

# Rosendo Cantú et al. v. Mexico

## ABSTRACT<sup>1</sup>

*On February 16, 2002, Mrs. Valentina Rosendo Cantú, a girl from an indigenous community in the State of Guerrero, was raped and tortured by military personnel. The Court found State's lack of due diligence in the investigation and punishment of the perpetrators a violation of the American convention. The case is significant for the discussion of rape as a form of torture, military jurisdiction, and special needs of women, minors, and indigenous peoples.*

## I. FACTS

### A. Chronology of Events

**February 16, 2002:** Around 3:00 pm Valentina Rosendo Cantú goes to a stream in an isolated area near her home to wash clothes.<sup>2</sup> Ms. Rosendo Cantú is seventeen years old, the mother of an infant child, and a member of the Me'phaa indigenous community in Barranca Bejuco, in the state of Guerrero.<sup>3</sup> She is originally from the Caxitepec community, also located in the state of Guerrero.<sup>4</sup>

While Ms. Rosendo Cantú is washing clothes, eight soldiers approach her and ask whether she knows “the hooded men” (“los encapuchados,” a term commonly used in Mexico to refer to guerrillas) from Barranca Bejuco while they point a gun at her chest.<sup>5</sup> Ms. Rosendo Cantú tells them that she does not know them, that she is originally from Caxitepec and that she only recently married a person from Barranca Bejuco.<sup>6</sup> Since Barranca Bejuco is such a small town,

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

2. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 73 (Aug. 31, 2010).

3. *Id.* ¶ 72.

4. *Id.*

5. *Id.* ¶ 90.

6. *Id.*

however, Ms. Rosendo Cantú recognizes the names of the people the soldiers mention.<sup>7</sup> She lies because she is intimidated by the soldiers' threats.<sup>8</sup>

Angered by Ms. Rosendo Cantú's response, a soldier hits her in the stomach with a gun.<sup>9</sup> Ms. Rosendo Cantú falls, momentarily losing consciousness.<sup>10</sup> When she wakes up, another soldier grabs her hair, continues to interrogate her about the men from Barranca Bejuco, and threatens to kill her and everyone in Barranca Bejuco if she does not answer truthfully.<sup>11</sup> A soldier knocks her to the ground.<sup>12</sup> Another soldier gets on top of Ms. Rosendo Cantú and rips off her clothes.<sup>13</sup> Two soldiers rape her, while six others watch.<sup>14</sup> She cries for help but no one comes.<sup>15</sup>

She finally manages to escape and runs home semi-naked.<sup>16</sup> At home, she tells her sister-in-law, Ms. Estela Sierra Morales, and her husband, Mr. Fidel Bernardino Sierra about the incident.<sup>17</sup> Her husband goes to Barranca Bejuco to file a complaint with the authorities of the indigenous community, including the Municipal Delegate of the Barranca Bejuco community.<sup>18</sup>

**February 18, 2002:** Ms. Rosendo Cantú visits a healthcare clinic in Caxitepec for abdominal pain, but she does not tell the clinic about the rape.<sup>19</sup> The physician prescribes painkillers and anti-inflammatory pills and tells her to visit a clinic in Ayutla de los Libres, a city in the Guerrero municipality of Mexico, allegedly because he does not have the right equipment to treat her and he does not want to get involved with the military.<sup>20</sup>

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7. Gretchen Peters, *Rebels Gains Ground in Guerrero: Military Abuses in the Mexican State are Driving More Disaffected Poor Toward Rebels for Protection*, CHRISTIAN SCIENCE MONITOR (May 10, 2002), <http://www.csmonitor.com/2002/0510/p07s01-woam.html>.

8. *Id.*

9. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 90 (Aug. 31, 2010).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* ¶ 106.

15. *Id.* ¶ 90.

16. *Id.*

17. *Id.*

18. *Id.* ¶ 90.74, n.73.

19. *Id.* ¶ 130.

