

OEA/Ser.L/V/II.
Doc. 60
24 February 2020
Original: Spanish

REPORT No. 50/20
PETITION 340-12
REPORT ON ADMISSIBILITY

JOSÉ VICENTE, CLARA VILMA, AND JUANA NOEMI RIVAS
CHILE

Approved electronically by the Commission on February 24, 2020.

Cite as: IACHR, Report No. 50/20. P-340-12. Admissibility. José Vicente, Clara Vilma, and Juana Noemi Rivas. Chile. February 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Asociación Pro-Búsquedas de Niñas y Niños Desaparecidos
Alleged victim	José Vicente, Clara Vilma and Juana Noemí Rivas and family
Respondent state	El Salvador
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 17 (rights of the family), 18 (right to a name), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to Article 1.1 (obligation to respect rights).

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	March 1, 2012
Notification of the petition to the State:	July 24, 2017
State's first response:	December 21, 2017
Additional observations from the petitioner	July 30, 2018
Additional observations from the State	March 5, 2019

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis</i>	Yes
<i>Competence Ratione materiae</i>	Yes, American Convention on Human Rights (deposit of instrument of ratification on June 23, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International res judicata:	No
Rights declared admissible:	Articles 3 (juridical personality), 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 17 (rights of the family), 18 (rights to a name), 19 (rights of the child), 22 (freedom of movement and residence) and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1 (obligation to respect rights) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception from art. 46.2 (c) of the American Convention is applicable
Timeliness of the petition:	Yes, the exception from art. 46.2 (c) of the American Convention is applicable

V. SUMMARY OF ALLEGED FACTS

1. The Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos (hereinafter “the petitioner”) denounces alleged violations of the human rights of the boy José Vicente Rivas and the girls Clara Vilma Rivas and Juana Noemi Rivas (hereinafter “the alleged victims”) affirming that they were victims of forced disappearance by agents of the Armed Forces of El Salvador in the context of the armed conflict that occurred in the country between 1980 and 1991. The petitioner claims that the forced disappearance violated the rights of personal integrity and personal freedom of the alleged victims and that the State breached its obligations to protect the family and the children. It also denounces a possible violation of their right to a name, indicating that it is unknown whether the people who transferred them assigned new names to the alleged victims.³ The petitioner also contends violations of judicial protection

¹ Hereinafter “American Convention”.

² The observations submitted by each party were duly transmitted to the opposing party.

³ The petitioner alleges that, according to standards of proof of the Inter-American system the petitioner is not obliged to provide evidence on a violation to the right to their name as the state is the one that controls the necessary information to clarify the facts.

and judicial guarantees claiming that the State has not fulfilled its duty to investigate the disappearance of the alleged victims.

2. The petitioner indicates that in 1982 the boy José Vicente Rivas was 11 years old and his two sisters Juana Noemi and Clara Vilma 9 and 6 years, respectively. The petitioner points out that in that year the Armed Forces developed the military operation "Lieutenant Colonel Mario Azenón Palma"⁴ in the department of San Vicente which forced several families to leave their homes, including the Rivas Family, who took refuge in the area known as "Las Pilitas". The petitioner reports that in August 1982, the Rivas family was discovered by members of the Armed Forces who shot at them killing several people in their path; reason why Mrs. Nicola Rivas (mother of the alleged victims) fled along with the youngest of her daughters, at that time a one year old. The petitioner continues to report that the alleged victims could not flee and stayed in the place, where later (as the alleged victims' mother heard) a helicopter of the Armed Forces landed. The petitioner alleges that some people returned to that place and found several bodies buried but none corresponded to boys or girls. It indicates that since then the whereabouts of the alleged victims are unknown. It adds that the mother of the alleged victims did not continue to search for their whereabouts out of fear of possible repressions. It emphasizes that the State has already internationally recognized that during the armed conflict that El Salvador suffered between 1980 and 1991 there was a systematic pattern of forced disappearances of children as reflected in the judgment issued by the Inter-American Court in the Contreras case.⁵ In addition, it points out that the case of the alleged victims was described as a "homicide" by the Truth Commission of El Salvador.

