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Title/Style of Cause: Irma Vera Pena v. Colombia
Doc. Type: Report
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: 12 October 1993
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BACKGROUND:

1. On August 11, 1989, the Inter-American Commission on Human Rights received the following petition:

On February 5, 1987, in the village of Piedra Azul, in the Municipality of Concepcion, 18 peasants were arrested by members of the Garcia Rovira Battalion and were subjected to mistreatment and humiliation. One of these peasants by the name of Delfin Torres, lived only a few meters from the place where they were held prisoner, and the soldiers did not allow him to return to his home until the next day (February 6). There, Delfin reported that the Army was still in the vicinity and had killed four people, among them his wife, IRMA VERA PENA, age 17 and pregnant at the time. Their nude bodies were laid beside the road.

For this reason, the peasants banded together to demand that the army turn over Irma's body. The military refused their request, arguing that she was "a guerrilla fighter".

Finally, the body was turned over, and the peasants were forced by the army to dig a grave in which to bury the other three persons killed.

Two months after these events, Delfin Torres was arrested by the army in the same region and beaten until gravely wounded.

2. On March 19, 1990, the Government of Colombia replied via communications dated October 25, 1989, February 5, 1990 and March 19, 1990, to the following effect:

I have the honor to address Your Excellency, on behalf of the Colombian Government to add information to the reply submitted on February 5 last, in connection with Case 10,456, that of Mrs. IRMA VERA PENA.

I would like to inform Your Excellency that based on information supplied by the Director of the Preliminary Investigations Section for Norte de Santander, Dr. Ruth Garcia de Morales, that criminal

inquiries were instituted on February 9, 1987, with the 25th Military Criminal Court, Maza Mechanized Group, of the Fifth Brigade of the National Army.

Based on the investigations, the court determined that the events took place in a clash between members of the National Army and the ELN subversive group (Ejercito de Liberacion Nacional - National Liberation Army), which is active in that area of the country; this is quite different from the situation portrayed by the individuals who filed the petition with the Commission.

The evidence includes the document attesting to the release of the body of Mrs. VERA PENA and photographs of the weaponry that was seized at the time of the events. As record No. 2972 in that office shows, the most recent proceeding, conducted on February 13 of this year, ordered that witnesses be summoned to testify on the events. As Your Excellency can see, with the investigation in the pre-trial phase, the remedies provided for under Colombian domestic law are fully under way. The Government will keep the Commission informed of the progress made in these cases.

3. When the Colombian Government's reply was forwarded to the petitioner, said petitioner submitted observations on May 18, 1990, wherein the following is stated:

In its observations the Colombian Government has stated that the 25th Military Criminal Court found that "the events took place in a clash between members of the National Army and the ELN subversive group (Ejercito de Liberacion Nacional - National Liberation Army)" and that the court records contain the document releasing the body of Mrs. VERA PENA and photographs of the weaponry seized at the time of the events."

Certainly the Government's information is vastly different from the information that we sent to the Commission and that we now reiterate. Irma Vera Pena was a young farm girl barely 17 years old, who engaged in the simple household chores in the humble cottage that she shared with her husband Delfin Torres. Irma Vera Pena was pregnant at the time she was murdered. The young lady was not a guerrilla fighter and had no ties to subversive organizations. There is no evidence of any clash between the Army and the guerrilla movement, since, according to Delfin Torres' own account, which was sent to the Commission, the National Army mistreated the peasants in the region and killed three people, one of them his wife. In the same statement, Mr. Torres points out that he himself was the victim of mistreatment and torture. But if for the sake of argument we accept that there was a clash between the National Army and a subversive group in the vicinity of the home of Irma and Delfin, this does not mean that the Colombian Army has the right to attack a defenseless civilian population and kill and injure defenseless peasants who, in our country, are caught in the crossfire between regular army and guerrilla groups.

