

OEA/Ser.L/V/II.151  
Doc. 8  
July 17, 2014  
Original: Spanish

**REPORT No. 43/14**  
**CASE 12.492**  
REPORT ON THE MERITS

CARLOS ESCALERAS MEJÍA AND FAMILY  
HONDURAS

Approved by the Commission at its session No. 1986 held on July 17, 2014.  
151<sup>st</sup> Regular Period of Sessions.

**Cite as:** IACHR, Report No. 13/14, Case 12,492, Merits, Carlos Escaleras Mejía and family,  
Honduras, July 17, 2014.

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**I. SUMMARY**

1. On January 14, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by the Team for Reflection, Investigation, and Communication (*Equipo de Reflexión, Investigación y Comunicación*, ERIC) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) in which they alleged the international responsibility of the Republic of Honduras (hereinafter “the Honduran State,” “Honduras,” or “the State”) arising from the murder of the environmental activist Carlos Escaleras Mejía on October 18, 1997, and from the failure to investigate, prosecute, and punish all the individuals involved therein.

2. According to the petitioners, the murder of Carlos Escaleras Mejía is part of a systematic pattern of human rights violations against defenders of the environment in Honduras. They contend that the investigation of his murder was neither serious nor effective, in that vital committal formalities were not carried out, not all the witness statements were taken, and the arrest warrants issued were carried out with excessive delays. They further contend that the fact that a person has been convicted does not exempt the State from its international responsibility, in that to date the facts of his death have not been cleared up and not all those involved in the crime have been punished.

3. The State disputes the petitioners’ contentions. It argues that there is no pattern of human rights violations against environmental activists that is either tolerated or encouraged by public authorities. The State claims that a judicial investigation was opened following Mr. Carlos Escaleras Mejía’s death, as a result of which two of the perpetrators have been punished. It maintains that the duration of the investigation was due to its inherent complexity, and not to actions for which its authorities can be held responsible. It also notes that it is continuing to carry out investigations in order to punish all the physical perpetrators of the crime and the masterminds behind it.

4. After analyzing the available information, the Commission concludes that the State of Honduras is responsible for violating the rights to life, to humane treatment, to a fair trial, and to judicial protection enshrined in Articles 4, 5, 8.1, and 25.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with Article 1.1 thereof, with respect to Carlos Escaleras Mejía and his family, as indicated in each of the corresponding sections of this report. Moreover, in accordance with the principle of *iura novit curia*, the IACHR concludes that the State is responsible for violating the right to freedom of association and to political rights set forth in Articles 16 and 23 of the American Convention, in conjunction with the obligations established in Article 1.1 thereof, with respect to Carlos Escaleras Mejía. The IACHR finds that the arguments related to the alleged violation of the right to freedom of thought and expression, established in Article 13 of the American Convention, are covered by the Commission’s analysis regarding the right to freedom of association and political rights.. Based on those conclusions, the IACHR formulates a series of recommendations for the Honduran State.

**II. PROCEEDINGS BEFORE THE COMMISSION**

5. The Team for Reflection, Investigation, and Communication and the CEJIL presented the initial petition by means of a communication dated January 14, 2002. Developments taking place between the presentation of the petition and the adoption of the admissibility decision are set out in Admissibility Report No. 15/05, adopted on February 24, 2005.<sup>1</sup> In that report the IACHR concluded that the petition was

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<sup>1</sup> See: IACHR, Report No. 15/05, Petition 59-03, Admissibility, Carlos Escaleras Mejía (Honduras), February 24, 2005.

admissible with respect to the rights set out in Articles 4, 5.1, 5.2, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 thereof.

6. On June 6, 2005, the IACHR sent the parties a communication informing them that a report on admissibility had been adopted. The petitioners submitted comments on the merits on August 6 and December 2, 2005, and on September 17, 2006. In turn, the State presented comments on October 13, 2005, and February 24 and September 1, 2006.

7. By means of a communication dated September 1, 2006, the Commission made itself available to the parties to commence the friendly settlement procedure. On March 5, 2007, a working meeting convened by the IACHR was held between the petitioners and the State. At that working meeting, the petitioners submitted a written proposal for the terms of a possible friendly settlement agreement. The State submitted comments on May 7 and 18, 2007, September 12, 2007, February 14, 2008, and March 7, 2008. The petitioners submitted comments on July 20, 2007, October 31, 2007, May 28, 2008, and November 19, 2008.

8. On March 21, 2009, a second working meeting convened by the IACHR was held between the petitioners and the State. The petitioners submitted their comments on April 2, 2009, December 1, 2010, and February 24, 2011. In turn, the State submitted comments on December 10, 2010.

9. By means of a submission dated August 22, 2011, the petitioners asked the Commission to issue its report on the merits in the case, given the failure to reach a friendly settlement agreement. The State submitted replies to that communication on September 8 and November 10, 2011. On December 27, 2011, the petitioners repeated their request that the IACHR adopt its report on the merits.

10. On January 11, 2012, the Commission informed both parties that it was concluding the friendly settlement procedure. The State sent a communication on February 9, 2012. In turn, the petitioners submitted communications and comments on the merits on June 11, 2012, September 24, 2012, and February 22, 2013. On April 8, 2014, the IACHR again informed the parties that it had concluded the friendly settlement procedure and had decided to continue with its processing of the case.

11. All submissions were duly forwarded between the parties.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

12. The petitioners contend that the State is responsible for the murder of the ecological activist Carlos Escaleras Mejía on October 18, 1997, as well as for the failure to conduct an investigation for elucidating the incident and punishing those responsible for the killing.

13. They state that Mr. Escaleras Mejía's murder took place in a context of threats, persecution, and killings of ecologists and environmentalists, as occurred in the cases of Blanca Jeannette Kawas and Carlos Luna, of which the agencies of the inter-American system are already aware. They claim that those acts of violence are the work of "powerful landowners and business owners," which has been tolerated by the State.

14. They contend that the struggle of activists and ecologists, which frequently involves the right to a healthy environment of poor communities and indigenous and campesino sectors, is seen as a serious obstacle to business projects that see such areas as fruitful locations for the pursuit of highly profitable activities. They state that the context of violence faced by those people has become so widespread that various human rights bodies and international organizations, including several agencies of the United Nations, have expressed their concern in connection with the phenomenon.

15. The petitioners claim that the State is internationally responsible for the violation of Carlos Escaleras Mejía's right to life. They report that prior to his homicide, Mr. Escaleras and his family received

warnings and threats, urging him to abandon his struggle for the right of the population to a healthy environment. They add that he was also pressured to withdraw his candidacy for the position of mayor of Tocoa municipality.

16. They claim that in spite of this context in which environmentalist activists were being killed and he was receiving threats, the State took no reasonable measures to prevent what ultimately occurred to Mr. Escaleras. On the contrary, they maintain, the State tolerates a systematic pattern of harassment, threats, and killings against environmental activists. They further hold that the lack of an exhaustive, impartial, and effective investigation into the death of Carlos Escaleras also constituted a violation of its duty of protecting his right to life.

17. In addition, the petitioners allege that the State violated the rights to a fair trial and to judicial protection in that, in their view, the proceedings initiated following Carlos Escaleras's death have not been effective, serious, timely, or suitable for revealing the truth behind his murder or for punishing all the physical perpetrators of the crime and the masterminds behind it.

18. They report that on the same day that Carlos Escaleras was murdered, four people were arrested with no evidence against them. They state that it was not until two and a half years later that the prosecutor in charge of the case acknowledged that they were not involved in the crime. The petitioners claim that this delay caused an unnecessary and excessive holdup in the proceedings because no investigation was conducted to identify the real perpetrators.

19. The petitioners contend that during the investigation, the police and the prosecution service showed a clear lack of interest in identifying the real perpetrators of the murder and the masterminds behind it. They claim that the few formalities pursued were not done either immediately or correctly, which had a serious effect on the evidence. For instance, they claim there was a significant delay in conducting a judicial inspection at the scene of the crime.

20. They hold that numerous steps that would have helped identify and punish all the guilty – as required by the jurisprudence of the Inter-American Court and by the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions – were not taken. Among other shortcomings they identified the following: (i) no photographs were taken of the position of Mr. Escaleras's body following the murder; (ii) the case file contains no record of the autopsy; and (iii) the ballistic examination of the projectiles found in the victim's body is not accredited.

21. They state that the masterminds behind the crime were not punished. They point out that impunity still surrounds the incident, in spite of the State's obligation of investigating and punishing all the people responsible. They claim that there was an unwarranted delay in justice because the two material perpetrators were only sentenced many years after the incident and because, in spite of the evidence that exists, none of the other perpetrators or masterminds have been punished.

22. The petitioners report that during the proceedings, statements were not taken from several witnesses, in spite of the requests made by the civil complainant and by the prosecutor. They claim that evidence that would have been of great use in casting light on the murder was not ordered, collected, or assessed. They also contend that although a notebook reportedly containing information on the perpetrators of the murder was found during a search, the court failed to take it into account.

23. They emphasize the unjustified delay that occurred in investigating and punishing all the guilty. They contend that the proceedings were not complex since they involved a single crime and a single victim. They further state that the number of accused was not excessive and that with diligent actions, that purported difficulty could have been resolved. They note that the members of Mr. Escaleras's family have remained ready to assist the proceedings. In spite of this, they claim, there was a high level of judicial inactivity, including a period of more than one year during which no formalities were carried out.

24. They report that a dozen prosecutors participated in the proceedings, which undermined the continuity of the investigations since “each prosecutor took a significant time to absorb the facts.” They add that the ad hoc prosecutor appointed by the Attorney General to take exclusive charge of the case remained in that position for barely three months before he was removed and transferred to another region of the country for no apparent reason.

25. In addition, the petitioners contend that Judge Francisco Sánchez, who was involved in the proceedings from the onset, has fueled legitimate doubts regarding his impartiality vis-à-vis the case. They report that he made a public statement in the media about the inadmissibility of one piece of evidence presented to the court. By expressing subjective opinions, they claim, this judicial officer undermined his credibility in the eyes of Carlos Escaleras’s family and of society. They report that the family lodged a filing to denounce the bias inherent in his actions, but that the motion was rejected.

26. In connection with the individuals who planned the killing, the petitioners state that the following formalities and procedures all took place on one single day, October 14, 2003; this, they claim, points to the impartiality of the court and its lack of interest in investigating prominent business owners: (i) two of the alleged masterminds, Miguel Facussé and Irene Castro, presented an application to give voluntary statements to the First-Instance Court of Tocoa; (ii) the court admitted their applications and took statements from them; (iii) the court issued an irrevocable dismissal in their favor and indicated that “it stands as *res judicata* in accordance with Special Law on the Interinstitutional Transition and Follow-up of the Criminal System”; and (iv) they were issued the corresponding release warrants.

27. The petitioners contend that the investigation failed to take into account all the lines of investigation indicated by the witness testimony and documentary evidence, including evidence linking a member of the military to Carlos Escaleras’s killing. They say that although reasonable indications were established at trial regarding the masterminds behind the murder of Mr. Escaleras, to date there have been no formalities indicating any intent on the part of the State to conduct an effective investigation and to punish all the guilty. They add that there has been an ongoing violation of the family’s right to know the truth in that, to date, the facts surrounding Mr. Escaleras’s still remain unclear.

28. The petitioners contend that the violation of Carlos Escaleras’s right to life caused a violation of his rights of free expression and freedom of association, and of his political rights.

29. Regarding the right of free expression, they contend that the homicide of Carlos Escaleras caused a restriction of his freedom to disseminate information and ideas, and of the Honduran people’s right to hear them. They explain that through the social and political organizations that Carlos Escaleras led, the population was informed about serious matters affecting their health and their right to enjoy a healthy environment. As for freedom of association, the petitioners claim that following the murder of Carlos Escaleras Mejía, the organizations he headed – the Coordinating Committee of Peoples’ Organizations of Aguán (COPA) and the Democratic Union Party – were seriously weakened.

30. Regarding his political rights, they claim that as a social leader he had acquired great public prestige and respect, and so had a good chance of becoming the mayor of Tocoa in the future. They add that opinion polls from late September 1997 indicated he was the clear favorite to win the election. Therefore, the petitioners contend that the murder of Carlos Escaleras undermined his right to be elected.

31. Finally, the petitioners claim that there was a violation of the right to humane treatment of the members of Mr. Escaleras Mejía’s family: his mother Ofelia Mejía; his wife Marta Alvarenga Reyes, his sons Douglas Arnaldo, Emerson Alexander, Carlos Andrés, Marta Agripina and Omar Josué Escaleras; and his siblings Eldin, René, Yolanda, Andrés, Omar, and Alma, all with the surnames Mejía Alvarenga. They contend that the way in which Carlos Escaleras was murdered, together with the constant denials of justice and ongoing impunity they have faced, have caused them suffering and anguish.

## **B. Position of the State**

32. In connection with the context described by the petitioners, the State refutes the existence of any support for a policy of extrajudicial killings against a given social group in the country. It holds that the State cannot be held guilty for the killings of different environmental activists “and neither can it be seen, in any way or form, as having any responsibility for their deaths.”

33. It contends that there is no widespread situation of impunity in those cases because convictions have been handed down against the perpetrators of crimes against ecologists in Honduras. It adds that those convictions are issued regardless of the social condition or political contacts of the perpetrators.

34. Honduras states that in all cases, including those involving violent acts by private citizens, the steps necessary to punish the guilty are taken promptly. It says that it is “not in a position to provide a different level of security to people who work to protect ecological property, since that would violate the principle of equality and create privileged classes, which is forbidden by the Constitution.”

35. Regarding the merits of the case at hand, the State acknowledges that Mr. Escaleras Mejía “was one of the most prominent social leaders in the Aguán valley (...) and served as the head of several organizations.”

36. Honduras states that is unknown “whether as a consequence of his activities he was targeted with threats by certain companies, after reporting them for harming the environment and ecosystem of the Aguán valley by dumping toxic substances in the rivers, particularly companies belonging to Mr. Miguel Facussé.” It adds that it does not know whether Mr. Escaleras was a victim of pressure and threats or received offers of money.

37. It also states that on the very day of Carlos Escaleras’s murder, four suspects were arrested. It reports that after various formalities were pursued, it was found that they had not participated in the crime. It adds that after further inquiries and formalities, a conviction was handed down against two perpetrators.

38. It notes that although charges were brought against several individuals during the proceedings, some were acquitted while others received irrevocable dismissals. On this point, Honduras explains that “if a judge finds that an accused has no responsibility in the facts and acquits him or dismisses him from the proceedings, he does so in accordance with his own convictions (...) and the parties only have the right to appeal that decision using the remedies provided by Honduran law.” It notes that the record shows that the Court of Appeal in La Ceiba overturned some of the decisions adopted by the first-instance court.

39. The State contends that as indicated by the case record, a serious and exhaustive investigation was carried out. It holds that there was no unjustified delay in the trial; rather, that the prosecution service and the courts acted with due responsibility and dispatch, respecting the guarantees and the rights enshrined in the Constitution of the Republic.

40. The State contends that this criminal trial was complex, and so a greater amount of time was needed for the investigation. It says that “to a large extent we lack the scientific means for casting light on complex crimes, and even those countries with economic capacity and scientific procedures never resolve or conclude a complete investigation in order to punish the intellectual and material perpetrators of a criminal act.” It adds that if the investigations did not yield the results expected by the petitioners, that was because of the complexity of the crime that was committed and because “in Honduras the assumption of innocence is the rule.”

41. In its submission dated September 1, 2006, Honduras states that:

It is aware of the various shortcomings in the investigation into the facts surrounding the murder of Mr. Carlos Escaleras Mejía; those shortcomings have meant that the judicial guarantees of Mr. Escaleras and his family have not received due protection, and for that

reason the State of Honduras has taken measures whereby it can be established that rather than an attitude of tolerance and permissiveness toward killings of environmental leaders, it has a willingness to respect and uphold the obligations arising from the American Convention.

42. In its submission of May 18, 2007, it stated it would continue to conduct “as many investigations as are necessary” to identify, prosecute, and, if applicable, punish all the physical perpetrators responsible for Mr. Carlos Escaleras Mejía’s death and all the masterminds behind it.

