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REPORT No. 166/18
PETITION 1315-12
REPORT ON ADMISSIBILITY

EFRÉN CORTES CHÁVEZ *ET AL.*
EL CHARCO MASSACRE
MEXICO

Approved electronically by the Commission on December 14, 2018.

Cite as: IACHR, Report No. 166/18, Petition 1315-12. Admissibility. Efrén Cortés Chávez et al. El Charco Massacre. Mexico. December 14, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	<i>Red Solidaria Década Contra la Impunidad A.C.; Comité de Sobrevivientes de la Masacre de El Charco; and Comité de Viudas de la Masacre de El Charco</i>
Alleged victims:	Efrén Cortes Chávez <i>et al.</i> ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention on Human Rights, ³ in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; articles 2, 3 and 4 of the Inter-American Convention on the Prevention, Punishment and Eradication of All Forms of Violence against Women, ⁴ and other international treaties ⁵

II. PROCEDURE BEFORE THE IACHR⁶

Filing of the petition:	July 16, 2012
Additional information received at the stage of initial review:	January 16, 2013 and May 15, 2014
Notification of the petition to the State:	May 22, 2015
State's first response:	July 13, 2016
Additional observations from the petitioner:	October 20, 2016
Additional observations from the State:	December 8, 2017

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 on March 24, 1981); Inter-American Convention to Prevent and Punish Torture (deposit of ratification instrument on June 22, 1987); Convention of Belém do Pará (deposit of ratification instrument on November 12, 1998); Inter-American Convention on Forced Disappearance of Persons (deposit of instrument on September 9, 2002)

¹ The petition was filed on behalf of 38 alleged victims and five of their family members, all identified in the document attached hereto.

² Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not partake in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ Hereinafter "Convention of Belém do Pará."

⁵ Articles 1 and 37 of the Convention on the Rights of the Child.

⁶ The observations submitted by each party were duly transmitted to the opposing party.

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof; articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; article I of the Inter-American Convention on Forced Disappearance of Persons; article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The instant petition concerns the massacre occurred on June 7, 1998 at the Primary School “Caritino Maldonado Pérez,” in El Charco, city of Ayutla de los Libres, state of Guerrero, whose population is predominantly made of poor, rural and Nu’Saavi (Mixtec) people. The petitioners allege that, in the context of the “Dirty War” and the region’s militarization, state authorities planned and executed a military operation against the Mixtec community as it was accused of concealing members of the Revolutionary Army of the Insurgent People. The petitioners affirm that, as a result of the massacre, 10 Nu’Saavi indigenous villagers and a male university student were killed; four adults and a boy were seriously wounded and then illegally held in detention; and other 22 people—including four children and a female university student—were illegally arrested and then tortured.

2. The petitioners argue that at approximately 2 a.m. of June 7, 1998 military officers led by the General of the 27th Military Region besieged the building of the primary school where, that weekend, indigenous community members and university students were gathered for a meeting on the production, autonomy and literacy of the region. They indicate that after besieging the school, officers shot more than 284 ammunitions and threw two grenades at the attendants to the meeting, who were sleeping and disarmed. In this regard, they submit that many of those wounded were riddled with bullets as they were trying to flee worn out and disarmed. They add that the military operation included the siege of the area—then inhabited by some 2,000 indigenous people—and that it became a place controlled by the army, which prevented civilians from entering or exiting the town. They indicate that military authorities publicly announced their version by claiming that there had been a confrontation with a death toll of 11 guerilla members.

3. According to the petitioners, during the military operation 27 survivors were illegally held in detention, five of whom were taken to the hospital Hospital Naval Militar in view of the seriousness of their wounds. It argues that these five alleged victims were held in the hospital for 15 days and were later transferred to a prison for tuberculosis patients, where they were held four months in detention and isolation. They further submit that the authorities did not notify the wounded victims’ next of kin of the whereabouts of these. According to the information submitted, the family members of Juan García de los Santos, one of the wounded detainees, were given the dead body of Ceferino Damián Marcos, an alleged victim of the massacre. In this regard, the petitioners report that Juan Garcia still appears as a deceased although it has not yet been established whose dead body is the one buried under his name nor have his remains been returned to the family.

