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REPORT No. 249/21
PETITION 1185-17
REPORT ON ADMISSIBILITY

JORGE ALBERTO RODRÍGUEZ ROMERO, FRANCISCO MILTON
ROMERO SEQUEIRA AND FAMILY
EL SALVADOR

Approved by the Commission electronically on September 20, 2021.

Cite as: IACHR, Report No. 249/21, Petition 1185-17. Admissibility. Jorge Alberto Rodríguez Romero y Francisco Milton Romero Sequeira and family. El Salvador. September 20, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jimmy Francisco Ortiz Rodríguez
Alleged victim:	Jorge Alberto Rodríguez Romero, Francisco Milton Romero Sequeira and family ¹
Respondent State:	El Salvador
Rights invoked:	Articles 8 (fair trial), 11 (honor and dignity), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights ² , in relation to its article 1.1 (obligation to respect rights); and articles V (right to protection of honor, personal reputation, and private and family life) and XVIII (justice) of the American Declaration of the Rights and Duties of Man ³ ; and other international treaties ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	July 8, 2017
Additional information received at the stage of initial review:	July 10, 2017
Notification of the petition to the State:	July 22, 2019
State's first response:	October 30, 2019
Additional observations from the petitioner:	August 13 and 14, 2019, November 2, 2020 and November 16, 2020
Additional observations from the State:	June 15, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of accession deposited on June 20, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 3 (right to juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (honor and dignity), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects)

¹ The petition refers Teresa de Jesús Romero de Rodríguez (mother of the youths Rodríguez Romero and Romero Sequeira), Melisa Guadalupe Rodríguez Romero (sister of youths Rodríguez Romero and Romero Sequeira), and Jimmy Francisco Ortiz Rodríguez (grandson of Teresa de Jesús Romero de Rodríguez).

² Hereinafter "the American Convention".

³ Hereinafter "the American Declaration" or "the Declaration".

⁴ International Covenant on Civil and Political Rights, articles 2, 17 and 26; and the Universal Declaration of Human Rights, articles 7, 10 and 12.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception of article 46.2.c) of the Convention is applicable
Timeliness of the petition:	Yes, in the terms of section VI

V. FACTS ALLEGED

1. Mr. Jimmy Francisco Ortiz Rodríguez holds that his rights as well as his family's rights were violated by the State of El Salvador by forcefully disappearing brothers Jorge Alberto Rodríguez Romero and Francisco Milton Romero Sequeira during the armed conflict in that country; and for the lack of a proper investigation and punishment of these facts occurred forty years ago.

2. He narrates that on January 17, 1981 youths Rodríguez Romero and Romero Sequeira left toward the municipality of Cuscatancigo to bathe in the Chagüite river. That afternoon Mr. Jorge Alberto Rodríguez Romero (father of the youths) had learned of the detention of his sons by the First Brigade of Infantry of the base of San Carlos of San Salvador. On January 18, 1981 Mr. Rodríguez Romero had visited the base, and a sergeant had confirmed to him that both young men had been arrested for being armed, for this reason he visited the National Guard—security body adscripted to the Armed Forces—which sent him back to the base, where he waited for several days with no information whatsoever. Then he resorted to the Committee of Families of Victims of Human Rights Violations of El Salvador (hereinafter “CODEFAM”), Judicial Protection by the Archbishopric, the International Red Cross Committee, the Supreme Court of Justice, among other organizations in El Salvador in order to locate his sons.

3. The petitioner holds that Mrs. Teresa de Jesús Romero (mother of the youths) and Mr. Rodríguez Romero had filed four habeas corpus remedies before the Supreme Court of Justice on January 26, February 17, March 3 and June 6, 1981. During the conflict none of the habeas corpus was resolved; however, once the conflict ended the case was submitted to the Commission of Truth backed by the United Nations.

4. Subsequently, on October 26, 2014 Mr. Rodríguez Romero filed an habeas corpus in favor of young Rodríguez Romero and Romero Sequeira, which was decided favorably, and notified on January 4, 2016 by the Constitutional Chamber of Supreme Court of Justice. The decision had confirmed that the disappearance of the youths was attributed to members of the Armed Force of El Salvador and he had requested the Defense Ministry and the Joint Chief of Staff of the Armed Force, to provide information concerning the military operation; he also requested the Attorney General's Office to investigate the forced disappearance, to determine the material situation of the young men and to notify Supreme Court of Justice every three months. He highlights that on November 30, 2016 the Constitutional Chamber ordered the archiving of the casefile related to the habeas corpus. He adds that he has taken several actions before public entities during 2016: on February 17, the rectification of the last name of young Jorge Alberto Rodríguez Romero by means of a brief to the Constitutional Chamber; on February 29, he annexed information into the casefile; on March 8, he filed a claim before the Procurator for the Protection of Human Rights for denial of Justice; on May 2 he filed a brief to the Chief of the Prosecutor's Office of Mejicanos requesting a hearing to be informed on the status of the investigation; on October 5, he requested a certification of the prosecution casefile; on October 27 he filed a brief to the Attorney General requesting a hearing.

