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File Number(s):	Report No. 25/89; Case No. 9811
Session:	Seventy-Sixth Session (18 – 29 September 1989)
Title/Style of Cause:	Felipe Bernal Martinez, Julian Bernal Martinez and Domingo Bernal Martinez v. El Salvador
Doc. Type:	Resolution
Decided by:	Chairman: Oliver H. Jackman; First Vice-Chairperson: Elsa Kelly; Second Vice-Chairman: Leo Valladares Lanza; Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; John R. Stevenson; Patrick L. Robinson
Dated:	28 September 1989
Citation:	Bernal Martinez v. El Sal., Case 9811, Inter-Am. C.H.R., Report No. 25/89, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1989-1990)
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BACKGROUND

1. On October 30, 1986, the Inter-American Commission on Human Rights received the following complaint:

At eleven o'clock in the morning on August 6, 1986, soldiers of the CIIFA took prisoner in his home FELIPE BERNAL MARTINEZ, a Salvadoran, 42 years of age, a shoemaker resident at San Pedro Nonualco in the jurisdiction of Zacatecoluca, La Paz Department, El Salvador. After invading and searching the house, they bound the victim and took him to his father's house, where the CIIFA soldiers captured his two brothers as well JULIAN BERNAL MARTINEZ and DOMINGO BERNAL MARTINEZ, the latter 30 years old. To the protests of the Bernal family the soldiers replied that they were taking their captives to "a conference."

On August 7, 1986, Domingo Bernal Martínez's wife, accompanied by friends, went in quest of the brothers, and quickly located the corpses of the three. Their throats had been cut, and Domingo's tongue had been cut out.

Through a witness the Bernal family has learned that the brothers were taken by CIIFA soldiers to the Civil Defense Headquarters at San Pedro Nonualco, where they were kept bound and subjected to torture. At 2 o'clock in the morning of August 7, 1986, a small truck with its lights off moved away from the Civil Defense Headquarters. Later the commandant there asserted that the Bernals had been executed "to set an example, because they were accused of collaboration with the guerrillas."

The corpses were identified by the local judge and then released to the family for interment.

2. In a letter of October 14, 1986, the Commission transmitted the pertinent parts of the complaint to the Government of El Salvador with a request that it supply such information as it deemed appropriate within 90 days.

3. On January 28, 1987, the Government of El Salvador replied to the Commission with the following note:

This Commission assigned a delegate to the Second Criminal Court, of Zacatecoluca, to make a thorough investigation of the case. Following are the salient details of his report: "In the said Court the Secretary furnished me with the following case: Entry No. 261/1986. Report on investigation into the death of the late FELIPE BERNAL MARTINEZ, JULIAN BERNAL MARTINEZ, and DOMINGO BERNAL MARTINEZ in consequence of lesions produced apparently by an edged weapon (machete). The scene of the deed, in the Guadalupe quarter of San Pedro Nonualco, was inspected on August 7, 1986, at 9:30 in the morning. Later that day the three corpses were examined by the medical experts MIGUEL VENTURA and JOSE DOMINGO MOLINA. Subsequently, on August 11 of that year, a declaration as injured party was received from Mrs. TEODORA ARDON stating that she did not feel injured and suspected no person of the death of her husband and brothers-in-law. That at about 11 o'clock in the morning of August 6, 1986, she was in the house of her residence in Hacienda Vieja Canton, in San Pedro Nonualco jurisdiction, and her husband DOMINGO BERNAL MARTINEZ said to her that he did not know why those boys were moving about there, referring to some individuals wearing those patched uniforms and bearing arms those rifles that have come out today and which they say are new; they had already surrounded the house, but she could not tell how many they were, and said only that they were a 'handful.' That after half-an-hour one of those individuals chatted with her brother-in-law FELIPE BERNAL MARTINEZ and told him they were from Zacatecoluca and were stationed in San Pedro Nonualco. That after the half-hour those individuals took away her husband and brothers-in-law. That she heard nothing from them until she found them dead. On August 12, 1986, the Justice of the Peace of San Pedro Nonualco referred the case to the 2nd Criminal Court of Zacatecoluca, La Paz Department, which Court took formal cognizance of it on August 21 of the same year. The next day, August 22, the 2nd Criminal Court asked the municipal government of San Pedro Nonualco to authenticate the death certificates of the three deceased parties. On August 26 the corpses of the deceased were formally identified and, finally, the death certificates were taken as received on September 2, 1986."