#### **IV. ANALYSIS OF THE MERITS**

##### **A. Proven facts**

##### **1. Context: The situation of defenders of environmental resources in Honduras**

43. Honduras has a vast environmental wealth and great biodiversity. Over recent years, those resources have been illegally exploited, causing a serious deterioration in Honduran ecosystems.<sup>2</sup>

44. Since the early 1990s, groups of individuals and some leaders launched private initiatives calling on society to defend its resources and to halt indiscriminate logging in forests and natural watersheds.<sup>3</sup> In reprisal for their work, environmental defenders and activists have been the victims of acts of harassment, threats, persecution, and killings.<sup>4</sup> Specifically, in the cases of *Kawas Fernández v. Honduras* and *Luna López v. Honduras*, the Inter-American Court found that between 1995 and 2005 there were reports of “acts of aggression, threats and execution of various individuals devoted to the defense of the environment in Honduras.”<sup>5</sup> In its analyses, the Court spoke about a series of specific cases that were common knowledge, including that of Carlos Escaleras Mejía.<sup>6</sup>

45. In 2002, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “The situation of Honduran human rights defenders has been difficult in the last few years, with several activists having received death threats.”<sup>7</sup> She also reported having received information about ecologists who had been killed on the orders of landowners and business people who “enjoyed virtual *de facto* immunity from prosecution because of their social status and political connections.”<sup>8</sup> She added that

<sup>2</sup> The Commission has received information on this topic on various occasions, including the following hearings: Human Rights Situation Related to Environmental Deterioration in the Hemisphere (116th Regular Session), October 2003; General Situation of Human Rights in Honduras (119th Regular Session), March 2004; Situation of Human Rights Defenders in Central America (123rd Regular Session), October 2005.

<sup>3</sup> The Commission has received information on this topic on various occasions, including the following hearings: Human Rights Situation Related to Environmental Deterioration in the Hemisphere (116th Regular Session), October 2003; General Situation of Human Rights in Honduras (119th Regular Session), March 2004; Situation of Human Rights Defenders in Central America (123rd Regular Session), October 2005.

<sup>4</sup> IACHR, Application to the Inter-American Court of Human Rights, Case No. 12.507, *Blanca Jeannette Kawas Fernández v. Honduras*, February 4, 2008, para. 40; I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, paras. 69 and 70. See also: Expert testimony on “the situation in Honduras of defenders of the environment and natural resources, and of human rights defenders,” given by Rigoberto Ochoa Peralta in the case of *Kawas Fernández v. Honduras*.

<sup>5</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 69; *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 18.

<sup>6</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 69; *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 18.

<sup>7</sup> Annex 1. UN, Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, document E/CN.4/2003/3/Add.2, June 14, 2002, para. 67.

<sup>8</sup> Annex 1. UN, Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, document E/CN.4/2003/3/Add.2, June 14, 2002, para. 63.

most of the killings “have often been attributed to individuals or groups with links to the local authorities, business people and the military.”<sup>9</sup>

46. The Rapporteur further noted that “the authorities have taken little or no action to bring those responsible to justice.”<sup>10</sup> Similarly, several local and international nongovernmental organizations have spoken out about the widespread impunity surrounding violations of the human rights of environmentalists in Honduras.<sup>11</sup>

47. In 2005, Honduras made the following statement to the United Nations Human Rights Committee in connection with the implementation of the Covenant on Civil and Political Rights:

It is a simple fact of life in Honduras that Governments have paid very little attention to the indigenous population, which lives by subsistence activities, especially in remote areas of the country. (...) [A] small group of individuals (politicians and entrepreneurs) (...) have promoted the overexploitation of natural resources, both renewable and non-renewable, and their actions have not only degraded and contaminated the environment, they have also adversely affected the interests of the people as a whole. Their undue, unlawful and arbitrary appropriation of large tracts of land, which is a natural source of wealth, has prevented the residents of local communities from having access to the available resources to obtain the income and food that they need in order to sustain their families. In some instances, [people] who have attempted to defend the local natural resources and the environment have lost their lives while opposing the destruction or undue appropriation of sites that were regarded as the heritage of all because of their scenic beauty and their utility as a source of employment (...), providing families with an opportunity of earning income and obtaining food. Other local people who have attempted to exercise their right to dispose freely of the country’s natural wealth and resources (...) have also been known to lose their lives when they have got in the way of powerful economic interests (...) and these murders have gone unpunished.<sup>12</sup>

48. In addition, Hina Jilani, the United Nations Secretary-General’s Special Representative on human rights defenders, stated in 2006 that the defenders of natural resources were the “second most vulnerable group” compared to other human rights defenders.<sup>13</sup> Specifically, in connection with the situation of the defenders of natural resources in Honduras, she expressed her “deep concern at the violations of [their] right to life, to security, and to physical and mental integrity.”<sup>14</sup> She added that “members of the State’s

<sup>9</sup> Annex 1. UN, Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, document E/CN.4/2003/3/Add.2, June 14, 2002, para. 63.

<sup>10</sup> Annex 1. UN, Commission on Human Rights, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, document E/CN.4/2003/3/Add.2, June 14, 2002, para. 63.

<sup>11</sup> Annex 2. Amnesty International, “Honduras: Much To Be Done Regarding Human Rights,” August 7, 2001, p. 26; Amnesty International, “Essential Actors of Our Time: Human Rights Defenders in the Americas,” November 2003, AI: AMR 01/009/2003/s, p. 24. See also: Expert testimony on “the situation in Honduras of defenders of the environment and natural resources, and of human rights defenders,” given by Rigoberto Ochoa Peralta in the case of *Kawas Fernández v. Honduras*. In addition, see: Expert testimony of Clarisa Vega in the same case.

<sup>12</sup> Annex 3. UN, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial Report, HONDURAS, CCPR/C/HND/2005/1, April 26, 2005, para. 15.

<sup>13</sup> Annex 4. UN, Human Rights Council, Implementation of General Assembly Resolution 60/215 of 15 March 2006 Entitled “Human Rights Council,” Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/HRC/4/37, January 24, 2007, para. 45.

<sup>14</sup> Annex 5. UN, Economic and Social Council, Promotion and Protection of Human Rights Human Rights Defenders, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, March 6, 2006, para. 724.

security forces have also been either directly or indirectly involved in attacks on the rights of human rights activists.”<sup>15</sup>

49. Because of the situation of violence against people devoted to the defense and promotion of natural resources in Honduras, in 2007 the State created the “Group for Investigation of Environmental Activists’ Deaths (...) – reporting to the Secretary of State, Security Office – which is exclusively in charge of the investigation of cases involving the death of environmental activists.”<sup>16</sup> In the case of *Luna López v. Honduras*, the Court spoke about this mechanism and said that it had no information about the length of time it was in operation.<sup>17</sup> The Court added that “the [Honduran] State has not implemented an overall public policy aimed at protecting the supporters of human rights, in particular environmental activists.”<sup>18</sup>

50. Similarly, in 2012, Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, issued a report on her visit to Honduras in February of that year.<sup>19</sup> In that report, she noted with concern “the degree of violence affecting people claiming their economic, social and cultural rights, including land rights, by peaceful means.”<sup>20</sup> She also reported that “defenders protecting natural resources (forest, land and water) have been repeatedly arrested, beaten and, in some instances, killed because of their activities.”<sup>21</sup>

51. The Rapporteur stated that “such violations are commonly attributed to law enforcement authorities. However, collusion and/or acquiescence has also reportedly been shown with regard to abuses committed by private actors, *inter alia*, criminal gangs and private security guards.”<sup>22</sup> She added that according to the information gathered during her visit, “impunity for such violations was a chronic problem.”<sup>23</sup> She therefore concluded that, “as a matter of priority, impunity should be addressed and human rights defenders should be provided with effective protection.”<sup>24</sup>

## 2. Regarding Carlos Escaleras Mejía

52. Mr. Carlos Escaleras Mejía was born in the city of Tocoa, Colón department, on August 10, 1958.<sup>25</sup> While at secondary school, he belonged to the Students’ Revolutionary Front and to the Progressive Student Movement. Mr. Escaleras later earned a degree in social promotion.<sup>26</sup>

<sup>15</sup> Annex 5. UN, Economic and Social Council, Promotion and Protection of Human Rights Human Rights Defenders, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/Add.5, March 6, 2006, para. 724.

<sup>16</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 70.

<sup>17</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 18.

<sup>18</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 70.

<sup>19</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, paras. 73 and 82.

<sup>20</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, paras. 73 and 82.

<sup>21</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, paras. 73 and 82.

<sup>22</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, para. 66.

<sup>23</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, para. 66.

<sup>24</sup> Annex 6. UN, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to Honduras, A/HRC/22/47/Add.1, December 13, 2012, para. 69.

<sup>25</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

53. In 1979, Carlos Escaleras Mejía, whose mother is Ofelia Mejía, married Marta Alvarenga Reyes.<sup>27</sup> They had six children: Douglas Arnaldo, Emerson Alexander, Carlos Andrés, Marta Agripina, Omar Josué, and Alvin, who died at an early age.<sup>28</sup> In addition, Mr. Escaleras had six siblings: Eldin, René, Yolanda, Andrés, Omar, and Alma, all with the surnames Mejía Alvarenga.<sup>29</sup>

## **2.1. Activities of Carlos Escaleras Mejía on behalf of natural resources, his political participation, and threats received**

54. As indicated by both parties, Carlos Escaleras Mejía was one of the foremost social leaders and human rights defenders in the Valle del Aguán region of Honduras. The petitioners indicated that Mr. Escaleras had worked as leader in a number of organizations, including the following: (i) the Union of National Electricity Company Workers (SITRAENEE), (ii) the National Farm Workers' Central (CNTC), (iii) the Committee for the Defense of Human Rights in Honduras (CODEH), and (iv) the Common Front of Local Citizen Organizations.<sup>30</sup>

55. Later, Carlos Escaleras founded and led the Coordinating Committee of Peoples' Organizations of Aguán (COPA).<sup>31</sup> The petitioners state that from within COPA, Mr. Escaleras Mejía forged ties with community organizations and environmentalist movements.<sup>32</sup> They report that COPA became a major social movement with a high level of credibility for its positions in defense of human rights.<sup>33</sup> They say that it denounced and opposed the activities of various companies that were harming the valley's environment and ecosystem by dumping toxic substances into its rivers.<sup>34</sup>

56. Carlos Escaleras Mejía's work, described in the above terms, has not been disputed by the State. On the contrary, as indicated in the section dealing with the positions of the parties, the State of Honduras has acknowledged that Mr. Escaleras Mejía was "one of the most prominent social leaders in the Aguán valley (...) and served as the head of several organizations."

57. Various statements indicate that months before his murder, Mr. Escaleras came out strongly against the construction of a palm-oil plant on the banks of the Tocoa River, because the toxic waste dumped

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(...Continuación)

<sup>26</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>27</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>28</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>29</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>30</sup> Annex 8. Initial petition of January 14, 2002.

<sup>31</sup> Annex 8. Initial petition of January 14, 2002; Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>32</sup> Annex 8. Initial petition of January 14, 2002.

<sup>33</sup> Annex 8. Initial petition of January 14, 2002; Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>34</sup> Annex 8. Initial petition of January 14, 2002.

into it would pollute it.<sup>35</sup> The construction project was being undertaken by the businessman Miguel Facussé.<sup>36</sup>

58. Mr. Pedro Marchetti, a witness in the domestic criminal proceedings and one of Carlos Escaleras Mejía's colleagues, said that Escaleras participated "in the struggle against the opening of Miguel Facussé's new African palm processing plant, which played a major role in the cancellation of an enormous World Bank loan to the Cressida company; (...) the coalition of eight environmental organizations (...) influenced the cancellation of the loan." Mr. Marchetti said that it "was common knowledge throughout Tocoa (...) that Carlos Escaleras Mejía was a thorn in the sides of Miguel Facussé and the leaders of the Liberal Party."<sup>37</sup>

59. René Escaleras, the alleged victim's brother and one Miguel Facussé's employees, stated that shortly before Carlos Escaleras's murder, his employer asked him to "speak to his brother (...) for him to stop fighting for the environment because (...) it had caused him a loss of several million lempiras."<sup>38</sup> He said that Mr. Facussé had told him that he had incurred those financial losses because Carlos Escaleras "organized [an] opposition movement that prevented him from opening a palm-oil processing plant, claiming that it would generate toxic waste that would pollute Tocoa's water."<sup>39</sup>

60. René Escaleras said that when he spoke with his brother Carlos, he had replied that he would continue to lead "the pro-environment movement."<sup>40</sup> According to this same witness, Carlos Escaleras Mejía's reply led to his firing from Miguel Facussé's company.<sup>41</sup>

61. As described in the following section, Carlos Escaleras Mejía was murdered three months after that incident.

62. In addition, Carlos Escaleras was chosen as the Democratic Unification Party's candidate for mayor of Tocoa in the November 1997 elections.<sup>42</sup> Ms. Blanca Escobar, a person who was close to Carlos Escaleras Mejía, gave a witness statement at the trial stating that before his death, Mr. Escaleras was the victim of pressure and threats and even received offers of money in exchange for withdrawing from the election.<sup>43</sup>

63. According to Blanca Escobar, one week prior to Mr. Escaleras's murder, Hernán Banegas, then a candidate and later the mayor of Tocoa, told Carlos Escaleras that "Liberal Party Congressman

<sup>35</sup> Annex 9. Petitioners' submission of August 6, 2005; Annex 10. Judicial statement of Pedro Marchetti, dated November 28, 2000, pp. 299-300; Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>36</sup> Annex 11. Document DGIC-TC-12-2000, dated November 20, 2000, judicial case file, p. 327, annexed to the initial petition of January 14, 2002; Annex 12. Newspaper article "New evidence presented to clear up death of Escaleras," published in the daily *La Prensa*, dated October 26, 2000, judicial case file, p. 325, annexed to the initial petition of January 14, 2002.

<sup>37</sup> Annex 10. Judicial statement of Pedro Marchetti, dated November 28, 2000, pp. 299-300.

<sup>38</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>39</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>40</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>41</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>42</sup> Information provided consistently by the petitioners and not disputed by the State; Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 39.

<sup>43</sup> Annex 14. Judicial statement of Blanca Escobar, dated September 29, 1999, p. 171.

Salomón Martínez wants to know how much money you want to withdraw your candidacy for mayor of Tocoa and he will pay it.”<sup>44</sup> Ms. Escobar said that Carlos Escaleras’s reply was that “he didn’t want anything because his principles wouldn’t allow him to do such a thing.”<sup>45</sup> Blanca Escobar stated that Hernán Banegas told Carlos Escaleras to “be careful.”<sup>46</sup>

64. She also reported that she had heard that Javier Banegas, Hernán Banegas’s brother, had on one occasion said that “that SOB Carlos Escaleras should be killed so his brother could be elected mayor.”<sup>47</sup> Ms. Escobar added that Mr. Hernán Banegas again visited Carlos Escaleras’s business and offered him 25,000 lempiras.<sup>48</sup> She claimed that Carlos Escaleras said, “you can go out through the same door you came in, because I didn’t take the three million that (...) Facussé offered.”<sup>49</sup> She maintained that Hernán replied that “he hoped he wouldn’t regret it later.”<sup>50</sup>

65. Marta Alvarenga, Mr. Escaleras’s wife, stated that some days before his death, he received several calls from Miguel Facussé offering him “three million lempiras to withdraw from politics and from the environmental movement.”<sup>51</sup> She said that Carlos Escaleras rejected the offer and so began to receive telephone threats and had to temporarily suspend his telephone line.<sup>52</sup> In turn, Blanca Escobar said that Carlos Escaleras had also narrated the same incident described by his wife in her statement.<sup>53</sup> Mr. Joaquín Benítez, a friend of Carlos Escaleras Mejía, said that one week before his murder, the victim had told him that “he had some very rich enemies.”<sup>54</sup>

66. Finally, some months before his death, Carlos Escaleras Mejía led the protests against Col. Aldo Augusto Aldana, the commanding officer of the 15th Infantry Battalion.<sup>55</sup> According to an undated public notice contained in the case file, Mr. Carlos Escaleras “had direct conflicts with the colonel (...) on account of the decision to construct military facilities at the location of a watershed that benefited hundreds of

<sup>44</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002; Annex 15. Judicial hearing of August 7, 2001, judicial case file, Vol. II, pp. 490-491, annexed to the initial petition of January 14, 2002.

<sup>45</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>46</sup> Annex 14. Statement of Blanca Escobar, dated September 29, 1999, judicial case file, p. 171, annexed to the initial petition of January 14, 2002.

<sup>47</sup> Annex 14. Statement of Blanca Escobar, dated September 29, 1999, judicial case file, p. 171, annexed to the initial petition of January 14, 2002.

<sup>48</sup> Annex 15. Judicial hearing of August 7, 2001, judicial case file, Vol. II, pp. 490-491, annexed to the initial petition of January 14, 2002.

<sup>49</sup> Annex 14. Statement of Blanca Escobar, dated September 29, 1999, judicial case file, p. 171, annexed to the initial petition of January 14, 2002.

<sup>50</sup> Annex 14. Statement of Blanca Escobar, dated September 29, 1999, judicial case file, p. 171, annexed to the initial petition of January 14, 2002.

