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Title/Style of Cause: Luis Gustavo Morroquin v. Guatemala
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Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated: 6 December 1996
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I. BACKGROUND INFORMATION

1. On September 22, 1982, the Inter-American Commission on Human Rights (the "Commission") received a communication denouncing the alleged abduction and disappearance of Mr. Luis Gustavo Marroquín by agents of the Guatemalan State. Mr. Marroquín, a Guatemalan citizen, was an accountant with the National Agricultural Development Bank (Banco Nacional de Desarrollo Agrícola-BANDESA). The complaint states that Mr. Marroquín was abducted in the vicinity of Bank headquarters.

II. FACTS

2. According to the complaint, on August 9, 1982, at 7:50 a.m., Mr. Luis Gustavo Marroquín was abducted in the parking lot of the National Agricultural Development Bank, as he was arriving at work that morning. The complaint states that the abductors wore civilian dress, were heavily armed and that they were in a red Mitsubishi van and in a Datsun car, both with tinted windows.

3. The complaint states that Mr. Luis Gustavo Marroquín is still disappeared, and that the Guatemalan State has never investigated and clarified the disappearance. The action taken on a petition of habeas corpus filed by Mr. Marroquín's next-of-kin on August 11, 1982, to ascertain his whereabouts, was defective and ineffective.

III. PROCESSING BEFORE THE COMMISSION

4. The Commission began to process the complaint on October 7, 1982, registering it as case 8075.

5. That same day, pursuant to Article 48.1.a of the American Convention, the Commission forwarded to the Guatemalan Government the pertinent parts of the complaint, with the request that the Government provide information on the facts reported in that communication, in accordance with Article 34 of its Regulations (then Article 31).

6. When it received no response from the Guatemalan Government, the Commission repeated its request on May 17, 1984, and gave the Government another thirty days in which to reply, mentioning the possible application of Article 42 (then Article 39) of the Commission's Regulations, whereby the facts denounced are presumed to be true if no reply is forthcoming.

7. On February 19, 1985, since no information had been received from the Government of Guatemala, the Commission once again requested information on the case, and gave the Government another thirty days, again mentioning the possible application of Article 42 of its Regulations.

8. When the Guatemalan Government failed to reply, the Commission reiterated its request to the Government on June 15, 1985 and once again warned of the possible application of Article 42 of its Regulations. Again, the Commission received no response from the Guatemalan Government in connection with this case.

9. To date, the Guatemalan Government has never provided any of the information requested by the Commission.

IV. CONSIDERATIONS

a. Admissibility

10. The conclusion from the background information examined is that the Commission is competent to entertain the complaint filed in the instant case, since it alleges facts that would be violations of the rights of Luis Gustavo Marroquín recognized in Articles 1, 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights.

11. The Commission considers that there are no grounds to argue that the complaint is manifestly groundless or out of order, or that it substantially reproduces a petition already examined or one pending before some other international proceeding for settlement. (Articles 46.1.c and 47.c,d of the American Convention).

12. As for exhaustion of domestic remedies, the Government of Guatemala has never replied to the Commission's requests for information on this matter. The purpose of the rule requiring exhaustion of domestic remedies is to allow the State an opportunity to settle the problem in accordance with its domestic laws before being confronted with an international proceeding.[FN1] Therefore, given the Government's silence, the Commission presumes that it is, by implication, waiving its right to invoke the rule of exhaustion of domestic remedies.[FN2]

[FN1] See Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 61.

[FN2] See Inter-American Court of Human Rights Cases: Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, par. 88; Fairén Garbí and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, par. 87; and Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, par. 90.

13. Apart from the implied waiver of the requirement of exhaustion under Article 46.1.a of the American Convention, the Commission considers that in the case of Mr. Luis Gustavo Marroquín, the domestic remedies have been ineffective, have not provided the guarantees of due process and have, without justification, failed to provide any decision regarding his person. These factual situations are contemplated in Article 46.2 of the Convention as exceptions to the requirement of exhaustion of domestic remedies set forth in Article 46.1.a.

14. In effect, the conclusion from the notes that the petitioners sent to the Commission is that the domestic remedies in Guatemala have been unsuccessful in solving the disappearance of Mr. Luis Gustavo Marroquín. On August 11, 1982, Mr. Marroquín's next-of-kin filed a petition of habeas corpus to ascertain his whereabouts. Because of the petition, the Ministry of Government ordered the National Police to investigate Mr. Marroquín's disappearance, but the order was never obeyed. The petitioners allege that no action was ever taken on the petition of habeas corpus that they filed seeking an investigation to determine the whereabouts of Luis Gustavo Marroquín.

