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REPORT No. 12/18

PETITION 178-10

REPORT ON ADMISSIBILITY

**48 WORKERS KILLED IN THE EXPLOSION AT THE PASTA DE
CONCHOS MINE
MEXICO**

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 12/18. Admissibility. 48 Workers Killed at the Pasta de Conchos Mine. Mexico. February 24, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Miguel Agustín Pro Juárez, A.C. Human Rights Center (Centro Prodh), Center for Reflection and Labor and Action (CEREAL), National Team of Pastoral Counselors on Labor (CEREAL), Pasta de Conchos Family Organization (OFPC) and the victims' families
Alleged victim:	48 Workers killed in the explosion at the Pasta de Conchos mine and their family members ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, ³ in relation to its Article 1.1

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	February 16, 2010
Notification of the petition to the State:	October 6, 2010
State's first response:	February 25, 2011
Additional observations from the petitioner:	February 14, May 14, June 20 and August 18, 2011; January 20 and October 27, 2012; December 6, 2013; May 20 and July 22, 2014; April 5, 2016
Additional observations from the State:	April 20 and November 11, 2011; May 23 and September 6, 2012; August 14, 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 ratification instrument on March 24, 1981)

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>:	None, under the terms of section VII
Rights declared admissible	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 25 (Judicial Protection) and 26 (Economic, Social and Cultural Rights) of the ACHR, in connection with its Articles 1.1 and 2
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

¹ Individualized in the attached document. The initial petition includes 28 alleged victims and their family members. In the written document of November 1, 2012, the petitioners added the families of other eight miners, and in the written document of May 20, 2014, they added the families of other 12 miners. In total, there are 48 dead miners and their family members.

² In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the decision on this matter.

³ Hereinafter "Convention" or "American Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners allege the lack of investigation into the explosion of February 19, 2006 in the coal mine called “Pasta de Conchos,” franchised by the State to Grupo Industrial Minera Mexico S.A.B.C.V. (“the company” or “IIMSA”), in the state of Coahuila. They indicate that 65 workers died as a result of the explosion, and that to date 63 bodies are yet to be rescued. Likewise, they indicate that eight miners survived the disaster, though their health and safety were severely compromised. They claim that the authorities of the Ministry Labor and Social Security were aware of the high-risk working conditions proper to the coal mining industry, as well as of several safety hazards found at the Pasta de Conchos mine by inspections made after 2000 and which endangered workers’ life and safety. According to the petitioners, the state authorities failed to effectively, quickly and closely supervise that those irregularities be corrected; therefore, they claim that the State is liable for having failed to exercise its duty of care.

2. The petitioners hold that the facts in the instant petition occurred in a context that, since 2000, was characterized by policies of structural adjustment and labor rights deregulation implemented in Mexico, which have gradually led to the outsourcing of jobs and the reduction of the inspection budget. They also indicate that the mining companies working in Mexico have become part of one of the most profitable industries although mine workers and their families continue being an excluded, poor population.

3. The events in this petition occurred in the morning of January 19, 2006 when an explosion in Mine 8 at the Pasta de Conchos Unit was heard, and 65 of the 73 coal miners working the third shift at the mine were trapped. The petitioners report that since 2000 government inspectors from the Ministry of Labor and Social Security (“STSP”) had recorded a series of irregularities and hygiene and safety hazards based on inspections at the mine. They further explain that although several deficiencies found at the mine were an inevitable, serious threat for workers, the state authorities failed to duly verify that they be corrected. This was allegedly proved through the investigations made by an ad-hoc Legislative Committee and the National Committee on Human Rights (“CNDH”), and the CNDH issued recommendation 26/2006 by which it established the STSP authorities’ liability. Consequently, the petitioners claim that the explosion at the Pasta de Conchos Mine was an event that the State should have foreseen and avoided.

4. Likewise, they question the decision of April 5, 2007 to suspend the rescue of the coal miners’ bodies, based on the State’s claim that it was impossible to enter the mine in view of the high-risk conditions. They indicate that according to the available information, operations at the mine continued until November 21 of that year. In this regard, they claim that said decision and the State’s denial to resume the search for the bodies were based on non-scientific reports which the State has used to prevent the undertaking of studies aimed at establishing the real causes of the tragedy. Thus, they demand that the events be established and that liabilities and penalties be attributed to the state officials, and that the rescue of the dead miners’ bodies be awarded as the main reparation measure.

