

REPORT Nº 6/94
CASE 10.772
EL SALVADOR
February 1, 1994

BACKGROUND:

1. On December 17, 1990, the Inter-American Commission on Human Rights received a petition based on the following:

On May 14, 1990, a soldier raped María Dolores Rivas Quintanilla, age 7, and left at the scene of the event his handkerchief bearing the name of his Military Unit, the Atonal Quick Reaction Infantry Battalion.

The rape was committed when the young girl was at her home in the village of Gualchua, in the Moropala canton of the department of San Miguel, El Salvador.

The child's mother, Ana María Quintanilla, said that she left home early on the morning of May 14, leaving her two daughters (ages 7 and 5) playing on the patio. A solder approached, asked the girls for water, and followed them when they entered the house. There he attacked the little girl. When she saw what was happening, the victim's little sister, Evelin Yamlit Rivas Quintanilla, age 5, ran from the house to tell a neighbor, who took no action.

When the mother of the little girls returned home and learned what had happened, she spoke with a group of soldiers who were one block from her home and asked the lieutenant to call all the soldiers together so that her little girl could identify her assailant. The little girl, who could not stop crying, was unable to identify any of the men.

Mrs. Quintanilla reported the crime to the canton commandant who is in charge of that company, Boanerges N., who said he was willing to jail the individual responsible and give her money for any medicines that might be needed.

Based on a description of the assailant that the young girl gave her mother, the mother filed the corresponding complaint with the Commandant and the next day with the First Court of Usulután. There the judge refused to take the case, telling her "These things happen, and not just here but elsewhere as well."

That same day, May 15, the Commandant went back to Mrs. Quintanilla's home and told her that the man who had raped her little girl was a guerrilla. The young girl bled for four days and it was not until June 21st that she could be taken to a gynecologist in San Salvador. It was the physician's finding that the child had "a broken and scarred hymen and an enlarged vaginal opening; the diagnosis was

that she had been sexually violated."

2. On January 16, 1991, the Commission instituted the processing of this case and asked the Government of El Salvador to supply the pertinent information on the facts reported in the communication as well as any other information of the case history and information to enable the Commission to determine whether the remedies under domestic law had been exhausted. The Commission gave the Government 90 days in which to respond.

3. Despite the seriousness of the facts denounced, the Government of El Salvador did not reply. By note of January 28, 1992, the Commission repeated its earlier request to the Government of El Salvador that it supply information, warning it of the possible application of Article 42 of the Regulations if no reply was sent within 30 days.

4. On August 18, 1992, the Commission repeated yet again its request that the Government of El Salvador supply information on this case, and again warned of the possible application of Article 42 of its Regulations.

5. Although the Commission sent the Government a detailed list of the cases now being processed that required an urgent response on the latter's part -one of those cases being the present case- thus far no communication has been received from that Government.

6. On October 5, 1993, the Inter-American Commission on Human Rights, sitting at its 84th Regular Meeting considered this case and issued Report No. 18/93, pursuant to Article 50 of the American Convention on Human Rights.

7. The Inter-American Commission on Human Rights resolved to send the Report, on a confidential basis, to the Government of El Salvador, granting it three months to implement the recommendations contained therein.

8. The Government of El Salvador failed to answer the Commission's request of October 18, 1993.

ANALYSIS

1. On the question of admissibility:

a. The petition satisfies the formal admissibility requirements stipulated in the American Convention on Human Rights and in the Commission's Regulations.

b. The petition is not pending settlement in another procedure under an international organization and is not substantially the same as one previously studied by the Commission.

2. With regard to the Commission's competence in this case:

a. The Commission is competent in the instant case because it concerns violations of rights recognized in the American Convention on Human Rights, principally Article 5.1 on the right to have one's physical, mental and moral integrity respected; Article 11 on the right to have one's honor respected and one's dignity recognized; Article 19 on the rights of the child, and Article 25 on the right to judicial protection, as provided in Article 44 of that Convention, of which El Salvador is a State Party.

b. Article 1.1 of the American Convention, which is binding for El Salvador, states that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

3. On the content of the petition:

a. Despite the fact that more than 3 years have passed since the events in question occurred and despite the seriousness of the charges made, the Government of El Salvador has not responded to the facts alleged by the petitioner.

b. The Government's passive and indifferent attitude in a case involving such cruelty and contempt for even the most elementary principles of human dignity, indicates a willingness on the part of military and judicial authorities to tolerate and cover up heinous crimes such as the one denounced, attitudes even shared by the executive branch of government, through which the case was transmitted to the Government of El Salvador.

c. In this regard, the Inter-American Court of Human Rights has stated 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, to impose the appropriate punishment and to ensure the victim adequate compensation."¹

d. The Court goes on to say that "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply

¹ Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 174.

with its obligation to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."²

e. The United Nations Convention on the Rights of the Child -which El Salvador signed on January 26, 1990 and then ratified on July 10 of that year, and is thus a State Party- states the following:

Article 19.1. "State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse..."

Article 37: "State parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment..."

Article 39. "State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, peer-respect and dignity of the child."

f. Article 16 of the Additional Protocol to the American Convention on Human Rights, the "Protocol of San Salvador", stipulates that:

Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother...

