REPORT No. 75/12
CASES 12,577, 12,646, 12,647, 12,667
MERITS
ROCHAC HERNÁNDEZ ET AL.
EL SALVADOR

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November 7, 2012

I. SUMMARY

1. On September 11, 2003, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received three petitions submitted by the Asociación Pro Búsqueda de Niñas y Niños Desaparecidos (Asociación Pro Búsqueda) on behalf of the children José Adrián Rochac Hernández (P 731-03), Emelinda Lorena Hernández (P 732-03), and Santos Ernesto Salinas (P 733-03). On December 8, 2003, a fourth petition was received submitted by the Asociación Pro-Búsqueda on behalf of Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca (P 1072-03).

2. In the four petitions it was alleged that the Republic of El Salvador (hereinafter "the Salvadoran State" or "the State") is internationally responsible for the forced disappearance of the children (hereinafter "the alleged victims") between 1980 and 1982 during the internal armed conflict, and for the subsequent failure to investigate, punish, and provide reparation as a result of those acts. In the first stage of the proceeding the State staunchly disputed the petitions. Subsequently, in the merits phase the Salvadoran State recognized responsibility for the facts, accepting the existence of a pattern of disappearance of children during the armed conflict, as well as the facts alleged in the petitions.

3. In Report No. 90/06, approved October 21, 2006, the Commission concluded that petition 731-03, referring to José Adrián Rochac Hernández, was admissible for the possible violation of the rights established at Articles 1(1), 4, 5, 7, 8, 17, 18, 19, and 25 of the American Convention. On March 5, 2008 the IACHR approved Reports Nos. No. 10/08 and 11/08, by which it declared the admissibility of petitions 733-03 and 732-01, with respect to Santos Ernesto Salinas and Emelinda Lorena Hernández, respectively, for the possible violation of the rights established at Articles 1(1), 2, 3, 4, 5, 7, 8, 17, 19, and 25 of the Convention. Subsequently, on July 25, 2008, by Report No. 66/08, petition 1072-03 with respect to Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca was declared admissible for the possible violation of the rights established at Articles 1(1), 2, 3, 4, 5, 7, 8, 17, 19, and 25 of the Convention. The four petitions were assigned the numbers 12,577, 12,647, 12,646, and 12,667, respectively. On April 29, 2010, the IACHR decided, pursuant to Article 29(d) of its Rules of Procedure then in force, to join cases 12,577, 12,647, 12,646, and 12,667.

4. After analyzing the positions of the parties, the Inter-American Commission concluded that the State of El Salvador is responsible for violating the rights to recognition of juridical personality, to life, to humane treatment, to personal liberty, to family, to special protection for children, and to judicial guarantees and judicial protection, established at Articles 3, 4, 5, 7, 17, 19, 8 and 25 of the American Convention, in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca. In addition, the Commission concluded that the State was responsible for violating the rights to humane treatment, family, judicial guarantees and judicial protection, to the detriment of the next-of-kin of the disappeared victims. Finally, the Commission concludes that it has not been shown that the State violated the right enshrined in Article 18 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

PROCESSING AFTER ADMISSIBILITY REPORTS Nos. 90/06, 10/08, 11/08, 66/08

With respect to case 12,577 (José Adrián Rochac Hernández)

5. As regards petition 731-03, received September 11, 2003, the Commission approved the admissibility report on October 21, 2006, during its 126th regular period of session. The petition was recorded under case number 12,577.

6. On November 9, 2006, the Commission informed the parties of the adoption of admissibility report No. 90/06 and asked that the petitioners, within two months, submit their additional observations on the merits. In addition, the Commission placed itself at the parties' disposal to pursue a friendly settlement.

7. The petitioners submitted their observations on the merits on January 16, 2007, which were forwarded to the State on March 1, 2007. The Salvadoran State submitted its observations on January 11 and May 2, 2007; they were transmitted to the petitioners on May 8, 2007.

With respect to case 12,646 (Santos Ernesto Salinas)

8. As regards petition 733-03, received September 11, 2003, the Commission approved admissibility report No. 10/08 on March 5, 2008, during its 131st regular period of sessions. The petition was recorded under case number 12,646.

9. On March 18, 2008, the Commission informed the parties of the adoption of admissibility report No. 10-08 and asked the petitioners to submit their additional observations on the merits within two months. In addition, the Commission placed itself at the disposal of the parties to pursue a friendly settlement.

10. On May 26, 2008, the petitioners requested a 15-day extension to submit their observations on the merits, which was granted on June 5, 2008. On June 10, 2008, the petitioners submitted their observations on the merits, which were forwarded to the State on June 17, 2008.

11. On August 20, 2008, the State requested a 30-day extension to submit its response to the petitioners' observations. This extension was granted by the Commission on September 9, 2008.

With respect to case 12,647 (Emelinda Lorena Hernández)

12. As regards petition 732-03, received on September 11, 2003, the Commission approved admissibility report No. 11/08 on March 5, 2008, during its 131st regular period of sessions. The petition was recorded under case number 12,647.

13. On March 18, 2008, the Commission informed the parties of the adoption of admissibility report No. 11/08 and asked the petitioners to submit their additional observations on the merits within two months. The Commission also placed itself at the disposal of the parties to pursue a friendly settlement.

14. On May 26, 2008, the petitioners requested a 15-day extension to submit their observations on the merits. This extension was granted on June 5, 2008. On June 12, 2008, the petitioners submitted their observations on the merits, which were forwarded to the Salvadoran

State on June 17, 2008. On August 20, 2008, the State requested a 30-day extension, which was granted by the Commission on August 9, 2008.

With respect to case 12,667 (Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca)

15. As regards petition 1072-03, received December 8, 2003, the Commission approved admissibility report No. 66/08 on July 25, 2008, during its 132nd regular period of session. The petition was recorded under number 12,667.

16. On August 4, 2008, the Commission informed the parties of the adoption of admissibility report No. 66/08 and asked the petitioners to submit their additional observations on the merits within two months. In addition, the Commission put itself at the parties' disposal to pursue a friendly settlement.

17. On October 7, 2008, the petitioners requested additional time for submitting their observations on the merits. This extension was granted on November 6, 2008, for one month. On November 21, 2008, the petitioners submitted their observations on the merits, which were forwarded to the State on January 15, 2009.

18. On October 10, 2008, and June 2, 2009, the Salvadoran State filed its observations, which were forwarded to the petitioners on November 21, 2008, and June 8, 2009.

19. On July 17, 2009, the petitioners requested an additional month for submitting their observations. This extension was granted on July 24, 2009.

20. On August 13, 2009, the State submitted additional information, which was transmitted to the petitioners on September 9, 2009.

21. On July 30, September 14, and August 7, 2009, the petitioners sent additional information. These communications were forwarded to the State on October 19, 2009, and January 8, 2010.

JOINDER OF THE CASES

22. On November 6, 2009, during the 137th period of sessions, a joint public hearing was held on the four cases in the merits phase. On February 12, 2010, the petitioners submitted additional information as follow-up to the hearing, which was forwarded to the State on April 9, 2010.

23. On that same day, and in keeping with Article 29(1)(d) of its Rules of Procedure, the Commission decided to join cases 12,646 (Santos Ernesto Salinas), 12,647 (Emelinda Lorena Hernández), and 12,667 (Manuel Antonio Bonilla and Ricardo Abarca Ayala) to the file in case 12,577 (José Adrián Rochac Hernández).

24. On April 19, 2010, the State requested a two-month extension to submit a proposed friendly settlement agreement. This extension was granted on May 5, 2010.

25. On November 19, 2010, the petitioners submitted additional information, which was forwarded to the State on December 27, 2010. On February 18, 2010, the State submitted a report in relation to the proposed friendly settlement agreement, which was forwarded to the petitioners on April 4, 2011.

26. On September 26, 2011, the Commission called the parties to a working meeting, to be held October 26, 2011.

27. On September 28, and on October 12, 17, and 26, 2011, the petitioners submitted additional information, which was sent to the State on October 14 and 19 and November 7, 2011, asking that it submit the observations it considered advisable.

28. On November 23, 2011, the State requested an extension until December 20, 2011. This extension was granted by the IACHR on November 30, 2011.

29. On May 2, 2012, the petitioners sent additional information, and on June 4, 2012, the IACHR informed the State that pursuant to the communication from the petitioners and in keeping with Article 40 of its Rules of Procedure, it was concluding its intervention in the friendly settlement procedure, and decided to continue with its consideration of the case on the merits.

30. On August, 3, 2012 the Commission requested the petitioners information about close family members of the alleged victims that allegedly suffered damage due to the claimed human rights violations. Until the date of the approval of this report the Commission has not received such information.

III. THE PARTIES' POSITIONS

A. The petitioners

31. The petitioners alleged that José Adrián Rochac Hernández, Emelinda Lorena Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala were victims of forced disappearance at the hands of the Salvadoran army.

32. In setting the context, they indicated that for 12 years El Salvador was mired in an internal armed conflict marked by indiscriminate attacks against the non-combatant civilian population that, had a particularly strong impact on the rural population. They indicated that in order to destroy the bases of support of the guerrilla forces, the Salvadoran armed forces carried out the bloodiest operations from 1980 to 1984. In addition, they indicated that this was the period of the armed conflict in which the largest number of disappearances of children took place. The petitioners indicated that the disappearance of children was part of the strategy of "taking the water from the fish", as one of the many forms of military repression against the civilian population, the objective of which was to cause terror through family separation. They alleged that the disappeared children were mostly from the conflict zones, where large-scale military operations were under way, such as Chalatenango, Cabañas, Cuscatlán, San Vicente, Usulután, the northern part of San Miguel, Morazán, and northern and eastern San Salvador.

33. They also indicated that both the Commission and the Inter-American Court have recognized the existence of this phenomenon of disappearances during the armed conflict. They added that in effect there was a pattern of forced disappearances of children, especially from 1980 to 1983. They alleged that the forced disappearances of José Adrián Rochac Hernández, Emelinda Lorena Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala were carried out in those years, and that in each case there was evidence that it was state agents who last had the children under their control for the last time, so the burden is on the State to prove otherwise.

34. With respect to Emelinda Lorena Hernández, the petitioners alleged that the disappearance occurred in the canton of La Joya, jurisdiction of Meanguera, department of Morazán, in December 1981, during one of the largest and bloodiest operations carried out by the Salvadoran

army. According to the petitioners, at the time of her disappearance Emelinda Lorena Hernández was 11 months and 15 days old.

35. As for the disappearance of Santos Ernesto Salinas, 9 years old when disappeared, the petitioners indicated that on October 25, 1981, he disappeared at the hands of agents of the Salvadoran armed forces during a military operation in the canton of San Nicolás Lempa, municipality of Tecoluca, department of San Vicente, a highly conflictive zone. In addition, the petitioners alleged that Ms. Josefa Sánchez saw when members of the armed forces led Santos Ernesto and another child to an unknown destination.

36. As for José Adrian Rochac Hernández, 5 years old at the time, the petitioners alleged that his disappearance occurred on December 12, 1980, during a military operation in the canton of San José Segundo, carried out by the Air Force of El Salvador and paramilitary forces in the zone. In addition, the petitioners alleged that there are several witnesses who have testified that the child was last seen in the custody of state agents who led him to an unknown destination.

37. With respect to Manuel Antonio Bonilla Osorio and Ricardo Abarca Ayala, the petitioners indicated that they disappeared in the context of the El Calabozo Massacre, which according to the petitioners' briefs was one of the worst massacres committed by the Salvadoran armed forced during the armed conflict. They alleged that the press articles at the time describe the abduction of children during "Operation Lieutenant Mario Azenón Palma," in August 1982. They also alleged that on the day of the disappearance witness Marta Abarca observed numerous soldiers who were taking her cousin Ricardo Abarca Ayala, Manuel Antonio Bonilla, and a woman towards the Cerros of San Pedro.

38. As regards the domestic proceedings, the petitioners alleged that the search for the disappeared did not begin until years after the signing of the Peace Accords, since the victims' next-of-kin did not trust the state institutions, which did not consider them credible. In addition, they indicated that after the military operations they continued to be subjected to persecution and repression by the military forces.

39. The petitioners indicated that the next-of-kin of the alleged victims turned to the Asociación Pro-Búsqueda, which on May 31, 1996, submitted to the Office of the Human Rights Ombudsperson (Procuraduría para la Defensa de los Derechos Humanos) several cases of children who disappeared during the armed conflict. They indicated that these cases include the case of Emelinda Lorena Hernández, José Adrián Rochac Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala. They noted that in 2004 the Office of the Human Rights Ombudsperson issued a report detailing 136 cases of disappeared children, including the cases mentioned. They added that in that resolution the Office of the Ombudsperson recommended to the Office of the Attorney General that it investigate the disappearance of the children mentioned in the report; according to the petitioners, that has not happened to date.

40. As regards the case of Santos Ernesto Salinas, they indicated that his mother, Ms. María Adela Iraheta, went before the Office of the Attorney General of the Republic, in the city of San Vicente, in August 2002 to file a complaint regarding the disappearance of her son. They said that this complaint was not received by the prosecutorial officials based on the argument that it should have been filed at the central offices, with the Attorney General of the Republic, in the city of San Salvador. They added that as of that moment the Asociación Pro-Búsqueda sought to file the complaint with the Attorney General of the Republic, yet did not obtain any positive result.

41. They also indicated that all the next-of-kin filed *habeas corpus* actions with the Constitutional Chamber of the Supreme Court of Justice, which were dismissed and archived, for,

as argued, the executing judges (*jueces ejecutores*) did not act with due diligence in pursuing the investigations.

42. The petitioners considered that these facts constituted violations of various articles of the American Convention to the detriment of the disappeared children and their next-of-kin. Following is a summary of the main arguments with respect to the petitioners' rights.

43. As for the right to personal liberty the petitioners alleged the violation of this right in relation to José Adrián Rochac Hernández, Emelinda Lorena Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala. They indicated that even though the State of El Salvador is not a party to the Inter-American Convention on Forced Disappearance of Persons, that instrument can be used for interpretive purposes in this case. They argued that all the disappeared victims were last seen in the custody of agents of the armed forces, who illegally abducted them from their families without bringing them before a competent judicial authority, and that there was no effective response to the *habeas corpus* actions filed by their next-of-kin.

44. With respect to the right to humane treatment, the petitioners alleged that the Salvadoran State is responsible for the violation of this right to the detriment of all the alleged victims and their next-of-kin for the suffering caused by the forced disappearance and by the negligent attitude on the part of the authorities in the search and investigation. They indicated that the abduction of the disappeared victims represented for them a situation of isolation from what at their tender ages was familiar to them: their family members, their community, their place of origin. They alleged that this isolation is drawn out to this day, as they were never returned to their families, and it is very possible that their identities were changed. With respect to the next-of-kin, they indicated that they have been exposed to the uncertainty of not knowing the whereabouts of José Adrián Rochac Hernández, Emelinda Lorena Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, or Ricardo Abarca Ayala, nor in what conditions they live. They alleged that the next-of-kin have made great efforts to determine their whereabouts and turned to the state authorities from whom they have received an omissive and negligent response. They indicated that this situation is a source of feelings of permanent impotence and suffering. They added that the disappearances were not isolated events, but that they took place during a period of violence, death, loss, and fear, in which people were being uprooted.

