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File Number(s):	Report No. 14/05; Petition 3101/02
Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Oscar Daniel Medina Cortes and Jose Luis Hernandez Martinez v. Honduras
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	23 February 2005
Citation:	Medina Cortes v. Honduras, Petition 3101/02, Inter-Am. C.H.R., Report No. 14/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: the Centro por la Justicia y el Derecho Internacional and the Asociacion Casa Alianza America Latina (Casa Alianza)
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## I. SUMMARY

1. On August 26, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition presented by the Centro por la Justicia y el Derecho Internacional (CEJIL) [Center for Justice and International Law] and the Asociación Casa Alianza América Latina (Casa Alianza) [Covenant House Latin America – Casa Alianza] (hereinafter “the petitioners”) in which they argue that the Republic of Honduras (hereinafter “the State” or “the Honduran State”) is internationally responsible for the illegal arrest, torture and execution of the children Oscar Daniel Medina Cortés and José Luis Hernández Martínez. The petitioners allege that the reported facts violate several provisions of the American Convention on Human rights (hereinafter the “American Convention” or the “Convention”): Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 19 (rights of the child), Article 8 (right to a fair trial) and Article 25 (right to judicial protection). They furthermore allege the violation of the general obligation of the State to respect the rights protected in the Convention, pursuant to Article 1(1) of same.

2. The petitioners report that on January 11, 1988, the minors Oscar Daniel Medina Cortés, 15, and José Luis Hernández Martínez, 14, were kidnapped by five unidentified persons carrying high caliber firearms, and that they were found dead the next day. They allege that this crime should be analyzed within the context of existing violence against children in Honduras. The petitioners further contend that there has been an unwarranted delay in the investigation, trial and punishment of all those responsible, which would exempt the petitioners from exhausting

domestic legal remedies, under the exception provided for by Article 46(2)(c) of the American Convention.

3. The State denies the existence of a practice of impunity, ordered or tolerated by the State, regarding crimes against minors allegedly committed by members of the National Police. In addition, the State expressly filed an objection on the grounds of lack of exhaustion of domestic legal remedies.

4. After examining the factual and legal arguments of the parties, as well as the evidence provided and, with no pre-judgment of its merits, the IACHR has concluded that the case is admissible under the exception provided for by Article 46(2)(a) and (c) of the American Convention, and has decided to publish this report in the Annual Report of the IACHR to the General Assembly, and to notify the parties about this decision.

## II. PROCESSING BEFORE THE COMMISSION

5. The petition was received on August 26, 2002; it was transmitted to the State on October 16, 2002. On December 11, 2002 the State requested an extension to deliver its response, which was granted for 30 days on January 8, 2003. The State's response was filed on January 28, 2003, and was transmitted by the Commission to the petitioners on February 5, 2003. On April 17, 2003, the petitioners requested an extension of the time period to present their comments on the State's response. A thirty day extension was granted for this purpose on March 18, 2003. On April 16, 2003 the petitioners presented additional information, which was transmitted to the State on April 23, 2003. On May 23, 2003 the State requested an extension to file its comments, which was granted, for 30 days, on May 30, 2003. The State presented its comments on August 4, 2003, which were transmitted to the petitioners on August 18, 2003. The petitioners requested, on September 22, 2003, an extension of the deadline to file their comments on the State's response, which was granted for 30 days on October 14, 2003.

## III. POSITIONS OF THE PARTIES

### A. The Petitioners

6. The petitioners allege that on January 11, 1998, at around 6:30 p.m., five unidentified[FN1] armed persons, carrying high caliber firearms, and who were traveling in a blue pick-up truck with no license plates, arbitrarily arrested the minors Oscar Daniel Medina Cortés, 15, and José Luis Hernández Martínez, 14, who were playing in the Policarpo Paz García Neighborhood, City of El Progreso, in the Department of Yoro.

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[FN1] The petitioners state that the individuals did not hide their faces and that they were later identified by witnesses as members of the National Police.  
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7. The petitioners state that during the disappearance of the children, no explanation was forthcoming to their families, who became aware of what had occurred through other members

of the community. The petitioners assert that the family members attempted to report the kidnapping to the Office of Criminal Investigations, but the authorities refused to acknowledge the report because it was a Sunday. They further state that the family members were directed to go to the Public Security Forces where the report was received, but no investigative action was taken.

