REPORT Nº 95/08
PETITION 1351-05
ADMISSIBILITY
NADEGE DORZEMA ET AL, OR "GUAYABIN MASSACRE"
DOMINICAN REPUBLIC
December 22, 2008

I. SUMMARY

1. On November 28, 2005, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission, "the Commission," or "IACHR") received a petition lodged by the Support Group for Repatriates and Refugees [*Grupo de Apoyo a los Repatriados y Refugiados*], represented by Mr. Cherubin Tragelus, and by the Dominican-Haitian Cultural Center [*Centro Cultural Domínico Haitiano*], represented by Mr. Antonio Pol Emil (hereinafter "the petitioners"),[1] alleging the international responsibility of the Dominican Republic (hereinafter "Dominican Republic" or "the State") for the presumed arbitrary deprivation of life of Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus, and Nadege Dorzema, the presumed failure to ensure the humane treatment of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin,[2] Celicia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, and Honorio Winique, (hereinafter the "alleged victims"), for the presumed deprivation of freedom of some of the alleged victims, and for failure to respect the right to a fair trial and the right to judicial protection, which would have allowed for reparations for the damages incurred.

2. The petitioners alleged that the State is responsible for violating the rights established in Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to fair trial), 24 (right to equal protection), and 25 (right to judicial Proteccion), in relation with the obligation to respect rights established in Article 1.1 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). With regard to the admissibility requirements, the petitioners maintained that the requirement of prior exhaustion of domestic remedies, stipulated in Article 46.1.a of the Convention, is not applicable because the alleged victims were prevented from exhausting adequate remedies under domestic law.

3. For its part, the State maintained that the petitioners' complaints were inadmissible, due to failure to comply with the requirement of prior exhaustion of domestic remedies stipulated in Article 46.1.a of the American Convention, since all of the remedies provided under Dominican law to the injured parties in this case were not exhausted.

4. Without prejudice to the merits of the case, and after examining the available information and verifying compliance with the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and in Articles 30 and 37 of the Rules of Procedure, the IACHR concludes that the petition is admissible insofar as the alleged violation of the rights established in Articles 4, 5, 7, 8, 24, and 25 of the American Convention are concerned, considered in relation to the general obligation established in Article 1.1 of that international instrument. Moreover, in application of the principle of *iura novit curia*, the Commission will examine, in the merits stage, whether there is a possible violation of Article 2 of the American Convention. The Commission has decided to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

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[1] On October 23, 2006, the IACHR Executive Secretariat received accreditation as co-petitioners from UQAM's International Clinic for the Defense of Human Rights, represented by Bernard Duhaime and Carol Hilling.

[2] The petitioners indicate that Michel Florantin and Michel Francois is the same person, and that in the interrogation of Michel Florantin in Court, he was called Michel Fransua. (The original petition received by the IACHR on November 28, 2005, page 8.)

II. PROCEDURES OF THE COMMISSION

5. On November 28, 2005, the Commission received the petition dated November 26, 2005, and assigned it number 1351-05. On March 26, 2007, the pertinent parts were transmitted to the State, with the request that it submit its response within two months, in accordance with the provisions of Article 30.2 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the "Rules of Procedure"). The State's response was received on July 13, 2007.

6. The IACHR received additional information from the petitioners on the following dates: June 1, August 29, and October 5, 2007, and April 2, 2008. These communications were duly forwarded to the State.

7. Furthermore, the IACHR received observations from the State on July 13, 2007, January 22, 2008, and September 25, 2008. These communications were duly forwarded to the petitioners.

III. POSITION OF THE PARTIES

A. The petitioners

8. The petitioners state that Haiti and the Dominican Republic experience constant migration of Haitian workers to the Dominican Republic, due to the difficult living conditions prevalent in Haiti. They add that this migration frequently takes place under extreme conditions, marked by a lack of legal parameters and discriminatory attitudes. More specifically, they contend that what happened to the alleged victims were not isolated incidents, but that they fall within an overall pattern of abuse and discrimination suffered by Haitian citizens at the hands of Dominican state agents, especially along the border between the two countries.

