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**REPORT No. 46/17**  
**PETITION 69-08**  
REPORT ON ADMISSIBILITY

JAVIER CHARQUE CHOQUE AND FAMILY  
BOLIVIA

Approved by the Commission at its session No. 2085 held on May 25, 2017  
162<sup>nd</sup> Extraordinary Period of Sessions

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**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Martín Charque Choque
<b>Alleged victim:</b>	Javier Charque Choque and family
<b>State denounced:</b>	Bolivia
<b>Rights invoked:</b>	Articles 4 (right to life) and 5 (right to humane treatment) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>2</sup>**

<b>Date on which the petition was received:</b>	January 18, 2008
<b>Date on which the petition was transmitted to the State:</b>	April 16, 2008
<b>Date of the State's first response:</b>	February 1, 2011
<b>Additional observations from the petitioning party:</b>	April 18, 2011; October 14, 2012; July 14, 2013; and November 3, 2016
<b>Additional observations from the State:</b>	June 18, 2012; January 10, 2013; and January 24, 2013

**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>	American Convention (instrument of ratification deposited on July 19, 1979)

**IV. ANALYSIS OF 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 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the Convention, in accordance with Article 1.1 of said Convention
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, the exception provided for under Article 46(2)(c) of the American Convention applies
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> Hereinafter "the Convention" or "the American Convention".

<sup>2</sup> The observations presented by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. The petitioner alleges that Javier Charque Choque (hereinafter also “the alleged victim”) was studying towards a degree in Tourism. On December 29, 2006, while he was working on a research project on indigenous communities in the north of the Potosi Department, the alleged victim attended a marriage ceremony in one of the communities in Llallagua. The petitioner notes that, during the ceremony, there was a misunderstanding that led to an argument with approximately six members of the Villa Arbolitos community, who started to physically attack the alleged victim. Javier Charque Choque tried to escape, but he was caught and taken, seriously injured, before the “Jilanko” (or “Jilanqu”), the community’s indigenous authority figure. The petitioner alleges that the Jilanko allowed further torture of the alleged victim in an act of “community justice.” After several hours of agony, the alleged victim died in the early hours of December 30, 2006. The petitioner notes that, on January 11, 2007, given that he had not been in touch, the alleged victim’s mother went out to the community to look for him, and a *comunaria* (communal peasant) told her that her son had been murdered. Finally, on January 13, 2007, the authorities found the body buried in a small grave. The alleged victim was face down, his hands and feet had been tied and he had a piece of string around his neck.

2. The petitioner notes that he filed a complaint for homicide before the Public Prosecutor’s Office and the Police in Llallagua on January 13, 2007, and that on January 16, 2007, he filed a criminal complaint against the Jilanko and four other people, as joint perpetrators and accessories in the murder. On February 28, 2007, a hearing was held to establish precautionary measures before the First Mixed and Precautionary Magistrate Court in Llallagua, which ruled that the Jilanko be remanded in custody. However, the petitioner notes that, following the hearing, a group of *comunarios* (communal peasants) and armed peasant leaders occupied the court building and allowed the Jilanko to escape. The Jilanko allegedly found refuge at the office of the FAOI-NP (Federation of Native and Indigenous Ayllus of Northern Potosi). Further, another group of *comunarios* from Villa Arbolitos held the prosecutor hostage for two hours, during which they hit him and demanded that he resign and close the case. The petitioner further notes that the investigation has made no progress since then. He notes, however, that the Jilanko’s whereabouts are publicly known, that he continues to live in the Llallagua community and has been seen walking freely on the street and that he even went to cast his ballot at the relevant voting center.

3. The petitioner notes that crimes are committed in Bolivia under the pretense of the so-called “community justice,” and that the Villa Arbolitos community itself alleged that the events that took place are to be taken in the context of community justice. In this sense, the petitioner notes that the Council of Indigenous Authorities of the Ayllus in the Rafael Bustillo Province of the Potosi Department passed a resolution on March 2, 2007 (signed among others by the Jilanko that was allegedly on the run), which states that the *comunarios*, “based on the event that happened in accordance with the custom and usage of the Villa Arbolito community, [...] set a final 30-day deadline for Prosecutor Vladimir Lazcano to file his resignation, for discriminating against us for belonging to Indigenous Peoples.” According to the *comunarios*, the prosecutor allegedly abused his authority by ordering the arrest of their Indigenous Authority. The petitioner further alleges that there are many cases around the country where, on the pretense of applying “community justice,” the *comunarios* have lynched and tortured alleged attackers or thieves. The petitioner attaches a list of 44 alleged lynchings that happened in various indigenous and peasant communities between 2004 and 2009, noting that the authorities fail to adequately respond to such events.

4. The petitioner notes that the investigation is unjustifiably delayed and has been at a standstill for 10 years. He notes that the Public Prosecutor’s Office has been negligent in processing the case, and that no proceedings have been carried out because police officers in charge of the investigation have received threats and are afraid. In this respect, the petitioner notes that police officers did not request statements from the alleged victim’s family because they deemed them unnecessary, and that, after receiving threats from the *comunarios* in Villa Arbolitos, they did not carry out a reconstruction of events, although they went as far as Llallagua. Further, the petitioner notes that, on the date when the petition was submitted, a request filed by the petitioner before the First Mixed and Precautionary Magistrate Court in Llallagua on March 2, 2007, remained pending. The request asked the Court to formally charge the four additional people, alleged joint perpetrators of the murder. The petitioner notes that, although on May 8, 2007, the Court ordered the publication of edicts that expanded formal charges to those four people, they have not yet been

declared in default, so the petitioner alleges that the proceedings have exceeded the statute of limitations for them.