<sup>51</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>52</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>53</sup> Annex 14. Statement of Blanca Escobar, dated September 29, 1999, judicial case file, p. 171, annexed to the initial petition of January 14, 2002.

<sup>54</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002.

<sup>55</sup> Annex 17. Notice “Six years and Carlos Escaleras Walks with Us,” undated, Annex 4 to the petitioners’ communication of April 24, 2004; Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 43.

families.”<sup>56</sup> A publication by the Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH) indicates that Col. Aldana’s decision would have hampered the access to water of several settlements.<sup>57</sup> In addition, Mr. Pedro Marchetti stated that he had “heard information about Col. Augusto Aldana” and his possible involvement in the murder of Carlos Escaleras.<sup>58</sup>

### 3. The killing of Carlos Escaleras Mejía

67. According to the statements of several witnesses, on October 18, 1997, Carlos Escaleras Mejía was returning from a political event organized by his party in the city of Tegucigalpa.

68. Specifically, they stated that at around 6:00 p.m., two people entered Lubricentro Escaleras, the Escaleras family business, and were received by Marta Alvarenga, Mr. Escaleras Mejía’s wife, who sold them two soft drinks.<sup>59</sup> Mr. Joaquín Benítez reported that he met with those individuals as they were leaving the business and that they offered him a drink.<sup>60</sup> He said they told him that “they [were] looking for Carlos because they want[ed] a number 14 inner tube.”<sup>61</sup> Mr. Benítez stated that he saw the two individuals waiting for Mr. Escaleras. He later saw Carlos Escaleras Mejía arrive on a motorcycle.<sup>62</sup>

69. Marta Alvarenga, Mr. Escaleras’s wife, stated that after parking the motorcycle, Carlos Escaleras Mejía “went into the back of the shop.”<sup>63</sup> His son, Douglas Escaleras Alvarenga, who was also present, reported that two men asked the shop’s watchman whether the person who had just arrived was Carlos Escaleras, to which he replied in the affirmative.<sup>64</sup> He added that the two men thereupon “shot him (...) in the back.”<sup>65</sup>

70. Mrs. Alvarenga described how she heard three gunshots and saw the men running away.<sup>66</sup> Mr. Benítez said he saw two people running.<sup>67</sup> Mrs. Alvarenga said she saw her husband on the ground and,

<sup>56</sup> Annex 17. Notice “Six years and Carlos Escaleras Walks with Us,” undated, Annex 4 to the petitioners’ communication of April 24, 2004.

<sup>57</sup> Annex 7. Committee of Relatives of the Detained and Disappeared in Honduras (COFADEH), *Erguidos como pinos. Memoria sobre la construcción de la conciencia ambientalista*, Honduras, 2006, p. 43.

<sup>58</sup> Annex 10. Statement of Pedro Marchetti, dated November 28, 2000, judicial case file, pp. 282-284, annexed to the initial petition of January 14, 2002.

<sup>59</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002; Annex 18. Statement of Martha Alvarenga Reyes, dated October 27, 1997, judicial case file, p. 37, annexed to the initial petition of January 14, 2002.

<sup>60</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002.

<sup>61</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002.

<sup>62</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002.

<sup>63</sup> Annex 18. Statement of Martha Alvarenga Reyes, dated October 27, 1997, judicial case file, p. 37, annexed to the initial petition of January 14, 2002.

<sup>64</sup> Annex 19. Statement of Douglas Escaleras Alvarenga, dated November 27, 1997, judicial case file, pp. 86-87, annexed to the initial petition of January 14, 2002.

<sup>65</sup> Annex 19. Statement of Douglas Escaleras Alvarenga, dated November 27, 1997, judicial case file, pp. 86-87, annexed to the initial petition of January 14, 2002.

<sup>66</sup> Annex 18. Statement of Martha Alvarenga Reyes, dated October 27, 1997, judicial case file, p. 37, annexed to the initial petition of January 14, 2002; Annex 20. Statement of Martha Alvarenga Reyes, dated November 27, 1997, judicial case file, p. 86, annexed to the initial petition of January 14, 2002.

<sup>67</sup> Annex 16. Statement of Joaquín Benítez, dated October 23, 1997, judicial case file, p. 22, annexed to the initial petition of January 14, 2002.

with the assistance of the watchman and another person, took him to the CEMECO clinic.<sup>68</sup> The petitioners report that no surgeon was available at that hospital and so Mrs. Alvarenga then took him to the D'Antoni Hospital in La Ceiba, where he underwent surgery and, a few hours later, died.<sup>69</sup>

71. The records of the Vicente D'Antoni Hospital read as follows:

On October 18, 1997, this hospital provided emergency care to Mr. Carlos Alfonso Escaleras Mejía, who was admitted in a state of hypovolemic shock due to gunshot wounds penetrating his abdomen and injuring his elbow and left thigh. This service provided him with assisted ventilation and restitution of volume until his condition improved; he was then taken into surgery and we found a severe lesion of the anterior and posterior stomach walls and pancreas, and, in the retroperitoneal space, a lesion of a major vessel. He went into cardiac arrest; resuscitation procedures were unsuccessful and he died at 12:25 p.m.<sup>70</sup>

72. Mr. Narciso Daniel Castro, a primary-school teacher and acquaintance of Carlos Escaleras, said that on the day of Mr. Escaleras's death, Mr. Orlando Martínez approached him and told him that "he killed a man there and (...) gave the name of Carlos Escaleras."<sup>71</sup> He reported that Mr. Martínez showed him a "wad of money" and said that he had been given it by Mr. Oscar Sosa,<sup>72</sup> who allegedly had ties to Miguel Facussé.<sup>73</sup> This same witness reported that previously "he had seen Mr. Orlando Martínez at Mr. Sosa's home, and there were rumors that the two were involved with drugs."<sup>74</sup> He also stated that Orlando Martínez had previously told him that he had killed two people on the orders of Oscar Sosa because "they had stolen livestock from him."<sup>75</sup>

73. Mr. Castro stated that after his conversation with Orlando Martínez, he received telephone calls telling him "they [knew] where he was" and that "if he opened his mouth they [would] close it for him."<sup>76</sup> His wife, who answered the telephone calls, recognized Orlando Martínez's voice.<sup>77</sup> Mr. Castro indicates in his statement that Orlando Martínez was murdered at a gasoline station a few weeks after the incident.<sup>78</sup>

<sup>68</sup> Annex 18. Statement of Martha Alvarenga Reyes, dated October 27, 1997, judicial case file, p. 37, annexed to the initial petition of January 14, 2002; Annex 20. Statement of Martha Alvarenga Reyes, dated November 27, 1997, judicial case file, p. 86, annexed to the initial petition of January 14, 2002.

<sup>69</sup> Annex 18. Statement of Martha Alvarenga Reyes, dated October 27, 1997, judicial case file, p. 37, annexed to the initial petition of January 14, 2002.

<sup>70</sup> Annex 21. Record of the Vicente D'Antoni Hospital, dated October 27, 1997, judicial case file, p. 50, annexed to the initial petition of January 14, 2002.

<sup>71</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, pp. 82-83, annexed to the initial petition of January 14, 2002.

<sup>72</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, p. 82-83, annexed to the initial petition of January 14, 2002.

<sup>73</sup> Annex 23. Statement of Lucas García Alfaro, dated November 15, 2000, judicial case file, pp. 291-296, annexed to the initial petition of January 14, 2002.

<sup>74</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, p. 82-83, annexed to the initial petition of January 14, 2002.

<sup>75</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, p. 82-83, annexed to the initial petition of January 14, 2002.

<sup>76</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, p. 82-83, annexed to the initial petition of January 14, 2002.

<sup>77</sup> Annex 24. Statement of Lilian Rosales, dated October 23, 1997, judicial case file, p. 83, annexed to the initial petition of January 14, 2002.

<sup>78</sup> Annex 22. Statement of Narciso Castro, dated November 21, 1997, judicial case file, p. 82-83, annexed to the initial petition of January 14, 2002.

According to his death certificate, Orlando Martínez was murdered on November 12, 1997, at a location known as Carbonal in the municipality of Bonito Oriental.<sup>79</sup>

74. In addition, Mrs. Blanca Escobar stated that on October 18, 1997, at 7:00 p.m., a person looking for Mr. Escaleras arrived at her home.<sup>80</sup> She said it was “a young man (...) [who] had a cloth tied around his face (...) and was also wearing [a] cap.”<sup>81</sup> She reported that five minutes after he had left, one of Mr. Escaleras’s sons arrived and told her that his father had been shot.<sup>82</sup>

75. René Escaleras said that a few days after his brother’s murder, he received a call from Irma González of the Lexus company, which belonged to Miguel Facussé, where he was received by Mr. Irene Castro.<sup>83</sup> He stated that Mr. Castro “asked him to write a letter on behalf of the Escaleras family” denying that Miguel Facussé had anything to do with Mr. Escaleras’s death.<sup>84</sup> He stated that after consulting with his family, he refused the request.<sup>85</sup> Irma González admitted in the criminal proceedings that she had called René Escaleras and asked him to release Miguel Facussé of all responsibility.<sup>86</sup>

#### 4. Investigation

76. According to a document from the Regional Police Commander, on October 18, 1997, at 11:20 p.m., five police officers entered a bar and saw four men – José Iraheta Pineda, Roberto Iraheta Pineda, Rigoberto Iraheta Hernández, and Marvin Zavala Pacheco – who were having a drink.<sup>87</sup> The documents states that “when they were challenged, they resisted and drew (...) firearms.”<sup>88</sup> One of the officers stated that the men took a young woman as a hostage – one Clenis Juliana<sup>89</sup> – and that after “convincing [them] psychologically (...) they surrender[ed] the weapon.”<sup>90</sup>

77. The four individuals were arrested “on suspicion of the crime [of] homicide committed against Mr. Carlos Escaleras, (...) the attempted kidnapping of Ms. Clenis Juliana, resisting arrest, and attempted homicide against the patrol officers.”<sup>91</sup> One officer stated that “they [were arrested] on suspicion of

<sup>79</sup> Annex 25. Death certificate of Orlando Martínez, dated January 31, 2001, judicial case file, pp. 350-351, annexed to the initial petition of January 14, 2002.

<sup>80</sup> Annex 26. Statement of Blanca Escobar, dated October 23, 1997, judicial case file, p. 23, annexed to the initial petition of January 14, 2002.

<sup>81</sup> Annex 26. Statement of Blanca Escobar, dated October 23, 1997, judicial case file, p. 23, annexed to the initial petition of January 14, 2002.

<sup>82</sup> Annex 26. Statement of Blanca Escobar, dated October 23, 1997, judicial case file, p. 23, annexed to the initial petition of January 14, 2002.

<sup>83</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>84</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>85</sup> Annex 13. Report of the General Directorate of Criminal Investigation, dated September 23, 1999, judicial case file, pp. 162-163, annexed to the initial petition of January 14, 2002.

<sup>86</sup> Annex 27. Statement of Irma González, dated September 29, 1999, judicial case file, p. 172, annexed to the initial petition of January 14, 2002.

<sup>87</sup> Annex 28. Document of the Regional Police Commander, dated October 20, 1997, judicial case file, pp. 1-2, annexed to the initial petition of January 14, 2002.

<sup>88</sup> Annex 28. Document of the Regional Police Commander, dated October 20, 1997, judicial case file, pp. 1-2, annexed to the initial petition of January 14, 2002.

<sup>89</sup> Annex 28. Document of the Regional Police Commander, dated October 20, 1997, judicial case file, pp. 1-2, annexed to the initial petition of January 14, 2002.

<sup>90</sup> Annex 29. Statement of Ramón Amaya, undated, judicial case file, p. 24, annexed to the initial petition of January 14, 2002.

<sup>91</sup> Annex 28. Document of the Regional Police Commander, dated October 20, 1997, judicial case file, pp. 1-2, annexed to the initial petition of January 14, 2002.

Mr. Carlos Escaleras's murder because their weapons had been discharged."<sup>92</sup> Other police officer said that "according to intelligence reports (...) two of them had purportedly killed [Mr. Escaleras]."<sup>93</sup>

78. Between October 20 and 22, 1997, the four men gave statements in which they indicated they were unaware of the incident involving Mr. Escaleras Mejía.<sup>94</sup>

79. On October 28, 1997, the First-Instance Court of Tocoa ordered the incarceration of José Iraheta Pineda and Roberto Iraheta Pineda for the crime of murdering Mr. Escaleras Mejía after they were allegedly identified as the people who had been at Lubricentro Escaleras on the day of Mr. Escaleras's death.<sup>95</sup> The attorney of the two requested that the identity parade be annulled on the grounds that the media had shown their faces before it was carried out.<sup>96</sup> He added that there were also inconsistencies between the witness statements and the physical appearances described.<sup>97</sup>

80. On November 13, 1997, the court conducted a judicial inspection at the premises of Lubricentro Escaleras.<sup>98</sup> It recorded that "the spent cartridges had already been collected by the prosecutor and police" and that "there were no blood stains because of the intervening rains."<sup>99</sup>

81. On November 21, 1997, the court ordered that the proceedings be kept secret for the space of one month in order to "protect the interests of justice and the security of the witnesses," chiefly Narciso Castro and his wife Lilian Rosales.<sup>100</sup> In addition, it ordered the Regional Police Commander to arrest Oscar Sosa on account of his possible participation as the mastermind behind the death of Carlos Escaleras.<sup>101</sup>

82. On January 20, 1998, the court ordered the annulment of the incarceration order issued against José Iraheta Pineda and Roberto Iraheta Pineda for the crime of Carlos Escaleras's homicide.<sup>102</sup> The court explained that it had reached that conclusion on the grounds that: (i) several witnesses stated that the two were in the community of Ilan at the time of Mr. Escaleras' death; (ii) the witnesses Joaquín Benítez and Blanca Escobar contradicted themselves in their physical descriptions of the persons they identified; and (iii) other people had been accused of participating in the crime.<sup>103</sup>

83. On March 4, 1998, Mr. Oscar Sosa gave his statement to the investigation.<sup>104</sup> Mr. Sosa denied any involvement in the killing of Carlos Escaleras, whom he knew "vaguely."<sup>105</sup> He stated that he had no kind

<sup>92</sup> Annex 30. Statement of Johnny Banegas, dated October 24, 1997, judicial case file, p. 27, annexed to the initial petition of January 14, 2002.

<sup>93</sup> Annex 29. Statement of Ramón Amaya, undated, judicial case file, p. 24, annexed to the initial petition of January 14, 2002.

<sup>94</sup> Annex 31. Statements of José Iraheta Pineda, Roberto Iraheta Pineda, Rigoberto Iraheta Hernández, and Marvin Zavala Pacheco, dated between October 20 and 22, 1997, judicial case file, pp. 4-11, annexed to the initial petition of January 14, 2002.

<sup>95</sup> Annex 32. Court document, dated October 28, 1997, judicial case file, p. 48, annexed to the initial petition of January 14, 2002.

<sup>96</sup> Annex 33. Document dated November 12, 1997, judicial case file, p. 72, annexed to the initial petition of January 14, 2002.

<sup>97</sup> Annex 33. Document dated November 12, 1997, judicial case file, p. 72, annexed to the initial petition of January 14, 2002.

<sup>98</sup> Annex 34. Court inspection record, dated November 13, 1997, judicial case file, p. 71, annexed to the initial petition of January 14, 2002.

<sup>99</sup> Annex 34. Court inspection record, dated November 13, 1997, judicial case file, p. 71, annexed to the initial petition of January 14, 2002.

<sup>100</sup> Annex 35. Court document, dated November 21, 1997, judicial case file, p. 84, annexed to the initial petition of January 14, 2002.

<sup>101</sup> Annex 35. Court document, dated November 21, 1997, judicial case file, p. 84, annexed to the initial petition of January 14, 2002.

<sup>102</sup> Annex 36. Court document, dated January 20, 1998, judicial case file, p. 109, annexed to the initial petition of January 14, 2002.

<sup>103</sup> Annex 36. Court document, dated January 20, 1998, judicial case file, p. 109, annexed to the initial petition of January 14, 2002.

<sup>104</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

of relationship with Orlando Martínez.<sup>106</sup> Mr. Sosa added that the testimony of Narciso Castro was on account of “simple personal envy, perhaps because they belong[ed] to different political parties.”<sup>107</sup>

84. Mr. Sosa maintained that on the day of Carlos Escaleras’s death, he heard “in a gaming parlor” three versions of the killing: (i) that the “politicians in office” and Congressman Salomón Martínez had killed him; (ii) that the private company run by Mr. Facussé had ordered him killed; and (iii) that the colonel of the 15th Battalion had had him murdered.<sup>108</sup> He added that the colonel had threatened Mr. Escaleras after he had “called him a thief, a rogue, a scoundrel,” to which the colonel had replied that “he would pay for that later.”<sup>109</sup>

85. On March 4, 1998, the court ruled on the nonexistence of “sufficient merit to order the incarceration” of Oscar Sosa; it therefore ordered his provisional release, without prejudice to the continued investigation of the case.<sup>110</sup>

86. On May 27, 1999, the prosecutor Luis Santos asked the court to contact the medical examiner in order to obtain the forensic report on Carlos Escaleras’s body since “the corresponding ruling is not in the record (...) [and] whether any projectiles were taken from his body.”<sup>111</sup> On June 1, 1999, the court requested that information.<sup>112</sup> The IACHR notes that this forensic report does not appear in the judicial case file.

