

**REPORT N° 48/08**  
PETITION 515-01  
ADMISSIBILITY  
MIREY TRUEBA ARCINIEGA  
MEXICO  
July 24, 2008

**I. SUMMARY**

1. On August 2, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition lodged by the Commission for Solidarity and the Defense of Human Rights (COSYDDHAC) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners") alleging the international responsibility of the United Mexican States (hereinafter "Mexico," "the State," or "the Mexican State") in the extrajudicial execution of Mirey Trueba Arciniega, aged 20, at the hands of members of its armed forces, in the village of Baborigame, Guadalupe y Calvo municipality, Chihuahua, Mexico, on August 22, 1998.

2. The petitioners claim that the Mexican State is responsible for violating the rights enshrined in Articles 4 (right to life), 8 (right to a fair trial,) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in conjunction with violating the obligation set out in Article 1(1) thereof (obligation to respect rights), with respect to Mirey Trueba Arciniega and his family.

3. The State acknowledges that Mirey Trueba Arciniega's death was caused by a member of the army on active service. It claims, however, that the crime occurred through misadventure: in other words, unintentionally. It also claims that the individual responsible for Mirey Trueba's killing was prosecuted and convicted, and that the IACHR should therefore not review the proceedings before its domestic courts. It also claims it has given the victim's family compensation for the harm inflicted on them, and has therefore complied with its obligations under the American Convention.

4. In this report, the Commission concludes that the petition is admissible with respect to the violation of Mr. Mirey Trueba Arciniega's right to life, a fair trial, and judicial protection, set out respectively in Articles 4, 8, and 25 of the American Convention; it also rules it admissible as regards Article 1(1) of that same international instrument, in accordance with the requirements established in Articles 46 and 47 thereof.

5. In keeping with the principle of *iuris novit curia*, the Commission will examine in the stage on merits if a possible violation exists of Articles 2 and 5 of the American Convention, as regards the duty to adopt domestic legal provisions and the right to humane treatment, respectively. The Commission also decides to make this report public and include it in its Annual Report to the OAS General Assembly.

## **II. PROCESSING BY THE COMMISSION**

6. The events that occurred on August 22, 1998, were brought to the attention of the IACHR in a petition dated August 2, 2001. On August 31, 2001, the IACHR began to process the petition and forwarded the information to the State, giving it a period of two months in which to submit its comments, in compliance with Article 30.2 of its Rules of Procedure.

7. In a communication dated November 7, 2001, the State requested an extension of the deadline for submitting its comments, which was duly granted by the IACHR. By means of a communication dated December 6, 2001, received at the Executive Secretariat of the IACHR on December 7, 2001, the State submitted its comments, which were then forwarded to the petitioners. On January 29, 2002, the petitioners submitted their comments, which were then relayed to the State. In a communication of May 24, 2002, received at the IACHR Executive Secretariat on May 28, 2002, the State reported that it had no further comments regarding this complaint, following which the IACHR duly transmitted that information to the petitioners.

8. On October 28, 2002, the Executive Secretariat received from the State updated information on the case and on the agreement reached by the authorities and the victim's next-of-kin on September 17, 2002,<sup>1</sup> which it then forwarded to the petitioners. In that agreement, the State, through the Secretariat of National Defense, admitted that Mirey Trueba's death was probably caused by a soldier belonging to that same Secretariat of National Defense, for which reason it granted compensation to the family for the moral and material damages inflicted in the amount of 117,822.00 Mexican pesos.

9. By means of a letter dated December 10, 2002, the petitioners expressed their willingness to work toward a friendly settlement agreement. On December 30, 2002, the IACHR forwarded the petitioners' letter to the State, noting its decision to make itself available to the parties with a view to reaching a

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1 Military Justice Maj. Francisco de Jesús Pérez Chávez, Agent of the Military Prosecution Service, representing the State through the Secretariat of National Defense; José Tomás Trueba Loera, father of Mirey Trueba Arciniega; Dover de Jesús Soto Rasco, attorney-at-law, who certified the proceedings; Elias Trueba Arciniega and Micaela Arciniega Ceballos, civilian witnesses; Sgt. Silvestre López Corral and Sgt. Lazado Hernández Guevara, military witnesses.

friendly settlement. During the processing of the petition, however, no such agreement materialized.