45. As for the right to life, they argued that it was violated to the detriment of all the disappeared victims, since while it is likely that they are still alive, there is no certainty of it, and it is up to the State to verify what has happened. They alleged that as regards forced disappearance, it is presumed that the victims have been deprived of life with the passage of time. They also noted that the disappearances occurred in the context of military operations in which hundreds of persons perished.

46. With respect to the right to the recognition of juridical personality, the petitioners argued that forced disappearance entails being excluded from the legal and institutional order of the State.[1]

47. As for the rights to due process and judicial protection, the petitioners alleged that these rights were violated to the detriment of Emelinda Lorena, José Adrián Rochac Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala, and to the detriment of their next-of-kin. They noted that these violations have taken place at different moments: first, when the disappeared

[1] It should be mentioned that the IACHR did not include the right to recognition of juridical personality in the admissibility report on the situation of José Adrián Rochac Hernández. In the merits stage the petitioners did not make any arguments with respect to this right in relation to José Adrián Rochac Hernández.

victims were arbitrarily abducted and impeded from having any access to mechanisms of judicial protection to make effective, for them, all the guarantees of due process and to determine the legality of their detentions, ordering that they be returned to their families; second, when the writs of *habeas corpus* were dismissed based on the argument that the family members did not produce sufficient information to characterize a forced disappearance, even though the investigation is to be carried out by the "executing judge"; and finally, as a consequence of the negligent and omissive attitude of the courts and prosecutors, to whom the Office of the Human Rights Ombudsperson made a recommendation to investigate, prosecute, and punish the persons responsible for the disappearances. In the case of José Adrián Rochac Hernández the petitioners also alleged unwarranted delay in the criminal proceedings.

48. As for the right to the family, the petitioners alleged that the intent behind the disappearance of children by the State during the armed conflict was precisely the separation of the family, to sow terror among those persons who supposedly supported the guerrilla forces and to keep their children from being useful to the guerrillas. In the case of the families in the instant case, the separation caused directly by members of the Salvadoran armed forces persists to this day, for despite the efforts of the family members and the Asociación Pro-Búsqueda to locate the disappeared victims it has been impossible to determine their fate and their whereabouts. The petitioners indicated that the Salvadoran State has sought the non-reunification of the families through its various acts and omissions. As an example they mentioned that the state agents who abducted José Adrián Rochac Hernández, Emelinda Lorena Hernández, Santos Ernesto Salinas, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala knew their places of origin despite which they took no steps to facilitate any reunion with their families, who were easy to locate. They also alleged that the failure to investigate and the impunity in the case have prolonged the separation of the family.

49. As for the right to a name, the petitioners alleged a violation of this right in the case of José Adrián Rochac Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala. In these cases the petitioners alleged that if the children were found alive, it is not known whether they would still have the first and last names with which they were legally registered prior to the disappearance. In addition, they indicated that most of the children found by the Asociación Pro-Búsqueda have been found alive. They indicated that based on the experience of the Asociación Pro-Búsqueda, it is highly likely that the disappeared children no longer use their original first and last names. They added that at the time of the armed conflict there was absolute flexibility for registering children, which facilitated changes in name, place of origin, date of birth, and other data. They alleged that the State did not take any measure to ensure that the information provided by those who were requesting the registrations were certain or to guarantee the right of the children to reestablish their identity.

50. With respect to the right to freedom of thought and expression, even though it is not in the petitioners' briefs, during the hearing on the merits held November 6, 2009, they alleged that they also considered this right violated, for it has been shown that there is information in the hands of the Army that could lead to establishing the whereabouts of these children. They indicated that in many of the judicial proceedings to look into these cases military authorities have refused to provide information, which would be a violation of the right to the truth, which is derived from the rights to freedom of expression, judicial guarantees, and judicial protection.

51. In a manner cutting across the previous arguments, the petitioners argued that the State breached its duty to adopt special measures of protection for children and to guide all of its actions by the best interest of the child. The petitioners recalled that the disappearances were part of a pattern of forced disappearance of children carried out and tolerated by the State. They indicated that even though the Salvadoran State is aware of this situation, it has not adopted effective measures to locate the children and reunite them with their families. In this respect, the

petitioners made reference to the failure to implement the measures of reparation ordered by the Inter-American Court in the case of *Serrano Cruz Sisters v. El Salvador,* including the inadequacy and ineffectiveness of the Inter-Institutional Commission to Search for Disappeared Children (Comisión Interinstitucional de Búsqueda de Niños y Niñas desaparecidos).

B. The State

52. In the admissibility phase, the State denied the petitioners' arguments, alleging the non-existence of the facts and the lack of competence of the Commission and lack of jurisdiction of the Inter-American Court to analyze the instant case. As regards domestic proceedings, the State argued that the petitioners did not make use of all the judicial mechanisms available for searching for disappeared children, and that the cases were being investigated by the Inter-institutional Commission to Search for Children who Disappeared as a result of the Armed Conflict. The Commission will not go further in this section on the details of the argument put forth by the State to controvert the allegations of fact and law made by the petitioners, due to the substantial change in its position in the merits stage.

53. In effect, during the hearing on the merits of the case, held November 6, 2009, the Salvadoran State declared that it was not controverting the facts alleged by the petitioners related to the forced disappearances of the children Santos Ernesto Salinas, José Adrián Rochac Hernández, Emelinda Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala, in the context of grave human rights violations that took place during the period of the armed conflict.

54. At that hearing the State asked the Asociación Pro-Búsqueda to convey to the family members of the children Santos Ernesto Salinas, José Adrián Rochac Hernández, Emelinda Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala the "most sincere apologies because in the past they were not considered by the State as victims of a pattern of violence that caused profound suffering for many families." In addition, the State offered to give the family members of the disappeared victims dignified and humane treatment.

55. It noted that it has begun, through the Ministry of Foreign Relations, a process of dialogue with the Asociación Pro-Búsqueda de niñas y niños, in the course of which it has invited representatives of the Center for Justice and International Law (CEJIL) to participate. It indicated that even though this process of dialogue is focused on enforcement of the judgment in the case of the *Serrano Cruz Sisters*, some of the measures seek reparation for a larger group of child victims of forced disappearance in El Salvador.

56. The State indicated that on that occasion among the measures of reparation urgent mention was made of the creation of a National Search Commission (Comisión Nacional de Búsqueda), as well as the use of consular protection to promote the reunification of families and the victims' recovery of their identity. It also reaffirmed its willingness to carry out the other measures provided for in the Judgment in the case of the *Serrano Cruz Sisters*, including the establishment of a gene bank.

57. Related to the instant case, the State indicated that through the Ministry of Foreign Relations it has promoted coordination with other state institutions to submit to them information that may allow access to justice for the victims. It argued in this connection that the Office of the Attorney General of the Republic has reported its decision to promote the investigation into the disappearance of José Adrián Rochac, and that was the subject of the opening of a prosecutorial investigation in 2002; it has been archived for several years. It also indicated that a prosecutorial investigation has been opened into the disappearance of the boys Manuel Antonio Bonilla, Ricardo Ayala Abarca, and Santos Ernesto Salinas, as well as the girl child Emelinda Hernández.

58. Finally, the State argued that it was fully willing to take steps forward in terms of access to information, recovery of identity, family reunification, and medical and psychosocial attention for the victims.

IV. FACTS PROVEN

A. Preliminary consideration on the recognition of responsibility by the State

59. As the Commission indicated in the section on the State's position, during the hearing on the merits held November 6, 2009, the State indicated that it does not controvert the facts alleged by the petitioners in relation to the forced disappearances of the children Santos Ernesto Salinas, José Adrián Rochac Hernández, Emelinda Hernández, Manuel Antonio Bonilla Osorio, and Ricardo Abarca Ayala. In addition, at that hearing the State of El Salvador requested of the petitioners that they convey to the petitioners their "most sincere apologies" for not having considered them victims in the past, and for not having recognized the suffering they have endured.

60. Based on what the State expressed in the hearing on the merits, the Commission observes that the recognition of responsibility by the State encompasses all of the facts that are addressed in the petitions, in relation to both the context and the circumstances around the disappearances of José Adrián Rochac Hernández, Santo Ernesto Salinas, Emelinda Lorena Hernández, Ricardo Ayala Abarca, and Manuel Antonio Bonilla.

61. The Commission greatly values the recognition by the Salvadoran State and determines that it has legal effects in the proceeding. Mindful of the need to contribute to recovering the truth, as well as the reparative effect of clarifying the facts for the family members, the Commission next proceeds to make a determination of the context, the facts of the case, and their legal consequences in light of the American Convention. In determining the facts, the Commission shall give special consideration, in addition to the available evidence, to the express recognition by the State of the facts narrated by the petitioners.

B. Context

62. Since its inception, the Commission has been particularly concerned by the human rights situation in El Salvador, especially during the years of civil war that blighted the country. In that regard, in 1983 it expressed its concern at "the violence in El Salvador, where unlawful executions and disappearances continued." As the Commission had pointed out in earlier reports, most such acts were committed by security forces and by paramilitary groups acting with impunity and outside the law. The fact that these crimes were never properly investigated seemed to indicate that these groups were operating with the Government's tacit consent. According to data supplied to the Commission by various reliable sources, more than 2000 Salvadorans died in the period covered by this report.[2].

63. For its part, the UN Working Group on Enforced or Involuntary Disappearances has said, "The majority of the 2,661[3] reported cases of disappearance occurred between 1980 and 1983, in the context of the armed conflict between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN). Many people disappeared following arrest by uniformed soldiers or police, or were abducted in death-squad style operations carried out by armed men in civilian clothing, reportedly linked to the army or to the security forces. Abductions of this

[2] IACHR, *Annual Report 1982-1983*, OEA/Ser.L/V/II.61, Doc. 22 rev. 1, September 27, 1983, p. 11.

[3] The Working Group says that these figures continue to be reviewed for accuracy.

kind were, in some cases, subsequently recognized as detentions, thus giving rise to allegations of links with the security forces"[4].

64. The Working Group added, "During the period under review, concern was expressed by non-governmental organizations about the alleged failure of the authorities to investigate disappearances that occurred during the internal conflict which took place between 1980 and 1991, to identify those responsible and bring them to justice, or to compensate families of victims. Allegedly, the Attorney-General's Office had not acted on decisions of the Constitutional Division of the Supreme Court in relation to writs of habeas corpus filed by families of disappeared children. The Court had urged the Office to take the necessary measures, in line with its constitutional powers, to fully establish the condition and whereabouts of the person concerned with the aim of safeguarding his/her fundamental right to physical freedom."[5]

65. At the domestic level and in the framework of the Peace Agreements that brought an end to the internal armed conflict in El Salvador, on January 16, 1992, a Truth Commission was set up with a mandate to investigate the serious acts of violence that occurred from January 1980 to July 1991. The report of the Commission, issued in 1993, divided its study into four periods: 1980 to 1983; 1983 to 1987; 1987 to 1989, and 1989 to 1991. The first period, which frames the events in this case, was titled "The Institutionalization of Violence" and was described as a period in which "violence became systematic and terror and distrust reigned among the civilian population. The fragmentation of any opposition or dissident movement by means of arbitrary arrests, murders and selective and indiscriminate disappearances of leaders became common practice[6].

66. The Truth Commission described the patterns of violence of both agents of the State and members of the FMLN[7]. In it general overview, the CVR "registered more than 22,000 complaints of serious acts of violence that occurred in El Salvador [...] Over 60 per cent of all complaints concerned extrajudicial executions, over 25 per cent concerned enforced disappearances, and over 20 per cent included complaints of torture. Those giving testimony attributed almost 85 per cent of cases to agents of the State, paramilitary groups allied to them, and the death squads. Armed forces personnel were accused in almost 60 per cent of complaints, members of the security forces in approximately 25 per cent [...] The complaints registered accused FMLN in approximately 5 per cent of cases."[8].

67. Among the patterns of violence by agents of the State and their collaborators the Truth Commission found that "[a]ll the complaints indicate that this violence originated in a political mind-set that viewed political opponents as subversives and enemies [...] This situation is epitomized by the extrajudicial executions, enforced disappearances and murders of political opponents [...] Counter-insurgency policy found its most extreme expression in a general practice of "cutting the guerrillas lifeline" [...] Roughly 50 per cent of all the complaints analyzed concern

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[4] Report of the Working Group on Enforced or Involuntary Disappearances, United Nations Distr.GENERAL E/CN.4/2004/58, 21 January 2004, Original: English, par. 109.

[5] *Idem,* pars. 110,111, 113.

[6] Report of the Commission on the Truth for El Salvador, From Madness to Hope (The 12-year War in El Salvador), p. 19.

[7] The Truth Commission registered more than 800 complaints of serious acts of violence attributed to the FMLN. It found that this violence occurred mainly in conflict zones and that nearly half the complaints concerned deaths, mostly extrajudicial executions. The rest concern enforced disappearances and forcible recruitment.

[8] Report of the Commission on the Truth for El Salvador, From Madness to Hope (The 12-year War in El Salvador), p. 41. The Commission points out that these complaints do not cover every act of violence, as it was able to receive only a significant sample in its three months of gathering testimony.

incidents which took place during the first two years, 1980 and 1981; more than 20 per cent took place in the following two years, 1982 and 1983. In other words, over 75 per cent of the serious acts of violence reported to the Commission on the Truth took place during first four years of the decade [...] The violence was less indiscriminate in urban areas, and also in rural areas after 1983. [Indeed,] 95 per cent of complaints concerned incidents in rural areas [...]"[9] It should be noted that the report of the Truth Commission does not include a special section on child disappearances in El Salvador; however, it included many such cases in its lists of missing persons.

68. The Inter-American Court, in the case of *Contreras et al. v. El Salvador*, took note of the recognition by the State of El Salvador of the existence of a systematic pattern of disappearance of children during the internal armed conflict, and recapitulated the relevant sources in which reference is made to the characteristics of that practice. As a result, the Inter-American Court established that:

> The phenomenon of forced disappearance in the armed conflict in El Salvador was addressed by the Truth Commission for El Salvador with the support of the United Nations, the Inter-American Commission on Human Rights, international agencies, authorities and bodies of the State itself, and other organizations. However, there was also a more specific pattern, acknowledged by the State, relating to the forced disappearance of children (*supra* para. 17), who were taken and illegally held by the Armed Forces during counterinsurgency operations.[10] Likewise, it has been established that, in many cases, this practice implied the appropriation of children and their registration under a different name or with false personal data.[11]
>
> According to the evidence in the case file, at May 2011, the Search Association had received 881 complaints of children disappeared during the armed conflict; of these, 363 had been resolved, including those who were located alive and those found dead. From these cases,

[9] Report of the Commission on the Truth for El Salvador, From Madness to Hope (The 12-year War in El Salvador), p. 42.