20. *Id.* ¶ 168.

**February 26, 2002:** Ms. Rosendo Cantú walks eight hours to visit the clinic in Ayutla.<sup>21</sup> Since she does not have an appointment, she has to wait until the next day to see a physician.<sup>22</sup> When she does see a physician, she tells him that a piece of wood fell on her abdomen.<sup>23</sup> She does not tell him that she was raped.<sup>24</sup>

**February 27, 2002:** Ms. Rosendo Cantú and her husband file a complaint with the National Human Rights Commission (Comisión Nacional de los Derechos Humanos) against the members of the Mexican Army.<sup>25</sup>

**March 6, 2002:** Ms. Rosendo Cantú renders a statement at the Military Public Prosecutor's office.<sup>26</sup>

**March 7, 2002:** The National Human Rights Commission initiates preliminary investigations.<sup>27</sup> The Mexican League for the Defense of Human Rights (*Liga Mexicana para la Defensa de los Derechos Humanos*) files a claim before the Commission for the Defense of Human Rights for the State of Guerrero (*Comision De Defensa De Los Derechos Humanos Del Estado De Guerrero*) regarding Ms. Rosendo Cantú's case.<sup>28</sup> At this point, no criminal case is opened to investigate Ms. Rosendo Cantú's rape.<sup>29</sup>

**March 8, 2002:** The Commission for the Defense of Human Rights for the State of Guerrero takes Ms. Rosendo Cantú and her husband's statements.<sup>30</sup>

Ms. Rosendo Cantú, with the help of others, files a complaint for the rape with the Allende Public Prosecutor's Office.<sup>31</sup> The Public Prosecutor's Office is reluctant to take the complaint at first, and only does so after the Inspector General of the Commission for the Defense of Human Rights for the State of Guerrero insists that it is necessary.<sup>32</sup>

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21. *Id.* ¶ 130.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 76.

26. *Id.* ¶ 90.

27. *Id.* ¶ 76.

28. *Id.* ¶ 77.

29. *Id.*

30. *Id.*

31. *Id.* ¶ 78.

32. *Id.*

Ms. Rosendo Cantú cannot communicate with the Office's agent without an expert interpreter, because does not speak Spanish.<sup>33</sup> The Inspector General requests that the Office assign a female gynecologist to carry out a physical examination on Ms. Rosendo Cantú.<sup>34</sup> Finally, the Allende public prosecutor initiates preliminary investigations.<sup>35</sup>

**March 11, 2002:** Ms. Rosendo Cantú and her husband ask for the Constitutional Governor of Guerrero to intervene to bring justice to her case and also to seek disciplinary action against the Caxitepec clinic, alleging that the clinic refused to examine her because the physician she saw was afraid of the military and because he did not have sufficient equipment.<sup>36</sup>

**March 12, 2002:** The next day, Ms. Rosendo Cantú visits the Ayutla hospital with an agent from the Commission for the Defense of Human Rights for the State of Guerrero.<sup>37</sup> A female gynecological expert examines her and requests laboratory tests.<sup>38</sup>

**March 19, 2002:** Since the Public Prosecutor's Office does not have any gynecological experts to examine Ms. Rosendo Cantú, she instead receives a gynecological evaluation at the Public Prosecutor's office in Tlapa of Comonfort by an examiner who is connected with the Office.<sup>39</sup>

**May 21, 2002:** After the Public Prosecutors Offices in Morelo and Guerrero decline to investigate Ms. Rosendo Cantú's case for lack of jurisdiction, the Military Public Prosecution's Office takes the case.<sup>40</sup>

**June 7, 2002:** Ms. Rosendo Cantú files a petition for relief against the decision to have the military jurisdiction take her case because she is afraid that the military jurisdiction will not be fair to her, as it was members of the military who raped her.<sup>41</sup>

**June 11, 2002:** Despite Ms. Rosendo Cantú's objections to the Military

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33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* ¶¶ 90, 170.

