

Radilla Pacheco v. Mexico

ABSTRACT¹

This case involves the forced disappearance of Rosendo Radilla Pacheco, a musician and political and social activist from Guerrero, Mexico. The Court declared that forced disappearances are of a continuing nature, and this gives it jurisdiction even though the State disappeared Mr. Radilla Pacheco in 1974, before it accepted the jurisdiction of the Court on March 2, 1981.

I. FACTS

A. Chronology of Events

1950s: Beginning in the 1950s, Mr. Rosendo Radilla Pacheco is politically and socially active in in Atoyac de Álvarez, in the state of Guerrero, Mexico.² He grows coffee and coconut, raises cattle, and is involved in the Agricultural Unit of the Coffee Sierra of Atoyac de Álvarez, an organization of coffee growers and farmers.³

June 1, 1955 – August 31, 1956: Mr. Radilla Pacheco serves as president of the Municipal Council of Atoyac de Álvarez.⁴

September 1956: Mr. Radilla Pacheco acts as Municipal President.⁵

1956 – 1960: Mr. Radilla Pacheco serves as general secretary of the Regional Farmers' Committee.⁶

1961: Mr. Radilla Pacheco serves as president of the parent association

1. Meri Khananashvili, Author; Elise Cossart-Daly and Sarah Frost, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 121 (Nov. 23, 2009).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

for the Federal School Modesto Alarcón.⁷

1965: Mr. Radilla Pacheco participates in the founding of the Agricultural League of the South Emiliano Zapata.⁸

Mr. Radilla Pacheco also composes *corridos*, popular Mexican songs that include epic verses accompanied by a guitar.⁹ Mr. Radilla Pacheco writes *corridos* recounting local events in Atoyac de Álvarez, and peasants' social battles of the time.¹⁰

September 26, 1965: The Federal Security Office drafts a document referring to Mr. Radilla Pacheco's participation in presiding over the inaugural act of the Extraordinary Peasant Congress of the Revolutionary League of the South Emiliano Zapata.¹¹

August 25, 1974: Sixty-year-old Mr. Rosendo Radilla Pacheco and his eleven-year-old son, Rosendo Radilla Martínez, travel by bus from Atoyac de Álvarez to Chilpancingo, Guerrero.¹² The bus stops at a military checkpoint.¹³ Soldiers at the checkpoint order the passengers to exit the bus and inspect them and their belongings.¹⁴ The soldiers allow the passengers to re-board the bus and continue on their way.¹⁵

The bus is stopped at another military checkpoint at the entrance of the Cuahtémoc Colony between Cacalutla and Alcholoa.¹⁶ The soldiers again make all the passengers exit the bus to conduct a search.¹⁷ Upon concluding their search, the soldiers allow all the passengers to re-board the bus, except Mr. Radilla Pacheco.¹⁸ The soldiers arrest Mr. Radilla Pacheco for his composition of *corridos*.¹⁹ Mr. Radilla Pacheco objects that this is not a crime, to which a soldier responds: "For the meantime, you're screwed."²⁰

7. *Id.*

8. *Id.*

9. *Id.* ¶ 122.

10. *Id.*

11. *Id.* ¶ 123.

12. Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 124 (Nov. 23, 2009).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* ¶ 125.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

Mr. Radilla Pacheco asks the soldiers to release his son because he is a minor, which they do.²¹ Mr. Radilla Pacheco tells young Rosendo to tell their family that the Mexican Army arrested him.²² The soldiers take Mr. Radilla Pacheco to the Military Zone of Guerrero.²³

Following his arrest, Mr. Radilla Pacheco is seen at the Military Barracks of Atoyac de Álvarez.²⁴ State agents physically abuse Mr. Radilla Pacheco, beat him, and blindfold him for extended periods of time.²⁵

Upon finding out about the arrest, Mr. Radilla Pacheco's family attempts to discover his whereabouts by contacting relatives and friends that work for the State.²⁶ Due to the situation of intense governmental repression, Mr. Radilla Pacheco's family is discouraged from filing a formal complaint.²⁷

March 27, 1992: Ms. Andrea Radilla Martínez, Mr. Radilla Pacheco's daughter, files a criminal complaint before the Agent of the Federal Public Prosecutors' Office in the State of Guerrero for the forced disappearance of her father.²⁸ The Public Prosecutors' Office dismisses the complaint claiming there was not enough evidence to determine who the responsible parties were.²⁹

May 14, 1999: Ms. Tita Radilla Martínez, Mr. Radilla Pacheco's daughter, files a criminal complaint before the Public Prosecutors' Office of the Common Jurisdiction of the City of Atoyac de Álvarez, Guerrero, for the forced disappearance of her father.³⁰ At first, the Agent of the Public Prosecutor's Office does not want to accept the complaint because he is afraid of getting fired.³¹ The Public Prosecutors' Office sends the complaint to reservation because they claim there is not enough evidence to determine who is responsible for Mr. Radilla Pacheco's disappearance.³²

21. *Id.* ¶ 126.

22. *Id.*

23. *Id.*

24. *Id.* ¶ 128.

25. *Id.*

26. *Id.* ¶ 131.

27. *Id.*

28. *Id.* ¶ 183.

29. *Id.*

30. *Id.*

31. *Id.* ¶ 198.

