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REPORT No. 276/23
PETITION 1923-18
REPORT ON ADMISSIBILITY

SERGIO RAMÓN RODRÍGUEZ ORELLANA
HONDURAS

Adopted electronically by the Commission on October 31, 2023.

Cite as: IACHR, Report No. 276/23. Petition 1923-18. Admissibility. Sergio Ramón Rodríguez Orellana. Honduras, October 31, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioning party:	Martha J. Giron
Alleged victim::	Sergio Ramón Rodríguez Orellana
Respondent State:	Honduras
Rights invoked:	Articles 5 (humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 13 (freedom of thought and expression), 14 (right to reply/correction) and 25 (judicial protection) of the American Convention on Human Rights, ¹ in conjunction with its Articles 1.1. (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)

II. PROCESSING BY THE IACHR²

Filing of the petition:	September 25, 2018
Additional information received during the initial review stage:	January 4, 2019 and August 28, 2020
Notification of the petition to the State:	September 21, 2021
State's first response:	December 16, 2021
Warning about possible archiving:	August 11, 2020
Petitioner's response to a warning of possible filing:	August 12, 2020
Additional observations from the petitioner:	August 7, 2023

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 ratification deposited on September 8, 1977)

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
<i>Rights declared admissible</i>:	Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (judicial guarantees), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception in Article 46.2.c) applies
Timeliness of the petition:	Yes, under the terms of Section VII

¹ Hereinafter "the Convention" or "the American Convention."

²Each party's observations were duly forwarded to the opposing party.

V. POSITIONS OF THE PARTIES

Position of the petitioning party

1. The petitioner alleges that Mr. Rodríguez Orellana was subjected to an arbitrary criminal proceeding, without fair cause and without reliable evidence. He was charged with the murder of the environmentalist Berta Cáceres, for which he has been deprived of his liberty for an unreasonable period of time, from May 2, 2016 to the present. In addition, the petitioner alleges that Mr. Rodríguez Orellana suffered mistreatment during his time in prison, was held in isolation and without communication, and was not allowed to go out in the sun.

2. By way of context, it is indicated that on March 2, 2016, Mrs. Berta Isabel Cáceres Flores, Coordinator of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), was murdered in her home in the municipality of La Esperanza, and an attempt was made on the life of the protected witness ABC. Berta Cáceres was an indigenous Lenca and a well-known human rights defender in Honduras.

3. On March 10, 2016, the Prosecutor's Office for Crimes against Life summoned Sergio Rodríguez (hereinafter "Mr. Rodríguez," "Rodríguez Orellana," or "Sergio Rodríguez") to testify, following a complaint filed by Ms. LLB, a member of COPINH and friend of Ms. Cáceres, who claimed that Sergio Rodríguez had threatened to kill Ms. Cáceres. According to the petitioner, during the interrogation, Mr. Rodríguez was never asked if he had had any communication with or made any threats against Ms. Cáceres, nor where he was on the day of the assassination.

4. On May 2, 2016, Sergio Rodríguez was captured at his home; and all the country's media arrived to show all the people what happened. Sergio Rodríguez was the executive who represented the company Desarrollos Energéticos, S.A. (DESA), which at the time was developing the Agua Zarca hydroelectric dam construction project, and Berta Cáceres was a leader of the protests against that project prior to her death. For this reason, he was linked to the murder of Mrs. Cáceres.

5. The initial hearing against Sergio Rodríguez Orellana and three other persons detained for the crime of Ms. Cáceres (Messrs. DGB, MDC, EADM) began on May 6, 2016. Sergio Rodríguez was accused of the murder of Berta Cáceres and the attempted murder of protected witness ABC, respectively. On May 8, 2016, Mr. Rodríguez and the rest of the defendants were formally indicted and remanded in custody to be served at the National Penitentiary of Támara.

6. Mr. Rodríguez indicated that he had been in contact with Ms. Cáceres twice in 2013, and once on February 20, 2016 in San Francisco de Ojuera, during a COPINH demonstration against the Agua Zarca project; and also, he stated that he never threatened her in any way. Likewise, Rodríguez Orellana stated that he became aware of Ms. Cáceres' death due to a call from a co-worker, at approximately 5:40 am, on March 3, 2016. After that, Mr. Rodríguez called the manager of the DESA company, and then Mr. DGB, to tell him what had happened. In his statement, the alleged victim pleaded not guilty.

