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Title/Style of Cause: William Fernandez Rivera, Raquel Fernandez Rivera and Julio Ernesto Fuentes Perez v. El Salvador
Doc. Type: Report
Decided by: Chairman: Marco Tulio Bruni Celli;
First Vice Chairman: Oscar Luján Fappiano;
Second Vice Chairman: Michael Reisman;
Members: Oliver H. Jackman; Leo Valladares Lanza; Patrick L. Robinson;
Alvaro Tirado Mejía.
Dated: 04 February 1992
Citation: Fernandez Rivera v. El Sal., Cases 10.227 and 10.333, Inter-Am. C.H.R., Report No. 8/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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HAVING SEEN:

1. The petitions received by the Inter-American Commission on Human Rights, dated July 15, 1988 and May 1, 1989, to the following effect:

A. William Fernandez Rivera and Raquel Fernandez Rivera:

William Fernandez Rivera, 24, single, and a journeyman by trade, with domicile in the Animas district of the jurisdiction of San Martin, in the Department of San Salvador, was taken April 25, 1988, at 4:30 p.m. by armed men in civilian attire who claimed to be members of the Armed Force. He was handcuffed and, with his sister Raquel Fernandez Rivera (who was pregnant at the time), was taken to a red, dual-cabin pick-up that was on the road that goes to San Jose Guayabal. One witness saw that there were uniformed soldiers on the same road, presumably from the Salvadoran Air Force (FAS). According to one witness, they were put into the vehicle, which then headed in the direction of the FAS. The witness stopped a private vehicle and followed the abductors. When the latter realized they were being followed, they made a sign to them to stop, so that the witness stopped following them. At the FAS they deny these arrests and thus far the whereabouts of these two people is unknown.

That same day (April 25, 1988), a soldier on guard said that a few minutes earlier, some detainees had been brought into the facility, but he did not give names.

About four days later, when the witness returned to the FAS to inquire, a soldier on guard told him that the detainees were there, but that as long as the investigation of the death of a corporal by the name of Pastor continued, they would not be released.

Later, three bodies were found. The description of one of the bodies of the men fit that of Mr. William Fernandez Rivera. Therefore, an exhumation request was filed with the Lower Court Judge of Ilobasco.

The date set for the exhumation was June 6, 1988. However, it could not be conducted because a military operation was in progress in the area.

B. Julio Ernesto Fuentes Perez

1. GENERALES

1.1 Name: Julio Ernesto Fuentes Perez

1.2 Age: 10 years

1.3 Profession or trade: student

1.4 Marital status: single

1.5 Domicile: Animas District, jurisdiction of San Martin, Department of San Salvador

1.6 Nationality: Salvadoran

2. A DESCRIPTION OF THE EVENTS

2.1 Date: April 25, 1988

2.2 Place of capture: Highway leading to San Jose Guayabal, some 100 meters from his house in the Animas district, jurisdiction of San Martin, Department of San Salvador

2.3 Time of capture: 1:30 p.m.

2.4 Perpetrators: armed men in civilian clothes

2.5 Circumstances:

2.5.1 The boy was headed for the farmland where his grandfather was tilling the soil.

2.5.2 Some 100 meters from his house, on the road leading to San Jose Guayabal, a red, private pick-up with tinted glass stopped.

2.5.3 Armed men in civilian dress got out and seized the boy, but not the boy who was with him.

2.5.4 There was a land patrol of Salvadoran Air Force troops in the area that day.

2.5.5 The FAS troopers saw the boy taken and spoke with his abductors, but the later paid no attention to their suggestions that they not detain him.

2.5.6 When the family learned of his capture, they went to the Headquarters of the FAS, where they were told that he had been taken into custody; the boy, however, was not turned over to them. They told them to come back the next day.

2.5.7 On April 26, 1988, they told relatives that they had not taken the boy.

2.5.8 His whereabouts is still unknown.

2.6 Witness: the boy who was with him.

3. LEGAL RECOURSES IMMEDIATELY INVOKED

A petition of habeas corpus was filed, but thus far has produced no results.

