

REPORT No. 119/13¹
CASE 12.500
OMAR MALDONADO VARGAS, ALVARO YÁÑEZ DEL VILLAR,
MARIO ANTONIO CORNEJO, ET AL.
CHILE
November 8, 2013

I. SUMMARY

1. On April 15, 2003, the Corporación de Promoción de Defensa de los Derechos del Pueblo [Corporation for the Promotion and Defense of People’s Rights] (CODEPU), headquartered in Chile, and the International Federation for Human Rights (“FIDH”), headquartered in France, filed a petition with the Inter-American Commission for Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) on behalf of 12 former members of the Chilean Air Force (hereinafter FACH), who had also filed a petition on their own behalf (hereinafter the 12 petitioners or alleged victims).² In the petition it is alleged that the 12 petitioners, former FACH members, had been tried and convicted of the crimes of treason, dereliction of military duty, disclosure and extra official knowledge of secret documents, and conspiracy and promotion of sedition by two courts martial [Consejos de Guerra] charged with trying certain offenses in times of war, in the context of military criminal proceeding that had been opened. That proceeding was conducted after the military coup of September 11, 1973, in connection with facts that had occurred prior to that date, as a retaliation for his opposition to the coup d’état.³

2. The crux of the complaint is the denial of justice the petitioners allege to have suffered as a result of the Supreme Court decisions, for which they assign international responsibility of the Republic of Chile (hereinafter “the State” or “the Chilean State”) as the result of the decision of the Supreme Court of Chile (hereinafter “Supreme Court”) to refrain from nullification of the convictions imposed. The petitioners allege that on September 10, 2001, a motion to reopen the case was filed with the Supreme Court in the terms of Article 657 of the Code of Criminal Procedure for nullification of the courts martial proceedings, with the argument that that procedure had severe human rights violations, such as the non-compliance to the due process guarantees and confessions extracted under torture. They allege that new facts had been uncovered that showed that the proceedings had been vitiated by serious human rights violations, such as failure to respect due process guarantees and confessions extracted under torture. The Supreme Court denied that motion, as it did an appeal for reversal (*recurso de reposición*) filed subsequently, by decisions of September 2 and December 9, 2002.

¹ Commissioner Felipe González, a Chilean national, did not participate in the deliberations or the decision of the case, in accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission.

² The 12 petitioners, who were officers and non-commissioned officers of the Air Force of Chile in September 1973, identified in the petition are: (1) Omar Humberto Maldonado Vargas; (2) Álvaro Yáñez del Villar; (3) Mario Antonio Cornejo Barahona; (4) Belarmino Constanzo Merino; (5) Manuel Osvaldo López Ovanedel; (6) Ernesto Augusto Galaz Guzmán; (7) Mario González Rifo; (8) Jaime Donoso Parra; (9) Alberto Salustio Bustamante Rojas; (10) Gustavo Raúl Lastra Saavedra; (11) Víctor Hugo Adriazola Meza, and (12) Ivar Onoldo Rojas Ravanal. In a communication dated July 5, 2012, after the admission report, the petitioners submitted a list of family members of the victims who alleged that they had suffered as a result of the human rights violations denounced in their complaint.

³ In a communication dated May 30, 2011, it was reported that the petitioners had given power of attorney to process the petition with the IACHR to Ernesto Galaz Caña, Paula Donoso Vergara, and Soledad Rojas Zepeda.

3. On March 9, 2005, the Commission adopted its Admissibility Report No. 6/05 in the instant case, in which it concludes that it has competence to consider the petition filed by the petitioners and decides to declare it admissible in connection with alleged violations of Articles 8.1, 8.2.h, 9, 11.1, 24, 25, and 27.2 of the American Convention on Human Rights (hereinafter “American Convention”), in connection with Article 1.1 thereof.⁴

4. In their observations regarding the merits, the petitioners allege that the facts denounced to the IACHR that occurred after March 11, 1990 (the date Chile deposited its instrument of ratification of the American Convention) constitute human rights violations, whose grounds for invoking guarantees [*cuyo principio de ejecución*] date from the time of the military dictatorship, whose impact and effects continue to be felt to this day. The petitioners allege that the consequences and sequelae of the judgments handed down by the courts martial on July 30, 1974 and January 27, 1975 still persist, since in 2001, the Supreme Court denied the motion for their review which, they allege, implies a series of violations of human rights enshrined in the American Convention.

5. For its part, after Admissibility Report No. 6/05 was issued, the State expressly indicated that in this case it would be inadmissible for it to present observations on the merits of the complaint in connection with its subject matter, since the Commission did not have competence *ratione temporis* to consider it, in view of the reservation entered by Chile on August 21, 1990, the date of deposit of its instrument of ratification of the American Convention.

6. In this report, the Commission, having analyze the allegations of the parties and the evidence submitted, concludes that pursuant to the provisions of Article 50 of the American Convention, the Chilean State is responsible for the violation of the following rights enshrined therein: Right to a Fair Trial and Judicial Protection (Articles 8 and 25), all in breach of its general obligation to respect rights (Article 1.1) of the same instrument. The IACHR also concludes that the State is in breach, in application of the *iura novit curiae* principle, of obligations under Articles 1, 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention against Torture”), and of its obligation to adopt domestic provisions (Article 2) of the American Convention, to the detriment of: (1) Omar Humberto Maldonado Vargas; (2) Álvaro Yañez del Villar; (3) Mario Antonio Cornejo Barahona; (4) Belarmino Constanzo Merino; (5) Manuel Osvaldo López Ovanedel; (6) Ernesto Augusto Galaz Guzmán; (7) Mario González Rifo; (8) Jaime Donoso Parra; (9) Alberto Salustio Bustamante Rojas; (10) Gustavo Raúl Lastra Saavedra; (11) Víctor Hugo Adriazola Meza, and (12) Ivar Onoldo Rojas Ravanal. The IACHR further concludes that insufficient grounds exist for it to decide on possible violations of Articles 9 (Freedom from Ex Post Facto Laws), 11.1 (Right to Honor and Dignity), 24 (Right to Equal Protection), and 27.2 (Suspension of Guarantees) of the Convention.

III. PROCESSING BEFORE THE COMMISSION

7. On May 5, 2005, the Commission registered the instant case as No. 12.500 and forwarded the admissibility report to the State and to the petitioners, requesting the petitioners to present their observations on the merits within two months, in accordance with Article 38.1 of the Rules of Procedure of the Commission in force on that date. The Commissions also placed itself at the disposal of the parties with a view to reaching a friendly settlement in this case, in accordance with Article 48.1.f of the American Convention.

⁴ IACHR. Report No. 05/06. Case 12.500. Admissibility, Omar Humberto Maldonado Vargas et al., Chile, March 9, 2005, operative paragraph 1.

8. On July 5, 2005, the petitioners presented their observations on the merits, which were forwarded to the State in a communication dated July 18, 2005, requesting it to presents its observations within two months, in accordance with Article 38.1 of the IACHR Rules of Procedure. On August 5, 2005, the IACHR received a communication from the State expressly indicating that it would be inadmissible for them to present observations on the merits. This information was forwarded to the petitioners in a communication dated August 11, 2005.

9. On October 5, 2006, the IACHR forwarded to the State a communication from the petitioners received on July 5, 2005, and requested it to present its observations within one month. By a communication dated June 20, 2007, the IACHR requested information from both parties. On June 27, 2007, the petitioners presented additional information.

10. At its 130th period of sessions, the IACHR invited the parties to a hearing regarding this case, which was held on October 12, 2007, at the headquarters of the IACHR, in Washington, D.C. At that hearing, both parties indicated their willingness to begin to seek a friendly settlement in this case. In a communication dated February 15, 2008, the State reported that it was analyzing, in the different public bodies with jurisdiction, the proposal for a friendly settlement contained in the document “Bases para un Acuerdo Amistoso” [Bases for a Friendly Settlement], which the petitioners submitted on December 30, 2007. In that regard, the petitioners presented additional information in a communication dated April 10, 2008, in which they reported that a proposal for a friendly settlement had been forwarded to the State.

11. On August 13, 2008, the petitioners submitted a communication indicating that since they had not received a reply to their proposal “Base para un Acuerdo Amistoso,” and requesting that consideration of the merits continue, of which the State was duly informed by a note dated August 28, 2008. The State indicated its willingness to continue working to achieve a friendly settlement, by noted dated August 29, 2008. On September 18, 2008, the State reported that, on August 29, 2008, a working meeting of the parties had been held in Chile in connection with the friendly settlement process.

12. On September 3, 2009, the petitioners reiterated their intent to continue the deliberations on the merits before the IACHR, of which the State was notified by a note of November 18, 2009. Subsequently, the petitioners presented additional information and repeated their request to the IACHR to issue a report in accordance with Article 50 of the American Convention, in communications received on February 23, 2010, June 9, and August 30, 2011; and May 7, 2012.

13. On July 5, 2012, the petitioners presented information regarding the family members of the alleged victims, which was duly forwarded to the State.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

14. As indicated in Admissibility report 6/05, the petitioners state that on September 11, 1973, a military coup in Chile overthrew the constitutional government of then-President Salvador Allende Gossens. As a consequence, a policy of political persecution was implemented against the adherents of the deposed government that affected not only civilians but also members of the military who were loyal to the Constitution and the law, among them the 12 petitioners in the instant case.

Within this context of political repression, the *de facto* government proceeded to arrest the individuals who are the subjects of this case and brought them before a Courts Martial.

15. The petitioners state that the *de facto* government, by Decree Law No. 5 of 1973, established the state of siege through the national territory, arguing its similarity to a state of war, by reason of which courts or War Councils [Consejos de Guerra] would act. They stated that on September 14, 1973, based on a complaint by the then-President of the Banco del Estado de Chile [Bank of the Chilean State], the Office of the Air Force Prosecutor brought charges against the members of the FACH who are the subject of this petition and alleged victims in the instant case -- the proceedings captioned "*Aviación/Bachelet et al. ROL 1-73.*"

16. The 12 petitioners state that the constitutionalist officers and non-commissioned officers who opposed the military coup by Augusto Pinochet were accused of sedition and treason, among other offenses. They indicate that on July 30, 1974, a judgment in the first part,⁵ and on January 27, 1975, a judgment in the second part, of the proceeding were handed down. The judgments included death sentences, life sentences, and other prison sentences. They indicate that these judgments were forwarded to the Commanders in Chief of the Air Force,⁶ who, on September 26, 1974 and April 10, 1975, respectively, reduced some of the sentences imposed, including reducing the death sentence to life imprisonment, among others. The petitioners indicate, that all the conviction judgments were released against all the defendants, except to the Air Force Brigadier General Alberto Bachelet M., because of his death during the process as consequence of the tortures he suffered.

17. The petitioners state that on September 10, 2001, with a constitutional government reinstalled, the officers and non-commissioned officers filed a motion to reopen the case (*recurso de revisión*) before the Supreme Court of Chile, to obtain a declaration of nullity that would do away with the accessory effects of the conviction and vindicate their names, and those of the persons who had died who had been tried and convicted in this proceeding.⁷ They indicate that the special motion for annulment makes it possible, on an exceptional basis, to modify firm and final judgments when new facts arise that clearly show they are in error or null, or that clearly show the innocence of one convicted.

18. The petitioners indicate that they had based their request for nullification of the above-mentioned judgments of the Courts Martial on new facts that had come to light following their issuance. Specifically, in the years 2000 and 2001, the Ninth Criminal Court of Santiago and the Special Judge (*Ministro de Fuero*) Juan Guzmán Tapia, processed cases 12,806 MV and 2122-98, respectively, where it was shown that a group of Chilean Air Force intelligence officers had functioned as a paramilitary command, in legal terms—an illicit association--, and had instituted a trumped up judicial proceeding against the individuals who are the subjects of this complaint, using their dual capacity as intelligence agents and members of the judicial apparatus in time of war, in addition to being members of this illicit

⁵ The petitioners observed that from the formal standpoint, the proceeding before the Supreme Court was divided into two parts, each with its own defendants and different members of the respective Courts Martial, despite the fact that they constituted a single case.

⁶ The petitioners noted that in criminal proceedings held during wartime, active-duty officers, who are non-lawyers and who, at the same time, are commanders in chief of the zone known as the theatre of operations, act as an appellate court.

⁷ The petitioners indicate that guilty verdicts were handed down against all the accused, except for Air Brigade General Alberto Bachelet M., due to his death in the course of the proceedings as a result of the torments suffered.

association. The petitioners allege that this concocted judicial proceeding had the following defects: (1) Confessions extracted under torture; (2) Grave breaches of evidence law and due process; (3) Lack of the court's jurisdiction; (4) Retroactive application of the criminal law; and (4) Aberrant criminal definition.

19. The petitioners add that they also based their request for nullification on the following evidence: (1) The above-mentioned resolution handed down by the Ninth Criminal Court of Santiago that recognized the existence of an illicit association; (2) Statements by Andrés Valenzuela, a former agent who participated in this illicit association; (3) Declassified Central Intelligence Agency (CIA) documents that showed serious procedural irregularities in the trials; (4) the report issued by the Truth and Reconciliation Commission ("Rettig Report"), Part Two, Chapter III, Vol. I, which is dedicated to war tribunals; (5) the testimony of survivors from the Academy of Aerial Warfare, which indicates that the Air Force Prosecutor's Office and the Courts Martial operated in the context of the War Academy of the FACH, as a clandestine detention and torture center; and (6) Complaints filed regarding acts perpetrated by this illicit association.

20. The petitioners indicate that in response to their motion to reopen the case, and without examining the merits, on September 2, 2002, the Supreme Court refrained from reviewing the judgments. They allege that in its decision, the Supreme Court declared it inadmissible to review the motion, since the decision challenged was a conviction handed down by military tribunals in time of war, subject matter not within the jurisdiction of said Court of Justice. They further allege that it is "evident" that the prohibition on taking cognizance of judgments handed down by military tribunals in time of war lasts only as long as there is a state of emergency, and that once the state of emergency is lifted, the Court would once again have full jurisdiction to take cognizance of the rulings of the military courts. They allege that this decision was challenged through an appeal for reversal (*recurso de reposición*), which was also denied by the Supreme Court by decision of December 9, 2002.

21. In view of the above, in their observations on the merits, the petitioners allege that the acts denounced to the IACHR that occurred after March 11, 1990 (the date Chile deposited its instrument of ratification of the American Convention) constitute violations of human rights whose circumstances date from the time of the military dictatorship, but whose impact and effects continue to this day. They indicate that consequences and sequelae still persist to the judgments issued by the Courts Martial on July 30, 1974 and January 27, 1975, since the Supreme Court refused to review them, this constituting a denial of justice which, they allege, is a violation of the rights enshrined in Articles 8 and 25 of the Convention. They further indicate that by refusing to review and annul the judgments issued by the Court Martial, the Supreme Court endorsed the defects of the proceeding, therefore also sharing in the reproach they warrant and lending continuity to the violations perpetrated therein.

22. The petitioners also allege that in November 2004, the then-President of the Republic, Ricardo Lagos Escobar, released to the country the "Report of the Commission on Political Imprisonment and Torture," which was the outcome of the work of a Commission whose aim was to determine and identify the universe of those who, for political reasons, suffered deprivation of liberty and torture not resulting in death between September 1973 and March 1990, which was presided over by Monsignor Sergio Valech. They indicate that that Commission had received reports for a six-month period, compiling the testimony of 28,459 victims, among them the members of the FACH that are the subject of the instant case.

23. The petitioners indicate that the “Courts Martial” chapter of the report of what was known as the Valech Commission indicates that the military prosecutors:

[...] constituted one more link in the chain of repressive agents ... rather than interrogate the accused in person, the prosecutors were satisfied with interrogations conducted by officials not connected with the courts martial, at sites located elsewhere, with abuse that extracted confessions geared to the requirements of the torturers. An examination of the process shows that, acting with systematic disregard for the impartiality of due process, prosecutors permitted and even promoted torture as a valid method of interrogation.⁸

24. They add that in the above-mentioned report, in the proceedings captioned “*Aviación/Bachelet et al., ROL 1-73*” brought against the alleged victims, it is indicated that:

[...] individuals were tried for alleged infiltration of the Air Force with the aim of destroying it and replacing it with another that would enable a dictatorship of the proletariat to be installed [...] disproportionate sanctions were imposed.⁹

25. They indicate that the rest of the report’s Courts Martial chapter confirms every argument used as the basis for the motion to reopen (*recurso de revision*) filed on September 10, 2001 before the Supreme Court that the proceedings had been conducted with systematic disregard for impartiality, that there had been massive violations of the right of the accused to physical and psychological integrity so as to obtain their self-incrimination, in breach of the principles of legality and criminal definition. This in addition to prejudice resulting from the indiscriminate use of presumptions.

26. The petitioners affirm that said Commission, like other predecessor commissions, such as the Truth and Reconciliation Commission and the Reparation Commission, were not judicial in nature. Therefore, the petitioners allege that it was crucial for an impartial court to be apprised of this background so that it could determine its effects in both the individual and judicial spheres.

27. Consequently, the petitioners filed the motion to reopen the case with the Supreme Court and allege that “unfortunately, not even since the publication of this report have those we represent had the right to effective remedy.” In particular, they allege that no other judicial body had undertaken to review and, if appropriate, reverse the effects of the illicit action of the courts martial in the “fictitious times of war.”

28. The petitioners further allege that in June 2005, the Judge of the Ninth Criminal Court of Santiago brought charges against the former Chief of the Air Force Intelligence Service (SIFA), Major Edgar Ceballos Jones, and Colonel Ramón Cáceres Jorquera in the action investigating the complaint of abuse, kidnapping, illicit association, and genocide filed by the survivors of torture from the War Academy (AGA), premises where, the petitioners indicate, the alleged victims—the plaintiffs in that action—were taken.

29. During the audience held during the 130th period of sessions, the petitioners added that consideration should be given to the fact that the instant case refers to a group of former members of the military who were charged and convicted for defending the Constitution and who now and since

⁸ Report of the Commission on Political Imprisonment and Torture, pp. 166 and 167.

⁹ Ibid, pp. 167 and 168.

the return to democracy, have been unable to have expunged their criminal record resulting from that trial. They indicate that they did not have effective remedy to protect their right to honor, to establish their truth through the courts, and to clear their names. They request that the truth be established through the courts so that justice is done and just reparation made.

30. To summarize, the petitioners' complaint is based on the lack of effective judicial recourse since the return to democracy to remedy the violations they suffered during the military judicial proceeding by which the War Councils convicted them.

31. Lastly, the petitioners identified the family members of the alleged victims who they indicate also suffered material and psychological harm as a result of the violations of the human rights committed against them.¹⁰

B. Position of the State

32. In its response to the original petition, the State indicated that it was based on acts that occurred during the military regime that was in power in Chile from September 1973 to March 1990. The State indicated that the return to a democratic form of government marked the start of a long process of updating and accommodating its domestic norms and its conduct to international standards in the field of human rights. The most important event in this process was the approval of the reform of Article 5 of the Constitution, which implied a general recognition of international treaties in this area.

33. The Chilean State indicates that once the democratic government was installed in power, the new legislature approved and subsequently ratified a series of human rights treaties. In particular, the members of Congress unanimously endorsed the American Convention on Human Rights and deposited the respective instrument of ratification on August 21, 1990. Nonetheless, in its first submission in the case of reference, the State specifically indicated that the Government of Chile deposited its instrument of ratification with the OAS subject to certain declarations and reservations. The latter were transcribed in the reply of the State received on February 18, 2005, emphasizing the reservation that the time for recognition of the jurisdiction of the Inter-American Court of Human Rights it has accepted refers to "situations occurring subsequent to the date of deposit of this instrument of

¹⁰ The petitioners indicate the following persons as members of the families of the alleged victims adversely affected by the facts denounced: (1) Omar Humberto Maldonado Vargas: Parents: Pedro José Maldonado Maldonado and María Secundina Vargas Linz. Sisters: Nelly del Carmén and Irma Edith Maldonado Vargas. Children: Inti Salvador Maldonado Rodríguez, Camilo Amaru Maldonado Vargas; and Julio Ayelen Maldonado Aguilar; (2) Álvaro Federico Yañez del Villar: Wife: Aydée Carrizo. Daughters: Jimena Paulina and Haydée Yañez; (3) Mario Antonio Cornejo Barahona: Parents: Lorenzo Cornejo Rojas and Aida Barahona Aceituno. Wife: Reina Cornejo Armijo; (4) Belarmino Constanzo Merino: Wife: Isabel Adriana Villegas Sánchez. Children: Belarmino, Marilyn, Adriana, and Estrella Constanzo Villegas; (5) Manuel Osvaldo López Oyanedel: Wife: Miriam Gilde García Ramírez. Children: Manuel Hernán, Marcelo Osvaldo, and Luis Antonio López García; (6) Ernesto Augusto Galaz Guzmán: Children: Ernesto Alejandro, Silvia Elena, and Patricia Georgina Galaz Cañas. Nieces and nephews: Mauricio, Julio and Eliana Galaz Romero; (7) Mario González Rifo: Wife: Marta Elena Bastías San Martín. Daughter: Mónica Cecilia González Bastías; (8) Jaime Arturo Donoso Parra: Wife: María Eugenia Vásquez Toro. Daughters: Claudia and Pablo Ignacio Donoso Vásquez, Cecilia and Cristina Donoso Pozo. Father- and Mother-in-Law: Ernesto Vásquez Merino and Juana Toro Urzúa; (9) Alberto Salustio Bustamante Rojas: Wife: Rosalva Eladia León Bon. Children: Laura Rosalva, Iván Gozálo and Marcelo Eduardo Bustamante León; (10) Gustavo Raúl Lastra Saavedra: Children: Fidelmira del Carmén, Gustavo Iván, Patricia de Fátima, Viviana Elizabeth, Marcos Boris, Jorge Mauricio Lastra Castro; (11) Víctor Hugo Adriaola Meza. Parents: Floridor Adriaola Maluenda and Berta Meza Lastra. Wife: Carmen Carvajal Varas. Children: Gabriel, Cristián and Verónica Adriaola Carvajal; and (12) Ivar Onoldo Rojas Ravanal: Mother: Doris Elba Ravanal García. Children: Alvaro Ivar, Doris Paola and Cristina Mariluz Rojas Baeza.

ratification, or, in any event, whose grounds for invoking guarantees arose after March 11, 1990 (*cuyo principio de ejecución sea posterior*)”

34. The State further noted that the Vienna Convention on the Law of Treaties specifically permits the ratification of an international treaty with a reservation formulated that is in conformity with the object and purpose of the treaty. Chile maintains that the reservation arises from the position of democratic governments that it is necessary to resolve human rights violations that occurred in the recent past at the domestic level. In that context, the Chilean State had undertaken a number of initiatives, such as the Truth and Reconciliation Commission (“Rettig Commission”), Law No. 19,123 on reparations for the victims of human rights violations, the Forum for Dialogue (*La Mesa de Diálogo*), and the Commission on Political Imprisonment and Torture. The State indicated that the Chilean people and their democratically-elected organs were appropriate ones to attempt to treat the wounds left by the violations of human rights committed during the military regime. The State further noted that the reservation regarding the competence *ratione temporis* of the Court cannot be considered contrary to the object and purpose of the Convention, since the time limit arises, in addition to the foregoing, from “a rule of common sense.” This alleging that the State had been subject to international supervision only since the time of ratification of the American Convention.