4. Other procedural matters:

a. The facts prompting the petition in this case are not such that they can be resolved through recourse to the friendly settlement procedure provided for in Article 48.1.f of the Convention and Article 45 of the Regulations of the Commission and neither the Government nor the petitioners have asked the Commission to apply that procedure.

b. Since the friendly settlement procedure does not apply, the Commission must comply with the provisions of Article 50.1 of the Convention and issue its opinion and

² Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 176.

conclusions on the matter put to it for consideration.

c. All legal and statutory procedures established in the Convention and in the Commission's Regulations have been exhausted, and more than the prescribed time periods have been allowed.

5. Of the exhaustion of the remedies under domestic law:

a. In the instant case, the petitioner has been unable to secure effective protection from bodies having jurisdiction. Hence, the remedies have been exhausted in accordance with Article 46 of the Convention, as stated below.

b. According to the petition filed with the Commission, the day after the events occurred the mother of the small child filed a complaint with the military authorities in the area and with the First Court of Usulután. These efforts produced no results; more importantly, however, no investigations were instituted to track down the individual responsible. Instead, the mother was told in advance how pointless her efforts were.

c. The petition states and the photographic evidence shows that the individual who committed this crime left a handkerchief at the scene of the events that identified him as a member of the Atonal Quick Reaction Infantry Battalion; with evidence of that nature, the circumstances surrounding his impunity become still more serious and leave the victim and her family with no means to defend themselves against the abuses and outrages committed by the authorities.

d. Concerning the exceptions made to the rule of exhaustion of internal remedies, the Inter-American Court of Human Rights stated that "...if a person, for a reason such as the one stated above [general fear in the legal community] is prevented from availing himself of the domestic legal remedies necessary to assert a right which the Convention guarantees, he cannot be required to exhaust those remedies."³

e. In that same advisory opinion, the Court stated the following regarding the duty incumbent upon the States: "Article 1 of the Convention provides not only that the States Parties have an obligation to respect the rights and freedoms recognized [t]herein, it also requires them to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. The Court has already had occasion to emphasize that this provision imposes an affirmative duty on the States. It is also important to note that the obligation to ensure requires the state to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the

³ Advisory Opinion OC-11/90, "Exceptions to the Exhaustion of Domestic Remedies", requested by the Inter-American Commission on Human Rights. Paragraph 33.

Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the convention."⁴

f. It is patently obvious that in the instant case the mother of the little girl was not obliged to exhaust remedies that were preordained to produce no result; more to the point, she was relieved of that obligation since the State clearly had failed to discharge its duty to guarantee the most elementary rights and attempt to right the wrong and punish those responsible.

6. With regard to noncompliance with Report 18/93 of October 1993

The three-month deadline given the Government of El Salvador has elapsed and it has not complied with the Commission's recommendations in Report No. 18/93, nor has it answered the communication of October 18, 1993, notifying it that the report was adopted and sending it a text thereof.

CONCLUSIONS

1. The Inter-American Commission on Human Rights finds that the Government of El Salvador is responsible for the facts denounced in the communication of December 17, 1990, whereby on May 14 of that year, a soldier raped a 7-year old girl, María Dolores Rivas Quintanilla, leaving behind a handkerchief bearing the name of his military unit, which was the Atonal Quick Reaction Infantry Battalion. The rape was committed while the little girl was in her home in the village of Gualcuha, Moropala canton, in the department of San Miguel, El Salvador.

2. The Commission further finds that the Government of El Salvador has violated the American Convention on Human Rights, specifically Article 5.1 on the right to have one's physical, psychological and moral integrity respected; Article 11 on the right to have one's honor and dignity protected; Article 19 on the rights of children, and the Article 25 on the right to judicial protection, in relation to Article 1.1 of that Convention, of which El Salvador is a State Party.

3. It makes the following recommendations to the Government of El Salvador:

a. That it conduct a thorough, rapid and impartial investigation into the facts denounced to identify those responsible for the rape of María Dolores Rivas Quintanilla

⁴ Advisory Opinion OC-11/90 of August 10, 1990, "Exceptions to the Exhaustion of Domestic Remedies," requested by the Inter-American Commission on Human Rights. Paragraph 34.

and for the subsequent cover-up of the crime; and that these individuals be brought to justice so that they may receive the punishments which such serious conduct demands.

b. That the consequences of the violation of those rights be redressed and that the injured party be paid a fair compensation.

c. To adopt the measures necessary to avoid a recurrence of similar acts hereinafter, particularly the following measures:

Require observance of the provisions of Article 19 on the rights of children of the American Convention on Human Rights; Article 16 of the Additional Protocol to the American Convention on Human Rights, the "Protocol of San Salvador", and Articles 19.1, 37 and 39 of the Convention on the Rights of the Child, all of which call for real and effective protection of children's rights.

Enact laws that establish very clear and unequivocal punishments for agents of the State who engage in conduct such as that described here, with special punitive aggravating circumstances if the victim is a minor.

4. The Commission invites the Government to accept the jurisdiction of the Inter-American Court of Human Rights in this case which is the subject of this report.

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 El Salvador did not adopt measures to correct the situation denounced within the time period.