7. According to the Public Prosecutor's Office and an expert witness, the first call that Mr. Rodríguez made was to Mr. DGB (in contradiction with the alleged victim's statement), and they claimed that it was to ask for a report of the event, since he had no way of knowing what had happened as a result of the "operation". However, the news of Mrs. Cáceres' death had been reported in the media since 5:00 a.m. on March 3.

8. Ms. LLB (member of COPINH) indicated that Ms. Cáceres received constant threats from DESA employees as a result of the protests that took place in November 2015 and February 20, 2016. She also indicated that Mrs. Cáceres had been threatened by messages and calls from Mr. Rodríguez. However, the petitioner alleges that Ms. LLB lied when she declared that Sergio Rodríguez threatened to kill Ms. Cáceres, because Mr. Rodríguez was not at the demonstration in San Francisco de Ojuera. Likewise, it would be absurd to threaten Berta Cáceres in front of the police, which Mrs. LLB also claims. Furthermore, in the video presented

at the initial hearing by witness JPP about said demonstration, the peaceful attitude of DESA employees is observed. Finally, according to the opinion made by expert BB, it is confirmed that there were no calls or messages between Ms. Cáceres and Sergio Rodríguez.

9. An investigating agent, a member of the Technical Criminal Investigation Agency, stated that Sergio Rodríguez was linked to the death of Mrs. Cáceres because of information he gathered from human sources, who indicated that Mr. Rodríguez had threatened Mrs. Cáceres on several occasions. The petitioner points out that these actions were never documented. Likewise, expert witness BB mentioned in her statement that on March 2, 2016, some of the accused had been together in the vicinity of Lake Yojoa. However, the expert did not point out that Sergio Rodríguez had been observed at the Yojoa site at 6:36 p.m., while the rest of the accused had been sighted in the area at noon.

10. The petitioner argues that it would be impossible for Mr. Rodríguez to have been the murderer of Mrs. Berta Cáceres, given that he had no prior contact with those accused of being the material perpetrators of the crime. The petitioner also states that expert witness BB lied; and that Mr. Rodríguez's call with Mr. DGB, after the fact, had been to tell him about the situation since they knew each other from their work at DESA. The Public Prosecutors' Office, the expert BB, and the agent of the Technical Criminal Investigation Agency deduce the criminal participation of Sergio Rodríguez from this call with DGB, but the only reason for that call was to tell Mr. DGB the news of Mrs. Cáceres' death. In addition, according to the records of the cell phone companies, it was proven that on March 2, 2016, the alleged victim had no contact with the other defendants. Also, according to the statement of expert witness BB, there was no type of communication (calls or messages) between Rodríguez Orellana and the other defendants, either before or during the events.

11. On May 11, 2016, Mr. Rodríguez's defense filed an appeal before the Criminal Court with National Territorial Jurisdiction in Criminal Matters against the indictment against the alleged victim. The appeal was based on the fact that Rodríguez Orellana was accused without sufficient reasons, which would violate his innocence. On September 30, 2016, the Criminal Court of Appeals ruled that the appeal was dismissed, validating the testimony of Mrs. LLB, the telephone records referred to by Expert BB, and the accusations obtained by the agent of the Technical Criminal Investigation Agency in his investigative work.

12. On June 12, 2017, the First Instance Trial Judge with National Territorial Jurisdiction in Criminal Matters ordered the opening of the trial against Sergio Rodríguez. Against this resolution, on June 15, 2017, the defense filed an appeal for reconsideration before the Trial Court with National Territorial Jurisdiction in Criminal Matters. On June 20, 2017, said appeal was declared inadmissible. On September 21, 2017, the defense filed an amparo action before the Criminal Court of Appeals of Francisco Morazán, for violation of due process and judicial protection. However, on October 10, 2017, the Court of Appeals declared the amparo appeal filed inadmissible since the issue was simply a legal matter that corresponded to the ordinary justice system. On November 12, 2018, a *habeas corpus* action was filed before the Court of Appeals of Francisco Morazán in order to obtain the release of the alleged victim for exceeding the reasonable time limit. The petitioner alleges that this appeal was denied, without any reason for that denial being given in the file, and Mr. Rodríguez remained deprived of his liberty.

