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**REPORT No. 58/16**  
**PETITIONS 1275-04 B AND 1566-08**  
REPORT ON ADMISSIBILITY

JUAN LUIS RIVERA MATUS ET AL.  
CHILE

Adopted by the Commission at its session No. 2070 held on December 6, 2016.  
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**I. SUMMARY**

1. On January 28, 2008, the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission," "Commission," or "IACHR") received a petition lodged by *Corporación Agrupación de Familiares de Detenidos Desaparecidos* (hereinafter, "AFDD"), and a group of lawyers<sup>1</sup> (hereinafter, "the petitioners") against Chile (hereinafter, "Chile" or "the State"), on behalf of Mr. Juan Luis Rivera Matus (hereinafter, "the alleged victim" or "Mr. Rivera") and his family. Subsequently, the Commission received 13 more complaints, presented by the same petitioners and the International Federation for Human Rights, in respect of which they requested that the petition be expanded. The complaints—14 in all—were submitted on behalf of the families of 48 individuals, so as to incorporate other alleged victims, who the petitions say are victims of crimes against humanity, inasmuch as they were political detainees who were disappeared or executed under the Chilean military dictatorship (hereinafter, "the alleged victims"). The complaints allege that the State of Chile bears international responsibility for violation of rights recognized at Articles 1 (obligation to ensure rights), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter, the "American Convention" or "Convention"), to the detriment of the alleged victims and their families.

2. In the above complaints, the petitioners argue that the State's responsibility was engaged by judgments rendered by the Supreme Court in the context of the criminal investigations into the events that harmed the alleged victims during the Chilean military dictatorship. They say that said tribunal applied the concept of "partial lapse of the statutory time period" (*media prescripción*) or "partial statutory limitations" (*prescripción gradual*) recognized in Article 103 of the Criminal Code. The application of that concept in the cases meant that the penalty imposed did not meet the standards of proportionality and pertinence or the purpose of comprehensive reparation that punishment in such cases is supposed to achieve. They say that in Chile the investigation and punishment of crimes against humanity is governed by the legislative statute on ordinary crimes and that the Court does not provide reasons for its decisions in granting the benefit of a mitigating factor such as partial statutory limitation to those responsible for crimes which, owing to their nature, are not covered by a statute of limitations. They also say that the Supreme Court lacks jurisdiction to act as a trial court, as occurred in these cases, which precluded the victims presenting their arguments to said tribunal, thereby depriving them of the possibility of a hearing and recourse against the decision.

3. The State, for its part, says that it has no objections in terms of the petition's compliance with the formal requirements of admissibility.

4. Having examined the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention, without prejudging the merits of the complaint, the Commission has decided to declare the petition admissible for the purposes of examination of alleged violations of rights recognized in Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, taken in conjunction with Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt provisions under domestic law) of that treaty. The Commission has further decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

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<sup>1</sup> Loreto Meza van den Daele, Boris Paredes Bustos, Karina Fernández Neira, Cristián Cruz Rivera, Magdalena Garcés Fuentes, José Antonio Guerrero Uriarte, Joseph Bereaud Barraza, María Cecilia Noguer Fernández, and Luisa Carolina Sanhueza Gómez.

## II. PROCEEDINGS BEFORE THE IACHR

5. On January 28, 2008, the Inter-American Commission received a petition lodged by AFDD and others on behalf of Juan Luis Rivera Matus and his family, which was registered with the number P-102-08. AFDD also presented 13 other petitions on behalf of different alleged victims in which the Supreme Court, as in the case of Juan Luis Rivera Matus, is said to have applied partial statutory limitations. In that connection, in subsequent communications dated March 3, 2008,<sup>2</sup> June 26, 2008,<sup>3</sup> June 10, 2009,<sup>4</sup> June 24, 2009,<sup>5</sup> March 4, 2010,<sup>6</sup> January 20, 2010,<sup>7</sup> February 12, 2010,<sup>8</sup> March 25, 2010,<sup>9</sup> June 1, 2010,<sup>10</sup> June 23, 2010,<sup>11</sup> July 20, 2010,<sup>12</sup> and August 16, 2010,<sup>13</sup> the petitioners presented new complaints expanding their petitions and adding new alleged victims.

6. On November 10, 2009, the petitioners requested the joinder of all the aforementioned petitions presented thus far with the petition lodged on January 28, 2008, on behalf of the alleged victim Juan Luis Rivera Matus, which was registered with the number P-102-08. The Executive Secretariat of the Commission advised on November 17, 2009, that the joinder request presented was acceptable and that the petitions would be joined to P-102-08.

7. On April 15, 2010, the Commission notified the petitioners that the petition presented by AFDD and the petitions joined thereto (P-102-08) would be joined, in turn, with a petition submitted on November 26, 2004 by Mr. Adil Brkovic on behalf of the alleged victim Juan Luis Rivera Matus and his family, and registered with the number P-1275-04.

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<sup>2</sup> Petition lodged on behalf of Cardenio Ancacura Manquián, Teófilo Zaragoza González Calfulef, Manuel Hernández Inostroza, Arturo Benito Vega González, and their respective families. The Commission initially registered this complaint with the number P-305-08.

<sup>3</sup> Petition lodged on behalf of Luis Evangelista Aguayo Fernández, Manuel Eduardi Bascuñan Aravena, José Ignacio Bustos Fuentes, Enrique Angel Carreño González, Rafael Alonso Díaz Meza, Rolando Antonio Ibarra Ortega (López), Aroldo Vivian Laurie Luengo, Ireneo Alberto Méndez Hernández, Armando Edelmiro Morales Morales, José Luis Morales Ruiz, Aurelio Clodomiro Peñailillo Sepúlveda, Luis Alcides Pereira Hernández, Armando Aroldo Pereira Meriño, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Roberto del Carmen Rivero Muñoz, Oscar Eladio Saldías Daza, Hernán Sarmiento Sabater, Hugo Enrique Soto Campos, Ruperto Oriol Torres Aravena, Edelmerio Andonio Valdez Sepúlveda, Víctor Julio Vivanco Vásquez, Claudio Jesús Escanilla Escobar, and their respective families. The Commission initially registered this complaint with the number P-759-08.

<sup>4</sup> Petition lodged on behalf of Nelson Almendras Almendras, José Ricardo López López, Juan de la Cruz Briones Pérez, Victoriano Lagos Lagos, and their respective families. The Commission initially registered this complaint with the number P-707-09.

<sup>5</sup> Petition lodged on behalf of Eugenio Iván Montti Cordero, Carmen Margarita Díaz Darricarrere, and their respective families. The Commission initially registered this complaint with the number P-798-09.

<sup>6</sup> Petition lodged on behalf of Félix Santiago de la Jara Goyeneche and his family. The Commission initially registered this complaint with the number P-665-11.

<sup>7</sup> Petition lodged on behalf of Luciano Aedo Hidalgo and his family. The Commission initially registered this complaint with the number P-102-08.

<sup>8</sup> Petition lodged on behalf of Felipe Segundo Rivera Gajardo, Gastón Fernando Vidaurrázaga Manríquez, José Humberto Carrasco Tapia, Abraham Muskatblit Eidelstein, and their respective families. The Commission initially registered this complaint with the number P-676-11.

<sup>9</sup> Petition lodged on behalf of Cecilia Miguelina Bojanic Abad, Flavio Arquímides Oyarzún Soto, and their respective families. The Commission initially registered this complaint with the number P-674-11.

<sup>10</sup> Petition lodged on behalf of José Felix García Franco and his family. The Commission initially registered this complaint with the number P-1275-04.

<sup>11</sup> Petition lodged on behalf of María Arriagada Jerez, Jorge Aillón Lara, and their respective families. The Commission initially registered this complaint with the number P-675-11.

<sup>12</sup> Petition lodged on behalf of Marcelo Eduardo Salinas Eytel and his family. The Commission initially registered this complaint with the number P-1051-11.

<sup>13</sup> On this date the Commission receive two petitions: one lodged on behalf of Gerardo Antonio Encina Pérez Miguel Antonio and his family, which it initially registered with the number P-1211-10; the other on behalf of Figueroa Mercado and his family, which it initially registered with the number P-1457-10.

8. On April 27, 2011, the IACHR forwarded a copy of the pertinent portions to the State and gave it two months to submit observations, in accordance with Article 30(3) of its Rules of Procedure then in force. On July 7, 2011, the Commission granted an extension at the request of the State. On December 6, 2012, the IACHR sent the State additional information and requested its to present its observations within one month. On August 6, 2013, the Commission reiterated the request for observations to the State. The IACHR received the response of the State on May 5, 2014, and forwarded it to the petitioners on June 18, 2014.

9. On October 9, 2015, the Executive Secretariat of the IACHR advised the parties of its decision to separate the petitions that were not connected with the alleged victim Juan Luis Rivera Matus, in accordance with Article 29(4) of the Commission's Rules of Procedure, and registered the complaint received on March 3, 2008, and the ensuing complaints related thereto as petition P-1566-08, while keeping the matters linked to Mr. Rivera under petition P-1275-04. The reason for the foregoing was that the original petition filed on behalf of Mr. Juan Luis Rivera concerned facts relating to civil reparations. Therefore, the petitions received on November 26, 2004 (concerning reparations in a civil suit) and on January 28, 2008 (related to the application of a partial lapse in the statutory time period in criminal proceedings), both on behalf of Mr. Rivera, were joined. Consequently, the petitions filed subsequently by AFDD that exclusively concern the application of partial statutory limitations in criminal proceedings and are not related to Mr. Rivera and his family were joined under petition P-1566-08.

