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Institution:	Inter-American Commission on Human Rights
File Number(s):	Cases Nos. 1702, 1748 and 1755
Session:	Thirty-First Session (15 - 25 October 1973)
Title/Style of Cause:	Unknown v. Guatemala
Doc. Type:	Report
Decided by:	President: Dr. Justino Jimenez de Aréchaga (Uruguay) Vice-President: Dr. Carlos A. Dunshee de Abranches (Brazil) Members: Professor Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Dr. Robert Woodward (United States); Dr. Genaro R. Carrió (Argentina); Dr. Andrés Aguilar (Venezuela) For health reasons, Dr. Gabino Fraga was unable to attend the Thirty-First Session.
Dated:	15 - 25 October 1973
Citation:	Unknown v. Guatemala, Cases 1702, 1748 and 1755, Inter-Am. C.H.R., OEA/Ser.L/V/II.32, doc. 3 rev. 2 (1973)
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[1] Case 1702, February 15, 1971, denouncing a number of events allegedly in violation of human rights in Guatemala and, in particular, the death of numerous persons belonging to the working class of the country during the "state of siege" declared by the government on November 12, 1970.

[2] In accordance with its Regulations, the Commission requested the appropriate information from the Government of Guatemala in a note of May 10, 1971. This request was repeated on November 6 of that year, as well as on March 30, 1972, in accordance with the decisions taken at the Twenty-sixth and Twenty-seventh Sessions (October 1971 and February-March 1972).

[3] Case 1748, July 28, 1972, also denouncing the general situation regarding human rights in Guatemala and listing the names of 296 persons dead or missing in that country during 1971 and the first months of 1972.

[4] The Commission, in a note of September 6, 1972, requested the appropriate information from the Government of Guatemala, transmitting to it the pertinent parts of the claim, in accordance with articles 42 and 44 of its Regulations.

[5] The Government of Guatemala, in a note of April 24, 1972, responded to the requests for information relating to case 1702.

[6] In accordance with its Regulations, the Commission transmitted to the claimants on May 31 and June 1, 1972, the pertinent parts of the information submitted by the government.

[7] The Commission considered cases 1702 and 1748 during its Twenty-ninth Session (October 1972) and, pursuant to the recommendations of the rapporteur, Dr. Genaro R. Carrió, contained in the

report presented at that session (doc. 20-29 res.), decided the following:

1. To Proceed jointly with cases 1702 and 174S, regarding Guatemala, postponing any decision on case 1702 until the information requested from the Government of Guatemala on case 1748 is available.
2. To send another communication to the Government of Guatemala, even though the term of 180 days provided for in Article 51 of the Regulations had not elapsed, requesting information as precise as possible regarding the events and circumstances denounced in Case 1748.
3. To continue the study of these cases during its Thirtieth Session

[8] Pursuant to point 2 of that decision, the Commission sent the government of Guatemala a note dated November 1, 1972. Likewise, it informed the claimants of the status of these cases in a note dated November 28, 1972.

[9] The Government of Guatemala, in a note of December 1 1972, in order to comply with the Commission's request for additional information, furnished documentation on the measures taken by police and judicial authorities and enclosed copies of the decisions handed down in this regard.

[10] In accordance with its Regulations, the Commission forwarded the pertinent parts of this documentation to the claimants with a letter of January 12, 1973. The claimants responded by a communication of April 5, 1973, in which they provided additional information on the cases and, particularly, in the data supplied by the Guatemalan Government.

[11] Having available the aforementioned data, the Commission continued its joint examination of cases 1702 and 1748 at its Thirtieth Session (April 1973). It entrusted Dr. Genaro R Carrió, rapporteur for the cases, with presenting another report containing such recommendations as he deemed appropriate.

The rapporteur prepared a second report (doc.25-30 res) on the basis of whose recommendations the Commission decided, at that session, to send another note to the Government of Guatemala, asking for precise data on the status of the investigations that the national authorities were undertaking on the presumably dead and missing persons, according to the report of the Ministry of the Interior transmitted with the note of December 1, 1972, from the government; to transmit to the Government of Guatemala the pertinent parts of the additional information and observations presented by the claimants; and to request that government to submit such data in time for it to be considered by the Commission at its Thirty-first Session, scheduled for October 1973.

