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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 56/05; Petition 779/01
Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Ana Julia and Carmelina Mejia Ramirez v. El Salvador
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, 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:	12 October 2005
Citation:	Mejia Ramirez v. El Salvador, Petition 779/01, Inter-Am. C.H.R., Report No. 56/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANTS: the Asociacion Pro-Busqueda de Ninas y Ninos Desaparecidos, and the Center for Justice and International Law
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I. SUMMARY

1. On November 16, 2001, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition lodged by the Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos (hereinafter Asociación Pro-Búsqueda), and the Center for Justice and International Law (CEJIL), (hereinafter "the petitioners"), alleging that the Republic of El Salvador ("the State") bears international responsibility for the forced disappearance of the girls Ana Julia and Carmelina Mejía Ramírez and for the subsequent failure to investigate the matter and provide reparations. The petition alleges violation of several rights enshrined in the American Convention on Human Rights ("the American Convention"): right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); right to protection of the family (Article 17); rights of the child (Article 19); and the right to judicial protection (Article 25), all in violation of the general duty to respect and ensure rights (Article 1(1)).

2. According to the briefs submitted by the petitioners on December 13, 1981, Ana Julia and Carmelina Mejía Ramírez, aged 15 and seven, respectively, were captured by members of the Salvadoran army's immediate reaction Atlacatl Battalion, as well as units of the Third Brigade and of the San Francisco Gotera Command Training Center, during an action called "Operación Rescate" ("Operation Rescue") in the north of Morazán Department. Almost 24 years since the

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events the girls' whereabouts remain unknown. All steps taken with the authorities to clarify the events, including a criminal complaint and a writ of habeas corpus, have been fruitless.

3. The State maintains that domestic remedies have not been exhausted because the investigations allegedly remain open. It holds that a complaint submitted by the mother of the girls in accordance with the laws in force on April 7, 1997, to the Second Lower Court in and for San Francisco Gotera initiated criminal proceeding No. 187/97 for the crime of forced disappearance, and that despite the fact that said case was closed, the ruling that closed it was a provisional administrative ruling, which means that it may be reopened if new information comes to light. Furthermore, the State says that the investigation remains open because the petitioners filed for a writ of habeas corpus on November 10, 2000, and the Constitutional Chamber of the Supreme Court of Justice, in a judgment of March 20, 2002, admitted this petition and ordered the Office of the Attorney General to adopt the appropriate measures to effectively safeguard the personal liberty of the girls. The State mentions that while the investigation has failed to produce any positive results, that does not indicate unwarranted delay because the length of time elapsed has hampered the investigation, particularly since the first petition was lodged 16 years after the disappearance of Ana Julia and Carmelina Mejía Ramírez. The State claims that the delay in filing the complaint and the habeas corpus petition held up the investigation of the facts, and that this delay did not originate from any cause imputable to the State. Therefore, the State requests the IACHR to declare the case inadmissible for failure to exhaust domestic remedies. The State further asserts that the Commission lacks jurisdiction to examine the instant case because the applicable law during the domestic conflict in El Salvador is international humanitarian law.

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

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission assigned the petition number 779-01 and on January 22, 2002, requested information from the Salvadoran State on the pertinent parts of the petition. The State responded on June 11, 2002. On August 27, 2002, the petitioners presented observations on the information provided by the State. For its part, the State responded to these additional observations of the petitioners on July 28, 2003. The petitioners submitted further observations on November 16, 2003, and the State presented comments on December 22, 2003. On February 8, 2004, the petitioners put forward additional observations, to which the State submitted its reply on February 24, 2005.

III. POSITIONS OF THE PARTIES

A. The petitioners

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6. The petition received by the IACHR alleges that Ana Julia and Carmelina Mejía Ramírez were victims of forced disappearance, presumably at the hands of members of the Salvadoran army. The petitioners say that the events in the instant case are part of a pattern of human rights violations that occurred from 1980 until 1992. As regards the alleged facts in the case, the petitioners say:

One of the first counterinsurgency operations of the Salvadoran Armed Forces was the so-called "Operación Rescate" ("Operation Rescue") carried out by the Atlacatl Immediate Reaction Battalion, along with units of the Third Brigade and of the San Francisco Gotera Command Training Center […] During the first few days, the confrontations were with the guerrillas. However, from December 10, 1981 onward, the civilian population became the target. The incursion encompassed several places: El Mozote hamlet (December 10, 1981), La Joya canton (December 11, 1981), Jocote Amarillo hamlet and Cerro Pando canton (December 13, 1981). The operation concluded with hundreds of persons captured, more than 700 summary executions, and the forced disappearances of 16 boys and girls under 15 years old, among whom were Ana Julia and Carmelina Mejía Ramírez.

