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REPORT No. 105/17
PETITION 798-07
REPORT ON ADMISSIBILITY

DAVID VALDERRAMA OPAZO ET AL.
CHILE

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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 SEPTEMBER 7, 2017

I. PETITION INFORMATION

Petitioner:	Teodosio del Carmen Cifuentes Rebolledo, José Antonio Lagos Améstica, and Aquiles Mercado Rioseco
Alleged victim:	David Antonio Valderrama Opazo et al. ¹
State denounced:	Chile
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 10 (compensation for a miscarriage of justice), 11 (honor and dignity), 13 (freedom of thought and expression) 14 (rectification or reply), 17 (protection of family), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (progressive development), in conjunction with Article 1(1) (obligation to respect rights) of the American Convention on Human Rights; ² as well as other international treaties. ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	June 13, 2007.
Additional information received at the initial study phase:	March 12, 2008; June 22, 2009; April 25, 2011 and August 1, 2012
Date on which the petition was transmitted to the State:	May 14, 2012
Date of State's first response:	September 12, 2014

III. COMPETENCE

Competence <i>ratione personae</i>:	Yes
Competence <i>ratione loci</i>:	Yes
Competence <i>ratione temporis</i>:	Yes

¹ José Antonio Lagos Améstica, Luis Ayala Herrera and Teodosio del Carmen Cifuentes Rebolledo.

² Hereinafter "the American Convention," "the Convention," or "the ACHR."

³ Articles 1, 3, 13, and 49 of the First Geneva Convention; articles 12, 13, 14, 17, and 22 of the Second Geneva Convention; and the Third and Forth Geneva Conventions.

⁴ The comments presented by each party were duly transmitted to the counter-party. It should also be noted that the petitions expressed their interest to the IACHR in processing the petition in 2016.

Competence <i>ratione materiae</i>:	Yes, American Declaration of the Rights and Duties of Man; ⁵ ACHR (ratification instrument deposited on August 21, 1990); and the Inter-American Convention to Prevent and Punish Torture (ratification instrument deposited on September 15, 1988)
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IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles I (life, liberty, and personal security), VII (protection for mothers and children), VIII (right to residence and movement), XXV (protection from arbitrary arrest), and XXVI (right to due process of law); articles 8 (fair trial), 13 (freedom of thought and expression), and 25 (judicial protection), in conjunction with Article 1(1) (obligation to respect rights) of the ACHR and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the exceptions established in articles 46(2)(a) and 46(2)(b)
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners allege that David Antonio Valderrama Opazo, Luis Ayala Herrera, Teodosio del Carmen Cifuentes Rebolledo, and José Antonio Lagos Améstica had recently joined the Chilean Navy when they learned that it was planning to carry out a coup d'état. In response, they reported this to Senator Carlos Altamarino and Deputy Oscar Garretón, who were close to President Salvador Allende. They say that as a result, on August 5 and 6, 1973, they were "violently kidnapped" and taken to the Office of the Naval Prosecutor of Valparaíso, where they were charged with "failing to perform military duties," under casefile 3,926-1973 (after the *coup d'état* in 1973, the charges were changed to "sedition and mutiny"). There, they were tortured with electric shocks to sensitive parts of their bodies or open wounds; regular beatings with clubs, rifle butts, and metal objects; and prolonged isolation to deprive them of the perception of time, among other forms of torture. They also note that they have not been recognized as victims by the 2004 National Committee on Political Prison and Torture, called the "Valech Commission" (I) of 2004.

2. As context, the petitioners recall that after the military coup carried out on September 11, 1973, the country was placed under "martial law," and on September 22, it was declared in a state of internal war, with those opposing the military regime categorized as "domestic enemies." They were often later considered "prisoners of war." In this context, the "War Councils" were formed, where the "prisoners of war" were tried. In these councils, the prisoners were convicted with severe intimidation and no respect for due process, and with no evidence or insufficient evidence. They were often sentenced to judicial or extrajudicial execution.

3. The petitioners state that the alleged victims were declared prisoners of war on suspicion that they were part of the Revolutionary Left Movement and had colluded with Senator Carlos Altamarino and Deputy Oscar Garretón to throw bombs in the city of Valparaíso. The petitioners indicate that after being

⁵ Hereinafter the "American Declaration."

held prisoners for a time, in January of 1975 they were violently transferred by the staff of the Naval Intelligence Service of Chile (SIM) from the Valparaiso jail to the torture center located inside the Office of the Naval Prosecutor in that city. A "War Council" (registry number A-678/75) was immediately formed to rule on the commission of the alleged crime and assign punishment. The alleged victims were tortured once again during questioning to get them to confess. Also, in the case of Mr. Teodosio Cifuentes, his wife, 4-year-old son, and 1-year-old daughter were detained as a means of pressuring him. The case against the alleged victims was finally and definitively dismissed for lack of evidence, and they were released in October 1976. They then fled Chile and sought refuge in other countries.

