

Comment,
ADVANCES IN CHILDREN'S RIGHTS OVER
THE PAST DECADE: THE INTER-
AMERICAN COURT OF HUMAN RIGHTS
AND THE EUROPEAN COURT OF HUMAN
RIGHTS' PROGRESSIVE INCORPORATION
OF THE CONVENTION ON THE
RIGHTS OF CHILDREN

Introduction

Both the Inter-American Court of Human Rights (IACHR) and the European Court of Human Rights (ECHR) view their respective conventions as living documents that adapt with the changing times.¹ Because of this, the two courts commonly reference the Convention on the Rights of the Child (CRC) in cases where children's rights are implicated and, over the past decade, the courts' case law has provided enforcement to the otherwise unenforceable CRC, advancing the rights of children in both regions of the globe. While there is still much to be done in the way of promoting, improving, and enforcing children's rights, the courts' enforcement and recognition over the past decade has attempted to bring member state compliance in line with modern views of the particularly damaging affects of the denial of human rights to children, a notably vulnerable group within any society.

In Section I, this Comment discusses the overwhelming ratification of the CRC and the background of the IACHR and the ECHR and their application of children's rights in cases before the courts. Section II discusses the different types of children's rights violations the two courts have reviewed over the past decade, and Section III will conclude the Comment with a summary of notable advancements and thoughts on the future of children's rights.

¹ Juridical Condition and Human Rights of the Child, Advisory Op. OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17, ¶ 21 (Aug. 28, 2002), *available at* www.oas.org/en/iachr/children/decisions/ia_court_hr.asp; *The Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 165 (July 8, 2004), *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf.

I. Background: Children's Rights

A. The Convention on the Rights of the Child and Its Enforcement

The CRC had “unanimous approval by the General Assembly of the United Nations in 1989, [and] attracted the highest number of ratifications of any international treaty within an extremely short period of time.”² The overwhelming ratification of the CRC coupled with both the IACHR and the ECHR recognizing that “human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions”³ has lead the courts to frequently consider and use CRC articles in their court rulings where each courts convention fails to define the parameters of children's rights.

The Committee on the Rights of the Child has only had the power to hear CRC violations since mid-July 2014 when a tenth country ratified the Optional Protocol on the Convention on the Rights of the Child on a Communications Procedure. Thus, the Committee may now possess the power to sanction states for non-compliance with the CRC.⁴ Because of the limited reach of the Committee on the Rights of the Child, the primary vessel through which CRC articles have been enforced for the past two decades has been through incorporation of the articles into court decisions. The IACHR and the ECHR have been particularly aggressive in their consideration of CRC articles in cases involving children.⁵

B. The Courts and the Early Development of Children's Rights

The courts take similar views on the incorporation of children's rights into their jurisprudence, though their compliance

² CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE 54 (Mark Ensalaco & Linda C. Majka eds., 2005); *See also* Juridical Condition and Human Rights of the Child, *supra* note 1, at ¶ 29.

³ JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 12-13 (2013).

⁴ *Children's Rights Boosted as UN Body Now Able to Hear Individual Complaints*, Office of the High Commissioner for Human Rights, United Nations Human Rights, (Jan. 14, 2014), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14166#sthash.MH7gHqEi.dpuf>.

⁵ CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE, *supra* note 2, at 2.

frameworks differ significantly. The IACHR implements what has been referred to as “checklist compliance” where “the IACHR orders a series of clear, specific steps and then vigorously monitors compliance itself, often through multiple state-specific compliance orders.”⁶ However, the ECHR primarily enforces what has been called “delegative compliance” in that “its rulings will identify a violation, but not make orders on how to end the violation, compensate for its effects, or prevent future infringements.”⁷ Instead, the ECHR delegates the task of determining how to encourage compliance to the states,⁸ and as a result “states generally must reason backwards from the violation to understand the appropriate remedy in a specific case, and the actions required to avoid similar future violations.”⁹ It is difficult to say with certainty which compliance framework has been more progressive in the enforcement of children’s rights, but the ability of the IACHR to provide specific orders to the state may indicate that the IACHR’s rulings provide greater relief on their face than those of the ECHR, which are limited to finding that a violation has occurred.

The IACHR was established in 1979 and hears violations of the American Convention on Human Rights (American Convention) on cases referred to it by the Inter-American Commission on Human Rights or a state that has ratified the American Convention.¹⁰ The ECHR was established in 1959 to hear violations of the European Convention on Human Rights¹¹ (European Convention) brought by inter-state application or, unlike the

⁶ Darren Hawkins & Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT’L L. & INT’L REL. 35, 37, 44 (2010).

⁷ *Id.*

⁸ Generally, in cases ruled on by both courts, there are two extremes of state compliance – full compliance or non-compliance. For an in depth discussion of partial compliance, see Hawkins & Jacoby, *supra* note 6.

⁹ *Id.* at 51-52.

¹⁰ I/A Court History, Inter-Am. Ct. H.R. (2015), available at <http://www.corteidh.or.cr/index.php/en/about-us/historia-de-la-corteidh>; Petition and Case System: Informal Brochure, Inter-Am. Comm’n H.R., 4 (2010), available at <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>.

¹¹ The Court in Brief, Eur. Ct. H.R., available at http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf.