On December 13, 1981, the contingent of soldiers that set out from El Mozote reached Cerro Pando canton, where it proposed to end the incursion. One of the houses inspected by the soldiers was that of Tiburcio Mejía [who was the father of the girls and was murdered on the spot. Tiburcio was with his wife, Leonicia, who was six months' pregnant; his mother, Nazaria; his older brother, Rafael; and nine of his children, including Ana Julia and Carmelina].

The soldiers ordered the families to come out of the house and all of them did so, except two of Tiburcio's daughters; Ana Julia and Carmelina had crept out of the kitchen door and hidden behind the trees in the orchard, where they overheard the soldiers interrogate and beat their relatives. The soldiers were convinced that the detainees were supporting the guerrillas and repeatedly demanded that they tell them where the weapons were hidden. As Tiburcio did not tell them anything, the soldiers began to shoot each of the people with him. Upon seeing this, Ana Julia went back into the house and found the identity card and a photograph of their older brother, Avenicio Portillo, who was stationed at San Francisco Gotera, Morazán department. On seeing the documents proffered by Ana Julia, the soldiers spared her life and that of her sister, and took them away with them.

At approximately 11 a.m. several soldiers took Ana Julia and her sister to the house of María Herminia Argueta so that she might wash them. Ms. Argueta did not ask them anything because she thought it would be dangerous to do so, even though the girls wept disconsolately. While there, their godmother, Ms. Ester Guevara, recognized them. Another group of soldiers arrived at 3 p.m. and took the girls away, saying that they were needed in Meanguera. A witness says he saw the Mejía sisters in the church at Meanguera, where they were guarded by soldiers in the Atlacatl Battalion. When he tried to approach and enquire what was happening an officer ordered him to leave. The soldiers left Meanguera at approximately 9 p.m. that night. Nothing more is known about Ana Julia and Carmelina Mejía since.

Five days after the incident, Avenicio Portilo -brother of the alleged victims- received permission from his superiors to bury his relatives. When he arrived at his home, he found the bodies with

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multiple gunshot wounds. He did not find Ana Julia and Carmelina but saw several bloody footprints that appeared to belong to the girls; therefore, he assumed that they had been captured.[FN2]

[FN2] See petitioners' brief of November 16, 2003.

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7. The petitioners allege that El Salvador has no effective remedies to determine the whereabouts of children who disappeared during the armed conflict. They say that during the war the relatives of the alleged victims did not report violations because many families continued to flee from military operations and feared that if they reported what happened the authorities would take them to be guerrilla sympathizers. Therefore, there was no viable remedy during this period. Later, the amnesty law issued in 1993, made it impossible to implement the recommendations of the Truth Commission as regards investigation of human rights violations. Finally, they say that habeas corpus, which ought to be the suitable remedy in cases of forced disappearance, is not effective in El Salvador.

8. In spite of the foregoing, the petitioners say that they have instituted proceedings before several organs but they have proved ineffective and unsatisfactory. The incident was reported in 1993 to the Truth Commission, after the signing of the Peace Agreements in El Salvador. On November 25, 1995, the mother of the girls, Ms. Arcadia Ramírez Portillo, turned to the Asociación Pro- Búsqueda, and on May 31 of that year sought the assistance of the Office of the Human Rights Ombudsman (Procuraduría para la Defensa de los Derechos Humanos). The resolution of the latter agency, dated March 30, 1998, was certified and transmitted to the Office of the Attorney General without result. Furthermore, on April 7, 1997, Ms. Arcadia Ramírez, brought a criminal complaint for the disappearance of her daughters before the Second Lower Court in and for San Francisco Gotera, Morazán Department. That case was provisionally closed on February 23, 1999. On November 10, 2000, Ms. Reyna Dionila Portillo, the girls' aunt, filed a petition for a writ of habeas corpus with the Constitutional Chamber of the Supreme Court of Justice. A ruling on that petition was issued on March 20, 2002, which recognized the constitutional violation of the right to physical liberty of the persons benefited by the ruling, and ordered the Office of the Attorney General to open an investigation of the facts.

