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REPORT No. 204/22
PETITION 1953-15
REPORT ON ADMISSIBILITY

ALEXANDER MONTES AGUILAR AND OTHERS
HONDURAS

Approved electronically by the Commission on August 8, 2022.

Cite as: IACHR, Report No. 204/22. Petition 1953-15. Admissibility.
Alexander Montes Aguilar and others. Honduras. August 8, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Center for the Prevention, Treatment and Rehabilitation of Torture Victims and their Families (CPTRT), Evelyn Melissa Escoto and Juan Angel Almendarez Bonilla
Alleged victim	Alexander Montes Aguilar and others ¹
Respondent State:	Honduras
Rights invoked	Articles 5 (humane treatment), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ² ; Articles I (life, liberty, and personal security) and XXV (Protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man; and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 18, 2015
Additional information received at the stage of initial review:	November 24, 2015 and December 21, 2016
Notification of the petition to the State:	November 29, 2021
State's first response:	March 1, 2022
Additional observations from the State:	March 3 and 4, 2022

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 (deposit of instrument of ratification made 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
Rights declared admissible:	Articles 5 (humane treatment), 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to its article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ The petition refers to thirteen alleged victims: 1. Alexander Montes Aguilar; 2. Elmer Enoc Nieto Rodriguez; 3. Gelson Yovanny Amador Herrera; 4. Gustavo Antonio Sierra Sanchez; 5. Jafet Ricardo Carbajal Pino; 6. Jesus Alexis Vasquez Perez; 7. Jose Alexander Ramirez Leon; 8. Jose Luis Soto Sierra; 9. Junior Joel Colindres Ramirez; 10. Mario Adalberto Leiva Reyes; 11. Oscar Armando Murillo Cano; 12. Walter Alexander Amador Perdomo; and 13. Wilmer Champoleon Castro Avila.

² Hereinafter "American Convention" or the "Convention".

³ Articles 5, 7 and 10 of the International Covenant on Civil and Political Rights; and Articles 4, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴ The observations of each party were duly forwarded to the opposing party. On July 14, 2020, the petitioner expressed its interest in the processing of the petition.

V. POSITION OF THE PARTIES

1. The present petition concerns allegations of torture and ill-treatment suffered by the alleged victims in a military detention center, in compliance with their respective condemnatory judgments.

2. The petitioners narrate by way of context that by means of Decree N.33401 of 2014, three penitentiary establishments were created in the modality of "Preventive Centers", in charge of the army, located in: (i) El Escuadron Las Cobras, of the National Police, in the neighborhoods of El Rincon and El Manchen, as well as in the vicinity of the Municipal Mayor's Office of the Central District; (ii) the First Infantry Battalion of the Armed Forces of Honduras, municipality of the Central District; and (iii) the Third Infantry Battalion of the Armed Forces of Honduras, located in the town of Naco, department of Cortés.

3. They specifically hold that on March 6 and 9, 2015, the alleged victims were transferred from different penitentiary centers to the Second Airborne Infantry Battalion (hereinafter the "Detention Center"), located in the Village of Tamara, department of Francisco Morazan. The petitioners argue that the Detention Center was not created by official order, unlike the other three centers created by means of Decree No. 33401; however, it is also operated by the army.

4. They claim that upon their arrival at the Detention Center the alleged victims were pepper-sprayed; they had no access to food or water for a week; and later, when they were offered food, they were forced to sing children's songs in exchange for it. In addition, they hold that for three months the soldiers in charge made noises on the bars of the cells in order to keep them awake. The petitioners state that the alleged victims' relatives were unable to visit them for fifteen days, and that when they saw them, the alleged victims were in precarious health conditions. Petitioners argue that according to Article 53 of the Regulations of the Penitentiary System Law, the period of confinement in maximum security centers is up to six months, a period which was exceeded by the authorities. They also hold that the facts were reported to the National Committee for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment (CONAPREV), who visited the Detention Center, and as a result, arranged for extended visits, provision of food to the cells, among other things.

