

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 10/08; Petition 733-03  
Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)  
Title/Style of Cause: Santos Ernesto Salinas v. Brazil  
Doc. Type: Decision  
Decided by: Chairman: Paolo Carozza;  
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;  
Second Vice-Chairman: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Victor E. Abramovich.  
In accordance with Article 17(2) of the IACHR Rules of Procedure, Commissioner Florentin Melendez Padilla, of Salvadoran nationality, did not participate in the discussion and decision relating to this report.

Dated: 5 March 2008  
Citation: Ernesto Salinas v. Brazil, Petition 733-03, Inter-Am. C.H.R., Report No. 10/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)  
Represented by: APPLICANT: the Asociacion Pro-Busqueda de Ninas y Ninos Desaparecidos  
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## I. EXECUTIVE SUMMARY

1. On September 11, 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, an organization devoted to finding missing children (hereinafter “the petitioners”), alleging the international responsibility of the Republic of El Salvador (hereinafter “the State”) for the forced disappearance in 1981 of a nine-year-old boy, Santos Ernesto Salinas, and its subsequent failure to investigate, prosecute, punish and make reparations for that disappearance. The petitioners argued that the facts alleged constituted a violation of various rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention”), including the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the rights 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 non-observance of the general obligation to respect and guarantee rights (Article 1(1)).

2. The petitioners argue that the alleged facts constitute a grave violation of human rights, made all the worse because they occurred as an expression of a government policy of forced disappearance. They also argued that their petition met the formal requirements for admissibility. With respect to the exhaustion of domestic remedies, the petitioners claimed exemption from that

requirement because they had been systematically blocked from access to domestic jurisdiction for more than 20 years.

3. In its response, the State asked that the complaint be declared inadmissible, because the requirements of Article 46(1)(a) of the American Convention had not been fulfilled. The State maintained that the petitioners had available numerous resources, including criminal action before the ordinary and auxiliary courts, and that the petitioners could have availed themselves of the court nearest to their jurisdiction. The State also noted that the petitioners filed a motion for habeas corpus in 2002 (which they could have done at any time earlier) and that it was rejected for lack of evidence and information on the child alleged to have disappeared.

4. Without prejudging the merits of the case, the IACHR concludes in this report that the petition is admissible, pursuant to Article 46(2)(b and c) of the American Convention. The Commission therefore notifies its decision to the parties and will continue its analysis of the merits, with respect to the alleged violation of Articles 5, 7, 8, 17, 19 and 25 of the American Convention, in relation with Article 1(1) thereof. In addition, in keeping with the principle of the *iura novit curia*, the Commission will examine, in the merits stage, whether there may be violations of Articles 3 and 4 of the Convention, with respect to the generic obligation to respect and guarantee rights, and the duty to adopt domestic legal provisions, as set forth in Articles 1(1) and 2 of the Convention, respectively. The Commission also decides to publish this report and to include it in its Annual Report to the OAS General Assembly.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On September 11, 2003 the Commission received a complaint submitted by the Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, which it acknowledged on October 22 of that year. On December 24, 2003 the IACHR transmitted the complaint to the Government of El Salvador, asking it to respond within two months. On March 10, 2004 the government responded to the petition. On March 17, 2004, the Commission transmitted the State's response to the petitioners. On April 22 and on June 3, 2004 the Commission received the response of the petitioners to the observations of the State, which was transmitted to the State on December 15, 2004. On February 15, 2005 the State presented additional observations on questions regarding the admissibility of the petition.

## III. POSITIONS OF THE PARTIES

### A. The petitioners

6. The petitioners alleged in their initial complaint that on October 25, 1981, the nine-year-old boy Santos Ernesto Salinas disappeared at the hands of members of the Salvadoran army. According to the complaint, the child's disappearance was not an isolated event, but rather part of a systematic policy of disappearances executed in El Salvador during the time of the internal conflict, when the disappearance of children was a common phenomenon.

7. On October 15, 1981, according to the petitioners, members of a guerrilla group destroyed the Puente de Oro ("Golden Bridge"), which was considered a strategically important

structure, and this attack sparked great concern and anger in the Armed Forces. Ten days after that event, a group of some 15 members of the Armed Forces conducted a sweep search in the locality of San Nicolas de Lempa, allegedly with the objective of "settling accounts" with the community of people living near the bridge, whom the Armed Forces suspected to be collaborating with subversive groups.

