I. SUMMARY

1. On May 6, 2002, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint submitted by Mr. Juan Ignacio Correa López and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C. (CMDPDH), (hereinafter "the petitioners"), in which it is argued that Mexico (hereinafter "the State" or "the Mexican State") is internationally responsible for the death of José Iván Correa Arévalo, 17 years old at the time of the facts, and the subsequent failure to carry out an investigation. The petitioners argue that the facts alleged constitute violations of the rights enshrined in Articles 2, 4, 8,19, 17, 19, and 25 of the American Convention on Human Rights ("the American Convention") in relation to the obligations that arise from its Article 1(1). Similarly, the petitioners alleged a violation of the right to education enshrined in Article 13 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador" (hereinafter "Protocol of San Salvador").

2. As regards the admissibility of the claim, the petitioners alleged that the instant case should be considered to fall within one of the exceptions to the requirement of prior exhaustion of domestic remedies. According to the petitioners, a complaint was lodged with the competent authorities concerning the death of the youth José Iván Correa Arévalo, but it has not been effective. In addition, they allege an unwarranted delay with respect to the decisions of the domestic remedies pursued, which would make the instant case admissible under Article 46(2)(c).

3. The State, for its part, argued that Mr. Juan Ignacio Correa López, the father of the alleged victim, has not exhausted domestic remedies, and that in Preliminary Inquiry 2062/ZC/91

there are investigative steps that remain to be taken, as it has not been possible to locate Mr. Juan Ignacio Correa López.

4. After the analysis of the parties' positions, the Commission concludes, without prejudging on the merits, that it is competent to decide the claim submitted by the petitioners; accordingly, the case is admissible in light of Articles 41, 46, and 47 of the same international instrument, and Article 37 of the Rules of Procedure of the IACHR. The IACHR, in the use of its powers established in Article 41 of the American Convention and Article 37 of the IACHR's Rules of Procedure, admits the instant case for the alleged violations of the rights enshrined in Articles 8 and 25 of the American Convention, in light of Article 1(1) of the same instrument, and finds it inadmissible in relation to the rights contained in Articles 2, 4, 17, and 19 of the American Convention. Without prejudging on the merits of the case, the Commission considers that the requirements established in Articles 47(b) and (c) of the American Convention have been met. Accordingly, the Commission decides to notify the parties of its decision, continue with the analysis of the merits regarding the alleged violations of the American Convention, and to publish this Admissibility Report and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

A. Petition

5. On May 6, 2002, the Commission received a complaint submitted by Mr. Juan Ignacio Correa López and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C. (CMDPDH), which was assigned number 333/02. On June 25, 2002, the IACHR transmitted the petition to the Mexican State and gave it two months to submit its observations. On August 27, 2002, the Mexican State requested an extension for submitting its observations. On September 26, 2002, the IACHR indicated to the State that the term expired on September 25, 2002; accordingly, it requested its observations. On October 7, 2002, the State sent in its observations.

6. On October 10, 2002, the IACHR forwarded the State's observations to the petitioners and gave them one month to submit their observations. On November 8, 2002, the petitioners submitted their observations. On November 14, 2002, the IACHR forwarded the petitioners' observations to the State, and gave it one month to submit its observations. On December 23, 2002, the State sent in its observations. On January 2, 2003, the IACHR forwarded the State's observations to the petitioners and gave them one month to submit observations. On February 4, 2003, the petitioners forwarded their observations. On February 12, 2003, the IACHR transmitted the petitioners' observations to the State and gave it one month to submit observations. On March 14, 2003, the State forwarded its observations to the IACHR. On April 16, 2003, the IACHR forwarded the State's observations to the petitioners and gave them one month to submit observations. On May 7, 2003, the petitioners sent in their observations, in which they asked the IACHR to use its good offices to initiate the process of pursuing a friendly settlement with the Mexican State.

7. On May 12, 2003, the IACHR transmitted the petitioners' observations to the State. On June 13, 2003, the State forwarded its observations to the IACHR. On August 5, 2003, the IACHR sent the petitioners the observations submitted by the Mexican State. On September 5, 2003, the petitioners sent their observations to the IACHR. On January 8, 2004, the IACHR forwarded the petitioners' observations to the State and gave it one month to submit its observations. On January 14, 2004, the petitioners asked the IACHR for a hearing during the 119th regular period of sessions. On February 3, 2004, the IACHR denied the request for a hearing. On February 10, 2004, the State submitted its observations. On March 25, 2004, the IACHR sent the State's observations to the petitioners, and gave them one month to submit their observations. On April 23, 2004, the petitioners forwarded their observations. On May 5, 2004, the IACHR sent the State the petitioners' observations and gave it one month to submit observations. On June 1, 2005, the petitioners submitted their observations.

8. On August 31, 2005, the petitioners requested a hearing before the IACHR during the 123rd regular period of sessions. On September 26, 2005, the IACHR decided not to grant the hearing requested by the petitioners. On May 26, 2006, the IACHR acknowledged receipt of the petitioners' communication of June 1, 2005, and the IACHR informed the State of the petitioners' observations. On June 30, 2006, the State forwarded its observations. On September 11, 2006, the IACHR forwarded the State's observations to the petitioners and gave them three months to submit their observations. On November 10, 2006, the petitioners sent in their observations. On January 11, 2007, the petitioners requested a hearing during the 127th regular period of sessions of the IACHR. On February 23, 2007, the IACHR denied the petitioners' request for a hearing. On April 27, 2007, the IACHR received additional information sent by the petitioners.

