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**REPORT No. 226/24**  
**PETITION 1624-14**  
REPORT ON ADMISSIBILITY

RIGOBERTO ALDANA CASTRO & FAMILY  
COLOMBIA

Approved electronically by the Commission on December 3, 2024.

**Cite as:** IACHR, Report No. 226/24. Petition 1624-14. Admissibility. Rigoberto Aldana Castro and Family. Colombia. December 3, 2024.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Luis Hector Aldana Castro and Jairo Efrain Rodriguez Bernal
<b>Alleged victims:</b>	Rigoberto Aldana Castro and family members <sup>1</sup>
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Article 4 (life) of the American Convention on Human Rights <sup>3</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	October 19, 2014
<b>Additional information received during the review stage:</b>	November 24, 2014; April 1 and 7, 2016; and July 2, 2018
<b>Notification of the petition to the State:</b>	May 29, 2019
<b>State's first response:</b>	December 18, 2020
<b>Additional observations from the petitioner:</b>	June 21, 2019; May 7, September 8, and December 28, 2020; February 2 and 25, and July 9, 2021
<b>Additional observations from the State:</b>	September 15, 2021

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, the American Convention (instrument of ratification deposited on July 31, 1973)

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

<b>Duplication of proceedings and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof
<b>Exhaustion of domestic remedies or applicability of an exception:</b>	Yes, under the terms of Section VI
<b>Timeliness:</b>	Yes, under the terms of Section VI

<sup>1</sup> The petition lists the following individuals as relatives of Mr. Aldana: 1. Luis Héctor Aldana Castro (brother); 2. Astrid Aldana Castro (sister); 3. Rosa Fanoris Aldana Castro (sister); 4. Yury Paola Aldana (no relationship specified); and 5. Filonila Castro (no relationship specified).

<sup>2</sup> Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not take part in the discussion or the decision on this matter.

<sup>3</sup> Hereinafter, "the American Convention" or "the Convention."

<sup>4</sup> Each party's observations were duly transmitted to the other party.

## V. POSITION OF THE PARTIES

### The petitioners

1. The petitioners claim the international responsibility of the Colombian State for the impunity surrounding the murder of Rigoberto Aldana Castro (hereinafter, "Mr. Aldana"). Specifically, they claim that no diligent criminal investigation has been conducted and that Mr. Aldana's relatives have not received reparations for what happened.

2. The petitioners state that Mr. Aldana was murdered by two individuals in front of his home in the village of *El Pajuil*, municipality of *Ataco*, department of Tolima, on June 17, 2010. Based on the little information furnished by the petitioners, it appears the individuals who murdered Mr. Aldana belonged to the FARC and had previously extorted money from him. Because of this, Prosecutor's Office 51 Delegated before the Circuit Criminal Court of the Tolima Sectional Directorate launched an *ex officio* criminal investigation (file no. 7306760000459201080134). On July 29, 2011, the same Prosecutor's Office closed its investigation because it had been impossible to identify the perpetrators.

3. The petitioners essentially allege a failure to prevent, and then subsequently investigate, the homicide of Mr. Aldana, arguing there was no police presence at the scene of the incident that would have made it possible to ascertain the conduct of individuals belonging to illegal groups. The petitioners further assert that Mr. Aldana's family members have not received any financial reparations for what happened. Regarding this latter claim, the IACHR notes that all that was received was a copy of a March 2011 brief submitted to the Administrative Office of the Procurator General 105 Judicial I Ibagué, by means of which Mr. Aldana's relatives requested a conciliatory process of reparation and mediation in order to obtain financial compensation.

### The Colombian State

4. The Colombian State corroborates and adds to the information regarding the criminal investigation into Mr. Aldana's homicide. Specifically, the State indicates that on June 18, 2010, the Judicial Investigation Section (SIJIN) unit learned of the homicide. It notes, however, that Mr. Aldana's relatives had covered the wounds on his body, cleaned him, and changed his clothes, thereby tainting the evidence and hampering the investigation. The State further indicates that the Prosecutor's Office was unable to interview witnesses because they refused out of fear of reprisals from illegal armed groups.

