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Title/Style of Cause:	Esmeralda Herrera Monreal v. Mexico
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez, Florentin Melendez.
Dated:	24 February 2005
Citation:	Herrera Monreal v. Mexico, Petition 282/02, Inter-Am. C.H.R., Report No. 17/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: “Red Ciudadana de No Violencia y por la Dignidad Humana”
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## I. SUMMARY

1. On March 6, 2005, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a complaint which alleges the international responsibility of Mexico for irregularities in the investigation into what happened to Esmeralda Herrera Monreal, who disappeared in Ciudad Juárez in the state of Chihuahua, on October 29, 2001 when she was 15 years old, and was found murdered on November 7, of the same year. The petition was presented by Irma Monreal, mother of the alleged victim, and by the “Red Ciudadana de No Violencia y por la Dignidad Humana” [the Civic Network for Non-Violence and Human Dignity], (hereinafter, jointly, “the petitioners”).

2. The petitioners allege that the events that are the subject of the complaint are in violation of Articles 8 (sections a, c, d, and h), and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”); Articles XIV and XVIII of the American Declaration of the Rights and Duties of Man (“American Declaration”). They also allege that they are in violation of several provisions of the American Convention on Human Rights (hereinafter “the American Convention”): the obligation to respect and protect rights (Article 1); the obligation of domestic legal effects (Article 2); the right to personal liberty (Article 7); the right to honor and dignity (Article 11), and the right to judicial protection (Article 25); and that all the requirements for admissibility have been met according to the aforementioned international instrument. For its part, Mexico claims that the steps taken by its legal authorities in this case are evidence of its wish to guarantee respect for the human rights of all, and that domestic remedies have not been exhausted. Consequently, the State requests the Inter-American Commission to declare the petition inadmissible.

3. Without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible, given that it meets the requirements defined in Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission decides to notify its decision to the parties and to continue its examination of the merits of the case with regard to the alleged violation of Articles 2, 5, 7, 8, 11, 19, and 25 of the American Convention, in connection with Article 1(1) of the aforementioned international instrument; and Articles 7, 8, and 9 of the Convention of Belém do Pará; and at the same time decides to publish the present report.

## II. PROCESSING BY THE IACHR

4. The petition was presented on March 6, 2002, with a communication from the Red Ciudadana de No Violencia y por la Dignidad Humana. After an initial examination of the process, on the basis of Article 30 of its Rules of Procedure, the IACHR transmitted the pertinent parts of the petition to the State on May 29, 2002, and fixed a period of two months for the State to present its observations. On August 2, 2002, the State requested an extension in order to present those observations, which was granted by the Commission until August 29, 2002. On August 30, 2002, a note was received from the State containing its observations on the petition. This information was transmitted to the petitioners on September 23, 2002, with a period of one month for them to present their observations.

## III. POSITIONS OF THE PARTIES

### A. Petitioners

5. The petitioners hold the State responsible for “irregularities and inconsistencies” in the investigation into the events surrounding the disappearance and subsequent death of Esmeralda Herrera Monreal. Mrs. Irma Monreal describes them as follows:

1. A prompt search for my daughter was not carried out as soon as they were notified of her disappearance, leaving us to look for her.
2. They discredited my daughter by telling me that she was sure to have gone off with her boyfriend, when I knew she did not have one.
3. They did not take into account the information her own family gave them regarding lines of investigation to follow and to identify the body, for example: they did not investigate a young man who was the last person to see her; they ignored a fractured collarbone, and identified my daughter’s body only on the basis of clothes.
4. Every time I enquired about the search for my daughter, I was given no information and told to buy the newspaper in order to hear the news.
5. When I asked what my daughter’s cause of death had been, the assistant procurator, José Manuel Ortega Aceves told me it was “undefined”. I was not given any paperwork relating to the autopsy.
6. The body of my daughter, only eight days after her disappearance, had neither face nor hair, and I was told in the procurator’s office that animals, the wind, and the soil would have destroyed them. However, the rest of her body was naked and intact. Furthermore, when she was found, she was lying face down.