In our earlier communication, we sent you copies of the account that Delfin Torres gave of the events, where he describes how, on February 5, 1987, the Army attacked the peasant community, detained and mistreated 18 peasants who were working the land, and stripped the women who worked with them. Mr. Torres says that his wife, Irma Vera, was alone at home and that he could not get there because the troopers prevented him from doing so. He also said that when he asked the soldiers about her they replied that "there were only guerrilla fighters there and all of them were killed." And finally he points out that when, he was able to return to his home, the following day, he found four bodies, among them that of his young wife. The other three bodies were those of a peasant from the region and two persons unknown.

Mr. Delfin Torres' version is emphatic in blaming the Colombian Army for the murder of Irma Vera, a murder that, no matter how one looks at it, had nothing to do with the clash between the Army and the guerrilla movement.

This is not the only time that the Colombian Army has attacked a defenseless civilian population in its clashes with subversive groups. There are numerous cases that we can cite for the Commission in which a civilian population has been directly attacked by the Colombian Army. This year alone, the peasants of the communities of Yondo, Turbo and Puerto Valdivia, to cite just three cases, were bombed by the army immediately after clashes with the guerrilla movement. In three cases, there were deaths among the civilians and the army justified these deaths saying that they were "guerrillas killed in combat." We are enclosing the complaints that this organization filed on those occasions, accompanied by testimony given

by peasants from those regions in which the events occurred.

Therefore, the exoneration of the 25th Military Criminal Court is understandable, as is the Government's observation concerning the case of Irma Vera. Please note that it is a military tribunal that conducts the investigation into a violation caused by the national army, making it very unlikely that those responsible for the crime will ever be punished. Therefore, we turn to the Commission, to request that this new act not go unpunished.

As for the Government's statement that the remedies under domestic law are fully under way, we believe that this is one of those cases provided in Article 46.2.c of the American Convention, where exhaustion of the remedies under domestic law is not required because of an unwarranted delay in rendering a final judgment under the aforementioned remedies. This is because more than two years have passed since the murder of Irma Vera Pena without any substantive decision on the case before the military criminal courts to punish those responsible for this violation.

4. On June 26, 1990, the petitioner submitted additional information, to include the following testimony.

Statement by Mr. Delfin Torres Castro, husband of Irma Vera. On February 5, 1987, there were 18 of us, among them Crisanto Pena Carvajal, Nicolas Pena Carvajal, their wives, Victor Torres and other individuals; we were planting potatoes on the land of Mr. and Mrs. Pena Carvajal. It was around ten in the morning when we heard shots in the distance; within minutes the army had surrounded us. There were twenty or thirty soldiers. After surrounding us, they told us to remove our ruanas, our hats and shirts and to lie face down. The women who were working with us, approximately five of them were taken elsewhere, stripped and raped. They had us on the ground, and took Irma's brother, Daniel Vera, and Crisanto Pena to don Crisanto's house. At around six in the afternoon, they let us go. To get us released, don Crisanto had to bring the police inspector, who spoke with the Army and explained to them that we were peasants and workers. The place where we had been working and where we were arrested was some 3 or 4 blocks from my house; but the site is on a hillside and my house cannot be seen from there. Some time after six that evening, I asked the army to let me go to my house; but they did not let me go, they told me that I couldn't go near there and when I asked about my wife Irma who was at home alone, they told me that the only people who were in that house were guerrillas and that everyone had been killed. I told them that my wife was not a guerrilla and that she had been at home alone. All they told me was to go find some place else to stay, somewhere far from my home because I couldn't go near my house; they said that after it got dark, the army would not be answerable for anyone. And so I went with the other workers and stayed in the house of Julio Roberto Carvajal, who is an uncle of Crisanto Pena. The next day, sometime after 9:00 a.m., we went to don Crisanto's house and from there the soldiers took us to look at the bodies. They told us to identify those we knew. The bodies were on the road, about a block from don Crisanto's house and a block from my own house, in other words halfway between the two houses. They made us walk by the bodies at a distance of some 3 meters, though we could not stop to look at them. We had to look as we walked by. I saw the body of Irma Vera and the bodies of three men. We later learned that one of them was Mauricio Castro, a cousin of mine. We did not recognize him at the time because he had been stripped and painted green. We did not know the other two. At that point, when I saw that it was my wife, and I said that it was she, the soldiers took me aside and beat me and threatened to kill me. I told them that if they wanted to kill me, go ahead, but that was my wife and she was not a guerrilla fighter, she was my wife. After much argument, the colonel told us to take the body wherever we wanted; a sister of mine, Ines Torres, and a sister of Irma, wrapped her body in a blanket and took her home. I myself helped carry her home, because they released me and told me to go bury the guerrilla, that all I deserved was death. We took her body to Concepcion that same day.

