

OEA/Ser.L/V/II.159
Doc. 56
29 November, 2016
Original: Spanish

REPORT No. 47/16

CASE 12,659

REPORT ON MERITS

MIREY TRUEBA ARCINIEGA ET AL.
MEXICO

Approved by the Commission at its session No. 2067 held on November 29, 2016
159 Regular Period of Sessions

Cite as: IACHR, Report No. 47/16, Case 12,659. Merits, Mirey Trueba Aciniega et al., Mexico,
November 29, 2016.



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¹ Commissioner José de Jesús Orozco Enríquez, a Mexican national, did not participate in the deliberation or decision of this case, as provided in Article 17.2.a of the Commission's Rules of Procedure.

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I. SUMMARY

1. On August 2, 2001, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by the Comisión de Solidaridad y Defensa de los Derechos Humanos (COSYDDHAC) and the Center for Justice and International Law (CEJIL) (hereinafter, “the petitioners”), alleging that Mexico (hereinafter “the Mexican State” or “the State”) is internationally liable for the alleged extrajudicial execution of Mirey Trueba Arciniega on August 22, 1998, at the hands of a member of the military, as well as for the failure to investigate, prosecute and punish all of the individuals responsible for the crime.

2. According to the petitioners, Mirey Trueba Arciniega was shot by a member of the Mexican Army in Baborigame, municipality of Guadalupe y Calvo, State of Chihuahua. They claimed that, along with other military members, said officer impeded the family members of Mr. Trueba from taking him to the hospital. They contended that because of the lack of medical care, Mr. Trueba died three hours after the events transpired. The petitioners also claimed that the investigations conducted into the case were ineffective because not all of the persons responsible for the crimes were punished.

3. The Mexican State’s defense rested on the fact that the military officer, who shot Mr. Trueba, was tried and convicted in domestic courts. The State further contended that his family received compensation for his death. The State concluded that, consequently, it fulfilled its obligation to investigate and punish those responsible for the crimes, as well as to provide reparation for the damages caused.

4. After examining the available information, the Commission concluded that the Mexican State is responsible for the violation of the right to life, humane treatment, a fair trial and judicial protection, as established in Article 4.1, 5.1, 8.1 and 25.1 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), in connection with the obligations set forth in Article 1.1 and 2 of that instrument, to the detriment of the persons named throughout the instant report. Based on these conclusions, the IACHR made its recommendations to the Mexican State.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On August 2, 2001, the IACHR received the initial petition. The proceedings from the time the petition was filed until the decision on admissibility was issued are explained in detail in Admissibility Report No. 48/08 of July 24, 2008.² In said report, the IACHR concluded that the petition was admissible with regard to the rights set forth in Articles 2, 4, 5, 8 and 25 of the American Convention, in connection with Article 1.1 of this instrument.

6. On August 4, 2008, the Commission served the parties with a copy of the admissibility report. Additionally, it informed the parties that it was making itself available to them in order to reach a

² See, IACHR, Report No. 48/08, Petition 515-01, Admissibility, Mirey Trueba Arciniega, Mexico, July 24, 2008. Additionally, the Commission recalls receiving on October 28, 2002, an agreement between the State and the victim’s family members, entered into on September 17 of that year. The State reported that in this agreement, it was noted that the death of Mirey Trueba was likely caused by a member of the Secretariat of National Defense and, therefore, compensation in the amount of \$117,822 Mexican Pesos was awarded to the family as reparation for moral and material damages.

friendly settlement in the matter. The IACHR also asked the petitioners to submit their comments on the merits within a two-month period. On October 6, 2008, the petitioners submitted their comments on the merits.

7. On November 12, 2008, the Commission asked the State to submit its observations on the merits within a two-month period. On January 16, 2009, the State submitted a communication to the Commission expressing its interest in beginning the friendly settlement process. On March 3 of that year, the petitioners submitted a communication asking for the IACHR to proceed with the merits stage.

8. Subsequently, the State submitted communications on May 1, 2009 and June 19, 2009. In turn, the petitioners submitted communications on April 14, 2009, September 26, 2009, August 19, 2011, October 20, 2011, January 18, 2012 and March 13, 2012. All communications were duly forwarded to the opposing party.

9. Then, in its communication of November 8, 2012, the State reiterated its interest in seeking a friendly settlement. On October 16, 2014, the petitioners submitted a communication to the IACHR asking it to issue its merits report. Said request was made again on February 26, June 15, and August 18, 2016. In its communication of October 17, 2016, the State reiterated its interest in seeking a friendly settlement. On November 3, 2016 the petitioners submitted a communication to the IACHR stating that they were not interested in a friendly settlement, and asking the Commission to issue its merits report.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

10. The petitioners alleged that the State is responsible for Mirey Trueba's death on August 22, 1998, in Baborigame, municipality of Guadalupe y Calvo, State of Chihuahua, as well as for the failure to adequately investigate and punish those responsible for the crime. They claimed that Mr. Trueba was riding in a vehicle with his brother and another companion, when they were stopped by members of the Army. According to their account, one of these soldiers fired 11 shots at him after Mr. Mirey Trueba ran out of the vehicle in the opposite direction of the soldiers. The petitioners explained that these incidents took place in a context of the use of the Armed Forces for law enforcement purposes and acts of violence were constantly committed by soldiers against the residents of Baborigame.

11. As for the right to life and humane treatment, the petitioners alleged that, after he was shot by the state agent, Mr. Trueba was not taken to a medical facility because the soldiers refused to allow it. They contended that Mr. Trueba went three hours without receiving any type of assistance and, consequently, passed away. The petitioners argued that the refusal to allow Mr. Trueba to receive timely medical care infringed his right to humane treatment, while he was alive. They further alleged that his right to life was also violated, inasmuch as his death was caused by shots fired by a member of the Army on duty at the time. Additionally, the petitioners contended that the soldiers beat Mr. Trueba's two companions, who pleaded for him to be taken to a medical facility.

12. With regard to the right to a fair trial and judicial protection, the petitioners alleged that the investigation did not fulfill due process requirements. They explained that the investigation was conducted under the military criminal jurisdiction, which runs counter to international standards. They contended that only the military officer, who shot Mr. Trueba, was tried and punished for homicide in said jurisdiction. In addition to arguing that it was not the suitable jurisdiction, they claimed that the punishment of one year and 11 months prison term was not proportional to the crime involved. The petitioners also alleged that Mr. Trueba's family members were unable to participate in or follow the developments in the proceedings, because they were not kept abreast of the case status.

13. Additionally, the petitioners contended that the State did not conduct an effective and thorough investigation, inasmuch as it did not investigate criminal liability of the other members of the

military, who witnessed the events, who beat Mr. Trueba's family members and prevented him from being taken to a medical facility after he was shot.

14. As for the obligation of domestic legal effects, the petitioners argued that Mexican law allowed the military courts to arrogate to themselves the authority to investigate cases of human rights violations. They noted that said provision of the law runs counter to the tenets of the American Convention and, consequently, Mexico has the obligation to adopt legislative or other measures, as may be necessary, in order to prevent the military authorities from overstepping their powers.

15. Lastly, the petitioners asserted that Mr. Trueba's family members received an amount of money as compensation under an agreement signed with the State in September 2002.

B. Position of the State

16. The State recognized that on August 22, 1998, Mirey Trueba was shot dead by a member of the Mexican Army. It specifically claimed that when the group of soldiers stopped the car Mr. Trueba was riding in, he got out of the vehicle, dropped a gun and started to run off shouting "don't follow me 'cause I'll shoot." In its initial submission, the State wrote that because of this situation, one of the soldiers "fired his weapon." It contended that the shots fired were not aimed at any target, but that because of the darkness of the night, "he fired them without having a specific point." The State's position on these incidents is consistent with the conclusions reached in the domestic investigation and criminal proceedings under the military criminal justice system.

17. Regarding the alleged lack of medical assistance for Mr. Trueba after being shot, the State contended that once the medic's unit arrived on the scene of the incident, he was put into an ambulance. It claimed that Mr. Trueba passed away while the ambulance was on its way to the closest clinic. The State did not address the petitioners' allegations about the three-hour delay to arrive in the hospital, nor did it provide any explanation about it.

18. With respect to the investigation conducted, the State contended that that Office of the Public Prosecutor opened a preliminary investigation promptly and, based on the evidence gathered therein, brought a charge against the officer that shot Mr. Trueba. It alleged that after the trial in the military court, a conviction was handed down against him in 2000 for the crime of simple intentional homicide, which was subsequently reduced on appeal to manslaughter or negligent homicide. The State further claimed that the proceeding was conducted expeditiously and within a reasonable period of time.

19. As for the proportionality of the punishment, the State alleged that Mr. Trueba was deprived of his life as a result of negligence. It further argued that the military trial was held in a public hearing and, consequently, information about it was not held back from Mr. Trueba's family members. It also claimed that Mr. Trueba's family members did not assert their right to act as collaborating parties in the proceedings. The State recognized that the military courthouse was located far away from Baborigame. It explained that, in its view, that does not justify the family members not becoming a party to the proceeding.

20. With relation to the choice of trying the case under the military criminal jurisdiction, the State argued that the Office of the Attorney General of Chihuahua ceded jurisdiction to the military courts based on a provision of Article 57 of the Code of Military Justice in force at the time.

21. In its communication of 2012, the State noted that currently "there is a debate on jurisdiction of military courts to hear matters in which civilians are involved." It claimed that it was working on several different initiatives to reform the Military Code of Justice.