8. On October 25, 1981, 9-year-old Santos Ernesto came to purchase supplies at the home of Mrs. Tomasa Torres, who at that time was 65 years of age and ran a shop below the bridge. Other people present at the time were Carmen Torres (the wife of Antonio, brother of Tomasa Torres), Wilber Torres (17 years of age, the nephew of Tomasa Torres), two-year-old Francisco Torres (grandson of Tomasa Torres) and a child named Modesto N. (the son of a couple who had arrived in the locality a few days earlier; according to the petition, no one remembers his last name, but only the given names of the parents and the child). In total there were six persons, three of whom were relatives of Mrs. Tomasa, and two were children who had come to buy things at the store. Members of the National Guard and the Atlacatl Battalion appeared on the scene and detained everyone found in the house. According to the petitioners, the neighbors testified that, after having been captured, all these people, with the exception of Santos Ernesto, were taken to the riverbank and killed. Santos Ernesto was captured by the soldiers and taken to an unknown destination. A woman living in the same neighborhood, named Josefa Sanchez, said she saw Santos Ernesto being taken away by members of the National Guard and the Atlacatl Battalion, and that he was wearing no clothes, except for his underpants.

9. On the very day of the boy's disappearance, his family began a search, but this had to be called off because the continued presence of soldiers in the area intimidated the family. Family members were not even able to venture near the river that day, because there was gunfire from the other side.

10. The petitioners report that it was impossible at that time to file a complaint with the authorities, because of the ongoing armed conflict, and the fear that any person who showed up at military headquarters would be taken to have links to the guerrillas and would suffer reprisals. On this point, according to the petitioners, the Truth Commission for El Salvador found that there were many violations of human rights committed against the population, simply on the grounds that they were deemed collaborators with the guerrillas, especially during the early years of the campaign to "quitarle el agua al pez" (roughly "deny the fish its water"). In these circumstances, the petitioners argue, there was no faith in the authorities, especially when human rights were violated by the Army.

11. As for clarifying the facts, the petitioners maintain that the Asociación Pro Búsqueda accompanied Ms. María Adela Iraheta[FN2], mother of Santos Ernesto Salinas, when she lodged a complaint with the Office of the Attorney General of the Republic, in the city of San Vicente, in August 2002, but that the complaint was not accepted by the staff in charge, who "argued that it must be presented at the central office" in the city of San Salvador; this was attempted, but yielded no positive outcome. The child's mother and the Asociación Pro- Búsqueda submitted a motion for habeas corpus to the Constitutional Chamber of the Supreme Court of Justice on October 17, 2002.[FN3] The child's mother first reported the facts to the Asociación Pro Búsqueda, which helped her to submit a motion for habeas corpus to the Constitutional Chamber

of the Supreme Court of Justice on October 17, 2002. In a ruling of March 3, 2003 (notified on March 11 of that year), the Court rejected the appeal on the grounds that there was insufficient evidence to establish the probability of the alleged forced disappearance, and that consequently the Court must go by what the authorities themselves reported.[FN4] The petitioners maintain that this judgment exhausted any chances of obtaining a judicial remedy through domestic jurisdiction.

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[FN2] Ms. María Adela Iraheta died on October 21, 2005, of diabetes.

[FN3] According to the petition for habeas corpus, the complainant attested to the existence of the child Santos Ernesto Salinas with a certified copy of his birth certificate.

[FN4] Decision of the Supreme Court of El Salvador, March 3, 2003.

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## B. Position of the State

12. In its response, the State argued that El Salvador had no evidence that there was any systematic practice of forced disappearance of juveniles during the conflict. It objected to the complaint's admissibility on the grounds that the petitioners had not exhausted the remedies provided in domestic legislation.

13. The State maintained that during the time the event was alleged to have occurred, a non-international armed conflict was underway in El Salvador, and that consequently the rules of international humanitarian law were applicable. The State said that, consistent with those rules, the Armed Forces established the "Standard operating procedure (PON) for detentions by members of the Armed Forces". That procedure provided that juveniles who fell into the hands of combatants were to be taken to a safe place, pursuant to Additional Protocol II to the Geneva Conventions (Part II, Article 4). The State maintains that this procedure was followed in accordance with humanitarian rules, citing as evidence the Report of the Special United Nations Representative for El Salvador, Pastor Ridruejo, which declared that "El Salvador has respected sectors of the civilian population who, presumably, were part of the so-called 'masses'".