37. *Id.* ¶ 79.

38. *Id.*

39. *Id.*

40. *Id.* ¶¶ 142-144.

41. *Id.* ¶ 145, n.138.

investigating the case, the Attorney General for Military Justice orders the First Agency of the Military Public Prosecutor's Office to continue the investigation.<sup>42</sup>

**August 30, 2002:** Ms. Rosendo Cantú's petition for relief is denied.<sup>43</sup>

**February 11, 2003:** Ms. Rosendo Cantú submits a second petition for relief, which is subsequently denied on April 29, 2003.<sup>44</sup>

**February 26, 2004:** After visiting the crime scene, conducting a line up at Ms. Rosendo Cantú's home with soldiers from the nearby military base and obtaining statements from various people, including military personnel, the Military Public Prosecutor's Office concludes that it is unable to prove that the military personnel committed any illegal act.<sup>45</sup>

**January 11, 2008:** The Common Public Prosecutor's Office re-opens Ms. Rosendo Cantú's case after requesting the Military Public Prosecutor's Office forward the case to them.<sup>46</sup>

**August 27, 2008:** Pursuant to an agreement to collaborate, the Common Public Prosecutor's Office forwards Ms. Rosendo Cantú's case to the Office of the Special Prosecutor for Offenses of Violence against Women and Trafficking of the Federal Public Prosecutor's Office ("Office of the Special Prosecutor")<sup>47</sup>

**August 14, 2009:** At the Office of the Special Prosecutor, Ms. Rosendo Cantú provides details about her attackers so that their composite sketches may be prepared.<sup>48</sup>

**October 29, 2009:** The Office of the Special Prosecutor for Offenses of Violence against Women and Trafficking forwards Ms. Rosendo Cantú's case to the Attorney General of Military Justice.<sup>49</sup>

### B. Other Relevant Facts

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42. *Id.* ¶¶ 145, 146.

43. *Id.* ¶ 145.

44. *Id.* ¶ 145.

45. *Id.* ¶ 147.

46. *Id.* ¶ 148.

47. *Id.* ¶ 149.

48. *Id.* ¶ 153.

49. *Id.* ¶ 154.

The state of Guerrero, while famous for its tourist attractions such as Ixtapa and Acapulco, is also Mexico's largest producer of illegal marijuana and opium.<sup>50</sup> With assistance from the U.S., Mexico has concentrated military and police bases throughout Guerrero to combat drug trafficking.<sup>51</sup> Ten or more active rebel groups take shelter in Guerrero's remote mountains, where extreme poverty is commonplace; Barranca Bejuco lacks electricity and running water.<sup>52</sup> Many say that this poverty drives villagers, including those in Barranca Bejuco, to rely on the rebels for protection.<sup>53</sup> There is a long history of violence committed by the Mexican police and military in Barranca Bejuco.<sup>54</sup>

## II. PROCEDURAL HISTORY

### A. *Before the Commission*

**November 10, 2003:** Ms. Rosendo Cantú's representatives file a petition with the Commission on her behalf.<sup>55</sup>

**October 21, 2006:** The Commission adopts Admissibility Report No.93/06.<sup>56</sup>

**March 27, 2009:** The Commission adopts Report on Merits 36/09.<sup>57</sup> The Commission finds that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 11 (Right to Privacy), 19 (Rights of the Child), and 25 (Right to Judicial Protection) in conjunction with Article 1(1) (Obligation to Respect Rights) of the Convention with respect to Ms. Rosendo Cantú.<sup>58</sup> In addition to this, the Commission rules that Mexico violated Article 7 (Duty to Prevent, Punish and Eradicate Violence against Women) of the

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50. Gretchen Peters, *Rebels Gains Ground in Guerrero: Military Abuses in the Mexican State are Driving More Disaffected Poor Toward Rebels for Protection*, CHRISTIAN SCIENCE MONITOR (May 10, 2002), <http://www.csmonitor.com/2002/0510/p07s01-woam.html>.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Rosendo Cantú v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.579, ¶ 11 (Aug. 2, 2009).

