

REPORT N° 4/94
CASE 10.517
EL SALVADOR
February 1, 1994

BACKGROUND:

1. On February 15 and March 7, 1990, the Inter-American Commission on Human Rights received a petition, the pertinent parts of which are summarized below:

In December 1989, six individuals disappeared and have not been seen since. They were all members of the San Cayetano El Rosario Cooperative, Llano de la Laguna canton in the department of Ahuachapán.

The disappearance of the members of this cooperative occurred amid a land dispute with the former owner of the property, Clementina Avelar Falla, whose hacienda was expropriated by FINATA on July 26, 1985, to be turned over to the cooperative in question.

On December 4, 1989, at 6:00 a.m., two truckloads of soldiers from Military Post No. 7 in Ahuachapán came to the cooperative and searched its premises and the homes of its members, but did not find anything suspicious. At around 9:00 p.m. the next day, uniformed members of the Las Chinamas Civilian Defense Force arrested two members of the cooperative, Julio César Juárez Vásquez (19) and his brother Juan Antonio Juárez Vásquez (26), at their domicile in the cooperative, in the presence of their families. Both the Civilian Defense Force and the military post and other military units denied having them in custody.

On December 26 of that year, Mrs. Anabel e Torres, representing Condesa de C.V., went to the cooperative and spoke with several officers. She informed them that she had purchased the property and that they had one month to vacate the property, which would be divided into lots in January.

On December 29, 1989, the other four men, Leonardo Pérez Núñez (age 23 and treasurer of the cooperative), and the three brothers Gerardo Saldaña Salazar (24 and president), Juan Saldaña Salazar (25 and secretary), and José Eladio Saldaña Salazar (33 and the driver), were seized at 8:30 a.m. outside the Los Ausoles processing plant not far from the cooperative. The four men were travelling with eight other people in a truck owned by the cooperative. It was stopped by soldiers, who were accompanied by four men in civilian dress and driving a white jeep. The four men who were seized were taken away in the jeep. One of those who had been with the men in civilian dress drove the other eight people to Ahuachapán. There he told

them to get out and then abandoned the truck. The vehicle was returned to the cooperative but was never used again, so that it might still have the fingerprints of one of those who apprehended the victims.

Relatives of the victims have exhausted every possible avenue to ascertain the whereabouts of the disappeared and have reported the case to the authorities, but without result. Colonel Mauricio Staben of the Seventh Military Outpost at Ahuachapán met on two different occasions with members of the cooperative to tell them that he had no hand in these events and to ask them to stop circulating rumors to that effect. At one of the last meetings, held on February 6, 1990, he accused certain members of the cooperative of collaborating with the guerrilla movement and threatened to take measures against them.

The cooperative had problems in the past with the previous owners, because a relative of one of the owners was implicated in the Las Hojas Massacre in 1983.

2. On February 23, 1990, the Commission instituted the processing of the case and asked the Government of El Salvador to supply information pertinent to the facts in the petition and any other information that would apprise the Commission of the case history and enable it to determine whether the remedies of domestic law had been exhausted. The Government was given ninety days in which to reply.

3. The communication received on March 7, 1990, concerning the disappearance of the brothers Julio César and Juan Antonio Juárez Vásquez, was initially processed as Case No. 10,525, but was subsequently joined with the original case (Case No. 10,517), pursuant to Article 40.2 of the Commission's Regulations.

4. On July 26, 1990, the Government of El Salvador sent a note to the Commission, dated May 2 of that year, to the following effect:

...this Secretariat of State made the appropriate overtures with the Vice Minister for Public Safety, who responded that the report which the Office of the Director General of the National Guard submitted on this matter states that `the institution's files have been carefully reviewed and there is no record of an arrest involving the individuals named in the communique sent...

5. On November 9, 1990, the Commission sent the petitioner the pertinent parts of the Government's reply, asking that the petitioner convey his observations within 45 days. That request was repeated on January 17, 1991.

6. By note of January 31, 1991, the Commission sent the Government of El Salvador additional information supplied by the petitioner and repeated its earlier request for information, giving the Government another 30 days for its reply. The new information reported concerned events that transpired subsequent to the disappearances, as summarized below:

On January 24, 1990, Mrs. Anabel de Torres and Mrs. Clementina de Avelar Falla sent a group of men to the cooperative to take the necessary measures to divide the hacienda into lots. These men began to trample some of the cooperative's crops.

On February 12, at 9:40 a.m., neighbors from the Los Magueyes canton, among them the wife of one of the disappeared Gerardo Antonio Saldaña, saw her husband and Leonardo Pérez Núñez in the custody of uniformed soldiers from the Military Outpost, on board a military truck. Both of them were dirty and appeared to have been beaten.

On February 23, soldiers from the Outpost dragged the wife of Gerardo Antonio Saldaña and his mother-in-law from their home to demand that they say which of the trucks from the Outpost they had seen take the two members of the cooperative away. Since all of the trucks are the same style and color, they were unable to identify it.