III. THE PARTIES' POSITIONS

A. The petitioners

9. The petitioners allege that José Iván Correa Arévalo was a student and independent student leader at the Colegio de Bachilleres Plantel 01 (COBACH) in Tuxtla Gutiérrez, Chiapas, and that he was killed by a gunshot wound to the head on May 28, 1991, in the city of Tuxtla Gutiérrez, Chiapas, when in the company of Rolando Vargas Pérez, Vicente Ardines Domínguez, and William Sánchez Mandujano.[FN1] According to the petitioners, the alleged victim was assassinated by one or all of those present at the time of the shooting, who, according to the petitioners' account, enjoyed the protection of the authorities of the state of Chiapas, due to the family relationship between one of those allegedly responsible and the Secretary of Government of the state of Chiapas at the time. The petitioners state that the investigation into the facts has been deficient and that not all of the evidence produced in the proceeding was considered.

[FN1] Initial petition, submitted by the petitioners on May 6, 2002., p. 2.

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10. According to the petitioners, the alleged victim's death resulted from a death threat made to José Iván Correa Arévalo by Ramiro Reyes Pérez.[FN2] From the petitioners' account it appears that one day before José Iván Correa Arévalo's death, i.e. on May 27, 1991, "a strike movement at COBACH in which José Iván is involved in his capacity as an independent leader …"[FN3] had been initiated, and it's in this context that he apparently received a death threat from Ramiro Reyes Pérez, who at the time of the facts – according to the petitioners —was the official leader of the COBACH. The petitioners allege that even though the facts occurred approximately 15 years ago, to date the preliminary inquiry is in the initial stage, without having clarified the facts.

[FN2] Initial petition, submitted by the petitioners on May 6, 2002, p. 2.
[FN3] Initial petition, submitted by the petitioners on May 6, 2002, p. 2.

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11. The petitioners alleged that in the instant case there is a violation of the right to life, the right to a fair trial, the right to judicial protection, the right to protection of the family, and the rights of the child, enshrined in Articles 4, 8, 25, 17, and 19 of the American Convention.

12. The petitioners alleged that on May 28, 1991, Preliminary Inquiry 2062/ZC/91 was opened at the Office of the Attorney General for the State of Chiapas, for the crime of homicide. The petitioners stated that "prosecutorial certification done at the Red Cross of the city of Tuxtla Gutiérrez … does not establish that José Iván had alcohol on his breath [at the time of his death],"[FN4] in contrast to the allegations made by the State to the effect that at the time of his death, youths José Iván Correa Arévalo, Rolando Vargas Pérez, Vicente Ardines Domínguez, and William Sánchez Mandujano were consuming alcoholic beverages. Likewise, the petitioners assert that according to the three Harrison tests performed on both of the alleged victim's hands, as well as the Walter test performed on the shirt that José Iván Correa was wearing the day of his death, concluded that the death of José Iván Correa Arévalo had not been the result of a suicide, as the State asserts. In addition, the petitioners argued that as there was no blackening around the mortal wound, it is deduced that "the shot was not by contact but at a distance."[FN5]

[FN4] Initial petition, submitted by the petitioners on May 6, 2002, p. 4.
[FN5] Initial petition, submitted by the petitioners on May 6, 2002, p. 5.

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13. As regards the statements given by the eyewitnesses, the petitioners assert that the statements contradict one another, as Rolando Vargas Pérez said that the alleged victim "had not shot himself,[FN6]" in contrast to what was established by the State. Similarly, the petitioners indicated that one of the eyewitnesses, William Sánchez Mandujano, had attained majority as of the time of the facts, and was not a minor, as the State argues. The petitioners also alleged that the clothes the alleged victim was wearing the day of his death were given to the family without performing the respective expert examination, which in the view of the petitioners evidences "the lack of diligent investigations"[FN7] in the instant case. In this regard, the petitioners argued that

the alleged assassins of José Iván Correa Arévalo enjoy protection by the authorities of that time of the Government of Chiapas.[FN8]

[FN6] Initial petition, submitted by the petitioners on May 6, 2002, pp. 3 and 4.
[FN7] Petitioners' observations of November 8, 2002, para. 7.
[FN8] According to the petitioners, in the statement by William Sánchez Mandujano, of November 11, 1993, before the agent of the Public Ministry of Chiapas, he stated that "his mother's brother is Chain Mandujano … who was first commander."

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14. The petitioners denounced that the alleged victim's next-of-kin became coadjutors in the investigation. Similarly, they alleged a series of irregularities in the processing of the case. In this regard, the petitioners alleged that a second autopsy was performed without the authorization of the next-of-kin, and without any notice whatsoever. The petitioners also denounced that no "tattooing" study had been performed to determine the distance from which the shot was fired, nor had toxicological studies been ordered in the instant case. In this regard, the petitioners argue that the Public Ministry did not take into account the results of the Harrison test performed on the alleged victim, which according to the petitioners would have established that the youth José Iván Correa had not shot himself.[FN9] In addition, they alleged that said test should have been performed on the persons who were with José Iván at the time of the facts, but that it was done two days later, thus due to the time elapsed, the possible evidence would have been gone.

[FN9] See para. 10 of this report.