[12] The Government of Guatemala was informed of this decision in a note dated June 15, 1973, and the claimants in a communication dated June 20, 1973.

[13] The Government of Guatemala, by a note dated September 4, 1973 (No I-OEA12), replied to the Commission, enclosing a copy of decision No. 4043 of August 2, 1972, issued by the Ministry of the Interior, the pertinent part of which states:

"We reply to the Ministry of Foreign Affairs, informing it that this office considers the information provided by the National Police, in decision No. 15143 of November 23, 1972, to be sufficiently broad and explicit to answer the denunciation made against the Government of Guatemala by anonymous persons alleging violations of human rights inasmuch as the Executive Secretary of the Inter-American Commission on Human Rights is apprised of that decision, it is felt that there is no further information to be provided on cases 1702 and 1748; as for the request for information on the continuation of the investigations, clearly it is not possible to reveal names and circumstances, since this would nullify the investigative procedure by giving advance warning to those responsible and thus making it easier for them to go into hiding – this being the reason why no answer can be given to points (b) and (c) of the note

in question, which moreover refers to actions of the courts and the status of cases, which are within the purview of the judicial branch and on which the Ministry of the Interior therefore cannot report."

[14] The Commission continued its examination of cases 1702 and 1748 at its Thirty-first Session (October 1973) Having taken cognizance of the foregoing note, it decided to pass the cases on to the rapporteur, Dr. Genaro R. Carrió, so that he might submit a report with the recommendations he considered appropriate on the statue of the matter, bearing in mind especially the advisability of requesting the Guatemalan Government to consent in order that the Commission might carry out an observation in loco of the acts and circumstances denounced.

The rapporteur presented a report (doc.36-31 rev.1) in which, "in view of the serious nature of the claims, the large number of individual cases therein, and the clearly negative attitude of the Government of Guatemala, as expressed in its latest communication...", he proposed that the consent of that government be requested so that a subcommittee might conduct and observation in loco, in accordance with the powers assigned the Commission under Article 11.c of its Statute and Article 50 of its Regulations.

[15] Pursuant to that recommendation, the Commission sent the Government of Guatemala the following cable on November 1, 1973:

HIS EXCELLENCY JORGE ARENALES CATALAN
MINISTER OF FOREIGN RELATION

GUATEMALA CITY (GUATEMALA)

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDED COMMA DURING ITS LAST SESSION HELD IN CALI COLOMBIA FROM OCTOBER 15 TO 25 THIS YEAR COMMA TO APPOINT A SUBCOMMITTEE TO MOVE TO THE TERRITORY OF THE REPUBLIC OF GUATEMALA FOR THE PURPOSE OF GATHERING NECESSARY DATA SO THE COMMISSION CAN CONTINUE ITS EXAMINATION OF THE DENUNCIATIONS RECEIVED ON ALLEGED VIOLATIONS OF HUMAN RIGHTS STOP THIS FORM OF ACTIVITY IS SPECIFIED ARTICLES 12 AND 50 OF COMMISSION REGULATIONS STOP PURSUANT ARTICLE 11 C OF COMMISSION STATUTE WE TAKE THE LIBERTY OF REQUESTING CONSENT OF GOVERNMENT OF YOUR EXCELLENCY SO THAT SUBCOMMITTEE MIGHT MOVE TO TERRITORY YOUR COUNTRY STOP COMMITTEE DEAFLY GRATEFUL IF FACILITIES ARE EXTENDED BY DISTINGUISHED GOVERNMENT OF YOUR EXCELLENCY TO SUBCCMMITEE IN PERFORMANCE ITS DUTIES STOP VERY TRULY

JUSTINO JIMENEZ DE ARECHAGA
CHAIRMAN
LUIS REQUE
EXECUTIVE SECRETARY

[16] The Government of Guatemala, by a cable of November 3, 1973, replied to that request as follows:

JUSTINO JIMENEZ DE ARECHAGA

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

WASHINGTON, D C.