87. On August 12, 1999, the General Directorate of Criminal Investigation (DGIC) prepared a report on the inquiries conducted in connection with the death of Carlos Escaleras.<sup>113</sup> The DGIC reported that Mr. José Echeverría Natarén stated that Orlando Martínez “had, on two occasions, told him in confidence that (...) he had been paid to kill Carlos Escaleras and that [he] in turn hired two people to carry out the murder.”<sup>114</sup> Mr. Echeverría maintained that Orlando Martínez had given them the weapon for them to commit the murder.<sup>115</sup> He added that those two individuals were known by the aliases of ‘Lucas’ and ‘Guatuso’.<sup>116</sup>

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(...Continuación)

<sup>105</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

<sup>106</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

<sup>107</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

<sup>108</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

<sup>109</sup> Annex 37. Statement of Oscar Sosa Vargas, dated March 4, 1998, judicial case file, pp. 124-125, annexed to the initial petition of January 14, 2002.

<sup>110</sup> Annex 38. Court document, dated March 4, 1998, judicial case file, p. 127, annexed to the initial petition of January 14, 2002.

<sup>111</sup> Annex 39. Communication of prosecutor Luis Santos, dated May 27, 1999, judicial case file, p. 138, annexed to the initial petition of January 14, 2002.

<sup>112</sup> Annex 40. Court document, dated June 1, 1999, judicial case file, p. 139, annexed to the initial petition of January 14, 2002.

<sup>113</sup> Annex 41. Report of the General Directorate of Criminal Investigation, dated August 12, 1999, judicial case file, pp. 149-150, annexed to the initial petition of January 14, 2002.

<sup>114</sup> Annex 41. Report of the General Directorate of Criminal Investigation, dated August 12, 1999, judicial case file, pp. 149-150, annexed to the initial petition of January 14, 2002.

<sup>115</sup> Annex 42. Statement of José Echeverría Natarén, dated August 13, 1999, judicial case file, p. 154, annexed to the initial petition of January 14, 2002.

<sup>116</sup> Annex 42. Statement of José Echeverría Natarén, dated August 13, 1999, judicial case file, p. 154, annexed to the initial petition of January 14, 2002.

88. On September 16, 1999, the court ordered the arrest of ‘Lucas’ and ‘Guatuso’ on suspicion of involvement in the murder of Carlos Escaleras.<sup>117</sup> On September 28, 1999, the DGIC submitted a new report indicating that after taking a statement from Lorenzo Cruz, ‘Lucas’ and ‘Guatuso’ had been identified as Lucas Suazo Rosales, reputed to be a “hired killer,” and Leodán Machado Fernández, a member of a gang of petty criminals.<sup>118</sup> On October 1, 1999, the court ordered the arrest of Lucas Suazo Rosales and Leodán Machado Fernández.<sup>119</sup>

89. On October 5, 1999, the court requested that a statement be taken from Miguel Facussé.<sup>120</sup>

90. On December 8, 1999, Lucas Suazo Rosales, whose real name was reported as Lucas García Alfaro, was arrested and taken in custody to the court in Tocoa.<sup>121</sup> On December 9, 1999, Lucas García Alfaro gave a statement in which he denied knowing Carlos Escaleras or having participated in his murder.<sup>122</sup> On December 13, 1999, the court ordered the incarceration of Lucas García Alfaro, holding him responsible for the murder of Carlos Escaleras.<sup>123</sup>

91. That same day, prosecutor Luis Santos asked the court to ask the magistrate’s court in Trujillo for “a pocket notebook (...) which contains information of great importance to the investigations underway (...) [and] which was found in a search of Oscar Sosa’s home.”<sup>124</sup> The court agreed to the request.<sup>125</sup> According to the statement given by police officer Aníbal Izaguirre, in December 1999 a search was carried out at the home of Oscar Sosa because his son, Oscar Sosa Galán, was involved in the murder of a foreigner in a case unrelated to the matter at hand.<sup>126</sup> He stated that at that address, they found “a card with notes containing the names of two people who had supposedly participated in the killing of [Carlos] Escaleras; one of them was Lucas Aguilera, the other [he could] not recall.”<sup>127</sup> According to the prosecutor, the notebook found at Oscar Sosa’s home contained the names of Orlando Martínez, Lucas García Alfaro, Oscar Escobar, and others.<sup>128</sup>

<sup>117</sup> Annex 43. Court document, dated September 16, 1999, judicial case file, p. 155, annexed to the initial petition of January 14, 2002.

<sup>118</sup> Annex 44. Report of the General Directorate of Criminal Investigation, dated September 28, 1999, judicial case file, p. 175, annexed to the initial petition of January 14, 2002.

<sup>119</sup> Annex 45. Court document, dated October 1, 1999, judicial case file, p. 181, annexed to the initial petition of January 14, 2002.

<sup>120</sup> Annex 46. Court document, dated October 5, 1999, judicial case file, p. 184, annexed to the initial petition of January 14, 2002.

<sup>121</sup> Annex 47. Court document, dated December 8, 1999, judicial case file, p. 204, annexed to the initial petition of January 14, 2002.

<sup>122</sup> Annex 48. Statement of Lucas García Alfaro, dated December 9, 1999, judicial case file, pp. 209-210, annexed to the initial petition of January 14, 2002.

<sup>123</sup> Annex 49. Court document, dated December 13, 1999, judicial case file, p. 219, annexed to the initial petition of January 14, 2002.

<sup>124</sup> Annex 50. Communication of prosecutor Luis Santos, dated December 13, 1999, judicial case file, p. 222, annexed to the initial petition of January 14, 2002.

<sup>125</sup> Annex 51. Court document, dated December 14, 1999, judicial case file, p. 222, annexed to the initial petition of January 14, 2002.

<sup>126</sup> Annex 52. Statement of Aníbal Izaguirre, dated May 28, 2001, judicial case file, pp. 414-415, annexed to the initial petition of January 14, 2002.

<sup>127</sup> Annex 52. Statement of Aníbal Izaguirre, dated May 28, 2001, judicial case file, pp. 414-415, annexed to the initial petition of January 14, 2002.

<sup>128</sup> Annex 53. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

92. On January 11, 2000, Marta Alvarenga stated that the person who bought soft drinks off her moments before her husband's death was Lucas García Alfaro.<sup>129</sup>

93. On March 24, 2000, the court concluded the committal stage.<sup>130</sup> On May 10, 2000, the prosecutor Luis Santos asked the court to separate the proceedings involving José Iraheta Pineda, Roberto Iraheta Pineda, Rigoberto Iraheta Hernández, and Marvin Zavala Pacheco from the case file on the grounds that "they had nothing to do with the death of Carlos Escaleras."<sup>131</sup> On May 15, 2000, the court reopened the committal proceedings and admitted the prosecutor's request.<sup>132</sup>

94. On September 11, 2000, at the request of Oscar Sosa's counsel, the court decided to annul the border alert issued for him in February 1998.<sup>133</sup>

95. On November 13, 2000, Eldyn Escaleras Mejía lodged a criminal accusation against the business owner Miguel Facussé, Congressman Salomón Martínez, and Oscar Sosa, for the murder of his brother Carlos Escaleras Mejía.<sup>134</sup> He said that the witness statements gathered during the proceedings identified those three individuals as the suspected masterminds behind his brother's killing.<sup>135</sup> In addition, he reported the existence of "a photocopy of a check issued by [Miguel Facussé's] agricultural company Lexus de Honduras, dated September 21, 1997, in the amount of 250,000 lempiras, issued to Salomón Martínez and endorsed to Oscar Sosa."<sup>136</sup> He contended that that evidence confirmed the involvement of the three men in his brother's murder.<sup>137</sup> Father Pedro Marchetti later stated that he received the photocopy of that check anonymously at his office<sup>138</sup> and that it "was allegedly the money used to pay the men who carried out the murder of Carlos (...) Escaleras."<sup>139</sup> The Commission notes that the photocopy of the check in question is included in the judicial case file.<sup>140</sup>

96. On November 15, 2000, the First-Instance Court admitted the accusation.<sup>141</sup> In addition, on that same day, Lucas García Alfaro gave a statement to the Committee for the Defense of Human Rights in

<sup>129</sup> Annex 54. Statement of Martha Alvarenga, dated January 11, 2000, judicial case file, p. 228, annexed to the initial petition of January 14, 2002.

<sup>130</sup> Annex 55. Court document, dated March 24, 2000, judicial case file, p. 270, annexed to the initial petition of January 14, 2002.

<sup>131</sup> Annex 56. Filing of Prosecutor Luis Santos, dated May 10, 2000, judicial case file, p. 273, annexed to the initial petition of January 14, 2002.

<sup>132</sup> Annex 57. Court document, dated May 15, 2000, judicial case file, p. 275, annexed to the initial petition of January 14, 2002.

<sup>133</sup> Annex 58. Court document, dated September 11, 2000, judicial case file, p. 276, annexed to the initial petition of January 14, 2002.

<sup>134</sup> Annex 59. Criminal accusation of Eldyn Escaleras Mejía, dated November 13, 2000, judicial case file, pp. 282-284, annexed to the initial petition of January 14, 2002.

<sup>135</sup> Annex 59. Criminal accusation of Eldyn Escaleras Mejía, dated November 13, 2000, judicial case file, pp. 282-284, annexed to the initial petition of January 14, 2002.

<sup>136</sup> Annex 59. Criminal accusation of Eldyn Escaleras Mejía, dated November 13, 2000, judicial case file, pp. 282-284, annexed to the initial petition of January 14, 2002.

<sup>137</sup> Annex 59. Criminal accusation of Eldyn Escaleras Mejía, dated November 13, 2000, judicial case file, pp. 299-300, annexed to the initial petition of January 14, 2002.

<sup>138</sup> Annex 10. Statement of Pedro Marchetti, dated November 28, 2000, judicial case file, pp. 282-284, annexed to the initial petition of January 14, 2002.

<sup>139</sup> Annex 60. Document DGIC-TC-11-2000 of the General Directorate of Criminal Investigation, dated November 14, 2000, judicial case file, pp. 314-316, annexed to the initial petition of January 14, 2002.

<sup>140</sup> Annex 61. Check dated September 21, 1997, judicial case file, p. 287, annexed to the initial petition of January 14, 2002.

<sup>141</sup> Annex 62. Court document, dated November 15, 2000, judicial case file, p. 285, annexed to the initial petition of January 14, 2002.

Honduras,<sup>142</sup> indicated that on November 12, 1997, Orlando Martínez confessed to him that Miguel Facussé had given money to two congressmen – Juan Ramón Salgado and Salomón Martínez – who in turn paid Oscar Sosa to kill Carlos Escaleras.<sup>143</sup> He claimed that Oscar Sosa and another attorney from Mr. Facussé’s company, Irene Castro, paid Orlando Martínez to carry out the murder, which was committed by Leodán aka ‘Guatuso’, Oscar Escobar, and another person. He stated that “they [were] angry with Escaleras because he had ruined a business deal for the congressmen and [for] Col. Aldana and [for] Mr. Facussé.”<sup>144</sup> He said that business deal involved “an oil factory they were going to build in Tocoa and Escaleras mobilized the people and prevented them from building the plant [and] reportedly they lost more than two million lempiras.”<sup>145</sup>

97. Mr. García Alfaro reiterated his statement given to the Committee for the Defense of Human Rights in Honduras to the DGIC on December 3, 2000.<sup>146</sup> In addition, in the expansion of his statement, he stated that Orlando Martínez also confessed to him that on the day of Carlos Escaleras’s death, he told the full story to Mr. Narciso Castro.<sup>147</sup> He said that Orlando Martínez told him that the congressmen received a check from Facussé.<sup>148</sup> He stated that hours after telling him about the death of Carlos Escaleras, Mr. Martínez was killed.<sup>149</sup> He further claimed that Oscar Sosa had Orlando Martínez killed “because he was ‘talking’.”<sup>150</sup>

98. In a later statement he said that Salomón Martínez’s attorney had visited him repeatedly at the prison where he was being held, and told him that “if (...) he gave that statement, what he (...) would get is a conviction because (...) he was the only poor person involved in the problem and everyone else had money.”<sup>151</sup> He reported that during a second visit, he was offered “scholarships for the children and (...) a monthly payment for [his] wife (...) and private defense counsel in exchange for (...) not [giving] that statement.”<sup>152</sup>

99. On November 21, 2000, the Escaleras family, its legal representative, and the Coordinating Committee of Peoples’ Organizations of Aguán (COPA) wrote to the Attorney General of the Republic to remind him that he had agreed to appoint an ad hoc prosecutor to take charge of the proceedings.<sup>153</sup> They

<sup>142</sup> Annex 23. Statement of Lucas García Alfaro, dated November 15, 2000, judicial case file, pp. 291-296, annexed to the initial petition of January 14, 2002.

<sup>143</sup> Annex 23. Statement of Lucas García Alfaro, dated November 15, 2000, judicial case file, pp. 291-296, annexed to the initial petition of January 14, 2002.

<sup>144</sup> Annex 23. Statement of Lucas García Alfaro, dated November 15, 2000, judicial case file, pp. 291-296, annexed to the initial petition of January 14, 2002.

<sup>145</sup> Annex 23. Statement of Lucas García Alfaro, dated November 15, 2000, judicial case file, pp. 291-296, annexed to the initial petition of January 14, 2002.

<sup>146</sup> Annex 23. Statement of Lucas García Alfaro, dated December 3, 2000, judicial case file, p. 321, annexed to the initial petition of January 14, 2002.

<sup>147</sup> Annex 63. Expansion of statement of Lucas García Alfaro, dated December 12, 2000, judicial case file, pp. 339-340, annexed to the initial petition of January 14, 2002.

<sup>148</sup> Annex 63. Expansion of statement of Lucas García Alfaro, dated December 12, 2000, judicial case file, pp. 339-340, annexed to the initial petition of January 14, 2002.

<sup>149</sup> Annex 63. Expansion of statement of Lucas García Alfaro, dated December 12, 2000, judicial case file, pp. 339-340, annexed to the initial petition of January 14, 2002.

<sup>150</sup> Annex 63. Expansion of statement of Lucas García Alfaro, dated December 12, 2000, judicial case file, pp. 339-340, annexed to the initial petition of January 14, 2002.

<sup>151</sup> Annex 64. Statement of Lucas García Alfaro, dated February 7, 2000, judicial case file, pp. 387-388, annexed to the initial petition of January 14, 2002.

<sup>152</sup> Annex 64. Statement of Lucas García Alfaro, dated February 7, 2000, judicial case file, pp. 387-388, annexed to the initial petition of January 14, 2002.

<sup>153</sup> Annex 65. Letter to the Attorney General of the Republic, dated November 21, 2000, Annex 2 to petitioners’ submission of August 6, 2005.

indicated that to date, seven prosecutors had been in charge of the case and that “in their dealings they showed little or no interest in seeking out the truth or casting light on the facts.”<sup>154</sup>

100. In a resolution dated November 20, 2000, the Public Prosecution Service appointed Mr. Luis Cantillano as the ad hoc prosecutor in the case of the death of Carlos Escaleras.<sup>155</sup> On April 26, 2001, the Director General of Prosecutors suspended Luis Cantillano from his position as ad hoc prosecutor for the proceedings “until the conclusion of the investigation into his actions currently underway under instructions from this Directorate.”<sup>156</sup>

101. On December 1, 2000, prosecutor Alain Díaz submitted a report from the DGIC recommending that the court conduct the necessary inspections of the company Lexus de Honduras.<sup>157</sup> On February 13, 2001, prosecutor Luis Cantillano requested that the court issue an order for Lucas García Alfaro to be brought from the detention center where he was being held on the grounds that “the case at hand has had a major social impact in the region and purportedly involves individuals with great economic and political influence in the country.”<sup>158</sup> He claimed that Mr. García Alfaro had received threats in prison and had been harassed by Salomón Martínez’s attorney, who frequently visited him.<sup>159</sup>

102. On February 16, 2001, a document was presented indicating that Salomón Martínez had been elected as a congressman for the department of Colón for the period 1998-2001. Nevertheless, the record indicates that on February 10, 1998, he requested permission to “be absent from parliamentary sessions for the duration of his duties at an autonomous institution [and] will receive no pay.”<sup>160</sup>

103. On March 28, 2001, prosecutor Luis Cantillano presented an expansion of the criminal accusation against Oscar Escobar and José Santos Manueles Hernández as the suspected perpetrators of the crime, and against Congressman Juan Ramón Salgado and Irene de Jesús Castro Reyes as the suspected masterminds behind the murder of Carlos Escaleras.<sup>161</sup> The prosecutor based this decision on the statement made by Lucas García Alfaro that, through Irene de Jesús Castro, Mr. Facussé had given money to the congressmen Juan Ramón Salgado and Salomón Martínez in order for them to kill Carlos Escaleras.<sup>162</sup>

104. He added that Oscar Escobar “was the person responsible for monitoring the deceased’s movements, and communicating them to Orlando Martínez so that he could give orders to his hitmen about the date and time [for killing him].”<sup>163</sup> He also stated that José Santos Manueles Hernández was “dedicated

<sup>154</sup> Annex 65. Letter to the Attorney General of the Republic, dated November 21, 2000, Annex 2 to petitioners’ submission of August 6, 2005.

