

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF TRUEBA ARCINIEGA ET AL. V. MEXICO**

**JUDGMENT OF NOVEMBER 27, 2018**

In the case of *Trueba Arciniega et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:<sup>1</sup>

Eduardo Vio Grossi, Acting President;  
Humberto Antonio Sierra Porto, Judge;  
Elizabeth Odio Benito, Judge;  
Eugenio Raúl Zaffaroni, Judge; and  
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 63, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment, which is structured as follows:

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<sup>1</sup> Judge Eduardo Ferrer Mac-Gregor Poisot, who is a national of Mexico, did not participate in the deliberation of this judgment in conformity with that set forth in Article 19(2) of the Statute of the Court and Article 19(1) of the Rules of Procedure.

## CASE OF TRUEBA ARCINIEGA ET AL. V. MEXICO

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**I.**  
**INTRODUCTION OF THE CASE AND CAUSE OF ACTION**

1. *The case submitted to the Court.*- On April 28, 2018, in conformity with that set forth in Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure of the Court, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court case No. 12,659 "Mirey Trueba Arciniega et al." v. the United States of Mexico (hereinafter "the State" or "Mexico"). The Commission indicated that the case is related to the international responsibility of the State for the extrajudicial execution of Mirey Trueba Arciniega on August 22, 1998, by members of the armed forces, in the State of Chihuahua. The Commission claimed that this occurred in a context where the State had assigned the armed forces to perform duties of law enforcement, with the risks that this entailed and without the necessary preventive measures of regulation, training, equipping and oversight of the use of force to prevent the arbitrary violation of the right to life by those agents. In addition, the Commission determined that the young Mirey Trueba underwent extreme physical suffering incompatible with his personal integrity and that the State, through its agents, did not provide an immediate response, despite the seriousness of the situation, to seek medical attention as soon as possible. Furthermore, it indicated that the State violated the right to a fair trial and the right to judicial protection due to its use of a military court and the lack of due diligence in conducting the investigation. Lastly, the Commission determined that the State violated the right to personal integrity of the next of kin of Mirey Trueba.<sup>2</sup>

2. *Proceedings before the Commission.* - The proceedings before the Commission were as follows:

a. *Petition.*- On August 2, 2001, the Commission received a petition lodged by the Commission for Solidarity and the Defense of Human Rights (COSYDDHAC) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners").<sup>3</sup>

b. *Admissibility Report.*- On July 24, 2008, the Commission issued Admissibility Report No. 48/08.<sup>4</sup>

c. *Report on the Merits.*- On November 29, 2016, the Commission issued Report on Merits No. 47/16 (hereinafter "the Report on Merits" or "Report No. 47/16") under the terms of Article 50 of the American Convention, where it reached a number of conclusions<sup>5</sup> and formulated a series of recommendations for Mexico.<sup>6</sup>

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<sup>2</sup> The next of kin of Mirey Trueba that appear as alleged victims in the Report on Merits are: his father José Tomás Trueba, his mother Micaela Arciniega and his brothers Vidal (deceased), Elías, Tomás, Eleazar, Eduardo (deceased) and Samuel, all having the surname Trueba.

<sup>3</sup> The Commission assigned No. 515-01 to the petition.

<sup>4</sup> In said report, the Commission declared admissible the petition of "Mirey Trueba Arciniega et al." regarding the alleged violation of the rights enshrined in Articles 2, 4, 5, 8 and 25 of the American Convention, in connection with Article 1(1) thereof.

<sup>5</sup> It declared that the State was responsible for: (i) violation of the right to life and humane treatment, established in Articles 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; 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.

<sup>6</sup> It recommended that the State: (1) Provide adequate reparation for the human rights violations declared in the Report on Merits for both material and moral damages; (2) Open an effective investigation within a reasonable

d. *Notification to the State.*- The Report on Merits was notified to the State on December 28, 2016. It was granted a term of two months to report on compliance with the recommendations. Subsequently, the Commission granted four extensions to the State.

3. *Submission to the Court.* – On April 28, 2018, the Commission submitted the case to the Court, concerning all of the facts and human rights violations described in Report on Merits No. 47/16. It asked the Court to declare the international responsibility of the State for the violations indicated in the Report on Merits and to establish reparation measures.

## **II. PROCEEDINGS BEFORE THE COURT**

4. *Notification to the State and to the representatives of the alleged victims*<sup>7</sup>.- The case was notified to Mexico and to the representatives of the alleged victims on June 8, 2018.

5. *Friendly settlement agreement.*- On November 13, 2018, the Court received from Mexico a document dated October 19, 2018, named "Friendly settlement agreement and acknowledgment of responsibility by Mexico in Case No. 12,659, Mirey Trueba Arciniega and next of kin" (hereinafter "the friendly settlement agreement", "friendly settlement" or "the Agreement"), subscribed by the representatives and the State.

6. *Observations of the Commission and the representatives.*- In view of the State's request for sanctioning of the friendly settlement agreement, the representatives and the Commission submitted their respective observations on November 19, 2018.

7. *Deliberation of the case.*- The Court began the deliberation of this Judgment on November 27, 2018.

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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 the Report on Merits. 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 facts 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 the Report on Merits; 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 the Report on Merits.

<sup>7</sup> The representatives of the alleged victims are the Commission for Solidarity and the Defense of Human Rights (COSYDDHAC) and the Center for Justice and International Law (CEJIL).

### **III. JURISDICTION**

8. The Inter-American Court has jurisdiction to hear the instant case pursuant to Article 62(3) of the Convention because Mexico has been a State Party to the American Convention since March 24, 1981, and it accepted the contentious jurisdiction of the Court on December 16, 1998.