9. In this context, the petitioners allege that a group of twenty-eighty Haitians, most of whom were from the Pilate area in northwestern Haiti, had paid a person to transport them to the city of Santiago de los Caballeros in the Dominican Republic, for the purpose of working, selling goods, and studying. They allege that on June 17, 2000, they crossed the border between Ouanaminthe (Haiti) and Dajabón (Dominican Republic) on the day of the bi-national market, and spent the night near Dajabón. In the early morning, they boarded a truck that took them to Santiago de los Caballeros.

10. The petitioners allege that at approximately 3:00 a.m. on June 18, 2000, the truck arrived at the checkpoint located in the town of "Botoncillo," municipality of Guayubin, Province of Montecristi, in the Dominican Republic. There the truck was intercepted by four members of the Border Intelligence Operations Department belonging to the Armed Forces (hereinafter the "DOIF"),[3] who were patrolling and inspecting vehicles. They add that the members of the DOIF gave a signal to stop the truck, but the driver of the vehicle was not aware of it and had continued on. They say that as a result, the soldiers began pursuing the truck for 17 kilometers, opening fire indiscriminately on it with official M16 rifles. They say that according to statements by witnesses, the soldiers who were pursuing the truck could see that there were people inside of it. They add that later on, the vehicle overturned on a curve some five kilometers from the town of "El Copey," as a result of the death of the driver from bullet wounds. According to the petitioners, the Dominican military forces continued to shoot at the alleged victims, who, terrified, were trying to run away from the place. Thus they argue that this amounted to an extrajudicial execution, at least in the cases of Nadege Dorzema and Pardis Fortilus.

11. The petitioners say that as a result of these acts, and the disproportionate response of the State agents, Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus and Nadege Dorzema lost their lives, and Joseph

[3] The petitioners mention that the DOIF is a specialized corps to combat the smuggling of weapons, vehicles, and drugs across the border, made up of a joint brigade of the Dominican Armed Forces (Army, Air Force, and Navy).l Communication of the petitioners received on November 28, 2005, para. 8.

Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Celicia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, and Honorio Winique were wounded, five seriously and others with permanent injuries.

12. The petitioners report that after this event, some of the alleged victims of the so-called "Guayubin Massacre" were transferred to detention centers in the cities of Montecristi and Dajabón, where they were held arbitrarily, without being informed of the reasons for their detention. In this regard, they say that the State agents who arrested and detained them did not request their identification, and that the courts did not examine their legality. They further report that after being detained, they were expelled from the Dominican Republic, without any attempt ever made to determine their legal status by judicial or administrative means.

13. The petitioners allege that on June 19, 2000, agents from the Ministry of Defense opened an investigation into the events that occurred, and on June 24, 2000, an official indictment was issued by the Prosecutor of the Joint Armed Forces and National Police Court Martial of First Instance [*Consejo de Guerra de Primera Instancia Mixto de las Fuerzas Armadas y de la Policía Nacional],* against the soldiers involved in the acts, who were charged with voluntary homicide. They further report that the court hearing on the preliminary proceedings [*Juzgado de Instrucción]* of the Joint Armed Forces and National Police Court Martial of First Instance concluded that there was serious, critical, specific, and consistent evidence pointing to the criminal liability of the accused soldiers, and the need for them to be judged pursuant to the law. As a result of these considerations, it recommended that the accused be tried by the Joint Armed Forces and National Police Court Martial of the First Instance, as allegedly responsible for violating Articles 295, 304, and 309 of the Dominican Criminal Code. They assert that despite the fact that an arrest warrant for immediate execution was issued by the public prosecutor [*Magistrado Procurador Fiscal*] against the persons charged, it was never carried out.

14. The petitioners state that the military proceedings were officially initiated, but that the alleged victims and their families were unable to attend as civilian parties, because Article 8 of the Code of Justice of the Armed Forces does not allow it.

15. They explain that as a result of the lack of transparency of the military proceedings and the fact that it was impossible for them to be civilian parties to the proceedings, in 2002 Thelusma Fortilus, Rosemond Dorzema, Nerve Fortilus, Alce Gyfranord, Alce Ruteau, Mirat Dorzema, and Onora Thereneus, family members of the alleged victims, filed a complaint with the Court for Preliminary Proceedings of the Judicial District of Montecristi. They report that the soldiers involved were summoned on four different occasions by the judge presiding over the preliminary proceedings, but they never appeared. According to the petitioners, when the soldiers failed to appear, the judge decided to proceed with the interrogation of the family members of the victims. However, before the interrogation was initiated, that same judge for the case ordered the suspension of said proceedings, based on the argument that the case was pending in a Military Court.