5. Notwithstanding the foregoing, the State indicates that the Prosecutor's Office in charge of the investigation conducted a forensic exam of the body and managed to interview three individuals. On July 20, 2010, Prosecutor's Office 51 Delegated before the Circuit Criminal Court of the Tolima Sectional Directorate instructed the Judicial Police to work to identify the assailants. The State notes, however, that [...] *Unfortunately, they were unable to obtain information on the identity of the assailants and the investigation was closed* [...].

6. The State requests the petition be declared inadmissible based on three considerations: (a) fourth international instance; (b) the facts are manifestly groundless; and (c) failure to exhaust domestic remedies.

7. As to point (a), the State indicates that the Prosecutor's Office in charge of investigating Mr. Aldana's homicide was diligent in its investigation and that should new evidence come to light, the investigation could be reopened, provided the right to bring a criminal action has not been terminated, pursuant to Article 79 of Law 906 of 2004.<sup>5</sup> In this regard, the State argues that the Prosecutor's Office decision to close the case does not characterize human rights violations attributable to the State. It argues that, on the

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<sup>5</sup> ARTICLE 79. CLOSING INVESTIGATIONS. When the Prosecutor's Office has knowledge of a matter with respect to which it finds no reasons or factual circumstances that would allow it to be characterized as a crime, or to indicate its possible existence as such, it shall order the investigation to be closed.

If, however, new evidence comes to light, the investigation shall be reopened, provided the right to bring a criminal action has not been terminated.

contrary, the petitioners are looking to contest decisions that were issued consistent with conventional standards.

8. Regarding point (b), the State notes that the charges made in the petition pertaining to the violation of Mr. Aldana's right to life are manifestly groundless and that his relatives indicated in interviews that they had not been aware of any threats against him. The State therefore requests that the petition be declared inadmissible based on Article 47(c) of the American Convention.

9. Finally, with respect to point (c), the Colombian State maintains that the petitioners did not exhaust the action for direct reparation. In this regard, it argues that: (i) that mechanism is suitable and effective for declaring the State's responsibility for the violations alleged in the petition and proceeding to full reparations; (ii) in the instant case, the alleged victims were not prevented from pursuing it; (iii) there is no evidence of obstacles preventing them from availing themselves thereof; and (iv) there can be no claim of unwarranted delays in the decision on the remedy in question since it was not even pursued with the competent judicial bodies. In this connection, the State underscores the fact that all the petitioners provided was a copy of a supposed mediation proceeding with the Administrative Office of the 105<sup>th</sup> Judicial Inspector General I Ibagué. It further contends that none of the exceptions provided for under Article 46(2) of the Convention apply in the instant case.

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

10. As to the analysis of exhaustion of domestic remedies, the IACHR recalls that, per its longstanding practice, when it comes to determining the remedies that should have been exhausted by petitioners before turning to the inter-American system, first a distinction must be drawn among the different claims being made in order to then examine them individually.<sup>6</sup> In the instant case, the petitioners have presented two claims before the Commission: (i) lack of a diligent investigation into the murder of Rigoberto Aldana Castro; and (ii) lack of reparations for Mr. Aldana's family members.

11. Regarding point (i), the Commission notes that the information on the criminal proceedings pursued domestically has come primarily from the State: Prosecutor's Office 51 Delegated before the Circuit Criminal Court of the Tolima Sectional Directorate launched an *ex officio* investigation into the murder of Mr. Aldana (file no. 7306760000459201080134); the corresponding forensic analyses were conducted; and a few individuals were interviewed. On July 29, 2011, the Prosecutor's Office closed the investigation because it had not been able to identify the perpetrators.