32. *Id.* ¶ 183.

October 20, 2000: Ms. Tita Radilla Martínez files a new criminal complaint before the Public Prosecutor's Office of the Federal Jurisdiction, State Delegation in the State of Guerrero, for the forced disappearance of her father.³³

January 4, 2001: The Federal Prosecutor's Office prepares Preliminary Inquiry 03/A1/2001.³⁴

January 9, 2001: Ms. Tita Radilla Martínez files another criminal complaint before the Attorney General of the Republic, regarding the forced disappearance of her father, among other people.³⁵ The complaint results in Preliminary Inquiry 26/DAFJM/2001.³⁶

May 15, 2001: The Public Prosecutor's office searches property located in Tres Pasos del Río, Municipality of Atoyac de Alvarez, Guerrero.³⁷ This inquiry unearths bone fragments, which experts in the fields of criminal sciences, photography and anthropology examine.³⁸ The inspectors ultimately conclude that the bones are non-human.³⁹

Government officials conduct the inspection unexpectedly at night and do not inform Mr. Radilla Pacheco's family.⁴⁰ The family does not have their own experts present at the inspection.⁴¹ Government officials excavate the bone remains without any care or protection, and effectively destroy the forensic anthropological context.⁴² Due to the way in which the excavation is carried out, Mr. Radilla Pacheco's family seriously doubts the origin of the bone fragments.⁴³

November 27, 2001: The National Human Rights Commission recommends that the State create a Special Prosecutor's Office for alleged human rights abuses.⁴⁴ Based on the recommendation, the State creates

33. *Id.* ¶ 184.

34. *Id.*

35. *Id.* ¶ 185.

36. *Id.*

37. *Id.* ¶ 207.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* ¶ 186.

a Special Prosecutor's Office through a Presidential Agreement.⁴⁵

August 11, 2005: The State begins prosecuting an alleged perpetrator of Mr. Radilla Pacheco's kidnapping and imprisonment before the District Judge at the State of Guerrero.⁴⁶ The Special Prosecutors' Office starts a Preliminary Inquiry to continue integrating the investigation until its resolution.⁴⁷

November 30, 2006: An agreement by the Attorney General of the Republic abolishes the Agreement that appointed the Special Prosecutors' Office.⁴⁸ The agreement also provides that the Special Prosecutors' Office turn their preliminary inquiries over to the General Investigation Coordination of the Attorney General's Office.⁴⁹

February 15, 2007: The General Investigation Coordination of the Attorney General's Office begins a preliminary inquiry on 122 cases, including the case of Mr. Radilla Pacheco's forced disappearance.⁵⁰

December 4, 2007: The State excavates a site called the City of Services at the property of the Municipal Council of the City of Atoyac de Alvarez, Guerrero, where the military barracks of Atoyac de Álvarez were previously located.⁵¹ This excavation unearths non-human remains.⁵² The results of the excavation are reported to Ms. Tita Radilla Martínez.⁵³

November 23, 2009: At the time of judgment, thirty-five years after Mr. Radilla Pacheco disappeared, and seventeen years after Mr. Radilla Pacheco's family submitted their first criminal complaint, the State has not found Mr. Radilla Pacheco or identified, prosecuted, or punished those responsible for his disappearance.⁵⁴

B. Other Relevant Facts

45. *Id.*

46. *Id.* ¶ 188.

47. *Id.*

48. *Id.* ¶ 189.

49. *Id.*

50. *Id.*

51. *Id.* ¶ 208.

52. *Id.*

53. *Id.*

54. *Id.*

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

November 15, 2001: The Mexican Commission for the Defense and Promotion of Human Rights and the Association of Relatives of Disappeared Detainees and Victims of Violations of Human Rights in Mexico present a petition on behalf of Mr. Radilla Pacheco and his family to the Inter-American Commission on Human Rights.⁵⁵

October 12, 2005: The Commission adopts Report on Admissibility No. 65/05.⁵⁶ The State contests the admissibility of the petition, alleging that the petitioners failed to exhaust domestic remedies.⁵⁷ The Commission finds that the State did not provide effective domestic remedies, as more than thirty years have passed since Mr. Radilla Pacheco disappeared, and the State has yet to identify, punish, or prosecute those responsible for his disappearance.⁵⁸ As the State did not provide effective domestic remedies, the Commission rejects the State's preliminary objection.⁵⁹

July 27, 2007: The Commission adopts Merits Report No. 60/07.⁶⁰ The Commission finds that the State violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 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 to the detriment of Mr. Radilla Pacheco.⁶¹ The Commission also finds the State violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention to the detriment of

55. *Id.* ¶ 1.

56. *Id.*

57. Radilla Pacheco v. Mexico, Admissibility Report, Report No. 65/05, Inter-Am. Comm'n H.R., Case No. 12.511, ¶ 12 (Oct. 12, 2005).

58. *Id.* ¶ 20.

59. *Id.* ¶ 22.

60. Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

61. *Id.* ¶ 3.

Mr. Radilla Pacheco's next of kin.⁶² Finally, the Commission finds the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.⁶³

B. Before the Court

March 15, 2008: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁴

1. Violations Alleged by Commission⁶⁵

To the detriment of Mr. Radilla Pacheco:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Radilla Pacheco's next of kin:

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Judicial Protection) of the American Convention.