10. By means of a letter dated February 10, 2003, received at the IACHR Executive Secretariat on February 11, 2003, the State asked the Commission to ratify the agreement signed by the victim's family and the Secretariat of National Defense (SEDENA); that letter was then duly forwarded to the petitioners. On May 2, 2003, the petitioners informed the Executive Secretariat of the IACHR that they disagreed with the State's request that the agreement be ratified because, in their opinion, it obeys national parameters alone and not the international standards developed by the Inter-American Court of Human Rights.

11. In a communication of August 23, 2004, received at the IACHR Executive Secretariat on August 24, 2004, the State submitted its comments on the petitioners' note. On December 20, 2004, the petitioners submitted additional information and asked the IACHR to proceed with the report on admissibility; this was conveyed to the State, along with a one month period in which to return its comments. On February 3, 2005, the State asked the IACHR for a 15-day extension, on account of the fact that it was gathering details from the authorities involved.

12. By means of a letter dated July 14, 2006, received at the Executive Secretariat on July 17, 2006, the State sent its comments on the petitioners' submission; those were then forwarded to the petitioners on August 21, 2006, along with a one month deadline in which to submit their reply.

13. On September 21, 2006, the Secretariat of the IACHR received a communication from Tomás Trueba Loera, the father of the alleged victim, stating his interest in continuing with the proceedings before the Inter-American Commission.

14. On that same date, the petitioners and Tomás Trueba Loera sent the IACHR further comments on the State's communication. The Inter-American Commission, on April 12, 2007, forwarded the petitioners' additional comments to the State.

### **III. POSITIONS OF THE PARTIES**

#### **A. The Petitioners**

15. The petitioners state that on August 22, 1998, Mirey Trueba, Vidal Trueba, and Jorge Jiménez were driving in a pick-up truck through the streets of Baborigame, Guadalupe y Calvo municipality, in the state of Chihuahua, when they were stopped by members of the Mexican Army. They allege that Mirey Trueba,

aged 20, was very frightened and that when they had parked he got out of the truck and started running, whereupon, for no reason whatsoever, Lt. Col. (Infantry) Luis Raúl Morales Rodríguez fired 11 shots at him, one of which hit him in the left femoral artery.<sup>2</sup> They claim that Vidal Trueba and Jorge Jiménez attempted to assist Mirey Trueba, but the soldiers did not permit them to do so and one of them struck Jiménez in the face and ribs with a rifle, threatened their lives, and accused them of being drug dealers.

16. The petitioners claim that Mirey was losing blood, and so Vidal Trueba asked the soldiers to allow him to go seek medical assistance at the local clinic. After they gave him permission to do so they agreed that the soldiers would then take him to the medical facility. They state that according to the statements of the doctor on duty, Efren Royval, Capt. Raúl Ruiz Gómez asked him to go to the scene of the incident to provide assistance to Mirey Trueba. The doctor reportedly asked that the wounded man be brought to the unit due to the large number of patients that he had. After waiting for 30 minutes, Jorge Jimenez, Vidal Trueba, Capt. Raúl Ruiz, and four other soldiers arrived without the wounded man, saying that he would arrive shortly. They say that after 40 or 50 minutes, upon noting his failure to arrive, the local clinic doctor and Capt. Raúl Ruiz Gómez went to find and assist him at the scene of the incident. However, the military vehicles that surrounded the site denied them access, by which time the body of Mirey Trueba had been abandoned for almost three hours without proper attention. The petitioners draw attention to the fact that when the ambulance arrived, Capt. (1st Class) Job Edilberto García Espinosa lifted up Mirey Trueba and found him unarmed. Based on the foregoing, the petitioners claim that Mirey Trueba bled to death for want of immediate medical assistance after he was wounded, in which condition he remained for more than three hours.