5. The petitioner ends by noting that he and his family live in Sucre, a city in the Chuquisaca Department that is a 12-hour trip away from the court where proceedings are taking place, so it is difficult to permanently pursue the case.

6. The State notes that domestic remedies have not been exhausted, since the investigation on the events mentioned in this petition remains open and is awaiting the arrest of the only person who has so far been charged in this case. The State notes that the man is in default and on the run, with a pending arrest warrant dated November 8, 2008, but that his whereabouts are not yet known. The State further notes that this is not a case of community justice, but rather an event that constitutes a crime, murder, and the Bolivian justice system, based on its Constitutional mandate, must prosecute it. The State says that the Public Prosecutor's Office is adequately fulfilling this obligation, and that alleged delays in proceedings cannot be attributed to the State but to the Jilanko's own malicious conduct.

7. The State alleges that the fact that the petitioner lacks the necessary financial resources is no obstacle for him to pursue his personal complaint, since it is free. In this respect, according to the State, the petitioner must activate the control mechanisms in place within Bolivian legislation, with a view to preventing delays and denouncing alleged misconduct by the authorities involved.

8. Regarding community justice, the State notes that the regulations in place in the Bolivian legal system stipulate that the natural authorities of native indigenous and peasant communities can enforce their rules as an alternative solution to conflicts, in accordance with their customs and procedures, but that such actions must always be circumscribed to Bolivia's Constitution and laws. The State thus notes that the events that took place on December 29, 2006, constitute the crime of murder and do not correspond to community justice. Regarding the resolution that was passed on March 2, 2007, the State says that "it does not prove that community jurisdiction dominates ordinary justice and stops criminal proceedings."

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

9. The parties note that a criminal investigation was launched on the events that allegedly took place on January 13, 2007, and that the only man charged has not been arrested since February 28, 2007. The petitioner alleges that the suspect's whereabouts are publicly known and that proceedings have exceeded the statute of limitations for four additional suspects due to the authorities' delay in declaring them in default. The petitioner notes, in that regard, that an exception applies with respect to the exhaustion of domestic remedies, due to the unjustified delay, since the investigation has been pending for more than 10 years. The State notes that domestic remedies have not been exhausted, since the investigation is pending and awaits the arrest of the only man who has been charged in this case, who is on the run and whose whereabouts are not known. The State further notes that the petitioner has a duty to pursue his personal complaint in order to prevent delays.

10. The Commission notes that all the events that the petitioner has detailed in relation to the alleged murder of his brother constitute, within national legislation, crimes that can be prosecuted *ex officio* and whose investigation and trial must be pursued by the State itself. The IACHR further notes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve evidence, and even to safeguard the rights of all persons deemed suspects in the context of the investigation.<sup>3</sup> In this petition, more than 10 years have passed since the alleged events that are the subject of the claim. To date, those events have not been established and the people responsible for them have not been either tried or convicted. In this respect, the Commission considers that the exception that is provided for in Article 46(2)(c) of the Convention is applicable, so the requirement that domestic remedies be exhausted

<sup>3</sup> IACHR, Report No. 87/06, *Carlos Alberto Valbuena and Luis Alfonso Hamburger Diazgranados*, October 21, 2006, para. 25; Report No. 70/09, *José Rusbell Lara*, August 5, 2009, para. 31; and Report No. 15/09.

cannot be enforced. Regarding the State's allegations about the petitioner's lack of insistence, the IACHR stresses that, in legal systems where the victims or their families might intervene as parties in criminal proceedings, it is optional rather than mandatory for them to do so, and it in no way replaces State activity in criminal proceedings that must be pursued by the State<sup>4</sup>.

11. The IACHR received the petition on January 18, 2008, while the alleged facts on the petition began to occur on December 29, 2006, and the criminal investigation on those events should be ongoing to this date. Therefore, in light of the context and characteristics of this case, the Commission considers that the petition was lodged within a reasonable time frame for the purposes of determining compliance with Article 46(1)(c) of the Convention.

## **VII. COLORABLE CLAIM**

12. In light of the factual and legal arguments provided by the parties and the nature of the matter being heard, the Commission considers that, were proof to be established of the lack of due diligence by police officers and legal officials in this criminal investigation, of the excessive delay in criminal proceedings without events having been established and without those responsible for them having been tried to date, of the alleged pattern of lynching that have prompted no effective legal response, and also bearing in mind public recognition of the Jilanko as a natural authority that can fulfil administrative tasks and also enforce rules that are circumscribed to indigenous and peasant communities, these acts would tend to establish possible violations of the rights recognized in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in accordance with Article 1.1 of said Convention. There might further be violations of the rights enshrined in Articles 5, 8, and 25 of the Convention to the detriment of the alleged victim's family.

## **VIII. DECISION**

1. To declare this petition admissible with regard to Articles 4, 5, 8 and 25 of the American Convention on Human Rights, in accordance with Article 1.1 of said Convention;
2. to notify the parties of the present decision;
3. to continue examining the merits of the case; and
4. 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 in the city of Buenos Aires, Argentina, on the 25<sup>th</sup> day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.

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<sup>4</sup> IACHR, Report No. 31/15, Case 10,522. Admissibility. Juan Fernando Porras Martínez. Colombia. July 22, 2015, para. 36