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Title/Style of Cause:	Jose Maria Flores, Nicolas Alfaro, Atilio Rivas, Francisco Alfaro, Jose Felix Ayala, María Zoila Rivas, Jose Uliser Sibrian, Maria Jesus Sibrian, Jesus Zepeda, and Teresa Argueta 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:	Maria Flores v. El Sal., Case 10.252, Inter-Am. C.H.R., Report No. 28/89, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1989-1990)
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BACKGROUND:

1. On October 4, 1988, the Inter-American Commission on Human Rights received the following petition:

We wish to bring to your attention a most unfortunate tragedy that recently occurred in El Salvador, one that involves the State and its agents or officials.

In essence, the facts narrow down to the following: On September 21, 1988, soldiers in appropriate uniformed attire from the Battalion known as Jiboa, of the Fifth Infantry Brigade located in the Department of San Vicente, proceeded to detain, without a court order, and in the absence of any state of emergency, approximately 40 Salvadoran nationals engaged in farm work. They then took them to the premises of the School in the small town of San Francisco, San Sebastian in that Department of San Vicente. These detentions involved physical and psychological abuse and occurred during the morning and early afternoon hours at the homes of the victims and on various streets in the community and at the work place. Some detentions occurred during the night of the 20th of September.

On the premises of the small School, some of the individuals were held in the classroom and others were put in the sanitary facilities. Messrs. NICOLAS ALFARO, JOSE ULISES SIBRIAN, ATILIO RIVAS, and JOSE MARIA FLORES were put in the sanitary facilities.

At approximately 12:00 noon on the 21st, the soldiers called each person from a list they were carrying. If present, they blindfolded him, took him from the school proper to behind the school or to a "house" where they held a group of eight persons, had been including the four in the sanitary facilities. At that point, the soldiers inside and outside the school accused the detainees of being guerrilleros or collaborating with them.

At approximately 2:30 p.m., the soldiers started moving the group of eight persons, but strangely enough, moving them in the direction of the Caserio de Cebadia (a hamlet) and not to the city of San Sebastian,

Department of San Vicente, which is where they should have been taken since this is where the administrative and judicial authorities responsible for any investigation or punitive action are. At that time, not only were these persons blindfolded, but also they had their hands tied behind them. Approximately one half-hour after the detainees left in the direction of that hamlet, the sound of the explosion of bombs or grenades was heard followed by rifle and machine gun fire. After a brief interval, the firing noise was repeated, but this time "... for about five minutes..."

Later, the soldier on guard at the School gate was asked what time they would be removed, to which he replied: "when the bird comes," referring to a helicopter, "which will bring the order from the Fifth Brigade."

Indeed, nearing 5:30 p.m., the helicopter arrived, "descending close to the place where the shots and bombs had been heard."

When the persons held in the School were allowed to exit, the soldiers threatened them, telling them not to go toward the area where the shots and explosions had been heard because the troops were circulating there. This happened at approximately 6:30 p.m. on the afternoon of the same day, the 21st, and it was not until the following day, at approximately 6:30 a.m. in the morning when the missing persons' families, accompanied by members of the Archbishop of El Salvador and the Justice of Peace of San Sebastian of the Department of San Vicente, went to the place where their relatives had been taken, that they noticed that a massacre of the persons singled out had taken place, persons who, as already noted, were totally defenseless. It was observed at that time that there were ten victims involved. The persons who were extrajudicially executed were:

JOSE MARIA FLORES, approximately 40 years of age.

NICOLAS ALFARO, 29 years of age, accompanied, 3 children.

ATILIO RIVAS, 45 years of age, 5 children.

FRANCISCO, widower.

JOSE FELIX AYALA, 43 years of age.

MARIA ZOILA RIVAS, 37 years of age, accompanied, 5 children.

JOSE ULISER SIBRIAN, approximately 40 years of age, married, 5 children.

MARIA JESUS SIBRIAN, 27 years of age, single (Jose Uliser Sibrian's sister).

JESUS ZEPEDA, 68 years of age, José Uliser and Maria Jesus' father.

TERESA ARGUETA, 45 years of age, married to Jose Uliser.

2. On October 21, 1988, the relevant parts of the petition were forwarded to the Government of El Salvador requesting a reply within a 90-day period.