14. The State also noted that that same report from the United Nations Special Representative, submitted in 1984 to the UN General Assembly, devoted a special section to the issue of forced disappearance. It did not however refer specifically to the disappearance of children, from which it may be inferred that international observers found no evidence that this was a systematic or generalized practice. Nor did the United Nations Working Group on Enforced Disappearance have anything to say on the matter, despite having received many complaints of disappearance. Consistent with those arguments, the State held that "if juveniles were the target of such actions, this was not the responsibility of the State, for the State gave no mandate to its armed forces to abduct children".

15. The State also argued that the petitioners had not exhausted domestic remedies. It noted that at the time of the events the 1974 Criminal Code was in effect, which made it a crime to interfere with personal liberty. The boy's mother could have availed herself of this mechanism, by filing a complaint with the General Directorate of the National Guard or the General

Directorate of the National Police as the law-enforcement bodies responsible for investigating crimes. In addition, the State declared that the new criminal legislation makes the forced disappearance of persons a crime, and yet the petitioners had not availed themselves of this route.

16. The State notes that the petitioners decided to file a motion for habeas corpus only in 2002, i.e. 20 years after the events. The Constitutional Chamber of the Supreme Court of Justice, in a ruling of March 3, 2003, dismissed that appeal because the appellant failed to provide sufficient evidence about the allegedly missing child. That court decision did not terminate the domestic judicial discussion, the State held, because if the parties produce evidence that a crime may have been committed, a new habeas corpus process can be requested. The State also argued that if such a motion had been filed earlier, more information could have been gathered. Subsequent to that decision, the public prosecutor's office opened an investigation, but that there has been too little time to complete the investigation, in particular because, so many years after the event, evidence is difficult to find.

17. In addition, the State contends that the petitioners had a series of alternative remedies available to them, such as the Government Commission on Human Rights. They could also have appealed to the International Committee of the Red Cross, which installed a permanent office in El Salvador during the conflict. The State notes that the petitioners did not report the alleged incidents to any of these organizations. Because of this, the State requests the IACHR to declare the complaint inadmissible, in accordance with the provisions of Article 30(3) of the Commission's rules of procedure.

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Jurisdiction *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Inter-American Commission

18. Under the terms of Article 44 of the American Convention, the petitioners are entitled to address a petition to the Commission. The petition names Santos Ernesto Salinas as the alleged victim, a person in relation to whom the Salvadoran State was bound to respect and guarantee the rights enshrined in the American Convention. Regarding the State, the Commission notes that El Salvador is a State Party to the American Convention, having duly deposited its instrument of ratification on June 23, 1978. As a consequence, the Commission has jurisdiction *ratione personae* to hear the complaint.

19. The Commission has jurisdiction *ratione materiae* because the petitioners claim violations of rights protected by the American Convention. The State argues that International Humanitarian Law was the applicable law during the domestic armed conflict. Regarding this, the Commission contends that it is not precluded from ruling on the reported incidents merely because some of them might have occurred in the context of an armed conflict. Article 27 of the Convention absolves the State from certain obligations in the context of armed conflicts but in no way does it suspend the force of the Convention in its entirety nor does it abridge the present Commission's powers. It must be noted that the rights of the Child are among those rights with respect to which the international obligations of States cannot be suspended. Despite the

foregoing, in the merits stage of the case the IACHR will have to examine the State's obligations stemming from the Convention, in the light of the provisions of International Humanitarian Law, which will serve as *lex specialis*, pursuant to Article 29 of the Convention, in interpreting the case.

20. The Commission has jurisdiction *ratione loci* to hear the petition, because it alleges violations of rights within the territory of a State party to the American Convention. The Commission has jurisdiction *ratione temporis* to examine the complaint, because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State at the time of the alleged events.

## B. Requirements for admissibility

### 1. Exhaustion of domestic remedies

21. Article 46(1) of the American Convention requires that for a petition to be admissible, the remedies available under the State's domestic jurisdiction must first have been exhausted. The petitioners argued that they were not required to exhaust any form of domestic remedy because the alleged facts of the case fell within the assumption of Article 46(2)(a), which provides an exception to the general rule when 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. The petitioners claim that for more than 20 years they were prevented from filing a motion for habeas corpus, and that when they were finally able to do so that remedy was useless, because of the length of time elapsed and the lack of governmental willingness to investigate the practice of forced disappearances.

22. The petitioners insisted that, as indicated by the IACHR in prior reports, during the conflict a widespread climate of fear prevented victims of violations from invoking their rights. Nor was effective recourse possible after the peace agreements were signed. The practice of domestic courts was to deny petitions for habeas corpus presented in cases of forced disappearance, claiming that complainants must identify the authority who had ordered the arrest. Beginning in 2002, when the Supreme Court changed its jurisprudence on the matter, petitions for habeas corpus could be lodged to initiate investigations of forced disappearances. By that time, however, investigating events that had taken place during the conflict was very difficult and required special investigative measures by state authorities, which have not been taken.