<sup>155</sup> Annex 66. Resolution No. DGF-001-00 of the Public Prosecution Service, dated November 20, 2000, Annex 3 to the petitioners’ submission of August 6, 2005.

<sup>156</sup> Annex 67. Memorandum DGF-No. 74-2001 of the Public Prosecution Service, dated April 26, 2001, Annex 4 to the petitioners’ submission of August 6, 2005.

<sup>157</sup> Annex 60. Document DGIC-TC-11-2000 of the General Directorate of Criminal Investigation, dated November 14, 2000, judicial case file, pp. 314-316, annexed to the initial petition of January 14, 2002.

<sup>158</sup> Annex 68. Communication of Prosecutor Luis Cantillano, dated February 13, 2001, judicial case file, pp. 367-369, annexed to the initial petition of January 14, 2002.

<sup>159</sup> Annex 68. Communication of Prosecutor Luis Cantillano, dated February 13, 2001, judicial case file, pp. 367-369.

<sup>160</sup> Annex 69. Record of the National Congress, dated February 1, 2001, judicial case file, pp. 375-376, annexed to the initial petition of January 14, 2002.

<sup>161</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

<sup>162</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

<sup>163</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

solely and exclusively to killings.”<sup>164</sup> The prosecutor said that according to the testimony of Exequiel Pérez, José Santos Manueles had confessed his involvement “in the death of (...) Carlos Escaleras in that he was one of those who discharged their weapons at the deceased and for which he received the amount of thirty thousand lempiras.”<sup>165</sup> The prosecutor stated that there was information that he was living in Houston as a fugitive from justice.<sup>166</sup>

105. The accusation was admitted by the First-Instance Court on April 2, 2001.<sup>167</sup>

106. On June 20, 2001, the First-Instance Court ordered the prosecutor to formulate charges within a period of six days.<sup>168</sup> On July 18, 2001, prosecutor Alain Díaz filed formal charges against Lucas García for the crime of murder.<sup>169</sup> He said that “the facts surrounding [his] death indicate that it was on account of his opposition to the establishment of a palm-oil processing plant belonging to Mr. Miguel Facussé, which influenced the cancellation of a World Bank loan to the Cressida company.”<sup>170</sup> He stated that the main suspects in the actual killing were Lucas García, who was under arrest, Leodán Machado, who was a fugitive from justice, and Oscar Escobar, who was deceased.<sup>171</sup> The following day the court ruled the charges formalized and ordered the conclusion of the committal stage.<sup>172</sup>

107. On July 26, 2001, Mr. Facussé’s attorney denied the accusations and said that the entire situation “has been orchestrated by the Democratic Union Party, priests of the Catholic Church (Pedro Marchetti), Juana Mejía Guerra, agents of the Public Prosecution Service, and officers of the DGIC.”<sup>173</sup> He said that “the facts and their origin had been distorted to confuse public opinion.” He also stated that the check presented to the proceedings was false.<sup>174</sup>

108. On July 30, 2001, the First-Instance Court ordered a judicial inspection of the Lexus company in order to “discover whether its accounts contain records of a check issued to Mr. (...) Salomón Martínez.”<sup>175</sup> On August 1, 2001, the judicial inspection was carried out, in which it was found that the account books “contained no check issued to Mr. (...) Salomón Martínez.”<sup>176</sup>

<sup>164</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

<sup>165</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

<sup>166</sup> Annex 70. Expansion of criminal charges, dated March 28, 2001, judicial case file, Vol. II, pp. 390-395, annexed to the initial petition of January 14, 2002.

<sup>167</sup> Annex 71. Court document, dated April 2, 2001, judicial case file, Vol. II, p. 396, annexed to the initial petition of January 14, 2002.

<sup>168</sup> Annex 72. Court document, dated June 20, 2001, judicial case file, p. 416, annexed to the initial petition of January 14, 2002.

<sup>169</sup> Annex 73. Formal charges filed by Prosecutor Alain Díaz, dated July 28, 2001, judicial case file, pp. 417-422, annexed to the initial petition of January 14, 2002.

<sup>170</sup> Annex 73. Formal charges filed by Prosecutor Alain Díaz, dated July 28, 2001, judicial case file, pp. 417-422, annexed to the initial petition of January 14, 2002.

<sup>171</sup> Annex 73. Formal charges filed by Prosecutor Alain Díaz, dated July 28, 2001, judicial case file, pp. 417-422, annexed to the initial petition of January 14, 2002.

<sup>172</sup> Annex 74. Court document, dated July 19, 2001, judicial case file, p. 422, annexed to the initial petition of January 14, 2002.

<sup>173</sup> Annex 75. Document of attorney Wilfredo Flores, dated July 26, 2001, judicial case file, Vol. II, pp. 416-425, annexed to the initial petition of January 14, 2002.

<sup>174</sup> Annex 75. Document of attorney Wilfredo Flores, dated July 26, 2001, judicial case file, Vol. II, pp. 416-425, annexed to the initial petition of January 14, 2002.

<sup>175</sup> Annex 76. Court document, dated July 30, 2001, judicial case file, Vol. II, p. 477, annexed to the initial petition of January 14, 2002.

<sup>176</sup> Annex 77. Judicial inspection, dated August 1, 2001, judicial case file, Vol. II, p. 479, annexed to the initial petition of January 14, 2002.

109. In connection with the inspection, that same day judge Francisco Sánchez told a radio station that “the team representing (...) Mr. Carlos Escaleras was [not] interested in exploring that.”<sup>177</sup> He said that “we were able to see that no check was in fact issued.”<sup>178</sup> He added that “clearly there is nothing to indicate that a check was issued to Salomón Martínez on or around that date.”<sup>179</sup> He maintained that “clearly that check did not exist, clearly it is not incriminating evidence against anyone in particular (...) it is something without juridical value.”<sup>180</sup>

110. On August 22, 2001, the National Coordinating Committee against Impunity (Conacim) reported the irregular actions of Judge Francisco Sánchez in the case to the President of the Supreme Court.<sup>181</sup> The Committee stated that the judge expressed private opinions in the media “clearly aligning himself with the defendants (...) and forgetting his position of impartiality.”<sup>182</sup> The complaint also noted its concern at the delay in conducting the judicial inspection at the premises of the Lexus company.<sup>183</sup>

111. On August 16, 2001, Eldyn Escaleras stated that he disputed Judge Francisco Sánchez’s contention, expressed to the media, that the check had no legal value.<sup>184</sup> He claimed that no technical or scientific procedure had been carried out to establish that it was lacking in juridical value.<sup>185</sup> He maintained that at a recent press conference, Mario Gutiérrez, a former DGIC officer, had said that on July 9, 2001, he was pressured to abandon the investigation of Carlos Escaleras’s case and subsequently dismissed after he found evidence of the involvement of Miguel Facussé and Salomón Martínez.<sup>186</sup> He maintained that the Director of the DGIC had told Mario Gutiérrez that he had found the original check in clearing at the Central Bank and that he had placed it in a safe at the DGIC.<sup>187</sup>

112. That same day, Santos Figueroa Hernández, a colleague of Carlos Escaleras, said that Mario Gutiérrez had told him he was dismissed from the DGIC “for finding rational evidence in the death of Carlos Escaleras, that there was evidence against Miguel Facussé and Salomón Martínez, and that he spoke of Oscar

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<sup>177</sup> Annex 78. Statement of Francisco Sánchez made to Radio Estéreo Bonita, dated August 1, 2001, Annex 5 to the petitioners’ submission of August 8, 2005.

<sup>178</sup> Annex 78. Statement of Francisco Sánchez made to Radio Estéreo Bonita, dated August 1, 2001, Annex 5 to the petitioners’ submission of August 8, 2005.

<sup>179</sup> Annex 78. Statement of Francisco Sánchez made to Radio Estéreo Bonita, dated August 1, 2001, Annex 5 to the petitioners’ submission of August 8, 2005.

<sup>180</sup> Annex 78. Statement of Francisco Sánchez made to Radio Estéreo Bonita, dated August 1, 2001, Annex 5 to the petitioners’ submission of August 8, 2005.

<sup>181</sup> Annex 79. Complaint presented by the National Coordinating Committee against Impunity (Conacim), dated August 22, 2001, Annex 6 to the petitioners’ submission of August 8, 2005.

<sup>182</sup> Annex 79. Complaint presented by the National Coordinating Committee against Impunity (Conacim), dated August 22, 2001, Annex 6 to the petitioners’ submission of August 8, 2005.

<sup>183</sup> Annex 79. Complaint presented by the National Coordinating Committee against Impunity (Conacim), dated August 22, 2001, Annex 6 to the petitioners’ submission of August 8, 2005.

<sup>184</sup> Annex 80. Statement of Eldyn Escaleras, dated August 16, 2001, judicial case file, Vol. II, pp. 498, annexed to the initial petition of January 14, 2002.

<sup>185</sup> Annex 80. Statement of Eldyn Escaleras, dated August 16, 2001, judicial case file, Vol. II, pp. 498, annexed to the initial petition of January 14, 2002.

<sup>186</sup> Annex 80. Statement of Eldyn Escaleras, dated August 16, 2001, judicial case file, Vol. II, pp. 498, annexed to the initial petition of January 14, 2002.

<sup>187</sup> Annex 80. Statement of Eldyn Escaleras, dated August 16, 2001, judicial case file, Vol. II, pp. 498, annexed to the initial petition of January 14, 2002.

Sosa.”<sup>188</sup> He said that he had told him that the check was genuine because he had obtained the copy from a teller and that the Director of the DGIC had placed it in a safe.<sup>189</sup>

113. On August 20, 2001, the court found that the copy of the check, “according to the investigation, never existed.”<sup>190</sup> It therefore resolved to start formalities to “investigate the commission of the crime of falsification of financial instruments.”<sup>191</sup>

114. That same day, it issued a dismissal resolution on behalf of Miguel Facussé and Irene Castro Reyes,<sup>192</sup> which was requested by both parties on August 8, 2001, claiming that it had been established that “they have no direct or indirect relation to the alleged facts.”<sup>193</sup> The court ruled that Lucas García Alfaro’s statement confessing his participation in the murder of Carlos Escaleras Mejía “lacks the factual and legal basis necessary to give it credibility” and added that the check that was presented did not exist.<sup>194</sup>

115. That same day, the prosecution service lodged an appeal against the dismissal, which was admitted by the First-Instance Court on August 27 of that year and sent to the Court of Appeal in La Ceiba.<sup>195</sup>

116. On November 14, 2001, the Court of Appeal in La Ceiba annulled the dismissal of Miguel Facussé and Irene de Jesús Castro from the proceedings on the grounds that it was indispensable for them to “report voluntarily to the trial judge for him to receive their statements.”<sup>196</sup> On February 13, 2002, the Constitutional Chamber of the Supreme Court of Justice received an *amparo* remedy presented by Miguel Facussé and Irene de Jesús Castro, seeking the reversal of the appeal court’s decision.<sup>197</sup>

117. On October 16, 2002, the court convicted Lucas García Alfaro and sentenced him to seventeen years in prison for the crime of murdering Carlos Escaleras.<sup>198</sup>

118. On November 12, 2002, Arnulfo Romero Andrade, an employee of Jesús Martínez and the uncle of Congressman Salomón Martínez, stated that some days after the death of Carlos Escaleras, he accompanied his employer to deliver some 250,000 lempiras to Orlando Martínez. He said that Jesús Martínez

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<sup>188</sup> Annex 81. Statement of Santos Figueroa Hernández, dated August 16, 2001, judicial case file, Vol. II, p. 499, annexed to the initial petition of January 14, 2002.

<sup>189</sup> Annex 81. Statement of Santos Figueroa Hernández, dated August 16, 2001, judicial case file, Vol. II, p. 499, annexed to the initial petition of January 14, 2002.

<sup>190</sup> Annex 82. Court document, dated August 20, 2001, judicial case file, Vol. II, pp. 504, annexed to the initial petition of January 14, 2002.

<sup>191</sup> Annex 82. Court document, dated August 20, 2001, judicial case file, Vol. II, pp. 504, annexed to the initial petition of January 14, 2002.

<sup>192</sup> Annex 82. Court document, dated August 20, 2001, judicial case file, Vol. II, pp. 505-507, annexed to the initial petition of January 14, 2002.

<sup>193</sup> Annex 83. Dismissal request document, dated August 8, 2001, judicial case file, Vol. II, pp. 492-495, annexed to the initial petition of January 14, 2002.

<sup>194</sup> Annex 84. Court document, dated August 20, 2001, judicial case file, Vol. II, pp. 505-507, annexed to the initial petition of January 14, 2002.

<sup>195</sup> Annex 85. Court document, dated August 27, 2001, judicial case file, Vol. II, p. 513, annexed to the initial petition of January 14, 2002.

<sup>196</sup> Annex 86. Resolution of the Constitutional Chamber of the Supreme Court of Justice, dated August 8, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>197</sup> Annex 86. Resolution of the Constitutional Chamber of the Supreme Court of Justice, dated August 8, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>198</sup> Annex 87. Judgment of the First-Instance Court, dated November 12, 2002, case file of trial brought against the masterminds behind the crime, annexed to the initial petition of January 14, 2002.

had told him that the payment was “for a job that [Orlando Martínez] had done” under the orders of “Salomón Martínez, someone called Sosa, one they called ‘Muñecón,’ and a Facussé.”<sup>199</sup>

119. On March 14, 2003, Eldyn Escaleras’s legal representative asked the court to order the arrest of Oscar Sosa for his participation as one of the masterminds behind Carlos Escaleras’s death.<sup>200</sup> She that “although the judge did not order an exhaustive investigation on an *ex officio* basis,” there were numerous statements, including reports from the DGIC, indicating the participation of Oscar Sosa as the mastermind behind the death of Carlos Escaleras.”<sup>201</sup> She underscored the importance of the notebook found at his home, which contained information on Carlos Escaleras’s murder. She maintained that “to date (...) the aforesaid notebook has not been presented as evidence at trial.”<sup>202</sup> That motion was rejected by the court and appealed on May 26, 2003.<sup>203</sup>

120. On March 19, 2003, the court resent the magistrate’s court its request of April 2001 regarding the conveyance of the notebook found in Oscar Sosa’s home.<sup>204</sup>

121. On August 8, 2003, the Constitutional Chamber of the Supreme Court of Justice dismissed the *amparo* filing presented by Miguel Facussé and Irene de Jesús Castro (see para. 116 above) and returned the proceedings to the trial judge in Tocoa.<sup>205</sup> It ruled that the defendants’ right to the presumption of innocence had been respected and that an *amparo* remedy could not rule on such particular situations as the admissibility of a dismissal from the proceedings.<sup>206</sup> It said that *amparo* remedies applied when a fundamental right had been violated, which was not the situation in the case at hand.<sup>207</sup>

122. On October 14, 2003, Miguel Facussé and Irene de Jesús Castro appeared before the court to give their statements.<sup>208</sup> That same day the court admitted their documents and ordered the taking of their statements. Mr. Facussé gave his statement, in which he denied having been involved in the death of Carlos Escaleras.<sup>209</sup>

123. That same day, the First-Instance Court issued a resolution dismissing Miguel Facussé and Irene de Jesús Castro from the proceedings.<sup>210</sup> The two men’s defense attorney then asked the court to serve

<sup>199</sup> Annex 88. Statement of Arnulfo Romero Andrade, dated November 12, 2002, case file of trial brought against the masterminds behind the crime, p. 533, annexed to the initial petition of January 14, 2002.

<sup>200</sup> Annex 89. Filing by defense attorney Claudia González, dated March 14, 2003, Annex 4 to the petitioners’ communication of April 24, 2004.