They say that day the army had clashed with the guerrillas, but we didn't see any confrontation with the guerrillas, we didn't see any guerrillas. We heard firing and we saw the Army.

QUESTION: Are there weapons in your home or in the home of any other of these workers?

ANSWER: The only arms we have in the countryside are picks and hoes.

Mr. Delfin Torres was also assassinated on June 9, 1992.

Statement by Mr. Crisanto Pena Carvajal. On February 5, 1987, I had workers on my land and we were planting potatoes. At around ten in the morning we heard shots and quickly thereafter the army surrounded us, taking everyone there prisoner. In all, there were about 18 of us, including the cooks. There were also little children there. My daughter, Gladys Pena Vega, had gone to get the brown sugar to make something for the workers to drink; the army chased her and she came running to where we were working. The army chased her from the house to the place where we were working. After taking us prisoner, they took the women far away and stripped them. They put a weapon on my daughter's shoulder as if to shoot her. This was to frighten her, because they didn't fire. They had us take off our shirts and strip down to our trousers. We were forced to lie on our backs and were kept that way for some two hours. At that point they summoned me and took me to my home. When I got to the house the army was already there and they mistreated us; they said all sorts of things to us and that there were already a number of people dead, and that we were guerrilla informers. At the house, the army was eating everything: the sugar, the cottage cheese. What they couldn't eat they threw out. They sprayed it and then they asked me who was the police inspector and I told him that it was my brother. They took me to his house and he, my brother, the Inspector whose name is Ricardo Pena, arrived soon thereafter; he was already on his way when we went to look for him. He said that we were working and that I was his brother. It was at that point that they released us, because they were holding us prisoner. They released me and all of the workers at around six in the afternoon. The army had already taken out the bodies, because the bodies were visible about a block from the house, but they did not let us get near the bodies that night because the army was in the house all night. We slept there that night like prisoners. The next day, we got together with the other farmers to demand that Irma's body be turned over, because they didn't want to do it. But we said that we knew her and that she was not a guerrilla fighter. I have known Irma since she was a little girl as has my brother Ricardo. Everyone knew her because she was from the village. Before the police inspector arrived the army hit me and kicked me. Even though it has been a long time, my right leg still aches from the kicking they gave me that day. I saw the army hit the other farmers and the other day, on February 6, they hit Delfin right in front of us, simply because he said that Irma was his wife.

QUESTION: Do you know whether Irma Vera was pregnant at the time of her death?

ANSWER: Yes, because it was obvious that she was pregnant; anyone could see that.

QUESTION: Did you see the wounds on Irma's body?

ANSWER: I saw that she had a bullet wound in the head and another in the leg.

QUESTION: Do you know what Irma Vera did?

ANSWER: She tended to domestic chores and the small shop they had. She was a friend of the people in the village and had a large family in Piedra Azul; the family is from the village and has always lived there. Everyone knows her because she grew up there.

QUESTION: Apart from the abuse that you have told us of thus far, what other violations did the army commit against the people during that period?

ANSWER: The army ransacked the houses, particularly that of Delfin, that of Nicolas Pena, who is my brother, and my house. They damaged all of the market produce; what they didn't eat they destroyed and/or threw out. They damaged everything. But the following year, on June 13 (1989) the army returned to the village and again took those of us who lived near the road prisoner and took away the livestock and destroyed the crops and stole what we had at home; at the time there was a village store for everyone from the village, and they stole everything. The goods there were valued at 1,500,000 pesos. They took the livestock to Pamplona and we had to go there to claim the cattle. They returned 22 head; they were infected with foot-and-mouth disease and died. We had to go there quite often. They stole 44 head of cattle, 25 sheep and 2 horses. They returned 22 head of cattle and the two horses.

