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Title/Style of Cause:	Carlos Escaleras Mejia v. Honduras
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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:	24 February 2005
Citation:	Escaleras v. Honduras, Petition 59/03, Inter-Am. C.H.R., Report No. 15/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: the Centro por la Justicia y el Derecho Internacional
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I. SUMMARY

1. On January 13, 2003, the Centro por la Justicia y el Derecho Internacional (CEJIL) [Center for Justice and International Law] filed a petition against the Republic of Honduras (hereinafter “the Honduran State,” “Honduras,” or “the State”) to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”). The petition states that there has been a violation of Articles 4, 8, 25 and 1(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), to the prejudice of Carlos Escaleras Mejía (hereinafter the “alleged victim”).

2. The petitioners allege that the State of Honduras violated the American Convention when it did not undertake an exhaustive and effective investigation to punish those responsible for the homicide of Mr. Escaleras, and, in the current national human rights context, did not adopt effective measures to prevent crimes against environmental activists. With respect to admissibility they allege that the unwarranted delay in deciding domestic legal remedies exempts them from exhausting them.

3. The State alleged that domestic legal remedies had not been exhausted.

4. After an analysis of the petition and pursuant to Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible in regard to the alleged violations of Articles 4, 8, 25 and 1(1) of the American Convention. It also decided to notify the parties about the report on admissibility and to publish the report in the Annual Report to the General Assembly of the Organization.

II. PROCESSING BEFORE THE COMMISSION

5. On May 19, 2003, the Commission, pursuant to its Rules of Procedure, began to process the petition. It transmitted the pertinent sections of the petition to the Honduran State and requested a response to the petition within two months time. The State replied on August 29, 2003, within the 30 day extension granted by the Commission for this purpose. The pertinent sections of the response were transmitted to the petitioners on September 11, 2003, and on November 25, 2003 the petitioners filed their comments regarding the State's response. On March 17, 2004, the State presented additional information, which was transmitted to the petitioners. The petitioners presented their observations on April 26. Subsequently, each party presented further additional information that was transmitted to the other, respectively, in a timely fashion.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners assert that on October 18, 1997, at approximately 6:30 p.m., when Mr. Carlos Escaleras Mejía was returning to his business from a political meeting of his party, two men came out of the shadows and shot him twice in the back. They state that Mr. Escaleras was taken to the CEMECO clinic, where care could not be provided for him. He then was taken to a hospital in La Ceiba where he underwent surgery. He did not survive the operation, however, dying during the early morning hours.

7. The petitioners allege that Mr. Escaleras was one of the most recognized leaders of the Aguán Valley. He was a leader of several organizations, such as the Comité para la Defensa de los Derechos Humanos en Honduras (CODEH) [Committee for the Defense of Human Rights in Honduras], the Frente Común de Patronatos [Common Front of Local Citizen Organizations] and the Coordinadora de Organizaciones Populares (COPA) [Coordinating Committee of Peoples' Organizations], the latter being where his work had the greatest impact. Through this organization he became involved with other community and environmental organizations. These movements enjoyed a high degree of credibility because of their strong activism in defense of human rights. One of the important facets of his struggle was to denounce and oppose the activities of companies that harmed the environment and the valley's ecosystem with their dumping of toxic substances into rivers. According to depositions on judicial record, as a consequence of his actions, he was pressured and threatened with bodily harm and with death, threats that ended with his murder.[FN1] According to these depositions, his death occurred within the atmosphere of insecurity and persecution surrounding environmental activists in Honduras.[FN2] In this connection the visit to Honduras of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions is cited. The Special Rapporteur stated in her report that she learned of "cases in which environmental and indigenous activists had been killed at the behest of powerful landowners and business people." [FN3]

[FN1] Judicial proceedings, DGIC investigation, page 161, section 3. The petitioners state that “the complaint against the African palm oil extracting plant caused more pressures and threats against Escaleras. In fact, businessman Facussé told his own brother, René Escaleras, to warn him, to please “advise his brother to stop being an obstacle to his business.” See deposition by Blanca Adilia Escobar (page 171. See deposition of Marta Mercedes Alvarenga Reyes, page 173. (Page 3, note 17 of the writ of petition).

[FN2] The petitioners cite, among others, the murders of the environmental activists Blanca Jeanette Kawas, Carlos Flores, Carlos Luna and Carlos Escaleras Mejía.

[FN3] Report of the United Nations Special Rapporteur, Ms. Asma Jahangir, on Extrajudicial, Summary or Arbitrary Executions, submitted pursuant to Commission on Human Rights resolution 2002/36, Addendum, Mission to Honduras, Commission on Human Rights, June 14, 2002, E/CN.4/2003/3Add. 2, Section C. Alleged extrajudicial killings and death threats against members of indigenous communities, environmental activists and human rights defenders, paragraph 63, Annex 1.