### **IV. FRIENDLY SETTLEMENT AGREEMENT**

#### **A. Friendly settlement agreement**

9. In the friendly settlement agreement (hereinafter “the Agreement”), the State expressly recognized the proven facts of the Report on Merits, as well as its international responsibility for the violation of the right to life and humane treatment (Articles 4(1) and 5(1) of the Convention in relation to Articles 1(1) and 2 of that instrument) to the detriment of Mirey Trueba Arciniega, and for the violation of the right to a fair trial, judicial protection, and humane treatment (Articles 8(1), 25(1) and 5 of the Convention in relation to Article 1(1) thereof) to the detriment of the next of kin of Mirey Trueba Arciniega.<sup>8</sup>

10. The State: a) expressed its commitment to uphold, respect, promote and protect human rights; b) confirmed its willingness to resolve the matter through a friendly settlement and comply with the reparations established in the Agreement and in this Judgment at the appropriate procedural time; c) expressed that the State’s authorities commit to comply with the Agreement through a plan for dialogue with and the participation of the beneficiaries of the case; and d) expressed that the Ministry of the Interior will coordinate the actions to comply with the Agreement.

11. The parties declared that: a) they opted to resolve the case through a friendly settlement, as established in the Agreement, omitting the holding of a public hearing; b) they request the Court to sanction the Agreement, determine its admissibility, and monitor it by virtue of its authority to monitor compliance with judgments; and c) that the parties commit to promoting compromises that adhere to inter-American standards, for which a plan has been created. In this regard, the parties decided on a series of specific measures for the comprehensive reparation of the victims (*infra* para. 44).

#### **B. Observations of the representatives**

12. In their observations to the Agreement, the representatives of the alleged victims confirmed that they subscribed said Agreement and, in conformity with Article 63 of the Rules of Procedure, they requested the Court to rule on its admissibility, juridical effects and to issue the corresponding sanctioning judgment.

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<sup>8</sup> In the Friendly settlement agreement, the parties recognized as victims the individuals listed by the Commission in Report on Merits No. 47/16, namely: Micaela Arciniega, José Tomás Loera, Vidal Trueba Arciniega, Elías Trueba Arciniega, Tomás Trueba Arciniega, Eleazar Heric Trueba Arciniega, Eduardo Trueba Molina and Samuel Trueba Arciniega.

### C. Observations of the Commission

13. In its observations, the Commission expressed its “satisfaction with the friendly settlement agreement and the acknowledgment of responsibility of the State based on the considerations of fact and of law of the report on merits of the Inter-American Commission.” It also noted that “the reparation measures agreed by the parties include various components of comprehensive reparation in conformity with the case law of the Inter-American Court.” Furthermore, the Commission reiterated the considerations included in the note of submission of this case, in that it can allow the Court to expand its case law on the duty to investigate human rights violations committed due to excessive use of force by members of the armed forces in contexts of duties of law enforcement, and the prohibition to invoke *non bis in idem* to perpetuate situations of impunity derived from the application of the military criminal jurisdiction in cases of human rights violations. The Commission requested the Court to take into account its observations when ruling on the Agreement.

### D. Considerations of the Court

14. On previous occasions, similar to this case, the Court has had the opportunity to consider and assess friendly settlement agreements.<sup>9</sup> In this regard, it is worth recalling Article 63 of the Rules of Procedure of the Court, which reads: “[w]hen the Commission; the victims or alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State, in a case before the Court inform it of the existence of a friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time.” Consequently, in conformity with that rule, this Court must determine the admissibility and juridical effects of the friendly settlement agreement reached by the parties.<sup>10</sup>

15. The Court also notes that, as can be inferred from Article 63 cited above, it is possible that during the proceedings before this Court the parties may reach friendly settlements, whose admissibility it must assess. Reaching this type of solution can lead to a more timely and effective reparation of the victims of the case. In addition, this contributes to the objectives of the inter-American system for the protection of human rights, especially to finding just solutions to the specific and structural problems of a case.<sup>11</sup>

16. Furthermore, the Court notes that in conformity with said article as well as Article 64 of the Rules of Procedure,<sup>12</sup> in exercising its mandate for the international protection of human rights, a matter of international public order that goes beyond the will of the parties, it has the duty to ensure that friendly settlement agreements are acceptable for the purposes of the inter-American system. This task is not limited solely to taking note of such agreements or verifying that the formal conditions are met; it must also examine them in relation to the

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<sup>9</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, Reparations and Costs*. Judgment of June 19, 1998. Series C No. 38, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361.

<sup>10</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012, Series C No. 241, para. 18, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 15.

<sup>11</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012, Series C No. 241, para. 19, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 16.

<sup>12</sup> Article 64 of the Rules of Procedure of the Court: “Continuation of a Case. Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.”

nature and seriousness of the alleged violations, the requirements and interest of justice, the specific circumstances of the case and the attitude and position of the parties.<sup>13</sup> In this regard, the agreement must not infringe, either directly or indirectly, the purpose of the American Convention.

17. For these purposes, the Court must analyze the situation in each specific case, confirming that the Agreement, which may be submitted to the Court at any stage of the contentious proceedings, is signed by the parties. After forwarding it to the parties and to the Commission and receiving, as applicable, the corresponding observations, the Court must verify that the formal and material requirements are met in order to sanction the agreement by means of a judgment.

18. The Court confirms that the agreement submitted contemplates a solution reached by the parties regarding the facts and the determination of human rights violations, pursuant to those determined in the Report on Merits, as well as reparation measures. Moreover, based on the manner in which the State formulated its acknowledgment of responsibility, it also understands the considerations of law that led the Commission to conclude that such violations had occurred to the detriment of the victims of this case.

