

Cabrera García and Montiel Flores v. Mexico

ABSTRACT¹

This is the case of two Mexican environmental activists in the State of Guerrero, Mexico, who, in 1999, were arrested by the military, and found guilty of various crimes based on confessions extracted under duress. The Court found that the State violated the American Convention on Human Rights and the American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

1998: Corporations log mountain forests in the State of Guerrero, Mexico.² Mr. Teodoro Cabrera García, Mr. Rodolfo Montiel Flores, and a group of other *campesinos* believe that the logging operations threaten the environment and livelihood of the local *campesino* community, and form the Farmers Environmentalist Organization of the Sierra of Petatlán and Coyuca de Catalán (*Organización de Campesinos Ecologistas de la Sierra de Petatlán and Coyuca de Catalán*; “OCESP”) to stop logging in Guerrero.³

May 2, 1999: Mr. Cabrera García holds a meeting with Mr. Montiel Flores and other *campesinos* in his home in Pizotla in the state of Guerrero.⁴ Around 9:30 a.m., forty soldiers from the Mexican Army’s 40th Infantry Battalion enter the community of Pizotla to carry out an operation against a drug trafficking gang called “gavilla.”⁵

1. Shirinnaz Zekavati, Author; Elise Cossart-Daly, Grace Kim, and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.449, ¶ 42 (June 24, 2009).

3. *Id.*

4. *Id.* ¶ 44.

5. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits,

During the operation, one of the soldiers shoots and kills a *campesino*, Mr. Salomé Sánchez.⁶ Meanwhile, Mr. Cabrera García and Mr. Montiel Flores hide behind bushes and rocks for several hours.⁷

At 4:30 p.m., the soldiers arrest Mr. Cabrera García and Mr. Montiel Flores and keep them on the bank of the Pizotla River for two days.⁸ The soldiers blindfold Mr. Cabrera García and Mr. Montiel Flores, shock them, force soda up their noses, pull their testicles, beat them, and threaten to kill them.⁹

May 4, 1999: The soldiers transfer Mr. Cabrera García and Mr. Montiel Flores to the headquarters of the 40th Infantry Battalion in Altamirano, Guerrero.¹⁰ Around 6 p.m., Mr. Cabrera García and Mr. Montiel Flores are taken to the Public Prosecutor's Office in Arcelia.¹¹ Mr. Montiel Flores gives a statement admitting that he possessed a .45 caliber semi-automatic pistol, a weapon used exclusively by the Army, and a .22 caliber rifle without a permit.¹² He also admits that he possessed and cultivated marijuana.¹³ Mr. Cabrera García also gives statement before the Public Prosecutor's Office wherein he admits that he possessed a 7.62 mm MI rifle and a magazine for the rifle, which is used exclusively by the Army.¹⁴ Mr. Cabrera García further admits that he fired a shot towards the Army and that he was a member of an illegal armed group.¹⁵

May 5, 1999: The Public Prosecutor's Office of Arcelia forwards the inquiry to the Federal Public Prosecutor's Office of Coyuca de Caralán.¹⁶

May 6, 1999: Mr. Cabrera García and Mr. Montiel Flores are

Reparations, and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 67 (Nov. 26, 2010).

6. *Id.*

7. *Id.* ¶¶ 67, 68.

8. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.449, ¶ 67 (June 24, 2009).

9. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations, and Legal Costs, ¶ 112.

10. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 55.

11. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations, and Legal Costs, ¶ 97(b).

12. *Id.* ¶ 170.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* ¶ 97(c).

transferred to the Federal Public Prosecutor's office in the city of Coyuca de Catalán.¹⁷ At 3:00 a.m. and 4:00 a.m., Mr. Cabrera García and Mr. Montiel Flores make additional statements.¹⁸ Mr. Montiel Flores modifies his original statement of May 4th, only confirming that he possessed a .45 caliber pistol and cultivated marijuana.¹⁹ Mr. Cabrera García modifies his original statement to only confirm that he possessed a 7.62 caliber MI rifle.²⁰

The Federal Public Prosecutor's Office decides that there is enough evidence to show probable cause for the criminal responsibility of Mr. Cabrera García and Mr. Montiel Flores and files criminal charges against them to the First Instance Court of the Judicial District of Mina.²¹ The First Instance Court of the Judicial District of Mina declares the detention of Mr. Cabrera García and Mr. Montiel Flores lawful.²²

May 7, 1999: The First Instance Court of the Judicial District of Mina orders Mr. Cabrera García and Mr. Montiel Flores to give preliminary statements.²³ In their preliminary statements, Mr. Montiel Flores only admits to possession of the firearm and Mr. Cabrera García only admits to possession of the rifle and magazine.²⁴

May 12, 1999: The Judge of the First Instance of the Mina Judicial District issues a formal order of detention against Mr. Cabrera García and Mr. Montiel Flores.²⁵ Soon after, the judge recuses himself from the case and forwards it to the Fifth District Judge of the Twenty-First Circuit.²⁶

May 13, 1999: Mr. Cabrera García and Mr. Montiel Flores receive notice of the former order of detention and immediately file appeals.²⁷

17. *Id.* ¶ 97(d).