8. They allege that this situation is aggravated by the impunity of those responsible for these crimes, which in turn favors the chronic repetition of human rights violations and the complete defenselessness of the victims and their families. They further allege that the State of Honduras violated Article 5 of the Convention with respect to the family members of Mr. Escaleras due to the impunity of those responsible for the crime, and also due to the lack of a serious and effective investigation, as well as the ineffectiveness of domestic legal remedies. They contend that the State also is in violation of the right to know the truth, that is, the right to learn in a detailed, public and accurate manner about the facts that gave rise to the human rights violations exposed and, besides, the right to justice for the harm caused.

9. They stress that the investigation of the facts that caused the death of Carlos Escaleras Mejía was not adequate, exhaustive, impartial or effective, because of the lack of interest on the part of the police and the Office of the Prosecutor in finding the true perpetrators of the crime.[FN4] They emphasize that the deficient investigation represents a violation, on the part of the State of Honduras, of its obligation to ensure and protect the right to life found in Article 4 of the American Convention.

[FN4] The petitioners claim that irregularities occurred in the forensic examination of the bodies, ballistics examinations, and the evidence from witness testimony, all of which vitiated the investigation of the facts. Among other irregularities alleged they state the following: 1) it was not until November 13, 1997, one month after the murder of Mr. Escaleras Mejía, that the judge conducted a personal inspection of the crime scene; 2) there was no autopsy and there were no photographs of the body, both of which are necessary to perform an effective investigation of a death; 3) it was not until March 27, 1999, 17 months after the events, that the Prosecutor requested information on the examination of the body from the forensic scientist of the city of La Ceiba, “because of the lack of a forensic report as part of the proceedings”; 4) the Prosecutor unsuccessfully twice requested a court order for the surrendering of a weapon that had been confiscated from the four suspects the night of the crime and which, because it was the Army’s property, had been returned to the latter without subjecting it to a ballistics test; according to the

petitioners to date there has been no ballistics test performed; 5) the only procedure carried out in 1998 was on February 9, when witness Narciso Daniel Castro Orozco appeared in court to add to his deposition; from March 17, 1998 to February 17, 1999, there was nothing added to the criminal proceedings; 6) Carlos Urbina's deposition has not yet been added to the record, despite the fact that the Prosecutor so requested it on two occasions, i.e., October 24, 1997 and May 27, 1999; 7) There have been ten prosecutors over the course of the trial, detracting continuity from the investigations; 8) the criminal complaint presented by the brother of the victim on November 13, 2000, requested an inspection of the company that had allegedly issued a check implicating the abettors, as well as a court order for the bank involved to confirm the cashing, or lack thereof, of the check (Court File, page 2829). It was, however, not until ten months after this evidence was offered that the inspection of the company took place to confirm the issuing of the check in question (Court File, page 479). 9) The court's ruling of August 20, 2001, dismissing with prejudice the charges against two of the alleged abettors, was handed down without considering the Prosecutor's request for the admission of the testimony of Mario Gutiérrez, an important witness.

10. They allege that the first police actions consisted of the arrest of four persons suspected of having committed the crime. They assert that on February 26, 2001 the investigative stage of the proceedings was concluded and that there was a judicial order to go to trial, with the perpetrators and abettors to be tried separately.

11. Regarding the defendants accused of being the principal perpetrators of the crime, on October 16, 2002,[FN5] Lucas García Alfaro was found guilty of the murder of Mr. Carlos Escalera Mejía. Mr. García Alfaro was sentenced to seventeen years in prison in the National Penitentiary.

[FN5] The petitioners assert that, during the first months of the investigation, the names of several possible perpetrators were mentioned, but little was done to investigate their connection to the case.

12. Regarding those charged as abettors, the petitioners state that on August 20, 2001 the judge ruled for the dismissal with prejudice of the charges against two of them, Mr. Miguel Facussé Barjún and Mr. Irene Castro without having before heard them and without having carried out any procedures related to them. The petitioners further state that this court ruling was appealed on August 27, 2001, and that in its judgment of November 14, 2001, the Court of Appeals overturned the dismissal due to the lack of testimony received from the alleged abettors. Both men charged with abetting lodged a recurso de amparo [petition for the protection of constitutional rights] before the Constitutional Chamber of the Supreme Court of Justice. On August 8, 2003 this Chamber denied the petition on the grounds that the testimony of the alleged abettors had not been heard, and returned the case to the Juez de Letras Seccional de Tocoa [Judge of the First Instance of Tocoa].[FN6] The petitioners state that the same Chamber took nearly two years to resolve the appeal (from November 2001 to August 2003), which entails, as a logical consequence, a delay in the administration of justice.

[FN6] Judgment of the Supreme Court of Justice, Constitutional Chamber, August 8, 2003, Annex 1 of the petitioners' brief of April 23, 2004, received by the IACHR on the 24th day of the same month and year.

