

REPORT Nº 8/93
CASE 10.793
HONDURAS
March 12, 1993 (*)

1. ORIGINAL PETITION

On February 8, 1991, the Commission received the following petition:

1. BACKGROUND:

Until his death in Tegucigalpa on May 31, 1990, FRANCISCO JAVIER BONILLA had been an active member in the Honduran Social Security Institute Union (SITRAIHSS), and at various times had been an officer in the union. Because of his activism in the union movement, he had been the target of two failed kidnapping attempts. At the time, the victim blamed possible members of Battalion 316 or some other State security force, as he stated in his oral testimony. Prior to his death, he was being nominated for the office of president of the Union, against the will and political interests of the executives of the IHSS (Honduran Social Security Institute).

2. CIRCUMSTANCES SURROUNDING HIS DEATH:

On Thursday, May 31, 1990, the victim participated in a meeting where various SITRAIHSS-related matters were discussed. Also present were Ramón Rosa Cabrera and Francisca Consuelo Valladares de Castellanos. It was raining when the meeting ended, and those attending left the home of Ramón Rosa Cabrera, in the neighborhood called El Chile de Tegucigalpa, and headed in the direction of the bridge that connects that neighborhood with the city. The victim was walking alongside Mrs. Francisca Consuelo Valladares de Castellanos. When they reached the end of the bridge, an armed man fired on him, killing him instantly. The individual beside him was able to see the face of the murderer, in spite of the rain and the fading light at that time, which was between 6:00 and 7:00. Another union member, Ramón Rosa Cabrera, was a few steps behind the victim.

3. THE INVESTIGATION OF THE CASE

As a result of that murder, the Public Relations Office of the Honduran Armed Forces published a communique dated June 1, 1990, announcing that

(*) Commission member Dr. Leo Valladares Lanza abstained from participating in the consideration and voting on both reports.

the Armed Forces had ordered "an exhaustive investigation, which will continue until the killer is identified. A special committee has been formed for that purpose." It was later learned that the committee was composed of five colonels. Their final report showed that there were three suspected assassins, allegedly acting on orders from and in the pay of a medical student and university leader, Martín Pineda. The first three suspects, when they were

brought before the competent judge, stated that they had confessed under torture, in the cells of the National Investigations Department (DNI). When brought face to face with the alleged intellectual author of the crime, the three denied ever having seen him until that moment. The two witnesses mentioned earlier stated, in the presence of the competent judge, that the accused did not fit the physical description they had given of the murderer.

4. EVIDENCE OF THE STATE'S CULPABILITY:

On Wednesday, October 17, 1990, the witness Francisca Consuelo Valladares de Castellanos recognized the murderer when his photograph was published on the front page of the newspaper "La Tribuna." He was identified as an agent of the National Investigations Department (DNI), Felipe Santiago Aguilar Martínez, also known as Felipe Martínez (alias "Popeye"), according to notarized testimony No. 30, signed by the witness and delivered in the presence of the attorney Linda Lizzie Rivera on December 17, 1990 (document attached).

5. PETITION

I ask that the Honorable Inter-American Commission on Human Rights accept this petition as a case of a violation of Article 4, the right to life, and, in exercise of its functions, that it act in accordance with Article 41.f on the matter of its competence.

On February 27, 1991, the Commission forwarded the pertinent parts of the denunciation to the Government of Honduras, requesting information within 90 days. When no reply to that request was received, the request was sent again on June 6, 1991. The Government was advised that if no reply was forthcoming within 30 days, the Commission would consider eventual application of Article 42 of its Regulations.

2. ADDITIONS TO THE PETITION AND REQUEST FOR PRECAUTIONARY MEASURES

On June 10, 1991, additional information on the case was received, which included a request for precautionary measures to protect the life and physical safety of Luis Andrés Galeas García. The Commission transmitted that new information to the Government on June 19, 1991, requesting a reply within 30 days; in exercise of its authority under Article 29.2 of its Regulation, the Commission asked the Government to take the requested precautionary measures.

The additional information received on June 19, 1991, is as follows:

One year after the murder of union leader FRANCISCO JAVIER BONILLA MEDINA, the Inter-American Commission on Human Rights is again being requested to investigate this crime.