22. The State noted that, in addition to conducting an effective investigation, it paid monetary compensation to Mr. Trueba's next of kin in order to redress the damages caused to them. It explained that in September 2002, an agreement was reached with Mr. Trueba's father, to pay the sum of \$117,822.00 Mexican pesos as reparation for the pain and suffering and material damages, and that it made good on the payment.

IV. PROVEN FACTS

A. The situation of Mirey Trueba prior to his death

23. Mirey Trueba was born in Baborigame, municipality of Guadalupe y Calvo, State of Chihuahua. At the time of the events of the case, he was working on his family's farm. His family was made up of: i) his father José Tomás Trueba; ii) his mother Micaela Arciniega; and iii) his brothers Vidal (deceased)³, Elías, Tomás, Eleazar, Eduardo (deceased)⁴ and Samuel, all having the surname Trueba.⁵

24. Baborigame has a population of approximately two thousand inhabitants and 75% of its population belongs to the Tepehuan indigenous group.⁶ Based on publically available information, the presence of the Mexican Army has increased since the end of the 1960s in said municipality.⁷ The State acknowledged the increased presence of the Army and explained that a military command post was established in Baborigame in the 1900s in response to the violence from drug trafficking.⁸ The State claimed that at the time of the events of the case, this base was commanded by Infantry Lieutenant Colonel Luis Raúl Morales Rodríguez.⁹

25. The Commission notes the press reports recounting that members of the military committed several acts of violence against the population of Baborigame. The incidents mentioned in the newspaper articles include house burnings and the execution of five civilians in 1992,¹⁰ the arrest and alleged torture and execution of a civilian in 1996¹¹ and the alleged executions of three civilians in 1998, 1999 and 2000, respectively.¹²

26. On August 20, 1998, two days before the events of the case before us took place, 400 soldiers came to Baborigame.¹³ The sectional President of the region claimed that the reason for the soldiers' arrival was to fight drug trafficking.¹⁴

³ According to the petitioners, Vidal Trueba was murdered on October 24, 2011. Petitioners' communication of March 13, 2012. The Commission also verified said status based on information available to the public. See: <http://www.oem.com.mx/elsoldeparral/notas/n2284591.htm>

⁴ According to the petitioners, Eduardo Trueba was murdered on October 24, 2011. Petitioners' communication of March 13, 2012. The Commission also verified said status based on information available to the public. See: <http://www.oem.com.mx/elsoldeparral/notas/n2284591.htm>

⁵ Petitioners' communication of March 13, 2012.

⁶ Newspaper article "Morir en la Sierra" [Dying in the Sierra], published in the daily newspaper Chihuahua, August 30, 1998. Annex 1 to initial petition.

⁷ Newspaper article "Morir en la Sierra" [Dying in the Sierra], published in the daily newspaper Chihuahua, August 30, 1998. Annex 1 to initial petition.

⁸ State's communication of June 19, 2009.

⁹ State's communication of June 19, 2009.

¹⁰ Newspaper article "Morir en la Sierra" [Dying in the Sierra], published in the daily newspaper Chihuahua, August 30, 1998. Annex 1 to initial petition.

¹¹ IACHR, Report No. 107/00, Case 11.808, Friendly Settlement, Valentín Carrillo, Mexico, December 4, 2000.

¹² Initial petition. Said information was not refuted by the State.

¹³ Newspaper article "Morir en la Sierra" [Dying in the Sierra], published in the daily newspaper Chihuahua, August 30, 1998. Annex 1 to initial petition.

¹⁴ Newspaper article "Morir en la Sierra" [Dying in the Sierra], published in the daily newspaper Chihuahua, August 30, 1998. Annex 1 to initial petition.

B. Events of August 22, 1998

27. According to the complaint filed by his family, on August 22, 1998, twenty-year-old Mirey Trueba was riding in a vehicle along with his brother Vidal Trueba and his friend Jorge Jiménez.¹⁵ In the complaint, the family noted that at around 1:10 AM, while they were driving down the main street of Baborigame, a military car approached and stopped them.¹⁶

28. The Commission takes note of the different accounts of what occurred subsequently to the point of time when the car Mr. Trueba was riding in was stopped.

29. On the one hand, Jorge Jiménez, who was driving the vehicle, made the following statement to the Office of the Public Prosecutor:

(...) as they were driving down their lane a military vehicle was driving ahead of them, and that was when they stopped him apparently in order to search them ... he stopped, and consequently Mirey suddenly got scared getting out of the vehicle and running out the back (...) and they started (...) a commander to fire shots with a pistol you could hear the discharge of about ten or twelve shots.¹⁷

30. Similarly, Mirey Trueba's brother made the following statement to the Office of the Public Prosecutor:

We were riding slowly down our lane and an Army convoy was riding in front of us, which had us stop, they got out and we did too, when all of a sudden Mirey apparently got scared of the soldiers, ran out the back (...) and when he got over a little wooden (...) bridge (sic) a military officer (...) took out a gun and started to fire at Mirey (...) ¹⁸.

31. On the other hand, the State claimed in its submission of August 2004 that, based on the investigations conducted by domestic authorities (see *infra*), the following sequence of events was established:

(...) as they were driving down the main street of Baborigame, [four members of the military: Infantry Lieutenant Colonel Luis Raúl Morales, Corporal Alejandro de la Cruz, Sergeant José Aguirre and private Ricardo Álvarez] they noticed that at a distance of approximately 20 meters away, a pick up truck was also coming from behind and so the military vehicle stopped in order wait for the aforementioned vehicle to catch up in order to perform a stop on it and carry out a search of the vehicle, as well as its passengers. (...)

Three civilians were riding in the abovementioned pick up truck (...). [Mirey Trueba] got out (...) apparently dropping a weapon, which he picked up and walked hastily away from said location, while he said "don't follow me 'cause I'll shoot" so then Infantry Lieutenant Colonel Luis Raúl Morales Rodríguez fired his weapon.¹⁹

¹⁵ Complaint of Tomás Trueba, August 22, 1998. Annex 2 to initial petition.

¹⁶ Complaint of Tomás Trueba, August 22, 1998. Annex 2 to initial petition.

¹⁷ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

¹⁸ Official No. 32161, November 30, 1998. Annex 5 to the initial petition.

¹⁹ State's communication of August 23, 2004.

32. The State also contended that during said investigations, it was determined that even though Mirey Trueba was shot with a firearm by an agent of the military, “it is also so that the military officer never had him in sight, in other words, the shots were not aimed at a target, it was due to an accident.”²⁰

33. In its submission of June 2009, the State based its allegations on the determinations reached by the criminal justice system. The Mexican State contended that Lieutenant Morales “fired without a specific target point toward where Trueba was fleeing (...) with the intention of frightening him and preventing him from escaping.”²¹ It further argued that “the darkness at the time led the military men to assume that Mr. Trueba (...) had managed to get away, and therefore they decided to immediately set out after him, finding him seriously wounded.”²²

34. Both the petitioners and the State concurred that Lieutenant Morales fired off eleven shots in the direction in which Mirey Trueba was running.²³

35. With regard to what happened after the shots were fired by officer Luis Morales, the Commission takes note of the differing accounts.

36. Vidal Trueba claimed the following:

(...) [Mirey] fell (sic) wounded, he was writhing, then several soldiers approached Mirey and did nothing to help him, then two other military cars arrived, I could not get close because others were holding me and they wouldn't let me speak, if I tried to speak they would push me and silence me (...) the soldiers continued to mistreat me (...)²⁴.

37. For his part, Jorge Jiménez made the following statement:

Vidal and I tried to help Mirey but the soldiers didn't let us get near, they hit us in the face with their hands and one hit me with a rifle in the ribs and threatened to kill me, accusing us of being drug traffickers and we weren't able to come to Mirey's aid, he bled to death from the wound caused by the bullet shot.²⁵

38. Doctor Efrén Royval Simental, the surgeon who was working at the clinic of Baborigame, made the following statement:

At 1:50 AM (...) Captain Raúl Ruiz Gómez arrived, I asked him to transfer the wounded man to the unit because I had other patients,²⁶ while I was getting together what was necessary to treat him, so I waited a half an hour, then Jorge Jiménez, Vidal Trueba and Captain Raúl Ruiz arrived with four more soldiers but they didn't have the wounded man with them, and they said he would be arriving any minute and so we waited for a space of 40 to 50 minutes and the wounded man never arrived, and therefore we left to go get him at the scene of the crime

²⁰ State's communication of August 23, 2004.

²¹ State's communication of June 19, 2009.

²² State's communication of June 19, 2009.

²³ Petitioners' communication of October 6, 2008. State's communication of June 19, 2009.

²⁴ Complaint of Tomás Trueba, August 22, 1998. Annex 2 to initial petition.

²⁵ Complaint of Tomás Trueba, August 22, 1998. Annex 2 to initial petition.

²⁶ Based on publically available information, Doctor Royval testified that he was treating two women who were giving birth. See: Newspaper article: “Morir en la Sierra” published in the daily newspaper Chihuahua, on August 30, 1998. Annex 1 to the initial petition.