[10] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción. Un estudio sobre la problemática de la niñez desaparecida por el conflicto armado en El Salvador*, January 2003 (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/24); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos como consecuencia del conflicto armado interno en El Salvador*, April 1999 (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folios 3207/32 to 3702/33); Asociación Pro-Búsqueda, *El día más esperado. Buscando a los niños desaparecidos de El Salvador.* UCA Editores, San Salvador, 2001 (evidence file, volume V, attachment 11 to the pleadings, motions and evidence brief, folios 3223); Asociación Pro-Búsqueda, Report on El Salvador to the Inter-American Commission on Human Rights, *La actuación del Estado de El Salvador en la problemática de la niñez desaparecida a consecuencia del conflicto armado*, October 2005 (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3540); Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador.* Document prepared for the visit of the Working Group on Enforced or Involuntary Disappearances, February 5, 2007 (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Laínez Villaherrera, Rosa América and Hasbún Alvarenga, Gianina, *Tejiendo nuestra identidad. Intervención psicosocial en la problemática de la niñez desaparecida en El Salvador*, Asociación Pro-Búsqueda, San Salvador, 2004 (evidence file, volume VI, attachment 28 to the pleadings, motions and evidence brief, folio 3958). In addition, the FMLN had exerted pressure on some of its members to leave their children in "safe houses" to act as a screen for clandestine activities. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción...* (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folios 2619/17 and 2619/18); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos...* (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folios 3207/13 to 3207/15), and Asociación Pro-Búsqueda, *El día más esperado...* (evidence file, volume V, attachment 11 to the pleadings, motions and evidence brief, folios 3223 to 3224 and 3378).

[11] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Expert opinion provided by Ana Georgina Ramos de Villalta before notary public (affidavit) on May 5, 2011 (evidence file, volume XI, affidavits, folios 7535 to 7537), and Expert opinion provided by Douglass Cassel before notary public (affidavit) on May 11, 2011 (evidence file, volume XI, affidavits, folios 7552 to 7575).

they were able to reunite 224 young people with their families.[12] Even though the Search Association is one of the representatives in this case, it is important to highlight that it is the institution that has documented and investigated this phenomenon most extensively and taken measures to search for and reunite young people with their families.[13] In this regard, the State indicated that "for more than 18 years, the Search Association has solved hundreds of cases of disappeared children and assisted numerous victimized families in an adverse environment, [...] without the support of the State." Given that it is part of the body of evidence in this case and that the State has not objected to it, and taking into consideration the work of the Search Association that has been recognized by the State itself, the Court will proceed to present some results of the investigations conducted by this organization.

The phenomenon of the forced disappearance of children was part of a deliberate strategy in the context of the institutionalized State violence that characterized this period of the conflict. Most of the disappearances occurred between 1980 and 1984, with the highest figures corresponding to 1982.[14] In its reports, the organization has established that the departments most affected by the conflict were also those where the greatest number of children disappeared; they included Chalatenango, San Salvador, San Vicente, Morazán, Usulután, Cabañas, Cuscatlán and La Libertad,[15] because the disappearances formed part of the counterinsurgency strategy developed by the State under the concept of destroying population groups associated with the guerrillas. Under that strategy, it was found useful to abduct children in order to separate them from the "enemy population" and "to educate them under the State's ideology at that time."[16] The children were abducted during military operations after family members had been executed or forced to flee to save their lives, and they were frequently appropriated by military leaders, who included them within their immediate families as their children.[17] The Search Association has identified 15 military operations in which soldiers took children with them, with the number of documented cases

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[12] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folio 7530).

[13] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. Expert witness Villalta stated that this organization is "the only body with disaggregated records of the number of cases of children disappeared during the armed conflict." Expert opinion given by Ana Georgina Ramos de Villalta *supra* note 35, (evidence file, volume XI, affidavits, folio 7530).

[14] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/23); Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3540); Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/32).

[15] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/31).

[16] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584), and Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541).

[17] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador, *supra* note 31, (evidence file, volume IV, attachment 8 to the pleadings, motions and evidence brief, folio 3190), and Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

varying between three and 39 in each operation.[18] Some former soldiers testified that, starting in 1982, they received orders to take any child found during an attack on enemy positions.[19] In addition to the separation of children from their families as part of a counterinsurgency strategy, there were other reasons, including taking children to give them up for adoption.[20]

According to the evidence received, the possible destinations of the children after they had been separated from their families and disappeared can be broken down as follows:[21] (1) adoptions through a formal process within the judicial system, with the majority assigned to foreign families, mainly in the United States, France and Italy;[22] (2) "*de facto*" adoptions or "appropriations," consisting of cases in which Salvadoran families took custody of the children but never formalized the adoption;[23] (3) cases of "appropriation" by soldiers,[24] who included the children in their families as if they were their own, although in most cases the children were used for domestic or agricultural tasks;[25] (4) children raised in orphanages

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[18] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/16), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/13).

[19] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/14), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/11).

[20] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folios 2619/15); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/12); Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541), and Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

[21] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/28); Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/22), and Asociación Pro-Búsqueda, Report on El Salvador, *supra* note 34, (evidence file, volume V, attachment 12 to the pleadings, motions and evidence brief, folio 3541). See also, *Case of the Serrano Cruz Sisters, supra* note 29, para. 48.6).

[22] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/31), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/25).

[23] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/32), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/26).

[24] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/32), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/25).

[25] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3584).

without guardians, in which those in charge of them did not try to find their parents,[26] and (5) children who grew up on military bases.[27] In addition, although it has not been proved in a court of law, the Search Association has compiled evidence indicating that some disappeared children were victims of illegal trafficking.[28] Finally, at September 2010, the Search Association had located 48 cases of children who had perished.[29]

Lastly, "in the cases of both adoptions through a legal procedure and appropriation of children, there was a practice of altering the minor's identity; many were registered as sons and daughters; in other words, without the need to alter the records; in other cases the names or surnames were changed together with the child's age."[30]

69. In response to the need to look for the children who had disappeared, Executive Decree 45, issued on October 5, 2004, created the Inter-Institutional Commission to Trace Missing Children in El Salvador (hereinafter the "Tracing Commission"). Several international and national agencies have mentioned the need to create a tracing mechanism. They include the UN Committee on the Rights of the Child[31], the Human Rights Ombudsman of El Salvador, and the petitioner in this case, Asociación Pro Búsqueda. As this Commission failed to produce any specific results, culminating its mandate without results, on January 15, 2010, a new National Commission for the Search of Disappeared Children was established; it official started up its operations on March 14, 2011.[32]

70. Next, the IACHR will establish the facts that have been proven separately with respect to each particular case, since the alleged disappearances occurred in different circumstances. In addition, even though some of the proceedings have certain similarities and even involve children of different family groups, the Commission considers it pertinent to establish in each case the domestic proceedings that were carried out, before the Office of the Human Rights Ombudsperson and other state authorities.

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[26] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/66).

[27] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/34), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/22).

[28] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Asociación Pro-Búsqueda, *La paz en construcción, supra* note 34, (evidence file, volume IV, attachment 5 to the pleadings, motions and evidence brief, folio 2619/33), and Asociación Pro-Búsqueda, *La problemática de niñas and niños desaparecidos..., supra* note 34, (evidence file, volume IV, attachment 10 to the pleadings, motions and evidence brief, folio 3207/20).

[29] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. *Cf.* Statistical data from the Asociación Pro-Búsqueda up until September 2010 (evidence file, volume IV, attachment 9 to the pleadings, motions and evidence brief, folio 3206).

[30] Corte I.D.H., *Caso Contreras y otros Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 31 de agosto de 2011 Serie C No. 232, párr. 51. Citando. Asociación Pro-Búsqueda, *La problemática de la niñez desaparecida en El Salvador, supra* note 34, (evidence file, volume V, attachment 13 to the pleadings, motions and evidence brief, folio 3585). *Cf.* see also expert opinion provided by Ana Georgina Ramos de Villalta, *supra* note 35, (evidence file, volume XI, affidavits, folios 7535 to 7537).

[31] Committee on the Rights of the Child, United Nations, Thirty-sixth session, 30 June 2004, CRC/C/15/Add.232.

[32] See http://www.pddh.gob.sv/menupress/menunoti/192-comision-nacional-de-busqueda-de-ninos-y-ninas-desaparecidos-inicia-su-trabajo.

C. With respect to José Adrián Rochac Hernández

71. José Adrián Rochac Hernández was born on May 17, 1975, in the canton of San José Segundo, jurisdiction of San Martín, department of San Salvador.[33]

72. José Adrián is the son of Alfonso Hernández and María Silveria Rochac.[34]

73. The Rochac Hernández family resided in the canton of San José Segundo, municipality of San Martín, department of San Salvador, and at the time of the facts was made up of Alfonso Hernández Herrera (father), María Silveria Rochac (mother) and their eight children: Sebastián, 14 years old; Estanislao, 12 years old; Sergio Antonio, 11 years old; María Juliana, 10 years old; María del Tránsito, 9 years old; José Adrián, 5 years old; Ana Margarita, 3 years old; and Nicolás Alfonso, born on September 6, 1980, all with the last name Rochac Hernández.[35] The information available indicates that these ages correspond to the moment of the disappearance of José Adrián.

74. As of early December 1980, the families of the canton San José Segundo were victims of death threats by the armed forces, demanding that they abandon their homes.[36] As a result of these threats, the family moved to another dwelling in the same canton, but would always return for economic reasons.[37]

1. Facts surrounding his disappearance

75. One week before the disappearance of José Adrián Rochac Hernández, Ms. María Silveria Rochac Hernández was captured by soldiers for not carrying papers when on a bus with her daughters María Juliana and María del Tránsito. She was released the next day, and on that occasion she told her family that she was released because she was pregnant, for the members of the military told her that "that one that you are going to have perhaps it will be a boy and can serve the fatherland … we're going to let you go, but if there's a shoot-out out there and a bullet kills you it's no longer our problem."[38]

76. On December 12, 1980, at 8:00 a.m., a military operation was carried out in the canton of San José Segundo, municipality of San Martín Segundo. This operation included the participation of units of the Salvadoran Air Force.[39] It was said that the area was used by

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[33] Annex xx. Birth certificate of José Adrián Rochac Hernández, issued March 12, 2002.

[34] Annex xx. Birth certificate of José Adrián Rochac Hernández, issued March 12, 2002.

[35] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7. The ages were given by the petitioners. Some of these do not match those indicated by María Juliana Rochac Hernández. In the case of the age of María Juliana and Sergio Antonio, the IACHR relies on what the declarant said.

[36] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7..

[37] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[38] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[39] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7, and Annex xx. Testimony of José Román Quijano. Notarized Public Document before Notary Paul Fino Soloórzano, January 11, 2007. Book XXIX, number 8.

"subversives" and that for this reason it was considered a zone that supposed supported the guerrillas.[40]

77. As a security measure, María Silveria Rochac kept the doors to her home closed and stayed inside with her children. Her husband, Alfonso Hernández Herrera, and two of their children, Sebastián and Estanislao Rochac Hernández, had gone out to work and were not present.[41]

78. The soldiers and some paramilitaries arrived at the house at about 9:00 a.m. asking about weapons and searching the house. María Silveria Rochac denied that she had weapons while she was bleeding due to the birth of her newborn child, who she was holding. Ms. Rochac left the baby in the care of her other son Sergio Antonio. At that moment, the assailants took María Silveria Rochac and removed her from the house. Sergio Antonio Rochac Hernández, on seeing that they were taking his mother away, gave the baby to his sister María Juliana Rochac Hernández and went after Ms. María Silveria.[42]

79. The other children, including José Adrián Rochac Hernández, were being kept in the house under the threat that they shouldn't go out because they would kill them. At that moment, three shots were heard.[43] According to the narration by María Juliana Rochac Hernández, at that moment she sensed that they had killed her mother and she heard like it was her brother José Adrián saying "where can I hide, where can I hide."[44]

80. Afterwards five soldiers returned to the house and told José Adrián Rochac Hernández "let's go little boy … let's go little boy, we're going to get on the horsey." According to the statement by María Juliana Rochac Hernández, one of the soldiers lived in the same canton and was known as "El Pacho."[45] The three sisters and the newborn baby stayed in the house when a neighbor by the name of Tina Martínez arrived; she told her that her mother and brother had been assassinated and that "they should go and place a blanket over the bodies." María Juliana Rochac Hernández said that she did not do so because wasn't so bold and that her sister María del Tránsito Rochac Hernández, 9 years old, went to cover the bodies and told her that her mother had a gunshot wound to the jaw and that her brother had one in his forehead.[46]

81. After these events, the family fled to the town of San Bartolomé Perulapía, to the home of the children's paternal grandmother.[47]

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[40] Annex xx. News in Diario Latino, Monday, December 22, 1980, pp. 7 and 22.

[41] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[42] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[43] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7; and Annex xx. Testimony of Dolores López Beltrán. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 9.

[44] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[45] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[46] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7; and Annex xx. Testimony of Dolores López Beltrán. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 9.

[47] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7; and Annex xx. Testimony of Dolores López Beltrán. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 9.

82. On the fate of José Adrián Rochac Hernández, his sister María Juliana said that "later she had some information on her brother, that her grandmother told her that several persons told her that the soldiers took away a small boy with a light complexion, and that they recognized him as José Adrián."[48]

83. A neighbor, Ms. Dolores López Beltrán, observed while José Adrián Rochac Hernández was take by soldiers of the Salvadoran Air Force and taken to the outskirts of the canton San José Segundo.[49] The child was taken to a truck of the Armed Forces[50] and was later seen in Perulapía, to the north, by several inhabitants who recognized him as a child who lived in the canton San José Segundo. After this they are said to have taken him to Air Force facilities.[51]

84. Another witness, Mr. José Román Quijano, indicated that one day after an operation in December 1980, he began to see soldiers who were returning from San José. According to his testimony:

> he saw that one of them had a small boy by the hand, it was a small boy approximately five years of age, very small and they were taking him barefoot, with a small animal they were bringing, he knew who it was because he had seen that child before, it was a child that he knew lived in the canton, at that moment he didn't know the child's name. He saw that they were taking him towards the plaza of Perulapía to where the trucks of the Army were waiting for him.... He recalls that afterwards they found out that the child's family had been massacred and that the child was left there where they had killed his mother and another small brother.... He recalls that the child walked about as if lost, without knowing what had happened, he was walking alongside the group of soldiers.... That he does not know where the soldiers went with the child but that it is obvious that they took him to the Air force, for they were soldiers from the Air Force who were taking him, he knows that the child did not stay in Perulapía.... He also found out that the child's mother was assassinated with another older brother of the child.... That the child like any peasant child, light tan skin, light black hair, thin... with brown shorts and a t-shirt and he was barefoot."[52]

85. José Adrián Rochac Hernández remains disappeared to this day.

86. According to the petitioners' narration, after the disappearance of José Adrián Rochac, his family did not make any effort to search for him due to the generalized fear. After the end of the conflict they went to the Truth Commission to tell what had happened.[53]

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[48] Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[49] Annex xx. Testimony of Dolores López Beltrán. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 9.

[50] Annex xx. Testimony of José Román Quijano. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 8.

[51] Annex xx. Testimony of José Román Quijano. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 8; and Annex xx. Testimony of Juliana Rochac Hernández. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 7.

[52] Annex xx. Testimony of José Román Quijano. Notarized Public Document before Notary Paul Fino Solórzano, January 11, 2007. Book XXIX, number 8.

[53] Annex xx. Letter from Asociación Pro Búsqueda to the Unit on Women and Children, Office of the Attorney General of the Republic, Sub-Regional Office, Soyapango. April 16, 2002.