56. *Id.* ¶ 12.

57. *Id.* ¶ 17.

58. *Id.*

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem Do Para”) to the detriment of Ms. Rosendo Cantú.<sup>59</sup> Finally, the Commission finds that Mexico violated Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures) and 8 (Obligation to Investigate) of the Inter-American Convention to Prevent and Punish Torture with respect to Ms. Rosendo Cantú.<sup>60</sup>

The Commission also rules that Mexico violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the American Convention in conjunction with Article 1(1) of the Convention with respect to her next of kin.<sup>61</sup>

The Commission recommends that Mexico immediately complete an investigation into Ms. Rosendo Cantú’s case, provide remedies to Ms. Rosendo Cantú and her daughter for their human rights violations, and restrict the scope of the military jurisdiction, among other recommendations.<sup>62</sup>

#### B. Before the Court

**August 2, 2009:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>63</sup>

**October 5, 2009:** The State appoints Alejandro Carlos Espinosa as Judge *ad hoc*.<sup>64</sup>

**February 2, 2010:** The Court issues provisional measures regarding Ms. Rosendo Cantú’s case.<sup>65</sup> The provisional measures are based on a series of facts demonstrating that Ms. Rosendo Cantú and her daughter are in grave danger.<sup>66</sup> On February 13, 2009, Ms. Rosendo Cantú noticed that two people she recognized as military personnel were following her from work to home.<sup>67</sup> Later, on October 12, 2009, she

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* ¶ 18.

63. *Id.* ¶ 22.

64. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216, n.5 (Aug. 31, 2010).

65. Rosendo Cantú v. Mexico, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) (Feb. 2, 2010)

66. *See id.* ¶ 4.

67. *Id.* ¶ 4.

experienced “grave fear” from the fact that a person continuously monitored her the whole day.<sup>68</sup> Two months later, on December 11, 2009, two men tried to abduct her daughter at school and stole her cell phone.<sup>69</sup> Her family reported that they feared for her life because they heard that the military personnel were communicating with other members in the community in order to follow Ms. Rosendo Cantú.<sup>70</sup> Ultimately, Ms. Rosendo Cantú and her daughter had to leave Barranca Bejuco for Chilpancingo.<sup>71</sup>

The Court found that the facts met all three requirements for issuing provisional measures: extreme gravity, urgency, and necessity to avoid irreparable damage to persons.<sup>72</sup> The Court found that Ms. Rosendo Cantú and her daughter were in a situation of extreme gravity and urgency since Ms. Rosendo Cantú had allegedly been sexually assaulted and there was a lack of an investigation, which in turn led to kidnapping attempts and stalking of Ms. Rosendo Cantú.<sup>73</sup> Consequently, the Court ordered the State to submit a report that identifies the threats to Ms. Rosendo Cantú and her daughter and ways to sufficiently protect them.<sup>74</sup>

#### 1. Violations Alleged by Commission<sup>75</sup>

To the detriment of Ms. Rosendo Cantú:

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

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

Article 11 (Right to Privacy)

Article 19 (Rights of the Child)

Article 25 (Right to Judicial Protection)

*all in relation to:*

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

Article 7 (Duty to Prevent, Punish and Eradicate Violence against

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68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* ¶ 10.

73. *Id.* ¶ 12.

74. *Id.* ¶ 13.

75. Rosendo Cantú v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.579, ¶ 218 (Aug. 2, 2009).



Women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belem do Para”).

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Take Effective Measures to Prevent and Punish Torture)

Article 8 (Right to Fair Trial) of the Inter-American Convention to Prevent and Punish Torture.