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15. According to the petitioners, Mr. Correa López had reported the facts to the National Commission on Human Rights (CNDH: Comisión Nacional de Derechos Humanos), and despite having presented sufficient evidence to determine that José Iván Correa Arévalo's death was apparently the result of a homicide, the CNDH reached a conclusion February 25, 1992, as to "the non-existence of a human rights violation by the Office of the Attorney General of Chiapas"[FN10] in the instant case. The petitioners allege that at the time of the facts, the President of the CNDH was Mr. Jorge Carpizo McGregor, while the First Inspector (Primer Visitador) of the CNDH was Mr. Jorge Madrazo Cuellar, and the attorney general of the state of Chiapas was Mr. Antonio Tiro Sánchez, who in turn had worked with Jorge Madrazo Cuellar at the Universidad Autónoma de México (UNAM). In this vein, the petitioners allege that at the time the CNDH issued its resolution on this case, there was some type of pressure being brought to bear on the CNDH, due to the alleged relationship between the attorney general of Chiapas, Antonio Tiro Sánchez, and the First Inspector of the CNDH, Jorge Madrazo Cuellar.

[FN10] Initial petition, submitted by the petitioners on May 6, 2002, p. 8.

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16. The petitioners alleged that during the time the investigation was at the Public Ministry, it was archived and closed, without any determination whatsoever, and then lost. Accordingly, in 1991 the preliminary inquiry was closed. In 1993, that preliminary inquiry was reopened, yet the file wasn't complete, as some of the documentation was missing. In view of the foregoing, Mr. Correa López asked the Consejo Tutelar de Menores for a copy of the file, with which the investigation was reopened with the copy requested. In 1994, the petitioners submitted an amended complaint to the Public Ministry of Chiapas, but according to the petitioners, by that date the file had gone missing once again. In that same vein, the petitioners allege that in 1995, Mr. Jorge Enrique Hernández Aguilar was appointed attorney general of Chiapas; before he had been the president of the Consejo Tutelar de Menores and according to the petitioners, while he held that position in the Consejo Tutelar de Menores "he protected three youths who were with the alleged victim the day of the incident."[FN11]

[FN11] Initial petition, submitted by the petitioners on May 6, 2002, p. 9.

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17. The petitioners alleged that thanks to the actions of the Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos (CMDPDH) before the local authorities, the file of preliminary inquiry 2062/ZC/91 appeared. Similarly, the petitioners alleged that due to the pressure from Mr. Jorge Enrique Hernández Aguilar, the investigations into the case were closed during the time that he headed up the Office of the Attorney General of Chiapas.[FN12] In 1996, at the petitioners' insistence, preliminary inquiry 2062/ZC/91 was reopened.

[FN12] Initial petition, submitted by the petitioners on May 6, 2002, p. 9.

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18. As for the alleged homicide of the alleged victim, the petitioners argued that the expert in criminalistic medicine, María Patricia López Muñoz, in her expert report of May 25, 2001, established:

Single paragraph:- JOSÉ IVÁN CORREA ARÉVALO, presented lesions immediately prior to his death of those caused by struggle and/or defense, and did not shoot a firearm prior to his death….[FN13]

The petitioners argued that the expert report was not accepted by the Office of the Attorney General of Chiapas.

[FN13] Initial petition, submitted by the petitioners on May 6, 2002, p. 11.

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19. With respect to the State's argument to the effect that it has not been possible to locate Mr. Correa López, the petitioners argued that "his domicile is set forth in the preliminary inquiry itself."[FN14]

[FN14] Petitioners' observations of November 8, 2002, para. 12.

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20. The petitioners, in view "of the deficient investigative capacity"[FN15] on the part of the State, sought the intervention of the Argentine Forensic Anthropology Team (EAAF: Equipo Argentino de Antropología Forense) by means of an expert forensic report, and argued that it is necessary that the Office of the Attorney General of the state of Chiapas "accord full evidentiary value and endorse as its own the technical opinion issued by the Argentine Forensic Anthropology Team (EAAF), due to the importance of [the evidence] for the case."[FN16] The expert report of the EAAF concluded that "the available elements, particularly the negative results of the tests on metallic particles on the victim's hands, the lesions in the external clothing, and the trajectory of the projectile in the skull are compatible with the hypothesis proposed from the outset of the process of investigation."[FN17] As for the technical opinion that the State obtained from the Instituto Jalisciense de Ciencias Forenses, the petitioners alleged that at the time that opinion was prepared, only "certain documents and not the file as a whole" had been taken into account.[FN18]

[FN15] Petitioners' observations of February 4, 2003, para. 18.
[FN16] Observations submitted by the petitioners on May 7, 2003, para. 1.
[FN17] Observations submitted by petitioners on July 1, 2005, p. 1.
[FN18] Observations submitted by petitioners on April 17, 2007, p. 2.

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21. As for the violation of the right to life, the petitioners allege that it was a state obligation to take all measures to protect the life of the alleged victim.[FN19] Along those same lines, the petitioners alleged that at the time of the facts, the alleged victim was 17 years old, accordingly the State is said to have failed to take the necessary measures in view of his status as a child.[FN20] Similarly, the petitioners added that in the wake of the events, the Correa Arévalo family "has disintegrated, occasioning the separation of José Iván Correa Arévalo's parents and the distancing of Mr. Correa López from his other children." Finally, as for the duty to adopt provisions of domestic law, the petitioners argued that the "Mexican State has not guaranteed the development of norms and practices conducive to full respect for human rights."

[FN19] Initial petition, submitted by the petitioners on May 6, 2002, p. 13.
[FN20] According to the Convention on the Rights of the Child, at its Article 1, a child means every human being under 18 years of age, unless, by the applicable law, majority has been attained before one turns 18.