35. Following the issuing of Admissibility Report No 6/05 in the instant case, by note dated August 5, 2005, the State indicated expressly that it would be inadmissible for it to present observations on the merits of the complaint since the Commission did not have competence *ratione temporis* to consider it, in view of the time limit arising from the reservation entered by Chile on August 21, 1990, transcribed above.

36. The State indicates that the facts that occurred prior to this time limit are time barred since “the principal source of the right to reparation apparently infringed originates from facts that occurred prior to the ratification of the Convention.” For the Chilean State, it is not possible to separate facts that are the basis for the motion filed before the Supreme Court to reopen the case from its decision, and the rest of the process and its background, which took place prior to the ratification of the American Convention.

37. At the hearing held during the 130th period of sessions, the State indicated that it would not present observations on the merits. It indicated that the efforts of the democratic governments should be recognized. With regard to the instant case, the State also submitted information indicating that the Commander-in-Chief of the FACH, Osvaldo Saravia, had organized a ceremony, attended by some 100 former uniformed members of the Air Force who had been tried by the War Councils after September 11, 1973. In addition, the identification cards of these former uniformed members had been returned to them, enabling them to be recognized as retired members of the Air Force and enjoy the corresponding benefits.

IV. FACTS

A. Prior considerations

38. First, it should be noted that the State of Chile ratified the American Convention on August 10, 1990, and deposited its instrument of ratification on August 21, 1990, making the above-mentioned declarations that indicates in its relevant parts.

a.

b. The Government of Chile declares that it recognizes as legally binding the obligatory jurisdiction of the Inter-American Court of Human Rights in cases dealing with the interpretation and application of this Convention pursuant to Article 62.

On formulating said declarations, the Government of Chile notes that the recognition of jurisdiction it has accepted refers to situations occurring subsequent to the date of deposit of this instrument of ratification, or, in any event, whose grounds for invoking guarantees arose (*cuyo principio de ejecución sea posterior*). Likewise the Government of Chile, on accepting the competence of the Inter-American Commission and the Inter-American Court of Human Rights declares that these organs, in applying Article 21(2) of the Convention, shall refrain from judgments concerning the concept of public use or social interest cited in cases involving the expropriation of an individual's property.¹¹

39. In that regard, the IACHR considers it important to note that the subject of the petitioners' complaint is not their arrest, prosecution, and punishment by the War Councils, but rather the alleged lack of effective recourse following the return to democracy to remedy the violations suffered in the context of the military proceeding identified as "*Aviación/Bachelet et al. ROL 1-73*." That proceeding began in 1974 and ended in 1975—as discussed below, i.e., prior to the ratification of the American Convention by the State of Chile, and it is alleged to have been conducted without respect for due process and based on submissions that the defendants had been subjected to torture. Nonetheless, in 2002, the Supreme Court of Chile denied the request for review filed by the petitioners in connection with the proceedings and ensuing convictions.

40. In that regard, as established in its Admissibility Report in the instant case,¹² the Commission has competence, *ratione temporis*, in that the decisions of the Chilean Supreme Court that are the basis for this complaint were issued on September 2, 2002, and December 9, 2002, when the obligation of respecting and ensuring the rights enshrined in the American Convention was already in force for the Chilean State.¹³ The IACHR considers that the denial by the Supreme Court of the requested review would imply acts of alleged denial of justice that began and ended after August 21, 1990.

41. Therefore, the acts and omissions to which the Commission will refer herein are those occurring after March 11, 1990, and relating essentially to the alleged failure by the State to fulfill its obligation to provide an effective remedy to review a proceedings conducted without respect for judicial guarantees and in which confessions extracted under torture were used, its duty to investigate *ex officio* the alleged tortures and its duty to adopt legislative or other measures to adjust its domestic legislation to the object and purpose of the American Convention.

42. The Commission thus proceeds based on the jurisprudence of the Inter-American Court, which establishes that "during the course of a proceeding separate facts might occur which

¹¹ IACHR, Basic documents in the inter-American [human rights] system. Available at: the IACHR website: http://www.oas.org/en/iachr/mandate/basic_documents.asp.

¹² IACHR. Report No. 05/06. Case 12.500. Admissibility, Omar Humberto Maldonado Vargas et al. Chile, March 9, 2005, para. 24.

¹³ Chile has been a party to the American Convention since August 21, 1990, the date of deposit of its instrument of ratification with the OAS.

constitute specific and independent violations arising from denial of justice.”¹⁴ Moreover, the Commission notes that it is competent to examine the legal effects of a legislative, judicial or any other kind of measure to the extent that it is incompatible with the rights and guarantees protected under the American Convention.¹⁵ Nonetheless, it should be noted that the division of a given situation into stages subject and not subject to the jurisdiction of an international court does not mean that account should not be taken of events occurring prior to the stage over which *ratione temporis* jurisdiction exists. As stated by the European Court, even if there is only *ratione temporis* jurisdiction regarding events occurred after the ratification of the European Convention, "it could have regard to facts prior to ratification inasmuch as they [...] might be relevant for the understanding of facts occurring after that date."¹⁶

43. Accordingly, to provide objective elements required for an optimal understanding of the situation brought before the IACHR, set out below is the background to the facts alleged in the complaint filed by the petitioners, including an historical context and an account of the proceedings brought before the War Councils against the alleged victims, which took place before the ratification Chile of the American Convention. Subsequently, the this facts will be analyzed that is the subject of the instant case related to the judicial actions pursued before the Supreme Court of Chile, whose compatibility with the American Convention is questioned in this case.

B. Historical context

44. On September 11, 1973, a military regime was established in Chile that overthrew the government of then-President Salvador Allende. That same day, as a result of the military coup, the Government Junta was constituted, which assumed the “Supreme Command of the Nation” (Decree Law No. 1, Article 1).¹⁷ Taking into consideration what has been established by the Inter-American Court, it has been documented that “The armed forces, through the Military Junta, took over the executive power first (Decree Law No. 1) and then the constituent and legislative power (Decree Law No. 128).”¹⁸ The new President of the Republic/Commander in Chief not only ruled and administered the country, but was also a member and the president of the Military Junta –therefore, legislation could only be passed and the Constitution could only be amended upon his participation. He was also the Commander in Chief of the Army.¹⁹

¹⁴ I-A Court H.R., *Case of Almonacid-Arellano et al v. Chile*. Judgment of September 26, 2006. Series C., No. 154, para. 48.

¹⁵ I-A Court H.R., OC-13, July 16, 1993; Report No. 36/96 (Chile), of October 15, 1996, Case No.10.843, para. 43.

¹⁶ See ECHR, *Case of Broniowski v Poland* [GC]. Judgment of 22 June 2004. Application No. 31433/96, para. 122.

¹⁷ IACHR, Report on the Status of Human Rights in Chile, Chapter IV: The Normative System Established Beginning September 11, 1973 and the “State of War,” para.1. OEA/Ser.L/V/II.34, doc.21, 25 October 1974.

¹⁸ IACHR, Report on the Status of Human Rights in Chile, Chapter IV: The Normative System Established Beginning September 11, 1973 and the “State of War,” para.1. OEA/Ser.L/V/II.34, doc.21, 25 October 1974, I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.3 (citing the Report of the Commission on Truth and Reconciliation, volume I, p. 42).

¹⁹ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.3 (citing the Report of the Commission on Truth and Reconciliation, volume I, p. 42).

45. For its part, by Decree Law Nº 3 (Official Gazette Nº 28.653 of September 18, 1973), invoking the provisions of Art. 72, Nº 17 of the State Political Constitution and Book I, Title 3 of the Code of Military Justice, the Junta declared “as of this date, a state of siege throughout the territory of the Republic, and the Junta assumes the capacity of Commander in Chief of the forces that will operate in the emergency.” The declaration of a state of siege was extended to September 11, 1974, by Decree Law Nº 360 of March 13, 1974.²⁰

46. Subsequently, on September 12, 1973, the Junta issued Decree Law Nº 5 (published in Official Gazette Nº 28,657 of September 22, 1973),²¹ by which it declared “it is the interpretation of Art. 418 of the Code of Military Justice that the state of siege decreed because of internal disturbance, in the situation now prevailing in the country, should be understood as ‘state or time of war’ for purposes of the application of the various penalties established in the Code of Military Justice and other penal laws, and in general, for all other purposes of such legislation”.²² The preamble of this decree sets forth: a) “The situation of internal disturbance in which the country is embroiled”; b) “The need to curb in the most drastic manner possible actions that are being committed against the physical integrity of personnel of the armed forces, of the *carabineros*, and of the population in general”; c) “The desirability of giving greater discretion in the present circumstances to military courts to repress any of the crimes stipulated in Law Nº 17.798 on control of arms, because of their seriousness and the frequency of their commission”; d) “The need to prevent and severely punish, with the greatest speed, crimes committed against internal security, public order, and normalcy of national activities.”²³

47. It has been established that during the period of military government, serious violations of human rights occurred. In particular, that widespread repression against alleged opponents to the regime was a standard State policy from that date [September 11, 1973] until the end of the military rule on March 10, 1990, “though subject to changing intensity and selectivity levels²⁴ for choosing victims.”²⁵ Said repression was characterized by a systematic and massive²⁶ arbitrary and

²⁰ IACHR, Report on the Status of Human Rights in Chile, Chapter IV: The Normative System Established Beginning September 11, 1973 and the “State of War,” para. 2. OEA/Ser.L/V/II.34, doc.21, 25 October 1974.

²¹ Documentation provided by the petitioners at the hearing in the instant case before the IACHR on October 12, 2007. Official Gazette of the Republic of Chile, Nº 28,657, of September 22, 1973. Decree Law No 5, Declaring a State of Siege Decreed as a Result of Internal Disturbance Unrest, a “State or Time of War.”

²² IACHR, Report on the Status of Human Rights in Chile, Chapter IV: The Normative System Established Beginning September 11, 1973 and the “State of War,” para. 3. OEA/Ser.L/V/II.34, doc.21, 25 October 1974.

²³ IACHR, Report on the Status of Human Rights in Chile, Chapter IV: The Normative System Established Beginning September 11, 1973 and the “State of War,” para. 3. OEA/Ser.L/V/II.34, doc.21, 25 October 1974.

²⁴ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.4 (citing the Report of the Commission on Truth and Reconciliation, volume I, p. 115).

²⁵ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.6 (citing the Report of the Commission on Political Imprisonment and Torture, p. 177).

²⁶ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.4 (citing the Report of the Commission on Truth and Reconciliation, Part One, Chapter II and Part Two, pp. 15 to 104; and the *Informe sobre calificación de víctimas de violaciones de derechos humanos y de la violencia política de la Corporación Nacional de Reparación y Reconciliación* [Report of the National Corporation for Reparation and Reconciliation on the Identification of Victims of Human Rights Violations and Political Violence], p. 37).

summary executions, torture ... and arbitrary detention at facilities not subject to legal control, forced disappearances, and other human rights violations committed by State officials, sometimes with the aid of civilians. Repression was applied in almost all regions of the country.²⁷

48. The first months of the *de facto* government were the most violent stage of the repressive period,²⁸ and “61 percent of the 33,221 arrests classified by the *Comisión Nacional sobre Prisión Política y Tortura* (National Commission on Political Imprisonment and Torture) refer to arrests made in 1973.”²⁹ Said Commission pointed out that “more than 94 percent of the victims of political imprisonment” alleged to have been tortured by State officials.³⁰ As the Inter-American Court noted in its judgment in the Almonacid case, the victims of all these violations were renowned officials of the overthrown government and important left-wing figures; ordinary and common militants; political, trade union, community, student (university and high school education) and indigenous leaders and heads; representatives of community-based organizations participating in social claim movements.³¹

C. Prosecution of the alleged victims by the War Councils

49. At the time of their arrest and indictment by the War Councils, the petitioners were members of the Chilean Air Force (*Fuerza Aérea de Chile*, or “FACH”) and, in their original petition, are listed as: Omar Humberto Maldonado Vargas, Petty Officer, electronics technician; Álvaro Yañez del Villar, Commander, Health Group, physician; Mario Antonio Cornejo Barahona, Sergeant 2nd-class, Merchant; Belarmino Constanzo Merino, Non-commissioned officer, Maintenance Supervisor; Manuel Osvaldo López Oyanedel, Petty Officer, bilingual teacher; Ernesto Augusto Galaz Guzmán, Group Commander, retired; Mario González Rifo, Non-commissioned officer, retired; Jaime Donoso Parra, Captain, engineer; Alberto Salustio Bustamante Rojas, civilian employee, draftsman; Gustavo Raúl Lastra Saavedra, Non-commissioned officer, retired; Víctor Hugo Adriazola Meza, Petty Officer, Air Navigation electronics specialist; and Ivar Onoldo Rojas Ravanal, Petty Officer, Aeronautics Technician.

50. They were tried before the War Councils in the proceeding captioned “Aviación/Bachelet et al.” ROL 1-73,³² brought based on the complaint filed on September 14, 1974 by

²⁷ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.4 (citing the Report of the Commission on Truth and Reconciliation, p. 19; *Informe sobre calificación de víctimas de violaciones de derechos humanos y de la violencia política de la Corporación Nacional de Reparación y Reconciliación*; and the *Informe de la Comisión Nacional sobre prisión política y tortura* [Report of the National Commission on Political Imprisonment and Torture]).

²⁸ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.5.

²⁹ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.5 (citing the Report of the Commission on Truth and Reconciliation, p. 178).

³⁰ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82 (citing the Report of the Commission on Political Imprisonment and Torture, p. 177).

³¹ I-A Court H.R. *Case of Almonacid-Arellano et al v. Chile*. Judgment (Preliminary Objections, Merits, Reparations and Costs). Judgment of September 26, 2006. Series C., No. 154, para. 82.6.

³² Note that in the judgment of July 30, 1974 in Case No. ROL 1-73 FACH (Part I), the case was dismissed against the accused Alberto Bachelet Martínez “as his criminal liability had expired due to his death” (Case No. 1-73 FACH (Part II), Judgment of January 27, 1975, p. 224). See also the communication from the petitioners received on June 27, 2007,

the then-President of the Banco del Estado de Chile, Air Brigade General Enrique González Battle, to the Office of the Air Force Prosecutor. That complaint referred to a series of political meetings held by civilians and personnel of the FACH in the offices of the former Vice President of the Bank, Carlos Lazo Frías, and to the improper use of that institution's funds.³³ Based on that complaint, an investigation was launched and War Councils were convened to try the defendants, who were accused of a series of criminal offenses of which they were eventually convicted and sentenced to imprisonment.³⁴ Those members of the Air Force included the 12 petitioners in the instant case.

51. The military proceeding identified as Case No. ROL 1-73 (FACH) was divided into two parts, each with different defendants—among whom were the 12 petitioners in this case, divided among the two parts of the proceeding. Each part was heard and decided by a War Council, the composition of the two Councils differing. Provided below is the list of facts under investigation and punished in each part of Case No. ROL 1-73 FACH:

- **ROL 1-73 FACH (Part I)**

[...] A group consisting of Chilean Air Force personnel, leaders of the former Socialist and Communist Parties, the Movimiento de Acción Popular Unitaria [Unitary People's Action Movement] (MAPU), and individuals belonging to the Movimiento de Izquierda Revolucionario [Revolutionary Leftist Movement] (MIR), began Marxist propagandizing and penetration efforts in the ranks of the institution, concealing their true purpose on the pretext of defending the Marxist government from an alleged coup d'état. This action was part of a broader objective, which was to so penetrate the other branches of the armed forces and Carabineros, all with the actual intent of destroying their existing structure and creating a People's Armed Forces to achieve their ultimate demonstrated ends throughout history in all countries where Marxism has sought to dominate, i.e., absolute power based on the dictatorship of the proletariat. [...]³⁵

- **ROL 1-73 FACH (Part II)**

[...] That the acts denounced and for which charges have been brought against the above-mentioned persons relate to the infiltration of units of the Chilean Air Force, Quintero Air Base, Aviation Group No 7, Specializations School, Maintenance wing, Aviation Group No. 10, and the General Staff of the Armed Forces, by extremist political elements who supported the Popular Unity Government regime. To that end, they formed secret cells within the bases and obtained from infiltrated military personnel maps, documents, data, and news regarding the security of the different air units mentioned above.

Plans to escape from the units with weapons and to sabotage institutional aircraft by creating mechanical defects were organized and their implementation planned. [...]³⁶

Jurisprudencia Delitos contra la Seguridad del Estado [Jurisprudence on Crimes against State Security], Vol. II: War Councils (Vicaría de la Solidaridad, 1991), p. 23.

³³ Documentation provided by the petitioners at the hearing in this case before the IACHR on October 12, 2007. Case No. 1-73 (Part I), Judgment of July 30, 1974, p. 57.

³⁴ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment.

³⁵ Documentation provided by the petitioners at the hearing in the instant case before the IACHR on October 12, 2007. Case No. 1-73 (Part I), Judgment of July 30, 1974, p. 57.

³⁶ Communication from the petitioners received on June 27, 2007 and documentation provided by the petitioners at the hearing on the case before the IACHR held on October 12, 2007. Case No. 1-73 FACH (Part II), Judgment of January 27, 1975, p. 3.

52. The War Councils in the above-mentioned court martial issued judgments on July 30, 1974³⁷ and January 27, 1975,³⁸ in connection, respectively, with Parts I and II of that proceeding,

³⁷ Documentation provided by the petitioners at the hearing on the case before the IACHR held on October 12, 2007. Case No. 1-73 FACH (Part I), Judgment of July 30, 1974. This judgment refers, *inter alia*, to petitioners: Omar Humberto Maldonado Vargas; Álvaro Yañez del Villar; Belarmino Constanzo Merino; Ernesto Augusto Galaz Guzmán; Alberto Salustio Bustamante Rojas; Gustavo Raúl Lastra Saavedra; Víctor Hugo Adriazola Meza, Ivar Onoldo Rojas Ravanal, and Jaime Donoso Parra. The judgment was issued by the War Council composed of Air Brigade General Juan Soler Manfredini (President of the Council), Aviation Cols. Eduardo Fonet Fernández, Huberto Berg Fontecilla, Sergio Sanhueza López, Julio Tapia Falk (Advisor to the Council), and Javier Lopetegui Torres; Group Commanders Carlos Carlos Godoy Avedaño; and Jaime Lavin Fariña (War Council Secretary).

The relevant parts of the Judgment of July 30, 1974 indicate:

THREE: The prisoners listed below are convicted of the offenses and sentenced indicated below:

I. Offense defined in Article 299, 3 of the Code of Military Justice: dereliction of military duty, as authors:

[...]

(4) ALVARO YANEZ DEL VILLAR, to 541 days of medium-term ordinary military imprisonment, and to suspension from public office or post during the time of the sentence, minus the time he has been in custody, to begin on November 5, 1973; [...]

II. Offense defined in Article 278.3 of the Code of Military Justice, of conspiracy to commit sedition, as authors: [...]

(21) OMAR MALDONADO VARGAS, to four years of maximum-term ordinary military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and absolute disqualification from all public offices and posts during the time of his sentence, minus the time he has been in custody, to begin on October 29, 1973; [...]

(30) VICTOR ADRIAZOLA MEZA, to ten years and one day of minimum-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 6, 1973; [...]

(32) IBAR ROJAS RAVANAL, to seven years of minimum-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 20, 1973; [...]

(38) JAIME DONOSO PARRA, to 15 years of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and from absolute disqualification exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 26, 1973; [...]

(40) GUSTAVO LASTRA SAAVEDRA, to 10 years and one day of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and from absolute disqualification exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on September 27, 1973; [...]

VIII. Offense defined in Article 245.1 of the Code of Military Justice, as perpetrators and authors of the plan:

[...]

(52) ALBERTO BUSTAMANTE ROJAS, to five years and one day of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 26, 1973;

[...]

XI. Crimes of treason and promotion of sedition through enticement established in Articles 245.1 and 274 of the Code of Military Justice, respectively, as authors:

[...]

convicting the defendants, in some cases imposing death sentences, as will be described below. These judgments were referred for approval to both Commanders-in-Chief, who, on September 26, 1974³⁹ and April 10, 1975,⁴⁰ respectively, upheld the judgments of the War Councils, incorporating a series of modifications, in particular regarding the convictions imposed on some of the defendants.