15. The petitioners also state that they made other written overtures to the Ministry of Government and filed a complaint with the Department of Technical Investigations of the National Police and other police agencies and prisons. None of these measures had any result.

16. On October 18, 1982, Luis Gustavo Marroquín's wife and mother filed a request, in writing, for a meeting with then President of the Republic, Efraín Ríos Montt, who informed that their request for a meeting would not be granted.

17. None of the actions filed by relatives of Mr. Marroquín was effective in securing protection of the rights which were violated. The Guatemalan State did not act on the petition of habeas corpus by conducting an efficient and adequate investigation based on due process of law, that would ascertain the whereabouts of Mr. Marroquín and the identity of those responsible for his disappearance.[FN3] This is consistent with a pattern of ineffective legal remedies, especially in relation to the remedy of habeas corpus, which the Commission found in Guatemala at the time the events denounced occurred.[FN4]

[FN3] The Inter-American Court of Human Rights has stated that: "in keeping with the object and purpose of the Convention and in accordance with an interpretation of Article 46(1)(a) of the Convention, the proper remedy in the case of forced disappearance of persons would ordinarily

be habeas corpus, since those cases require urgent action by the authorities. Consequently, 'habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty' (Velásquez Rodríguez Case, Judgment of July 29, 1988, . . . paragraph 65; Godínez Cruz case, Judgment of January 20, 1989, . . . paragraph 68; and Fairén Garbí and Solís Corrales case, Judgment of March 15, 1989, . . . paragraph 90)". Caballero Delgado y Santana Case, Preliminary Objections, Judgment of January 21, 1994, par. 64.

[FN4] See Annual Report of the Inter-American Commission on Human Rights 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, p. 107-08.

b. Merits

18. The Government of Guatemala has never disputed the abduction and disappearance of Mr. Marroquín nor the fact that these were perpetrated by State agents. Since the time the pertinent parts of the complaint were first forwarded to the Government, and despite repeated requests, the Government has never provided any information in connection with this case, thereby violating its international obligation under Article 48 of the American Convention. Therefore, the Commission considers that the presumption allowed under Article 42 of its Regulations applies in the instant case. Article 42 of the Commission's Regulations provides that the facts reported in the petition whose pertinent parts have been transmitted to the Government in reference shall be presumed to be true if, during the time period set by the Commission, the Government has not provided the pertinent information requested, as long as other evidence does not lead to a different conclusion.[FN5] In this case, the information which exists does not contradict the version of the facts alleged in the complaint but rather supports that version of events.

[FN5] The Inter-American Court of Human Rights has confirmed that, "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law." Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 138.

19. From the manner and characteristics of Mr. Marroquín's abduction, the Commission can reasonably infer that it was perpetrated by agents of the Guatemalan State, since those were the same methods used in other abductions and unlawful detentions in which State security agents were involved. At the time the events denounced occurred, the Commission had confirmed the presence of an "extraordinary number" of cases like Mr. Marroquín's, committed by security agents.[FN6] The abductions and unlawful detentions generally were carried out by groups of heavily armed individuals, who took their victims from their places of work or their homes and told no one of the reasons for the alleged arrest or where the victim was being taken. The abductors acted in plain view and generally traveled in vehicles with tinted windows.[FN7] Luis Gustavo Marroquín was abducted in precisely that manner.

[FN6] See Report on the Situation of Human Rights in the Republic of Guatemala, OEA/Ser.L/V/II.53, doc. 21 rev. 2, 13 October 1981, p. 34.

[FN7] See Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.61, Doc. 47 rev. 1, October 5, 1983, p. 76.

20. Based on the foregoing, the Commission concludes that on August 9, 1982, Mr. Luis Gustavo Marroquín was abducted by agents of the Guatemalan Government. His whereabouts have remained unknown since the time of his kidnapping.

c. Conclusions on points of law

21. The description of what Luis Gustavo Marroquín suffered on August 9, 1982, fits the definition of "forced disappearance" which has been developed by the jurisprudence of the Commission and the Inter-American Court of Human Rights and which was incorporated into Article II of the Inter-American Convention on Forced Disappearance of Persons.[FN8]

[FN8] See Annual Report of the Inter-American Commission on Human Rights 1985-86, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, p. 37-38; Annual Report of the Inter-American Commission on Human Rights 1982-83, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, p. 46-48; Annual Report of the Inter-American Commission on Human Rights 1980-81, OEA/Ser.L/V/II.54, doc. 9 rev. 1, 16 October 1981, p. 113-14; Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 147; Inter-American Convention on Forced Disappearance of Persons, Article II. The Inter-American Convention on Forced Disappearance of Persons entered into force on March 28, 1996, after Argentina and Panama deposited their instruments of ratification with the General Secretariat of the OAS on February 28, 1996. Guatemala has signed, but not yet ratified, that Convention.

