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Decided by:	Chairman: Dr. Marco Tulio Bruni Celli; First Vice-Chairman: Dr. Oscar Luján Fappiano; Second Vice-Chairman: Prof. Michael Reisman Members: Dr. Patrick Robinson; Mr. Oliver H. Jackman; Dr. Leo Valladares Lanza; Dr. Alvaro Tirado Mejía.
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BACKGROUND

1. The Inter-American Commission on Human Rights received a petition dated January 27, 1989, and a corrected, clarified version on August 31 of the same year, the pertinent parts of which are transcribed below:

Summary:

On February 22, 1983, approximately 74 people were assassinated by members of the Salvadoran security forces near Las Hojas, Sonsonate, El Salvador. All the identified victims were assassinated with firearms at close range. The massacre was carried out in a premeditated fashion by Salvadoran Armed Forces, with the participation of members of the Civil Defense. The Government of El Salvador has failed to bring any successful prosecution against members of its forces implicated in the massacre and has improperly used an amnesty law in violation of its international obligations under human rights law.

Events Preceding the Massacre:

The Las Hojas massacre stems from a land dispute between ANIS and a neighboring land owner. In 1978 ANIS purchased land near the village of Las Hojas in the department of Sonsonate. This land was purchased from Mr. Candelario Castro. The land was previously used to graze cattle and as access to the major road to Sonsonate. The ANIS property is bordered on one side by land owned by Mr. Alfonso Arauz. Mr. Arauz sought a right of way across the ANIS property in order to shorten the distance traveled to the main road. No agreement was ever reached between ANIS and Mr. Arauz. In May 1979, after ANIS planted its first crops, Mr. Arauz repeatedly attempted to cross the property and in so doing destroyed fences and crops belonging to ANIS. A legal suit was eventually filed in the Sonsonate Court of First Instance. The suit was resolved in ANIS' favor.

During the land dispute, several employees of Mr. Alfonso Arauz joined the Civil Defense. The Salvadoran Civil Defense is a branch of the military whose members are not professional soldiers. The Civil Defense operates under the command of regional military authorities. Its duties are to maintain order

and protect the population from attacks.

In early 1982 members of the ANIS cooperative began to receive anonymous written death threats. Prior to the massacre, ANIS members were informed by members of the local Civil Defense that they had a list of subversives and that certain ANIS members were identified.

The massacre:

Shortly after dawn on February 22, 1983, approximately two hundred (200) Salvadoran Army soldiers under the command of Captain Carlos Alfonso Figueroa Morales and Major Oscar Alberto Leon Linares entered the ANIS cooperative. The soldiers entered the cooperative from several different points and, with the assistance of members of the local Civil Defense force, began seizing members of the cooperative. The Civil Defense members wore masks in an effort to hide their identities from persons in the cooperative. The Civil Defense members were nonetheless recognized by survivors. Among those identified were Juan Aquilino Sermeco, Mario Arias Perez, and the Comandante Cantonal, Jose Domingo Caceres.

The soldiers carried a list of names and were assisted in identifying those listed by Civil Defense members. ANIS members were removed by soldiers from their homes and taken away. An eyewitness observed ANIS members being led away from the cooperative toward the Cuyuapa River. All had their thumbs bound together; some were bound in front, and some behind their backs. Gunfire was heard after the members were led away. Of the bodies found along the banks of the Cuyuapa River, seventeen (17) were identified. Various sources, including the United States Embassy in San Salvador, claim as many as seventy-four (74) bodies were found in the general area. All of the identified and one unidentified massacre victims had been shot at close range, in the temple or behind the ear.

The Judicial Process:

According to the documents found in the annexes attached to the petition, the sixteen (16) bodies which were legally identified are: Marcelino Sanchez-Viscarra, age eighty (80); Benito Perez-Zetico, thirty-five (35); Pedro Perez-Zetico, twenty-four (24); Juan Bautista Martir-Perez, seventy-five (75); Gerardo Cruz-Sandoval, thirty-four (34); Jose Guido Garcia, twenty-one (21); Hector Manuel Marquez, sixty (60); Martin Mejia Castillo, twenty-four (24); Antonio Mejia Alvarado, twenty-two (22); Alfredo Ayala, twenty-five (25); Lorenzo Mejia Caravante, eighteen (18); Ricardo Garcia Elena, nineteen (19); Romelio Mejia Alvarado, twenty-three (23); Francisco Aleman Mejia, thirty-six (36); and Leonardo Lopez Morales, twentytwo (22).