18. *Id.*

19. *Id.* ¶ 170.

20. *Id.*

21. *Id.*

22. *Id.* ¶ 97(d).

23. *Id.* ¶ 97(e).

24. *Id.* ¶ 170.

25. *Cabrera García and Montiel Flores v. Mexico*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.449, ¶ 64 (June 24, 2009); *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, ¶ 157.

26. *Cabrera García and Montiel Flores v. Mexico*, Petition to the Court, ¶ 64.

27. *Id.*

May 28, 1999: The Fifth District Court agrees to review the appeals of Mr. Cabrera García and Mr. Montiel Flores.²⁸

August 26, 1999: Mr. Cabrera García and Mr. Montiel Flores ask the Fifth District Judge of the Twenty-First Circuit to order the Public Prosecutor's Office to investigate the torture and unlawful detention allegations.²⁹

November 30, 1999: The Office of the Attorney General of the Republic declares that it does not have jurisdiction to investigate the allegations of torture and transfers the case to the Office of the Prosecutor General for Military Justice.³⁰

December 14, 1999: The Office of the Public Prosecutor of Coahuila de Zaragoza also declares that it does not have jurisdiction over the case and transfers the case to its military court in the 35th military zone.³¹

April 6, 2000: The Richard and Rhoda Goldman Foundation award Mr. Cabrera García and Mr. Montiel Flores Goldman Environmental Prize while they are in prison.³² This prize honors individuals who have done outstanding work in defense of the environment.³³

June 13, 2000: Since no evidence had been produced to prove the torture allegations, the Office of the Public Prosecutor General for Military Justice orders the investigation closed without prejudice, pending further evidence to support the complaint.³⁴

July 14, 2000: Mr. Cabrera García and Mr. Montiel Flores file a complaint with the National Human Rights Commission ("NHRC").³⁵ The NHRC establishes that the military personnel violated the principle of freedom from *ex post facto* laws and the right to liberty of Mr. Cabrera García and Mr. Montiel Flores.³⁶ The NHRC presumes the

28. *Id.*

29. *Id.* ¶ 79.

30. *Id.* ¶ 80.

31. *Id.*

32. *Id.* ¶ 43.

33. *Id.* ¶ 43, n.6.

34. *Id.* ¶ 80.

35. *Id.* ¶ 81.

36. *Id.*; Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 75 (Nov. 26,

allegations of torture are true and orders that State's Attorney General Office to investigate the allegations, as the Office of the Prosecutor General for Military Justice has repeatedly failed to provide the NHRC with information.³⁷ The NHRC recommends the Inspection and Comptrollership Unit of the Mexican Army and Air Force begin a preliminary investigation into members of the Army responsible for authorizing, supervising, and executing the operations.³⁸

August 28, 2000: The Fifth District Judge of the Twenty-First Circuit convicts Mr. Cabrera García and Mr. Montiel Flores of possession of firearms intended for the exclusive use by the Army, Navy, and Air Force and sentences them to six years and eight months and ten years in prison, respectively.³⁹ In the judgment, Mr. Cabrera García and Mr. Montiel Flores' confessions are given special weight.⁴⁰

September 2000: Mr. Cabrera García and Mr. Montiel Flores file a motion with the First Single-Magistrate Court of the Twenty-first Circuit to revoke the judgment of the Fifth District Judge.⁴¹ They argue that their convictions relied on confessions obtained through torture.⁴²

September 29, 2000: Due to the NHRC recommendations, the Office of the Prosecutor General for Military Justice begins another preliminary inquiry into Mr. Cabrera García and Mr. Montiel Flores' torture allegations.⁴³

October 26, 2000: The First Single-Magistrate Court upholds Mr. Cabrera García and Mr. Montiel Flores' August 28, 2000 convictions.⁴⁴

2010).

37. *Cabrera García and Montiel Flores v. Mexico*, Petition to the Court, ¶ 81.

38. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 75.

39. *Cabrera García and Montiel Flores v. Mexico*, Petition to the Court, ¶ 65; *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 69.

40. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 65.

41. *Id.* ¶ 69.

42. *Id.*

43. *Cabrera García and Montiel Flores v. Mexico*, Petition to the Court, ¶ 82; *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 76.

44. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 69.