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22. As for the issue of exhaustion of domestic remedies, the petitioners argued that their complaint fits within an exception to the requirement of exhaustion of domestic remedies. According to the petition, despite the existence of a preliminary inquiry into the death of the

youth José Iván Correa Arévalo, it has not yielded specific results, more than 15 years after the facts, and is still pending resolution to this day, thus in the view of the petitioners there is an unwarranted delay in the decision, as provided for by Article 46(2)(c) of the American Convention. In that regard, the petitioners stated that if "the State is convinced that there are no elements for placing the inquiry before the judge, it should so state, in writing, setting forth the reasoning and foundation of its decision."[FN21] Similarly, the petitioners argued that even though the State assures that domestic remedies have not been exhausted, it "failed to indicate which remedies have not been exhausted, and indicate their effectiveness."[FN22] Along those same lines, the petitioners noted that while the preliminary investigation continues to be open, that does not mean that one is "complying with the duty to carry out a serious and diligent investigation. [Accordingly] it is clear that the investigative stage before the Public Ministry repudiates the principle of reasonable time established in Article 46 of the [American] Convention."[FN23]

[FN21] Observations submitted by the petitioners on April 17, 2007, p. 2.
[FN22] Petitioners' observations submitted on November 8, 2002, para. 3
[FN23] Observations submitted by the petitioners on April 23, 2004, paras. 11 and 15.

B. The State's position

23. The State in its briefs indicated that one cannot conclude that José Iván Correa Arévalo was an independent leader of the COBACH. The State argued that José Iván lost his life as the result of a gunshot wound, which he had inflicted on himself and that at that time he was in the company of Rolando Vargas Pérez, Vicente Ardines Domínguez, and William Sánchez Mandujano, consuming alcoholic beverages. In addition, the State argued that it has carried out the appropriate investigations, in which it has been determined that the death of the alleged victim was the result of a self-inflicted wound. With respect to the preliminary inquiry, the State argued that it is open mainly due to: (1) the perfection of the inquiry; (2) the different evidence offered to Mr. Juan Ignacio Correa, in his capacity as coadjutor; and (3) the changes of officers in the Office of the Attorney General of the state of Chiapas.[FN24]

[FN24] Observations submitted by the State on February 10, 2004, p. 1.

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24. The State argued that the alleged death threat, which according to the petitioners was made by Ramiro Reyes Pérez against José Iván Correa Arévalo, does not appear in any of the declarations that appears in the file, except for the statement by Juan Ignacio Correa López, who was not an eyewitness to the events.[FN25] In addition, the State indicated that "there is no compelling showing that [the] problems [between Ramiro Reyes Pérez and José Iván Correa Arévalo] had been the cause [of the alleged victim's] death. The only hypothesis that holds that [the youth] Correa Arévalo was murdered is the expert report by the forensic expert hired by the family itself, which has been refuted on two occasions by different experts."[FN26]

[FN25] Observations submitted by the State on October 7, 2002, p. 1.
[FN26] Observations submitted by the State on October 7, 2002, p. 1.

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25. Along those same lines, the State argued that the statements certified by the prosecutors of the three eyewitnesses coincide on the following points: (a) they were consuming alcoholic beverages; (b) Vicente Ardines was carrying a firearm; and (c) José Iván Correa Arévalo asked for the weapon from Vicente Ardines, and immediately thereafter set off the weapon towards his head and, as it wouldn't shoot, turned the chamber of the revolver once again, and shot the gun at the height of his temple. Along those same lines, the State argued that in the expert reports performed on different occasions, it is established that the shot "was … on contact [at the] moment [José Iván Correa Arévalo] lost his life, no second or third person was involved."[FN27]

[FN27] Observations submitted by the State on October 7, 2002, p. 2.

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26. As for the alleged participation of Rolando Vargas Pérez, Vicente Ardines Domínguez, and William Sánchez Mandujano in the facts of the case, the State argued that the three youths were brought before the Public Ministry as the persons likely responsible for the murder of the alleged victim, but that as all were minors, they were transferred to the Consejo Tutelar de Menores on May 31, 1991, where they apparently remained until June 14, 1991. The State assured that the youths resulted from the expert report of June 7, 1991[FN28], in which it was determined that "there was no intervention of a second or third person" in José Iván Correa Arévalo's death.[FN29] The State also indicated that William Sánchez Mandujano was subjected to a clinical medical exam on physical integrity and age in which his status as a minor was determined; accordingly, he was referred to the Consejo Tutelar de Menores in the state of Chiapas.[FN30]

[FN28] According to the State, the export report issued by the Office of the Attorney General of the Federal District on June 7, 1991 established:
7. Through the anatomical region where the wound described above is located it can be considered a typical wound chosen in some cases of suicide and/or those chosen in some risky cases such as Russian roulette.
Concluding:
From all that is expressed above, it is deduced that no second or third person intervened in this act and specifically in the mechanics of the wound produced by projectile of a firearm, which the body of the now-deceased presented.
[FN29] Observations submitted by the State on October 7, 2002, p. 3.
[FN30] Observations submitted by the State on December 23, 2002, p. 2.

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27. In terms of the alleged contradiction among eyewitnesses, the State indicated that the statement given on May 30, 1991, even though not identical, "… are in agreement in terms of the

essentials of the facts."[FN31] With respect to the argument that the eyewitnesses enjoy projection by the authorities of the Government of Chiapas[FN32], the State held that while it is true that the youth Ardines Domínguez was a relative of the then-Secretary of Government of the state of Chiapas, the accusation is subjective and lacks any probative value.