3. The petitioner points out that the case of the alleged victims was presented before the Prosecutor for the Defense of Human Rights' Office in 1996 together with another 140 cases of missing children, resulting in said institution issuing a report recommending the Minister of National Defense to provide all the necessary information to investigate the disappearances. It alleges that, despite this, no information has been obtained from the Armed Forces to clarify the whereabouts of the missing children. It indicates that in 2004, the Office of the Attorney for the Defense of Human Rights issued a report in which it concluded that the alleged victims "fled from a military operation in Cerro Juan Bosco, in San Juan Buenavista Canton, and met with elements of the Armed Forces among them the Belloso Battalion, Fifth Infantry Brigade and elements of the National Guard, who made a military siege and surrounded the refugees, proceeding the Armed Forces to carry out a massacre". The petitioner indicates that in this report the Attorney General's Office was recommended to investigate the disappearances; despite this, the prosecutors have not reported on "the determination of the whereabouts of José Vicente Rivas."

4. The petitioner adds that on October 24, 2007, the mother of the alleged victims filed an appeal for habeas corpus for their forced disappearances. It indicates that in the course of this process the Prosecutor's Office of San Vicente warned that it had opened a file to investigate the disappearance of the Rivas girls. Then, the Court recognized the violation of the constitutional right to physical liberty of the alleged victims and requested the Prosecutor's Office to continue with the ongoing investigations and also to investigate the disappearance of the Rivas boy; the Court also requested the National Commission for the Search of Missing Children during the Internal Armed Conflict (hereinafter "the Search Commission") to report on the outcome of the efforts made in relation to the case of the alleged victims. The petitioner emphasizes that on December 15, 2011, it was notified by the Court of the referral of the habeas corpus process certification to the San Vicente Fiscal Office. It considers that the habeas corpus is the appropriate domestic remedy to be exhausted in case of forced disappearances of people. Likewise, the petitioner argues that the exception to the exhaustion of domestic remedies contained in Article 46.2 (b) of the American Convention applies to the present case, since the mother of the alleged victim was prevented from filing an habeas corpus earlier as the state agents had generated an environment where people were afraid to go to the authorities for fear of being designated as guerrilla collaborators.

5. The petitioner acknowledges that the Search Commission has made serious and thorough efforts within its capacity to clarify the whereabouts of the alleged victims. However, it considers that the State has not fully complied with its obligations since the Ministry of National Defense has not provided the files related to the facts described, indicating that it had no record of the operation that originated the events, although later another institution released information provided by the Ministry that confirmed that Operative Mario Azenón Palma had been executed. Likewise, the petitioner points out that, although the Office of the Attorney General has made efforts and modified its policies to give greater participation to the victims and their representatives within the processes, it has not fulfilled its duty in accordance with the standards of the Inter-American System. It highlights that the Prosecutor's Office did not open the

⁴ They indicate that this operation was named by the civilian population as "ring invasion".

⁵ I/A Court H.R., Case of Contreras et al. v. El Salvador. Merits, Reparations and costs. Judgment of August 31, 2011. Series C No. 232

relevant administrative investigation file until June 2009, despite its duty to investigate ex officio since it had been notified of the facts in 2004 through the report of the Prosecutor for the Defense of Human Rights' Office. It also maintains that the Prosecutor's investigations have not complied with the principle of reasonable time because in 2018 the proceedings continued in the stage of initial investigation despite having passed 9 years of the opening of the file. The petitioner alleges that lapses of passivity and inaction by Prosecutor's Office can be identified, as well as delays in the execution of the procedures ordered.⁶

6. The State, for its part, recognizes that in the context of the armed conflict that took place in the country between 1980 and 1981, serious human rights violations were committed and indicates that in 2009 it defined a policy of reparation and recognition of dignity of the victims. It indicates that the Search Commission initiated ex officio investigations in 2012 related to the forced disappearance of the alleged victims within which investigations were carried out at the scene of the crime, documentary investigations in administrative and judicial archives and interviews with family members, eyewitnesses, informants and survivors. It emphasizes that the Commission initiated a process of review of the protection and adoption files processed between 1980 and 1984 in order to verify the possibility that children labeled as disappeared had been processed for adoption, without finding evidence that this would have happened to the alleged victims.⁷ It highlights that the Commission's investigations remain open and active.