The Commission is also informed that the Special Committee that the Armed Forces of Honduras established with colonels Lázaro Avila Soleno, Herbert Munguia, Oscar Flores, Juan Ramón Alvarado and Fredy Miranda, and Major

Luis Alonso Cordón, submitted a report so unconvincing that those alleged responsible, Amador Zúñiga and Luis Andrés Galeas García, who were reported to be the material authors of the crime, were released provisionally, when the judge who was hearing the case ruled that there was insufficient merit to hold them in custody. The student Martín Pineda, whom the military had claimed was the intellectual author, is also still at liberty. The same is also true of Marco Tulio Mencía García who, according to the military report, served as an intermediary between the alleged material authors and the intellectual author of the crime.

As it happens, the Special Committee, which consists exclusively of military officers, did not name the real guilty parties. Attached is testimony from an eyewitness to the murder, who states that it was an agent from the National Investigations Bureau who committed the crime. This individual has not been called before the courts by his superiors to be investigated as the law requires. We are therefore urging the Commission to reveal the identity of the alleged assassin to the Government of Honduras.

It is clear that when they submitted their report on July 26, 1990, the officers serving on the Special Committee incriminated innocent people and are, it would seem, guilty of a cover-up (Article 388 of the Penal Code) and of making a false accusation or denunciation (Article 387).

Luis Andrés Galeas García was brutally tortured to force him to confess to being one of the material authors. When he was released, he testified to these facts. We are attaching a copy of this document to this note. Mr. Galeas is also being persecuted by agents of the DNI, for the obvious purpose of silencing him or eliminating him. We are therefore requesting that precautionary measures be taken to protect his safety.

3. THE GOVERNMENT'S RESPONSE

On July 8, 1992, the Government of Honduras sent its reply to the denunciation. That reply included Memorandum 051-CIDH from the Interinstitutional Human Rights Commission (a governmental body). The pertinent parts of that reply read as follows:

In connection with this case, the First Criminal Court of the Department of Francisco Morazán is hearing the case in question; at present, pre-trial steps are in progress; the inquiries that the law requires are being conducted which may turn up evidence to shed light on the facts.

As for the evidence of the guilt of the Honduran State that the petition alleges, I should inform you that efforts have been made to speak with Mrs. FRANCISCA CONSUELO VALLADARES MONTOYA DE CASTELLANOS, both at her work place (Honduran Social Security Institute) and at her home (Villa Adela neighborhood, Sixth Avenue, 22nd and 23rd Streets, Comayagueta, D.C.). Thus far, she has been impossible to locate. However, we have information from other persons to the effect that the individual in question left the country; however, she stated the following when she testified before the Court on June 5, 1990:

QUESTION: Can you identify the individual who fired the shots? **ANSWER:**

No, I can't because I wear glasses. It was raining at the time and I didn't have them on. Moreover, because of the time and the place, I was unable to identify the person...

In her expanded testimony on June 18, 1990, the same individual stated the following: **QUESTION:** Did the individual get out of an automobile? **ANSWER:** I never saw the face; it was very dark.

This is evident from the photocopies of the affidavits attached hereto.

The Government's reply also contained a copy of an affidavit from the First Criminal Court of the Department of Francisco Morazán attesting to the testimony that Mrs. Francisca Consuelo Valladares Montoya gave under oath on June 5, 1990 in connection with this case.

4. THE PETITIONER'S REPLY

The petitioner, who was sent the above information on July 9, 1991, replied on August 8, with the assertions summarized below. Those assertions were forwarded to the Government on August 12, 1991, requesting a reply within 30 days.

The petitioner's reply relates a number of procedural flaws and cover-ups on the part of the Government:

- a) In Honduras summary proceedings are public, except in those cases where confidentiality is necessary to preserve the interests of justice. However, the courts refuse to provide certified records of court proceedings to interested parties and there are even judges who allege confidentiality so as not to let nonlitigant interested professionals read the proceedings;
- b) During the pre-trial period, no suspect can be held for more than a month. With reasonable cause, that period can be extended to three months, if information from outside the country is required;
- c) The Government is not revealing the false charges being brought against innocent parties in this case and the cover up of the one directly responsible and of the intellectual authors. This is even more serious in the case of grievous crimes such as this one, where inquiries are automatic;
- d) One of the measures to be taken, under Article 154 of the Code of Criminal Procedure, is the police report or the report by a public security force. The special (military) committee's report of July 26, 1990, is the only such report in the case file;
- e) The witnesses to the killing of BONILLA were not brought face to face with the alleged assassins; from the photographs published in the newspaper, they said that none of the accused was the actual author.

