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Title/Style of Cause: Guadalupe Ccalloccunto v. Peru
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Decided by: Chairman: Dr. Oscar Luján Fappiano;
First Vice Chairman: Prof. Michael Reisman;
Second Vice Chairman: Dr. Alvaro Tirado Mejía;
Members: Mr. Oliver H. Jackman; Dr. Leo Valladares Lanza; Dr. Marco Tulio Bruni-Celli; Mr. Patrick L. Robinson
Dated: 07 October 1993
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I. BACKGROUND

1. Context

The political scenario and widespread violence in Peru in mid 1990, at the time the detention and disappearance of Mrs. Guadalupe Ccalloccunto occurred, is a matter of record: since the Communist Group known as Sendero Luminoso [Shining Path] first unleashed its brand of political violence in 1980, it has used methods that routinely violate the most elementary standards of international humanitarian law, hurting innocent victims.

Peru's police and military forces have responded with methods of their own, often involving human rights violations. Salient here is the practice of detention and enforced disappearance of persons, particularly those suspected of being members of the Shining Path or sympathizers.

The practice of the enforced disappearance of persons has been and continues to be very common in areas where a state of emergency suspending certain constitutional guarantees is in effect and the so-called political-military commands are established.

The province of Huamanga in the Department of Ayacucho is one of the areas where the practice of enforced disappearance is most serious, as it is an area in which the Shining Path has made some real inroads.

In the last three years, individuals who engage in activities to defend human rights in Peru have also become the victims of indiscriminate military and police repression. [FN1]

[FN1] See in this regard the report entitled "El Peru de Fujimori: Golpe a la Democracia y a los Derechos

Humanos", prepared by Americas Watch, August 30, 1992.

Mrs. Guadalupe Ccalloccunto Olano was a member of the Peace and Justice Service [Servicio de Paz y Justicia - SERPAJ], an internationally known human rights organization, and was in charge of a crafts workshop benefitting the victims of the violence in the city of Ayacucho. She was in a very delicate state of health as she was recovering from tuberculosis.

2. Facts denounced

On June 13, 1990, the Inter-American Commission on Human Rights received a petition concerning the detention and disappearance of Mrs. Guadalupe Ccalloccunto Olano.

The petition, based on the testimony of persons who witnessed the victim's abduction on June 10, 1990, states that at around 2:30 a.m., a group of men wearing hoods and armed with machine guns and pistols, dragged Mrs. Ccalloccunto from inside the home of her mother, Mrs. Silvia Olano Ccalloccunto, at Jr. Grau No. 620, in the city of Ayacucho, where Guadalupe was spending the night with her four children and her niece Paula Garcia Ccalloccunto.

The petition also states that the abductors "were around 15 in number, were wearing rain ponchos, ski masks and black turtleneck sweaters; they had on boots like those worn by the military." The petition also states that without giving the victim time to put on her clothes or shoes, several men grabbed her by the hair and dragged her from the house, using the blanket with which she was sleeping.

That same day, June 10, the victim's next-of-kin went to the Peruvian Army garrison known as "Los Cabitos" in the city of Ayacucho, to inquire about the whereabouts of Mrs. Guadalupe Ccalloccunto. The inquiry turned up nothing, however, as the military personnel at the garrison denied that Mrs. Ccalloccunto was there.

On June 15, 1990, the Commission asked the Peruvian Government to provide the corresponding information, in accordance with Article 48 of the American Convention on Human Rights.

The Commission also asked that the petitioners forward any additional information they might have regarding the facts denounced.

3. Additional information supplied by the petitioners

On June 8, 1992, the petitioners sent the Commission additional, documentary information on the case. The information consists of the seven-page body of a document with 22 appendices containing, inter alia, the following:

- a copy of the petition of habeas corpus filed on behalf of Mrs. Ccalloccunto, with the Chief of the Political-Military Command of Huamanga, dated June 11, 1990;
- a copy of the petition filed with the Superior Prosecutor of Ayacucho, on June 11, 1990; copies of the two petitions filed with the Attorney General of the Nation on June 12 and 20, 1990, respectively, and
- copies of the investigation requests filed with the Political-Military Command of Ayacucho, the Minister of Defense and the Commander of the Peruvian Army, all on June 12, 1990.

The petitioners also informed the Commission of the measures taken to establish the whereabouts of Mrs.

Ccallocunto, all to no avail since the authorities denied that Mrs. Ccallocunto had been detained and gave the victim's next-of-kin no further explanations.

4. Lack of response from the Government

Though more than two years have passed since the Commission forwarded the petition to the Government of Peru, the latter has not given any response on the case.