(...) without finding the wounded man. (...) we headed back to the clinic of the ejido and when we arrived we found that Mirey was lifeless.²⁷

39. Doctor Efrén Royval Simental claimed that when he saw the body of Mr. Trueba, he noticed that “he had been dead for at least three hours, because the wound was in the left femoral artery, this wound causes someone to bleed out in five minutes.”²⁸

40. For its part, the State contended in its submission of August 2004 that after he was shot, Mr. Trueba was taken in an ambulance to the Clinica Ejidal of Baborigame and died on the way.²⁹ In its subsequent submission of June 2009, it claimed that Surgeon Lieutenant Juan Gálvez immediately administered first aid to him applying a tourniquet to control the bleeding.³⁰ It further argued that “the characteristics of the wound called for specialized medical treatment, which could only be obtained in the city of Chihuahua, which was located a little further than 300 kilometers away from where the events took place.”

C. The investigation

41. On August 22, 1998, Mr. Trueba’s father, Tomás Trueba Loera, filed a complaint with the Office of the Public Prosecutor of Baborigame.³¹ That same day, the Assistant Prosecutor of the Office of the Public Prosecutor opened initial investigation No. 23/98.³² The Assistant Prosecutor went to the clinic of the ejido in order to conduct a visual inspection of the body of Mr. Trueba.³³ The medical certificate read as follows:

[Mirey Trueba] presents a gunshot wound with an entry orifice at the level of the left gluteus at the height of the bottom of the thigh or external region (...) gunshot wound with exit orifice in the internal anterior face of the left thigh.³⁴

42. The Office of the Public Prosecutor also conducted a visual inspection of the scene of the crime.³⁵ During this inspection, eleven firearm shell casings were found.³⁶ The petitioners also maintained that Captain Job Edilberto García testified that “we noticed that the wounded man had no gun at all, and also, no gun was found in the immediate area of the location.”³⁷

43. Additionally, statements were taken from Vidal Trueba and Jorge Jiménez.³⁸ At a later time, members of the Office of the Public Prosecutor went to the military base located at Baborigame in order to take the statement of Lieutenant Coronel Luis Morales, the person allegedly responsible for firing the shots.³⁹ A military major attorney indicated to the members of the Public Prosecutor’s Office that said statement was

²⁷ Complaint of Tomás Trueba, August 22, 1998. Annex 2 to initial petition.

²⁸ Complaint of Tomás Trueba, August 22, 1998. Annex 3 to initial petition.

²⁹ State’s communication of August 23, 2004.

³⁰ State’s communication of June 19, 2009.

³¹ Complaint, August 22, 1998. Annex 2 to initial petition.

³² Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

³³ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

³⁴ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

³⁵ Official Letters No. 2402/98. Annex 29 to Petitioners’ communication of October 6, 2008.

³⁶ Official Letters No. 2402/98. Annex 29 to Petitioners’ communication of October 6, 2008.

³⁷ Petitioners’ communication of October 6, 2008.

³⁸ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

³⁹ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

unnecessary because said person was at the disposal of the Military Prosecutor's Office.⁴⁰ Additionally, this attorney ordered a preliminary investigation to be opened in this jurisdiction.⁴¹

44. On August 24, 1998, the Office of the Military Prosecutor issued its decision to bring a criminal suit against Lieutenant Coronel Luis Morales as the likely perpetrator of the crime of homicide⁴² under Article 192 and 193 of the Criminal Code for the State of Chihuahua, in connection with Article 57 of the Code of Military Justice.⁴³

45. On August 30, 1998, the Office of the Public Prosecutor ceded jurisdiction over the case and transferred the case file to the Military Judge assigned to the Third Military Region in Mazatlán, Sinaloa,⁴⁴ as provided under Article 57 of the Code of Military Justice, inasmuch as Mr. Trueba was killed by the alleged perpetrator in performance of acts of military service.⁴⁵

46. That same day, the Military Judge assigned to the Third Military Region in Mazatlán, Sinaloa, opened criminal case No. 3979/98.⁴⁶ He also issued a formal custody order against Mr. Morales.⁴⁷

47. On September 2, 1998, Tomás Trueba filed a submission with the National Human Rights Commission requesting its intervention in the investigation into the crimes.⁴⁸ On September 17, 1998 officials of the National Human Rights Commission interviewed the coronel who was the commanding officer of the outpost of the zone.⁴⁹ This coronel asserted that "the military member allegedly responsible for the death of Mirey Trueba (...) was transferred to the military prison located in Mazatlán, Sinaloa, and is undergoing trial there."⁵⁰

48. On November 30, 1998, the National Human Rights Commission sent a communication to Tomás Trueba Loera noting that, after examining the information received by the Office of the Attorney General for Military Justice, he is advised as follows:

On August 22, (...) Infantry Lieutenant Coronel Luis Raúl Morales Rodríguez, fired several shots at now deceased Mirey Trueba (...). It can be surmised that Mr. Luis (...) Morales (...) is being criminally investigated (...) before the Military Judge (...) so therefore we are facing a jurisdictional situation, inasmuch as it is the responsibility of the aforementioned judicial authority, (...) to rule on the guilt of the allegedly responsible person.⁵¹

49. The petitioners contended that authorities denied the representatives of the Mr. Trueba's next of kin access to information on the status of the case from the beginning of the proceedings.⁵² On May 11,

⁴⁰ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

⁴¹ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

⁴² Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

⁴³ Official Letter No. 32161, November 30, 1998. Annex 5 to initial petition.

⁴⁴ Initial petition. State's communication of December 6, 2001.

⁴⁵ Initial petition. State's communication of December 6, 2001.

⁴⁶ Official Letter No. 32161, November 30, 1998. Annex 5 to the initial petition.

⁴⁷ State's communication of August 23, 2004.

⁴⁸ Official Letter No. 32161, November 30, 1998. Annex 5 to the initial petition.

⁴⁹ Official Letter No. 32161, November 30, 1998. Annex 5 to the initial petition.

⁵⁰ Official Letter No. 32161, November 30, 1998. Annex 5 to the initial petition.

⁵¹ Official Letter No. 32161, November 30, 1998. Annex 5 to the initial petition.

⁵² Initial petition. Said information was not refuted by the State.

2000, the petitioners filed a new motion to find out the current status of the case.⁵³ They further argued that the court where the case was being heard was thirty hours away from where Mr. Trueba's family members live.⁵⁴

50. In response to the complaints of the representatives about the lack of access to information on the proceedings, on May 30, 2000, the Military Prosecutor's Office sent them a communication, noting the following:

(...) the National Human Rights Commission is the body (...) legally empowered to hear complaints against (...) public servants (...) of a federal nature. Allow me to suggest to you to channel your request through the aforementioned Commission.⁵⁵

51. The petitioners contended that on October 3, 2000, they filed a motion again for information on the status of the case.⁵⁶ According to the State, on March 18, 1999 and October 3, 2000, Mr. Trueba's next of kin and the petitioners were voluntarily apprised of the status of the criminal proceedings.⁵⁷

52. On February 22, 2000, the Military Judge assigned to the Third Military Region convicted Luis Morales of the crime of the simple intentional homicide of Mirey Trueba.⁵⁸ The Military Judge sentenced him to eight years in regular prison and disqualification from reinstatement in the Army for eight years.⁵⁹

53. On January 19, 2001, the Supreme Military Tribunal ruled on the appeal filed by Lieutenant Coronel Morales.⁶⁰ The Supreme Military Tribunal amended the sentence handed down by the trial judge and convicted Mr. Morales of being the actual and involuntary perpetrator of the crime of manslaughter (negligent homicide).⁶¹ Accordingly, the Supreme Military Tribunal concluded that the punishment should be reduced to a one year, eleven month and fifteen days regular prison term.⁶² The Supreme Military Tribunal ordered the release of Mr. Morales because he had already served out his prison term.⁶³

54. In order to reach this conclusion, the Supreme Military Tribunal ruled as follows:

That the location of Luis (...) Morales (...) at the time of firing the shots, was at a distance (...) of 14 to 18 meters away.

That the angle of the shooting and trajectory of the projectile was impossible to determine (...).

With such affirmations, it is safe to say that the defendant did not directly fire at the body of the late Mirey Trueba (...) because (...) electricity on the street is suspended (...) at 11:00 makes it more difficult for the lieutenant coronel (...) to fire his gun with the intention of causing harm inasmuch as (...) visibility on the streets at that time is poor.⁶⁴

⁵³ Communication of May 11, 2000. Annex 33 to petitioners' communication of October 6, 2008.

⁵⁴ Petitioners' communication of January 29, 2002.

⁵⁵ Official Letter No. 1030 of the Military Prosecutor's Office. Annex 7 to initial petition.

⁵⁶ Initial petition.

⁵⁷ State's communication of June 19, 2009.

⁵⁸ State's communication of August 23, 2004.

⁵⁹ State's communication of August 23, 2004.

⁶⁰ State's communication of August 23, 2004.

⁶¹ State's communication of August 23, 2004.

⁶² State's communication of August 23, 2004.

⁶³ State's communication of August 23, 2004.

⁶⁴ State's communication of August 23, 2004.

55. The Supreme Military Tribunal concluded the following:

(...) the conduct displayed by (...) Luis Raúl Morales Rodríguez was not intended to cause any harm but [instead] (...) lacking in foresight, thoughtfulness or carefulness and induced by what he heard from the civilian and that everyone heard, he fired his weapon in the aforementioned way, which resulted in the highly negligent deprivation of life of civilian Mirey Trueba Arciniega.⁶⁵

56. On September 17, 2002, an agreement was entered into between the representatives of the Secretariat of National Defense (SEDENA) and José Trueba Loera.⁶⁶ The agreement set forth the following:

The State asserts that because the persons probably responsible for the events occurring on August 21, 1998, wherein Mr. Mirey Trueba lost his life, were public servants (...) for this reason in this act, the amount of \$117,822.00 (Mexican pesos) shall cover reparation for moral and material damages. (...)