8. The petitioners assert that on the next day, January 12, 1998, a National Police officer notified Oscar Daniel's father, Mr. Héctor Medina, that the bodies of the minors had been found. The father immediately went to the scene of the crime and found that the bodies bore marks of having suffered from grave physical violence.[FN2]

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[FN2] In his deposition in the Office of the Public Prosecutor, Mr. Medina stated that the murderers removed the boys' pants and cut off their genital organs, and that their legs had wounds apparently caused using an ice pick.  
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9. They state that since the competent authorities did not recover the boys' bodies, Mr. Medina took them to their respective homes to prepare them for the wake. They allege that it was not until then that the legal authorities appeared to recover the bodies.

10. The petitioners affirm that the modus operandi used to make this arrest corresponds to the pattern followed by the police to make clandestine arrests with the purpose of identifying and eliminating alleged delinquent minors. They also assert that there is evidence that in this case the kidnapping of the boys was carried out by State agents. They further claim that there is evidence in this case of police involvement in the crimes and that the arrest, execution and torture of Oscar Daniel Medina Cortés and José Luis Hernández Martínez occurred as part of a process of "social cleansing", they were confused with other youths who allegedly were members of a gang that had participated in a crime on the same day of the executions of the victims.

11. The petitioners state that on January 14, 1998 a preliminary ex officio investigation of the facts was opened, based on press information. They allege that notwithstanding the depositions of several witnesses during the judicial investigation, at the time the petition was filed more than four years had gone by without any arrest warrants being issued and without an effective investigation to determine the identity of those responsible for the deaths. This demonstrates the lack of interest on the part of the State in investigating the facts. It also demonstrates the lack of State compliance with its obligation to take the necessary measures to investigate and punish the alleged human rights violations. They further argue that the procedure was characterized by a series of irregularities,[FN3] the result of which was that the victims' families were denied their right to know the truth about the facts and the possibility of claiming their rights in court.

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[FN3] The petitioners allege that indispensable investigative procedures were not carried out, that all possible witness depositions that would have been essential to the investigation were not taken, that the bodies of the children were allowed to be removed and that the required forensic

activities in this kind of cases were not carried out. They further note that the crime of torture was omitted from the investigation.

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12. Based on the exception provided for by Article 46(2)(a) of the Convention, the petitioners argue that they are under no obligation to exhaust domestic legal remedies, since four years have passed from the time of the murders, without those responsible having been tried and punished, constituting an unwarranted delay in the administration of justice. This has occurred notwithstanding that the alleged situation of violence and impunity is fully documented in the case through witness depositions, opinions of experts, judicial inspections and presumptions that, they state, lead to evidence of guilt.

13. In short, the petitioners allege that judicial remedies have not been effective and that, on the contrary, they have hindered the clarification of the facts and have delayed the investigation. In their view this also corresponds to a modus operandi and to a practice allegedly ordered and/or tolerated by the Honduran State of allowing impunity for crimes in which members of the National Police participate and whose victims are children and adolescents at risk. In addition, they state, as a consequence of the above, a systematic pattern of impunity has taken shape, encouraging the commission of this type of crimes.

14. Based on their factual and legal arguments, the petitioners assert that the State of Honduras has violated Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 19 (rights of the child), 8 (right to a fair trial), and 25 (right to judicial protection) in concordance with Article 1(1) (general obligation to respect rights) of the American Convention.

#### B. The State

15. In their response to the petition, the State denies the existence of a pattern of extrajudicial execution of minors in Honduras or of a practice, ordered or tolerated by the State, of impunity for crimes allegedly committed by the National Police against minors at risk. It further states that the aforementioned phenomenon has appeared as a product of the proliferation of common criminality and that many of the deaths are the product of internal conflicts between maras (juvenile gangs) that exist in Honduras and Central America. The State asserts that Honduras is going through a critical period with respect to security and that, with the purpose of guaranteeing security for its citizens, the State has planned to reinforce the police and the investigative agencies, in order to punish and prevent, and thus reduce, crime.