February 2001: Mr. Cabrera García and Mr. Montiel Flores receive the Chico Mendes Prize from Sierra Club International for their activities to protect the environment.⁴⁵ The prize is given to an organization or individual outside of the United States that has “demonstrated extraordinary courage and leadership in defending the environment, [and] has risked their lives, their liberty, their families, and their jobs.”⁴⁶

March 9, 2001: Mr. Cabrera García and Mr. Montiel Flores file an application for *amparo* relief with the Second Collegiate Tribunal of the twenty-first Circuit to challenge their convictions.⁴⁷

May 2001: The Don Sergio Méndez Arceo Foundation gives Mr. Cabrera García and Mr. Montiel Flores the Don Sergio Human Rights award.⁴⁸ This prize is intended to honor individuals who have demonstrated extraordinary courage in defending human rights in Mexico.⁴⁹

May 9, 2001: The Second Collegiate Tribunal of the Twenty-first Circuit grants *amparo* relief to Mr. Cabrera García and Mr. Montiel Flores and orders the First Single-Magistrate Court to vacate its decision and admit evidence presented by Mr. Cabrera García and Mr. Montiel Flores be admitted into evidence.⁵⁰

May 16, 2001: Mr. Cabrera García and Mr. Montiel Flores’ wives accept the Roque Dalton medal on their behalf.⁵¹ This medal is intended to reward various contributions to matters related to peace, independence, sovereignty, self-determination, solidarity, conservation and promotion of Latin American culture.⁵²

July 16, 2001: The First Single-Magistrate Court of the Twenty-first Circuit resumes proceedings, confirms the decision of the Fifth District Judge of the Twenty-first Circuit, and dismisses the proposed evidence

45. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 43.

46. *Id.* ¶ 43, n.5.

47. *Id.* ¶ 70; Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 71.

48. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 43.

49. *Id.* ¶ 43, n.7.

50. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 72.

51. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 43.

52. *Id.* ¶ 43, n.8.

by Mr. Cabrera García and Mr. Montiel Flores.⁵³

October 24, 2001: Mr. Cabrera García and Mr. Montiel Flores file an *amparo* application to challenge the judgment with the Second Collegiate Tribunal of the Twenty-first Circuit.⁵⁴

November 3, 2001: The Office of the Prosecutor General for Military Justice closes its preliminary inquiry into the torture allegations without prejudice, pending further evidence.⁵⁵

November 7, 2001: The Federal Executive branch orders Mr. Cabrera García and Mr. Montiel Flores to be released from prison.⁵⁶

November 8, 2001: Mr. Cabrera García and Mr. Montiel Flores are released from prison.⁵⁷

August 14, 2002: The Second Collegiate Tribunal of the Twenty-first Circuit denies the new application for *amparo* relief for Mr. Cabrera García and sentences him to ten years in prison and a fine of 100 days.⁵⁸ It denies Mr. Montiel Flores' *amparo* relief application regarding the conviction for carrying a firearm intended for the exclusive use of the Army, Navy and Air Force.⁵⁹ However, the tribunal grants Mr. Montiel Flores's *amparo* relief application regarding the cultivation of marijuana and carrying a firearm without a permit and vacates the decision of the First Single Magistrate.⁶⁰

August 22, 2002: The Second Collegiate Tribunal of the Twenty-first Circuit amends the judgment of August 28, 2000.⁶¹ It confirms the conviction for possession of firearms intended for exclusive use of Army, Navy, and Air Force and vacates the conviction for marijuana

53. *Id.* ¶ 72; Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 72.

54. *Id.* ¶¶ 72, 73.

55. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 82.

56. *Id.* ¶ 74.

57. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 117.

58. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 77.

59. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, ¶ 73; Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 75.

60. *Id.*

61. *Id.* ¶ 76.

cultivation and possession of firearms without a permit.⁶² It also sentences Mr. Montiel Flores to five years in prison and forty days' fine, the equivalent of one thousand four hundred eighty-five pesos (\$151.85 USD).⁶³

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

October 25, 2001: Ubalda Cortés Salgado, Ventura López, the Sierra Club, Greenpeace International, Miguel Agustín Pro Juárez Center for Human Rights ("PRODH"), and the Center for Justice and International Law ("CEJIL") submit a complaint to the Inter-American Commission on Human Rights on behalf of the victims.⁶⁴

November 8, 2001: In a report to the Commission, the State notifies the Commission that the Mr. Cabrera García and Mr. Montiel Flores have been released and asked the Commission to adopt precautionary measures on behalf of Mr. Cabrera García and Mr. Montiel Flores.⁶⁵ The Commission asks the State to immediately adopt all measures necessary to protect the safety and life of Mr. Cabrera García and Mr. Montiel Flores.⁶⁶

November 10, 2001: Mr. Cabrera García and Mr. Montiel Flores and PRODH report to the Commission that, following their release from prison, Mr. Cabrera García and Mr. Montiel Flores have been staying in a safe place with their families and have been protected by the Preventive Federal Police.⁶⁷

April 8, 2002: Precautionary measures expire according to prior agreement.⁶⁸

62. *Id.*

63. *Id.*

64. *Id.* ¶ 11.

65. Cabrera García and Montiel Flores v. Mexico, Petition to the Court, ¶ 39.

66. *Id.*

67. *Id.* ¶ 40.