4. The petitioners allege that the other 22 detainees were interrogated at the crime scene by torture. They claim that at around 3 p.m. the detainees were taken by helicopter to the 48th Infantry Battalion and then in military trucks to the barracks of the 9th Military Region. They submit that all the detainees, including the four indigenous children, were brought before the Military Prosecutor's Office and interrogated until dawn by intense sessions of torture with electric shocks. These acts of torture were aimed at forcing detainees to make false statements, on which preliminary investigation IXRM/14/18 was based. They claim that at approximately 10 a.m. on June 8, 1998 the 22 alleged victims were taken to the Federal Prosecutor's Office where preliminary investigation 109/A1/98/B was initiated. They indicate that in the following 24 hours they reported the acts of torture before the National Committee on Human Rights, which certified the wounds, recorded the detainees' statements and prevented their being shown in the media in guerrilla clothes as the authorities intended. In this regard, the petitioners submit that the acts of torture and the threats were reported in detail by the alleged victims in their preliminary examination statements.

5. The petitioners indicate that on June 11, 1998 16 of the detainees were released and four were kept in prison (Sabino Adelaido, Alfoso Oliva, Esteban Leobardo and Anastasio Ramírez, all indigenous people). They add that Ericka Zamora Pardo and Efrén Cortés Chávez were imprisoned and brought before the District Fourth Court, which filed against them criminal case 57/1998 on charges of terrorism, stockpiling and possession of firearms and criminal association. At the same time, they claim that on June 20 criminal case 49/1998 was filed against them before the District Second Court on charges of rebellion, conspiracy and sedition. They claim that the alleged victims were deprived of their liberty in several prisons and that Ericka Zamora was most of the time held in a prison for men. They assert that on May 8, 2002 they lodged appeals for legal protection in relation to the guilty verdicts issued by the trial and appellate courts, and that the appeals were resolved in their favor, Ericka Zamora and Efrén Cortés being released on May 30, 2002.

6. The petitioners claim that these grave violations have not been unpunished at all, that the State has failed to undertake investigations aimed at establishing the truth and punishing those responsible and that the alleged victims of torture were criminalized in proceedings that infringed their judicial guarantees. They submit that the family members of the deceased alleged victims did not file legal actions due to the generalized fear in the region, the lack of guarantees, the political context of violence and the influence that the persons responsible have within the military apparatus settled in the state of Guerrero. In this regard, they indicate that after the massacre, military officers have, with absolute impunity, sexually assaulted women, searched houses and stolen cattle. The petitioners moreover affirm that several of the surviving alleged victims have been threatened and subjected to arbitrary detention and torture, and that four of them, Melitón Castro, Esteban Leobardo, Eusebio Porfirio and Porfirio Fernández, were killed after their release, whereas Sabino Adelaido was disappeared after his release.

7. For its part, the State alleges that in the night of June 6, 1998 military officers did a night reconnaissance in the framework of a campaign against drug trafficking in the region including the towns of El Piñal, El Charco and Ocote Amarillo. It submits that, at the school "Caritino Maldonado Pérez," officers found several armed individuals who shot at them; that the school was besieged accordingly. It claims that 27 people were arrested and brought before the Federal Prosecutor's Office, which filed the applicable preliminary investigations, followed by two criminal proceedings. As for the admissibility requirements, the State claims that the instant petition is inadmissible due to the lack of prior exhaustion of domestic remedies, non-compliance with the requirement on timeliness and the fact that the events do not establish human rights violations.

