

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 11/05; Petition 708/03
Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Gregoria Herminia Contreras, Serapio Cristian Contreras and Julia Ines Contreras v. El Salvador
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez. Commissioner Florentin Melendez, of Salvadoran nationality, did not participate in the consideration of or vote on this case, in keeping with Article 17(2) of the IACHR's Rules of Procedure.
Dated:	23 February 2005
Citation:	Contreras v. El Salvador, Petition 708/03, Inter-Am. C.H.R., Report No. 11/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: the Asociacion Pro-Busqueda de Ninas y Ninos Desaparecidos
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## I. SUMMARY

1. On September 4, 2003, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by the Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos (Asociación Pro-Búsqueda) (hereinafter “the petitioners”), in which it is alleged that the Republic of El Salvador (“the State”) is responsible internationally for the forced disappearance of the children Gregoria Herminia Contreras, Serapio Cristián Contreras, and Julia Inés Contreras, and for the subsequent failure to investigate and make reparation for those acts. The petitioners argue that the facts alleged constitute violations of several rights enshrined in the American Convention on Human Rights (“the American Convention”), namely: the right to humane treatment (Article 5); the right to personal liberty (Article 7); the right to judicial guarantees (Article 8); the right to protection of the family (Article 17); the right to a name (Article 18); the rights of the child (Article 19); and the right to judicial protection (Article 25), all in violation of the general obligation to respect and ensure the rights (Article 1(1)).

2. According to the complaint, on August 25, 1982, the siblings Gregoria Herminia, Serapio Cristián, and Julia Inés Contreras, ages 4 years, 1 year 8 months, and 4 months, respectively, were captured by members of the military from the Fifth Infantry Brigade of the Armed Forces of El Salvador during an operation carried out at the place known as “La Conacastada” in the

hamlet (cantón) of San Juan Buenavista, jurisdiction of Tecoluca, department of San Vicente. Since then, almost 23 years after the facts, the children's whereabouts are unknown. All the efforts made before the authorities to clarify the facts, including a criminal complaint and a writ of habeas corpus, have come to naught.

3. The State argues that the petitioners filed a writ of habeas corpus in 2002 (having been able to do so at any previous moment). The State indicates that in a judgment of February 17, 2003, that writ was found admissible, and the Attorney General of the Republic was ordered to carry out the respective actions to give effect to the protection of the minors' personal liberty. The State indicates that the Office of the Attorney General initiated the respective investigations and that the investigation is taking its course and should be taken further to determine the circumstances. It also argues that during the internal armed conflict it was possible to file the complaint reporting the disappearances to the International Committee of the Red Cross, and that this was never done in relation to the minors. Accordingly, it asks that the IACHR declare the case inadmissible for failure to exhaust domestic remedies.

4. Without prejudging on the merits, the IACHR concludes in this report that the case is admissible, for it meets the requirements set forth in Articles 46 and 47 of the American Convention. The Inter-American Commission decides to give notice of the decision to the parties and to continue analyzing the merits with respect to the alleged violations of the American Convention, to publish this decision, and to include it in its Annual Report to the General Assembly of the OAS.

## II. PROCESSING BEFORE THE COMMISSION

5. The Inter-American Commission assigned number 708-03 to the petition and requested that the Salvadoran State provide information on the pertinent parts of the complaint on December 24, 2003. The State responded on March 5, 2004 (received at the Executive Secretariat on March 10, 2004). On April 22, 2004, the petitioners submitted their observations on the information provided by the State, which was duly transmitted to the State.

## III. THE PARTIES' POSITIONS

### A. The petitioners

6. The complaint received at the IACHR alleges that the siblings Gregoria Herminia, Serapio Cristián and Julia Inés Contreras were victims of forced disappearance, presumably at the hands of members of the Salvadoran Army. With respect to the facts of the case, the petitioners state as follows:

On August 24, 1982, a large-scale military operation was deployed, from south of the hamlet of San Juan Buenavista and probably affected part of the hamlets of El Socorro, San Andrés de Achiotés, and San Jacinto, all in the jurisdiction of Tecoluca, department of San Vicente. The operation was called by the civilian population "The invasion of the Ring," for it was mobilized so as to form a military cordon, so as to prevent the targets from taking flight.

