

REPORT No. 143/10
PETITION 1137-04¹
ADMISSIBILITY
NATIVIDAD DE JESÚS RAMÍREZ ET AL.
EL SALVADOR
November 1, 2010

I. SUMMARY

1. On October 27, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition submitted by the Institute of Human Rights of José Simeón Cañas Central American University (IDHUCA) and by Carlota Ramírez Hernández, the latter acting on her own behalf and on behalf of her relatives (hereinafter "the petitioners"), which alleges international liability on the part of the Republic of El Salvador (hereinafter "the State," "El Salvador," or "the Salvadoran State") for the alleged extrajudicial execution of Rufino and Teresa Ramírez; the alleged forced disappearance of Natividad de Jesús Ramírez, Guadalupe Roble, Salvador Ramírez, and the children José Elías and Jorge Alberto Ramírez, allegedly perpetrated by State agents in 1982; and the failure to investigate, prosecute, and punish those responsible for such acts.

2. The petitioners allege that the State violated Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 25 (right to judicial protection), and 1.1 (obligation to respect rights) of the American Convention on Human Rights (hereinafter "the American Convention," "the Convention," or "the ACHR") and violated Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the IACPPT").

3. The State alleges that the petitioners have not exhausted the remedies available under domestic law. However, it has recognized that practices such as forced disappearance of persons were carried out during the armed internal conflict in El Salvador and reiterated its commitment to providing decent and humane treatment to the victims of that conflict.

4. Without prejudging the merits of the complaint, after studying the positions of the parties, and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission finds the case admissible for purposes of an examination of the alleged violation of the rights enshrined in Articles 4, 5, 7, 8, and 25, in keeping with Articles 1.1. and 2 of that convention. The Commission also finds the complaint admissible with respect to the right established in Article 8 of the IACPPT. In addition, according to the principle *iura novit curia*, the Commission finds the petition admissible with respect to the alleged violation of the rights enshrined in Articles 2, 3, 17, and 19 of the American Convention and Articles 1 and 6 of the IACPPT. The Commission has decided to convey this decision to the parties, to publish it, and to include it in the Commission's Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 27, 2004, the Commission received a petition submitted by the IDHUCA and by Carlota Ramírez Hernández, dated October 22, 2004, and assigned it the number 1137-04. On August 4, 2005, the Commission transmitted the petition to the State, requesting that within two months the State submit its reply, as stipulated in Article 30.3 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "the Rules of Procedure") in force at that time. The State's reply was received on October 7, 2005.

¹ Commission member María Silvia Guillén, a Salvadoran national, in accordance with Article 17.2.a of the Rules of Procedure of the Commission, did not participate in the deliberations or in the decision on this case.

6. In addition, the IACHR received information from the petitioners on December 21, 2005, and June 8, 2010. Those communications were duly transmitted to the State. The IACHR also received observations from the State on February 27, 2006, and May 13, 2010. Those communications were duly transmitted to the petitioner.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petition refers to the alleged extrajudicial execution of Rufino and Teresa Ramírez and to the forced disappearance of Natividad de Jesús Ramírez, Guadalupe Roble, José Elías Ramírez, Jorge Alberto Ramírez, and Salvador Ramírez, all members of the Ramírez family; to the lack of investigation, prosecution, and punishment of those responsible for these acts; and to the lack of information as to the whereabouts of the disappeared persons. By way of context, it notes that between 1980 and 1991 in El Salvador a civil war resulted in 75,000 extrajudicial executions among the noncombatant civilian population and over 8,000 forced disappearances. It notes that the forced disappearance of persons was a systematic practice of state agents or organized groups of individuals who acted with the consent and acquiescence of the Government. It indicates that the Judiciary was weak and encouraged impunity and human rights violations by its refusal or inability to investigate the facts, punish those responsible, and help those who sought to learn the whereabouts of their relatives.