7. No family member was present when they placed the body in a coffin, and we were told that the law did not allow it. They sealed the coffin and we were not allowed to open it before burial.

8. They took samples of blood and DNA from me and from Esmeralda's father and they told us that they would give us the results in a month. We have received nothing yet.

9. The assistant procurator, José Manuel Ortega Aceves, tried to convince me that the two people responsible for my daughter's murder were already in prison, something that has not been duly proved by the authorities, and something which I seriously doubt because no hard evidence exists to either prove or disprove.

10. Once they had handed over my daughter's body the authorities closed the case without giving me the file or even one piece of paper, in spite of the fact that I had earlier requested them. A short while ago they gave me a folder full of disorganized papers, some of them repeated and others illegible, which reflects a lack of seriousness in following up the case, and demonstrates negligence and irregularities in the investigations.

6. On the basis of the above, Mrs. Monreal considers that government authorities "have not done all they could to clarify the death of my daughter" and that "the inefficiency of the investigation reflects how little the government cares about solving these crimes and preventing them." Amongst other general measures, she asks the IACHR to establish the responsibility of the authorities for these events and "to come out energetically in favor of ending the climate of impunity and violation of human rights [of women] in the State of Chihuahua, especially in Ciudad Juarez."

7. With regard to the exhaustion of domestic remedies, the petitioners claim that the exception described in Article 46(2) of the American Convention is applicable to them because the case remained open in the domestic jurisdiction until the date on which they presented the petition to the Inter-American Commission. Mrs. Monreal also claims that she has no documents on which to base the petition because these were denied to her by the authorities responsible for the investigation. Finally, she declares her willingness to appear before the IACHR in order to sustain her petition.

#### B. State

8. In response to the complaint, the Mexican state maintains firstly "the report of the disappearance of Esmeralda Herrera Monreal was received the day after she disappeared, that is, on October 30, 2001, and that same day notification went out ordering the state judicial police to find her immediately." [FN1] With regard to the second and fourth paragraphs of the petition, quoted above, the State "reserves its right to answer... although the points raised are subjective in character."

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[FN1] Communication from the Mexican State dated August 30, 2002, page 1.

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9. The State's comments continue:

Regarding point 3, according to official reports, a study of the initial investigation reveals that on November 2, 2001, Eduardo Chávez Marín was questioned. He appears to have been in contact with the victim before she disappeared.

Furthermore, regarding the petitioner's opinion that the authorities used only clothing in order to identify Esmeralda Herrera Monreal, this is contradicted by the results of the specialist examination carried out on November 21, 2001. This consisted of a forensic craneometric and dental examination that established an identical bone structure of the front of the skull [una coincidencia en relación óseo facial. (sic)[FN2] ].

Similarly, on November 2001, Adrián Herrera Monreal and Antonio Herrera Rodríguez, brother and father of Esmeralda respectively, voluntarily presented themselves at the public prosecutor's office in order to identify the body as that of Esmeralda Herrera Monreal.

Regarding points five and six of the relevant reports, the Mexican government states that these are true and that in fact the certificate from the autopsy dated November 9, 2001, issued by the Technical Office of Expert Services, does describe the cause of death as "undefined."

Regarding point seven of the pertinent parts of the petition, the Mexican government states that it does not know for a fact that the event took place, and therefore refrains from replying.

With regard to the eighth point, the Mexican government would like to clarify that the delay in obtaining the results of the DNA studies is not due to any negligence on the part of the local procurator's office but to the processes required for these specialist studies.

The results have not yet been handed over. Once the local department of the Prosecutor's Office is in possession of the results, they will be passed on to the IACHR.

Concerning point nine of the petitioners' report, the Mexican government points out that two persons are currently the subjects of legal proceedings for the murder of the eight women found during the operations of November 6 and 7, 2001, and it is for the legal authorities to determine their situation.

Point ten is invalid because at no time and under no circumstances does handing over the body of a murdered person indicate that the case has been closed, something that does not happen even when an alleged perpetrator has been indicted.[FN3]

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[FN2] Idem.