17. In the wake of Mirey Trueba's death, his father Tomás Trueba Loera filed a complaint with the deputy agent of the Public Prosecution Service in Baborigame that same day. The petitioners state that on August 22, 1998, the Military Prosecution Service began preliminary investigation 5ZM/4998 and, by means of a resolution of August 24, 1998, filed criminal charges against infantry Lt. Col. Luis Raúl Morales Rodríguez.<sup>3</sup>

18. The petitioners claim that the State did not conduct an effective and thorough investigation even though the authorities were aware of the facts based on the complaints received. The foregoing is based on the fact that, to date, only one person has been prosecuted and punished for the killing of Mirey Trueba, in spite of the fact that other agents were present, who struck his companions when

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2 Original complaint of July 31, 2001, received by the Executive Secretariat on August 2, 2007.

3 Original complaint of July 31, 2001, received by the Executive Secretariat on August 2, 2007.

they sought to go to his aid after the shooting occurred, which would make them accomplices.

19. In that regard, the petitioners argue that the State has yet to investigate or release any findings about Mirey Trueba's failure to receive assistance; that is, regarding the time elapsed from the moment he was seriously injured by the shots fired by the soldier to the time he was put in an ambulance; or regarding the three hours during which his companions were prevented from reaching the scene of the incident in order to assist him.

20. The petitioners further state that the person responsible was investigated, tried, and punished by the military courts due to the fact that on August 30, 1998, the Public Prosecution Service declined jurisdiction in the matter and referred the case to the Military Judge in Mazatlán, Sinaloa, where criminal proceeding 3979/98 was opened. Lt. Col. Raúl Morales Rodríguez was sentenced to eight years in prison and barred from the military for the same period of time. He appealed and on January 19, 2001, the Supreme Military Court reduced his sentence to 1 year, 11 months, and 15 days in prison, on the grounds that it was a case of homicide from misadventure.

21. The petitioners argue that the soldier responsible for the death of Mirey Trueba should have been tried in a civilian court, not by the military courts as was designated, since the latter lacked jurisdiction, independence, and impartiality, given that the military was trying one of its own officers. They indicate that when a military court takes up a matter that belongs in a regular court it violates the principle of natural jurisdiction and, *a fortiori*, due process, which, in turn, is intimately associated with the right of access to justice. For that reason, they hold that the State infringed Articles 8 and 25 of the American Convention.<sup>4</sup>

22. As to proportionality of the punishment, the petitioners report that Lt. Col. Raúl Morales Rodríguez, who was sentenced to eight years in prison and barred from the military for the same period of time, appealed his conviction and the Supreme Military Court, on January 19, 2001, reduced his sentence to 1 year, 11 months, and 15 days in prison, on the grounds that it was a case of homicide through misadventure. The petitioners consider that the penalty ultimately imposed on Lt. Col. Raúl Morales Rodríguez was not commensurate with the crime committed.

23. They also say that a feature of military proceedings is that they are confidential and closed, which denies victims and their next of kin the right to know about the progress of investigations as well as the right to the truth, and, for

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<sup>4</sup> Petitioners' communication of January 29, 2002.

that reason, both a fair trial and access to judicial guarantees under the terms of the American Convention were denied.

24. The petitioners further request that the Mexican State adopt such legislative or other measures as may be necessary to ensure effective observance of the rights and freedoms enshrined in the Convention, in order to prevent any authorities, including the military, from continuing to exceed their powers.

25. Regarding the criminal justice system, the petitioners allege that it guaranteed neither swift nor prompt justice inasmuch as the victims were denied any possibility of knowing about the progress or outcome of the trial, given that Mirey Trueba's family was not informed of the status of the proceeding nor, in spite of their efforts, was any contact made with them for a period of two years and 11 months.