5. The information contained in the casefile shows that relatives of the alleged victims filed various remedies in order to stop the ill-treatment inflicted upon them, such as habeas corpus actions and, subsequently, actions for review, as follows:

Gelson Yovanny Amador, Jesus Alexis Perez and Gustavo Antonio Sierra

6. On October 26, 2015, relatives of Mr. Amador, Mr. Perez and Mr. Sierra jointly filed a habeas corpus remedy before the Criminal Court of the Judicial Section of Tegucigalpa requesting the cease of the cruel and degrading treatment perpetrated against them inside the Detention Center. However, on November 30, 2015, the Criminal Court of Appeals of the Department of Francisco Morazan declared the habeas corpus inadmissible, in considering, based on what was established by the Executing Judge, that Messrs. Amador, Perez and Sierra were incarcerated in a place authorized by law, in good health and confirming that they had received medical and psychological care. Considering, in addition, the statements obtained from the three alleged victims, from which it was concluded that: "[...] *the situation has changed since they are treated with respect (sic) as well as the situation with food has improved and they receive visits from their relatives and timely medical assistance [...]*"

7. Dissatisfied with this, on January 21, 2016, relatives of these three alleged victims filed an action for review before the Supreme Court of Justice. The Constitutional Chamber of the Supreme Court of Justice, by means of a judgment of April 13, 2016, upheld the appealed judgment, considering that the claimants were not violated any right or freedom enshrined in the Constitution, since they were serving their sentences in a place authorized by law, and since there was no evidence of mistreatment against them.

Jose Alexander Ramirez, Jose Luis Soto and Junior Joel Colindres

8. On October 26, 2015, relatives of Mr. Ramirez, Mr. Soto and Mr. Colindres, jointly, filed a habeas corpus remedy before the Criminal Court of the Judicial Section of Tegucigalpa, requesting the halt of the cruel and degrading treatment inflicted against them inside the Detention Center. However, on November 17, 2015, the Criminal Court of Appeals of the Department of Francisco Morazan declared the habeas corpus action inadmissible, considering that, based on what was established by the Executing Judge, the transfer of the alleged victims to the detention center was conducted in accordance with the law, and that: “[...] *the complaint about the treatment inflicted on the alleged victims occurred when they were recently admitted to the Military Unit, that is to say, more than six months ago, but said inmates hold that they are not currently suffering from mistreatment [...].*”

9. Dissatisfied with this, on January 21, 2016, relatives of these three alleged victims filed an action for review before the Supreme Court of Justice. The Supreme Court, through a judgment of April 13, 2016 issued by its Constitutional Chamber, confirmed the appealed judgment, determining that the fundamental rights of the alleged victims were not violated, considering that they were transferred on March 6, 2015 to the Detention Center through a duly grounded and motivated resolution issued by the National Penitentiary Institute.

Jafet Ricardo Carbajal, Oscar Armando Murillo and Elmer Enoc Nieto

10. On October 26, 2015, relatives of Mr. Carbajal, Mr. Murillo and Mr. Nieto jointly filed a habeas corpus action before the Criminal Court of the Judicial Section of Tegucigalpa, department of Francisco de Morazan, requesting the cease of the cruel and degrading treatment inflicted against them inside the Detention Center. On November 12, 2015, the Criminal Court of Appeals of the department of Francisco Morazan declared the habeas corpus action inadmissible, based on the opinion and the interviews conducted by the Executing Judge, concluding that none of these three alleged victims had been beaten or physically abused inside the Detention Center, and that they were in good physical and mental condition.

11. Unsatisfied, on November 26, 2015, relatives of these three alleged victims filed an action for review before the Supreme Court of Justice. The Supreme Court, in a judgment of January 29, 2016 issued by its Constitutional Chamber, upheld the appealed judgment on the grounds of: “[...] *no proven evidence concerning mistreatment, humiliation or torture against the physical integrity of the beneficiaries of the appeal, who have requested to be returned to the National Penitentiary.*”

Alexander Montes and Mario Adalberto Leiva

12. On October 26, 2015, relatives of Mr. Montes and Mr. Leiva filed a habeas corpus remedy requesting the halt of the cruel and degrading treatment inflicted against them inside the Detention Center. The Criminal Court of Appeals of the Department of Francisco Morazan declared the habeas corpus action inadmissible, considering the ruling and the interviews conducted by the Executing Judge, who concluded that neither of these two alleged victims had been beaten or physically abused inside the Detention Center, and that the detainees were in good physical and mental condition -from the information provided by the petitioner, although an incomplete copy of the decision issued by the Court of Criminal Appeals of the Department of Francisco Morazan is attached, it does not contain the date on which the sentence was issued-.