13. On December 2, 2019, the Sentencing Court with National Territorial Jurisdiction in Criminal Matters convicted Mr. Rodríguez Orellana, finding him guilty of the crime of murder against Berta Cáceres; and acquitting him of the charge of attempted murder of the protected witness ABC. Against this ruling, on January 20, 2020, the defense filed an appeal in cassation before the National Court of Criminal Territorial Jurisdiction on the grounds of arbitrariness and wrongful conviction. This appeal is pending resolution by the Supreme Court of Justice of Honduras.

14. The petitioner alleges that Honduran law does not provide for a broad appeal in criminal matters and does not allow for the review of evidentiary issues. In this case, the alleged victim would not be able to challenge the allegedly dubious evidence in the proceedings. Regarding the time frame, Mr. Rodríguez was arrested on May 2, 2016, this being the first procedural act, and as of August 2023 the judicial process continues without a final decision, so the alleged victim has remained deprived of his liberty for seven years

and four months, with all the moral, psychological, and material harm that this entails. In addition, his personal and professional reputation, as well as that of his company Ecología y Servicios S.A., was destroyed.

Alleged mistreatment suffered by Mr. Rodríguez during his detention

15. On May 2, 2016, at 6:00 a.m., Sergio Rodríguez was arrested at his mother's house and taken to the offices of the Technical Criminal Investigation Agency. From May 2 to May 7, 2016, when Mr. Rodríguez remained in a cell, he was never taken out to the patio (sunlight) and was not allowed to communicate by telephone. Access to his lawyer was limited and always with the presence of a soldier, listening to the entire conversation. On May 8, he was remanded in custody, transferred to the National Penitentiary and placed in the Maximum Security Module, where he was held in isolation, with no communication and no access to sunlight, in a cell in which the only light that existed was from a light bulb.

16. On September 14, 2017, the alleged victim was transferred to the Second Infantry Battalion, without the prison authority informing his lawyers. From that date until today, the alleged victim has remained at the Battalion, without telephonic or written communication. Throughout this time, he has been under a maximum security regime, supervised by the military. His representatives, together with other relatives of other prisoners, have filed complaints anonymously, for security reasons, with the National Committee for the Prevention of Torture, Cruel, Inhuman, or Degrading Treatment, without obtaining any further results.

Arguments of the Honduran State

17. The State indicates that the petition arose from the criminal proceedings against Rodríguez Orellana, in which he was charged with the murder of Berta Cáceres, and the attempted murder of protected witness ABC. The State argues that the petitioner attended the oral and public trial pending at the time. Once the conviction was handed down, seven appeals were filed, including by the alleged victim and the other defendants, which are still pending judicial resolution, which is why the domestic remedies were not exhausted.

18. The State alleges that the *habeas corpus* remedy was not attempted by the alleged victim, being the ideal remedy to appeal during legal detention or imprisonment, when the detainee is subjected to torment, torture, humiliation, illegal exaction, and any coercion or restriction not needed for his individual safety. It would have been the effective remedy to repel the mistreatment alleged by the petitioner; when he has not been allowed to engage in physical activity, he had limited communication with his attorney, he was not allowed to receive sunlight. In this regard, there is no evidence that a complaint has been filed with the prosecutor's office or with the National Penitentiary Institute regarding the mistreatment suffered in prison.

19. The State alleges that the petition evidences a "fourth instance" arising from the evaluation of the evidence. Among this evidence questioned by the petitioner are the testimonies against him by members of COPINH and relatives of Mrs. Berta Cáceres, and at the same time the telephone tapping is questioned as it is presumed to be unlawful. Thus, it transpires that, the petitioner wants the IACHR to review the evidence and the assessment of facts and law made by the domestic court, wrongly treating the inter-American system as if it were an appellate court.

20. In relation to the alleged violation of the right to personal integrity, the State reiterates the non-exhaustion of domestic remedies, inasmuch as *habeas corpus* represents the indispensable judicial guarantee and the ideal means to guarantee the accused's liberty, ensure respect for his life, and protect his personal integrity. Likewise, regarding the alleged violation of the right to personal liberty, the State indicates that Mr. Sergio Rodríguez, after being detained, was placed at the disposal of the competent judges, and the grounds for the judgment are due to the expert and testimonial evidence presented at trial.

21. The State also argues that the extensions in the proceedings were not arbitrary, but due to requests from the parties. Also, during this period, other legal proceedings were requested, such as, inter alia, the swearing in of experts and presentation of documentation. In this regard, the State alleges that the case was complex due to the large number of incidents and instances, and the plurality of parties involved in the murder

of Ms. Cáceres. In addition, the alleged victim purportedly had access to domestic remedies to prove the alleged illegality of his detention but has not been able to disprove the evidence that led to the conviction.