2. Domestic proceedings

a. Investigation of the Office of the Human Rights Ombudsperson

87. On May 31, 1996, the Asociación Pro Búsqueda presented several cases of disappeared children, including that of José Adrián Rochac Hernández, to the Office of the Human Rights Ombudsperson.[54]

88. On September 7, 2004, that Office issued a report on Ernestina and Erlinda Serrano Cruz and in that report included information on the case of José Adrián Rochac Hernández, and recommended that the Office of the Attorney General of the Republic investigate the disappearances of 136 children that have yet to be resolved.[55]

89. This report was also transmitted to the President of the Republic, the Attorney General of the Republic, the Public Advocate of the Republic (Procurador General de la República), the Constitutional Chamber of the Supreme Court of Justice, and the Minister of National Defense.[56]

b. Investigation by the Office of the Attorney General of the Republic

90. On April 12, 2002, the Unit on Women and Children of the Soyapango Sub-Regional Office of the Office of the Attorney General of the Republic asked Asociación Pro Búsqueda to submit information, which was provided on April 16, 2002[57], setting forth basic factual elements of the disappearance of José Adrián Rochac Hernández, and also indicating the names of persons who can provide information on the matter. In effect, the Asociación Pro-Búsqueda suggested that a statement be taken from María Juliana Rochac Hernández, José Adrián's sister and an eyewitness of the facts. It also suggested that a statement be taken from Dolores López Beltrán, a witness of the moment when the soldiers took the child.[58]

91. On August 28, 2003, an investigator together with the prosecutor assigned to the case went to the place where the facts occurred, but did not obtain any information. According to the State, this happened because of the time that has elapsed and since most of the residents at the time of the events have died, while others have left the area.[59]

92. In their petition of September 11, 2003, the petitioners indicated that they do not have any information on steps taken in the context of this investigation, even though they requested it on three occasions.[60]

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[54] Annex xx. Note of March 31, 1996 from the Asociación Pro-Búsqueda to the Office of the Human Rights Ombudsperson.

[55] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

[56] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

[57] Letter from the Asociación Pro Búsqueda to the Unit on Women and Children, Office of the Attorney General, Sub- Regional Office in Soyapango. April 16, 2002.

[58] Letter from the Asociación Pro Búsqueda to the Unit on Women and Children, Office of the Attorney General, Sub- Regional Office in Soyapango. April 16, 2002.

[59] Response from the State received March 10, 2004.

[60] Annex xx. Letters of September 25, 2002, June 19, 2003, and August 25, 2003, requesting information on steps taken in the investigation into the disappearance of José Adrián Rochac Hernández.

c. *Habeas corpus* proceeding

93. On October 16, 2002, Mr. Alfonso Hernández Herrera filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice for the disappearance of his son José Adrián Rochac Hernández.[61] The brief filed sets forth the facts surrounding his disappearance; the child's birth certificate was attached; and the witness statements of María Juliana Rochac Hernández and Dolores López Beltrán were offered.[62]

94. After filing the writ an executing judge was appointed to expedite the matter. According to procedural regulations set out in the Constitution, the powers of this "executing judge" consist of carrying out the order to show the person (*auto de exhibición personal*). To that end he has broad powers to seek information from both state authorities and private persons.[63]

95. The executing judge indicated that "the books and records kept by the respondent institutions do not include any related annotations or information on the date expressed by the petitioner; in addition, it was found that the minor is not deprived of his liberty in any of the grounds of the military units of the Ministry of Defense and the Chief of the Joint Chiefs of Staff of the Armed Forces."[64]

96. In a resolution of March 3, 2003, notice of which was made on March 11, 2003, the Constitutional Chamber of the Supreme Court of Justice dismissed the *habeas corpus* proceeding. The resolution indicates that no minimum indicium was produced to generate the conviction that the disappearance existed. The Chamber also held that this judgment is not *res judicata*, and, therefore, if new information is forthcoming, it is possible to file a new writ of *habeas corpus.*[65]

D. With respect to Santos Ernesto Salinas

97. Santos Ernesto Salinas was born November 28, 1972, in the canton of San Antonio Achilquiquito, jurisdiction of San Vicente.[66]

98. Santos Ernesto Salinas is the son of María Adela Iraheta, who died on October 21, 2005, and Manuel Eugenio Salinas. At the time of his disappearance he had three siblings by both parents (Amparo, Estela, and Josefina Salinas); and two brothers by his mother, Julio and Felipe Flores Iraheta[67].

1. Facts surrounding his disappearance

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[61] Annex xx. Decision of the Constitutional Chamber of the Supreme Court of Justice, March 3, 2003.

[62] Annex xx. Motion filing writ of habeas corpus, October 16, 2002.

[63] I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, Reparations, and Costs. Judgment of March 1, 2005. Series C No. 120, para. 80. This paragraph makes reference to Articles 44 and 45 of Legislative Decree 2996 of 1960, on Constitutional Procedures of El Salvador.

[64] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[65] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[66] Annex xx. Birth certificate of Santos Ernesto Salinas, issued December 5, 1972.

[67] Facts described by the petitioners, acknowledged by the State.

99. Following is a description of the facts that surrounded the disappearance of Santos Ernesto Salinas based on the narration of the petitioners, which has been recognized by the State in the procedure before the Inter-American Commission. This narration also agrees with the brief filing the writ of *habeas corpus* mentioned *infra.*

100. On October 15, 1981, the guerrilla forces brought down the bridge known as Puente de Oro in the canton of San Nicolás Lempa. Days later, the government conducted a sweep in San Nicolás Lempa that included soldiers from the Atlacatl Battalion and the National Guard.[68] The press documented this operation as a "wrap-around operation" ("*operación envolvente*") that sought to combat and corner the guerrillas who had destroyed the Puente de Oro.[69]

101. In the context of this operation, Santos Ernesto Salinas, 9 years old, was outside of his home with his father and a person by the name of Wilber Torres when the soldiers came in to the place. As the soldiers approached, they ordered Manuel Eugenio Salinas to leave or he would be killed, so he had to leave the place and leave his son there.[70] The child fled along with Mr. Torres to the store of Mr. Torres's aunt, a woman by the name of Tomasa Torres. At that place, in addition to the persons already mentioned, there were other persons.[71]

102. At the moment that Santos Ernesto was taking refuge, soldiers, including from the Atlacatl Battalion, forcibly entered and detained all those present. They then led them to the banks of the river and assassinated all those who were not children.[72] After the assassination of these persons, residents of the place saw a child who matched the physical description of Santos Ernesto Salinas being transported in underwear by the soldiers[73]. From that moment his whereabouts have been unknown.

103. According to the petitioners' narrative the family did not turn to the official agencies to denounce the disappearance for fear of reprisals. The family moved permanently to Tecoluca, department of San Vicente.[74]

2. Domestic proceedings

a. Investigation of the Office of the Attorney General of the Republic in San Vicente

104. In August 2002, Ms. María Adela Iraheta, mother of Santos Ernesto Salinas, filed a complaint with the Office of the Attorney General of the Republic, offices in San Vicente, regarding the forced disappearance of her son. On that occasion the officials did not admit the complaint, indicating that she had to go to the city of San Salvador[75].

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[68] Narration of the petition, coinciding with: Annex xx. Filing of writ of habeas corpus, October 17, 2002.

[69] Annex xx. Diario de Hoy, October 29, 1981, p. 2.

[70] Facts narrated by the petitioners, recognized by the State. In general these facts agree with the narration set forth in the *habeas corpus* motion of October 17, 2002.

[71] Facts narrated by the petitioners, recognized by the State. In general these facts agree with the narration set forth in the *habeas corpus* motion of October 17, 2002.

[72] Facts narrated by the petitioners, recognized by the State. In general these facts agree with the narration set forth in the *habeas corpus* motion of October 17, 2002.

[73] Facts narrated by the petitioners, recognized by the State. In general these facts agree with the narration set forth in the *habeas corpus* motion of October 17, 2002.

[74] Facts narrated by the petitioners, recognized by the State. In general these facts agree with the narration set forth in the *habeas corpus* motion of October 17, 2002.

[75] Facts narrated by the petitioners, recognized by the State.

b. *Habeas corpus* proceeding

105. On October 17, 2002, Ms. María Adela Iraheta filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice for the disappearance of her son Santos Ernesto Salinas.[76] The brief for filing this writ sets forth the facts surrounding the disappearance, his birth certificate was attached, and the witness statement of Ms. Josefa Sánchez was offered; she observed how Santos Ernesto was taken away by the soldiers.[77]

106. After the writ was filed, an executing judge was appointed to expedite the process.[78] The "*executing judge*" reported that "there is no investigation or investigative steps being taken against the beneficiary," accordingly the petition cannot be the subject of study by the law.[79]

107. The information available indicates that the executing judge did not take any other steps to investigate and failed to question the person mentioned in the motion filed.[80]

108. By resolution of March 3, 2003, notice of which was made on March 11, 2003, the Constitutional Chamber of the Supreme Court of Justice dismissed the *habeas corpus* proceeding. The Supreme Court held that no minimum indicium was produced to give rise to the conviction that the disappearance occurred. The Chamber also held that this judgment is not *res judicata* and, therefore, if new information is produced, it is possible to file a new writ of *habeas corpus.*[81]

E. Emelinda Lorena Hernández

109. Emelinda Lorena Hernández was born on March 18, 1981, in the jurisdiction of Meanguera, department of Morazán.[82] Her mother is María Adela Hernández and her father was Juan de la Cruz Sánchez.[83] Emelinda Lorena Hernández's siblings are Joel Alcides Hernández, 3 years old, Juan Evangelista, José Cristino, Eligorio, and Rosa Ofelia Hernández. Emelinda Lorena Hernández's grandmother is Valentina Hernández, and her life partner is Santiago Pérez[84].

1. Facts surrounding her disappearance

110. From December 8 to 16, 1981, an extensive military operation was carried out in several cantons of the jurisdiction of Meanguera, department of Morazán. In the context of this operation events occurred known as the *Massacres of El Mozote and nearby places,* in which more than 1,000 persons were killed at the hands of the Immediate Response Battalion (Batallón de

[76] Annex xx. Decision of the Constitutional Chamber of the Supreme Court of Justice.

[77] Annex xx. Habeas corpus motion, October 17, 2002.

[78] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[79] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[80] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[81] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[82] Annex xx. Birth certificate of Emelinda Lorena Hernández, issued April 1, 1981.

[83] Annex xx. Birth certificate of Emelinda Lorena Hernández, issued April 1, 1981 and Facts from the Petition. The information available indicates that the father of Emelinda Lorena Hernández is deceased.

[84] Facts narrated by the petitioners, recognized by the State.

Reacción Inmediata) of the Armed Forces of El Salvador.[85] The operation was called "Operación Rescate" (Operation Rescue) and is the most emblematic example of the implementation of scorched earth operations as part of the strategy known as "taking the water from the fish."[86] The military commander of the operation was the commander of the Atlacatl Battalion, Domingo Monterrosa Barrios.[87]

111. Next is a description of the facts that surrounded the disappearance of Emelinda Lorena Hernández based on the narration of the petitioners, which has been recognized by the State in the procedure before the Inter-American Commission. This narration also agrees with the habeas mentioned *infra.*

112. The family of Emelinda Lorena Hernández – who at the time was nine months old – lived in the canton of La Joya. On learning of the imminent military incursion the family fled to the bush in search of protection.[88] After several days on the run, the Emelinda Lorena Hernández's parents decided to take her to the canton of La Joya and leave her in the care of a woman by the name of Marta Ramírez, who in turn had four children, including an eight-month-old baby.[89]

113. On December 12, the day after having left Emelinda Lorena Hernández in the care of Marta Ramírez, shots were heard. That night, the father of Emelinda Lorena Hernández found Marta Ramírez and her family dead, but did not find the body of Emelinda Lorena.[90] Persons who lived in the area saw soldiers taking away children.[91]

114. To date, the whereabouts of Emelinda Lorena Hernández remain unknown.

2. Domestic proceedings

a. Investigation of the Office of the Human Rights Ombudsperson

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[85] These facts were before the Commission in the context of Case 10,720. *El Mozote Massacre v. El Salvador.* At present these facts are under the jurisdiction of the Inter-American Court. The note remitting the case to the Inter-American Court and the Inter-American Commission's report on the merits can be found at the following link: http://www.cidh.oas.org/demandas/10.720Esp.pdf

[86] On the Operation and the events that occurred in its context, see: Annex xx. Informe de la Oficina de Tutela Legal del Arzobispado de San Salvador, El Salvador, sobre la masacre de El Mozote y caseríos aledaños, November 9, 1991. See also: From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, Available at: http://www.fundacionpdh.org/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm. p. 118.

[87] On the Operation and the events that occurred in its context, see: Annex xx. Informe de la Oficina de Tutela Legal del Arzobispado de San Salvador, El Salvador, sobre la masacre de El Mozote y caseríos aledaños, November 9, 1991. See also: From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, Available at: http://www.fundacionpdh.org/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm. p. 118.

[88] Facts narrated by the petitioners, recognized by the State. In general, these facts agree with the narration set forth in the *habeas corpus* motion, November 15, 2002.

[89] Facts narrated by the petitioners, recognized by the State. In general, these facts agree with the narration set forth in the *habeas corpus* motion, November 15, 2002.

[90] Facts narrated by the petitioners, recognized by the State. In general, these facts agree with the narration set forth in the *habeas corpus* motion, November 15, 2002.

[91] Facts narrated by the petitioners, recognized by the State. In general, these facts agree with the narration set forth in the *habeas corpus* motion, November 15, 2002.

115. On May 31, 1996, the Asociación Pro Búsqueda presented several cases of disappeared children, including that of Emelinda Lorena Hernández, to the Office of the Human Rights Ombudsperson.[92]

116. On September 7, 2004, the Office of the Human Rights Ombudsperson issued a report on Ernestina and Erlinda Serrano Cruz, and in that report detailed the case of Emelinda Lorena Hernández, recommending that the Office of the Attorney General of the Republic investigate the disappearances of 136 cases of children still unresolved.[93] This report was transmitted to the President of the Republic, the Attorney General of the Republic, the Public Advocate of the Republic, the Constitutional Chamber of the Supreme Court of Justice, and the Minister of National Defense.[94]

b. *Habeas corpus* proceeding

117. On November 15, 2002, Ms. María Adela Hernández filed a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice for the disappearance of her daughter Emelinda Lorena Hernández.[95]

118. The brief for this writ of *habeas corpus* described the facts surrounding the disappearance of Emelinda Lorena Hernández; her birth certificate was attached; and the witness statement of Dominga Martínez was offered. Ms. Martínez observed several children being transported by soldiers.[96]

119. After the writ was filed, an executing judge was appointed to expedite the process.

120. This judge reported that "according to the information provided by the department of Human Rights of the Ministry of Defense, there is no file on Emelinda Lorena Hernández" and, therefore, there is no violation of Article 11(1) of the Constitution.[97]

121. The information available indicates that the executing judge did not take other steps and that the testimony offered was not heard.

122. By resolution of March 3, 2003, notice of which was given on March 11, 2003, the Constitutional Chamber of the Supreme Court of Justice dismissed the *habeas corpus* proceeding. The resolution indicates that no minimum indicium was produced to generate the conviction that a disappearance occurred. The Chamber also held that this judgment is not *res judicata*, and therefore if new information is produced, it is possible to file a new writ of *habeas corpus.*[98]

F. Manuel Antonio Bonilla and Ricardo Ayala Abarca

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[92] Annex xx. Note of March 31, 1996 from the Asociación Pro-Búsqueda to the Office of the Human Rights Ombudsperson.

[93] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

[94] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

[95] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[96] Annex xx. Habeas corpus motion, November 15, 2002.

[97] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

[98] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice of El Salvador, March 3, 2003.