Generally:

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

2. Violations Alleged by Representatives of the Victims⁶⁶

62. *Id.*

63. *Id.*

64. *Id.* ¶ 1.

65. *Id.* ¶ 3.

66. *Id.* ¶ 5. Mario Solórzano Betancourt, Humberto Guerrero Rosales, María Sirvent Bravo-Ahuja of the Mexican Commission for the Defense and Promotion of Human Rights

Same Violations Alleged by Commission, plus:

Article 13 (Freedom of Thought and Expression)

all in relation to:

Article 8 (Right to a Fair Trial)

Article 25 (Judicial Protection)

Article 1(1) (Obligation to Respect Rights) of the American Convention.

Article 1 (Obligation to Adopt Measures)

Article 2 (Definition of Forced Disappearance)

Article 3 (Obligation to Adopt Legislative Measures)

Article 9 (Trial By Competent, Ordinary Non-Military Court)

Article 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance.

September 21, 2008: The State submits four preliminary objections.⁶⁷ First, the State argues that the Court lacks temporal jurisdiction over the case because the State accepted the Court's jurisdiction after Mr. Radilla Pacheco's alleged forced disappearance.⁶⁸ Second, the State argues that the Court lacks temporal jurisdiction to apply the Inter-American Convention on Forced Disappearance because the State accepted the treaty after Mr. Radilla Pacheco's alleged forced disappearance.⁶⁹ Third, the State argues the Court lacks subject matter jurisdiction to use the Charter of the Organization of American States as grounds to hear the case.⁷⁰ Finally, the State argues the Court lacks temporal jurisdiction to hear the alleged violations to Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention to the detriment of Mr. Radilla Pacheco.⁷¹

The State acknowledges responsibility for the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the

Tita Radilla Martínez and Julio Mata Montiel of the Association of Relatives of Disappeared Detainees and Victims of Violations of Human Rights in Mexico served as representatives of Mr. Radilla Pacheco and his next of kin.

67. *Id.* ¶ 6.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

American Convention to the detriment of Mr. Radilla Pacheco and his next of kin.⁷² The State also acknowledges responsibility for the violation of Articles 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention to the detriment of Mr. Radilla Pacheco.⁷³ Similarly, the State accepts responsibility for the violation of Article 5 (Right to Humane Treatment) of the American Convention to the detriment of Mr. Radilla Pacheco's next of kin.⁷⁴

On the other hand, the State denies responsibility for the violation of Article 3 (Right to Juridical Personality) to the detriment of Mr. Radilla Pacheco; Article 5 (Right to Humane Treatment) to the detriment of the community where Mr. Radilla Pacheco lived; Article 13 (Freedom of Thought and Expression) to the detriment of Mr. Radilla Pacheco's next of kin; and Article 2 (Obligation to Give Domestic Legal Effect to Rights).⁷⁵

July 2, 2009: The Court receives an *amicus curiae* brief from Amnesty International.⁷⁶

July 17, 2009: Ms. María Valdés Leal submits an *amicus curiae* brief to the Court.⁷⁷

July 20, 2009: The Court receives *amici curiae* briefs from Mr. Erik Nelson Ramírez and the Mexican Human Rights and Democracy Institute.⁷⁸

July 21, 2009: A coalition of Mexican organizations who defend human rights submit an *amicus curiae* brief to the Court.⁷⁹ Also, the Spanish Association for International Human Rights Law, the Center for Justice and International Law, and the Washington Office for Latin American Matters each submit an *amicus curiae* brief to the Court.⁸⁰

July 22, 2009: Mrs. Victoria Livia Unzueta Reyes submits an *amicus*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* ¶ 13.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

curiae brief to the Court.⁸¹ The Clinic of Public Interest of the Division of Legal Studies of the Center for Economic Investigation and Teaching, Mrs. Gabriela Rodríguez Huerta and Mrs. Karen Hudlet Vázquez each submit an *amicus curiae* brief to the Court as well.⁸²

July 24, 2009: Students of the Masters Program in Human Rights and Democracy of the Latin American Faculty of Social Sciences submit an *amicus curiae* brief to the Court.⁸³

July 27, 2009: The Court receives an *amicus curiae* brief from the Miguel Agustín Human Rights Center.⁸⁴

November 23, 2009: The Court unanimously dismisses the State's preliminary objections.⁸⁵

The Court recognizes that retroactive application of the American Convention to Mexico was inappropriate.⁸⁶ The Court, however, draws a distinction between instantaneous acts and acts of a continuous or permanent nature.⁸⁷ The Court defines continuous acts as those that are ongoing and during which the State continues to fail to conform to its international obligations.⁸⁸ The Court notes that once a treaty goes into force, continuous acts that persist after the treaty's inception may generate international obligation for the State.⁸⁹ The Court finds that the forced disappearance of persons is a continuous act: the disappearance starts with the deprivation of freedom of the person and the subsequent lack of information regarding their fate, and continues until the whereabouts of the disappeared person are known and the circumstances of their disappearance are shared.⁹⁰ Therefore, the Court finds that the State's acts that predate the State's acceptance of the American Convention, but continue after the State's acceptance of the treaty, are subject to the American Convention as of the date that the State accepted the treaty.⁹¹

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* ¶ 50.