GUATEMALAN GOVERNMENT RESPECTS AND GUARANTEES HUMAN RIGHTS AND JUST AS OTHER STATES RESPECT SOVEREIGNTY IT JEALOUSLY GUARDS ITS OWN STOP BECAUSE OF FOREGOING AND BECAUSE COUNTRY IS IN MIDST OF DEMOCRATIC PREELECTION ACTIVITIES COMMA GUATEMALA DENIES CONSENT COMMISSION VISIT COMMA ESPECIALY BECAUSE IT MIGHT LEND ITSELF TO POSSIBLE MISREPRESENTATION BY POLITICAL PARTIES IN MIDST OF PREVIOUSLY SCHEDULED PRESIDENTIAL ELECTION CAMPAIGN STOP VERY TRULY

JORGE ARENALES CATALAN
MINISTER FOREIGN AFFAIRS

[17] In a letter dated December 4, 1973, the Commission informed the claimants of the above-cited communications.

[18] Following its request for consent, the Commission received additional communications from the claimants regarding the statue of one of the persons detained in Guatemala whose name appears on the list of alleged dead and missing that to sent to the government of that country by a note of September 6, 1972, with a request for information, pursuant to articles 42 and 44 of the Regulations.

[19] In view of the serious and urgent nature of the additional acts denounced, the Commission sent the Government of Guatemala the following communication:

December 19, 1973
REF: Cases 1702 and 1748 (Guatemala)

Excellency:

By note dated September 6, 1972, the Inter-American Commission on Human Rights transmitted to Your Excellency a list of two hundred forty-six persons alleged to be missing in the Republic of Guatemala. At the same time the distinguished Government of Guatemala was requested to provide such information as it deemed pertinent, together with any data that might permit the Commission to verify whether, in the cases referred to, the internal legal remedies had been exhausted. That request for information was made again on November 1, 1973.

The Government of Guatemala replied to that request by a note dated December 1, 1972 (I/OEA/12/No. 2974), enclosing information furnished by the Ministry of the Interior with regard to the acts denounced. That information consisted essentially of copies of official communications from the Department of National Police to Judges of the criminal courts of the Republic of Guatemala, inquiring whether, in their respective jurisdictions, legal procedures or remedies were pending against any of the persons mentioned on the list transmitted with the note of September 6, 1972.

During its Thirtieth Session (April 1973), the Commission continued its examination of the aforementioned cases, on the basis of the denunciations, the additional information provided by the Government of Guatemala, and the additional data submitted by the claimants, and decided to approach Your Excellencies Government again, requesting specific information, including given and surnames, on the missing persons and on the investigations being carried out by the Department of National Police of Guatemala in order to determine their whereabouts and legal status. This decision was communicated to Your Excellency in a note dated July 15, 1973.

The Government of Guatemala, in a note dated September 4, 1973 (I/OEA/12/No. 2060), transmitted a copy of the official paper of the Ministry of the Interior of Guatemala (No. 4043), of August 2, 1972, the pertinent part of which states that the information provided by that Department was "sufficiently broad and explicit to answer the denunciation made against the Government of Guatemala by anonymous persons alleging violations of humans rights."

The Commission examined that note and the official communication attached thereto during its Thirty-

first Session (October 15-25, 1973), at which time it decided to appoint a subcommittee to more to the territory of the Republic of Guatemala for the purpose of gathering the necessary data so that the examination of the denunciations might be carried forward. This decision was communicated to Your Excellency by cable on November 1, 1973, and Your Excellency replied by cable on November 3, 1973, stating that Guatemala denied consent to the Commission's visit "because it might lend itself to possible misrepresentation by political parties in the midst of a previously scheduled Presidential election campaign."

Following that reply from Your Excellency, the Commission received a denunciation regarding the status of the Guatemalan citizen Mr. Rodolfo Villagrán Aguirre, whose name is No. 34 on the aforementioned list transmitted with the note of September 6, 1972. According to that denunciation, Mr. Villagrán Aguirre was being detained at the Fourth Police Corps, in the city of Chimaltenango.

The denunciation states that Mr. Villagrán Aguirre was arrested on September 2, 1972, at 6 p.m., at No. 2233 Avenida 34, Zona 5 of Guatemala City, by Detective Raúl Arnoldo Arguete R., and that a writ of habeas corpus was filed in connection with that arrest, but the petition was denied.