In response to the operation, the population fled from their dwellings to the bush, as they tried to hide. A group of persons sought refuge at the place known as “La Conacastada,” situated to the north of San Juan Buenavista. The Contreras siblings took refuge in this place, along with a family group made up of their mother, Mrs. María Maura Contreras, their father, Mr. Fermín Recinos, and their siblings Marta Daysi, 10 years of age, and Nelson Geovany, eight years of age. The second day of the operation, the group of persons who had hidden in La Conacastada was discovered and attacked indiscriminately by the military forces, causing the deaths of many persons. Afterwards, the members of the military proceeded to pursue small groups of persons, among them the family group of Ms. María Maura Contreras.

As people fled, the children remained behind, they couldn’t keep up; Ms. María Maura Contreras saw how a soldier grabbed her daughter Gregoria Herminia by the hair, and took her with other children; she also saw that they took Serapio Cristián; and since she couldn’t walk with all the children because she had her daughter Julia Inés, four months old, in her arms, when she had to climb an incline she slipped and dropped the little girl when the soldiers had almost reached her – she was forced to leave the child on the ground so as to continue running, and the child was taken by the soldiers.

Ms. María Maura Contreras, her common-law husband, and their two children continued running and hid in the bush for several days. Once the military operation was over, they began the search for the persons who had disappeared, to which end they went to La Conacastada, where they found that many people had died, including elderly and children, yet the bodies of the three minors were not found. Accordingly, it is thought that her children survived the operation. In addition, approximately 15 days after the disappearance of her children, Ms. Contreras received news that they had been seen at the military post of Río Frío, in the northern part of the municipality of Tecoluca, and that they were there for several days, and that they were later taken away in a truck.

7. As for the investigation, the petitioners indicate that the various entities that were involved in El Salvador have been ineffective and insufficient. The children’s mother first went to denounce the facts in 1993, to the Truth Commission, after the peace accords were signed in El Salvador. In addition, the same year she went to the Comisión de Derechos Humanos de El Salvador (CDHES). When the Asociación Pro-Búsqueda was formed, she resorted to it as well. And in 1996 she turned to the Office of the Human Rights Ombudsman (Procuraduría para la Defensa de los Derechos Humanos). The resolution of the Ombudsman’s office, of March 30, 1998, was certified and sent to the Office of the Attorney General, without any results. On October 16, 2002, Ms. María Contreras filed a writ of habeas corpus before the Constitutional Chamber of the Supreme Court of Justice.

8. It is indicated that it was not possible to file a complaint sooner since, due to the armed conflict, there was fear that any person who went to the military bases would be associated with the guerrillas and suffer reprisals. In this respect, the Truth Commission for El Salvador noted that many human rights violations were committed against the civilian population merely to “drain the water from the fish” because they were believed to be guerrilla collaborators, especially in the first years of the campaign. In this context, the petitioners allege that there was

no trust in the authorities, especially when human rights violations were perpetrated by the Salvadoran army.

9. The petitioners note that the domestic criminal proceeding did not begin until the resolution of Constitutional Chamber of the Supreme Court of Justice of February 17, 2003 (reported March 3, 2003), in which it is recognized that there was a violation of the Contreras siblings' constitutional right to liberty, and the Office of the Attorney General was urged to "take the necessary measures pursuant to its constitutional powers, so as to bring to completion the establishment of the conditions of those benefitted, Serapio Cristián, Julia Inés, and Herminia Gregoria, all of the last name Contreras." [FN2]

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[FN2] Order of the Constitutional Chamber of the Supreme Court of El Salvador, February 17, 2003.  
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10. The petitioners allege that "the Office of the Attorney General has not put the necessary effort into investigating the case, since according to what is stated in the answer brief [in response to the petition], there are records that would allow one to obtain information that could lead to a determination of the whereabouts of the Contreras siblings..." [FN3] The petitioners also argue that "...though it be argued [by the State in its brief answering the petition] that the proceeding is still open, it has been one year since the ruling on the writ of habeas corpus, and we do not know that any results have been obtained in terms of locating the minors, nor has the respective summons been presented to the court with jurisdiction"