Citizen José Tomás Trueba Loera receives the above-referenced amount as payment in full (...) hereby considering the compensation as paid (...) and therefore does not reserve any right to any present or future civil or administrative action against the State (...) notwithstanding any criminal responsibility of the defendants, who are currently undergoing criminal trial.⁶⁷

57. The judgment of the Supreme Military Tribunal of January 19, 2001, was peremptory. The Commission does not have any information about any other investigations relating to possible liability linked to the alleged acts and omissions that may have given rise to the obstruction and delay of the medical care that Mr. Mirey Trueba could have received.

V. LEGAL ANALYSIS

58. The Commission notes that the main dispute in this case is related to the circumstances in which the death of Mr. Mirey Trueba came about. It has not been refuted that the death of the alleged victim was caused by shots fired with a gun by Mexican Army Lieutenant Colonel Luis Morales. What is in dispute is, as the Mexican State believed and was concluded by the investigation in the military criminal jurisdiction, that the case involves an accidental death in the context of the use of force for a legitimate purpose. The petitioners claim that the death was the consequence of excessive use of force by a state agent, which resulted in the arbitrary deprivation of life of Mirey Trueba. Additionally, they alleged that members of the Army obstructed access to timely medical care.

59. In this regard, the Commission stresses that international human rights protection must not be confused with criminal justice. It is not the purpose of international human rights protection to mete out punishments to those culpable of violations thereof, but rather to determine whether the State in question fulfilled its international obligations and, in the event the State has not fulfilled them, protect the victims and provide for reparation for any damages that may have been caused to them by conduct attributable to the State. As such, the Commission must first clarify that it is not its duty to determine whether or not agents of the military are criminally liable for the death of Mr. Trueba, but rather to assess based on available information and in keeping with obligations emanating from the American Convention and applicable rules of the burden of proof, whether or not said agents compromised the State's international responsibility.

⁶⁵ State's communication of August 23, 2004.

⁶⁶ Agreement, September 17, 2002. State's communication of October 25, 2002.

⁶⁷ Agreement, September 17, 2002. State's communication of October 25, 2002.

A. Right to life and humane treatment (Articles 4.1⁶⁸ and 5.1⁶⁹ of the American Convention in connection with Article 1.1⁷⁰ and 2⁷¹ of the same instrument)

60. The Commission has repeatedly asserted that the right to life is a prerequisite for the enjoyment of all other human rights, without the respect thereof, all other rights are meaningless.⁷² As such, compliance with Article 4, in connection with Article 1.1 of the American Convention, does not only presuppose that no person can be arbitrarily deprived of his or her life (negative duty), but also requires that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty), pursuant to their obligation to guarantee the full and free exercise of human rights of all individuals under their jurisdiction.⁷³ For its part, the European Court has highlighted the importance that the right to life be interpreted and applied so as to make its safeguards practical and effective.⁷⁴

61. Both the Inter-American Commission and Court have held that the use of force must be examined in any case in which force has been deployed, wherein State agents have killed or injured anyone.⁷⁵ As such, the Commission will examine the facts of the case in light of Inter-American legal precedent on the right to life, in connection with the obligations to respect and ensure, and on the subject of the use of force. For this purpose, the IACHR will take note of different international instruments on the subject matter and, in particular, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials (hereinafter, “Principles on the Use of Force” and “Code of Conduct,” respectively). In keeping with the methodology followed by the Commission and the Court in cases of alleged excessive use of force, we will examine the use of force by the agents of the Mexican State against Mirey Trueba, at three junctures: a) preventive actions; b) actions at the time of the incidents; and c) actions subsequent to the events.⁷⁶

1.1. Examination as to whether the Mexican State took preventive action

62. The Inter-American Commission has held that in the context of police or military operations, international law imposes several requirements, which derive from the protection afforded to the rights enshrined in the Convention, including the right to life.⁷⁷ States must adopt the necessary measures to create

⁶⁸ Article 4.1 of the American Convention: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

⁶⁹ Article 5.1 of the American Convention: Every person has the right to have his physical, mental, and moral integrity respected.

⁷⁰ Article 1.1 of the American Convention: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

⁷¹ Article 2 of the American Convention: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

⁷² IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 185.

⁷³ IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 80. Also, see: CIDH, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 186.

⁷⁴ ECHR, Case McCann and others v. The United Kingdom. Application No. 27229/95, 27 September 1995, § 146.

⁷⁵ IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. Par. 123; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 123.

⁷⁶ IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. Par. 124; and *Case of Nadege Dorzema et al v. Dominican Republic*. Merits Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 78; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 189.

⁷⁷ IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 168.

an adequate legal framework to deter any threat to this right.⁷⁸ The Inter-American Commission and Court have held that States have a duty to adapt their national laws and to “see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”⁷⁹

63. With regard to this duty, the Court has fleshed out the following obligations: i) the State must be “clear when defining domestic policies on the use of force and pursue strategies to implement the Principles on the Use of Force and the Code of Conduct;” ii) agents should be provided with different types of weapons, ammunition, and protective equipment that enable them to adapt the elements used in their reaction proportionately to the incidents in which they have to intervene, restricting the use of lethal weapons that can cause injury or death as much as possible,⁸⁰ and iii) the State must train its agents to ensure that they know the legal provisions that permit the use of firearms and are properly trained so that if they have to decide on their use, they have the relevant criteria do so.⁸¹

64. The Inter-American Court has established that during an incident when a display of authority is deployed, insofar as possible, “the State agents should assess the situation and draw up a plan of action before intervening.”⁸² Regarding this same obligation, the European Court has highlighted that “unregulated and arbitrary” actions of State agents “is incompatible with effective respect for human rights.” In the words of the European Court:

(...) in keeping with the importance of Article 2 [right to life] in a democratic society, the Court must subject allegations of breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the State agents who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (...).⁸³

65. In the instant case, the Commission notes that at the time immediately prior to the death of the Mr. Trueba, a group of military agents requested the vehicle in which the alleged victim and two other persons were driving to stop. Regarding the conduct of its agents, the State generally claimed that at the time of the incidents, because of violence linked to drug trafficking, a military outpost was established in Baborigame under the command of Lieutenant Luis Morales, who was the person who shot Mr. Trueba. Based on the arguments put forth by the State and the evidence available in the case file of the military criminal jurisdiction, it is not clear that these events took place in the context of a specific military operation nor are the date and the location of the death of the alleged victim clear either. However, based on claims of both parties, what is clear is that at that time, in general terms, the Mexican Army was engaged in law enforcement activities in the area.

66. The Commission has ruled repeatedly on delegation of law enforcement duties to armed forces. Accordingly, in its *Report on Citizen Security and Human Rights*, the Commission wrote that:

⁷⁸ IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 81; and *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, par. 66.

⁷⁹ IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 168. Also, see: IA Court of HR. *Case of Montero Aranguren et al, (Detention Center of Catia) v. Venezuela*. Merits, Reparations and Costs. Judgment July 5, 2006. Series C No. 150, par. 66.

⁸⁰ IA Court of HR. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 80.

⁸¹ IA Court of HR. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 84.

⁸² IA Court of HR. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 81.

⁸³ ECHR, Case Makaratzis v. Greece . Application No. 50385/99/95, 20 December 2004, § 59.

Within the region, it is sometimes suggested —or is even carried out directly— that military troops take over internal security based on the argument that violence or criminal acts are on the rise. The Commission has also addressed this point, stating that arguments of this type “confuse the concepts of public security and national security, when there is no doubt that the level of ordinary crime, however high this may be, does not constitute a military threat to the sovereignty of the State.”⁸⁴

67. In the above-cited report, the Commission expressed its concern over “the involvement of the armed forces in professional tasks that, given their nature, fall strictly within the purview of the police force. The Commission has repeatedly observed that the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front.”⁸⁵

68. The Commission also noted that even though, in some instances, the Armed Forces participate in the investigation of criminal offenses linked to drug trafficking and organized crime, if a democratic system is to function properly, these kinds of activities should be within the purview of civilian police forces, subject to the necessary scrutiny by the legislature and, if need be, the judicial branch.⁸⁶

69. For its part, the Inter-American Court has emphasized “the extreme care which States must exercise when they decide to use their Armed Forces as a means of controlling social protests, domestic disturbances, internal violence, public emergencies and common crime.”⁸⁷ In the words of the Court:

(...) States must restrict to the greatest extent the use of Armed Forces to control domestic crime or internal violence, since they are trained to defeat a legitimate target and not to protect and control civilians, a training that corresponds to police forces.⁸⁸ The strict fulfillment of the duty to prevent and protect endangered rights must be assumed by the domestic authorities, observing a clear demarcation between military and police duties.⁸⁹

70. Additionally, taking into account that in the instant case, before killing him, the military agents stopped the vehicle Mr. Trueba was riding in, the IACHR regards the ruling of the Inter-American Court as pertinent to this case to the effect that “the possibility of assigning the Armed Forces tasks aimed at restricting the personal liberty of civilians, in addition to meeting the requirements of strict proportionality in the restriction of a right, must respond, in turn, to strict exceptional criteria and due diligence in the protection of treaty guarantees,”⁹⁰ bearing in mind that the system of the armed forces, from which it is difficult for members to remove themselves, is not compatible with the functions of civilian authorities.⁹¹

⁸⁴IACHR. Report on Citizen Security and Human Rights. 2009, par. 103.