[FN3] Idem, pages 1 and 2.

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10. The State goes on to say that the Mexican authorities "have intensified their efforts to exhaust all the hypotheses that might lead to identifying and proving the guilt of those who killed the eight women victims." The State is also of the opinion that "one should not lose sight of the fact that in this case the authorities have managed to capture two individuals who appear to be

responsible for the murders” and who are “currently subject to legal proceedings, which are at the stage when evidence is being collected.”[FN4]

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[FN4] *Idem*, page 2.

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11. The Mexican State claims that “at no time have the problems experienced by women in Ciudad Juárez been underestimated,” but on the contrary, meetings have been held between the authorities and representatives of civil society to “study the possibility of setting up mechanisms to reduce the incidence of this sort of lamentable occurrence.” The State also describes the actions taken by the Chihuahua State government to address the situation of women in Ciudad Juárez, the steps taken to strengthen the work of the Special Prosecutor for the Murder of Women in Ciudad Juárez, and the restructuring of the Unit for Victims and Disappeared Persons “in order to optimize our human resources and make the service more efficient.”

12. The above information, in the State’s opinion, should be taken into account to “demonstrate the political will of the Mexican government to ensure respect for the human rights of all persons subject to its jurisdiction.” It also claims that the criterion established by the Inter-American Court of Human Rights concerning prior exhaustion of domestic remedies “permits a State to resolve a problem in domestic law before facing an international proceeding” applies to this matter.

13. In short, the Mexican State asks the Inter-American Commission to take into account the efforts made by the authorities to investigate the deaths of women in Ciudad Juárez; to “recognize that transparency has been of overriding importance in official proceedings resulting from alleged irregularities in the investigation into the death of Esmeralda Herrera Monreal,” and, in due course, to declare the petition inadmissible “on the grounds that it does not meet the requirements established by the Inter-American Convention on Human Rights.”

#### IV. ANALYSIS

14. The petitioners are empowered by Article 44 of the Inter-American Convention to lodge petitions with the IACHR. The petition identifies as potential victim an individual whose rights under the American Convention Mexico is committed to respecting and protecting. Concerning the State, Mexico has been party to the American Convention since March 24, 1981, when it deposited the instrument of its respective ratification; it has also been party to the Convention of Belém do Pará since November 12, 1998. Therefore, the Commission has competence *ratione personae* to examine the petition.

15. The IACHR has competence *ratione loci* to examine the petition because it alleges violations of rights protected under the American Convention and the Convention of Belém do Pará that took place in the territory of Mexico, a State party to said treaty. Also, the Inter-American Commission has competence *ratione temporis* given that the obligation to respect and protect the rights enshrined in the American Convention was already in force for the State on the date on which the events alleged in the petition took place. Finally, the Commission has

competence *ratione materiae* because in the petition violations are denounced of human rights that are protected by the American Convention and the Convention of Belém do Pará.

16. Regarding the allegations of violations of the American Declaration, in accordance with the stipulations of Articles 23 and 49 of its Rules of Procedure, the Commission, in principle, has competence *ratione materiae* to examine violations of the rights enshrined in said Declaration.[FN5] However, the IACHR has previously[FN6] established that once the American Convention comes into force in relation to a State, it is the Convention – not the Declaration – that becomes the specific source of the law to be applied by the Inter-American Commission, whenever the petition alleges violations of rights that are identical in substance in the two instruments[FN7] and whenever the violation is ongoing[FN8].

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[FN5] See also the interpretation of the American Declaration on the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 14, 1989, I/A Court HR (Ser.A) No. 10 (1989), paragraph 41.

[FN6] See IACHR, Amílcar Menéndez and others, *supra* note 1, paragraph 41.

[FN7] Advisory Opinion OC-10/89, *supra*, paragraph 46.

[FN8] The IACHR has determined that it has jurisdiction to examine violations of the Declaration and the Convention provided that the continuous violation of the rights protected by both instruments is established. See, for instance, IACHR, 1987-88 Annual Report, Resolution 26/88, Case 10,190, Argentina; and IACHR, 1998 Annual Report, Report 38/99, Argentina, para. 13.