22. Regarding the alleged violation of Article 8 of the American Convention, the State argues that the alleged victim had access to the competent courts, was heard, and the evidence established in the domestic courts was considered. In addition, the conviction was issued by the competent sentencing court, composed of judges appointed prior to the facts. In relation to the alleged violation of Article 25 of the American Convention, the State argues that if a particular remedy is resolved against the claims of the person filing it, that does not entail a violation of the right to judicial protection. Recognition of the right only implies that there is a possibility that the remedy will be successful.

VI. PRIOR ISSUE OF CONTEXT

23. By way of context, it is recalled that the assassination of Berta Cáceres has been the subject of several pronouncements by the IACHR. In March 2016, in a press release, the IACHR repudiated the assassination of Berta Cáceres;³ and in July 2021, in another press release, a call was made to guarantee effective and impartial access to justice in the trial related to this event.⁴ Likewise, precautionary measures have been granted and maintained in favor of the members of COPINH, as well as in favor of Berta Cáceres' family, in order to guarantee her life and personal integrity.⁵ In addition, the Commission previously referred in the 2015 report to the judicial harassment suffered by Ms. Cáceres (she was still alive at the time).⁶ And in its 2019 report on the human rights situation in Honduras, the IACHR again repudiated the murder of the environmentalist, urged the State to seek justice, and highlighted that a DESA manager was arrested and prosecuted as the murderer (*autor intelectual*)⁷ (thus referring to Mr. Sergio Rodríguez Orellana).

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

24. Pursuant to the Commission's consolidated and reiterated practice, in order to identify the appropriate remedies that should have been exhausted by a petitioner before resorting to the inter-American system, the first methodological step in the analysis consists of distinguishing the various claims formulated in the corresponding petition in order to proceed to examine them one by one. Thus, in this proceeding, the IACHR observes that the claims formulated by the petitioners are basically: the allegedly arbitrary criminal proceedings against Mr. Rodríguez, with the consequent excessive application of pretrial detention; and alleged mistreatment during his arrest and imprisonment.

25. In relation to the alleged arbitrary criminal proceeding suffered by Mr. Rodríguez Orellana, the remedies attempted are specified below in order to evaluate exhaustion:

- a) On May 11, 2016, an appeal was filed before the Criminal Court of Appeals with National Territorial Jurisdiction in Criminal Matters against the decision of May 8, 2016, which issued the indictment against the alleged victim, arguing that there was insufficient evidence to determine Mr. Rodríguez's guilt. On September 30, 2016, the Criminal Court of Appeals of the Department of Morazán declared the appeal inadmissible and maintained that enough evidence was available to issue the formal indictment.
- b) On June 12, 2017, the Court of First Instance with National Territorial Jurisdiction in Criminal Matters ordered the start of the trial. Against this resolution, on June 15, 2017, an appeal for

³ IACHR press release of March 4, 2016.

⁴ IACHR press release of July 1, 2021.

⁵ Precautionary Measures No. 405-09 and 112-16 Berta Isabel Cáceres, her next of kin, members of COPINH, and others with respect to Honduras, November 15, 2021 (Follow-up).

⁶ 2015 IACHR Report on the Situation of Human Rights in Honduras, page 30, paragraph 48. OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015.

⁷ 2019 IACHR Report on the Situation of Human Rights in Honduras, pp. 94-97, paragraphs 170-174. OEA/Ser.L/V/II. Doc. 146, August 27, 2019.

reconsideration was filed before the same Court, which rejected the request on June 20, 2017. On September 21, 2017, the amparo action was filed before the Criminal Court of Appeals of Francisco Morazán, for violation of due process and effective judicial protection. On October 10, 2017, the Court of Appeals declared the amparo action inadmissible, as it was simply a legal issue to be decided in the ordinary justice system.

- c) On December 2, 2019, the Sentencing Court with National Territorial Jurisdiction in Criminal Matters issued a first instance conviction against Mr. Rodríguez Orellana, finding him guilty of murdering Berta Cáceres and acquitting him of the charge of attempted murder of the protected witness. Against this decision, the defense of the alleged victim filed a cassation appeal on January 20, 2020, which is pending resolution.