26. The petitioners also hold that the State has denied them access to justice since it expected the relatives themselves to advance the proceedings. They say that the State expected them to become third-party plaintiffs in the proceeding along with the Public Prosecution Service, which was their right, a situation that apparently did not come about due to the 30 hours distance between the very poor rural farming town where the family of Mirey Trueba live and the nearest military judge. They say that, in spite of being financially and materially unable to obtain access to justice, the relatives of Mirey Trueba decided to grant power of attorney to COSYDHAC for the necessary purposes in the proceeding. They claim that at one time the authorities reportedly accepted the intervention of the representatives as both the Public Prosecution Service and the competent military judge communicated with them in connection with information requested on March 16, 1999. However, they report that when, on May 11, 2000, the representatives requested information by means of a letter addressed to the Military Prosecution Service, the latter replied that they should address their request to the National Human Rights Commission, which agency had reportedly declared on November 30, 1998 that it lacked jurisdiction in the case. With that, according to the petitioners, Mirey Trueba's next of kin were denied what little participation they had enjoyed until then in the proceeding.

27. The petitioners also express their willingness to submit to a future friendly settlement agreement, which would include moral damages, a public acknowledgement of the State's responsibility, an effective and impartial investigation of the incident, and guarantees of non-repetition; however, no such agreement has yet materialized.<sup>5</sup> They hold that although the alleged victim's father received an amount of money as compensation under the agreement he signed with the authorities on September 17, 2002, the petitioners note their

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<sup>5</sup> Petitioners' communication of December 10, 2002.

disagreement with the State's request that the Commission ratify that agreement because, in their opinion, it obeys national parameters alone.

28. The petitioners state that other cases involving military violence against the residents of Baborigame have come to the attention of the Inter-American Commission, including the murder of Valentín Carrillo Saldaña, who was abducted and executed by a platoon of soldiers in 1996.<sup>6</sup> Accordingly, precedents of violence and abuse against the local residents exist, as a result of the increased military presence.<sup>7</sup> The petitioners ask that the IACHR proceed to adopt the report on admissibility.<sup>8</sup>

## **B. The State**

29. The State claims that on the day the incident occurred, the army personnel involved were acting under the Federal Law of Firearms, Explosives, and Permanent Anti-Drug Trafficking Efforts: in other words, they were on active duty.

30. The State claims that preliminary investigation 23/98 and criminal proceeding 3779/98 indicate that on the day in question, the soldiers stopped a pick-up truck on the streets of Baborigame, Guadalupe y Calvo municipality, in the Mexican state of Chihuahua, on August 22, 1998; that three civilians got out; and that as Mirey Trueba descended from the vehicle, he apparently dropped a firearm, quickly picked it up again, and hurried away from the area, shouting, "Don't follow me or I'll shoot," on account of which infantry Lt. Col. Luis Raúl Morales Rodríguez discharged his service weapon.

31. The State claims that according to the crime report, Mirey Trueba's death was due to an accident, since the soldier's shots were not aimed at a target: the lieutenant colonel's defense counsel adds that as it was dark, Morales Rodríguez could not see the alleged victim and so fired without having a specific mark.<sup>9</sup>

32. Regarding medical assistance, the State indicates that when the emergency services arrived on the scene, Mirey Trueba was taken in an ambulance to the local clinic in Baborigame, Chihuahua, but died en route.

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6 Friendly Settlement Report No. 107/00, Case 11.808, *Valentín Carrillo Saldaña, Mexico*, December 4, 2000.

7 Communication from the petitioners dated December 17, received by the IACHR Executive Secretariat on December 20, 2004.

8 Petitioners' communication of September 21, 2006.

9 Communication from the State of August 23, 2004, received at the Executive Secretary of the IACHR on August 24, 2004.

33. The State notes that the Public Prosecution Service for civil jurisdiction crimes in the town of Baborigame, Guadalupe y Calvo municipality, Chihuahua, began preliminary investigation 23/28 on the day of the incident, finding that Mirey Trueba Arciniega died as a result of the wound inflicted by Lt. Luis Raúl Morales Rodríguez. Furthermore, according to the death certificate issued at the local clinic in Baborigame, his death was caused by a gunshot wound.

34. The State argues that as a result of the investigation, the office of the Public Prosecution Service in charge decided, based on the evidence produced by the inquiry, to bring criminal charges against Lt. Col. (Infantry) Luis Raúl Morales Rodríguez, who was prosecuted and punished as the person responsible for the homicide of Mirey Trueba. Therefore, it considers that the investigation was effective.

