human rights. While the Commission understands that this is not a uniform criterion within Chile, it deems it pertinent , on this matter, to cite the Supreme Court of Justice's position in judgment 23.583-2014 of May 20, 2015: It reads as follows:

That, in the case of crimes such as those investigated, which the international community has characterized as crimes against humanity, the civil suit brought against the Treasury is designed to

[154] Council of State. Counsel presenting the argument (Rapporteur): Jaime Orlando Santofimio Gamboa (E). Bogotá, D. C., May 2, 2016. Plaintiff: MARIA FAELLY CUTIVA LEYVA ET AL. Defendant: MNISTRY OF DEFENCE - NATIONAL ARMY ET AL Reference: APPEAL DECREE LAW 1437 OF 2011 - MEANS FOR OVERSIGHT OF DIRECT REPARATION.

[155] See http://universojus.com/codigo-civil-comercial-comentado/articulo-2561.

obtain comprehensive reparation for the damage inflicted by the acts of a State agent, consistent with the international treaties ratified by Chile and the interpretation of the provisions of domestic law, pursuant to the Political Constitution of the Republic.
Indeed, this right of victims and their next of kin is founded upon general principles of international human rights law and their incorporation in international treaties ratified by Chile, which oblige the State to recognize and protect this right to comprehensive reparation, by virtue of the second paragraph of Article 6 and Article 6 of the Political Constitution.

That compensation for the harm done by the crime and the action for rendering such compensation effective are of the utmost importance when it comes to administering justice, in matters of concern to the public interest and "material justice." In the case under review, given the context in which the unlawful acts were ascertained, with the intervention of State agents during a period of extreme institutional abnormality in which they represented the government of the day and in which -- at least in the case at hand -- they misused that power and representative capacity, perpetrating wrongs as grave as those examined here, the State of Chile cannot elude its legal responsibility to make reparation for that de jure debt (...).

Thus, the provisions under domestic law provided for in the Civil Code on the prescription of ordinary civil suits for compensation of damages and invoked the Chilean Treasury are not relevant in the instant case as they stand in contradiction to the provisions of international human rights law, which protect the right of victims and their next of kin to receive due reparation, an international regulatory statute that Chile has recognized (...).

That, in short, since the State has the obligation to make reparation to victims and their next of kin established by international human rights law, domestic law cannot be adduced as a sustainable argument to exempt it from complying with that obligation (...).

That, under those circumstances, the judges involved did indeed commit an error of law when they allowed the objection that the civil suits brought against the State had prescribed: an error that substantively altered the ruling in the judgment, so that the appeal for annulment on the merits will be upheld.[156]

1) Analysis of the instant case

126. Taking into account the prior considerations in paragraphs 94 - 104 above regarding the limits to the object of review in this case, the Commission notes that the judicial remedy available in the Chilean legal system to accede to compensation for human rights violations is a civil action for compensation. In all the cases examined, the decisions to dismiss that were rendered final[157] applied the statute of limitations to the civil action.

127. Bearing in mind the standards described in foregoing sections, the Commission considers that there is clarity in inter-American jurisprudence that applying the statute of limitations to criminal proceedings in cases of grave human rights violations is incompatible with the American Convention. The Commission is of the view that the reason for that prohibition has to do with the fundamental need for victims of grave human rights violations to throw light on the facts and see justice done. The Commission sees no reasons to apply a different standard to an equally fundamental aspect, namely reparation in these kinds of cases. Moreover, that is consistent with the above-mentioned developments in the United Nations system

[156] See Supreme Court 23583-2014. Non-prescriptibility of action for reparation brought against the Treasury for violation of human rights. May 20, 2015. Available at: http://www.i-juridica.com/2015/05/21/suprema-23583-2014-imprescriptibilidad-de-la-acción-reparatoria-en-contra-del-fisco-por-violación-a-derechos-humanos/.

[157] The Commission notes that the appeals for annulment filed domestically were declared void for reasons that the petitioners identified as formal.

and in comparative law, to the effect that judicial actions for reparation of harm done by international crimes, such as crimes against humanity, should not be subject to prescription.

128. The Commission underscores that in the *Almonacid Arellano* et al. case, the Inter-American Court established that the military dictatorship was characterized by the existence of crimes against humanity.[158] In the words of the Court:

> [The Court] finds that there is sufficient evidence to conclude that in 1973 [...] the commission of crimes against humanity, including murder committed in the course of a generalized or systematic attack against certain sectors of the civil population, was in violation of a binding rule of international law. Said prohibition to commit crimes against humanity is a ius cogens rule, and the punishment of such crimes is obligatory pursuant to the general principles of international law.[159]

129. In accordance with the established facts and the dates on which the primary violations for which the alleged victims in this case seek reparation all occurred or began to occur as of September 1973, the Commission considers that they form part of the crimes against humanity committed during the military dictatorship. The State did not contest this characterization of the facts. Accordingly, the Commission considers that applying the statute of limitations to the civil actions for reparation filed in the instant case constituted an obstacle to effective access to justice and to materialization of the victims' right to receive reparation.

130. Based on the foregoing considerations, the Commission concludes that the State of Chile violated the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention, i conjunction with the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Maria Laura Órdenes Guerra, Ariel Luis Antonio, Marta Elizabeth, Augusto Oscar, Gloria Laura Astris and Maria Laura Elena Alcayaga Órdenes; Lucía Morales Compagnon, Jorge Roberto, Carolina Andrea, Lucía Odette and María Teresa Morales Osorio; Alina María Barraza Codoceo, Eduardo Patricio, Marcia Alejandra, Patricia Auristela, Nora Isabel, Hernán Alejandro Cortés Barraza; Mario Melo Acuña, Ilia María Pradenas Pérez and Carlos Gustavo Melo; Pamela Adriana Vivanco; Elena Alejandrina Vargas; and Magdalena Mercedes Navarrete and Alberto, Patricio Hernán and Víctor Eduardo Reyes Navarrete.

VI. CONCLUSIONS

131. Based on the considerations of fact and law contained in this report, the Commission concludes that the Chilean State is responsible for violation of the rights to judicial guarantees and judicial protection, established in Articles 8.1 and 25.1 of the American Convention, both in conjunction with the general obligation to respect and ensure rights and the duty to adopt domestic legal provisions established in Articles 1.1 and 2 of the same instrument, to the detriment of the victims in the instant case.

VII. RECOMMENDATIONS

1. Based on the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RECOMMENDS:

1. Making reparation to victims for the violations declared in this report. As part of that reparation, the State must adopt the measures need to provide an effective judicial remedy so that the victims can file their claims and obtain a decision with respect to reparations. Compliance with this recommendation is independent of the administrative reparations program.

[158] Cf. I/A Court H.R., Case of Almonacid-Arellano et al. v. Chile. Judgment of September 26, 2006. Series C No. 154, par. 99.

[159] I/A Court H.R., Case of Almonacid-Arellano et al. v. Chile. Judgment of September 26, 2006. Series C No. 154, par. 99.

2. Adopting Non Repetition Measures, in particular, legislative, administrative and other measures designed to align Chilean legislation and judicial practices with the standards described in this report regarding the prohibition of applying the statute of limitations to civil actions for reparation in cases such as this.