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**REPORT No. 7/23**  
**PETITION 1032-14**  
REPORT ON ADMISSIBILITY

JOSÉ MARTÍN SUAZO SANDOVAL AND OTHERS  
HONDURAS

Approved electronically by the Commission on February 15, 2023.

**Cite as:** IACHR, Report No. 7/23. Petition 1032-14. Admissibility. José Martín Suazo Sandoval et al. Honduras. February 15, 2023.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner party:</b>	Alfonso Ocampo Orozco, Gustavo Adolfo Maldonado Gálvez Canales and José Luis Guerra Gómez (Bufete Ocampo Orozco)
<b>Alleged victims:</b>	José Martín Suazo Sandoval et al. <sup>1</sup>
<b>Respondent State:</b>	Honduras
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association), 24 (equality before the law) and 25 (judicial protection), in relation to its Article 1.1 (obligation to respect rights) of the American Convention on Human Rights <sup>2</sup> ; articles I (life, liberty and personal security), II (equality before the law); XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man <sup>3</sup>

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

<b>Filing of the petition:</b>	July 21, 2014
<b>Additional information received at the stage of initial review:</b>	July 23, December 1, 2014, August 14, 2018 and August 17, 2020
<b>Notification of the petition to the State:</b>	October 29, 2021
<b>State's first response:</b>	January 28, 2022
<b>Additional observations by the State:</b>	February 2 and 4, March 10 and 14, 2022
<b>Notification of the possible archiving of the petition:</b>	July 9, 2020
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	July 21, 2020

**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, 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**

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 7 (personal liberty), 8 (fair trial), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association), 24 (equality before the law) and 25 (judicial protection) of the Convention, in connection to its article 1.1 (obligation to respect rights)

<sup>1</sup> The petition refers to eighteen alleged victims, who are identified in the attached document.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

<sup>3</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>4</sup> The observations of each party were duly forwarded to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 21, 2014
Timeliness of the petition:	Yes

## V. POSITION OF THE PARTIES

### *Allegations of the petitioner*

1. The petitioner claims that Honduras violated the human rights of Mr. José Martín Suazo Sandoval and seventeen teachers, who were detained when they participated in a protest in defense of the Honduran Teachers' Statute and prosecuted criminally for the mere fact of having participated in a social claim.

### *The participation of the alleged victims in a protest and their subsequent arrest*

2. The petitioner reports that on March 23, 2011, the Federation of Teachers' Organizations of Honduras (hereinafter, FOMH) called for a civic activity whose purpose was to file a writ of amparo before the Supreme Court of Justice in order to defend the Honduran Teachers' Statute, which is the law that regulates the personnel administration system which protects the teaching career, since the President of the Republic issued Executive Decree No. PCM-016-2001, which abolished provisions of the aforementioned law.

3. Thus, the petitioner holds that on March 24, 2011, the group of teachers began an orderly march, but platoons of police and the National Army dispersed them by means of tear gas bombs. Therefore, only a part of the group was able to file the aforementioned amparo.

4. With regard to the detention of the alleged victims, petitioner holds that it was carried out on March 24 at two times: at 11:50 a.m. and at 12:50 p.m., during the march. However, the petitioner asserts that the police made changes to the time of the arrest in order to cover up the illegal detention, since the time of 12:55 p.m. appeared twice in the news book of the Barrio Manchen Police Station, one of which was written over.

### *Judicial remedies filed*

5. The petitioners indicate that on that same day the defense of the alleged victims filed a motion for habeas corpus, which was admitted by the Constitutional Chamber of the Supreme Court of Justice, which appointed an executing judge. On April 27, 2011, the executing judge submitted a report to the Supreme Court of Justice in which she stated that the alleged victims were not detained or held incommunicado for more than twenty-four hours and, consequently, the detention was conducted in accordance with the legal framework.