To the detriment of Yenys Bernardino Rosendo, daughter of Ms. Rosendo Cantú:

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

*all in relation to:*

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

## 2. Violations Alleged by Representatives of the Victims<sup>76</sup>

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

**April 30, 2010:** Three graduate level law students, Miguel Ángel Antemate Mendoza, Julio César Hernández Salmorán, and Carlos Alejandro Martiarena Leonar, of the National Autonomous University of Mexico (*Universidad Autónoma de México*) submit an *amicus curiae* brief to the Court regarding the Guerrero indigenous people’s right to

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76. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 4 (Aug. 31, 2010). Organización del Pueblo Indígena Tlapaneco/Me’phaa (Organization of Tlapaneco/Me’phaa Indigenous People), Centro de Derechos Humanos de la Montaña “Tlachinollan” A.C. (the Center for Human Rights of the Tlachinollan Mountain A.C.), and the Center for Justice and International Law (CEJIL) served as representatives of Ms. Rosendo Cantú and Ms. Yenys Bernardino Rosendo.

access justice, the military criminal jurisdiction among other issues.<sup>77</sup>

**June 1, 2010:** The General Council of Spanish Lawyers (*Consejo General de la Abogacía Española*) and the Foundation of the General Council of Spanish Lawyers submits an *amicus curiae* brief on rape as torture, the military jurisdiction, and the women victims' entitlement to medical treatment.<sup>78</sup>

**June 10, 2010:** The Washington Office on Latin America (*Oficina en Washington para Asuntos Latinoamericanos*) writes to the Court about the militarization of Guerrero and the human rights abuses committed by Mexican soldiers.<sup>79</sup>

**June 11, 2010:** The following organizations and individuals submit *amicus curiae* briefs to the Court: Fundar, Center for Analysis and Investigation (*Fundar, Centro de Análisis e Investigación A.C.*) regarding the indigenous rights recognized by Mexico,<sup>80</sup> Women's Link Worldwide (arguing that rape is a form of torture and explaining the standards of protection for minors victimized by rape),<sup>81</sup> the International Litigation Program of the Committee for Latin America and the Caribbean for the Defense of the Rights of Women (*Programa de Litigio Internacional del Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer*),<sup>82</sup> the University of the Andes Law School Faculty (explaining the significance of the context of the current case),<sup>83</sup> James C. Hopkins, Associate Professor at the University of Arizona (discussing Mexico's obligation to consult with indigenous people when there is military occupation and the State's responsibility to comply with international obligations on that matter).<sup>84</sup>

**June 12, 2010:** Fundar, Center for Analysis and Investigation submits an *amicus curiae* brief on the alleged inexistence of remedies against the rejection of the jurisdiction of ordinary justice in favor or the military justice system.<sup>85</sup>

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77. *Id.* ¶ 9, n.11.

78. *Id.* ¶ 9, n.12.

79. *Id.*

80. *Id.* ¶ 9.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

**June 15, 2010:** Lawyer's Rights Watch Canada submits an *amicus curiae* brief to the Commission about military justice in Mexico and indigenous persons' access to justice.<sup>86</sup>

**June 17, 2010:** The Bar Human Rights Committee and Solicitor's International Human Rights Group submits an *amicus curiae* brief concerning rape as a form of torture and the standards of investigation.<sup>87</sup>

### 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  
Alejandro Carlos Espinosa, Judge *ad hoc*

Pable Saavedra, Secretary  
Emilia Segares Rodriguez, Deputy Secretary

#### B. Decision on the Merits

**August 31, 2010:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.<sup>88</sup>

The Court found unanimously that Mexico had violated:

Article 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment), Article 11(1) (Right to Honor and Dignity), and Article 11(2) (Protection of Honor and Dignity), in relation to Article 1(1) of

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86. *Id.*

87. *Id.*

88. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

the Convention and Article 1 (Obligation to Prevent and Punish Torture), Article 2 (Acts that Constitute Torture), Article 6 (States Must Take Effective Measures to Prevent and Punish Torture) of the Inter-American Convention to Prevent and Punish Torture and Article 7(a) (Duty to Refrain from Any Acts of Violence Against Women and to Ensure that Authorities Conform with this Obligation) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Ms. Rosendo Cantú,<sup>89</sup> because:

*Mexico violated Ms. Rosendo Cantú's rights to personal integrity, private life and personal dignity.<sup>90</sup> Rather than reviewing violations of each provision separately, the Court takes a holistic approach in assessing the human rights infringements against Ms. Rosendo Cantú.<sup>91</sup> The Court first refers to the Convention of Belem do Para, ruling that the State violated the Convention of Belem do Para because rape is a paradigmatic form of violence against women and Ms. Rosendo Cantú experienced precisely this type of violence.<sup>92</sup>*

*The Court then categorized the rape as a type of torture under the Inter-American Convention to Prevent and Punish Torture (Convention to Prevent Torture) and Article 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment) of the Convention.<sup>93</sup> According to the Convention to Prevent and Punish Torture, an act qualifies as torture when it is intentional, causes severe physical or mental suffering and is committed with an objective or purpose.<sup>94</sup> First, the Court found that the rape was intentional because the soldiers deliberately confronted and attacked Ms. Rosendo Cantú during the rape.<sup>95</sup> Second, the Court ruled that Ms. Rosendo Cantú's medical records showing that she experienced pain after the rape and expert witness testimony about Ms. Rosendo Cantú's mental state after the rape prove that she suffered from physical or mental suffering.<sup>96</sup> Finally, the Court found that the rape was done with a purpose, as the soldiers' goal in raping*

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89. *Id.* ¶ 121.

90. *Id.*

91. *Id.* ¶¶ 108, 109.

92. *Id.* ¶¶ 109, 121.

93. *Id.* ¶ 118.

94. *Id.* ¶ 110.

95. *Id.* ¶ 111.

96. *Id.* ¶¶ 112-115.

*Ms. Rosendo Cantú was to punish her for not cooperating.*<sup>97</sup>

*The Court further held that the State violated Ms. Rosendo Cantú's right to private life because this right encompasses the right to sexual life.<sup>98</sup> Due to the sexual violation, Ms. Rosendo Cantú lost autonomy over her right to control her sexual life, which is a very personal and intimate issue.<sup>99</sup>*

Article 5(1) (Right to Physical, Mental and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Ms. Rosendo Cantú,<sup>100</sup> because:

*Ms. Rosendo Cantú met substantial obstacles in her pursuit of justice, including difficulty in filing complaints with the Public Prosecutor and the delayed investigation.<sup>101</sup> The fact that she was unable to prove that the clinics in Caxitepec and Ayutla failed to give her the appropriate care did not affect the outcome of the Court's analysis.<sup>102</sup>*

Article 5(1) (Right to Physical, Mental and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Ms. Yenys Bernardino Rosendo,<sup>103</sup> because:

*The Court has recognized that the right to psychological and moral integrity of a victim's next of kin can be damaged when that victim has suffered severe human rights violations.<sup>104</sup> In this case, Ms. Bernardino Rosendo had to suffer the consequences of her mother's rape at a young age, and due to discrimination against her mother after the rape, Ms. Bernardino Rosendo had to leave her mostly rural community and face the drastic changes of city life, where she felt insecure and vulnerable.<sup>105</sup>*

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention and Article

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97. *Id.* ¶¶ 117-118.

98. *Id.* ¶ 119.

99. *Id.*

100. *Id.* ¶ 131.

101. *Id.* ¶¶ 127-131.

102. *Id.* ¶¶ 131, 132.

103. *Id.* ¶ 139.

104. *Id.* ¶ 137.

105. *Id.* ¶ 138.