26. Regarding the State's argument about the inapplicability of the exception contained in Article 46.2.c of the Convention, the IACHR observes that, beyond the allegations that focus on judicial delay in the requests and remedies of the parties, the complexity of the matter, the subjects involved, and the presentation of documentation; It is evident that a period of time greater than seven years cannot be justified; almost four years after the first instance conviction. In this sense, it is relevant for this analysis that throughout the procedure the alleged victim has remained deprived of liberty, and continues to be so without a final judgment in his trial. That being so, and beyond the substantive considerations that do not pertain to the present admissibility stage, the Inter-American Commission considers that for purposes of the admissibility of the present petition, the exception contained in Article 46(2)(c) of the American Convention should be applied.

27. In this regard, the Commission first reiterates, as it has consistently done, that Article 46(2) of the Convention, by its nature and purpose, is a norm that is applicable in its own right, irrespective of the substantive norms of the American Convention⁸. Therefore, determining whether or not the exceptions to the rule of exhaustion of domestic remedies provided in said provision are applicable to a particular case requires an examination carried out in advance of and separate from the analysis of the merits of the case, since it depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. The Commission has also stressed that there are no conventional or regulatory provisions that specifically regulate the period of time that constitutes 'unjustified delay', so that the Commission needs to evaluate on a case-by-case basis to determine whether the delay is justified.⁹ Along these lines, the Inter-American Court has established as a guiding principle for the analysis of possible unwarranted delay as an exception to the rule of exhaustion of domestic remedies, that "*The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.*"¹⁰ In other words, in the Commission's opinion, the complementary nature of the international protection provided for in the American Convention also implies that the intervention of the organs of the inter-American system must be timely so that it may have some kind of useful effect in the protection of the rights of the alleged victims.

28. In relation to the excessive amount of time spent in pretrial detention, the IACHR has established: "*In addition, and specifically in the case of petitions alleging the misapplication or excessive prolongation of preventive detention, the Commission has established that these claims may have, in relation to Article 46.1.a of the Convention, its own dynamics of exhaustion of domestic remedies, independent of that of the criminal process as a whole; and that for the exhaustion of resources, the request for release and rejection is sufficient.*"¹¹ In this regard, on November 12, 2018, the defense of Mr. Rodríguez filed a *habeas corpus* action before the Court of Appeals of Francisco Morazán, with the view to eliciting immediate restitution of the right to freedom of the alleged victim, due to the expiration of the precautionary measure of preventive detention, and its substitution by other alternative measures. That action was denied, although the reason for the rejection

⁸ IACHR, Report No. 371/21. Petition 2011-12. Admissibility. Jorge Alexander Bustamante Goetz and Others, Colombia, November 29, 2021, paragraph 18. IACHR, Report No. 171/23, Petition 1006-08, Admissibility, Puerto Alvira Massacre, Colombia, August 20, 2023, paragraph 17.

⁹IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, par. 68.

¹⁰ Inter-American Court of Human Rights, Velasquez Rodríguez v. Honduras, Preliminary Objections, Judgment of June 26, 1987, par. 93.

¹¹IACHR, Report No. 49/18, Petition 1542-07. Admissibility. Juan Espinosa Romero. Ecuador. May 5, 2018, par. 13.

does not appear in the file. Thus, the domestic remedy regarding the excessive prolongation of pretrial detention was exhausted.

29. With regard to the filing deadline requirement, the petition before the Commission was filed on September 25, 2018, and as of the date of this report, there is no information on the resolution of the cassation appeal filed on January 20, 2020, which must be resolved by the Supreme Court of Justice of Honduras. Therefore, it is clear that the petition complies with the requirement established in Article 32.2 of the IACHR Rules of Procedure.

30. Finally, with respect to the allegations of mistreatment and conditions of confinement contrary to Mr. Sergio Rodríguez Orellana's right to humane treatment, the petitioner merely states: "*Complaints have been filed anonymously (by the petitioner), for security reasons, and by other relatives of those deprived of liberty, with the National Committee for the Prevention of Torture, Cruel, Inhuman, or Degrading Treatment, without achieving any significant outcomes*"; however, the petitioner does not provide any further information, and the Commission does not observe that other complaints have been filed in this regard, or that such allegations have been brought to the attention of the judicial authorities in the same criminal proceeding to which Mr. Rodríguez Orellana was subjected. Thus, the Inter-American Commission does not have concrete information that would allow it to establish that the petition complies with the requirement of exhaustion of domestic remedies established in Article 46(2)(c) of the American Convention. This conclusion is reinforced by the fact that the State did challenge the lack of exhaustion of domestic remedies in these allegations, pointing out and arguing that the habeas corpus action was the appropriate legal avenue. The petitioners did not comment on this argument. Therefore, the allegations related to alleged violations of the alleged victim's right to personal integrity are outside the factual framework of this report.

