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File Number(s):	Report No. 27/89; Case No. 10.201
Session:	Seventy-Sixth Session (18 – 29 September 1989)
Title/Style of Cause:	Arnaldo Cerrito, Vicente Cerrito and Arturo Navarro Garcia 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:	Cerrito v. El Sal., Case 10.201, Inter-Am. C.H.R., Report No. 27/89, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1989-1990)
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BACKGROUND:

1. In June 1988, the Inter-American Commission on Human Rights received the following complaint:

During the night of April 14, 1988, soldiers in olive-drab uniforms carrying M-15 automatic rifles came to the community of Las Cañas, where they went to the house of ARNALDO CERRITO and told them to turn out the lights - there was no electricity, and candles had to be used - and it could be seen that the soldiers wore hats but their uniforms could not be described. They put out the candles and VICENTE CERRITO went to the door, at which point the soldiers pulled him out of the house, went in again and asked for Arnaldo, and both men were taken out of the house with their hands tied. Maria Luisa followed them out and asked where they were being taken and why, but the soldiers threatened to take her along, too, if she didn't shut up, and so she went back into the house but kept on insisting, and this time she was threatened with a rifle and pushed. The soldiers took the two men off to the river without allowing them to put on their shirts or shoes. Below the river they met more soldiers who had taken Arturo.

ARTURO NAVARRO GARCIA and Manuel de Jesus Lopez Ramos had gone to the river to load sand onto a truck. When they were about 50 meters away from Arturo's house they were stopped by some uniformed soldiers. Arturo's son, Rosendo Sorto Navarro, was with them, so the three were made to lie face down on the ground. One of the soldiers asked, "Are you ARTURO NAVARRO?" "Yes," he answered. "You must come with us, then." They told the child to go home and let Manuel go. The three captured men were taken seven blocks down the river in front of the Bosque del Río settlement, where more soldiers were waiting for them with a pickup truck. The three men were put in the back of the truck with their hands still tied. Since it was very dark and the truck's lights were out, its make, color, and license plates could not be distinguished.

In the afternoon of April 14, 1988, there had been much active patrolling across the Cantón of El Tránsito by the "Red Berets" of the Salvadoran Air Force. There has been a controversy in these communities because the settlers have spread out along the river and ANTA has offered them daily work and has

organized them into communities, while a landowner has been making threats to get them to desist. The settlers believe this to be the reason for the murders, though they have no certain knowledge, and they say that there has been no political intervention and all they want to do is survive.

In the morning of April 16, 1988, the local military authorities found three corpses with 45-caliber bullet wounds in their heads. The corpses had been thrown into a ravine at kilometer 10 on the road from San Salvador to Zacatecoluca, and dried pools of blood, the remains of blood-soaked hemp sacks and empty 45-caliber cartridges were still at the spot. FMLN pamphlets were found under the corpses, which had on only underwear, though one still had a shoe on its right foot. According to the report of the Justice of the Peace, they are presumed to have died about 24 hours previously.

1. On the 17th the corpses were exhumed for inspection by relatives and then were buried. Arrangements were later made for re-exhumation of the bodies on April 21, 1988. The Justice of the Peace of San Juan Talpa and his secretary, accompanied by local members of the Armed Forces, dug up the corpses so that they could be identified by members of their families. The corpse of Arturo Navarro was identified by his wife, mother, and sister, and reburied.

2. On June 28, 1988, the relevant parts of this complaint were transmitted to the Government of El Salvador, which was given 90 days to reply to the Commission's request for a report.

3. For his presentation before the plenary session of the Commission in its 74th session, held from September 6 to 16, 1988, the Executive Secretary of the Governmental Commission on Human Rights of El Salvador personally brought the following note in reply:

In this regard the Governmental Commission has opened a file on the death of the persons named in the complaint, in the most important passages in which the members of their families and witnesses stated that the three victims were apprehended by heavily-armed individuals dressed in olive-drab and driving a red pick-up truck, but they could not identify them because the night was too dark, and could not say with certainty that they were soldiers. The victims were then taken to parts unknown, where they were murdered. The Justice of the Peace of San Juan Talpa set in motion the investigation into the death of these persons. The Governmental CHR has sent an attestation of the action taken to the Office of the General Prosecutor of the Republic so that its Human Rights Unit may continue pursuing the matter before the competent court.

4. Later, on September 20, 1988, the Government of El Salvador replied formally to the request for information with the following statement to the Commission:

The Governmental Commission has an open file on the death of the persons named in the complaint, in the most important passages of which the members of their families and witnesses stated that the three victims were apprehended by heavily-armed individuals dressed in olive-drab and driving a red pick-up truck, but they could not identify them because the night was too dark, and could not say with certainty that they were soldiers. The victims were then taken to parts unknown, where they were murdered. The Justice of the Peace of San Juan Talpa set in motion the investigation into the death of these persons. The Governmental CHR has sent an attestation of the action taken to the Office of the General Prosecutor of the Republic so that its Human Rights Unit may continue pursuing the matter before the competent court.

5. Since the reports provided by the Government of El Salvador confirmed that the events had taken place and that the first investigations had been begun, but gave no information on their results, on January 26, 1989, the Government of El Salvador was again asked to inform the Commission on the outcome of the investigations pursued into the murders of Arturo Navarro Garcia, Arnoldo Cerrito, and Vicente Cerrito.