19. Furthermore, the Court notes the willingness of the parties to reach a solution to the dispute in this case; particularly, it highlights the procedural stage at which it was reached. In this case, it occurred before the representatives submitted their brief containing pleadings, motions and evidence and the State submitted its response to petition. This allows the Court to issue a judgment much sooner than if it had carried out the international proceedings. Thus, the dispute ended without the need to hold a public hearing or conduct the final written procedure.<sup>14</sup>

20. Based on the terms of the Agreement signed, the Court considers that the dispute has ended regarding the facts and the arguments on the violation of the rights to life and humane treatment to the detriment of Mirey Trueba Arciniega, and the rights to humane treatment, fair trial and judicial protection to the detriment of his next of kin. Thus, it is not pertinent for the Court to make its own determination of the facts and juridical effects, as would be performed in the event of a dispute regarding the facts or the applicable laws. However, in order to ensure a better understanding of the case, the Court will summarize the facts and background of the case based on the contents of Report on Merits No. 47/16 (*infra* Chapter V). Subsequently, it will perform an analysis in order to determine whether to sanction the agreement (*infra* Chapter VI).

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<sup>13</sup> Cf. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 17.

<sup>14</sup> Cf. *Case of García Cruz and Sánchez Silvestre v. Mexico*. Judgment of November 26, 2013. Series C 273, para. 19, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 20.

21. Notwithstanding the above, the Court calls to mind that maintaining domestic public order and citizen security should be primarily reserved to civilian police bodies. However, the participation of the armed forces in duties of law enforcement must be extraordinary or exceptional, given that their presence and intervention in such duties may entail a risk to human rights.<sup>15</sup> In this regard, the Court notes that the State has the obligation to ensure that its armed forces, which are entitled to use legitimate force, respect the human rights of those who are under its jurisdiction, in conformity with the standards established by this Court.<sup>16</sup> This entails the restrictive use of lethal weapons and the proportional use of force when necessary.<sup>17</sup>

22. The Court appreciates the State's willingness to provide comprehensive reparation for the damages caused to the victims due to the violations in this case and to prevent their repetition. Regarding the reparation measures described in the Agreement subscribed by the State, the victims and their representatives, the Court will analyze them in order to determine whether to sanction the Agreement and, if applicable, its scope and enforcement (infra Chapter VII).

## **V. FACTS**

23. The Agreement establishes that "the parties agree that the facts that constitute the basis of this [agreement] and the acknowledgment of responsibility of the [State] are the proven facts determined by [the Commission] in its [Report on Merits N° 47/16] approved on November 29, 2016."<sup>18</sup> Based on the foregoing, the Court will refer briefly to the facts that constitute the violations in this case, described in Chapter IV "Proven Facts" of the Report on Merits.

### **A. Situation of the municipality of Baborigame at the time of the facts**

24. The State acknowledged the increased presence of the army in the municipality of Baborigame and explained that in the 1990s a military command post was established in response to the violence from drug trafficking. The State expressed that at the time of the facts of the case, the base was commanded by Infantry Lieutenant Colonel Luis Raúl Morales Rodríguez.

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<sup>15</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, paras. 86 and 87.

<sup>16</sup> Cf. *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, para. 66, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 80.

<sup>17</sup> Cf. *Basic principles on the use of force and firearms by law enforcement officials*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990, Principle No. 2, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 80.

<sup>18</sup> Friendly settlement agreement and acknowledgment of responsibility of the State of Mexico in case N° 12,659 Mirey Trueba Arciniega et al. of August 28, 2018, p. 4.



25. The Commission took note of the acts of violence committed by members of the military against the population of Baborigame. These include the burning of a house and the execution of five civilians in 1992,<sup>19</sup> the arrest, alleged torture and execution of a civilian in 1996<sup>20</sup> and the alleged execution of three civilians in 1998, 1999 and 2000, respectively.<sup>21</sup>

26. On August 20, 1998, two days before the facts of the case, 400 soldiers arrived at Baborigame to fight against drug trafficking.<sup>22</sup>

### **B. Facts of August 22, 1998**

27. Mirey Trueba was born in Baborigame, municipality of Guadalupe y Calvo, State of Chihuahua. At the time of the facts of the case he was working in his family's farm. His family was composed of: i) his father José Tomás Trueba Loera;<sup>23</sup> ii) his mother Micaela Arciniega Cevallos;<sup>24</sup> and iii) his brothers Vidal (deceased), Elías, Tomás, Eleazar, Eduardo (deceased) and Samuel, all having the surname Trueba Arciniega.

28. On August 22, 1998, twenty-year-old Mirey Trueba Arciniega was riding in a vehicle along with his brother Vidal Trueba Arciniega and his friend Jorge Jiménez. They were driving down a main street in Baborigame when a military car approached and stopped them.

29. Based on the statement made by Jorge Jiménez, who was driving the vehicle, it can be inferred that when he stopped the vehicle Mirey got scared, got out of the vehicle and ran out the back, and a commander fired ten to twelve times.<sup>25</sup> Mirey's brother, Vidal Trueba Arciniega, declared that "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 (...)." <sup>26</sup>

30. The State claimed that based on the investigations conducted by the domestic authorities, the military authorities meant to perform a search of the pick-up truck. When they stopped it, three civilians got out and one of them "apparently dropped a weapon" which

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<sup>19</sup> Cf. Newspaper article "Morir en la Sierra" [Dying in the Sierra] published in Diario Chihuahua on August 30, 1998; brief containing evidence, folio 8.

<sup>20</sup> Cf. Inter-American Commission on Human Rights (IACHR), Report No. 107/00, Case 11,808, Friendly Settlement, Valentín Carrillo Saldaña v. Mexico, December 4, 2000.