10. In addition, on October 9, 2015, the petitions lodged on August 16, 2010, which were also joined to petition P-1566-08, were forwarded to the State. On January 7, 2016, the State submitted a written response to the forwarded petitions, which was relayed to the petitioners on February 17, 2016.

11. On July 27, 2016, based on a request expressed by the petitioner—and answered by the State—with a view to reaching a friendly settlement, which the petitioner requested be confined exclusively to the aspect concerning the judicial declaration of extinction of action in civil proceedings relating to Mr. Rivera's case, the Commission decided that said friendly settlement proceeding should be processed separately as petition P-1275-04 A. In addition, the Commission informed the parties that the aspects of the complaint regarding the arguments relating to criminal proceedings and the legitimacy of the application of partial statutory limitations, will be processed as petition P-1275-04 B.

### **III. PRIOR CONSIDERATIONS**

12. Bearing in mind that petition P-1275-04 B (lodged by AFDD on January 28, 2008), concerning Mr. Rivera, and the matters registered under petition P-1566-08 (received by means of a brief dated March 3, 2008, and other subsequent briefs, all presented by AFDD), have to do with the alleged application of partial statutory limitations in criminal proceedings, this report deals exclusively with those matters and excludes the matter under petition P-1275-04 A (lodged on November 26, 2004 by Mr. Brkovic), which concerns aspects of reparations in civil proceedings that are currently the subject of a friendly settlement procedure.

### **IV. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

##### **Submissions in common**

13. The complaints were filed as a consequence of judgments rendered by the Supreme Court, which, the petitioners claim, covertly allowed serious crimes committed against the alleged victims to go unpunished. In that regard, the petitioners allege that the rulings handed down by the Supreme Court, generally *sua sponte*, without prior discussion or presentations by the parties due to a series of irregularities, merely constituted the appearance of justice, when in reality an array of rights were violated that are protected by the American convention, such as the prohibition of statutory limitations, proportionality of punishment, and the right of the victims to have access to the proceedings and to know the truth of what happened to their family members. They also say that the Supreme Court, by overreaching its authority and

reclassifying crimes in several cases, became a tribunal that did not meet the basic requirements of a competent and impartial court, and that it also violated the obligation of states parties to the Convention to impose penalties, given that those responsible were not appropriately punished. They say that as a consequence of the foregoing, the State has violated its obligation to ensure free and full exercise of the rights recognized by the American Convention.

14. Article 103 of the Criminal Code provides: "If the guilty party comes forward or is found before the statutory limitation for the criminal proceeding or the penalty has expired, but half of that time period has already elapsed, in either case, in considering such limitations, the tribunal shall recognize that fact as amounting to two or more mitigating circumstances and not as an aggravating factor, and shall apply the rules contained in Articles 65, 66, 67, and 68, either in imposing the sentence, or to reduce the one already imposed. This rule does not apply to statutory limitations on misdemeanors and special short-term limitations. The petitioners say that the judgments declare that the criminal-law concept recognized in Article 103 of the Criminal Code is a circumstance mitigating criminal liability that influences the determination of the length of the sentence, and therefore the prohibition on applying statutory limitations, recognized by international law, does not affect it because it is a separate concept, with differing premises and consequences. They say that this assertion by the Court is patently contradictory, as it cannot recognize in its ruling the prohibition on applying statutory limitations to crimes of this nature, and at the same time apply a benefit that precisely considers the time elapsed since the crime was committed, having particular regard to the fact that the statutory time period is close to lapsing.

15. The petitioners say that the Supreme Court has held that the application of this rule "is grounded on the assumption that the offense has been forgotten, on procedural considerations and on the need not to punish the conduct, which leads to the crime going unpunished" and "is based on the idea that it is meaningless to impose such a harsh sentence for events that occurred a long time ago but that must be punished, with the result being a lighter sentence."

16. The petitioners also argue that the Supreme Court lacks authority to adopt decisions as a trial court. They say that the Supreme Court is a court of cassation that rules on matters of law, whose authority only extends to the examination of errors of law, and that, by exceeding and misusing that power, it has become a court of third instance examining matters of fact and law, with the result that, in reclassifying facts that have already proved and classified by the appropriate bodies, it is overreaching its powers as an impartial tribunal and, in so doing, violating the principle of legality. They also argue that when the Court "annuls *sua sponte*" and applies a mitigating factor such as the partial statute of limitations, it prevents the victims from having free access to present their arguments to that tribunal, thereby depriving them of the possibility of a hearing and appeal against the decision.

17. They hold that the State, by being a party to or tolerating the actions of the Supreme Court, has violated its general obligation to ensure the free and full exercise of rights, is fostering chronic repetition of human rights violations, and is leaving the families of the aggrieved utterly defenseless.

18. They argue that the obligation to impose penalties was violated because the benefits applied signified that the guilty parties were allowed to remain largely unpunished, and that by applying partially mitigating circumstances and giving weight to the passage of time, the State infringed its obligations to respect and ensure the free and full exercise of rights recognized in the Convention. The petitioners say that one of the purposes of the penalty in punishing conduct that constitutes a crime against humanity is that for the victims and their families reparation entails a punishment commensurate with the seriousness of the crime, with the understanding that said reparation is also an obligation for the State. They say that if the State grants the guilty parties the benefit of partially mitigating circumstances that reduces their liability, as it does by applying partial statutory limitations, the punishment is far from being disciplinary in practice and, therefore, the reparation falls short of being comprehensive. They add that the applicable punishment for a crime against humanity must be in proportion to the crime committed, a generally recognized principle enshrined in various instruments.

19. They say that the rule that the applicable penalty for a crime against humanity must be proportional to the crime committed is a general principle recognized in different international bodies of law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 4.2), the Convention on the Rights of the Child (Article 3), the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (Article 2.2), and the Inter-American Convention on Forced Disappearance of Persons (Article 3).

20. They argue that the State violated the obligation to respect rights in relation to the right to judicial protection. They say that the Supreme Court is applying passage-of-time effects to crimes that, owing to their seriousness, are not covered by the statute of limitations. In that connection, they say that the rule on the partial lapse of the statutory time period is envisaged in the Criminal Code, under the title "Extinction of Criminal Liability, and that said concept is only applicable to crimes covered by a statute of limitations. They argue, therefore, that for the partial statute of limitations to apply, the crime involved must be subject to limitation, which excludes the possibility of its application to crimes against humanity because they are not covered by the statute of limitations. Thus, the decisions are contradictory given that, despite acknowledging that the offenses involved are crimes against humanity, it recognize passage-of-time effects by applying partial statutory limitations.

21. The petitioners say that the facts alleged in the petition refer to crimes against humanity in which the purpose was the disappearance or execution of individuals by a state structure. They argued that granting benefits of any sort to those guilty of such crimes based on considerations to do with the time elapsed would mean those individuals obtaining an advantage from their own unlawful conduct in which they intentionally engaged in order to ensure their impunity. With regard to those cases in which the facts concern alleged victims who are still missing, the petitioners argue that since kidnapping is a continuing crime, there is no date from which to calculate the period of limitations and, in turn, the partial lapse of the statutory time period.

22. As for exhaustion of domestic remedies, they argue that no possible remedies exist because the decision comes from the Supreme Court and, therefore, is final.

### **Specific cases**

#### **1. Case of Juan Luis Rivera Matus and family**

23. In the complaint filed on January 28, 2008 by the AFDD and others, the petitioners say that on November 6, 1975, Juan Luis Rivera Matus, a communist and trade union leader, was detained in a public place in the city of Santiago as he was leaving the offices of the company Chilectra, where he worked, by agents of the Joint Command, and taken to the headquarters of the Colina Antiaircraft Artillery Regiment, an Air Force unit, where the clandestine detention center known as *Remo Cero* operated. There, army personnel interrogated him under torture, applying electrical current to his body and subjecting him to other forms of duress, resulting in his death. The following day, the same individuals went there to remove the corpse. The remains of the alleged victim were found on March 13, 2001, following excavations carried out at Fort Arteaga, an Army facility, as part of a judicial investigation. A death certificate was issued on June 5, 2002, that recorded the date of death as March 13, 2001. The National Commission on Truth and Reconciliation reportedly reached the firm conclusion that Juan Luis Rivera Matus was a qualified victim.

24. The petitioners say that on the day that the events occurred relatives of the alleged victim filed an application for relief (*amparo*) with the Santiago Appellate Court, which was rejected after the Ministry of the Interior issued a report denying the alleged victim's detention.

25. According to the petition, on December 1, 1975, the alleged victim's spouse, Olga Sanchez Rivas, filed a complaint with the First Criminal Court in and for Santiago, which proceeding was provisionally dismissed on July 14, 1976. The petitioners say that on June 28, 1996, the National Reparation and Reconciliation Corporation asked for the preliminary inquiry to be reopened, which request was complied

with on August 12, 1996. According to the petitioners, on February 28, 1997, the case was again provisionally dismissed, a decision that became final on November 24, 1998.

26. They say that on May 25, 2001, Mr. Rivera's children filed a criminal complaint, and the judicial investigation was again reopened. In the course of those proceedings, on May 4, 2004, Major (r) Álvaro Corbalán and Colonel (r) Sergio Díaz were sentenced to 15 and 10 years' imprisonment, respectively for their participation as material perpetrators of the crime of kidnapping of Juan Luis Rivera Matus, from November 16, 1975 until March 13, 2001; and General (r) Freddy Ruiz and Colonel (r) Carlos Madrid, as accessories to the crime, to 600 days' imprisonment, both benefiting from a suspended sentence.<sup>14</sup>

27. They say that on June 27, 2006, the Santiago Appellate Court confirmed the judgment and amended the penalty, sentencing all four agents to 10 years' imprisonment as the perpetrators of the crime of kidnapping resulting in grave injury (death), committed on November 6, 1975, against the person of Juan Luis Rivera Matus.