8. The State indicates that the District Second Court of Guerrero filed criminal case 49/1998 against Ericka Zamora Pardo, Efrén Cortés Chávez, Bernardino García Francisco, Juan García de los Santos, Alfonso Oliva Morales, Anastasio Ramírez Simona, Adolfo Filiberto Concepción, Lázaro Peláez Castro and Albino Santos Concepción. It submits that on March 10, 1999 they were convicted on charges of conspiracy and sedition. It alleges that, in view of the refusal of an appeal, Ms. Zamora and Mr. Cortés presented a constitutional appeal, which on May 30, 2002 was granted in favor of Mr. Cortés but dismissed in relation to Ms. Zamora. It asserts that, pursuant to the resolution on the constitutional appeal, on June 12, 2002 a judgment of acquittal was issued in favor of Mr. Cortés, along with an order of immediate release. The State explains that, given that 10 years elapsed from May 30, 2002 to the date the petition was filed to the IACHR,

the instant petition is inadmissible in regard to Ms. Zamora and Mr. Cortés as it was filed beyond the dates established in Article 46 of the Convention.

9. Furthermore, the State claims that on March 10 and November 23, 1999 Bernardino García Francisco, Alfonso Oliva Morales and Anastasio Ramírez Simona were convicted on conspiracy charges. It asserts that although they could have challenged their conviction, they did not; that, consequently, the instant petition must be declared inadmissible on grounds of lack of exhaustion of domestic remedies. In regard to Juan García de los Santos, Adolfo Filiberto Concepción, Lázaro Peláez Castro and Albino Santos Concepción, the State indicates that on February 27, 2004 the criminal proceeding was extinguished; that, as a result, the instant petition must be declared inadmissible on grounds of untimeliness.

10. As for the second criminal case (57/1998) filed against Ms. Zamora and Mr. Cortés, the State claims that these were convicted to three years and six months in prison on charges of possession of firearms to be exclusively used by the Army, the Navy and the Air Force. It submits that on June 12, 2002, through trials on direct constitutional appeals, the conviction was extinguished; as a result, they were released. Given that the petition to the IACHR was lodged on July 16, 2012, it alleges that it is untimely also in relation to said proceeding.

11. Lastly, as for the alleged acts of torture against Mr. Cortés and Ms. Zamora, the State claims that military officers provided health care support to those who required it, who were immediately brought before the Federal Prosecutor's Office, where physical and mental health screenings were made. It alleges that Ms. Zamora had no wounds and that Mr. Cortés had some excoriations that were not proved to have been caused by torture. In this regard, it indicates that the National Committee on Human Rights, in a report on the events occurred in El Charco, did not document the claims of physical torture. In view of this, the State alleges that the instant petition must be declared inadmissible as no human rights violations were committed that consisted in torture.

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

12. The petitioning party alleges that to date the persons responsible for the alleged deaths, acts of torture, wounds and arbitrary detentions—perpetrated in an alleged context of continual attacks to the members of the Nu'Saavi indigenous communities by military officers—have not been investigated, prosecuted or punished. For its part, the State, after analyzing the proceedings in the criminal complaints filed against the alleged victims, alleges lack of prior exhaustion of domestic remedies in connection with some of the alleged victims and untimeliness in relation to others.

13. The Commission reiterates that, in situations involving criminal offenses against the rights to life and humane treatment, the domestic remedies to be exhausted for the purpose of admissibility are those concerning the criminal investigation and the punishment of the persons responsible. In the instant case, the Commission observes that, from the available information there is nothing to indicate that criminal investigations have been undertaken into the alleged death of 11 people, the serious wounds of 5 people—including children—and the alleged torture by state officers at the crime scene and the office of the Military Investigating Public Prosecutor's Office. Moreover, the Commission notes that the State's observations on the requirements of prior exhaustion of domestic remedies and timeliness of the petition exclusively concern the criminal actions filed against the alleged victims and not the violations allegedly sustained by these in the context of the events of June 7, 1998 and the days that followed.

14. Therefore, considering the characteristics of the instant petition and the time elapsed since the date of the events under examination, the Commission believes that the exception provided for in Article 46.2.c of the Convention is applicable to this case. The petition was received on July 16, 2012; the alleged events in the complaint started on June 7, 1998 and the effects in terms of the alleged denial of justice seem to persist to date. As a result, in view of the context and the characteristics of the facts included in the instant report, the Commission considers that the petition was presented within a reasonable timeframe.