35. With regard to the criminal proceeding, the State mentions that the Office of the Chihuahua State Attorney General for Justice surrendered jurisdiction to the military courts, in accordance with Article 13 of the Constitution and Article 57 of the Code of Military Justice. The military judge assigned to the Third Military Region in Mazatlán, Sinaloa, filed criminal proceeding 3779/98 against infantry Lt. Raúl Morales Rodríguez who, in a judgment dated September 22, 1998, was sentenced to 8 years in prison for the murder of Mirey Trueba, as well as being discharged and barred from the military for the same period of time. The State argues that that decision was reached promptly and effectively in accordance with the terms of Article 25 of the American Convention on Human Rights<sup>10</sup>. Subsequently, after he filed an appeal, Lt. Morales Rodríguez's sentence was reduced to 1 year, 11 months, and 15 days in prison, in a judgment handed down by the Supreme Military Tribunal on January 19, 2001,<sup>11</sup> which left intact the possibility for anyone so legitimately entitled to institute civil proceedings in accordance with Article 436 of the Code of Military Justice. The State argues that the next of kin did not attempt an action for *amparo* or any other appeal, which meant that this judgment acquired the force of *res judicata*.

36. As to proportionality of the penalty, the Supreme Military Court decided to reduce the sentence on the grounds that infantry Lt. Col. Luis Raúl Morales Rodríguez took the life of Mirey Trueba Arciniega through misadventure (accidentally), in that he was unaware of the adverse circumstances surrounding his action: in other words, he did not carefully consider the consequences that his actions could bring about. It stated that because it was dark, Lt. Col. Morales could not see Mirey Trueba and so did not fire directly at him; but rather fired shots that were not aimed at a specific target. Nevertheless, his imprudent and rash behavior

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10 Communication from the State of December 6, 2001.

11 Communication from the State of December 6, 2001.



caused the injury to Mirey Trueba's left leg and his subsequent death. The State further indicates that the family did not file for *amparo* constitutional relief or any other remedy against the resolution that decided the appeal filed with the Supreme Military Court, which means that the judgment was upheld as *res judicata*.

37. With respect to the hearings, the State claims that the proceedings in the military court were open to the public, announced by general orders from the garrison, and notified to the corresponding authorities for all legal purposes,<sup>12</sup> and so the military court acted with transparency.

38. Furthermore, the State says that the next of kin did not exercise their right to register as third-party plaintiffs in the proceeding as they failed to notify the investigating authorities so that they might be recognized as such. The State holds that in spite of that, on March 18, 1999, the family was notified of the filing of the criminal case and the crime for which criminal proceedings were being instituted against Lt. Col. (Infantry) Morales Rodríguez and that the Military Attorney General's Office informed the representatives of COSYDDHAC at a meeting on October 3, 2000, of the status of the criminal proceeding brought against the person accused of the killing of Mirey Trueba Arciniega. Based on the foregoing, the State maintains that the petitioners' claim that the victim's next-of-kin were unable to register as third-party plaintiffs alongside the Military Prosecution Service in the proceeding because of the distance between Baborigame, Chihuahua, and the city of Mazatlán, Sinaloa, is not attributable to the State because there is no record of these persons having indicated that there was any impediment to their appearance at the place where the trial of the accused took place. In that connection, the State argues that the petitioners' allegation of unwarranted delay is false inasmuch as they omitted basic procedures that would have given them standing to act as third-party plaintiffs under the terms of the Constitution and laws, given that it is up to the recognized third-party plaintiff to initiate the necessary steps, and it is not incumbent upon the authorities to locate them in order to inform them. The State adds that in the instant petition COSYDDHAC is not a third-party plaintiff. Therefore, they argue that legal due process was observed and that the domestic remedies were available to the petitioners, who, nonetheless, failed to use them.

39. As to the petitioners' argument that the next of kin received no information on the case and that they were prevented access to the remedies under domestic law, the State claims that to be untrue, since, according to the State, on November 13, 1998, the National Human Rights Commission closed the investigation and notified Mr. Tomás Trueba Loera that it lacked jurisdiction to take up the case as the alleged culprit was being tried by a military tribunal. That

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<sup>12</sup> Communication from the State of March 17, 2005.