16. The petitioners indicate that this situation generated a conflict of jurisdiction. Consequently, on March 12, 2003, the family members of the alleged victims petitioned the Supreme Court of Justice of the Dominican Republic to settle the conflict of jurisdiction, requesting that the Court refuse jurisdiction to the Military Court in favor of the regular courts. The petitioners report that at the time the petition was lodged with the IACHR, the highest court had not resolved the conflict of jurisdiction, and that this constituted an unwarranted delay in rendering a judgment under domestic remedies. On this point, they maintain that they were informed, by way of the observations of the State submitted to the IACHR on July 13, 2007, that the Supreme Court of Justice had resolved the conflict of jurisdiction in favor of the military courts on January 3, 2005.

17. The petitioners further state that the outcome of the proceedings in the Military Courts was the judgment of March 5, 2004, issued by the Joint Armed Forces and National Police Court Martial of First Instance, in which three soldiers were found guilty, two were convicted to 5 years' imprisonment and one was suspended from duty for 30 days, while the fourth soldier was acquitted. After that verdict was handed down, the two soldiers convicted and sentenced to prison appealed, and on May 27, 2005,

the Appellate Joint Armed Forces and National Police Court Martial amended the judgment of the court of first instance and ordered the acquittal of the convicted soldiers, in accordance with Articles 321 and 327 of the Dominican Criminal Code.

18. With regard to the investigation into and punishment of the acts described in the petition, the petitioners state that the State gave preference to the military jurisdiction over the civilian one. They argue that the State is responsible for violation of the rights established in Articles 4, 5, 7, 8, 24, and 25 of the American Convention, considered in relation to Article 1.1 of that international instrument. Insofar as Article 24 is concerned, they contend that the situation in question is not exceptional in the Dominican Republic, but that abuses of this type are frequent. They further state that there was discriminatory treatment of the alleged victims both on June 18, 2000 and during the judicial proceedings, which were inadequate and ineffective.

19. As for the requirements for admissibility of this complaint, the petitioners allege that the rule contained in Article 46.1 of the American Convention should not apply, since the victims were prevented from exhausting adequate remedies under the domestic legal system.[4]

B. The State

20. The State alleges that this case refers to a truck on the stretch of highway between Botoncillo and Copey, in the jurisdiction of Montecristi that ran through a checkpoint and then had an accident. It adds that in view of the fact that it was 3:00 a.m. on June 18, 2000, the DOIF personnel, together with members of the National Army from the Botoncillo military post, ordered a Daihatsu truck, covered with canvas, to halt, as they had information that it was attempting to bring in drugs.

21. The State further reports that the truck charged past the soldiers who were at the military station, as a result of which they fired a shot in the air. When the truck failed to stop, the members of the patrol shot at the tires of the vehicle, which caused the vehicle to have an accident. They then determined that under the canvas were approximately thirty Haitian nationals, seven of whom died and thirteen of whom were injured as a result. The State Secretariat of the Armed Forces therefore ordered the appropriate investigation to be conducted by a Joint Board of General officials, in order No. 15012 dated Jun 19, 2000.

22. The State indicates that as a result of the accident in which the truck overturned, causing the death of six Haitian nationals and one Dominican, the Joint Board of General Officers conducted an investigation and recommended that the four soldiers be tried by the Joint Armed Forces and National Police Court Martial of First Instance, as allegedly responsible for violating Articles 295, 304, and 309 of the Criminal Code, in accordance with the provisions of Article 3 of the Code of Justice of the Armed Forces (Law No. 3483 of February 13, 1953), which states: "Violations committed by soldiers in the exercise of their duties also come under the jurisdiction of military courts, no matter where they were committed. If the violation was committed in another country, the proceeding shall take place after the accused is returned to the Republic."

23. The State further indicates that military courts only rule on criminal action, and that this case involves an action in the process of settlement which is governed by the procedural rules prior to September 27, 2004, the date on which the Dominican Penal Code of Procedure (Law 76-2002) entered into force; therefore, it had to be tried under the former rules of procedure established in the Code of Criminal Procedure.