8. The petitioners state that between March 1981 and August 1982, members of the Ramírez family, most of whom participated in Catholic Church activities, were subjected to constant death threats, and other acts of harassment that harmed the entire family, by members of the Army and/or men in civilian dress. They report that at the time the Ramírez family resided in two dwellings, located in the El Progreso quarter, Nuevo San Salvador, La Libertad. In one house lived Carlota Ramírez; her mother, Herculana Hernández de Ramírez; and her brothers Salvador Ramírez and Rufino Ramírez, the latter with his wife, Lucía Cuchilla, and their children, José Elías, age 13, Jorge Alberto, age 14, and Máximo, age 10. In the other lived Natividad de Jesús Ramírez (father of Carlota Ramírez); and the sisters Teresa and Marta Elba Ramírez (sisters of Carlota Ramírez), the latter with her husband, Guadalupe Roble.

9. They report that in early March 1981, a group of around 10 armed men, according to the petitioners carrying G-3 rifles and dressed as civilians, arrived at the home of Carlota Ramírez, asking for her brother, Rufino Ramírez, and her mother, Herculana Hernández de Ramírez. They say these men entered the house, ordered Carlota Ramírez, Lucía Cuchilla, and their children to drop to the floor, searched the place, and took money and other valuables. They also took Salvador Ramírez, who was ill, "in the direction of some coffee plantations, where they held him for about three hours," threatening to kill him. They say that later the family learned that the armed group belonged to the Armed Forces camped at the Pinares farm, in the Las Granadillas quarter of San Juan Opico, La Libertad, assigned to the Artillery Brigade.

10. They say that one year later, in March 1982, a group similar to the earlier one—armed and accompanied by two persons whose faces were covered—came to the home of Carlota Ramírez asking for Rufino Ramírez. On that occasion, they took from the home Carlota Ramírez, Herculana Hernández, and the baby Carla Deysi Ramírez (daughter of Carlota Ramírez, only a few months old), mistreated and insulted them, and threatened them with death. They also say that when Natividad de Jesús Ramírez arrived home, the men pointed a gun at him and said that next time they should have Rufino Ramírez ready. They allege that, fearing for their lives, they slept not at home but at deserted houses or ranches or in the hills. They say that in those days, in the early morning, a large group of armed soldiers in camouflage uniforms arrived at one of the family's sleeping places, found the ranch house empty, and burned it.

11. They say that on May 10, 1982, the family was staying at two nearby homes² and in the early morning, a sergeant who had participated in the earlier harassment came to where Carlota Ramírez was and ordered the capture of Alejandro Ramírez, who managed to escape. They say the soldiers searched the house but did not find the room where the petitioner, together with her mother, Herculana Hernández, and the rest of the family members were hiding. They add that when the men left, Carlota Ramírez went to her father's house, where her sister Marta Elba told her that around midnight a group of men armed with G-3 rifles, "dressed like sportsmen and with kerchiefs on their foreheads," arrived and captured her brother Rufino Ramírez and when he tried to escape they murdered him; that they murdered Teresa Ramírez when she objected to what the armed men were doing; and that they detained Natividad de Jesús Ramírez, Guadalupe Roble, and the boys José Elías and Jorge Alberto Ramírez. To date their whereabouts are unknown.

12. As for Salvador Ramírez, the petitioners allege that, on August 8, 1982, he was captured in a place called "the butcher," in the Las Granadillas quarter of Nuevo San Salvador, by persons in civilian dress driving an Army truck, and taken to a place called "La Periquera." His whereabouts are unknown to date.

13. Accordingly, they allege, the State of El Salvador has violated Articles 4, 5, 7, 8, 25, and 1.1 of the American Convention, in addition to Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture.

14. As for the requirement that domestic remedies first be exhausted, they state that at the time of the events the Ramírez family was being persecuted, attempts were being made to kill them, and this situation was aggravated by the prevailing climate of insecurity and impunity in El Salvador. They say that Ms. Carlota Ramírez feared for her life and had to remain in hiding for fear that those responsible for the murder and disappearance of her family members would look for her to kill her or make her disappear. They say that at the time of the events, owing to a state of systematic human rights violations by State agents, it would have been difficult for a victim to go to the justice system, out of fear, and because the justice system did not effectively protect human rights. They allege that the survivors of these events did not report the arbitrary arrests and extrajudicial executions to the State institutions for the aforesaid reasons. They report that on March 31, 2003, Carlota Ramírez reported the disappearances of her relatives to the Office of the Attorney General of the Republic, since that crime was defined in the Salvadoran Penal Code as a crime against humanity with no statute of limitations³. They argue that the investigations have not made significant progress, in that the only actions taken are interviews with various witnesses; they argue that, therefore, the delay and denial of justice is unjustifiable.

