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Title/Style of Cause: Jose Javier Santamaria Medina, Jose Luis Cornejo and Angel de Jesus Santamaria Raymundo 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: Santamaria Medina v. El Sal., Case 10.151, Inter-Am. C.H.R., Report No. 5/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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HAVING SEEN:

1. The complaint received by the Inter American Commission on Human Rights, dated February 5, 1988, to the effect that:

On February 1, 1988, the bodies of Jose Javier Santamaria Medina, 16 years old and a journeyman, Jose Luis Cornejo, and Angel de Jesus Santamaria Raymundo, 27, appeared at the Puerta del Diablo, Texacuangos, San Salvador. The three lived in San Jose Guayabal and were seized near their homes (street to Melendez district) in Cuscatlan at 11:00 p.m. on January 31, by a group of men, some in civil dress and others in Army uniform. They were put in a jeep with tinted glass and taken to some unknown destination.

2. Through a note dated February 8, 1988, the Commission began to process the case and asked the Government of El Salvador to furnish the pertinent information on the facts reported in that communication and any other information that would make it possible to establish whether the remedies under domestic law had been exhausted in the case addressed in the petition; the Government was given 90 days in which to respond to that request.

3. On April 14, 1988, the Government of El Salvador sent a note of reply, stating that:

The inquiries made thus far indicate that members of the Armed Forces may have been involved, so that this institution has so notified the Joint Chiefs of Staff of the Army and the Criminal Investigations Commission. The highest ranking military authorities have ordered a thorough investigation, and the findings will be sent to us as soon as they are available, whereupon we shall so advise the Foreign Ministry.

4. On July 14, 1988, the Commission asked the Government of El Salvador to send information on the investigations being conducted into the instant case, giving it 30 days in which to reply.

5. On October 20, 1988, the petitioner sent observations on the Government reply, as follows:

The three people, farmers and laborers, were at the festival of San Jose Guayabal in the Department of Cuscatlan on January 31, 1988. As they were returning home with their families and friends, they were stopped by individuals carrying rifles. The later took the three men away in a jeep with a green top. Two of the captors were dressed in the uniform of soldiers; the other were in civilian clothes. Jose Luis Cornejo, Miguel Angel Santamaria, and Jose Javier Santamaria were violently forced into a vehicle in the presence of their families and friends. The witnesses recognized their abductors as members of the Infantry Brigade. A tourist discovered the three men's bodies on February 1, 1988, at a place called "La Puerta del Diablo" (the Devil's Door), a place used by the death squadrons to abandon the bodies of their victims. The relatives of the victims have reported that the three men were executed with M 16 rifles, the official weapon of government agencies; their bodies showed signs of torture.

6. On November 6, 1988, the Government of El Salvador informed the Commission that:

The discovery was made on February 1, 1988, at the tourist attraction known as La Puerta del Diablo. The CDH has these inquiries on record under No. 1711 sm 88, on the murder of three unknown males, whose names match those cited above. The most recent inquiries conducted in connection with this case are as follows: The Judge of the Third Criminal Court of this city sent a letter to the Ministry of Defense asking for a list of the persons who were patrolling the area on the day the three men who turned up dead were kidnapped. The First Infantry Brigade answered the judge's letter by sending a list of approximately 300 persons, giving the names of the soldiers who were in the area on the day the three men disappeared. The witnesses suggested that an unknown man called "Tony" his surname was not known is a deserter from the FMLN terrorist groups and is the principal author of this crime; so far we have been unable to identify this person.

7. The Commission asked the Government of El Salvador to send observations on the additional information provided by the petitioner, in communications dated February 15, 1989, and March 8, 1989.

8. On April 26, 1989, the petitioner sent new information, which was sent to the Government on May 2, 1989. The pertinent parts of that new information appear below:

On January 31, 1988, the victims were taken by uniformed soldiers in the vicinity of the Melendez district, San Jose Guayabal jurisdiction, Department of San Salvador. They headed in the direction of San Jose Guayabal, where the Salvadoran Army has a permanent base. The next day, February 1, 1988, they were found murdered. There were obvious signs that they had also been tortured. Their bodies were discovered at a place known as "La Puerta del Diablo" in the jurisdiction of Panchimalco, Department of San Salvador, approximately 25 kilometers from where they had been seized. They were transported, either alive or already dead, through an area that is under the complete control of the Salvadoran Army, i.e., the capital and the all surrounding areas.

The "modus operandi" of the abductors was such that we can charge the Armed Force of El Salvador with this matter.

In response to complaints received from relatives, Monsignor Gregorio Rosa Chavez, Auxiliary Bishop of San Salvador, also blamed the Armed Forces of El Salvador in the homily he delivered on Sunday, February 7, 1988. That homily is attached to the Criminal Proceedings, at pages 91 to 96; the part pertaining to this event is titled "disregard for human life." It is important to underscore the fact that the families of the three abducted men managed to recognize one of the abductors, whom they identified only as Toni, a deserter from the guerrilla movement and, at the time the three men were taken, an Army

collaborator.

For its part, the Army, specifically the Director of the National Guard, General Rafael Humberto Larios, said in an article that appeared in the newspaper "El Mundo" on February 4 of that year that he did not believe the three men whose bodies were found at "La Puerta del Diablo" were killed by the death squadrons. It seemed to him, he said, that they were killed by those interested in keeping up the terror in the Salvadoran farm region. Of importance here is the defensive tone of this high ranking military chief when it comes to the "death squadrons" and the institution he represents, since on the day the events transpired it was the National Guard that was patrolling the town of San Jose Guayabal. At the time General Larios made this comment, neither the Army nor the death squadrons had been publicly accused. "An inquiry into the death of": so goes the title of thousands of criminal proceedings to investigate the authorship of thousands of murders that have been committed in the country under circumstances similar to the instant case.