(63) ERNESTO GALAZ GUZMAN, to a single penalty of death for the two offenses;

(64) BELARMINO CONSTANZO MERINO, to a single penalty of death for the two offenses;

[...].

³⁸ Communication from the petitioners received on June 27, 2007. Documentation provided by the petitioners at the hearing in the instant case before the IACHR held on October 12, 2007. Case No. 1-73 FACH (Part II), Judgment of January 27, 1975. The judgment refers to three of the petitioners: Mario Cornejo Barahona, Mario González Riffo, and Manuel López Oyanedel, and to 18 other individuals. The judgment was issued by the War Council composed of Air Brigade General René Peralta Pastén (President of the Council), Group Commanders Samuel Mujica Verdugo and Carlos Urzúa Contreras; Flight Commanders Laurataro Van de Wyngard Salazar, Alejandro Alvarado González, and Adolfo Celedón Sandoval, and Squad Captain José Massa Doyharcabal.

The relevant parts of the Judgment of January 27, 1975 state:

ONE: The prisoners listed below are convicted of the offenses and sentenced as indicated below.

I. Offense of dereliction of military duty, defined in Article 299.3 of the Code of Military Justice, as authors:

[...]

7. MARIO GONZALEZ RIFFO, to two years of medium-term ordinary military imprisonment, and to the ancillary sanction of suspension from public offices and posts during the time of his sentence, minus the time he has been in custody, to begin on June 25, 1974.

8. MANUEL LOPEZ OYADENEL, to three years of medium-term ordinary military imprisonment, and to the ancillary sanction of suspension from public offices and posts during the time of his sentence, minus the time he has been in custody, to begin on April 6, 1974.

[...]

III. Offense established in Article 255 of the Code of Military Justice, as authors:

[...]

15. MARIO CORNEJO BARAHONA, to eight years of minimum-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute disqualification from public offices and permanent absolute forfeiture of political rights and absolute disqualification from exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 30, 1973. [...]

³⁹ Communication from the petitioners received on June 27, 2007 and documentation provided by the petitioners at the hearing in the instant case before the IACHR held on October 12, 2007. Case No. 1-73 FACH (Part I), Judgment of September 26, 1974. This Resolution reproduces all parts of the judgment of July 30, 1974, except the modifications indicated therein. The judgment was issued by Air Brigade General José Berdichewsky Scher, Combat Command Commander and Aviation Judge.

⁴⁰ Communication from the petitioners received on June 27, 2007 and documentation provided by the petitioners at the hearing in the instant case before the IACHR held on October 12, 2007. Case No. 1-73 FACH (Part II), Decision of April 10, 1975 (note that the cover page of the judgment shows April 16, 1975 as the date of the Decision). This Decision confirms the judgment issued on January 27, 1975, with the modifications made (note that the text of the Decision confirming the judgment of January 27, 1975 identifies it as December 16, 1974). The Decision was issued by Aviation General, Combat Command Commander Mario Vivero Ávila.

The relevant parts of that decision state:

RESOLVES: A. To approve, with the modifications set forth in letters A) B) C), and D) above, the Judgment of December 16, 1974, [...]. B. Therefore, the sanctions indicated below shall be imposed on the accused, for the crimes indicated: [...]. 5° On the accused MARIO CORNEJO BARAHONA and [...], a sentence of 15 years and one day of maximum-term rigorous military imprisonment, plus the ancillary sanctions indicated in Article 28 of the Penal Code, as authors of the crime of treason defined and sanctioned in Article 245.1 of the Code of Military Justice. [...] 9° On each of the accused [...] MARIO GONZALEZ RIFFO,

53. Identified below are each of the 12 petitioners in this case, indicating the part of the proceeding in which they were tried, the crimes with which they were charged, and the sentences imposed by both the relevant War Council, and the subsequent modifications made by the Commanders-in-Chief, if applicable:

- **MARIO GONZALEZ RIFFO**: Case No. ROL 1-73 FACH (Part II); convicted by the War Council of the offense of dereliction of military duty by judgment of January 27, 1975, and sentenced to two years of medium-term ordinary military imprisonment, and to the ancillary sanction of suspension from public office or post during the time of his sentence. This sentence was subsequently modified by the Commander-in-Chief by Decision of April 10, 1975, increasing it to three years of military imprisonment.
- **MANUEL LOPEZ OYADENEL**: Case No. ROL 1-73 FACH (Part II); convicted by the War Council of the offense of dereliction of military duty by judgment of January 27, 1975, and sentenced to three years of medium-term ordinary military imprisonment, and to the ancillary sanction of suspension from public office or post during the time of his sentence. The sentence imposed was upheld by the Commander-in-Chief by Decision of April 10, 1975.
- **MARIO CORNEJO BARAHONA**: Case No. ROL 1-73 FACH (Part II); convicted by the War Council of the offense of dereliction of military duty by judgment of January 27, 1975, and sentenced to eight years of minimum-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute disqualification from all public offices and permanent absolute forfeiture of political rights and absolute disqualification from exercising licensed professions during the time of his sentence. Subsequently, the sentence was modified by the Commander-in-Chief by Decision of April 10, 1975, increasing it to 15 years and one day of maximum-term rigorous military imprisonment.
- **ALVARO YANEZ DEL VILLAR**: Case No. ROL 1-73 FACH (Part I); convicted for the crime of dereliction of military duties by the War Council by judgment of July 30, 1974, and sentenced to 541 days of medium-term ordinary military imprisonment, and to suspension from public office or post during the time of the sentence. The sentence was upheld by Decision of September 26, 1975.
- **OMAR MALDONADO VARGAS**: Case No. ROL 1-73 FACH (Part I); convicted for the crime of conspiracy of sedition by the War Council by judgment of July 30, 1974, and sentenced to four years of maximum-term ordinary military imprisonment and to the ancillary sanctions of permanent absolute forfeiture of political rights and absolute disqualification from all public offices and posts during the time of his sentence. The sentence was upheld by Decision of September 26, 1975.
- **VICTOR ADRIAZOLA MEZA**: Case No. ROL 1-73 FACH (Part I); convicted for the crime of conspiracy of sedition by the War Council by judgment of July 30, 1974, and sentenced to ten years and one day of minimum-term rigorous military imprisonment and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence, minus the time he has been in custody, to begin on October 6, 1973. The sentence was modified by Decision of September 26, 1975 to eight years of minimum-term rigorous military imprisonment plus the legal ancillary sanctions.
- **IBAR ROJAS RAVANAL**: Case No. ROL 1-73 FACH (Part I); convicted for the crime of conspiracy of sedition by the War Council by judgment of July 30, 1974, and sentenced

MANUEL LOPEZ OYADENEL, [...] a sentence of three years of medium-term ordinary military imprisonment, plus the ancillary sanctions indicated in Article 30 of the Penal Code, as authors of the crime of dereliction of military duty [...].

to seven years of minimum-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence. The sentence was upheld by Decision of September 26, 1975.

- **JAIME DONOSO PARRA:** Case No. ROL 1-73 FACH (Part I); convicted for the crime of conspiracy of sedition by the War Council by judgment of July 30, 1974, and sentenced to 15 years of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and absolute disqualification from exercising licensed professions during the time of his sentence. The sentence was upheld by Decision of September 26, 1975.
- **GUSTAVO LASTRA SAAVEDRA:** Case No. ROL 1-73 FACH (Part I); convicted for the crime of conspiracy of sedition by the War Council by judgment of July 30, 1974, and sentenced to 10 years and one day of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and permanent absolute disqualification from all public offices and posts and of absolute disqualification from exercising licensed professions during the time of his sentence. The sentence was upheld by Decision of September 26, 1975.
- **ALBERTO BUSTAMANTE ROJAS:** Case No. ROL 1-73 FACH (Part I); convicted for the crime of betrayal by the War Council by judgment of July 30, 1974, and sentenced to five years and one day of medium-term rigorous military imprisonment, and to the ancillary sanctions of permanent absolute forfeiture of political rights and absolute disqualification from all public offices and posts and permanent absolute disqualification from exercising licensed professions during the time of his sentence. The sentence was modified by Decision of September 26, 1975 to seven years of minimum-term rigorous imprisonment plus the legal ancillary sanctions.
- **ERNESTO GALAZ GUZMAN:** Case No. ROL 1-73 FACH (Part I); convicted for the crimes of betrayal and promotion of sedition by the War Council by judgment of July 30, 1974 sentenced to a single penalty of death for the two offenses. The sentence was subsequently commuted to 30 years of imprisonment.⁴¹
- **BELARMINO CONSTANZO MERINO:** Case No. ROL 1-73 FACH (Part I); convicted for the crimes of betrayal and promotion of sedition by the War Council by judgment of July 30, 1974, sentenced to a single penalty of death for the two offenses. The sentence was subsequently commuted to 30 years of imprisonment.⁴²

54. Based on the information available during the processing of the petition, especially that indicated by the petitioners in the statements contained in their writ filing the motion to reopen—details of which will be provided below, the aforesaid individuals were deprived of liberty for some time and their sentences were subsequently commuted to expulsion or exile.⁴³

⁴¹ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report). Part Two, Chapter III: War tribunals. In Air Force War Council Case No ROL 1-73, four individuals were sentenced to death, but the Combat Command Commander, in issuing a decision on the judgment of the Council, reduced these sentences to sentences of rigorous military imprisonment.

⁴² Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report). Part Two, Chapter III: War tribunals. In Air Force War Council Case No ROL 1-73, four individuals were sentenced to death, but the Combat Command Commander, in issuing a decision on the judgment of the Council, reduced these sentences to sentences of rigorous military imprisonment.

⁴³ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment.

D. Irregularities presented during the process by the War Councils

55. The 12 petitioners were tried and convicted between 1974 and 1975 by War Councils. As indicated above, on September 12, 1973, the Government Junta issued Decree Law No. 5, published in Official Gazette No. 28,657, on September 22, 1973,⁴⁴ which was interpreted to make the state of siege decreed on the grounds of internal commotion equivalent to the “state or time of war,”⁴⁵ and therefore, War Councils or military tribunals would begin to operate.⁴⁶

56. As regards the time at which courts martial begin to operate, Article 73 of the Code of Military Justice of Chile establishes that the jurisdiction of military courts in time of peace shall end and the jurisdiction of military courts in time of war shall begin, throughout the territory declared to be in state of siege, “as of the time of designation of the General in Chief of an army that is to operate against a foreign enemy or against organized rebel forces.”⁴⁷

57. In its reports on the situation of human rights in Chile from 1974 to 1990, the Inter-American Commission analyzed the norms applicable to and procedure of said War Councils. With specific regard to procedure, the IACHR established that:

The war-time procedure is regulated in Book II, Title IV, of the Code of Military Justice; that procedure is characterized by being brief and summary. Once the holder of the jurisdiction becomes aware of the commission of a crime over which he has jurisdiction, he orders the military examining magistrate to investigate the corresponding case and the magistrate has a period of 48 hours, which may be extended, in which to complete his assignment. Once the investigation is completed and the summary proceedings closed, the Military Examining Magistrate submits it to the Commander, together with an opinion in which he indicates the persons responsible for the crimes and the punishment that should be imposed on them. If the Commander is of the opinion that a trial is in order, he issues a resolution establishing the criminal facts and orders the convocation of a Court Martial that will try the accused [...].

⁴⁴ Documentation provided by the petitioners at the hearing in this case before the IACHR held on October 12, 2007. Official Gazette of the Republic of Chile No. 28,657, of September 22, 1973. Decree Law No 5, Declaring a State of Siege Decreed as a Result of Internal Disturbance, a “State or Time of War.”

⁴⁵ From September 11, 1973 to September 9, 1975, the state of siege was deemed equivalent to a state or time of war, with the jurisdiction, procedures, and penalties corresponding to a time of war (See IACHR, Report on the Situation of Human Rights in Chile. OEA/Ser.L/V/II.66, Doc.17, 9 September 1985, Original: Spanish. Chapter VIII: Right to a Fair Trial and Due Process – The Right to Due Process and Military Jurisdiction in Chile. Available at: <http://www.cidh.org/countryrep/Chile85eng/TOC.htm>

⁴⁶ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report). Part Two, Chapter III: War tribunals, A. Laws, p. 81.

⁴⁷ The relevant parts of Article 73 of the Code of Military Justice of the Republic of Chile establish that:
From the time of designation of a General in Chief of an Army that is to operate against a foreign enemy or against organized rebel forces, the jurisdiction of military courts in time of peace shall end and that of military courts shall begin, through the territory declared to be in a state of war against a foreign enemy, or in state of siege.

For its part, Article 418 of said Code of Military Justice establishes that “state of war” shall mean not only when war or state of siege has officially been declared in accordance with the respective laws, but also when war in fact exists or mobilization for it has been decreed, even if an official declaration of a state of war has not been issued.

[...] The Code of Military Justice does not stipulate a minimum period in which the lawyer may prepare the defense and therefore the grant of that period is at the discretion of the military chief that convokes the Court Martial. When the day of the trial arrives, the Court Martial is constituted, the Military Prosecutor gives an account of the summary proceedings and formulates the charges, after which the lawyer presents the defense and any evidence he may have offered is taken. Then the Court Martial deliberates in secret, weighs the evidence in good conscience and issues a judgment, which is immediately notified to the accused and to the Military Prosecutor and the file is sent to the appropriate general or commander for approval or amendment. [...]

War-time military courts, with the above-mentioned procedure, regularly operated in Chile between September 1973 and September 1975.⁴⁸

58. In its 1974 Report of the Status of Human Rights in Chile, the IACHR described the main characteristics of this proceeding as follows:

a) The accused do not have the right to be assisted by defense counsel at summary proceedings. They are interrogated, confronted by their accusers, etc., without having available any kind of legal assistance.

The accused only have the right to designate defense counsel when, after the accusation is made and the decree is issued ordering convocation of the appropriate war council for a particular day, hour and place, they are informed of that convocation.

b) The war councils are composed of the judge, who is a lawyer, and of lay officers.

c) The court thus constituted can evaluate "in good conscience" the evidence gathered, in order to establish the facts of the case.

d) Their verdict along with the record of the proceedings must be submitted to the cognizance of the appropriate General or Commander in Chief, for his approval or amendment. He has the authority to approve, revoke, or modify sentences of the war councils and to order them carried out. The General or Commanding Officer need not give reasons for his decisions.⁴⁹

59. The IACHR described in general terms the irregularities of that process, establishing that:

This process, which has been briefly described, suffers from many irregularities. In the first place, it should be pointed out that the defense counsel cannot intervene or request steps to be taken during the summary proceedings, which permits the Military Examining Magistrate to accumulate evidence without any counterbalancing evidence whatsoever and even to support his accusation on secret documents to which the defense does not have access.

Finally, the war-time military procedure makes no provision for appeal, contrary to all the principles of due process. The Supreme Court, as already stated, declared that it lacked

⁴⁸ IACHR, Report on the Situation of Human Rights in Chile. OEA/Ser.L/V/II.66, Doc.17, 9 September 1985, Original: Spanish. Chapter VIII: Right to a Fair Trial and Due Process – The Right to Due Process and Military Jurisdiction in Chile, paras. 169, 170, and 174. Available at: <http://www.cidh.org/countryrep/Chile85eng/TOC.htm>

⁴⁹ IACHR, Report on the Status of Human Rights in Chile. OEA/Ser.L/V/II.34, doc. 21, 25 October 1974, Chapter IV. Original: Spanish.

competence to review on appeal the judgments of Courts Martial, basing itself on the fact that the Code of Military Justice gives “full jurisdiction” to the Commander in Chief of the Army and disregarding Article 86 of the 1925 Constitution, which stipulated that “The Supreme Court has direct supervision, correctional and economic, over all the Tribunals of the Nation...”. To dispel doubts, the 1980 Constitution, in Article 79, expressly excludes war-time Military Courts from the supervision of the Supreme Court.

This trial without appeal particularly affects the guarantees of due process, in that the power to try and apply the law is given, as pointed out in the preceding section, to a court composed of military personnel without legal training of any kind who, in addition, lack an essential attribute of every judge; permanent tenure and, consequently, independence. Although it is true that the judgment of the Court Martial is not binding on the superior officer that convoked it, this does not constitute a sufficient guarantee for the accused: His fate depends on the judgment of a general in active service, in command of troops and directly subordinate to the President. This military chief, furthermore, may convert an acquittal into a verdict of guilty.⁵⁰

60. The IACHR emphasized:

The lack of independence of those who exercise military jurisdiction in this case is obvious and there is a complete lack of permanent tenure or legal training. For its part, the Supreme Court declared it incompetent to try on appeal the judgments handed down by the Courts Martial, as explained in this chapter. The lengthy period during which they were in operation, added to the acts submitted to their jurisdiction pursuant to provisions issued by the Government Junta, show the serious violation of the right to a fair trial resulting from the exercise of the jurisdiction assigned to them.⁵¹

61. It should be noted that, for its part, the Commission on Truth and Reconciliation,⁵² in its report published in 1991, considered that the military courts that acted in that capacity to punish acts committed prior to September 11, 1973, did so in violation of the legislation then in force and in violation of basic principles of law. Specifically, that report indicated:

The foregoing makes clear that the decreed state of siege leads to a "state or time of war called preventive" rather than a real state of war, since those decree laws never pointed to, or based their decisions on, the existence of militarily organized rebel or mutinous forces. These observations and the terms of Articles 73 and 419 of the Military Justice Code enable us to state that this "preventive" state or time of war neither justified nor permitted the functioning of wartime military tribunals. Thus it may be concluded that the tribunals that acted in such

⁵⁰ IACHR, Report on the Status of Human Rights in Chile. OEA/Ser.L/V/II.66, Doc.17, 9 September 1985, Original: Spanish. Chapter VIII: Right to a Fair Trial and Due Process – The Right to Due Process and Military Jurisdiction in Chile, paras. 171-173. Available at: <http://www.cidh.org/countryrep/Chile85eng/TOC.htm>

⁵¹ IACHR, Report on the Status of Human Rights in Chile. OEA/Ser.L/V/II.66, Doc.17, 9 September 1985, Original: Spanish. Chapter VIII: Right to a Fair Trial and Due Process – The Right to Due Process and Military Jurisdiction in Chile. Para. 149. Available at: <http://www.cidh.org/countryrep/Chile85eng/TOC.htm>

⁵² The Truth and Reconciliation Commission was created by Supreme Decree No. 355, of April 25, 1990. Its main purpose was to contribute to a general clarification of the truth in connection with the most serious human rights violations committed between September 11, 1973 and March 11, 1990, whether within the country or abroad. In the latter case, if they related to the State of Chile or to national political life (Article 1). As a result of the work of that Commission, the government forwarded to Congress a general law on reparations. It was enacted as Law No. 19,123, of February 8, 1992. It created the “National Corporation on Reparation and Reconciliation” and established measures for reparation of the victims.

fashion to punish actions committed prior to September 11, 1973 did so in opposition to the legislation then in force and in violation of basic principles of law.⁵³

62. Also set out in that report are observations on the judgments issued by the War Councils, it being considered, *inter alia*, that:

As a rule the sentences issued by the war tribunals accept or state that the crimes were actually committed without stating which deeds constitute the crimes or which proofs establish that fact; hence whether such crimes were in fact committed remains in doubt.

The legal basis for most of the sentences is not provided. The elements that constitute a crime, exactly which crime is being committed, and the basis in law or equity that make it possible to come to a just decision should all be set forth.

[...]

In some trials the confession of the accused is regarded as establishing that the crimes were committed, without any further evidence of a punishable action. This transgression of the law is utterly inadmissible for justifying a guilty verdict and sentence. [...]⁵⁴

63. The Commission on Political Imprisonment and Torture,⁵⁵ in its report published two years later (2004), also considered that the legal declaration of war served as a legal fiction and political justification “for repressive acts inconsistent with the context of reference, therefore utilizing military courts in times of war.”⁵⁶ Furthermore, with regard to the action of the War Councils, it establishes that the right to legitimate self-defense was not recognized, regarding which it indicated specifically:

⁵³ Original petition filed with the IACHR on April 16, 2003, Annex 7, Report of the National Commission on Truth and Reconciliation, Part Two, Chapter III, War tribunals, (A). Laws, p. 123.

⁵⁴ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the National Commission on Truth and Reconciliation, Part Two, Chapter III, War Tribunals, (D) Observations on the judgments handed down by the War Councils, p. 137.

⁵⁵ The Commission on Political Imprisonment and Torture, created by Supreme Decree No. 1040, of September 26, 2003, was defined as an advisory body to the President of the Republic to determine the victims of deprivation of liberty and torture for political reasons by acts of State agents or persons in their service (Article 1 of Supreme Decree No. 1040). The Commission was composed of eight individuals designated by the President of the Republic:

- Monsignor Sergio Valech Aldunate, President
- María Luisa Sepúlveda Edwards, Executive Vice President
- Miguel Luis Amunátegui Monckeberg
- Luciano Fouillieux Fernández
- José Antonio Gómez Urrutia
- Elizabeth Lira Kornfeld
- Lucas Sierra Iribarren y
- Álvaro Varela Walker

⁵⁶ Report of the Commission on Political Imprisonment and Torture, Chapter III, War tribunals, p. 176. Available [only in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-cap3.pdf>. That report also indicated that “given the lack of a context of internal warfare and in the absence of armed conflict that would jeopardize the monopoly of force reserved to the armed forces and the police, legal grounds did not exist for subordinating the legal system to this emergency situation.”

[...] In all penal proceedings, the accused enjoy different rights and guarantees. For example, to be specifically and clearly informed of the acts of which they are accused; to be assisted by an attorney as from the initial steps of the investigation; to request that an investigation be launched and to know the content thereof; to request dismissal of the action; to remain silent or to make statements while not under oath; and not to be subjected to torture or to cruel, inhuman, or degrading treatment [...]. Nonetheless, those indicted by military courts in time of war beginning in 1973 almost never enjoyed the above-mentioned rights. In these military courts, the norm was violation of those rights and guarantees. The charges were not known with any certainty. Only the reason for detention was known, [...]