23. The State argued that the petitioners had effective judicial remedies available to them at all times. The criminal prosecution system was in place both during the conflict and subsequent to signature of the peace accords. Yet they chose not to report the event until 20 years after it occurred. Despite this fact, the Supreme Court of Justice was diligent in its handling of the motion for habeas corpus, finding that the evidence presented was insufficient to substantiate the conduct alleged. In addition, the prosecutor's office opened an investigation, which has still not been completed and has been running for only two years, a short length of time for investigating events that allegedly occurred more than two decades earlier. Moreover, the decision of the

Supreme Court does not preclude the petitioners from submitting a new motion for habeas corpus, if additional evidence should come to light.

24. The Commission considers that the petitioners were prevented from pursuing domestic remedies during the time of the armed conflict, because in those years El Salvador did not have an independent judiciary, and complaints of human rights violations were notoriously ineffective.[FN5] In some circumstances, to file complaints was a hazardous undertaking for the plaintiff. Thus, the events occurred at a time when domestic judicial remedies were inoperative, and this is especially true of motions for habeas corpus.[FN6]

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[FN5] In its Annual Report published at the end of the armed conflict in El Salvador, the IACHR recounted the situation that the country had experienced during the previous 12 years. It found that:

El Salvador does not now enjoy –nor has it in the recent past –the kind of efficient, impartial administration of justice that is the best safeguard against impunity and an effective deterrent against crime. Throughout the armed conflict, and once it was over, human rights organizations and experts of all leanings and origins concurred on this one point.

IACHR, Annual Report 1992, OAS/Ser.L/V/II.83 Doc. 14, 12 March 1993, Chapter IV, "Status of Human Rights in Several Countries: El Salvador", paras. 10 and 11.

In a similar vein, the IACHR had recommended in 1984 "that the Government should urgently proceed to reform the judiciary, in order to guarantee the punishment of those responsible for human rights violations", IACHR, Annual Report 1983-84, OAS/Ser.L/V/II.83 Doc. 10, 28 September 1994, Chapter IV, "Status of Human Rights in Several Countries: El Salvador", para. 15.e.

[FN6] The Inter-American Commission, in referring to the situation in El Salvador during the domestic armed conflict, found that the recourse of amparo or habeas corpus had lost its effectiveness, "since the state of emergency indefinitely suspends such remedies". IACHR, Annual Report 1983-84, Ch. IV, para. 4.

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25. Subsequent to that time, the remedy of habeas corpus has remained ineffective for investigating disappearances, because the judicial authorities demanded that the appellants provide proof of the detention.[FN7] The Commission finds that cases involving the forced disappearance of persons presented during that time did not result in due clarification of the facts or the investigation and punishment of those responsible.[FN8] The State itself admits that it was only in March 2002, in the proceedings concerning the disappearance of the child Ana Julia and Carmelina Mejía Ramírez, that the Supreme Court of Justice changed its jurisprudence, which denied protection in cases of forced disappearance, to admit violations of the right to physical liberty, even without proof of detention.[FN9] This case, therefore, represented the possibility of an effective habeas corpus remedy in cases involving disappeared persons in El Salvador.

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[FN7] See IACHR, Report 31/01, Case 12.132, Ernestina and Erlinda Serrano Cruz, in which the Commission decided to declare the case admissible and accepted the exception to the exhaustion of domestic remedies provided in Article 46(2)(c) of the Convention, declaring that "as of the

date this report was adopted, domestic remedies had not operated with the effectiveness required to investigate a complaint of forced disappearance .... In fact, nearly eight years have passed since the first complaint was lodged with the authorities in El Salvador, with no definitive finding of how the events transpired”.

[FN8] The Office of the Public Prosecutor for the Defense of Human Rights of El Salvador (Procuraduría para la Defensa de los Derechos Humanos de El Salvador—PDDH) spoke out about the issue of forced disappearances, and in its considerations on access to justice during the postwar period it indicated that "since the end of the war, the situation has not changed substantially in the face of victims' complaints. The best proof that Salvadoran justice has not functioned for the victims is that no one is behind bars for such atrocious crimes, and no victims, nor their remains, have been found." Procuraduría para la Defensa de los Derechos Humanos de El Salvador, Informe Especial de la Señora Procuradora sobre la práctica de Desapariciones Forzadas de personas en el contexto del conflicto armado interno ocurrido en El Salvador entre 1980 y 1992, 8 March 2005.