5. The petitioners submit that despite the numerous investigations opened by several judicial, administrative, non-jurisdictional and even legislative bodies, the facts presented here are yet to be punished and have not been appropriately investigated or repaired. They also explain the difficulties they had to face in order to stay informed of the progress of the judicial cases, and they assert that the coal miners’ widows were denied legal standing as nominal parties in the two criminal proceedings and in the administrative civil liability actions against state agents and the company, and thus they were unable to submit evidence or lodge remedies.

Criminal Proceedings

6. In the first place, they claim that proceeding No. 200/2007 was filed before the ordinary criminal court of the state of Coahuila against five employees of the company for negligent homicide, and no one from the government was prosecuted in it. They indicate that the alleged victims’ family members were never allowed to appear as nominal parties. They assert that on March 28, 2007 the trial judge issued an imprisonment order; however, on April 13 of the same year, the same judge ruled to dismiss the proceeding in view of the reparation of the damage pursuant to Article 155 of the local Criminal Code, thus the

proceeding was terminated.⁵ They indicate that the prosecuted allocated the sum of \$182,629.20 Mexican pesos (equivalent to US\$14,048.40 when petition was filed before the Commission) to each of the 65 miners' families in reparation. The petitioners explain that the family members accepted that sum in view of their financial hardship caused by the loss of the households' source of income and that, in exchange, these were asked to settle for the compensation and the dismissal of the case. In addition, they stress that said compensation was not based on the miners' salary, and that their having accepted it is far from being equal to their granting of a pardon.

7. The petitioners consider that the events were not duly assessed and that this allowed that the alleged violations of the right to life be diminished in return for compensation. In view of this, they claim that the filing of proceedings before the ordinary court, in which they were unable to appear as nominal parties, was not appropriate to seek the establishment of the truth or the punishment of all those responsible; therefore, they request that the exceptions to the requirement of exhaustion of domestic remedies be applied to this case pursuant to Article 46.2 paragraphs a) and b) of the American Convention.

8. Secondly, the petitioners refer to the criminal investigation filed simultaneously on February 19, 2007 before the federal court for the criminal liability on the part of federal state agents. They submit that the following year the investigation was [temporarily archived] ex officio, thus the criminal proceeding did not take place. They indicate that the authorities justified the investigation's temporary and indefinite suspension by alleging the lack of elements necessary to establishing the causes of the blast, for "it was impossible to undertake risk-free, safe procedures [inside the mine]." They claim that the possibility of undertaking procedures in the mine was dismissed without solid, scientific grounds, and that the Public Prosecutor's Office refused to receive several expert reports recommended for establishing the causes of the explosion. The petitioners allege that the family members were unable to access the file of the preliminary investigation or any remedy to challenge the archiving of the petition because they were denied legal standing in the case. Later, the CNDH ruled on the events of the case again by issuing Recommendation No. 64/2008, in which it established that the archiving of the preliminary investigation violated the right to judicial protection.

Administrative Lawsuits

9. The petitioners list several administrative lawsuits furthered by the State. They indicate that although these led to the imposition of administrative penalties on state agents and the company, these procedures are not appropriate to hold the company to account for the violations of the right to life, as they only serve the purpose of establishing non-compliance with safety and health regulations.

10. For instance, they submit that the STPS's Internal Body of Control presented an administrative civil liability proceeding (Case file DE/66/2006), concluded on February 15, 2008. In that proceeding, several state agents were punished by removal from office and one-year disqualification in view of their negligence prior to the explosion. They allege, however, that the Ministry of Labor and Social Security was not prosecuted although he, as the highest authority of the minister, was in charge of enforcing and supervising the prevention policies for the protection of workers.

11. They indicate that in some of the cases in which the State's personal liability was claimed, compensation was awarded. They allege that one of these actions, filed on November 17, 2006 by San Juanita Camacho Pérez in favor of petitioners Cindy Fabiola and Mayra Guadalupe García Camacho, is pending settlement and thus there is an unwarranted delay.

⁵ Criminal Code of the state of Coahuila, Article 155. TERMINATION OF CRIMINAL ACTION BY PARDON OR AN EQUIVALENT ACT, CONCERNING OFFENSES SUBJECT TO PROSECUTION EX OFFICIO. The criminal action shall be terminated when the offense is subject to prosecution ex officio provided that the following conditions are met: [...]

IV. PARDON, DAMAGE REPARATION OR EQUIVALENT ACT. The wronged party or their rightful representative awards pardon; or the damage is repaired, if any damage was caused. Unless the wronged party is individualized or damage is caused, it will be necessary that the accused party confesses the offense and that it is deemed that, based on their personal characteristics and the circumstances of the case, they do not seem to pose a threat for the community [...]."