<sup>201</sup> Annex 89. Filing by defense attorney Claudia González, dated March 14, 2003, Annex 4 to the petitioners’ communication of April 24, 2004.

<sup>202</sup> Annex 89. Filing by defense attorney Claudia González, dated March 14, 2003, Annex 4 to the petitioners’ communication of April 24, 2004.

<sup>203</sup> Annex 90. Appearance before the Court of Appeal, dated May 26, 2003, annexed to the petitioners’ communication of September 29, 2004.

<sup>204</sup> Annex 91. Court document, dated March 19, 2003, Annex 4 to the petitioners’ communication of April 24, 2004.

<sup>205</sup> Annex 92. Resolution of the Constitutional Chamber of the Supreme Court of Justice, dated August 8, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>206</sup> Annex 92. Resolution of the Constitutional Chamber of the Supreme Court of Justice, dated August 8, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>207</sup> Annex 92. Resolution of the Constitutional Chamber of the Supreme Court of Justice, dated August 8, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>208</sup> Annex 93. Voluntary appearance of Miguel Facussé and Irene de Jesús Castro, dated October 14, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>209</sup> Annex 94. Statement of Miguel Facussé, dated October 14, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>210</sup> Annex 95. Court document, dated October 14, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

notice of its ruling “by means of a deed posted on the office’s notice board.”<sup>211</sup> The court accepted that request the following day.<sup>212</sup>

124. On April 20, 2009, the First-Instance Court of Tocoa ordered the incarceration of Leodán Machado Fernández in his capacity as the suspected perpetrator of Carlos Escaleras Mejía’s homicide.<sup>213</sup> On August 28, 2009, the prosecution served filed formal charges against Leodán Machado Fernández for the crime of murder.<sup>214</sup>

125. On August 24, 2011, the First-Instance Court of Tocoa issued judgment and sentenced Leodán Machado Fernández to twelve years in prison as an accomplice in the crime of murder against Mr. Carlos Escaleras Mejía.<sup>215</sup> The court found that the “the extensive investigation and evidence shown” established that Leodán Machado Fernández was an accomplice to the people who carried out the murder of Mr. Escaleras.<sup>216</sup>

126. The court stated that a witness brought forward by the Public Prosecution Service stated that on October 18, 1997, the date of Carlos Escaleras’s murder, Mr. Machado was at Mr. Escaleras’s place of business and “even bought some sodas.”<sup>217</sup> In addition, it noted that Marta Alvarenga said that Mr. Machado was at the scene of the incident “but that she did not see him fire.”<sup>218</sup>

127. The court concluded that the witnesses “have indicated (...) that the accused did not fire but was with those who did fire.”<sup>219</sup> It therefore ruled that “in spite of having been prosecuted as the physical perpetrator of the crime of murder, the evidence and circumstances of the proceedings indicate a different participation, albeit still punishable, as an accomplice in a criminal act.”<sup>220</sup>

128. The Commission has no information about any subsequent domestic proceedings.

## **B. Law**

129. In light of the nature of the case and the interrelations between the State’s actions in the domestic proceedings and the analysis of any responsibility due to the State, the Commission will conduct its analysis of law, first, with respect to the investigation and domestic proceedings in accordance with the American Convention. Second, the Commission will rule on whether Mr. Escaleras Mejía’s death can in and of

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<sup>211</sup> Annex 96. Defense attorney’s submission, dated October, 14, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>212</sup> Annex 97. Court document, dated October 15, 2003, Annex 1 to the petitioners’ communication of April 24, 2004.

<sup>213</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>214</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>215</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>216</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>217</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>218</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>219</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

<sup>220</sup> Annex 98. Final judgment of the First-Instance Court of Tocoa, dated August 24, 2011, annexed to the State’s submission of September 9, 2011.

itself be attributed to the State in accordance with the consistent opinions of the agencies of the inter-American system.

**1. Right to a fair trial and to judicial protection (Articles 8.1 and 25.1 of the American Convention)**

130. Article 8.1 of the American Convention establishes:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

131. Article 25.1 of the Convention, in turn, reads:

Everyone has the right to simple prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

132. According to the Court, the right to a fair trial means that any person whose human rights have been violated is entitled “to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through [...] investigation and prosecution.”<sup>221</sup> Regarding the right to judicial protection, the Court has ruled that it:

(...) obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered (...). Article 25 is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society.<sup>222</sup>

133. Thus, the State is obliged to ensure that “each state action that makes up the investigation process, as well as the investigation as a whole, must be oriented toward a specific purpose: the determination of the truth and the investigation, persecution, capture, trial, and, if possible, punishment of the persons responsible.”<sup>223</sup>

134. That obligation of investigating is an obligation of means and not of results, which must be undertaken by the State as its own legal obligation, and not as a mere formality preordained to be ineffective.<sup>224</sup> Hence, the existence of acts that obstruct justice, barriers, or failures to assist on the part of the authorities that have impeded or are impeding the resolution of the case constitute a violation of the right to a fair trial.

<sup>221</sup> I/A Court H. R., *Case of Barrios Altos v. Peru*, Merits, Judgment of March 14, 2001, Series C No. 75, para. 48.

<sup>222</sup> I/A Court H. R., *Case of Loayza Tamayo v. Peru*, Reparations and Costs, Judgment of November 27, 1998, Series C No. 42, para. 169; *Case of Fairén Garbí and Solís Corrales v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 90.

<sup>223</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 101.

<sup>224</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 177; I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 131.

135. The IACHR also reiterates that the obligation of investigating and punishing all actions that constitute violations of Convention-protected rights requires that punishment be meted out not only to the physical perpetrators of human rights violations, but also the individuals who mastermind such offenses.<sup>225</sup> That is based on the right to the truth of the victim's next of kin, which implies obtaining from the State's competent agencies the elucidation of the truth about what happened and to ensure that all the persons responsible are punished,<sup>226</sup> involving all institutions of the State in that undertaking.<sup>227</sup>

136. In addition, when the death of a human rights defender is involved, the Commission has ruled that the State must take into account his or her activities in order to identify the interests that might have been affected thereby and thus to establish lines of investigation and hypotheses about the crime.<sup>228</sup> In turn, the Court has acknowledged that the fear felt by defenders at "the death of a human rights defender [in reprisal for his or her activities] can directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations."<sup>229</sup> The IACHR has underscored the fact that impunity in cases of this kind constitutes the factor that most increases the risk to defenders, because it leaves them in a situation of defenselessness and vulnerability.<sup>230</sup>

### 1.1. Due diligence in investigating and clarifying the facts

137. The Court has held that whenever the State conducts an investigation into the alleged commission of a crime, it must ensure that it is oriented toward a specific purpose: "the determination of the truth through the identification, prosecution, and, if applicable, punishment of those responsible for the events."<sup>231</sup> To ensure that goal, the investigation must be carried out by means of all available legal means<sup>232</sup> and must be pursued with due diligence, effectively, seriously, and impartially.<sup>233</sup>

#### 1.1.1. Initial formalities

<sup>225</sup> I/A Court H. R., *Case of the Gómez Paquiyaui Brothers v. Peru*, Merits, Reparations, and Costs, Judgment of July 8, 2004, Series C No. 110, para. 146; *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 275; *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 186; and *Case of the Constitutional Court v. Peru*, Competence, Judgment of September 24, 1999, Series C No. 55, para. 123. In addition, see: IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 doc. 5 rev. 1, March 7, 2006, para. 109.

<sup>226</sup> I/A Court H. R., *Case of Gómez Palomino v. Peru*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 136, para. 78; *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 150; and *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 163, para. 147.

<sup>227</sup> I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 130; *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 120; and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C, No. 121, para. 66.

<sup>228</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 237. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

<sup>229</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 96.

<sup>230</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 232. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

<sup>231</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 101.

<sup>232</sup> I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101.

<sup>233</sup> I/A Court H. R., *Case of the Gómez Paquiyaui Brothers v. Peru*, Judgment of July 8, 2004, Series C No. 110, para. 146; and I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 130.

138. The IACHR reiterates that States are obliged to act with all diligence from the first stages of the proceedings.<sup>234</sup> This is because the first formalities in an investigation are key components “for an appropriate development of the judicial investigation, especially in face of a fact that has cost a person’s life.”<sup>235</sup> As the Court has established, a lack of diligence in the early stages may lead to the loss of essential evidence, as the passage of time reduces the possibilities of casting light on the incident and determining responsibilities.<sup>236</sup>

139. Thus, the duty of diligence covers acts in the investigation prior to judicial proceedings, since an efficient and effective trial cannot be conducted if the investigation phase fails to meet the requirements described in the previous paragraphs.<sup>237</sup> The Court has ruled that “all these requirements, together with criteria of independence and impartiality, also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings.”<sup>238</sup>

140. In light of the foregoing, the Commission will proceed to analyze whether the Honduran State pursued diligent investigations in order to identify the persons responsible for the facts by gathering the evidence necessary to trace out lines of investigation that were coherent with that evidence.

141. As has been the practice of the Commission<sup>239</sup> and of the Court,<sup>240</sup> in cases involving violent deaths, the “Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions”<sup>241</sup> is a useful tool for assessing the formalities pursued by authorities in investigations, particularly in the early stages. That usefulness is because the instrument sets out the minimum, most basic formalities that must be carried out “to discover the truth about the events leading to the suspicious death of a victim.”<sup>242</sup> Thus, the Manual establishes that state authorities conducting an investigation must, *inter alia*:

(a) identify the victim; (b) recover and preserve evidentiary material related to the death; (c) identify possible witnesses and obtain statements from them concerning the death; (d) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; and (e) distinguish between natural death, accidental death, suicide, and homicide. In addition, it is necessary to thoroughly investigate the crime scene and competent professionals employing the most appropriate procedures must perform autopsies and carefully practice analyses of human remains.<sup>243</sup>

<sup>234</sup> I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 121.

<sup>235</sup> I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003, Series C No. 101, para. 167. IACHR, Report No. 37/00, Case 11.481, Merits, Msgr. Óscar Arnulfo Romero y Galdámez (El Salvador), April 13, 2000, para. 85.

<sup>236</sup> I/A Court H. R., *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 135; and *Case of Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C No. 186, para. 150.

<sup>237</sup> See: IACHR, Report No. 10/95, Case 10.580, Admissibility and Merits, Manuel Stalin Bolaños (Ecuador), September 12, 1995.

<sup>238</sup> I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 133.

<sup>239</sup> See: IACHR, Report No. 48/97, Case 11.411, Merits, Severiano and Hermelindo Santiz Gómez “Ejido Morelia” (Mexico), February 18, 1998; Report No. 34/00, Case 11.291, Carandirú (Brazil), April 13, 2000; and Report No. 1/98, Case 11.543, Rolando Hernández Hernández (Mexico), May 5, 1998.

<sup>240</sup> I/A Court H. R., *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 301; and *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 383.

<sup>241</sup> Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations General Assembly in 1991, document ST/CSDHA/12.

<sup>242</sup> Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations General Assembly in 1991, document ST/CSDHA/12, para. 9.

<sup>243</sup> I/A Court H. R., *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, Series C No. 152, para. 120.

142. Moreover, the Commission notes that as established in this document, due diligence in the legal and medical investigation of a death requires maintaining the chain of custody of each item of forensic evidence.<sup>244</sup> In this regard, the Inter-American Court has stated that:

This entails keeping a precise written record, complemented, as applicable, by photographs and other graphic elements, to document the history of the item of evidence as it passes through the hands of the different investigators responsible for the case.<sup>245</sup>

143. First of all, nothing in the record indicates that any formalities were conducted at the scene of the crime on the day it occurred. On the contrary, the IACHR notes that there was an unjustified delay in carrying out the judicial inspection of the crime scene in this case. That inspection was effected almost one month after Carlos Escaleras's murder. The effects of the delay were recognized by the trial judge himself, who stated that no kind of evidence could be gathered other than the spent cartridges already collected by the prosecution service (see para. 80 above).

144. Second, the IACHR notes that nothing in the record indicates that the scene of the crime was protected following the incident or that any steps were taken to preserve the evidence. Other than the reference to the cartridges, there are no documentary or photographic records of Mr. Escaleras's death or of any other evidence gathered at the crime scene. The Commission therefore notes that from the very onset, one of the minimum components cited above – namely, an exhaustive evaluation of the scene of the crime – was omitted.

145. Third, the Commission also notes that there is no record of the autopsy performed on Mr. Escaleras Mejía's body. On the contrary, as indicated in the section setting out the proven facts, on May 27, 1999, the prosecution service acknowledged that the report of the examination of Carlos Escaleras's body was not available (see para. 86 above). Fourth, the IACHR notes that according to the available information, no reconstruction of the incident was carried out. Finally, the Commission observes that during the first months following Mr. Escaleras's death, the investigation focused exclusively on the Iraheta Pineda brothers. The IACHR finds no evidence in the judicial case file to link them to the murder of Carlos Escaleras and that the ballistic examination of their weapons was conducted almost two months after the facts of the case.

146. Based on these elements, the IACHR finds that following Mr. Escaleras Mejías's homicide, the police, prosecutors, and judicial authorities failed to pursue the minimum formalities in accordance with the standards set by the Commission and the Court in numerous cases, in line with the "Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions." Therefore, from the very onset, the investigation suffered from serious limitations that, as will be examined in the following sections, had a direct impact on the situation of partial impunity that characterizes the facts of this case.

### **1.2.2. Subsequent formalities**

147. In its examination of the subsequent formalities carried out, the Commission has identified various shortcomings, irregularities, and omissions throughout the investigation, which contributed to the convictions of one perpetrator (Lucas García Alfaro) and one accomplice (Leodán Machado) being handed down 5 and 13 years after the facts, the failure to clarify the motivation behind the crime, and the continued impunity enjoyed to date by those who masterminded it.

#### **a. Absence of logical and timely lines of investigation regarding the possible direct participation of state agents**

<sup>244</sup> Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; and I/A Court H. R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 305.

<sup>245</sup> I/A Court H. R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 305.

148. In its precedents dealing with impunity, the Court has underscored the importance of establishing logical lines of investigation based on the evidence gathered during the proceedings.<sup>246</sup> Moreover, the IACHR notes that in cases involving executions, the Court has ruled that:

In order to comply with the duty to investigate cases such as this, it is not sufficient to have knowledge of the crime scene and material circumstances of the crime; rather it is essential to analyze the information concerning the power structures that permitted, planned and executed it, both intellectually and directly, and concerning the individuals or groups that were interested in or would benefit from the crime (beneficiaries). This, in turn, would lead to theories and lines of inquiry and to an examination of the crime scene, witnesses and other probative elements. Hence, in cases such as this, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.<sup>247</sup>

149. The Commission notes that as of the first statements given during the judicial proceedings, different witnesses gave the names of persons who had threatened, persecuted, and intimidated Carlos Escaleras Mejía in the weeks before his death. In addition, information was obtained about people who had participated in his murder, some of whom were state agents.

150. Thus, the IACHR notes that according to the testimony received, Mr. Escaleras had been both threatened and offered money at the orders of Congressman Salomón Martínez to withdraw his candidacy in the Tocoa mayoral election. The Commission also notes that during the proceedings, an officer of the DGIC identified Congressman Salomón Martínez as a suspected mastermind behind the death of Carlos Escaleras. During the proceedings reference was also made to the ties between both individuals and another suspected mastermind: Miguel Facussé, who wanted Mr. Escaleras dead because his environmental advocacy had prevented the construction of a processing plant on the Tocoa River (see paras. 57-60 below). Similarly, the established facts indicate that the perpetrator who was convicted told the authorities in charge of the investigation that both Congressman Martínez and Congressman Juan Ramón Salgado paid a group of individuals to have Carlos Escaleras killed.

151. The case record also indicates that some weeks before his death, Mr. Escaleras had received threats from Col. Aldo Augusto Aldana, the commanding officer of the 15th Infantry Battalion, due to his constant efforts to prevent the establishment of a military base in a river basin.

152. In connection with the congressmen Salomón Martínez and Juan Ramón Salgado, the IACHR notes that although they were named as being the masterminds, the State did not pursue the minimum investigative formalities to follow up on this basic information regarding the possible motive for the murder or to determine their possible responsibility in Carlos Escaleras's death. The Commission notes that, according to the information furnished by the parties, those individuals are no longer under investigation.

153. The Commission also observes that during the proceedings, neither were those individuals summoned to give statements. A statement from the DGIC officer who incriminated Congressman Salomón Martínez was requested, but it was never taken. In addition, the IACHR holds that one piece of evidence of relevance in determining his possible involvement with the crime was the check allegedly received by Congressman Salomón Martínez in order to proceed to pay for the killing of Carlos Escaleras. The trial judge failed to properly assess the importance of that document because he believed it to be a forgery. The Commission notes that the judge dismissed it as a forgery but did not order expert testing or other procedures to determine its authenticity or otherwise, in spite of which he still dismissed it.