[FN31] Observations submitted by the State on October 7, 2002, p. 3.
[FN32] See paras. 1 and 13 of this report.

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28. In terms of the expert evidence collected, the State asserted that the autopsy, of which the petitioners were allegedly not given notice, the State noted that said evidence consists of "narrating how the body was found, and not issuing conclusions, as the petitioners do." Nonetheless, from the autopsy performed on June 28, 1991, at no time does it appear that the occurrences had been the result of a murder, because the conclusions establish:

In view of what is mentioned above, it is affirmed that the cause of death of the adult male who in life answered to the name of José Iván Correa Arévalo is due to neorogenic (sic) shock due to the perforation and destruction of encephalic mass, a lesion not compatible with life, caused by firearm (sic).

29. As for the Harrison and Walter tests that were negative and performed on May 28, 1991, and May 30, 1991, the State asserts that in those tests one may obtain "negative results" due to:

1. The elements to be determined (lead and barium) do not always maculate the hand of the person who fired the shot, in addition the manner in which the shot is fired has a major impact, that is, the position of the hand at the time the trigger is activated.
2. Protecting the hands with any object, for example, gloves made of various materials.
3. Cleaning the hands prior to taking samples with acidic substances, either diluted or concentrated, antiseptic substances, and detergents.
4. The time elapsed from firing the shot to performing the test. The lack of diligence in this respect explains a large part of the high incidence of "FALSE NEGATIVES." It is to be recommended that this time not be greater than 24 hours.
5. That the projectile was covered with copper plating, an element that is not detected by this test.
6. A warm climate provokes excessive sweating, thus eliminating the particles of lead and barium.

30. In that regard, the State argued that the Harrison test was done 48 hours later, [on May 30, 1991], once the Public Ministry learned that Domínguez and Sánchez Mandujano … had been eyewitnesses to the facts. That is, the appearance of the three youths was not the result of negligence by the Public Ministry, but of the voluntary appearance of Rolando Vargas Pérez [who on May 29, 1991, appeared voluntarily before the Public Ministry]."[FN33]

[FN33] Observations submitted by the State on December 23, 2002, p. 3.

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31. With respect to the petitioners' argument about the lack of blackening around the mortal wound[FN34], the State argued that in the autopsy results of May 28, 1991, "it is not mentioned whether there is or is not blackening in that zone, that is, not even is any allusion made to the fact."[FN35] Nonetheless, the State argued that the expert examination done on June 7, 1991, established:

4.- in view of the characteristics observed in the wound in the body in question in the right temporal region, it can be established that this is one of those produced by the projectile of a firearm upon entry.
5.- For that reason and based on the burn and blackening that it presents, one can establish that at the moment of that injury, and mouth of the cannon of the firearm was at the forehead, to the right and in a slightly lower plane in relation to the area of the impact, that firearm should have been in contact with the region affected.…[FN36]

[FN34] See para. 13 of this report.
[FN35] Observations submitted by the State on October 7, 2002, p. 4.
[FN36] Observations submitted by the State on October 7, 2002, p. 4.
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32. As regards the archiving and/or reservation of the case, the State said that had the preliminary inquiry been archived, it would not have been possible allowed to receive the evidence that the petitioners have submitted, specifically the "new technical opinion from the reports that would be offered by Mr. Luis Fondebrider, director of the Argentine Forensic Anthropology Team."[FN37] Similarly, it noted that "there is no evidence that the file has been lost … and it should be reiterated that in the preliminary inquiry there are various notifications to Juan Ignacio Correa López, nonetheless it has not been possible to locate him to inform him that his petition to present Mr. Luis Fondebrider has been accepted by the Public Ministry."[FN38]

[FN37] Observations submitted by the State on October 7, 2002, p. 6.
[FN38] Observations submitted by the State on October 7, 2002, p. 8.
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33. Along those lines, the State said that Mr. Correa López "provided two domiciles, one in Tuxtla Gutiérrez, Chiapas, and another in the Federal District."[FN39] In its communication of March 14, 2003, the State indicated that a meeting had been held with the petitioners in which the State undertook to allow expert Luis Fondebrider to issue a technical opinion, in his capacity as an expert offered by Mr. Correa López. In terms of what the petitioners argued, to the effect that the expert report of the Equipo Argentino de Antropología Forense (EAAF) be given full probative value,[FN40] the State indicated that the Public Ministry "is not in a position to commit itself ahead of time to giving full probative value to the technical opinion,"[FN41] since if one were to do so, one would be "condition[ing] the action and independence of the Public Ministry. [Once] the expert issues his opinion, it will be valued in the terms [established by] the

procedural law [of Mexico].”[FN42] In this regard, the State argued that the “Public Ministry of Chiapas was fully disposed to carry out the expert examination referred to above, and to that end all the facilities needed were given to the petitioners, that support and that disposition do not constitute the obligation to accept the results of the expert examination.”[FN43] Similarly, the State argued that “in order to obtain sufficient elements of conviction [the Public Ministry of Chiapas had] request[ed] that another expert examination be done,[FN44] and so the Instituto Jalisciense de Ciencias Forenses performed a new forensic expert examination[FN45] in the instant case.