VIII. ANALYSIS OF COLORABLE CLAIM

31. The Inter-American Commission reiterates that, for admissibility purposes, it must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged could characterize a violation of rights, or whether the petition is, under paragraph (c) of that Article, "manifestly groundless or obviously out of order." The criterion used to evaluate those requirements differs from that used to pronounce on the merits of a petition. Likewise, within the framework of its mandate, the Inter-American Commission is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say that, based on the aforementioned conventional norms, in keeping with Article 34 of its Rules of Procedure,¹² the admissibility analysis focuses on the verification of such requirements, which refer to elements that, if true, could constitute *prima facie* violations of the American Convention.

32. In the instant case, the object of the petition that is the subject of this analysis of colorable claim is basically the alleged unjustified delay in the conclusion of the criminal proceeding against the alleged victim; the alleged violations of his right to the presumption of innocence among other alleged arbitrariness committed in the course of the proceeding; the excessive prolongation of the custodial measure of preventive detention; and the lack of effective judicial protection, inasmuch as to date the second criminal instance has not ruled on the case.

33. In this regard, Mr. Rodríguez was arrested on May 2, 2016, this being the first procedural act, and as of September 2023, the judicial process remains unresolved in the second instance, pending the resolution of the cassation appeal, so that the alleged victim has remained deprived of his liberty for seven years and four months without a final conviction. Likewise, Mr. Orellana was deprived of his liberty on remand for three and a half years; furthermore, it is alleged that as a defendant he was not separated from other convicted prisoners.

¹² Article 34 of the Rules of Procedure of the IACHR reads: The Commission shall declare any petition or case inadmissible when: a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

34. In view of these considerations, and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioning party's allegations are not manifestly unfounded and require a study of the merits, since the alleged facts, if corroborated as true, could constitute violations of the rights recognized in Articles 5 (right to humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 of the same treaty, to the detriment of Sergio Ramón Rodríguez Orellana.

35. With respect to the "fourth instance formula" argument, the Commission stresses the complementary nature of the inter-American system and emphasizes that, as indicated by the Inter-American Court, in order for a "fourth instance" exception to proceed, it would be necessary to "review the decision of the domestic court, based on its incorrect assessment of the evidence, the facts or domestic law without, in turn, alleging that such decision was a violation of international treaties [...]".¹³ In the present case, the Commission considers that, as indicated by the Inter-American Court, "it is up to the Court to ascertain whether or not the State, in the steps effectively taken at domestic level, violated its international obligations stemming from those Inter-American instruments that grant authority to the Court".¹⁴ It is also up to the Court to determine "whether or not the actions of judicial organs constitute a violation of the State's international obligations [which] may mean that the Court must examine the respective domestic proceedings to establish their compatibility with the American Convention".¹⁵ Accordingly, the analysis of whether the State incurred in violations of the American Convention in this case is a matter to be decided at the merits stage.

36. Regarding the claim of alleged violation of Articles 11 (protection of honor and dignity), 13 (freedom of thought and expression), 14 (correction or reply) of the American Convention, the Commission observes that the petitioners have not offered sufficient allegations or support to allow a *prima facie* consideration of a possible violation.

IX. DECISION

1. Declare the present petition admissible in relation to Articles 5 (humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the Convention.

2. Declare the present petition inadmissible in relation to Articles 11 (protection of honor and dignity), 13 (freedom of thought and expression), 14 (correction or reply) of the Convention.

3. Notify the parties of this decision; continue with the analysis of the merits, and 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 31st day of the month of October, 2023. (Signed:) Margarett May Macaulay, President; Roberta Clarke, Second Vice President, Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.

¹³I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 18.

¹⁴I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 19.

¹⁵I/A Court H.R. Case of Palma Mendoza et al. v. Ecuador. Preliminary Objection and Merits. Judgment of September 3, 2012, Series C No. 247, par. 18; I/A Court H.R., Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 14, 2019. Series C No. 388, par. 24; I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, par. 19.