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IACHR, by individuals.¹² The IACHR's caseload over the years has been lighter than that of the ECHR,¹³ but regardless, both courts have pursued inclusion of children's rights into their respective jurisprudence in a similar manner – both rely on Article 31.2 of the Vienna Convention on the law of treaties regarding the “General Rules of Interpretation” to incorporate the CRC into court decisions where the rights of a child may be at stake.¹⁴

Even though the American Convention is the only international convention that specifically recognizes protection for children in Article 19 of the Convention¹⁵ – theoretically making judicial recognition of children's rights easy – Article 19 fails to specify the measures states should take to enforce the protections afforded to children under the article. Thus, judicial opinions in the IACHR have looked to the CRC to provide a definition of the “measures of protection” that states should put in place

¹² The ECHR in 50 Questions, Eur. Ct. H.R., 4 (Feb. 2014), *available at* http://www.echr.coe.int/Documents/50Questions_ENG.pdf.

¹³ Hawkins & Jacoby, *supra* note 6, at 46, 51.

¹⁴ CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE, *supra* note 2, at 57; Article 31.2 of the Vienna Convention on the law of treaties regarding the “General Rules of Interpretation” states that:

The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- a) Any agreement relating to the treaty which was made between all the parties in connexion [sic] with the conclusion of the treaty;
- b) Any instrument which was made by one or more of the parties in connexion [sic] with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

Vienna Convention on the Law of Treaties (with annex), Concluded at Vienna on 23 May 1969, art. 31.2, Jan. 27, 1980, 1155, I-18232 U.N.T.S. 340, *available at* <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

¹⁵ MONICA FERIA TINTA, THE LANDMARK RULINGS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS ON THE RIGHTS OF THE CHILD. PROTECTING THE MOST VULNERABLE AT THE EDGE 1 (2008). The American Convention on Human Rights Article 19 of the American Convention states that “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” *Id.* at 2, n.3.

under Article 19.¹⁶ The IACHR also recognized a *corpus juris* of “a set of basic provisions associated with the goal of upholding the human rights of children.”¹⁷ The CRCs importance in interpreting Article 19 of the American Convention was first presented in the 1999 seminal case *The “Street Children” Case (Villagrán Morales et al.)*.¹⁸

The *Street Children* case was the first case to establish the wide latitude the IACHR exercises in utilizing the *corpus juris* of human rights for children to determine the rights of the child under Article 19. The case also continues to be cited in IACHR opinions and it is necessary to understand the case before viewing more recent IACHR cases. The *Street Children* case involved the death of a number of “street children” – two of whom were minor children – during a time when “there was a systematic practice of aggression against ‘street children’ in Guatemala carried out by members of State security forces.”¹⁹ Not having ruled on the rights of children before, the Court looked to articles of the CRC and a presumption previously established by the ECHR for guidance. Because Article 19 does not define “child” as it is used in the article, the Court first looked to Article 1 of the CRC to define “child” to include “every human being” below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.²⁰ The IACHR then examined a “presumption established by the [ECHR] that the State is responsible for the ill treatment in the custody of State agents, unless the authorities can demonstrate that the agents did not engage in such behavior.”²¹ The *Street Children* case thus provided a defini-

¹⁶ *Id.* at 2.

¹⁷ Report on Corporal Punishment and Human Rights of Children and Adolescents, Rapporteurship on the Rights of the Child, Inter-Am. Comm'n H.R., V(A)(16)-(21), 3-4 (2009), available at <http://www.cidh.org/Ninez/CastigoCorporal2009/CastigoCorporal.1eng.htm>.

¹⁸ The “Street Children” (Villagrán-Morales et al.) v. Guatemala, Merits, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 194, 196 (Nov. 19, 1999), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf.

¹⁹ PASQUALUCCI, *supra* note 3, at 188-89 (“[T]he Court is using the colloquial expression “street children” to refer to the five victims in this case, who live on the streets, in a risk situation,” though only two of the street children were considered minor children under the CRC definition.).

²⁰ TINTA, *supra* note 15, at 13.

²¹ PASQUALUCCI, *supra* note 3, at 170.

tion of child under the American Convention and was the first case to look to the CRC for guidance on the scope of children's rights. In doing so, the case serves to demonstrate the broad *corpus juris* from which the IACHR can draw to expand on children's rights. This has remained the typical interpretation structure employed by the IACHR when viewing children's rights violations.

The ECHR, however, is not explicit in its recognition of children's rights and instead relies on a combination of two articles in the European Convention: "Article 1 of the [Convention] guarantees convention rights and freedoms to 'everyone,' and . . . [t]he child's equal entitlement under the convention is enforced further by article 14, which prohibits discrimination in the enjoyment of convention rights on numerous grounds, including age."²² Despite the European Convention's lack of a specific reference to children's rights, the decisions of the ECHR have contributed greatly to the case law expanding the rights of children through the broad topics of violations upon which the court rules.²³ In addition, because the ECHR has ruled on such a broad assortment of cases involving children's rights, it is not uncommon to see citations to ECHR cases included in the judicial analysis of IACHR cases,²⁴ and ECHR decisions will likely gain in influence as the IACHR's caseload increases.

For all the similarities the courts share in their recognition of children's rights and use of the CRC, the types of violations before the two courts are in stark contrast. The differences in violations seen by the courts may be due in part to the underdeveloped judicial structures within states in the Inter-American court system compared to the more developed judicial structures in states within the European court system.²⁵ For example, from its inception, the IACHR has handled a large number of cases involving forced disappearances, while the ECHR has handled cases ranging from the legal recognition of children born in sur-

²² CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE, *supra* note 2, at 56.

²³ *Id.*

²⁴ See *Atala Riffo and Daughters v. Chile (Merits, Reparations and Costs)*, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶ 87 (Feb. 24, 2012), available at http://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf.