Commission also advised the complainants to register as third-party plaintiffs with the Public Prosecution Service in order to determine reparations for the damages caused.<sup>13</sup>

40. The State says that in order to identify viable alternatives for resolving the matter and to create the conditions necessary for it to redress the harm inflicted, an agreement was signed on September 17, 2002, by the victim's father, José Tomás Trueba, and the authorities.<sup>14</sup> In that agreement the Secretariat of National Defense states that Mirey Trueba Arciniega's death was probably caused by a soldier belonging to that same Secretariat and, consequently, it compensated the family for the moral and material damages inflicted in the amount of 117,822.00 Mexican pesos, and it further states that José Tomás Trueba Loera accepted and received that amount as redress for the moral and material damages.<sup>15</sup> The agreement also stipulates that José Tomás Trueba shall not pursue any present or future civil or administrative action. Thus, the State claims that it thereby reached a settlement with the victim's next-of-kin and asks that the IACHR ratify the agreement since, in this case, it has been shown that the incident was investigated and the perpetrator was tried and punished.<sup>16</sup>

41. The State claims it has met the obligation of ensuring the free and full exercise of the rights enshrined in the American Convention, per Article 1(1) thereof, in that it has complied with its duty of prevention by enacting legal, political, administrative, and cultural provisions that promote respect of the right to life.<sup>17</sup>

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae***

42. The petitioners have standing under Article 44 of the American Convention to lodge petitions on behalf of the alleged victim, with respect to whom the Mexican State had agreed to respect and ensure the rights enshrined in the

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13 Communication of December 6, 2001.

14 Military Justice Maj. Francisco de Jesús Pérez Chávez, Agent of the Military Prosecution Service, representing the State through the Secretariat of National Defense; José Tomás Trueba Loera, father of Mirey Trueba Arciniega; Dover de Jesús Soto Rasco, attorney-at-law, who certified the proceedings; Elias Trueba Arciniega and Micaela Arciniega Ceballos, civilian witnesses; Sgt. Silvestre López Corral and Sgt. Lazado Hernández Guevara, military witnesses.

15 Communication from the State of October 25, 2002, received at the IACHR Executive Secretariat on October 28, 2002.

16 Communication from the State of February 10, 2003, received at the IACHR Executive Secretariat on February 11, 2003.

17 Communication from the State of March 17, 2005.

American Convention. Mexico has been a party to the American Convention since March 24, 1981, the date on which it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

43. Similarly, the Commission has competence *ratione loci* to examine the petition, since it alleges violations of rights protected by the American Convention occurring under the jurisdiction of the State. The Commission has competence *ratione temporis* to study the claim since the obligation to respect and ensure the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

44. Finally, the Commission has competence *ratione materiae* to examine this case, since the petition describes possible violations of human rights protected by the American Convention.

## **B. Other admissibility requirements of the petition**

### **1. Exhaustion of domestic remedies**

45. Article 46.1.a of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. However, Article 46.2 provides that this requirement shall not apply when:

- (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or,
- (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

46. In this connection, the Inter-American Court has maintained that petitioners must only exhaust those remedies that are "appropriate" for redressing the alleged violation. It should be noted that the function of those remedies within the domestic legal system must be suitable for addressing an infringement of a legal right.

47. In the instant case, the petitioners claim that with the transfer of the case from civilian to military jurisdiction the domestic law of the State failed to afford legal due process to protect the abridged rights and that there was a denial of justice as the State sought to make progress in the proceeding dependent on the initiative of the victim's next of kin and, in spite of their being impoverished rural farmers, to make it necessary for them to travel to the nearest military court 30 hours away to register as third-party plaintiffs with the Public Prosecution Service if they wanted to receive information. Based on the foregoing, the petitioners consider that they are exempt from the requirement to exhaust domestic remedies, in keeping with the exceptions set forth at Article 46 (a) and (b).