123. Manuel Antonio Bonilla was born on December 7, 1971, in the canton of Cerros de San Pedro, municipality of San Esteban Catarina, department of San Vicente, El Salvador.[99] Manuel Antonio Bonilla is the son of José de la Paz Bonilla and María de los Ángeles Osorio.[100] His siblings are José Arístides Bonilla, 14 years old at the time of the disappearance, and María Inés Bonilla, 16 years old at the time of the disappearance.[101] His maternal grandmother is María Josefa Rosales and his paternal aunt and uncle are María Esperanza Alvarado and Luis Alberto Alvarado[102].

124. There is no legible documentary evidence of Ricardo Ayala Abarca's date of birth.[103] The family of Ricardo Ayala Abarca was made up of his mother Petrolina Abarca Alvarado, his grandmother Paula Alvarado, and his siblings Ester, Daniel, José Humberto, Osmín Abarca.[104]

1. Facts surrounding their disappearances

125. Next is a description of the facts that surrounded the disappearance of Manuel Antonio Bonilla and Ricardo Ayala Abarca according to the narration by the petitioners, which has been recognized by the State in the procedure before the Inter-American Commission.

126. From August 19 to 24, 1982, in Quebrada Seca, road to Los Conejos, canton of Amatitán Abajo, jurisdiction of San Esteban Catarina, in the department of San Vicente, a military operation was carried out by members of the Fifth Infantry Brigade and the Atlacatl Immediate Response Battalion.[105] The operation was directed by the Ministry of Defense and the Chief of the Joint Chiefs of Staff of the Armed Forces.[106]

127. This operation was called "Lieutenant Colonel Mario Azenón Palma"[107] and included the participation of nearly 6,000 troops.[108]

128. On August 19, 1982, when the operation began, the families that were living in the canton of Cerros de San Pedro and other neighboring cantons were forced to flee their homes and take refuge in the mountains. The family of Manuel Antonio Bonilla was one of those that fled and in the mountains they met up with other families in the same situation.[109]

129. In the context of an exchange of gunfire near the hamlet of Guayabillas, the family of Manuel Antonio Bonilla became separated, and at that moment met up with the child Ricardo Ayala Abarca, who was carrying his six-year-old sister Ester. From that moment, after walking for

[99] Annex xx. Birth certificate of Manuel Antonio Bonilla, issued January 27, 2003.

[100] Annex xx. Birth certificate of Manuel Antonio Bonilla, issued January 27, 2003.

[101] Facts narrated by the petitioners, recognized by the State.

[102] Facts narrated by the petitioners, recognized by the State.

[103] Annex xx. Illegible birth certificate. Facts narrated by the petitioners, recognized by the State.

[104] Facts narrated by the petitioners, recognized by the State.

[105] Facts narrated by the petitioners, recognized by the State.

[106] Annex xx. El Diario de Hoy, August 28, 1982.

[107] Annex xx. Diario Latino. Finaliza operación contra insurgente en San Vicente "Operación Mario Palma", August 24, 1982.

[108] From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, Available at: http://www.fundacionpdh.org/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm. p. 124.

[109] Facts narrated by the petitioners, recognized by the State.

three days, the group stopped by a sugar cane field, in an area known as Quebrada Seca, to eat and rest. At that moment soldiers approached, and even though some of the persons who were fleeing were hiding in the jungle, other remained in the area known as Quebrada Seca. This last group was discovered, surrounded, and subjected to multiple gunshots by the soldiers. After the assassination of these persons, the soldiers captured the children Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca, along with María Josefa Rosales, Ester Ayala Abarca, María Esperanza Alvarado, and Mauricio Osorio Alvarado.[110]

130. The soldiers, on not finding the other residents who were hiding, left with the civilians who they had captured. After a few kilometers they released María Josefa Rosales, given her old age, turning her over to Ester Ayala Abarca and Mauricio Osorio Alvarado.[111]

131. To date, the whereabouts of the children Manuel Antonio Bonilla and Ricardo Ayala Abarca remain unknown.

132. Ricardo Ayala Abarca and Manuel Antonio Bonilla appear in the Truth Commission report as victims of homicide, on August 18, 1982, at the hands of the Armed Forces of El Salvador; they appear in the lists of persons about whom the information is from "indirect sources."[112]

2. Domestic Proceedings

a. Investigation by the Office of the Human Rights Ombudsperson

133. On May 31, 1996, the Asociación Pro-Búsqueda submitted several cases of disappeared children to the Office of the Human Rights Ombudsperson, among them those of Ricardo Ayala Abarca and Manuel Bonilla Osorio.[113]

134. On September 7, 2004, the Office of the Ombudsperson issued a report on Ernestina and Erlinda Serrano Cruz, and in that report detailed the case of Ricardo Ayala Abarca and Manuel Bonilla Osorio, recommending to the Office of the Attorney General of the Republic that it investigate the disappearances of 136 children, not yet resolved.[114] This report was transmitted to the President of the Republic, the Attorney General of the Republic, the Public Advocate of the Republic, the Constitutional Chamber of the Supreme Court of Justice, and the Minister of National Defense.[115]

b. *Habeas corpus* proceeding

135. On February 18, 2003, Petronila Abarca Alvarado filed a writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice on the disappearance of her son Ricardo Ayala Abarca. At the same time, on February 27, 2003, María de los Ángeles Osorio filed a

[110] Facts narrated by the petitioners, recognized by the State.

[111] Facts narrated by the petitioners, recognized by the State.

[112] From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador, Annex: Tome II, 6. List of victims presented to the Commission with Indirect Source, pp. 16 and 20. Annex 1. http://www.fundacionpdh.org/lesahumanidad/informes/elsalvador/informe-de-la-locura-a-la-esperanza.htm.

[113] Annex xx. Note of March 31, 1996, from the Asociación Pro-Búsqueda to the Office of the Human Rights Ombudsperson.

[114] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

[115] Resolutions of the Office of the Human Rights Ombudsperson, September 7, 2004.

writ of *habeas corpus* before the Constitutional Chamber of the Supreme Court of Justice of the disappearance of her son Manuel Antonio Bonilla Osorio.[116]

136. After the writ was filed, an executing judge was appointed to expedite the process.

137. In the case of Ricardo Ayala Abarca, this judicial authority made an inquiry of Chief of the High Command, who told him "that on reviewing the archives of this agency, and of the various military units, no records or information appears related to the possible restriction or deprivation of liberty of the beneficiary, in the place and date mentioned in the request or on other dates and places."[117]

138. By resolution of March 6, 2003, notice of which was given on June 6, 2003, the *habeas corpus* proceeding was dismissed. The Constitutional Chamber held that no minimum indicium was produced to generate the conviction that the disappearance occurred. The Chamber also held that this judgment is not *res judicata* and, therefore, if new facts are produced, it is possible to file a new writ of *habeas corpus.*[118]

139. In the case of Manuel Antonio Bonilla Osorio, the executing judge made an inquiry of the Chief of the High Command, who stated "that on reviewing the archives of that agency, and of the various military units, no records or information appear related to the possible restriction or deprivation of liberty of the minor Manuel Antonio Bonilla Osorio, in the place and date mentioned in the request or on other dates or places." It was also indicated that "Manuel Antonio Bonilla Osorio is not restricted in his ambulatory liberty in any of the units that make up the Armed Forces, and there are no investigations or orders issued by the Chief of the Joint Chiefs of Staff of the Armed Forces or by other military authorities with respect to the minor Manuel Antonio Bonilla Osorio." The executing judge reported that the Minister of Defense answered in the same terms, and that he went to the Fifth Brigade, where they did not have any information with respect to the case.[119]

140. The *habeas corpus* proceeding was dismissed by resolution of May 26, 2003, notice of which was given on June 6, 2003. The Constitutional Chamber held that no minimum indicium was produced to give rise to the conviction that the disappearance occurred. The Chamber also held that this judgment is not *res judicata*, and, therefore, if new information is produced, it is possible to file a new writ of *habeas corpus.*[120]

V. LEGAL ANALYSIS

141. Based on the facts that have been considered proven, and taking into consideration the context of an internal armed conflict in which they unfolded, the Commission will undertake its legal analysis in the instant case in the following order: (i) Characterization of the appropriation of children as a form of forced disappearance; (ii) The rights to personal liberty, humane treatment, life, and the recognition of juridical personality; (iii) The rights to a family, a name, and special protection

[116] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, March 6, 2003; and Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, May 26, 2003.

[117] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, March 6, 2003.

[118] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, March 6, 2003.

[119] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, May 26, 2003.

[120] Annex xx. Judgment of Habeas Corpus, Constitutional Chamber, Supreme Court of Justice, May 26, 2003.

for children; (iv) The rights to judicial guarantees and judicial protection; and (v) the right to humane treatment with respect to next-of-kin.

A. Characterization of the appropriation of children as a form of forced disappearance

142. The consistent case-law of the organs of the inter-American system in cases of forced disappearance of persons has indicated that this phenomenon constitutes an unlawful act that gives rise to the multiple and continuing violation of several rights protected by the American Convention and it places the victim in a completely defenseless state, entailing other related offenses. The international responsibility of the State is aggravated when the disappearance is part of a systematic pattern or practice applied or tolerated by the State. It is, in summary, a crime against humanity that represents a crass abandonment of the core principles on which the inter-American system is grounded.[121]

143. The Inter-American Court has recounted the international treatment accorded to forced disappearance in the following terms:

> Although the international community adopted the first declaration and the first treaty using the term forced disappearance of persons only recently in 1992 and 1994, respectively, already in the 1970s, the issue as such was examined in international human rights law and was developed within the framework of the United Nations system as of the 1980s.[122] The inter-American regional system had frequently used this term to refer to this series of acts and violations as a crime against humanity.[123] It is even described as such by Article 7(1)(i) of the

[121] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 82; *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, para. 92; Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections. Judgment of November 23, 2004. Series C No. 118, paras. 100 to 106; and *Case of Molina Theissen v. Guatemala. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of July 3, de 2004, Series C No. 108, para. 41; IACHR. Report No. 101/01. Case 10,247 *et al*. Extrajudicial Executions and Forced Disappearances of Persons. Peru. October 10, 2001. Para. 178.

[122] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153. Para. 82. Citing: "The establishment of a Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, by Resolution 20 (XXXVI) of February 29, 1980, is a clear demonstration of general censure and repudiation of the practice of disappearances, which had already received world attention at the UN General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Subcommission for the Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the rapporteurs or special envoys of the Commission on Human Rights show concern that the practice of disappearances be stopped, the victims reappear and that those responsible be punished." (*Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 151. Along the same lines see *Case of Godínez Cruz,* para. 159, and *Case of Fairén Garbi and Solís Corrales*. Judgment of March 15, 1989. Series C No. 6, para. 146). In addition, one should cite the following resolutions issued by the UN General Assembly: Resolution 3450 (XXX) of December 9, 1975, 30th session, on the disappearances in Cyprus as a result of the armed conflict; Resolution 32/128 of December 16, 1977, 32nd session, proposing the creation of an organ entrusted with investigating the disappearances in Cyprus "impartially, effectively and speedily," and Resolution 33/173 of December 20, 1978, 33rd session, called "Disappeared Persons," by which the General Assembly expressed its concern over "reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations," as well as its concern over "reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons," and indicated that there is a "danger to the life, liberty and physical security of such persons arising from the persistent failure of these authorities or organizations to acknowledge that such persons are held in custody or otherwise to account for them."

[123] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 82. Citing: Resolution AG/RES. 666 (XIII-0/83) of November 18, 1983 and Resolution AG/RES. 742 (XIV-0/84) of November 17, 1984, of the General Assembly of the Organization of American States. See also, Inter-American Commission on Human Rights. 1983-1984 Annual Report. Chapter IV, paras. 8, 9 ad 12 and Chapter V, I.3, OEA/Ser.L/V/II.63 doc. 10 of September 28, 1984; 1986-1987 Annual Report. Chapter V.II, OEA/Ser.L/V/II.71 Doc. 9 rev. 1 of September 22, 1987; 1987-1988 Annual Report. Chapter IV, OEA/Ser.L/V/II.74 Doc. 10 rev. 1 of September 16, 1988; 1990-1991 Annual Report. Chapter V, OEA/Ser.L/V/II.79, Doc. 12 Rev. 1 of February 22, 1991, and 1991 Annual Report. Chapter IV, OEA/Ser.L/V/II.81 Doc. 6 Rev. 1 of February 14, 1992.

1998 Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed against any civilian population.[124] This description of the offense in reference has been reiterated in the text of Articles 5 and 8(1)(b) of the United Nations International Convention for the Protection of All Persons from Forced disappearance, adopted by the recently created United Nations Human Rights Council in June 2006.[125]

144. According to the Inter-American Court,

The need to consider integrally the offense of forced disappearance of an autonomous, continuing or permanent nature, composed of multiple elements with their complex interrelationships, and related criminal acts, can be deduced not only from the its definition in the abovementioned Article III of the Inter-American Convention on Forced Disappearance of Persons, the *travaux préparatoires* for this instrument[126], its preamble and provisions, but also from Article 17(1) of the 1992 United Nations Declaration on the Protection of all Persons from Forced disappearance, which even adds one further element, related to the obligation to investigate, by indicating that this must be considered "a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts have not been clarified." International case law also reflects this understanding[127] as do Articles 4 and 8(1)(b) of the abovementioned United Nations international convention on this matter.[128]

145. Recently the Inter-American Court has held, reaffirming its considerations,

This Court's case law has been in the vanguard of the consolidation of a comprehensive perspective of the multiple offenses against the rights affected and the permanent or continuing nature of the offense of forced disappearance of persons[129], in which the act of disappearance and its execution begin with the deprivation of liberty of the person and the subsequent absence of information on their whereabouts, and remain while the whereabouts of the disappeared person is not known or until their remains are identified with certainty. The Court developed this characterization of forced

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[124] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 82. Citing: Rome Statute of the International Criminal Court, adopted July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, A/CONF.183/9.

[125] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 82. Citing: United Nations Human Rights Council. Draft International Convention for the Protection of All Persons from Enforced Disappearance. 1st session, item 4 of the program, A/HRC/1/L.2, June 22, 2006.

[126] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 82. Citing: Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent insofar as it is committed not in an instantaneous way but permanently, and is prolonged as long as the person remains disappeared" (OEA/CP-CAJP, Report of the Chairman of the Working Group Entrusted with Analyzing the Draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).

[127] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 82. Citing: *European Court of Human Rights*, *Cyprus v. Turkey*, *judgment of 10 May 2001,* Application No. 25781/94, paras. 136, 150 and 158; United Nations Human Rights Committee, *case of Ivan Somers v. Hungary*, Communication No. 566/1993, 57th session, CCPR/C/57/D/566/1993 (1996), July 23, 1996, para. 6.3; *case of E. and A.K. v. Hungary*, Communication No. 520/1992, 50th session, CCPR/C/50/D/520/1992 (1994), May 5, 1994, para. 6.4, and *case of Solórzano v. Venezuela*, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983, March 26, 1986, para. 5.6.

[128] I/A Court H.R., Case of Goiburú et al. v. Paraguay. Judgment on the Merits, Reparations, and Costs. Judgment of September 22, 2006.. Series C No. 153. Para. 83.