13. The petitioners stress that, in all, more than six years have elapsed since the opening of the proceedings without a definitive judgment having been reached against all the responsible parties. This lapse of time is beyond the limits of what is reasonable. They claim that the Code of Criminal Procedure provides that "the procedures of the preliminary inquiry ... shall not last more than one month..." and that in the separate proceedings against the abettors this phase has been ongoing for six years. Moreover, the case does not present the complexity alleged by the State, given that one of the perpetrators of the execution has been punished and two of those charged as abettors have been acquitted with unprecedented celerity. In this respect, they note that on a single day, October 14, 2003, the Juzgado de Letras Seccional de Tocoa [Court of the First Instance of Tocoa] processed and decided upon several procedures: it received a petition for the voluntary appearance of the alleged abettors Messrs. Miguel Facussé Barjún and Irene Castro; it ruled the dismissal with prejudice, of their charges, ruling, moreover, that this decision should have the effects of *res judicata*, and authorized the provisional release of both. The petitioners stress that the Juzgado Seccional de Tocoa [Court of the First Instance of Tocoa] carried out all these procedures on the same day of October 14, 2003 in order to facilitate the immediate dismissal of the charges against Messrs. Facussé and Castro, while other procedures to clarify the murder of Mr. Escalera took months and years to carry out, and others have not yet been carried out. They add that on October 23 of 2003 the attorneys of Messrs. Facussé and Castro requested their final release; this petition was received and decided on the same date, and both defendants were issued the release.[FN7] The petitioners claim that, consequently, there was an unwarranted delay in the administration of justice and that the remedies under domestic law were, in practice, ineffective. They request that, in the light of the aforementioned, the Commission admit the petition based on the exception provided for by Article 42 (2) (c) of the American Convention.

[FN7] According to the evidence available to the Commission, the criminal trial of the abettors of the death of Mr. Escaleras Mejía continues against other alleged abettors, Messrs. Juan Ramón Salgado, José Salomón Martínez and Oscar Félix Sosa Vargas.

B. The State

14. The State of Honduras argues that it does not sponsor a policy of extrajudicial, summary or arbitrary executions against any particular social group in the country, as is alleged by the petitioners, and stresses that in the referred cases the State has initiated investigations in a timely manner and has found those responsible for the crimes guilty. It maintains that in the last few years there was an improvement in the human rights situation of the country.[FN8]

[FN8] The State of Honduras notes the enactment of a new Organic Law of the Police and a new Code of Criminal Procedure which replaced the old inquisitorial with the adversary system.

15. The State argues that there is no atmosphere of impunity in Honduras. It emphasizes that in this case there is a judgment against one of the defendants, who was found guilty of being a perpetrator of this crime. The State also stresses that there was no negligence on the part of the Office of the Prosecutor or of the Judiciary: both have exerted their best efforts so that the defendants would be tried as promptly as possible. It maintains, with respect to the homicide of Mr. Escaleras, that all judicial measures and procedures determined by Honduran law were carried out and that the petition is unfounded because there has been no violation of the right to due process or to the right to a fair trial.

16. Honduras claims that domestic remedies have not been exhausted and that there was no unwarranted delay of justice; that the proceedings against the parties allegedly implicated continues in the Honduran courts. It claims that in the case of the persons whose charges were dismissed, the principle of presumption of innocence was applied and that the fact that one of the defendants has already been found guilty establishes the suitability, appropriateness and effectiveness of domestic judicial remedies to provide legal protection to the parties.

IV. ANALYSIS OF ADMISSIBILITY

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

17. Pursuant to Article 44 of the American Convention and Article 23 of the IACHR's Rules of Procedure, the petitioners, as legally recognized non-governmental entities, are entitled to file petitions to the Commission related to alleged violations of the rights contained in the American Convention. Regarding the State, Honduras is a party to the Convention and hence is responsible internationally for the violations of that treaty. The petitioners claim Carlos Alfonso Escaleras Mejía and his family, i.e., his wife Martha Mercedes Alvarenga Reyes and his children Douglas Arnaldo Escaleras and Emerson Alexander Escalera as the alleged victims. These are all human beings whose rights are contained in the Convention, rights which the State has the duty to guarantee. Based on all of the above, the Commission has competence *ratione personae* to examine the petition.

18. The Commission has competence *ratione materiae* because the petition refers to alleged violations of human rights protected by Articles 4, 5, 8, 25 and 1(1) of the American Convention. It has competence *ratione temporis* because the alleged actions occurred when the obligations of respecting and guaranteeing the rights contained in the Convention were already in force for the Honduran State, which ratified the instrument on September 8, 1977. Finally, the Commission has competence *ratione loci* because the alleged facts occurred in the territory of the Republic of Honduras which, as said before, is a party to the American Convention.

