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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 57/90; Case No. 9946
Session:	Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause:	Nicolas Agustin Cruz v. Guatemala
Doc. Type:	Report
Decided by:	Chairman: Patrick L. Robinson; First Vice Chairman: Marco Tulio Bruni Celli; Second Vice Chairman: Oscar Lujan Fappiano; Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares Lanza; Michael Reisman
Dated:	22 February 1991
Citation:	Cruz v. Guat., Case 9946, Inter-Am. C.H.R., Report No. 57/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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## BACKGROUND:

1. On March 17, 1987, the Inter-American Commission on Human Rights received the following complaint:

Nicolas Agustin Cruz, Guatemalan citizen, was illegally and arbitrarily detained by security forces who took him out of his house located in Municipality of San Andres, Villa Seca, Department of Retalhuleu, on July 9, 1986, since which date their whereabouts are unknown despite many efforts made by their family members.

At this time, he is considered disappeared.

Writs of habeas corpus have been filed unsuccessfully on his behalf with the head of the judicial branch.

2. In a letter dated April 24, 1987, the pertinent parts of this complaint were transmitted to the Government of Guatemala. The Government was requested to provide pertinent information that would make it possible to determine whether the remedies of domestic jurisdiction had been exhausted. The Government was given 90 days to reply to the Commission's request.

3. No reply was received and the time period lapsed despite informal efforts made to officials of the Guatemalan Mission to the OAS and the Advisory Commission of the President of the Republic (COPADEH). Therefore, the Inter-American Commission on Human Rights reiterated, on August 17, 1987, March 4, 1988, and February 17, 1989, its request for information to the Government of Guatemala.

4. The Commission received no response to any of its requests and, therefore, on July 6, 1990, the Commission sent another letter to the Government of Guatemala reiterating its request for information and warning that if such information were not received within a period of 30 days it would consider the application of Article 42 of its Regulations, which authorizes it to presume as true the allegations contained in the complaint, as long as other evidence does not lead to a different conclusion.

5. In addition, the Commission has undertaken a number of direct efforts to resolve this case, without success, with the President's Advisory Commission on Human Rights (COPADEH) in July of 1989 and February 1990, as well as with members of the Permanent Mission of Guatemala to the OAS in Washington, whose officials in April, 1989 and again in May, 1990 appeared at the Commission's headquarters to discuss pending cases in which the IACHR had protested the Government of Guatemala's lack of cooperation. On this last occasion the Government was again provided with copies of the relevant correspondence on this case. On an earlier occasion the Commission had sent the same files to the Foreign Ministry by facsimile.

CONSIDERING:

1. That the petition meets the formal requirements of admissibility contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.
2. That in this case it is clear that the petitioner has not received effective protection from the courts and thus the requirements relating to the exhaustion of domestic remedies do not apply.
3. That the friendly settlement procedure to which Articles 48 f) and 45 of the American Convention and the Regulations of the Commission, respectively, do not apply to this case.
4. That the petition is not pending before any other comparable international body nor is it a duplication of an earlier petition already examined by the Commission.
5. That all efforts have been made to obtain adequate information from the Government of Guatemala in relation to the disappearance of the above-mentioned person and all the legal and regulatory provisions, as established in the Convention and Regulations of the Commission, have been exhausted.
6. Having provided no response, the Government of Guatemala has failed to fulfill its international obligation to provide information to the Commission within a reasonable time period as provided in Article 48 of the American Convention.
7. That the General Assembly of the Organization of American States declared in Resolution 666 (XIII-0/83) and Resolution 742 (XIV-0/84) that "the forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity."
8. That the Commission has not found any information that allows it to reach a different conclusion.
9. That the Commission, in its report to the General Assembly for 1987, discussed the excesses that were being committed by means of the practice of kidnapping and forced disappearance of persons, of which the statistical information provided by the National Police of Guatemala was incontrovertible proof.
10. That Article 42 of the Commission's Regulations establishes the following:

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.

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

1. To presume true the facts reported in the petition relating to the illegal detention and the later disappearance of Nicolas Agustin Cruz by security forces of the Government of Guatemala.
2. To declare that the Government of Guatemala has failed to fulfill its obligations to respect the human rights and guarantees contemplated in Article 1 of the American Convention on Human Rights to which Guatemala is a party.
3. To declare that the Government of Guatemala has violated Articles 4 (right to life) and 7 (right to personal liberty).
4. To recommend to the Government of Guatemala that it undertake a full and impartial investigation to determine the responsibility for the crimes denounced and, in accordance with Guatemalan law, punish those responsible for them and pay just compensation to the family members of the victim.
5. To communicate this report to the Government of Guatemala and to the petitioner with the request that they do not publish it.
6. If within a period of 90 days, the Government of Guatemala fails to implement the recommendations contained in operative paragraph number 4 above, the Commission shall publish this report in its Annual Report to the General Assembly of the Organization of American States pursuant to Article 63 g. of its Regulations.