[129] Narciso 50. Citing. *See Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 102. The European Court of Human Rights has also considered the continuing or permanent nature of the forced disappearance of persons in the case of *Cyprus v. Turkey* [GC], no. 25781/94, paras. 136, 150 and 158, 2001-IV.

disappearance even before the definition included in the Inter-American Convention on Forced Disappearance of Persons.[130]

146. Among the distinctive characteristics of disappearance are the means used to carry it out, which are designed to conceal any evidence of the facts, the corresponding responsibility, and the fate of the victim. Another feature is the manner in which the failure to elucidate the facts and identify those responsible affects not only the direct victim, but also their family and society in general.

147. In keeping with its consolidated case law, the Commission finds that forced disappearance is a complex human rights violation that continues in time so long as the fate or whereabouts of the victim are not known. The disappearance as such only ceases when the victim appears, his or her fate is established or his or her remains are located. The Commission has adopted an integral approach to this human rights violation, understanding it as a continuing violation so as to analyze and determine the full extent of the State's responsibility. It should be borne in mind that so long as the fate or whereabouts of the victim are not determined or their remains located and identified, the family and the rest of society must endure the experience of a forced disappearance with all the attendant consequences.

148. The subject of disappearance of children amid climates of violence both in dictatorships and in armed conflicts, and how that relates to the concept of forced disappearance, has been addressed by the international community

149. In the course of its functions in the individual petitions system, the Inter-American Commission examined the case of the Serrano-Cruz sisters v. El Salvador, which concerns the disappearance of two girls, also in the framework of the internal armed conflict and in circumstances similar to those alleged in the instant case. The Commission concluded in that case that the Serrano-Cruz sisters had been victims of forced disappearance and, consequently, found that the State was responsible for a series of violations of the American Convention. In its application to the Inter-American Court, the Commission submitted that what happened to the victims constituted forced disappearance[131]. This conclusion is consistent with the development of the subject in international human rights law.

150. Article 20 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance provides:

> 1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.
>
> 2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
>
> 3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or

[130] Narciso. 50.

[131] IACHR. Application to the Inter-American Court of Human Rights. *Case of the Serrano Cruz Sisters.* par. 15.

suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such[132].

151. In more categorical terms, the International Convention for the Protection of all Persons from Forced Disappearance, sets out at Article 25(1) the duty of states parties to take the necessary measures to prevent and punish under their criminal law:

a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance:

b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

152. Paragraphs (2), (3), and (4) of this Article, provide that:

Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

153. For its part, the then-UN Commission on Human Rights adopted resolutions in which it decided to continue to give particular consideration to cases of children subjected to enforced disappearance and to cooperate with the governments concerned in their identification.[133].

154. In its reports to the now-United Nations Human Rights Council, the Working Group on Enforced or Involuntary Disappearances, has noted that children are also victims of disappearances, both directly and indirectly. The disappearance of a child, his/her wrongful removal, and the loss of a parent through disappearance are serious violations of children's rights[134].

155. In the report on its mission to Argentina, this Working Group, in reference to the chapter on “missing children and pregnant women” in the 1984 Report of the National Commission on the Disappearance of Persons, mentioned:

A specific phenomenon that occurred in the country under the military dictatorship from 1976 to 1983 in the Argentine Republic was the enforced disappearance of children and children born in captivity. The children were removed, stripped of their identity, and torn from their

[132] United Nations Declaration on the Protection of all Persons from Enforced Disappearance. Adopted by General Assembly resolution 47/133 of 18 December 1992

[133] UN Commission on Human Rights. *Question of enforced or involuntary disappearances* Resolution 2000/37.

[134] UN Human Rights Council. Report of the Working Group on Enforced or Involuntary Disappearances. A/HRC/10/9. 25 February 2009. par. 456.

families. It was also common for children to be abducted by military commanders, who would take them into their families as their own children.[135].

156. Recently, in the case of *Contreras et al. v. El Salvador,* the Inter-American Court found that in effect the practice of appropriating children in the same context in which the facts of the instant case occurred was a form of forced disappearance of persons.[136]

157. Taking account of the foregoing references, the Commission must analyze whether the facts that have been established in the instant case are in line with the concept of forced disappearance. Although the Salvadoran State is not a party to the Inter-American Convention on Forced Disappearance of Forces, the definition established in it may be used for this analysis, as it represents a consensus version of the matter.[137] Article II of that instrument indicates that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

158. The facts that the Commission has considered established in the instant case indicate that José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca disappeared in circumstances with similar characteristics: in the context of the armed conflict, after "counterinsurgency" military operations had been carried out in which their family members either escaped or were assassinated, and with witness testimony in most of the cases that indicates that they were last seen with members of the armed forces, who appropriated them and decided what to do with them. In the case of Emelinda Lorena Hernández, while there is no specific information, the data available indicated that she was left by her parents at the home of a neighbor a few days before her disappearance, a home where soldiers entered and assassinated the members of the family. Since the body of Emelinda Lorena Hernández was not found in that place that was under the absolute control of state agents, and taking into consideration the recognition of the Salvadoran State, the Commission finds no reason to accord different treatment to the case of the child Emelinda Lorena Hernández.

159. The testimony and information that is a matter of public knowledge included in the section of facts proven suggest that the operations did not take place in the context of confrontations but with the aim of repressing, with great violence, groups of persons not involved in the conflict but considered "insurgents" by the security forces. The Commission concludes that José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca were deprived of liberty by military officials without any knowledge or information as to the whereabouts or fate of any of them.

160. The Commission considers that the foregoing information is sufficient to conclude that what happened to José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena

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[135] UN Human Rights Council. Report of the Working Group on Enforced or Involuntary Disappearances. Addendum. Mission to Argentina. A/HRC/10/9/Add.1. 5 January 2009. par. 10 [*unofficial translation*].

[136] I/A Court H.R., *Caso Contreras y otros Vs. El Salvador.* Merits, Reparations, and Costs. Sentencia de 31 de agosto de 2011 Serie C No. 232, párrs. 50 – 55.

[137] See joint separate vote by judges García-Sayán and García Ramírez, in the case of Ticona Estrada et al. I/A Court H.R. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191.

Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca should be characterized within the concept of forced disappearance of persons, which continues to this day.

161. Next and in keeping with its reiterated practice, the Commission shall determine the provisions of the American Convention that have been violated as a result of the victims' forced disappearance.

B. The rights to personal liberty, humane treatment, life, and recognition of juridical personality (Articles 7, 5, 4, and 3 of the Convention)

162. Article 7 of the American Convention, at the pertinent part, provides:

> 1. Every person has the right to personal liberty and security.
> 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
> 3. No one shall be subject to arbitrary arrest or imprisonment.
> 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
> 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

163. Article 5 of the American Convention provides, at the pertinent part:

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
> 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

164. Article 4 of the American Convention establishes, in part:

> 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

165. Article 3 of the American Convention establishes:

> Every person has the right to recognition as a person before the law.

166. Article 1(1) of the Convention establishes:

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

167. According to the case-law of the Inter-American Court, in cases of forced disappearance of persons, it is not necessary to make a detailed analysis in relation to each of the guarantees established in Article 7 of the American Convention. In the view of the Inter-American Court, when it is shown that the deprivation of liberty constituted a step prior to the disappearance of the victims, it is unnecessary to determine whether the alleged victims were informed of the motives of their detention, if this was unrelated to the motives and conditions established in the

legislation in force at the time of the facts, or whether the act of detention was unreasonable, unforeseeable, or lacking proportionality.[138]

168. The Court has also indicated that on analyzing a case of forced disappearance one must bear in mind that the deprivation of liberty of the individual should be understood as just the beginning of a complex violation that is drawn out in time until one learns of the fate and whereabouts of the alleged victim.[139]

169. As for the right to humane treatment, the Inter-American Court has recognized that a "person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated."[140]

170. In addition, the Inter-American Court has held that forced disappearance is a violation of that right for "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment … [and violate] the right of every detainee under Article 5 (1) and 5(2) to treatment respectful of his dignity."[141] In the case of *Ticona Estrada et al. v. Bolivia* the Court established that it is evident that the victims of this practice have their right to humane treatment violated in all dimensions.[142]

171. Of special relevance for the instant case, in the case of *Contreras et al. v. El Salvador,* the Inter-American Court indicated that:

> the abduction of the children and their separation from their parents or next of kin under the conditions described, as well as the fact that they were taken into the custody of military personnel during a military operation, harmed the mental, physical and moral integrity of the children, a right recognized in Article 5 of the American Convention, leading to feelings of loss, abandonment, intense fear, uncertainty, anguish, and pain, all of which could vary or intensify depending on age and the specific circumstances.[143]

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[138] I/A Court H.R., *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 109.

[139] I/A Court H.R., *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 112.

[140] I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala.* Judgment of November 25, 2000. Series C No. 70, para. 90.

[141] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras.* Merits, paras. 156 and 187; *Case of the Miguel Castro Castro Prison v. Peru.* Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 323; and *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171; and I/A Court H.R. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

[142] I/A Court H.R. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

[143] Contreras 85. Citing: ""Each child reacts differently to the impact of armed conflict. Their response depends on their age, gender, personality type, personal and family history, cultural background and experience, as well as on the nature and duration of the event." United Nations, *The Machel Review, 1996-2000: A critical analysis of progress made and obstacles encountered in increasing protection for war-affected children*, A/55/749, 26 January 2001, p. 27. For example, among the different circumstances that can influence the psychosocial repercussions of violence on children, "include individual factors such as age, sex, personality type, personal and family history and cultural background. Other factors will be linked to the nature of the traumatic events, including their frequency and the length of the exposure. Children who suffer from stress display a wide range of symptoms, including increased separation anxiety and developmental delays, sleep disturbances and nightmares, lack of appetite, withdrawn behaviour, lack of interest in play, and, in younger children, learning difficulties. In older children and adolescents, responses to stress can include anxious or aggressive behaviour and depression." United Nations, *Impact of armed conflict on children, Report of the expert of the Secretary General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157*, A/51/306, 26 August 1996, para. 168. Similarly, in the context of flight from armed conflict, "[a]lthough the decision to leave is normally taken by adults, even the youngest

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> In addition, in the specific case of children separated from their parents or next of kin in the context of armed conflict, who are in a situation of special vulnerability, their appropriation, with different objectives, is often considered a normal consequence of armed conflict or, in any case, inherent in it, which is what happened, at least in the case of Gregoria Herminia. Treating children as objects susceptible of appropriation harms their dignity and personal integrity, and it is the State that should ensure their protection and survival, as well as prioritize measures to promote family reunification.[144] In this regard, the Inter-American Court has indicated that an obligation exists to apply "the highest standard to determine the criminal nature of actions that impair [the] personal integrity [of children]."[145]

172. It has been established that on August 12, 1981, the Hernández Rochac family was in their home in the canton of San José Segundo. At about 9 a.m., members of the Air Force of El Salvador captured José Adrián Rochac Hernández after assassinating his mother and brother. There is testimony from witnesses who say they saw the child that same day in army trucks headed towards a military base.

173. The Commission has also considered it proved that after the extrajudicial execution of several persons, the child Santos Ernesto Salinas was captured by members of the Atlacatl Immediate Response Battalion, who had executed the other persons. In subsequent days the child was seen being transported by members of the military, in underwear.

174. The Commission has also established that on December 12, 1981, Emelinda Lorena Hernández, who was in the care of a neighbor of the family, in the locality of "La Joya," was captured by members of the Atlacatl Immediate Response Battalion, who assassinated the inhabitants of the home where the person who cared for Emelinda Lorena Hernández lived. In subsequent days, residents saw soldiers carrying children. These facts occurred in the context of the massacre of El Mozote and neighboring places, events of which the IACHR has taken cognizance and whose characteristics of extreme violence and cruelty are known to the Commission.

175. Finally, the Commission has established that from August 19 to 24, 1982, in the framework of a military operation, the children Manuel Antonio Bonilla and Ricardo Ayala Abarca were captured by military operatives while they were fleeing to the mountains.

176. The Commission considers that given these circumstances, the children, placed under the custody of state agents, at the moment of these facts feared for their lives and felt a profound sense of abandonment, vulnerability, and lack of protection in the face of the imminent separation from their parents and/or families. The Commission notes that this inference operates independent of the victims' ages. The Commission notes that the ages of the victims at the time of the events ranges from 9 months to 9 years, which means that the manifestations of fear and the sense of lack of protection could have varied in each case, without that meaning that there was no impairment.

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children recognize what is happening and can sense their parents' uncertainty and fear." United Nations, *Impact of armed conflict on children*, *supra*, para. 67.

[144] Contreras 85. Citing. *See* United Nations, *The Machel Review 1996-2000, supra* note 116, pp. 14 and 27. See also Convention on the Rights of the Child and provisions of international humanitarian law, such as Article 4(3) of Additional Protocol II to the Geneva Conventions of 1949 on the protection of victims in non-international armed conflicts.

[145] I/A Court H.R., *Case of the Brothers Gómez Paquiyauri v. Peru. Merits, Reparations, and Costs*. Judgment of July 8, 2004. Series C No. 110, para. 170.

177. With respect to the right to life, the Inter-American Court has recently indicated that "owing to the nature of forced disappearance, the victim is in an aggravated situation of vulnerability, which gives rise to the risk that several rights may be violated, including the right to life. This situation is accentuated in the presence of a systematic pattern of human rights violations and when children are involved … given that the illegal removal of their biological parents also jeopardizes the life, survival and development of the children[146], the latter understood in its broadest sense to include its physical, mental, spiritual, moral, psychological, and social aspects."[147]

178. While it is true that the disappearances of children have certain characteristics that distinguish them from other forms of forced disappearance, and experience has shown that there is a greater likelihood of finding the victims alive, those differences are not sufficient to refute the violation of the right to life in the instant case. The Commission notes that the case-law of the inter-American system on this point seeks precisely to establish the full scope of international responsibility in cases of forced disappearance in which the intrinsic risk it implies for the lives of persons is undeniable. In addition, an effort is made for the States to adopt all the measures within their reach to establish the victims' whereabouts and, if they are found alive, to rebut the presumption of a violation of the right to life.

179. The Commission is of the view that the actions of the members of the military who deprived the victims in the instant case of liberty, appropriated them, and decided what to do with the victims in the instant case, without taking into consideration their special needs of protection or adopt other measures that would have made it possible to determine their identity, and, therefore, to facilitate immediate reunification with their families, all in a context of extreme and permanent violence such as that experience during the armed conflict in El Salvador, meant that the five children were placed in a situation of imminent risk to their lives at the hands of state agents. Up to date, after more than 30 years of the dissapearance, it has not been established the fate or whereabouts of any of the five victims of the instant case.

180. As for the right to recognition of juridical personality, the Commission recalls that this is an essential and necessary requirement for claiming and exercising all the rights, for without it the person does not enjoy the protection and guarantees offered by the law, simply because one is invisible in the eyes of the law.

181. By its very nature, forced disappearance of persons seeks the juridical annulment of the individual precisely in order to remove them from the protection that the laws and justice afford them. Thus, the apparatus of repression ensures that persons may be deprived of their rights with impunity by placing them beyond the reach of any possible judicial protection. The aim of those who perpetrate forced disappearance is to operate outside the law and conceal any evidence of crime, thereby seeking to avert its investigation and punishment, and prevent the person or their next of kin from filing suit or, in the event suit is filed, from accomplishing a positive result.