The petitioner's response to what the Government said concerning the statements

made by the witness Francisca Consuelo Valladares before the First Criminal Judge of Morazán, was that at the time of her testimony the witness was experiencing the psychological stress of having witnessed the death of her friend and union colleague and of having been on the verge of becoming another victim in the murder. That stress is obvious from the psychological treatment that the witness had to undergo at the Honduran Social Security Institute, both because of her emotional imbalance and to relieve her indescribable fear that someone would discover that she recalled the face of the murderer perfectly, because he was very close to her when he pointed the weapon at her. She survived because of a miracle, which was that the murder's weapon was out of bullets. This is all clear in the first sworn statement made by the witness in which she says that she would hold authorities of the State responsible for any attack against her or her family. In the days that followed, she was under surveillance, which made all the members of her family nervous.

Her suffering increased when it was said that this was a crime of passion, because of alleged relations with Mr. BONILLA, which her husband dismissed.

In her statement before the court, the principal witness described the murderer of Mr. BONILLA as follows: "a short man, slender, with short hair; I couldn't say whether it was straight or curly. He was wearing khaki pants and a beige sweater." The witness was willing to take a lie detector test for the Commission.

For the sake of her own safety, the witness had to seek political refuge and now lives in Canada. However, the Government made it difficult for her to leave Honduras, and put her name on the "Red Alert" list of the General Bureau of Population and Migration Policy, which made her look as if she were a suspect in the murder. When they were not able to keep her there, her passport and the passport of her two daughters were revoked.

Finally, the petitioner alleges that systematic human rights violations persist in Honduras and that there is no means of obtaining effective internal guarantees in the country.

The petitioner also appeared in a hearing before the Commission at its meeting on February 1, 1992. There, the petitioner reported that two of the witnesses in the case had to leave Honduras to protect their lives and safety, after testifying to the events that had transpired. In late July 1991, the National Congress of the Republic had decreed a general amnesty that would cover those State agents who allegedly were responsible for the murder of FRANCISCO JAVIER BONILLA MEDINA.

5. THE GOVERNMENT'S SECOND REPLY

In a note dated February 19, 1992, the Government replied by sending a statement from the Director General of Population and Migration Policy to the effect that Mrs. Francisca Consuelo Valladares had and still has complete freedom to enter and leave the country and that no impediment of any kind stood in the way of her leaving the country.

The Government's reply also included memorandum 2/CIDH/92 from the Interinstitutional Human Rights Commission, describing the petitioner's observations as "subjective, bordering on slander." The Government noted that the proceedings instituted as a result of the death of Mr. BONILLA were being conducted in accordance with the law but that it was difficult for the Court to compile the information necessary to complete the case; it said that no reasonable evidence had as yet been found concerning the authorship of the

crime.

The Government stated that when witness Valladares was brought face to face with a suspect being held, it was established that the suspect in question had not taken part in the crime and he was released. The Government alleged that there was no case file wherein false accusations were made against innocent parties and that there were no secret files. The Government also included the request for procedural certifications.

It further stated that

It is absolutely false that the General Bureau of Population and Migration Policy created some impediment to prevent Mrs. Consuelo Valladares from leaving the country. It is a matter of public record that she has left the country, and the document attesting to that fact is attached hereto.

The Government stated that it had no knowledge of any police surveillance of the principal witness and did not believe that the police had taken any such action; the Government said that the witness could make an appearance in court and amend her testimony. It stated that witnesses Carlos Alberto Cerrato Padilla, Wilfredo Yolando Silvestrucci Santos, Francisca Consuelo Valladares and Ramón Rosa Cabrera Girón had been brought face to face.

The Government concluded with some positive comments concerning the Government's conduct where human rights were concerned.