On March 2, Colonel Staben returned to the cooperative, this time in the company of soldiers from the Outpost, agents of the National Guard and reporters from COPREFA to threaten the families of the disappeared and those who witnessed the captures into signing a document wherein they cleared the Outpost of any part of the seizure of the six members of the cooperative.

The Armed Forces had denied any role in these events and the Army itself has tried to intimidate the families and members of the cooperative who have been brave enough to denounce the case. When the pressure about the case reached a certain level, a decision was made to dismiss Colonel Staben, who had for some time been linked to cases involving serious human rights violations.

A proper investigation of the case to determine who was responsible and the fate of those taken has not been made.

7. On March 2, 1992, the Commission again asked the Government of El Salvador to provide information on the investigations conducted into the present case and

gave it sixty days in which to reply.

8. On August 20, 1992, the Government of El Salvador sent a note of reply to the Commission, the text of which follows:

On instructions from the President of the Republic, an exhaustive investigation was instituted to ascertain the facts of this case, and the following conclusions were reached:

Soledad Saldaña, María Jesús Vásquez Mendoza, Julia Nuñez de Pérez, Reyes Coronado Martínez, Simeón Vásquez and Araceli del Carmen López did not identify the individuals who captured the missing persons, as shown at pages 7 (front and back), 10 (front and back) and 17 (front and back).

Neither the aggrieved parties nor witnesses identified the vehicle in which the missing persons were allegedly transported, who were taken to an unknown destination, as shown at pages 7 (front and back) and 17 (front and back).

The theory is that the Vásquez brothers' disappearance on December 5, 1989, may be due to the fact that a well on the San Cayetano Cooperative was fenced in; when neighbors were unable to supply themselves from the fenced-in well, problems arose to the point that they even threatened them with death, as their mother María Jesús Vasquez stated, as shown at page 9 (reverse side) and page 10 (front side).

Because Mrs. Clementina de Falla had her property expropriated by virtue of Agrarian Reform Decree 207, the beneficiaries being the members of the San Cayetano Cooperative, the theory is that there was friction between this woman and the members of the Cooperative, and Mrs. Soledad Saldaña, mother of the three Saldaña Salazar brothers, believes that Mrs. Clementina de Falla is behind her sons' disappearance, as shown at pages 7 (front and back).

These proceedings have clearly established that both the aggrieved parties and the witnesses exonerated the Armed Forces of any blame. According to all the statements, the real perpetrators are unknown persons; certain statements even mention some of the above-named individuals as the possible guilty parties.

Based on the statements attached to page 7 (front and back), 10 (front and back) and 17 (front and back), in the instant case there is clear evidence that

FEDECOPAIDE resorted to political manipulation by only requesting the fingerprints of the aggrieved parties and not reading to them the content of the paid published notices, which were solely intended to smear the image of the Armed Forces and of the Government, both nationally and internationally...

...The Government therefore requests that this case be filed and that the proper notifications be made.

9. On October 5, 1993, the Inter-American Commission on Human Rights, sitting at its 84th Regular Meeting considered this case and issued Report No. 16/93, pursuant to Article 50 of the American Convention on Human Rights.

10. The Inter-American Commission on Human Rights resolved to send the Report, on a confidential basis, to the Government of El Salvador, granting it three months to implement the recommendations contained therein.

11. The Government of El Salvador failed to answer the Commission's request of October 18, 1993.

ANALYSIS

1. On the question of admissibility:

a. The petition satisfies the formal requirements for admissibility contained in the American Convention on Human Rights and in the Commission's Regulations.

b. The petition is not pending with any other international proceeding and is not substantially the same as a previous petition already examined by the Commission.

2. On the competence of the Commission:

a. The Commission is competent in the instant case because it concerns violations of rights recognized in the American Convention on Human rights, principally Article 4 on the right to life, Article 5 on the right to humane treatment, Article 7 on the right to personal liberty and Article 25 on the right to judicial protection, as provided in Article 44 of the Convention, of which El Salvador is a State Party.

b. Moreover, Article 1.1 of the American Convention, which is binding upon El Salvador, states that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

3. On the content of the petition and exhaustion of the remedies under domestic law:

a. Despite the fact that almost 4 years have passed since the events occurred and despite the seriousness of the charges, the Government of El Salvador has not given a satisfactory response concerning the events reported by the petitioner in terms of ascertaining the whereabouts of the detained cooperative members or investigating and punishing those responsible for their disappearance.

b. The replies sent by the Government of El Salvador, dated May 2, 1990 and August 20, 1992, report no active measures or legal proceedings by the responsible authorities to investigate the commission of punishable offenses --such as the forced disappearance of persons-- or the findings of any such inquiries. The American Convention stipulates that this is a duty incumbent upon the State. The Inter-American Court of Human Rights has interpreted that duty as follows:

The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individual responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.¹

c. The failure to comply with the duty to investigate by taking positive measures aimed at producing a result that sheds light on the facts is evident from the very content of the Salvadoran Government's replies. There, the Government merely states that "the institution's [the National Guard's] files have been carefully reviewed and there is no record of an arrest involving the individuals ..." (according to the note of May 2, 1990); that relatives of the victims "did not identify the individuals who captured the missing persons"; that "Neither the aggrieved parties nor witnesses identified the vehicle in which the missing persons were allegedly transported, who were taken to an unknown destination ..."; and even that "These proceedings have clearly established that both the aggrieved parties and the witnesses exonerated the Armed Forces of any blame the real authors are identified