On April 11, 1983, the Las Hojas case was opened before the Juzgado de Primera Instancia de lo Penal de Sonsonate. (Criminal Court of the First Instance for the District of Sonsonate). Thirteen (13) people were charged with the murders of fifteen (15) persons. Six (6) of the thirteen were detained. Charges were filed against Vicente Julian Sermeco, Pedro Perez Gonzalez, Rene Arevalo-Moz, Jose Domingo Caceres, Alfonso Inocente Caceres, Captain Carlos Alfonso Figueroa Morales, and Major Oscar Alberto Leon Linares. Charged and detained were Juan Aquilino Sermeco Morales, Marcial Caceres Rosa, Mario Arias Perez, Liandro Perez, Salvador Jose Sermeco, and Julian Sermeco.

On December 15, 1984, the Sonsonate court ruled that there was sufficient proof to proceed to plenario for three (3) defendants. The court provisionally dismissed charges against all remaining defendants, holding that there was a lack of sufficient proof presented against them. On July 24, 1985 the Camara de lo Penal de Occidente (Criminal Appellate Court for the Western Region) ruled that charges were to be provisionally dismissed against all 13 defendants. On July 10, 1986, the prosecutor's office moved to reopen the case. The Criminal Court of Sonsonate ruled that same day that the prosecutor had submitted sufficient proof to warrant reopening of the proceedings.

On March 30, 1987, the Criminal Court of First Instance for Sonsonate provisionally dismissed the case for the second time. Newspaper reports of this second dismissal indicate that charges were dismissed against eleven members of the Civil Defense and three military officers, including Colonel Araujo.

On April 28, 1987, the prosecutor appealed the Sonsonate court's decision to the Criminal Appellate Court for the Western Region. The appellate court overturned the Sonsonate court's ruling on August 13,

1987, and ordered the defendants to stand trial. The Sonsonate Criminal Court issued an arrest warrant for Colonel Araujo on September 17, 1987. In response, Colonel Araujo filed a habeas corpus petition with the Salvadoran Supreme Court (Constitutional Chamber) on September 19, 1987. On October 28, 1987, the Legislative Assembly passed the Amnesty Decree.

The Supreme Court returned the case to the Criminal Court of First Instance in Sonsonate, which ruled that the amnesty law provided impunity from prosecution to all of the defendants in the Las Hojas case, thus dismissing all charges. On February 19, 1988, the appellate court upheld the Sonsonate court's ruling that the amnesty law provided complete protection from prosecution for all of those who participated in the las Hojas massacre.

On July 18, 1988, the Supreme Court [Criminal Chamber] held that the amnesty law applied to the Las Hojas case. The Supreme Court determined that the crime had been committed by not less than 20 people, therefore the amnesty law was properly applied to the case.

El Salvador Has Violated its Obligations Under the Convention:

The evidence submitted in this Petition shows clearly that the perpetrators of the massacre at Las Hojas were members of the Salvadoran Armed Forces and of the Civil Defense, a paramilitary organization under the control and direction of the Salvadoran Armed Forces. It follows that the actions of the perpetrators of the massacre are imputable to the Government of El Salvador.

The application of the Salvadoran amnesty decree constitutes a clear violation of the obligation of the Salvadoran Government to investigate and punish the violations of the rights of the Las Hojas victims, and to provide compensation for damages resulting from the violations.

The right to life protected under Convention Article 4, and the right to personal integrity, protected under Article 5, are nonderogable rights, and as such are never subject to suspension, according to Article 27 of the Convention. The application of the amnesty decree to the present case constitutes a violation of Article 27 of the Convention, which prohibits the suspension of guarantees indispensable to the protection of nonderogable rights.

The application of the amnesty decree in the instant case renders nugatory the obligations imposed by Article 1 (1) of the Convention, and thus constitutes a violation of this article of the Convention. The present amnesty law, as applied in these cases, by foreclosing the possibility of judicial relief in cases of murder, inhumane treatment and absence of judicial guarantees, denies the fundamental nature of the most basic human rights. It eliminates perhaps the single most effective means of enforcing such rights, the trial and punishment of offenders.

Request for Relief:

The petitioners respectfully request:

- a. That the Commission investigate this case and adopt a decision finding that the Government of El Salvador has violated its obligations under the Convention for its application of an amnesty law, and further to make recommendations to the Government of El Salvador to investigate and prosecute those culpable for the Las Hojas massacre.
- b. That the Commission exercise its authority and refer this case to the Inter-American Court. If El Salvador does not accept the jurisdiction of the Court, we would request that the Commission consult that body for a resolution of the legal questions presented in this case.
- c. That the Commission direct the government of El Salvador pay appropriate reparations to the families of the Las Hojas massacre victims and to ANIS.

2. The complaint is supported by a significant number of documentary proofs attached as exhibits, including newspaper clippings, reports, copies of the amnesty law (Decree No. 805) and the July 18, 1988 decision of the Supreme Court of Justice.