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B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

17. Article 46(1)(a) of the American Convention states that the admissibility of a petition lodged before the Commission is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” Article 46(2) of the Convention establishes three situations in which the rule of exhaustion of domestic remedies is not applicable: 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; and c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

18. The parties in the present case disagree regarding the exhaustion of remedies under domestic law in Mexico, and it is therefore for the Inter-American Commission to determine the issue. The State claims that the requirement as defined in the Convention has not been met; the petitioners, for their part, invoke the exception to the rule based on denial of access to the remedies under domestic law or having been prevented from exhausting them.

19. When a State alleges that the remedies available under domestic law have not been exhausted, it is the State's responsibility to indicate which remedies should be exhausted and to provide evidence of their effectiveness.[FN9] That done, responsibility for the process then passes to the petitioners to show that said remedies were exhausted or that one of the exceptions in Article 46(2) of the American Convention applies.

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[FN9] I/A Court H.R., Velásquez Rodríguez case, judgment on preliminary exceptions quoted, para. 88. See also, Fairén Garbi and Solís Corrales case, Preliminary Exceptions, Judgment June 26, 1987, Series C, No. 2, para.8; Godínez Cruz case, Preliminary Exceptions, Judgment December 4, 1991, Series C No. 13, para. 30; Castillo Páez, Preliminary Exceptions, Judgment January 30, 1996, Series C No. 25, para. 40; Exceptions to Exhaustion of Remedies under Domestic law (Art. 46.1, 46.2a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Series A No.11, para. 41.  
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20. In this case, the Mexican state claims only that remedies under domestic law were not exhausted and provides information concerning actions taken to deal with the problem of violence against women in Ciudad Juárez. It also mentions generally some of the steps taken in connection with the file on Esmeralda Herrera Monreal, but does not provide any specific information to demonstrate how the remedy is appropriate for the situation or effective to the level required by international standards of human rights.

21. Without going into the arguments of both parties concerning the alleged violation of judicial guarantees and judicial protection, the Inter-American Commission makes a preliminary observation that up to the date when this report was approved, nearly three and a half years have passed since Esmeralda Herrera Monreal disappeared, and said event was reported to the relevant authorities. According to the information available to the IACHR, even once her remains had been located, the matter has not been completely solved, nor has it been determined whether or not responsibility can be imputed to government officials, as alleged by the petitioners.

22. Furthermore, the Inter-American Commission observes that the petitioners allege that the events of the present case took place against a background of numerous murders and forced disappearances of women in Ciudad Juárez that remain unpunished for reasons imputable to the authorities.

23. Based on the foregoing considerations, and on the evidence presented concerning this case, the Inter-American Commission establishes – with regard to admissibility – that an unwarranted delay has been established in the decision by the appropriate Mexican authorities concerning the events reported, and that remedies available under domestic law have proved ineffective to provide an opportune solution for the situation reported. Consequently, the IACHR applies to the present matter the exception of the exhaustion of remedies available under domestic law enshrined in Article 46(2)(c) of the Inter-American Convention.

2. Deadline for presentation of petitions

24. With regard to the requirement established in Article 46(1)(b) of the Convention, that the petition must be lodged within a period of six months from the date on which the victim was notified of the final judgment that remedies available under domestic law had been exhausted, the Commission considers also that it is not possible to demand compliance with the deadline, as long as the petition was lodged within the reasonable period of time described in Article 32(2) of its Rules of Procedure for those cases in which final judgment has not been made before the petition was lodged.

### 3. Duplication of procedures and *res judicata*

25. The file concerning the petition contains no information that would suggest that this subject is currently pending in another international proceeding, or that it has already been judged by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions envisaged in Article 46(1)(d) and in Article 47(d) of the American Convention are not applicable.