Labor Lawsuits

12. The petitioners assert that the legal representation services provided by the legal aid program to claim labor and social security compensation was deficient. They allege that the amount of damages established by the Conciliation and Arbitration Board was unfair because it was calculated based on the amounts that the company had informed before the Mexican Institute of Social Security, not on the miners' actual income, which was higher. As a result, they claim that the State must also be held to account for non-compliance with its duty of registering workers' actual income before the social security bodies.

Conclusions

13. In sum, the petitioners hold that despite their constant activity to further the investigations, a situation of impunity exists due to the unwarranted delay and the lack of due diligence in establishing and punishing the events concerning the explosion at the mine. They emphasize that it has been 10 years since the tragedy occurred, yet no state agent has been criminally punished, that the administrative sanctions set are not appropriate to bring to justice and punish those responsible for the serious human rights violations that caused the death of 65 miners, that the dead miners' bodies have not been rescued, and that the miners' family members have not been granted reparation measures. Finally, they claim that they have many times reported a pattern of harassment against Cristina Auerbach Benavides and Manuel Fuentes Muñiz's safety in view of their legal representation of the dead miners' families; and that, however, the Public Prosecutor's Office did not lodge a criminal proceeding.

Allegations by the State

14. For its part, the State claims that the accident that took place at the Pasta de Conchos Mine was heard by different courts of justice which, together, worked to guarantee full reparation for the victims. It asserts that the domestic remedies pursued in the criminal, labor and administrative venues were effective. In this regard, it asserts that it investigated to the best of its ability, punished the responsible, granted reparation to the victims by several payments in compensation, and adopted a set of normative and structural guarantees of non-repetition in order to avoid future events like the explosion at the Pasta de Conchos Mine. Therefore, the State claims that the instant petition is inadmissible because the presented facts do not establish a violation of the rights protected by the American Convention.

15. The State moreover alleges that a few of the petitioners exhausted domestic remedies and that the petition is inadmissible with regard to the alleged victims who did not prove their status of wronged parties or economically dependent persons before the domestic authorities, a prior requirement for the lawful exhaustion of domestic remedies.

16. In view of the foregoing, the State emphasizes that after a thorough investigation opened in view of a complaint lodged by the General Secretary of Mexico's National Union of Mine, Metal, Steel and Allied Workers, several employees of the company were found criminally liable for negligence in causing the accident that killed the 65 miners. In this regard, it indicates that the termination of the criminal action was pursuant to the requirements established in the Mexican law, because it was proved that 65 families granted a pardon and voluntarily accepted compensation. It stresses that the petitioners did not express their discontent with the dismissal of the case, although they could have filed an appeal in accordance with Article 517 of the Code of Criminal Procedure of the state of Coahuila. It also asserts that two families dissatisfied with the amount of damages, not petitioners in the complaint, pursued an amparo proceeding and, as a result, obtained a higher bill of damages. It submits that the other families' right to appear as nominal parties was respected and thus they were heard and their claims were considered.

17. Moreover, the State reports that the federal criminal investigation, opened at the request of a representative of the Legislative Assembly of the Federal District, had to be archived because the high concentration of gases in the mine, shown by expert reports, meant high-risk and unsafe conditions that impeded the undertaking of further procedures. It emphasizes that the investigations will remain archived until additional data is gathered so investigation procedures can be resumed without putting people's lives at

risk. It affirms that the time elapsed and the result of the judicial remedies are such due to the complexity of the explosion and of its risks, along with the large number of affected people and the convergence of different types of jurisdictions and competence. The State also alleges that administrative remedies proved to be effective in the instant case because of the administrative sanctions imposed on Grupo Industrial Minera México S. A. and on state agents in view of their wrongful exercise of the public function.

18. Additionally, it indicates that the Federal Fiscal and Administrative Court of Justice settled the six personal liability lawsuits against the State filed by the dead miners' family members. It explains that two of them were dismissed because the claims were not established whereas the other four—which include ten widows in this petition—were settled in favor of the alleged victims, thus several compensation measures were ruled, and already fulfilled. The State highlights that the rest of the dead miners' family members, alleged victims in this petition, did not lodge a complaint to claim the State's personal liability. Likewise, it explains that the number of remedies filed has increased the time needed to settle them and, therefore, no unwarranted delay can be established.

19. Furthermore, the State claims that 59 of the 65 families received state legal aid and representation through the Federal Prosecutor's Office for the Defense of Workers (PROFEDET) in the labor and social security jurisdiction. It highlights that in the trial PROFEDET succeeded in having the court order the company pay compensation based on a daily income of \$300 Mexican pesos. However, it asserts that, as a corollary of the successive appeals filed by the company, the amount of damages and pensions calculated by the Supreme Court of Justice based on the workers' registered income (\$110 Mexican pesos) became final. The State contradicts the petitioners, noting that it also succeeded in having the Mexican Institute of Social Security pay an extra 25 per cent on the bill of damages for the employer's gross negligence pursuant to Article 490 of the Mexican National Labor Law.