<sup>21</sup> Cf. Initial petition dated August 2, 2001, filed by the petitioners, addressed to the IACHR (brief containing evidence, folio 53).

<sup>22</sup> Cf. Newspaper article "Morir en la Sierra" [Dying in the Sierra] published in Diario Chihuahua on August 30, 1998; brief containing evidence, folio 7).

<sup>23</sup> As evidenced in the Friendly Settlement Agreement, José Tomás Trueba Loera is interchangeably referred to as "José Tomás Trueba Loera" or "José Tomás Trueba Loera".

<sup>24</sup> As evidenced in the Friendly Settlement Agreement, Ms. Micaela Arciniega is interchangeably referred to as "Micaela Arciniega Cevallos" or "Micaela Arciniega Ceballos".

<sup>25</sup> Statement of Jorge Jiménez of August 22, 1998, made to the Office of the Public Prosecutor assigned to the town of Baborigame, Municipality of Guadalupe y Calvo, State of Chihuahua, retaken by the National Human Rights Commission on November 30, 1998, in file No. 98/5007-1 (brief containing evidence, folio 90).

<sup>26</sup> Statement of Vidal Trueba Arciniega of August 22, 1998, made to the Office of the Public Prosecutor assigned to the town of Baborigame, Municipality of Guadalupe y Calvo, State of Chihuahua, retaken by the National Human Rights Commission on November 30, 1998, in file No. 98/5007-1 (brief containing evidence, folio 90).

he picked up and walked hastily away from the location while saying "don't follow me 'cause I'll shoot" so then Infantry Lieutenant Colonel Luis Raúl Morales Rodríguez fired his weapon.<sup>27</sup>

31. The State contended that during the investigations it was determined that the agent of the military that fired the shot never had Mirey Trueba in his sight, meaning that the shots were not aimed at a target. Thus, the State claimed 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."<sup>28</sup> 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."<sup>29</sup>

32. Vidal Trueba Arciniega and Jorge Jiménez pointed out that the soldiers did not do anything to help Mirey Trueba Arciniega once they found him wounded. They expressed that the soldiers hit them and did not allow them to help Mirey, who was bleeding out.<sup>30</sup>

33. Mirey Trueba Arciniega was transferred to a clinic of the ejido. According to the statement given by Doctor Efrén Royval Simentral, he had been dead for three hours due to a wound in the femoral artery.<sup>31</sup> In this regard, the State indicated that Mr. Trueba died while he was being taken to the clinic.<sup>32</sup>

### **C. Investigation and judicial proceedings**

34. On August 22, 1998, Tomás Trueba Loera, father of Mirey Trueba Arciniega, filed a complaint with the Office of the Public Prosecutor of Baborigame, Chihuahua. That same day, the Assistant Prosecutor of the Office of the Public Prosecutor opened initial investigation No. 23/98.<sup>33</sup> The Assistant Prosecutor went to the clinic of the ejido in order to conduct a visual inspection of the body of Mr. Trueba and determined that he had a gunshot wound.<sup>34</sup> The Office of the Public Prosecutor also conducted a visual inspection of the scene of the crime, where eleven firearm shell casings were found, and took the statements of Vidal Trueba and Jorge Jiménez.<sup>35</sup> The petitioners also maintained that Captain Job Edilberto García testified that "[he] noticed that the wounded man had no gun at all, an also, no gun was found in the

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<sup>27</sup> Cf. Brief of observations by the State on case No. 12,659 Mirey Trueba Arciniega of August 23, 2004, addressed to the IACHR (brief containing evidence, folio 114).

<sup>28</sup> Cf. Brief of observations by the State on case No. 12,659 Mirey Trueba Arciniega of June 19, 2009, addressed to the IACHR (brief containing evidence, folio 16).

<sup>29</sup> Cf. Brief of observations by the State on case No. 12,659 Mirey Trueba Arciniega of June 19, 2009, addressed to the IACHR (brief containing evidence, folio 16).

<sup>30</sup> Cf. Statements of Vidal Trueba Arciniega and Jorge Jiménez García of August 22, 1998, before the Office of the Public Prosecutor assigned to Baborigame, Chihuahua, included in the complaint (brief containing evidence, folio 84).

<sup>31</sup> Cf. Initial petition dated August 2, 2001, filed by the petitioners, addressed to the IACHR (brief containing evidence, folio 55).

<sup>32</sup> Cf. Brief of observations by the State on case No. 12,659 Mirey Trueba Arciniega of August 23, 2004, addressed to the IACHR (brief containing evidence, folio 114).

<sup>33</sup> Cf. Complaint of August 22, 1998, by José Trueba Loera, addressed to the Office of the Public Prosecutor of Baborigame, Chihuahua (brief containing evidence, folios 84 and 85).

<sup>34</sup> Cf. Report of November 30, 1998, by the National Human Rights Commission in which it forwarded the information in file No. 98/5007-1 (brief containing evidence, folio 89).

<sup>35</sup> Cf. Official Letter No. 2408/98 of December 21, 1998, by the Office of the Public Prosecutor of Chihuahua, addressed to the Head of Department of that institution (brief containing evidence, folio 181).

immediate area of the location."<sup>36</sup> The Office of the Public Prosecutor also went to take the statement of Lieutenant Colonel Luis Raúl Morales Rodríguez, the person allegedly responsible for firing the shots.<sup>37</sup> However, he had been placed in custody of the Military Prosecutor's Office; where a preliminary investigation was opened.<sup>38</sup>

35. On August 24, 1998, the Military Prosecutor's Office decided to open a criminal action against Lieutenant Colonel Luis Raúl Morales Rodríguez as alleged perpetrator of the crime of homicide under Articles 192 and 193 of the Criminal Code of the State of Chihuahua, in relation to Article 57 of the Code of Military Justice.<sup>39</sup> On August 30, 1998, the Office of the Public Prosecutor declined jurisdiction of the case and transferred the file to the Military Judge assigned to the Third Military Region in Mazatlán Sinaloa, pursuant to Article 57 of the Code of Military Justice. That same day, the military judge opened criminal case No. 3979/98 and issued a formal commitment order for Luis Raúl Morales Rodríguez<sup>40</sup>.