28. The petitioners say that the defense counsels of Madrid, Ruiz, Corbalán and Díaz filed cassation appeals, alleging formal and material errors in the case of the first two, and material errors in the case of the latter two, and that on July 30, 2007, the Second Division of the Supreme Court of Justice vacated the judgment, invoking the existence of a formal error (failure to state the facts that gave rise to the modification of the considerations of the court of first instance and failure to state in what capacity Mr. Ruiz was a perpetrator), and rendered a substitute judgment, applying partial statutory limitations, which had affected the length of the sentence, with the result that Ruiz and Madrid were sentenced to three years' imprisonment as perpetrators of the crime of aggravated homicide, and Corbalán and Díaz to four years' imprisonment for the same offense and in the same degree. Ruiz, Madrid and Díaz were granted release (in the form of a suspended sentence or supervised release) and are required monthly to sign their names in a book held by the *Gendarmería de Chile* for that purpose. They say that Álvaro Corbalán was not granted that benefit because he was already serving a life prison term to which he was sentenced in another proceeding. They say that there is no possible recourse against that judgment.

## **2. Case of Cardenio Ancacura Manquián, Teófilo Zaragoza González Calfulef, Manuel Hernández Inostroza, Arturo Benito Vega González, and their families**

29. On March 3, 2008, the IACHR received a petition filed on behalf of Cardenio Ancacura Manquián, Teófilo Zaragoza González Calfulef, Manuel Hernández Inostroza, Arturo Benito Vega González, and their families.

30. The petitioners state that in the small hours of October 16, 1973, a group of Navy agents and civilians with ties to *Patria y Libertad*, which, they say, was a far-right paramilitary group, arrived at the community of Lago Ranco, a rural area inhabited by smallholders in the Province of Valdivia, where, with the cooperation of the police, they began to look for and detain citizens, particularly smallholders or individuals of Mapuche descent, without a court order. In that context, they say that Cardenio Ancacura Manquián, Teófilo Zaragoza González Calfulef, Manuel Hernández Inostroza, and Arturo Benito Vega González, were abducted and taken with other individuals to Lago Ranco police post, where they were tortured and subjected to a phony trial. They say that early that morning the alleged victims were taken to one of the docks on Lago Ranco and put on a steamer called the *Valdivia*. They say that to this day their fate remains unknown and that the military authorities of the time, without complying with the legal requirements, ordered the deaths of the four alleged victims to be registered.

31. The petition states that relatives of some of the alleged victims filed a criminal complaint in April 2001 for aggravated kidnapping and other crimes, a proceeding that came to be known as the Lago Ranco case. The documents presented to the Commission indicate that on June 25, 2002, the judge with

<sup>14</sup> The ranks of the Army and Air Force agents were obtained at the website <http://www.ddhh.gov.cl/filesapp/2.sentenciadef.pdf> and

standing (*ministro de fuero*) presiding in the case ordered the acquittal with prejudice of the accused (at that time civilians) Javier Vera Junemann, Rodolfo Mondión Romo, Cristián Bórquez Bernucci and Julio Vera Arriagada, having applied the exonerating factor of due obedience envisaged in Article 10(10) of the Criminal Code. The acquittal was upheld on consultation on July 31, 2006, by the Santiago Appellate Court.

32. The petitioners also say that on June 25, 2002, the court prosecuted Sergio Rivera Bozzo, a lieutenant in the Navy at the time of the events, as perpetrator of repeated counts of the crimes of aggravated kidnapping. On February 7, 2006, the above lieutenant was convicted for his participation in the events as perpetrator of the crime of aggravated homicide and sentenced to five years' imprisonment, while the other accused were acquitted with prejudice. The petitioners say that the plaintiff and the Human Rights Program of the Ministry of the Interior (hereinafter, "PDH") appealed against that decision, particularly with regard to the acquittal with prejudice.

33. They say that on November 8, 2006, the Santiago Appellate Court upheld the judgment but amended Rivera Bozzo's sentence, increasing it to 15 years' imprisonment; vacated the acquittal with prejudice of the other accused and ordered that the proceeding revert to the preliminary investigation stage in relation to the acquitted defendants, so that the judge with standing might "issue the appropriate rulings to give effect to the criminal responsibility rightly accruing to those accused based on the investigations in the proceeding." The petitioners say that Rivera Bozzo's defense filed a cassation appeal against that judgment alleging material errors, which they say was taken up, in spite of evident defects.

34. They say that on September 5, 2007, the Supreme Court vacated the appeal decision *sua sponte* citing a formal error which, they say, was not even alleged by the convicted man's defense, and returned a substitute judgment in which it reclassified the offense, sentenced Rivera Bozzo to five years and one day of imprisonment as the perpetrator of the crime of aggravated homicide of the alleged victims, and acquitted the other accused upon confirming the consulted decision of June 25, 2002. The petitioners mentioned that that acquittal was issued *sua sponte* without being requested, since the Court has legal authority to examine consultations of acquittals.

35. The petition states that it was filed as a consequence of the judgment issued by the Supreme Court, which, the petitioners say, covertly allowed the crimes committed against the alleged victims to go largely unpunished, given that in the judgment of September 5, 2007: (1) the criminal classification was modified *sua sponte* without prior discussion among the parties, with the punishable conduct reclassified as constituting aggravated homicide, rather than kidnapping, allowing the accused to benefit from the partial lapse of the statutory time period and a lower sentence based on the application of a form of statutory limitation in the criminal proceeding, despite the fact that crimes against humanity were involved; (2) the Supreme Court exonerated the four accused after considering that the exonerating circumstance of due obedience was applicable to them, without taking into account that they were all perpetrators and that at the time of the events they did not belong to the Armed Forces, but were paramilitaries.

36. A specific submission in this case is that as a result of the judgment rendered by the Supreme Court, not only were four guilty individuals not punished, but the only one who was convicted did not receive an adequate penalty, with the result that the culprits have remained substantially unpunished. They argue that the obligation to impose penalties and the right of the families to know the truth was violated because those responsible were acquitted with prejudice after an exonerating factor envisaged in Article 10 (10) of the criminal code was applied.<sup>15</sup> On that point, they say that the Supreme Court, by considering that exonerating circumstance applicable, is saying that the crimes committed by those civilians were either acts apparently criminal in nature but which the individual was compelled by law to carry out, or were the result of an unlawful order from a superior, neither of which situations is consistent with the facts of the crime committed by those individuals. Moreover, however, that justifying factor requires observance of the principles of adequacy and proportionality. Consequently, the petitioners say, it does not protect against the

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<sup>15</sup>That provision states: "Article 10. The following are exonerated from criminal responsibility: No. 10. He who acts in the performance of a duty, or in the legitimate exercise of a right, authority, office, or post."



unnecessary use of violence. They argue that the foregoing violates the obligation to impose penalties as well as the duty properly to investigate wrongdoing.

**3. Case of Luis Evangelista Aguayo Fernández, Manuel Eduardo Bascuñán Aravena, José Ignacio Bustos Fuentes, Enrique Ángel Carreño González, Rafael Alonso Díaz Meza, Rolando Antonio Ibarra Ortega (López), Aroldo Vivian Laurie Luengo, Ireneo Alberto Méndez Hernández, Armando Edelmiro Morales Morales, José Luis Morales Ruiz, Aurelio Clodomiro Peñailillo Sepúlveda, Luis Alcides Pereira Hernández, Armando Aroldo Pereira Meriño, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Roberto del Carmen Romero Muñoz, Oscar Eladio Saldías Daza, Hernán Sarmiento Sabater, Hugo Enrique Soto Campos, Ruperto Oriol Torres Aravena, Edelmiro Antonio Valdez Sepúlveda, Víctor Julio Vivanco Vásquez, Claudio Jesús Escanilla Escobar and their families**

37. On June 26, 2008, the IACHR received a petition lodged on behalf of 24 individually identified persons: Luis Evangelista Aguayo Fernández, Manuel Eduardí Bascuñán Aravena, José Ignacio Bustos Fuentes, Enrique Angel Carreño González, Rafael Alonso Díaz Meza, Rolando Antonio Ibarra Ortega (López), Aroldo Vivian Laurie Luengo, Ireneo Alberto Méndez Hernández, Armando Edelmiro Morales Morales, José Luis Morales Ruiz, Aurelio Clodomiro Peñailillo Sepúlveda, Luis Alcides Pereira Hernández, Armando Aroldo Pereira Meriño, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Roberto del Carmen Rivero Muñoz, Oscar Eladio Saldías Daza, Hernán Sarmiento Sabater, Hugo Enrique Soto Campos, Ruperto Oriol Torres Aravena, Edelmerio Andonio Valdez Sepúlveda, Víctor Julio Vivanco Vásquez, Claudio Jesús Escanilla Escobar, and their respective families.

38. The petition says that in the context of the coup d'état, in Maule, Chile's Seventh Region, there were nearly 40 cases of disappeared detainees, most of them members of left-wing political parties or people who were not politically active but participated to some degree in the activities of trade unions or student organizations. They say that in the majority of cases they were detained in Parral and disappeared while in that city's public jail or the *Carabineros* (police) station. They say that several of the detainees were registered as released in the detention centers' log books. Some were turned over to military authorities, while others were seen at prison or military facilities physically in a bad way after their supposed release.

39. With respect to Luis Evangelista Aguayo Fernández, Aurelio Clodomiro Peñailillo Sepúlveda, Oscar Eladio Saldías Daza, and Hugo Enrique Soto Campos, the petition says that they were detained between September 13 and 20, 1973, and taken to Parral jail. On September 26, 1973, absent of any judicial proceedings, on orders from the departmental governor, they were taken from the facility and turned over to Army personnel, since when all trace of them has been lost.