²⁵ PASQUALUCCI, *supra* note 3, at 4.

rogacy to recognition of inheritance rights. As a result, even though the American Convention contains express recognition of children's rights, the IACHR has not had the same opportunities to expand on children's rights that the ECHR has.²⁶

II. Developments over the Past Decade

A. *Inter-American Court of Human Rights*

The IACHR has experienced a slow growth in cases since its establishment, while the ECHR has maintained a steady, and largely increasing, caseload.²⁷ As previously noted, the cases taken by the IACHR have been indicative of issues faced by underdeveloped countries, with the exception of the cases before the IACHR in 2011 and 2012. The vast majority of the cases before the IACHR have involved forced disappearances of children and the displacement of indigenous peoples, resulting in the loss of family and identity. What is also particular about the cases before the IACHR is that the facts provided in most cases, no matter the state, may involve disappearances that occurred years ago during periods of armed conflict.²⁸ The passage of time in these cases has raised issues affecting whether the IACHR has the jurisdiction to rule on forced disappearances of children that occurred prior to the date a given state submitted to the jurisdiction of IACHR.²⁹ In more recent years, however, the IACHR has handled cases involving the determination of the scope of the child's best interest. These more recent cases mirror the cases that have been before the ECHR since its inception, indicating the potential that states under the IACHR's jurisdiction may be moving away from forced disappearance cases towards more advanced cases interpreting children's rights.

²⁶ CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE, *supra* note 2, at 69.

²⁷ Hawkins & Jacoby, *supra* note 6, at 54.

²⁸ See *The "Las Dos Erres" Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 70 (Nov. 24, 2009), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf.

²⁹ *Id.* at ¶ 39 (The Court acknowledged that it only had jurisdiction to hear violations after March 9, 1987 when Guatemala "recognized the Court's contentious jurisdiction", but the Court found that it did have jurisdiction to hear cases that "had not ceased to exist as of that date.").

Article 19 of the American Convention, explicitly guaranteeing the rights of the child, has been addressed alongside other Convention articles in IACHR cases to determine a state's added obligations to ensure children's rights.³⁰ Thus, violations of Article 19 of the American Convention are generally not ruled on in isolation, but instead violations of Article 19 are examined together with other alleged article violations under the Convention, expanding on those rights by adding extra protections for children.³¹ As a result, the measures of protection provided for children under Article 19 are generally determined based on the particular circumstances of each alleged violation.³²

In recent years the IACHR has dealt with three major forced disappearance cases in which children were abducted.³³ The difficulty with most forced disappearance cases before the court is the speculative nature of the alleged violation because in most circumstances it is unknown whether the disappeared parties are alive or dead. Two of the cases named El Salvador as the state violator: *Serrano Cruz Sisters v. El Salvador*³⁴ and *Contreras et al. v. El Salvador*.³⁵ Both cases involved alleged forced disappearances of children in El Salvador occurring between the years 1980-1991 when "El Salvador was engaged in an internal

³⁰ The "Juvenile Reeducation Institute" v. Paraguay (Preliminary Objections, Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 148 (Sept. 2, 2004), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_112_ing.pdf.

³¹ *Id.* at ¶ 150; *The Girls Yean and Bosico v. Dominican Republic* (Preliminary Objections, Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 135 (Sept. 8, 2005), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf.

³² *Forneron and Daugther v. Argentina*, (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 242, ¶ 45 (Apr. 27, 2012), available at http://corteidh.or.cr/docs/casos/articulos/seriec_242_ing.pdf.

³³ PASQUALUCCI, *supra* note 3, at 211 ("Contreras et al. v. El Slavador, Serrano Cruz Sisters v. El Salvador, and Las Dos Erres Massacre v. Guatemala").

³⁴ See *Serrano-Cruz Sisters v. El Salvador* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 120 (Mar. 1, 2005), available at http://corteidh.or.cr/docs/casos/articulos/seriec_120_ing.pdf.

³⁵ See *Contreras et al. v. El Salvador* (Merits, Reparations and costs), Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011), available at http://corteidh.or.cr/docs/casos/articulos/seriec_232_ing.pdf.

armed conflict during which forced disappearances” were known to have occurred.³⁶

In the *Serrano Cruz* case, the court was unable to rule on a violation of Article 19 granting the rights of the American Convention to children, due to the events occurring prior to El Salvador's submission to the IACHR's jurisdiction in 1995.³⁷ This was common with many of the earlier claims in front of the IACHR. Due to the inability of the IACHR to rule on violations taking place prior to a state's submission to the Court's jurisdiction, the most notable advances in children's rights in cases like this may be sourced to the reparations ordered of various states by the IACHR. The IACHR is granted the power to issue reparations, both pecuniary and non-pecuniary in nature, under Article 63 of the American Convention.³⁸ These reparations are meant to “consist of measures that seek to make the effects of the violations disappear,” and restore alleged victims to their position before the violation occurred.³⁹

The IACHR has ordered many reparations in an attempt to raise awareness of alleged violations or to aid in correcting the

³⁶ *Serrano-Cruz Sisters*, (ser. C) No. 120 at ¶ 48(1); See also Larry Rohter, *El Salvador's Stolen Children Face a War's Darkest Secret*, N.Y. TIMES, Aug. 5, 1996, available at <http://www.nytimes.com/1996/08/05/world/el-salvador-s-stolen-children-face-a-war-s-darkest-secret.html?pagewanted=1>.

³⁷ *Serrano-Cruz Sisters*, (ser. C) No. 120 at ¶ 125.