### 4. Characterization of the alleged facts

26. The allegations made by the petitioners concern alleged violations of the rights to equal protection, to judicial protection, to honor and personal dignity, and the right of women to a life free of violence, as guaranteed respectively by the Inter-American Convention and the Convention of Belém do Pará. For its part, the Mexican state alleges that the requirements for admissibility have not been met, in particular it invokes the rule of prior exhaustion of domestic remedies and claims that no evidence has been provided to prove the allegation of judicial irregularities, questions the description of them [Tr. text missing?], and alleges that the events cannot be described as possible violations of human rights.

27. It is not at this stage of the current procedure that it must be established whether or not the American Convention or other applicable instruments were violated. For the purposes of admissibility, the IACHR must determine whether events have been described that amount to a possible violation, as stipulated in Article 47(b) of the American Convention. The requirements for defining these matters differ from those needed to decide on the merits of a case. The Inter-American Commission must make a *prima facie* evaluation to determine whether or not the petition substantiates the apparent or potential violation of a right protected by the American Convention. This judgment is summary in character, and implies neither rejection nor acceptance of the substance of the case. The distinction between the investigation necessary for a declaration on admissibility and the one needed to establish a violation is covered in the Procedures of the IACHR, which make a clear distinction between the stages of admissibility and the merits of the case.

28. The allegations made by the petitioners refer to events that, if true, amount to violations of several of the rights protected by the American Convention and by the Convention of Belém do Pará. Even though the State alleges that there has been no violation, the IACHR is of the opinion that the events described deserve closer and fuller examination when the petition is at the merits stage.



29. The IACHR considers that the facts, if proven, violate the rights protected in Articles 8 and 25 of the American Convention, in connection with Article 1(1) of said instrument.

30. Furthermore, the IACHR considers that the events described would amount to possible violations of Article 7 of the Convention of Belém do Pará. The analysis of the allegations relating to alleged violations of Articles 8 and 9 of the Convention of Belém do Pará will depend on the conclusion of the IACHR at the merits stage regarding Article 7 of the relevant instrument.

31. Although the petitioners have not invoked Articles 4 or 19 of the American Convention, by virtue of the principle *iura novit curia* the Inter-American Commission can admit allegations concerning the right to life guaranteed by the American Convention so that they can be examined at the merits stage in relation to the duty to protect as enshrined in Article 1(1) and to the duty of special care of children as enshrined in the international instrument. Applying the same legal principle, the IACHR considers that the allegations of fact made regarding the treatment alleged to have been received by the mother and other family members of Esmeralda Herrera Monreal from the Mexican authorities, could amount to possible violation of the rights protected in Articles 5 and 11 of the American Convention to the detriment of the aforementioned family members.

32. With regard to Articles 2 and 7 of the American Convention invoked by the petitioners, the IACHR considers them admissible, with the proviso that for a judgment to be reached on both provisions in the merits stage, it will need clearer, fuller, and more detailed information from both parties. Concerning the duty to adopt provisions of domestic law, the Inter-American Convention understands that in this case it would be more appropriate to examine at the merits stage whether or not the State fulfilled its obligation to take all necessary steps to ensure the effectiveness of the rights protected in the American Convention. In particular, at that stage, we will examine whether or not the State adopted the necessary measures or policies at the time of the events.

33. With regard to the right protected by Article 7 of the American Convention, within the context of the events reported in Ciudad Juárez and given the lack of clarity regarding what took place in this case, the possibility exists that Esmeralda Herrera Monreal had been held against her will.

34. Based on the foregoing conclusions, the IACHR considers that the petitioners have established *prima facie* the requirements of Article 47(b) of the American Convention.

## V. CONCLUSIONS

35. The Inter-American Commission concludes that it has competence to examine the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the Inter-American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible, in relation to alleged violations of the rights protected by Articles 2, 4, 5, 7, 8, 11, 19, and 25 of the American Convention, in relation to Article 1(1) of said instrument; and to Articles 7, 8, and 9, of the Convention of Belém do Pará.
2. To give notice of this decision to the parties.
3. To continue the analysis of the merits of the case, 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 Washington, D.C., on February 24th, 2005 (Signed):, Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; José Zalaquett, Evelio Fernández Arévalos, Freddy Gutiérrez, Florentín Meléndez, Commissioners.