12. The State maintains that the Prosecutor's Office in charge of the investigation pursued all possible avenues to solve Mr. Aldana's murder but was unable to identify the perpetrators or determine the circumstances surrounding the crime with any certainty. The State notes that various investigative avenues were pursued, e.g., autopsy protocols, but the forensic analyses could not be completed because the body had been handled by family members before the authorities could examine it properly. In view thereof, the Colombian State contends that the authorities fulfilled their duty to investigate and that the petitioners are using the IACHR to challenge domestic decisions they dispute. It further argues that the petition lacks merit because there is no evidence to suggest that State agents were involved in, tolerated, or allowed the crime to happen, or that they failed to protect Mr. Aldana since no threats against his life or safety had been reported prior to the incident.

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<sup>6</sup> By way of illustration, the following IACHR admissibility reports may be consulted: Report No. 117/19. Petition 833-11. Admissibility. Workers released from the Boa-Fé Caru Farm. Brazil. June 7, 2019, paras. 11 and 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 et seq; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26-27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15 and 16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 et seq; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 et seq; or Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and family. Colombia. June 7, 2019, paras. 20 et seq.

13. The Inter-American Commission has consistently held that in cases involving allegations of violations of the right to life, and ensuing impunity, the appropriate domestic remedy to be exhausted is criminal justice, through *ex officio* and diligent investigations aimed at identifying the perpetrators of the violation and prosecuting and punishing them pursuant to the American Convention.<sup>7</sup> This burden must be assumed by the State as its own legal duty, and not as a management of private interests or reliant on the initiative of the latter or on the provision of evidence by them.<sup>8</sup> Thus, when faced with an alleged crime that is prosecutable *ex officio*, the State has the obligation to pursue the respective criminal process—which is the best way to solve the case—prosecute the perpetrators, and determine the corresponding punishment.<sup>9</sup>

14. In this connection, it is important to bear in mind that the incident occurred on June 17, 2010 and the investigation was closed on July 29, 2011, without any further investigation having been diligently pursued by the competent authorities. The IACHR notes that more than a decade has passed without the case having been solved or the perpetrators of Mr. Aldana's murder having been identified, prosecuted, and punished. The Commission has previously concluded that when there is specific evidence of impunity in cases of serious human rights violations, as in the instant case, the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention<sup>10</sup> and 31(2)(c) of the IACHR Rules of Procedure applies.

15. With respect to the timeliness of the petition, the IACHR notes that the incident in question occurred in 2010 and to date no investigation has yielded clear results, nor have the perpetrators been identified. Considering that the petition was lodged on October 19, 2014, and that the impact of what's being alleged continues, the Commission considers that it was filed within a reasonable time under the terms of Article 32(2) of its Rules of Procedure.

16. In close relation to the foregoing, the Commission reiterates first, as it has consistently done, that Article 46(2) of the Convention, by its nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to a case must be made prior to and separately from the analysis of the merits of that case since it depends on a different standard of consideration from that used to determine possible violations of Articles 8 and 25 of the Convention. The IACHR has also emphasized that there are no conventional or regulatory provisions that specifically stipulate the amount of time that constitutes unwarranted delay, for which reason it conducts case-by-case analyses to determine whether any delay has occurred.<sup>11</sup> In its assessment, the Commission considers a series of factors, such as the amount of time elapsed since the crime was committed.<sup>12</sup> Similarly, 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 "[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective."<sup>13</sup> In other words, in the Court's opinion, the complementary nature of the international protection provided for under the American Convention also requires that the intervention of the organs of the inter-American system be timely so that it may have some kind of useful impact on the protection of the rights of the alleged victims.

<sup>7</sup> IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10. IACHR, Report No. 70/14. Petition 1453-06. Admissibility. Maicon de Souza Silva. Renato da Silva Paixão et al. July 25, 2014, para. 18; Report No. 3/12, Petition 12.224, Admissibility, Santiago Antezana Cueto et al, Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al, Peru, September 7, 2017, paras. 3, 9-11.