³⁸ Article 63 of the American Convention on Human Rights reads:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32) art. 63, Organization of American States, Nov. 22, 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

³⁹ *The Mapiripán Massacre v. Colombia* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 245 (Sept. 15, 2005), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf.

status of alleged victims of children's rights violations as well as to put safeguards in place to curb future violations. One common reparation has involved the IACHR ordering states to create "a state-sponsored webpage and database to assist in the search for the abducted children,"⁴⁰ to aid in locating children who may have disappeared. The IACHR has also ordered El Salvador to "prepare an audiovisual documentary on the forced disappearance of children", and in addition to disseminating it widely, post it on the website established after the *Serrano Cruz Sisters* case.⁴¹ Following the *Contreras et al. v. El Salvador* case, the court also ordered reparations in the form of "symbolic relevance" by having the state name three schools after the three different families affected by the forced disappearance of children in the case and to place plaques in front of the schools acknowledging the forced disappearances.⁴² These reparations show the IACHR's ability to address alleged violations of children's rights while not necessarily finding an explicit violation of Article 19.

Advances in recognition of identity and family have arisen in cases ranging from forced disappearances to displacement of indigenous peoples and nationality. Two cases involving the abduction of children implicate Articles 11 (Right to Privacy), 17 (Right to Family), and 18 (Right to a Name) of the American Convention.⁴³ In the *Contreras* case, a woman who was abducted between 1981-1983 did not discover her true identity until the

⁴⁰ *Contreras et al.*, (ser C) No. 232 at ¶ 209-210; PASQUALUCCI, *supra* note 3, at 211; *Serrano-Cruz Sisters*, (ser C) No. 120 at ¶ 189; *The "Las Dos Erres" Massacre*, (ser C) No. 211 at ¶ 271-274.

⁴¹ *Contreras et al.*, (ser. C) No. 232 at ¶ 209-210; *Serrano-Cruz Sisters*, (ser. C) No. 120 at ¶ 163(d)(i).

⁴² *Contreras et al.*, (ser. C) No. 232 at ¶ 208.

⁴³ American Convention on Human Rights Article 11(2) Right to Privacy reads:

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

American Convention Article 17(1) Rights of the Family:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

American Convention Article 18 Right to a Name:

- "Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner

age of twenty-four, and only after she dedicated her life to “re-constructing her identity and relationship with her biological family.”⁴⁴ In the case of *The “Las Dos Erres” Massacre v. Guatemala*, a child was abducted from the scene of a massacre and was renamed and kept from his biological family.⁴⁵ Over the years, the IACHR has “reiterated that the forced disappearance of persons is a crime of a continuous or permanent nature, and of a multiple offense nature, since it not only produces an arbitrary deprivation of freedom, but it puts the personal integrity, safety, and the life of the detainee in danger.”⁴⁶ Thus, violations in cases like *Contreras* and *Las Dos Erres* generally do not center on the act of abduction itself, but rather the state’s failure to take adequate measures to restore identity to the alleged victims and make attempts to return them to their biological families after the abduction.

In both *Las Dos Erres* and *Contreras* the IACHR determined that the state parties failed to provide adequate protection to the children involved in the cases in addition to the states’ failures to reestablish family ties by looking to “Article 4(3) of Protocol II additional to the Geneva Convention, which stipulated that: ‘Children shall be provided with the care and aid they require, and in particular: . . . (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated’”⁴⁷ The IACHR found that the states violated Article 17 in

in which this right shall be ensured for all, by the use of assumed names if necessary.”

American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32) art. 11(2), 17(1), 18, Organization of American States, Nov. 22, 1969, *available at*, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

⁴⁴ *Contreras et al.*, (ser. C) No. 232 at ¶ 2, 118 (Expert opinion from the *Contreras* case indicated that “the original name of 69% of the 222 young people reunited with their families had been altered.”).

⁴⁵ *The “Las Dos Erres” Massacre*, (ser. C) No. 211 at ¶ 2.

⁴⁶ *Tiu-Tojín v. Guatemala* (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 190, ¶ 52, (Nov. 26, 2008), *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_190_ing1.pdf.

⁴⁷ *Contreras et al.*, (ser. C) No. 232 at ¶ 107; *see also The “Las Dos Erres” Massacre*, (ser. C) No. 211 at ¶ 191.

relation to Article 19 for failing to take steps to reunite the children with their biological families.⁴⁸

Additionally, in both *Las Dos Erres* and *Contreras*, the right to a name under Article 18 in relation to Article 19 of the American Convention was before the IACHR. To determine the rights under Article 18, in both cases the IACHR cited to the 2005 *Case of the Girls Yean and Bosico v. Dominican Republic*,⁴⁹ which had established that:

182. The right to a name, embodied in Article 18 of the American Convention, constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State. This right is also established in several international instruments.

184. The State must also ensure that the individual is registered under the name that he or his parents have chosen, according to the moment when registration occurs, without any type of restriction to the right or interference in the decision of choosing the name. Once an individual is registered, the possibility of preserving and re-establishing the given name and surname must be ensured. The given name and surname are essential to establish formally the connection that exists between the different members of the family with society and with the State. . . .⁵⁰

In *Contreras*, the IACHR stated “the Court has recognized that the right to identity is not expressly provided for in the American Convention,”⁵¹ and looked to Article 8(1)⁵² of the CRC to recognize the right to identity,⁵³ concluding “that identity is a right that encompasses several elements, including nationality, name

⁴⁸ *Contreras et al.* (ser. C) No. 232 at ¶ 117; see also *The “Las Dos Erres” Massacre* (ser. C) No. 211 at ¶ 310(4).