3. Subsequently, both the petitioner and several nongovernmental human rights organizations provided the Commission with further information confirming the events reported in the petition. Among these was the report on the autopsy of the victims, which established the following:

On October 5, 1988, on orders from the judge of the Court of First Instance of San Sebastian, the bodies of ten peasants assassinated on September 21, 1988, in the Canton of San Francisco, Jurisdiction of San Sebastian, San Vicente, by members of the Jiboa Battalion, were exhumed, as part of initial formalities. The Supreme Court appointed the following doctors in forensic medicine: Drs. Jose Roberto Maldonado, Oliverio Antonio Arevalo, and Andres Remberto Guzman Barahona, and Juan Arevalo Reinoso, doctor in forensic medicine from San Sebastian. All of the family members summoned by the judge of the Court of First Instance of San Sebastian were present. First, seven bodies buried in two common graves, seven meters from the chapel of the San Francisco Canton, and two buried in separate graves at the General Cemetery of San Sebastian, San Vicente, were exhumed. The tenth body was not exhumed because it was buried on a remote elevation, known as "loma San Francisquito." The corpses exhumed were the following:

1. JOSE ULISES SIBRIAN RIVAS, whose autopsy showed the following: bullet wound with point of entry in the left occipital region, where there was a noticeable powder mark, and exit point in the

temporoparietal region and on the left side of the face, with extensive destruction to and exposure of the intra-cranial tissue. Two bullet wounds, with powder mark at the level of the left subscapular region, with exit point at the level of the right iliac fossa, exposing viscera, and exit point on the left nipple. There is periumbilical echymosis. The distal phalanx of the fourth left hand finger is severed. There is echymosis of the middle third of the front right thigh. The middle third of the outer side of the thigh shows a glancing wound. Bullet wound with entry and exit points ten centimeters apart on the posterior aspect of the left thigh. Echymosis and hematoma on the front of the middle third of the left thigh. Direct cause of death, severe inter-cranial trauma.

2. JOSE MARIA FLORES, who had a type of nylon tape tied to the right wrist. The autopsy showed: bullet wound with entry point in the left occipital region, with powder mark, and exit point in the right front temporoparietal region, with destruction of bone and exposure of intra-cranial tissue; bullet wound with entry point on the lateral aspect of the middle third of the right thigh and exit point on the front upper third of the right thigh. There is a fracture to the femur; there are various noticeable echymoses on the right and left rib cage. There was a black nylon tape attached to the right wrist. The direct cause of his death was severe inter-cranial trauma.

3. JOSE FELIX ALFARO, whose autopsy showed: bullet wound with point of entry in the temporal region behind the right ear, and point of exit in the right temporoparietal region, with destruction of bone and exposure of intra-cranial tissue. Bullet wound with entry point in the right interscapular region, and exit point in the right iliac fossa where the viscera is exposed. Wound with lacerations and echymosis in the left dorsal rib cage and right and left lumbar fossa. Bullet wound with point of entry on the posterior aspect and point of exit on the lateral aspect of the distal third of the left arm. Shows powder mark at entry point. There is a bullet wound with point of entry on the anterior aspect of the upper third of the left forearm and exit point on the posterior aspect of the middle third of the same forearm. Cause of death, severe inter-cranial trauma caused by firearm.

4. JOSE ATILIO RIVAS whose autopsy showed: bullet wound with point of entry on the right side of the neck and exit point in the left occipital region. There are fractures to both wrist joints and to the left ankle. The cause of death is severe inter-cranial trauma caused by wounds inflicted by a firearm.

5. NICOLAS FLORES ALFARO who showed the following at the time of the exhumation and autopsy: bullet wound with entry point behind the left ear and exit point in the atloido-occipital region; bullet wound with entry point in the posterior axillary line, without powder mark, and exit point in the right scapular region which caused the fracture to the right shoulder, elbow, and forearm; bullet wound with entry point in the third inner aspect of the left thigh and exit point on left leg with internal destruction and exit point on the lateral aspect of the middle third of the left thigh. The cause of death was due to severe inter-cranial trauma from wounds inflicted by a firearm.

6. JESUS ZEPEDA RIVAS who showed the following at the time of the exhumation and autopsy: bullet wound with entry point on the posterior aspect of the middle third of the right arm with powder mark. There is a fracture to the humerus. The exit point is in the middle third of the right forearm, causing it to sever and fragment. Multiple wounds in the posterior region of the thorax (6) and lumbo-sacral area and lower limbs caused by fragments from an explosive device, with entry point on the back of the middle third of the right thigh, without exit point, causing a fracture to the femur. The area was examined and small fragments found. The direct cause of death was hemorrhagic shock caused by the injuries described.

7. MARIA JESUS SIBRIAN whose autopsy showed: bullet wound with entry point in the atloido-occipital region, with powder mark, and exit point in the posterior pharynx with fracture to the upper incisors; bullet wound with entry point in the region of the right side of the neck and exit point in the right axillary pectoral region, with widespread destruction of soft tissue; glancing bullet wound, soft tissue on the right anterior superior iliac process. The direct cause of death was caused by severe inter-cranial damage.