86. *Id.* ¶ 17.

87. *Id.* ¶ 22.

88. *Id.*

89. *Id.*

90. *Id.* ¶ 23.

91. *Id.* ¶ 24.

Regarding the alleged lack of temporal jurisdiction in applying the Inter-American Convention on Forced Disappearance, the Court finds that the treaty is applicable to events that continue after the date of its ratification.⁹² The Court concludes that because in the present case, the forced disappearance of Mr. Radilla Pacheco is ongoing, the Inter-American Convention on Forced Disappearance is enforceable against the State as of the date of the Convention's ratification by the State.⁹³

Regarding the Court's alleged lack of subject matter jurisdiction under the Charter of the Organization of American States, the Court states that it is not using the Charter to gain jurisdiction over the State.⁹⁴ As such, the Court finds that the preliminary objection has no purpose.⁹⁵

Regarding the alleged and lack of temporal jurisdiction to hear the alleged violations to Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention to the detriment of Mr. Radilla Pacheco, the Court rejects the State's presumption that Mr. Radilla Pacheco died prior to the date of ratification of the Court's contentious jurisdiction, and therefore dismisses this objection.⁹⁶

III. MERITS

A. *Composition of the Court*⁹⁷

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice-President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary,
Emilia Segares Rodríguez, Deputy Secretary,

B. *Decision on the Merits*

92. *Id.* ¶ 31.

93. *Id.* ¶ 41.

94. *Id.* ¶ 42.

95. *Id.* ¶ 43.

96. *Id.* ¶ 45.

97. Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, 1 (Nov. 23, 2009). On May 4, 2008, Judge Sergio García Ramírez disqualified himself as he was a national of Mexico. Judge Leonardo A. Franco informed the court of his inability to participate in the proceedings for reasons beyond his control.

November 23, 2009: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁹⁸

Before turning to the merits, the Court briefly addressed the issue of who could be considered alleged victims in the case.⁹⁹ The Court noted that under Article 34(1) of the Rules of Procedure of the Court, it is the Commission that identifies the alleged victims in cases before the Court.¹⁰⁰ In its Merits Report No. 60/07, the Commission identified as victims Mr. Radilla Pacheco as an alleged victim and made brief reference to Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez as Mr. Radilla Pacheco's next of kin.¹⁰¹ In its Application to the Court, the Commission identified thirteen of Mr. Radilla Pacheco's next of kin, including his twelve children and his deceased wife, as victims.¹⁰² The Court noted however, that according to its jurisprudence, it only considers as victims those identified as victims in the Commission's Merits Report.¹⁰³ Thus, the Court determined that it would only consider Mr. Radilla Pacheco himself, and Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez alleged victims.¹⁰⁴

The Court finds unanimously that Mexico has violated:

Articles 7(1) (Right to Personal Liberty and Security), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 3 (Right to Juridical Personality), and 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention and Articles 1 (Obligation to Adopt Measures) and 6 (Obligation to Submit Case to Competent Authorities When Extradition Not Granted) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Radilla Pacheco,¹⁰⁵ because:

98. Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment.

99. *Id.* ¶ 104.

100. *Id.* ¶ 108.

101. *Id.* ¶ 109.

102. *Id.*

103. *Id.* ¶ 110.

104. *Id.* ¶ 111.

105. *Id.* ¶ 159.

*State agents kidnapped and imprisoned Mr. Radilla Pacheco.*¹⁰⁶ *At the time of judgment, the State has not located Mr. Radilla Pacheco or identified, prosecuted, or punished those responsible for his disappearance.*¹⁰⁷

*Though the Court did not retroactively apply its jurisdiction to the State at the time of Mr. Radilla Pacheco's disappearance, it nonetheless examined the social, political, and economic circumstances present in the State at the time of Mr. Radilla Pacheco's forced disappearance in order to appropriately evaluate the State's violation to date.*¹⁰⁸

*The Court concluded that Mr. Radilla Pacheco's forced disappearance was a result of the State's belief that Mr. Radilla Pacheco was a supporter of the guerilla movement.*¹⁰⁹ *Arrests of this nature were made in secret, without official sanctions by government officials, with the purpose of depriving the arrested individual of liberty and, through torture, extracting confessions and information about guerillas.*¹¹⁰ *Therefore, the Court found Mr. Radilla Pacheco's forced disappearance to be a violation of his rights to personal liberty, enshrined in Article 7; integrity and humane treatment, enshrined in Article 5; and life, enshrined in Article 4 of the American Convention;*¹¹¹ *in relation to Articles 1 (Obligation to Adopt Measures) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the American Convention on the Forced Disappearance of Persons.*¹¹²

*The Court also found that the State violated Article 3 (Right to Juridical Personality) of the American Convention to the detriment of Mr. Radilla Pacheco.*¹¹³ *This provision obligates the State to ensure that individuals are given the enjoyment of fundamental civil rights and the ability to exercise such rights.*¹¹⁴ *The Court concluded that forced disappearances involve extensive human rights violations and inherently deprive indi-*

106. *Id.* ¶ 158.

107. *Id.*

108. *Id.* ¶ 117.

109. *Id.* ¶ 151.