36. On September 2, 1998, Tomás Trueba requested the intervention of the National Human Rights Commission (hereinafter "NHRC") in the investigation of the facts.<sup>41</sup> On November 30, 1998, the NHRC indicated that there was a jurisdictional situation and that it corresponded to the military criminal jurisdiction to adjudge on whether the alleged perpetrator was guilty.<sup>42</sup> The petitioners noted that since the beginning of the proceedings before the military criminal jurisdiction the next of kin of Mirey Trueba Arciniega were denied access to information on that status of the case. In addition, the court where the case was heard was thirty hours away from where they live.<sup>43</sup>

37. In response to the complaints of the representatives about the lack of access to information on the proceedings, the Military Prosecutor's Office referred the next of kin to the NHRC.<sup>44</sup> On February 22, 2000, the military judge convicted Luis Raúl Morales Rodríguez of the crime of simple intentional homicide of Mirey Trueba Arciniega, sentencing him to eight years of regular prison and a disqualification from reentering the army of eight years.<sup>45</sup>

38. On January 19, 2001, the Supreme Military Court resolved the appeal filed against the condemnatory judgment. In the judgment, Luis Raúl Morales Rodríguez was convicted as physical and involuntary perpetrator of the crime of manslaughter. Thus, the sentence was reduced to one year, eleven months and fifteen days of prison. The Supreme Military Court

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<sup>36</sup> Brief of October 6, 2008, by the petitioners, addressed to the IACHR (brief containing evidence, folio 153).

<sup>37</sup> Cf. Official Letter No. 2408/98 of December 21, 1998, by the Office of the Public Prosecutor of Chihuahua, addressed to the Head of Department of that institution (brief containing evidence, folio 182).

<sup>38</sup> Cf. Official Letter No. 2408/98 of December 21, 1998, by the Office of the Public Prosecutor of Chihuahua, addressed to the Head of Department of that institution (brief containing evidence, folio 183).

<sup>39</sup> Cf. Report of November 30, 1998, by the National Human Rights Commission in which it forwarded the information in file No. 98/5007-1 (brief containing evidence, folio 93).

<sup>40</sup> Cf. Report of November 30, 1998, by the National Human Rights Commission in which it forwarded the information in file No. 98/5007-1 (brief containing evidence, folio 94).

<sup>41</sup> Cf. Report of November 30, 1998, by the National Human Rights Commission in which it forwarded the information in file No. 98/5007-1 (brief containing evidence, folio 87).

<sup>42</sup> Cf. Report of November 30, 1998, by the National Human Rights Commission in which it forwarded the information in file No. 98/5007-1 (brief containing evidence, folio 94).

<sup>43</sup> Cf. Initial petition dated August 2, 2001, filed by the petitioners, addressed to the IACHR (brief containing evidence, folios 60 and 62).

<sup>44</sup> Cf. Brief of August 24, 2004, by the State addressed to the IACHR (brief containing evidence, folio 116).

<sup>45</sup> Cf. Brief of August 24, 2004, by the State addressed to the IACHR (brief containing evidence, folio 115).

ordered the release of Mr. Morales because he had already served the prison term.<sup>46</sup> It determined that "(...) the conduct displayed by (...) Luis Raúl Morales Rodríguez was not intended to cause any harm (...) he fired his weapon in the aforementioned manner, which resulted in the negligent deprivation of the right to life of the civilian Mirey Trueba Arciniega."<sup>47</sup>

39. On September 17, 2002, an agreement was signed by the representatives of the Secretariat for National Defense and José Tomás Trueba Loera, in which the latter was given reparation for the pain and suffering and physical damages in the amount of \$117,822.00 (one hundred and seventeen thousand eight hundred and twenty-two Mexican pesos). Furthermore, the agreement indicated that Mr. Trueba Loera "receives the aforementioned amount to his full satisfaction (...) thus considering the compensation paid (...) and he does not reserve the right to any present or future civil action against the State (...), notwithstanding the criminal liability of the defendants currently undergoing the criminal proceedings."<sup>48</sup>

40. The judgment of the Supreme Military Court of January 19, 2001, was made final.<sup>49</sup> The Commission expressed that it has no information on the other investigations related to the medical care that Mirey Trueba Arciniega could have received.

## **VI. SANCTIONING OF THE FRIENDLY SETTLEMENT AGREEMENT**

41. As mentioned above, the terms of the agreement include the State's acknowledgment of responsibility for the human rights violations indicated by the Inter-American Commission in the Report on Merits (*supra* para. 18). In view of the foregoing, the Court considers that the dispute has ceased regarding the facts (*supra* para. 20). In addition, the Court understands that the dispute has ceased regarding the arguments on the violation of: Article 4(1) right to life and Article 5(1) humane treatment of the American Convention, in connection with Articles 1(1) and 2 of the same instrument, to the detriment of Mirey Trueba Arciniega; and the violation of Article 5(1) humane treatment, Article 8(1) right to a fair trial and Article 25(1) judicial protection of the Convention to the detriment of the next of kin of Mirey Trueba.<sup>50</sup>

42. The Court considers that the State's acknowledgment of responsibility is a positive contribution to the development of these proceedings and to the effectiveness of the principles that inspire the American Convention. Similarly, the Inter-American Commission has assessed the agreement reached by the parties and considers the requested sanctioning to be appropriate (*supra* para. 13). The Court holds that the friendly settlement agreement complies with the formal and material requirements mentioned above, to the extent that it has been subscribed by the parties to the dispute, who had the opportunity to submit their

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<sup>46</sup> Cf. Brief of August 24, 2004, by the State addressed to the IACHR (brief containing evidence, folio 125).