15. The petition shows that the Office of the Attorney General of the Republic was informed that those who captured the members of the Ramírez family belonged to the "death squads," commanded by a colonel and a major assigned to the Artillery Brigade stationed in San Juan Opico, La Libertad.

16. Consequently, the petitioners argue that they did attempt to exhaust remedies but have been denied justice and judicial protection. They argue that no progress has been seen in the

² The complaint presented to the Office of the Attorney General of the Republic on March 31, 2003, states that on May 10, 1982, Ms. Carlota Ramírez Hernández was with her daughter Carla Deysi Ramírez at the home of her brother Alejandro Ramírez, located in San Jerónimo, along with her mother, Herculana Hernández de Ramírez, and her brothers Salvador, Alejandro, and Francisco Ramírez; the wife of Alejandro Ramírez, Virginia Contreras, and their children Eliseo Ramírez Contreras, Joaquín Santana, Lorenzo, María Rosa, Concepción, Alejandro, and Luis Alonso Ramírez, ages 14, 13, 10, 15, 7, 12, and 3, respectively. It also states that at the other home were Natividad de Jesús Ramírez, with his domestic partner, Pilar Pérez; Rufino Ramírez, with his three children; Teresa Ramírez (age 18); and Marta Elba Ramírez (age 22), with her husband, Guadalupe Roble, and their son, Ever Roble (age 1).

³ Additionally, as for the lodging of a writ of *amparo*, they state that the Salvadoran Supreme Court of Justice, in connection with the writ of habeas corpus with respect to a person, has ruled in its judgment of March 21, 2002 (378-2000HC) that "among State bodies, the Office of the Attorney General of the Republic is the most appropriate institution, under the constitution and the law, to carry out the corresponding measures to achieve that purpose; (...)," thereby arguing that such remedy is ineffective.

investigations by the Office of the Attorney General and they therefore are availing themselves of the jurisdiction of the IACHR.

B. Position of the State

17. As to the admissibility requirements, the State argues that remedies under domestic jurisdiction have not been exhausted and the alleged victims are not clearly identified⁴. It states that it is not party to the Inter-American Convention on Forced Disappearance of Persons, nor to the Rome Statute of the International Criminal Court, and therefore is not bound by their provisions. Concretely, it argues that (1) the investigations into the alleged forced disappearances are in progress and the complaint was lodged after the deadline; (2) the remedy of habeas corpus was not pursued; and (3) no complaint has been lodged concerning the deaths or alleged extrajudicial executions of the persons named in the petition. It argues therefore that domestic remedies have not been exhausted and requests that the petition be declared inadmissible.

18. The State indicates that Carlota Ramírez lodged a complaint with the Office of the Attorney General of the Republic on March 31, 2003, concerning events that took place on May 10, 1982, i.e., 21 years later and 11 years after the signature of the peace accords, since which time, according to the State, the petitioners have been entirely at liberty to submit their complaint. It states that it mentions these timeframes to demonstrate to the IACHR the difficulties involved in conducting an investigation of the facts 21 years later. It says it intends to pursue the investigations of the alleged events; but that, in order to assess the reasonableness of the timeframe for the process, it is necessary to apply the criteria established by the Inter-American Court, considering: (a) the complexity of the matter, which is directly linked to the passage of time; (b) the procedural activities of the interested party, i.e., that the petitioners have taken little action; and (c) the conduct of the judicial authorities, in respect of which it argues that they have taken all possible measures.