110. *Id.*

111. *Id.* ¶¶ 152-153.

112. *Id.* ¶ 154.

113. *Id.* ¶ 159.

114. *Id.*

viduals of the enjoyment and exercise of their civil rights.¹¹⁵ Therefore, the Court found that Mr. Radilla Pacheco's forced disappearance violated his right to juridical personality.¹¹⁶

Mr. Radilla Pacheco was a victim of a forced disappearance carried out by Mexico's soldiers.¹¹⁷ The State has a duty to guarantee citizens' rights by preventing and diligently investigating forced disappearances.¹¹⁸ To this end, the State must engage in a serious and effective investigation to attempt to determine the victim's fate and/or whereabouts, identify the perpetrators, and impose appropriate punishment.¹¹⁹ To date, the State has neglected to engage in any such investigation, disregarding Mr. Radilla Pacheco's fate and his whereabouts, as well as the whereabouts of his remains.¹²⁰

The Court, therefore, concluded that the State violated Articles 7(1) (Right to Personal Liberty and Security), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 3 (Right to Juridical Personality), and 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention and Articles 1 (Obligation to Adopt Measures) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mr. Radilla Pacheco.¹²¹

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 Convention, to the detriment of Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez,¹²² because:

*They have been forced to suffer the psychological consequences of the disappearance of their father, Mr. Radilla Pacheco.*¹²³ *The State has an*

115. *Id.* ¶ 157.

116. *Id.* ¶ 159.

117. *Id.* ¶ 158.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* ¶ 159.

122. *Id.* "Declares" ¶ 4.

123. *Id.* ¶ 165.

*obligation to guarantee the right to humane treatment of the next of kin of a forcibly disappeared individual through effective investigations.*¹²⁴ *The continuous deprivation of the truth regarding the fate of a disappeared person constitutes a form of cruel and inhuman treatment of the next of kin.*¹²⁵ *In cases of forced disappearance, the Court presumes violation of the rights to psychological and moral integrity of the victim's next of kin.*¹²⁶

*Furthermore, the absence of effective resources is a source of suffering and anguish for the victims next of kin.*¹²⁷ *In the present case, Mr. Radilla Pacheco's next of kin took multiple steps to attempt to uncover Mr. Radilla Pacheco's fate following his disappearance.*¹²⁸ *These attempts at investigation by Mr. Radilla Pacheco's children have been frustrated by the State's lack of cooperation in the investigations, resulting in ineffectiveness of the investigations, and exacerbating the next of kin's feelings of anguish and impotence in the face of the law.*¹²⁹

*Also, the next of kin have experienced stigmatization and indifference, which are common in cases of forced disappearance.*¹³⁰ *Finally, Mr. Radilla Pacheco's disappearance has had the effect of changing completely the course of his children's lives, forcing them to prematurely assume roles of responsibility in the face of their father's disappearance.*¹³¹

*The Court therefore, determined that the State violated 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 Convention, to the detriment of Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez.*¹³²

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Be-

124. *Id.* ¶ 166.

125. *Id.* ¶ 167.

126. *Id.* ¶ 161.

127. *Id.*

128. *Id.* ¶ 167.

129. *Id.* ¶¶ 167-168.

130. *Id.* ¶ 169.

131. *Id.* ¶ 171.

132. *Id.* "Declares" ¶ 4.

fore a Competent Court), in relation to Articles 1(1) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, and Articles 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances), 1(b) (Duty to Punish Forced Disappearances), 1(d) (Duty to Take Measures), 9 (Trial By Competent, Ordinary Non-Military Court), and 19 (Specific Treaty Reservations) of the Inter-American Convention on Forced Disappearance to the detriment Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez,¹³³ because:

The State failed to conduct an effective and diligent investigation of Mr. Radilla Pacheco's arrest and subsequent disappearance.¹³⁴ Likewise, the State failed to effectively investigate, identify, prosecute, and punish the responsible parties.¹³⁵ Furthermore, the State has failed to ascertain the whereabouts of Mr. Radilla Pacheco or his remains.¹³⁶ Finally, by applying military jurisdiction to Mr. Radilla Pacheco's forced disappearance, the State infringed the right of Mr. Radilla Pacheco's next of kin to a competent tribunal, and deprived them of a recourse that would allow them to contest the prosecution of Mr. Radilla Pacheco's arrest and forced disappearance by the military jurisdiction.¹³⁷

The Court therefore determined that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Articles 1(1) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, and Articles 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances), 1(b) (Duty to Punish Forced Disappearances), 1(d) (Duty to Take Measures), 9 (Trial By Competent, Ordinary Non-Military Court), and 19 (Specific Treaty Reservations) of the Inter-American Convention on Forced Disappearance to the detriment Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez.¹³⁸

The Court found unanimously that Mexico had failed to fully comply

133. *Id.* ¶ 314.