4. ADDITIONAL COMMENTS

Inquiries concerning the boy were made at the FAS, the Treasury Police, the First Infantry Brigade, the Headquarters of the Belloso Battalion, Military Detachment N° 5 and at the Children's Shelter, without results.

On the day this happened, five other people were taken in the same area: Raquel Fernandez Rivera, William Fernandez Rivera, Rosario Hernandez, a single woman approximately 27 years old and a domestic by trade; Transito Rosales Cornejo (male), single, 17 years old. All were from the Animas district, jurisdiction of San Martin in the department of San Salvador. The other person taken was Jose Carlos Rodriguez Hernandez, a journeyman 25 years of age, single, born in San Jose Guayabal in the department of Cuscatlan.

The next day, April 26, 1988, three bodies were found in the San Antonio district of the Cinquera jurisdiction in the department of Cabacas.

According to witnesses--residents of the town of Copapayo, in the San Antonio district of the jurisdiction of Cinquera, department of Cabacas--at around one in the morning on April 26, a helicopter dropped something from a height of approximately 200 meters. When they went there at 7:00 a.m. on April 26, 1988, three bodies were found:

a) a boy approximately 11 years old, with dark skin and dressed in blue shorts with white trim. His body showed signs of torture and the head had been smashed.

b) three hundred meters away, two more bodies were found; they were men approximately 30 years

old, and showed signs of having been tortured.

The three bodies were given a very hurried burial right there, because of the fighting in the area. The description of the boy's body fits that of Julio Ernesto Fuentes Perez, so that the Lower Court Judge of Ilobasco was asked to have the bodies exhumed.

The date set for the exhumation was June 6, 1988. It could not be conducted because a military operation was in progress in the area at that time.

2. In notes dated August 25, 1988, and May 18, 1989, the Commission began to process these cases and requested the Government of El Salvador to supply information pertinent to the facts reported in those communications and any other information that would make it possible to ascertain whether the remedies under domestic law had been exhausted in these cases; the Government was given 90 days in which to respond to that request.

3. On July 18, 1989, the Government of El Salvador reported the following in connection with case 10.227, involving Jose William Fernandez Rivera and Raquel Fernandez Rivera:

Jose William Fernandez Rivera and Raquel Fernandez Rivera. On April 25, 1988, six heavily armed men in civilian dress came to the home of these two people, located in the Las Animas district of the jurisdiction of San Martin, in the Department of San Salvador. The men, whose identity is not known, asked for the Fernandez Riveras, saying "that they had to go to Guazapa, since the 'compas' had sent them to pick them up." Later, Miss Raquel Fernandez Rivera, who had been out, arrived home. They told them they were members of the armed force; they then proceeded to arrest them, taking them to a turn-off known as "El Jiote," where they had a white pick-up truck parked. They put them in the pick-up and headed for San Salvador. The Human Rights Commission has made inquiries with all the security forces, detachments, battalions, etc, but has found nothing concerning their whereabouts.

4. On September 28, 1989, the Government of El Salvador sent a reply concerning the case of the child Julio Ernesto Fuentes Perez, to the following effect:

The Human Rights Commission has sent representatives to the Central Headquarters of the Air Force of El Salvador, the Central Headquarters of the National Guard, of the National Police and of the Treasury Police; it has also gone to the headquarters of the First Infantry Brigade, Military Detachment No. 1 and the Chalatenango National Police Station, and the "Ramon Beloso" Immediate Response Battalion. Everywhere it went letters were obtained stating that he was not taken by troops of the Armed Forces of El Salvador.

5. On October 11, 1989, the petitioner sent observations on the Government's response to the two cases (10.227 and 10.333); those observations were sent to the Government on January 29, 1990, as follows:

1. In recent interviews with relatives, the grandparents of Julio Ernesto Fuentes Perez (10 years old) said they saw a white pick-up as they were leaving Salvadoran Air Force (FAS) Headquarters on the day of his capture (April 25, 1988). The grandparents had gone there to inquire about the people who had been picked up. When they saw the pick-up it was parked outside the facilities, waiting for someone to open the gate so that it could enter. In the back of the pick-up, which was uncovered, the witnesses had a clear view of William Fernandez Rivera, Raquel Fernandez Rivera, Transito Rosales Cornejo and Jose Carlos Rodriguez Henriquez, who were blindfolded. The vehicle carrying these people entered the Headquarters facilities. There, once inside, they also identified the red pick-up in which the young Julio Ernesto Fuentes Perez had been taken away. It was parked inside the FAS facility. Nevertheless, the military authorities denied that the vehicle was the property of the army. That same red vehicle went back to the Las Animas district some hours later to pick up some FAS soldiers who had stayed in the area.