6. On February 17, 1989, the observations of the complainant on the replies made by the representatives of the Government of El Salvador were transmitted to that Government. The relevant portions of those observations are as follows:

I. Lack of positive legal action

The Government refers in its reply to the initiation by the Justice of the Peace of San Juan Talpa of inquiries into the death of the three murder victims. This is indeed true, for it is so stated in the reports enclosed with original request. On our side, however, we advise that the First Criminal Court of

Zacatecoluca, which is so far in charge of pursuing the investigation, has taken no action, and the case is pigeon-holed in the file of cases "pending investigation."

Moreover, regarding the action taken by the Office of the General Prosecutor through its "Human Resources Unit," we have found out in the First Criminal Court of Zacatecoluca that the only thing the Office of the General Prosecutor has done since the file was forwarded in May last year is to "constitute itself a party in the case," and the inquiries are in the state in which they were left by the Justice of the Peace of San Juan Talpa on April 21, 1988.

The Government's reply implies that the wheels of justice are turning in this case, and that the Government has the intention of assigning responsibility for the deaths. That the matter stands, otherwise is shown by the lack of positive legal action on the case, including the brevity of the Government's response to the IACHR, which demonstrates the necessity that the Inter-American Commission move to identify those responsible for the violations of the most fundamental human rights in this case.

We enclose a copy of the request submitted to the Supreme Court of Justice for information on the results of the petitions for habeas corpus on behalf of Santos Leiva Aviles presented on May 10 last year and a copy of the request presented to the Office of the General Prosecutor of the Republic for information on the action it has taken and proposes to take in the present case. These inquiries are too recent for the answers to have been received yet, but they will be of no significance when they arrive because nothing has been done so far.

II. Participation of the Armed Forces

In its reply the Government states that the witnesses "could not say that (the perpetrators) were soldiers." But we regard the participation of soldiers of the Salvadoran Armed Forces as amply proved by the statements of the injured parties and witnesses. Although none of the declarants is able to identify specific perpetrators, they have all said the same thing: that they were soldiers of the national army under arms and wearing olive-drab uniforms.

Besides, all the circumstances point to an operation by elements of the Armed Forces, and to the probability that they were members of the Salvadoran Air Force. Some three or four hours before the three victims were captured, the area where they were taken from was patrolled by the Salvadoran Air Force, specifically by the so-called "Red Berets." This is borne out by the complete openness, coolness, and impunity with which they acted in an area controlled by the army.

The central headquarters of the Air Force is near the community in which the victims lived. When relatives went to this headquarters in search of the victims, a soldier inquired over the internal phone whether the three were on the premises, and identified them by name, and then told the visitors that they were there. This information was later denied by armed men in civilian clothes. The Air Force has been identified as involved in several cases, many of which occurred in the same area.

III. There are other persuasive indications of the guilt of the Armed Forces

At least two of the victims, Arnaldo and Vicente Cerrito, were members of the Asociación Nacional de Trabajadores (the National Workers' Association or ANTA), which has been subjected to constant repression by the Armed Forces, being wrongly regarded as a subversive organization. As proof of this persecution we attach a paid advertisement of ANTA published in the *Diario de Hoy* of June 12, 1988, which itemizes some of the many repressions suffered by the Association.

The connections between Mr. Rene Mendoza, the presumed owner of the lands adjacent to the Rio Cañas community, in which the victims lived, and the Government (see clipping from the *Diario de Hoy* of August 11, 1988), and his threats against workers who were extracting sand from the river to earn a livelihood, are indications that he may have provided the initial justification for the capture of the victims by the Armed Forces.

7. No reply having been received from the Government of El Salvador, on March 2 the Commission again transmitted the observations of the complainant and granted an extension of 30 days.

8. This extension granted to the Government of El Salvador having also expired without, again, any reply or any request for an extension of time being received, on June 19, 1989, the Commission repeated

its request to the Government of El Salvador to supply, within an additional 30 days' time, information in relation to the case, and advised that, if no reply were received the Commission would, as prescribed in Article 42 of its Regulations and under the weight of the abundant confirmatory information, presume the facts reported to be true.

9. This further extension of time granted to the Government of El Salvador has expired long since with no response of any kind having been received any request for additional time in which to do so.

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, the petitioner has been unsuccessful in prevailing upon the judicial authorities to obtain effective protection and, therefore, the requirements concerning the exhaustion of domestic under Article 46.2.b of the American Convention are inapplicable;

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 regulation procedures established in the Convention and the Commission's Regulations have been exhausted;

7. That in its replying notes the Government of El Salvador confirms the commission of the acts referred to in the complaint concerning the murder of the victims and the participation of uniformed men in those acts;

8. That the facts described in the complaint are corroborated by the personal testimony of members of the victims' families, who confirm the text of the complaint and agree that responsibility for the murder of ARTURO NAVARRO GARCIA, ARNOLDO CERRITO, and VICENTE CERRITO rests with the Armed Forces;

9. That the Government of El Salvador has had nothing to say about the petitioner's allegations of inadequate investigation of the facts and the officially granted impunity of the perpetrators;

10. That the requirements established in Articles 48 of the American Convention on Human Rights and 34 et. seq. of the Commission's Regulations, have been fulfilled.

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), 7 (right to personal liberty), and 8 (right to a fair trial) of the American Convention on Human Rights by its responsibility for the detention, mistreatment and summary execution of, and failure to guarantee due process for ARTURO NAVARRO GARCIA, ARNOLDO CERRITO, and VICENTE CERRITO.
2. To recommend to the Government of El Salvador that it order a thorough and impartial investigation of the acts charged in order to establish the responsibility of the members of its Armed Forces that participated directly or indirectly in their commission so that they may be punished in accordance with Salvadoran law, that fair compensation be granted to the families, and that it advise the Commission within 90 days on the steps taken.
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 the information is not received from the Government of El Salvador.