5. Likewise, on November 25, 2016 the Procurator for the Protection of Human Rights issued a resolution which declares the forced disappearance of the two youths, and typifies it as a crime against humanity. On January 10, 2017 the petitioner resorted to the Unit against Crimes Related to Life and Physical Integrity of Mejicanos, where he was requested to submit a proposal as to the lines of investigation of human rights crimes in times of the armed conflict; then on January 18, 2017 he was summoned a couple of times to broaden the interview and offer elements to clarify the investigated fact. Finally, he highlights that on January 18, 2017 he was interviewed by the Prosecutor's Office of the Unit against Crimes Related to Life and Physical Integrity of Mejicanos, whose representative was Counselor Benavides, told him that he was seeking to violate the human rights of the military by insisting on the case of forceful disappearance.

6. In view of these allegedly dilatory and futile actions, from authorities in charge of investigating the forced disappearance brothers Jorge Alberto Rodríguez Romero and Francisco Milton Romero Sequeira, the petitioner concludes that the Salvadorian State is responsible for the forced disappearance of his relatives, due to the lack of investigation and punishment of those responsible. He claims that the information collected by CONABÚSQUEDA is superficial and denotes no interest from the State to conduct a serious, exhaustive, responsible, impartial, integral, systematic and conclusive investigation and not doomed to failure for the clarification of the facts of forced disappearance. In conclusion, the petitioner holds that there is an unjustified delay from the Attorney General's Office, which would be refusing to investigate the case.

7. The State holds that the petition fails to meet the requirement of exhaustion of domestic remedies set forth in article 46.a) of the Convention; in this sense, informs that the following State actions have been filed concerning the proceedings:

i) On March 8, 2015 the Procurator for the Protection of Human Rights opened the casefile for the alleged forced disappearance of youths Rodríguez Romero and Romero Sequeira. On November 25, 2016 it issued a resolution establishing the forced disappearance of both youths; and on July 26, 2018 it requested a report to the Attorney General's Office and to the President of the Republic concerning the measures adopted in order to enforce them.

ii) The Constitutional Chamber of Supreme Court of Justice acknowledged an habeas corpus and decreed a resolution of personal exhibition in favor of youths Rodríguez and Romero, named an executor judge in charge of linking the National Defense Ministry and the Joint Chief of Staff of the Armed Force, and requested a report on the youths to non-government bodies and institutions. This proceeding received the incorporation of the habeas corpus filed by Mr. Jorge Alberto Rodríguez Romero in 1981. The Constitutional Chamber of Supreme Court of Justice issued a resolution which admitted the habeas corpus due to the confirmation of the disappearance of the youths, and ordered the Joint Chief of Staff of the Armed Force to conduct a new investigation of the facts and to communicate to the Chamber of the Supreme Court of Justice and ordered the Attorney General's Office to investigate the facts and determine the whereabouts of the missing youths. On March 4, 2019 the Constitutional Chamber by means of a follow-up resolution requested the Attorney General's Office a report on the status of the investigations conducted, and on December 23, 2019 by means of a second follow-up resolution it required updated information to the Attorney General's Office.

iii) The National Defense Ministry conducted the following actions as a follow-up of the constitutional proceedings: on January 13, 2015 it forwarded the requirement made by the Constitutional Chamber of the Supreme Court of Justice; on March 19, 2015 it submitted a report before the Constitutional Chamber on the allegations formulated against said institution, concerning the activities developed in regard to the search of the Rodríguez Romero and Romero Sequeira brothers; on February 16, 2016 it submitted a report on the search made in the files of the Armed Force oriented to find a record of the alleged deprivation of liberty of the youths by the First Brigade of Infantry of the base of San Carlos, however, there was no record found of the alleged military operation; on April 25, 2016 a report for the Constitutional Chamber on a new search which yielded no documents or physical records of said operation.