⁸⁵ IACHR. Report on Citizen Security and Human Rights. 2009, par. 100; And IACHR. Justice and Social Inclusion: Challenges of Democracy in Guatemala. 2003, par. 113.

⁸⁶ IACHR. Report on Citizen Security and Human Rights. 2009, par. 104; and IACHR. Report: Social Justice and Inclusion: The Challenges of Democracy in Guatemala. 2003, par. 113.

⁸⁷ IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220, par. 87; *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par. 78.

⁸⁸ IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220, par. 88; *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par. 78.

⁸⁹ IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220, par. 88; and *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 51.

⁹⁰ IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220. Par. 89.

⁹¹ IA Court of HR. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010 Series C No. 220. Par. 89.

71. Based on the foregoing considerations of the risks involved in the use of the Armed Forces in citizen security duties, the Commission highlights that the aforementioned preventive obligations to regulate, train, equip and oversee (*supra* par. XX) are even more important in the case before us. Consequently, when such duties are assigned to the Armed Forces, an assessment of compliance must be particularly strict.

72. Applying this principle to the case at hand, the State did not submit any information on the existence of any adequate legal framework regulating the use of force by its security forces, including military members assigned to carry out law enforcement duties. In addition to that failure, the State did not report on the existence of any protocols of supervision or control over operations by the military posted in Baborigame in which force could legitimately be used, or of any training on the “use of force” provided to these agents. Internal investigations have not turned up any references to any items of this nature either.

73. On the contrary, in 1998, the year the incidents in the case took place, the Commission released its *Report on the Situation of Human Rights in Mexico* after conducting an *in situ* visit to the country. In said report, the Commission expressed particular concern over the information it received about the impact of assigning law enforcement duties to the Armed Forces. In the words of the IACHR in both the report and the final press release at the end of the country visit:

During its on-site visit to Mexico, the IACHR received information on the exercise of police functions by officials of the Armed Forces. The obvious result is the militarization of the leaders of the organizations in charge of ensuring the security of citizens. In this regard, the Commission had the following to say in Press Release No. 14/96, issued on July 24, 1996:

...based on its experience, it wishes to draw attention to the consequences of the use of the Armed Forces in functions involving the security of citizens, since this could lead to serious violations of human rights because of the military nature and the training received by the Armed Forces.⁹²

74. Consequently, the Commission concludes that the Mexican State assigned law enforcement duties to the Armed Forces in the area where Mr. Trueba was killed, with all the risks that it implies as noted by both the IACHR and the Court, without having the necessary safeguards in place as to the regulation, training, equipment and oversight required in order to prevent arbitrary deprivations of the right to life as a consequence of the use of force by said agents.

75. This serious omission by the Mexican State created an atmosphere, that was conducive to the commission of violations of said right, which in and of itself is incompatible with Article 4.1 of the American Convention, in connection with the obligations to respect rights and of domestic legal effects set forth in Articles 1.1 and 2 of the same instrument.

1.2. Examination of actions at the time of the events: Use of deadly force against Mr. Trueba

76. When allegations are made that a death was the result of the use of force, the Inter-American Court has established clear rules on the burden of proof. In the words of the Court:

Whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of

⁹² IACHR. Report on the Situation of Human Rights in Mexico. OEA/Ser.L/V/II.100. Doc. 7 rev. 1. September 24, 1998. Par. 399.

the events and to rebut allegations over its liability, through appropriate evidentiary elements.⁹³

77. Similarly, the UN Human Rights Committee has held that in cases where further clarification depends on information exclusively in the hands of the State, allegations may be considered substantiated in the absence of satisfactory evidence or explanation to refute the claims of the petitioners.⁹⁴ This is very much in line with the holding of the European Court to the effect that in cases of death as a consequence of the use of deadly force, the strictest test must be used on the compelling nature of said use of force.⁹⁵

78. As such, in order for an explanation of the use of deadly force to be deemed satisfactory, it must be the fruit of an investigation that is compatible with guarantees of independence, impartiality and due diligence and, additionally, must meet certain requirements under Inter-American legal precedent in order to justify the use of force, which are:

- i. Legitimate purpose: the use of force must be aimed at achieving a legitimate purpose. (...)
- ii. Absolute necessity: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that is sought to protect, according to the circumstances of the case. (...)
- iii. Proportionality: the level of force used must be in accordance with the level of resistance offered, which implies striking a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused.⁹⁶

79. It follows from the aforementioned criteria that legitimate purpose, absolute necessity and proportionality of the use of force must be substantiated by the State in light of the particular circumstances of the specific case involved. Additionally, as a consequence of these principles, the Commission recalls that state agents who intervene in such operations must apply the criteria of “differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.”⁹⁷

80. The Commission also notes that the Principles on the Use of Force provide for the use of firearms in “order to arrest a person presenting such a danger and resisting their authority.”⁹⁸ Notwithstanding, as part of the requirements to authorize the use of force in said hypothetical situation, the Principles establish that: i) it may only be used only when other less extreme means are insufficient to achieve this purpose; ii) it must be used “when strictly unavoidable in order to protect life;” iii) officers must give a clear warning of their intent to use firearms;” and iv) this warning must be given with sufficient time

⁹³ IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 108; *Case of Cruz Sánchez et al v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, par. 291; and *Case of Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, par. 132.

⁹⁴ UN, Human Rights Committee. *Case of Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay*. Communication No. 30/1978, UN Doc. CCPR/C/OP/1, of March 29, 1982, par. 13.3; *Case of Albert Womah Mukong v. Cameroon*. Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, of July 21, 1994, par. 9.2, and *Case of Turdukan Zhumbaeva v. Kyrgyzstan*. Communication N° 1756/2008, UN Doc. CCPR/C/102/D/1756/2008, of July 29, 2011, par. 8.7.

⁹⁵ ECHR, *Case McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 149.

⁹⁶ IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, par. 134.

⁹⁷ IA Court of HR. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 85.

⁹⁸ Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, August 27 to September 7, 1990.

for the warning to be observed, except when such a warning would unduly place the officer at risk or create a risk of death or serious harm to other persons.

81. On this issue, the Commission will examine the available information regarding the use of deadly force by Lieutenant Coronel Luis Morales against Mr. Trueba. Based on the accounts provided above, the Commission notes that there is no dispute as to the following facts: i) the vehicle in which Mr. Trueba and two other persons were riding was stopped by a group of members of the military, among whom Lieutenant Coronel Luis Morales was included; ii) Mr. Trueba and the two people accompanying him got out of the vehicle; iii) Mr. Trueba began to run in the opposite direction of the group of soldiers; iv) Lieutenant Coronel Luis Morales fired eleven rounds of ammunition from his gun in the direction Trueba was running in; v) Trueba was hit by the shots, and was seriously wounded; and vi) Mr. Trueba died shortly after the events.

82. The only mention by the Mexican State of a possible justification of the use of deadly force was that Mr. Trueba dropped a weapon, which he picked back up as he was running away from the location and allegedly said “don’t follow me ‘cause I’ll shoot.” In light of these circumstances and based on the decisions of the military criminal courts, the State claimed that the purpose of the use of deadly force was “to frighten him and prevent him from escaping.”

83. In order to determine whether or not the State provided a satisfactory explanation on the use of deadly force in light of the facts mentioned above, the Commission notes preliminarily that, as was established in the proven facts section, the case was heard and disposed of in the military criminal jurisdiction. This jurisdiction, as was explained earlier, does not fulfill the requirements of independence and impartiality as demanded by the American Convention in order to elucidate and punish crimes such as those in the case at hand. Consequently, the evidence gathered and the assessment thereof, which was lacking the minimum guarantees of independence and impartiality, and the rulings of the jurisdiction, in and of themselves, are incompatible with the Convention and, as such, cannot constitute a satisfactory explanation of strict compliance with the principles of legitimate purpose, necessity and proportionality in the use of deadly force in the case before us.

84. Notwithstanding the foregoing considerations, the Commission notes that beyond this incompatibility between the investigation conducted in the case and the American Convention, the specific rulings of the military criminal courts raised by the Mexican State as the basis of its defense do not satisfy the above-mentioned principles either.

85. The Commission first notes that based on the documentation introduced, the only reference to the existence of a gun is the statement of the very same state agents involved in the case. However, there is no information to corroborate said account and, on the contrary, there is evidence indicating otherwise. In this regard, the two persons accompanying Mr. Trueba testified consistently during the course of the investigation that he was not carrying any weapon. This evidence was not refuted by the State with any other contradicting evidence beyond the findings of the military criminal courts, which is also lacking the independence and impartiality required to reach such decisions, as will be examined below in the instant report. Additionally, the Commission finds as particularly relevant the fact that there is no physical evidence of the existence of said weapon. Accordingly, the petitioners claimed that when the visual inspection was conducted, no gun was found in the immediate area. These circumstances, considered as a whole, enable the IACHR to affirm that the hypothesis that Mr. Trueba was carrying a gun is groundless.

86. Secondly, even if we accept the hypothesis that has not been proven by the State through an effective investigation, to the effect that Mr. Trueba picked a gun back up that he had dropped, there is no information at all to indicate that he had fired this alleged gun at the military agents. As such, the Commission finds that the mere presence of a gun is not sufficient reason to exercise the use of deadly force, especially when, as was noted above, the military officers themselves acknowledged that Mr. Trueba was attempting to escape from the location, by running away in opposite direction of them. This is consistent with the justification provided by the State to the Commission mentioned earlier, to the effect that the purpose of the use of deadly force was not to protect the state agents from a risk to their lives, but rather to frighten Mr. Trueba and prevent him from getting away. This purpose does not constitute a valid reason to exert deadly

force because, as was noted, it was not used for the purpose of saving a life, less extreme means were not explored to avoid his alleged escape, nor was he warned with sufficient advance notice that the firearms of the military officers could be deployed. Based on the foregoing, the Commission finds that even though the military agent had the impression that a gun existed, the use of deadly force did not meet the requirements of legitimate purpose and strict necessity.

