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Title/Style of Cause:	Sebastian Gutierrez, Jose Mario (Mariano) Cruz Rivera and Felix Antonio Rivera 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:	Gutierrz v. El Sal., Case 10.179, Inter-Am. C.H.R., Report No. 26/89, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1989-1990)
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BACKGROUND:

1. On March 10, 1988, the Inter-American Commission on Human Rights received the following complaint:

On the night of February 25, 1988, SEBASTIAN GUTIERREZ, 18 years of age; JOSE MARIO CRUZ RIVERA, 16 years of age; and, FELIX RIVERA, 25 years of age, were seized by uniformed soldiers of the national army in Temepechin, a small village, in the Canton of El Tablon, Sociedad Jurisdiction, county town in the Department of Morazan. They were taken away in the direction of the Temepechin River close to a place with a sugar mill, where the soldiers ignited a shrub and dragged JOSE CRUZ and FELIX RIVERA, with their hands tied behind them, to the fire (they were burnt initially). The soldiers then removed them from the fire and placed them in a trough of water. They cut off JOSE MARIO CRUZ RIVERA's ears and peeled the skin off the other person's nose to the mouth, and finally, mutilated their legs and toes.

SEBASTIAN GUTIERREZ is still missing. At the time they were taken captive, the individuals responsible told the families that had come on behalf of the guerrillas. According to testimony by the same family members, however, it was national army personnel who had been responsible for the capture, because at the time it occurred, a woman named Juana Gomez, had been recognized as someone working "for the soldiers" and who had previously lived with Jose Mario Cruz Rivera in a conjugal relationship.

2. On July 6, 1988, additional information received from the claimant was forwarded to the Government of El Salvador. It reads as follows:

Temepechin is a small hamlet with 29 families, belonging to El Tablon Canton, where some 100 families now live, in the jurisdiction of Sociedad, to the northeast of San Francisco Gotera, Department of Morazan. Porfirio Benitez, law officer from Paz de Corinto, went all the way there, to a place in an area

of conflict and exposed to fighting and confrontation, to take charge of the exhumation of the bodies of the young FELIX ANTONIO RIVERA and J.M. CRUZ RIVERA, who lost their lives on February 26 this year in the small village of Temepechin.

On February 25, armed troops entered Temepechin. Maria Juana Granados, 18 years of age, armed and dressed in military clothing, arrived with them and pointed out specific persons from a list she was carrying. They proceeded to take people away from their homes. SEBASTIAN GUTIERREZ, 19 years of age, father of a new-born baby, was taken away clad in nothing but bathing trunks. His wife, Alejandra Bonilla, stood witness. Family members and neighbors said that they later heard gun shots.

In the very early morning hours of February 26, soldiers entered the home of FELIX ANTONIO RIVERA, 25 years of age, leader of a consumers' cooperative, seized him, took him away, searched his home, tore up some papers, including a loan document from FINATA giving them ownership of lands in the community, and personal identification documents. When interviewed, family members confirmed that he had been beaten when taken captive. That same night, soldiers went to the home of JOSE MARIO CRUZ RIVERA, asked for him by name, but he was not there. At that time, he was working at a mill. When he reached home at daybreak on the 26th, the military were waiting for him. They tied his thumbs behind him, put a pack and weapon on his back and made him cry out that he was a guerrilla. They then led him away. "When I saw them taking him away," said J. Mario Cruz' mother, "I started following them, but they threatened me. I couldn't take it any more, I felt as though my heart stopped beating."

The family went to the Parish Church and to the International Red Cross seeking help for the three captives. They even went to the barracks of the Fourth Military Detail asking for them but knowledge of them was denied.

That very afternoon, according to J. MARIO CRUZ RIVERA'S father, the soldiers started burning pasture lands in the area known as Baria Negra. The army forced the captives to enter the ignited shrubbery and to run. The father of one of the victims said that someone living on the property heard the two men crying out when they were forced to run through the ignited pasture lands. The family later found the bodies of J. MARIO CRUZ and FELIX A. RIVERA not far from a fountain. J. MARIO CRUZ' father saw the bodies of his son and FELIX ANTONIO, which he described: his son's face was disfigured, the ears and nose cut off; several toes had also been dismembered. The bodies of both men bore blisters on the feet and legs. There were gashes from a knife on the chest and neck of one body; the skull was fractured, the skin peeled from the face, and a leg broken.