On June 19, 1992, the Commission sent to the Peruvian Government the additional information that the petitioners had supplied and asked that it present its comments thereon within sixty days. The Peruvian Government has made no comment on the additional information that the Commission sent to it and has instead confined itself to repeating that the Ayacucho Political-Military Command had no part in the detention-enforced disappearance of Mrs. Ccallocunto.

II. ANALYSIS

1. Procedural matters

(a) Submission within the established time period

The petition was presented within the six-month time period stipulated in Article 46.b of the American Convention on Human Rights and in Article 38.1 of the Commission's Regulations.

(b) Requirements as to form

The petition satisfies the formal requirements for admissibility as stipulated in the American Convention on Human Rights and the Regulations of the Commission.

(c) Exhaustion of domestic remedies

The documents presented by the petitioners show that the domestic remedies have been duly filed and exhausted, as follows:

- Appendix 2 submitted by the petitioners shows that on June 11, 1990, a petition of habeas corpus was filed on behalf of Mrs. Guadalupe Ccallocunto and that her detention-disappearance was reported to the Superior Prosecutor of Ayacucho and to the Huamanga Provincial Prosecutor;

- On June 12 of that year, the detention-disappearance of Mrs. Ccallocunto was reported to the Attorney General of the Nation, to the Political-Military Command of Ayacucho, to the General Commander of the Army and to the Minister of Defense;

- On June 20, 1990, Maria Jesus Ccallocunto Olano, the sister of the disappeared, reported Guadalupe's disappearance to the Attorney General of the Nation;

All these legal steps were ineffective in protecting Mrs. Ccallocunto's rights, who remains disappeared.

(d) Friendly settlement procedure

The friendly settlement procedure provided for in paragraph 1.f of Article 48 of the Convention and Article 45 of the Regulations of the Commission does not apply in the instant case because the Peruvian authorities have told Mrs. Ccallocunto's next-of-kin that she "has never been arrested, certainly not by military personnel from "Frente No. 4." It would not be illogical to infer from this response that some military or police unit or office other than Frente No. 4 could have abducted the victim, since the response merely denies that Mrs. Ccallocunto was detained by military personnel from that "Frente".

Moreover, the nature of the facts denounced is such that in the Commission's judgment they do not lend themselves to the friendly settlement procedure.

(e) Nonexistence of other procedures and the requirement of res judicata

The present case is not pending settlement in another procedure under an international governmental organization and is not a duplication of a petition pending or already examined and settled by the Commission or by another international governmental organization.

2. Merits of the case

The Commission is competent to hear the present case as it concerns violations of rights recognized in the American Convention on Human Rights.

Since the date of her abduction and despite the numerous overtures that the victim's next-of-kin made to the Peruvian Government with the support of human rights organizations, it has been impossible to secure any information concerning Mrs. Ccalloccunto's disappearance.

The petition of habeas corpus filed on behalf of Mrs. Ccalloccunto on June 11, 1990, was declared unfounded, though no explanation was given as to the reasons for the decision; the petitioners were not notified of the decision until several months after it was filed. The unwarranted delay rendered the petition of habeas corpus totally ineffective and senseless.

As the documentary record presented by the petitioners shows, legislators of a member state of the Organization also made overtures to the Peruvian Government concerning Mrs. Ccalloccunto's detention-disappearance. In a note sent to the President of Peru, one of them expressed "grave concern" for Mrs. Ccalloccunto's safety and well-being.

Even though more than two and a half years have passed since the date on which this case was first filed with the Commission, and despite the latter's repeated overtures, the Government of Peru has not given it any response concerning the facts alleged by the petitioners.

The obligation to investigate the situations reported

The Commission believes that the remedies exhausted and the other measures taken under domestic law to have Mrs. Ccalloccunto's disappearance investigated and to have those responsible identified and punished have been utterly ineffective because of the deliberate indifference and inaction on the part of the competent organs of the Peruvian State.

Through Report No. 13/93, of March 12, 1993, the Commission resolved, inter alia, "to recommend to the Government of Peru that it conduct a thorough investigation into the events denounced to determine the whereabouts of the victim, identify those responsible and bring them to justice."

Through Note No. 7-5-M/300, dated September 17, 1993, the Delegation of Peru to the Organization of American States informed the Executive Secretariat of the IACHR that:

Pursuant to the recommendations made in Report No. 13/93, which was brought to the attention of the Ministers of Defense, Justice and the Interior and the Attorney General of the Nation, the Defense and Interior sectors have conducted a thorough investigation into the facts reported and have again established that "under no circumstances" was Mrs. Ccalloccunto "stopped and/or detained by either the police or the Army, though one should not discount the possibility that the authors of the crime are members of the PCP-SL or others of that ilk."

