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REPORT No. 169/18
PETITION 1044-07
REPORT ON ADMISSIBILITY

TOMASA CHUCHON CASTILLO AND OTHERS
PERU

Electronically approved by the Commission on December 21, 2018.

Cite as: IACHR, Report No. 169/18. Admissibility. Petition 1044-07. Tomasa Chuchon and others.
Peru. December 21, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Asociación Pro Derechos Humanos (APRODEH) ¹
Alleged victim:	Tomasa Chuchon Castillo and others ²
Respondent State:	Peru ³
Rights invoked:	Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, ⁴ in relation to its Articles 1 and 2. As well as Article 1 of the Inter-American Convention on Forced Disappearance of Persons, ⁵ Article 1 of the Inter-American Convention to Prevent and Punish Torture, ⁶ and other international treaties ⁷

II. PROCEDURE BEFORE THE IACHR⁸

Filing of the petition:	August 8, 2007
Additional information received at the stage of initial review:⁹	October 9, 2007
Notification of the petition to the State:	October 14, 2011,
State's first response:	November 8, 2013

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 made on July 28, 1978), CIDFP (deposit of instrument made on February 13, 2002), CIPST (deposit of instrument made on March 28, 1991), and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ¹⁰ (deposit of instrument made on June 4, 1996).

¹ The petition was submitted by the Asociación Pro Derechos Humanos Runamasinchiqpaq (Runamasinchiqpaq Human Rights Association), but through a note from March 27, 2014 the alleged victims informed that APRODEH would assume its legal representation.

² The petition refers to 70 alleged victims, who are individualized in the annexed document.

³ Pursuant to Article 17.2 of the Commission's Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate of the present case's decision.

⁴ Hereinafter "Convention" or "American Convention."

⁵ Hereinafter "CIDFP"

⁶ Hereinafter "CIPST"

⁷ International Convention on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations.

⁸ The observations presented by each party were duly forwarded to the opposing party.

⁹ The petitioner has sent multiple notifications to the IACHR requesting information on the petition's status. The latest of the said communications is from September 21, 2016.

¹⁰ Hereinafter "Convención de Belem do Pará."

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 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (honor and dignity), 19 (rights of the child), 21 (private property), 24 (equality), and 25 (judicial protection) of the Convention, in relation to its Articles 1 and 2. As well as Articles I and IX of CIDFP, Articles 1, 6, and 8 of CIPST and Article 7 of Convención Belem do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exceptions under Articles 46.2.b) and c) of the Convention apply.
Timeliness of submission:	Yes, under the terms of Section VI.

V. FACTS ALLEGED

1. The petitioner indicates that 70 people (hereinafter “the alleged victims”) were extrajudicially executed by members of the Peruvian Army on August 14, 1985 in Accomarca district, Ayacucho department. The petitioner party says that on that day, four military patrols penetrated the region aiming at carrying out operation “Quebrada de Huancayocc,” which ordered the capture and/or removal of alleged Sendero Luminoso’s members. It states that army troops locked the men of the town up in a house, where they were beaten up and tortured and that they sexually assaulted the women and later locked them up in another house together with 29 children. Moreover, it says that at the houses, the victims were accused of being terrorists and were shot. The petitioner indicates that the military soldiers threw grenades and set the houses on fire so as to burn the alleged victims’ bodies and impede their identification. The alleged victims were buried in a mass grave by their families and some inhabitants.

2. The families and survivors reported the events to the media. As a consequence, the Senate of the Republic summoned the army to inform about what had happened. It says that, with the aim of hiding the facts, the military soldiers “cleansed the area” and that between September 8 and 10, 1985, seven more people were killed in the region. It indicates that on October 12, 1985, the Senate’s Investigatory Commission concluded that the facts took place within the counter-insurgency policy, that the perpetrators were just another part of the problem, and that the instigators shall be investigated. She adds that, in the framework of the investigations, and after a competence dispute, the Supreme Court of Justice referred the case to the military jurisdiction on March 11, 1986.

3. On October 15, 1987, the Permanent Court Martial at the Second Judicial Zone passed a judgment absolving the members of the army for homicide and abuse of power. On January 2, 1988, the Supreme Council of Military Justice ordered that the case be brought to the status of the pre-trial, so that clarifying procedures are carried out regarding the facts. On February 28, 1992, the Council of War removed the subordinated troop’s responsibility and absolved Second Lieutenant THH for the crimes of aggravated homicide, negligence, and disobedience, and condemned him for abuse of power, with the aggravation of misrepresentation, to six years in prison and to pay a five-hundred *nuevos soles* (Peruvian currency) fine. The judgment was confirmed on February 24, 1994. However, on June 19, 1995, Second Lieutenant THH had the benefit of amnesty approved by Act No. 26479, and was later promoted to Major.