VII. ANALYSIS OF COLORABLE CLAIM

15. In light of the factual and legal elements presented and the nature of the matter brought to its attention, the IACHR considers that, if proven, the massacre occurred in El Charco amidst the militarization of a region whose population is predominantly indigenous; military officers' responsibility for the deaths, serious wounds and arbitrary detentions taking place on June 7, 1998; the alleged criminalization of the alleged victims in the military and civil jurisdictions, and the alleged lack of investigation and punishment of the persons responsible for the massacre all could tend to establish violations of the rights protected through Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention. Likewise, the events alleged in the petition could constitute a possible violation of Article 19 (rights of the child) to the detriment of Francisco Cristino Crescendo, Melitón Castro Morales, Bernabé García de Jesús, Adrián Patriarca Agustín and Pedro Esteban Ávila.

16. With respect to the alleged acts of torture, although the State refers to the undertaking of health examinations, the information submitted does not *prima facie* indicate that an investigation has been filed on the alleged acts of torture that were reported to the court; thus, in the merits stage, the Commission will analyze the possible violation of the rights enshrined in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and article 7 of the Convention of Belém do Pará in relation to Ericka Zamora's allegedly being subjected to arbitrary detention, acts of torture and pretrial detention in prisons for men.

17. Likewise, the fact that five wounded victims were held incommunicado for more than four months in detention without their next of kin being informed of their whereabouts and the claim that Juan García de los Santos still appears as a deceased although it has not yet been established whose body is buried under his name nor his mortal remains have been returned to his family, could tend to establish a violation of Article 3 (juridical personality) of the American Convention in relation to Article 1.1 thereof, and article I of the Inter-American Convention on Forced Disappearance of People in connection with the duty to investigate.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 19, 24 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof; articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; article 7 of the Convention of Belém do Pará; and article I of the Inter-American Convention on Forced Disappearance of Persons; and

2. To notify the parties of this decision; to continue with 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 14th day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.

Appendix
List of alleged victims

A. Alleged victims killed:

1. Honorio García Lorenzo
2. Mauro González Castro
3. Mario Chávez García
4. José Rivera Morales
5. Fidencio Morales Castro
6. Ceferino Damián Marco
7. Fernando Félix Guadalupe
8. Daniel Crisóforo Jiménez
9. Ricardo Zavala Tapia
10. Manuel Francisco Prisciliano
11. Apolonio Jiménez García

B. Surviving alleged victims:

B.1. Wounded/Detained:

1. Bernardino García Francisco
2. Eugenio Ambrosio Trinidad
3. Juan García de los Santos
4. Francisco Cristino Crescendo (aged 15)
5. Porfirio Hernández Francisco

B.2. Detained/Allegedly tortured:

1. Adolfo Filiberto Concepción
2. Anastasio Ramírez Simona
3. Melitón Castro Morales (aged 15)
4. Arnulfo Santiago Hernández
5. Esteban Leobardo Epitacio
6. Sabino Adelaido García
7. Serafín Morales López
8. Bernabé García de Jesús (aged 14)
9. Julián Ramírez Crescendo
10. Pedro Esteban Ávila (aged 17)
11. Eusebio Porfirio Catarino
12. Lázaro Peláez Castro
13. Vicente Vázquez Díaz
14. Albino Santos Concepción
15. Miguel Ángel García Cristino
16. Adrián Patriarca Agustín (aged 16)
17. Pedro Barrera Daniel
18. Alfonso Oliva Morales
19. Javier Ángel Severiano Virginia
20. Arcadio Alfredo Martínez
21. Efrén Cortes Chávez
22. Erika Zamora Pardo

C. Widows and mothers of the killed alleged victims:

1. Eustolia Castro Ramírez
2. Juana Morales Guadalupe
3. Catalina Leobardo Aurelia
4. María Julia Lucaria
5. Marcela Petra Cayetano