[FN9] See Sala de lo Constitucional de la Corte Suprema de Justicia, 20 March 2002, Expediente 379-2000.

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26. The Inter-American Court of Human Rights has established that the remedy of habeas corpus is an essential means of monitoring respect for the lives and well-being of persons, of preventing their disappearance or a lack of information as to their whereabouts, and of protecting them against torture and other cruel, inhumane, or degrading treatment.[FN10] The Commission notes that the remedy of habeas corpus has been ineffective in El Salvador in cases of forced disappearance, even after the conflict ended in 1992. The Commission has been informed by both parties that, on March 20, 2002, in a judgment in the proceedings concerning Ana Julia and Carmelina Mejía Ramírez, the Supreme Court of Justice changed its jurisprudence, establishing that petitions for habeas corpus could be lodged to initiate investigations of forced disappearances. This case, therefore, represented the first possibility of an effective habeas corpus remedy in cases involving disappeared persons in El Salvador.[FN11]

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[FN10] I/A Court H.R., Advisory Opinion OC-8/87, January 30, 1987, “Habeas corpus in Emergency Situations,” para. 35.

[FN11] Decision of the Supreme Corte of Justice of El Salvador, March 20, 2002, in the habeas corpus proceeding No. 379-2000, Ana Julia and Carmelina Mejía Ramírez.

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27. After having their access to justice blocked for more than 20 years, the petitioners filed a motion for habeas corpus on November 15, 2002, receiving a negative response from the courts, which was notified to them on March 11, 2003. The decision of the Supreme Court rejecting that motion demanded that the relatives provide proof to demonstrate that a forced disappearance had in fact occurred. The Commission observes that this State approach prevents the petitioners from gaining access to this remedy, because the State effectively passes on the burden of investigation to the alleged victims’ relatives.[FN12] The Commission finds that, at this stage in its processing of the case, the State has presented no evidence of concrete efforts to investigate the facts of the case and to locate the whereabouts of the alleged victim.[FN13] It should be emphasized that in

previous Admissibility Reports, the Inter-American Commission has seen the obstacles faced by the relatives of the disappeared victims in El Salvador to be able to establish the whereabouts of those victims, using the habeas corpus motion. [FN14] Consequently, the Commission considers that the exceptions of Article 46(2)(b and c) of the Convention apply in this case.

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[FN12] See I/A Court H.R., *Bámaca Velásquez Case*. Judgment of 25 November 2000. Series C. No. 70, Para. 152, in which the Court held that "in cases of forced disappearance, the State's defense cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since, in such cases, it is the State that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, in practice, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence."

[FN13] The State was also negligent in its pursuit of measures to locate persons reported as missing. Thus, in 2003, the Public Prosecutor for Human Rights recalled for the Legislative Assembly the importance of complying in good faith with "the recommendations to the Salvadoran State issued by the Human Rights Committee and the Committee on Rights of the Child, to institute a national commission with sufficient resources and powers to find missing children, and to create a reparations fund for the juveniles located." See *Informe Especial de la Señora Procuradora sobre la práctica de Desapariciones Forzadas de personas en el contexto del conflicto armado interno ocurrido en El Salvador entre 1980 y 1992*, 8 March 2005 page 49.

[FN14] See, Report N° 31/01, Case 12.132, Admissibility, Ernestina and Erlinda Serrano Cruz, El Salvador, February 23, 2005, para. 23; Report N° 56/05, Admissibility, Ana Julia and Carmelina Mejía Ramírez, El Salvador, October 12, 2005, paragraphs 33 and 34; Report N° 53/05, Admissibility, José Rubén Rivera, El Salvador, October 12, 2005, paragraphs 30 and 31, and Report N° 11/05, Admissibility, Gregoria Herminia, Serapio Cristián and Julia Inés Contreras, El Salvador, February 23, 2005, para. 32.

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28. At the same time, the IACHR does not consider filing a complaint with the International Committee of the Red Cross to be one of the remedies that must be exhausted according to the Convention. That Committee is a humanitarian organization and does not constitute a judicial body.