6. On this point, the petitioner argues that, pursuant to Article 26 of the Constitutional Justice Law, the judge is obliged to request the competent authority to immediately present the detainees, as well as a detailed report of the facts that led to the detention within twenty-four hours. Based on this, petitioner claims that the executing judge lied in her report, since she did not conduct the inquiries within twenty-four hours and did not verify that the alleged victims were illegally detained for six days. Consequently, in the petitioner's opinion, the judge is a co-perpetrator of the crime of illegal detention, since the *habeas corpus* action should have been initiated *ex officio*. The petitioner argues that due to these irregularities, on August 16, 2011, the Supreme Court of Justice declared the *habeas corpus* remedy inadmissible.

### *Criminal proceeding against the alleged victims*

7. The petitioner holds that on March 25, 2011, at 1:58 p.m., the Public Ministry filed an indictment for the crimes of unlawful protests and sedition before the Criminal Court of the Department of Francisco de Morazán, for which reason the hearing for the declaration of the accused was initiated. The petitioner argues that there was a contradiction between the seals on the presentation of the prosecutor's

request, since the front of the document states that it was presented at 1:58 p.m., while the back indicates that this occurred at 12:58 p.m. In this order of ideas, the petitioner stresses that the time that should be taken into account should be 1:58 p.m., and, based on this premise, the authorities should have found that the alleged victims had been detained for more than twenty-four hours, and, therefore, declared the illegality of the process and the extinction of the criminal action, causing the absolute nullity of the actions carried out as of the filing of the complaint.

8. However, the petitioner argues that on March 30, 2011, the Criminal Court of the Tegucigalpa Section resolved: (i) the definitive dismissal in favor of the eighteen alleged victims for the crime of sedition to the detriment of the internal security of the State of Honduras; (ii) to issue an order of imprisonment against the alleged victims for the crime of unlawful protest to the detriment of the internal security of the State of Honduras; (iii) to revoke the precautionary measure of judicial detention pending against the defendants and to impose on them the precautionary measures contained in article 173 paragraphs 6, 7 and 8 of the Criminal Procedural Code; (iv) to order the Public Ministry to initiate investigations against the officials responsible for the lack of presentation of the alleged victims before the court within the term of twenty-four hours; and (v) to extend the letters of release for the crime of sedition to the defendants.

9. Against this decision, the Public Ministry and the petitioner filed an appeal before the Francisco Morazán Criminal Court of Appeals. In their brief, the petitioners argued that: i) the prosecutor's request was filed beyond the legal deadline and therefore there was an illegal detention; ii) the nullity of the proceeding was established from the beginning of the proceedings and therefore the judge should have declared it *ex officio*; iii) the accused were not identified in relation to the crimes committed; and iv) the alleged victims, as teachers, attended a call made by the FOMH, which was peaceful and it was not proven that they were armed.

10. Nonetheless, on March 8, 2012, the Francisco Morazán Criminal Court of Appeals denied the appeal filed by the petitioner, arguing that although the prosecutor's request was filed out of time, the subsequent proceeding had the consent of the alleged victims' defense attorneys, since they did not file the respective motions for *habeas corpus*, which would surely have been declared admissible. In addition, this instance declared the appeal filed by the Public Ministry admissible and, consequently, issued an arrest warrant against the alleged victims for the crime of sedition to the detriment of the internal security of the State.

#### *Remedies filed upon the criminal proceeding*

11. In view of this scenario, the petitioners argue that on August 26, 2013, the alleged victims filed remedies before the Tegucigalpa Sentencing Court claiming lack of action to bring a criminal suit and extinction of the criminal action; and requested the absolute nullity of the proceedings, arguing that the right of the Public Prosecution Service to bring a criminal action had been extinguished after twenty-four hours of detention. However, the petitioner refers that on September 9, 2013, the Fourth Chamber of the Sentencing Court of Tegucigalpa issued an interlocutory judgment and held that it is not competent to rule on allegations that had already been resolved. In addition, it stressed that the alleged victims are at liberty thanks to the alternative measures to pretrial detention imposed on them. Therefore, it dismissed the pleas of lack of action to bring the criminal suit and the plea of extinction of the criminal action. The petitioners filed an appeal against this judgment, which was declared inadmissible by the Court of Criminal Appeals of the Department of Francisco Morazán on October 18, 2013.