In addition, the judgments of the military courts usually were very poorly constructed, [...]. In many cases, the facts and offenses were deemed established without adducing any further grounds. The defenses of the accused were only summarily indicated and rapidly rejected as contradicting the aforesaid conclusions. In general, no legal analysis was made of the established acts, and these were facily deemed consistent with pre-selected criminal definitions. Even acts never defined in law as offenses were declared reprehensible, constituting, for the prosecutors, instrumental offenses. Crimes were often established based on a single confession. And indiscriminate use was made of presumptions. Some judgments merely endorsed the conclusions of the prosecutor, who, in turn, simply accepted the military or police report. In other cases, the facts for which charges had been brought were not even mentioned, or were only recorded in general terms.⁵⁷

64. The Commission on Political Imprisonment and Torture also referred explicitly to the proceeding conducted to the detriment of the victims in this case, indicating, in that regard, that “the FACH trials were conducted with unprecedented severity.”⁵⁸

65. As for the acts of torture in the context of the proceedings mentioned earlier, the present section will make reference to what the IACHR found during its visit to Chile in 1974, as recorded in the report issued subsequent to its visit and to the effect that “of the large number who stated that they had been subjected to torture, in some cases brutally with visible marks remaining, most of them asserted that the torture was not applied in the establishments where they were or had been detained, but in certain places where they were taken for that purpose. According to what they told the Commission, they were interrogated there, and in the interrogations a wide range of physical and psychological torture was employed.”⁵⁹ In that report, the IACHR mentioned a number of places it was unable to visit⁶⁰ but that, according to the information received through testimony, were allegedly used for torture:

⁵⁷ Report of the Commission on Political Imprisonment and Torture, Chapter III, Courts Martial, pp. 176-178. Available [only in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-cap3.pdf>.

⁵⁸ Report of the Commission on Political Imprisonment and Torture, Chapter III, Courts Martial, p. 181. Available [only in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-cap3.pdf>.

⁵⁹ IACHR, Report on the Situation of Human Rights in Chile, Chapter VI: “Installations the Commission was not able to visit, establishments denounced as torture center.” OEA/Ser.L/V/II.34 doc. 21 October 25, 1974 Original: Spanish. This report explained and evaluated the findings of the Commission during its *in loco* visit to Chile from July 22 to August 2, 1974, in connection with the general human rights situation in that country.

⁶⁰ IACHR, Report on the Situation of Human Rights in Chile, Chapter VI: “Installations the Commission was not able to visit, establishments denounced as torture center.” OEA/Ser.L/V/II.34 doc. 21 October 25, 1974 Original: Spanish. The IACHR observed that “when the Commission members, having completed their investigations and still not having received the promised identification cards, expressed their intention to visit those installations, they were told that such a visit could not be made, because the installations had recently been declared ‘military areas’.”

- a) A building of the Santiago Investigations Bureau, commonly known as “la patilla”, which is on the lower floor of its local headquarters.
- b) The property at N° 38 Londres Street, also called “The House of Terror” or “The House of the Bells”. The latter name was due to the fact that the bells of a nearby church can be heard inside the house.
- c) The Air Force War Academy, indicated as a very important center for physical torture.
- d) A section of the Military Hospital, in which tortures are reportedly controlled with medical supervision.
- e) The Navy ship “Esmeralda”.⁶¹

66. Finally, the information in the case file shows that the irregularities found in the proceedings of the courts martial mentioned previously, particularly the practice of torture by State agents, also occurred in the two parts of the military criminal proceedings that convicted the petitioners in the present case.

E. Established facts occurring after August 21, 1990

1. Motion for review of the convictions issued in the case “Aviación/Bachelet et al.” Case No. ROL 1-73 FACH

67. Following the return to democracy, on September 10, 2001, la Corporación de Promoción y Defensa de los Derechos Humanos [Corporation for the Promotion and Defense of Human Rights] (CODEPU)⁶² filed a motion to reopen the case and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash in connection with the above-mentioned judgments issued in the military war-time proceeding captioned “Aviación/Bachelet et al., Case No. ROL 1-73,” on behalf of a group of individuals convicted therein, among them the 12 petitioners in the instant case. In their motion to reopen the case, the petitioners expressly indicated:

We file this motion to vindicate our names, as well as those of those who died charged and convicted in this proceeding, which, as we will show, is legally flawed, invalid, and baseless,

⁶¹ IACHR, Report on the Situation of Human Rights in Chile, Chapter VI: “Installations the Commission was not able to visit, establishments denounced as torture center.” OEA/Ser.L/V/II.34 doc. 21, October 25, 1974 Original: Spanish. The Commission also noted that “similar descriptions have been given of those places by prisoners widely separated from each other.”

⁶² In the writ filed to reopen the case, the petitioners requested that “it be taken into account that we have given power of attorney to the following attorneys: Ms. María Alejandra Arriaza Donoso, of the Corporation for the Promotion and Defense of People’s Rights (CODEPU) [...] who, in her capacity as authorized attorney, has power of attorney to act on behalf of her clients. We have also given power of attorney to the following authorized attorneys: Mr. Hirant Villagra Castro, [...]; Hugo Gutiérrez Gálvez, of CODEPU, [...]; Juan Bastos Ramírez, [...]. We also give power of attorney to authorized attorney of the University of Chile Mr. Federico Aguirre Madrid, of CODEPU, to act separately or jointly; [...].” Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment.

because it arises from a conspiracy perpetuating an illicit association to victimize a group of Chileans [...] ⁶³.

68. In filing the motion, the petitioners indicated that in the instant case the grounds for review exist that are established in Article 657 of the Code of Criminal Procedure, ⁶⁴ which provides that:

The Supreme Court may review, on an extraordinary basis, for purposes of annulment, the final judgments in which a person has been convicted for a crime or misdemeanor, under the following circumstances:

4. When, after a conviction of guilt, there should occur or come to be discovered some fact, or some document should appear, unknown during the trial, that is such as to suffice to demonstrate the innocence of the person convicted.

69. The petitioners alleged that after the judgments were issued in the proceeding identified as “Aviación/Bachelet et al.,” Case No. ROL 1-73, new facts and background were uncovered such as to suffice to demonstrate the innocence of those convicted and to nullify those convictions. The petitioners alleged that serious irregularities had occurred during the proceeding, such as confessions extracted under torture, serious violations of probatory law, retroactive application of penal law, absence of jurisdiction or competence of the court, and aberrant criminal definition. Therefore, they requested the Supreme Court to nullify this proceeding. They alleged that “to maintain the integrity of the rule of law, these situations call for radical rejection of the validity of this proceeding as a remedy.” [...] ⁶⁵ Accordingly, they included evidence from the motion to reopen, *inter alia*, the Report of the National Commission on Truth and Reconciliation, ⁶⁶ declassified documents of the Central Intelligence Agency (CIA) of the United States ⁶⁷; a Decision issued by the Ninth Criminal Court of

⁶³ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment.

⁶⁴ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment.

⁶⁵ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment.

⁶⁶ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment. The petitioners alleged that “authorities of the government of President of the Republic Patricio Aylwin A hereby create the Truth and Reconciliation Commission, whose conclusion is to confirm the existence of serious human rights violations committed by the Office of the Air Force Prosecutor and the paramilitary apparatus associated with it.” [...] They also indicated that the entire Chapter III, Part Two, Volume I, of the Report of the Truth and Reconciliation Commission analyzes the war tribunals.

⁶⁷ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment. The petitioners note that they have provided declassified documents from the Central intelligence Agency of the United States showing the serious procedural irregularities in the instant case: “statements of the accused alone were used as evidence; nearly all these statements were obtained under torture; the attorneys for some 70 of the accused only had access to the file, which was over 2000 pages long, for only five days; the defense counsel had to be positively vetted by the War Council, which removed whatever members it chose; attorneys were charged and sometimes even arrested.” As for the crime and the conviction, these documents also set out their multiple irregularities.

Santiago⁶⁸; testimony of survivors of the Air Warfare Academy (AGA),⁶⁹ statements by former agent Andrés Valenzuela⁷⁰; and charges brought in connection with acts perpetrated by said illicit association, and their investigations following the trials.⁷¹

2. Allegations of torture and cruel, inhuman, and degrading treatment

70. As indicated above, in the writ filed in 2001 with the Supreme Court of Chile moving to reopen the case (*recurso de revision*) that challenged the judgments of the War Councils, it is alleged that the victims had been tortured at the time of their detention to extract their confessions, and referred to all evidence indicated above. Specifically they indicated:

We, the appellants, are a group of officers, non-commissioned officers, and civilian personnel with long careers in the ranks of the Chilean Armed Forces, which we proudly serve, honoring our oaths of loyalty to the Constitution and the laws, and we have in common the experience of being subjected to cruel abuse, torture, and humiliation constituting a violation of our fundamental rights in the context of the proceeding captioned "Aviación (sic) contra Bachelet et al., Case No. ROL 1-73." ⁷²

71. Provided below is the testimony of the victims in the instant case included in the writ filing the motion to reopen it, which give account, *inter alia*, of the circumstances of the detention of each, the abuse and torture to which they were subjected, and the sequelae thereof. It was alleged to

⁶⁸ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. The petitioners indicate that: "For purposes of the investigation of the abduction and disappearance of José Luis Baeza Cruces and others Case No. ROL N° 12.806-MV is being conducted in the Ninth Criminal Court, which has established the crime of genocidal illicit association, perpetrated by Office of the Air Force Prosecutor personnel, and others, which operated in the Aerial Warfare Academy (AGA) and was directly related to the detentions and interrogations of the appellants. This illicit association was planned in the so-called "Joint Command," and its members carried out repressive actions until 1985."

⁶⁹ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. The petitioners indicate that this testimony shows that the Office of the Air Force Prosecutor and the War Council operated in the context of the operations of the Air Force War Academy as a clandestine detention and torture center. "There was no organizational separation between serving as a clandestine center perpetrating crime and as the headquarters of a pseudo-judicial body."

⁷⁰ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. The petitioners indicate that the statements made by former agent Andrés Valenzuela to the Truth and Reconciliation Commission on November 10, 1990, indicate that he acknowledges having participated in this illicit association, confirming that the Office of the Air Force Prosecutor, in conjunction with the Intelligence Service of the FACH, constituted a single criminal unit that abducted, tortured, and, in some cases murdered, and, in continuation of these acts, "tried" and "convicted."

⁷¹ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. In the motion to reopen, the petitioners indicate that in view of the illicit activity of this association, criminal complaints had been filed with the jurisdictional judge, Juan Guzmán Tapia, and with the Ninth Criminal Court of Santiago.

⁷² Communication from the petitioners received June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment, p. 4.

the Supreme Court of Chile that, “the transcripts of the appellants’ testimony alone demonstrate that the only bases for the convictions contained in the judgment challenged are the confessions obtained under torture, which are of nil value and absolutely invalid. This was the treatment suffered by each of the appellants at the hands of the Office of the Air Force Prosecutor in the proceeding against Bachelet et al., Case No. ROL 1-73.”⁷³

Ernesto Augusto Galaz Guzmán

As of September 1973, he had the military rank of Group Commander and 30 years of service in the Chilean Air Force.

In early September 1973, I was in Arica on assignment. [...] I returned to Santiago the night of September 10. When I learned of the *coup* on the morning of September 11, I decided not to report for duty with the Air Force, as I had no intention of making myself part of a military *coup*. I was supposed to have reported to the Office of the Director of Operations of the FACH Staff, which was the department I served in; to be precise I served in the Organization Department. I decided not to report, first because of my loyalty to the constitutional Government; second, because of my belief that the government (which the coup was toppling) was the best for the country’s development; and third, because everyone knew I subscribed to the government policies of the *Unidad Popular*, which was evident at social gatherings, in my classes at the FACH’s War College, and from my outrage at the attempted military coup known as the “Tanquetazo”, which had happened just months earlier.
[...]

When I arrived at the Ministry of Defense, I had barely gotten to my office in the Organization Department when I was notified by a lieutenant, accompanied by three heavily armed noncommissioned officers, that I was to remain there and was under arrest. A few moments later, Colonel Hugo Sage from the Personnel Department arrived to read me the decree whereby I had been discharged from the service on September 11, 1973. He confirmed my arrest and asked me to surrender my service revolver. After about an hour I was taken to the basement of the Ministry where an officer –whose name I don’t recall but who said he was a prosecutor– subjected me to a brief interrogation, whereupon he decided to send me, under arrest, to the Colina Air Base. It was then that I realized that I was not the only one arrested; that General Alberto Bachelet, Colonel Rolando Miranda and Captain Raúl Vergara were also under arrest. We were all put in a vehicle with armed men and taken to the Air Base. At the base, we were held in custody, each one in a room at the Officers Casino. We were told that we were there as prisoners of war. And we were treated as prisoners of war until September 20, 1973. During my time at Colina, I was never called upon to make a statement, either before the prosecutor or any other military authority.

On September 20, things changed suddenly. At around midday, we were taken from our rooms and boarded onto a helicopter. At the base, there was an enormous show of military force (men hunched over, pointing their rifles in every direction). The helicopter headed out for what to us was an unknown destination. After a brief flight, we landed somewhere I was unable to identify. It was the Air War College; this was my understanding, because someone said as much. I should point out that when I taught at the Air War College, it was at the old facilities [...]. We were led through the basements of the Air War College and placed in an enormous room, each in his own corner. About five minutes passed, and some young officers marched in. I didn’t recognize

⁷³ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment, p. 24. Note that mention will be made only of the statements of the victims in the instant case.

them. They forced hoods on our heads and tied our hands. Like my fellow detainees, I was left standing, tied up and with a hood over my head. I can't really say how long we stood that way. We were denied water. The feeding was ridiculous: they lifted the hood just enough to put food in our mouth. I haven't any idea what I was being fed. We stood for hours and hours with our hands and feet tied. The pain was terrible, both from the ties and from being forced to stand for so long and in such condition. At a certain point, it may have been nighttime, they had me lie on the floor. I must have slept some hours, because suddenly I was awakened when I was kicked in the ribs. I remained in that room for a long time; I was beaten and verbally abused by those who periodically came in the room to guard us. I heard Colonel Miranda moaning and the movements of others; from that I assumed that the four of us were still in that underground room. Exhausted and wasted, at some point in time I was taken out of the room and put up against a wall in a half-bent position, always with my hands tied and supporting myself on them. I was told that if I let myself drop, there were bayonets under my body. I spent hours in that torment, until a number of individuals took me nearby and beat and kicked me, saying with scorn and derision that "they were talking to me." Once they had finished their farce, they took me, bound and hooded, to yet another place, where I was given to understand that I was being questioned by the Prosecutor. He had me sit down, had the hood removed and my hands untied. I realized that I was facing General Orlando Gutiérrez, who said that he was the Prosecutor in the proceedings being conducted against me. I told him of the abuse to which I had been subjected, and that I had no idea of what I was charged with. I should note that Gutiérrez and I had been classmates together at the Aviation School and that during our military careers we had a good relationship. Although I would not call it a friendship, it was smooth and normal as it should be between comrades at arms. [...] General Gutiérrez said that he was the prosecutor in the court martial being conducted against me. His attitude, which was initially calm, changed as the interrogation proceeded; he insisted that my meetings with politicians from the Administration were relations with the enemy and that I had given them military secrets. He even said that he wanted me to testify to my knowledge of and participation in a plan called Z, whose purpose was to establish a Marxist regime in the country. I said that I did indeed know politicians in the Government and that I had had meetings with them, some of which were attended by generals like [...]. However, Gutiérrez insisted on implicating me in a "plot against the country", which involved handing over military secrets to the enemy, use of arms and the seizure of MACH units. At this point in the "conversation", the general was openly exasperated and ordered that I be taken back to isolation. I mention these details because they explain why I was later subjected to cruel torture and mistreatment.

In effect, this is where Commander Cebollas, Captain Cáceres and others whose names I don't know, entered the picture. They kept us wearing hoods and with our hands tied. They beat us constantly. I was taken out of the prisoners' common room –by now our numbers had grown– and taken countless times for sessions to wear me down so that I would confess. They had their version; the systematic torture was to get me to confirm their story. All the so-called confessions were nothing more than confirmation of the version they extracted through torture.

On multiple occasions, I was taken –bound and hooded– to the Prosecutor's place where, in addition to Gutiérrez, I would find [...]

During those interrogations with the Prosecutor they would force needles under my nails; they would string me up with a line between my legs to inflict pain on the testicles; I was beaten on the ribs with a rubber object, they yelled at me saying that I would be shot the next day. They were always trying to force me to confess to being part of a nefarious plot which they believed was true. In the meantime, between my appearances before the prosecutor, I was twice taken to a place that later came to be called the chapel, for electric shock sessions. With the hood always on my head, they would spread me out on a grill and apply electric current to my testicles, my penis, my tongue and other parts of the body, yelling and screaming at me to tell them the names of those involved in the supposed plot. They gave names and wanted me to confirm the names. I am ashamed to say that the torture was unbearable, and to avoid any

further suffering, I chose to agree to the charges that were leveled against me and to admit that I had plotted with people with whom I had never spoken and even some that I didn't even know. I recognized some of my torturers from their voice, although they tried to conceal their identity by speaking with a pencil between the teeth. Ceballos and Cáceres were always there. There were others, whom I never recognized.

Through these torture sessions, the so-called Prosecutor's Office was implicating more and more members of the FACH in its investigations. As the days went by, and after I had signed countless papers for my torturers, I was put in a basement room in the Air War College, sitting facing the wall, along with many other prisoners. Our situation was dreadful: we were thirsty, hungry, with few opportunities to take care of our physiological needs; at intervals, they would take a prisoner from the cell for a torture session, only to return shattered and defeated, as he may have been beaten or subjected to electric shock

Some of those I recall from those dark days were captains Carvacho, Silva, Donoso, Vergara; Colonel Miranda, Corporal Toro, Corporal Samuel Reyes (who was killed in those underground rooms), Corporal Pacheco, and many others whose names I learned later when I was in the Public Prison.

It would appear that the person in command of that band of torturers was Commander Ceballos, who was called Cabezas; his second was Captain Cáceres, who was called Matamala. The group included officers and non-commissioned officers. There was also a band of guards composed of personnel from the enlisted ranks and conscripts. I don't know who was the Director of the Air War College at that time, but whoever it was, he was outranked by the Intelligence Services.

Around early November, many of the FACH prisoners were transferred to the Aeronautical Polytechnic Academy, where we were put in rooms in groups of around 15. We were seated facing the back wall, with a guard at the door who was constantly playing with the bolt on his rifle. Perhaps his instructions were to keep us afraid. At night we had to sleep on the floor boards.

Once in an adjacent room, as he was playing with the bolt on his rifle, the guard accidentally fired his weapon and the bullet killed prisoner Corporal Espinen. They say he was buried with honors for having died in battle with the "enemy".

I was removed from this room once and taken to the Air War College, where they used electric current on me again, this time to get me to confirm new information. The fear of being taken from the Aeronautical Polytechnic Academy to the Air War College was with us 24 hours a day. It was frightening to hear vehicles approaching our place of confinement. [...] While at the Aeronautical Polytechnic we were taken away to the Air War College to be present for the proceedings that Prosecutor Gutiérrez conducted against us, [...]. I was convicted and given the maximum sentence, as were Carlos Lazo, Raúl Vergara and Belarmino Constanzo. We were taken to the Santiago Penitentiary and were on death row. After a week, we received news of a decision by the Aviation Judge, who at the time was General Berdichewski, who commuted the death sentence to 30 years in prison in recognition of our "previous good conduct". We went back to the Public Prison. I was there until April 18, 1978, the date on which I left and went directly from the Prison to the Airport to travel to Brussels (Belgium), which had granted me political asylum. I was permitted to leave the country under Decree 504. [...].

The torture I received did damage to my cerebellum, which manifests itself in recurring episodes of a loss of physical stability, accompanied at times by a brief loss of consciousness. The torture, imprisonment, and death sentence have left me with nightmares in which I relive the events that

occurred during my time as a prisoner, associations of ideas that leave me mortified and depressed.⁷⁴

Álvaro Yáñez Del Villar

In September 1973, I had the rank of (Health) Group Commander. I was arrested on September 13, 1973, and held at the Air War College (AGA), subjected to torture, prosecuted and convicted in the case called "Aviation v. Bachelet *et al.*" Case No. 1-73.

At 4:00 p.m. on the afternoon of September 13, an officer by the name of Cáceres appeared at my office. I knew him because I had treated him when he was sick; I also knew him as a pilot on health missions. He was accompanied by a second lieutenant and two or three armed soldiers whom I did not know. It was a group with infantry weapons, traveling in a pickup with no institutional markings. [...]

Cáceres told me that he was to take me to the Office of the Prosecutor of Aviation. I got into the vehicle that he was driving. We headed out in an easterly direction. I sat beside him. To my right was a young officer who held a knife pointed at my right side. Before entering the Air War College, I was blindfolded "by order of the command", as Cáceres said. As we entered the building, he turned me over to someone else. An individual, a male, [...], proceeded to tie my hands with parachute cords, threatening to kill me if I tried to get away. To get to the room where I would be made to stand facing a wall, I was brought down a set of stairs in two sections of eight or ten steps. At night they made me walk some 6 meters and sat me down on a chair, next to a small table. They then brought me bread and a cup of soup.

When I woke up I realized –because of the light- that I was in a room on the ground floor, with windows about two meters high. Some days later they removed the blindfold and I realized that the room led to a hall; at the end of the hall were the toilets, showers and sinks.

It was interrogated. A group asked me multiple questions and when the answer was not what they were hoping for, one would hit me hard with his fist in the abdomen.