19. More specifically, the State alleges that the petitioners did not exhaust the remedy of habeas corpus provided under constitutional law. It states that the Supreme Court considers every case individually and issues its ruling, and therefore the petitioners cannot assume that the Court always rules the same way. It specifies that the Constitutional Chamber of the Supreme Court of Justice, by way of constitutional interpretation, has broadened the protective scope of that remedy. It adds that a subjective assessment of the effectiveness of the administration of justice does not exempt persons from availing themselves of remedies and fulfilling the requirements set forth in the Convention. It adds that no inspector's report or judicial file exists concerning the deaths of Teresa and Rufino Ramírez, which shows that no complaint has been lodged and therefore the available domestic remedies have not been pursued.

20. As to the investigations, the State reported that the file bears the number 724-UDV-03, under the crime of forced disappearance of persons, and that the following measures are in progress within the Office of the Attorney General: (1) request and examine the report of the Justices of the Peace of Santa Tecla (there being no Institute of Legal Medicine at that time) on the identification of the bodies of Rufino and Teresa Ramírez, murdered on May 10, 1982; (2) conduct further interviews of witnesses.

21. The State reports that it has taken the following measures: (1) interviews of the witnesses María Bernarda Ramírez de Méndez, Elba Pérez Ramírez de Guerra, Ángela Ramírez Hernández, and the widow Cristina Ramírez de Pérez; (2) letter to the Technical and Scientific Police Division of the National Civilian Police, remitting a casing provided by Ms. Elba Pérez Ramírez of Guerra, apparently from a G-3 rifle; (3) report of the Ministry of National Defense on the officer in charge of the barracks or Artillery Brigade of San Juan Opico during 1982; (4) report of the Ministry of National Defense on the officers assigned to the Artillery Brigade of San Juan Opico during 1982; (5) report on the findings of the

⁴ Concretely, the State argues that the alleged victims were identified by the petitioners in a confused manner in the account given in their petition; mostly it cites alleged errors in the names of the alleged victims. Those observations were duly transmitted to the petitioners, who issued the clarifications they considered relevant in that regard.

analysis of the casing found at the scene of the event by a relative of the victims. It added that the Supreme Court of Justice is looking into whether other proceedings are under way at the judicial level concerning the forced disappearance of the alleged victims and that the Ministry of National Defense provided the Office of the Attorney General of the Republic with information on the names of officers who were assigned to the Artillery Brigade in 1982.

22. On May 13, 2010, the State reported that as of June 1, 2009, the Government had adopted a new perspective on its obligations in the area of human rights, recognizing that during the armed internal conflict practices such as the forced disappearance of persons had been perpetrated by State agents. The State reported that it had issued an acknowledgment of State responsibility for those events and an apology to the victims, which had included to all those persons who had been unable to complete their mourning for lack of information as to the whereabouts of their loved ones and who "for years have carried the pain in their hearts without assistance from their institutions," noting that this had happened to the relatives of the alleged victims in this case.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

23. The petitioners are empowered by Article 44 of the American Convention to lodge petitions with the IACHR. The petition names as alleged victims natural persons in respect of whom the State undertook to respect and guarantee the rights enshrined in the American Convention. As for the State, the Commission indicates that El Salvador has been a state party to the American Convention since June 23, 1978, on which date it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to consider the petition. In addition, the Commission is competent *ratione loci* to consider the petition, since it alleges violations of rights protected in the American Convention that allegedly took place within the territory of El Salvador, a state party to that treaty.

24. The Commission is competent *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date on which the events described in the petition allegedly took place. As for the Inter-American Convention to Prevent and Punish Torture, the Commission observes that the State ratified it on October 17, 1994, depositing the corresponding instrument of ratification on December 5 of that year. Therefore the Commission is competent *ratione temporis* to rule on possible violations of that instrument that may have taken place since that date.

25. The Commission is competent *ratione materiae* because the petition reports possible violations of human rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture, as provided in Article 8 of that instrument.