9. The petitioners say that it was only possible to file the complaint in 1997 because, owing to the armed conflict, there was a fear that anyone who went to a military facility would be associated with the guerrillas and suffer reprisals. In this connection, the Truth Commission for El Salvador said that many human rights violations were committed against the civilian population simply because they were suspected of collaboration with the guerrillas, as part of the campaign -particularly in the early years of the conflict- to "leave the fish without water". In this context, the petitioners argue no one had confidence in the authorities, especially since the human rights violations were perpetrated by the Salvadoran army. The petitioners add that besides the fear factor, it was physically impossible to approach the courts and the authorities did not have the capacity to process complaints.

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10. The petitioners mention that the domestic criminal proceeding was not effective because after a number of procedures it was provisionally closed. According to the petition, the following procedures were carried out: deposition of the injured party; summonsing of witnesses; and a request for a report from the Ministry of National Defense, since which time the case has remained closed to this day, and neither have the facts been clarified nor Ana Julia or Carmelina Mejía Ramírez found. The petitioners say that the judge failed to take such elementary measures as, inter alia, ordering a report from the Third Infantry Brigade or the Atlacatl Battalion on their activities at the time of the incident, or ascertaining the identity of other persons who lived at the scene. The say that during the proceeding the prosecution requested measures which were not granted.

11. The petitioners claim that the petition for a writ of habeas corpus lodged on November 10, 2000, also failed to be effective due to the inefficacy of the criminal investigation. They say that the Supreme Court issued a decision on that petition on March 20, 2002, in which it recognized constitutional violation of the right to personal liberty of Ana Julia and Carmelina Mejía Ramírez; however, in that judgment the Supreme Court mentioned that habeas corpus is a formal remedy incapable of resolving material aspects of the case and, therefore, in its ruling it urged the Office of the Attorney General to "take the necessary measures to conclude the process of determining the conditions of those benefited by this decision, Ana Julia and Carmelina Mejía Ramírez, in order to safeguard their fundamental right to liberty."[FN3] The petitioners say that they have no knowledge of any steps taken by the Office of the Attorney General to investigate the facts.

[FN3] Decision of the Constitutional Chamber of the Supreme Court of El Salvador, March 20, 2002.

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12. In sum, the petitioners say that no suitable or effective remedy exists in El Salvador to determine the whereabouts of the children who disappeared during the armed conflict in that country. They say that until some time after the creation of the Truth Commission, the petitioners had no possibility of access to a domestic judicial remedy in El Salvador. Since then the petitioners hold that the domestic remedies available in El Salvador have not been effective for the purposes of investigating the facts, determining the whereabouts of Ana Julia and Carmelina Mejía Ramírez, and providing reparation for the consequences of the alleged violations. In that regard they argue that more than 12 years have elapsed since the case was first reported, during which time the attitude of the State has been one of utter negligence and indifference in the proceedings, despite the publicly actionable nature of the incident. The petitioners request, therefore, that the exception to the rule of prior exhaustion of domestic remedies, provided at Article 46(2)(b) of the Convention, be applied in this case.

13. As regards applicable standards, the petitioners say that the Salvadoran State ratified the American Convention on June 23, 1978, and, therefore, is responsible for any violations thereof to the detriment of Ana Julia and Carmelina Mejía Ramírez.

B. The State

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14. For its part, the Salvadoran State says that during the period of armed conflict there was no pattern of forced disappearance of persons, including children, but that the armed conflict gave rise to circumstances in which families were inadvertently separated, and therefore, in many cases nothing was known of the consequences and extent of that separation. The State adds that during the conflict there were certain territories under the control of the FMLN (Farabundo Martí Front for National Liberation) in which the latter had "masses" or peasant populations that lived alongside the guerrillas or helped them to subsist. The State adds that the operations of the army were not intended to eliminate this civilian population that voluntarily coexisted with the guerrillas, but it was logical that regrettable fatalities occurred in the conflict with the guerrillas.