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[FN3] Brief of observations by the petitioners on the State's response, April 22, 2004.  
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11. In summary, the petitioners argue that initially and until the creation of the Truth Commission, there was no possibility in El Salvador for the petitioners to gain access to any domestic remedy. Since then, the petitioners argue that the domestic remedies available in El Salvador have been ineffective when it comes to investigating the facts, determining the whereabouts of Serapio Cristián, Julia Inés and Herminia Gregoria, and making reparation for the consequences of the violations alleged. They argue in this regard that more than 12 years have elapsed since the case was first brought forth, during which the attitude of the State has been extremely negligent and indifferent in the procedure, despite which the facts make out a criminal action of the type that must be prosecuted at the initiative of the authorities (crime of public action). Accordingly, the petitioners are of the view that the investigation has been doomed to failure from the outset. The petitioners request, therefore, that the exception to the prior exhaustion of domestic remedies rule, provided for at Article 46(2)(b) of the Convention, be applied in this case.

12. In relation to the applicable provisions, the petitioners argue that the Salvadoran State ratified the American Convention on June 23, 1978, and therefore is responsible for the violations of the Convention to the detriment of the Contreras siblings.

B. The State

13. The Salvadoran State indicates that the international law applicable during the armed conflict is international humanitarian law, specifically common Article 3 of the four Geneva Conventions, supplemented by Protocol II. It establishes as follows:

It is true that initially, international human rights law is to be carried out by the governments, but in certain armed conflicts, by the norms mentioned previously, international humanitarian law is binding on both sides, i.e. it governs the conduct of both the insurgents and for the government forces....[FN4] with what is noted previously, perhaps while the total application of international humanitarian law is not guaranteed in practice, the regulations were abundant; even if applied in their minimum expression they some human rights protection to all Salvadorans, as this legal framework existed, plus the vigilance and accompaniment given, in this process of protecting human rights, by professor Pastor Ridruejo, which determined that the State made available to the petitioners the guarantees and means for attaining an effective defense of their rights.[FN5]

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[FN4] Response by the State of March 5, 2004, to the initial petition, p. 2.

[FN5] In its response of March 5, the State cites the report submitted by professor José Antonio Pastor Ridruejo to the United Nations Commission on Human Rights, pursuant to the mandate granted by Resolution 1983/29 of that Commission, of January 19, 1984, in which the P.O.N. is determined to be in force [“Normal Operating Procedure for detentions by the Armed Forces”]. That procedure establishes that minors found should be taken to safe places.  
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14. Based on this information, the State asks the IACHR to establish that there was “no systematic practice by the Salvadoran Armed Forces of disappearing minors.”

15. As regards the exhaustion of domestic remedies, the State adduces that they have not been exhausted. First, it notes that the petitioner filed the writ of habeas corpus in 2002, though it could have done so at any moment. The Salvadoran State indicates that in the judgment of February 17, 2003, the Court admitted the writ, determining that there had been a violation of the right to liberty. It notes that this remedy added that the protection of that court did not represent full reparation; accordingly, the action of other entities of the State is required, the Office of the Attorney General being the most suitable.

16. In this regard, the State indicates:

The Office of the Attorney General undertook the investigations, to which end it recurred on the 27th [does not indicate the month] of 2003 to the Fifth Infantry Brigade in the city of San Vicente, where it met with various members of that Brigade, who stated as follows: “Lt. Col. Alas Zansur having explained that all the records of the operations carried out by members of the Fifth Infantry Brigade of this city in the 1980s and 1990s were sent to the General Archive of the Ministry of National Defense, since they are of historical value ... the above-mentioned persons

having undertaken to provide guides, for the purpose of performing inspections in the hamlets noted, and thus try to locate family members of the disappeared minors....”

17. The State adds that there are other avenues for pursuing grievances, such as the International Committee of the Red Cross, and that it was never used by the petitioners.

18. Finally, the Salvadoran State argues that the investigations are still open in the investigative phase, and that domestic remedies have not been exhausted, as per generally accepted principles of international law, and it asks that the IACHR declare the case inadmissible. The State reiterates that an investigation opened 20 years after the facts cannot be resolved with the promptness required, considering that the time elapsed prejudices the investigation and the evidence. Nonetheless, the State insists that it has proceeded with the diligence required.

#### IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione materiae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

19. In keeping with Article 44 of the American Convention, the petitioners have standing to bring a petition before the Commission. The petition that is the subject matter of the study indicates that the alleged victim was subject to the jurisdiction of the Salvadoran state at the time of the facts adduced. With respect to the State, the Commission notes that El Salvador is a state party to the American Convention, having deposited, in proper form, its instrument of ratification on June 23, 1978. Accordingly, the Commission is competent *ratione personae* to examine the allegations.