6. That information was sent to the petitioner on February 25, 1992, requesting observations as soon as possible. The Commission received the petitioner's observations on June 1, 1992, which reasserted statements made earlier by the petitioner.

At its 82 session, the Commission adopted Report No. 25/92, which was referred to the Government of Honduras so that the latter might make whatever observations it deemed pertinent within three months of the date of transmission.

ANALYSIS:

7. The Commission has competence to hear the instant case because it involves facts that, if true, constitute violations of rights recognized by the American Convention on Human Rights; the petition satisfies the formal requirements for admissibility and there is no allegation that this same case is pending settlement in another international forum or that it is a duplication of a case already examined by the Commission.

The note that the Government sent on February 8, 1992, makes it very clear that there is no judicial inquiry into the facts in this petition.

8. The Commission therefore resolves to admit the present case, inasmuch as it fulfills the requirements stipulated in Article 46 of the Convention and since none of the grounds for inadmissibility stipulated in Article 47 of the Convention applies to it.

Because of the nature of the facts denounced, the friendly settlement procedure provided in Article 48.1.f of the American Convention on Human Rights does not apply, so that the Commission must carry out the provisions of Article 50.1 of the Convention, issuing its conclusions and recommendations on the petition submitted to it for consideration.

As to the pre-trial procedures

9. From the information the Commission has in its possession, it is evident that even though the principal witness reported having recognized the material author of the crime

in a newspaper photograph of someone known as "Popeye", who was then an agent of the National Bureau of Investigations and whose photograph had appeared in the newspaper because of an attempted kidnapping in which he was the co-author, that agent was never interrogated nor brought face to face with the eyewitnesses to the murder of Bonilla and the attack on his companions.

10. Said DNI agent, "Popeye", had stated -according to statements made to journalists--that his role in the attempted kidnapping of another DNI agent who was in the custody of the court, was done in the official line of duty; this was confirmed by one of his superiors, Captain Cesar Augusto Somoza, in statements made to the press to the effect that this was "excessive zeal in the line of duty." (La Prensa, October 17, 1990).

11. The attempt to wrest the DNI agent from the custody of the court was a public incident witnessed by judges and journalists alike; its purpose was to extract José Manuel Guzmán Martínez from court custody, as he was being indicted as the brains behind the kidnapping of another union leader by the name of Briceño.

12. This same Popeye, in those statements on the kidnapping attempt, told journalists: "We didn't think that this problem would come up here. We were performing an official mission. I cannot say on whose orders. This is part of the job." (La Prensa, October 17, 1990).

13. According to the Interinstitutional Commission's note of February 8, 1992, the Judge examined the witnesses Francisca Consuelo Valladares, Carlos Alberto Cerrato Padilla, Wilfredo Yolando Silvestrucci Santos, and Ramón Rosa Cabrera Girón, but did not examine Lilian Cerrato, Florencio Sánchez, Arnulfo Moncada and Ana Bell Gómez, the eyewitnesses to the murder.

14. While what the Interinstitutional Commission says is true, i.e., the principal witness, Consuelo Valladares in her sworn testimony (June 5 and 18, 1990) alluded to problems of visibility in terms of identifying or recognizing the murderer at the time the crime occurred, a careful reading of the statements she made shows that she never said that she did not see all of the perpetrator or she did not see him close up; she said quite the opposite:

...and it was then, when they began to fire on them from behind; the two of them immediately spun around, and Mr. Francisco Bonilla shoved her (the deponent) with his right hand; she saw a bullet hit, which she believed was intended for her; when Francisco (Bonilla) shoved her, two or three shots had already been fired; she was not sure how many; she saw Mr. Francisco try to run; he took three steps to the right, looking for the corner...; when Francisco fell to the ground, the assailant went up to him and fired two more times; at that point, Francisco was lying face down; the assailant immediately turned around and, facing the deponent, pointed the gun at her for a moment; she doesn't know whether the assailant fired or whether he had no bullets in the pistol,...
(emphasis added)

15. The principal witness later stated that she was terrified when she testified and that in a subsequent psychiatric examination, it was found that her fear prevented her from revealing that she recalled the assassin's face perfectly.

16. The lack of judicial inquiries to interrogate and establish the responsibility of "Popeye," despite the public statements, shows that the judicial system has little interest in prosecuting investigations.