40. As for Manuel Eduardo Bascuñán Aravena, José Ignacio Bustos Fuentes, Rafael Alonso Díaz Meza, Claudio Jesús Escanilla Escobar, Ireneo Alberto Méndez Hernández, Oscar Abdón Retamal Pérez, and Roberto del Carmen Rivero Muñoz, the petitioners say that they were detained between September 13 and October 9, 1973, and taken to Parral jail. Reportedly there is a record of them leaving the detention facility on October 23, 1973, on orders from the department governor, and being taken by a *Carabineros* patrol to give a statement at a military prosecutor's office, since when all trace of them has been lost. It should be noted that, according to the petitioners, Claudio Jesús Escanilla Escobar was a student and 16 years old at the time of the events.

41. As regards Enrique Angel Carreño González, the petition states that he was detained by *Carabineros* on September 20, 1973, and taken to the public jail, which he left on October 5 of that year. He was detained again on January 4, 1974, and freed on "parole" on January 9 that year on an order from the Military Prosecutor's Office, since when all trace of him has been lost.

42. The petitioners say that Armando Edelmiro Morales Morales was detained on October 4, 1973, after going voluntarily to the *Carabineros* station in Parral, where he was taken into custody on the orders of the departmental governor and later taken to the public jail, which he is recorded as leaving on October 11, 1973, in order to be taken to the military prosecutor's office, after which all trace of him was lost.

43. Regarding Luis Enrique Rivera Cofré, the petitioners say that he was detained on October 5, 1973. Víctor Julio Vivanco Vásquez, for his part, was detained on October 8, 1973. In turn, José Hernán Riveros Chávez was detained on October 12, 1973. The petition says that they were all taken to the *Carabineros* station in Parral, since when all trace of them has been lost.

44. The petition alleges that Ruperto Oriol Torres Aravena was detained on September 16, 1973, and taken to the public jail, where he was held incommunicado on orders from the departmental governor. He left that place on September 29 before being detained again on October 13 of that year while fulfilling his obligation to sign in with the authorities. Since then all trace of him has been lost.

45. The petition says that Hernán Sarmiento Sabater and Aroldo Vivian Laurie Luengo were detained without a court order by *Carabineros* on July 28, 1974, and taken to the police station at Parral, without that being logged. They have been missing ever since.

46. With respect to José Luis Morales Ruiz, the petition says that they were detained by *Carabineros* from Parral on August 1, 1974, and that there has been no trace of them ever since.

47. According to the petition, Edelmerio Antonio Valdez Sepúlveda, Armando Aroldo Pereira Meriño, Luis Alcides Pereira Hernández, and Rolando Antonio Ibarra Ortega (López), were detained by *Carabineros* from Parral without a court order on October 25, 1974, when they went of their own volition to the police station, and have been missing ever since.

48. The petitioners say that the families of 21 of the alleged victims filed complaints with the Court of First Instance (*Juzgado de Letras*) of Parral,<sup>16</sup> which were provisionally dismissed. They say that in 1991, the National Commission on Truth and Reconciliation (hereinafter, "CNVR") sent background information on those crimes to the Court of First Instance of Parral and case No. 45.589 was opened, which was joined with case No. 128.534 before the Seventh Criminal Court of First Instance in and for Santiago that was been opened for 25 Parral victims, including Roberto del Carmen Romero Muñoz, Luis Evangelista Aguayo Fernández, and Ireneo Alberto Méndez Hernández. The petitioners say that that proceeding was sent to the military criminal jurisdiction and then joined with case No. 64.461 from the Court of First Instance of Parral.

49. The petitioners also say that criminal complaints for kidnapping were filed with that court of first instance by Aurelio Peñailillo, Oscar Retamal, and Claudio Escanilla. In case of the latter, the criminal complaint alleged abduction of a minor.

50. The petitioners say that a judge with standing collected evidence in case No. 2.182-98, known as the "Parral Episode," in order to investigate the crimes of kidnapping of the persons mentioned above, to which the above-detailed proceedings were added.

51. Final judgment was returned on August 4, 2003, in which Army Colonel (r) Hugo Alfredo Cardemil Valenzuela was convicted as the perpetrator of the crime of abduction of a minor to the detriment of Claudio Jesús Escanilla Escobar and the aggravated kidnappings of Luis Evangelista Aguayo Fernández, Manuel Eduardo Bascuñan Aravena, José Ignacio Bustos Fuentes, Enrique Angel Carreño González, Rafael Alonso Díaz Meza, Ireneo Alberto Méndez Hernández, Armando Edelmiro Morales Morales, Aurelio Clodomiro Peñailillo Sepúlveda, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Roberto del Carmen Rivero Muñoz, Oscar Eladio Saldías Daza, Hugo Enrique Soto Campos, Ruperto Oriol Torres Aravena, and Víctor Julio Vivanco Vásquez, and sentenced to 17 years' imprisonment. In

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<sup>16</sup> Manuel Eduardo Bascuñan Aravena, José Ignacio Bustos Fuentes, Enrique Ángel Carreño González, Rafael Alonso Díaz Meza, Rolando Antonio Ibarra Ortega (López), Armando Edelmiro Morales Morales, Aurelio Clodomiro Peñailillo Sepúlveda, Luis Alcides Pereira Hernández, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Oscar Eladio Saldías Daza, Hernán Sarmiento Sabater, Hugo Enrique Soto Campos, Ruperto Oriol Torres Aravena, Edelmiro Antonio Valdez Sepúlveda, Víctor Julio Vivanco Vásquez, and Claudio Jesús Escanilla Escobar.

addition, *Carabineros* Colonel (r) Pablo Rodney Caulier Grant was convicted of aggravated kidnapping of Rolando Antonio Ibarra Ortega (López), Aroldo Vivian Laurie Luengo, Luis Alcides Pereira Hernández, Armando Aroldo Pereira Meriño, Hernán Sarmiento Sabater, Edelmerio Andonio Valdez Sepúlveda, and Oscar Abdón Retamal Pérez and sentenced to 10 years and one day of imprisonment. He was acquitted of the charge of aggravated kidnapping of José Luis Morales Ruiz. Furthermore, *Carabineros* Noncommissioned Officer (r) Luis Alberto Hidalgo was convicted as the perpetrator of the crime of abduction of the minor Claudio Jesús Escanilla Escobar and the aggravated kidnapping of Manuel Eduardo Bascuñan Aravena, José Ignacio Bustos Fuentes, Rafael Alonso Díaz Meza, Ireneo Alberto Méndez Hernández, Armando Edelmiro Morales Morales, Aurelio Clodomiro Peñailillo Sepúlveda, Oscar Abdón Retamal Pérez, Luis Enrique Rivera Cofré, José Hernán Riveros Chávez, Roberto del Carmen Rivero Muñoz, Oscar Eladio Saldías Daza, Hugo Enrique Soto Campos, Víctor Julio Vivanco Vásquez, Rolando Antonio Ibarra Ortega (López), Aroldo Vivian Laurie Luengo, Luis Alcides Pereira Hernández, Armando Aroldo Pereira Meriño, Hernán Sarmiento Sabater, and Edelmerio Antonio Valdez Sepúlveda, and sentenced to seven years' imprisonment. He was acquitted of the charge of aggravated kidnapping of José Luis Morales Ruiz.

52. That judgment was upheld at second instance by the Santiago Appellate Court on June 15, 2005, which increased the sentence imposed on Luis Albero Hidalgo to 10 years and one day of imprisonment and found him guilty of the kidnapping of Luis Evangelista Aguayo Fernández and Enrique Angel Carreño González; it lowered the sentence of Hugo Alfredo Cardemil Valenzuela to 15 years and one day of imprisonment.

53. They say that on December 27, 2007, the Supreme Court, examining a cassation appeal, vacated *sua sponte* the second-instant judgment and issued a substitute judgment, based on its finding that said judgment contained formal errors, and granted the convicted men the benefit of the partial statute of limitations. With that, the sentence of Hugo Alfredo Cardemil Valenzuela was reduced to five years' imprisonment and that of Pablo Rodney Caulier Grant, to four years' imprisonment; there was no pronouncement on Luis Alberto Hidalgo, on account that he was deceased. The Supreme Court apparently also decided to grant the two convicted men supervised release as a noncustodial measure.

54. As a specific submission in this case, the petitioners say that, faced with the crimes of aggravated abduction, which are continuing offenses, the Supreme Court lacked a specific date from which to calculate the period of limitations and, in turn, of partial limitations. Accordingly, it evidently opted to apply a criminal classification that at the time that the offenses were committed was established, according to Article 141 of the Criminal Code, by the fact that the confinement or detention lasted more than 90 days, in order to consider the crimes consummated from the 92nd day, so that the above mitigating circumstance would apply. They say that the judgment states that for the purpose of applying the mitigating circumstance, consummation occurred once the confinement or detention lasted more than 90 days, thus allowing the partial period of limitations to be calculated from that date; that is, the 92nd day, taking into account to that end that, even if it is prolonged over time or serious injury results to the person or interests of the confined or detained individual, the penalty provided for this type of aggravated offense is always the same: long-term imprisonment in any degree, without prejudice to the seriousness of the offense.

#### **4. Case of Nelson Cristián Almendras Almendras, José Ricardo López López, Juan de la Cruz Briones Pérez, Victoriano Lagos Lagos and their families**

55. On June 10, 2008, the IACHR received a complaint lodged on behalf of Nelson Cristián Almendras Almendras, José Ricardo López López, Juan de la Cruz Briones Pérez, Victoriano Lagos Lagos and their families. The petition says that the alleged victims were detained without a court order on September 17, 1979 in Canteras, Quilleco District, Bio Bio Province, by a *Carabineros* patrol from El Álamo police post. They say that the whereabouts of the alleged victims have remained unknown since the date of their detention.