182. The Commission also notes that since its earliest case law, the Court has consistently found that forced disappearance of persons comprises multiple offenses[148]. This

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[146] I/A Court H.R., *Case of Contreras et al. v. El Salvador.* Merits, Reparations, and Costs. Judgment of August 31, 2011. Series C No. 232, para. 90. Citing *See: Case of Gelman, supra* note 16, para. 130.

[147] I/A Court H.R., *Case of Contreras et al. v. El Salvador.* Merits, Reparations, and Costs. Judgment of August 31, 2011. Series C No. 232, para. 90. Citing *See* United Nations, Committee on the Rights of the Child, General Comment No. 5, *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6))*, CRC/GC/2003/5, November 27, 2003, para. 12.

[148] I/A Court H.R., *Case of Heliodoro-Portugal*. Judgment of August 12, 2008. Series C No. 186, par. 106 and 112; *Case of Goiburú et al*. Judgment of September 22, 2006. Series C No. 153, pars. 81-85; *Case of Gómez Palomino*.

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multiple violation of a person's human rights is possible for the very reason that the latter is held outside of the law and deprived of their juridical personality. Accordingly, and bearing in mind, moreover, the continuous nature of this crime, the Commission considers that in the case of forced disappearance it is not possible to establish that extinction of juridical personality because it is impossible to determine whether or not the person is still alive. Therefore, one of the multiple rights abridged by forced disappearance is the right of victims of this practice to recognition of their juridical personality. Furthermore, the Commission finds that the mechanism through which violation of all the other rights infringed by forced disappearance is sought and achieved is precisely deprivation of juridical personality.

183. The violation of the right to legal personality that comes with forced disappearance is such that several states in the region have had to adopt specific laws to distinguish this phenomenon from extrajudicial execution. The State prevents living persons from exercising their rights and obligations because the State denies their final fate.[149].

184. In this regard, the Court has recognized that

> ... forced disappearance also leads to a violation of the right to recognition of juridical personality established in Article 3 of the American Convention, given that forced disappearance seeks not only one of the most serious ways of removing a person from the whole sphere of the legal system, but also denies his existence and leaves him in a sort of limbo or situation of juridical uncertainty before society and the State[150], especially when his identity has been altered illegally.[151]

185. In the instant case, the disappearance of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca was aimed at depriving them of their juridical personality, thus leaving them outside of the legal and institutional order. In effect, in the context in which their disappearances occurred, they were the means by which their perpetrators sought impunity for their actions, guaranteed by the impossibility of the victims and their family members from seeking judicial protection in the face of the constant and systematic absence of any investigation related to their whereabouts, for this information was denied and/or distorted by the authorities. In this regard, the Commission has established that:

> The objective of those who perpetrate a disappearance is to operate beyond the margins of the law, to conceal all evidence of their crimes, and to escape any sanction. When a disappearance is carried out, the fundamental protections established by law are circumvented and the victim is left defenseless. For the victim, the consequence of an enforced disappearance is to be denied every essential right deemed to inhere in the very fact of being human. In this way, the act of

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Judgment of November 22, 2005. Series C No. 136, par. 92; and *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, par. 155.

[149] For example, in the case of detainees-disappeared persons who remain alive the State denies the right of access to a judge if they are in detention, and in the case of detainees-disappeared persons who had been executed it denies the consequential rights of the deceased persons' next of kin, such as, rights of inheritance, for instance, which are obstructed by the indeterminate legal status of the detainee-disappeared person.

[150] I/A Court H.R., *Case of Contreras et al. v. El Salvador.* Merits, Reparations, and Costs. Judgment of August 31, 2011 Series C No. 232, para. 88. *See Case of Anzualdo Castro, supra* note 109, para. 90; *Case of Gomes Lund et al. (Guerrilha do Araguaia), supra* note 97, para. 122, and *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 100, para. 98.

[151] I/A Court H.R., *Case of Contreras et al. v. El Salvador.* Merits, Reparations, and Costs. Judgment of August 31, 2011 Series C No. 232, para. 88.

> enforced disappearance violates the right of the individual under Article 3 of the American Convention "to recognition as a person before the law."[152]

186. In view of the foregoing considerations, the Commission concludes that the State of El Salvador violated the rights to personal liberty, humane treatment, life, and recognition of juridical personality enshrined in Articles 7, 5, 4, and 3 of the American Convention, in relation to the obligations established in Article 1(1) of the same instrument, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca.

C. The rights to a family, a name, and special protection for children (Article 17, 18, and 19 of the Convention)

187. Article 17 of the American Convention establishes, at the pertinent part: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

188. Article 18 of the American Convention provides: "Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary."

189. Article 19 of the American Convention indicates: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

190. Article 1(1) of the Convention establishes:

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

191. Mindful of the particularities of the instant case and the fact that all the victims were children at the time of their forced disappearance, the Commission considers it appropriate to analyze the State's obligations under Article 17 of the American Convention read in conjunction with Article 19 of the same instrument. Subsequently, the Commission will refer to the petitioners' arguments regarding Article 18 of the Convention.

192. By the Court's case law, Article 19 of the American Convention should be understood as a complementary right that the Convention establishes for individuals who need special measures of protection, owing to their stage of physical and emotional development[153]. Children, therefore, possess not only the same human rights that correspond to all persons, but also

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[152] See IACHR, Report No. 11/98, Case 10,606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, para. 57, available at http://www.cidh.oas.org/annualrep/97span/Guatemala10.606.htmNota.

[153] I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, par. 106; *Case of Baldeón García*, Judgment of April 6, 2005. Series C No. 147, par. 244; *Case of the "Mapiripán Massacre"*, Judgment of September 15, 2005. Series C No. 134, par. 152; and, in particular, *Case of the "Juvenile Reeducation Institute"*, Judgment of September 2, 2004. Series C No. 112, par. 147, and *Case of Servellón-García et al.* Judgment of September 21, 2006, par. 113

special rights accruing to their child status, in regard to which the family, society and the State have specific duties. In other words, children are entitled to special measures of protection[154].

193. In sum, the rights of children must be safeguarded both in view of their status as human beings and by reason of their special condition, to which end special protective measures must be adopted. This added obligation to provide protection[155] and these special duties should be regarded as determinable based on the needs of the child as a person with rights[156].

194. The Inter-American Court has noted the special obligations of Status with respect to children in the context of internal armed conflicts. In the words of the Court:

> Finally the Court notes that, within the context of an internal armed conflict, the State's obligations toward children are defined in Article 4(3) of the Geneva Conventions' Additional Protocol II. This Article establishes that: "the children will be provided with the care and help they need, and, particularly: [...] b) the timely measures to facilitate the reunion of the temporarily separated families will be taken [...]". According to the International Committee of the Red Cross, this obligation has been defined as follows: "the parties to the conflict should do everything possible to reestablish family ties, that is, not only allow the members of the dispersed families to search for their next of kin, but also facilitate this search."[157]

195. In this regard, the Inter-American Court has referred in previous cases to the *corpus juris* on the human rights of the child[158]. The Commission has previously addressed this concept in the following terms:

> For an interpretation of a State's obligations vis-a-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere[159].

196. Specifically, the Court held that both the American Convention and the Convention on the Rights of the Child[160] form part of a very comprehensive international corpus juris for the

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[154] Advisory Opinion OC-17/2002, par. 62:

> Adoption of special measures to protect children is a responsibility both of the State and of the family, community, and society to which they belong.

[155] I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*, par. 160; Case of the Gómez Paquiyauri Brothers, pars. 124, 163-164, and 171; *Case* of *Bulacio*, pars. 126 and 134; *The "Street Children" Case (Villagrán Morales et al.)*, pars. 146 and 191; and *Case of the Indigenous Community Yakye Axa.* Judgment of June 17, 2005, par. 172. In the same connection: Advisory Opinion OC-17/02, pars. 56 and 60.

[156] I/A Court H.R., *Case of the Indigenous Community Sawhoyamaxa*. Judgment of March 29, 2006, par. 154

[157] I/A Court H.R., *Case of "Las Dos Erres Massacre"*. Judgment of November 24, 2009. Para. 191. Quoting. Commentary on additional Protocol II to the Geneva Conventions of 1949 regarding the protection of the victims of armed conflicto that are not of an international character. Section B. Reunion of Families, para. 4553, *Available at http/www.icrc.org.*

[158] I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63.

[159] IACHR, Report No. 41/99, Case 11.491, Minors in Detention, Honduras, March 10, 1999, par. 72.

[160] In this section, the Commission will make reference to the Convention on the Rights of the Child and other instrumentos that are relevant in offerring intepretative elements on the State obligations in cases such as the instant case. Eventhough at the date of the beggining of the violations of the case, theses instruments had not been adopted, the IACHR

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protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention. Indeed, in various cases concerning children, the Court has relied on specific provisions contained in the Convention on the Rights of the Child to interpret Article 19 of the American Convention[161].

197. Therefore, the Commission believes it relevant to mention a number of provisions in the Convention on the Rights of the Child that have a bearing on the duty to provide special protection to children through the institution of the family.

198. Article 9 of said Convention provides:

> 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
>
> (...)
>
> 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

199. The *travaux préparatoires* for this Convention considered the need for separations of children from their family nucleus to be duly justified and preferably temporary, and for the child to be returned to his or her parents as soon as circumstances allow. The standards set forth in Article 9 of the Convention on the Rights of the Child may be summarized as the right of the child to stay with their biological family except where that would contrary to their best interests and, should it be necessary to separate the child from their family, equitable procedures shall be applied in which fair trial guarantees are observed.

200. This instrument also contains various provisions that recognize the right of the child to live with and be cared for by their parents[162]. The preamble expressly recognizes the family as

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will take them into consideration in the understanding of the continuing nature of these violations and fact that the State obligations continue over the time.

[161] I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 194; see also: *Case of the "Juvenile Reeducation Institute"*, Judgment of September 2, 2004. Series C No. 112, par. 148; and *Case of the Gómez Paquiyauri Brothers.* Judgment of July 8, 2004, par. 166.

[162] **Article 7:** 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents; **Article 10:** 1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family. 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals
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the natural environment for the growth of children and establishes the duty of states to support this institution so that it can perform its function in the community.

201. Other declarations and sets of principles recognize the relationship between the rights of the child and protection of the family. The United Nations Guidelines for the Prevention of Juvenile Delinquency, or "Riyadh Guidelines", provide that:

> (...) the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. (...)[163]

202. In keeping with this international development in the link between protection of the child and protection of the family, the Inter-American Court has held:

> The child has the right to live with his or her family, which is responsible for satisfying his or her material, emotional, and psychological needs. Every person's right to receive protection against arbitrary or illegal interference with his or her family is implicitly a part of the right to protection of the family and the child (...)[164].

203. The same Tribunal, citing the European Court of Human Rights, has determined that mutual enjoyment of harmonious relations between parents and children is a fundamental component of family life and that the essential content of this precept is protection of the individual in face of arbitrary action by public authorities. One of the gravest interferences is that which leads to division of a family[165].

204. All of the foregoing, examined in the light of the obligations of the State under Articles 17 and 19 of the American Convention, means that even in a state of emergency the State, through its agents, must ensure the protection of the family institution as an essential mechanism for the protection of the rights of the children under its jurisdiction. Therefore, if a child is separated from their family nucleus, the State should seek to preserve that link by intervening temporarily and directing its efforts toward the return of the child to their family and community, provided that is not contrary to their best interests. The Inter-American Court of Human Rights has established very clearly that in such situations children should be returned to their parents as soon as circumstances permit[166].

205. In the instant case, it was the Salvadoran State itself which, through its Armed Forces, provoked the separation of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca from their families of origin by forcibly disappearing them.

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or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention; **Article 11:** 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. (...).

[163] The Beijing Rules (17, 18 and 46) made a similar statement. See also, *inter alia*, the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (1985) adopted by UN General Assembly resolution 41/85 of 3 December 1986, and the Plan of Action of the Third Summit of the Americas held in Quebec, Canada, in April 2001.

[164] I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, par. 71.

[165] I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, par. 72.

[166] I/A Court H.R., Advisory Opinion OC-17 of August 28, 2002, pars. 75 and 77.

206. Some of the victims in the instant case were of sufficient age to be aware of the names of their family members and where they lived. It is apparent that the soldiers who took the children who are the victims in this case did not attempt to establish their identity so as to make family reunification possible. To the contrary, the way in which the events unfolded – considered proven by the Commission, and recognized by the State – shows that the military officials sought the separation of the children from their families of origin through persecution of the families, the state of terror that was generated, and even their assassination, as for example in the case of the mother of José Adrián Rochac Hernández, who was executed moments before the child was abducted. All this was done under the doctrine of "taking the water from the fish"[167], a state strategy that consisted of attacking primarily the rural populations in the areas considered to have guerrilla activity, leading, among other things, to the deaths of many civilians, the separation of families, the forced displacement of entire communities, the abduction of children, and the destruction of property.

207. In addition to the responsibility derived from the State's actions at the very moment of carrying out the forced disappearances of the children with the aim of separating them from their families of origin, this violation continues to the present day, since adequate and effective measures have not been taken to conduct a serious search for the victims or to determine their fate or whereabouts. This omission has for more than three decades impeded re-establishing the family tie and, consequently, restoring the identity of the victims.

208. In view of the foregoing considerations, the Inter-American Commission concludes that the Salvadoran State breached the obligations established in Article 19 of the Convention in relation to the obligations established in Article 1(1) of the same instrument, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca. In addition, the Commission concludes that the State breached its obligation to protect the family enshrined in Article 17 of the American Convention in relation to the obligations established in Article 1(1) of the same instrument to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca, and their family members identified to date, Alfonso Hernández, Sebastián Rochac Hernández, Estanislao Rochac Hernández, Maria Juliana Rochac Hernández, María del Tránsito Rochac Hernández, Ana Margarita Rochac Hernández, Nicolas Alfonso Rochac Hernández, María Adela Iraheta (deceased in 2005), Amparo Salinas, Estela Salinas, Josefina Salinas, Julio Iraheta, Felipe Flores Iraheta, María Adela Hernández, Juan de la Cruz Sánchez (deceased), Joel Alcides Hernández, Valentina Hernández, Santiago Perez, Juan Evangelista, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, José de la Paz Bonilla, María de los Ángeles Osorio, Petrolina Abarca Alvarado, José Arístides Bonilla, María Inés Bonilla, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Ester Ayala Abarca, Paula Alvarado, Daniel Abarca, José Humberto Abarca, Osmín Abarca y Manuel Eugenio Salinas..

209. As for the petitioners' allegation with respect to the right to a name established in Article 18 of the American Convention, the Commission is of the view that even though the context described indicates that one common fate of the disappeared children was being stripped of one's identity through name changes, in the instant case such circumstances have not been established. In this regard, the Commission agrees with the approach of the Inter-American Court in the case of *Contreras et al. v. El Salvador,* in which it indicated that "this assumption cannot be applied to establish the violation of the right to a name in all the cases. In this regard, the sole confirmation of

[167] Report of the El Salvador Truth Commission. Cases and patterns of violence A and B.

the practice of disappearances is not enough, because evidence of the alleged violations is required."[168]

D. The rights to judicial guarantees and judicial protection (Articles 8 and 25 of the Convention)

210. Article 8(1) of the American Convention establishes:

> Every 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.

211. Article 25(1) of the American Convention provides:

> Everyone 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.

