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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 52/82 [FN1]; Case No. 5154
Session:	Fifty-Eighth Session (16 - 24 November 1982)
Title/Style of Cause:	Humberto Villavicencio Montoya, Pedro Pablo Calderon Urbina, Marcos Davila Andrade, Guillermo Sanchez Pinell and Perfecto Perez v. Nicaragua
Doc. Type:	Resolution
Decided by:	Chairman: Marco Gerardo Monroy Cabra; First Vice-Chairman: Cesar Sepulveda; Second Vice-Chairman: Luis Demetrio Tinoco Castro; Members: Andres Aguilar; Carlos A. Dunshee de Abranches; Tom J. Farer; Francisco Bertrand Galindo
Dated:	23 November 1982
Citation:	Villavicencio Montoya v. Nicar., Case 5154 Inter-Am. C.H.R., Report No. 52/82, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1982-1983)
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[FN1] The Government of Nicaragua, by way of its note of September 19, 1983, requested reconsideration of this Resolution. The IACtHR studied the request of the Government and adopted the Resolution which appears on page 120 of the Annual Report.

BACKGROUND:

1. In a communication dated December 3, 1979, the Inter-American Commission on Human Rights received the following complaint:

According to the November 29th, 1979, issue of the newspaper La Prensa, the Director of Disclosure and Press of the Government Junta, Comrade Manuel Espinoza Enriquez, officially reported the death of a former member of the defunct National Guard Humberto Villavicencio Montoya, age sixty, of cardiac arrest while being held at the Tipitapa "Modelo" Jail.

In that respect, we wish to express our deep concern about the case since Humberto Villavicencio had suffered from serious ailments such as diabetes and circulatory problems, and considering the age of the inmate and the seriousness of his illness this Commission, in order to avoid a fatal outcome, promptly took the following measures.

- 1) On November 7th, a telegram was sent to Commander Tomas Borge Martinez, Minister of the Interior, requesting that he order the transfer of Mr. Villavicencio to a hospital.
- 2) On November 12th, another communication was sent to Commander Borge, impressing upon him the grave condition of the aforementioned inmate.
- 3) On November 13th, given the silence of Commander Borge, a telegram was sent to the International Red Cross delegate, Mr. Pierre Josserson, explaining the same situation.

4) On that same day, a communication was sent to Dr. Cesar Amador Kuhl, Minister of Public Health, requesting his humanitarian intervention so that the inmate would be hospitalized.

5) Faced with silence and inertia on the part of the above mentioned persons, a communication was sent to Dr. Andres Aguilar, Chairman of the Inter-American Commission on Human Rights, urging his humanitarian attention in order to save the life of Mr. Villavicencio

It should be noted that today, December 3rd, we received a copy of a communication dated November 29th in which the Minister of Public Health requests that Comrade Francisco de Asis Fernandez, Head of the Penitentiary System, inform him as to the condition of the prisoner we have been referring to. However, as of the date of this letter, Mr. Villavicencio had been in the El Retiro Hospital's Morgue for four days without his relatives having any knowledge of his death.

The death of Mr. Villavicencio, which we all regret, confirms the timeliness and urgency of the various efforts that this Permanent Commission on Human Rights made on his behalf; we enclose copies of the same in the hope that they would serve to support all the other documents that in different cases this Commission has submitted to different agencies of that government.

In addition, these situations cause concern among all relatives of the inmates who are presently imprisoned in that penitentiary since this death is not an isolated case; another source of concern is the silence of the authorities, who do not reveal the names of all the prisoners who died in that prison. According to investigations carried out by this Commission and confirmed by unimpeachable sources, the recent deaths at the "Modelo" Jail were not two, as was announced by the Director of Disclosure and Press, but five:

- 1) Pedro Pablo Calderon Urbina, 18 years old, civilian, died on November 20th.
- 2) Marcos Davila Andrade, 28 years old, former sergeant, died on August 31st.
- 3) Guillermo Sanchez Pinell, 19 years old, died on November 26th.
- 4) Perfecto Perez Gonzalez, 15 years old, died on November 26th.
- 5) Humberto Villavicencio Montoya, 60 years old, retired major, died on November 25th.

2. In a written communication dated January 16, 1980, the Commission transmitted the pertinent parts of the complaint to the Government of Nicaragua, requesting that it provide the information it deemed appropriate.

3. In a written communication of February 18, 1980, the Government of Nicaragua acknowledged receipt of the Commission's communication and informed it that "Said information has already been forwarded to the competent authority and as soon as we have an answer we will relay it to you."

4. When no further communication was received from the Government of Nicaragua, the Commission, in written communications of March 14, 1980, and August 21, 1980, reiterated its request for information, notifying of the possible application of Article 39 of the Regulations referring to the presumption of truth of the facts. Despite the above, and to this date, the IACMR has not received an answer from the Government of Nicaragua with respect to the facts denounced.

5. The Commission has received additional information which confirms that Perfecto Perez Gonzalez, a farm youth from Telpaneca, died of bullet wounds in the "Modelo" Jail at the end of November of 1979.

CONSIDERING:

1. That Article 39 of the Commission's Regulations establishes the following:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

2. That, to this date, the Government of Nicaragua has not responded to the Commission's requests for information formulated in its written communications of January 16, March 14 and August 21, 1980.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. In application of Article 39 of the Regulations, to presume as true the facts denounced in a communication of December 3, 1979, relating to the prison deaths of Pedro Pablo Calderon Urbina, Marcos Davila Andrade, Guillermo Sanchez Pinell, Perfecto Perez and Humberto Villavicencio Montoya.
2. To indicate to the Government of Nicaragua that those deaths, considering the young age of four of the accused, constitute serious violations of the right to life (Article 4 of the American Convention on Human Rights) and of the right to personal integrity (Article 5).
3. To recommend to the Government of Nicaragua that it investigate the facts denounced and, in turn, sanction those responsible, and to communicate to the Commission, within sixty days.
4. To forward this resolution to the Government of Nicaragua and to the complainants.
5. If by the expiration of the deadline set in paragraph 3 of this resolution the Government of Nicaragua has not submitted observations, the Commission will include this resolution in its Annual Report to the General Assembly of the Organization of American States, in accordance with Article 59, paragraph (g) of the Commission's Regulations.