56. The petitioners say that the families of Messrs. Almendras, Lagos and de la Cruz filed applications for relief (*amparo*) on September 3, 1974, July 8, 1978, and December 29, 1978, respectively, with the Concepción Appellate Court, which rejected all the applications. They say that on May 22, 1996, the

Superior Council of the CNRR filed a criminal complaint with the Third Court of First Instance of Los Angeles, which declared itself as lacking jurisdiction on January 7, 1997, and referred the proceeding to the Third Military Court of Concepción, which, on May 28, 1998, dismissed the entire proceeding with prejudice, which decision was upheld by the Court-Martial on October 3, 2001.

57. They say that on October 31, 2001, the Supreme Court accepted the application for cassation alleging material errors, filed by the spouse of Nelson Almendras against the judgment of the Court-Martial and ordered the investigation to be reopened and the record to be referred to the Third Court of First Instance for Criminal Matters of Los Angeles. They say that on June 16, 2004, Oscar Humberto Medina, a Sargent (first class) in the *Carabineros* at the time of the events, was put on trial. On October 30, 2006, he was sentenced to 10 years and one day of imprisonment for the crime of aggravated kidnapping. That judgment was confirmed by the Concepción Appellate Court on April 10, 2008.

58. The petitioners say that the convicted man's defense filed an application for cassation. According to the petitioners, on December 11, 2008, the Supreme Court vacated the ruling at second instance on the grounds that it considered that it contained material errors by failing to pronounce in detail on the benefits of the partial statute of limitations, and it rendered a substitute judgment, sentencing the accused to four years' imprisonment and granting the benefit envisaged at Article 103 of the Criminal Code, by virtue of which he was granted supervised release.

##### **5. Case of Eugenio Iván Montti Cordero, Carmen Margarita Díaz Darricarrere and their families**

59. On June 24, 2009, the Commission received a petition lodged on behalf of Eugenio Iván Montti Cordero, Carmen Margarita Díaz Darricarrere, and their families. The petition states that the alleged victims, both members of the Revolutionary Left-Wing Movement (*Movimiento de Izquierda Revolucionaria*) (hereinafter, "MIR") were detained in Santiago on February 13, 1975, along with three other members of the MIR by personnel of the National Intelligence Directorate (hereinafter, "DINA") and taken to Villa Grimaldi, a clandestine DINA detention center. The petitioners say that Eugenio Iván Montti Cordero was detained together with his five-year-old son and that the child was later taken to a *Carabineros* children's home, where he remained until March 1975, when he was found by chance by an aunt, following an intense search. The petitioners say that the whereabouts of the alleged victims is unknown.

60. According to the petitioners, relatives of Eugenio Montti filed an application for relief (*amparo*) on behalf of the alleged victim and his son on March 7, 1975. They say that government agencies denied the detention, that the application was rejected on April 2, 1975, and that the record of the proceeding was referred to the 11th Court of First Instance for Criminal Matters in and for Santiago. They say that on April 8, 1975, that court opened case No. 1938, eventually concluding that the steps taken to locate Eugenio Montti had been unsuccessful and that presumably he had fled the country. In relation to the child, they say that the Investigations Police of Chile was ordered to conduct an inquiry and that the social worker in charge of the children's home allegedly denied that the child had been admitted to the home where he was found.

61. They say that in March 1976, a woman prisoner was reportedly turned over to the court and gave a statement about what happened to Eugenio Iván Montti; however, the judge provisionally dismissed the case. They say that the Court overturned the dismissal and returned the proceedings to the preliminary investigation stage. The judge declared that he lacked jurisdiction on July 30, 1978, and referred the record to the military jurisdiction. In 1982, the Court-Martial ordered the case to be dismissed because it had not been shown that the crime had been committed.

62. The petitioners say that in the case of Carmen Diaz, a complaint was lodged for the crime of kidnapping on July 20, 1979, with a visiting judge (*ministro en visita*), who was presiding over cases of disappeared detainees in Santiago. They say that the judge declared himself as lacking jurisdiction and referred the record to the Sixth Court of First Instance for Criminal Matters in and for Santiago, which opened case 193.360. They say that the case was closed in 1985 because there was nothing in the record to show that any crime had been committed, which decision was upheld by the Appellate Court.

63. They say that on January 2, 1998, a criminal complaint (Case No. 2182-98) was opened based on a complaint filed against Augusto Pinochet Ugarte for the aggravated kidnapping of several persons, among them the two alleged victims, as well as for the abduction of the child of Eugenio Iván Montti. On July 12, 1974, a separate case file was opened for the disappearance of the alleged victims. They say that on December 4, 2006, the following were convicted of the crimes of aggravated kidnapping: Juan Manuel Contreras Sepúlveda, a retired army general and director of the DINA at the time of the events, sentenced to 15 years' imprisonment; Marcelo Moren Brito, sentenced to 10 years' imprisonment; Osvaldo Romo Mena, sentenced to five years' imprisonment; Rolf Wenderoth Pozo, sentenced to 10 years' imprisonment; Miguel Krassnoff Martchenko, sentenced to five years' imprisonment; and Basclay Zapata Reyes, sentenced to five years' imprisonment.

64. They say that on January 21, 2008, the Appellate Court upheld the judgment on appeal, but closed proceedings with respect to Osvaldo Romo Mena, on account that he was deceased.

65. The petitioners say that on December 24, 2008, the Supreme Court, upon examining the cassation applications filed by the convicted men's defense, vacated the judgment *sua sponte*. They say that in the substitute judgment the Supreme Court applied partial statutory limitations and sentenced Juan Manuel Contreras to seven years' imprisonment, Marcelo Moren Brito to four years' imprisonment (with the benefit of supervised release), Rolf Wenderoth Pozo to four years' imprisonment (with the benefit of supervised release), Miguel Krassnoff Martchenko to 540 days' imprisonment (with the benefit of a suspended sentence), and Basclay Zapata Reyes to 540 days' imprisonment (with the benefit of a suspended sentence).

## **6. Case of Luciano Aedo Hidalgo and family**

66. On January 20, 2010, the petitioners expanded the petition lodged on behalf of Luciano Aedo Hidalgo. They say that early in the morning of October 11, 1973, he was abducted from his home in District of Cunco by a patrol from Cunco police station. They say that to this day his whereabouts are unknown.

67. They say that on April 10, 1979, his spouse filed a complaint for "suspected mishap" (*presunta desgracia*) with the Third Court of First Instance for Criminal Matters of Temuco, which declared itself as lacking jurisdiction on October 25, 1979, and referred the record to the IV Military Court of Valdivia, reportedly on the basis that everyone whose disappearance was investigated was detained at different places and times by *Carabineros*, the Army, or the Air Force. The petitioners say that in October 1980, the military court judge dismissed the entire proceeding with prejudice, in accordance with the Amnesty Law of 1978.

68. They say that subsequently, case 113.115 was opened to which the case of Luciano Aedo Hidalgo was joined. On June 30, 2008, the First Court of First Instance for Criminal Matters of Temuco reportedly sentenced Gamaliel Soto Segura to seven years' imprisonment for the crime of aggravated kidnapping. The petitioners say that on September 22, 2008, the Temuco Appellate Court upheld the judgment.

69. They say that the defense filed an application for cassation and that on July 23, 2009, the Supreme Court vacated the judgment *sua sponte* and issued a substitute ruling in which it applied the partial statute of limitations, reduced the sentence to three years, and granted a suspended sentence.

## **7. Case of Felipe Segundo Rivera Gajardo, Gastón Fernando Vidaurrázaga Manríquez, José Humberto Carrasco Tapia, Abraham Muskatblit Eidelstein and their families**

70. On February 12, 2010, the petitioners expanded the petition lodged on behalf of Felipe Segundo Rivera Gajardo, Gastón Fernando Vidaurrázaga Manríquez, José Humberto Carrasco Tapia, Abraham Muskatblit Eidelstein, and their families. They say that Messrs. Rivera and Muskatblit were members of the Communist Party and that Messrs. Vidaurrázaga and Carrasco were members of MIR.

71. The petitioners say that the alleged victims were abducted from their respective homes on September 8 and 9, 1986, then murdered. Their corpses were found hours later at different points on the outskirts of Santiago. They say that the detention and murder of the alleged victims occurred as a reprisal for the attempt on the life of Augusto Pinochet on September 7, 1986, given that, following that incident, a plan was hatched to eliminate individuals chosen at random by the National Intelligence Center (*Central Nacional de Informaciones* – CNI).<sup>17</sup>

72. They say that on September 9, 1986, the families of Abraham Muskatblit Eidelstein and Felipe Segundo Rivera Gajardo filed applications for relief (*amparo*), and that the families of the alleged victims filed various petitions and criminal complaints which were examined under a single investigation and joined under the case known as “Operation Albania,” which was processed by the Sixth Court of First Instance for Criminal Matters in and for Santiago and was later heard by a special visiting judge, on instructions from the Supreme Court. The petitioners say that on December 29, 2006, judgment was returned at first instance and 14 people were sentenced to terms ranging from 5 to 18 years’ imprisonment for the crimes of aggravated homicide. That ruling was upheld by the Santiago Appellate Court on December 27, 2007. The petitioners say that on August 13, 2009, the Supreme Court, upon examining applications for cassation alleging material errors, vacated the judgment *sua sponte*, as it considered that the ruling at first instance had omitted any pronouncement on the partial statute of limitations requested by the accused, which, the petitioners say, is not true. The petitioners say that the Court proceeded to issue a substitute judgment in which it applied the mitigating circumstances of irreproachable past conduct and due obedience, and declared that the statutory time period had partially lapsed. They say that the Supreme Court lowered the 18-year sentence to 12 years, the 13-year sentences to 7 years, and all the other sentences to 5 years. They say that the Court applied partial statutory limitations to 11 convicted individuals and granted them the benefit of supervised release.