20. Lastly, the State refers to the complaint filed by a group of labor unions before the International Labor Organization (ILO) in view of the events at the Pasta de Conchos Mine. As a result, on March 19, 2009 the ILO Governing Body issued a report in which it established the State's non-compliance with the ILO Conventions No. 150, concerning labor administration, No. 155, concerning occupational safety and health, and No. 170, concerning chemicals. The State submits that the proceeding before the ILO is under a study for requirements compliance; that, therefore, the petition is inadmissible in accordance with Article 46.1.c of the American Convention.

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

21. The petitioners claim that they were denied legal standing to participate in the criminal proceedings and that these were not effective in establishing liability on the part of intervening state agents or the circumstances in which the explosion at the Pasta de Conchos Mine took place; therefore, they invoke the exceptions to the requirement of exhaustion of domestic remedies, set forth in Article 46.2 paragraphs a) and b) of the Convention. Likewise, they consider that given that it has been 12 years since the events occurred, under Article 46.2.c of the Convention an unwarranted delay is established. In turn, the State alleges that the petitioners did not exhaust domestic remedies, for they failed to challenge the case's dismissal by the criminal court and because the family members of 38 dead alleged victims did not bring to court a claim for the State's personal liability. Moreover, it asserts that the prolonged archiving of the federal investigation was due to the matter's complexity and to circumstances beyond the State's control; therefore, it claims that there was no unwarranted delay.

22. Firstly, it is important to clarify which domestic remedies must be exhausted as a requirement for admissibility. The petitioners denounce the death of 48 coal mine workers due to an explosion allegedly caused by safety hazards previously recorded by the federal authorities, which establishes a purported offense subject to prosecution ex officio according to the legislation of the state of Coahuila and of the federal jurisdiction. As a result, a criminal proceeding is the appropriate remedy to investigate the possible liability of state agents or private individuals. The Commission notes that in this case a criminal investigation against state agents was filed before the federal court, and that it was temporarily

archived in 2008 because the high-risk circumstances reported by the authorities impeded to continue with the procedures necessary to establish the causes of the blast. The petitioners contradict the State's claims as regards the impossibility to undertake procedures and claim that the families were unable to access any remedy to appeal against the archiving of the petition because they were not allowed to appear as nominal parties.

23. According to the available information, the federal investigation was resumed in 2012 and on August 31, 2015 the court ruled the offense of wrongful exercise of the public function barred by the statute of limitations, therefore the local court received jurisdiction. Based on the available information, no investigation was filed by said court. Therefore, after 12 years of the events, the causes of the explosion and the alleged liability on the part of state agents have not been established nor the miners' bodies been pulled. In view of this, the Commission decides to apply the exception to the exhaustion of domestic remedies, set forth in Article 46.2.c of the American Convention.

24. Moreover, in 2007 a proceeding was lodged before the ordinary criminal court in the state of Coahuila against five employees of the company for negligent homicide. After the judge issued an imprisonment order, the proceeding was dismissed in view of compensation payments made to the families, who, the petitioners say, accepted them pressed by their financial need. The State claims that two families who are not part of this petition lodged an amparo proceeding against the bill of damages and were given a larger sum in compensation. The petitioners, for their part, allege that the families were never allowed to appear as nominal parties to the proceeding. In this regard, the IACHR stresses that, since this an offense subject to prosecution *ex officio*, it is the State, not the family members, who must further the proceeding. Consequently, for the purpose of admissibility and based on the available information, the Commission resolves that, concerning the federal criminal investigation, the exception foreseen in Article 46.2.b of the Convention applies to this case.

25. As to the labor and administrative actions and punitive damages, given that the main object of the instant petition is the criminal investigation and punishment in a situation where the State is obliged to further the criminal proceeding, the Commission rules that it is not necessary to exhaust said remedies as a requirement to resort to the inter-American system.⁶

26. With respect to the requirement of timeliness, the Commission notes that the petition was lodged on February 16, 2010, that the facts for which this petition was presented occurred on February 19, 2006 and that the alleged denial of justice persists to date. As a result, in view of the context and the characteristic of this case, the Commission believes that the petition was filed within a reasonable time and that the admissibility requirement of timeliness is met.