3. The Commission initiated proceedings in the case pursuant to a memorandum dated January 31, 1989, and asked the Government of El Salvador for information pertinent to the subject of the

communication, as well as any basis for determining if internal legal remedies had been exhausted in the case, allowing a period of 90 days for the response to this request.

4. On May 12, 1989, the IACHR reiterated to the Salvadoran Government its request for information concerning the investigations carried out in the present case, allowing a period of 30 days for the Government's response.

5. The Commission received a further communication with respect to the case, dated August 9, 1989, in which the petitioners stated, in summary, the following:

We believe the amnesty enjoyed by those responsible for the Las Hojas massacre constitutes an ongoing and gross violation of human rights committed by the Salvadoran government. The amnesty law undermines the essence of the system of Justice in El Salvador and the process of creating the necessary conditions for peace and democracy. With this in mind, the Las Hojas case presents an issue of critical importance regarding the guarantee of human rights in El Salvador, in that the question of impunity of the perpetrators is an essential part of the case.

Mr. Jose Antonio Pastor Ridruejo in his Final Report for the United Nations Commission on Human Rights, dated February 2, 1989, expressed in relation to the decision of the Supreme Court in the Las Hojas case: ...Investigations and sentencing by legal authorities for gross human rights abuses continues to be unsatisfactory. Specifically, the passage and application of the amnesty law of October 1987 exacerbates and reinforces the problematic climate of impunity.

The Salvadoran government has ignored the instant complaint and allowed the time to respond to the complaint and petition, as set out by the Convention and the Commission's Statute and Regulations, to run. The government has not requested an extension. Presently the original period to respond plus all time possibly to be gained through extensions has also run.

6. By memorandum dated August 17, 1989, the Commission transmitted this communication to the Government of El Salvador, requesting it to report to the Commission about it, within 60 days.

7. The Commission received another related communication in this case, dated September 19, 1990, in which the Minnesota Lawyers International Human Rights Committee, as *amicus curiae*, stated, *inter alia*, the following:

In October 1987, the Salvadoran National Assembly enacted a general amnesty law which covered "the crimes committed by any person for motive of, because of, by reason of or as a consequence of the armed conflict, without taking into consideration their militancy, membership, or political ideology or belonging to one or the other of the sectors involved in that conflict". Those arrested or imprisoned for such crimes were to be immediately released; those with pending cases were to have the charges dropped, and those arrested subsequently for crimes committed before October 1987 could raise the amnesty decree as a reason for extinction of the charges. The effect of this law on the petitioners in the instant case, namely the victims and their families of the massacre at Las Hojas, is the denial of redress to those whose rights were violated by person allegedly acting under state authority.

El Salvador's amnesty decree, by preventing any judicial proceedings against those responsible for the murder at Las Hojas, is directly contrary to this obligation to ensure human rights by punishing those responsible for violations. The amnesty decree, as applied to military and other government personnel, also is in direct conflict with El Salvador's obligation under Article 25 of the Convention, right to judicial protection.

8. On repeated occasions, in letters dated September 19, 1989, March 13, 1990 and November 9, 1990, the Commission asked the Government of El Salvador to send information regarding the internal investigations concerning the facts in the petition; to date, despite the seriousness of the events, the

amount of evidence and other elements of proof sent to the Salvadoran authorities, there has been no Government response.

9. At its 81^e session the Commission adopted report No. 17/92, which was referred to the Government of El Salvador so that the latter might make whatever observations it deemed pertinent within three months of the date of transmission.

ANALYSIS:

1. The Commission has jurisdiction with respect to the present case because it concerns violations of rights recognized in the American Convention on Human Rights, Article 4, concerning the right to life; Article 5, on the right to personal integrity; Articles 7 and 8, the right to due process, and Article 25, the right to judicial protection, as provided by Article 44 of the Convention, to which El Salvador is a State Party.

2. The complaint fulfills the formal requirements of admissibility contained in the American Convention on Human Rights and in the Commission's Regulations.

3. The complaint is not pending settlement in any other international proceedings, nor does it duplicate any petition previously examined by the Commission.

4. In the present case, the petitioner has not been able to achieve effective protection from bodies having jurisdiction, despite having turned to the existing judicial and legal forums within the country; consequently, the requirements concerning the exhaustion of internal remedies, contained in Article 46 of the Convention, do not apply.

5. Despite the fact that more than three years have transpired since the proceedings in this case were initiated before the Commission, despite the seriousness of the charges made and the repeated efforts on the part of the Commission, the Government of El Salvador has provided no response concerning the events which are the subject of the present case.

6. By not responding, the Government of El Salvador has failed to fulfill its international obligation to provide information within a reasonable period, as set forth in Article 48 of the Convention.