QUESTION: Why do you think the army is mistreating the farmers in that region?

ANSWER: Well, the National Liberation Army is active in the area, but are we farmers to blame? Still, we end up paying the price.

QUESTION: Were there any weapons in either your home or in any other farmer's home on the day Irma died?

ANSWER: No weapons.

5. On November 9, 1990, the Government of Colombia submitted its observations which were forwarded to the petitioner on November 14, 1990:

As reported in our note of March 21, 1990, concerning the investigation being conducted by the 25th Military Criminal Court, the finding was that these events occurred in a clash between members of the National Army and the ELN Guerrilla Group (Ejercito de Liberacion Nacional - National Liberation Army).

Furthermore, the Prosecutor for the Department of Norte de Santander, Dr. Calixto Cortes Prieto, in an effort to properly monitor the case, sent a fax dated October 25, 1990, to the Office of the Special Prosecutor for Human Rights, to inform that office that a special visit had been made to the 25th Military Criminal Court of Cúcuta in connection with case No. 2972, on the death of IRMA VERA PENA, finding that it had been removed from the docket to be sent to the examining court in the city of Pamplona so that the Office of the Deputy Military Inspector No. 12 might decide on the merits, if deemed appropriate.

I would also like to point out that Dr. Clara Bernarda Cifuentes Orjuela, Special Prosecutor for the Office of the Government Attorney, in furtherance of the law enacted on January 4, 1990, which restructured the Office of the Attorney General of the Nation, a civil, independent and autonomous agency charged with overseeing the performance of all state employees, without limitations of any kind, appointed a Special Agent from the Office of the Government Attorney to oversee the proceedings and to keep the Special Prosecutor informed of the status of the case, of any proceedings, inquiries and decisions adopted by the 25th Military Criminal Trial Court.

I must also emphasize, again, the National Government's commitment to keep the Commission informed of the investigation into this case. As Your Excellency can see, the remedies under domestic law are still in progress to shed more light on the facts.

6. In a communication dated September 17, 1991, the Government of Colombia sent another communication which was forwarded to the petitioner on October 18, 1991, to the following effect:

Dr. Cesar Leal Gomez, Superior Prosecutor for Pamplona, serving as special agent for the Office of the Attorney General of the Nation, to oversee the investigation into the death of Mrs. IRMA VERA, was of the opinion that the 25th Military Criminal Court should conduct additional inquiries to complete the investigation.

I should also repeat that the events occurred during the course of a clash between the National Army and the ELN guerrilla group (National Liberation Army), and that the remedies under domestic law have not been exhausted and do offer effective means of control or redress to all persons under the Colombian State's jurisdiction.

7. During its 81st session, held from February 3 through 14, 1992, the Inter-American Commission on Human Rights examined the case of Irma Vera in a hearing attended by representatives for the Government and the petitioner. On that occasion, the petitioner stated that the proceedings conducted by the military criminal courts, which had ended in a ruling of March 10, 1988, contained insurmountable flaws, since the presiding judge of the 25th Military Criminal Court had been Col. Plinio Rodriguez Villamil, the very same person who, as Commandant of "Garcia Rovira" Infantry Battalion No. 13 had directed the operation wherein his subordinates murdered Irma Vera Pena; later, brazenly acting as judge, he had ordered that the proceedings be closed, for the sake of his subordinates who had been acting on his own orders. The petitioner then added: the proceedings were so biased that they could not have ended in any other decision, since the chief of the military operation, acting as judge and party, acquitted his subordinates and himself of any responsibility, even though he was directly responsible for the facts being

denounced.

8. Later on, the petitioner sent the following information to the Commission:

The Colombian Government states that the investigation into the extrajudicial execution of IRMA VERA continues and that the 25th Military Criminal Court must conduct additional inquiries" to complete the investigation, adding that the facts took place in the course of a clash between the national army and some guerrilla group.