The burial of the mutilated bodies took place in the presence of family and neighbors who saw the bodies of their children and/or friends completely disfigured.

As afternoon came, a helicopter appeared, dropped two bombs feigning a confrontation, and kept going. SEBASTIAN GUTIERREZ is missing. Various human rights organizations are working on the case, but the family has yet to hear anything.

The families asked that the bodies be exhumed in the presence of a legal representative from the public prosecutor's office and the appropriate law officer to attest legally to the death and the condition of the bodies. The dates of the exhumation had been postponed several times because of the state of conflict in the area.

The bodies were exhumed on May 24 in the small village of Temepechin. Various organizations were represented, such as, "Tutela Legal del Arzobispado," "Socorro Jurídico," "IDHUCA," a Commission of the Lutheran Church, Americas Watch, the Governmental Human Rights Commission, and the public prosecutor's office. The law officer from Paz de Corinto, Porfirio Benitez, was responsible for exhuming the bodies. The doctor in forensic medicine examining the bodies, Jörgen L. Thomsem, from Denmark, (University Institute of Forensic Medicine) is part of a group of pathologists specializing in human rights, has worked in common graves in Argentina and the Phillipines and has wide experience in such cases. After his examination, he said he would submit a more detailed report at a later date, but that on the basis of data obtained at the time the bodies were exhumed, he substantiated what the witnesses had said, which is, that the head of one of the bodies had been beaten and battered, and that the leg and toes of the other were broken.

At the time that the bodies of FELIX ANTONIO RIVERA and JOSE MARIO CRUZ RIVERA, peasants

from the area, were exhumed, they were noticeably in a state of decomposition. When questioned, all of the neighbors agreed that it was the army that had captured and tortured them. "We saw them by day," "we are frightened because after that we were threatened."

The head of the Fourth Military Detail in San Francisco Gotera, Colonel Juan Carlos Carillo has not commented publicly on these deaths caused by the army in the area he commands.

On March 2, young residents from the area were detained and questioned on their way to mass. On April 5, the arrests continued, and there is a list of names of people in danger and they have left their communities. Whole families have started leaving the area, the atmosphere is desolate, and the residents are extremely concerned about what might happen.

3. In the absence of a reply to the original complaint or any additional information from the Government of El Salvador long after the statutory deadline of November 17, 1988, had passed, the IACHR again asked for information, setting a new 30-day deadline for the purpose.

4. The extended deadline expired again, and still there was no reply from the Government, nor a request for extension of the deadline. The IACHR repeated its request to the Government of El Salvador to furnish the relevant information bearing on the case within the new additional 30-day period.

5. Once again, the new deadline expired, once again without reply and without any request for another extension of the deadline from the Government of El Salvador. The Inter-American Commission on Human Rights turned to the Governmental Human Rights Commission of El Salvador for assistance, forwarding to it a complete list of all cases pending reply.

6. In his presentation before the plenum of the Commission during its 74th session in September of 1988, the Executive Secretary of the Governmental Human Rights Commission of El Salvador brought personally with him, along with the report on the exhumation of the bodies, the following note of reply, which was copied to the claimant:

7. The Governmental Human Rights Commission has entered, under Reference No. C4-0056-CR-88, the complaint filed by Mr. Hilario Cruz Arriaza in connection with the homicide of his son, José Mario Cruz Rivera, following his apprehension at 1:00 p.m. on February 26, 1988, by heavily armed uniformed personnel, who also had in their custody Messrs. Felix Antonio Rivera and Sebastian Gutierrez Cruz. The dead bodies of Mr. Rivera and Mr. J. M. Cruz Rivera were found in the place known as Caserío Peñas Negras, Varilla Negra Canton, Jurisdiction of Corinto with ears and some fingers amputated, and wounds inflicted by a small, pointed weapon on various parts of the body. On March 23 this year, a report was received from Dm. 4 based in Morazán, stating that Messrs. J. Mario Cruz Rivera and Félix Antonio Rivera died as a result of fighting between members of the PRAL Unit from that Detail and approximately 25 terrorists. On May 24 this year, the bodies were exhumed by the law officer from Paz de Corinto in the presence of representatives from this Commission, the public prosecutor's office and a Doctor in forensic medicine, of Danish origin. Mr. Jose Sebastian Gutierrez Cruz has been missing since February 25, 1988, when he was taken from his home in Temepechin, El Tablon Canton, Sociedad Jurisdiction, Department of Morazan. The pertinent report on the exhumation is attached herewith.

8. Below is the autopsy report:

I am pleased to submit the report on the EXHUMATION, IDENTIFICATION, and AUTOPSY, of the remains of FELIX ANTONIO RIVERA and JOSE MARIANO RIVERA, conducted on May 24. Messrs. Felix Antonio Rivera and Jose Mariano Rivera were buried on February 26 this year without due and proper legal identification on an elevation in the Barilla Negra Canton, Jurisdiction of Corinto, Department of Morazan.

The procedure started at 11:45 a.m. and was concluded at 3:00 p.m.

Both bodies were in the same grave in separate plastic bags and strange clothing.

An external examination of FELIX ANTONIO RIVERA's body, exhumed at 12:00 p.m., showed a light whitish layer of fungus over the face, multiple fractures to the bones of the skull, and bloody infiltration of the facial bones. There was an almost total absence of soft tissue on the neck and little tissue in the axillae and on the legs. The lower right limb was displaced outward, and there was visible and extensive lysis of all tissue, making it difficult to discern all the wounds. There was also a distinct foul odor.

The head was disfigured, minus auricular tissue, and the multiple fractures to the bones of the skull were clearly visible. The contours of the brain tissue were deformed and the tissue was whitish-greyish in color. The facial bones were not fully identifiable, were partially destroyed, and there was pervasive bloody infiltration of the bones of the left eye socket. The lower ramus of the right mandibulae was fractured.

The neck: the tissues of the neck were so extensively damaged that it was not possible to identify the elements properly; the vertebrae were entirely disconnected. There were no visible fractures.

The thorax: the skin was pale, leathery, with a marked tendency toward lysis. The subcutaneous cell tissue was identifiable, showed loss of firmness and identity. The distal third of the 11th rib on the left and the right shoulder blade were fractured.

The abdomen: pale with areas with a black coloring, which were easily removed by cleaning. All of the organs were in an obvious state of decomposition.

The genitals were intact, minus injury, save for obvious signs of lysis.

The soft tissue of the upper limbs has been largely destroyed, especially the axillae; the skin of the upper limbs was pale, the right thumb was missing. The remaining fingers were all well preserved. There was a fracture in the proximal third of the femur, accounting for the leg being displaced outward, as described in the external examination. Since there was so little remaining tissue, the feet were not even moist.

CONCLUSION: In my opinion, the direct and only attributable cause of death was the multiple trauma, particularly to the head, and possible the serious wounds inflicted on the neck and axillae by a knife, causing the natural heavy bleeding.

The external examination of the remains of JOSE MARIANO RIVERA, exhumed at 12:30 p.m., showed that the body was better preserved, without the same degree of trauma, with the phenomena related to natural decomposition predominating.

On the head, the only noteworthy feature was the missing ears.

On the neck, there was extensive loss of soft tissue and pronounced lysis of existing tissue, which is normal, given the injuries sustained.

On the upper limbs, at the level of the axillae, there was a noted absence of soft tissue and lysis of existing tissue. The fingers and toes were well preserved, except for the missing third finger and the absence of moisture associated with living tissue. What particularly struck me was a black circle on the anterior aspect of the proximal third of the right thigh, very close to the groin.

The remains of the genitals were there, intact. Almost all of the bones were disconnected as a post-mortem phenomenon.

CONCLUSION: In my opinion, hemorrhaging from wounds inflicted by a knife to the neck and axillae could have been the only possible direct and attributable cause of death.