<sup>47</sup> Brief of observations by the State on case No. 12,659 Mirey Trueba Arciniega of June 19, 2009, addressed to the IACHR (brief containing evidence, folio 26).

<sup>48</sup> Agreement of September 17, 2002, subscribed by members of the State and José Tomás Trueba (brief containing evidence, folios 176 and 177).

<sup>49</sup> Cf. Brief of August 24, 2004, by the State addressed to the IACHR (brief containing evidence, folio 149).

<sup>50</sup> These are: his mother Micaela Arciniega, his father José Tomás Loera, and his brothers Vidal Trueba Arciniega, Elías Trueba Arciniega, Tomás Trueba Arciniega, Eleazar Heric Trueba Arciniega, Eduardo Trueba Molina and Samuel Trueba Arciniega.

observations; it puts an end to the dispute on the facts, rights and reparations; and its contents are compatible with the goal and purpose of the Convention. Therefore, the Agreement reached by the parties is sanctioned by means of this Judgment.

43. The reparation measures agreed are included in the sanctioning of the friendly settlement agreement. Without detriment to the above, the Court will analyze them in order to determine their scope and execution in light of the criteria established in its case law and in relation to the nature, purpose and goal of the obligation to provide comprehensive reparation for the damages caused to the victims.<sup>51</sup> Thus, the reparation measures agreed must be complied with under the terms of this Judgment, as indicated below.

## **VII. REPARATIONS (application of Article 63(1) of the American Convention)**

44. In the friendly settlement agreement, the State and the representatives decided on the comprehensive reparation of the victims through a series of measures, on which they requested the Court's sanctioning and monitoring of compliance. The various reparation measures decided by the parties in the friendly settlement agreement are detailed below.<sup>52</sup>

### **A. Obligation to investigate**

45. In the Agreement, the State assumed the following obligation:

The [State] recognizes the victims' rights to justice and to the truth. The parties note that in conformity with the legal framework in effect at the time of the facts, Luis Raúl Morales Rodríguez was convicted in the judgment of second instance to a sentence of one year, eleven months and fifteen days of prison for the death of Mirey Trueba Arciniega.

In view of the foregoing, the State commits to perform a review of the criminal case in light of the circumstances and the criteria of the time, considering the inter-American standards and with the participation of the victims' representatives. This review will be submitted to the [Inter-American Court] within six (6) months from the signing of the [Agreement]. If any irregularities are identified, the [State] will adopt the corresponding measures.

### **B. Measures of rehabilitation**

46. In the Agreement, the State assumed the following obligation:

#### *B.1 Medical attention*

The [State] will continue providing, permanently, the medical and psychological care required by the victims, at specialized health institutions through the Popular Health Insurance [Seguro Popular] provided, with the coordination of the Secretary of Health of the State of Chihuahua, under the terms of the roadmap for comprehensive medical

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<sup>51</sup> Cf. *Case of Velásquez Rodríguez. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25-27; *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 214, and *Case of Gómez Murillo et al. v. Costa Rica*. Judgment of November 29, 2016. Series C No. 326, para. 49.

<sup>52</sup> Since it was thus agreed by the parties, the Court will not mention the amounts that the State committed to pay to the next of kin of Mr. Trueba Arciniega as reparation.

attention prepared by the [State] and provided in the proceedings before the Inter-American Commission, annexed to this [Agreement].

The victims [will have...] access to all procedures and attention for their illnesses and complaints, including those of a psychiatric or psychological nature. They will also have access to the pharmaceutical services and medications required. In the event that the medical service required is provided in facilities located in areas different from their place of residence, they will have the right to travel expenses and per diem, which shall be covered by the [State], once the victims have been formally included in the National Registry of Victims.

Regarding the third level of care, adequate specialized medical care will be provided through the national health institutions, federal hospitals for referrals and highly-specialized regional hospitals, as required.

The Human Rights Unit [UDDH] of the Ministry of the Interior [SEGOB] and the Secretary of Health of the State of Chihuahua will manage everything related to this reparation measure.

### **C. Measures of satisfaction**

47. In the Agreement, the State assumed the following obligation:

#### *C.1 Production project for Mr. Eleazar Heric Trueba Arciniega*

The [State] through the Trust for Compliance with Human Rights Obligations managed by the [UDDH] of [SEGOB], will provide Mr. Eleazar Heric Trueba Arciniega with a single payment [at an amount agreed by the parties and established in the Agreement] to be destined for a production project of his choice, which will allow him to have a legal production activity.

The [State] through the [UDDH] of [SEGOB], will submit the proposal within a term of six (6) months from the signing and sanctioning of this friendly settlement agreement to the Trust mentioned in the previous paragraph, so that, once the proposal is approved, the corresponding capital reserve is made and the amount is given to the beneficiary.

#### *C.2 Provide a house and furniture to Micaela Arciniega Cevallos (who is interchangeably referred to as Micaela Arciniega Cevallos) and her son Eleazar Heric Trueba Arciniega*

Once the beneficiaries have registered in the National Registry of Victims, the [State] will provide funds for the purchase of a house for Micaela Arciniega Cevallos (who is interchangeably referred to as Micaela Arciniega Cevallos) and Eleazar Heric Trueba Arciniega through the Executive Commission for Victim Assistance (Comisión Ejecutiva de Atención a Víctimas, CEAV). The house will be located in either Barrio Insurgente, Colonia Loma Dorada, or Fraccionamiento Los Moros in the city of Chihuahua, State of Chihuahua.