As for the first point, we must point out again that the investigation being conducted by the 25th Military Criminal Court was closed definitively on March 10, 1988. However, we have recently learned that the decision, handed down by the Garcia Rovira Infantry Battalion No. 13, was overturned by the Military Superior Court, which ordered that the investigation be reopened, which is why the proceedings are still under way in the 25th Military Criminal Court. This means that even though, by next February, 5 years will have passed since the extrajudicial execution of Irma Vera Pena, the crime still goes unpunished, since the system of military criminal justice has failed to punish those responsible, despite the evidence of the authorship of the crime. In its resolution 01/88 on Case 9755, the Inter-American Commission on Human Rights stated the following in paragraph 7: "More than twenty months have elapsed since the events that are the object of this case transpired, but as of March 23, 1988, date of the provisional approval of this Resolution, there has been no indication of accountability, and it could, therefore, be considered that there has been an unwarranted delay in the judicial decision under the provisions of Article 37.c of the Regulations of the Commission, which would make it possible to waive the requirement of the exhaustion of domestic remedies." Therefore, we are requesting that, based on that jurisprudence, the Commission declare that because of an unwarranted delay, the remedies under domestic law need not be exhausted.

Furthermore, the Government again insists that the execution occurred in a clash with guerrillas. Using direct testimony taken from the inhabitants of the village of "Piedra Azul", which is where the events transpired, we established that Irma Vera was a humble young woman who was born and raised in the region, that she had recently married Delfin Torres and that when she was executed she was in an advanced stage of pregnancy. Her execution violated not only her right to life, but that of her unborn child. We further demonstrated that in Colombia, the National Army has often attempted to justify its extrajudicial executions by saying that they occurred in clashes with guerrillas and we illustrated that fact by documenting similar events that occurred in Puerto Valdivia and Yondo (Antioquia). The various pieces of testimony in the Commission's case file all state that no one had any knowledge of any clash with guerrillas and that the operation mounted by the army was targeted against the farm workers in the region. And if this were not enough, one need only read the record documenting the release of the bodies, one of which was that of Irma Vera, to realize that the alleged combat was simply an arbitrary execution. One of the bodies had, "on the left side of the back, five entry wounds, measuring 1 cm in diameter and 1 cm apart, two entry wounds on the right side of the back, one entry wound on the upper right scapula, measuring 1 cm in diameter, one entry wound on the right shoulder, measuring 1 cm in diameter, one entry wound on the lower left scapula, measuring 1 cm in diameter, one entry wound on the upper left shoulder, measuring 1 cm in diameter." (Appendix 6 of our communication of January 3, 1991, p. 2). What type of combat is this where the alleged combatants are shot in the back and pregnant women are murdered? Executions like these cannot be explained by saying that they were armed confrontations. The evidence compiled and provided to the Commission leaves no doubt whatever that Irma Vera was the victim of an extrajudicial execution for which the Colombian State is answerable.

For the foregoing reasons, we again ask the Commission that at its next session, it pass a resolution declaring the Colombian State responsible in the extrajudicial execution of Irma Vera Pena.

9. The Commission has been informed that on June 9, 1992, the witness Delfin Torres, Irma Vera's husband, was assassinated.

10. During its Eighty-third Session in March 1993, the Commission issued Report 5/93, which was sent to the Government of Colombia so that the latter might issue any observations it deemed appropriate within a period of three months from the date of transmittal.

CONSIDERING:

1. As to admissibility:

a. That the Commission is competent to examine the subject of the case because it concerns violations of rights recognized in the American Convention on Human Rights: Art. 4, the right to life; Art. 7, the right to personal liberty; Art. 8, the right to a fair trial, and Art. 25, the right to judicial protection.

b. That the petition satisfies the formal requirements for admissibility, as stipulated in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

c. That in the instant case, it is obvious that the petitioners have been unable to secure effective protection from the domestic jurisdictional organs, which despite the irrefutable evidence made available to them, have exonerated the members of the military of all responsibility, so that whether or not the remedies under domestic law have been exhausted, those remedies cannot be invoked on the Colombian Government's behalf to suspend the action being taken on this case in the Commission, because of the delay of the internal investigation into this case.

d. That the present petition is not pending settlement in any other procedure under an international governmental organization and is not a duplication of a petition already examined by the Commission.