7(b) (Duty to Prevent, Investigate, and Punish Violence Against Women) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Ms. Rosendo Cantú,<sup>106</sup> because:

*The State failed to exercise due diligence when investigating Ms. Rosendo Cantú's rape.<sup>107</sup> States have the duty to adopt measures to guarantee the human rights provided in the American Convention.<sup>108</sup> While this obligation is an obligation of means rather than results, States should still promptly initiate a serious, impartial and effective investigation once government officials are aware of an alleged crime.<sup>109</sup> Additionally, Article 8 (Right to a Fair Trial) requires that victims and their next of kin are given an adequate opportunity to participate in the proceedings and seek remedies.<sup>110</sup> Furthermore, the Court notes that the Convention for the Prevention, Punishment and Eradication of Violence against Women imposes additional requirements on top of Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the Convention; Article 7(b) (Duty to Prevent, Investigate, and Punish Violence Against Women) of the Convention for the Prevention of Violence Against Women establishes that States must apply due diligence to prevent violence against women.<sup>111</sup>*

*In criminal investigations of human rights cases, the Court has established several guiding principles, such as obtaining and preserving probative evidence, identifying witnesses and thoroughly examining the crime scene using appropriate measures.<sup>112</sup> Additionally, for cases of rape, the Court noted that the victim's statement must be taken in a safe environment that ensures privacy, the statement must be recorded to limit repetition, the victim must be provided with medical and psychological treatment, a trained medical professional should promptly conduct a complete physical and psychological examination.<sup>113</sup>*

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106. *Id.* "Declares" ¶ 6.

107. *Id.* ¶ 182.

108. *Id.* ¶ 175.

109. *Id.*

110. *Id.* ¶ 176.

111. *Id.* ¶ 177.

112. *Id.* ¶ 178.

113. *Id.*

*The Court ruled that the State did not comply with the duty to exercise due diligence for several reasons.<sup>114</sup> First, while the investigation had been running for three years and ten months, the process contained many errors.<sup>115</sup> Although the State already knew the facts of Ms. Rosendo Cantú's case before she filed a claim, it did not start an investigation or examine her to gather evidence.<sup>116</sup> Furthermore, the State did not provide Ms. Rosendo Cantú with an interpreter, so she had to rely on her husband's interpretation in recounting details of the rape.<sup>117</sup> Moreover, the officials did not make efforts to collect physical evidence, such as the clothes Ms. Rosendo Cantú was wearing on the day of the rape.<sup>118</sup> Also, the State did not provide appropriate medical and psychological treatment to Ms. Rosendo Cantú.<sup>119</sup>*

*Second, the State did not take efforts to avoid re-victimizing Ms. Rosendo Cantú.<sup>120</sup> In rape cases, States must minimize the victim's need to testify, as repeated testimony would lead the victim to relive her traumatic experience.<sup>121</sup> Instead of gathering other probative evidence, the State concentrated on repeatedly summoning Ms. Rosendo Cantú so that she would testify.<sup>122</sup> Moreover, several investigators involved in the case lacked sensitivity and capacity in handling the case, as medical officials failed to follow the minimum standards of immediately gathering evidence in rape cases when examining Ms. Rosendo Cantú.<sup>123</sup>*

*Specifically with regards to Article 1(1) (Obligation of Non-Discrimination), the Court ruled that the State violated the principles of nondiscrimination enshrined in that article.<sup>124</sup> Article 1(1) requires States to offer effective protection to indigenous communities that considers the special vulnerabilities, traditions and customary laws.<sup>125</sup> In the present case, the State did not provide Ms. Rosendo Cantú with a translator when she received medical care or preparing her*

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114. *See id.* ¶ 179.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* ¶ 180.

121. *Id.*

122. *Id.*

123. *Id.* ¶ 181.

124. *Id.* ¶ 185.