2. Relatives of the victims went to file a complaint before the Justice of the Peace of Cinquera, Department of Cabacas, which is in the city of Ilobasco in that Department. They had learned that in the San Antonio district, jurisdiction of Cinquera, three bodies had been thrown out of an FAS helicopter high in the air. The description matched that of three of the people who had been captured. To date, no type of judicial inquiry has been carried out and the petitions of habeas corpus have been fruitless.

3. The government Human Rights Commission has confined its investigation to a review of the arrest logs of the security forces and other branches of the army. From the outset, the security forces and the army have denied any part in the case. Even though the family knew when the victims were brought into the facility, the FAS has flatly denied any role.

4. The response is not a serious one and is not supported by a genuine investigation. It seems to us illogical that "armed men in civilian attire," sent out by the "compas," as the Government of El Salvador says, would be able to move about freely with their victims and even "chat" with members of an FAS reinforcement. This version is neither moral nor logically acceptable.

We are therefore inviting the Government of El Salvador to refute the information that we are contributing. It would be wise to clear up the contradictions and from there ascertain the whereabouts of the victims.

6. On September 19, 1990, the petitioner sent additional information in connection with the two cases; that information was forwarded to the Government of El Salvador on November 9, 1990. The pertinent parts are as follows:

In regard to the disappearance of the minor Julio Ernesto Fuentes Perez, the complaint filed the following observations:

According to the government Human Rights Commission, the Headquarters of the Salvadoran Air Force (FAS) did not acknowledge to this arrest. This is very much at odds with the information that relatives gave to the Jewish-Christian Aid Society. The additional data, expanding upon the testimony of the victim's relatives, is as follows:

1. The grandparents went immediately to the FAS Headquarters. While waiting in the information office, a military man approached them. He was dressed in civilian clothes and wore face make-up, as did the men who had taken the boy. He assured them that he had the boy in custody but that he could not turn him over to them that very day, that the child was there at headquarters, and they should not worry because he would be turned over the next day. The child's grandparents swear that while they were making their inquiries at the FAS headquarters, they saw a white pick-up come in. It was driven by men in civilian attire and in it were four of the disappeared: William and Raquel Fernandez Rivera, Jose Carlos Rodriguez Hernandez and Transito Rosales Cornejo, whom they knew because they were from the same neighborhood.

2. When they returned to the headquarters the next day, the boy's grandparents and relatives of five other neighbors who had been picked up and disappeared that same day, identified the red pick-up in which Julio Ernesto had been picked up. Some hours after the boy had been taken, the same red vehicle was in the Las Animas district, jurisdiction of San Martin, department of San Salvador, to pick up some FAS soldiers who had been in the area.

That vehicle was parked at FAS Headquarters, but the military authorities denied that it was army property. They also denied having taken the disappeared.

3. On April 26, 1988, three bodies were discovered in the San Antonio district, jurisdiction of Cinquera, Department of Cabacas. According to witnesses, at around 1:00 a.m. that morning (the day after the boy's capture) the body of a boy, whose physical description and clothing matched that of Julio Ernesto, was thrown from a helicopter approximately 300 meters in the air. The boy's body was discovered at 7:00 a.m. It bore evidence of torture and was buried by people who live in the area. The bodies of two males were also discovered in the same vicinity. With this, the relatives filed a complaint with the Court of First Instance of the city of Ilobasco in the department of Cabacas. The proceedings instituted to examine the bodies were never conducted and the judicial inquiries have made no progress.

whatever.

The foregoing shows that a serious investigation has never been conducted. It is illogical to contend that armed men in civilian dress could have moved about with their victims amid the show of FAS troops who were conducting land patrols in the area that day.