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<sup>246</sup> I/A Court H. R., *Case of Gonzalez Medina and family v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 27, 2012, Series C No. 240, para. 115.

<sup>247</sup> I/A Court H. R., *Case of Uzcátegui and et al. v. Venezuela*, Merits and Reparations, Judgment of September 3, 2012, Series C No. 249, para. 225.

154. In addition, the inspection of the company from which the check came was carried out almost one year after the court was made aware of the document's existence. The IACHR also observes that despite statements indicating that the original check was in a safe at the DGIC, the authorities conducted no investigation of the matter. Hence, the Commission concludes that the State did not adequately or diligently analyze the possible ties between the two congressmen and the murder of Carlos Escaleras.

155. In addition, Col. Aldo Augusto Aldana was not included in the criminal investigation. The Commission notes that in spite of the indications identified above, no action was taken to establish his criminal responsibility.

156. For the reasons set out in this section, the Commission believes that during the development of the investigation, the State failed to pursue evidence and to seriously and exhaustively explore basic lines of investigation that would have effectively addressed the indications, apparent from the earliest stages, that at least three state officials were involved in the matter.

**b. Lack of diligence and obstacles in the investigations**

157. In the case at hand, the IACHR notes that in addition to the three state authorities, at least five additional individuals were brought to trial as suspects in the death of Carlos Escaleras Mejía: Miguel Facussé, Oscar Sosa, Irene Castro, Oscar Escobar, and José Santos Manueles. The IACHR notes that the judicial case file contains: (i) at least five statements claiming that Miguel Facussé ordered the death of Carlos Escaleras through Irene Castro and Oscar Sosa because the alleged victim's environmental activism prevented the establishment of a palm-oil processing plant in the vicinity of the Tocoa River;<sup>248</sup> (ii) the existence of a notebook seized at Oscar Sosa's home containing references to the planning of Carlos Escaleras's death and giving the name of Oscar Escobar; and (iii) the statement of an associate of José Santos Manueles who confessed to him his involvement in the murder of Carlos Escaleras.

158. In spite of this evidence, the Commission holds that the State failed to pursue the minimum formalities necessary to conduct an appropriate investigation of these individuals' alleged responsibility.

159. The Commission has identified fundamental omissions that contributed to the failure to identify the responsibility for planning the murder; nevertheless, as noted above, there are indications of those responsibilities that, pursuant to the State's obligation to conduct an investigation in accordance with inter-American standards, should have led to lines of investigation and the exhaustion thereof through all available means prior to being discarded. For example, the Commission notes that both Miguel Facussé and Irene Castro were dismissed from the proceedings on October 14, 2003, mere hours after their first statements were taken and without assessing the testimony of different witnesses incriminating them in the death of Carlos Escaleras. Neither is there any record in the case file of efforts to follow up on the notebook seized from Oscar Sosa's home that contained information on Mr. Escaleras's death.

160. In addition, the IACHR notes that during the criminal proceedings, around a dozen prosecutors were assigned to the case, which hindered the continuity of the investigations. The Commission also notes that the ad hoc prosecutor appointed to take sole charge of the case remained in that position for less than six months before being removed. The IACHR observes that the case file does not indicate the reasons why that prosecutor was removed, or the reasons why a new ad hoc prosecutor was appointed.

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<sup>248</sup> It should be noted that during the public hearing in the case of *Luna López v. Honduras*, the expert witness Juan Antonio Mejía Guerra said that deaths of environmental activists "have in common the fact that they took place in places and among organizations and individuals who h[ad] direct confrontations with companies that had major economic interests either in the forests, the water, the land or the mines." See: I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 20.

161. At the same time, the Court has ruled that “judges, based on the principle of effective judicial protection, should [act] with due diligence, ensuring prompt trial proceedings.”<sup>249</sup> The IACHR also observes that there was an unjustified delay on the part of the judicial authorities in conducting various formalities, together with periods of time without any follow-up measures or additional formalities.

162. Similarly, the Commission notes that the security of some of the individuals involved in the trial was compromised.

163. On this point, in the cases of *Kawas Fernández v. Honduras* and *López Luna v. Honduras*, the Court ruled that threats against trial witnesses can have an intimidating and discouraging effect on those in charge of investigations and potential witnesses, seriously affecting the effectiveness of the investigation.<sup>250</sup> For that reason, States are under the obligation to “provide all necessary measures to protect the (...) investigators, witnesses and families of the victims from harassment and threats aimed at obstructing the proceeding and preventing elucidation of the facts, as well as covering up those responsible.”<sup>251</sup>

164. Thus, the IACHR observes that Orlando Martínez, one of the alleged physical perpetrators of the homicide against Carlos Escaleras, was murdered about a month after the incident. The Commission notes that several witnesses stated that they were being harassed and threatened. In addition, mention should be made of the pressure brought to bear on the perpetrator Lucas García Alfaro while he was being held in prison. Also, Mr. Escaleras’s brother was fired from his job with one of the suspected masterminds. Nevertheless, nothing in the record indicates the State’s adoption of protective measures or its investigation of the sources of the threats and harassment. Neither does the Commission have any information on investigations following the death of Orlando Martínez or on any analysis of that crime in connection with the investigation into Carlos Escaleras’s death.

165. In addition to that killing, the record also indicates that the DGIC officer who incriminated Congressman Salomón Martínez and Miguel Facussé in Carlos Escaleras’s murder stated that he was subjected to pressure and later dismissed from his position on account of his investigations.

166. In light of all the above considerations, the Commission finds that in the later stages of the investigation there was a serious lack of diligence in preserving, securing, and assessing evidence that linked various individuals, including state officials, to the crime. Moreover, the Commission notes that during the investigation there were serious incidents of possible reprisals and pressure against people involved in the proceedings, in spite of which no investigation into those facts was conducted.

167. It should be noted that in several of its submissions to the IACHR, the State acknowledged the shortcomings in the investigation and even recognized that because of them, the rights of the next of kin did not receive effective protection. In the State’s words, Honduras “to a large extent [lacks] the scientific means for casting light on complex crimes,” and there were “various shortcomings in the investigation into the facts of Mr. Carlos Escaleras Mejía’s murder, and as a result of those shortcomings, the right of Mr. Escaleras and his family to a fair trial was not effectively protected.”

168. In conclusion, from the analysis offered above, the Commission finds that the State failed to meet its duty of clarifying the Mr. Carlos Escaleras’s murder by uncovering the truth and identifying and punishing all the people responsible for it, including the physical perpetrators and the masterminds behind it.

<sup>249</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 170; and *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 210.

<sup>250</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 106; *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 173.

<sup>251</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 107; *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 173.

## 1.2. Reasonable time

169. Article 8.1 of the American Convention provides that one of the elements of due process is that the courts must resolve the cases placed before them within a reasonable time. Thus, a long delay may *per se* constitute a violation of the right to a fair trial.<sup>252</sup> For that reason, it falls to the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>253</sup>

170. Therefore, the reasonableness of the time taken must be assessed in light of the overall duration of the criminal proceedings.<sup>254</sup> According to the terms of the Article 8.1 of the American Convention, the Commission must take into consideration, in light of the specific circumstances of the case, the four elements used by the Court in its recent judgments. These elements are: (i) the complexity of the matter, (ii) the procedural activity of the interested party, (iii) the actions of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>255</sup>

171. Regarding the complexity of the matter, the State claimed that this was the factor behind the delay in the proceedings, since the case entailed several incidents involving numerous people. Nevertheless, the State of Honduras did not explain how those factors influenced the trial delays.

172. The Commission holds that, as the Court has ruled, a delay in conducting an investigation cannot be justified by claiming the complexity of the matter when (i) the possible perpetrators have been identified, (ii) there are witnesses, and (iii) possible lines of investigation exist.<sup>256</sup> In any event, for the complexity argument to be admissible, it is not enough for the State to make a generic claim that a matter is complex. Specific information connecting the complexity with the delay must be presented in each case. In the case at hand, the Commission has already noted the failure to follow up on evidence regarding the perpetrators, together with a string of shortcomings and omissions that make it clear that the delay was not on account of the complexity of the case.

173. Regarding the participation of the interested parties, the Commission notes that although it is the State's duty to pursue investigations on an *ex officio* basis, the victim's next of kin and the witnesses have contributed actively by giving statements to the proceedings. In addition, their legal representatives followed up on and encouraged the investigation, and they complained on repeated occasions about the delays in carrying out formalities and about the lengthy periods of procedural inactivity.

174. As regards the actions of the judicial authorities, the Commission refers back to the delays, shortcomings, irregularities, and obstacles described previously (paras. 143-146, 152-156, and 159-168 above). The fact that between 2003 and 2009 no major formalities were carried out to cast light on the crime is particularly serious.

175. Regarding the fourth element, the Court has said that in order to determine the reasonableness of the duration, attention must be paid to the effect of the length of the procedure on the legal

<sup>252</sup> I/A Court H. R., *Case of García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 166; *Case of Gómez Palomino v. Peru*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 136, para. 85; I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, para. 160.

<sup>253</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 142.

<sup>254</sup> I/A Court H. R., *Case of López Álvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141, para. 129; *Case of Acosta Calderón v. Ecuador*, Judgment of June 24, 2005, Series C No. 129, para. 104; and *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, para. 168. In addition, see: IACHR, Report No. 77/02, Case 11.506, Merits, Waldermar Gerónimo Pinheiro and José Victor dos Santos (Paraguay), December 27, 2002, para. 76.

<sup>255</sup> I/A Court H. R., *Case of the Santo Domingo Massacre v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of May 30, 2012, Series C No. 259, para. 164.

<sup>256</sup> I/A Court H. R., *Case of the Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment of November 24, 2011, Series C No. 237, para. 275.

situation of the person involved and on the interests at play.<sup>257</sup> The Commission believes that the impunity surrounding the facts of the case at hand, due to the failure to clarify the circumstances of Mr. Escaleras's murder, is heightened by the passage of time, given that it encourages further concealment of responsibilities and the adoption of measures to avoid justice. In addition, the IACHR underscores the discouraging effect of cases of this kind, which extends to activists defending similar causes.<sup>258</sup>

176. To summarize, the Commission believes that the more than 17 years taken by the domestic courts exceeds what can be considered a reasonable time for the State to conduct the relevant investigation and constitutes a denial of justice with respect to the victims' next of kin.

### 1.3. Conclusion

177. The Commission cannot ignore the particular gravity of the fact that each of the components analyzed in this section is a part of a situation characterized by a high level of impunity toward criminal acts committed against environmental activists. That context of impunity has been pointed out by various agencies of the United Nations, human rights organizations (see paras. 44-51 above), and by the Inter-American Court itself, in the cases of *Kawas Fernández v. Honduras* and *Luna López v. Honduras*.<sup>259</sup>

178. In the case at hand, the Commission concludes that the domestic investigations and proceedings have not been effective remedies for ensuring access to justice, determining the truth of the facts, investigating and punishing all the guilty, and redressing the consequences of the violations. Consequently, the IACHR finds that the State did violate the right to a fair trial and the right to judicial protection set forth in Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof, with respect to the members of Carlos Escaleras Mejía's family, namely: his mother Ofelia Mejía; his wife Marta Alvarenga Reyes, his sons Douglas Arnaldo, Emerson Alexander, Carlos Andrés, Marta Agripina and Omar Josué Escaleras; and his siblings Eldin, René, Yolanda, Andrés, Omar, and Alma, all with the surnames Mejía Alvarenga.

## 2. Right to life (Article 4 of the American Convention)

179. Article 4.1 of the American Convention provides that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

180. As regards the import of the right to life, the Inter-American Court has ruled that:

The right to life plays a fundamental role in the American Convention as it is the essential corollary for the exercise of the other rights.<sup>260</sup> When the right to life is not respected, all other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order that violations of this inalienable right do not occur and, in

<sup>257</sup> I/A Court H. R., *Case of Garibaldi v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 23, 2009, Series C No. 203, para. 138; *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 155; and *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 115.

<sup>258</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 237. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

<sup>259</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 18; *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 67.

<sup>260</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 237; I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 120; I/A Court H. R., *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C No. 121, para. 65.

particular, the duty to prevent its agents from violating it.<sup>261</sup> Compliance with Article 4 of the American Convention, in conjunction with Article 1.1 thereof, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the states take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.<sup>262</sup>

181. The Commission has established that Carlos Escaleras Mejía was murdered on October 18, 1997, when he was shot by at least two people. In addition, the IACHR notes that there is no dispute between the parties as to how the attack affected his right to life, but rather as to whether those facts can be attributed to the State.

182. Therefore, the Commission notes that analyzing the possible attribution of responsibility to the State must take account of the evidence contained in the case file, the available information about the context, and the domestic investigations pursued. Accordingly, and in line with the petitioners' claims, the Commission will first examine whether the State of Honduras failed to meet its obligation of preventing Mr. Escaleras Mejía's death. Second, the Commission will analyze whether the evidence gathered during the investigation establishes the State's responsibility.

### 2.1. The duty of prevention

183. The Court has ruled that the duty of prevention covers "all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages."<sup>263</sup>

184. The Court has also ruled that the State's responsibility to act with due diligence in cases of human rights violations extends to the actions of nonstate agents, third parties, and private citizens.<sup>264</sup> That notwithstanding, the Court has established that a State may not be held responsible for "all the human rights violations committed between individuals within its jurisdiction."<sup>265</sup> It has set out, in the following terms, the criteria to be taken into account in assessing compliance with the obligation of prevention and protection as a means to uphold a right:

The treaty-based guarantee obligations of the States [do] not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is

<sup>261</sup> I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Judgment of July 4, 2007, Series C No. 166, para. 79; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006, Series C No. 150, para. 64; *Case of Ximenes Lopes v. Brazil*, Judgment of July 4, 2006, Series C No. 149, para. 125; *Case of Baldeón García v. Peru*, Judgment of April 6, 2006, Series C No. 147, para. 83.

<sup>262</sup> I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Judgment of September 26, 2006, Series C No. 155, para. 75; I/A Court H. R., *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006, Series C No. 148, para. 130; I/A Court H. R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of March 29, 2006, Series C No. 146, para. 152.

<sup>263</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 118; *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009, para. 252.

<sup>264</sup> I/A Court H. R., *Case of the "Mapiripán Massacre" v. Colombia*, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, para. 111.

<sup>265</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of 31 January 2006, Series C No. 140, para. 123.

not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.<sup>266</sup>

185. That reasoning has been endorsed by both the IACHR<sup>267</sup> and the European Court of Human Rights.<sup>268</sup>

186. In the case at hand, the petitioners contend that Honduras failed in its duty of prevention with respect to the homicide of Carlos Escaleras Mejía in that the State was aware of the context of risk surrounding environmental defenders in general, and the alleged victim in particular, given that he was one of the most visible activists in the region. In turn, the State contends that Mr. Escaleras never requested protective measures or reported any threatening actions made against him.

187. The Commission finds there are a number of factors to take into account. First of all, note must be taken of Carlos Escaleras's status as a human rights defender: from his position as director of COPA and Tocoa mayoral candidate to his recognition by the State as one of the foremost leaders and human rights defenders in the area. Second, as described in the proven facts section, at the time of Mr. Escaleras Mejía's murder, environmental defenders in Honduras were facing a grave situation of violations and impunity. In its 2013 judgment in the case of *Luna López v. Honduras*, the Court "confirm[ed] that [in 1998] environmentalists in Honduras faced a situation of particular risk, which grew worse in the years following."<sup>269</sup>

188. Third, the IACHR notes the threats and acts of intimidation suffered by Carlos Escaleras Mejía prior to his murder. In addition, at no point in the proceedings before the IACHR did Honduras present any information to indicate the adoption of specific preventive measures to curtail the violence against human rights defenders during that time.

189. Nevertheless, the IACHR believes that in an individual case, that general noncompliance and the failure to report the threats made against Carlos Escaleras to the state authorities before his death cannot alone form the basis for attributing international responsibility to the State of Honduras for failing to prevent Carlos Escaleras's homicide.

190. Regardless of the foregoing, the fact the State did not adopt a comprehensive prevention strategy to prevent the risk factors and strengthen its institutions so they could provide an effective response in cases involving environmental activists<sup>270</sup> will be addressed in the recommendations at the end of this report.

## 2.2. Evidence of direct and indirect participation by state agents

191. The Court has established that the general obligation of ensuring the human rights enshrined in the Convention with respect to all persons under the State's jurisdiction, set forth in Article 1.1 of that instrument, in conjunction with the right to life established in Article 4 thereof, gives rise to the obligation of pursuing an official and effective investigation of cases involving extrajudicial, illegal, arbitrary,

<sup>266</sup> I/A Court H. R., *Case of González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009, para. 280; and *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 123.