20. In addition, it is competent *ratione materiae* because the petitioners adduce violations of rights protected by the American Convention. The State notes that the applicable law during the internal armed conflict was international humanitarian law. In this respect, the Commission considers that the circumstance that some of the facts alleged had occurred in the context of an armed conflict does not negate the power of this Commission to rule on them. Article 27 of the Convention allows for the suspension of certain rights in the context of armed conflicts, but by no means does it suspend the force of the Convention in its entirety, nor deprive this Commission of its powers. While these considerations are put forth here, the IACHR must still analyze the obligations of the State that emanate from the Convention in light of the provisions of international humanitarian law, which will be used in the interpretation as *lex specialis*.

21. The Commission is competent *ratione temporis* to examine the allegations. The petition was based on allegations concerning events that took place as of August 25, 1982, the date the disappearance of the Contreras siblings is alleged to have begun. The facts adduced occurred, therefore, after the entry into force of the State's obligations as a party to the American Convention. In addition, as the petition alleges violations of rights protected under the American Convention that took place in the territory of a state party, the Commission concludes that it is competent *ratione loci* to take cognizance of it.

B. Other requirements for the admissibility of the petition

22. Article 46 of the Convention establishes additional requirements, as follows:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
- c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and
- d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

The requirements established by this Article have exceptions, as follows:

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

1. Exhaustion of domestic remedies

23. The State alleges that the instant case is inadmissible because domestic remedies in El Salvador have yet to be exhausted. It notes, in this regard, the existence of a criminal proceeding open in the investigative stage, which would mean that a domestic decision is pending. In addition, it notes that available remedies were not exhausted in the proper time frame, such as habeas corpus and lodging a complaint with the International Committee of the Red Cross. The State argues that a writ of habeas corpus was filed in 2002, though it could have been filed at any time before that; that this writ was admitted and that pursuant to it a criminal investigation was initiated by the Office of the Attorney General, which is continuing. The State adds that on September 12, 1980, it signed a headquarters agreement with the International Committee of the Red Cross, for it to establish a permanent delegation in El Salvador. Under this agreement, the ICRC installed a search agency to record the requests from family members of persons allegedly detained or considered disappeared. Two of these offices were located in Santa Ana and San Miguel. It is argued that the document provided by the ICRC on May 15, 1993, which set forth the complaints received with respect to disappearances from 1979 to 1992, there was no document noting complaints involving the disappearance of minors.

24. For their part, the petitioners argue that the domestic remedies are ineffective, but that even so they have pursued all possible means to discover the whereabouts of the siblings Gregoria Herminia Contreras, Serapio Cristián Contreras, and Julia Inés Contreras. The petitioners note that more than 11 years have elapsed since the case was denounced, and the Salvadoran authorities have not done anything at all to ensure the effectiveness of the investigation, determine the persons responsible, punish them, and make reparation to the victims or their next-of-kin. While the case remains open, the Salvadoran authorities have not carried out an exhaustive investigation to determine the siblings' whereabouts. According to the petitioners, the inactive role of the Office of the Attorney General shows that the domestic remedies available constitute a mere formality.

25. In the instant case, it is argued that members of the Salvadoran Army were allegedly responsible for the forced disappearance of three children in the midst of the internal armed conflict in El Salvador. That period was characterized by systematic human rights violations and impunity, facilitated in part by the ineffectiveness of the Salvadoran judicial system.[FN6] Taking into account the particular circumstances of the case, and the context, the Commission considers that at the time of the facts alleged, it was neither possible nor necessary to pursue any remedy.

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[FN6] In its annual reports published during the conflict, the IACHR on several occasions described the violence and the failure to provide effective judicial protection of those rights. For example:

The right to justice has also been deeply affected by the state of emergency that governs in El Salvador. The statement of the Commission in its previous Annual Report should be reiterated: the American Convention on Human Rights does not authorize suspension of the judicial guarantees necessary to protect fundamental rights, even less so when that suspension is in force for unduly long periods, as has happened in El Salvador. To this should be added the lack of independence and authority of its judiciary, against whose members criminal acts have also been practiced.