22. The Inter-American Court of Human Rights (the "Court" or the "Inter-American Court") has held that "the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee." [FN9] The preamble to the Inter-American Convention on Forced Disappearance of Persons reaffirms that forced disappearance of persons "violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights." [FN10]

[FN9] See Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 155.

[FN10] Inter-American Convention on Forced Disappearance of Persons, third paragraph of the preamble.

23. Based on these principles, the Commission examines the human rights that were violated as a result of the forced disappearance of Luis Gustavo Marroquín.

The right to juridical personality

24. The disappearance of Mr. Luis Gustavo Marroquín constitutes a violation of his right to recognition as a person before the law protected by Article 3 of the American Convention on Human Rights. When Mr. Marroquín was disappeared by agents of the Government, he was necessarily placed outside of and excluded from the juridical and institutional order of the State. This exclusion had the effect of denying recognition of the very existence of Mr. Marroquín as a human being entitled to be recognized as such before the law.[FN11]

[FN11] See Declaration on the Protection of All Persons from Enforced Disappearance, Art. 1.2, characterizing forced disappearance as "a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law." United Nations General Assembly Resolution 47/133, December 18, 1992.

The right to life

25. Mr. Luis Gustavo Marroquín is still a disappeared person. The Inter-American Court has held that, "[t]he practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life." [FN12] Moreover, the context in which the disappearance occurred and the fact that fourteen years later Mr. Marroquín is still a disappeared person, allow the Commission to reasonably conclude that Mr. Marroquín was killed.[FN13]

[FN12] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 157.
[FN13] Idem, par. 188.

26. For these reasons, the Commission concludes that the facts denounced constitute a violation of Mr. Luis Gustavo Marroquín's right to life, recognized in Article 4 of the American Convention on Human Rights.

The right to humane treatment

27. Under Article 5 of the American Convention, every person has the right to have his physical, psychological and moral integrity respected. The facts denounced in the instant case constitute a violation of Mr. Luis Gustavo Marroquín's right to humane treatment.

28. The Inter-American Court has held that, "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and

moral integrity of the person and a violation of any detainee's right to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person."[FN14]

[FN14] *Idem*, par. 156.

The right to personal liberty

29. The Inter-American Court has held the following with regard to the violation of this right: "The kidnapping of a person is an arbitrary deprivation of liberty, and an infringement of the detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty."[FN15]

[FN15] *Idem*, par. 155.

30. The abduction and disappearance of Luis Gustavo Marroquín, which the Commission has established, constitute a violation of his right to personal liberty, recognized in Article 7 of the American Convention.

The right to due process of law and to judicial protection

31. Under Articles 8 and 25 of the American Convention, everyone has the right to recourse to a competent court or tribunal for protection against acts that violate his rights, and the State is obligated to provide the minimum guarantees for the determination of the individual's rights. The Guatemalan State's domestic guarantees have not provided what is essential to the fulfillment of these rights, and have therefore violated the American Convention.

32. Article 25.1 contains the principle recognized in the international law of human rights whereby the instruments or procedural means to guarantee such rights must be effective. It is not sufficient that a state's legal system formally recognizes the remedy in question; instead, it must develop the possibilities of an effective remedy, substantiated in accordance with the rules of due process of law.[FN16]

[FN16] See Inter-American Court of Human Rights Cases: Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, par. 91; Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, par. 90; and Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, par. 93.

33. The domestic remedies of the Guatemalan State have not provided adequate and effective recourse that fulfills the minimum guarantees and produces a decision as to the rights of Luis Gustavo Marroquín, establishes his whereabouts, and determines the identity and responsibility of the authors of the abduction.

34. In the instant case, the failure of the domestic remedies not only justifies the finding that the petitioners are not obligated to file and exhaust such remedies, but also implicates the Guatemalan State in a violation of the rights to judicial protection and to due process of law, recognized in Articles 25 and 8 of the American Convention.[FN17]

[FN17] Idem.

The obligation to respect and ensure rights

35. The Guatemalan State has failed to honor its obligation under Article 1.1 of the American Convention to "respect the rights and the freedoms recognized [therein] and to ensure to all persons subject to [its] jurisdiction the free and full exercise of those rights and freedoms." Therefore, the violations of the rights recognized in Articles 3, 4, 5, 7, 8 and 25 are imputable to the Guatemalan State.

36. Under the terms of Article 1.1, the first obligation of the States Parties of the American Convention is to respect the rights and freedoms established therein.