VII. ANALYSIS OF COLORABLE CLAIM

27. In light of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR believes that, if proved, the State's alleged liability in the causes of the explosion at the Pasta de Conchos Mine in view of alleged irregularities in its duty of care, which allegedly killed the coal miners, as well as the alleged lack of due diligence in investigating the facts, pulling the bodies and issuing reparation measures for the families all could establish possible violations of the rights protected by Articles 4 (life), 5 (humane treatment), 8 (fair trial), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in accordance with its Articles 1.1 and 2.

28. As to the State's allegation about the alleged victims' failure to prove direct harm before the domestic courts, either as wronged parties or as dependent persons, the Commission notes that throughout the procedure the petitioners individualized 48 of the 75 workers killed in the blast at the Pasta de Conchos Mine as alleged victims and their family members. The Commission stresses that the status of alleged victim

⁶ IACHR, Report No. 105/13. Petition 541-00. Admissibility. Oscar Alfonso Morales Díaz and Family. Colombia. November 5, 2013, par. 40.

before the inter-American system is established based on provisions of the American Convention and the Commission's Rules of Procedure in the merits stage at the IACHR, not before domestic courts.

29. With regard to the State's allegation about the settlement pending internationally in view of a lawsuit before the ILO, the Commission notes that there is no identity between the two complaints and also recalls that the possibilities of "international settlement," referred to in Article 46.1.c of the Convention, which offer the procedure before the Committee on Freedom of Association, are not equivalent to those offered by the Inter-American Human Rights System.⁷ In view of this, the Commission believes that the exception invoked by the State does not apply to this case.

30. Finally, as to the State's claim about the establishment of a fourth-instance body, the Commission notes that by declaring this petition admissible it does not seek to replace the domestic authorities' competence. The Commission will analyze in the merits stage whether the domestic legal proceedings conformed to the rights of due process and judicial protection and ensured the alleged victims' right of access to justice under the terms of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 25 and 26 of the American Convention, in relation to its Articles 1.1 and 2;

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.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 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.

⁷ IACHR. Report No. 41/16. Petition 142-04. Admissibility. José Tomás Tenorio Morales and Others ("Ervin Abarca Jiménez" Union for Higher Education Professionals of the National Engineering University). Nicaragua, par. 53.

Annex
List of alleged victims

Alleged victims listed in the initial petition:

- 1) Guillermo Iglesias Ramos
- 2) José Armando Rodríguez Torres
- 3) Mario Alberto Ruiz Ramos
- 4) Jorge Bladimir Muñoz Delgado
- 5) Mauro Antonio Sánchez Rocha
- 6) Raúl Villasana Cantú
- 7) José Porfirio Cibrián Mendoza
- 8) Juan Antonio Cruz García
- 9) Margarito Cruz Ríos
- 10) Jesús Cortés (Cortez) Ibarra
- 11) José Isabel Minjares (Minjarez) Yañez
- 12) Julián Martínez Ojeda
- 13) Juan Antonio Cárdenas Limón
- 14) Juan Ramón Barrientos Gloria
- 15) Mario de Jesús Cordero Arévalo
- 16) Juan Arturo Salazar Olivera
- 17) Ricardo Hernández Rocha
- 18) Isidro Briseño Ríos
- 19) Amado Rosales Hernández
- 20) Juan Manuel Rosales Hernández
- 21) Ignacio Campos Rosales
- 22) Guillermo Ortiz Mora
- 23) José Alfredo Ordóñez Martínez
- 24) José Guadalupe García Mercado
- 25) José Manuel Peña Saucedo
- 26) José Alfredo Silva Contreras
- 27) Juan Pablo Soto Nieto
- 28) Eliud Valero Valero

Alleged victims added on November 1, 2012:

- 1) Jesús Álvarez Flota
- 2) Juan Raúl Arteaga García
- 3) José Luis Calvillo Hernández
- 4) Ernesto de la Cruz Sánchez
- 5) José Ángel Guzmán Franco
- 6) Hugo Ramírez García
- 7) Felipe de Jesús Torres Reina
- 8) Jesús Viera Armendariz

Alleged victims added on May 20, 2014:

- 1) Javier Pérez Aguilar
- 2) Lauro Olacio Zarazua

- 3) José Eduardo Martínez Baltazar
- 4) Roberto Zapata González
- 5) Feliciano Vázquez Posada
- 6) Juan Gómez Martínez
- 7) Jesús Alberto de León Camarillo
- 8) Gregorio Rangel Ocura
- 9) Fermín Tavares Garza
- 10) Adrián Barboza Álvarez
- 11) Jorge Arturo Ortega Jiménez
- 12) Arturo García Díaz