48. For its part, the State maintains that the petitioners' complaint must be ruled inadmissible since Mirey Trueba's family filed no remedies whatsoever against the resolution that decided the appeal lodged before the Supreme Military Court whereby infantry Lt. Col. Luis Raúl Morales Rodríguez's sentence was reduced, with which the judgment became finalized as *res judicata*. The State claims that the petitioners seek the review of decisions reached by the domestic courts: in other words, for the IACHR to serve as a fourth instance.

49. The Commission notes that the record shows that the Military Prosecution Service began preliminary investigation 5ZM/499 on August 22, 1998, and that, in a decision dated August 24, 1998, that same service filed criminal charges against Lt. Col. (Infantry) Luis Raúl Morales Rodríguez. On August 30, 1998, the Public Prosecution Service declined jurisdiction in the matter and transferred the case file to the military court in Mazatlán, Sinaloa, which then opened criminal proceeding 3979/98. On September 2, 1998, the National Human Rights Commission opened case Fed. 032/98 and decided on November 30, 1998, that it lacked jurisdiction in the matter since the alleged perpetrator was being tried by a military tribunal and that the family should register as third-party plaintiffs in the proceeding. Lt. Col. Morales Rodríguez was tried by a court martial and, on September 22, 1998, sentenced by a military judge attached to the 3rd Military Region to eight years in prison and exclusion from any position in the Army for the same period. The convicted man appealed the decision and, on January 19, 2001, the Supreme Military Court reduced his sentence to 1 year, 11 months, and 15 days in prison, ruling that it was a case of homicide through misadventure. In other words, in the case at hand the regular justice system did not consider itself competent and therefore transferred the case to the military courts, which investigated, tried, and convicted the member of the armed forces who caused Mirey Trueba's death.

50. With regard to the use of military courts to try members of the armed forces suspected of offenses, the Commission has on repeated occasions

noted that the military justice system is not a suitable venue for examining alleged violations of human rights committed by members of the security forces.<sup>18</sup> Similarly, the Inter-American Court has ruled that military justice is an adequate forum only for trying members of the military for crimes or misdemeanors which by their very nature infringe legal interests particular to the military order.<sup>19</sup> For that reason, and in determining the admissibility of this complaint, the Commission notes that the military justice system was used to investigate the death of Mirey Trueba, a civilian, and to prosecute and punish a member of the army. In that regard, it finds that the instant case constitutes an alleged lack of access to a suitable and independent judicial remedy to investigate, prosecute, and punish the person responsible for the death of the victim and, therefore, gives rise to the exception provided at Article 46(2)(b) of the American Convention.

51. Furthermore, the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the Convention, such as the guarantee of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. Consequently, whether or not the Convention's exceptions to the rule requiring the prior exhaustion of domestic remedies are applicable in the case at hand must be decided prior to and in isolation from the analysis of the merits of the case, and that is because it depends on a standard of appreciation that is different from the one used to determine whether or not Articles 8 and 25 of the Convention have been violated.<sup>20</sup> It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the case at hand will be analyzed, as appropriate, in the Commission's report on the merits of the dispute, in determining whether or not the American Convention was in fact violated.

## **2. Period for lodging a petition**

52. Under the terms of Article 46.1.b of the Convention, for a petition to be admitted it must have been lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level. The six-month rule guarantees certainty and legal stability once a decision has been adopted.

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18 Report on Admissibility No. 84/98, Case 11.710, *Carlos Manuel Prada González and Evelio Antonio Bolaño Castro, Colombia*, September 25, 1998, paragraph 41. "Military tribunals do not guarantee that the right to a fair trial will be observed since they do not have the independence that is a condition *sine qua non* for this right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose serious involvement in serious human rights violations has been established."

19 Report No. 74/01, Case 11.662, *Giaccommo Turra, Colombia*, October 10, 2001.

20 Report on Admissibility No. 93/06, Petition 972-03, *Valentina Rosendo Cantu, Mexico*, October 21, 2006.

53. The IACHR has ruled on the applicability of exceptions to the exhaustion of domestic remedies rule under Article 46.2.b of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time.