On multiple occasions, they applied electric shock to my genitals. One of the individuals, halfway through the session, checked me with a stethoscope. During this process, I was tied down on a kind of examining table and blindfolded. I couldn't identify any of those who were interrogating me. Later, I think the same day, someone handed me a block of paper and a pencil and asked me to write "my confession". Then an officer by the name of Lisozain appeared and reminded me that he was "my friend"; he begged me to write "everything" down to avoid any further interrogation. When the blindfold was removed, I realized that Senator Schnake was in my room; some days later, they took us outside to get some sun. I recognized Colonel Ominami among the detainees.

I was made to endure death threats, loud rock music throughout the night, alternating with sad melodies, a low-calorie diet; I had to listen to the screams of others being beaten in the halls or complaining of feeling sick and being badly injured from the beatings.

I saw people who were badly hurt by the beatings: one person complained of abdominal pain and threw up blood; another obviously had a rib fracture, and was beaten again on the very same place. I watched as an attorney from the prosecutor's office by the name of Barahona was interrogating someone in the hall, beating him on the back until he screamed.

⁷⁴ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an ex officio declaration of annulment and/or the application of general powers to quash a judgment, pp. 27-30.

On November 14, I was moved to the Public Prison. I never returned to the Air War College. I was tried and sentenced to three years and one day. The Aviation Judge reduced my sentence to 541 days. Having spent 11 months in jail, I was released on October 8, 1974.

My incarceration, my discharge from the service and the temporary separation from my activities in the SNS and the University, caused me severe professional harm and hurt my job expectations.⁷⁵

Jaime Donoso Parra

Having been a Captain (R) of the FACH and having been tried, convicted and later sent into exile, I looked for ways to understand the facts that I will now recount. When I was unable to find them, I felt a sense of frustration and anxiety because of my inability to be able to put matters to rest.

My family's suffering and their abandonment by other relatives and friends, the violation of basic rights, the justice I and my FACH comrades at arms were denied, cannot be remedied. I hope that the armed forces never again become a house of executioners.

Many Chileans, and many of us who were comrades at arms in the FACH, have never come to grips with the tremendous abuse and fear to which we were subjected. I would ask them to look at the content of our complaint, not as an unfounded complaint filed only to besmirch the image of the military regime. Instead, I would ask them to look at our complaint as something that happened and to consider what it meant to be a political prisoner, subjected to pressures exerted by a group representing a military government who were pulled into a vortex of sadism, in an effort to destroy our personalities and ideals.

I must point out that the evidence of what happened in our country in those years is overwhelming and abundant, and confirmed by international and national organizations of unquestionable moral standing, which lends our testimony special credibility. I was terribly disillusioned when I was detained and arrested in such a humiliating manner by Squadron Commander Edgar Ceballos Jones, who stripped me of my FACH Captain's insignia, using his bayonet to cut them off my uniform, taking my private revolver and a Ralea watch, which I had acquired in the service. I never recovered these belongings.

I also felt that my dignity was lost when I learned that my home had been searched by a lieutenant whose name I don't recall [...].

By the middle of 1973, I was a Captain in the FACH Corps of Engineers. I had also graduated as a pilot and instructor in tow and glider planes at the School of Motorless Flight. I was also a professor for engineers in various professional disciplines and with specific knowledge of engineering and fluid mechanics at the Aeronautical Polytechnic Academy in El Bosque.

I was an officer of excellence and impeccable conduct, and was ranked first on the list with the highest grades for my military department and professional performance in the service.

[...] Another thing I'll never understand is the attitude of General Orlando Gutiérrez Bravo, Prosecutor of the Summary Proceeding and head of the officers assigned to the AGA, where FACH officers and noncommissioned officers were interrogated and tortured, and [...].

⁷⁵ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. P. 30.

I don't think I'll ever understand the attitude of the officers assigned to the FACH War College in the days that followed the *coup d'état*. These officers were torturers; we were pressured so that they could make their case called "FACH v. Bachelet *et al.*".

Of course, all the statements were obtained under physical and/or psychological torture, which I will discuss later. [...]

The transformation that the torturers underwent was systematic and gradual; they became increasingly brutal and sadistic, ever less tolerant and more aggressive. The intensification of the beatings, the use of electric shock and other tortures, happened very quickly. As the torture increased, so did the suffering of those being tortured; their screams and cries became louder and more anguished as the torture sessions continued.

As said previously, in the case called "FACH v. Bachelet *et al.*," we were accused of treason against the country and against the FACH, sedition or seduction to sedition for having reported the preparations for the *coup d'état* to certain members of Congress and President Allende's inner circle.

I want the record to show the names of the FACH officers assigned to the Air War College who participated in, conducted or led the sessions of torture to which those accused in the case were subjected. That group of officers including the following:

General Ing. Orlando Gutiérrez Bravo, Chief of Operations and Prosecutor, applied the sanctions in the formal accusation and sentenced three officers and one noncommissioned officer in the FACH to death: Colonel Ernesto Gal, Captains Raúl Vergara and Patricio Carvacho and noncommissioned officer Belarmino Constanzo. The Group Commander Airman Sergio Lizasoain Mitrandó, who appeared to be next in the torturers' chain of command. Squadron Commander Ing. Edgar Ceballos Jones. Squadron Commander Airman Carlos Cáceres. Squadron Commander Airman Gonzalo Pérez Canto (who operated at the Cerro Moreno Base in Antofagasta, and was famous among the torturers for his aggressiveness and sadism). Squadron Commander Airman Jaime Lavin Fariña (*) (this officer was denied entry into the US because of his participation in acts of torture). Group Captain Airman Álvaro Gutiérrez (also known for his aggressiveness and sadism). Group Captain Airman Víctor Mettig. Group Captain Airman León Dufey (*). Group Captain Airman Florencio Doblé Almeyda (A). Lieutenant Engineer Juan Carlos Sandoval. Lieutenant Dumont. Lieutenant Franklin Bello. Noncommissioned officer Juan Norambuena. Aviation Sargeant Hugo Lizana. Aviation Corporal Cortes.

[...]

The members of the Court Martial who convicted all the accused, knowing beforehand that the confessions had been obtained under torture, are the following:

Air Brigade General, Airman Juan Soler Manfredini (Chair of the Court Martial); Colonel Airman Eduardo Fonet Fernández; FACH Colonel Physician, Humberto Berg Fontecilla; Colonel Engineer Sergio Sanhueza López; FACH Colonel Attorney Julio Tapia Folk (Auditor of the Court Martial); Colonel Airman Javier Lopetegui Torres; Group Commander Airman Carlos Godoy Avendaño; they reached the rank of General in the FACH.

Heavy propaganda campaigns were waged. One was that the government and certain members of the FACH had developed the "PLAN Z". I was accused of having collaborated in the plan's creation and application. There were also stories of truly gruesome situations that never occurred, but that might have happened, according to the findings of the aviation judges of that period.

An idea was systematically filtered among the officers and their families, to the effect that there had been special elimination groups, composed of members of the FACH and civilians, whose mission was to assassinate the officers at the El Bosque Air Base and their families. The officers and noncommissioned officers prosecuted in the AGA, and others, were also supposedly members of those elimination groups.

Let me pause here to recall that I was arrested around September 20-25 by Commander Edgar Ceballos. I overheard the heads of operations of the Aviation Group No. 10 Base, where I was serving as an officer engineer, saying absolutely incredible things about the UP plans, which were described as terrible and criminal; one of them was PLAN Z. I didn't know anything about PLAN Z and never knew it existed, except when I was interrogated and coerced into declaring that I was part of the plan.

Here I must emphatically state that the existence of PLAN Z was never proven; no copy of it was ever found. The torturers never had the brains or the guts to write one up and enter it into evidence during the proceedings.

[...]

These men, the actors who sentenced us, are in my opinion less reprehensible than those who planned these sub-human measures and who exerted the pressure that comes with their positions of command to get their henchmen to commit torture [...] ⁷⁶.

Mario Antonio Cornejo Barahona

In September 1973, I was a Sargeant Second Class.

When I finished my shift at the Quintero Air Base on October 14, 1973, I was picked up by guards at the Air Base, who did not show a warrant for my arrest. I was told that I had to be transferred to Santiago, to appear before the Office of the Aviation Prosecutor, who ordered that I was under immediate arrest. [...] I remained there approximately two hours. I was then taken by car to the basement of the Ministry of Defense, which was under the command of FACH Captain Barahona. I was blindfolded, my hands were tied and I was subjected to physical abuse.

I was there for two days. After that I was taken, bound and blindfolded, to the Specializations School, where I was held incommunicado for one week. I stayed there approximately two months; some days I was allowed to converse freely. It was then that I learned that they had an enormous torture center, located in the furniture and carpentry workshop. When the torture was being administered, they turned on the machinery to drown out the screams of the person being tortured. There were also three chairs for interrogations, where the torture method was electric current. From there I was sent, bound and blindfolded, to the Air War College, where they held me the entire time absolutely incommunicado, tied to a chair and blindfolded. Because of that, I was unable to identify where I was. However, I do recall the climb to the second floor, where the torture chamber was located. [...]

I was beaten and given electric shock; I was prevented from taking care of bodily functions when necessary; my sleep was interrupted, my vital functions like eating and respiration were suppressed. The day before we were taken to the torture chamber, they made loud noise, played march music, beat us and pistol whipped us, all to keep us awake all day and all night.

⁷⁶ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 30-33.

During the torture sessions, I recognized Commander Edgar Ceballos, alias "Inspector Cabezas" and Air Force Captain Carlos Cáceres.

I was convicted in the case of "Bachelet et al." 1-73 and sentenced to 15 years in prison. I served three years and 6 months in the Public Prison and in Capuchins Annex. The remainder of my sentence was commuted by Decree 504.

The torture did permanent injury to my spinal column. To this day I do not have the right to vote because I was convicted by a military tribunal.⁷⁷

Belarmino Constanzo Merino

In September 1973, I was a noncommissioned officer.

On September 27, 1973, I was summoned by the Deputy Director of the School of Aviation, Hans Bastermay, and ordered to report to a cadet dormitory. I was under arrest and was taken into custody by cadets bearing weapons and ready to shoot if I opened the door to the room. I did not recognize any of the cadets.

I was taken to the Air War College in a government pickup at around 3 in the morning on September 28. When I arrived, I had a hood on my head, my hands were tied behind my back. I was beaten and kicked. I remained there until November 1973. When I entered the facility all my belongings were taken away (my wallet, watch and documents). My name was entered into a book that they kept at the entrance. Because I was in uniform they stripped my stripes, saying that I was no longer in the service. The people there were all FACH military and did not identify themselves. They took me to a large room, and there removed the hood. I saw many detainees, all facing the wall.

The torture room was on the second or third floor; to get there one had to climb a circular staircase. Inside there were iron cots where they stretched us out nude, as if on a cross, with our hands and feet bound. They then applied electric current. The pain was terrible. There I found out who was in charge: General Orlando Gutiérrez Bravo, Commander Edgar Caballos, Captain León Dufey, Commander Humberto Velásquez Estay, Captain Juan Carlos Sandoval, Captain Floreado Dable, Captain Contreras and Corporal Eduardo Cartagena. There were no civilians. I was held with all the others accused in case 1-73 Bachelet *et al.*: General Sergio Poblete Garcés, General Alberto Bachelet, Commander Ernesto Galaz, Captain Raúl Vergara, etc. I was beaten on very sensitive parts of my body, endured electric shock, cigarette burns, needles under my fingernails, beatings on the soles of my feet.

Many officers were present for the first torture session; it was a kind of theater. Bound and wearing a hood, I was questioned about the weapons of the leftist political parties. When I answered that the only weapons I knew about were the FACH weapons, they drove needles under my fingernails; four of them held me down and tried to force liquid into me. Because I resisted, I turned the liquid over, whereupon they beat me with their fists and kicked me. Another torture was to soften me up; for six days and night they had me sit in front of a strong light, wearing the hood and bound. By the end of the six days I was delirious from the lack of water and food, and my feet were swollen. I often fell over on my back, whereupon they would take the butt of their rifles and prop me up again; very often they would hit me, saying that I had betrayed the country and the FACH. One day they took me to the furnaces that heated the

⁷⁷ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 34 and 35.

building. There they read me a decree, supposedly signed by four members of the *coup*, which said that I was condemned to death and would be burned alive. They opened the door to the furnace and brought me near the fire. I was so exhausted from the torture that I told them to go ahead and throw me into the furnace. Then they held me down and said that they would let me go because a counter-order had arrived.

They brought many military personnel to the APA, the Aeronautical Polytechnic Academy, to recover from the torture. FACH military personnel took us to the APA; we were brought back to the AGA "to identify people", but we knew we were going to be tortured again. It was at the APA that we witnessed the execution of Corporal José Espinoza Santis by firing squad.

Commander Galaz, Captain Vergara and civilian Carlos Lazo Farías and I were convicted and sentenced us to death. We were taken from the Capuchine Annex and sent to the Penitentiary. [...] We were held there 20 days incommunicado, in cells so full of bedbugs that we couldn't sleep. Sometime later, a chief warrant officer took us out to show us the execution posts. The poor noncommissioned officer was more upset than we were, because one could see the bullet holes in the wall. He tried to tell us that our hands would be tied behind our backs, that we would be blindfolded and then shot. Sometime later a FACH officer told us that the sentence had been commuted and we were each given 30 years. I spent nearly five years in prison and got out by virtue of decree 504; I had applied for release under decree 504 several times and been denied. I was exiled to the US where I spent 15 years, because I was not allowed to re-enter Chile.

The torture left me deaf, perhaps because of the current; they had placed electrodes on the ears; I do not have balance when I walk, and my legs and arms are in pain; my knees are swollen and I have a humming in my ears, headaches and chest pains. I always dream that they're coming after me, that I'm fighting with weapons; that I tried to defend myself from many people. At times I wake up screaming and my dreams are usually bad dreams.⁷⁸

Mario González Rifo

I had the rank of Sergeant First Class in September 1973.

I was placed under arrest when I was at home [...] on December 12, 1973, at 21:30 hours. The only witnesses to my arrest was my wife Marta Bastías, the driver of the FACH vehicle in which they were traveling, and around 15 recruits who stayed inside the vehicle. Two officers (both pilots) came to arrest me: Lieutenant Luis Campos and another by the surname Pérez. They were in civilian dress and carried pistols in plain view. One came inside my house and the other stayed outside.

According to them, I was being taken into custody only to give a brief statement in the presence of an Air Force prosecutor and that I would be released within hours. They didn't present any warrant for my arrest or identify themselves. I was transported in a car, a more or less new Mercedes Benz, and taken to a place that I had never been. I was in one of the front seats and blindfolded for "security" reasons. The vehicle headed north and there was no other person under arrest in the vehicle. There was no intervening place of detention; instead, I was taken directly to the Air War College.

⁷⁸ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 35 and 36.

There, my name was taken down as soon as I entered the building, presumably by the military guard. From their voices I could tell they were military personnel. They were unidentified men.

I was placed in the basement of the building, since we went down from the ground floor by a set of concrete steps; one could hear the noise of the footsteps walking across the concrete; there were several rooms and a bathroom near one of the rooms. For the interrogations, one had to go up a double staircase with 6 or 7 rungs. I was held in a room with Colonel Pedro Guerrero. The persons with whom I had contact inside the build and whom I could identify were Commander Lizosain, Captain Ceballos, Lieutenants Luis Campos and Pérez. Occasionally I saw Lieutenants Matig and Duffey, also Commander Juan Bautista González.

I was threatened with death if I tried to escape and tortured. I was taken from the Air War College to the Aeronautical Polytechnic Academy (APA) on the Air Base at El Bosque, under heavy guard and on the back of a pickup, with guards on both sides. They beat me hard if I tried to remove the blindfold, which had been secured with a cord. The cord started to irritate my right eye, causing me unbearable pain. I was tried by a court martial, convicted and sentenced to three and a half years, on charges of having provided information to the enemy.

I was partially blind in my right eye; the diagnosis was that the damage to the eye could not be corrected; the damage was permanent. I am suffering from schizophrenia and anxiety. From the financial standpoint, the loss of my military career after more than 18 years and 9 months in the Air Force took a terrible toll on my benefits, which has affected the entire family.⁷⁹

Alberto Salustio Bustamante Rojas

I was a civilian employee in September 1973.

On October 17, 1973, in the Maintenance Wing at El Bosque [Air Base] [...] in my office at work, I was arrested by a lieutenant, who was accompanied by two Air Force noncommissioned officers [...]. They did not show any identification or an arrest warrant. They were in uniform, except for the officer, who was in civilian dress. They were carrying regulation weapons. They were also using a government vehicle. The witnesses to my arrest were my colleagues at work at the time, almost all of whom were officers, noncommissioned officers and civilians present in the Engineering Department in the Maintenance Wing of the Chilean Air Force. I don't recall anyone else being arrested with me. All I know is that they arrested my sister Berta de las Mercedes Bustamante Rojas, who was later released.

I was transported in a pickup or van. I couldn't identify it because they had a hood over my head and my hands tied.

I was tried in the case of "A. Bachelet *et al.*" along with officers, noncommissioned officers and civilian employees.

At least three times between October 1973 and October 1974, I was transported by Air Force personnel from the Air War College to the APA. It was always blindfolded, my hands were tied and I had a hood over my head. As a result, I was unable to identify any other buildings or places [...].

⁷⁹ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. P. 39.

The interrogations done under torture were conducted in a basement area, equipped with a metallic cot like a grill. Electric current was applied to the genitals, penis, testicles, tongue and temples. At the same time, two people would hit me on the chest. We were forced to spend the entire night on the cold floor of a gymnasium; other times we were made to stand for entire days, without rest or sleep. Other days and nights were spent in a sitting position, always with the hood over our head. We were verbally abused and threatened that our loved ones, wives, sisters, children would get the same treatment. The purpose of this cruel treatment was to force us to confess to involvement in supposed crimes.

Among those I recall as being particularly violent was Commander Edgard Ceballos Jones.

The torture left me deaf in one ear, and with a constant unbearable ringing in both ears. Sexual impotence, bodily pains. Fear, insecurity, and distrust. Finally, all my rights to bring up my children and see to their education were lost. I lost my profession, my rank; my health will never be assured, nor will my wife's, who suffers from severe arthritis, high blood pressure and diabetes. I've lost all my household belongings, which were sold to pay the attorney's fees. As a result, I have lost all my material possessions.⁸⁰

Raúl Gustavo Lastra Saavedra

In September 1983, I had the rank of a noncommissioned officer.

I was arrested at the El Bosque School of Aviation on September 26, 1973. [...]

I was taken into custody by Doctor Alamain, who was a Squadron Commander [...]. Dr. Alamain thought he would fool me by saying that I had to go with them for a medical examination at the FACH Hospital (this exam was a psychological test that all members of the FACH had to take). When we arrived at Stop 9 on the Gran Avenida, the doctor –who was driving- stopped the vehicle, opened the glove compartment and told me to put on a blindfold. I tried to resist and immediately felt the lieutenant and corporal traveling with us cock their weapons.

I stayed at the Air War College from September 26 to October 4, 1973. I was handed over to the Intelligence Service personnel at the Air War College at 7 p.m. on the 26th, where I immediately became the target of insults and physical aggression. They tied my hands, and left the blindfold on me in a small room like a classroom. Later they took me upstairs where I could hear many voices. Someone asked if I had a blindfold under the hood. They removed the hood and I saw a large office with a table. Seated at the table were eight FACH officers, headed by General Orlando Gutiérrez. Other officers I was able to identify were Commander Lisosoain and Captain Jaime Lemus.⁸¹

Víctor Hugo Adriozola Meza

In September 1973, I was a corporal first class.

My arrests were in 1973, in October, November and December, at the maintenance unit of the School of Aviation. At the school, formation time was at 8:00 a.m.; there, a list was read of the names of comrades who had to go to make statements at the Air War College. Almost no one

⁸⁰ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 39 and 40.

⁸¹ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. P. 40.

returned from that place; those who did manage to return came back with a persecution complex. The atmosphere was one of great uncertainty; there was no communication since if one spoke to anyone who had been at the Air War College, one was associated with the detainees. In truth, the atmosphere was terrible; friendships were over. [...] We were transported in a Land Rover, with our hands tied and eyes blindfolded. This was coupled with the psychological torture of knowing that one was helpless, since we were constantly threatened that we pay very dearly if we tried to escape [...].

During my first detention, we were searched by SIFA personnel. We were always blindfolded. My second arrest was spent the same way; the third time I was arrested, my documents were taken away and never returned. The same thing happened with my watch and other personal effects. The first place I was held was the Air War College, in the so-called chapel of that torture facility. We were locked up with other prisoners, but unfortunately I was unable to identify anyone. We were guarded by recruits who were doing their mandatory military service. The second time I was taken into custody I was held at the APA, where we were four to a classroom, with one in each corner of the room [...]. This was where prisoners came to recover, only to be returned to the Air War College to be tortured again, both physically and psychologically. Here our guards were colleagues from work. The person in charge of the place was Commander Sergio Lizasoain, Group Captains Floreado Dublé and León Duffey, Lieutenant Juan Carlos Sandoval, Sergeant Hugo Lizana "*el chuncho Lizana*", Corporal Second Class Gabriel Cortés (who has changed his name since), Corporal Second Class Cartagena "melon face", Corporal First Class Flores, Commander Jaime Llavín and others whose names I don't recall. I was held with all those standing trial in FACH case 1-73 "*Bachelet et al.*" [...]. I was beaten, tortured with electric shock, mock execution, and brought face to face with witnesses with my eyes blindfolded.