24. The State adds that the Supreme Court of Justice denied the motion to appoint a civilian court judge, filed on March 12, 2003 by Telusma Fortilus, Rosemond Dorsala *et al.*, pursuant to

[4] In the petition, the petitioners further allege application of the exception to exhaustion of domestic remedies contemplated in Article 46.2. of the American Convention, because on the date that the petition was lodged with the IACHR, they were not notified of the decision by the Supreme Court of Justice issued on January 3, 2005.

Resolution No. 25-2005, dated January 3, 2005. In its decision, the Supreme Court pointed out that "whenever two or more courts of equal rank are seized with the same case, and the petitioner has brought the relevant evidence, the court or courts subsequently petitioned must remove themselves to give preference to the court that was originally responsible for hearing the matter. In the event that none of the parties so requests, the judges may take the initiative and remove themselves from the case, leaving solely and exclusively the court originally empowered."

25. According to the State, this line of reasoning is based on the following precepts: a) Article 382 of the 1884 Code of Criminal Procedure, which establishes that: "In criminal or correctional matters, judges may be designated by the Supreme Court of Justice, and in merely police matters, by courts of first instance, provided the judges of the preliminary hearing and the correctional or criminal courts, as well as police courts that do not come under the authority of either, are considering the same offense or related offenses or the same violation;" and, b) Article 28 of Law No. 834 of July 15, 1978, which establishes that: "If the same case is pending in two courts of the same rank that are equally competent to hear it, the second court to be seized of it must cede to the other if one of the parties so requests. Failing this, it may do so on its own initiative."

26. The State alleges that since this case involves a criminal offense provided for and punished in Dominican legislation, the Joint Armed Forces and National Police Court Martial of First Instance assumed jurisdiction and the national armed forces investigated the unfortunate incident.

27. Similarly, the State contends that it is wrong to assert that the military courts could not hear the case, since Dominican law grants such powers to different legal systems.

28. Moreover, the State advised that the Dominican Republic recognizes and applies the rules of general and American international law to the extent that its government has adopted it, notwithstanding the fact that the sovereignty of the Dominican nation, as a free and independent state, is inviolable. It adds that in the Dominican Republic, police and security laws are binding on all inhabitants of the territory, and that the State recognizes that it is its purpose to provide effective protection for all human beings and to maintain an environment in which they can continually improve themselves, in a context of individual freedom and social justice, consistent with public order, general well-being, and the rights of all.

29. The State further maintains that Article 8, followed by Articles 70 and 92 of the Code of Military Justice (Law 3483 of February 13, 1953), establishes the procedure for compensation or review of a case that has been heard and judged by military courts, in a decision that has acquired the authority of *res judicata*, but that the parties have not availed themselves of that remedy to date. By virtue of the foregoing, it requests that the petition be declared inadmissible, since domestic remedies have not been exhausted.

IV. ANALYSIS OF ADMISSIBILITY

A. Jurisdiction of the Commission: *ratione personae, ratione loci, ratione temporis* y *ratione materiae*

30. The petitioners are authorized by Article 44 of the American Convention to lodge petitions on behalf of alleged victims in respect of whom the State has pledged to respect and guarantee the rights established in the American Convention. The Dominican Republic has been a State Party to the American Convention since April 19, 1978, the date on which it deposited its instrument of ratification. Thus the Commission has personal jurisdiction to examine the petition.

31. The Commission also has jurisdiction *ratione loci* to take cognizance of the petition, since it alleges violations of the rights protected in the American Convention that took place within the jurisdiction of the State.

32. The Commission has temporal jurisdiction to consider the complaint, since the obligation to respect and guarantee the rights protected in the American Convention was already in effect in the State on the date that the acts alleged in the petition occurred.

33. Finally, the Commission has subject matter jurisdiction to examine this case, because the petition refers to possible violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

34. Article 46.1 of the American Convention states that, in order for a petition lodged with the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to look into an alleged violation of a protected right and, if appropriate, to settle the case before it is brought before an international body.