87. The State also noted that, because it was the early morning hours of the day and there was little visibility, “the shots were not aimed at a target,” and therefore it was “an accident.” In light of these arguments, the Commission notes that visibility at the location does not constitute an impediment for the military agents to stop an automobile and attempt to conduct a search thereof and of its occupants. As such, the argument that the shots hit Mirey Trueba because of reduced visibility is not consistent with the factual context. Without prejudice to the foregoing and independently of the visibility at the location, firing eleven rounds in the direction of a person who was running away in the opposite direction in no way can be construed as an accident. Even if we accept that Mirey Trueba was armed, responding with eleven shots constitutes an obvious lack of caution and disregard for the requirement of strict proportionality in the use of deadly force, as explained above.

88. The Commission notes that what happened to Mr. Trueba is exactly what can happen when States place human rights at risk by assigning the duties of citizen security to Armed Forces. Additionally, the State’s failure to act, examined earlier in this report, in not taking preventive measures through regulation, equipping, training and overseeing, directly contributed to these incidents.

89. Based on the foregoing considerations, the Commission concludes that the use of deadly force against Mr. Trueba was not in line with the principles of legitimate purpose, necessity and proportionality. Accordingly, the Commission finds that Mr. Mirey Trueba was extrajudicially executed and, therefore, arbitrarily deprived of his life, in violation of Article 4.1 of the American Convention, in connection with the obligation to respect rights established in Article 1.1 of this same instrument. This conclusion stems from the fact that the fatal outcome of the victim was caused by shots fired by Lieutenant Coronel Luis Morales, without prejudice to the examination hereunder regarding actions after the use of force.

1.3 Examination of subsequent actions: The transfer of Mirey Trueba to the medical facility

90. In light of the fact that Mr. Mirey Trueba did not die immediately after being shot, in the instant case, the examination of subsequent actions relates to the response of state agents to the fatal wounds that one of them had just caused in the victim.

91. On this score, the Basic Principles on the Use of Force establish that officers who use force “shall ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”⁹⁹

92. As such, the Commission finds that the Mexican State had the duty to provide timely and immediate medical care to Mr. Trueba, who was alive and wounded as a result of the shots fired at him by a military agent.

93. Based on the statements provided by witnesses, as well as documentation provided by the parties, the Commission will summarize what happened to Mr. Trueba after he was shot. The IACHR stresses that there is not dispute that he was shot at around 1:10 a.m. on August 22, 1998.

94. Pursuant to the statements of the two persons accompanying Mr. Trueba, they were mistreated, one was even beaten, in addition to being prevented from getting near Mirey Trueba to provide

⁹⁹ UN Basic Principles on the Use of Force and Firearms adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, August 27 to September 7, 1990.

him with some type of assistance. They also recounted that they asked the military agents to immediately transfer him to a medical center because he was still alive. Both Vidal Trueba and Jorge Jiménez testified that despite their request, the military men refused to transfer him to the medical facility.

95. This is consistent with the statements of the doctor at the Baborigame clinic, Efrén Royval, who stated that at 1:50 a.m., in other words, forty minutes after the incidents occurred, he received Captain Raúl Ruiz Gómez, who recounted to him what had transpired. Doctor Royval claimed that after another thirty minutes, at approximately 2:20 a.m., four military men arrived along with Vidal Trueba and Jorge Jiménez. He also noted that after waiting another 40 to 50 minutes, in other words, at around 3:00 a.m., he went to the clinic of the ejido and the body of Mr. Trueba had just arrived, and was lifeless.

96. The IACHR confirmed that Mr. Trueba was taken to the clinic of the ejido of Baborigame almost two hours after being wounded. The Commission notes that even though we do not know the exact distance between that clinic and the scene of the crime, the State did not provide any explanation for this delay. On the contrary, over the course of the proceedings before the IACHR, the Mexican State only noted that Mr. Trueba was taken by ambulance to the clinic and passed away prior to arriving there, but did not account for what happened during the two hours in question.

97. The Commission believes that the simple fact of being wounded for that length of time before his death, means Mirey Trueba endured extreme physical suffering, which is inconsistent with respect for humane treatment and personal integrity and is attributable to the Mexican State. Additionally, the Commission concludes that, through its agents, despite the seriousness of the situation, the State did not provide an immediate response in order to find medical assistance as quickly as possible. Consequently, the Commission finds that the State violated the right to life and humane treatment, as established in Article 4.1 and 5.1 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of Mirey Trueba. This is also because of the suffering that he had to endure between the time he was shot and his death, as well as the failure of the State to seek immediate medical assistance.

98. The Commission finds that this conclusion is not changed by the fact that Dr. Royval testified that due to the type of wound that Mr. Trueba had, it was possible to assert that he bled to death in five minutes. In this regard, the *a posteriori* decision of whether or not medical assistance could have saved the life of Mirey Trueba, in light of the nature of his wounds, cannot exonerate the Mexican State of its responsibility due to the unjustified delay in transferring Mirey Trueba to the medical facility, when he was seriously wounded.

B. Right to a fair trial and judicial protection (articles 8.1¹⁰⁰ and 25.1¹⁰¹ of the American Convention, in connection with Article 1.1 and 2 of the same instrument)

99. In cases of violent deaths, the Inter-American Court has held that States are obligated under Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention to conduct an *ex officio*, prompt, serious, impartial and effective investigation, as an essential element and requirement for the protection of the rights affected in such situations.¹⁰² In light of Article 1.1 of the American Convention, this duty obliges the State to provide a prompt and simple recourse so that, *inter alia*, those responsible for

¹⁰⁰ Article 8.1 of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature.

¹⁰¹ Article 25 of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁰² IA Court of HR. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 75.

human rights violations may be prosecuted and reparations obtained for the damages suffered.¹⁰³ In turn, Article 2 of the Convention requires the State to do away with provisions of the law and practices that imply a violation of rights protected in the Convention, as well as to pass laws and implement practices aimed at achieving effective observance of the required investigation.¹⁰⁴

100. In cases of deaths, which may have been the consequence of the use of deadly force by state agents, the European Court has held that the “most careful scrutiny” must be used, taking into consideration not “only the actions of the State agents who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.”¹⁰⁵ Thus, “any deficiency in the investigation, which undermines the ability thereof to establish the cause of death or the person responsible, will put compliance with this norm at risk.”¹⁰⁶

101. The Commission will examine whether or not the Mexican State met its obligation to investigate, in keeping with Inter-American standards, the death of Mirey Trueba at the hands of military agents and to provide his next of kin with an effective remedy to learn the truth and to obtain justice and reparation for what happened to him. This examination will focus on three areas: i) competence, independence and impartiality of the military authorities in charge of the investigation; ii) due diligence in the investigations; and iii) access to justice and access to information for the family members over the course of the proceedings.

1. Independence and impartiality of the military authorities in charge of the investigation

102. The proceedings were conducted in this case under the military criminal jurisdiction on the basis of Article 13 of the Constitution of the United Mexican States and Article 37 of the Code of Military Justice, which, at the time of the events, read as follows:

Article 13.- Military jurisdiction subsists for crimes and offenses against military discipline.

Article 57.- Crimes of military discipline are: [...] II. Those of a common [local] or federal order when in the commission thereof any of the following circumstances explained below are present:

a).- if they are committed by military members at the time they are on duty or on the occasion of acts thereof; [...] When in instances of section II, military members and civilians are present, the former shall be tried by military justice.

103. In the instant case, jurisdiction of military courts was determined based on the fact that the perpetrator of the crime, Lieutenant Coronel Morales, was a member of the Armed Forces.

104. The Commission recalls that special jurisdictions, such as military criminal courts, must be of limited and exceptional scope and be intended to protect special legal interests, linked to the entity itself.¹⁰⁷ In this regard, the Inter-American Court has had the opportunity to examine the structure and composition of special tribunals, such as military courts, in light of the United Nations Basic Principles on the Independence of the Judiciary. Some relevant factors in this area are: i) the fact such courts are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command; ii) the fact their designation does not depend on their professional skills and qualifications to

¹⁰³ IA Court of HR., *Case of Loayza Tamayo v. Peru*. Reparations. Judgment of November 27, 1998. Series C No. 42, par. 169; *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. par. 91.

¹⁰⁴ IA Court of HR. *Case of Almonacid Arellano et al. v. Chile*, Judgment of September 26, 2006. Series C No. 154. par. 118; and *Case of “The Last Temptation of Christ” (Olmedo Bustos et al) v. Chile*. Judgment of February 5, 2001. Series C No. 73, par. 85.

¹⁰⁵ ECHR, *McCann and Others v. the United Kingdom*, Application no. No. 27229/95, September 1995, § 36.

¹⁰⁶ ECHR, *Milkhalkova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42.