15. The State also notes that the applicable international law in armed conflicts is international humanitarian law, in particular Article 3 common to the four Geneva Conventions and of Additional Protocol II. The State says that the Armed Forces of El Salvador acted in accordance with these provisions in that conflict:

In keeping with international humanitarian law, the ICRC intervened during the conflict to provide assistance to victims on both sides of the conflict and to the civilian population directly affected. In light of the foregoing we consider that the instant case is among those governed by international humanitarian law, and the Inter-American Court of Human Rights has produced jurisprudence (Las Palmeras Case) which concludes that the American Convention on Human Rights gives the Court jurisdiction to determine the compatibility of the acts and laws of states with the Convention, not with the Geneva Conventions.

16. Based on this information, the State requests the IACHR to find that there was "no systematic practice on the part of the Salvadoran Armed Forces in disappearances of minors".

17. With respect to the absence of remedies during the conflict in El Salvador, the State says that is not true. It says that the relatives of the children or alleged victims did not exercise that right [to seek remedies] by their own decision. For instance, they did "not accede to the Amnesty Law of 1983, which permitted and ensured their dissociation from the then-guerrilla forces; they remained in the refugee camps and chose not to leave them because that meant they would no longer belong to the guerrillas' social support base, members of which, as mentioned, very often lost their civilian status and became combatants […]"[FN4] The State argues that the petitioners have not shown that no remedies existed. It adds that the criminal complaint and the habeas corpus petition are suitable remedies and that the State has shown every intention of ensuring their effective application despite the delay in their presentation.

[FN4] Reply brief of the State of December 22, 2003.

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18. The State argues that domestic remedies have not been exhausted, first, because there is an ongoing criminal proceeding before the Second Lower Court in and for San Francisco Gotera, which was initiated on April 7, 1997, by the mother of the alleged victims. This proceeding is being processed in accordance with procedural laws that have since been abolished, under which

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the judge has the obligation to investigate. The State says that a provisional closure order was issued in that proceeding, which does not definitively close the case but allows it to be reopened should more information come to light. The State says that while there has not been a positive result, that does not mean that there has been an unwarranted delay in processing the case because the judge acted diligently and ordered all the measures that he could, bearing in mind the period elapsed between the disappearance of the girls and the time the complaint was lodged. In second place, the State mentions that the investigation remains open on the orders of Supreme Court of Justice, which, in its ruling on the habeas corpus petition, instructed the Office of the Attorney General to take steps to determine the physical situation of the disappeared persons, in order to safeguard their fundamental right to liberty. The State says that the delay in the investigation is not imputable to the State because the relatives of the alleged victims waited before filing the complaint.

19. As regards the lack of effectiveness of the habeas corpus remedy, the State says that the laws in force in this area make no provision for forced disappearance, and that the Supreme Court, via constitutional interpretation, has broadened them to enhance the protection afforded by the remedy. In this connection, the State mentions that the Supreme Court of Justice has submitted a draft Constitutional Procedural Law bill to the Legislative Assembly, which contains a section on special cases that includes a procedure on the disappearance of persons. The State notes, with respect to the habeas corpus petition submitted by Reyna Dionila Portillo, that the Court found in favor of the complainant.

20. Finally, the Salvadoran State holds that, in light of the reservation made by the State of El Salvador when it accepted the contentious jurisdiction of the Inter-American Court, and of the finding of said Court in its judgment on preliminary objections in the Case of Serrano-Cruz Sister, the Inter-American Court could not have jurisdiction in the case of the disappearance of Ana Julia and Carmelina Mejía Ramírez.

21. In sum, the State requests that the instant case be declared inadmissible because the remedies under domestic law have not been exhausted in accordance with generally recognized principles of international law. The State mentions that an investigation opened years later cannot be completed with the requisite promptness because the time elapsed is detrimental to the investigation and the evidence. However, the State insists that it has acted with all due diligence in this case.