16. In this connection the State said that a new Code of Criminal Procedure has been enacted, transforming the Honduran legal process to reconcile it with international human rights instruments. It pointed out that this new system of legal procedure balances the rights of the defendant with those of the victim, with society's interest in punishing crime, as well as with principles of procedural transparency. It claimed that there has been progress in the investigation of these crimes, according to field studies conducted by national institutions on violent deaths of children, and that the Honduran government has requested the institutions involved in the investigations to grant priority to the deaths of minors.

17. The State maintained that there is no culture of impunity in the country. It alleged that many crimes go unpunished because in many cases there is not enough evidence indicating who committed them, or because sometimes the evidence is insufficient to jail the perpetrators, and sentence them. However, the State asserted, with the implementation of the country's new system for criminal procedure, the citizen has been guaranteed an honest delivery of justice.

18. The State noted that the criminal trial related to the death of the alleged victims of this case was in the investigative stage, and described the procedural actions taken to investigate the reported facts. It argued that the judicial proceedings are ongoing and that the procedure has been followed according to the law. It concluded that in this case the exception of lack of exhaustion of domestic legal remedies could not be claimed, given that the trial to investigate the deaths of the victims was not over.

#### IV. ANALYSIS

##### A. Competence *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Commission

19. Pursuant to Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioners, as legally recognized non-governmental organizations, are legally entitled to present petitions regarding alleged violations of the rights established in the American Convention. Regarding the State, Honduras is a party to the Convention and hence is internationally responsible for the violations of same. The petitioners name Oscar Daniel Medina Cortés and José Luis Hernández Martínez as the alleged victims, whose rights, contained in the Convention, the State committed itself to guarantee. The Commission therefore has competence *ratione personae* to examine the petition.

20. The Commission has competence *ratione materiae* because the petition refers to complaints of violations of the human rights protected by Articles 4, 5, 7, 8, 19, 25 and 1(1) of the American Convention. The Commission also has competence *ratione temporis* because the alleged actions occurred when the obligation of respecting and guaranteeing the rights established by the Convention was in force for the Honduran state, which ratified it on September 8, 1977. The Commission has competence *ratione loci* because the alleged facts occurred within the territory of Honduras, which is a country that has ratified the American Convention.

##### B. Other admissibility requirements for the petition

###### 1. Exhaustion of domestic remedies

21. Article 46(1) of the American Convention on Human Rights establishes that for the admission of a petition or communication lodged under Articles 44 or 45, it shall be required "that all remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

22. The petitioners have alleged that the amount of time elapsed since the investigation was launched *ex officio* to clarify the facts surrounding the deaths of the children, and to try and punish those responsible for the deaths has been unreasonably excessive. They further allege that the investigation has been ineffective and has given rise to impunity. They therefore request that the case be declared admissible in accordance with Article 46(2) of the American Convention, which provides that the requirement of prior exhaustion of domestic remedies, and the time period for lodging a petition, shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The requirement of prior exhaustion of domestic remedies is related to the possibility for the State of using its domestic judicial organs to investigate and punish human rights violations committed by its own agents, before it becomes subjected to an international procedure. This, however, in turn requires the assumption that, domestically, due process of law exists to investigate these violations and that the investigation is effective; otherwise, the Inter-American Commission, under Article 46(2)(a) is competent to examine the case before domestic remedies are exhausted.

24. The Honduran state filed its objection related to the lack of exhaustion of domestic remedies starting from the first stages of the proceedings. However, the Commission confirms that the right of the State to argue the inadmissibility of a petition based on the lack of exhaustion of domestic legal remedies cannot serve as a basis for stopping or indefinitely delaying international action on behalf of a defenseless victim. If in a certain case the processing of domestic remedies is unjustifiably delayed, it can be deduced that they have lost their capability to effectively bring about the result for which they were established. Therefore, it is appropriate to use international protection mechanisms, including the above-mentioned exceptions, which provide an exemption from the requirement that domestic remedies be exhausted.

25. The Commission considers that, as a general rule, any criminal investigation must be undertaken promptly to protect the interests of the victims and to preserve evidence. In this case, action was initiated with a “whereas” in the Juzgado Segundo de Letras de lo Criminal [Second Criminal Court of San Pedro Sula], on January 15, 1998. According to information received to date, more than seven years after the fact, the proceedings are in their investigative stage. The Commission believes that the time elapsed without an effective investigation, or the trial and punishment of all those responsible, demonstrates unwarranted delay and scant possibilities for the effectiveness of this remedy. The state has not provided any justification for such a delay.