29. Invoking the exceptions to the rule on exhaustion of domestic remedies set forth in Article 46(2) of the American Convention is closely linked to the finding of possible violations of certain rights enshrined in the Convention itself, such as effective judicial protection. By its nature and objective, however, Article 46(2) is a standard that is independent of other substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the exhaustion of domestic remedies should apply in the present case must be made previously and separately from the analysis of the merits of the case, because the standard for assessing those exceptions is different from that used in determining possible violations of Articles 8 and 25 of the American Convention. The causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the Commission's report on the merits of the dispute, in order to determine whether they constitute violations of the Convention.

2. Deadline for filing the petition

30. In the petition under study, the Commission has established that the exception of Article 46(2)(b and c) of the Convention is applicable, and therefore the requirement of Article 46(1)(a) to exhaust domestic remedies does not apply. Nor is the requirement to submit a petition within six months applicable in this case, and the Commission must therefore determine whether the petition was submitted within a reasonable time, in accordance with Article 32(2) of the Commission's rules of procedure, i.e. taking into account the date on which the alleged violation of rights occurred, and the circumstances of each case.

31. On this point, bearing in mind the date on which the alleged events occurred, as well as the possibility that the reported disappearance may constitute a continuing violation of human rights, and recalling the situation with the various domestic remedies in El Salvador, the Commission considers that the petition was submitted within a reasonable period of time.

3. Duplication of proceedings and res judicata

32. The Commission understands that the petition at hand is not pending in another international proceeding for settlement, and that it is not substantially the same as one previously studied by the Commission or by another international organization. Consequently, the requirements of Articles 46(1)(c) and 47(d) of the Convention are fulfilled.

4. Characterization of the alleged events

33. The Commission notes that the petition complains of the forced disappearance of a child,[FN15] which according to the petitioners' allegations was not an isolated event but represented a systematic practice involving the disappearance of children during the acute domestic conflict in El Salvador between 1980 and 1992. In considering the context in which the alleged events took place, the Commission will take as a point of reference the fact that the consequences of the phenomenon of forced disappearances have been analyzed by the Truth Commission for El Salvador. Consequently, the Commission concludes that the petitioners' complaint describes facts that, if proven, could constitute violations of the rights protected by Articles 5, 7, 8, 17, 19 and 25 of the American Convention in relation to the obligations of Articles 1(1) and 2, and that the requirements of Article 47 are therefore fulfilled. On this point, the Commission notes that the information supplied by the petitioners does not characterize the violation of the right to a name, covered by Article 18 of the Convention.

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[FN15] According to the UN Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

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34. As well, by virtue of the principle of *iura novit curia* to the effect that, if a forced disappearance is proven, it would constitute a violation of the right to juridical personality and the right to life,[FN16] the IACHR will examine, in the merits stage, whether there is a possible violation of the rights protected by Articles 3 and 4 of the American Convention, in relation with

the generic obligation to respect and guarantee rights, contained in Article 1(1) thereof, recognizing that these articles are involved in the description of the facts of the complaint, even though they were not explicitly indicated by the petitioners.[FN17]

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[FN16] See, IACHR, Report 101/01, case 10.247 et al., Extrajudicial Executions and Forced Disappearances of Persons, 11 October 2001, para. 230. See, I/A Court H.R., Castillo Páez Case. Judgment of November 3, 1998. Series C No. 24, para. 66.

[FN17] See, IACHR, Report N° 11/05, Admissibility, Gregoria Herminia, Serapio Cristián, Julia Inés Contreras, El Salvador, 23 February 2005.

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## V. CONCLUSION

35. The Commission concludes that this petition is admissible and that the Commission has jurisdiction to examine the complaint submitted by the petitioners in relation to the alleged violation of Articles 5, 7, 8, 17, 19 and 25, in accordance with Articles 1(1) and 2 of the American Convention; by virtue of the principle of *iura novit curia*, for the alleged violation of Articles 3 and 4 in relation to Articles 1(1) and 2, consistent with Article 46(2)(b and c) thereof, and with Articles 28 to 37 and 39 of the Commission's rules of procedure; and that it is inadmissible with respect to the alleged violation of Article 18 of the Convention.

36. On the basis of the factual and legal arguments indicated above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible in regard to Articles 5, 7, 8, 17, 19 and 25 in concordance with Article 1(1) of the American Convention.
2. By virtue of the principle of *iura novit curia*, to declare the petition admissible with respect to Articles 3 and 4 of the American Convention in relation to Articles 1(1) and 2 thereof.
3. To declare the petition inadmissible with respect to Article 18 of the American Convention.
4. To notify the State and the petitioners of this decision,
5. To continue examining the merits of the case, and
6. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of the month of March, 2008.  
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Víctor E. Abramovich, Commissioners.