⁴⁹ *Contreras et al.*, (ser. C) No. 232 at ¶ 110; *The “Las Dos Erres” Massacre*, (ser. C) No. 211 at ¶ 192; See also *The Girls Yean and Bosico*, (ser. C) No. 130 at ¶ 3 (In *The Girls Yean and Bosico v. Dominican Republic* *Bosico*, “[t]he Commission alleged that the State, through its Registry Office authorities, had refused to issue birth certificates for the Yean and Bosico children, even though they were born within the State’s territory and that the Constitution of the Dominican Republic . . . establishes the principle of *ius soli* to determine those who have a right to Dominican citizenship.”).

⁵⁰ *The Girls Yean and Bosico*, (ser. C) No. 130 at ¶ 182, 184.

⁵¹ *Contreras et al.*, (ser. C) No. 232 at ¶ 112.

⁵² *Id.*

⁵³ *Id.* (Article 8(1) of the CRC states that “State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as acknowledged by law without unlawful interference.”).

and family relationships, included in the said article in a descriptive but not restrictive manner.”⁵⁴ Thus, the states’ failure to take steps to restore the identity of the alleged victims and return them to their biological family units has a long term impact on the child, not necessarily for better or worse, but one that inevitably affects the development of a secure identity.⁵⁵

Both cases before the IACHR in 2012 – *Atala Riffo and Daughters v. Chile* and *Forneron and Daughter v. Argentina* – ruled on two months apart — were the first IACHR cases that made rulings regarding what factors should be considered when determining the best interest of the child under Article 17 of the American Convention. In the first case before the IACHR, *Atala Riffo and Daughters v. Chile*, the Inter-American Commission on Human Rights alleged that the State discriminated against the mother of the children by removing her children from her custody after discovering that she was a lesbian, and failed to take the children’s best interest into consideration in doing so, violating Articles 11(2), 17(1), and 19.⁵⁶

The *Atala Riffo* case was the first case where the IACHR had the opportunity to determine what circumstances should be considered when determining the child’s best interest. Commenting specifically about the mother’s sexual orientation, the IACHR stated that “there is no single model for family, which may have many variations.”⁵⁷ The IACHR reviewed two previously decided ECHR cases which both had found that it is in the best interest of the children to remain with their family unit un-

⁵⁴ *Id.*

⁵⁵ *Id.* at ¶ 115 (The IACHR highlighted the importance of forming an identity as a child by pointing out the expert witness opinion of María Sol Yáñez de la Cruz before the Inter-American Court during the public hearing held on May 17, 2011: “In this regard, it is illustrative to recall the opinion of the expert witness Ms. Yáñez that, “[a] central part of Gregoria’s identity is damaged because her name was stolen, but also because her family was stolen and so were her place, her community, her people. She does not know her own roots and this creates a kind of a vacuum, not knowing who she is, but it also prevents her from having a life plan in which she can place herself. She has gone through life asking, who am I, how old am I? She says that, at times, because they made her do adult tasks, she said, maybe I’m older than I am. She could not place herself in her real age or who she looked like. Who do I look like, who am I, what is my surname, what is my name; ultimately, who am I?”).

⁵⁶ *Atala Riffo and Daughters*, (ser. C) No. 239 at ¶ 3.

⁵⁷ *Id.* at ¶ 172.

less exceptional circumstances require otherwise.⁵⁸ The IACHR then held that:

[T]he determination of the child's best interest in cases involving the care and custody of minors must be based on an assessment of specific parental behaviors and their negative impact on the well-being and development of the child, or of any real and proven damage or risks to the child's well-being and not those that are speculative or imaginary. Therefore, speculations, assumptions, stereotypes, or generalized considerations regarding the parents' personal characteristics or cultur[e] . . . are not admissible.⁵⁹

The IACHR found the state in violation of Articles 11(2) and 17(1) in conjunction with Article 1(1) and Article 19 (in regards to the minor children) after determining that while the right to privacy granted under Article 11 is not absolute, violations of privacy must not be arbitrary or abusive in nature.⁶⁰ In this case, the mother and children had established a family unit in that they were emotionally close and had maintained close contact with one another,⁶¹ and the mother's sexual orientation was not per se grounds for having the children removed from her custody.

In the *Forneron* case, the IACHR evaluated facts centering on the best interest of a child who was put up for adoption by her mother without the father's consent.⁶² After the child was adopted, the father tried in vain to set up visitation with his daughter, and after twelve years had only met her once for forty-five minutes.⁶³ The first court to hear the father's case believed that it was not in the best interest of the child to be raised by a single father without a mother.⁶⁴ The IAHCR, however, cited to the *Atala Riffo* decision for what factors may be used to deter-

⁵⁸ *Schalk and Kopf v. Austria*, Eur.Ct. H.R. 90 (2010), available at [http://hudoc.echr.coe.int/eng?i=001-99605#{"itemid":\["001-99605"\]}](http://hudoc.echr.coe.int/eng?i=001-99605#{); See also *Atala Riffo and Daughters*, (ser. C) No. 239 at ¶ 173 ("When deciding whether a relationship can be said to amount to 'family life,' a number of factors may be relevant, . . . their commitment to each other by having children together or by any other means.") (citing to *X, Y and Z v. United Kingdom*, Eur. Ct. H.R. 36 (Apr. 22, 1999)).

⁵⁹ *Atala Riffo and Daughters*, (ser. C) No. 239 at ¶ 109.

⁶⁰ *Id.* at ¶ 164.

⁶¹ *Id.* at ¶ 176-77.

⁶² *Forneron and Daughter*, (ser. C) No. 242, at ¶ 2.

⁶³ *Id.* at ¶ 160.