68. *Id.*

February 27, 2004: The Commission adopts Report on Admissibility No. 11/04 and declares that the petitioners have exhausted all domestic remedies.⁶⁹

October 30, 2008: The Commission adopts Merit Reports No. 88/08.⁷⁰ The Commission finds the State violated Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention.⁷¹ Furthermore, the Commission finds violation of Articles 1 (Obligation to Prevent and Punish Torture), 8 (Obligation to Investigate and Prosecute), 10 (Statements Obtained Through Torture Are Inadmissible) of the Inter-American Convention to Prevent and Punish Torture, all in general relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.⁷² The Commission also finds that the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention in relation to Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture and Article 1(1) (Obligation to Respect Rights) of the American Convention.⁷³

In the report, the Commission requests the State to conduct an effective and prompt investigation into the violations of Mr. Cabrera García and Mr. Montiel Flores's right to humane treatment, identify the people who were involved in the decision making and execution process, conduct criminal trials, and give proper sanctions.⁷⁴ The State should also ensure that the jurisdiction of the military criminal courts is limited to military members' crimes or offenses that affect the military's interest,⁷⁵ and ensure that complaints involving human rights violations are not heard by the State's military justice system.⁷⁶

Furthermore, the Commission requests that the State adopt the necessary measures to ensure that the State's laws and practices in regards to torture comply with the Inter-American system's standards.⁷⁷

69. *Id.* ¶ 21.

70. *Id.* ¶ 30.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* ¶ 31(1).

75. *Id.* ¶ 31(2).

76. *Id.* ¶ 31(8).

77. *Id.* ¶ 31(3).

The State should introduce permanent human rights instruction programs into the State's Armed Forces at all levels and make specific reference to this case and the international human rights instruments.⁷⁸

Additionally, the Commission recommends the State review the validity of the criminal case against Mr. Cabrera García and Mr. Montiel Flores, specifically the weight that was attached to their confessions that were made while they were subject to cruel, inhuman and degrading treatment.⁷⁹ The State should also adopt necessary measures to ensure that detained persons are brought in front of a judge without delay to determine the lawfulness of the arrest.⁸⁰ Moreover, the Commission requests the State make full reparations to Mr. Cabrera García and Mr. Montiel Flores, including pecuniary and non-pecuniary damages.⁸¹ Lastly, the State should adopt measures to prevent recurrence of similar events.⁸²

B. Before the Court

November 26, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸³

1. Violations Alleged by Commission⁸⁴

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7(5) (Right to Personal Liberty)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8(2)(g) (Right Not to Self-Incriminate)

Article 8(3) (A Confession is Valid Only if Not Coerced)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

78. *Id.* ¶ 31(4).

79. *Id.* ¶ 31(5).

80. *Id.* ¶ 31(6).

81. *Id.* ¶ 31(7).

82. *Id.* ¶ 31(8).

83. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220 (Nov. 26, 2010).

84. *Id.* ¶ 3.

Article 1 (Obligation to Prevent and Punish Torture)
Article 6 (States Must Take Effective Measures to Prevent and Punish Torture)
Article 8 (Obligation to Respond to Accusations of Torture)
Article 10 (Inadmissibility of Statements Obtained Through Torture) of the Inter-American Convention to Prevent and Punish Torture.

2. Violations Alleged by Representatives of the Victims⁸⁵

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)
Article 7 (Right to Personal Liberty)
Article 7(1) (Right to Personal Liberty and Security)
Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)
Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)
Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges)
Article 16 (Freedom of Assembly)

in relation to:

Article 1(1) (Obligation to Respect Rights)
Article 2 (Domestic Legal Effects) of the American Convention.

October 15, 2009: The State appoints Eduardo Ferrer Mac-Gregor Poisot as Judge *ad hoc*.⁸⁶

The following individuals submitted *amicus curiae* briefs to the Court: Harvard Law School Human Rights Clinic; University of Texas Human Rights Clinic; Economics Research and Reaching Center (*Investigación y Docencia Económicas*; “CIDE”); Association for Torture Prevention (*Asociación para la Prevención de la Tortura*); Autonomous Technological Institute of Mexico (*Instituto Tecnológico Autónomo de México*; “ITAM”); Free Law School Human Rights Clinic

85. *Id.* ¶ 4. Miguel Agustín Pro Juárez Center for Human Rights, CEJIL, and the Human Rights Center of the Mountain Tlachinollan served as representatives of Mr. Cabrera García and Mr. Montiel Flores.

86. *Id.*

(*Clínica de Derechos Humanos de la Escuela Libre de Derecho*); Mexican Commission for the Defense and Promotion of Human Rights A.C. (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.*); Mexican Center for Environmental Law (*Centro Mexicano de Derecho Ambiental*; “CEMDA”); Inter-American Association for Environmental Defense (*Asociación Interamericana para la Defensa del Medio Ambiente*; “AIDA”); Human Rights Program of the Ibero-American University (*Programa de Derechos Humanos de la Universidad Iberoamericana*); International Forensic Program of Physicians for Human Rights; and Earth Rights International.⁸⁷

November 26, 2010: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Legal Costs.⁸⁸