4. The petitioners allege that the torture suffered by the alleged victims caused irreparable psychological, moral, and spiritual damage, along with general illness related to stress and panic, among other effects. They also claim that their honor was damaged on having been classified as traitors and expelled from the Chilean navy, as a consequence of which they were deprived of their salaries and military reparations. Based on all this, they claim the right to reparations and to their pensions.

5. Regarding the judicial actions launched by the alleged victims, the petitioners indicate that on June 13, 2000, the Valparaiso branch of the Association of Former Political Prisoners of Chile filed civil suit before the courts of that city against the State of Chile, represented by the Council of Defense of the State, for the facts suffered by the alleged victims. The petitioners state that the judicial action was unsuccessful due to administrative and judicial obstacles.

6. On June 2, 2002, the petitioners, along with other members of a group of "constitutionalist sailors" who were in the same situation, brought a criminal complaint before the Appellate Court of Valparaiso against Augusto Pinochet Ugarte and those allegedly responsible for the torture during their detention. The petitioners allege that the court's judge, appointed to conduct the investigation in the case (special minister of the Appellate Court of Valparaiso) declared herself as lacking competence to hear the criminal complaint and transferred the casefile to the Naval Court of the First Naval Zone on April 24, 2003. In response, the Naval Court sent certified letter No. 386, dated October 13, 2003, stating that pursuant to Article 133 of the Code of Military Justice, private criminal complaints were not admitted to military proceedings, and thus it would not be processed. However, because the facts denounced involved criminal actions, the court decided to examine the records and maintain the "constitutionalist sailors" as injured parties rather than plaintiffs. In a resolution dated October 27, 2003, the Naval Court of the First Naval Zone found that prescription applied to the criminal action, preventing it from moving forward, and declined to hear the matter, arguing that the facts alleged were an "ordinary offense" under the Chilean Penal Code. Therefore, prescription applied after five years. The court added that the accused could not have committed aggravated kidnapping and conspiracy because they were acting within the realm of their duties. The petitioners stated that they did not file motions in the proceeding before the Naval Court of the First Naval Zone because of a lack of information regarding the proceedings.

7. Later, on July 7, 2006, Mr. Teodosio Cifuentes requested the records of cases N°3.926-1973 and N° A-678/75 from the Office of the Naval Prosecutor. In response, in a certified letter dated August 22, 2006, the Naval Court of the First Naval Zone said that the information was in the public domain. Nevertheless, according to the petitioners, as an arbitrary condition for turning over part of the records, specifically those related to case 3,926-1973, the petitioner was required to demonstrate that he held power of attorney for the other two former sailors involved in the cases. On March 27, 2007, Mr. Teodosio Cifuentes repeated the request to the Office of the Naval Prosecutor, and on April 2, 2007, in letter No. 59, the Naval Court of the First Naval Zone responded with "denied." The petitioner has thus not received the requested documents. No further action was attempted, on the assumption that justice was denied to them. The petitioners state that despite the fact that they were recognized as victims of the dictatorship, they have not had access to protection and to judicial guarantees, neither to assign criminal responsibility nor to provide comprehensive reparations.

8. For its part, the Chilean state argues that, with the return of democracy, a long and arduous process was launched to adjust domestic law to meet international human rights standards, with the ratification of a series of human rights treaties. In this framework, the State notes that the American

Convention on Human Rights was ratified and its ratification instrument deposited on August 21, 1990, with two reservations. One of these reservations was that the Chilean State recognized the competence of the Commission regarding facts that took place subsequent to the date of deposit of the instrument; or in any case, facts whose execution began subsequent to March 11, 1990.

9. Along these lines, they allege that recognition of the competence of the bodies of the Inter-American System includes an *ex ratione temporis* limitation. Therefore, pursuant to Article 47(c) of the American Convention, the Commission cannot issue a decision on the petition in question because it deals with facts that took place prior to March 11, 1990, and are thus expressly excluded from the Commission's competence under a reservation properly formulated by the State. The State also notes that there is no record of the petitioners pursuing any civil legal action in Chile to seek reparations for the violations alleged, and the petition is limited to mentioning a civil suit in which the petitioners' case was mentioned but that they did not file.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. In this case, the Inter-American Commission observes that the main facts on which this petition is based involve the alleged detention and torture of the alleged victims, along with accusations of a subsequent denial of justice. Along these lines, the petitioners say they were party to a criminal complaint filed in civilian courts that was later transferred to military courts, which found that prescription applied to the crimes originally alleged. For its part, the State argues that the petitioners must bring civil actions to obtain the corresponding reparations for the facts they allege violated their human rights, and that the petitioners had not demonstrated exhaustion of civil jurisdiction.