B. Admissibility requirements for the petition

1. Exhaustion of domestic remedies

19. Article 46(1)(a) of the Convention requires, for the admission of a petition, “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

20. In the instant case the State of Honduras, in timely fashion, filed a motion for inadmissibility on the grounds of the lack of exhaustion of domestic remedies, stating that the Honduran judiciary continues to process the case. The State asserted that, should the petitioners be dissatisfied with the judgment rendered, they could contest it using motions to appeal and to vacate, provided for by domestic legislation.

21. For their part, the petitioners argue that there has been unwarranted delay in the decision on domestic remedies and that these have been ineffective. For this reason, they should be exempted from exhausting them, pursuant to the exception provided for by Article 46(2)(c) of the Convention.

22. 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 notes that the right of the State to argue the inadmissibility of a petition due to 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. In consequence, 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.

23. The Commission considers that, as a general rule, a criminal investigation must be undertaken promptly to protect the interests of the victims and to preserve evidence. In this case, the Commission notes that the murder of Mr. Carlos Escaleras Mejía occurred on October 18, 1997. According to information received to date, more than seven years after the fact, there is no final judgment against all those charged in relation to this crime. The Commission believes that the time elapsed without effective investigation, trial and punishment of all those responsible, demonstrates unwarranted delay and scant possibilities for the effectiveness for this remedy. The state has not provided any justification for such a delay.

24. It is important to note that an allegation on the part of the State that domestic legal remedies have not been exhausted does not suffice for this objection to be admitted. As the Inter-American Court has established, a State that makes such a plea must also identify the domestic remedies to be exhausted and demonstrate their effectiveness under such circumstances. Honduras has not done so in this case.

25. 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. 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.

26. 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.[FN9]

[FN9] See IACHR, Report N° 54/01, Case 12.250, Mapiripán Massacre, Colombia, paragraph 38 and IACHR Juan Humberto Sánchez-Honduras, Report N° 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.

27. 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

28. 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.”

29. 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 referred to in Article 46(1)(b), has not been handed down. Hence the six month time period for the lodging of a petition after the notification of a final judgment, has not begun to run. Nevertheless, the Commission considers that the petition has been filed within a reasonable time 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 international proceedings and res judicata

30. 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. It has not received any information, either, to indicate the existence of

a situation of similar nature. 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

31. It is the opinion of the Commission that, *prima facie*, the facts alleged by the petitioners, should they be proven, could eventually constitute the violation, with prejudice to the alleged victim, of Articles 4 (right to life), 8 (right to a fair trial), and 25 (right to judicial protection), all in connection with Article 1(1) (general obligation to respect rights) of the American Convention. Regarding the possibility that the alleged facts could eventually constitute a violation of Article 4 of the Convention, it is the opinion of the Commission that Article 4, in connection with Article 1(1) of the American Convention, implies a duty of full protection which not only requires that no person should be deprived arbitrarily of his or her life (negative obligation), but that also requires the States to take all appropriate measures to protect and preserve the right to life (positive obligation)[FN10] as part of their duty to ensure full and free exercise of their rights by all persons under their jurisdiction.[FN11] This is a duty which imposes on the State the obligation to efficiently investigate and punish those actions that could lead, by action or by omission, to the negation of the inviolability of the right to life. It also imposes the obligation to provide compensation to the relatives of the victims for the damages caused by said violations. In view of the aforementioned considerations, the facts of the instant case could constitute a violation of the obligation to respect rights derived from Article 4 of the Convention.

[FN10] I/A Court H.R., Cfr. Case of *Bámaca-Velásquez*. Judgment of November 25, 2000, Series C, No. 70, para. 172; and Case of the “Street Children” (*Villagrán Morales et al.*), Judgment of November 19, 1999. Series C, No. 63, para. 139. Case of *Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003, para. 110.

[FN11] Cfr. *Cantoral Benavides Case*, Judgment of August 18, 2000. Series C, No. 69, para. 69, Case of the “Street Children” (*Villagrán Morales et al.*). Reparations (art. 63.1 Inter-American Convention on Human Rights. Judgment of May 26, 2001. Series C, No. 77, para. 99; and Case of the “Panel Blanca” v. Guatemala (*Paniagua-Morales et al.*). Reparations (Art. 63.1 American Convention on Human Rights). Judgment of May 25, 2001. Series C, No. 76, para. 199.

V. CONCLUSIONS

32. The Commission concludes that it is competent to examine the petition and that same is admissible pursuant to Articles 46(1)(c) and (d) and 46(2)(a) and (c) and 47 of the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudice of the merits of the petition, that it is admissible regarding the alleged violation of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair

trial) and 25 (right to judicial protection) of the Convention, all in connection with Article 1(1) (obligation to respect rights protected by the Convention).

2. To transmit this report to the State and the petitioners.

3. 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 24th day of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.