The torture started upon arrival at the Air War College. We went down by a set of stairs with about 10 steps, and all the while were being beaten by the guards; we also ran into walls because we couldn't see. We had to wait hours in the interrogation rooms, because the persons who registered incoming detainees were also the persons who administered the torture. The wait was itself a kind of torture, because of our sense of insecurity and the consequences that awaited us. Participating in the torture was the chaplain of the FACH, known as "don saca", [...]. The food was occasional and we were not always fed; we were never taken to the bathrooms after the torture to prevent us from drinking water after the application of electric current. Sleep was interrupted by questions or on some other pretext. The mock executions were staged as a kind of ceremony, with the priest, the supposed firing squad and the chief who gave the orders; it was so well organized that, between the time that the order to fire was given and the time one was supposed to be hit, the victim of the mock execution experienced a kind of transition to death, until the torturers brought the victim back to reality.

In one confrontation where the torturers implicated us to justify my detention, I witnessed the brutal beating of noncommissioned officers Belarmino Constanzo and Enrique Reyes, in the presence of Lizasoain. [...]. My friend confessed to being the official contact in Antofagasta; he was brutally tortured and taken to that city where he was subjected to the most terrible torture; he was accused of being the head of the plot in Antofagasta and was condemned to die by the lower court. In the end he got a life sentence.

Of my free will, I decided to make a statement while at the Public Prison, to clear Sergeant Second Class Miguel Guzmán Meneses' name. I gave my statement in the presence of the commissions and inspector from the International Red Cross, the Kennedy Commission, the Nixon Commission; there I stated that I had implicated my friend under torture. After that statement, and on my word of honor, I was taken out by a group of uniformed military who treated us very badly and took me to a place where my life was really in danger and where the prosecutor treated me with brutality. When the commissions intervened, I was returned to the Prison and remained there, in a deep psychological crisis, knowing that I was being persecuted

and fearing that they would come and take me away for another torture session since we were taken out to be tortured even though we were in prison.

I availed myself of decree law 504. The gendarmerie took me to the airport and handed me over to the officials. I regained my freedom there on the flight to Germany.

During my second detention, I spent three days in the FACH Hospital with internal hemorrhaging caused by the beatings inflicted on me. I was released from my second detention without charges being brought. In 1975 I underwent emergency surgery at the main base; my injuries did not heal well and I went into exile with infected wounds, which were luckily treated in Germany. During the long recovery from the operation in the Prison, my family members had to care for me on visiting days. They had to bring the medications necessary for the wounds to heal and to ease the pain, as I wasn't being given anything, not even an aspirin. Other times my fellow political prisoners got permission to treat me and when this didn't happen they shared the recovery room with me. There were common criminals there, one of whom was the famous crazy Pepe; he was one of those who helped me get better and worried about my health.

My incarceration inflicted severe financial problems on my family, since at that time I was supporting my parents [...] ⁸².

Onoldo Ivar Rojas Ravanal

In September 1973, I had the rank of Corporal First Class, aeronautical technician.

I was detained on October 10, 1973, at my place of work in the School of Aviation. The persons who arrested me were military personnel, officers from the same school where I worked. Three Air Force officers participated in my arrest. They put me into an Air Force vehicle; I was blindfolded with a hood over my head. Another person was arrested at the same time and was already in the vehicle. I was transported immediately to the Air War College, where I was taken to basements, to the place known as the "AGA chapel". There I was beaten, mainly on the chest; electric current was applied to my genitals, tongue and the dental fillings; my sleep was interrupted and I was prevented from taking care of my physiological functions; I was also subjected to death threats, and attempts were made to provoke me to attempt an escape, all to be able to enforce the escape law.

During my time at the AGA, I was taken from there to the Aeronautical Polytechnic Academy at El Bosque Air Force Base. That was in October 1973. After that, I was taken to Santiago's Public Prison in November of that year. I was then taken back to the AGA on two different occasions, until I was finally incarcerated in the Public Prison. My prison sentence was commuted to exile on October 30, 1975, and I left for England, a country whose customs and language were completely unfamiliar to me and to my family. I spent 18 years in exile, as I was banned from returning to Chile. The effect was to break up the family.

My arrest caused me to lose my job; with that I lost the financial means to maintain my two children, who were minors at the time, and my wife. Because we had been living in Air Force housing, we were thrown out once I was arrested.

The torture I suffered during my time at the AGA left me partially blind, with dizzy spells, loss of equilibrium and mental gaps. ⁸³

⁸² Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 41 and 42.

Omar Humberto Maldonado Vargas

Age 55. [...]. Electrician. I was a Corporal Second Class in September 1973.

I was detained on October 23, 1973, at my place of work, which was the Transmitter Section (Instruction Group) at the School of Aviation, at around 8:05 a.m. I received a notice where I was advised that I was to make a statement to the Ministry of Defense, and I was to be in uniform. About an hour later, we left the Air Base and headed downtown. We stopped at the Ministry of Defense and continued in the direction of the mountains, headed for the Air War College. They showed me an internal order, Commander Alberto Villegas and they put me in a blue jeep, driven by civilians and aviators carrying revolvers and a machine gun. All my work colleagues and my boss, commander Villegas, were witnesses to what happened. I don't recall ever having seen the men who arrested me, but they had their hair short, military style. I was with the people who had been held previously at the School of Aviation, later implicated in my case.

When I arrived at the Air War College, they put a hood on my head and tied my hands behind my back. They guided me through a hall; at the end of the hall was a guard and a table where I was told to hand over my documents, belt, shoe laces, and my Corporal Second Class insignia. From there I went to a room where others were kept; some complained. They turned me around so that I was facing the wall. They took us out of that room, passing by the guard and up stairs with some five steps and then another 6. I think it was the same staircase that went up in one direction and then came down in another. From there we went to a room that looked staged. The torture room had a table; they put me on the table nude, face up, with my ankles and wrists tied down, and the arms separated. They put connectors or cables on my ears, mouth, ankles, and genitals in order to apply the electric current. But they didn't ask me anything. Then someone else started asking questions, hitting me in the stomach with something made of wood or rubber.

At the Air War College I was held with Mario Arenas, Iván Figueroa, Ivar Rojas, Enrique Villanueva, Moisés Silva, Humberto Frías Toro. I was subjected to psychological torment, because they threatened me with my family; they wanted me to implicate them. They told me they were going to Ancud to make inquiries. Around Christmas I was transferred to the APA, at El Bosque Air Base. Almost all the detainees were there. Shortly thereafter my friends were transferred to the Public Prison. In early 1974, I was taken back to the Air War College, this time to try to implicate my family, who knew nothing of this. Then, after more than two weeks, they finally took me to the Prison. Toward the end of 1975 I was transferred to the Capuchin Annex. Then, in November 1975 I went into exile to England, and was banned from returning to Chile under decree 504.

As a result of the ties around my wrists and my constant tugging on the ties to free myself, I have lost sensitivity in my right hand.

The proof is the FACH case of "Bachelet *et al*".

I lost my job, and because of that was unable to support my parents who relied on me and my younger sister. I also lost all my personal effects where I lived inside the Aviation school and all

⁸³ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 42 and 43.

my books, as I was in the process of studying electrical engineering at the *Universidad Técnica del Estado*, in night school.⁸⁴

Manuel Osvaldo Oyadenel López

In September 1973 I was a corporal first class.

I was arrested in March 1974, in the hangar at the Specialized Studies School at El Bosque Air Base. The officer from the company ordered me to put on my uniform –I was in work clothes– because I was going on a work assignment. He told me that I was to report to the building to the side of the airplane hangar. A corporal with less seniority and who had been a student of mine and belonged to the FACH secret service, asked me for my professional card. They took me by car from the Specialized Studies School to the Air War College. In the classroom they ordered me to put on dark glasses and put cotton over the eyes. [...] I was held in a room of the Air War College, where there were around 7 detainees. I heard once that the detainees were from the MIR. I was kept blindfolded at all times, night and day. [...] I was interrogated twice in almost 30 days. The interrogation site was on the second floor. I asked the guard to speak with the captain and they got very angry. They told me there was no such captain there and gave me a beating. On a number of occasions they beat me up with their fists, feet and rifles. During the day, I had to stay seated, without moving and with strict orders not to touch the hood. I wore the same clothes for 32 days. I asked for pills for the pain, but was not given any. When a prisoner asked to be taken to the bathroom, they converted his request into an opportunity to torture him, as they would make him wait three hours before taking him to the bathroom. We were fed twice a day, and very little. I was threatened, and could hear detainees scream as they were being beaten right there in the room, just a short distance away. I heard a woman cough; by the third day, I didn't hear her more. When I was taken to the bathroom, I dared to ask the guard why I didn't hear her, and he said, "we killed her last night". One day before being taken to the Public Prison, they removed the hood I was wearing and took me to another room with an elderly gentleman who told me he was a doctor. They took me to the Air War College twice while I was in prison. This brought fear and new torture. In late April 1974 I was taken from the Prison to Santiago's International Airport. The civil police who transported me to the airport beat me and verbally abused me.

For 15 years, when I went to sleep, I had to cover my eyes. To this day I find it extremely difficult to have any contact with members of the Armed Forces.

I was planning to retire with the rank of captain. I was already a noncommissioned officer and was educating myself. Thanks to the special laws, I am now retired with the rank of corporal first class. But the difference between what I ended up with and what I had aspired to have has been too great. I lost a lot of money.⁸⁵

72. Therefore, the argument made to the Supreme Court was that no probative value could be assigned to confessions extracted under torment and torture; the following was said "In short, inasmuch as the verdict was the result of a trial in which the principles of legality and due process and the

⁸⁴ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 44 and 45.

⁸⁵ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. Pp. 47 and 48.

prohibition against the use of torture-induced confessions were violated, its verdict is null and void under the law, and it is the State's duty to so declare it.”⁸⁶

73. Furthermore, in its 1991 report, Chile's Truth and Reconciliation Commission established that torture was routine in the interrogations conducted in court martial proceedings. Specifically, the report of the Truth and Reconciliation Commission states the following:

[...] When a detainee was “tough” to get a confession out of, they interrogated him under duress. The proceedings conducted by the courts martial were no exception. A former prosecutor of some importance in the courts martial conducted in the North told members of the Commission that torture was a routine method of gathering “evidence”, which was then introduced to the courts martial.

The methods of torture varied greatly. Violent and repeated beatings that caused fractures and bloodshed were used almost universally. To make matters worse, the detention conditions were so strict that they became a kind of torture. For example, making detainees lie face-down on the floor or stand up for long hours, without moving; being kept nude for hours and even days, under constant lights or in the dark because of blindfolds or hoods, or tied up; keeping prisoners in cells –some of which were rigged ad hoc- that were so small that the prisoner could not move; being held incommunicado in some or various of these conditions; being denied food, water, or warm clothing, or bathroom facilities. It was also common to hang detainees for long periods of time suspended by the arms, without their feet touching the ground. Various forms of semi-asphyxiation were used: in water, in foul-smelling substances, in excrement. Sexual harassment and rape are common complaints, as was the use of electric shock and burns. Mock executions were also a common occurrence. In some institutions, other methods of torture were used, such as the *pau de arara* (parrot's perch), dogs and prisoners being tortured in the presence of their families or vice versa [...].⁸⁷

74. The report of the Truth and Reconciliation Commission also identified places of detention and torture. It observed that while it could not describe all the torture sites throughout the country during the period under study, there were many of them. It commented that for relatively long periods of time, the armed forces' and police academies were used for interrogation and detention, since all classes were closed owing to the state of emergency. One example was the Naval War College in Valparaíso and the Military School and Air War College in Santiago.⁸⁸

75. The documentation attached to the case file contains a copy of the declaration that Andrés Antonio Valenzuela gave on November 10, 1990, in which he recounts his role in the Chilean State's security agencies between 1974 and 1984. He states that in August 1974 he was assigned to the Air War College, specifically to the Office of the Aviation Prosecutor. He stated that:

⁸⁶ Communication from the petitioners received on June 27, 2007. Motion to reopen the case filed with the Supreme Court on behalf of the alleged victims, among others, in the instant case, and, subsidiarily, an *ex officio* declaration of annulment and/or the application of general powers to quash a judgment. Pp. 27-30. P. 48.

⁸⁷ Report of the National Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Three, Chapter I: Human Rights Violations Committed by Agents of the State or Persons in its Service. Item 1.D. Mistreatment and Torture. Available [in Spanish] at: http://www.ddhh.gov.cl/ddhh_rettig.html

⁸⁸ Report of the National Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Three, Chapter I: Human Rights Violations Committed by Agents of the State or Persons in its Service. Item 1.c.2. Detention centers. Available [in Spanish] at: http://www.ddhh.gov.cl/ddhh_rettig.html

I recall that many of the detainees had signs hung on them with instructions like “no food or water for 48 hours,” “one meal a day”, “stand until further orders” and the like. ...

I was never called upon to be present for torture sessions, but I did see people coming down in very bad condition. I also saw people hanging from the staircase that went to the first floor, and elsewhere... Statement made on November 10, 1990, in the presence of the Truth and Reconciliation Commission, by someone testifying that torture was practiced at the Air War, ...⁸⁹

76. In 2004, the practice of torture in the context of the court martial proceedings conducted at the time of the military coup was also acknowledged by Chile’s National Commission on Political Imprisonment and Torture.⁹⁰ In its report, the National Commission on Political Imprisonment and Torture observed that an examination of the proceedings found that “in routine disregard for the impartiality of due process, prosecutors allowed and even encouraged torture as an acceptable method of interrogation.”⁹¹ In its report, that Commission also wrote the following:

[...] torture was systematically used to extract information and govern by fear, instilling a deep and lasting terror in the immediate victims and, through them, in anyone who had direct or indirect knowledge of the torture being used. It is important to point out that in 94% of the victims that this Commission lists were persons who were tortured during the political imprisonment. In general, the victims were subjected to various methods; changing up the method made the impact all the more intense. [...] ⁹²

77. Furthermore, the Commission learned of a court ruling in which agents of the State were found criminally responsible for the practice of torture as a method of interrogation. In effect, the case file with the Commission contains a court ruling dated April 30, 2007, issued by Santiago’s Ninth Criminal Court, in which two FACH agents were convicted of having committed the crime of torments on persons deprived of liberty, three of whom are among the victims in the present case.⁹³ The pertinent parts of that judgment read as follows:

FOUR: That the information summarized above constitutes legal presumptions which meet the legal requirements set out in Article 488 of the Code of Criminal Procedure and therefore can be taken as legally established:

A) That in the wake of the events of September 11, 1973, members of the Chilean Air Force

⁸⁹ Original petition filed with the IACHR on April 16, 2003. Annex 2. Declaration that Andrés Antonio Valenzuela gave in the presence of the National Truth and Reconciliation Commission, November 10, 1990

⁹⁰ The list of persons recognized as victims by the National Commission on Political Imprisonment and Torture include the following: Omar Humberto Maldonado Vargas; Álvaro Yañez del Villar; Mario Antonio Cornejo Barahona; Belarmino Constanzo Merino; Ernesto Augusto Galaz Guzmán; Mario González Rifo; 8) Jaime Donoso Parra; Alberto Salustio Bustamante Rojas; 10) Gustavo Raúl Lastra Saavedra; Víctor Hugo Adriaola Meza, and Ivar Onoldo Rojas Ravanal.

⁹¹ Report of the National Commission on Political Imprisonment and Torture (2004), Chapter III, Courts Martial, p. 177. Available [in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-capt3.pdf>. A statement is also made to the following effect: “the same can be said of other members of the military courts –like the auditors, for example- who also put their punitive function first in order of priority.”

⁹² Report of the National Commission on Political Imprisonment and Torture (2004), Chapter V: Torture Methods: Definitions and Testimony, p. 225. Available [in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-cap3.pdf>.

⁹³ In Case 1058-2001, the competent judicial authority issued a decision on July 19, 2006, which temporarily and partially dismissed the case with respect to the crimes alleged by complainants Ernesto Augusto Galaz Guzmán, Mario Antonio Cornejo Barahona, Mario González Rifo, Jaime Arturo Donoso Parra and Victor Hugo Adriaola Meza, among others.

proceeded to arrest a number of people and members of that branch of the Chilean Armed Forces, to investigate them for alleged activities deemed inimical to the Military Government. They also arrested civilians who had reportedly been identified as belonging to leftist groups or groups opposing the military regime in power at the time. Once detained, these people were taken to a place inside the Air Force's Air War College, located at La Cabaña No. 711, Las Condes district; the majority of the detainees were kept in the basement of that building; the others were held in other offices of that institution, guarded by Air Force personnel under the command of officers of that institution. They were interrogated by them and at times subjected to various forms of psychological or physical duress. The latter consisted of keeping them blindfolded at all times, with their legs or arms bent, with a piece of wood between their extremities so that they would hang in the air (the "pau de arara" or parrot's perch); electric current was applied to sensitive body parts such as the tongue, the genitals and temples; they were forced to remain standing for hours or even days without food or water, and were subjected to mock executions. Occasionally prisoners who had been held for a time were released without any charge being brought; other times, they were accused of crimes that the two prosecutors offices in wartime had under investigation. Those two prosecutor's offices were also in the Air War College.⁹⁴

78. In this verdict, the court found the two state agents who served at the Air War College guilty of the crimes set forth below:

[...] it has been duly proven that Edgar Benjamín Cevallos Jones was the author of repeated incidents of the crime of torture, criminalized under No. 1 of Article 150 of the Criminal Code, as drafted at that time, to the detriment of the following detainees [...] Belarmino Constanzo Merino, [...], Manuel Osvaldo López Oyanedel and Gustavo Raúl Lastra Saavedra, under the terms of Article 15 No. 1 of the Criminal Code, inasmuch as he was a public servant and a commander in the Chilean Air Force and the immediate superior of a group of officers who, following his orders, guarded the prisoners held in the Air War College; he participated directly and in person in their interrogations and in the application of physical and mental torture methods that caused them severe pain and suffering.⁹⁵

[...]

It has been duly proven that Ramón Pedro Cáceres Jorquera was the author of repeated incidents of the crime of torture, criminalized under No. 1 of Article 150 of the Criminal Code, as it was drafted at the time, to the detriment of the following detainees [...] Belarmino Constanzo Merino, [...], Manuel Osvaldo López Oyanedel and Gustavo Raúl Lastra Saavedra, under the terms of Article 15 No. 1 of the Criminal Code, inasmuch as he was a public servant and, as Commander, played an immediate and direct role in their interrogations and in the application of physical and mental torture methods that caused them severe pain and suffering.⁹⁶

79. The referred verdict was appealed to the Santiago Appellate Court which, in a decision dated November 6, 2008, confirmed the lower court's decision and elevated the sentence they had received to three years and one day of ordinary imprisonment within the maximum range, with accessories of absolute disqualification for life from exercise of their political rights and absolute

⁹⁴ Documentation supplied by the petitioners at the hearing the Commission held on the case on October 12, 2007. Judicial Branch of Chile, Ninth Criminal Court of Santiago, Case No. 1058-MEV, Judgment of April 30, 2007 *consideranda* four.

⁹⁵ Documentation supplied by the petitioners at the hearing the Commission held on the case on October 12, 2007. Judicial Branch of Chile, Ninth Criminal Court of Santiago, Case No. 1058-MEV, Judgment of April 30, 2007 *consideranda* eight.

⁹⁶ Documentation supplied by the petitioners at the hearing the Commission held on the case on October 12, 2007. Judicial Branch of Chile, Ninth Criminal Court of Santiago, Case No. 1058-MEV, Judgment of April 30, 2007 *consideranda* eleven.

disqualification from public position or office for the duration of their sentence.⁹⁷ The two convicted men filed an appeal in cassation, which the Second Chamber of the Supreme Court dismissed in a ruling delivered on September 24, 2009.⁹⁸

3. The Supreme Court's decisions on the remedies that the petitioners filed

80. On September 2, 2002 the Chilean Supreme Court ruled on the petitions for review and nullification of the proceedings and the appeal in cassation filed jointly and subsidiarily, and declared them inadmissible on the following grounds:

Having Seen: that the decision being challenged is a conviction by military courts in times of war, a matter that the military courts have not surrendered to the jurisdiction of this Supreme Court pursuant to Article 70 letter A.N2⁹⁹ of the Code of Military Justice, and bearing in mind as well articles 6¹⁰⁰ and 7¹⁰¹ of the Constitution of the Republic, the review argued for in the main part of the presentation at 1 is declared inadmissible. The other petitions made in that presentation are out of order.¹⁰²

81. As the evidence shows, the Supreme Court of Chile resolved that it did not have jurisdiction to review decisions of military tribunals in time of war.¹⁰³ In 1991, the National Truth and Reconciliation Commission commented on this situation and wrote in its report that the Supreme Court did not exercise its jurisdictional authority with respect to military courts in times of war.¹⁰⁴ It pointed

⁹⁷ Judgment of the Second Chamber of the Supreme Court, September 24, 2009 (referencing the Santiago Appellate Court's judgment of November 6, 2008).

⁹⁸ Judgment of the Second Chamber of the Supreme Court, September 24, 2009.

⁹⁹ Article 70-A.2) of the Code of Military Justice: "It shall also be the function of the Supreme Court, with the added participation of the Auditor General of the Army or the person serving in his stead, to exercise the authorities and to take cognizance of : 2. Petitions seeking review of final judgments delivered in the courts of military jurisdiction in times of peace...

¹⁰⁰ Article 6 of the 1980 Constitution of the Republic of Chile: The organs of the State shall ensure that their actions conform to the Constitution and the laws issued in accordance with it [...]. The provisions of this Constitution are binding upon the officers or members of those institutions, and on any other person, institution or group. Violation of this general clause shall lead to the liabilities and sanctions that the law prescribes.

¹⁰¹ Article 7 of the Constitution of the Republic of Chile: Once their members have been appointed and are seated, the organs of the State shall be functioning validly within their area of competence and in the manner prescribed by law.

No official body, person or group of persons may claim, even under the pretext of extraordinary circumstances, authorities or rights other than those conferred by the Constitution or the law.