[FN39] Observations submitted by the State on December 23, 2002, p. 1.
[FN40] See para. 20 of this report.
[FN41] Observations submitted by the State on June 13, 2003, p. 1.
[FN42] Observations submitted by the State on February 10, 2004, p. 1.
[FN43] Observations submitted by the State on June 30, 2006, p. 1.
[FN44] Observations submitted by the State on June 3, 2006, p. 1.
[FN45] Observations submitted by the State on June 30, 2006, p. 1.

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34. The State argued that on February 25, 1992, the CNDH issued a report and concluded as follows:

(a) As the expert criminalistics reports are technically the really objective indicia on the investigations carried out by the CNDN, it was concluded in the National Commission that no second or third persons were involved in the death of José Iván Correa Arévalo. Indeed, in the first autopsy performed on May 28, 1991, the absence of lesions in the body of José Iván Correa was evident, and subsequently in the exhumation not only was this latest report corroborated, but it was also determined that the death was the result of a suicide; these expert reports, as already indicated, coincided with those done internally by this agency. In this sense technically there is no doubt.
(b) No well-founded indicia were found on the many violations from the interviewed that would suggest the participation of the Office of the Attorney General of Chiapas in a possible cover-up of those who might have been the murderers. Indeed, there was an opportunity to review the files of minors Rolando Vargas, William Sánchez, and Vicente Ardines, brought before the Consejo Tutelar de Menores of the state of Chiapas, without noting any irregularities in them.
(c) From the reports and documents given to this National Commission by the PGJ and by the complainant, there do not appear to be any well-founded indicia in the sense that the Office of the Attorney General of the state has violated human rights to the detriment of José Iván Correa Arévalo.

In view of all that is stated and founded above, … as there is no responsibility whatsoever of the PGJ of the state, the file in question has been sent to archive as a matter totally and definitively concluded.

35. The State argued that with respect to the alleged relationship[FN46] of "work of the then-President of the CNDH and the Attorney General of Chiapas, this argument is subjective and does not contribute at all to clarifying the instant case."[FN47] As for the delay in the investigations, the State said that "one would have to consider that Mr. Juan Ignacio Correa … has been producing evidence without any of it being sufficiently solid to prove what he says, and it has been the Office of the Attorney General of Chiapas that has respected his right to produce such evidence as might refute the hypothesis of suicide."[FN48]

[FN46] See para. 15 of this report.
[FN47] Observations submitted by the State on October 7, 2002, p. 7.
[FN48] Observations submitted by the State on October 7, 2002, p. 8.

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36. The State alleged that within the preliminary inquiry, the following investigative measures have been taken to collect evidence:

(a) Autopsy carried out on May 28, 1991, which concluded that the death of the alleged victim was caused by "a neurogenic shock induced by perforation and destruction of the brain [FN49]";
(b) Forensic report of June 7, 1991, which found that the mechanism that produced the wound was a bullet, without the intervention of a second or third party. [FN50]";
(c) Forensic medical autopsy of July 6, 1991, which found that "José Iván Correa died as a result of a firearm wound corresponding to a shot at point-blank range [FN51]";
d) Technical testimony in the report by María Patricia López Muñoz of August 17, 2001, which established that "judging by the nature of the injuries described in both the official opinions and in the statements of the pretrial investigation, it is clear that the shot was fired point-blank. The injuries mentioned as indicative of a struggle in the aforementioned report do not correspond to defense mechanisms[FN52]"; and
e) Forensic expert's report of February 19, 2002, which found that "1. The injuries found on José Iván Correa Arévalo show dermoepidermal excoriation on the back of the second phalanx of the right middle finger produced after the injury to the right temple. Such an injury is not typical or characteristic of injuries caused by fighting and/or struggling. 2. The negative finding of the test carried out on the deceased's hands to determine whether he had fired a shot was a false negative, because the medical asepsis was carried out at the hospital. 3. The injury located on the right temple showed signs of a point-blank shot as well as the presence of Benassi indications, of the entrance and exit of a bullet in the area typically used by persons committing suicide or playing Russian roulette.4. The expert opinion by Dr. María Patricia López Muñoz suggests that the injuries were caused with the killer standing in front of the victim. However, the fact is: the opening of the barrel of the firearm was in contact with the victim's head and the shot produced what is known as a "mine detonation" effect. Therefore the mechanics of the occurrence reported by the expert do not match the deceased's injury. 5. Therefore, based on all the key forensic evidence found in the material provided, it may be determined that no second or third party intervened in the death of José Correa Arévalo.[FN53]

[FN49] Observations submitted by the State on February 10, 2004, pp. 2-4.
[FN50] Observations submitted by the State on February 10, 2004, pp. 2-4.
[FN51] Observations submitted by the State on February 10, 2004, pp. 2-4.
[FN52] Observations submitted by the State on February 10, 2004, pp. 2-4.
[FN53] Observations submitted by the State on February 10, 2004, pp. 2-4.
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37. As for the admissibility of the claim, the State alleges that this petition is inadmissible since the preliminary inquiry initiated in the domestic jurisdiction continues to be open. If the corresponding resolution were not favorable, he could avail himself of a domestic remedy before the local prosecutorial authority, and if hes continued to be dissatisfied, he could file a writ of amparo."[FN54]

[FN54] Observations submitted by the State on December 23, 2002, p. 1.

IV. ANALYSIS OF ADMISSIBILITY

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

38. Article 44 of the American Convention establishes: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Therefore, the petitioners are authorized to file this petition with the Inter-American Commission, and, accordingly, the IACHR is competent ratione personae for the instant case.