8. MARIA ZOILA RIVAS SIBRIAN whose autopsy showed: two bullets with entry point in the right temporoparietal region, four centimeters apart, with power mark, and exit point in the left temporoparietal region with extensive damage to bones and exposure of intra-cranial tissue; bullet wound

with entry point on the back of the lower third of the right thigh and exit point ten centimeters below. The cause of death was severe inter-cranial trauma cause by injury described.

9. TERESA DE JESUS ARGUETA whose autopsy showed: two bullet wounds with point of entry in left region, one of which bears a powder mark, and point of exit in right parasternal region and right fifth intercostal space ribs. They are ten centimeters apart. The other wound has its exit point in the right middle axillary region; bullet wound with entry point in the right naso-labial region and exit point on the right side of the neck. The cause of death was hemorrhagic shock caused by the injuries described.

These examinations show:

- a. that all of the individuals were killed by a heavy-caliber firearm (possibly M-16) fired at close range to the back of the head;
- b. it is possible that they were ordered to lie down on the ground face down, and were then shot; and,
- c. the forensic medical report bears out the investigation by the Oficina de Tutela Legal (Office for Legal Protection) of the Archbishop of San Salvador.

4. Not having received a reply, and since January 27, 1989, the statutory deadline, had expired, the IACHR renewed its request for information to the Government of El Salvador, granting it an additional 30-day period for the purpose.

5. The extended deadline expired, once again without reply from the Government of El Salvador, and minus a request for an extension of the deadline. Accordingly, on June 19, 1989, the Government of El Salvador was asked once again to furnish, within an additional 30-day period, the pertinent information bearing on the case, and informed that failure to reply in accordance with Article 42 of the Regulations, would incur a presumption, by the Commission, of veracity of the facts reported in the petition, in light of the substantial information confirming their occurrence.

6. The extended deadline granted to the Government of El Salvador has long passed and until now, no reply of any kind nor any request for an additional deadline for the purposes at hand has been forthcoming from the Government of El Salvador.

7. Subsequently, in March of 1989, the IACHR learned, through various sources, of the public statement made by General Eugenio Vides Casanova, Minister of Defense of El Salvador, who in referring to the events, recognized the responsibility of the Armed Forces of El Salvador in the assassination of the peasants.

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, clearly, the petitioner have 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 are not applicable to this case;

4. That the claim is not pending any other international settlement procedure and, therefore, is not barred by 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, is not barred by 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 steps have been taken to obtain from the Government of El Salvador information on the assassination of the persons mentioned and the legal and statutory procedures stipulated in the Convention and the Regulations of the Commission have been exhausted;

7. That furthermore, in the present procedure all of the pertinent applicable requirements established in Article 48 of the American Convention on Human Rights and Articles 34 et. seq. of the Regulations of the Commission have been observed and met;

8. That despite repeated requests, the Government of El Salvador has not once replied to the requests for information addressed to it by the Commission, neither has it taken any action to negotiate additional deadlines to comply with this request;

9. That in light of the absence of an investigation, due heed and an adequate response, the provisions of Article 42 of the Regulations of the Commission are therefore applicable:

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 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

10. That Article 42 of the aforesaid Regulations authorizes the Commission to presume the facts reported in the petition to be true as long as other evidence does not lead to a different conclusion, which does not occur in this case;

11. That, on the contrary, in March of 1989, in public statements made known to the press, the Minister of Defense of El Salvador, General Eugenio Vides Casanova admitted the responsibility of the Armed Forces of El Salvador in the death of ten peasants from the town of San Francisco, San Sebastian, of the Department of San Vicente, and expressed the view that the perpetrators should be brought to justice;

12. That despite the time that has elapsed since the date of the last request for information, the Commission has received no information regarding prosecution of any of those responsible for these events nor of any sanctions having been imposed.

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 torture, and extrajudicial summary execution of Jose Maria Flores, Nicolas Alfaro, Atilio Rivas, Francisco Alfaro, Jose Felix Ayala, María Zoila Rivas, Jose Uliser Sibrian, Maria Jesus Sibrian, Jesus Zepeda, and Teresa Argueta, the Government of El Salvador violated Articles 4 (right to life), 5 (humane treatment), 7 (personal liberty), and 8 (right to a fair trial) as well as Article 1 (1) of the American Convention on Human Rights.

2. To recommend to the Government of El Salvador that it order a thorough investigation into the serious facts reported in this petition in order to bring to light the responsibility of the members of its Armed Forces who participated directly or indirectly in these events so that they may be punished

according to the law, that fair compensation be granted to the families, and to advise the Commission of compliance with the measures adopted within a period of 90 days.

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

4. 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.