54. In that regard, bearing in mind that the criminal proceeding conducted by the military tribunal did not constitute a suitable remedy and that the petition was lodged on August 2, 2001, that is, seven months after the final judgment issued by that organ was made public on January 19, 2001, the Commission believes that the petition under review was lodged within a reasonable time.

### **3. Duplication of international proceedings and *res judicata***

55. Article 46.1.c stipulates that the admissibility of a petition is dependent on the matter not being "pending in another international proceeding for settlement"; likewise, Article 47.d of the Convention provides that the Commission shall admit no petition that "is substantially the same as one previously studied by the Commission or by another international organization." Nothing in the case file indicates that the subject matter of the petition is pending in another international settlement proceeding or that it is substantially the same as one previously examined by this Commission or by another international body. Consequently, the requirements set out in those articles have been met.

### **4. Characterization of the alleged facts**

56. The Commission notes that under the agreement signed on September 17, 2002 by the State and the father of Mirey Trueba, the latter received a sum of money in compensation. In keeping with the consistent and firmly established jurisprudence of the Inter-American Court of Human Rights with respect to the nature and the scope of the obligation to offer reparations,<sup>21</sup> it is necessary to consider not only pecuniary damages arising from the violation, but to weigh as a whole all those injuries of multiple characteristics which, consequently, should be repaired by means of different measures specific to the nature and extent of the injury.<sup>22</sup> The Court also considers that it is necessary to add any positive measures the State must adopt to ensure that the harmful acts,

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21 Cfr. I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, paras. 25-26.

22 Cfr. I/A Court H.R., *Loayza Tamayo Case*. Judgment of September 17, 1997. Series C No. 3 (Concurring Opinion of Judge A.A. Cançado Trindade)

such as those that occurred in this case, are not repeated.<sup>23</sup> By the same token, in the judgments in the Mapiripán, Pueblo Bello and La Rochela Massacres versus Colombia, the Court deemed that comprehensive reparation of the violation of a right protected by the Convention cannot be restricted to payment of compensation to the next of kin of the victim. In keeping with this precedent, in the event of finding the State responsible for a violation of human rights, the Commission must consider pecuniary elements sufficient to repair both material and moral injuries sustained, as well as non-pecuniary elements, measures of satisfaction and guarantees of non-repetition that comprehensively repair the consequences of the violations. In that regard, the Commission finds that the delivery of a sum of money to the father of Mirey Trueba in acknowledgement of the State's responsibility could be regarded as partial reparation of the damage caused by the State, since it is not sufficient or effective reparation for all the harm caused; in other words, comprehensive reparation remains pending. Based on the foregoing, the IACHR decides to declare the petition admissible in spite of the existence of the aforesaid agreement.

57. The Commission believes that it is not appropriate at this stage of the proceedings to determine whether or not the alleged violations actually occurred, as that is to be addressed during the analysis of the merits of the case. However, the Commission considers that the allegations, if proven, would tend to establish violations of Articles 2, 4, 5, 8, and 25 of the American Convention, in conjunction with Article 1(1) thereof, and that the case is admissible in accordance with the requirements set forth in Articles 46 and 47 of the American Convention.

58. In keeping with the principle of *iuris novit curia*, the Commission will examine in the stage on merits if a possible violation exists of Articles 2 and 5 of the American Convention as regards the duty to adopt domestic legal provisions and the right to humane treatment, respectively, given that those articles are implied in the description of the facts alleged in the petition, though not explicitly invoked by the petitioners.

## **V. CONCLUSION**

59. The Commission concludes that the case is admissible and that it has competence to examine the petitioners' claim regarding the alleged violation of Articles 4, 8, and 25 of the American Convention, all in connection with the obligations arising from Articles 1(1) thereof.

60. In light of the foregoing arguments of fact and law, and without prejudging the merits of the case,

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<sup>23</sup> Cfr. I/A Court H. R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 144.

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

### **DECIDES:**

1. To declare this petition admissible as regards the alleged violation of the rights enshrined in Articles 2, 4, 5, 8, and 25 of the American Convention, all in conjunction with the obligations arising from Article 1(1) thereof.
2. To convey this report to the petitioners and to the State.
2. To continue with its analysis of the merits of the case.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission).