

El Salvador

Where are the “disappeared” children?

INTRODUCTION

During the period of armed conflict in El Salvador between 1980 and 1991, 75000 people suffered violations of their human rights including extrajudicial executions, torture and “disappearances”. So great were the abuses committed that they are considered to have constituted crimes against humanity.¹

The peace process that began in 1987 culminated with the signing of the Peace Accords in Mexico in January 1992. The San José Accord, signed in 1990, focused on respect for human rights, investigation into human rights violations, and the identification and punishment of those responsible. Another important part of the process was the creation of the Truth Commission to investigate and make recommendations on violations committed since 1980.

Thousands of girls and boys were innocent victims of the armed conflict. Hundreds were assassinated in massacres committed by the armed forces; others were taken after their parents were murdered or after becoming separated from them during army attacks on their villages. Some were taken to orphanages, others were given up for adoption either within El Salvador or abroad, including the United States, France, Germany and the United Kingdom.

According to figures provided to the Truth Commission by the UN Working Group on Disappearances, the total number of “disappeared” stands at at least 2,598. However, it is almost certain that the actual number is greater. Since the end of the conflict, mothers, fathers and relatives have been trying to establish the whereabouts of their “disappeared” children but, coming generally from poor farming families, they have enormous difficulties in doing so. The government, which should have taken responsibility for this search, has not done so.

Amnesty International considers that the authorities should do everything possible to seek out and find those children who were separated from their families as a result of the armed conflict, in order to enable them to regain their identity and their past and so that their families can at last find out what happened to them. This would help to restore the mental integrity of

¹ The systematic and widespread violation of human rights in El Salvador included murders, torture, “disappearances” and arbitrary detentions, among other things, which were considered as crimes against humanity by, for example, the Inter-American Commission on Human Rights in its Report N° 136/99, Case 10,488, paragraph 216.

those girls and boys who were snatched from their families under such traumatic circumstances and would put an end to the years of torture that the “disappearance” of these children has caused for their mothers, fathers and relatives.

BACKGROUND

From 1980 to 1991, El Salvador experienced one of the darkest periods in its history, with an armed conflict that caused the human rights of approximately 75,000 people to be violated. Extrajudicial executions, unlawful murders, disappearances and torture were widespread, committed in the majority of cases by the armed forces and ‘death squads’ and, to a far lesser extent, by the armed opposition group, the Farabundo Martí National Liberation Front (FMLN).²

Where is Ricardo Ayala Abarca?

On 22 August 1982, the Atlacatl Battalion carried out a counter-insurgency operation in the Department of San Vicente, which resulted in what is now known as the El Calabozo massacre. Two to three hundred people were killed, gunned down by the soldiers.

Ricardo Ayala, then 13 years old, together with other minors, was seized by the soldiers and taken to an unknown location. His mother, Petronila Abarca Alvarado, has appealed to the courts to find her son. She has filed a writ of habeas corpus to the Constitutional Division of the Supreme Court of Justice, and this writ is pending a decision.

One of the most significant periods in the armed conflict took place between 1980 and 1984, when the armed forces carried out ‘cleansing’ operations of the civilian population. Various massacres took place during this period, including those of Río Sumpul and El Mozote, during which families became separated or parents were murdered and the surviving children taken by the soldiers. Some were taken to orphanages and other institutions, others were held at military bases or kept in the houses of the soldiers and their families. Yet others were put up for adoption (both within the country and abroad). These are the disappeared children of El Salvador, whose families have been searching for them ever since.

Once the Truth Commission had been set up, created as part of the peace process that commenced in 1987, some families began the long search for their children. Although the Commission did not investigate the phenomenon of the disappeared children, it did, however, encourage the parents to initiate proceedings through the legal system. The Salvadorean government did not assume, and has not to this day, its responsibility to investigate the cases of these disappeared children or, indeed, other cases.

² According to the complaints received by the Truth Commission, the FMLN was responsible for “approximately 5% of the cases” of human rights violations.

Some parents began to file cases regarding their disappeared children through the legal system. On the basis of these initial cases, other families joined in these efforts, and this led to the formation of the Association for the Search for Disappeared Children (*Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos - Pro-Búsqueda*) in 1994.

Pro-Búsqueda receives complaints from family members and documents the cases. Over the course of its existence, the organisation has determined the whereabouts of many girls and boys, even in other countries, and has sponsored family reunions. The aim of the search is to put the minds of the families at rest as to the fate of their children and to give the children the opportunity of being reunited with their families, if they so wish. The majority have opted for a reunion, as this helps them to recover their past and their identity and allows the families to see their children once more.

IN SEARCH OF THE DISAPPEARED CHILDREN

National Search Committee

Pro-Búsqueda has endeavoured to convince the State that it should take on its responsibilities in terms of resolving such an important issue. In 1999, Pro-Búsqueda organised a number of activities that led to the presentation of a proposal for the creation of a National Committee to Search for the Disappeared Children of El Salvador (*Comisión Nacional de Búsqueda de Niñas y Niños Desaparecidos de El Salvador - CNB*) to the Legislative Assembly. The proposal set out, “the need for an operating structure to be established, chaired by a Council made up of the State institutions and civil society organisations competent in the issue; a technical committee with specialisms in law, social work and psychology and the appointment of an Executive Director responsible for implementing and fulfilling the Council’s agreements. In addition it should have a clear budget with which to operate”. To start with, the proposal was supported by members of the Family, Women and Children’s Committee (*Comisión de la Familia, la Mujer y la Niñez - CFMN*) of the Legislative Assembly and was referred for study and processing within that Committee. The main opposition to the project came from the Army and Armed Forces in general, who were in fact those primarily responsible for the human rights violations, including the disappearances of children, committed during the war.

Our experience has shown us that the family is one of the most important things in life. There is nothing, no home, no institution, that can replace it. It is essential for any human being to know his or her roots and background, as they are extremely important components of our identity, of who we are and of what we will become. These are truths that nobody should be denied.

“Historias para tener presente” (“Stories to keep in mind”)

However, in November 2001, the CFMN concluded that having “studied and undertaken consultations in relation to the said bill of law, it had not reached the necessary consensus to issue a favourable opinion”. It noted the existence of a “similar Committee established by the

Executive and coordinated by the Procurator General’s Office (*Procuraduría General de la República*), which is working on this very issue”. This Committee, known also as the “Procurator General’s Working Group”, had no budget or organic structure, nor any institutional support for its operations, both of which elements were included in the proposal for a National Search Committee.

In March 2002, after more than a year of efforts, Pro-Búsqueda decided to withdraw from the Procurator General’s Working Group as it was making no progress whatsoever in terms of moving forward with the agreed work plan or on the 13 cases prepared by the organisation. They are now continuing their work of searching and their work to obtain the creation of the CNB, which would provide legal backing to their activities.

The State’s responsibility

What should the Salvadorean State’s role have been with regard to the complaints of children who disappeared during the armed conflict?

“... the adoption of legal, legislative, administrative or other kinds of measures to restore the identity of the girls and boys in question is a legal and moral imperative of the utmost importance and urgency on the part of the Salvadorean State.”

Office of the Human Rights Procurator, March 2002.
Position with regard the creation of a Committee to clarify the whereabouts of the children who disappeared as a consequence of the armed conflict.

It is the State’s responsibility to investigate and punish violations of human rights, particularly disappearances, which are ongoing crimes that are not subject to the statute of limitations until the victim has been found and the facts established. However, El Salvador has not taken on this responsibility, not only for cases of disappearances but for virtually all human rights violations perpetrated during the armed conflict. Moreover, in the few cases that have been investigated and tried, and sentence passed for human rights violations, any hopes on the part of the victims or their relatives of seeing justice done were dashed by the approval of the Amnesty Law in March 1993.

The Constitution and national legislation require the State to protect people’s rights and to take measures when such rights are violated. A further level of responsibility emerges from the international obligations assumed by El Salvador via the international instruments to which it is a Party.

The Constitution establishes that:

Article 2: “All people have the right to life, to physical and moral integrity, to security, to work, to property and possessions, and to be protected in the maintenance and defence of these”.

Article 32: “The family is the fundamental basis of society and will enjoy the protection of the State, which will pass the necessary legislation and will create the

appropriate bodies and services for its integration, well-being and social, cultural and economic development”.

Article 34: “All minors have the right to live in family and environmental conditions that enable their integral development, for which they will have the protection of the State”.

Article 35: “The State will protect the physical, mental and moral health of children, and will guarantee their right to education and assistance”.

The international instruments to which El Salvador is a State Party and which protect the various rights violated by the practice of the forced disappearance of minors are, among others:

The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and the Convention on the Rights of the Child.

Article 8 of this latter establishes that:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

And Article 9:

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

The State has not fulfilled its obligations in this respect.

Moreover, in the cases of human rights violations examined by institutions such as the Inter-American Commission on Human Rights, it has been concluded that the State violated various of the victims’ rights, including the right to life. Impartial, thorough and effective

investigations were recommended, along with reparation for the consequences of these violations. However, the government’s response has been to ignore these decisions and recommendations, and to argue that the victims’ efforts to gain justice are “playing dangerously with the peace”, or that trying crimes committed during the war “would re-open the door to a conflict we have already put behind us, and we Salvadoreans want to turn the page”, according to President Francisco Flores ³. Such opinions ignore the fact that the victims and their families also want to “turn the page” – but not through impunity, only after they have been permitted access to justice.

“The cases already resolved show that finding these girls and boys does not cause social instability. As the Office of the Human Rights Procurator has already stated, family reunions have caused no kind of social upheaval, desire for vengeance or re-opening of old wounds”.

Report of the Office of the Human Rights Procurator, July-December 2001, p. 13.

In this context, the Salvadorean State has taken no measures to remedy the damage already suffered by one particular group: the children who disappeared during the armed conflict. The State has ignored the recommendations made by the Office of the Human Rights Procurator in 1998 (see below, Other Institutions) and has refused to support the initiatives instigated by the relatives of the disappeared children in their tireless efforts to clarify the fate of their children and to determine their whereabouts. The Salvadorean State has demonstrated a total lack of humanity and charity towards the mothers, fathers and relatives of the children who disappeared. In addition, the Legislative Assembly has rejected repeated requests to create a National Search Committee.

It should be noted that UN bodies and mechanisms such as the Human Rights Committee, and regional bodies such as the Inter-American Court of Human Rights³ and the European Court of Human Rights, have determined that “disappearances” constitute torture or other cruel, inhuman or degrading treatment, not only for the “disappeared” but also for their families. Thus, Sir Nigel Rodley, then Special Rapporteur on Torture, came to the conclusion that “there is a trend towards recognising that making someone ‘disappear’ is a form of torture or mistreatment, undoubtedly for the relatives of the ‘disappeared’ and presumably for the ‘disappeared’ themselves”.

³ Godínez Cruz case – Fair Compensation (Article 63.1 American Convention on Human Rights), Ruling of 21 July 1989, Inter-American Court of Human Rights, Series C.: No. 8 (1990), paras. 48 and 49.

Who has taken the initiative?

In the face of the State’s indifference, efforts to locate the girls and boys who disappeared during the armed conflict in El Salvador have in practice been undertaken by the mothers, fathers and relatives of the victims, organised in the *Asociación Pro-búsqueda de Niñas y Niños Desaparecidos*, which has continued this difficult but unavoidable task.

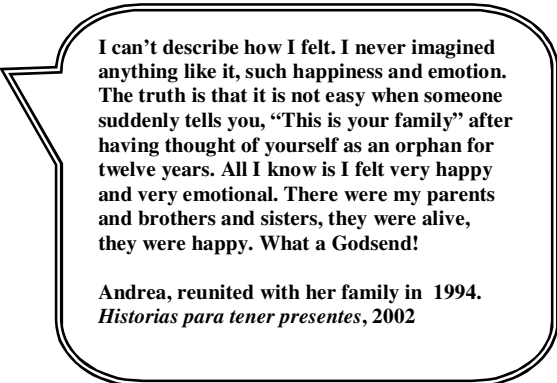
Other non-governmental organizations have also taken initiatives to investigate the human rights violations of the past. One such organization, the Legal Aid Office of the Archbishopric of San Salvador (*Oficina de Tutela Legal del Arzobispado de San Salvador*) has been involved since the very early days in the task of identifying victims by means of their exhumation and subsequent identification of the remains. In 1989, it began efforts to identify the victims of the El Mozote massacre, perpetrated in 1981 by the Armed Forces. The authorities, with the collusion of the United States – who were deeply involved in the human rights violations in El Salvador – at first refused to allow this to take place. However, investigations by journalists finally brought the facts to light. In recent years, various exhumations have taken place that have led to the identification of dozens of victims. In December 2001, to coincide with the twentieth anniversary of the massacre, the burial of the exhumed remains of twenty people took place, along with the erection of a monument to the victims in the village of El Mozote.

Since it first started its work, Pro-búsqueda has received 687 complaints. Of these, 40% have been resolved (275 cases) and the rest (412) are still under investigation. These figures do not represent the actual total of all cases of children disappeared during the war, only those that have been denounced.

Children have been found in El Salvador, in the neighbouring countries of Honduras and Guatemala, and also in Belgium, France, Italy, the Netherlands, Switzerland, the UK, and the USA.

One activity undertaken by the organization has been that of reuniting families with their children, now young adults, should they so wish. The majority of children have so far opted for this reunion.

In July 2002, a meeting of young people who had been found took place, which was attended by some of those who had been adopted in other countries. Hernán and Carmen, adopted by an Italian couple, came to meet their biological family accompanied by their adoptive parents.



I can’t describe how I felt. I never imagined anything like it, such happiness and emotion. The truth is that it is not easy when someone suddenly tells you, “This is your family” after having thought of yourself as an orphan for twelve years. All I know is I felt very happy and very emotional. There were my parents and brothers and sisters, they were alive, they were happy. What a Godsend!

**Andrea, reunited with her family in 1994.
Historias para tener presentes, 2002**

This brother and sister had been captured, along with their parents, in Santa Ana by soldiers raiding a safe house of one of the groups fighting the army. They were later taken to children's homes and, in 1981, given up for adoption.

Carmen said:

"Meeting my family has been so good, because they are a part of my life, they complete my history, and they are very important for my future. There was something lacking in my life. Now I have found the part of my identity that was missing, the part that completes my person, and enables me to understand my future more clearly, and where I am going".

The importance of the reunions is also positive in terms of clarifying the circumstances of the separation, for many children were told they had been abandoned by their parents. For other families, the fact that some of the 'disappeared' children, now young adults, have been found gives them fresh hope that they may yet find their own children.

Photocaption: Hernán and Carmen Lombardo on the day of their reunion with their biological family in July 2002

Other institutions

At national level, the **Office of the Human Rights Procurator** carried out an investigation after receiving a complaint from Pro-Búsqueda in 1996. The complaint included a total of 145 cases. On 30 March 1998, the PDDH issued a decision on five of those cases, in which the forced disappearance of eight children was established: Reina Elizabeth Carrillo Panameño (5 years of age at the time of her disappearance); Leonor López Rodríguez (2); Herminia Gregoria (5), Serapio Cristián (2) and Julia Inés (four months) Contreras Recinos; Erlinda (7) and Ernestina (3) Serrano Cruz; and José Rubén Rivera (3). The PDDH concluded that members of the Salvadorean Armed Forces were responsible and that the disappearances had taken place during various military operations in which non-combatant civilian populations were attacked by military forces.

Among its recommendations, the PDDH urged the National Defence Minister and the Joint Chief of Staff to a) order investigations and present the results to the competent judges in order to deduce the relevant criminal responsibilities; and b) establish the whereabouts of the children and return them to their families, should such a measure be in the best interests of the child. The decision also ordered material and moral reparation for damages caused. The above officials were also urged to cooperate with the legal system in bringing those responsible to justice. A violation of due process through the denial of justice and a failure to render justice

without delays in legal proceedings was established and, in one of the cases, the procedural file was included.

The **Constitutional Division (*Sala de lo Constitucional*) of the Supreme Court** has issued decisions in relation to writs of habeas corpus filed by the families of disappeared children in which it “recognises the constitutional violation of the right to physical freedom” and has urged the Attorney-General’s Office (*Fiscalía General de la República*) to take the necessary measures, in line with its constitutional powers, to fully establish the condition and whereabouts of the people forming the object of the writ with the aim of safeguarding their fundamental right to freedom.

The **Inter-American Commission on Human Rights** has also examined cases of children who disappeared during the armed conflict in El Salvador. In February 2001, it passed judgment on a complaint presented in February 1999 by *Pro-Búsqueda* and by the Centre for Justice and International Law, *CEJIL*, relating to the cases of Ernestina and Erlinda Serrano Cruz. The two sisters disappeared on 2 June 1982 during military operations in the municipality of San Antonio La Cruz, Department of Chalatenango [see case studies below for more information].

The Commission declared the writ admissible. It rejected the Salvadorean State’s argument that internal remedy had not been exhausted stating, “As of the date of adopting this report, internal remedy has not worked with the efficacy required to investigate a complaint of enforced disappearance, which constitutes a serious violation of human rights”.⁴ It noted that eight years had passed since the presentation of the complaint, and the State had still not yet established what had taken place.

In February 2003 the Commission issued recommendations to the Salvadorean State, urging it to undertake a thorough, impartial and effective investigation in order to establish the whereabouts of Ernestina and Erlinda Serrano Cruz. Also, if found, the State was to provide adequate reparation for the violations against them. The Commission also recommended finding those responsible for the violations against the two girls and their relatives.

The Salvadorean State did not comply with any of the recommendations; as a result, on 18 June the Commission submitted the case to the Inter-American Court of Human Rights.

Where is José Adrián Rochac Hernández?

On 12 December 1980, members of the Salvadorean Air Force (FAES) and paramilitary forces burst into his house, in the Department of San Salvador, where he was found with his mother and five brothers and sisters. His mother and his six-year-old brother were murdered, and José Adrián was taken by the soldiers. His father, Alfonso Hernández Herrera, continues his efforts to find his son.

⁴ Report No 31/01 Case 12.132, Ernestina and Erlinda Serrano Cruz, El Salvador, 23 February 2001

This is the first time that a case from El Salvador will be considered by the Inter-American Court of Human Rights.

The **Working Group on Enforced or Involuntary Disappearances** has also considered the disappearances that took place in El Salvador. In its report on 21 January 2003, the Working Group expressed its concern at the lack of progress in investigating the "more than 2,000 cases pending" and expressed its concern at the fact that it had received no information of any kind during 2002 from the government with regard to these cases. It also reminded the government of its responsibilities under article 13 of the Declaration on the Protection of all People from Enforced Disappearances to "carry out a thorough and impartial investigation". The Working Group noted that the said obligation remains in effect "until the fate of the victim of forced disappearance has been clarified". It called upon the government to endeavour to clarify the cases and implement the provisions for providing compensation to victims and their families.

The Working Group is to invite the government of El Salvador, along with other countries that have a large number of unresolved cases and who have not maintained regular communication with the Group, to its session to be held from 11 to 15 August 2003.

Events according to the victims

Five of the first young people to be found have recounted their experiences since their separation from their families, including the traumatic incidents that led to the family's separation. This includes tales of how and where they spent their childhood and adolescence, their feelings at being reunited with their biological families and their opinions on the government's conduct. Another important aspect is that their stories help to gather information on massacres about which there has been very little information, such as that of Río Sumpul.

In *Historias para tener presentes*,⁵ four men and one woman have written about their early experiences, including the witnessing of scenes of extreme violence, including in some cases the death of their mother or father. They are all agreed that they had housing, health and education but say that this was not necessarily all for the best, as this was at the cost of other rights, brutally violated in the context of massacres and war.

⁵ *Historias para tener presentes*, 2002, Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos, published by UCA.

They acknowledge the pain caused by “the idea that our families had abandoned us”, an idea that was imparted to them in the institutions in which they spent their childhood, and also the lack of love, “the absence of love that our own families would have given us”.

Speaking with an authority that comes of such experience, the opinions of these young people should not be discounted when they say, “... we think it is serious that the State has not collaborated in helping to find the young people who continue to be disappeared. The fact that the Legislative Assembly does not want to approve a National Search Committee to find these young people indicates that the politicians still think within the logic of the past, a logic of confrontation and not one of reconciliation...As for the State, rather than blaming it, we want to stress its responsibility”.

Conclusions and recommendations

Like the Salvadorean organisations, Amnesty International has spent years endeavouring to see that the Salvadorean authorities assume their responsibilities with regard to the human rights violations perpetrated during the armed conflict.

It has urged successive governments to take measures to put an end to impunity in specific cases such as the murder of Monsignor Oscar Arnulfo Romero y Galdámez in 1980 and the murder of six Jesuit priests, Elba Julia Ramos, their housekeeper, and her daughter Celina Maricet Ramos in November 1989, particularly after the Inter-American Commission on Human Rights issued decisions on the two cases that contained clear recommendations to investigate them and bring those responsible to justice.

In addition to the government’s lack of will, the General Amnesty Law of 1993 has thus far also formed an insurmountable obstacle. According to the IACHR, the amnesty laws “eliminate the most effective measure for the validity of human rights, [...] the indictment and punishment of those responsible”. What is more, this law violates the international instruments to which El Salvador is a State party, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights, for which reason it should be annulled.

However, the Salvadorean authorities – both current and past – have maintained a situation of dual impunity, for the violations persist, and they refuse to investigate and punish past human rights violations and they also refuse to do whatever possible to determine the whereabouts of those who disappeared or, at least, to support efforts to find the disappeared children, given evidence that many of them are alive but unaware of their background.

Amnesty International will continue its efforts to see that the Salvadorean government fulfils its obligation to protect human rights and to investigate and punish the violations committed, whoever the perpetrators may have been. In this context, the organisation considers that:

- The pleas of the families of the children who disappeared during the armed conflict must be answered, and the whereabouts of the children determined, particularly when it has been proven that many of them are alive;
- The relevant authorities must support the request presented by Pro-Búsqueda in relation to the formation of a National Search Committee at the level of the Legislative Assembly to continue the task of finding the disappeared children;
- The relevant authorities must put into practice the recommendations made by the Office of the Human Rights Procurator in its 1998 and 2003 decisions;
- Bearing in mind the decision of the Constitutional Division of the Supreme Court of Justice in the cases of Ana Julia and Carmelina Mejía Ramírez; Serapio Cristian, and Julia Inés and Herminia Gregoria Contreras Recinos, the Attorney-General's Office must "fully establish their condition and whereabouts.....with the aim of safeguarding their fundamental right to freedom".
- The authorities must fulfil their obligations under the international human rights standards on reparation to victims of human rights violations. To this end, they must create and contribute to a fund aimed at compensating the victims and their families. Many of the children found, and their relatives, require psychological support, the costs of which should be borne by the government.
- There should also be moral reparation. In this respect, the authorities must implement the recommendations of the Truth Commission in this regard:
 - The construction of a national monument in San Salvador with the names of identified victims of the conflict.
 - Recognition of the honour of the victims and the serious crimes to which they were victim.
 - The establishment of a national public holiday commemorating the victims of the conflict and asserting national reconciliation.
- We urge the government to ratify the Inter-American Convention on the Enforced Disappearance of Persons, adopted in June 1994 by the General Assembly of the Organisation of American States, as soon as possible.

Julia Inés Contreras, four months
Herminia Gregoria Contreras, five years
Serapio Cristian Contreras, two years

On 25 August 1982, the Fifth Infantry Brigade of the Salvadorean army carried out a military operation in La Llorona, San Jacinto and San Juan Buenavista, department of San Vicente. This was a large-scale operation in which the civilian population was indiscriminately attacked. The inhabitants divided into groups and sought refuge in the mountains. However, the largest group was discovered and, according to reports, virtually decimated by the soldiers.

The survivors tried to escape the soldiers and, in the consequent confusion, the children became separated from their families. María Maura Contreras, now 48 years old, and her partner, Fermín Recinos, lost three of their children in this incident. She has testified that she saw a soldier take Herminia by the hair and carry her off, and the same for Serapio and other children. María Maura was carrying Julia in her arms but when she fell, the child slipped out of her arms; a soldier picked her up and carried her off. When the military operation came to an end, she began to search for her children, being told that they had been seen in the vicinity of the Río Frío and that the Armed Forces had taken them.

In the ensuing period of continuing armed conflict, insurmountable difficulties arose in the face of any attempts to find the children given that, among other things, such proceedings had to be undertaken at the military barracks. Only at the end of the conflict could María Maura once more search for her children with the help of NGOs, the Commission of Human Rights of El Salvador and the Association for the Search for Disappeared Children

In March 1998, the PDDH issued a decision on five cases in which the forced disappearance of eight children was established, including the Contreras Recinos children. The PDDH concluded that those responsible were members of the Salvadorean Armed Forces and that the disappearances had occurred during various military operations in which non-combatant civilians had been attacked by the military.

Among other recommendations, the PDDH urged the National Defence Minister and the Joint Chief of Staff to order investigations and present the results to the competent judges in order to deduce the relevant criminal responsibilities and to establish the whereabouts of the children and return them to their families, should such a measure be in the best interests of the child. The decision also ordered material and moral reparation for damages caused.

In October 2002, María Maura filed a writ of habeas corpus (*'exhibición personal'*) before the Constitutional Division of the Supreme Court of Justice. In February 2003, the Court issued its decision in this regard, in which it recognised the "constitutional violation of the right to

physical freedom” of the three children, and urged the Attorney-General’s Office “to take the necessary measures, in line with its constitutional powers, to establish the condition and whereabouts of the [disappeared children].

To date, the Attorney-General’s Office has taken no measures in this regard.