B. Exhaustion of domestic remedies

26. Article 46.1.a of the American Convention provides that in order for a petition or communication lodged with the Inter-American Commission on Human Rights in accordance with Article 44 to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion of domestic remedies is required when the national system truly affords available remedies that are suitable and effective in remedying the alleged violation. Article 46.2 provides that this requirement does not apply when (a) the domestic law does not afford due process of law for the protection of the right in question; (b) the alleged victim has not had access to the remedies under domestic law; or (c) there has been unwarranted delay in rendering a judgment under the aforementioned remedies.

27. In this case, the State argues that the investigations of the alleged forced disappearances are in progress and that the complaint was lodged after the deadline; that the remedy of *habeas corpus* was not pursued; and that no complaint has been lodged concerning the alleged extrajudicial execution of Teresa and Rufino Ramírez.

28. For their part, the petitioners argue that at the time of the events, owing to a state of systematic human right violations by State agents, a victim would be hard pressed to seek justice, and that, in addition, the survivors were subjected to persecutions and threats, for which reason they lived in hiding and in fear, which was heightened by the prevailing climate of insecurity and impunity in El Salvador. They argue that at the time, therefore, they were in no position to report the event to State institutions. They state that, subsequently, on March 31, 2003, Ms. Carlota Ramírez reported to the Office of the Attorney General of the Republic the violations committed against her relatives. They argue that the crime of forced disappearance is a crime against humanity, it is not subject to a statute of limitations, and the State is obliged to investigate it on its own initiative, regardless of the efforts made by the relatives. They add that the investigations have not produced any results and thus, considering the amount of time that has passed, justice has been denied.

29. In order to determine whether the stipulations of the Convention have been met, it is necessary to determine the purpose of the complaint, whether effective and appropriate remedies to the alleged violations were pursued, and whether impediments to the exhaustion of such remedies existed. The purpose of the complaint has to do with the Salvadoran State's alleged responsibility for the actions of State agents in the alleged extrajudicial execution and forced disappearance of members of the Ramírez family in May 1982, during the armed internal conflict, to the alleged failure to investigate and punish those responsible, and to the failure to clarify the whereabouts of the allegedly disappeared victims.

30. The IACHR finds that two major questions must be examined here: (i) whether it is necessary to exhaust the remedy of *habeas corpus*; and (ii) the status of the criminal investigations at the domestic level.

31. Both the Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") have established that "habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty."⁵ However, the IACHR has stated on prior occasions that during the civil war El Salvador had no independent Judiciary, that reporting human rights violations was thus notoriously ineffective, and that during that conflict the domestic judicial remedies did not function, in particular the remedy of *habeas corpus*⁶.

32. The Commission has also established that after that time the remedy of *habeas corpus* remained ineffective in the investigation of forced disappearances because the judicial authorities required petitioners to provide proof of such detention⁷. The State itself has acknowledged, in connection with cases heard earlier, that only since March 2002 has the Supreme Court of Justice changed the jurisprudential criteria under which it previously rejected cases of forced disappearance and come to recognize the violation of the right to physical liberty even without proof of such detention, and that such writ can be lodged in order to initiate investigations of forced disappearances⁸.

⁵ Inter-American Court of Human Rights. Case of Velásquez Rodríguez v. Honduras. Judgment of July 29, 1988. Series C N°4, para. 65.

⁶ IACHR, Report No. 10/08, Petition 733-03, Admissibility, Santos Ernesto Salinas, El Salvador. March 5, 2008, para. 24; Report No. 66/08, Petition 1072-03, Admissibility, Manuel Antonio Bonilla Osorio and Ricardo Ayala Abarca, El Salvador, July 25, 2008, para. 42.

⁷ IACHR, Report No. 11/08, Petition 732-03, Admissibility, Emelinda Lorena Hernández, El Salvador, March 5, 2008, para. 36, citing IACHR, Case of Ernestina and Erlinda Serrano Cruz, Report N° 31/01, para. 24, in which the Commission decided the case was admissible, and applied the exception to exhaustion of domestic remedies specified in Article 46.2.c of the Convention because "As of the date this report was adopted, domestic remedies had not operated with the effectiveness required to investigate a complaint of forced disappearance...and 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."