## **8. Case of Félix Santiago de la Jara Goyeneche and family**

73. On March 4, 2010, the petitioners expanded the complaint filed on behalf of Félix Santiago de la Jara Goyeneche and his family. They say that he was a member of MIR and was detained in the city of Santiago on November 27, 1974, by a group of DINA personnel and taken to the clandestine detention center known as *Venda Sexy* or *La Discoteque*, where he was tortured. They say that between December 18 and 24, 1974, he was removed by his captors from the detention center and that his whereabouts remain unknown to this day.

74. The petitioners say that on January 3, 1975, an application for relief (*amparo*) was filed with the Santiago Appellate Court, which was rejected on February 13, 1975. The record was then referred to the Fifth Court of First Instance for Criminal Matters in and for Santiago. They say that the case was provisionally dismissed in October 1975 on the ground that there was no evidence of the crime. They say that the dismissal was approved by the Appellate Court. According to the petitioners, on July 3, 1975, a new application for relief was filed but on July 15, 1975, that too was denied.

75. They say that on July 24, 1996, the CNRR requested that the preliminary inquiry be reopened and the investigation began again. After a special visiting judge was appointed to examine the matter, the petitioners say that on April 2, 2007, judgment was returned at first instance, sentencing Juan Manuel Contreras to five years and one day of imprisonment as the perpetrator of the crime of aggravated kidnapping, and Raúl Iturriaga Neumann, Manuel Carevic Cubillos, and Risiere Altez España to three years’ imprisonment. The latter three were reportedly granted a suspended sentence. The petitioners say that the Appellate Court upheld the judgment on July 31, 2008.

76. They say that on September 10, 2009, the Supreme Court, upon examining the applications for cassation, vacated the judgment *sua sponte* and issued a substitute judgment, applying the benefit of

<sup>17</sup> The petitioners say that agency was created by Decree Law No. 1.878 of 1997 as the successor to the DINA, with an organized command structure, independent means, and clandestine detention facilities.

partial lapse of the statutory period of limitations. Consequently, none of the convicted men was deprived of liberty in that proceeding; Juan Manuel Contreras was sentenced to five years imprisonment with the benefit of supervised release while the others, who were sentenced to three years' imprisonment, had their sentences suspended.

#### **9. Case of Cecilia Miguelina Bojanic Abad, Flavio Arquímides Oyarzún Soto and their families**

77. On March 25, 2010, the petitioners expanded the complaint lodged on behalf of Cecilia Miguelina Bojanic Abad, Flavio Arquímides Oyarzún Soto and their families.

78. The petitioners say that Cecilia Miguelina Bojanic Abad, who was a member of MIR and four months pregnant at the time of the events, was detained together with her one-year-old son at her home on October 2, 1974, by DINA agents and taken to the home of her sister, where her husband, Flavio Arquímides Oyarzún Soto, was. They say that the two were taken without a detention order to the clandestine detention center known as *Ollahue* or *José Domingo Cañas*, and then to the *Cuatro Álamos* center. To this day their whereabouts are unknown.

79. The petitioners say that on October 14, 1974, an application for relief (*amparo*) was filed on behalf of the alleged victims with the Santiago Appellate Court, which was rejected on November 21 that year. They say that another application for relief was filed on behalf of the married couple on August 21, 1975, but it was denied on September 1, 1975. On July 10, 1975, their families filed a complaint for "suspected mishap" (*presunta desgracia*) with the Fourth Court of First Instance for Criminal Matters in and for San Miguel, which was provisionally dismissed on April 30, 1976. The petitioners say that the Appellate Court rejected the dismissal and ordered the proceedings to revert to the preliminary investigation stage. They say that on September 2, 1977, the case was again dismissed, with the Court approving that dismissal. Thus, they say that on July 11, 1996, the CNRR requested that the preliminary inquiry be reopened and the investigation began again. They say that, subsequently, the son of the alleged victims, represented by the head of the PDH, filed a criminal complaint for kidnapping and other crimes committed against his parents, which was joined to the proceeding in progress. They say that in addition, on August 29, 2001, the Under-Secretary of the Interior, as the top-ranking official in the PDH, became a co-plaintiff in the case.

80. The petitioners say that in 2001, the magistrate of the Fourth Court of First Instance for Criminal Matters in and for San Miguel was assigned exclusively to cases involving human rights violations in her jurisdiction, which included this proceeding. They say that later, due to lack of jurisdiction, the matter was transferred to the Eighth Court of First Instance for Criminal Matters in and for Santiago, which devoted itself exclusively to this case, and that on May 6, 2005, the Supreme Court ruled that this and other investigations should be assigned to a judge with standing serving as a special visiting judge. On December 18, 2006, they say that a judgment was returned at first instance that sentenced five military personnel to prison terms ranging from 10 to 4 years as perpetrators of the crime of aggravated kidnapping; one *gendarmería* officer to three years' imprisonment as an accessory; and one civilian to 10 years' imprisonment as a perpetrator. They say that that ruling granted no alternative benefits to the convicted men.

81. The petitioners say that, at second instance, the Santiago Appellate Court upheld the judgment on March 12, 2009, with the exception of the decision with regard to the convicted civilian, owing to the fact that he was deceased. Therefore, the Appellate Court did not pronounce on his appeal and confirmed his acquittal for the same reason.

82. They say that, finally, on September 29, 2009, the Supreme Court, upon examining applications for cassation, vacated the judgment *sua sponte*, as it considered that it contained formal errors and, without reexamining the case, issued a substitute judgment, confirming the sentences of the perpetrators to terms of between 10 and 4 years' imprisonment and applying to the convicted men the mitigating circumstance of irreproachable past conduct and the partial statute of limitations. They say that in that judgment only one of the six convicted men did not benefit from the application of the partial statute of

limitations. The military personnel were granted the benefit of supervised release, while the gendarme was given a suspended sentence.

#### **10. Case of José Felix García Franco and family**

83. On June 1, 2010, the petitioners expanded the petition lodged on behalf of José Felix García Franco—an Ecuadorian citizen—and his family.

84. The petitioners say that the alleged victim, who was a medical student at the time of the events, went voluntarily to the *Carabineros* unit in Temuco on September 13, 1973, obeying a call put out by the authorities to all foreign nationals, as well as in response to a verbal summons and the fact that his home had been raided by *Carabineros*. They say that he was held at the Coilaco unit before being transferred to the Second *Carabineros* Station in Temuco. They say that his wife took him clothes and food there every day until September 19 that year, when the authorities informed her that they had released him at a border crossing at 6:00 a.m. They say that to this day his whereabouts are unknown.

85. They say that in 1978, his wife filed a complaint with the First Court of First Instance for Criminal Matters in and for Temuco, which was joined with other disappeared persons cases under case 2-79. They say that the visiting judge declared himself as lacking jurisdiction on account of the apparent responsibility of Army officials in the disappearances, and transferred the case to the military jurisdiction, which dismissed it entirely with prejudice in accordance with the Amnesty Law of October 24, 1980.

86. They say that in April 2000, the Medical College of Chile filed a criminal complaint in relation to the cases of 19 doctors who disappeared while in detention and were executed for political reasons, which included José García. They also say that on April 14, 2000, his brother filed a criminal complaint against Augusto Pinochet and any found to be responsible, which resulted in the judgment of January 31, 2008, that sentenced Juan de Dios Fritz Vega, Omar Burgos Dejean, and Juan Miguel Bustamante León to eight years' imprisonment and Hugo Opazo Insunza to 10 years and one day of imprisonment as perpetrators of the crime of aggravated kidnapping. They also say that they were not granted any alternative benefits.

87. They say that the ruling was confirmed with a number of amendments in a judgment rendered by the Santiago Appellate Court on December 26, 2008, which maintained the ancillary penalties imposed at first instance and, applying the mitigating circumstance of irreproachable past conduct, reduced the prison sentences to five years and one day.

88. They say that on December 2, 2009, the Supreme Court, examining cassation appeals, vacated the second-instant judgment, as it considered that it contained formal errors, and issued a substitute judgment that reiterated the decision at first instance but applied the partial statute of limitations and granted the convicted men the benefit of supervised release.

#### **11. Case of María Arriagada Jerez, Jorge Aillón Lara, and their families**

89. On June 23, 2010, the petitioners expanded the petition lodged on behalf of María Arriagada Jerez, Jorge Aillón Lara, and their families.

90. As regards María Arriagada Jerez, the petition says that she was a teacher and member of the Communist Party and that she was detained by personnel of the Chilean Air Force (hereinafter, "FACH"), who arrived at her domicile situated at School No. 31 in Chilpaco by helicopter from the Air Force base. They say that she was detained along with another teacher, whose last name was Durán, in front of her family and colleagues and taken to Lonquimay, where she was held for three days at the *Carabineros* post. They say that, subsequently, she was transferred to the *Carabineros* Barracks at Curacautín and then to Maquehue Air Force Base, from where she disappeared.

91. As for Jorge Aillón Lara, the petitioners say that he was a member of the Communist Party and first detained by *Carabineros* from Lonquimay and taken to the barracks, where he remained for three



days. They say that he was then taken to Victoria jail, where he was held until September 27, 1973, when he was released. According to the petitioners, that day upon arriving at the train station on his way home, he was detained by military personnel from the Lautaro Regiment, who turned him over to FACH personnel. They say that he was then taken to the *Carabineros* station in Curacautín and later to Maquehue Air Force Base in Temuco, from where he disappeared.