7. It also highlights the investigations carried out by the Office of the Attorney General of the Republic corresponding to file 482-UDCV-2000-SV which was opened by the Prosecutor's Office of San Vicente to investigate the deprivation of liberty of the alleged victims. It highlights that these investigations remain open and active. It affirms that in the framework of these investigations, proceedings such as requests for information have been carried out by the media, the Red Cross, the Ministry of National Defense and the Ministry of Foreign Affairs. It adds that the Ministry of Defense has also made provisions for the investigation of the facts raised, requiring the Joint Chiefs of Staff of the Armed Forces to carry out an exhaustive investigation in the archives of the different military units mentioned in the petition. It points out that, despite the fact that this investigation was carried out in the presence of senior officials of the Joint Chiefs of Staff and specialized file technicians, no information was found on the alleged forced disappearance of the alleged victims. It clarifies that this Ministry has not ruled on the non-existence of the military operation Lieutenant Colonel Mario Azenón Palma, only on the absence of records regarding the alleged disappearance of the alleged victims.

8. It adds that in 2018 the Attorney General's Office publicly launched its "Policy of criminal prosecution of war crimes and crimes against humanity occurred in the context of the armed conflict in El Salvador" which focuses its attention on victims and the fight against impunity and has a gender approach. It also emphasizes that the President of the Republic has requested the creation of a "Military Archives Review Commission linked to the past internal armed conflict" which will include, among other actors, a person representing the human rights organizations designated by the President of the Republic of a list of three that they present. It requests that the Commission take into consideration that the institutional actions carried out for the investigation of the alleged disappearance of the alleged victims are currently in process; therefore, it considers that the State has not exhausted its possibility of responding to the families of the victims of this case, through the action of domestic institutions.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

9. The Commission observes that in the present case, the State has alleged that its possibility of responding to the families of the alleged victims through its domestic institutions is not exhausted as multiple state authorities keep investigations open and active aimed at clarifying the denounced facts. The petitioner, on the other hand, considers that the Prosecutor's Office has not complied with the reasonable period of time, since more than 9 years after the process began, it remains in the initial investigation stage and the state has not contributed elements that would allow providing answer to the family members of this case's victims.

10. Given the parties' arguments, the Commission takes into consideration that the whereabouts of the alleged victims are still unknown despite the fact that more than 36 years have elapsed since the date on which the disappearance allegedly occurred and that the State was aware of the possible enforced disappearance since at least May 31, 1996, date on which (according to a resolution whose copy is on file), the alleged disappearance was reported to the Prosecutor's Office for the Defense of Human Rights. Based on these considerations, the Commission concludes that the exception to the exhaustion of

⁶ The petitioner also affirms that it has maintained active to make sure the investigations continued.

⁷ It indicates that these investigations allowed the finding of a child that had disappeared during operation Teniente Coronel Azenón Palama and a girl named Noemí Rivas that was then confirmed through DNA testing was not Juana Noemí Rivas.

domestic remedies contained in Article 46.2 (c) of the American Convention is applicable to the present petition and that it was presented within a reasonable period of time under the terms of Article 32 (2) of the Rules of the Commission. This determination does not prejudice on the merits and is without prejudice to the fact that, at the merits stage, the Commission can assess the information provided by the State or the petitioning parties with respect to the efforts that have been undertaken to try to provide answers to the families of the alleged victims.

VII. COLORABLE CLAIM

11. The Commission observes that this petition includes allegations that the alleged victims were forcibly disappeared by state agents and that the State has not acted with due diligence or within a reasonable period of time to investigate and clarify the facts.

12. In view of these considerations and after examining the factual and legal elements set forth by the parties, the Commission considers that the allegations of the petitioning party are not manifestly groundless and require a study on the merits as the alleged facts could, if proven, amount to violations of Articles 3 (right to juridical personality), 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 17 (rights of the family), 18 (right to a name), 19 (rights of the child), 22 (circulation and residence) and 25 (judicial protection) of the American Convention in relation to its Article 1.1 (obligation to respect rights).

VIII. DECISION

13. To find the instant petition admissible in relation to Articles 3, 5, 7, 8, 17, 18, 19, 22 and 25 of the American Convention, in accordance with Articles 1.1 of the same instrument; and

14. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.