⁸ IACHR, Report No. 11/08, Petition 732-03, Admissibility, Emelinda Lorena Hernández, El Salvador, March 5, 2008, para. 36, citing the Constitutional Chamber of the Supreme Court, March 20, 2002, in habeas corpus proceeding No. 379-2000, Ana Julia and Carmelina Mejía Ramírez.

33. In this sense the IACHR notes that the writ of *habeas corpus* has not proven effective in El Salvador in cases of forced disappearances, even after the conflict ended in 1992, and at least until the aforementioned 2002 change in jurisprudence. In this case, the State has not presented evidence that the remedy of *habeas corpus* in El Salvador was or is effective in establishing the whereabouts of victims allegedly detained and disappeared.

34. Accordingly, the Commission notes that the period in which the events in this case took place was characterized by systematic human rights violations and impunity, facilitated in part by the ineffectiveness of the Salvadoran judicial system⁹. It also notes that the survivors of the reported events were allegedly living in anxiety and fear in the face of persecution and threats, and therefore it is unreasonable to expect that they would be able to report the facts when they took place and in the succeeding years. In view of the particular circumstances of the case and the context mentioned, the Commission concludes that the petitioners were prevented from availing themselves of domestic remedies during the period of armed conflict and in the succeeding years.

35. Moreover, the precedents established by the Commission state that whenever a judicially prosecutable offense is committed, the State is obliged to institute and pursue criminal proceedings, and that, in these cases, this is the ideal way to clarify the facts, prosecute those responsible, establish the appropriate criminal penalties, and make possible other appropriate means of reparation¹⁰.

36. As for the status of the investigations at the domestic level, these were initiated when, after the signing of the peace accords in El Salvador, Carlota Ramírez Hernández presented a complaint to the Office of the Attorney General of the Republic on March 31, 2003, reporting the violations perpetrated against her relatives. The complaint made concrete and express reference not only to the forced disappearances but to the extrajudicial execution of Rufino and Teresa Ramírez, thus apprising the State of those events¹¹.

37. The information provided by the parties in this regard shows that the investigations have remained at the preliminary investigation stage for over seven years. The State refers only to the ongoing investigative measures in its reports, without citing any specific or meaningful progress to indicate that the facts would eventually come to light.

38. In short, the Commission notes that as of the date of adoption of this report the domestic remedies have not proven effective in bringing about the investigation of the events reported, which involved grave violations of human rights. For purposes of this examination of admissibility, the IACHR concludes that at the time at which the reported events occurred there was no available access to an appropriate and effective remedy to ascertain the whereabouts of the alleged victims and denounce the executions; and that there are subsequent indications of an unwarranted delay in investigative actions by the bodies entrusted with the administration of justice. Consequently, the exceptions to the prior exhaustion of the domestic remedies established in Article 46.2, sections (b) and (c), of the American Convention apply.

39. Lastly, the application of exceptions to the exhaustion of domestic remedies rule set forth in the American Convention is closely tied to the determination of possible violations of certain rights

⁹ IACHR, Report No. 11/08, Petition 732-03, Admissibility, Emelinda Lorena Hernández, El Salvador, March 5, 2008, para. 35.

¹⁰ IACHR, Report No. 4/10, Petition 664-98, Admissibility, Rigoberto Tenorio Roca et al., Peru, March, 15, 2010, para. 38.

¹¹ The complaint states: "On the way to my dad's house I found some candles and, imagining that something had happened, I arrived at the house and found the bodies of my brother and sister, Rufino and Teresa. [...] When I arrived at the house, I found my sister Marta Elba Ramírez, who told us that around midnight some people dressed as sportsmen, armed with G-3 rifles, and with kerchiefs on their foreheads, arrived calling for her brother Rufino, who got up, knelt, and said his prayers, and then they captured him, but on the road they killed him because he tried to escape, and my sister Teresa objected to this and the armed individuals killed her."

enshrined therein, such as effective judicial protection. The provisions of Article 46.2 of the American Convention, however, are independent of the other substantive provisions of the Convention. In order to determine whether the exceptions to the exhaustion of domestic remedies rule also constitute violations of the American Convention in this case, a different analysis of the subject of the complaint must be performed in the merits phase. This is because the criteria used in considering those exceptions are different from those applied in considering alleged violations of Articles 8 and 25 of the American Convention.