92. The petitioners say that in response to the events, the families of the two victims immediately undertook efforts before the authorities to establish their whereabouts, to no avail. They say that the Court of Curacautín started an investigation, which was provisionally dismissed on October 30, 1979, because it was considered that there was no evidence to show that the crime had been committed, which decision was upheld by Temuco Appellate Court on November 22, 1979. They say that the visiting judge from Temuco Appellate Court later opened an investigation in which a final judgment was rendered on May 30, 2008, which sentenced Leonardo Reyes Herrera, Luis Alberto Soto Pinto, Heriberto Pereira Rojas, Jorge Eduardo Soto Herrera, Luis Osmán Yañez Silva, Jorge Aliro Valdebenito Isler, and Enrique Alberto Rebolledo Sotelo to eight years' imprisonment for the crime of aggravated kidnapping of María Arriagada Jerez and Jorge Aillón Lara, without granting any of the convicted men alternative benefits, on the grounds that they did not meet the requirements set forth in Law 18.216.

93. They say that Temuco Appellate Court confirmed that judgment on August 19, 2008. In addition, they say that on December 23, 2009, the Supreme Court, upon considering the cassation application, vacated the second-instance judgment *sua sponte*, finding it to contain formal errors because the adjudicator did not pronounce in detail on the reasons for denying application of the partial statute of limitations. The Supreme Court it issued a substitute judgment without re-examining the case in which it applied the mitigating circumstances of irreproachable past conduct and partial lapse of the statutory time period, calculating the period of limitations for the crime from the date on which the wrongdoing was committed. Thus, they say that the perpetrators were sentenced to three years and one day of imprisonment for the crime of aggravated kidnapping of the alleged victims, with the convicted men granted the benefit of supervised release.

## **12. Case of Marcelo Eduardo Salinas Eytel and family**

94. On July 20, 2010, the petitioners expanded the petition lodged on behalf of Marcelo Eduardo Salinas Eytel and his family.

95. The petition says that Marcelo Eduardo Salinas Eytel was detained on October 31, 1974, in the District of Providencia, as he went to pick up his wife, Jacqueline Drouilly, as prearranged. The petitioners say that she too was detained and disappeared. The petitioners say that security agents arrived at the building where they were to meet on October 30 and detained his wife. They say the alleged victim, upon noticing people guarding the house, tried to escape, whereupon the agents started shooting at the vehicle's tires, forcing him to stop. They say that Marcelo Eduardo Salinas Eytel was detained and taken to the clandestine DINA facility known as *José Domingo Cañas* or *Ollahue*, and later transferred to the Villa Grimaldi barracks, where he was interrogated and tortured. They say that he and his wife were subsequently taken to the *Cuatro Álamos* facility. He has been missing ever since.

96. The petitioners say that their relatives immediately set in motion efforts with the authorities of the time and on November 19, 1974 filed an application for relief (*amparo*) with Santiago Appellate Court, which turned down the application on March 5, 1975, and referred the case to the Court of First Instance for Criminal Matters in and for Santiago to investigate any possible wrongdoing. They say that on May 13, 1975, the preliminary investigation was closed on the grounds that there was nothing in the evidence collected to support any crime and the case was provisionally dismissed. That ruling was confirmed upon consultation by Santiago Appellate Court on July 16, 1975.

97. The petitioners say that in July that year, the alleged victim's mother-in-law filed a complaint for the kidnapping of her son-in-law and daughter, which was joined with the case initiated for "suspected mishap" (*presunta desgracia*) in relation to Jacqueline Drouilly. They say that the complaint was provisionally

dismissed on March 31, 1976, as there was no evidence of criminal wrongdoing. They say that Santiago Appellate Court approved the dismissal on appeal on June 18, 1976.

98. The petitioners say that years later, the CNRR requested that the preliminary inquiry be reopened, with the result that a criminal investigation was initiated. According to the petition in May 2002, the judge declared himself as lacking jurisdiction in favor of a judge with standing. The case file was joined to the so-called "Operation Colombo" case. They say that years later the case file was separated and referred to a judge with standing, as it had bearing on the so-called "Villa Grimaldi" investigation. They say that the PDH was a co-plaintiff in the latter proceedings. According to the petitioners, on April 17, 2008, Juan Manuel Contreras was sentenced to 15 years' imprisonment, and General (r) César Manrique Bravo, Brigadier (r) Pedro Octavio Espinoza Bravo, Lieutenant Colonel (r) Francisco Maximiliano Ferrer Lima, and Brigadier (r) Miguel Krassnoff Martchenko to 10 years and one day of imprisonment, as the perpetrators of the crime of aggravated kidnapping of Marcelo Eduardo Salinas Eytel; a retired *gendarmería* officer was acquitted. They also say that they were banned for life from any public office and political rights, and from engaging in any titled profession while the conviction was in force. In addition, the ruling did not grant the sentenced men any alternative benefits while serving their punishment.

99. They say that Santiago Appellate Court upheld the judgment at second instance on January 5, 2009. In addition, they say that on January 25, 2010, the Supreme Court, examining cassation applications, vacated the second-instant judgment *sua sponte* based on its finding that it contained formal errors, and issued a substitute judgment in which it confirmed the judgment at first instance, while applying to three of the convicted men the mitigating circumstance of irreproachable past conduct and to all of the convicted men the benefit of partial lapse of the statutory time period. They say that, as a result, Juan Manuel Contreras was sentenced to five years' imprisonment, while the other convicted men were sentenced to three years' imprisonment; all were granted supervised release.

### **13. Case of Gerardo Antonio Encina Pérez and family**

100. On August 16, 2010, the petitioners expanded the petition lodged on behalf of Gerardo Antonio Encina Pérez and his family.

101. The petitioners say that the alleged victim was a member of the Socialist Party and that early in October 1973 a police patrol arrived at his house looking for him. Upon not finding him, they left instructions for him to go to the Fifth Carabineros Station in San Javier. They say that Gerardo Antonio Encina Pérez had been detained previously and turned over to the military prosecutor's office in Linares. At the time he was on bonded release with the obligation to present himself at the military prosecutor's office weekly. Accordingly, upon returning home he decided to go to the military prosecutor's office with his wife and then to the police unit, where he was detained. They say that his wife waited for him all day and returned the next without receiving a satisfactory explanation. He has not been heard from since.

102. They say that around 10 or 15 days later, family members of other disappeared persons from the same area requested permission from the local military authority to drag the River Loncomilla to see if they could find their relatives' remains. The search turned up the corpse of Gerardo Antonio Encina Pérez with signs that he had been shot. They were forced to return the body to the river for fear of reprisals, as they only had permission to recover the bodies of their family members.

103. The petition says that as a result, his spouse immediately approached the military prosecutor and the governor of the zone, to no avail. They say that in 1990 his spouse went to the CNVR and the alleged victim's case was classified as that of a disappeared detainee. At the end of its term that commission referred the case to the Court of First Instance of San Javier, and a proceeding was instituted on February 20, 1991. The petitioners say that on June 21, 1994, after an inadequate investigation, the case was provisionally dismissed for lack of evidence to bring charges against a particular individual.

104. The complaint states that on June 20, 2003, the plenary of Talca Appellate Court agreed to appoint a judge exclusively devoted to cases of human rights violations and, as a result, the case was assigned

to the Judge of the Court of First Instance of San Javier. The PDH became a co-plaintiff in the proceeding on July 3, 2003, and on August 29 that year two former Army officers and one former *Carabineros* officer were put on trial as perpetrators of the crime of aggravated kidnapping.

105. The petitioners say that, subsequently, the cases involving human rights violations were transferred to a judge of the Talca Appellate Court, who reclassified the crime as aggravated homicide and passed sentence on August 14, 2005, acquitting two of the accused: one on the grounds that the criminal action was extinguished because the statute of limitations had run, and the other because his participation was not proved. She acquitted the third person accused in the proceeding owing to the fact that he was deceased. The documents provided to the Commission indicate that the first-instance decision found, based on the testimony of witnesses in the proceeding, that the discovery of the alleged victim's body in the River Loncomilla in October 1973 was beyond doubt, and therefore the alleged crime of aggravated kidnapping was dismissed, for which reason the legal fiction that held that the wrongdoing was a continuing offense did not apply in that case.

106. The petitioners say that the PDH appealed the decision and that on July 6, 2009, Talca Appellate Court overturned the judgment, sentenced Lecaros Carrasco to five years and one day of imprisonment as the perpetrator of aggravated homicide, and confirmed the ruling in all other respects.

107. The petitioners say that on April 14, 2010, the Supreme Court, examining a cassation appeal alleging material errors filed by the convicted man, vacated the ruling *sua sponte*, having considered that it contained formal errors, and issued a substitute judgment. The new judgment, applying the mitigating circumstances of irreproachable past conduct and partial lapse of the statutory time period, sentenced the accused to five years' imprisonment and, having regard to the length of the sentence imposed and the fact that he suffered from physical complaints were verified in a medical report, granted him supervised release.

#### **14. Case of Miguel Antonio Figueroa Mercado and family**

108. On August 16, 2010, the petitioners expanded the petition lodged on behalf of Miguel Antonio Figueroa Mercado and his family.