35. The State alleges that the present case involves a criminal offense that is provided for and punished under Dominican legislation. Thus, since the Joint Armed Forces and National Police Court Martial of First Instance had jurisdiction over the case for the purposes of the corresponding law, the National Armed Forces complied with the duty to clarify this highly regrettable incident which resulted in the death of six Haitian nationals and one Dominican. Moreover, it points out that the petition does not meet the requirement on prior exhaustion of remedies under domestic law stipulated in Article 46.1.a of the American Convention, in view of the fact that all of the remedies provided under Dominican law and available to the injured parties to resolve the case were not exhausted. Articles 8, 70, and 92 of the 1953 Code of Military Justice establish the procedure for compensation or review of a case heard and judged in military courts, in a judgment that has acquired the authority of *res judicata*, yet the parties have not availed themselves of this remedy to date.

36. The petitioners, on the other hand, allege that the military courts opened an official investigation and prevented the alleged victims and their next of kin from participating in it. Moreover, they point out that even when the family members of the victims brought a legal action in the regular courts, the proceedings were suspended because of the existence of a proceeding in a military court. Furthermore, they point out that the family members of the victims requested the Supreme Court of Justice to establish the jurisdiction of the regular courts, a petition that was denied on January 3, 2005. In this regard, they explain that they learned of this decision by the highest court on their petition regarding jurisdiction in a communication submitted by the State to the IACHR on July 13, 2007, which, in their view, is a clear instance of irregularity and inefficiency in the judicial proceeding. As a result, the petitioners argue that the exception to prior exhaustion of domestic remedies stipulated in Article 46.2 of the American Convention applies.

37. In the case in point, it is important to clarify the domestic remedies that must be exhausted in accordance with the letter and the spirit of Article 46.1.a of the American Convention. In order for a petition to be found admissible, this provision requires that "... the remedies under domestic law have been pursued and exhausted in accordance with the generally recognized principles of international law." The Inter-American Court has interpreted this provision to mean that only *adequate* remedies to resolve the violations allegedly committed must be exhausted. The term "adequate remedies" means that:

> the function of these remedies within the domestic legal system must be appropriate to protect the infringed legal situation. In all domestic legal systems, there are multiple remedies, but not all are applicable in all circumstances. If, in a specific case, the remedy is not adequate, it is obvious that it is not required to be exhausted. This is consistent with the principle that the rule must lead to an

> effect and cannot be interpreted in the sense that it should not produce any effect or that its effect is clearly absurd or unreasonable.[5]
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> The case law of the Commission recognizes that whenever an indictable crime is committed, the State has the obligation to promote and advance the criminal proceedings up to the final outcome,[6] and that, in those cases, this is the appropriate way to clarify the facts, judge the perpetrators, and establish the corresponding penal sanctions, in addition to providing for other types of reparations. The Commission considers that the acts alleged by the petitioners in the present case involved the alleged violation of a fundamental, irrevocable right, the right to life, which appears in domestic legislation as an indictable crime, and that therefore it is this criminal proceeding, advanced by the State itself, that must be considered for the purposes of determining the admissibility of the petition.

38. From the information provided by the parties, it appears that the events of June 18, 2000 were investigated under the military jurisdiction. On March 5, 2004, the Joint Armed Forces and National Police Court Martial of First Instance issued a judgment of conviction in the case of three of the four accused State agents. On May 27, 2005, the Appellate Joint Armed Forces and National Police Court Martial handed down a verdict of acquittal in the case of the two State agents who appealed their conviction.

39. Moreover, it appears that in November 2002, the families of the alleged victims filed a complaint in a civilian court for preliminary criminal proceedings in the Judicial District of Montecristi, to open an investigation into the events that occurred on June 18, 2000. However, the court refused jurisdiction, due to an investigative proceeding under military jurisdiction pertaining to the same events.

40. In view of the conflict of jurisdiction, on March 12, 2003, the family members of the alleged victims filed a motion with the Supreme Court of Justice, requesting that the court for preliminary criminal proceedings of the Judicial District of Montecristi pursue the preliminary proceedings of the investigation into the events of June 18, 2000 and that the Joint Armed Forces and National Police Court Martial of First Instance be refused jurisdiction in favor of the civilian court. On January 3, 2005, the Supreme Court of Justice decided to deny the motion because the military court had begun to litigate the case prior to the civilian court. On May 27, 2005, the Appellate Joint Armed Forces and National Police Court Martial amended the judgment of the court of first instance and ordered the acquittal of the convicted soldiers, in accordance with Articles 321 and 327 of the Dominican Criminal Code.