⁶⁴ *Id.* at ¶ 95.

mine what was in a child's best interest⁶⁵ and determined that a mother's unilateral decision to put her child up for adoption cannot provide judicial authority for the court to deny the father paternity.⁶⁶ However, the child had been living with her adoptive parents for twelve years and immediate return to the biological father was not practical.⁶⁷

The *Forneron* case also established that the excessive delay in a determination of the father's paternity and setting up visitation was not excused by the state's claim that the delay was a result of an overload of pending cases.⁶⁸ This led the IACHR to conclude that because of the State's lack of judicial process and due diligence, the state violated Articles 8(1) (right to a fair trial)⁶⁹ along with Articles 17(1), 1(1), and Article 19 (for the child) of the American Convention to the detriment of both the biological father of the child and the child herself.⁷⁰ Because the child had formed substantial ties with her adoptive family, the Court was not able to restore the father to the position he was in prior to the violation and instead the Court ordered the state to establish a procedure for establishing a relationship between the biological father and the child.⁷¹

The IACHR has shown through its case law over the past decade that it is willing to use Article 19 and the *corpus juris* of law relating to the rights of children to broadly stretch rights granted in articles of the American Convention to provide added

⁶⁵ *Id.* at ¶ 50.

⁶⁶ *Id.* at ¶ 93.

⁶⁷ *Id.* at ¶ 157-58.

⁶⁸ *Id.* at ¶ 74.

⁶⁹ American Convention Article 8(1) reads:

"1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32) art. 8(1), Organization of American States, Nov. 22, 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

⁷⁰ *Forneron and Daughter*, (ser. C) No. 242, at ¶ 106, 111.

⁷¹ *Id.* at ¶ 157, 160.

protection of children, quickly expanding on the rights of children in the IACHR system.

B. *European Court of Human Rights*

The ECHR has had the opportunity to hear a wide range of cases, developing on children's rights in Europe, despite the European Convention's lack of express protection for children.⁷² This lack of express protection leads the ECHR to rely heavily on the CRC to provide detail to rights that are extended to children, just as the IACHR does. Because both the ECHR and IACHR rely on the CRC to provide detail to the rights of children implicated under their respective conventions, both courts take similar – if not the same – views on the rights of the child. Because of the similarities, this section will address cases before the ECHR that have not yet been addressed by the IACHR, focusing primarily on cases implicating Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

The right to family is granted under Article 8⁷³ of the European Convention and mirrors the rights granted under Articles 11(2) and 17(1) of the American Convention.⁷⁴ The cases alleging violations of Article 8 in the last ten years have factually differed significantly from those before the IACHR and have addressed violations involving paternity issues, the recognition of

⁷² CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE, *supra* note 2, at 56.

⁷³ European Convention Article 8 Right to respect for private and family life reads:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Eur. Ct. H.R., Nov. 4, 1950, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷⁴ *Atala Riffo and Daughters*, (ser. C) No. 239 at ¶ 175.

children born through surrogacy, and inheritance rights of adopted children and children born illegitimately.

In the 2006 case *Jäggi v. Switzerland*,⁷⁵ the ECHR found a violation of Article 8 had occurred when the State had denied the applicant's request to perform a DNA test on his deceased alleged father to determine paternity.⁷⁶ The Court "considered that persons trying to establish their ancestry had a vital interest, protected by the Convention, in obtaining the information they needed in order to discover the truth about an important aspect of their personal identity," but also noted that forcing a third party to submit to a DNA test may be too intrusive.⁷⁷ The Court, however, found the state in violation of Article 8, determining that although the applicant was no longer a child, "an individual's interest in discovering his parentage did not disappear with age."⁷⁸ The Court concluded that the applicant could draw DNA from the deceased alleged father because the applicant had shown interest in determining whether the decedent was his father – and the family of the decedent failed to point to any "religious or philosophical reasons" for their denial of a DNA test of the decedent – "the private life of the decede[nt]" could no longer be impaired because he was dead.⁷⁹

Another alleged violation of the right to family under Article 8 was before the Court again in 2012 in the case *A. M. M. v. Romania*,⁸⁰ when a disabled child (A.M.M.), represented by his disabled mother and then maternal grandmother, petitioned the state to establish paternity of the disabled child to be the alleged father (Z).⁸¹ The ECHR acknowledged that it was the duty of the guardianship office to participate in the proceedings on behalf of A.M.M., which it did not do at any phase of the proceedings, and also that the courts could have taken Z's refusal to submit to the

⁷⁵ *Jäggi v. Switzerland*, 2006-X Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-1736071-1820318>.

⁷⁶ *Id.* at 3, art. 8.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Romanian Courts Did Not Respect the Right to Respect for Private and Family Life in Paternity Proceedings Concerning a Minor, A. M. M. v. Romania*, Eur. Ct. H.R. (2012), available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-3844592-4417275>.

⁸¹ *Id.* at 2-3.

DNA test into account in that he “had sought to prevent certain facts from being established.”⁸² The ECHR determined that the failure of the state to ensure A.M.M. was adequately represented during the hearings, coupled with the state having failed to take Z’s refusal to participate into account, amounted to a violation of Article 8.⁸³

There have been a number of cases before the ECHR implicating the rights of children born through surrogacy in relation to Article 8 of the European Convention.⁸⁴ In the January 2015 case, *Paradiso and Campanelli v. Italy*, the ECHR found a violation of Article 8 in a case involving “the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into by [an Italian] couple.”⁸⁵ The Italian couple had attempted to circumvent an Italian prohibition “on using surrogacy arrangements and the rules governing international adoption.”⁸⁶ As a result the state denied the applicants from registering the birth certificate of the child born by a Russian surrogate, citing that “it would be contrary to public policy.”⁸⁷ The ECHR found that even though the Italian couple had only spent six months with the child, that was enough time to establish a *de facto* family life between the

⁸² *Id.* at 3.