7. 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 out 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.

8. In its decision of July 18, 1988, the Criminal Branch of the Supreme Court of Justice of El Salvador stated:

The judicial process has established the following: a) the existence of a military operation on February twenty second nineteen hundred and eighty three in said Canton; b) that those implicated in the commission of common crimes, were part of this military operation; c) officers, non-commissioned officers, soldiers, and Civil Defense members participated in the operation; d) that of all those who participated in the operation, according to the judicial process, only fourteen (14) were identified.

...Those who were identified were part of a much larger group, that on February twenty second nineteen hundred and eighty three, at about six a.m., reached the Canton of Las HoJas, Jurisdicción of San Antonio del Monte, Department of Sonsonate, seized some people from their homes and others from where they

were working, taking them to a place on the Salraja Ranch, to said ravine, where they were killed....

9. The Inter-American Court of Human Rights, in its ruling issued in the Velasquez Rodriguez case, affirmed that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction to identify those responsible, impose the appropriate punishment and ensure the victims adequate compensation. I/A Court H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988. Series C No. 4, at para. 174.

10. The Inter-American Court, in that ruling, added:

The State is obligated to investigate every situation involving a violation of the human rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished ...it has failed to comply with its duty to guarantee the free and full exercise of those rights to the person within its jurisdiction. Id. at para. 176.

11. Decree No. 805, passed by the Legislative Assembly on October 27, 1987, provides in that part pertinent to the present case, in Article 1 that "Full and absolute amnesty is granted in favor of all persons, whether nationals or foreigners, who have participated directly or indirectly or as accomplices, in the commission of political crimes or common crimes linked to political crimes or common crimes in which the number of persons involved is no less than twenty, committed on or before October 22 current year"; and that as a result, the passage of the amnesty, even after an arrest warrant had been issued to Armed Forces officers, legally eliminated the possibility of an effective investigation and the prosecution of the responsible parties, as well as proper compensation for the victims and their next-of-kin by reason of the civil liability for the crime committed.

12. Article 27 of the Vienna Convention on the Law of Treaties prohibits a State from unilaterally invoking national law as a justification for failing to comply with legal obligations imposed upon it by the Convention.

13. Additionally, Article 144, para.2 of the Constitution of El Salvador declares that:

The law shall not modify or derogate that agreed upon in a treaty in effect in El Salvador. In the event of a conflict between the treaty and the law, the treaty will prevail.

14. The Government of El Salvador did not present its observations on time nor adopted the measures recommended by the Commission on Report No. 17/92, in spite of it having been granted a ninety days period.

15. On October 9, 1992 the Government of El Salvador presented its observations on Confidential Report No. 17/92. This note was submitted after the Inter-American Commission on Human Rights, had decided to publish its report. The content of the Government's note does not justify changing the Commission's report.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. To accept as true those facts complained of in relation to the Las Hojas Massacre.

2. To declare, as a result, that the Government of El Salvador is responsible for the events denounced in the communication of January 27, 1989, for the summary and extra-judicial execution of approximately 74 civilian victims, of whom only the following have been identified:

Marcelino Sanchez Viscarra, Benito Perez Zetico, Pedro Perez Zetico, Juan Bautista Martir Perez, Gerardo Cruz Sandoval, Jose Guido Garcia, Hector Manuel Marquez, Martin Mejia Castillo, Antonio Mejia Alvarado, Alfredo Ayala, Lorenzo Mejia Caravante, Ricardo Garcia Elena, Romelio Mejia Alvarado, Francisco Aleman Mejia, and Leonardo Lopez Morales.

3. To declare that the events referred to above constitute violations of the right to life (Article 4), the right to personal security and integrity (Article 5), the right to due process (Article 8) and the right to due judicial protection (Article 25), set forth in the American Convention on Human Rights.

4. To declare that the Government of El Salvador has failed to comply with the obligation imposed upon it by Article 1 of the American Convention, to guarantee the free and full exercise of human rights and fundamental guarantees of all persons subject to its jurisdiction.

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

a. That it carry out an exhaustive, rapid, complete and impartial investigation concerning the events complained of, in order to identify all the victims and those responsible, and submit the latter to justice in order to establish their responsibility so that they receive the sanctions demanded by such serious actions.

b. That it adopt those measures necessary in order to avoid the commission of similar acts in the future.

c. That it remedy the consequences of the situation which has arisen from the violation of the above-mentioned rights and that it pay a fair compensation to the family members of the massacre victims.

6. To publish this report in the Annual Report to the General Assembly, pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, inasmuch as the Government of El Salvador did not did not adopt measures to correct the situation denounced, within the time period stipulated in Report No. 17/92.