26. It is important to note that it does not suffice for the State to argue the lack of exhaustion of domestic legal remedies for the objection to be admitted. As the Inter-American Court has established, a State that lodges such an objection must also identify the domestic remedies to be

exhausted and demonstrate their effectiveness under such circumstances. Honduras has not done so in this case.

27. Finally, the Commission considers that it is important to clarify that the exceptions to the rule of exhaustion of domestic remedies are closely connected to the determination of possible violations of certain rights contained in the Convention, such as the right to a fair trial (Article 8) and the right to judicial protection (Article 25). It should be borne in mind, however, that Article 46 (2), by its nature and purpose, has a content that is independent of the substantive norms of the Convention and depends on a standard of evaluation different from the one used to determine the violation of Articles 8 and 25 of this international instrument. Because of this, the applicability of the exceptions to the rule of exhaustion of domestic remedies provided for in paragraphs (a), (b), and (c) of Article 46(2) must be decided, specifically and at the outset, just as the Commission is doing now in this report.

28. Therefore, the reasons for which domestic remedies were not exhausted and the legal effect of their lack of exhaustion will be analyzed when the Commission examines the merits of the issue, with the purpose of determining whether violations of Articles 8 and 25 have taken place.[FN4]

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[FN4] See IACHR, Report 54/01, Case 12.250, Mapiripán Massacre, Colombia, paragraph 38 and IACHR Juan Humberto Sánchez-Honduras, Report 65/01-Case 11.073, March 6, 2001, paragraph 51. IACHR, Report N° 15/02, Admissibility, Petition 11.802, Ramón Hernández Berrios ET. AL., Honduras, February 27, 2002.  
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29. Based on the arguments set forth above, the Commission concludes that the petition sub judice is admissible based on the exceptions established in Article 42(2)(a) and (c) of the American Convention.

## 2. Timeliness of the petition

30. According to Article 46(1)(b) of the American Convention, for a petition to be admissible it must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

31. In view of the Commission’s conclusion that there was an unwarranted delay in the processing of domestic remedies and that the exception provided for in Article 46(2)(c) of the American Convention is applicable, it is understood that the final judgment has not been handed down. Hence the six month time period for the lodging of a petition after the notification of a final judgment, referred to in Article 46(1)(b), has not begun to run. Nevertheless, the Commission considers that the petition has been filed within a reasonable period starting from the date on which the victims’ rights were allegedly violated and that, therefore, pursuant to Article 32 of its Rules of Procedure, the requirement of timeliness of the petition has been satisfied.

3. Duplication of proceedings and res judicata

32. The Commission finds that there is no evidence in the record indicating that this petition is pending in another international proceeding or that it is substantially the same as one previously examined by it or by another international organ. It therefore finds that the requirements established in Articles 46(1)(c) and 47(d) of the convention have been satisfied.

4. Characterization of the alleged facts

33. The Commission considers that there is no evidence of any lack of grounds for, or irrelevancy of, the complaint received. It further considers that, prima facie, the claims of the petitioners regarding the alleged violation of the victims' and their family members' rights to life, to humane treatment, to personal liberty, to a fair trial, to judicial protection, as well as of the rights of the child, could eventually constitute a violation of the rights of the victims, as well as the right of the family members guaranteed by Articles 4, 5, 19, 8 and 25 of the Convention, all in connection with Article 1(1) of the same instrument. Therefore, the Commission finds that the requirements established by Article 47(b) and (c) of the American Convention are satisfied.

V. CONCLUSIONS

34. The Inter-American Commission concludes that the petition is admissible pursuant to the exceptions provided for in Article 46, paragraph 2, sections (a) and (c) of the American Convention. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible regarding the alleged violation of the rights protected by Articles 4, 5, 7, 8, 19, 25, and 1(1) of the American Convention.
2. To notify the parties of this decision.
3. To continue with the examination of the merits of the issue, and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 23rd day of the month of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett, Freddy Gutiérrez and Florentín Meléndez, Commissioners.