The State raises a preliminary objection, arguing that the Court lacks competence to hear the merits of the case because the Court cannot serve as a court of “fourth instance.”⁸⁹ This means that the Court cannot determine whether the national courts applied the domestic law correctly or whether their decision was fair.⁹⁰ Instead, the State argues, the Court should only determine whether the criminal proceedings complied with the American Convention or whether there was a judicial error resulting in injustice.⁹¹ According to the State, the domestic tribunals effectively exercised *ex officio* conventionality control between the domestic rules and the American Convention.⁹² In other words, the domestic tribunals ensured that that the domestic proceedings complied with the American Convention.⁹³ The State argues that this conventionality control was effectively exercised because impartial judicial bodies analyzed all of the alleged acts or omissions of the State with full respect for the right to a fair trial and judicial protection which led to determining non-existence of torture.⁹⁴ Furthermore, Mr. Cabrera García and Mr. Montiel Flores were able to file a partially successful motion challenging their imprisonment.⁹⁵ Additionally, Mr. Cabrera García and Mr. Montiel Flores were

87. *Id.* ¶ 9.

88. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220 (Nov. 26, 2010).

89. *Id.* ¶ 12.

90. *Id.*

91. *Id.*

92. *Id.* ¶ 13.

93. *Id.* ¶¶ 12-13.

94. *Id.*

95. *Id.*

permitted to file appeals.⁹⁶

The State further argues that although the Court has consistently declared preliminary objections based on a “fourth instance” argument inapplicable, this case is exceptional.⁹⁷ In previous cases the plaintiffs were not asking the Court to revise the decisions of the domestic courts; the plaintiffs were only requesting the determination of whether an act or omission on the part of the State violated the rights protected under the American Convention.⁹⁸ The State argues that in this case contrary to the previous cases, Mr. Cabrera García and Mr. Montiel Flores request that the Court to review the decisions of the domestic courts.⁹⁹

The Court states that it is competent to hear the case to determine whether the State has violated its international obligations under the American Convention.¹⁰⁰ The State’s “fourth instance” argument only applies where the plaintiff is asking the Court to review the decision of the domestic tribunal for incorrect assessment of the evidence, the facts, or the domestic law without alleging that the domestic tribunal’s decision was a violation of international treaties.¹⁰¹ However, the Court is competent to review whether the State violated its international obligations under Inter-American instruments in the steps it took at the domestic level.¹⁰² In order to determine whether the State has violated its international obligations, the Court may need to examine the corresponding domestic proceedings.¹⁰³

In the instant case, the basic premise underlying the State’s main argument is that the State did not commit a human rights violation.¹⁰⁴ This basic premise is exactly what will be discussed in the merits analysis of this case,¹⁰⁵ as the Court will determine whether the domestic procedures complied with the State’s international obligations.¹⁰⁶ The Court will assess the State’s argument that it exercised an ex officio conventionality control between the domestic rules and the American Convention at the merits stage.¹⁰⁷ The Court thus dismisses the State’s

96. *Id.*

97. *Id.* ¶ 13.

98. *Id.*

99. *Id.*

100. *Id.* ¶ 19.

101. *Id.* ¶ 18.

102. *Id.* ¶ 19.

103. *Id.*

104. *Id.* ¶ 20.

105. *Id.*

106. *Id.*

107. *Id.*

preliminary objection.¹⁰⁸

III. MERITS

A. *Composition of the Court*

Diego García-Sayán, President
Leonardo A. Franco, Vice-President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 26, 2010: The Court issues its Judgment on Preliminary Objection, Merits, Reparations and Legal Costs.¹⁰⁹

The Court unanimously found that State had violated:

Articles 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 7(4) (Right to Be Informed of Reasons of Arrest and Charges), in relation to Article 1(1) of the Convention, to the detriment of Mr. Cabrera García and Mr. Montiel Flores,¹¹⁰ because:

Although the State has an obligation to maintain public order, its power is not unlimited.¹¹¹ When military members take control of the internal security of the State, they must ensure that arrested individuals are transferred to the appropriate judicial authority without delay.¹¹² This is

108. *Id.* ¶ 22.

109. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220 (Nov. 26, 2010).

110. *Id.* "Declares" ¶ 2.

111. *Id.* ¶ 87.

112. *Id.* ¶ 102.

*important in order to minimize the risk of violating the rights of the individuals arrested.*¹¹³

The Court found that the State violated Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) because Mr. Cabrera García and Mr. Montiel Flores (“Defendants”) were not brought before a judge until almost five days after they were arrested.¹¹⁴ The Court concluded that from the time of the defendants’ arrest, the State had multiple means by which to transport them without delay.¹¹⁵ The State had access to flight logs of some air force helicopters in the area on the day after the defendants’ arrest and the military personnel had a radio station and four vehicles.¹¹⁶

The State violated Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) because the defendants were not transferred before a competent authority without delay, and therefore, their detention was arbitrary.¹¹⁷

The State violated Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) because the victims had not been informed of the reasons for their arrest when their detention occurred.¹¹⁸

The Court, therefore, found that the State violated Articles 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(4) (Right to Be Informed of Reasons of Arrest and Charges).¹¹⁹

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cabrera García and Mr. Montiel Flores,¹²⁰ because:

113. *Id.*

114. *Id.*

115. *Id.* ¶ 100.