The house will have at least four rooms, a dining room, an equipped kitchen, two bathrooms, a laundry area and a large patio. The [State] will give the house completely furnished.

Furthermore, the [State] promises to give them the house within six (6) months from the signing of this [Agreement], once the victims have registered in the National Registry of Victims.

The [UDDH] of [SEGOB] and [CEAV], will manage everything related to this reparation.

### *C.3 Maintenance improvements to the house of José Tomás Trueba Loera*

The [State] commits to provide a single amount to make the necessary improvements to the home of Tomás Trueba Loera (who is interchangeably referred to as Tomás Trueba Loera), located in Baborigame, State of Chihuahua.

According to two inspection visits to the house of Mr. Tomás Trueba Loera, remodeling the house requires an investment of [amount agreed by the parties and established in the Agreement]. This amount will be given to the beneficiary through [CEAV], once the victims have registered in the National Registry of Victims.

In addition, the representatives commit to provide support to the victims for the effective reconstruction of the house until the programmed improvements are completed in full.

The [State] commits to giving the funds for improvements within a term of six (6) months from the signing of this [Agreement], once the victims have registered in the National Registry of Victims.

The [UDDH] of [SEGOB], [CEAV] and the representatives will manage everything related to this reparation.

### *C.4 Food support*

The [State] will continue providing a basic food basket each month until December of 2022, and for a period of five years (5) after that, to the parents of Mirey Trueba Arciniega. The [State] will guarantee that the basic food basket contains all of the products indicated in the list prepared by the National Institute of Statistics and Geography, which is updated annually.

The [UDDH] of [SEGOB] and [CEAV], will manage everything related to this reparation.

### *C.5 Public act of acknowledgment of responsibility*

Regarding the acknowledgment of responsibility for the facts, the [State] will hold an act, to be presided by the Deputy Secretary of Human Rights of the Ministry of the Interior [SEGOB], the Deputy Secretary of Multilateral Affairs and Human Rights of the Secretariat of Foreign Affairs [SRE], and with the presence of personnel of the Secretariat for National Defense [SEDENA].

For the act of acknowledgment of responsibility, the [State] will prepare and read a text based on the proven facts established by the [Inter-American Commission]. This text will also be published once in the Official Federal Gazette and in a newspaper of widespread circulation in the State of Chihuahua. In addition, the text will be published in the main page of the websites of the Ministry of the Interior [SEGOB] and the Secretariat of Foreign Affairs [SRE] for a term of twelve (12) months from the signing of this [Agreement].

The text will be prepared by the Deputy Secretary of the Ministry of the Interior [SEGOB] and the Deputy Secretary of Multilateral Affairs and Human Rights of the [SRE], in which the international responsibility of the [State] will be acknowledged. Before making it public, the proposed text will be corroborated with the victims.

The [State] commits to submit a timeline for compliance with this measure within three (3) months and to comply with it within six (6) months from the signing of this [Agreement].

The [UDDH] of [SEGOB] will manage everything related to this reparation.

## **D. Guarantees of non-repetition**

48. In the Agreement, the State assumed the following obligation:

### *D.1 Training of State agents*

The State commits to implement training courses for the armed forces on the following topics:

- a. Standards on the use and excessive use of force
- b. Human Rights standards on citizen security.

To this end, it will take into consideration the international standards on the subject matter, particularly the United Nations' Basic principles on the use of force and firearms by law enforcement officials.

These courses will be taught by [SEDENA] continuously and permanently.

Moreover, the [State] commits to developing indicators that allow it to evaluate the results and the impact of these trainings.

In this regard, the [State] commits to submit a timeline, explaining when and how it will comply with this measure and the indicators of the results of this training, within six (6) months from the signing of this [Agreement].

[The parties] request that the [Inter-American Court of Human Rights] monitor this measure for a period of two years so as to evaluate its implementation and results, to subsequently determine whether it is necessary to maintain the monitoring of compliance with this measure.

The [UDDH] of [SEGOB] and [SEDENA] will manage everything related to this reparation measure.

### *D.2. Strengthen the authorities in charge of the investigation and prosecution in these types of cases*

The [State], through the Office of the Public Prosecutor [PGR], will implement a permanent training program for agents of the National Office of the Public Prosecutor on the following topics, including the standards indicated in Report on Merits 47/16, namely:

- a. Due diligence in the investigations on human rights violations committed by agents of the armed forces;
- b. Excessive use of force, in light of international standards; and
- c. Judicial guarantees for victims of human rights violations.

[The parties] request that the [Inter-American Court of Human Rights] monitor this measure for a period of two years so as to evaluate its implementation and results, to subsequently determine whether it is necessary to maintain the monitoring of compliance with this measure.

The [State] commits to submit a timeline, explaining when and how it will comply with this measure and the assessment of its impact, within six (6) months from the signing of this [Agreement].



## **E. Compensation**

49. In the Agreement, the State assumed the following obligation:

### *E.1 Pecuniary compensation*

The [State] commits to pay the total amount of [amount agreed by the parties and established in the Agreement] for the pain and suffering, physical damages and lost wages, amount approved by the Technical Committee of the Trust on April 9, 2018.

This sum corresponds to a total of [amount agreed by the parties and established in the Agreement] for lost wages in favor of Mirey Trueba Arciniega and [amount agreed by the parties and established in the Agreement] for the pain and suffering in favor of Mirey Trueba Arciniega and his next of kin.