134. *Id.* ¶ 313.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* ¶ 314.

with:

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Articles 7(6) (Right to Have Recourse Before a Competent Court) of the Convention, and Articles 1(d) (Duty to Take Measures) and 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance to the detriment Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez,¹³⁹ because:

*Even though the legal classification currently in place in Mexico permits the punishment of certain acts that constitute forced disappearance of persons, the current state of the law fails to give full effect to the international regulations in force with regard to forced disappearance of persons.*¹⁴⁰

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

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

1. Judgment as a Form of Reparation

The Court indicated that the judgment itself should be understood as a form of reparation.¹⁴¹ The Judgment served as a measure of satisfaction that recognized the State violated Mr. Radilla Pacheco's rights.¹⁴²

2. Investigate, Prosecute, and Punish Those Responsible

139. *Id.*

140. *Id.* ¶ 324.

141. *Id.* ¶ 359.

142. *Id.*

The State must conduct an effective investigation into Mr. Radilla Pacheco's whereabouts, and into the criminal responsibility for Mr. Radilla Pacheco's forced disappearance.¹⁴³ At the conclusion of the criminal investigation, the State must appropriately punish the perpetrators.¹⁴⁴

Furthermore, the investigation into Mr. Radilla Pacheco's forced disappearance must be conducted by ordinary courts, not military ones.¹⁴⁵ Also, any individuals prosecuted in Mr. Radilla Pacheco's case will be prosecuted for the crime of his forced disappearance.¹⁴⁶

During the investigation and prosecution, the State must guarantee the victims full access and ability to act during all parts of the proceedings.¹⁴⁷

3. Determine Mr. Radilla Pacheco's Whereabouts

The State must conduct an effective and prompt investigation into the whereabouts Mr. Radilla Pacheco or his remains.¹⁴⁸ In the event that Mr. Radilla Pacheco's remains are located, the State must deliver them to Mr. Radilla Pacheco's next of kin as soon as possible.¹⁴⁹ The State must pay for the delivery of the remains, and must pay for the funeral costs according to the beliefs of Mr. Radilla Pacheco's family.¹⁵⁰

4. Reform the Constitution and Legislation

The Court ordered two kinds of reforms to the State's legislative and constitutional system.¹⁵¹ First, the Court ordered that the State adjust the constitutional and legislative criteria for military jurisdiction.¹⁵² To this end, if the criminal acts committed by a person who enjoys the classification of active soldier do not affect the juridical rights of the military sphere, ordinary courts must prosecute said person.¹⁵³ Mexico may

143. *Id.* ¶ 331.

144. *Id.*

145. *Id.* ¶ 332.

146. *Id.*

147. *Id.* ¶ 334.

148. *Id.* ¶ 336.

149. *Id.*

150. *Id.*

151. *Id.* ¶¶ 274, 340.

152. *Id.* ¶ 340.

153. *Id.* ¶ 274.

not apply military jurisdiction in situations violating civilians' human rights.¹⁵⁴

Second, the Court ordered the State to adopt an adequate definition of the crime of forced disappearance of persons.¹⁵⁵ To the extent that Article 215A of the State's Federal Criminal Code, which punishes the crime of forced disappearance of persons, does not fully comply with international regulations in force on the subject, the State must promptly adopt such legislative measures as would bring the crime of forced disappearance of persons in Mexico into compliance with international standards.¹⁵⁶

5. Provide Human Rights Training

Without detriment to current human rights training programs for its public officials the State must implement, within a reasonable period of time and with the corresponding budgetary stipulation, human rights training programs for its public officials.¹⁵⁷

First, the State must institute programs or permanent courses instructing Mexico's public officials in human rights protection, and must reference the limits of military criminal jurisdiction, and rights of judicial guarantees and judicial protection, in order to promote proper investigation and prosecution of human rights violations.¹⁵⁸ These programs must be administered for all members of the military forces, including agents of the Public Prosecutors' Office and judges, as well as the agents of the public prosecutors' office of the Attorney General of the Republic and judges of the Judiciary of the Federation.¹⁵⁹

Second, the State must institute a training program on the due investigation and prosecution of forced disappearances.¹⁶⁰ This program must be administered to agents of the Public Prosecutors' Office of the Attorney General of the Republic, and judges of the Judiciary of the Federation.¹⁶¹

6. Publish the Judgment

154. *Id.*

155. *Id.* ¶ 344.

156. *Id.*

157. *Id.* ¶ 347.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

Within six months of notification of the present Judgment, the State must publish, in the Official Gazette of the Federation, and in another newspaper of wide national circulation, once, certain paragraphs of this Judgment.¹⁶² Also, the entire Judgment must be published on the official website of the Attorney General of the Republic within two months of the notification of the present Judgment.¹⁶³ The publication on the Attorney General's website must be made available for a one-year period.¹⁶⁴

7. Publically Acknowledge International Responsibility

The State must hold a public act acknowledging responsibility for the forced disappearance of Mr. Radilla Pacheco and honoring his memory.¹⁶⁵ The public act must refer to the human rights violations declared in this Judgment.¹⁶⁶ The act must be carried out in the presence of high national authorities and Mr. Radilla Pacheco's next of kin.¹⁶⁷ Also, in an effort to preserve Mr. Radilla Pacheco's memory within the community to which he belonged, the State shall place a commemorative plaque describing Mr. Radilla Pacheco's forced disappearance in the city of Atoyac de Álvarez.¹⁶⁸

8. Publish a Biography of Mr. Radilla Pacheco

In an effort to commemorate Mr. Radilla Pacheco's efforts for the benefit of the Atoyac community, the State must, with the participation of the victims, prepare and publish a bibliographical sketch of Mr. Radilla Pacheco's life, accompanied by corresponding official sources.¹⁶⁹

9. Provide Psychological Care

162. *Id.* ¶ 350.