The extreme restrictions on judicial guarantees have led, as stated earlier, to the failure to conclude of many trials, leading to a lack of confidence in the judicial system among the population.

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26. As of the date of the adoption of this report, domestic remedies have not operated with the effectiveness required to investigate a complaint of a forced disappearance. In effect, almost 12 years have elapsed since the Salvadoran authorities learned of the facts. In effect, the mother of the alleged victims reported their disappearance to the Truth Commission in 1993. That same year, the Truth Commission published its Report, and delivered it to the authorities in El Salvador. The Report contains the names of the three siblings.[FN7] Nonetheless, as of the adoption of this report, what happened has not been definitively established.

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[FN7] See *From Madness to Hope: The 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador*, United Nations, 1993. The list of victims is in the Annexes, Volume II.6.c. Indirect source, p. 33.

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27. The Truth Commission[FN8] recommended that the State, among other things, determine and punish the grave events that it investigated.[FN9] Accordingly, at least as of 1993, the authorities had knowledge of the facts and as they were crimes of public action, i.e. they had the obligation to investigate them at their own initiative. Nonetheless, the investigation was not initiated for at least another 10 years.

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[FN8] *From Madness to Hope: The 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador*, United Nations.

[FN9] See *Report of the Commission on the Truth for El Salvador*, 1993, United Nations, p. 189, Recommendations. The Commission recommended that the State reform the judicial branch due to “the glaring inability of the judicial system either to investigate crimes or to enforce the law, especially when it comes to crimes committed with the direct or indirect support of State institutions.” The Report adds that there is “no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably. This is a part of the country’s current reality and overcoming it urgently should be a primary objective for Salvadorian society.”

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28. On May 31, 1996, the Asociación Pro-Búsqueda filed a complaint with the Office of the Human Rights Ombudsman of El Salvador concerning 145 cases involving minors who were victims of forced disappearance, all in the context of the internal armed conflict. The Ombudsman’s Office selected five of these cases, including that of the Contreras siblings.

29. On March 30, 1998, the Ombudsman’s Office, in its Report[FN10], establishing the responsibility of the State for the disappearance of the three siblings. Among the steps taken to establish the facts, the Ombudsman’s Office gave notice to the Ministry of National Defense, which responded: “The Commander of the Fifth Infantry Brigade as of the date of the operation was Col. Napoleón Alvarado; the units that participated in the operation were the Cavalry Regiment, the Center for Instruction of Engineers of the Armed Forces, and the Center for Instruction of Transmissions of the Armed Forces; it was not possible to determine the names of the officers who were in charge of the operation, nor the name of the chief of the Hunter Battalion (Batallón Cazador) of the Fifth Infantry Brigade, began “Hunter” (“Cazador”) was a generic name that several battalions had; the Ministry of National Defense did not open any type of investigation into the possible forced disappearance of minors Erminia Gregoria, Serapio Cristián, and Julia Inés, all with the last name Contreras Recinos.”

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[FN10] Resolution of the Procuraduría para la Defensa de los Derechos Humanos, of March 30, 1998.

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30. The Ombudsman's Office delivered this report to the Office of the Attorney General, "for it to initiate the legally established procedures to determine any criminal liability." The State has not provided any information regarding the opening of an investigation by the Office of the Attorney General in 1998 on the possible disappearance of three children. Accordingly, in 1998, the Salvadoran authorities with jurisdiction were once again put on notice that there had been a forced disappearance, yet failed to respond.

31. On October 16, 2002, and in the face of the State's silence, a writ of habeas corpus was filed before the Constitutional Chamber of the Supreme Court of Justice of El Salvador. It issued its resolution on February 17, 2003, receiving the writ, acknowledging the constitutional violation of the right to physical liberty, and urging the Office of the Attorney General of the Republic to "take the necessary measures in keeping with its constitutional authority to conclude the process of determining the conditions of those benefitted by this ruling, Serapio Cristián, Julia Inés, and Herminia Gregoria, all with the last name Contreras, in order to safeguard their fundamental right of liberty." [FN11] [FN12]

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[FN11] In relation to the failure to investigate, it notes: "the Ministry of National Defense was asked for information, and stated that none of those benefitted are deprived of or facing any restriction on their physical liberty at any of the military units of the Armed Forces, it not being possible to show the persons; according to the files of this ministry and of the various military units, there are no records or information related to possible restrictions. For his part, the Chief of the High Command of the Armed Forces, who was also asked for information, stated: that none of those benefitted is deprived of or subject to any restriction on their liberty at any military unit of the Armed Forces, thus it is not possible to show their persons, there being no investigations initiated by the military authorities, for according to the files of the ministry and of the various military units, there are no records or information related to possible restrictions on or deprivation of liberty of those hereby benefitted. Finally, the executing judge appointed concluded in his report that to date there was no complete or detailed record of the rank or name of the members of the military who carried out that operation."