Other allegations

13. The petition reports additional human rights violations perpetrated against the family members of the alleged victims. In particular, they claim that the wives and mothers of the detainees were victims of mistreatment during visits to the Detention Center, being forced to take off their underwear to be inspected and forced to do push-ups in this state; in addition, they were observed and their breasts were felt by the military women in charge of this procedure. Likewise, in a communication of November 24, 2015, the petitioner expressed that on November 21, 2015, three women were murdered on a bus after having visited

their relatives at the Detention Center - it is noted that two of these women were wives of Messrs. Jesus Alexis Vasquez and Mario Adalberto Leiva-.

Position of the State

14. The State, in the first place, argues that the alleged victims, having filed the habeas corpus action, used the appropriate and effective remedy to protect their personal integrity; furthermore, that the resolutions of the habeas corpus actions were promptly resolved by the judicial bodies in order to protect the alleged violation. In the same sense, it establishes that although the habeas corpus remedies filed on behalf of the alleged victims were declared inadmissible, this was because the Executing Judges, based on the statements of the alleged victims, as well as on physical and psychological reports, concluded that the alleged violations inside the Detention Center had no basis whatsoever.

15. The State holds that although the alleged victims suffered precarious situations when they were admitted to the Detention Center, these were improving and that throughout the development of the investigations initiated by the filing of the habeas corpus actions it was possible to confirm that the physical and mental health of the alleged victims was stable, that their food had improved and that they received visits from their relatives, holding that their detention was based on the convictions in each particular case. The State also asserts that on April 26, 2021, the Second Airborne Battalion in Tamara - the detention center to which the alleged victims were transferred - and the Third Infantry Battalion located in Naco, department of Cortés, were disabled by resolution 001/CISNP2021, which internally redressed one of the petitioner's claims.

16. With regard to the murders of the three women, two of whom were wives of the alleged victims, the State holds that investigative measures have been taken to clarify the facts and identify those responsible, consisting of witness statements, autopsy reports, ballistics experts, among others. Finally, with respect to the ill-treatment of the alleged victims' relatives during visits to the Detention Center, the State refers those two complaints in particular have been followed up for the alleged facts; however, the claimants have not come forward to give their statements.

17. Therefore, the State concludes: “[...] *that inadmissibility be ruled in a timely manner, since the infringed legal situation has been remedied in accordance with the principle of subsidiarity or complementarity of the Inter-American System, and also due to the unfounded alleged violation of Articles 5, 24, and 25 of the ACHR*”.

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

18. The Commission observes that the main subject matter of the present petition refers to the alleged acts of torture and ill-treatment inflicted on the alleged victims at the time of their admission to the Detention Center, claiming that they lasted for at least three months.

19. In this regard, the Inter-American Commission has established that when prison mistreatment is claimed, the appropriate remedies to be exhausted are all those means which allow the affected person to bring the situation to the attention of the prison or judicial authorities, including the presentation of requests to the officials in charge of the respective prison, the communication of the matter to the competent judicial authorities, the *habeas corpus*, or other means⁵.

20. In the instant case, the Commission notes in the first place that the State has not contested compliance with the requirements of exhaustion of domestic judicial remedies or the deadline for submission, established in Articles 46(1)(a) and 46(1)(b) of the American Convention. It also confirms that, in general, the relatives of the alleged victims informed the judicial authorities of the ill-treatment inflicted on them at the

⁵ IACHR, Report No. 167/17. Admissibility. Alberto Patishtan Gomez. Mexico. December 1, 2017, para. 16; and IACHR, Report No. 237/21. Petition 491-14. Admissibility. Frank Oviedo Fuentes and others. Nicaragua. September 17, 2021, para. 19.