12. Finally, the petitioner reports that on November 29, 2013, the alleged victims filed an amparo remedy with suspension of the challenged act against the aforementioned resolution of October 18, 2013, on the grounds that it violated their right to free association, due process, and the alleged victims' right to defense. However, on May 29, 2014, the Supreme Court of Justice declared the suspension of the challenged act without grounds and granted 48 hours for the formalization of the appeal. In view of this, on June 17, 2014, the alleged victims formalized and ratified the amparo. However, the final response issued on this action is not specified.

*Allegations by the Honduran state*

13. The State, for its part, alleges that the members of the armed forces were in the area to guard the facilities of the Military Social Security Institute and that several of them were injured by the protesters. It adds that the arrests of March 24, 2011 were not performed by members of the armed forces because the National Police has the obligation to carry out the arrests.

14. In addition, the State holds that the persons were detained for the alleged responsibility of the crime of illegal protest and damage to different private businesses, and that the criminal proceeding was conducted in accordance with article 175 of the Criminal Procedural Code. It also stresses that the authorities respected the right to judicial guarantees of the alleged victims, because at the time of their arrest they were read their rights and informed of the reason for the arrest, but in spite of them they refused to sign the arrest records. It adds that the alleged victims were not detained or held incommunicado for more than twenty-four hours; and that there was no torture, harassment, coercion, restrictions or unnecessary discomfort in the detention centers. Although the alleged victims filed a writ of *habeas corpus* due to their detention, on August 16, 2011, the Supreme Court of Justice dismissed this action.

15. In addition, the State holds that on March 25, 2011, the Public Ministry filed the charges against the alleged victims for the crimes of unlawful protests and sedition to the detriment of the internal security of the State. It argues that the allegations of the petitioner concerning the untimely presentation of the alleged victims before the Criminal Court are unsubstantiated and unreasonable, because the proceedings were conducted in compliance with domestic laws.

16. Finally, in relation to the amparo action filed by the alleged victims, it reports that on July 27, 2016, the Constitutional Chamber of the Supreme Court declared it inadmissible, finding that no judicial guarantees had been breached in the conduction of the criminal proceedings, which proves that the right to judicial protection was protected. Finally, it holds that the fact that the actions brought before the domestic courts were dismissed does not mean that the alleged victims have been denied access to justice. Therefore, it requests that the petition be declared inadmissible under Article 47.c) of the Convention because it does not comply with the subsidiary nature of the Inter-American Human Rights System.

**VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE FILING**

17. Based on the arguments raised by the petitioner, the Commission considers that the main purpose of the present petition is to question the detention and prosecution of the alleged victims, since these measures did not comply with due judicial guarantees and were initiated in response to the participation of the aforementioned persons in an apparently peaceful protest.

18. In this regard, the Commission notes that on March 25, 2011, the Public Prosecutor's Office filed an indictment against the alleged victims for the crimes of unlawful demonstrations and sedition. According to the information present in the file, said criminal proceeding is still pending a decision, without a first instance decision having been made, more than eleven years after it began.

19. Due to this, it is up to the Commission to examine whether there is an unjustified delay in the proceedings, in order to apply the exception provided for in Article 46.2.c) of the Convention. 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 with autonomous content compared to 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 the case in question must be carried out previously and separately from the analysis of the merits of the matter since it depends on a different standard of appreciation. that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also stressed that there are no conventional or regulatory provisions that specifically regulate the period of time that constitutes unjustified delay, for which reason the Commission evaluates case by case to determine if said delay is configured<sup>5</sup>. In this

<sup>5</sup> IACHR, Report N° 14/08, Petition 652-04. Admissibility, Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

line, the Inter-American Court has established as a guiding principle for the analysis of eventual unjustified delay as an exception to the rule of exhaustion of domestic remedies, that "in no way should the rule of prior exhaustion lead to stopping or delaying until the futility of international action in aid of the helpless victim"<sup>6</sup>. In other words, in the opinion of the Commission, 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 is opportune so that it can have useful effect in the protection of the rights of the alleged victims.

20. In this matter, the Commission notes that the State has not provided information to justify why the criminal proceeding continues without a final decision, despite the fact that more than eleven years have passed since the first procedural act. Given this lack of information, the Commission deems it pertinent to apply the exception provided for in Article 46.2.c) of the American Convention.