As for the obligation to investigate the facts denounced, in its judgement of July 29, 1988, on the Velasquez Rodriguez case the Inter-American Court of Human Rights stated the following:

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 the violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. (paragraph 174)

Later in that same judgment the Court has the following to say about the duty to investigate:

It must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. (paragraph 177)

The practice of enforced disappearance

The Commission has stated repeatedly that enforced disappearance is a cruel and inhuman practice and that:

... it not only constitutes arbitrary deprivation of freedom, but also a very serious threat to the personal integrity, safety and very life of the victim. [FN2]

[FN2] Annual Report 1978, 1980-81, 1982-83, 1985-86, 1986-87.

For its part, in a number of resolutions the General Assembly of the Organization of American States has stated that countries where enforced disappearance has occurred should put an immediate end to that practice and has asked the governments to take the necessary steps to ascertain the situation of disappeared persons.

The Assembly has also declared that the enforced disappearance of persons is an affront to the conscience of the hemisphere and a crime against humanity. [FN3]

[FN3] Resolutions 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); AG/RES.742 (XIV-0/84), and AG/RES.890 (XVII-0/87).

In the judgment on the Velasquez Rodriguez case, the Inter-American Court of Human Rights ruled that:

The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, 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. (paragraph 158)

At the United Nations on December 18, 1992, the General Assembly adopted the resolution entitled "Declaration on the protection of all persons from enforced disappearance" wherein it states that "enforced disappearances undermine the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity."

Article 1 of that Declaration reads as follows:

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and

reaffirmed and developed in international instruments in this field.

2. Such act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

As for the suffering of the family of the victim to which the second paragraph of the above article refers, it is important to underscore the fact that a person's enforced disappearance often causes serious economic hardship and want, as well as social alienation. In the present case, for example, the victim was the sole source of support for her four children, since their father had disappeared in 1983, under circumstances similar to those surrounding Mrs. Ccalloccunto's disappearance.

III. CONCLUSIONS

Given the foregoing, the Commission draws the following conclusions:

It is competent to take cognizance of the present case as it concerns violations of the right to personal liberty upheld in Article 7 of the Convention; the right to humane treatment (Article 5 of the Convention); the right to life (Article 4 of the Convention); Mrs. Ccalloccunto's right to the fundamental judicial guarantees, such as the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge, and her right to be presumed innocent so long as her guilt has not been proven according to law (Article 8), and the right to judicial protection (Article 25), all implicit in the obligation undertaken under Article 1.1 of the Convention.

The Government of Peru has had numerous opportunities to investigate the facts denounced, determine the whereabouts of Mrs. Ccalloccunto and punish those responsible; nevertheless, it has not done so.

The numerous cases on record of disappearances in Peru seem to indicate that in an alarming number of cases they are the result of an action taken by persons who avail themselves of the machinery of the State to commit such crimes.

The information furnished by the Peruvian Government in Note No. 7-5-M/300, dated September 17, 1993, does not fulfill the international obligation that the Peruvian State has in the instant case, as it does not add any new elements that refute the facts denounced or that demonstrate that appropriate measures have been taken to correct it.

The Commission does not have any new information that would warrant amending its original report.

IV. RECOMMENDATIONS

Given the foregoing and the fact that the friendly settlement procedure provided for in Article 48.f of the Convention and Article 45 of the Commission's Regulations does not apply.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
AGREES:

1. To declare that in the case of Mrs. Guadalupe Ccalloccunto, the Government of Peru has failed to honor its obligation to respect human rights and guarantees, stipulated in Article 1 of the American Convention on Human Rights, to which Peru is a State party.

2. To declare that the Government of Peru is responsible for the violation of the rights to personal liberty, to life, to humane treatment, to a fair trial and to judicial protection, recognized in articles 7, 4, 5, 8 and 25 of the American Convention on Human Rights, respectively, by reason of the fact that Mrs. Guadalupe Ccalloccunto was unlawfully deprived of her freedom in the city of Ayacucho on June 10, 1990, which resulted in the victim's disappearance.

3. To recommend to the Government of Peru that it conduct a new investigation into the facts denounced in order to determine the victim's whereabouts and identify and punish those responsible for Mrs. Ccalloccunto's disappearance.

4. To recommend to the Government of Peru that it pay fair compensation to the victim's next-of-kin.

5. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Peru did not adopt measures to correct the situation denounced within the time period.