[FN12] Resolution of the Supreme Court of Justice of El Salvador, of February 17, 2003, in habeas corpus proceeding number 215-2002.  
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32. Soon after the habeas corpus resolution of the Supreme Court, the Office of the Attorney General initiated a proceeding, yet to date the facts that began 23 years ago have yet to be clarified. The Commission considers that given the time elapsed since the original facts (1983) or since the judicial authorities took cognizance of them (1993, 1998, and 2002), it is possible to hold that there has been an unwarranted delay that exempts the petitioners from having to exhaust domestic remedies. Moreover, the Commission considers that the State has not presented any evidence that in El Salvador habeas corpus was or is an effective remedy for establishing the children's whereabouts. The State has not provided information that shows that habeas corpus can be used to actually locate or determine the fate of a disappeared person.

33. Based on all the foregoing, the Inter-American Commission decides to apply the exception provided for at Article 46(2)(c) of the American Convention to the instant case. Accordingly, the requirements set forth in said Convention regarding exhaustion of domestic remedies do not apply, nor the six-month period for submitting the petition. At the same time, the IACHR does not consider that lodging a complaint with the International Committee of the Red Cross is one of the remedies that the Convention requires be exhausted.

34. Finally, it should be noted that invoking the exceptions to the prior exhaustion of domestic remedies rule provided for in the American Convention is closed linked to the determination of possible violations of certain rights enshrined in it, such as effective judicial protection. Article 46(2) of the American Convention, nonetheless, is a norm whose content is autonomous vis-a-vis the other substantive provisions of the Convention. In order to determine whether the exceptions to the exhaustion of domestic remedies result in violations of the American Convention in the instant case, one must undertake a different analysis in the merits stage. This is because the analysis of those exceptions uses standards of appreciation different from those applicable to the determination of violations of Articles 8 and 25 of the American Convention.

## 2. Time for submitting the petition

35. Article 32 of the IACHR's Rules of Procedure provides that in those cases in which the exceptions to the requirement of exhaustion of domestic remedies apply, the petition must be submitted within a time that is reasonable, in the Commission's view, mindful of the date of the alleged violation, and the circumstances of each case.

36. In this respect, taking into account the date of the facts alleged, the possibility of a continuing human rights violation, and the status of the various domestic remedies in El Salvador, the Commission considers that the petition under study was submitted within a reasonable time.

## 3. Duplication of procedures and res judicata

37. The objections provided for in Article 46(1)(d) and Article 47(d) of the American Convention have not been raised by the Salvadoran State, nor do they arise from the information contained in the record in the instant case.

## 4. Characterization of the facts alleged

38. The IACHR considers that the facts alleged, if true, would tend to establish violations of the rights protected at Articles 5, 7, 8, 17, 18, 19, and 25, all in conjunction with Article 1(1) of the American Convention.

39. Under the principle of *iura novit curia*, and from the reiterated case-law of the Commission and the Court to the effect that if a forced disappearance is proven, it constituted a violation of the right to life[FN13], the IACHR admits the instant case for an alleged violation of Article 4 as well.

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[FN13] See, e.g., I/A Court H.R., Castillo Páez Case, Judgment of November 3, 1998, Series C No. 34, para. 66.  
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## V. CONCLUSIONS

40. The Inter-American Commission concludes that it has jurisdiction to take cognizance of this case, and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention.

41. Based on the arguments of fact and of law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible in relation to alleged violations of the rights protected at Articles 1(1), 4, 5, 7, 8, 17, 18, 19, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits.
4. To publish this decision and include it in its annual report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C., on February 23rd, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners José Zalaquett, Evelio Fernández Arévalos, Freddy Gutiérrez and Florentín Meléndez.