¹⁰⁷ IACHR. Report 53/01. Case No. 11.565. Ana, Beatriz and Cecilia González Pérez. Mexico. April 4, 2001, par. 81.

exercise judicial functions; and iii) the fact that they do not have sufficient guarantees that they will not be removed. All of this implies that said courts lack the necessary independence and impartiality required to hear cases of human rights violations.¹⁰⁸

105. Taking into consideration the criteria laid out above, the Inter-American Court has addressed the American Convention's incompatibility with the application of military criminal jurisdiction to potential human rights violations, affirming that the fact that in these courts it is the armed forces themselves, who are "charged with prosecuting their peers for executing civilians," makes it problematic for them to ensure independence and impartiality.¹⁰⁹ Thus, when it comes to special jurisdictions, such as military courts, the Inter-American Court has held that active-duty military personnel should only be tried "for the commission of crimes or offenses that based on their own nature, threaten the juridical rights of the military order itself."¹¹⁰

106. In the instant case, because the investigation was opened into a potential violation of the right to life, a legal interest outside of the realm of military discipline, the Commission deems application of military justice to the case at hand a violation of the right to have a competent, independent and impartial authority to seek justice in cases of human rights violations. The Commission underscores that the only definitive response at the domestic level to the incidents of the case was precisely from a jurisdiction whose application was incompatible with the Convention, which raises serious doubts about the findings of fact reached by the military courts. The evidentiary implications of this were taken into consideration in the examination of the violation of Article 4 of the American Convention.

107. The Commission also notes that the application of military justice to this particular case was a result of a legal framework in force at the time of the incidents, specifically Article 13 of the Constitution and Article 57 of the Code of Military Justice. The organs of the Inter-American system have previously addressed incompatibility of the application of military jurisdiction, under the provisions of the Mexican Code of Military Justice, with the obligations established in the American Convention. The Commission has ruled several times now on international responsibility of the State for application of military criminal justice in cases falling outside the purview of military legal interests and made recommendations to the State on this issue on a number of occasions.¹¹¹ For its part, in the case of *Radilla Pacheco v. Mexico*, the Inter-American Court held the following:

(...) Article 57, fraction II, subparagraph a) of the Code of Military Justice is an ample and imprecise provision that prevents the determination of the strict connection of the crime of the ordinary jurisdiction with the military jurisdiction objectively assessed. The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted due to the mere circumstance of being a soldier. In that sense, even when the crime is committed by soldiers while they are still in service or based on acts of the same, this is not enough for their knowledge to correspond to the military criminal justice.¹¹² [*official English translation of original*]

108. Based on this holding, the Court ordered "the State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision [Article 57 of the Code of

¹⁰⁸ IA Court of HR. *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs, Judgment of November 22, 2005, Series C, No. 135, pars. 155-156.

¹⁰⁹ IA Court of HR. *Case of Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, par. 53.

¹¹⁰ IA Court of HR. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 272.

¹¹¹ IACHR. Report 53/01. Case 11.565. Ana, Beatriz and Cecilia González Pérez. Mexico. April 4, 2001. Par. 81.

¹¹² IA Court of HR. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 286.

Military Justice] compatible with international standards of the field and of the American Convention on Human Rights.”¹¹³ Said order was reiterated in three subsequent cases involving Mexico, in which military criminal jurisdiction was used, based on Article 57.II.a of the Code of Military Justice.¹¹⁴ In keeping with the foregoing recommendation, on June 13, 2014, the reform of said provision was published in the Official Gazette establishing that human rights violations committed against civilians may not be heard by military justice.

109. Because the case was heard by the military courts, when the above cited legal framework was in force, which prevented an independent investigation and proceeding from taking place, the Commission finds that the State breached its obligation of domestic legal effects as provided under Article 2 of the Convention.

110. Based on the preceding considerations, the Commission concludes that by leaving in place the legal framework that allowed for the application of military justice to the instant case, the Mexican State violated the right to a fair trial and judicial protection, specifically the right to have a competent, independent and impartial authority, pursuant to Article 8.1 and 25.1 of the American Convention in connection with Article 1.1 and 2 of this same instrument, to the detriment of Mirey Trueba’s next of kin.

2. Due diligence in the investigations

111. The IACHR has stressed that the State must prove that it has conducted an immediate, exhaustive, serious and impartial investigation,¹¹⁵ which must be aimed at exploring all possible lines of inquiry.¹¹⁶ For this reason, the State can be held accountable for “failing to order, practice or evaluate evidence” that may be critical to solving a case.¹¹⁷ For its part, the European Court of Human Rights has held that in cases where there is evidence of homicide caused by State agents, “an investigation will not be effective unless all the evidence is properly analyzed and the conclusions are consistent and reasoned.”¹¹⁸

112. Both the IACHR and the Inter-American Court have specified that in order to fulfill the obligation to investigate the death of a person, States are obligated to act, from the first stages of the proceeding, with all diligence.¹¹⁹ For purposes of analyzing the due diligence with which an investigation is conducted, from the first stages of the proceedings, the Commission and the Court have taken into consideration the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which reads as follows:

The state authorities conducting the inquiry shall, at a minimum, seek: a) to identify the victim; b) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible; c) to identify possible witnesses and obtain statements from them concerning the death; d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; and e) to distinguish between natural death, accidental death, suicide and homicide. Additionally,

¹¹³ IA Court of HR. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, tenth operative paragraph and paragraphs. 337 to 342.

¹¹⁴ IA Court of HR. *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, par. 178-179; and *Case of Rosendo Cantú et al v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, par. 162-163.

¹¹⁵ IACHR, Case 11.137, Report No. 55/97, Merits, Juan Carlos Abella, Argentina, November 18, 1997, par. 412.

¹¹⁶ IACHR, Case 12.310, Report No. 25/09, Merits, Sebastião Camargo Filho, Brazil, March 19, 2009, par. 109.

¹¹⁷ IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc. 68, January 20, 2007, par. 41.

¹¹⁸ ECHR, *Masneva v. Ukraine*, Application no. 5952/07, 20 December 2011, § 49.

¹¹⁹ IACHR, Case 12.251, Report No. 85/13, Admissibility and Merits, Vereda La Esperanza, Colombia, November 4, 2013, par. 248. Also, see: IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 121.

the scene of the crime must be thoroughly investigated; autopsies and analysis of human remains must be rigorously conducted by competent professionals and using the most appropriate procedures.¹²⁰

113. Likewise, the Inter-American Court has held that in situations of violent deaths, investigators must, at the very least, photograph the scene and any other physical evidence, and the body as it was found and after it has been moved; gather and conserve the samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other trace that could be used as evidence, and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the assigned storage of all the evidence collected.¹²¹ For its part, the Minnesota Protocol establishes, among other obligations, that the area around the body must be closed off, and entry into it prohibited, except for the investigator and his team.¹²²

114. Additionally, it has been established in the system of Inter-American jurisprudence that all technical evidence must be gathered as required to determine whether or not the use of force was strictly necessary and proportional, as well as to clarify discrepancies between opposing accounts of the circumstances surrounding the use of force.¹²³ In the case of *García Ibarra et al v. Ecuador*, the Inter-American Court stressed the importance of expert witness technical reports to determine the plausibility of a hypothesis that a fatality from the use of force was “accidental,”¹²⁴ which could be useful in the case before us.

115. After closely reviewing the investigations opened in the domestic arena, the Commission notes that, as of the first stages of the investigation several situations arose, which expose a lack of due diligence by the Mexican State.

116. Firstly, the Commission notices that the authority, who had control over the scene of the crime and of the evidence on the day of the death of Mirey Trueba and for a few days afterwards, before jurisdiction was ceded to the military system, was the Office of the Public Prosecutor. Based on the facts, it is evident that the Public Prosecutor’s Office conducted the first stage of the investigation, but the military forces themselves then assessed the evidence gathered at the scene and were authorized to request further evidence.

117. Secondly, based on the evidence made available to the IACHR, the investigation proved to not be exhaustive nor to exhibit the level of due diligence required to establish the legality of the use of deadly force and the consequences thereof in criminal law. The Commission notes that, as it is acknowledged in the judgment of the Military Supreme Court, the necessary technical ballistics tests were not conducted to determine the trajectory of the shots fired by Lieutenant Coronel Morales, nor were any other technical tests conducted to establish whether or not the account provided by the members of the military present at the time was true. On the contrary, in the aforementioned ruling, the military authority only noted that the “angle of the shot and the trajectory of the projectile were not possible to determine” without setting forth the reasons for it not being possible to do so, when technical evidence exists that may be able to shed light on these facts. Additionally, the Commission notes that even though there were differing versions of the facts between Mirey Trueba’s companions and the members of the military that stopped their car, no additional

¹²⁰ United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

¹²¹ IA Court of HR. *Case of González et al (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 301.

¹²² IA Court of HR. *Case of González et al (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 301.

¹²³ See IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, pars. 234 – 236.

¹²⁴ IA Court of HR. *Case of García Ibarra et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306. Par. 141.

investigation was conducted to clarify those differences, such as line-ups or other measures intended for this purpose.

118. The Commission stresses on this point that it is not its job to determine whether or not Lieutenant Coronel Morales is criminally liable or whether the homicide was out of willfulness or gross negligence, as this is the job of domestic criminal court judges. Notwithstanding, it is indeed the job of the Commission to determine whether or not the investigation and the criminal proceeding that determined how the crime was committed, fulfilled the obligations of the State under the American Convention.