Ernestina SERRANO CRUZ, 7 years

Erlinda SERRANO CRUZ, 3 years

On 2 June 1982, the Atlacatl battalion of the Salvadorean army undertook an operation in the Municipality of San Antonio de la Cruz, Department of Chalatenango, during which it captured the Serrano Cruz sisters, who had been separated from their parents and other brothers and sisters. According to witnesses, the two girls were taken away by helicopter and handed over to the Red Cross, who took them to an unknown destination.

As in other cases, the first complaint was presented once the war had come to an end. In April 1993, María Victoria Cruz Franco, the mother of the girls, submitted a complaint to the Court of First Instance in Chalatenango for the kidnapping of her children. It should be noted that the father and brother of the girls had subsequently been murdered during the conflict. However, the legal proceedings made no progress and the case was archived on two occasions: in September 1993 and March 1998. Although the case was reopened in 1999, apparently due to steps taken by the Inter-American Commission on Human Rights (IACHR) (see below), there has been no real progress.

In March 1998, the PDDH issued a report on children "forcibly separated from their parents" during the course of military operations or clashes during the armed conflict. The decision contained a study of five cases, which included eight disappeared children, including Ernestina and Erlinda. The decision established their forced disappearance and noted the members of the Atlacatl Rapid Response Unit as being responsible in the case of Ernestina and Erlinda. The PDDH urged the National Defence Minister and Joint Chief of Staff to order investigations in order to gather information on those operations and the disappearances, to present the results of these investigations to the competent judges in order to deduce criminal responsibility, and to establish the whereabouts of the children and return them to their families, should this be in their best interests. The decision also established a violation of due process. None of these recommendations have been implemented.

In February 1999, Pro-Búsqueda and CEJIL presented a complaint to the IACHR for enforced disappearance and a subsequent lack of investigation and reparation. In February 2001, the IACHR issued a decision in which it declared the writ admissible; it rejected the Salvadorean State's argument that internal remedy had not been exhausted saying, "As of the date of adopting this report, internal remedy has not operated with the efficacy required to investigate a complaint of enforced disappearance, which constitutes a serious violation of human rights".⁶ It noted that eight years had passed since the presentation of the complaint, and the State had still not yet established what had taken place.

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Ana Julia MEJIA RAMIREZ, 15 years

Carmelina MEJIA RAMIREZ, 7 years

Between 10 and 13 December 1981, the army carried out an operation known as “Operation Rescue” in the Department of Morazán. The operation covered the hamlets of El Mozote, La Joya, La Ranchería, Los Toriles, Jocote Amarillo and Cerro Pando and left a toll of at least 767 people dead, summarily executed, along with the disappearance of girls and boys, including Ana Julia and Carmelina.

There are statements from people who saw the girls alive in the hands of members of the Atlacatl Battalion, one of the units responsible for the massacre. Although at one point the soldiers left the girls with a person they knew (godmother), a few hours later they once more took them, saying they were following orders. The next day, the battalion left the area, taking with them the two girls and other children who had survived the massacre. Their families have not seen them since, despite their efforts to find them.

In April 1997, a case was presented to the Second Court of First Instance of San Francisco Gotera, Department of Morazán. Of the steps taken by the judge, the only information obtained was a statement from the Director General of Divisions (*Director-General de Divisiones*) of the National Ministry of Defence denying that the Atlacatl Battalion had carried out an operation on the date and at the place specified in the complaint. The case was archived in March 1999 without inspections having been made of the documents in the hands of the Armed Forces or any other investigations.

In November 2000, Reyna Dionila Portillo, the children’s aunt, presented a writ of ‘*exhibición personal*’ before the Constitutional Division of the Supreme Court of Justice. In March 2002, the institution issued a decision in which it “recognises the constitutional violation of the right to physical freedom of Ana Julia and Carmelina, both with the surname of Mejía Ramírez and, in application of art.11, 86 sub-section 3º, 193 ordinal 2º and 7º of the Constitution of the Republic, urges the Attorney-General’s Office to take the measures necessary, in line with its constitutional powers, to establish the whereabouts of Ana Julia and Carmelina Mejía Ramírez, with the aim of safeguarding their fundamental right to freedom and b) to communicate this resolution to the Attorney-General’s Office ”.

Meanwhile, in November 2001, Pro-Búsqueda submitted the case to the Inter-American Commission on Human Rights where a decision on admissibility is still pending.

Photocaption : Ana Julia Mejía Ramírez