37. To determine what manner of exercise of public power violates the obligation to respect rights under Article 1.1, the Inter-American Court has held that, "under international law, a State is responsible for the actions of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law." The Court further held that "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." [FN18]

[FN18] See Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 170, 172.

38. The Commission has concluded that the abduction of Luis Gustavo Marroquín on August 9, 1982, his subsequent disappearance, and the subsequent denial of justice, which constitute violations of rights recognized in Articles 3, 4, 5, 7, 8 and 25 of the Convention, were committed by Government agents using their position of authority. Therefore, in keeping with the jurisprudence of the Court, the Guatemalan State has violated its obligation under Article 1.1, to respect the rights of Luis Gustavo Marroquín recognized in the American Convention.

39. The second obligation emanating from Article 1.1 is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. "This obligation implies the duty of the

States Parties to organize a governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention."[FN19]

[FN19] *Idem*, paragraph 166.

40. The Commission has concluded that the Guatemalan State's domestic remedies have failed to investigate the human rights violations suffered by Mr. Marroquín, the parties responsible for those violations have not been punished, and the consequences of those violations have not been redressed. Therefore, the Commission concludes that the Guatemalan State also violated Article 1.1 because it failed to guarantee to Luis Gustavo Marroquín and his family the exercise of their rights.

V. TRANSMISSION OF REPORT 18/96 TO THE GOVERNMENT

41. Confidential Report 18/96 was approved by the Commission on April 30, 1996, during its 92nd Regular Session, and was transmitted to the Government of Guatemala on May 27, 1996, with a request that it provide information as to the measures that had been taken to resolve the situation denounced within a period of 60 days. At the same time, the Commission informed the parties that it placed itself at their disposal for a friendly settlement, based on respect for the human rights set forth in the American Convention, and set a period of 30 days for the parties to advise whether they were willing to participate in such a procedure.

42. By means of a note dated July 22, 1996, the Government of Guatemala requested that the period within which it was to provide its response to the Commission be extended by 60 days, given that various State institutions were in the process of gathering relevant information. In a note of July 31, 1996, the Commission informed the Government that it had been granted an additional 70 days to provide information as to the measures it had taken. The Commission also transmitted to the Government copies of pertinent documents from the case file for its information.

43. The Government's response, dated October 2, 1996, indicated that the Presidential Coordinating Commission of Executive Policy in Human Rights Matters had requested the collaboration of the Ministers of National Defense and Government in investigating the facts denounced, as well as that of the Attorney General's Office. A Prosecutor assigned to investigate had attempted, without success, to locate any relevant files within the criminal justice system. He had also interviewed the mother of the victim and the Chief of Security of the National Bank of Agricultural Development, who corroborated certain basic facts. As a result of his interview with the victim's mother, the Prosecutor had requested that the Transit Department of the National Police provide information on five license plate numbers dating back to 1982. The Prosecutor also went to the office of the Mutual Support Group to inquire whether they could provide information on the disappearance from their files. However, representatives of the Group informed him that, three years before, a number of files had been taken from their office, most

likely including those pertaining to this case. The Government manifested concern with respect to the facts denounced, but indicated that the National Police and Public Ministry did not have any information in its files. The Government reported that the Attorney General had therefore initiated an investigation, and that it would opportunely inform the Commission as to its results, and "thus the Government considers that for the moment it is not possible to accede to a friendly settlement and appreciates the offer that was made."

44. The Government of Guatemala has provided no further information with respect to this case.

VI. FINDINGS

45. In light of the information and observations provided above, the Commission concludes that the Guatemalan State has violated Luis Gustavo Marroquín's rights to life, humane treatment, personal liberty, due process of law and judicial protection, all recognized, respectively, in Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights, in relation to Article 1.1 thereof.

46. Article 1 of the American Convention sets forth the undertaking of States Parties first, to respect the rights and freedoms recognized, and second, to ensure the free and full exercise of those rights. The latter obligation refers to the State's duty to prevent, investigate and punish human rights violations. The consequence of this duty is the continuing responsibility of the State to "attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights." (Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.)

VII. RECOMMENDATIONS

47. In accordance with the foregoing analysis, the Commission recommends to the State of Guatemala that:

a. It conduct an impartial and effective investigation of the facts denounced that determines the fate of Luis Gustavo Marroquín, that establishes the identity of the authors of his disappearance, and that leads to the submission of those responsible to the appropriate judicial processes.

b. It adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Luis Gustavo Marroquín; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and compensating his family members.

48. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Guatemala did not adopt measures to correct the situation denounced within the time period.