IV. ANALYSIS

A. The Commission's Competence Ratione Personae, Ratione Materiae, and Ratione Temporis and Ratione Loci

22. In accordance with the terms of Article 44 of the American Convention, the petitioners have standing to present a petition before the Commission. The petition under examination indicates that the alleged victims were subject to the jurisdiction of the Salvadoran State at the time of the alleged facts. With respect to the State, the Commission observes that El Salvador is a State Party to the American Convention, having duly deposited its instrument of ratification on

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June 23, 1978. Accordingly, the Commission has competence ratione personae to examine the claims presented.

23. The Commission is also competent ratione materiae because the petitioners allege violations of rights protected under the American Convention. The State says that the applicable law during the domestic armed conflict is international humanitarian law. In this connection, the Commission finds that the fact that some of the alleged facts should have occurred in the context of an armed conflict does not deprive it of its power to rule on those facts. Article 27 of the Convention permits suspension of certain rights during an armed conflict, but in no circumstances does it suspend the force of the Convention in its entirety or relieve this Commission of its powers. The foregoing notwithstanding, at the merits stage the IACHR must examine the obligations of the State under the Convention in the light of the standards of international humanitarian law, which will be used in the interpretation as lex specialis in accordance with Article 29 of the Convention.

24. The Commission has temporal jurisdiction to review the claims. The petition is based on allegations that date to December 13, 1981, the time of the disappearance of Ana Julia and Carmelina Mejía Ramírez. The facts alleged thus arose subsequent to the entry into force of the State's obligations as a Party to the American Convention. The State argues that, in accordance with the declaration it made at the appropriate time, the Inter-American Court of Human Rights lacks jurisdiction to take up this case; the IACHR will not comment on this issue in the instant report because it does not concern its jurisdiction.

25. Furthermore, given that the petition alleges violations of rights protected under the American Convention that have taken place in the territory of a State Party, the Commission concludes that it has the competence ratione loci to take cognizance of it.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

26. The State argues that this case is inadmissible because domestic remedies in El Salvador have not been exhausted. In this connection, it cites the existence of an open criminal proceeding and of an investigation ordered by the Supreme Court of Justice, for which reason a decision is pending before the domestic courts.[FN5] The State challenges the argument of the petitioners that there are no domestic remedies to exhaust, and says that there is the criminal complaint as well as the habeas corpus petition, adding that the former has not been exhausted. The State argues that there has been no unwarranted delay since the authorities have acted diligently, and the delay is due to the difficulty of the investigation, caused principally by the time elapsed between the events and the complaint.[FN6] The State further mentions that the habeas corpus petition filed was effective given that the Supreme Court ruled in favor of the petitioner and ordered the Office of the Attorney General to investigate the incident.[FN7]

[FN5] See paragraphs 3 and 18 of the instant report
[FN6] See paragraphs 3, 17, 18, and 19 of the instant report
[FN7] See paragraphs 18 and 19 of the instant report.

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27. For their part, the petitioners hold that no effective domestic remedies exist, but that even so they have sought by every possible means to ascertain the whereabouts of Ana Julia and Carmelina Mejía Ramírez.[FN8] The petitioners mention that more than 12 years have passed since the case was denounced and 24 years since the incident occurred, and yet the Salvadoran authorities have not done anything at all to ensure the effectiveness of the investigation, identify and punish the persons responsible, and provide reparation to the victims or their next-of-kin.[FN9] The petitioners say that the habeas corpus petition was not effective either for determining the whereabouts of the girls. Therefore, they request that the exception to the rule of prior exhaustion of domestic remedies, provided for at Article 46(2)(b) of the Convention, be applied.[FN10]

[FN8] See paragraphs 7 and 8 of the instant report.
[FN9] See paragraph 8 of the instant report.
[FN10] See paragraph 12 of the instant report.

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28. In the instant case, it is argued that members of the Salvadoran Army were allegedly responsible for the forced disappearance of two girls 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.[FN11] 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.