41. In this regard, it is important to note that the Commission has repeatedly found that the military courts are not an appropriate forum and thus do not offer an adequate remedy for investigating, judging, and punishing possible violations of the human rights established in the American Convention that are allegedly committed by law enforcement agents or members of the police, with their cooperation or acquiescence.[7]

42. As for the State's argument to the effect that the petitioners did not exhaust all of the remedies under Dominican law, the IACHR notes that the State itself has recognized that under the legislation of the Dominican Republic, civilians cannot participate in proceedings heard in military courts. The petitioners allege—and the State has not contested—that they did not have access to the proceeding or the case file and they were not notified of the decisions issued by the military courts.

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[5] I/A Court H.R., *Velásquez Rodríguez Case.* Judgment of July 29, 1988. Series C No. 4, para. 63.

[6] Report Nº 52/97, Case 11218, Arges Sequeira Mangas, 1997 IACHR Annual Report, paras. 96 and 97. See also Report N° 55/97, para. 392.

[7] IACHR, *Third Report on the Human Rights Situation in Colombia* (1999), p. 175; *Second Report on the Human Rights Situation in Colombia* (1993), p. 246*; Report on the Human Rights Situation in Brazil* (1997), pp. 40-42. Also, the Inter-American Court has recently confirmed that military courts are only an adequate forum for judging members of the military who committed crimes or offenses that by their very nature violate legal goods belonging to the military. I/A Court H.R., *Durand and Ugarte Case.* Judgment of August 16, 2000. Series C No. 68, para. 117. IACHR, Report Nº 43-02, Admissibility, Petition 12.009, Leydi Dayán Sánchez, Colombia, October 9, 2002, para. 23.

43. The petitioners availed themselves of the remedies to which they had access for the purpose of requesting proceedings in the regular courts. With the decision issued by the Supreme Court of Justice on January 3, 2005, which decided in favor of the military jurisdiction in the jurisdictional motion brought before it, the exception to exhaustion of domestic remedies provided for in Article 46.2.a of the American Convention is verified, because due legal process to protect the right or rights allegedly violated did not exist in the domestic legislation of the Dominican Republic.

44. In view of the characteristics of this case, the Commission considers that the exception stipulated in Article 46.2.a of the American Convention is applicable, hence the requirement of exhaustion of domestic remedies cannot be invoked.

45. It only remains to indicate that invocation of the exceptions to the rule of exhaustion of domestic remedies stipulated in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights established therein, such as guarantees of access to justice. However, Article 46.2, by its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, whether the exceptions to the rule of exhaustion of the domestic remedies established in that Article are applicable to the case in point must be determined previously and separately from the analysis of the merits of the case, since it relies on a different standard of evaluation from the one used to determine a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented exhaustion of domestic remedies in this case will be examined, as relevant, in the report adopted by the Commission on the merits of the case, to determine if they effectively constitute violations of the American Convention.

2. Deadline for presentation

46. Pursuant to Article 46.1.b of the American Convention, a requirement for admissibility of the petitions is that they be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. Article 32 of the Commission's Rules of Procedures establishes that "in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

47. In the present case, the Commission decided on the applicability of the exception to the requirement of exhaustion of domestic remedies. Considering that the military courts took the initiative to open the investigation into the events that occurred on June 18, 2000; the actions taken by the alleged victims to petition the State; the evolution and continuity of the denounced situation; the resolution on January 3, 2005, the Supreme Court of Justice that decided to deny the motion because the military court had begun to litigate the case prior to the civilian court; the decision on May 27, 2005, of Appellate Joint Armed Forces and National Police Court Martial amended the judgment of the court of first instance and ordered the acquittal of the convicted; and the date the petition was lodged with the IACHR, the Commission is of the view that the complaint was presented within a reasonable period of time. Therefore, the requirement regarding the deadline for presentation of the petition was met, pursuant to the terms of Article 32 of its Rules of Procedure.

3. Duplication of international proceedings and res judicata

48. Article 46.1.c states that admission of petitions is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47.d of the Convention stipulates that the Commission shall not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." The petitioners have expressly stated in their petition that they have not appealed to another international organization with regard to the events that are the subject of this petition. Nor is there evidence in the case records that the subject of the petition is pending a decision in another international proceeding, or that it reproduces a petition already examined by this or another international organization. Consequently, the requirements established in the referenced articles have been met.