109. The petitioners say that the alleged victim was a member of the Communist Party and that on the night of September 29, 1973, while he was in his house, where he lived as a trade union leader in the community of Fundo Peñuelas, Villa Alegre District, there arrived two vehicles, a patrol comprising 10 or 12 soldiers, and a representative of the *Carabineros*, who was the chief of the police station for the sector known as Pataguas, Lagunillas, or Polvareda. They say that the agents surrounded the house, entered it, detained the alleged victim on orders from the commanding officer in San Javier without showing any detention order, put him in a military jeep, and took him to an unknown destination, despite telling his daughter Sara Eugenia Figueroa Quezada that they were taking him to Linares. He has been missing ever since.

110. They say that the alleged victim's partner, María Rebeca Quezada Cifuentes, immediately began looking for him at the Artillery School Regiment in Linares, hospitals, and police stations in Linares and San Javier, to no avail. They say that, owing to the precarious circumstances in which she was left and having several young children in her charge, coupled with the fact that she lived a long way from the city, she was unable to approach any human rights organization to present her case.

111. They say that, subsequently, in 1990, her son Carlos Antonio Figueroa Quezada notified the CNVR of the incident, with the result that Miguel Antonio Figueroa Mercado was classified as a victim of human rights violations as a disappeared detainee. The petitioners say that the CNRR, the CNVR's legal successor, filed a complaint with the First Court of First Instance in and for Linares. On July 3, 2003, the PDH became a co-plaintiff in the proceeding and on September 8 that year, the magistrate presiding in the case tried Army Lieutenant Colonel (r) Claudio Abdón Lecaros Carrasco as the perpetrator of the crime. Subsequently, the judge declared himself as lacking competence, since the crime had occurred in another territorial jurisdiction. As a result, the case was transferred to an exclusively devoted judge in San Javier. They say that the judge brought charges on November 21, 2003.

112. The petitioners say that, subsequently, the Supreme Court assigned the cases to the judge of the Talca Appellate Court, who dismissed the case on July 18, 2008, citing extinction of criminal action.

113. The petitioners say that the PDH appealed that judgment and that the Talca Appellate Court overturned same by a ruling dated April 17, 2009, finding that the crimes constituted unlawful and arbitrary detention, not aggravated kidnapping, and therefore sentenced the accused to 540 days' imprisonment, granting him a suspended sentence. An examination of the judgment indicates that the Talca Appellate Court considered that as there was only certainty with respect to the alleged victim's detention, but not with regard to his subsequent fate, it was unable to conclude that he had been permanently abducted and in the power of the convicted man, for which reason, as that circumstance was not known or if he was deceased, permanent abduction could not be construed.

114. They say that the PDH challenged that judgment by means of an application for cassation and that on May 18, 2010, the Supreme Court, accepting the cassation application, vacated the judgment and issued a substitute judgment by which it sentenced the accused to three years' imprisonment for the crime of aggravated kidnapping but, applying the mitigating circumstances of irreproachable past conduct and the partial statute of limitations, gave him a suspended sentence.

## **B. Position of the State**

115. The State responded on May 5, 2014 and January 7, 2016, saying that, without prejudice to the observations on merits that it might make in due course, it had no objections as regards the petitioners' compliance with the formal requirements of the admissibility.

## **V. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

### **A. Competence**

116. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims individuals in respect of whom the Chilean State undertook to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission finds that Chile has been a party to the American Convention since August 21, 1990, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Chile, a state party to said treaty.

117. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition are said to have occurred. In that connection, the Commission notes that the petitioners allege the application of the concept of "partial lapse of the statutory time period" (*media prescripción*) or "partial statutory limitations" (*prescripción gradual*) in the final stage of each of the above cases, which in each instance occurred when the Convention was in force in Chile. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

### **B. Admissibility requirements**

#### **1. Exhaustion of domestic remedies**

118. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission alleging violation of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine

alleged violations of protected rights and, as appropriate, to resolve the situation before it is taken up in an international proceeding. For its part, Article 46(2) provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (a) domestic law does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

119. The petitioners state that the Supreme Court, examining applications for cassation in each matter, vacated each judgment at second instance and, without a new hearing of the case, rendered a new decision that amounted to a final judgment. They say that no possible remedies exist because the decision comes from the Supreme Court and, therefore, is final.

120. The State, for its part, says that it has no objections in terms of the petitioners' compliance with the formal requirements of admissibility.

121. The Commission notes that all the complaints presented were examined at first and second instance and that final decisions were adopted on them by the Supreme Court upon its examination of applications for cassation alleging formal and material errors. The Supreme Court accepted the applications or vacated the judgments at second instance *sua sponte* and, consequently, issued substitute judgments. Following the Supreme Court's decision, the petitioners say that they had no access to additional remedies and that the State, for its part, has also not identified other suitable remedies that remain to be exhausted. Accordingly, the Commission finds that the respective decisions of the Supreme Court produced final judgments in the criminal proceedings and that the remedies have been exhausted.

## **2. Timeliness of the petition**

122. Article 46(1)(b) of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment.

123. The IACHR received the petitions on different dates. Thus, as regards the petition lodged by AFDD, it was received on January 28, 2008 and the facts alleged in the petition occurred on July 30, 2007. As regards the petition received on March 3, 2008, the facts alleged in the petition occurred on September 5, 2007. As regards the petition received on June 26, 2008, the facts alleged in the petition occurred on December 27, 2007. As regards the petition received on June 10, 2009, the facts alleged in the petition occurred on December 11, 2008. As regards the petition received on June 24, 2009, the facts alleged in the petition occurred on December 24, 2008. As regards the petition received on March 4, 2010, the facts alleged in the petition occurred on September 10, 2009. As regards the petition received on January 20, 2010, the facts alleged in the petition occurred on July 23, 2009. As regards the petition received on February 12, 2010, the facts alleged in the petition occurred on August 13, 2009. As regards the petition received on March 25, 2010, the facts alleged in the petition occurred on September 29, 2009. As regards the petition received on June 1, 2010, the facts alleged in the petition occurred on December 2, 2009. As regards the petition received on June 23, 2010, the facts alleged in the petition occurred on December 23, 2009. As regards the petition received on July 20, 2010, the facts alleged in the petition occurred on January 25, 2010. Finally, as regards the petition received on August 16, 2010, the facts alleged in the petition occurred on April 14 and May 18, 2010.

124. Therefore, the Commission concludes that all the matters were presented within the prescribed time and, therefore, the requirement set forth in Article 46(1)(b) of the Convention has been met.

## **3 Duplication of proceedings and international *res judicata***

125. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied

by this or any other international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are considered as having been met.

#### 4. Colorable Claim

126. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is “manifestly groundless” or “obviously out of order.” The standard by which admissibility is assessed is different from the one needed to decide the merits of a petition since the Commission must perform a *prima facie* evaluation to determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the American Convention. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits of the matter.

127. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

128. The petitioners hold that the Supreme Court, upon examining applications for cassation filed by the parties in the context of the criminal investigation initiated for torture, forced disappearance, or extrajudicial execution of the alleged victims, on the understanding that they constitute crimes against humanity that occurred under the military dictatorship, applied the legal concept recognized in Article 103 of the Criminal Code that contemplates “partial lapse of the statutory time period” (*media prescripción*) or “partial statutory limitations” (*prescripción gradual*). In that regard, they say that the Supreme Court lacks jurisdiction to act as a trial court, as occurred in these cases, and that by vacating the judgment *sua sponte*, the victims were prevented from freely presenting their positions to said tribunal, which deprived them of the possibility of a hearing and of appealing against the decision. They also argue that penalties imposed upon application of that rule did not meet the standards of proportionality and pertinence or fulfill the purpose of providing reparation in cases involving crimes against humanity. Finally, they say that in Chile crimes against humanity are investigated, prosecuted and punished under the law governing ordinary crimes and that the Court does not provide reasons for its decision to grant the benefits of a mitigating factor such as partial statutory limitations to those responsible for crimes that are not covered by a statute of limitations.

129. The State, for its part, says that it has no objections in terms of the petitioners’ compliance with the formal requirements of admissibility.

130. The Commission finds that in the merits stage it must analyze the arguments regarding the legal nature and effects of the application of the legal concept of “partial lapse of the statutory time period” or “partial statutory limitations,” which the petitioners say was applied by the Chilean Supreme Court of Justice on its examination of applications for cassation in the cases presented in this petition relating to crimes against humanity committed during the dictatorship.

131. In that connection, the Commission concludes that the facts alleged in the petition could amount to violations of rights contained in Articles 8 and 25 of the Convention, given that the petition claims that the families did not have access to simple and effective recourse in the context of a proceeding that observes fair-trial guarantees and affords the possibility of an appropriate and proportional punishment for the perpetrators of the violations, as well as by virtue of the complained-of application of a legal concept that mitigates criminal responsibility based on the passage of time and its possible incompatibility with the prohibition against applying statutory limitations in cases of crimes against humanity; and Article 5 of the Convention, in relation to the suffering caused to the families of the alleged victims on account of what they claim to be a denial of justice. All of the above is taken in conjunction with Articles 1 (1) and 2 of the Convention.

132. Taking into account the factual and legal arguments presented by the parties, the nature of the matter before it, and the context that frames the complaints, the IACHR finds that, if proven, the petitioners' submissions could characterize possible violations of rights protected in Articles 5, 8, and 25 of the American Convention, taking in conjunction with Articles 1(1) and 2 thereof.

## **VI. CONCLUSIONS**

133. Based on the arguments of fact and law set forth above, the Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, and without prejudging the merits of the matter,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To declare this petition admissible in relation to Articles 5, 8, and 25 of the American Convention, taken in conjunction with Articles 1(1) and 2 of that instrument;
2. To notify the parties of this decision;
3. To proceed with its analysis of merits in the matter; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, Panama, on the 6<sup>th</sup> day of the month of December, 2016.  
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.