4. Furthermore, she says that once the Truth and Reconciliation Commission was constituted, the investigations were re-conducted and the case was referred to Ayacucho’s Human Rights Public Prosecutor’s Office, which regularized the criminal complaint of genocide, aggravated homicide, and forced disappearance. Among the reported authorities, there were the then-President, Head of the Armed Forces’ Joint Command, War Minister, and Political Military Commander, among other officers and noncommissioned officers. On May 31, 2005, the Third Criminal Court provided the files of the criminal proceeding regarding

high-ranking officers and its continuation against 29 officers of the Peruvian Army. The said resolution was appealed to and the National Criminal Court confirmed the decision on September 8, 2005.

5. The petitioner says that from the moment the criminal proceeding was established on May 31, 2005, the investigation has been insufficient and that, at the time of the petition's submission, the judicial periods of investigation had already ended, and the procedures ordered by the Criminal Court for the identification and recovery of the alleged victims' corpses had not been finished yet, which prolonged the suffering of their families and violated their right to access justice and the right to truth within a reasonable period of time.

6. Additionally, it indicates that members of the "Aprista Peruvian Party" filed a complaint against Ayacucho's Human Rights Prosecutor who was in charge of the investigation, allegedly for having links with Sendero Luminoso and for malfeasance of office before the Domestic Monitoring of the National Public Prosecutor's Office. In such sense, it says that the President of the Families' Association of Accomarca has been the victim of death threats since February 2005, which increased during the beginning of the extradition procedures of THH and other reported noncommissioned officers (Telmo Hurtado and Juan Manuel Elías Rondón). It alleges that its representatives were intimidated and threatened with death, which was brought to the attention of the corresponding authorities and was also investigated without obtaining any results.

7. Furthermore, the State deduces the exceptions of incompetence of time regarding the Inter-American Convention on Forced Disappearance of Persons, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, indicating that these instruments were ratified by the Peruvian State after the facts happened and which are the object of this petition. Additionally, it indicates that the Commission has no jurisdiction over potential violations of the International Convention on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are part of the UN protection system.

8. It adds that the last decision recorded in the proceeding's files of criminal military jurisdiction was issued on June 19, 1995 and the petition was untimely submitted after more than twelve years. It also indicates that the petitioners did not appeal to or justify the exceptions to the fulfillment of the requirements included in Article 46.1 of the Convention.

9. Moreover, on its own motion and according to its conventional duties, it agreed to re-conduct the facts' investigations in ordinary jurisdiction, which are currently known in the criminal proceeding conducted by the National Criminal Court, complying with all the procedural safeguards. In addition, it says that due to the subsidiarity principle, the international protection of the Inter-American System is supplementary to the one offered by domestic law.

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

10. In relation to the alleged extra-judicial executions committed in Accomarca region, the Commission has repeatedly indicated that the special jurisdictions (military or police) do not constitute an appropriate forum, so they are not an adequate resource to investigate, judge, and punish human rights violations included in the American Convention allegedly committed by members of the Public Force or with their contribution or acquiescence.¹¹ The Commission observes that this case was initially developed in the military criminal jurisdiction, which is why the exception established in Article 46.2.b) applies. Furthermore, it takes into consideration that there is no definitive decision on the criminal proceeding yet, in spite of the

¹¹ IACHR, Report No. 157/17. Admissibility. Carlos Andrade Almeida and others. Ecuador. November 30, 2017, para. 19.

re-conduction of investigations in ordinary jurisdiction, established as a consequence of the Report of the Peruvian Truth Commission of 2003, according to the information provided by both parties. In this sense, the Commission considers that the exception of exhaustion of domestic remedies under Article 46.2.c) of the American Convention applies.

11. Furthermore, regarding the characteristics of this case, the Commission indicates that the petition was submitted within a reasonable period of time and that the admissibility requirement shall be deemed as complied with regarding timeliness.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission considers that the alleged extra-judicial acts of torture and executions of the 70 victims, including women and children, the alleged sexual violations committed against the women by military soldiers, the alleged lack of identification of the remains, the destruction of the Accomarca's citizens' houses, and the lack of effective judicial protection on these events might characterize potential violations of Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (honor), 21 (private property), 24 (equality), and 25 (judicial protection) of the Convention, in relation to its Articles 1 and 2; to the detriment of the alleged victims and their families, as well as Articles I and IX of the Inter-American Convention on Forced Disappearance of Persons due to the continuous nature of the crime of forced disappearance and its alleged lack of investigation; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convención de Belén do Pará, the latest treaties regarding the lack of investigation of the alleged facts, after the alleged ratifications' and deposits' dates. Likewise, and considering the alleged extra-judicial execution of 29 children, the aforementioned might constitute a potential violation of Article 19 (rights of the child) of the American Convention.