<sup>267</sup> IACHR, Application to the Inter-American Court of Human Rights, *Case of Luisiana Ríos et al.* (Venezuela), April 20, 2007, paras. 226-228.

<sup>268</sup> ECHR, *Kiliç v. Turkey*, Judgment of March 28, 2000, para. 62; and *Osman v. United Kingdom*, Judgment of October 28, 1998, para. 115.

<sup>269</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 21.

<sup>270</sup> See, *mutatis mutandis*: I/A Court H. R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 258.

or summary killings.<sup>271</sup> In addition, the Court has ruled that in such cases the State must initiate, on an *ex officio* basis and without delay, a serious, impartial, and effective investigation, once it is apprised of the fact,<sup>272</sup> regardless of whether the violation was committed by state agents or private citizens. Thus, an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by those situations, such as the right to life.<sup>273</sup>

192. The Court has also said that the duty of conducting an investigation is heightened when there are indications that state agents were involved.<sup>274</sup> On this point, the European Court of Human Rights has ruled that:

The State's obligation of protecting the right to life requires by implication that there must be some form of effective official investigation when an individual has been killed by the use of force. Those investigations must be carried out [...] regardless of whether the perpetrators are state agents or third parties. However, when the involvement of state agents or agencies is alleged, specific requirements may be imposed on the effectiveness of the investigation. (...) The essential purpose of such an investigation is to ensure the effective enforcement of the domestic laws that protect the right to life, and to ensure, in those cases involving state agents, their accountability for the deaths under their responsibility (unofficial translation).<sup>275</sup>

193. Based on the foregoing, in the case at hand the duty of investigating should have been observed with particular diligence and seriousness, on account of the existence of indications that state agents were implicated or involved in Carlos Escaleras's death.

194. The Commission again states that given such indications, which would appear to directly engage the State's international responsibility by acquiescence, collaboration, or participation, the authorities in charge of the investigation should have made every effort to clarify any possible responsibility or involvement on the part of state authorities in a violation of the right to life.<sup>276</sup> It therefore falls to the State to conduct a detailed, serious, and diligent investigation to verify or disprove the claims of state agents' involvement.

195. In connection with this duty, the Court has ruled that in cases of violent deaths where there are indications of the participation of state agents, the State must take all the measures necessary to determine the corresponding individual responsibilities.<sup>277</sup> The Court has ruled that in cases where this does not take place, it is

(...) reasonable to assess as evidence the indications contained in the case file (...) that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproved by the State. Reaching any other conclusion would entail allowing the State to resort to its own

<sup>271</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 142.

<sup>272</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 143; *Case of the Moiwana Community v. Suriname*, Judgment of June 15, 2005, Series C No. 124, para. 145.

<sup>273</sup> I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 145.

<sup>274</sup> I/A Court H. R., *Case of Castillo González et al. v. Venezuela*, Merits, Judgment of November 27, 2012, Series C No. 256, para. 127.

<sup>275</sup> ECHR, *Khaindrava and Dzamashvili v. Georgia*, Judgment of September 8, 2010, para. 58; *McCann and Others v. the United Kingdom*, Judgment of September 27, 1995, paras. 49 and 161; and *Mastromatteo v. Italy*, Judgment of October 24, 2002, para. 89.

<sup>276</sup> IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González (Venezuela), October 22, 2010, para. 109.

<sup>277</sup> I/A Court H. R., *Case of Kwas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 97.

negligence or inefficacy for the criminal investigation to release itself from responsibility for the violation of Article 4.1 of the Convention.<sup>278</sup>

196. The Court has also said that a failure to investigate alleged violations committed against a person when there are indications of the involvement of state agents “prevents the State from presenting a satisfactory and convincing explanation of the alleged [facts], and disproves the arguments concerning its responsibility, with adequate probative elements.”<sup>279</sup> Similarly, the Court has ruled that failure to clear up an incident is a factor to be taken into account in establishing the alleged violation and the resulting international responsibility.<sup>280</sup>

197. In the instant case, the IACHR reiterates the indications of involvement of state agents - congressmen Solomón Martínez and Juan Ramón Salgado, and Col. Aldo Aldana- in the murder of Carlos Mejía Escaleras. As indicated in the previous section, these indications are gathered in the evidence available to the Commission and that was collected in the criminal process: i) statements by relatives of Mr. Escaleras and residents of the area; ii) a statement of the only convicted perpetrator; iii) statements and reports of state officials from the DGIC; and iv) the alleged existence of a check which would have been paid to people who murdered the victim. In addition to the indications of participation by state agents in the killing, there are also indications of their involvement at later stages to conceal information about the people who masterminded the murder, such as the lack of declarations of those persons, the harassment of witnesses including one person’s death, and the unexplained dismissal of the ad hoc prosecutor.

198. The Commission also considers that beside the indications of involvement of state agents, it must be taken into account, as described in the section dealing with the rights to a fair trial and judicial protection, that the State failed to pursue the minimum formalities for exploring the logical lines of investigation on account of the omissions, obstacles, and irregularities that arose during the process. As a result, the judicial authorities failed to analyze with any seriousness the possible ties to Carlos Escaleras Mejía’s murder of at least three state officials. Given those omissions, the Commission believes that the State did not satisfy the burden of disproving the indications that state agents were implicated or involved.

199. In this case, the Commission believes that for the purposes of international responsibility, the indications of participation by state agents joined with the lack of a diligent investigation, allow it to conclude that the State has a direct international responsibility for the violation of Mr. Escaleras Mejía’s right to life, enshrined in Article 4.1 of the Convention, in conjunction with the obligations set out in Article 1.1 thereof.

### **3. Right to freedom of association and political rights (Articles 16 and 23 of the American Convention)**

#### **3.1. Right to freedom of association**

200. Article 16 of the American Convention provides that “everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

201. The Commission notes that this right has two dimensions: an individual dimension, and a social dimension. Regarding the individual dimension, the Inter-American Court has established that “those who are protected by the Convention [...] have the right and freedom to associate freely with other persons,

<sup>278</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 97.

<sup>279</sup> I/A Court H. R., *Case of J. v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 27, 2013, Series C No. 275, para. 353.

<sup>280</sup> I/A Court H. R., *Case of J. v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 27, 2013, Series C No. 275, para. 354.

without the interference of the public authorities limiting or obstructing the exercise of the respective right.”<sup>281</sup> As regards the collective dimension, the Court has ruled that in exercising this right, people “enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.”<sup>282</sup> The Inter-American Court has also established that the positive obligations of preventing and investigating breaches of this right must be enforced “even in the sphere of relations between individuals, if necessary.”<sup>283</sup>

202. In its precedents, the Court has constantly ruled that “freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.”<sup>284</sup> Consequently, it has ruled that “an impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16.1 of the Convention when that violation arises from the victim’s legitimate exercise of the right to freedom of association.”<sup>285</sup>

203. The IACHR notes that as indicated in the established facts in the case at hand, Carlos Escaleras Mejía founded and led the Coordinating Committee of Peoples’ Organizations of Aguán (COPA), a community environmentalist organization with a great impact in the region. In addition, the Commission notes that from within that organization, in the weeks before his death, Mr. Escaleras denounced the construction of a processing plant that would have caused pollution along the Tocoa River. The Commission again points out that Mr. Escaleras’s visibility as an environmentalist leader was acknowledged by the State itself.

204. On this point, the Commission has stated that the activities to defend human rights bear a particularly close relationship to the legitimate exercise of the right to freedom of association. Therefore, “any act that tends to impede (...) or in any way impedes the purposes for which they have formally associated, is a direct attack on the defense of human rights.”<sup>286</sup> The Court has also ruled that “States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; [...] to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”<sup>287</sup>

<sup>281</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 69.

<sup>282</sup> I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 69.

<sup>283</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 144. Cf.: I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 76; and I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 141.

<sup>284</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 150; *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 75; and *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 146.

<sup>285</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 150. Cf.: I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 147.

<sup>286</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 doc. 5 rev. 1, March 7, 2006, para. 76; Report No. 31/96, Case 10.526, Merits, Arnoldo Juventino Cruz (Guatemala), October 16, 1996, para. 119; and Report No. 49/99, Case 11.610, Merits, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999.

<sup>287</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 145; *Case of Nogueira de Carvalho et al. v. Brazil*, Preliminary Objections and Merits, Judgment of November 28, 2006, Series C No. 161, para. 77; and *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 91.

205. Furthermore, the Commission observes that defenders play an essential role in ensuring the balance between environmental protection and the development of the countries of the region.<sup>288</sup> They are also vital to guaranteeing that every individual's right to life and right to personal integrity are protected from exposure to contaminating agents that, emanating from a variety of sources, can affect the quality of the air, water, soil and subsoil, and can be inimical to the enjoyment of human rights.<sup>289</sup>

206. The IACHR finds that in this case, the State failed to ensure Carlos Escaleras Mejía's right to associate freely in that it conducted no serious and effective investigation into the facts related to his murder in order to identify those responsible, including state agents. As occurred in the analysis on the right to life, the lack of follow-up to the lines of investigation related his human rights defense work through the organizations to which he belonged, which in turn involved state agents, has an impact on the analysis of the State's responsibility as regards the right to freedom of association.

207. In addition, the Commission understands that the organized work of human rights defenders is an essential component in constructing a solid and lasting democracy, in fully assuring the rule of law, and in upholding the fundamental guarantees of all persons.<sup>290</sup> Accordingly, the Commission notes that the death of Carlos Escaleras Mejía had a direct chilling effect on the vindication of rights and the reporting of violations.<sup>291</sup> As reported by the petitioners, COPA was seriously weakened following Mr. Escaleras's death.

208. In light of the above considerations, the Commission concludes that the State did violate the right to associate freely enshrined in Article 16.1 of the American Convention, in conjunction with the obligations established in Article 1.1 thereof, with respect to Carlos Escaleras Mejía.

### 3.2. Political rights

209. Article 23.1.b of the American Convention establishes the right of people "to be elected in genuine periodic elections." The Court has said that in addition to entailing the right to be elected, this also implies "the right to have a real opportunity to serve in the position to which [a person] was elected."<sup>292</sup> In particular, the right to participate in government specifically implies that citizens not only have the right, but also the opportunity, to participate in the conduct of public affairs.<sup>293</sup> Accordingly, the State is responsible for adopting effective measures to ensure the conditions necessary for the full enjoyment of that right.<sup>294</sup>

210. As determined in the established facts, Mr. Carlos Escaleras Mejía was elected as his party's candidate for the Tocoa mayoral election, which was to be held in November 1997. Mr. Escaleras was murdered approximately one month before the election took place. Moreover, the IACHR notes that in the weeks prior to his killing, Mr. Escaleras was pressured to withdraw his candidacy, threatened, and even offered money in exchange for declining to fight the election. The Commission observes that the established

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<sup>288</sup> Principle 3 of the Rio Declaration on Environment and Development reads as follows: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."

<sup>289</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 311. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>.

<sup>290</sup> IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González (Venezuela), October 22, 2010, para. 109.

<sup>291</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 doc. 5 rev. 1, March 7, 2006, para. 141. In addition, see: I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121.

<sup>292</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 142.

<sup>293</sup> I/A Court H. R., *Case of Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 142; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, para. 107.

<sup>294</sup> I/A Court H. R., *Case of Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 23, 2005, Series C No. 127, para. 201.

facts offer evidence of the involvement in those facts of two congressmen of the Liberal Party, against which Mr. Escaleras's party was to compete in the elections.

211. Thus, the Commission believes that the acts of harassment and threats received by Mr. Escaleras arose from his participation as a candidate in the elections and from his work defending human rights and were intended to deny his political participation. Moreover, as in the analysis regarding the right to life, the IACHR believes that the failure to follow up on the lines of investigation related to that motive, which in turn involved state agents, has an impact on the analysis of the State's responsibility vis-à-vis his political rights. In conclusion, the State of Honduras is internationally responsible for violating Article 23 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Carlos Escaleras Mejía.

### 3.3. Other claims

212. The Commission notes that the petitioners claim that Carlos Escaleras Mejía's right of free expression was violated in that his death prevented him from making further environmental denunciations from within his organization and possibly from serving as mayor. The IACHR believes that those arguments are covered by the Commission's analysis in the sections dealing with the right to freedom of association and political rights.

## 4. Right to humane treatment (Article 5.1 of the American Convention)

213. Article 5.1 of the American Convention stipulates that "every person has the right to have his physical, mental, and moral integrity respected." The Court has also ruled that the next of kin of victims in certain human rights violations may, in turn, be considered victims.<sup>295</sup> The Court has ruled that their mental and moral integrity may be violated as a result of the particular circumstances suffered by the victims and of the subsequent acts or omissions of the State authorities in relation to the facts.<sup>296</sup>

214. Specifically, in cases such as the one at hand, in which a complete and effective investigation was not carried out, the Court has stated that:

(...) the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.<sup>297</sup>

215. Pursuant to the foregoing, the Commission believes that the loss of a loved one in a context like the one described in the case at hand – together with the absence of a complete and effective investigation, which in turn causes suffering and anguish, given that the truth is not known – already represents a violation of the mental and moral integrity of Mr. Escaleras Mejía's next of kin.

<sup>295</sup> I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 112; and *Case of Bueno Alves v. Argentina*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 164, para. 102.

<sup>296</sup> I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 112; and *Case of Vargas Areco v. Paraguay*, Judgment of September 26, 2006, Series C No. 155, para. 96.

<sup>297</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, para. 102; *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 163, para. 195; *Case of Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C No. 186, para. 146; and *Case of García Prieto et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 102.

216. In light of the foregoing, the Commission believes that the anguish experienced by the victim's family in their search for justice, the lack of effective protection, and the profound suffering and radical changes in their lives they have endured, gravely affected their physical integrity. Consequently, the Commission concludes that the State did violate the right to mental and moral integrity enshrined in Article 5.1 of the American Convention, in conjunction with the duty of respect established in Article 1.1 thereof, with respect to the members of Carlos Escaleras Mejía's family: his mother Ofelia Mejía; his wife Marta Alvarenga Reyes, his sons Douglas Arnaldo, Emerson Alexander, Carlos Andrés, Marta Agripina and Omar Josué Escaleras; and his siblings Eldin, René, Yolanda, Andrés, Omar, and Alma, all with the surnames Mejía Alvarenga..

## V. RECOMMENDATIONS

217. Based on the legal and factual considerations set out above, the Inter-American Commission concludes that the State of Honduras is responsible for violating:

(i) the rights to life, to freedom of association, and political rights enshrined in Articles 4, 16, and 23 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Carlos Escaleras Mejía; and

(ii) the rights to humane treatment, to a fair trial, and to judicial protection enshrined in Articles 5, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the members of Carlos Escaleras Mejía's family, namely: his mother Ofelia Mejía; his wife Marta Alvarenga Reyes, his sons Douglas Arnaldo, Emerson Alexander, Carlos Andrés, Marta Agripina and Omar Josué Escaleras; and his siblings Eldin, René, Yolanda, Andrés, Omar, and Alma, all with the surnames Mejía Alvarenga..

218. In consideration of the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF HONDURAS:**

1. Make appropriate reparations for the human rights violations established in this report, in both their material and moral dimensions, as well as the historical vindication of the work of Mr. Carlos Escaleras Mejía as a human rights defender.

2. Swiftly undertake and complete an impartial, complete, and effective judicial investigation in order to clarify the circumstances in which Mr. Carlos Escaleras Mejía was killed, to identify all the persons who participated, either directly or indirectly, in the different stages of its design and execution, and to impose the corresponding punishments. As a part of this process, the State should adopt all the measures necessary to protect the witnesses and other participants in the proceedings, as applicable.

3. Order the relevant administrative, disciplinary, or criminal measures applicable to the actions or omissions of the state officials that contributed to the denial of justice and the impunity that characterize the facts of the case.

4. Adopt legislative, institutional, and judicial measures to reduce the exposure to risk of human rights defenders, including environmentalists and ecologists, in vulnerable situations. Therefore, the State must:

4.1. Strengthen its institutional capacity for combating the impunity surrounding threats against and killings of defenders, by devising investigation protocols that take account of the risks inherent in defending human rights, and in particular the right to a healthy environment, and that lead to the punishment of the guilty and ensure appropriate redress for the victims. The State must also ensure that when public officials are implicated in investigations into human rights violations, those investigations are conducted effectively and with independence.

4.2. Strengthen the mechanisms for providing effective protection for witnesses, victims, and family members who are at risk on account of their involvement with investigations.

4.3. Develop appropriate, swift institutional response measures to provide effective protection to human rights defenders who are at risk.