The Government version is unsatisfactory. In response to such a serious event, the Government ought not to be satisfied with a superficial inquiry at Armed Force Headquarters by delegates of its Human Rights Commission. The original communication clearly stated that the Lower Court of Ilobasco had ordered the case investigated and that the men who took the boy had passed without problem through a reinforcement of soldiers from the Salvadoran Air Force and had even chatted with them. The Government takes none of this into account.

The obligation of the State to protect the victims of human rights violations is not satisfied with the inquiries that government human rights commissions may or may not conduct. The State, through its judicial branch, must act much more decisively, especially in cases such as this, where we find ourselves facing one of the most despicable violations of human rights.

Given the seriousness of the situation that concerns us and because the Government's response adds no useful information relevant to the substance of the case, we are requesting that Article 42 of the Regulations of the Commission be applied with regard to the disappearance of Julio Ernesto Fuentes Perez, Raquel and William Fernandez Rivera.

7. On January 17, 1991, the Commission sent another communication to the Government of El Salvador wherein it repeated its request for information on the investigations conducted into these cases and its observations on the notes sent by the petitioner; thus far, despite the numerous pieces of evidence and testimony sent, no reply from the Government has been received.

8. At its 79th session, the Commission adopted Report N° 17/91, which was dispatched to the Government of El Salvador so that it might formulate whatever observations it deemed appropriate, within three months of the date of dispatch. The report indicated that if the case was not settled by the Government, or submitted by it to the Court, the Commission would decide whether to publish the report.

WHEREAS:

1. The Commission is competent to hear the present case, as it involves violations of human rights recognized in the American Convention on Human Rights--Article 4 on the right to life, Article 5 on the right of human treatment, Article 7 on the right to personal liberty, and Article 25 on the right to judicial protection--as provided under Article 44 of that Convention, of which El Salvador is a State Party.

2. The petitions satisfy the formal requirements for admissibility as stipulated in the American Convention on Human Rights and in the Regulations of the Commission.

3. The petitions are not pending action in any other international arrangement and are not a restatement of a petition already examined by the Commission.

4. In the instant case, it is obvious that the aggrieved parties were unable to secure effective protection from the organs having jurisdiction, as is evident from the unsuccessful results of the petitions of habeas corpus filed with the Supreme Court and the inquiries made at the FAS, the Treasury Police, at the First Infantry Brigade, at the Headquarters of the Belloso Battalion Military Detachment No. 5, among others, which produced no positive results. Hence, the requirements on exhaustion of the remedies under domestic law, contained in Article 46 of the Convention, do not apply.

5. The method used in the abduction and forced disappearance of the child Julio Ernesto Fuentes Perez and Mr. William Fernandez Rivera and Mrs. Raquel Fernandez Rivera, the judicial system's lack of

effectiveness in protecting and safeguarding their rights, the inability of the Salvadoran Armed Forces' own organs to resolve situations such as the one denounced and the frequency with which forced disappearances occur in El Salvador, as the Inter-American Commission on Human Rights has repeatedly established, lead to the conclusion that the Government of that country, through its security forces, is engaging in the practice of forced disappearances, since events such as those denounced cannot be isolated incidents attributable to the excesses of individuals, but rather a modus operandi used by the institutions concerned.

6. Despite the time that has passed since the child Fuentes Perez and Mr. and Mrs. Fernandez Rivera were taken into custody and the repeated efforts made by the families of the victims and by the Commission, the Government has not supplied a satisfactory response to the facts in the instant cases.

7. The Government has not ascertained whether the bodies that appeared in the San Antonio district, jurisdiction of Cinquera, Department of Cabacas, which witnesses said were thrown out of a helicopter from an altitude of close to 300 meters, are in fact those of the individuals whose disappearance is reported in the instant cases, despite repeated inquiries by the families with the corresponding judicial authorities. This demonstrates the Salvadoran investigative organs' disinterest in taking the necessary measures; now that so much time has passed, they will be costly to conduct and of no real effect, all of which helps to hide the identity of the victims, a critical element in the forced disappearance of persons.