The pertinent parts of the denunciation are enclosed. Furthermore, for the purpose of providing Your Excellency full background information, copies of the notes of September 6, 1972, with appendices, and of the notes of November 1, 1972, and July 15, 1973, are also enclosed.

We earnestly request Your Excellency to provide us such information as is deemed appropriate, in order to bring it to the attention of the Commission.

Accept, Excellency, the assurances of our highest consideration.

Justino Jiménez de Aréchaga

Chairman

Luis Reque

Executive Secretary

Enclosures

His Excellency

Dr. Jorge Arenales Catalán

Minister of Foreign Affairs

Guatemala City, Guatemala

[20] The Government of Guatemala has not replied.

[21] In view of the Guatemalan Government's refusal to permit an observation in loco by the Commission regarding the numerous denunciations received, which, if confirmed, would constitute extremely serious violations of fundamental human rights, the Commission, exercising the powers assigned it by Article 150 of the Charter of the Organization, articles 9.c and 9 (bis).b of its Statute, and Article 56 of its Regulations, is preparing a report on the situation regarding human rights in Guatemala, this report to be brought to the attention of the government concerned, the other governments of the member states of the OAS, and the General Assembly of the Organization.

[22] Case 1755, September 30, 1972, denouncing the arbitrary arrest of several persons in Guatemala City on September 26, 1972, and the denial of petitions of habeas corpus filed before competent judicial authority.

[23] The Commission, in a note dated October 18, 1972, requested the pertinent information from the Government of Guatemala, in accordance with articles 42 and 44 of its Regulations.

[24] At its Twenty-ninth Session (October 1972), the IACHR assigned this case to the rapporteur for

cases 1702 and 1748, Dr. Genaro R. Carrió, who at that session presented a report (doc.30-29 res.) on the basis of whose recommendation the Commission decided to postpone the study of the case, since the term provided for in Article 51 of the Regulations for the provision of the information requested from the government had not elapsed.

[25] The Government of Guatemala, by a note of December 20, 1972, responded to the request of the Commission and enclosed the pertinent parts of the report of the Department of the National Police according to which the claimant's version of the events denounced does not correspond with the facts of the case. As to the writs of habeas corpus presented by the families of the missing persons, it stated the following:

"With respect to the writs of habeas corpus that have been presented at various times, on behalf of the missing persons, they have been answered through legal channels to the effect that those persons have not been captured by members of this Institution, which is why those persons have not been found to date and why our investigations continue daily into their whereabouts."[FN1]

[FN1] Aforementioned note, in the files of the Commission.

[26] The Commission began its examination of case 1755 at its Thirtieth Session (April 1973), having available the information submitted by the Government of Guatemala, and assigned it to the rapporteur for cases 1702 and 1748 (Guatemala) for study.

On the basis of the recommendation of the rapporteur (doc.26-30 res.), the Commission decided at that session to request the government to forward copies of the resolutions handed down in the writs of habeas corpus mentioned in the reports from the government that were transmitted with the aforementioned note of December 20, 1972, as well as data on any other complaints or legal action that might have been presented to the courts of the nation for the protection of the missing persons. To that end, a communication dated June 15, 1973, was sent to the government concerned.

[27] By a note dated July 25, 1973 (I-OEA-12), the Government of Guatemala transmitted a copy of Official Communication No. 106/73C, of July 20, 1973, from the President of the Judicial Branch and the Supreme Court, stating that reports had not yet been received from all the judges of first instance of the Republic, who had been charged by that Court with applying the writs of habeas corpus on behalf of the persons mentioned in the note from the Commission.

[28] Having this information available, the Commission proceeded to study the case at its thirty-first Session (October 1973).

The rapporteur for the case, Dr. Genaro R. Carrió, presented a report (doc.34-31 rev.1) recommending that the CIDH request consent to conduct an observation in loco on the situation regarding human rights in Guatemala. The events denounced in Case 1755 were to be included in that investigation.

[29] Accordingly, in this summary report the Commission makes reference to the statements made in connection with cases 1702 and 1748.