Detention Center. Specifically, the next of kin of the alleged victims filed habeas corpus actions and actions for review, in accordance with the following table:

Legal remedy	In favor of	Judicial body issuing judgment	Date of judgment
Habeas corpus	Gelson Yovanny Amador, Jesus Alexis Perez, and Gustavo Antonio Sierra	Criminal Court of Appeals of Francisco Morazan	November 30, 2015
Habeas corpus	Jose Alexander Ramirez, Jose Luis Soto, and Junior Joel Colindres	Criminal Court of Appeals of Francisco Morazan	November 17, 2015
Habeas corpus	Jafet Ricardo Carbajal, Oscar Armando Murillo, and Elmer Enoc Nieto	Criminal Court of Appeals of Francisco Morazan	November 12, 2015
Habeas corpus	Alexander Montes, and Mario Adalberto Leiva	Criminal Court of Appeals of Francisco Morazan	No date of judgment
Review action	Gelson Yovanny Amador, Jesus Alexis Perez, and Gustavo Antonio Sierra	Supreme Court of Justice	April 13, 2016
Review action	Jose Alexander Ramirez, Jose Luis Soto, and Junior Joel Colindres	Supreme Court of Justice	April 13, 2016
Review action	Jafet Ricardo Carbajal, Oscar Armando Murillo, and Elmer Enoc Nieto	Supreme Court of Justice	January 19, 2016

21. With regard to the above table, the Commission considers that the alleged victims can be divided into three groups for the purposes of analyzing the exhaustion of domestic remedies: (a) those who filed a habeas corpus action and the subsequent action for review; (b) those who filed only a habeas corpus; and (c) those who did not file any domestic remedy.

22. With regard to group (a), comprised of Gelson Yovanny Amador, Jesus Alexis Perez, Gustavo Antonio Sierra, Jose Alexander Ramirez, Jose Luis Soto, Junior Joel Colindres, Jafet Ricardo Carbajal, Oscar Armando Murillo and Elmer Enoc Nieto, who filed a habeas corpus remedy and the subsequent action for review, the Commission observes that the procedural sequence of the remedies filed in the domestic sphere were definitively denied by the Supreme Court of Justice on April 13, 2016. For this reason, considering that the petition was filed on November 18, 2015, the Inter-American Commission concludes that this group complies with the requirement of exhaustion of domestic remedies and the deadline for submission set forth respectively in Articles 46(1)(a) and b) of the American Convention.

23. Regarding group (b), which pertains to Alexander Montes and Mario Adalberto Leiva, who only filed the habeas corpus action, which was denied by the Francisco Morazan Criminal Court of Appeals, the Commission concludes that it also complies with the requirement of exhaustion of domestic remedies established in Articles 46(1)(a). As for the filing deadline, the IACHR observes that, although there is no precise date of the judgment which declared the habeas corpus remedy admissible, the State has not disputed, nor has it provided information that would make it possible to establish the date on which this decision was notified to the petitioners; therefore, based on this information, the Commission concludes that this group complies with the requirement established in Article 46(1)(b) of the American Convention.

24. Regarding group (c), the IACHR finds, based on the information contained in the casefile, that Walter Alexander Amador Perdomo and Wilmer Champoleon Castro Ávila did not pursue any remedy with respect to the ill-treatment inflicted against them; therefore, the Commission concludes that, with respect to these two alleged victims, the petition does not comply with the requirement of Article 46(1)(a) of the American Convention.

25. Finally, regarding the murders of the three women, the Commission observes that the information provided by the petitioner relates only to the event of the murders, without providing substantive information regarding a lack of diligent action on the part of the State in order to clarify the facts and,

eventually, punish those responsible of the homicides. On the other hand, the Commission observes that the State has provided information regarding the investigative measures aimed to clarify these murders; however, it would not be updated as of the date hereof. Therefore, the IACHR lacks sufficient information to rule in any way on this aspect of the petition; and therefore, these three women will not be considered as alleged victims in this petition, leaving them outside the factual framework of the same.

VII. ANALYSIS OF COLORABLE CLAIM

26. The Commission observes that the instant petition contains allegations of acts of torture and ill-treatment suffered by the alleged victims from members of the military inside the Second Airborne Infantry Battalion, located in the village of Tamara, department of Francisco Morazan. The State, for its part, does not deny or dispute that these acts have occurred, but rather presents the Commission with the same position that the courts maintained internally, namely, that at the time the habeas corpus petitions were analyzed, the conditions of detention had improved, and the alleged victims were not being subjected to any form of mistreatment. However, the Commission notes that the alleged facts refer specifically to acts of torture which were committed during the first weeks and months of the alleged victims' detention in the Second Airborne Infantry Battalion, a military base, not originally intended for the detention of common prisoners. The fact that this situation eventually changed, or that the alleged victims themselves did not dare to denounce the abuses suffered in the detention center where they were held, does not imply that the violations of their rights and those of their families did not occur. Moreover, regardless of the outcome of these remedies, the domestic courts learned of these facts, allegedly committed during the first months of the alleged victims' deprivation of liberty, and did not initiate any investigation in this regard, limiting themselves, as mentioned above, to verifying the situation existing at the time of deciding the habeas corpus actions.