iv) On August 21, 2017 Executive Decree No. 33 was formulated which created the CONABÚSQUEDA the goal of which is to investigate and determine the whereabouts and situation of the adult victims of forced disappearance in the context of the armed conflict, and to prompt the meeting or the retrieval of the remains to the families in a context of respect and dignity to the victims. The CONABÚSQUEDA received on January 18, 2019 the claim for the forced disappearance of the youths Rodríguez Romero and Romero Sequeira, date when it opened the casefile. The case is currently at an investigative phase and the work is being centered in the documentation and collection of the testimonies from family and witnesses or potential informers. On October 28, 2020 they proceeded with taking D.N.A. samples to four alleged relatives of the petitioner, establishing in agreement the guidelines for a psycho-social accompaniment, and performed the taking of an audiovisual testimony.

8. Finally, it highlights that due to the pandemic derived from COVID-19 and the strict quarantine during most of 2020, CONABÚSQUEDA, as well as other bodies connected to the case, performed their duties

in a remote fashion which meant a halt, and it reiterates that it maintains an open process of investigation concerning the present case.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner holds that five habeas corpus were filed during the proceedings; however, only the last one, filed on October 26, 2014 before the Constitutional Chamber of Supreme Court of Justice, was decided in favor of the alleged victims, remedy which was notified on January 4, 2016. He claims that there is an unjustified delay from the Attorney General's Office which refuses to conduct the investigation, for which reason the exception of article 46.2.c) of the Convention would be applicable. In return the State holds that the petition fails to meet with the exhaustion of domestic remedies set forth in article 46.1.a) of the Convention because there is an ongoing open investigation in the CONABÚSQUEDA.

10. After analyzing the information provided by the parties, the Commission observes that both the Procurator for the Protection of Human Rights in 2015, and the Constitutional Chamber of the Supreme Court of Justice in 2016, recognized the forced disappearance of the alleged victims; however, and in spite of the numerous proceedings and actions from different authorities, the Commission observes also that the facts took place as of January 17, 1981 and to this date there is no information whatsoever as to the whereabouts of Rodríguez Romero and Romero Sequeira; with its criminal proceedings yet at an investigation stage. Also, highlighting an important detail in this context, is the allegation from the petitioner according to which an official of the Prosecutor's Office of the Unit Against Crimes Related to Life and Physical Integrity of Mejicanos manifested to the petitioner that what he was doing was to attempt to violate the human rights of the military; which, if true, would evidence a sign of lack of willingness by the State to investigate the reported facts, which have been typified by the State itself as dire human rights violations.

11. In attention to these considerations, the nature of the claimed violations and the context present in the State at the time of the facts and after the armed conflict, the IACHR, considers that there are enough grounds to apply the exception set forth in article 46.2.c) of the American Convention.

12. The Commission observes that the facts have taken place as of January 17, 1981 and the petition was received on July 8, 2017, some of its effects, such as the lack of knowledge of the whereabouts of the Rodríguez Romero and Romero Sequeira brothers, the reasons for the disappearance, would extend to the present. Therefore, in view of the context and the characteristics of the facts included in the present report, the Commission considers that the petition was filed within a reasonable time and that the requirement for admissibility concerning the timeliness of the filing is to be considered met based on article 32.2 of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 3 (right to juridical personality), 4 (life), 5 (human treatment), 7 (personal liberty), 8 (fair trial), 11 (honor and dignity), 24 (equality before the law) and 25 (judicial protection) of the American Convention, to the detriment of Jorge Alberto Rodríguez Romero and Francisco Milton Romero Sequeira, and their relatives: Teresa de Jesús Romero de Rodríguez, Melisa Guadalupe Rodríguez Romero and Jimmy Francisco Ortiz Rodríguez, in the terms of the present report.

14. The Inter-American Commission has previously established that, once the American Convention comes into force in a State, it is the latter and not the Declaration which becomes the primary source of applicable law for the Commission, as long as the petition refers to the alleged violation of identical rights in both instruments and does not verse about a situation of continuous violation. In the instant case, articles V and XVIII of the Declaration to which the petitioner refers are identical to articles 8, 11 and 25 of the

Convention; and are not applicable since all of the denounced facts occurred as of 1981, and El Salvador is a State party to the American Convention since 1978.

15. On the other hand, in regard to the other international instruments claimed by the petitioners, the Commission lacks competence to establish violations to the norms of said treaties, without prejudice of them being likely taken into account as part of its interpretative exercise of the norms of the American Convention at the merits stage of the present case, in the terms of article 29 of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11, 24 and 25 of the American Convention in connection to its article 1.1, and;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.