11. In this context, the Inter-American Commission reiterates, first, that in situations like the ones in question that include allegations of illegal detention and torture, the internal remedies that must be taken into account for the purposes of admissibility of the petition are the criminal investigation, resolution, and punishment of the perpetrators. Along these lines, whether or not the alleged victims have sought pecuniary compensation from civil courts has no bearing on the analysis of exhaustion of domestic remedies in this case. Thus, the Commission observes that the petitioners were party to a criminal process launched before the Appellate Court of Valparaiso on June 2, 2002, which effectively was transferred to the Naval Court of the First Naval Zone on April 24, 2003, by the judge of the Appellate Court of Valparaiso in charge of the investigations. A few months later, on October 27, 2003, the Naval Court ruled that prescription applied to the criminal action. Regarding this, the Commission also reiterates that the military jurisdiction is not the appropriate forum, and therefore no adequate remedy was provided to investigate, try, and punish human rights violations allegedly committed by members of the Army.⁶ The Commission also notes that the State was made aware of the situation described in the petition through the 2004 Valech Commission (I). Therefore, and in line with existing precedent, the Commission finds application of the exception established in Article 46(2)(a) of the Convention admissible.

12. Regarding the deadline for presenting the petition, the Commission observes that the facts alleged took place starting in 1973; that the petitioners took legal action toward the start of the 2000s; that the alleged victims are recognized in the 2004 Valech Report (I); and that the consequences of the facts, including the alleged failure to investigate and punish those responsible and the damage to the health of the alleged victims, continues to the present day. Thus, taking into account that this petition was filed on June 13, 2007, the Inter-American Commission finds that the petition was filed within a reasonable period of time, in the terms of Article 32(2) of the Rules of Procedure of the IACHR, pursuant to Article 46(2) of the American Convention.

13. The Commission also observes that, according to the facts alleged, Mr. Teodosio Cifuentes repeatedly requested the records of the criminal proceedings to which he and the alleged victims were subjected in 1973 and 1975, and that information was denied twice by the Naval Court of the First Naval Zone. The second of these denials was communicated by that court in letter No. 59, dated April 2, 2007. This was not contested by the

⁶ IACHR, Report N^o 47/13 (Admissibility), Petition 1266-06, Ángel Diaz Cruz *et al.*, Mexico, July 12, 2013, para. 24.

State. The Commission thus finds that the allegation of the petitioners regarding the lack of access to that information also reflects difficulty accessing remedies in the terms of articles 46(1)(a) and 46(1)(b) of the American Convention.

VII. COLORABLE CLAIM

14. Based on the elements of fact and law set forth by the petitioners and on the information available in the case file, as well as the nature of the matter brought before it, the Commission finds that the allegations regarding the failure to investigate and the transfer of the case to military courts, as well as the subsequent lack of access to the case files from those processes, could *prima facie* represent a violation of the rights enshrined in articles 8 (fair trial), 13 (freedom of expression), and 25 (judicial protection), in conjunction with Article 1(1) (obligation to respect rights) of the American Convention; and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims, as well as their relatives to be identified in the merits stage of the processing of this case, from the date on which the corresponding treaties were ratified.

15. With regard to the claim of the alleged violation of articles 4 (right to life), 5, (humane treatment), 7 (right to personal liberty), and other articles of the American Convention invoked, the Commission observes that the facts supporting these allegations would have taken place prior to August 21, 1990, the date on which the Chilean State deposited the ratification instrument for the American Convention. Therefore, with regard to the alleged facts that took place prior to that date, the Commission will apply the American Declaration.⁷

16. In this sense, the Commission finds that the pleadings on the detention, lack of due process, torture, and later exile could describe *prima facie* violations of the rights established in articles I (life, liberty and personal security), VIII (right to residence and movement), XXV (protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of David Antonio Valderrama Opazo, José Antonio Lagos Améstica, Luis Ayala Herrera, and Teodosio del Carmen Cifuentes Rebolledo; as well as Article I of the American Declaration, to the detriment of the relatives to be identified in the merits stage of this case, and Article VII (protection for mothers and children) of that instrument, to the detriment of the children of Mr. Teodosio Cifuentes, who were allegedly detained for three days along with their mother in 1975 as a means of pressuring him.

VIII. DECISION

1. To declare this petition admissible regarding articles 8, 13, and 25 of the American Convention on Human Rights, in conjunction with Articles 1(1); and regarding articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To declare this petition admissible with regard to articles I, VII, VIII, XXV, and XXVI of the American Declaration;

3. To declare this petition inadmissible regarding articles 4, 5, 7, 10, 11, 14, 17, 19, 24, and 26 of the American Convention on Human Rights;

4. To notify the parties of this decision;

5. To continue with the analysis of the merits of this matter; and

6. To publish this ruling and include it in its Annual Report to the General Assembly of the Organization of American States.

⁷ IACHR, Report N° 59/16 (Admissibility), Petition 89/07, Juan Alberto Contreras González, Jorge Edilio Contreras González and Family, Chile, December 6, 2006, para. 6.

Approved by the Inter-American Commission on Human Rights in the city of México, on the 7th day of the month of September, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.