4. Characterization of the alleged events

49. As the Commission has already indicated in other cases, at this stage of the procedure, it is not relevant to verify whether or not there was a violation of the American Convention. For the purposes of admissibility, the IACHHR must merely decide if the allegations describe events that could be characterized as a violation of the American Convention, according to the terms of its Article 47.b, and if the petition is "manifestly groundless" or "obviously out of order." pursuant to paragraph (c) of that Article. The standard for evaluation of these facts is different from the one required to decide on the merits of the petition. In the present stage, the IACHR must conduct a preliminary *prima facie* evaluation that does not entail a prior judgment or advance opinion as to the merits. Its own Rules of Procedure reflect this distinction between the evaluation that must be conducted to declare a petition admissible, and the one required to determine the actual responsibility of the State, by establishing clearly differentiated stages for study of admissibility and merits.

50. In the present case, the petitioners allege violation by the State of the rights to life, humane treatment, personal liberty, a fair trial, equality before the law, and judicial protection, established in Articles 4, 5, 7, 8, 24 y 25 of the American Convention, respectively, considered together with the obligation to respect these rights and the duty to adopt domestic legislation, established in Article 1.1 of that instrument.

51. Having reviewed the information submitted by the parties, the Commission finds that the petitioners have made allegations that are not "manifestly groundless" or "obviously out of order," and that, if proven to be true, could represent violations of Articles 4, 5, 7, 8, 24, and 25 of the American Convention, respectively, considered in relation to Article 1.1 of that international instrument.

52. More specifically, the Commission deems it appropriate to state that the facts described in this petition are fundamentally related to the assumed international responsibility of the Dominican Republic stemming from the action of State agents that resulted in the alleged arbitrary deprivation of life of Jacqueline Maxime, Fritz Alce (Gemilord), Roselene Theremeus, Ilfaudia Dorzema, Máximo Rubén de Jesús Espinal, Pardis Fortilus, and Nadege Dorzema, the presumed failure to ensure the humane treatment of Joseph Pierre, Selafoi Pierre, Silvie Thermeus, Roland Israel, Rose Marie Dol, Josué Maxime, Michel Florantin, Celicia Petithomme/Estilien, Sonide Nora, Alphonse Oremis, Renaud Timat, and Honorio Winique, the presumed deprivation of the freedom and presumably arbitrary deportation of some of the alleged victims, and the failure to ensure a fair trial and judicial protection that would have provided for reparations for damages incurred.

53. In addition, based on the information provided by the petitioners and on the principle of *iura novit curia*, that grants the power to determine the law applicable to the specific case, the Commission decides, without prejudice to the merits, that the events described, if proven, could also characterize a violation of Article 2 of the American Convention, as regards the duty of states to adopt legislative provisions to give effect to the rights and freedoms established therein, and especially in relation to national criminal legislation and regulation of the jurisdiction of military and regular courts.

54. Since the lack of foundation or groundlessness for these aspects of the complaint are not evident, the Commission considers that the requirements established in Article 47.b and 47.c of the American Convention have been met with regard to this aspect of the complaint.

V. CONCLUSION

55. The Commission concludes that without prejudice to the merits of the case, and after analyzing the available information and verifying compliance with the admissibility requirements established in Articles 46 and 47 of the American Convention, as well as in Articles 30 and 37 of its Rules of Procedure, the petition is admissible with regard to the alleged violation of the rights established in Articles 4, 5, 7, 8, 24, and 25 of the American Convention, considered in relation to the general obligation established in Article 1.1 of that international instrument. Moreover, in application of the principle of *iura*

novit curia, the Commission will, in the merits stage, examine whether there is a possible violation of Article 2 of the American Convention.

56. On the basis of the factual and legal arguments set forth herein, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible, with regard to the alleged violation of the rights established in Articles 4, 5, 7, 8, 24, and 25 of the American Convention, all of which are considered in relation to the obligations derived from Article 1.1 of this international instrument. Moreover, in application of the principle of *iura novit curia*, the Commission concludes that the petition is admissible for the alleged violation of Article 2 of the American Convention.

2. To forward this report to the petitioners and the State.

3. To continue with its analysis of the merits of the case.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on the 22nd day of December 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.