39. The State is a party to the American Convention as of March 24, 1981, the date on which it deposited the respective instrument of accession. The petitioners allege violations of rights enshrined in the American Convention, accordingly the IACHR is competent ratione materiae to hear this case.

40. The Inter-American Commission is competent ratione loci, since the human rights violations occurred in a state party to the American Convention. The Commission is also competent ratione temporis because as of the date on which the facts are alleged to have begun, the obligation to respect and ensure the rights enshrined in the American Convention had already entered into force for the Mexican State.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

41. The American Convention, at Article 46(1)(a), establishes that for a complaint to be admissible under the terms of Article 44 of the Convention, it is necessary for the petitioners to

have exhausted domestic remedies in keeping with generally recognized principles of international law. This requirement has been recognized in the consistent case-law of the Commission as a procedural requirement for the purpose of allowing the State to take cognizance of the alleged violation of a right protected in the framework of the American Convention, and if pertinent to have the opportunity to make reparation within its jurisdiction, prior to the subsidiary jurisdiction of the international body.

42. The rule on exhaustion of domestic remedies has exceptions, which are set forth at Article 46(2), establishing in the Convention that said rule will not be applicable when there is no due process in the domestic legislation for protecting the right recognized in the American Convention; when the alleged victim was not able to access domestic remedies; or when there is unwarranted delay in the decision on the remedy.

43. The Commission's Rules of Procedure, at Article 31(3), stipulate that when the petitioner alleges any of the exceptions to the prior exhaustion requirement, it is up to the State to show that the domestic remedies have not been exhausted, unless that is clearly deduced from the record. In situations such as those described in the instant case, the case law of the inter-American system has established that when a State alleges that domestic remedies have not been exhausted before turning to the international system of protection, it must identify those remedies suitable to repair the harm, and provide evidence that they are effective.[FN55]

[FN55] IACHR, Report No. 55/06, petition 12,380, Admissibility, Members of the José Avélar Restrepo Lawyers' Collective, Colombia, July 20, 2006, para. 36; Report No. 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Community of Awas Tingni. Preliminary Objections, Judgment of February 1, 2000. Series C No. 66, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para.; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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44. In the instant case, the petitioners invoked the exception to the exhaustion of domestic remedies provided for at Article 46(2)(c), considering that more than 15 years after the facts, the preliminary inquiry is open without reaching any conclusions on the facts, despite the various actions taken by them. The State, for its part, has indicated that from all the steps taken in the investigation, one concludes that the death of the alleged victim "did not involve any intervention of a second or third person" and that therefore the Public Ministry has not brought the criminal action and for these reasons the preliminary inquiry is still open. The State alleges that the petitioners could have challenged the failure to bring the criminal action but have not done so.

45. The IACHR observes that from the arguments of both parties, one deduces that the preliminary inquiry begun into the facts of the instant case is open in the initial phase, even though the facts occurred 15 years ago. The IACHR observes that there are several investigative

steps pending that have not been taken, and that the Public Ministry has not reached a definitive conclusion establishing the facts clearly, even though 15 years have elapsed.

46. The Commission understands that the states, in keeping with the international obligations they have contracted, have the duty to investigate the facts, and, as the case may be, to prosecute the persons responsible. In the process before the Commission, the State has not justified, even though it is its duty, why the investigations continue open in the initial phase. On this point, the Inter-American Court has held that "the duty to investigate is an obligation of means, not of results. It must be undertaken in a serious manner and not as a mere formality preordained to be ineffective."[FN56] In other words, "… once the State authorities have knowledge of the facts, they must, on their own initiative and without delay, undertake a serious, impartial and effective investigation."[FN57]

[FN56] I/A Court H.R., Miguel Castro Castro Prison Case. Judgment of November 25, 2006. Series C No. 160, para. 255; Ximenes Lopes Case. Judgment of July 4, 2006. Series C No. 149, para. 148; Ituango Massacres Case. Judgment of July 1, 2006. Series C No. 148, para. 296; Baldeón García Case. Judgment of April 6, 2006. Series C No. 147, para. 93.
[FN57] I/A Court H.R., Miguel Castro Castro Prison Case. Judgment of November 25, 2006. Series C No. 160, para. 256; Goiburú et al. Case. Judgment of September 22, 2006. Series C No. 153, para. 117; Baldeón García Case. Judgment of April 6, 2006. Series C No. 147, para. 93; Pueblo Bello Massacre Case. Judgment of January 31, 2006. Series C No. 140, para. 144.

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47. Without prejudging on the merits, the IACHR, based on these considerations and considering the initial procedural status of the investigation, concludes that the exception of "unwarranted delay in rendering a final judgment under the … remedies," established at Article 46(2)(c) of the American Convention, applies to this case.

2. Timely submission of the petition

48. According to Article 46(1)(b) of the American Convention, for a petition to be admitted and analyzed by the Commission, it must be submitted within six months of the final judicial decision. Nonetheless, the American Convention, at Article 46(2), establishes exceptions to this rule.