21. Notwithstanding the foregoing, the Commission emphasizes that the alleged victims have not failed in their duty to use domestic remedies, since they filed, as a last resort, an amparo petition, in which they claimed the violation of their rights to free association, due process and the right to defense, considering that the criminal proceedings against them contained irregularities. In view of this, the State does not present any exception aimed at questioning the lack of exhaustion of any remedy or the deadline for filing the petition, limiting itself to informing that on July 27, 2016, the Constitutional Chamber of the Supreme Court declared the amparo proceeding inadmissible.

22. Consequently, the Commission considers that, based on the information presented, it is reasonable to understand that the alleged victims used an appropriate channel to seek protection of the rights allegedly violated by their detention and in the context of the criminal proceedings against them. For these reasons and considering that there are allegations referring to alleged irregularities in the processing of said constitutional action, the Commission considers that the instant case formally complies with the requirement set forth in Article 46.1.a) of the American Convention. Likewise, since the decision on the amparo appeal was issued while the present case was under admissibility review, it concludes that the time limit requirement set forth in Article 46.1.b) of the Convention is also met.

## VII. ANALYSIS OF COLORABLE CLAIM

23. The Commission observes that the present petition includes allegations concerning the violation of the human rights of eighteen teachers who were allegedly detained during a peaceful march, without having committed any violent act (a fact not contended by the State) and who were not brought before a judge within the constitutional twenty-four-hour period. In addition, it notes that there are also questions regarding the way the appeals to challenge their detention and prosecution were handled, as well as the consequences that the weight of the criminal litigation would be having, due to its persistence, to the detriment of the alleged victims.

24. In this sense, the Commission recalls that the application of criminal offenses that convert into criminal acts behaviors commonly observed in protests that, in themselves, do not affect assets such as life, security or liberty of persons, may be contrary to the Convention, since in the context of protests they constitute forms of the exercise of the rights of freedom of expression, assembly and free association.

25. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the allegations of the petitioner are not manifestly unfounded and require a study of the merits, since, without prejudging on the merits, the facts alleged, if corroborated as true, could characterize violations of Articles 7 (personal liberty), 8 (fair trial), 13 (freedom of expression), 15 (freedom of assembly), 16 (freedom of association), 24 (equality before the law) and 25 (judicial protection) of the Convention, in relation to its Article 1. 1 (obligation to respect rights), to the detriment of the alleged victims.

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<sup>6</sup> Inter-American Court of Human Rights, Velásquez Rodríguez vs Honduras, Preliminary objections, judgement del 26 de junio de 1987, párr. 93

26. Finally, in relation to alleged non-compliance with obligations under the American Declaration, the Inter-American Commission has previously established that, once the American Convention enters into force in relation to a State, it is it and not the Declaration which becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and does not involve a situation of continuous violation. Consequently, the Commission shall analyze, within the scope of the Convention, the allegations referring to alleged violations committed to the detriment of rights enshrined in the American Declaration.

#### **VIII. DECISION**

1. To declare the present petition admissible in relation to Articles 7, 8, 13, 15, 16, 24 and 25 of the Convention in relation to Articles 1.1 of the Convention; and

2. To notify the parties of this decision; to continue with the analysis of the merits of the matter; 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 15<sup>th</sup> day of the month of February, 2023. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Roberta Clarke and Carlos Bernal, Commissioners.

**Annex**

**List of alleged victims**

1. José Martín Suazo Sandoval
2. José Francisco Zeleya Ramos
3. Donaldo Molina
4. Marco Antonio Melgar Chacón
5. Leavin Amaya
6. Elvis Rolando Guillén Zelaya
7. Linda Melina Guillén Fonseca
8. Ingrid Lizeth Sierra Méndez
9. Nuria Evelin Verduzco Avendaño
10. José Alex Martínez Ponce
11. Wendy Jamileth Méndez Ocampos
12. María Auxiliadora Espinoza Chavarría
13. Dennis Alexander Núñez Bojórquez
14. Walter Urbina Mencía
15. José Erasmo Chinchilla Melgar
16. Edgar Mahaliel Cobos Gutiérrez
17. José Rolando Servellón Bonilla
18. Andrés Adalid Romero Padilla