These sums, converted into foreign currency (US dollars) correspond to [an amount agreed by the parties and established in the Agreement], which will be distributed as [agreed by the parties in the Agreement].

For purposes of the amounts corresponding to the main victim of the case, Mirey Trueba Arciniega, and to his brothers Elías, Tomás Rafael, Samuel and Vidal Trueba Arciniega and Eduardo Trueba Molina, which are deceased, such amounts will be given directly to the surviving next of kin.

In the case of Vidal Trueba Arciniega, the corresponding amount will be given to his wife and children. To this end, a bank account will be opened to deposit the money and protect their safety.

In the case of the amount corresponding to Mirey Trueba Arciniega and the rest of this deceased brothers, the amount will be given to his parents, Micaela Arciniega Cevallos (who is interchangeably referred to as Micaela Arciniega Ceballos), and José Tomás Trueba Loera (who is interchangeably referred to as José Tomás Trueba Loera).

In order to guarantee the safety of the beneficiaries, the [State] will not disclose publicly the amounts payable.

The [State] commits to comply with this measure within three (3) months from the signing of this [Agreement].

The [UDDH] of [SEGOB] will manage everything related to this reparation measure.

## **F. Payment of costs and expenses**

50. In the Agreement, the State assumed the following obligation:

Based on the case law of the Inter-American System for the Protection of Human Rights, the State will give, in Mexican pesos, the equivalent of USD\$ 5,000.00 (five thousand US dollars) to [COSYDDHAC] and the equivalent of \$ 5,000.00 (five thousand US dollars) to [CEJIL], amounts that comprise the expenses made in the management of this case from the time of death of the victim, August 22, 1998, and until the proceedings before the Inter-American Court of Human Rights. This amount will be paid in national currency at the exchange rate in effect, in conformity with that set forth in Chapter Six, paragraphs 10 and 11 of the Rules of the Trust for Compliance with Human Rights Obligations.

The [State] commits to making these payments within six (6) months from the signing of this [Agreement].

## **G. Monitoring of compliance with the Agreement**

51. The Court values the State's willingness to provide reparations for the human rights violations in this case, and confirms that the agreed measures seek to redress the damages in a comprehensive manner, insofar as they provide pecuniary compensation, measures of restitution, satisfaction and guarantees of non-repetition. Based on the foregoing, it sanctions the reparation measures under the terms agreed by the parties. Within its framework of monitoring compliance with judgments, the Court determines that it will monitor compliance with all of the measures agreed by the parties. Regarding the measures of satisfaction agreed by the parties, the Court will assess their compliance during two years and subsequently determine whether it is necessary to continue monitoring compliance therewith.

52. The friendly settlement agreement subscribed by the representatives on behalf of the victims and the State has been sanctioned in this Judgment. Therefore, any dispute or difference that arises in relation to it will be clarified by this Court.

## **VIII OPERATIVE PARAGRAPHS**

53. Therefore,

### **THE COURT**

#### **DECIDES,**

unanimously:

1. To sanction, under the terms of this Judgment, the friendly settlement agreement subscribed by the State and the victim's representatives, pursuant to Chapter VII of this Judgment.

2. To accept the acknowledgment of international responsibility made by the State in said Agreement.

#### **DECLARES,**

unanimously, that:

3. The State violated the rights to life and humane treatment, contained in Articles 4(1) and 5(1) of the American Convention on Human Rights, in connection with Articles 1(1) and 2 of the same instrument, to the detriment of Mirey Trueba Arciniega.

4. The State violated the rights to humane treatment, to a fair trial and judicial protection, as set forth in Articles 5(1), 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 Arciniega, namely: his mother Micaela Arciniega, his father José Tomás Loera, and his brothers Vidal Trueba Arciniega, Elías Trueba Arciniega, Tomás Trueba Arciniega, Eleazar Heric Trueba Arciniega, Eduardo Trueba Molina and Samuel Trueba Arciniega.

#### **AND ESTABLISHES**

unanimously, that:

5. This sanctioning Judgment is in and of itself a form of reparation.
6. The State must:
  - a) Perform a review of the criminal case in light of the circumstances and the criteria of the time, and taking into consideration the standards at the time, in conformity with that set forth in paragraph 45 of this Judgment;
  - b) Provide the medical and psychological care required by the victim, at specialized health institutions, in conformity with that set forth in paragraph 46 of this Judgment;
  - c) Provide to Eleazar Heric Arciniega the funds to establish a production project of his choice; provide the funds for the purchase of a house to Micaela Arciniega Cevallos, to make the necessary improvements to the house of Tomás Trueba Loera, provide food support to the parents of Mirey Trueba Arciniega, and perform a public act of acknowledgment of responsibility, in conformity with that set forth in paragraph 47 of this Judgment;
  - d) Implement training courses for agents of the armed forces and of the National Office of the Public Prosecutor, in conformity with that set forth in paragraph 48 of this Judgment;
  - e) Pay the amounts established for pain and suffering, physical damages and lost wages, in conformity with that set forth in paragraph 49 of this Judgment; and
  - f) Pay the amounts established for costs and expenses in conformity with that set forth in paragraph 50 of this Judgment.
7. The State must, within the term of one year from the notification of this Judgment, submit to the Court a report on the measures adopted.
8. The Court will monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and shall consider this case ended once the State has fully complied with that set forth herein.

Done in San José, Costa Rica, on November 27, 2018, in Spanish language.

Judgment. Case of *Trueba Arciniega et al. v. Mexico*.

Corte IDH. *Case of Trueba Arciniega at al. v. Mexico*. Judgment of November 27, 2018.

Eduardo Vio Grossi  
Acting President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Vio Grossi  
Acting President

Pablo Saavedra Alessandri  
Secretary