116. *Id.*

117. *Id.* ¶ 102.

118. *Id.* ¶ 106.

119. *Id.* “Declares” ¶ 2.

120. *Id.* ¶ 137.

When a person alleges that his confession was due to torture, the State has the obligation to investigate possible acts of torture in order to guarantee the rights embodied in Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).¹²¹ The burden of proof is on the State to show that the confession was voluntary and not due to torture.¹²² Based on the evidence presented in this case, the Court stated that it is possible to conclude that the defendants were subject to cruel, inhuman and degrading treatment.¹²³ The Court also concluded that the State had not conducted an autonomous investigation.¹²⁴ Therefore, the Court found that the State had violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) for the cruel, inhumane and degrading treatment to which defendants were subjected.¹²⁵

Articles 8(3) (A Confession is Valid Only if Not Coerced), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 25(1) (Right of Recourse Before a Competent Court), and 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 1(1) of the Convention, to the detriment of Mr. Cabrera García and Mr. Montiel Flores,¹²⁶ because:

A defendant's confession is only valid if it was made without the defendant being under duress.¹²⁷ The Court concluded that State agents subjected Mr. Cabrera García and Mr. Montiel Flores to cruel treatment in order to break down their resistance and confess to illegal activities.¹²⁸ The domestic courts, therefore, should have excluded the confessions of Mr. Cabrera García and Mr. Montiel Flores that were made on May 7, 1999 and their confessions made in front of the Public Prosecutor's Office.¹²⁹ Since these confessions were not excluded, the State violated Article 8(3) (A Confession is Valid Only if Not Coerced) of the American Convention.¹³⁰

121. *Id.* ¶¶ 126, 136.

122. *Id.* ¶ 136.

123. *Id.* ¶ 134.

124. *Id.* ¶ 131.

125. *Id.* ¶ 137.

126. *Id.* "Declares" ¶¶ 5, 6, 8.

127. *Id.* ¶ 166.

128. *Id.* ¶ 175.

129. *Id.* ¶ 177.

130. *Id.*

Furthermore, the military jurisdiction is not deemed to be a competent jurisdiction to investigate, prosecute and punish those responsible for violations of human rights because subjecting a person to degrading treatment by a military officer is not related to the military's disciplines or missions.¹³¹ Instead, the ordinary justice system is the competent court for processing these violations.¹³² Therefore, the Court found that the military court's intervention in the preliminary inquiry of torture was not within the limits of military courts and the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹³³

The State has the obligation to ensure that individuals within their jurisdiction have an effective recourse against acts that violate their fundamental rights.¹³⁴ Here, Mr. Cabrera García and Mr. Montiel Flores submitted a petition to the Prosecutor General of Military Justice requesting that it decline jurisdiction, but the State did not respond to their petition.¹³⁵ Consequently, Mr. Cabrera García and Mr. Montiel Flores could not effectively contest the military court's jurisdiction over the allegations of torture.¹³⁶ As a result, the Court found that the State had violated Article 25(1) (Right of Recourse Before a Competent Court).¹³⁷

Every State has the duty to adapt its domestic laws to the provisions of the Convention.¹³⁸ The Court found that the State did not comply with Article 2 in connection with Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention when the State extended the military courts' jurisdiction to crimes that are not strictly related to military disciplines.¹³⁹

Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate

131. *Id.* ¶¶ 198-99.

132. *Id.* ¶ 198.

133. *Id.* ¶ 201.

134. *Id.* ¶ 202.

135. *Id.* ¶ 203.

136. *Id.* ¶ 204.

137. *Id.*

138. *Id.* ¶ 206.

139. *Id.* ¶ 8.

and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Cabrera García and Mr. Montiel Flores,¹⁴⁰ because:

The State's obligation to investigate possible acts of torture is reinforced in Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.¹⁴¹ The Court concluded that the State violated Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) the Inter-American Convention to Prevent and Punish Torture for the same reasons it had violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention.¹⁴²

The Court unanimously found that State had not violated:

Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) of the Convention, to the detriment of Mr. Cabrera García and Mr. Montiel Flores,¹⁴³ because:

The presumption of innocence is a requirement of a fair trial.¹⁴⁴ A person cannot be convicted unless there is sufficient proof of his liability.¹⁴⁵ The Court concluded that the defendants were unable to establish that they had been treated as if they were guilty from the onset of the proceedings.¹⁴⁶ In fact, the judicial instances treated the defendants' criminal liability as subject to determination.¹⁴⁷

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) in relation to Article 1(1) of the Convention, to the detriment of Mr. Cabrera García and Mr. Montiel

140. *Id.* ¶ 137.

141. *Id.* ¶ 126.

142. *Id.* ¶ 137.

143. *Id.* "Declares" ¶ 10.

144. *Id.* ¶ 182.

145. *Id.* ¶ 183.

146. *Id.* ¶ 186.