Yours truly, Dr. Guillermo Alvarado Morán, Doctor in Forensic Medicine.

9. On April 26, 1989, the petitioner filed his observations, which were forwarded to the Government of El Salvador on May 2, 1989, for comments. The following is a summary of the petitioner's comments:

The documents submitted by the Government of El Salvador do not deny the facts alleged in the petition, but rather serve to substantiate the main points in the case, namely, the dual assassination of FELIX ANTONIO RIVERA and JOSE MARIO CRUZ RIVERA, and the fact that SEBASTIAN GUTIERREZ was detained, taken from his home, and then disappeared. The military report included implicates the PRAL (Patrulla de Reconocimiento de Alcance Largo) of Military Detail No 4, based in San Francisco Gotera, Morazan. The Government does not deny the conclusions of the autopsy report; the Armed

Forces seeks to absolve itself of all responsibility by claiming that the deaths of FELIX ANTONIO RIVERA and JOSE MARIO CRUZ RIVERA occurred during combat, but the evidence proves otherwise. The legal proceedings "to verify the death" of those persons has come to a standstill since the exhumation of the bodies, which is the last time any action has been taken in the proceedings. Despite the evidence, no effort has been made to call the military implicated to testify, and the Armed Forces have not apparently conducted an internal investigation to shed light on the case, despite the following statements published in the Washington Post on June 21, 1988:

Colonel Rene Emilio Ponce, Commander of the Armed Forces Brigade having jurisdiction in the area, read to journalists the combat report on the day the two men died. In it, the troops reported having killed two "subversives" in the place where the two residents were stabbed to death, and that there had been an exchange of gunfire. Civilians who testified said that there had been no confrontation, and that the soldiers had feigned a shoot-out while they were torturing the men in order to muffle their cries of pain.

"I don't know anything about any other reports," said Ponce. "If there was mutilation, it is reprehensible and must be condemned in every aspect."

Ponce said that he would not investigate the unit that, according to reports, were responsible for the killings. "We cannot investigate every combat report," he said. "In these cases, I have to believe what my colonels report to me."

10. To date, despite the fact that more than four months have elapsed, the Government of El Salvador has not indicated that it contests the claim, and has not filed any observations on or objections to the claimant's allegations.

CONSIDERING:

1. That the claim meets the formal admissibility requirements set forth 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 remedies under Article 46.2.b of the American Convention are inapplicable;

3. That the friendly settlement procedure referred to in Article 48.f of the American Convention and Article 45 of the Regulations of the Commission is not applicable to this case;

4. That the claim is not pending any other international settlement procedure and, therefore, is not subject to the incongruities envisaged in Article 47.d of the American Convention and Article 39.c of the Rules of Procedure of the Commission;

5. That the claim is not a replica of a previous petition examined by the Commission, and therefore does not violate the requirement in Article 47.d of the Convention and Article 39.c of the Rules of Procedure of the Commission;

6. That in the present case, all possible steps have been taken to obtain from the Government of El Salvador adequate information on the assassination of the persons mentioned and, furthermore, the legal and statutory procedures stipulated in the Convention and the Regulations of the Commission have been exhausted;

7. That in its note of reply, enclosed with the report on the exhumation, identification, and autopsy of the victims' bodies, the Government of El Salvador confirms having received the same complaint from the family of the victims in which their narrated account of the facts also coincides with that brought to

the attention of the IACHR, the only variation being the official version of the military source consulted in this matter, that MARIO CRUZ RIVERA and FELIX ANTONIO RIVERA died as a result of fighting between the guerrilla and the army, and specifically naming PRAL (Patrulla de Reconocimiento de Alcance Largo) of the Fourth Military Detail of the Salvadoran Army based in San Francisco Gotera, Morazan, as having participated directly in the occurrence of the facts;

8. That the autopsy report furnished by the Government of El Salvador, which coincides with the report mentioned by the petitioners in the complaint, also attests, in detail, to the abuse, torture, and mutilations suffered by Felix Antonio Rivera and Jose Mario (Mariano) Cruz Rivera at the hands of the Salvadoran Army;