4. The Government's reply was duly conveyed to the complainant on February 16, 1987.

5. Since the facts of the complaint had been duly verified by the Government of El Salvador but the Government's reply said nothing about judicial proceedings against the perpetrators of the murder of the BERNAL MARTINEZ family or about the action taken against those who had summarily executed them, on July 7, 1988, the IACHR again requested the Government of El Salvador to send it information on the status of the case within 30 days.

6. On August 18, 1988, the Government of El Salvador replied to the IACHR with a repetition of the text of the report sent on January 28, 1987, which was the information supplied to the Ministry of Foreign Affairs by the Governmental Commission on Human Rights.

7. Direct personal inquiry was subsequently made to the Governmental Commission on Human Rights for more information on the measures taken by the Government in connection with the matter of the complaint, but no answer has yet been received from that state agency.

CONSIDERING:

1. That the complaint meets the formal requirements for admissibility in Article 46 (d) of the American Convention on Human Rights and Article 32 of the Regulations of the Inter-American Commission on Human Rights;

2. That in the present case it is manifest that the petitioner has been unable to obtain effective

protection by the jurisdictional authorities, thus rendering inapplicable the requirement of exhaustion of domestic remedies under paragraph 2(b) in Article 46 of the American Convention;

3. That the procedure for friendly settlement referred to in Articles 48 (f) and 45 of the American Convention and the Commission's Regulations, respectively, is inapplicable to the present case;

4. That the complaint is not pending settlement by some other international procedure and so is not subject to the disqualification envisaged in Articles 47 (d) of the American Convention or paragraph 1, Article 39 of the Commission's Regulations;

5. That the complaint does not duplicate a previous petition already examined by the Commission, and thereby escapes the same disqualification of Articles 47 (d) of the American Convention and paragraph 1, Article 39 of the Commission's Regulations;

6. That in the present case all steps have been taken to obtain from the Government of El Salvador satisfactory information on the murder of the persons mentioned, and all the legal and regulatory procedures established in the Convention and the Commission's Regulations have been exhausted;

7. That the official reply of the Government of El Salvador conveys no indication as to whether the investigation required in this sensitive case to establish the identity of the soldiers who illegally seized the BERNAL MARTINEZ brothers in their home and subsequently killed them, nor that of the officers who ordered this done, if such was the case;

8. That the deed charged is corroborated in the direct testimony of the wife of one of the victims, who was an eyewitness to the forcing of her husband and his brothers out of their home and to their removal hence by force and against their will by men of the Sixth Infantry Brigade;

9. That there are other eyewitnesses to the seizure of the victims, members of their own family, who recognized the soldiers and sought to dissuade them from taking the brothers away, and in reply were told that they were being taken to "a conference;"

10. That, moreover, the family was advised that the soldiers had taken them in the direction of the Civil Defense Headquarters of San Pedro Nonualco, where they were reportedly seen bound and being subjected to torture;

11. That the applicable requirements of Articles 48 of the American Convention on Human Rights and 34 et. seq. of the Commissions Regulations have been complied with;

12. That, despite the time that has elapsed and the Commission's repeated and fruitless efforts, the Government of El Salvador has made no further reply on the present case and requested no extension of time for transmitting the information;

13. That the Government's reply, far from disproving the charges, confirms them over and over with the direct, personal testimony of Mrs. Teodora Ardón, an eyewitness to the events, who states that a group of men in uniform bearing heavy arms carried off her husband DOMINGO BERNAL MARTINEZ and her brothers-in-law FELIPE BERNAL MARTINEZ and JULIAN BERNAL MARTINEZ of whom nothing more was known until she found them dead.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
Exercising the powers vested in it,
RESOLVES:

1. To declare, in light of the foregoing, that the Government of El Salvador has violated Articles 4 (right to life), 5 (right to humane treatment), and 7 (right to personal liberty) in connection with Article 1 (1) of the American Convention on Human Rights, to which El Salvador is a party, in respect of the murder of FELIPE BERNAL MARTINEZ, JULIAN BERNAL MARTINEZ, and DOMINGO BERNAL MARTINEZ.
2. To recommend to the Government of El Salvador that it order a complete and impartial investigation to identify the perpetrators of the facts charged, punish them in accordance with Salvadoran law, that fair compensation be granted to the families, and advise the Commission within 90 days on the steps taken to act on the recommendations set forth in this resolution.
3. To transmit this resolution to the Government of El Salvador and to the complainant.
4. To include this resolution in the Annual Report to the General Assembly of the Organization of American States if information in the terms of paragraph 2, above, is not received.