13. In relation to the other international instruments alleged by the petitioners, the Commission lacks *ratione materiae* competence so as to establish violations of the rules of the said treaties, without prejudice to which it might consider them as part of its interpretation exercise of the American Convention's regulations at the merits stage of this case, under the terms of Article 29 of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11, 19, 21, 24, and 25 of the American Convention, regarding its Articles 1 and 2 of the said treaty; Articles I and IX of the Inter-American Convention on Forced Disappearance of Persons; 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of Convención de Belém do Pará, and

2. To notify the parties of the present decision; to continue analyzing 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 21st 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; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

Annex 1
List of alleged victims

1. Balboa Gamboa, Lorena (aged 42)
2. Baldeon Garcia, Juliana (aged 60)
3. Baldeon Gutierrez, Fortunata (aged 30)
4. Baldeon Palacios, Seferino (aged 55)
5. Baldeon Palacios, Marisol (aged 3 months)
6. Baldeon Pulido, Justina (aged 68)
7. Baldeon Ramirez, Nerio (aged 3)
8. Baldeon Reza, Maria (aged 58)
9. Chavez Baldeon, Agustin (aged 64)
10. Chuchon Castillo, Tomasa (aged 54)
11. Chuchon Janampa, José (aged 66)
12. Chuchon Teccsi, Filomeno (aged 45)
13. De la Cruz Baldeon, Angélica (aged 40)
14. De la Cruz Sulca, Felix (aged 3)
15. Flores Balboa, Pantaleon (aged 5)
16. Flores Balboa, Cesario (aged 2)
17. Flores Baldeon, Maria Magdalena (aged 16)
18. Flores Baldeon, Gervacio (aged 3 months)
19. Gamboa De la Cruz, Gertrudis (aged 75)
20. Gamboa Herrera, Alejandro (aged 55)
21. Gamboa Lozano, Victor (aged 4)
22. Gamboa Lozano, Richard (aged 4)
23. Gamboa Lozano, Hugo (aged 3)
24. Gamboa Medina, Eugenia (aged 10)
25. Gamboa Medina, Edilberta (aged 10)
26. Gamboa Pulido, Nestor (aged 10)
27. Gamboa Pulido, Francia (aged 35)

28. Gamoa Quispe, Delfina (aged 52)
29. Gamboa Pulido, Walter (aged 42)
30. Gomez de la Cruz, Pastor (aged 81)
31. Janampa de la Cruz, Lorenza (aged 45)
32. Lizarbe Solis, Silvestra (aged 45)
33. Lozano Baldeon, Otilia (aged 33)
34. Martinez Baldeon, Felicitas (aged 55)
35. Mendoza Baldeon, Delia (aged 6)
36. Mendoza Baldeon, Lourdes (aged 8)
37. Mendoza Baldeon, Delfina (aged 11)
38. Ochoa Lizarbe, Gerardo (aged 10)
39. Ochoa Lizarbe, Victor (aged 7)
40. Ochoa Lizarbe, Ernestina (aged 6)
41. Ochoa Lizarbe, Celestino (aged 3)
42. Ochoa Lizarbe, Edwin (aged 1)
43. Ochoa Janampa, Damasa (aged 8)
44. Ochoa Janampa, Toribio (aged 12)
45. Palacios Quispe, Albino (aged 70)
46. Palacios Quispe, Leandra (aged 45)
47. Parez Baez, Aquilino (aged 54)
48. Parez Palomino, Esther (aged 3)
49. Pariona Baldeon, Basiliza (aged 45)
50. Pulido Baldeon, Edgar (aged 7 months)
51. Pulido Lozano, Victor (aged 7)
52. Pulido Romero, Maximilia (aged 52)
53. Quispe Baldeón, Cornelio (aged 35)
54. Quispe Martinez, Benedicta (aged 40)
55. Quispe Martinez, Julia (aged 50)
56. Quispe Palacios, Pelayo (aged 55)
57. Quispe Pariona, Leonidas (aged 6)

58. Ramirez Baldeon, Cornelia (aged 50)
59. Ramirez Baldeon, Primitiva (aged 48)
60. Sulca de La Cruz, Valeriano (aged 4)
61. Sulca Teccsi, Bonifacia (aged 62)
62. Baldeon, Perez, Alejandro (aged 45)
63. Baldeon Ayala, Martín (Not specified)
64. Gamboa Mendoza, Cecilio (Not specified)
65. Janampa Widow of Pujaiico (aged 80)
66. Melgar Pujaiico de Baldeon (aged 68)
67. Pulido Palacios, Paulina (aged 60)
68. Perez Chavez, Brigida (aged 75)
69. Quispe Chucon Padua (aged 13)
70. Quispe De Gamboa, Ciriana (aged 66)