147. *Id.*

Flores,¹⁴⁸ because:

*The right to defense must be exercised throughout the proceedings against a person including giving him adequate time and means to prepare his defense.*¹⁴⁹ *The Court found that Mr. Cabrera García and Mr. Montiel Flores had the necessary defense: their court-appointed defense counsels provided them with legal counseling and ensured compliance with their individual guarantees.*¹⁵⁰ *Furthermore, the defendants appointed their own counsel to represent them at the appeals stage of the case.*¹⁵¹ *Therefore, the Court held that the defendants did not sufficiently prove a violation of the right to defense.*¹⁵²

C. *Dissenting and Concurring Opinions*

1. Concurring Opinion of Judge *Ad Hoc* Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Mac-Gregor Poisot addressed the State's preliminary objections, the principle characteristics of "control of compliance," the implications of "control of compliance" with the Mexican rules of procedure, and the importance of having the doctrine of "control of compliance."¹⁵³

First, with respect to the State's preliminary objection that the Court lacks jurisdiction to hear the case because the domestic courts exercised "control of compliance" ex officio, Judge Poisot agrees with the Court and states that the Court has jurisdiction to analyze whether the "control of compliance" of the domestic courts was actually compatible with obligations of the American Convention.¹⁵⁴ Therefore, the exercise of "control of compliance" cannot be a threshold for

148. *Id.* "Declares" ¶ 9.

149. *Id.* ¶¶ 154, 156.

150. *Id.* ¶ 160.

151. *Id.* ¶ 161.

152. *Id.* ¶ 162.

153. *Cabrera García and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations and Legal Costs, Concurring Opinion of Judge *Ad Hoc* Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 3 (Nov. 26, 2010). In Judge *ad hoc* Eduardo Ferrer Mac-Gregor Poisot's separate opinion, he referred to "conventionality control," which the State raised in the preliminary objection as "control of compliance."

154. *Id.* ¶ 7.

whether the Court should review a case because the Court analyses “control of compliance” in the decision on merits.¹⁵⁵ This examination does not turn the Court into a court of appeals because it is only limited to the review of violations of obligations under the American Convention.¹⁵⁶

Second, the essence of “control of compliance” is that when a state has ratified an international treaty such as the American Convention, its judiciary is bound by the Convention.¹⁵⁷ This means that the judicial bodies of the State need to ensure that the enforcement of domestic laws do not adversely affect the purpose or the end result of any of the provisions of the American Convention.¹⁵⁸ The “control of compliance” must be exercised *ex officio*, which means that it must be exercised under any circumstances.¹⁵⁹ Furthermore, all domestic judges should exercise such that “control compliance” is diffused.¹⁶⁰

Third, Article 133 of the Political Constitution of the United Mexican States includes the treaties entered into as part of the supreme law of the land.¹⁶¹ Therefore, Mexican judges and judicial bodies must exercise “control of compliance” *ex officio* with the American Convention.¹⁶² Therefore, just as the Court concluded, the State should amend the Code of Military Justice that is incompatible with the American Convention to bring it into compliance with the Convention.¹⁶³

Lastly, the exercising of “diffused control of compliance” is essential to the future of the Inter-American System of Human Rights.¹⁶⁴ It contributes to the constitutional and democratic development of member states since many member states such as Mexico have incorporated rules of the Convention into their constitutions.¹⁶⁵ Also, the emphasis of the Court on the principle of diffused control of compliance with the Convention in eight contentious cases since 2010 reflect the consolidation of this principle.¹⁶⁶

155. *Id.* ¶ 8.

156. *Id.* ¶ 11.

157. *Id.* ¶ 17.

158. *Id.*

159. *Id.* ¶ 42.

160. *Id.* ¶ 21.

161. *Id.* ¶ 68.

162. *Id.*

163. *Id.* ¶¶ 75, 77.

164. *Id.* ¶ 88.

165. *Id.*

166. *Id.* ¶ 87.

IV. REPARATIONS

The Court ruled that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigate, Prosecute, and Punish Responsible Individuals

The State must effectively conduct a criminal investigation regarding the facts of the case, particularly the allegations of torture against the victims, in order to determine who is criminally responsible and to impose proper punishment.¹⁶⁷

2. Publish the Judgment

The Court ordered the State to publish the Judgment once in the Official Gazette of the Federation and once in the *Semanario Judicial de la Federación* (Judiciary Weekly Magazine) and its Gazette.¹⁶⁸ The State must also publish the official summary of the judgment in a newspaper with wide national circulation, as well as in a newspaper with wide circulation in the State of Guerrero.¹⁶⁹ Furthermore, the State must fully publish the judgment on the Federal State and the State of Guerrero's official web site where it shall remain available for at least one year.¹⁷⁰ Lastly, the State must broadcast the official summary at least once on a radio station that the residents of the municipalities of Petatlán and Coyuca de Catalán can access.¹⁷¹

3. Provide Medical and Psychological Care

The State must provide Mr. Cabrera García and Mr. Montiel Flores the necessary amount to cover the expenses of specialized medical and psychological treatment and other related expenses in the town where they live.¹⁷²

167. Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 215 (Nov. 26, 2010).