[FN11] In its annual reports published during the armed conflict, the IACHR issued statements on several occasions about the violence and lack of effective judicial protection of rights. For example:
The right to justice has been profoundly affected by the state of emergency that reigns in El Salvador, as indicated earlier. Here it is worth reiterating the Commission's remarks from its last Annual Report: the American Convention does not authorize the suspension of judicial guarantees that are essential for protecting basic rights, particularly not for prolonged periods, as has been the case in El Salvador. In addition, there is a lack of judicial independence and authority; members of the judiciary have themselves been the target of criminal acts.
The marked limitations on judicial guarantees, as stated previously, have left many proceedings unresolved, causing the population to lose confidence in the judicial system.
IACHR, Annual Report 1983-1984, Chapter IV "Human Rights Situation in Several States: El Salvador", par. 6.

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29. 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. Indeed, almost 12 years have elapsed since the Salvadoran authorities learned of the facts. The case of the Mejía Ramírez sisters was reported to the Truth Commission in 1993. That same year, the Truth

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Commission published its Report, and delivered it to the authorities in El Salvador. The Report contains the names of the two sisters. [FN12] Nonetheless, as of the adoption of this report, what happened has not been conclusively established.

[FN12] See From Madness to Hope: The12-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.c. Indirect source, p. 110.

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30. The Truth Commission recommended that the State, among other things, determine and punish the grave events that it investigated.[FN13] Accordingly, at least as of 1993, the authorities had knowledge of the facts and, as they were publicly actionable crimes, they had the obligation to investigate them at their own initiative. Nonetheless, at least at the time of the criminal complaint presented by the mother of the girls on April 7, 1997,[FN14] the investigation was not initiated.

[FN13] 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."
[FN14] See paragraph 3 of the instant report.

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31. 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 Mejía Ramírez sisters. In that report it established the responsibility of the State for their disappearance.[FN15]

[FN15] Report of the Human Rights Ombudsman - Case SS-0449-96 of March 30, 1998.

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32. 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." [FN16] 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 the girls. Accordingly, in 1998, the Salvadoran authorities with jurisdiction were once again put on notice that there had been a forced disappearance, yet they failed to respond

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[FN16] Idem.
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33. On November 10, 2000, and in the face of the State's silence, a petition for a writ of habeas corpus was filed with the Constitutional Chamber of the Supreme Court of Justice of El Salvador. It issued its decision on March 20, 2002, receiving the petition, acknowledging the constitutional violation of the right to physical liberty, and urging the Office of the Attorney General to "take the necessary measures in keeping with its constitutional authority to conclude the process of determining the conditions of those benefited by this decision, Ana Julia and Carmelina Mejía Ramírez, in order to safeguard their fundamental right to liberty."[FN17] However, to date, the IACHR has received no information regarding the initiation of investigations by the Office of the Attorney General.

[FN17] Decision of the Supreme Court of Justice of El Salvador, of March 20, 2002, in Habeas Corpus proceeding No. 379-2000.
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34. The Commission considers that given the time elapsed since the original facts (1981) without the petitioners being able to seek a remedy, and since the judicial authorities took cognizance of them (1993, 1997, 1998, and 2000), 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 girls' 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.

35. Based on the foregoing, the Inter-American Commission decides to apply the exception provided 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.

36. Finally, it should be noted that invoking the exceptions to the rule of prior exhaustion of domestic remedies 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. Deadline for submitting the petition

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37. 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, bearing in mind the date of the alleged violation and the circumstances of each case.

38. 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 proceedings and res judicata

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

4. Nature of the alleged violations

40. 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 constitutes a violation of the right to life,[FN18] the IACHR admits the instant case, furthermore, as an alleged violation of Article 4.[FN19]

[FN18] See, for example, Inter-Am. Ct.H.R., Castillo Páez Case, Judgment of November 3, 1998, Series C, No. 34,
par. 66.
[FN19] See Report Nº 11/05, Admissibility, Gregoria Herminia, Serapio Cristián, Julia Inés Contreras, El Salvador, February 23, 2005.

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41. The IACHR considers that the facts alleged, if true, would tend to establish violations of the rights protected at Articles 2, 4, 5, 7, 8, 17, 18, 19, and 25, all in conjunction with Article 1(1) of the American Convention.

V. CONCLUSIONS

42. 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.

43. Based on the factual and legal arguments given above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

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DECIDES:

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

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 12th day of October 2005. (Signed) Clare K. Roberts, President; Susana Villarán, First Vic-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners: Evelio Fernández Arévalos, José Zalaquett, and Freddy Gutiérrez.