163. *Id.*

164. *Id.*

165. *Id.* ¶ 353.

166. *Id.*

167. *Id.*

168. *Id.* ¶ 354.

169. *Id.* ¶ 356.

Upon the victims' request, the State must offer them free psychological and/or psychiatric services immediately, adequately, and effectively, through its specialized public health institutions.¹⁷⁰ The treatment shall be offered for as long as considered necessary, and must include free medications as required.¹⁷¹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must make a compensatory payment of \$12,000 for the loss of income of Mr. Radilla Pacheco, which should be distributed equally among Mr. Radilla Pacheco's successors.¹⁷²

The State must make a compensatory payment of \$1,300 for the expenses incurred by the Radilla Pacheco family in searching for Mr. Radilla Pacheco.¹⁷³ The payment should be divided evenly between the beneficiaries of the Judgment.¹⁷⁴

2. Non-Pecuniary Damages

The Court found that compensation to the Radilla Pacheco family was appropriate in light of their suffering due to the forced disappearance of Mr. Radilla Pacheco, the time that had elapsed since the disappearances, the denial of justice, the change in living conditions, and other non-pecuniary damages.¹⁷⁵

The State must pay \$80,000 to Mr. Rosendo Radilla Pacheco as compensation for non-pecuniary damages.¹⁷⁶

State must pay \$40,000 each to Ms. Tita Radilla Martínez, Ms. Andrea Radilla Martínez, and Mr. Rosendo Radilla Martínez.¹⁷⁷

3. Costs and Expenses

170. *Id.* ¶ 358.

171. *Id.*

172. *Id.* ¶ 365.

173. *Id.* ¶ 370.

174. *Id.*

175. *Id.* ¶ 375.

176. *Id.*

177. *Id.*

The State must pay \$25,000 to the Association of Relatives of Disappeared Detainees and Victims of Human Rights Violations in Mexico and the Mexican Commission for the Defense and Promotion of Human Rights for costs and expenses incurred throughout the litigation of the case.¹⁷⁸

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

\$198,300

C. Deadlines

The State must offer Mr. Radilla Pacheco's next of kin free psychological and/or psychiatric services and attempt to locate Mr. Radilla Pacheco immediately.¹⁷⁹ The State must publish the judgment in the official website within two months, and in the Official Gazette and in another newspaper of wide national circulation.¹⁸⁰ The State must pay the compensation for pecuniary and non-pecuniary damages and costs and expenses within one year from notification of the judgment.¹⁸¹ The State must carry out an effective investigation, implement legislative reforms, and provide human rights training programs within a reasonable period of time.¹⁸²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

May 19, 2011: In a Monitoring Compliance decision the Court found that the State had not satisfied its obligation to investigate the facts of the case.¹⁸³ The Court acknowledged that the State had undertaken a preliminary inquiry into Mr. Radilla Pacheco's disappearance, but noted

178. *Id.* ¶ 385.

179. *Id.* ¶ 358.

180. *Id.* ¶ 350.

181. *Id.* ¶ 386.

182. *Id.* ¶ 347, "States" ¶¶ 8, 10, 11.

183. *Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering" ¶ 10 (May 19, 2011).*

that based on the State's report, it was impossible to ascertain how the inquiry complies with the requirements set out in the Judgment.¹⁸⁴ Additionally, the Court noted that the State's refusal to provide copies of the preliminary inquiry's files to the representatives directly violates the Court's order to allow the representatives full access to the investigation.¹⁸⁵

Regarding the State's obligation to continue with the effective search for and the immediate location of Mr. Radilla Pacheco or his remains, the Court found the obligation had not been satisfied.¹⁸⁶ The Court acknowledged that the State had reported excavations aimed at locating Mr. Radilla Pacheco, but observed that based on the State's report, it was impossible to ascertain how the State's excavations aimed at locating Mr. Radilla Pacheco comply with the standards set out in the Judgment.¹⁸⁷ Additionally, the Court noted that the State's refusal to continue excavations due to an alleged lack of resources was contrary to the Judgment.¹⁸⁸ The Court noted that, "the State must provide the authorities with the logistic and scientific resources necessary to collect and process evidence and, in particular, the power to access relevant information and documents in order to investigate the alleged facts and obtain clues or evidence of the location of the victims."¹⁸⁹

Regarding the State's obligation to adopt appropriate legislative reforms, the Court found the obligation had not been satisfied.¹⁹⁰ The Court acknowledged the State's efforts to make legislative reforms as a positive step, but noted that the proposed initiative is insufficient because it does not fully comply with the standards specified in the Judgment.¹⁹¹ This is because the proposed reform "only sets forth that military jurisdiction shall have no jurisdiction in cases related only to forced disappearance, torture and rape committed by soldiers."¹⁹² The Court noted however, that the Judgment demands that the military justice system should only try military for the commission of crimes or offenses that by their very nature violate the legal rights of the military, and that human rights violations committed by military personnel against civil-

184. *Id.*

185. *Id.* ¶ 11.

186. *Id.* "Declares" ¶ 2(b).

187. *Id.* ¶ 15.