168. *Id.* ¶ 217.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* ¶ 221.

4. Adapt the State's Domestic Law to International Standards

As Article 57 of the Military Criminal Code of Mexico is incompatible with the American Convention, the Court ordered the State to adopt the necessary legislative reforms to bring Article 57 of the Military Criminal Code into conformity with prevailing international standards.¹⁷³

5. Create A Public and Accessible Registry of Detainees

The State must provide an accessible public registry of detainees that is continually updated.¹⁷⁴ There must be an interconnection between the database of the registry of detainees and any other existent database in order to easily identify the location of the detainees.¹⁷⁵ There must be a guarantee that the registry of detainees ensures access to information and privacy.¹⁷⁶ Finally, there must be a control mechanism for authorities who do not update the registry.¹⁷⁷

6. Continue Implementing a Training Program for Civil Servants

The Court ordered the State to continue implementing permanent training programs on conducting thorough investigations in cases of cruel, inhumane or degrading treatment for federal officials, Guerrero state officials, members of the Public Prosecutor's office, the judiciary, the police, and health sector personnel who assist such victims.¹⁷⁸ The State must also implement training programs for the Mexican Armed Forces that will teach the principles of the human rights system in order to avoid repeating the human rights abuses committed against Mr. Cabrera García and Mr. Montiel Flores.¹⁷⁹

B. Compensation

The Court awarded the following amounts:

173. *Id.* ¶ 234.

174. *Id.* ¶ 243.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* ¶ 245.

179. *Id.*

1. Pecuniary Damages

The State must pay \$5,500 to each victim to reimburse him for loss of income.¹⁸⁰ The State must also give each victim \$7,500 for specialized medical, psychological treatment, medicines and other expenses.¹⁸¹

2. Non-Pecuniary Damages

The State must pay \$20,000 to each victim, in equity, as compensation for non-pecuniary damages.¹⁸²

3. Costs and Expenses

The State must pay \$20,658 to CEJIL and \$17,307 to Centro PRODH for professional fees and \$17,708 to CEJIL and \$10,042 to Centro PRODH as reimbursement for expenses incurred during the proceedings.¹⁸³

4. Total Compensation (including Costs and Expenses ordered):

\$131,715

C. *Deadlines*

The State must comply with the order to investigate the facts of the case within a reasonable time.¹⁸⁴ The State must comply with the order of publication of the judgment within six months following the notice of the judgment.¹⁸⁵

As to the State's requirement to pay \$7,500 for medical and psychological expenses, the State must make the reimbursements within two months of the judgment.¹⁸⁶ The Court requested that the State pay the pecuniary, non-pecuniary, and reimbursements of costs and

180. *Id.* ¶ 253.

181. *Id.* ¶ 221.

182. *Id.* ¶ 261.

183. *Id.* ¶ 267.

184. *Id.* ¶ 215.

185. *Id.* ¶ 217.

186. *Id.* ¶ 221.

expenses compensation within one year.¹⁸⁷ The State must make Article 57 of the Military Criminal Code compatible with international standards of justice within a reasonable time.¹⁸⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

August 21, 2013: The Court determined that the State complied with its obligation to publish the judgment, pay the awarded compensation, and implement human rights education programs.¹⁸⁹ The Court will continue to monitor the State's progress on the investigation of those responsible for torturing the victims in the present case, the adoption of legislation to comply with the human rights delineated in the American Convention, and the creation of an accessible public registry of detainees in Mexico.¹⁹⁰ The State should comply with the remainder requirements promptly.¹⁹¹ The State shall submit a brief updating the Court on its compliance no later than December 15, 2013.¹⁹²

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations, and Legal Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 220 \(Nov. 26, 2010\).](#)

2. Decisions on Merits, Reparations and Costs

[Cabrera García and Montiel Flores v. Mexico, Preliminary Objection,](#)

187. *Id.* ¶ 268.

188. *Id.* ¶ 234.

189. Cabrera García and Montiel Flores v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides That," ¶ 1 (Aug. 21, 2013). Available in Spanish only.

190. *Id.* ¶ 2.

191. *Id.* ¶ 3.

192. *Id.* ¶ 4.

[Merits, Reparations, and Legal Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 220 \(Nov. 26, 2010\).](#)

[Cabrera García and Montiel Flores v. Mexico, Preliminary Objection, Merits, Reparations and Legal Costs, Concurring Opinion of Judge Ad Hoc Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 220 \(Nov. 26, 2010\).](#)

3. Provisional Measures

Cabrera García and Montiel Flores Flores v. Mexico, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 220 (Nov. 8, 2001).

4. Compliance Monitoring

[Cabrera García and Montiel Flores Flores v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 21, 2013\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Cabrera García Garcia and Montiel Flores Flores v. Mexico, Admissibility Report, Report No. 11/04, Inter-Am. Comm'n H.R., Case No. 12.449 \(Feb. 27, 2004\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[Cabrera García García and Montiel Flores Flores v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.449 \(June 24, 2009\).](#)

VIII. BIBLIOGRAPHY

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