Any act committed in violation of this article is null and shall lead to the liabilities and sanctions that the law prescribes.

¹⁰² Communication from the petitioners received on June 27, 2007 (attachment) and documentation supplied by the petitioners at the hearing the Commission held on the case on October 12, 2007. Supreme Court, Case 3503/2001 – Resolution: 13522 of September 2, 2002.

¹⁰³ IACHR, Report on the Situation of Human Rights in Chile; Chapter IV: The Normative System Established Beginning September 11, 1973, and the "State Of War"; paragraph 7. OEA/Ser.L/V/II.34 doc. 21 October 25, 1974. Original: Spanish.

¹⁰⁴ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Two, Chapter IV: The response of the courts to the serious human rights violations that occurred between September 11, 1973 and March 11, 1990, d) Failure of the Supreme Court to exercise its jurisdictional authority over the military courts in time of war, p. 101.

out that by decisions dated November 13, 1973 and August 21, 1974, among others, the Supreme Court officially declared that military tribunals in time of war were not within its jurisdiction, thereby dismissing any arguments to the contrary.¹⁰⁵ Therefore, in the report, the Truth and Reconciliation Commission wrote the following:

By failing to exercise these authorities over the military courts in times of war, and as a reading of the 1925 Constitution would have shown, the Supreme Court was unable to ensure that military tribunals effectively complied with the rules governing criminal proceedings in time of war, as set forth in the Code of Military Justice.

This situation prevented the Supreme Court from being able to demand that the proceedings of military tribunals in time of war conform to the letter of the law.¹⁰⁶

82. In response to that September 2, 2002 Supreme Court ruling in case No. 3503-2001, on September 7, 2002 the petitioners filed a motion to have their case reopened. The petitioners alleged that the declaration of a state or time of war was done through Decree Law No. 5 of September 22, 1973,¹⁰⁷ and Article 73 of the Code of Military Justice;¹⁰⁸ they argued that once the state of constitutional exception expired, the competence of the ad hoc bodies appointed (courts martial) would cease and the Supreme Court would recover its full competence and jurisdiction. As the petitioners argued in the brief they filed to have their case reopened, this interpretation is supported by Article 79 of the Constitution¹⁰⁹ which states that the Supreme Court does not have executive, correctional and economic authority over the military tribunals in time of war, but does not expressly state that its jurisdictional authority does not remain intact. The petitioners also cited the provisions of international treaties and reiterated that in their rulings, the courts martial had used confessions obtained by torture, and that in the proceedings, serious violations of the convicted persons' judicial guarantees had been committed.

83. The Supreme Court denied the motion to reopen the case in a ruling of December 9, 2002, which read as follows:

¹⁰⁵ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Two, Chapter IV: The response of the courts to the serious human rights violations that occurred between September 11, 1973 and March 11, 1990, d) Failure of the Supreme Court to exercise its jurisdictional authority over the military courts in time of war, p. 101.

¹⁰⁶ Original petition filed with the IACHR on April 16, 2003, Annex 7. Report of the Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Two, Chapter IV: The response of the courts to the serious human rights violations that occurred between September 11, 1973 and March 11, 1990, d) Failure of the Supreme Court to exercise its jurisdictional authority over the military courts in time of war, p. 101.

¹⁰⁷ This decree read as follows: "Interpreting Article 418 of the Code of Military Justice, it is hereby declared that the state of siege decreed due to internal disturbance, given the circumstances in the country, should be understood as a "state or time of war" for purposes of the laws criminalized under the Code of Military Justice and other criminal laws and, in general, for all other purposes of that legislation."

¹⁰⁸ "From the moment a general is named to lead an army to do battle with a foreign enemy or organized rebel forces, the jurisdiction of the military tribunals in time of peace shall cease to exist, and the jurisdiction of the military tribunals in time of war shall begin throughout the territory declared to be in a state of assembly or siege..."

¹⁰⁹ The Supreme Court has executive, correctional and financial authority over all courts of the Nation. The exceptions shall be the Constitutional Court, the Election Review Board, the regional electoral tribunals and the military tribunals in time of war. (...)"

Bearing in mind the provisions of Article 56 of the Code of Criminal Procedure,¹¹⁰ read in conjunction with Article 122 of the Code of Military Justice,¹¹¹ the motion to reopen at 204 is hereby declared out of order. The above agreement is reached with the dissenting opinion of Justice Juica, who was in favor of granting the motion to reopen the case, with the one exception of the finding in favor of the relatives of Alberto Bachelet Martínez, since this person was acquitted in the case, which means that there is no conviction for review. As for the others, Justice Juica was of the view that the grounds for granting the motion to reopen the case was Article 8(2)(h) of the Pact of San José, Costa Rica, which under Article 5¹¹² of the Constitution of the Republic take precedence over domestic law. Hence, he reasoned, even though this was a decision by a military tribunal in time of war, appeal to a higher court was still possible. Decision at 211: out of order.¹¹³

V. THE LAW

84. In keeping with the purpose of the case as established in Admissibility Report No. 6/05, the IACHR will now proceed to examine whether this case involves violations of the rights recognized in articles 8(1), 8(2)(h), 9, 11(1), 24, 25 and 27(2) of the American Convention, read in conjunction with Article 1(1) thereof.¹¹⁴

85. The State of Chile has been party to the Inter-American Convention to Prevent and Punish Torture since September 30, 1988, the date on which it deposited its instrument of ratification. Hence, based on the principle of *iuria novit curia*, in this section the Commission will also examine articles 1, 6, 8 and 10 of that Convention. While in its admissibility report the Commission did not address the alleged violation of those articles, an analysis of the case file with the IACHR reveals information on *de facto* and *de jure* circumstances that support a possible violation of the rights

¹¹⁰ Code of Criminal Procedure, Article 56: Motions to reopen may be filed with the judge that delivered an interlocutory judgment, an order or decree. Such a motion may only be filed within the first three days and, to be admissible, must also state the grounds.

The court may issue its own decision or may order that notice be served if the motion was filed against an interlocutory judgment or on a matter whose complexity is such that the advisable course of action is to hear from the other side.

When a motion to reopen is filed with respect to a decision that is also subject to appeal and if no appeal is filed when the motion to reopen is denied, then the party shall be understood to have waived the right of appeal.

A motion to reopen shall not suspend the decision, except when the decision is also subject appeal.

¹¹¹ Article 122 of the Code of Military Justice: "The rules that appear in articles 50 to 53, 55, 56, 57, 59, 61, 62, 64, 66 final paragraph, 67 and 75 of the Code of Criminal Procedure can be applied in military criminal proceedings".

¹¹² Article 5 of the Constitution of Chile reads as follows: "Sovereignty essentially resides in the Nation. Its exercise is by the people, through plebiscite or periodic elections, and by the authorities that this Constitution establishes. No sector of the people, no single individual can exercise sovereignty. The limits on the exercise of sovereignty are the observance of the essential rights inherent in human nature. The duty of the organs of the State is to respect and promote such rights, which are guaranteed by this Constitution and by the international treaties that Chile has ratified and that are in force."

¹¹³ Communication from the petitioners received on June 27, 2007 (attachment) and documentation supplied by the petitioners at the hearing the Commission held on the case on October 12, 2007. Supreme Court, Petition 3503/2001 – Decision: 19789, December 9, 2002.

¹¹⁴ IACHR. Report No. 05/06. Case 12,500. Admissibility, Omar Humberto Maldonado Vargas *et al.*, Chile, March 9, 2005, operative paragraph 1.

recognized in those articles of the Inter-American Convention to Prevent and Punish Torture. At the same time, the Commission must make clear that it will only examine facts that occurred or continued to occur subsequent to the date in question and any information it received to the contrary while the petition was in process with the Commission or that is a matter of public record, or official documents or legal actions were presented before the authorities; and therefore the State has been able to exercise their right to defense. Moreover, the Commission considers that the application of the principle of *iuria novit curia* relevant to maintain a consistent treatment between cases with similar characteristics.

86. Furthermore, and again by virtue of the principle of *iuria novit curia*, the Commission will analyze Article 2 of the American Convention.

87. As for the petitioners' allegations regarding the judicial guarantee established in Article 8(2)(h), the right to appeal a judgment, the Commission observes that these arguments allege that the decisions of the Courts Martial were not subject to appeal. These were decisions issued prior to March 11, 1990 and hence outside the timeframe analyzed in this report. The Commission will therefore refrain from issuing any opinion in this regard.

88. Then the Commission shall consider whether the State complied with its international obligations in the investigation of allegations of torture, in observance of judicial guarantees and judicial protection of victims and their families, in view of its duty to investigate and punish acts of torture, in accordance with the provisions of Articles 8 and 25 of the American Convention, in relation to Article 1 thereof, and Articles 1, 6 and 8 of the Convention against Torture. The Commission also analyzed whether the State adopted domestic legal provisions to guarantee access to adequate and effective remedy so that they can obtain the application of the exclusion clause of evidence obtained under torture in the military processes led to convictions against them, in consideration of the provisions of Articles 2 and 25 of the American Convention in conjunction with Article 1.1 and Article 10 of the Convention against Torture.

A. Judicial guarantees and judicial protection, in relation to the general obligation to ensure human rights and the duty to investigate and punish acts of torture (articles 8 and 25 of the American Convention, read in conjunction with its Article 1 thereof and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture).

89. In the present case, the Commission must underscore the obligations undertaken by the Chilean State under the American Convention and the Inter-American Convention to Prevent and Punish Torture with respect to the investigation and punishment of any acts committed by its agents that violate human rights, particularly with respect to the alleged failure to investigate the acts of torture denounced. Article 8(1) of the American Convention provides that:

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

90. The relevant part of Article 25 of the American Convention reads as follows:

[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though

such violation may have been committed by persons acting in the course of their official duties.

91. Article 1(1) provides that:

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

92. Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture read as follows:

Article 1: The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6: In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8: The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

93. The Commission established that the State has an international obligation to investigate, clarify and redress any violation of human rights which gives rise to a complaint and to punish those responsible, in keeping with articles 1(1), 8 and 25 of the American Convention.¹¹⁵ As the Inter-American Court wrote, the obligation to investigate "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government."¹¹⁶ In other words, the duty to investigate, prosecute and punish those responsible for human rights violations is an irrevocable obligation of the State. Where acts of torture are concerned, articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, cited above, specify and elaborate upon the obligation to "conduct an investigation" of and "to punish" acts of torture.

¹¹⁵ IACHR., Report No. 55/97, Case 11,137, Merits, *Juan Carlos Abella*, Argentina, November 18, 1997. Paragraph 392.

¹¹⁶ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, paragraph 177.

94. Furthermore, Article 8(1) of the American Convention, read in conjunction with its Article 25(1), gives the victims and their next of kin the right to have the harm done effectively investigated by the State authorities, to have proceedings brought against those responsible and, where appropriate, to sentence them to the appropriate punishment and redress the harm and injury caused.¹¹⁷

95. In that framework the case law of the system has repeatedly held that torture and cruel, inhuman or degrading treatment or punishments are strictly prohibited by international human rights law. The absolute ban on torture, both physical and mental, is today part of the international *jus cogens*¹¹⁸, in effect at the time when the facts of the alleged torture occurred in this case¹¹⁹. It is noted that this ban remains in place even in the most difficult circumstances like war, threat of war, the fight against terrorism and any other crime, state of siege or emergency, internal disturbance or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or calamities.¹²⁰ Furthermore, “[t]he way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee’s vulnerability.”¹²¹

96. This obligation becomes even more imperative in cases where the acts of torture or cruel, inhuman or degrading treatment alleged coincided in time and place with the State’s custody of the alleged victims.¹²² Hence, when faced with allegations of torture, the State has a duty to take reasonable and necessary measures to clarify the situation denounced, measures that consider the complainant’s situation and other circumstances as well, such as the place where the events occurred, the time of the events, potential witnesses to the events, and other factors. In effect, to be in compliance with the Inter-American standards, the State has an obligation to conduct a serious, documented, diligent investigation that respects the principles of independence, impartiality, competence, diligence and promptness.¹²³

97. Furthermore, Inter-American case law has held that in response to a complaint of torture or cruel, inhuman or degrading treatment or punishment:

¹¹⁷ IACHR. Report No. 7/06 *Laura Albán Cornejo et al. v. Ecuador*, February 28, 2006, paragraph 62. I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000. Series C No. 68. paragraph 117.

¹¹⁸ I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 76. Additionally, although it is not a matter of issue in the present case, it is noted that reservations to a treaty made against international *ius cogens* may be considered against the object and purpose thereof.

¹¹⁹ It is worth citing Article 5 of the Universal Declaration of Human Rights of 1948, which in its text states: No one shall be subjected to torture or to cruel, inhuman or degrading treatment.

¹²⁰ I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164. Paragraph 76; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Paragraph 271; and I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. Paragraph 117.

¹²¹ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 126, citing Eur. Court H.R., *Iwanczuk v. Poland* (App. 251196/94) Judgment of November 15, 2001, paragraph 53.

¹²² Where an individual raises an arguable claim that he has been tortured by agents of the State, the State’s general duty not to torture and to respect and secure the rights of everyone within their jurisdiction requires an effective official investigation “capable of leading to the identification and punishment of those responsible.” Eur. Court H.R., *Assenov and others v. Bulgaria*, Judgment of October 28, 1998 (90/1997/874/1086), paragraph 102. See, IACHR. Application to the Inter-American Court of Human Rights, *Case 12,449 Teodoro Cabrera García and Rodolfo Montiel Flores v. the United Mexican States*, June 24, 2009.

¹²³ I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 108.

the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention. Furthermore, this action is specifically regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which Articles bind the State Parties to take all steps that may be effective to prevent and punish all acts of torture within the scope of their jurisdiction, as well as to guarantee that all torture cases be examined impartially.¹²⁴

98. In effect, where acts of torture are concerned, Article 8 of the Inter-American Convention to Prevent and Punish Torture provides that the “authorities will proceed properly and immediately to conduct an investigation into the case” if “there is an accusation or well-grounded reason to believe that an act of torture has been committed within the jurisdiction [of the State].”

99. Summarizing, once they have knowledge of a human rights violation, especially a violation of the rights to life, to personal integrity and personal liberty,¹²⁵ the authorities have an obligation to initiate, *ex officio* and without delay, a serious, impartial and effective investigation,¹²⁶ which must be conducted within a reasonable period of time.¹²⁷ The right to justice of the victims and their next of kin includes their right to demand that the State bring criminal action against and be the driving force behind the prosecution of those alleged to be responsible for the conduct that violated Convention-protected human rights¹²⁸ and the State’s obligation to administer justice when such violations occur.

100. The Commission will now examine whether the Chilean State complied with its international obligations in the investigation conducted into the torture allegations. The purpose is to determine whether an effective remedy was made available, in keeping with judicial guarantees, to ensure the rights of access to justice and to know the truth of what happened.¹²⁹

101. It bears repeating that in view of the arguments of the parties with respect to the events that took place following the ratification of the American Convention, as well as to the temporal

¹²⁴ I/A Court H.R., *Case of Gutiérrez Soler*. Judgment of September 12, 2005. Series C No. 132. Paragraph 54. See also, I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, paragraph 88.

¹²⁵ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 100.

¹²⁶ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

¹²⁷ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the La Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

¹²⁸ *Cfr.* IACHR. Report No. 7/06 *Laura Albán Cornejo et al. v. Ecuador*, February 28, 2006, paragraph 63. I/A Court H.R., *Case of Myrna Mack v. Guatemala*, Judgment of November 25, 2003, Series C, No. 101, paragraph 209; *Case of Bulacio v. Argentina*, Judgment of December 8, 2003, Series C No. 100, paragraph 114; and I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, Judgment of June 21, 2002. Series C No. 94. Paragraphs 142 to 145.

¹²⁹ The Commission considers that the obligation to ensure the human rights recognized in the American Convention requires the existence of a legal system designed to make fulfillment of this obligation possible; accordingly, the proper course of action is to examine the internal practices and norms applied to the case, which will be addressed in the section devoted to Article 2 of the American Convention.

jurisdiction of the Commission, the IACHR will analyze the State's international responsibility as of the date of its ratification of the American Convention and deposit of its instrument of ratification, which was August 21, 1990. It was at that point that the State committed itself, under the American Convention, to the international duty to investigate that serious violation of human rights.

102. As a preliminary note, the factual background of this case indicates that the events of the case occurred within the context of egregious and massive human rights violations. The Inter-American Court has written that the failure to investigate facts that constitute serious violations of human rights and were part of systematic patterns is particularly serious and can expose the State's failure to comply with its international obligations under non-derogable norms.¹³⁰

103. The Commission notes that on a number of occasions subsequent to its ratification of the Convention, the State was apprised of the acts of torture alleged in this case. In effect, apart from the Commission's earlier reports, which date back to 1974, as the facts will show that information was brought to light within the State itself and presented for public scrutiny. In the section dealing with the background to the established facts, the Commission has presented a number of pieces of evidence showing how, during the *coup* in Chile, Courts Martial resorted to torture in the military proceedings they conducted. That evidence is quite apart from what the victims themselves said in their testimony and from what some State agents have confessed to.

104. The previous section on the facts of the case reveal that investigations were launched in response to complaints filed by some people –among them some victims in the present case- and that the victims in the present case turned to the Supreme Court of Chile to bring their allegations of torture to the attention of the State. They did this for a number of reasons, one of which was to have their convictions overturned as part of their quest for truth, justice and reparations.

105. Summarizing, the case file shows that subsequent to its ratification of the American Convention, the State had knowledge of the torture alleged by the victims in the present case because of information that came to light within the Chilean State, thanks to which the public learned of the torture being alleged:

- **National Truth and Reconciliation Commission.** On February 8, 1991, this Commission delivered its report to former President Patricio Aylwin Azócar, in which it established, *inter alia*, that torture was routine in the interrogations conducted in the Courts Martial proceedings.¹³¹
- **National Commission on Political Imprisonment and Torture.** The National Commission on Political Imprisonment and Torture also acknowledged the practice of torture in the proceedings conducted by the Courts Martial during the era of the military *coup*. Its report was delivered to the then President of the Republic on November 10, 2004 and was made public on November 28 of that year. An annex to that report, titled "List of political and tortured prisoners" included

¹³⁰ I/A Court H.R., *Case of García Lucero et al. v. Chile*. Judgment of August 28, 2013, paragraph 123, citing (*Cf., mutatis mutandi, Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraphs 96, 157 and 160, and *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paragraph 183.)

¹³¹ Report of the Truth and Reconciliation Commission (Rettig Report), February 8, 1991. Part Three, Chapter I: Human Rights Violations Committed by Agents of the State or Persons in Its Service. Point 1.D. Mistreatment and Torture. Available [in Spanish] at: http://www.ddhh.gov.cl/ddhh_rettig.html

the names of 27,153 persons. It is important to note that the list of persons that the National Commission on Political Imprisonment and Torture recognized as victims including the following: Omar Humberto Maldonado Vargas; Álvaro Yañez del Villar; Mario Antonio Cornejo Barahona; Belarmino Constanzo Merino; Ernesto Augusto Galaz Guzmán; Mario González Rifo; Jaime Donoso Parra; Alberto Salustio Bustamante Rojas; Gustavo Raúl Lastra Saavedra; Víctor Hugo Adriaola Meza, and Ivar Onoldo Rojas Ravanal. In effect, in its report the Commission pointed out that its analysis of the proceedings found that “in routine disregard for the impartiality of due process, prosecutors allowed and even encouraged torture as an acceptable method of interrogation.”¹³²

- **Case No 1058-2001.** According to the available information, in this court case, instituted as a result of a complaint, charges were brought on July 24, 2006, against Edgar Benjamín Ceballos Jones and Ramón Pedro Cáceres Jorquera, both members of the Air Force. In the end they were convicted by the lower court in a ruling dated April 30, 2007, as the authors of the crime of torture to the detriment of Belarmino Constanzo Merino, Manuel Osvaldo Oyadenel and Gustavo Raúl Lastra Saavedra, and others. That verdict was later appealed and, in end, an appeal in cassation was filed. The court case concluded with the conviction of the two State agents of the FACH for the crimes of torture, in which serious injury was inflicted; the victims of their crimes were a number of private individuals in their custody, among them three of the victims in the present case, previously named.¹³³ A resolution dated July 19, 2006, temporarily and partially dismissed the case with respect to the illegal acts reported by complainants Ernesto Augusto Galaz Guzmán, Mario Antonio Cornejo Barahona, Mario González Rifo, Jaime Arturo Donoso Parra, Víctor Hugo Adriaola Meza, and others.
- **Statements by a former FACH agent.** The documentation attached to the case file includes a copy of a statement made by Andrés Antonio Valenzuela, dated November 10, 1990, in which he recounts his role in the Chilean State’s security agencies between 1974 and 1984. He states specifically that in August 1974 he was assigned to the War College of the Chilean Air Force, specifically to the Office of the Prosecutor of Aviation. He stated the following:

I recall that many of the detainees had signs hung on them with instructions like “no food or water for 48 hours,” “one meal a day”, “stand until further orders” and the like. ...

I was never called upon to be present for torture sessions, but I did see people coming down in very bad condition. I also saw people hanging from the staircase that went to the first floor, and elsewhere...¹³⁴

¹³² Report of the National Commission on Political Imprisonment and Torture (2004), Chapter III, Courts Martial, p. 177. Available [in Spanish] at: <http://www.resdal.org/ultimos-documentos/chile-informe-dictadura-cap3.pdf>. The report also stated that “the same can be said of other members of the military courts –like the auditors, for example- who also put their punitive function first in order of priority.”

¹³³ Documentation presented by the petitioners in the case hearing celebrated before the IACHR on October 12, 2007. Judicial Branch of Chile, Rol No 1058-MEV, Judgment of April 30, 2007, *consideranda* eighth. Among the persons identified as victims within the case are Belarmino Constanzo Merino, [...], Manuel Osvaldo López Oyanedel y Gustavo Raúl Lastra Saavedra, who presented this claim before the IACHR as victims.