9. That as the petitioner stated in filing his observations, the reply from the Government of El Salvador does not deny the alleged facts nor the Armed Forces' participation in their occurrence, but seeks to absolve it from responsibility by claiming that the two deaths were the result of fighting between personnel from the military detail and guerrilla fighters. This account is, however, contradicted by eyewitnesses, who each confirm individually and independently, that the victims were abducted from their own homes by uniformed soldiers, and belied, moreover, by the medical reports on the exhumation, which provide more than sufficient evidence to determine that the two young men assassinated did not die in combat but were tortured, assassinated, and mutilated;

10. That with regard to the situation concerning Sebastian Gutierrez, reported missing since his captivity, here too, not one piece of information has been forthcoming from the Government to deny or confirm the allegations of family members and other eyewitnesses that Salvadoran army soldiers forcefully took him from his home and drove him in vehicles of the Armed Forces to Military Detail No 4, which have been confirmed, furthermore, by eyewitnesses and by the versions of the soldiers from the Morazan Battalion to the family;

11. That the Government of El Salvador has not made the effort incumbent upon it to investigate in due form the facts reported in the complaint, merely confirming the occurrence of those facts, as further manifested in the lack of expediency in the legal proceedings to "verify," where none of the perpetrators of the facts, whose identity is known to the Armed Forces of El Salvador, has been cited, detained or held responsible;

12. That the OAS General Assembly has stated that the forced disappearance of persons is an affront to the conscience of the Hemisphere and is a crime against humanity (AG/Res. 666 XIII-0/83 of November 18, 1983);

13. That, moreover, the Inter-American Court of Human Rights has indicated that the practice of disappearances, in addition to being a direct violation of numerous provisions of the Convention, also signifies a radical break with this treaty insofar as it implies the all-out renouncement of the values inherent in human dignity and of the principles on which the inter-American system and the Convention itself are deeply rooted (Paragraph 158 of the final judgment in the Velásquez Rodríguez case, June 29, 1988);

14. That further, insofar as FELIX ANTONIO RIVERA and JOSE MARIO (Mariano) CRUZ RIVERA are concerned, the signs of a violent death by torture, mutilation, burning, and skinning, alleged in the denunciation and confirmed by the autopsy report, are evidence of a repeated and not too infrequent occurrence, namely, that victims taken captive by members of the Army on suspicion of belonging to the guerrillas are subject to inhumane, cruel, and degrading treatment;

15. That the facts contained in the present denunciation, which have been duly confirmed and are

known to the Government of El Salvador, constitute evidence of the use and practice of methods incompatible with the most elementary standards of human behavior, none of which can be condoned or concealed for any reason and must be punished in an exemplary manner;

16. That the pertinent applicable parts of the requirements established in Article 48 of the American Convention on Human Rights and Article 34 et. seq. of the Regulations of the Commission have been met.

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

1. To declare that, by virtue of its responsibility in the detention, abuse, and mutilation, summary execution of FELIX ANTONIO RIVERA and JOSE MARIO (MARIANO) CRUZ RIVERA, the Government of El Salvador violated Articles 4 (right to life), 5 (humane treatment), and 7 (personal liberty) of Part I, Chapter I of the American Convention on Human Rights.

2. To declare that by virtue of its responsibility in the detention and subsequent disappearance of SEBASTIAN GUTIERREZ, the Government of El Salvador violated Articles 4 (right to life), 5 (humane treatment), and 7 (personal liberty) of Part I, Chapter I of the American Convention on Human Rights.

3. To recommend to the Government of El Salvador that it call for a thorough investigation into the grave facts reported in the denunciation to bring to light the responsibility of the members of its Armed Forces who participated directly or indirectly in those events so that they may receive the appropriate punishment under the law, that fair compensation be granted to the families, and to advise the Commission of compliance with the measures adopted within 90 days.

4. To forward this resolution to the Government of El Salvador and to the claimant.

5. To include this resolution in the Annual Report of the Commission to the General Assembly of the Organization of American States, should the information not be received from the Government of El Salvador.