<sup>8</sup> IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

<sup>9</sup> IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo et al. Chile. September 7, 2017; IACHR, Report No. 129/21. Petition 894-09. Admissibility. Alcira Pérez Melgar et al. Peru. June 14, 2021, para. 9.

<sup>10</sup> IACHR, Report No. 129/21. Petition 894-09. Admissibility. Alcira Pérez Melgar et al. Peru. June 14, 2021, para. 9; IACHR, Report No. 240/20. Petition 399-11. Admissibility. Over José Quila et al. (Rejoya Massacre). Colombia. September 6, 2020, para. 12; Report No. 129/18, Petition 1256/07, Admissibility. Cornelio Antonio Isaza Arango et al. (El Retiro Sawmills Massacre), Colombia, November 20, 2018; and Report No. 104/18, Petition 221/08, Admissibility. Delis Palacio Herrón et al. (Bojayá Massacre), Colombia, September 20, 2018.

<sup>11</sup> IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

<sup>12</sup> IACHR, Report No. 50/08, Petition 298-07. Admissibility. Néstor José Uzcátegui et al. Venezuela. July 24, 2008, para. 42.

<sup>13</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, para. 93.

17. Regarding point (ii), the Commission has repeatedly held that direct reparation is not a suitable remedy for purposes of analyzing the admissibility of a claim like the one in the case at hand. However, for purposes of transparency, in the instant case, as the State has argued, the IACHR finds there is insufficient information in the case file to establish that the petitioners have exhausted the administrative remedy. In view thereof, the Inter-American Commission considers that it does not have sufficient information to conclude that the instant petition meets the requirements set forth in Articles 46(1)(a) and (b) of the American Convention.<sup>14</sup>

## VII. ANALYSIS OF THE CHARACTERIZATION OF THE ALLEGED FACTS

18. Based on the information laid out in the preceding section, the IACHR notes that, at its core, the petition pertains to the lack of a diligent investigation into the murder of Mr. Aldana. The State has put forward two main arguments: first, it contends that the petitioners are appealing to the Commission as a fourth international instance merely because they disagree with the actions carried out by the Prosecutor's Office in charge of the investigation; and the second, that the petition is manifestly groundless since there is no evidence that the incident was perpetrated by State agents, in collusion with them, or that the State had any knowledge of threats against the life or safety of Mr. Aldana.

19. With respect to the State's assertion that there is no evidence to indicate that Mr. Aldana's murder was committed by State agents or that it was carried out with the consent and tolerance of the authorities, the IACHR notes that the petitioners have not made any arguments in this regard and have simply denounced an alleged lack of protection by the security forces on their behalf. The Commission will examine these claims in greater depth during the merits stage of this case based on the information provided by the parties.

20. As to the State's allegations regarding the fourth instance appeal, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts can be characterized as a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47(c) thereof. The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, the Commission may declare a petition admissible when it refers to domestic processes that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned conventional norms, and in keeping with Article 34 of the Commission's Rules of Procedure, the analysis of admissibility centers on substantiating these requirements, which have to do with the existence of elements of fact. Therefore, for purposes of clarification, the criterion for assessing the above is different from the one required to rule on the merits of a petition.

21. In view of these considerations, the Commission finds that the petitioners' allegations are not manifestly groundless and require a study of the merits wherein the investigation carried out by the State can be evaluated in light of the standards of the inter-American system. Accordingly, should the facts alleged be found to be true, they could characterize, *prima facie*, violations of Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) (obligation to respect rights) thereof, to the detriment of Rigoberto Aldana Castro and members of his family, duly specified in this process, in the terms of this report.

## VIII. DECISION

1. To declare the instant petition admissible with respect to Articles 4, 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof.

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<sup>14</sup> Similarly: IACHR, Report No. 153/22. Petition 1466-08. Inadmissibility. Ana Delia Campo Peláez and Family. Colombia. June 30, 2022, paragraph 11.

2. To notify the parties of this decision; to continue with to the analysis of the merits of the case; 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 3<sup>rd</sup> day of the month of December, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.