188. *Id.* ¶ 16.

189. *Id.*

190. *Id.* ¶ 21.

191. *Id.*

192. *Id.*

ians must never be subject to military jurisdiction.¹⁹³

Regarding the State's obligation to adopt appropriate legislative reforms to adequately define the crime of forced disappearance of persons, the Court found the obligation had not been fully satisfied.¹⁹⁴ The Court acknowledged that the State had begun to undertake legislative reforms to adequately define the crime of forced disappearance, but observed that the legislative reforms had not yet been finalized, and stated that it would continue to monitor the legislative reform proceedings.¹⁹⁵

The Court found that the State had not satisfied its obligation to implement educational programs training its public officials in human rights protections.¹⁹⁶ The Court observed that the State had not submitted adequate information from which the Court could conclude this measure of reparation to have been satisfied.¹⁹⁷

The Court found that the State had published the Judgment in the Official Gazette of the Federation and in another widely circulated national newspaper, as well as on the web page of the Attorney General's Office.¹⁹⁸

The Court found that State had not carried out a public act acknowledging international responsibility and commemorating Mr. Radilla Pacheco's memory.¹⁹⁹ The Court acknowledged that the State had made efforts to comply with the obligation, but noted that the efforts had not yet amounted to a fulfillment of the obligation.²⁰⁰

Regarding the State's obligation to prepare a biographical sketch of Mr. Radilla Pacheco's life, the Court found the obligation had not been fully satisfied.²⁰¹ The Court acknowledged that the State had taken actions toward the fulfillment of this obligation, but noted that the biographical sketch had not yet been published.²⁰²

The Court found that State had not fulfilled its obligation to provide psychological and/or psychiatric services to the victims upon their request.²⁰³ The Court acknowledged the State's offer to provide psychological and/or psychiatric assistance not only to the victims declared in

193. *Id.*

194. *Id.* "Declares" ¶ 2(d).

195. *Id.* ¶ 28.

196. *Id.* "Declares" ¶ 2(e).

197. *Id.* ¶ 32.

198. *Id.* ¶ 36.

199. *Id.* "Declares" ¶ 2(f).

200. *Id.* ¶ 41.

201. *Id.* "Declares" ¶ 2(g).

202. *Id.* ¶ 45.

203. *Id.* "Declares" ¶ 2(h).

the judgment but also to other victims of Mr. Radilla Pacheco's disappearance.²⁰⁴ However, the Court observed that as yet, no psychological and/or psychiatric services had been provided to any of the victims because the State had not determined which public institutions would provide such assistance.²⁰⁵

December 1, 2011: The Court found that the State fully satisfied its obligation to hold a public act acknowledging responsibility for the forced disappearance of Mr. Radilla Pacheco and commemorating Mr. Radilla Pacheco's memory, and that the State had created a plaque detailing the account of Mr. Radilla Pacheco's forced disappearance.²⁰⁶

June 28, 2012: The Court found that the State had not completely fulfilled its obligation to compensate the victims for pecuniary and non-pecuniary damages and to reimburse costs and expenses.²⁰⁷

May 14, 2013: The Court found that the State had fully complied with its obligations to implement programs analyzing case law of the Inter-American systems, establish training programs on forced disappearances, create a profile of Mr. Radilla Pacheco's life, and pay pecuniary and non-pecuniary damages, as well as costs and expenses.²⁰⁸ The Court found that the State had not fully complied with its obligations to undertake criminal proceedings for the detention and forced disappearance of Mr. Radilla Pacheco; search for and discover his remains; adopt legislative reforms to make articles of the Military and Criminal Codes comply with the American Convention on Human Rights and the Inter-American Convention on Forced Disappearances, respectively; and provide psychological and psychiatric treatment to the victims in the Judgment.²⁰⁹ The Court will continue to monitor the State's progress in satisfying these obligations.²¹⁰

204. *Id.* ¶ 49.

205. *Id.*

206. Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Dec. 1, 2011).

207. Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (June 28, 2012).

208. Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶¶ 1(a)-(c) (May 14, 2013).

209. *Id.* "Declares" ¶¶ 2(a)-(e).

210. *Id.*

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Radilla Pacheco v. Mexico, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 209 \(Nov. 23, 2009\).](#)

2. Decisions on Merits, Reparations and Costs

[Radilla Pacheco v. Mexico, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 209 \(Nov. 23, 2009\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 14, 2013\).](#)

[Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 28, 2012\).](#)

[Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 1, 2011\).](#)

[Radilla Pacheco v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 19, 2011\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Radilla Pacheco v. Mexico, Petition No. 777-01, Inter-Am. Comm'n

H.R. (Nov. 15, 2001).

2. Report on Admissibility

[Radilla Pacheco v. Mexico, Admissibility Report, Report No. 65/05, Inter-Am. Comm'n H.R., Case No. 12.511 \(Oct. 12, 2005\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Radilla Pacheco v. Mexico, Report on Merits, Report No. 65/07, Inter-Am. Comm'n H.R., Case No. 12.511 (July 27, 2007).

5. Application to the Court

Radilla Pacheco v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.511 (Mar. 15, 2008).

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Víctor Manuel Colli Ek, *Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges*, 20 HUM. RTS. BR. 7, 12 (2012).