119. In this regard, in the case of *García Ibarra et al v. Ecuador*, the Court established the relationship between an investigation conducted in breach of the duty of due diligence and the assessment of the facts. Specifically, the Court held that an assessment of the facts in the domestic arena, which is the product of a deficient investigation, does not constitute clarification of the facts under the requirement of the Convention. In the words of the Court on the case cited above:

(...) the absence of the aforementioned investigation, or deficiently conducting any stage thereof, in order to substantiate contradictory versions of the deprivation of life, generated a lack of accurate and indispensable technical evidence with regard to said versions and did not genuinely strive to substantiate the whole truth about what happened, having a determinant bearing on the assessment of the facts set forth in the opinion of the judgment which was made final in said proceeding and, therefore, in the reasoning of the judgment. As such, the Court finds that the State is responsible for a lack of due diligence in the investigation of the facts relating to the instant case.¹²⁵

120. As such and applying the above cited legal precedent to the instant case, the Commission considers that the decision finding Lieutenant Coronel Morales criminally responsible for negligent homicide was the result of a criminal investigation and proceeding that violated the protections of having a natural judge, independence, impartiality, as well as the duty to investigate with due diligence. In this regard, even though a final ruling was handed down in the domestic courts, because it was issued in a trial proceeding that was incompatible with the American Convention, said response of the State cannot be regarded as effective elucidation of the events nor as obtaining justice for the family of Mr. Trueba.

121. With regard to the punishment, the Commission recalls that it was a prison term of one year, eleven months and fifteen days. The Court has held that, in order to observe due process, the State must guarantee the principle of proportionality of punishment.¹²⁶ Consequently, the punishment which the State assigns to the perpetrator of illicit conduct should be proportional to the rights recognized by law and the culpability with which the perpetrator acted, which in turn should be established as a function of the nature and gravity of the events.¹²⁷

122. In the instant case and in the same vein as was set forth above, the imposition of the prison sentence of one year, eleven months and fifteen days was the result of an investigation and trial proceeding that violated the American Convention for a number of reasons that were examined earlier in the instant report. The Commission considered that the necessary evidence was not gathered in order to elucidate, among other things, whether or not Lieutenant Coronel Morales's conduct was deliberate or not. On this score, the conclusion that led to the imposition of the punishment was not the result of an exhaustive investigation, but rather of the account of the military members present at the time, which was assumed to be true, while no effort was made at all to substantiate it through the expert witness studies required to do so.

¹²⁵ IA Court of HR. *Case of García Ibarra et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306. Par. 143.

¹²⁶ IA Court of HR. *Case of the Massacre of La Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, par. 193.

¹²⁷ IA Court of HR. *Case of the Massacre of La Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, par. 196.

This consideration is relevant in light of the principle of proportionality of punishment, in keeping with the legal precedent of the Court cited above.

123. Lastly, the Commission notes that the State did not investigate potential liability of the other military agents, who were present at the scene of the crime. Regarding this, the IACHR takes into account what was consistently indicated during the proceeding and in the claim presented at the national level with respect to the obstacles imposed by the Armed Forces to impede helping Mirey Trueba and taking him immediately to a health facility. Moreover, it has been consistently denounced that such agents also mistreated his brother and Mr. Jiménez. Such mistreatment was denounced by Vidal Trueba in his declaration. Given the consistency, specificity and context of what was denounced and in absence on investigation or evidence on the part of the State, the Commission concludes that other members of the security forces participated in the human rights violations that took place on August 22, 1998. Therefore, the competent authorities necessarily had the obligation to investigate the death of Mirey Trueba in the context of the other facts denounced.

124. Based on all of the foregoing, the Commission concludes that the Mexican State breached its obligation to investigate the death of Mirey Trueba Arciniega with due diligence and, consequently, violated the right to a fair trial and judicial protection, provided for in Article 8.1 and 25.1 of the American Convention, in connection with the obligations set forth in Article 1.1 of this same instrument, to the detriment of his next of kin.

3. Access to justice and access to information for the family over the course of the proceedings

125. The Commission underscores that it is the obligation of the State to ensure that, at all of the respective stages of investigations and judicial proceedings, victims are able to make their claims, submit evidence and for that evidence to be examined fully and seriously by the authorities before a ruling is made on the facts, criminal liability, punishments and reparations.¹²⁸

126. In the instant case, the petitioners alleged repeatedly that Mr. Trueba's next of kin did not have access to the investigations and that the military court where the case was processed was thirty hours away from their place of residence. In response, the State only noted that the hearings conducted during the case were public. The Commission notes that Mexico did not refute the petitioners' allegations by submitting any evidence to substantiate that the family members did indeed take part in the investigations and had access to the relevant information. The State did not provide any proof that it took the necessary measures to ensure that they were able to travel to the courthouse despite the long distance between it and their residence.

127. Consequently, the Commission finds that access to the case file for Mr. Trueba's next of kin was limited and this had an impact on their ability to take part and be heard in the investigation and trial. This situation constituted an additional violation, to their detriment, of the right to a fair trial and judicial protection as established in Article 8.1 and 25.1 of the American Convention in connection with the obligations enshrined in Article 1.1 of this same instrument.

C. Right to humane treatment of the next of kin (Article 5 of the American Convention in connection with Article 1.1 of the same instrument)

128. Article 5.1 of the American Convention establishes that "Every person has the right to have his physical, mental, and moral integrity respected." With regard to the next of kin of victims of certain human rights violations, the Inter-American Court has reiterated that such family members can, in turn, be

¹²⁸ IA Court of HR. *Case of the Massacres of Ituango v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 296; and *Case of Ximenes Lopes v. Brazil*. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, par. 193.

considered victims.¹²⁹ In this regard, the Court has considered that their right to mental and moral integrity can be infringed as a consequence of the particular circumstances of the violations perpetrated against their loved ones and of subsequent acts or omissions of domestic authorities in relation to these events.¹³⁰

129. In the instant case, the Commission regarded as established fact that Mirey Trueba lost his life in circumstances where state agents deployed deadly force unnecessarily and disproportionately with no justification to do so. Additionally, the Commission determined that the men riding with him, which included Vidal Trueba, Mirey Trueba's brothers, were mistreated and were prevented from providing any type of assistance to the victim.

130. In addition to these circumstances, which in and of themselves constitute a source of suffering and powerlessness, the Commission also concluded in this report that in the instant case no investigation was conducted with due diligence by a competent, independent and impartial authority. In this type of circumstances, the Court has written that:

[...] the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.¹³¹

131. Based on the foregoing, the Commission finds that the loss of their loved one in circumstances such as those described in the this report, as well as the absence of truth and justice, caused suffering and anguish for Mr. Trueba's next of kin, in violation of their right to mental and moral integrity, as provided in Article 5.1 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument.

VI. CONCLUSIONS

132. Based on the considerations of fact and of law put forward throughout this report, the Inter-American Commission concludes that the Mexican State is responsible for i) violation of the right to life and humane treatment, established in Article 4.1 and 5.1 of the American Convention, in connection with Article 1.1 and 2 of the same instrument, to the detriment of Mirey Trueba; ii) violation of the right to a fair trial and judicial protection, as set forth in Article 8.1 and 25.1 of the American Convention, in connection with Article 1.1 and 2 of the same instrument, to the detriment of the next of kin of Mirey Trueba listed in paragraph 23 of this report; and iii) violation of the right to humane treatment, provided for in Article 5 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of the next of kin of Mirey Trueba listed in paragraph 23 of this report.

¹²⁹ IA Court of HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and *Case of Bueno Alves v. Argentina*. Merit, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164. par. 102.

¹³⁰ IA Court of HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155. par. 96.

¹³¹ IA Court of HR. *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102; *Case of the Massacre of la Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, par. 195; and *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par. 146.

VII. RECOMMENDATIONS

133. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE MEXICAN STATE,

1. Provide adequate reparation for the human rights violations declared in this report for both material and moral damages.¹³²

2. Open an effective investigation within a reasonable period of time under the ordinary criminal jurisdiction, in order to fully elucidate the facts, identify all potential liability and impose the appropriate punishment for the human rights violations declared in this report. The State may not oppose the application of the principle of *ne bis in idem* in order to comply with this obligation, in light of the fact that the final decision in the domestic courts was the result of a trial that violated the guarantee of a competent judge, independence, impartiality and the duty to investigate with due diligence.

3. Take the appropriate administrative, disciplinary or criminal measures with regard to acts or omissions of state agents who contributed to the denial of justice and impunity in the events of the case.

4. Adopt measures of non repetition to include legislative, administrative and any other type of measure for the purpose of: i) Limiting the use of the Armed Forces in duties of law enforcement and citizen security to exceptional situations and ensuring strict compliance with preventive measures of regulation, training, equipping, oversight of the use of force, in keeping with the standards described in this report; and ii) Strengthening the institutions in charge of the investigation and the judicial authorities in charge of prosecution and punishment of these types of cases, in order to make sure that they perform their duties in strict compliance with the different aspects comprising the duty of due diligence, in keeping with the standards described in this report.

¹³² The IACHR takes note that in September 2002, Mr. José Trueba Loera received from the Mexican State the sum of \$117,822.00 Mexican pesos “as moral and material reparation.” In this regard, in considering compliance, the Commission will assess its connection to the totality of the facts and of the violations established in this report, and will assess whether or not it is suitable and sufficient in light of Inter-American standards on the subject of full reparation, when the time comes to monitor compliance with its recommendations. In this same vein, the Inter-American Court has held that “it [the State] may deduct the amounts that have been paid for the violations established in this [...] judgment, when paying the reparations ordered. At the stage of monitoring compliance with judgment, the State must prove that, under this program, it has effectively paid the amounts established.” IA Court of HR. *Case of Gudiel Álvarez et al (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012 Series C No. 253, par. 389.