2. As for the investigations conducted by the Colombian Government:

a. That the investigations conducted by authorities of the Colombian Government through the Criminal Proceedings Section for Norte de Santander, 25th Military Criminal Court, the Office of the Prosecutor of the Department of Norte de Santander, the Office of the Special Prosecutor for Human Rights, the Office of the Special Prosecutor for the Government Attorney and the Office of the Attorney General of the Nation should have compiled the evidence contained in the present report, sufficient to indict and convict active members of the Colombian Army, "Garcia Rovira" Battalion as the parties responsible for the events, had it not been for the egregious error committed, which can be neither explained nor justified, whereby the investigation conducted was based on an aberrant court proceeding wherein the judge hearing the case was himself the intellectual and material author of the facts in question.

b. That in the face of the protests and indignation aroused by this singular "judgment," the Superior Military Court revokes its decision and orders the case to be reopened.

c. That the file was remanded to the Military Court of Criminal Investigation Number 25 where it remains to this day without sentencing those responsible.

3. As for the other issues bearing upon the processing of the case:

a. That the nature of the facts prompting the petition is such that they do not lend themselves to resolution via the friendly settlement procedure and that the parties have not requested the Commission to employ this procedure, provided for in Article 48.1.f of the Convention and Article 45 of the Regulations of the IACHR.

b. That because the friendly settlement procedure does not apply, the Commission must comply with the provisions of Article 50.1 of the Convention, stating its opinion and its conclusions on the matters submitted to it for consideration.

c. That in the prosecution of the instant case, all legal and statutory measures provided for in the

Convention and in the Commission's Regulations have been exhausted.

4. Other considerations:

a. That the proceedings in the instant case have confirmed, and the Colombian Government has not denied, that agents of the Colombian Armed Forces were the authors of the murder of the minor Irma Vera Pena, whose advanced state of pregnancy made it unlikely that she could have been involved in clashes with the Army.

b. That this fact is confirmed by ample evidence supplied by the petitioners in the form of personal and direct testimony in the investigation, one of them rendered by her husband, Delfin Torres, who was also assassinated recently. This precludes all possibility that her death was the result of a clash with the Army.

c. That to allow the authors of a punishable act to go unpunished constitutes a serious violation of the basic standards of human rights, and the principles of justice recognized in the domestic and international legal systems.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. That with regard to the illegal arrest and subsequent murder of the minor Irma Vera Pena, the Government of Colombia has failed in its duty to respect and guarantee articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (the right to a fair trial) and 25 (the right to judicial protection), in relation to Article 1.1, recognized in the American Convention on Human Rights, of which Colombia is a State Party.

2. To recommend to the Colombian Government that the investigations into the facts denounced continue until those responsible for the extrajudicial execution of Irma Vera Pena are punished in accordance with criminal law, thereby avoiding the consummation of egregious acts of impunity that damage the very foundation of the legal system.

3. To recommend to the Government of Colombia that it pay fair compensation to the victims' next of kin.

4. To request the Colombian Government to guarantee the safety of the witnesses to the events who have helped shed light on the facts, and to afford them all necessary protection, so they are not exposed to the same fate as Mr. Delfin Torres, assassinated on June 9, 1992.

a. That the Government of Colombia, on July 12, 1993, presented its observations on Report 5/93 of March 11, 1993;

b. That, in the remarks contained in its reply note, the Government of Colombia does not provide any information that refutes the accusations made or that shows that appropriate measures have been taken to resolve the situation described in the complaint; and

c. That the Commission has no new evidence that would justify a modification of the original report.

5. To order the publication of this report in the Annual Report to the General Assembly, pursuant to Article 53.1 of the American Convention and Article 48 of the Commission's Regulations, because the Government of Colombia did not adopt measures to correct the situation denounced, within the time period stipulated in Reports No. 5/93 of March 11, and No. 23/93 of October 12, 1993, approved by the Commission in its 83^o and 84^o sessions.

(*) Commission member Dr. Alvaro Tirado Mejia abstained from participating in the consideration and voting on this report.