⁸³ *Id.*

⁸⁴ *Bouvet v. France*, Eur. Ct. H.R. (2015), available at [http://hudoc.echr.coe.int/eng?i=001-151102#{"itemid":\["001-151102"\]}](http://hudoc.echr.coe.int/eng?i=001-151102#{); *D. and Others v. Belgium*, Eur. Ct. H.R. (2014), available at [http://hudoc.echr.coe.int/eng?i=001-146420#{"itemid":\["001-146420"\]}](http://hudoc.echr.coe.int/eng?i=001-146420#{); *Foulon v. France*, Eur. Ct. H.R. (2015), available at [http://hudoc.echr.coe.int/eng?i=001-151103#{"itemid":\["001-151103"\]}](http://hudoc.echr.coe.int/eng?i=001-151103#{); *Laborie and Others v. France*, Eur. Ct. H.R. (2015), available at [http://hudoc.echr.coe.int/eng?i=001-151104#{"itemid":\["001-151104"\]}](http://hudoc.echr.coe.int/eng?i=001-151104#{); *Menesson and Others v. France and Labassee v. France*, Eur. Ct. H.R. (2014), available at [http://hudoc.echr.coe.int/eng-press?i=003-4804617-5854908#{"itemid":\["003-4804617-5854908"\]}](http://hudoc.echr.coe.int/eng-press?i=003-4804617-5854908#{); *Paradiso and Campanelli v. Italy*, Eur. Ct. H.R. (2015), available at [http://hudoc.echr.coe.int/eng-press?i=003-4993036-6126454#{"itemid":\["003-4993036-6126454"\]}](http://hudoc.echr.coe.int/eng-press?i=003-4993036-6126454#{).

⁸⁵ *The Best Interests of a Child Born from a Surrogacy Arrangement Abroad Ought to Have Been of Paramount Importance in the Italian Authorities’ Decisions*, *Paradiso and Campanelli v. Italy*, Eur. Ct. H.R. 1 (Jan. 27, 2015), available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4993036-6126454>.

⁸⁶ *Id.*

⁸⁷ *Id.* at 2.

couple and the baby and that, although the couple had attempted to register the child unlawfully, the state had failed to take the child's best interest into consideration.⁸⁸ The ECHR "reiterated that the removal of a child from the family setting was an extreme measure, which could be justified only in the event of immediate danger to the child."⁸⁹ The ECHR further reasoned that the couple "had been assessed fit to adopt" and the state could not use its actions to circumvent Italian law as grounds for removing the child from their custody, and thus violated Article 8.⁹⁰

Although the ECHR in *Paradiso* did decide that the state had violated Article 8 by not considering "appropriate evidence in deciding to place the child in the care of the social services," because the proceedings took over two years, the ECHR pointed out that the violation "wa[s] not to be understood as obliging the Italian State to return the child to the applicants, [given that] he had undoubtedly developed emotional ties with the foster family with whom he had been living since 2013."⁹¹ The ECHR is unable to make specific directives to state parties found to have violated an article of the European Convention, so the ruling of the ECHR in *Paradiso* may not result in reunification of the Italian couple with their Russian surrogate child, but the case may operate to provide rights for future families who may find themselves in a similar situation, or cases before the IACHR implicating similar facts.

Three cases before the ECHR in the past decade have expanded the right to inheritance for children who are born out of wedlock,⁹² adopted,⁹³ or illegitimate.⁹⁴ Generally, the denial of

⁸⁸ *Id.* at 3.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 4.

⁹² See *Brauer v. Germany*, Eur. Ct. H.R. (2009), available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2739222-2991828>.

⁹³ See *Pla and Puncernau v. Andorra*, Eur. Ct. H.R. (2004), available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-1049247-1085914>.

⁹⁴ See *Refusal to Grant Inheritance Rights to a Child "Born of Adultery" Entitled to Claim Such Rights Under a New Law Was Unjustified*, *Fabris v. France*, Eur. Ct. H.R. (2013), available at <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4250162-5059871> ().

inheritance will implicate Article 14⁹⁵ in conjunction with Article 8 because of its discriminatory nature in the family setting. In the 2009 case *Brauer v. Germany*,⁹⁶ the ECHR viewed a denial of inheritance case where the applicant was born out of wedlock in 1948 but had been recognized by her father and had contact with him until his death.⁹⁷ The appellant was denied inheritance rights “under the Children Born Outside of Marriage Act (*Nichtehe-lichengesetz*) of 1969, a child born outside marriage before 1 July 1949 was not a statutory heir.”⁹⁸ The ECHR ruled that the reasoning behind the Act was no longer valid because German modern “society had evolved considerably and the legal status of children born outside marriage had become equivalent to that of children born within marriage,”⁹⁹ thus finding that denying the applicant access to her father’s inheritance violated Article 14 in conjunction with Article 8.

The inheritance of an adopted applicant came before the ECHR in the 2004 case *Pla and Puncernau v. Andorra*,¹⁰⁰ in which the ECHR also found the state to have violated Article 14 in conjunction with Article 8.¹⁰¹ The applicant before ECHR had denied inheritance to his adoptive grandmother’s estate because the state found that he was not “a child of a lawful and canonical marriage” as required in his adoptive grandmother’s will.¹⁰² The ECHR ruled that there was nothing to indicate that the applicant’s grandmother “intended to exclude adopted grandsons,”¹⁰³

⁹⁵ European Convention Article 14 – Prohibition of discrimination reads: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour [sic], language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Convention for the Protection of Human Rights and Fundamental Freedoms art. 14, Eur. Ct. H.R., Nov. 4, 1950, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁹⁶ See *Brauer*, Eur. Ct. H.R.