17. The judiciary's disinterest occurs at a time when, in the space of only a few months, a number of union and university leaders who opposed the Government were murdered in the country, though none of the murders has ever been solved. (Case Salomón Vallecillo in San Pedro Sula, shortly after the Honduran Tobacco Workers Union that he led triumphed in the negotiation of a collective contract in mid-1989; Edgardo Herrera, a leader of the University Reform Front, also in San Pedro Sula, in July 1989; Cristóbal Pérez Alfaro, in San Pedro Sula at around the same time; Reinaldo Zúñiga and Hernán Rodríguez García, peasant leaders murdered on January 25 and April 26, 1990; the bomb thrown at the leader of the electrical workers union, Gladys Lanza, at around the same time, and the death of the transportation leader Briceño, in which the DNI agent Guzmán Martínez was tried and whom other DNI agents tried to extricate from the custody of the court).

As to the investigation conducted by the Armed Forces Committee

The Commission considers that:

18. The fact that the Government, through the Armed Forces, which oversees the Bureau of Investigations and the Police, announced and created a special, high-level committee to conduct the investigation is indicative of the importance that Mr. Bonilla's murder and the attack on his union colleagues had in the eyes of the public.

19. The committee's findings were clearly inconclusive, as evidenced by the fact that the judge had to order the release of those whom the military committee had named as suspects; for their part, the former suspects accused the committee and their abductors of having tortured them to force them to confess.

20. There is no evidence in the Government's reply that the appropriate independent investigations were ordered into the complaints of torture and illegal duress of those falsely accused.

21. Another contradiction in the military version is the fact that the alleged intellectual authors, two university leaders, were fugitives; newspaper accounts indicate that journalists visited at least one of them. The so-called fugitive was at home, going about his business; he said that he would go to the Court immediately since this was the first he had learned of the matter.

As to the alleged persecution of the principal witness

22. As Mrs. Consuelo de Valladares contends, from the time of the crime, when the author approached her, pointed the gun at her and actually fired at her, without success, a particular form of persecution began involving threats and surveillance.

23. As part of that persecution, efforts were made to try to prevent her from leaving the country, on orders from the Bureau of Population and Migration.

In a note to this Commission dated February 8, 1992, the Government's

Interinstitutional Commission denied that any such order ever existed.

24. However, the Commission has in its possession an official telegram dated 12-27-90, a copy of which was duly transmitted to the Government, wherein the Director of Population and Migration, Col. Bustillo Murcia, stated: "Kindly nullify the Stop-Exit Alert for VALLADARES MONTOYA, FRANCISCA CONSUELO, dated 6-11-90, a HONDURAN national."

25. That order was issued after the principal witness denounced the impediment to the Minister of the Interior, presenting legal records to the effect that there was no charge against her and she was not being sought. The Minister gave the order on December 19, 1990.

26. The fact that there was such an order to obstruct the principal witness' departure, as shown above, and the Government's conduct in sending an official note to the Commission denying any impediment, lends credence to the charge that the Government was indeed persecuting the principal witness.

27. That the Government of Honduras has not presented its observations on Report No. 25/92.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. To declare that the Government of Honduras is responsible for violation of the right to judicial protection, Article 25 of the American Convention on Human Rights in relation to Articles 1.1, 2 and 8 concerning the obligation to respect and ensure the rights recognized therein, in the case of FRANCISCO JAVIER BONILLA MEDINA, a union leader killed in Tegucigalpa on May 31, 1990.
2. To recommend to the Government of Honduras that:
 - a. it establish the conditions necessary to conduct a thorough judicial investigation of the facts and to punish those responsible.
 - b. it take legislative and all other measures necessary to ensure, henceforth, the rights that, in the Commission's judgment, have been violated in this case and to prevent a recurrence of such violations.
 - c. it make reparations for the consequences of the violation of the aforementioned rights and pay fair compensation to the injured parties.
 - d. it develop a witness protection program for this case and cases like it.
3. To publish this report in the Annual Report to the General Assembly, pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, inasmuch as the Government of Honduras did not adopt measures to correct the situation

denounced, within the time period stipulated in Report No. 25/92.