27. The IACHR's analysis considers that the petitioners' allegations are not unfounded also due to the fact that through its monitoring functions it has referred with concern to the use of military bases as detention centers in Honduras for common, civilian prisoners, as an anomalous situation, since both the facilities and the military personnel are not suitable for prison functions. In addition, they are outside the orbit of command of civilian authorities. The IACHR referred extensively to all these aspects in its 2015 Report on the Situation of Human Rights in Honduras (paragraphs 545 to 555), in which it warned of this then incipient practice in Honduras. Specifically, with respect to the situation of the Second Infantry Battalion, it said: *"authorized after the visit of the IACHR, CONAPREV expressed its concern with respect to the complaints made by some relatives of inmates regarding the treatment they are allegedly receiving from soldiers during visits; and other anomalies, such as the alleged lack of access to drinking water and the lack of adequate medical care (para. 554)"*.

28. Subsequently, the Inter-American Commission in its preliminary observations of its on-site visit to Honduras, from July 30 to August 3, 2018, reported that:

With regard to militarization, the Commission notes that despite the fact that the regulations on the matter forbid military presence in the penitentiary system, and that the State had reported on the transition of the penitentiary function to a civilian institution, there is a significant involvement of the Armed Forces in the penitentiary system. In this regard, the Honduran State has three preventive detention centers which operate in military facilities, and despite the fact that the agreement authorizing their use establishes that custody will depend on prison personnel, this function is performed by the military. During its visit to the First Battalion, the Commission was informed that the military personnel are not trained to perform this type of work, as they do not identify themselves, their faces are covered, they threaten the detainees, and they are a factor of intimidation for their families. One of the inmates said: "The military personnel are not prepared to treat us detainees. These centers are created, not to rehabilitate, but to destroy us". In this context, the IACHR reiterates that military training is not suitable for controlling and managing detention centers, due to the fact that as a result of military training, there are particular human rights violations, such as the

excessive use of force in their custody duties, and the application of stricter regulations to control the population deprived of liberty⁶.

29. Thus, in view of the elements of fact and law provided by the parties, and the information available to the IACHR concerning the context in which the facts allegedly occurred, the Commission considers that they are not manifestly unfounded; and that if true, they could constitute violations of the rights set forth in Articles 5 (humane treatment), 8 (fair trial), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in relation to its Article 1(1) (obligation to respect rights), to the detriment of: Alexander Montes Aguilar; Elmer Enoc Nieto Rodriguez; Gelson Yovanny Amador Herrera; Gustavo Antonio Sierra Sanchez; Jafet Ricardo Carbajal Pino; Jesus Alexis Vasquez Perez; Jose Alexander Ramirez Leon; Jose Luis Soto Sierra; Junior Joel Colindres Ramirez; Mario Adalberto Leiva Reyes; and Oscar Armando Murillo Cano; as well as those injured relatives who are individualized in the merits stage of this case. For the Inter-American Commission, these acts are part of the essential object of the petition.

30. Likewise, in the merits stage, and based on the information available in the casefile, the Commission is to assess the possible application of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women -to which Honduras deposited the instrument of ratification on July 12, 1995- to the case of those women relatives of the alleged victims who claim having been subjected to degrading body searches during their visits to the detention centers; and to the murders of two women wives of the alleged victims.

31. Finally, the Commission reiterates that once the American Convention enters into force in relation to a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of rights identical in both instruments and that it does not involve a situation of continuous violation.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 24, and 25 of the American Convention, in relation to Article 1(1);

2. To declare the present petition inadmissible with respect to Walter Alexander Amador Perdomo and Wilmer Champoleon Castro Ávila, for failure to exhaust domestic judicial remedies; and

3. To notify the parties of this decision; to proceed to 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 8th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Roberta Clarke, and Carlos Bernal Pulido, Commissioners.

⁶ IACHR, Preliminary observations of the IACHR visit to Honduras, August 3, 2018. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2018/ObsPrelHnd.pdf>