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Institution: Inter-American Commission on Human Rights
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Session: Eighty-First (3 – 14 February 1992)
Title/Style of Cause: Mesias Elias Hernandez Anzora v. El Salvador
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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: Hernandez Anzora v. El Sal., Case 10.323, Inter-Am. C.H.R., Report No. 12/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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HAVING SEEN:

1. The petition received by the Inter-American Commission on Human Rights, dated April 26, 1989, whereby:

On January 6, 1989, Mesias Elias Hernandez Anzora, a day laborer 31 years old, was taken at his home in the Las Delicias district, jurisdiction of San Martin, department of San Salvador, El Salvador. Mr. Hernandez Anzora has since disappeared. He was taken by the San Martin Civil Defense, working jointly with the Salvadoran Air Force (Fuerza Aerea Salvadoreca - FAS).

The Commandant of the Civil Defense and members of the FAS wearing the insignia of Parachute Commandos, came to his house at 9:00 p.m. on January 6. They seized Mr. Hernandez, tied his hands behind his back, blindfolded him and took him away in his stocking feet. The soldiers searched the house, tearing holes in the floor. They said they were looking for a rifle, but found nothing. It is worth noting that this was not the first time that these forces took Mr. Hernandez. On August 28, 1988, he was apprehended and transferred from the San Martin Civil Defense to the FAS. Again, he was falsely accused of possessing a firearm and of being a guerrilla collaborator. Five days later he was released.

Mr. Hernandez was taken to the civil defense and then moved to the Long-Range Reconnaissance Patrol (PRAL) of the FAS. However, the FAS denies his capture and arrest.

After being taken, Civil Defense soldiers threatened Mrs. Hernandez, telling her that if she reported the incident they would blow her up and kill her brothers. Despite the danger, Mrs. Hernandez has reported the case to the press, the Justice of the Peace and the Supreme Court of Justice.

To date, the Commandant of the Civil Defense and the Salvadoran Air Force both deny apprehending the victim. A petition of habeas corpus was filed and the case was reported to the Justice of the Peace, but nothing has been established.

The remedies under domestic law are not expected to produce any results in this case; since this disappearance was carried out by military troops, strong and swift action is needed to ascertain Mr. Hernandez' whereabouts and to protect his physical safety if he is still alive.

In the face of this obvious violation of various Articles of the American Convention, including articles 1, 5, 7, 8 and 25, the inefficacy of internal remedies and the urgency and very serious nature of these cases of disappearance, we respectfully request that the Commission take the measures provided for in its Statute and Regulations to avoid irreparable harm to the persons of Mesias Elias Hernandez Anzora and his lifelong companion Ana Julia Hernandez, including the following measures:

1. To receive this case and ask the Government for a swift response (Regulations, Article 34.2).
2. To request that the Government of El Salvador adopt concrete, immediate measures to ascertain the whereabouts of Mr. Hernandez and to ensure his physical and emotional safety.
3. To request the Government to guarantee the safety of Mrs. Hernandez, as a witness to the violation and as a relative of the victim.
4. To establish responsibility and punish those responsible for this crime, compensating the victims and/or their next-of-kin.

2. Through a note dated May 2, 1989, the Commission began its processing of the case and requested the Government of El Salvador to supply the pertinent information on the facts denounced in that communication and any other information that would show whether the remedies under domestic law had been exhausted in the case in question; the Commission informed the Government that it had 90 days in which to reply.

3. That on February 12, 1990, the Commission again asked the Government of El Salvador for information on the investigations being conducted into the instant case, and set a 30-day period for the Government's response.

4. On May 7, 1990, the Government of El Salvador replied by way of the (government) Human Rights Commission, reporting that "it has no information at all" on this case.

5. That in communication dated November 9, 1990, the Commission asked the Government of El Salvador to forward its observations, but has yet to receive any reply.

6. At its 79th session, the Commission adopted Report N° 21/91, which was dispatched to the Government of El Salvador so that it might formulate whatever observations its 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.

CONSIDERING:

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

2. That the petition satisfies the formal requirements for admissibility, as set forth in the American Convention on Human Rights and in the Regulations of the Commission.

3. That the subject of the communication is not pending settlement in another international proceeding and is not a restatement of a previous communication already examined by the Commission.

4. That in the instant case, it is obvious that the petitioner has not been able to secure effective protection from those organs having jurisdiction, as reflected by the fact that neither the petition of habeas corpus filed nor the complaint filed with the Justice of the Peace produced any results; therefore, the requirements as regards exhaustion of the remedies under domestic law, contained in Article 46 of the

Convention, do not apply.

5. That the instant case is compounded by the threats that have made to the companion of the victim, Mrs. Ana Julia Hernandez, because of her efforts to find Mr. Hernandez Anzora.

6. That in spite of the amount of time that has passed and the Commission's repeated overtures, the Government of El Salvador has not responded to the facts in the instant case. In effect, the content of the note sent, wherein the (government) Human Rights Commission states that it has no knowledge of the whereabouts of Mr. Hernandez Anzora, is an indication of grave negligence on the part of El Salvador's investigative organs in the investigation of such serious events as those denounced.

7. The method used in the abduction and forced disappearance of Mr. Hernandez Anzora, the judicial system's lack of effectiveness in protecting and safeguarding his 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.

8. That by not responding, the Government has failed to comply with its international obligation to supply the Commission with information within a reasonable time period, as provided in Article 48 of the Convention.

9. 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.

10. 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 situations 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).

11. 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.

12. 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 acts 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.

13. That the Government of El Salvador has not submitted observations on Report N° 21/91.

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, 7 and 25 of the Convention) of Mr. Mesias Elias Hernandez Anzora, who disappeared after being seized at La Delicias canton, San Martin, San Salvador, El Salvador, by soldiers of the Defensa Civil de San Martin and Salvadoran Air Force (FAS), according to the communication received by the Commission on April 26, 1989.

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. To conduct a thorough, rapid and impartial investigation into the facts denounced, in order to bring those responsible to justice so that they may receive the punishments warranted by such grave conduct.

b. To adopt the necessary measures to prevent such crimes in the future.

c. To make reparations for the consequences of the violation of said rights and to pay the next-of-kin a just indemnity.

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° 21/91.