212. Article 1(1) of the Convention establishes:

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

213. The Court has indicated that "as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law."[169]

214. As for the rights of the family members of the victims of human rights violations to obtain justice and reparation, the Court has said:

> From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.[170]

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[168] I/A Court H.R., Case of Contreras et al. v. El Salvador. Merits, Reparations, and Costs. Judgment of August 31, 2011 Series C No. 232, para. 118.

[169] I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 124; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, para. 145; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Judgment of November 24, 2006. Series C No. 158, para. 106.

[170] 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, para. 102; I/A Court H.R., "*The Streetchildren Case" (Villagrán Morales et al. v. Guatemala*). Judgment of November 19, 1999. Series C No. 63, para. 227; and I/A Court H.R., *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations, and Costs*. Judgment of March 1, 2005.Series C No. 120, para. 63.

215. Along the same lines, the Court has indicated that the family members of victims have the right, and the States the obligation, for what has happened to them to be effectively investigated by the authorities of the State; for a trial to go forward against those allegedly responsible for these crimes; and, as the case may be, for the pertinent sanctions to be imposed, and for reparation to be made for the damages that those family members have suffered.[171] According to the foregoing, the state authorities, once they are aware of a human rights violation, in particular of the rights to life, humane treatment, and personal liberty[172], have the duty to initiate, *sua sponte* and without delay, a serious, impartial, and effective investigation,[173] which should be carried out in a reasonable time.[174]

216. Regarding the content of the duty to investigate with due diligence, the Inter-American Court has indicated that it implies that the inquiries should be conducted by all legal means available and should be geared to determining the truth.[175] Along the same lines, the Court has indicated that the State has the duty to ensure that everything necessary is done to learn the truth of what happened and to punish those responsible[176], involving every state institution.[177] The Court has also said that the authorities must adopt reasonable measures that allow them to secure evidentiary material needed for the investigation.[178]

217. While the duty to investigate is a duty of means, and not of results, it must be assumed by the State as its own legal duty, and not as a mere formality preordained to be

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[171] 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, para. 103; I/A Court H.R., *Case of Bulacio v. Argentina*. *Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 18, 2003. Series C No. 100, para. 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382.

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

[173] 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, para. 101; I/A Court H.R., *Case of the Brothers Gómez Paquiyauri v. Peru*. Judgment of July 8, 2004. Series C No. 110, paras. 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru,* Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130.

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

[175] 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, para. 101.

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

[177] I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 120; and I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, para. 66.

[178] I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador.* Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

ineffective[179], 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.[180]

218. As for the guarantee of reasonable time, the Court has established that it is necessary to take into consideration three elements in order to determine the reasonableness of the time: (a) the complexity of the matter, (b) the procedural activity of the interested party, and (c) the conduct of the judicial authorities.[181] In more recent cases the Court has included as a fourth element the effects that the delay in the process can have for the legal situation of the victim.[182]

219. In view of the above-noted precedents, the Commission will analyze whether, in the instant case, the State of El Salvador conducted a serious and diligent investigation, in a reasonable time, on the forced disappearance of the victims as a mechanism for ensuring the victims' rights, and to ensure the rights to truth, justice, and reparation for their next-of-kin.

1. With respect to José Adrián Rochac Hernández

220. The Commission has considered as proven that with respect to what happened to José Adrián Rochac Hernández, three domestic proceedings were initiated. The first was a proceeding before the Office of the Human Rights Ombudsperson; the second an investigation by the Public Ministry; and the third, a *habeas corpus* action before the Constitutional Chamber of the Supreme Court of Justice.

221. The proceeding before the Office of the Human Rights Ombudsperson culminated by resolution of September 7, 2004, which recommended to the Public Ministry that it investigate his disappearance, along with that of 136 other children. The second proceeding was initiated in the Office of the Attorney General of the Republic, and as of the date of the presentation of the petition there was no information as to steps or measures aimed at finding José Adrián Rochac. The *habeas corpus* proceeding, the third proceeding initiated, was rejected, with notice given March 11, 2003; the main argument for the rejection was the absence of records on the child in army facilities.

222. The Commission notes that his disappearance was a public fact as of at least May 31, 1996, the date on which the Asociación Pro-Búsqueda presented to the Office of the Human Rights Ombudsperson the case of the disappearance of José Adrián Rochac Hernández. Despite this, it was not until August 2003 that the first investigative steps were taken by the Public Ministry to establish the facts; nonetheless there is no information whatsoever on any subsequent impetus or results of this investigation.

2. With respect to Santos Ernesto Salinas

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[179] I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131; and I/A Court H.R., *Case of Zambrano Vélez et al.*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

[180] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador.* Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 120.

[181] I/A Court H.R., *Case of Escué Zapata v. Colombia.* Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 72; I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006 Series C No. 162, para. 102.

[182] I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196; I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192.

223. The Commission has considered it proven that two domestic proceedings were initiated with respect to what happened to Santos Ernesto Salinas. The first stemmed from a complaint filed in August 2002 by Santos Ernesto's mother, Ms. María Adela Iraheta, at the San Vicente offices of the Office of the Attorney General of the Republic; the second, was a result of a *habeas corpus* action filed also by the child's mother.

224. There is no information on the impetus and/or result of the investigation, whereas the *habeas corpus* proceeding was rejected and notice given on March 11, 2003, arguing that there was no investigation or investigative steps to be able to determine whether the motion was well-founded.

3. With respect to Emelinda Lorena Hernández

225. According to the facts established by the Commission concerning the forced disappearance of Emelinda Lorena Hernández, two domestic proceedings were begun: the first, as the result of a presentation on May 31, 1996, by the Asociación Pro-Búsqueda to the Office of the Human Rights Ombudsperson; and the second, a *habeas corpus* action of November 15, 2002, filed by María Adela Hernández, the disappeared girl's mother.

226. The proceeding before the Office of the Human Rights Ombudsperson culminated in a resolution of September 7, 2004, in which it was recommended to the Public Ministry that it investigate her disappearance, as well as the disappearances of another 136 children. With respect to the *habeas corpus* proceeding, it was rejected and notice was given on March 11, 2003, arguing mainly the absence of any archives concerning Emelinda Lorena Hernández.

4. With respect to Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca

227. According to the facts established by the Commission concerning the forced disappearance of Manuel Antonio Bonilla and Ricardo Ayala Abarca, two domestic proceedings were initiated: the first resulted from a presentation on May 31, 1996, by the Asociación Pro-Búsqueda to the Office of the Human Rights Ombudsperson; the second, after *habeas corpus* actions filed on February 18, 2003, in the case of Ricardo Ayala Abarca, and February 27, 2003, in the case of Manuel Antonio Bonilla Osorio.

228. The process before the Office of the Human Rights Ombudsperson culminated in a resolution of September 7, 2004, in which it was recommended to the Public Ministry that it investigate their disappearance, along with those of another 136 children. With respect to the *habeas corpus* proceedings, they were rejected and notice was given on June 6, 2003, arguing mainly that there were no indicia that the children were deprived of liberty.

5. Conclusion

229. The information available on the criminal cases indicates that to date the investigations related to the forced disappearances of José Adrian Rochac Hernández and Santos Ernesto Salinas have not gone beyond the preliminary stages, or are at a standstill without evidence being gathered to determine the circumstances of the victims' forced disappearance, their whereabouts, or the persons responsible.

230. As for the *habeas corpus* actions, which would be a suitable remedy for dealing with forced disappearances[183], in the case of the five victims in the instant case, the processing of those

[183] I/A Court H.R. Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A. No. 8. Para. 35.

actions lacked any diligence and was limited to normal treatment, as if it were a deprivation of liberty in normal circumstances. The measures ordered to search for the children through the *habeas corpus* actions did not take into consideration that the facts alleged unfolded in a context in which a systematic pattern of disappearance of children was shown, such that the search measures would answer to the particularities of such contexts. In the five cases, the motivation of the dismissals of the *habeas corpus* actions is so laconic that one can infer from it the ineffectiveness of this remedy in practice.

231. In addition, the Commission considers extremely serious the time that has elapsed since the State learned of the facts – no later than May 1996 – without having ordered an adequate and diligent investigation of the facts. Moreover, the Commission does not have any information indicating the reasons why the State has not ordered the reactivation of the investigations after its recognition of international responsibility before the IACHR. The passage of time helps perpetuate impunity, for it has the inevitable effect of reducing the prospects of locating truthful witnesses and evidence useful for establishing what happened and punishing those responsible. The Commission understands that the forced disappearance of persons is a phenomenon whose complexity may entail a delay in the investigations. Nonetheless, in the instant case the Commission observes that the delays in the processes have not been the result of the nature of the matter or of especially complex investigative measures. To the contrary, the information available indicates that the lack of results in the process has been due to the generalized inactivity on the part of the authorities in charge of the investigation.

232. In view of the foregoing considerations, the Commission concludes that the Salvadoran State violated the rights to judicial guarantees and judicial protection, enshrined in Articles 8(1) and 25(1) of the American Convention in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca, as well as the next-of-kin identified to date, Alfonso Hernández, Sebastián Rochac Hernández, Estanislao Rochac Hernández, Maria Juliana Rochac Hernández, María del Tránsito Rochac Hernández, Ana Margarita Rochac Hernández, Nicolas Alfonso Rochac Hernández, María Adela Iraheta (deceased in 2005), Amparo Salinas, Estela Salinas, Josefina Salinas, Julio Iraheta, Felipe Flores Iraheta, María Adela Hernández, Juan de la Cruz Sánchez (deceased), Joel Alcides Hernández, Valentina Hernández, Santiago Perez, Juan Evangelista, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, José de la Paz Bonilla, María de los Ángeles Osorio, Petrolina Abarca Alvarado, José Arístides Bonilla, María Inés Bonilla, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Ester Ayala Abarca, Paula Alvarado, Daniel Abarca, José Humberto Abarca,Osmín Abarca y Manuel Eugenio Salinas..

E. The right to humane treatment with respect to the next-of-kin (Article 5 of the Convention)

233. As the Court has indicated on repeated occasions, the next-of-kin of the victims of human rights violations may, in turn, be victims.[184] In several cases, the Inter-American Court has considered the mental and moral integrity of victims' next-of-kin to be violated "in light of the additional suffering experienced as a result of the specific circumstances surrounding the violations committed against their loved ones and of the subsequent acts or omissions by State authorities with respect to the incidents at issue."[185]

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[184] I/A Court H.R., *Case of Goiburú et al*. Judgment of September 22, 2006. Series C No. 153. Para. 96; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149. Para. 156; and I/A Court H.R., *Case* of *López Álvarez*. Judgment of February 1, 2006. Series C No. 141. Para. 119.

[185] I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136. Para. 60; I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134. Paras. 144 and 146.

234. Specifically, in cases of forced disappearance, the Court has indicated that it is possible to understand that the violation of the right to mental and moral integrity of the victim's next-of-kin is a direct consequence precisely of that phenomenon, which causes them severe suffering because of the act itself, which is compounded, among other factors, by the constant refusal of the state authorities to provide information on the whereabouts of the victim or to initiate an effective investigation to clarify what happened.[186]

235. The Commission considers that this presumption is even more evident in a case such as the instant case, in which the victims are all children who, given their condition, were in a situation of greater defenselessness and vulnerability. This allows one to infer that their parents and/or family members felt profound fear and impotence in the face of the victims' fate. Mindful of the circumstances already described of each of the disappearances, the separation from the family, the failed attempts to clarify what had happened, and the consequent uncertainty as to the fate or whereabouts of their children, the Commission considers that the State violated the right to mental and moral integrity of the family members Alfonso Hernández, Sebastián Rochac Hernández, Estanislao Rochac Hernández, Maria Juliana Rochac Hernández, María del Tránsito Rochac Hernández, Ana Margarita Rochac Hernández, Nicolas Alfonso Rochac Hernández, María Adela Iraheta (deceased in 2005), Amparo Salinas, Estela Salinas, Josefina Salinas, Julio Iraheta, Felipe Flores Iraheta, María Adela Hernández, Juan de la Cruz Sánchez (deceased), Joel Alcides Hernández, Valentina Hernández, Santiago Perez, Juan Evangelista, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, José de la Paz Bonilla, María de los Ángeles Osorio, Petrolina Abarca Alvarado, José Arístides Bonilla, María Inés Bonilla, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Ester Ayala Abarca, Paula Alvarado, Daniel Abarca, José Humberto Abarca,Osmín Abarca y Manuel Eugenio Salinas..

VI. CONCLUSIONS

236. In keeping with the considerations set forth throughout this report, the Inter-American Commission on Human Rights concludes that the State of El Salvador violated the rights enshrined in Articles 3, 4, 5, 7, 8, 17, 19, and 25 of the American Convention on Human Rights, in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of the disappeared children José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca. In addition, the Commission concludes that the State of El Salvador violated the rights enshrined in Articles 5, 17, 8, and 25 of the American Convention in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of family members Alfonso Hernández, Sebastián Rochac Hernández, Estanislao Rochac Hernández, Maria Juliana Rochac Hernández, María del Tránsito Rochac Hernández, Ana Margarita Rochac Hernández, Nicolas Alfonso Rochac Hernández, María Adela Iraheta (deceased in 2005), Amparo Salinas, Estela Salinas, Josefina Salinas, Julio Iraheta, Felipe Flores Iraheta, María Adela Hernández, Juan de la Cruz Sánchez (deceased), Joel Alcides Hernández, Valentina Hernández, Santiago Perez, Juan Evangelista, José Cristino Hernández, Eligorio Hernández, Rosa Ofelia Hernández, José de la Paz Bonilla, María de los Ángeles Osorio, Petrolina Abarca Alvarado, José Arístides Bonilla, María Inés Bonilla, María Josefa Rosales, María Esperanza Alvarado, Luis Alberto Alvarado, Ester Ayala Abarca, Paula Alvarado, Daniel Abarca, José Humberto Abarca, Osmín Abarca y Manuel Eugenio Salinas..

VII. RECOMMENDATIONS

[186] I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006 Series C No. 162. Para. 132; I/A Court H.R., *Case of Goiburú et al*. Judgment of September 22, 2006. Series C No. 153. Para. 97; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136. Para. 61.

237. In keeping with the conclusions of this report on the merits, the Inter-American Commission recommends to the Salvadoran State:

1. Conduct a thorough, impartial, and effective investigation into the fate or whereabouts of José Adrián Rochac Hernández, Santos Ernesto Salinas, Emelinda Lorena Hernández, Manuel Antonio Bonilla, and Ricardo Ayala Abarca and, if they are found, make the necessary efforts to ensure family reunification. If it is established that any of them is not alive, take the measures necessary to deliver their remains to their next-of-kin.

2. Conduct a thorough, impartial, and effective investigation into the facts to determine the responsibility and to punish all the perpetrators of the human rights violations to the detriment of the victims in the instant case, including the investigations necessary to determine the responsibility and punish the persons who participated in covering up the facts and in the denial of justice.

3. Make adequate reparation to the victims of the instant case, including both the material and non-material aspect.

4. Adopt the measures necessary for ensuring the effectiveness and permanence for the time necessary of the search commission, the search webpage, and the genetic information system being implemented in the framework of what was ordered by the Inter-American Court of Human Rights in the judgment of the case of the Serrano Cruz Sisters. In particular, ensure that these measures are established through the legal mechanisms that provide legal certainty in its functioning and sufficient budget.

5. Adopt non repetition measures to ensure that the integral protection system of children is implemented effectively, including the strenghtening and adequacy with the internacional standards of the Civil Registry system and the adoption system.