C. Timeliness of the petition

40. Article 46.1.b of the Convention provides that, in order for a petition to be declared admissible, it must have been presented within six months from the date on which the interested party was notified of the final decision that exhausted domestic remedies. This rule does not apply when the Commission finds that any of the exceptions to the exhaustion of domestic remedies enshrined in Article 46.2 of the Convention applies. In such cases, the Commission must determine whether the petition was presented within a reasonable time, in keeping with Article 32 of its Rules of Procedure.

41. As indicated earlier, the Commission concluded that in this case the exceptions provided in Article 46.2, sections (b) and (c), of the American Convention are applicable. Considering the alleged failure to investigate and to punish the responsible parties, the alleged extrajudicial executions, the continuing nature of the alleged forced disappearance of the alleged victims, i.e., since May 10, 1982, the failure to clarify their whereabouts or to deliver their remains to their family members, the failure to determine who is at fault, and that the petition was presented on October 27, 2004, the Commission finds that the petition was presented within a reasonable time.

D. Duplication of procedures and international *res judicata*

42. The case file shows no evidence that the subject of the petition is pending in another international proceeding for settlement or duplicates one previously studied by the Commission or by another international organization. The Commission finds therefore that the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

E. Colorable claim

43. For purposes of admissibility, the Commission must decide whether the petition describes events that, if proven, could constitute a violation of rights as stipulated in Article 47.b of the American Convention; and whether the petition is "manifestly groundless" or "out of order" according to section (c) of that article. The standard for assessing those requirements is different from the one used to rule on the merits of a petition. The Commission must make a *prima facie* assessment as to whether the petition includes the basis for the possible or potential violation of a right guaranteed by the Convention, but not to establish the actual existence of a violation. This determination constitutes a summary examination that does not prejudice or rule upon the grounds for the case.

44. In the merits phase the Commission will examine whether there exists a possible violation of the rights protected in Articles 4, 5, 7, 8, and 25, in relation to Article 1.1 of that instrument, to the detriment of the alleged victims; and of the rights protected under Articles 5, 8, and 25, also in relation to Article 1.1 of the Convention, to the detriment of their relatives. The Commission will also consider the possible violation of Article 8 of the IACPPT. And, according to the principle *iura novit curia*, the Commission will examine in the merits phase the possible violation of Articles 2, 3, 17, and 19 American Convention, in relation to Article 1.1 thereof, to the detriment of the alleged victims, and the possible violation of Articles 1 and 6 of the IACPPT. The Article 17 analysis will focus on what the case file reveals as to the alleged acts of harassment against the family as such, and the Article 19 analysis will focus on the allegations regarding the obligation to provide special protection and to the situation of the children. Finally, the Commission indicates that Article 2 of the IACPPT presents the definition of torture without establishing a particular right, in that sense technically it could not be consider to declare a violation.

45. The Commission therefore finds that the requirements established in Article 47, sections (b) and (c), of the American Convention have been met.

V. CONCLUSIONS

46. On the basis of the considerations of fact and of law set forth herein, and without prejudging the merits of the matter, the Inter-American Commission concludes that this case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention. Therefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**HAS DECIDED:**

1. To declare this petition admissible in relation to Articles 4, 5, 7, 8, and 25 of the American Convention, as regards Article 1.1 of that treaty, to the detriment of the alleged victims, and of Articles 5, 8, and 25, also in relation to Article 1.1 of the Convention, to the detriment of their family members. Also to declare this petition admissible with respect to Article 8 of the Inter-American Convention to Prevent and Punish Torture. In application of the principle *iure novit curia*, the IACHR also will consider, in the merits phase, the possible violation of Articles 2, 3, 17, and 19 of the Convention, in respect of Article 1.1 of that treaty, and of Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

2. To apprise both the State and the petitioner of this decision.

3. To institute proceedings on the merits of the matter.

4. To publish this decision and to include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 1st. day of the month of November 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.