This proceeding is in the Third Criminal Court of San Salvador.

It is interesting to note that it has been at a standstill since May 27 of last year (1988); no progress has been made in the investigation of the list of 300 members of the "Fourth Infantry Battalion of the BIAC Guazapa" who participated in the military operation in the area on the date the victims in this case were abducted. In response to the national and international pressure brought to bear in this case, late though it may be, the Army has had to own up to its presence in the area. However, the fact that no high ranking officer was listed as being present in the area, in command of the 300 troopers whose names appear on the list, is merely evidence of a deliberate attempt to conceal the identity of those responsible for these events. Further, by not specifying precisely which troopers were in the immediate vicinity of the place where the three men were taken (four blocks from the town of San Jose Guayabal) and supplying instead the names of all those who participated in the operation, an attempt is being made to establish legal grounds for a possible exoneration of all charges: under Article 649 of our Code of Criminal Procedure, amnesties can be granted in the case of criminal acts committed by 20 or more persons. This is a tactic that not only obstructs the investigations but also ensures that the identities of those responsible will be protected and they will go free; it has already been used in other cases, such as the Las Hojas Massacre.

9. On June 16, 1989, the Government sent the following note of reply:

The Third Criminal Court has case 58/88 containing the principal inquiries conducted to shed light on this matter; in the case record is the report sent by the Chief of the First Infantry Brigade listing the names of the military troopers who participated in operations conducted in San Jose Guayabal, from the following units: First Infantry Brigade, Ramon Belloso Battalion, Bracamonte Battalion, Military Detachment N° 5, etc.

10. On May 7, 1990, the Government of El Salvador reported that:

On January 31, 1988, at around 9:30 p.m., Miguel Angel Santamaria Raymundo, Javier Solis Santamaria, Jose Luis Cornejo, Marta Dinora Melgar Santamaria, and Hector Salvador Guerrero Ardon were stopped by four heavily armed individuals, some in civilian clothes, one in camouflage fatigues and another in black. They put all the people named above in a dark vehicle, with a black canvas top and similar in style to a jeep. One of the subjects ordered the women (2) and Mr. Hector Salvador Guerrero Ardon to get out. Later, the bodies of Miguel Angel Santamaria Raymundo, Javier Solis Santamaria and Jose Luis Cornejo Calles were found in the place known as La Puerta del Diablo, in the Planes de Renderos district, San Salvador. They were examined by the Justice of the Peace of Panchimalco on February 1 of that year. All had bullet wounds from what appeared to be M 16 rifles. The inquiries are presently being conducted in the Third Criminal Court of this city. Among other materials compiled in the inquiries are letters from the Ministry of Defense and Public Security reporting that on the day of the events a military operation was in progress in the zone and that the troops were from the First Infantry Brigade, who were assigned the San Jose Guayabal area, the place where the individuals in question were seized.

11. At its 79th session, the Commission adopted Report N° 14/91, 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 and Article 5 on the right to humane treatment as provided in Article 44 of that Convention, of which El Salvador is a State Party.

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

3. That the petition is not pending settlement in any other international arrangement and is not a restatement of an earlier petition already examined by the Commission.

4. That in the instant case it is obvious that the petitioner has been unable to secure effective protection from the organs having jurisdiction, so that the requirements concerning exhaustion of the remedies under domestic law, spelled out in Article 46 of the Convention, do not apply.

5. That the Government of El Salvador has itself provided information that allows one to assert that members of the Armed Force were the authors of the triple murder. In effect, in the very first note sent to the Commission (April 14, 1988), the Government acknowledges that "members of the Armed Forces may have been involved," and reported that the Armed Force had sent the judge a "list of the persons who were patrolling the area on the day the three men who turned up dead were kidnapped" (note of November 1988) and confirms that "on the day of the events a military operation was in progress in the zone and that the troops were from the First Infantry Brigade, who were assigned the San Jose Guayabal area, the place where the individuals in question were seized" (note of May 7, 1990).

6. That in spite of the evidence and the testimony of those who witnessed the events, after more than three and a half years neither the examining magistrate nor the military authorities have identified the authors of the crime in order to bring them to trial and given them the punishment that such grave conduct demands.

7. That this shows that there has been a deliberate cover up to protect the authors of the crime; added to this is the fact that the bodies were left at a place known as La Puerta del Diablo, which is symbolic of the period when the so called "death squads" reached their peak; the conclusion from all this is that members of the Armed Forces who are involved in human rights violations of this type can act with impunity.

8. That in the instant case, one of the victims (Jose Javier Santamaria Medina) was a minor.

9. That as the friendly settlement procedure provided for in Article 48.1.f of the American Convention does not apply because of the very nature of the facts denounced, the Commission must comply with Article 50.1 of the Convention, issuing its conclusions and recommendations on the petition submitted to it for consideration.

10. That the Government of El Salvador has not submitted observations on Report N° 14/91.

THE INTER AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of El Salvador is responsible for the violation of the right to life and the right to humane treatment (articles 4 and 5 of the Convention) of Jose Javier Santamaria Medina, Jose Luis Cornejo, and Angel de Jesus Santamaria Raymundo, according to the communication received at the Commission on February 5, 1988.
2. To declare that the Government of El Salvador has failed to honor 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, pursuant to Article 50.3 of the Convention and Article 47 of the Regulations of the Commission:
 - a. That it conduct a swift, exhaustive and impartial investigation into the events denounced in order to identify those responsible and bring them to justice, so that they may receive the punishment that such grave conduct demands.
 - b. That it adopt the measures necessary to prevent the commission of similar crimes in the future.
 - c. That it make reparations for the consequences of the situation that its violation of those human rights has created and pay the aggrieved parties fair compensation.
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° 14/91.