49. In view of Article 32(2) of the IACHR's Rules of Procedure, referring to cases that fit the exception to the requirement to exhaust domestic remedies, a petition must be submitted in a time that is reasonable, in the view of the Commission. According to this article, the Commission, in its analysis, "shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

50. In the instant case, the Commission has concluded that it is appropriate to apply the exception to the requirement of exhaustion of domestic remedies, due to the unwarranted delay in the judicial decision, thus the IACHR should analyze whether the petition was submitted in a reasonable time, mindful of the specific circumstances of the situation presented for its

consideration. The Commission observes that the petition was submitted on May 6, 2002, 11 years after the facts, and after many actions taken by the petitioners for the purpose of clarifying the facts,[FN58] all of which had turned out to be fruitless in the instant case. In that regard, the IACHR observes that despite the actions carried out by the petitioners, to date there has not been significant progress in the investigations that would make it possible to clarify the facts, as they are in the initial stage. Based on the foregoing, the Commission concludes that the complaint in question was submitted in a reasonable time.

[FN58] See the following paragraphs of this report: 14, 16, 18, 19 , and 20.

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3. International duplication of procedures and res judicata

51. Article 46(1)(b) provides that the admissibility of petitions is subject to the requirement that the subject "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 another international organization. In the instant case, the parties have not argued the existence of either of those circumstances of inadmissibility, nor can they be deduced from the record.

4. Characterization of the facts alleged

52. The Inter-American Commission must determine whether the facts described in the petition tend to establish violations of the rights enshrined in the American Convention, as per the requirements of Article 47(b), or whether the petition, as per Article 47(c), should be rejected as "manifestly groundless" or "obviously out of order." In this procedural stage the IACHR must make a prima facie evaluation, not for the purpose of establishing alleged violations of the American Convention, but to examine whether the petition alleges facts that potentially constitute violations of rights guaranteed in the American Convention. This examination does not imply prejudging or anticipating its opinion on the merits.

53. According to the analysis of what each party has asserted, the Commission does not find that the petitioners have made allegations that are "manifestly groundless" or "obviously out of order." If shown to be true, the situations alleged could constitute violations of rights enshrined in the American Convention at Articles 8 and 25, which refer to the right to a fair trial and the right to judicial protection, respectively, in conjunction with Article 1(1) of the same international instrument. Nonetheless, the IACHR considers that the petitioners have not made arguments of fact or of law that establish a foundation for and that would allow one to presume, in this procedural stage, an alleged violation of the right to life, the rights of the child, right to protection of the family, or the obligation to adopt provisions of domestic law (Articles 4, 19, 17, and 2 respectively, of the American Convention), or of the right to education, enshrined in Article 13 of the Protocol of San Salvador.

54. The IACHR observes that the investigations, more than 15 years after the facts, continue open in the preliminary stage, without the State having argued why it has not issued a resolution

on the preliminary inquiry in the instant case, or why it has not set forth the reasoning behind and foundation for its decision in this regard. This petition alleges a series of irregularities in the investigation, among them that the Walter and Harrison tests would have determined that the death of José Iván Correa Arévalo was not the result of suicide; the statements of the eyewitnesses contradict one another; different forensic exams on the body of the alleged victim apparently determined that "the lesions of the alleged victim are compatible with the hypothesis of homicide"; the Harrison tests were performed on the eyewitnesses two days after the facts, etc. The IACHR observes that if these allegations are true, they could constitute violations of the rights contained in Articles 8 and 25 of the American Convention.

55. With respect to the violation of the right to life and the rights of the child alleged by the petitioners, the IACHR does not find anything in the record that would allow one, at this procedural stage, to find an alleged violation of the rights protected at Articles 4 and 19 of the American Convention.

56. As regards the alleged violation of the right to protection of the family and the right to education, alleged by the petitioners, the IACHR considers that in the instant case there is no factual or legal evidence that would allow the IACHR to establish prima facie the alleged violation of those rights.

57. As regards the alleged violation of the duty to adopt provisions of domestic law enshrined in Article 2 of the American Convention, the petitioners, throughout the process in the IACHR, have not indicated the measures that the Mexican State has not adopted, or the practices or provisions contrary to the American Convention. Therefore, the IACHR concludes that in the instant case, there is no factual or legal evidence that allows one to establish that the Mexican State has not carried out its obligation to adopt provisions of domestic law.

58. The IACHR, in the use of its powers established in Article 41 of the Convention, and Article 37 of its Rules of Procedure, admits the instant case for the alleged violations of the rights enshrined in Articles 8 and 25 of the American Convention, in relation to its Article 1(1), and finds this petition inadmissible in respect of the rights contained in Articles 2, 4, 17, and 19 of the American Convention and the right enshrined in Article 13 of the Protocol of San Salvador. Without prejudging on the merits of the case, the Commission considers that the requirements established at Article 47(b) and (c) of the American Convention have been satisfied.

V. CONCLUSION

56. The Commission concludes that the case is admissible and that it is competent to take cognizance of the claim presented by the petitioners on the alleged violation of the rights contained in Articles 8 and 25 of the American Convention, all in relation to the obligations derived from Article 1(1) of this international instrument.

57. The IACHR concludes that the present case is inadmissible with respect to the rights enshrined in Articles 2, 4, 17, and 19 of the American Convention and the right to education enshrined at Article 13 of the Protocol of San Salvador.

58. Considering the arguments of fact and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the case in this matter admissible in relation to the rights enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof.
2. To find the instant case inadmissible in relation to the rights enshrined in Articles 2, 4, 17, and 19 of the American Convention.
3. To forward this report to the petitioners and the State.
4. To continue with the analysis of the merits of the case.
5. To publish this report and include it in the Annual Report of the Commission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 16th day of the month of October, 2007. (Signed): Florentín Meléndez, President; Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez, Members of the Commission.