⁹⁷ *Id.* at 1.

⁹⁸ *Id.*

⁹⁹ *Id.* at 3.

¹⁰⁰ See *Pla and Puncernau v. Andorra*, Eur. Ct. H.R.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

and found the State had discriminated against the applicant for his adoptive status and had thus violated Article 14.¹⁰⁴

Illegitimate children have also been recognized by the ECHR to have a right to inheritance under Article 14 “in conjunction with Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights”¹⁰⁵ in the 2013 case, *Fabris v. France*,¹⁰⁶ when the applicant was denied the same inheritance rights as his half-siblings by virtue of having been “born of adultery” to the siblings’ mother.¹⁰⁷ The ECHR “reiterated first of all that very weighty reasons had to be advanced before a distinction on grounds of birth outside marriage could be regarded as compatible with the Convention.”¹⁰⁸ The difference in treatment between the applicant and his half-brother and half-sister derived from the 2001 Law, which granted “children ‘born of adultery’ identical inheritance rights to those of legitimate children.”¹⁰⁹ The mother passed away in 1994, prior to the 2001 law taking effect.¹¹⁰ The ECHR considered whether the 2001 law should apply retroactively to the 1994 division by assessing “whether the difference in treatment was proportionate to that legitimate aim,¹¹¹ and determined that because the step-siblings were aware of the applicant’s existence and should have known that their rights would possibly be challenged, the law does not serve a legitimate purpose other than to discriminate against the applicant for being “born of adultery,” in violation of Article 14 in conjunction with Article 1 of Protocol No. 1.¹¹² Thus, because the only reason for the difference in treatment was the fact that the applicant had been born outside marriage,”¹¹³ the ECHR reasoned that the illegitimate child had a right to inheritance.

¹⁰⁴ *Id.*

¹⁰⁵ See Refusal to Grant Inheritance Rights to a Child “Born of Adultery” Entitled to Claim Such Rights Under a New Law Was Unjustified, *Fabris v. France*, Eur. Ct. H.R. at 1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 3.

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 3.

¹¹² *Id.* at 1.

¹¹³ *Id.* at 3.

There are a variety of other cases that have come before the ECHR over the past decade that have implicated European Convention Articles regarding the freedom of religion and the right to education that have also contributed to protections for children within the ECHR's jurisdiction.¹¹⁴ But generally, the ECHR cases implicating the right to private life and freedom from discrimination provide a good pool of cases for the IACHR to draw upon should it face future cases implicating similar facts.

III. Conclusion

Rulings from both the IACHR and ECHR contribute to the *corpus juris* of children's rights and have developed dramatically over the last decade, with this Comment only discussing some of the major points of progress. The ECHR's rulings on paternity issues, rights of children born through surrogacy, and inheritance rights for adopted and illegitimate children show the wide breadth of cases the ECHR has been able to rule on compared to the IACHR, which, until the last couple of years, had heard a large number of cases involving forced disappearances and rights of indigenous peoples.

The interplay between the two courts makes it difficult to say that either court has contributed more to the advancement of children's rights, although IACHR's detailed rulings may indi-

¹¹⁴ Aktas v. France & Bayrak v. France & Gamaleddyn v. France & Ghazal v. France & J. Singh v. France & R. Singh v. France, Eur. Ct. H.R. (2009), available at <http://hudoc.echr.coe.int/eng-press?i=003-2801594-3071237>; Folgerø and Others v. Norway, 2007-III Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/eng-press?i=003-2044966-2162378>; Hasan and Eylem Zengin v. Turkey, Eur. Ct. H.R. (2007), available at <http://hudoc.echr.coe.int/eng-press?i=003-2142546-2275681>; Temporary Exclusion from School Did Not Breach Student's Right to Education, Ali v. the United Kingdom, Eur. Ct. H.R. (2011), available at <http://hudoc.echr.coe.int/eng-press?i=003-3392893-3805654>; The Court Gives Several Decisions on Conspicuous Religious Symbols, Grzelak v. Poland, 2010-IV Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/eng?i=002-926>; The Forced Closure of Moldovan/Romanian Language Schools in Transnistria Fell Within Russia's Jurisdiction, Catan and Others v. the Republic of Moldova and Russia 385 Eur. Ct. H.R. (2012), available at <http://hudoc.echr.coe.int/fre-press?i=003-4124055-4855677>; Timishev v. Russia, 2005-XII Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/eng-press?i=003-1532826-1603961>; Two Chamber Judgments in Respect of France on Wearing the Headscarf in School, Dogru v. France and Kervanci v. France, Eur. Ct. H.R. (2008), available at <http://hudoc.echr.coe.int/eng-press?i=003-2569490-2781270>.

cate that the IACHR provides greater relief to injured parties before the court. However, the IACHR looks to previous presumptions and findings of the ECHR, indicating that the ECHR's large body of jurisprudence guides the IACHR in its interpretations of Article 19 of the American Convention. This has already been seen in the two most recent cases addressing children's rights before the IACHR, both of which relied on previously established presumptions of the ECHR to determine the meaning and scope of the "child's best interest" and parental rights.

Now that the Commission on the Rights of the Child has the power to hear violations of the CRC, the *corpus juris* of children's rights will undoubtedly continue to expand with the evolution of the Commission's rulings on CRC violations and will provide additional guidance to the IACHR and ECHR in determining the scope of children's rights within their respective conventions. The overwhelming recognition of the importance of providing additional protections for children in international human rights law indicates that this past decade may only be the beginning of what could become a comprehensive and forceful body of law for the protection of children.

Andrea Young