8. The response sent by the Government of El Salvador on September 28, 1989, which states only that information has been received concerning the minor Fuentes Perez to the effect that the boy "has not been taken by troops of the Armed Forces of El Salvador," is a serious indication of negligence in the investigation into events as serious as those denounced, in the face of the evidence presented and the existing testimony.

9. The Commission is of the view that for the Salvadoran Air Force to abduct and torture a ten year old child and then throw him from a helicopter shows a moral degeneracy utterly unacceptable in an armed institution such as the one blamed for the heinous act in question here.

10. The Commission has repeatedly expressed its categorical repudiation of the phenomenon of forced disappearance, and in various documents has stated that:

... This practice is cruel and inhuman (...) forced disappearance not only constitutes an arbitrary deprivation of liberty, but also a very severe threat to the personal integrity, security and the very life of the victim.[FN1]

[FN1] Cf. Annual Reports 1978, 1980-81, 1982-83, 1985-86, 1986-87.

11. For its part, the General Assembly of the Organization of American States has adopted numerous resolutions wherein it has underscored the fact that countries where forced disappearances have occurred must put an immediate end to this practice, and has urged the governments to take the measures necessary to ascertain the situation of these people. The General Assembly has also declared that the forced disappearance of persons in the Americas is a crime against humanity.[FN2]

[FN2] Cf. AG/RES. 443 (IX-0/79), AG/RES. 510 (X-0/80), AG.RES. 543 (XI-0/81), AG.RES. 618 (XII-0/82), AG/RES. 666 (XIII-0/83), and AG/RES. 742 (XIV-0/84).

12. In a judgment of July 29, 1988, in the Velasquez Rodriguez case, the Inter-American Court of Human Rights stated the following:

The practice of disappearances, in addition to directly violating many provisions of the Convention (...), constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention (...). [FN3]

[FN3] Cf. Inter-American Court of Human Rights, Velasquez Rodriguez, Judgment of July 29, 1988, Series C, No. 4, paragraph 158.

13. The instant cases are compounded by the fact that one of the victims is a minor (Julio Ernesto Fuentes Perez) and another was pregnant at the time she was taken into custody (Raquel Fernandez Rivera).

14. Since the friendly settlement procedure provided for in Article 48.1.f of the American Convention does not apply because of the nature of the facts denounced, the Commission must comply with Article 50 paragraph 1 of the Convention and so issue its conclusions and recommendations on the petition submitted to it for consideration.

15. That the Government of El Salvador has not submitted observations on Report N° 17/91.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of El Salvador is responsible for the violation of the rights to life, humane treatment, personal liberty and judicial protection (Articles 4, 5, 7, and 25 of the Convention) of the child Julio Ernesto Fuentes Perez and Mr. William Fernandez Rivera and Mrs. Raquel Fernandez Rivera, based on the communications received at the Commission on July 15, 1988, and May 1, 1989, through the acts of its agents, who abducted, tortured, and killed these three people.

2. To declare that the Government of El Salvador has failed to comply with its obligations under Article 1 of the American Convention on Human Rights, to respect human rights and fundamental guarantees.

3. To make the following recommendations to the Government of El Salvador, based on Article 50.3 of the American Convention and Article 47 of the Regulations of the Commission:

a. That it conduct a thorough, swift and impartial investigation into the facts denounced in the hope of finding the child Julio Ernesto Fuentes Perez and Mr. William Fernandez Rivera and Mrs. Raquel Fernandez Rivera alive, and to identify those responsible for their disappearance and bring them to trial, so that they may receive the punishment that such grave conduct warrants.

b. That it adopt the measures necessary to avoid similar acts from being committed hereinafter.

c. That it make reparations for the consequences of the situation created by the transgression of the aforementioned rights and pay a fair compensation to the injured parties.

4. Request the Government of El Salvador to inform the Commission regarding the measures it is adopting in the present case, in accordance with the recommendations formulated in paragraph 3 of the

operative part of this report.

5. Publish this report by including it in the Annual Report to be presented to the General Assembly, in accordance with Article 48 of the Regulations of the Commission; since the Government of El Salvador did not inform the Commission of the measures it has taken to remedy the situation, within the period prescribed in Report N° 17/91.