¹³⁴ Original petition filed with the IACHR on April 16, 2003, Annex 2. Statement that Andrés Antonio Valenzuela made in the presence of the National Truth and Reconciliation Commission, November 10, 1990.

106. In the case of the findings of the National Truth and Reconciliation Commission, it is important to bear in mind that the Commission was not a judicial body,¹³⁵ nor was the National Commission on Political Imprisonment and Torture. The nature of their mandates was such that the Commissions did not have the authority to conduct a criminal investigation and prosecution and punish human rights violations. As a result, despite the important role they played in getting at the facts and bringing them to light, the National Truth and Reconciliation Commission and the National Commission on Political Imprisonment and Torture cannot be regarded as a substitute for a judicial proceeding, nor can their findings be put on the same plane as a court ruling. Ultimately, the reports these two commissions produced are sources of information that should have triggered, *ex officio*, a criminal investigation. However they cannot be regarded as mechanisms that can replace the State's obligation to see that justice is done when acts of torture are committed.

107. Furthermore, the complaint regarding the alleged torture suffered by the victims in the present was again brought to the State's attention when this case was filed with the IACHR. The original petition was forwarded to the State on June 23, 2003.

108. The Commission observes that, the present case came to the Commission's attention long after the American Convention and the Inter-American Convention to Prevent and Punish Torture became binding upon the Chilean State, yet, notwithstanding the complaints processed, it did nothing to launch and propel *ex officio* investigations. This omission, by itself, compromises the State's international responsibility.

109. When the courts failed to act on their complaints of torture, on September 10, 2001 the victims in the present case filed a petition with the Chilean Supreme Court seeking a review; when that petition was denied, on September 7, 2002 they filed a motion with the Supreme Court to have their case reopened, arguing that they had been subjected to torture in the military criminal proceedings that the Courts Martial conducted against them, and in which they were condemned and received the sentences mentioned earlier. The victims asked that their convictions be nullified. From the facts in the case it has been established that the Supreme Court denied their appeals on grounds of jurisdiction. But in those Supreme Court proceedings, the details of the torture suffered were aired yet the State did nothing to order an *ex officio* investigation into the acts of torture denounced.

110. Given the foregoing, the IACHR observes that as of the date of preparation of this report, the Commission has not received any information that would suggest that the State has undertaken, *ex officio*, criminal investigations to comprehensively and complete address the acts of torture which it knew occurred during the trials conducted by the Courts Martial at the time of the *coup d'état*, which involved the victims in the present case. It also has to be said that the majority of the victims in this case were included by name on the lists of victims that appeared in the report of the National Commission on Political Imprisonment and Torture.

111. Consequently, the IACHR observes that subsequent to its ratification of the American Convention, the State learned, from various sources, of the allegations of torture that the petitioners are making in this case. Armed with that knowledge, it was incumbent upon the State to undertake an effective and comprehensively investigation, *ex officio*, into that practice, which would enable it to

¹³⁵ Application to the Inter-American Court of Human Rights in the case: Luis Alfredo Almonacid Arellano (Case 12.057) v. the Republic of Chile, paragraph 69. Available [in Spanish] at: <http://www.IACHR.org/demandas/12.057%20Almonacid%20Arellano%20Chile%2011jul2005%20ESP.pdf>.

identify, prosecute and punish those responsible. Lastly, the Commission considers that the lack of a serious, exhaustive and impartial investigation, undertaken *ex officio*, into the complaint of alleged acts of torture was a violation of the rights protected under Article 8(1) and Article 25 of the American Convention, read in conjunction with the duty to ensure established in Article 1(1) of that instrument. Furthermore, the State also violated articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

B. The inadmissibility of confessions obtained under torture –the exclusionary rule- (articles 25 and 2 of the American Convention read in conjunction with its Article 1(1) and Article 10 of the Inter-American Convention to Prevent and Punish Torture)

112. Article 25(1) of the Convention establishes, in broad terms, the States' obligation to offer to all persons subject to their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.¹³⁶ Specifically, the Inter-American Court has held that States have an obligation to provide effective judicial recourses to persons who claim to be victims of human rights violations (Article 25), recourses that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all under the general obligation of the States to ensure the free and full exercise of the Convention-protected rights to all persons subject to their jurisdiction (Article 1(1)).¹³⁷

113. Similarly, the Court has also written that States have an obligation to embody in law effective remedies and ensure that those remedies and the guarantees of due process of law are effectively invoked before the competent authorities, that those remedies and guarantees protect all persons under their jurisdiction against acts that violate their basic rights or lead to a determination of their rights and obligations.¹³⁸ It also held that for a State to be in compliance with Article 25 of the American Convention, the formal existence of those remedies will not suffice; instead, they must be effective in the meaning of the Convention,¹³⁹ in other words, produce results or responses to violations of rights protected either in the Convention, in the Constitution or in the law.¹⁴⁰ The Court has

¹³⁶ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 91; *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paragraph 180, and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 164.

¹³⁷ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections, Judgment of June 26, 1987. Series C No. 1. paragraph 91; *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, paragraph 104, and *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, paragraph 190.

¹³⁸ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, Merits. Judgment of September 11, 1997. Series C No. 63, paragraph 237; *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paragraph 182, and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 166.

¹³⁹ I/A Court H.R., *Advisory Opinion Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24; *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paragraph 182, and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 166.

¹⁴⁰ I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paragraph 182, and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 166.

underscored that this obligation requires that the remedy be suitable for combating a violation, and that its application by the competent authority be effective.¹⁴¹

114. For its part, while in its admissibility report the Inter-American Commission did not address the alleged violation of Article 2 of the American Convention, the case file with the Commission contains information and documents supplied by the parties during the course of the proceedings on this case that support the violation, thus necessitating an analysis of that article. Article 2 of the American Convention provides as follows

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

115. The Inter-American Court has pointed out that under the law of nations, a customary law prescribes that a State that has signed an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken. This principle is universally valid and has been characterized in case law as an evident principle (“*principe allant de soi*”).¹⁴²

116. For its part, the Inter-American Court has observed that this principle, which is embodied in Article 2 of the American Convention, establishes the general obligation of each State party to adapt its domestic laws to conform to the provisions of the Convention, so as to thereby guarantee the rights therein contained,¹⁴³ which implies that the domestic legal measures must be effective (the principle of *effet utile*).¹⁴⁴

117. The *jurisprudence constante* has been that Article 2 of the Convention does not define which measures are appropriate to adjust the domestic law to the Convention; obviously that depends on the nature of the rule requiring adjustment and on the circumstances of each specific situation. Therefore, the Court has interpreted that such adjustment implies adopting two sets of measures, namely: (i) repealing rules and practices of any kind entailing violations of the guarantees provided for in the Convention or disregarding the rights enshrined therein or impeding the exercise of such rights, and (ii) adopting rules and developing practices aimed at ensuring effective observance of those

¹⁴¹ I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103, paragraph 117; *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, paragraph 182, and *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, paragraph 166.

¹⁴² I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 55; *Case of Garrido and Baigorria. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, paragraph 68. See also *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, paragraph 170; and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, paragraph 117.

¹⁴³ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, paragraph 171; and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, paragraph 117.

¹⁴⁴ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, paragraph 171; and *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 205.

guarantees.¹⁴⁵ The Court's interpretation has been that the first set of duties is breached so long as the norm or practice that is contrary to the Convention is part of the legal system;¹⁴⁶ therefore, a State is Convention-compliant when it modifies,¹⁴⁷ derogates or otherwise annuls¹⁴⁸ or amends¹⁴⁹ the norms or practices that are in violation of the Convention, as the case may be.¹⁵⁰

118. Therefore, for its analysis of the facts of the case in light of the provisions of articles 2 and 25 of the American Convention and the alleged noncompliance with the obligations set forth in other related inter-American instruments, the Commission will examine whether the Chilean State provided the victims a recourse by which to exercise their right not to have any evidence obtained by torture used against them in the military criminal proceedings that ended with their convictions.

119. It is important to point out that the IACHR will not determine whether the acts of torture alleged in this case actually occurred, which is why the petitioners filed this case expressly for a finding with respect to the subsequent consequences of the alleged acts of torture. The Commission's finding will be confined to the question of the international responsibility of the State in view of its international obligations established in the above-mentioned bodies of law as they pertain to the exclusionary rule that disallows any evidence obtained under torture.

120. The Inter-American Commission has written that "in the case of a statement or testimony in which there is a well-founded suspicion or presumption that it was obtained by some type of coercion, be it physical or psychological, [it must be determined] whether such coercion did actually exist. In the event that a statement or testimony obtained in these circumstances is admitted and used during the trial as an element of evidence or proof, the State may incur international responsibility."¹⁵¹

121. The Inter-American Court has observed that the exclusionary rule does not apply only in cases in which torture or mistreatment has been committed. Article 8(3) of the American Convention clearly states that "[a] confession of guilt by the accused shall be valid only if it is made without coercion of any kind." In other words, the exclusionary rule "is not limited to the factual situation of torture or cruel treatment, but extends to any form of duress."¹⁵² The Inter-American Convention to Prevent and Punish Torture also applies to the present case, Article 10 of which provides that:

¹⁴⁵ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, paragraph 172; and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, paragraph 118.

¹⁴⁶ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, paragraph 172.

¹⁴⁷ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, paragraphs 97 and 130.

¹⁴⁸ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, paragraph 254.

¹⁴⁹ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133, paragraphs 87 and 125.

¹⁵⁰ I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2004. Series C No. 166, paragraph 56; *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, paragraph 172.

¹⁵¹ IACHR, Report on the Situation of Human Rights in Mexico, Chapter IV: the right to humane treatment, OEA/Ser.L/V/II.100, Doc.7 rev. 1, September 24, 1998, paragraph 320.

¹⁵² I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 166.

No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.

122. For its part, the Inter-American Court has held that if duress capable of breaking a person's will has been used, then the evidence so obtained must be excluded from the judicial proceeding, in order to discourage the use of any type of coercion.¹⁵³ The Court also wrote that accepting or giving probative value to statements or confessions obtained by means of coercion and that concern the person or a third party, is a violation of the right to a fair trial.¹⁵⁴

123. Here, it is important to note that in its General Comment No. 32, the United Nations Human Rights Committee wrote that:

Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.¹⁵⁵

124. It should be pointed out that the Inter-American Court is of the view that the exclusionary rule prohibiting the use of evidence obtained by torture or cruel and inhuman treatment is absolute and non-derogable¹⁵⁶ and has maintained that nullifying proceedings because torture or cruel and inhuman treatment was used is an effective measure to end the consequences of this violation of judicial guarantees.¹⁵⁷ As for the non-derogable and absolute nature of the exclusionary rule to ban evidence obtained by torture, the Human Rights Committee has written that:

(...) Similarly, as article 6¹⁵⁸ is also non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in

¹⁵³ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 166.

¹⁵⁴ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations y Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 167.

¹⁵⁵ United Nations, International Covenant on Civil and Political Rights, Human Rights Committee, General Comment No. 32: "Article 14: Right to equality before courts and tribunals and to a fair trial," paragraph 41.

¹⁵⁶ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 165 (citing what the Committee against Torture wrote to the effect that "the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction, including extradition proceedings, have been made as a result of torture." United Nations. Committee against Torture. *GK v. Switzerland*, May 7, 2003 (CAT/C/30/D/219/2002), paragraph 6.10).

¹⁵⁷ I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paragraph 166.

¹⁵⁸ Article 7 of the United Nations International Covenant on Civil and Political Rights provides that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

any proceedings covered by article 14,¹⁵⁹ including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred.¹⁶⁰

125. For its part, in its General Comment No. 2, the Committee against Torture reminds all the States parties to the Convention against Torture that the obligations established in the Convention are non-derogable.¹⁶¹

126. Concerning the State's obligation to investigate the acts of torture alleged to have been committed by its agents, it is important to emphasize that under the rules of international human rights

¹⁵⁹ Article 14 of the United Nations' International Covenant on Civil and Political Rights reads as follows:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

¹⁶⁰ United Nations, International Covenant on Civil and Political Rights, Human Rights Committee, General Comment No. 32: "Article 14: Right to equality before courts and tribunals and to a fair trial," paragraph 6.

¹⁶¹ United Nations, Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Committee against Torture, General Comment No. 2: Implementation of article 2 by States Parties, paragraph 6.

law, that obligation is not subject to statute of limitations. As for criminal convictions based on confessions obtained under torture, because the exclusionary rule with respect to any evidence so obtained is absolute and non-derogable, its temporal effects extend well beyond the date on which the conviction was delivered. Therefore, the IACHR believes that it has competence *ratione temporis* to examine the matter, even though the military proceedings in which the victims were convicted predated Chile's ratification of the American Convention. The non-derogable nature of the exclusionary rule regarding statements obtained under torture and the duty to investigate the alleged acts of torture, mean that the human rights violation *sub examine* continues and gives the Commission competence.

127. As shown in the section on established facts, the petitioners filed petitions seeking review and nullification of the proceedings and an appeal in cassation (jointly and subsidiarily); thereafter, they filed a motion with the Supreme Court to have their case reopened to file complaints of violations of due process and the torture to which they were subjected in the court martial that convicted them, and to that end provided the Supreme Court with a number of pieces of evidence. By a ruling of September 2, 2002, the Supreme Court denied the petitions for review, nullification and the appeal in cassation brought by the petitioners invoking jurisdictional grounds and without examining the merits of the claims. It did so on the grounds that "the decision being challenged is a conviction by military courts in times of war, a matter that the military courts have not surrendered to the jurisdiction of this Supreme Court pursuant to Article 70 letter A.2 of the Code of Military Justice, bearing in mind as well articles 6 and 7 of the Constitution of the Republic" of Chile. The articles mentioned provide the following:

Article 70-A.2) of the Code of Military Justice: "It shall also be the function of the Supreme Court, with the added participation of the Auditor General of the Army or the person serving in his stead, to exercise the authorities related to preservation of order, discipline and economic matters referred to in Article 2 of this Code, in relation to the administration of military justice in times of peace and to take cognizance of:

2. Petitions seeking review of final judgments delivered in the courts of military jurisdiction;

Article 6 of the Constitution of the Republic of Chile: The organs of the State shall abide by the Constitution and the laws issued in accordance with it, and shall guarantee the Republic's institutional order. The provisions of this Constitution are binding upon the officers or members of those institutions, and on any other person, institution or group. Violation of this general clause shall lead to the liabilities and sanctions that the law prescribes.

Article 7 of the Constitution of the Republic of Chile: Once their members have been appointed and are seated, the organs of the State shall be functioning validly within their area of competence and in the manner prescribed by law. No official body, person or group of persons may claim, even under the pretext of extraordinary circumstances, authorities or rights other than those conferred by the Constitution or the law. Any act committed in violation of this article is null and shall lead to the liabilities and sanctions that the law prescribes.

128. Thereafter, on December 9, 2002, the Supreme Court denied the petitioners' motion to reopen the case, and wrote that "given the provision of Article 56 of the Code of Criminal Procedure concerning article 122 of the Code of Military Justice, the reopening of the case is declared out of order." It should be noted that the basis for the decision in which the motion to reopen the case was denied makes this statement, with no elaboration and without specifying the grounds for denying the petitioners' motion. In effect, the article cited by the Court as the grounds for its decision gives more than one reason for denying a motion or petition, yet the Court did not specify what the grounds for denying the motion were. The articles mentioned in the Supreme Court's decision read as follows:

Article 56 of the Code of Criminal Procedure. Motions to reopen may be filed with the judge that delivered an interlocutory judgment, an order or decree. Such a motion may only be filed within the first three days and, to be admissible, must also state the grounds.

The court may issue its own decision or may order that notice be served if the motion was filed against an interlocutory judgment or on a matter whose complexity is such that the advisable course of action is to hear from the other side.

When a motion to reopen is filed with respect to a decision that is also subject to appeal and if no appeal is filed when the motion to reopen is denied, then the party shall be understood to have waived the right of appeal.

A motion to reopen shall not suspend the decision, except when the decision is also subject appeal.

Article 122 of the Code of Military Justice. The rules contained in articles 50 to 53, 55, 56, Art 3 57, 59, 61, 62, 64, 66 final subparagraph, 67 and 75 of the Code of Criminal Procedure Law 16639 apply to military criminal proceedings.

129. The IACHR observes that the Supreme Court did not review the case to investigate the complaints of torture presented and, where appropriate, take steps to exclude any evidence obtained through torture and did not order other measures in connection with the case. The Court did not advise the petitioners of any remedy or recourse they could use to ensure application of the exclusionary rule with respect to the evidence obtained under torture. Hence, the Commission considers that the petitioners did not have an effective remedy to secure enforcement, investigation and subsequent review of the conviction based on the exclusionary rule with respect to the evidence allegedly obtained under torture in the military criminal proceeding by which they were tried and convicted. In effect, by denying the motions to reopen the case and the petition to review the judgment, the Supreme Court not only failed to investigate the acts of torture denounced, but also held that the petitioners had no legal protection, since they were not afforded an effective remedy by which to seek enforcement of the exclusionary rule with respect to the evidence obtained by torture.

130. Furthermore, in this section the Commission is calling attention to the lack of any domestic legal provision or relevant judicial practice by which to establish the effective remedy to secure enforcement of the exclusionary rule with respect to evidence obtained under torture. The findings of the National Commission on Political Imprisonment and Torture and the National Truth and Verification Commission notwithstanding, as the established facts show, the information in the criminal complaints filed in the domestic courts and the information that the victims presented to the Supreme Court to ask that their convictions be reviewed reveal that the judicial authorities did not order any investigation *ex officio* into the torture complaints, so as to apply, if appropriate, the exclusionary rule discounting evidence obtained by torture.

131. The law itself prevents the regular courts from reviewing decisions by the military authorities. In the present case, by its own interpretation the Supreme Court of Chile served to perpetuate the problem and failed to test for compliance with the requirement under the American Convention regarding an effective remedy for the victims in this case, one that would have triggered enforcement of the exclusionary rule with respect to the evidence obtained under torture in the military proceedings by which they were tried. In effect, the Supreme Court not only refrained from hearing the petition for review that the petitioners filed in 2001 and then denied their 2002 motion to reopen the case, but also failed to advise them of another remedy they could avail themselves of to get

enforcement of the exclusionary rule. This problem was compounded by the fact that the competent authorities failed to conduct criminal investigations *ex officio* in response to the reports of the torture that had been committed in the proceedings conducted by the Courts Martial at that time, and as a result left the petitioners without legal protection to claim their right to have the torture-induced evidence thrown out.

132. The Chilean State thus failed to comply with the obligations set forth in Article 25 of the American Convention, read in conjunction with its Articles 1(1) and 2. In this case, the Chilean State is also liable for the violation of the Inter-American Convention to Prevent and Punish Torture, which requires investigation and punishment of torture and expressly prohibits the use of torture-induced confessions in its Article 10, again to the victims' detriment.

C. Principle of Legality and the Non-retroactivity of the Law (Article 9), Protection of One's Honor and Dignity (Article 11(1)), Equality before the Law (Article 24) and Suspension of Convention protected Guarantees (Article 27(2)).

133. The petitioners also alleged violations of the rights protected in articles 9, 11, 24 and 27(2) of the American Convention, which the Commission declared admissible in its Report No. 6/05.

134. The petitioners alleged that they were victims of discrimination because they were denied the courts' protection. They also alleged a violation of their right to have their honor respected, since the convictions have branded them as criminals. The petitioners also claimed that the laws were applied retroactively in the proceedings against them.

135. The IACHR is of the view that these allegations are not supported by facts that would allow the Commission to conclude that the rights protected in those articles were violated. It therefore proceeds to dismiss those allegations.

VI. CONCLUSIONS

136. Based on the foregoing analysis of the facts and the law, the Inter-American Commission on Human Rights concludes that:

1. The Chilean State is responsible for violation of its obligation to investigate torture in accordance with the provisions of articles 8 and 25 of the American Convention, read in conjunction with Article 1(1) thereof and to the detriment of the victims and their next of kin. In application of the principle of *iura novit curiae*, the Commission also finds that the State is responsible for violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and for violation of its obligation under the American Convention to adopt domestic legal measures (Article 2), to the detriment of the victims and their next of kin.
2. The Chilean State is responsible for failing to adopt the domestic legal provisions to ensure the existence of an effective remedy by which to enforce the exclusionary rule in respect of confessions made under torture, pursuant to the provisions of Article 25 and, in application of the principle of *iura novit curiae*, Article 2 of the American Convention read in conjunction with its Article 1(1) and Article 10 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the victims and their next of kin.

3. It does not find sufficient grounds for a finding on the possible violations of articles 9 (Principle of Legality and Non-Retroactivity of the Law), 11(1) (Protection of One's Honor and Dignity), 25 (Equality before the Law), and 27(2) (Suspension of Guarantees) of the American Convention.

VII. RECOMMENDATIONS

137. Based on the observations made in this report and the conclusions reached, the Inter-American Commission on Human Rights is recommending that the State of Chile

1. Investigate, prosecute and punish the alleged torture committed against the victims in this case.
2. Establish any criminal and/or administrative blame there may be for the failure to investigate the torture suffered by the victims in the present case, which was brought to the attention of the Chilean judicial authorities.
3. Adopt the measures necessary to afford an effective judicial recourse for the protection of the violated rights of the victims and their next of kin, particularly with respect to the evidentiary value attached to the confessions made under torture.
4. Make full reparations to the victims and their next of kin, which shall include pecuniary and non-pecuniary damages for the human rights violations herein established.
5. Adopt the legislative, administrative and other measures necessary to make Chile's laws and practices conform to the Inter-American standards on the subject of torture and judicial protection.
6. Take measures to prevent a repetition of acts similar to those at issue in the present case.