¹ Caso Velásquez Rodríguez, Sentencia de 29 de julio de 1988, párr. 181.

as unknown persons. According to all the statements, the real perpetrators are unknown persons."

d. In this connection, in the judgment cited earlier, the Inter-American Court of Human Rights stated the following concerning the State's responsibility as an active subject that must pursue the investigation and not leave it to third parties:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interest that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the Government, thereby making the State responsible on the international plane.²

e. The above observation takes on particular relevance when one reviews the text of the Government's final response, to the effect that "The theory is that the Vásquez brothers' disappearance on December 5, 1989, may be due to the fact that a well on the San Cayetano Cooperative was fenced in; when neighbors were unable to supply themselves from the fenced-in well, problems arose to the point that they even threatened them with death, as their mother María Jesús Vasquez stated." Despite evidence pointing to the identity of those responsible for the enforced disappearance, the State did not head the investigation in that direction, but rather confined itself to `theories' about who was responsible for the events, thereby failing to fulfill its legal obligations under the American Convention on Human Rights.

f. As in the previous case, the failure to comply with the duty to investigate can be inferred from the Government's own statements about the disappearance of the Saldaña brothers. While it theorizes that "Because Mrs. Clementina de Falla had her property expropriated by virtue of Agrarian Reform Decree 207, the beneficiaries being the members of the San Cayetano Cooperative, the theory is that there is friction between this woman and the members of the Cooperative, and Mrs. Soledad Saldaña, mother of the three Saldaña Salazar brothers, believes that Mrs. Clementina de Falla is behind her sons' disappearance," the Government nevertheless did not institute an inquiry to ascertain the

² Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 177.

facts and determine who was responsible for the violations.

g. One citation from the jurisprudence of the Inter-American Court in this regard parallels the earlier observations. In effect, the Court stated that "States Parties have an obligation to provide effective judicial remedies to victims of human rights violation (Art. 25), remedies that must be substantiated according to the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction."³

h. Therefore, the matter of the content of the Salvadoran Government's replies and its request can best be summed up by again citing the Court: "Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the acts of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."⁴

4. With regard to other matters related to the processing of the case:

a. The facts prompting the petition in the instant case are not such that they can be resolved through recourse to the friendly settlement procedure; moreover, neither the Government nor the petitioners asked the Commission to invoke this procedure, provided for in Article 48.1.f of the Convention and Article 45 of the Commission's Regulations.

b. Since the friendly settlement procedure does not apply, the Commission must comply with Article 50.1 of the Convention, and therefore issue its opinion and findings on the matter put to it for consideration.

c. All legal and statutory procedures established in the Convention and the Commission's Regulations have been exhausted, even beyond the stipulated deadlines.

³ Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 91.

⁴ Velásquez Rodríguez, Judgment of July 29, 1988, para. 172.

d. In reference to the crime of enforced disappearance and the many rights violated when this crime is committed, the Inter-American Court of Human Rights stated that "the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty (...). Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhumane treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person (...). The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention (...).⁵

5. With regard to noncompliance with Report 16/93 of October 1993

The three-month deadline given to the Government of El Salvador has elapsed and it has not complied with the Commission's recommendations in Report No. 16/93, nor has it answered the communication of October 18, 1993, notifying it that the report was adopted and sending it a text thereof.

CONCLUSIONS:

1. The Inter-American Commission on Human Rights concludes that the Government of El Salvador is responsible for the facts denounced in the communications of February 15 and March 7, 1990, concerning the disappearance of Julio César Juárez Vásquez (19), his brother Juan Antonio Juárez Vásquez (26), Leonardo Pérez Núñez (23) and the three brothers Gerardo Saldaña Salazar (24), Juan Saldaña Salazar (25) and José Eladio Saldaña Salazar (33). All the victims were members of the San Cayetano El Rosario Cooperative in the canton of Llano de la Laguna in the department of Ahuachapán.

2. It further finds that the Government of El Salvador has violated the rights to life, humane treatment, a fair trial and judicial protection, upheld in articles 4, 5, 8, and 25, respectively, of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, of which El Salvador is a State Party.

⁵ Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 155 to 157.

3. It makes the following recommendations to the Government of El Salvador:
 - a. That it reopen the criminal proceedings and conduct a rapid, impartial and thorough investigation of the facts denounced so that the circumstances under which they occurred may be fully brought to light and those responsible identified and brought to trial to receive the punishments that such serious conduct demands.
 - b. That it make the necessary reparations for the violation of the aforementioned rights and pay a fair compensation to the victims' next-of-kin.
4. It invites the Government of El Salvador to accept the jurisdiction of the Inter-American Court of Human Rights in this specific case which is the subject of this report.
5. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of El Salvador did not adopt measures to correct the situation denounced within the time period.