125. *Id.* ¶ 184.

complaint.<sup>126</sup> She also did not receive information about upcoming legal procedures in her language and had to rely on her husband.<sup>127</sup>

The Court found that the State violated Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) because the State investigated Ms. Rosendo Cantú in the military justice system, which lacked jurisdiction over her case.<sup>128</sup> The military justice system has jurisdiction only over cases of military discipline or mission and has no jurisdiction over cases of civilian human rights violations.<sup>129</sup> In the present case, Ms. Rosendo Cantú had been raped and suffered a human rights violation, which is an offense that exceeds the jurisdiction of a military court.<sup>130</sup>

The State did not provide an effective remedy for Ms. Rosendo Cantú.<sup>131</sup> Simply providing remedies to victims of human rights is not sufficient to comply with Article 25(1) (Right of Recourse Before a Competent Court).<sup>132</sup> States must ensure that those remedies are effective and that they guarantee due process.<sup>133</sup> Furthermore, victims must be able to effectively contest jurisdiction.<sup>134</sup> Ms. Rosendo Cantú petitioned against having her case decided in the military justice system, but her petitions were denied because it was found that the military court has jurisdiction over her case because soldiers were involved.<sup>135</sup>

Article 19 (Rights of the Child) of the Convention, in relation to Article 1(1) to the detriment of Ms. Rosendo Cantú,<sup>136</sup> because:

The State did not provide Ms. Rosendo Cantú special measures that consider her young age at the time of the rape.<sup>137</sup> States must be keen to a child victim's particular vulnerability and should implement special measures, such as guaranteeing that the child always has legal and other assistance, and training personnel to ensure that interview rooms

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126. *Id.* ¶ 185.

127. *Id.*

128. *Id.* ¶ 160.

129. *Id.* ¶¶ 160, 161.

130. *Id.*

131. *See id.* ¶ 166.

132. *Id.*

133. *Id.*

134. *Id.* ¶ 167.

135. *Id.*

136. *Id.* "Declares" ¶ 8.

137. *Id.* ¶ 201.



are not intimidating to children.<sup>138</sup> States must devote even more attention when the child comes from an indigenous community, because the communities' poverty generally make them more vulnerable.<sup>139</sup> The Court found that Mexico did not provide any such special measures for Ms. Rosendo Cantú, who was a child when the rape occurred.<sup>140</sup>

The Court unanimously held that Mexico is not responsible for the non-compliance of Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Take Effective Measures to Prevent and Punish Torture), and Article 8 (Obligation to Investigate) of the American Convention to Prevent and Punish Torture,<sup>141</sup> because:

*Mexico has codified rape as a type of crime in its Criminal Code.<sup>142</sup> The victim's representatives argued that the State authorities did not investigate rape as a type of torture and therefore violated the American Convention to Prevent and Punish Torture.<sup>143</sup> Article 1 (Obligation to Prevent and Punish Torture) requires States to generally prevent and punish torture, Article 6 (Take Effective Measures to Prevent and Punish Torture) requires States to establish torture as a criminal offense under domestic law, and Article 8 (Obligation to Investigate) mandate States to impose heavy penalties on those who inflict torture on others.<sup>144</sup> In the present case, Mexico codifies rape as a severe criminal offense and heavily punishes rapists.<sup>145</sup> While Mexico does not define rape as torture, its approach to rape is consistent with the requirements in the American Convention to Prevent and Punish Torture.<sup>146</sup> Therefore, there is no additional ruling required on this subject.<sup>147</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Rhadys Abreu Blondet

In a separate opinion, Judge Abreu Blondet writes to discuss

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138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* "Declares" ¶ 7.

142. *Id.* ¶ 186.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

Mexico's withdrawal of its preliminary objection and several reparation measures that the Court denied in the present case.<sup>148</sup>

First, in regard to the preliminary objection, Judge Abreu Blondet notes that Mexico filed its preliminary objection after the Court decided the "Cotton Fields" case, in which the Court ruled that it has compulsory jurisdiction over the Convention of Belém do Para.<sup>149</sup> The Court's resolution on its compulsory jurisdiction on the matter is firm and extremely difficult to change.<sup>150</sup> That Mexico filed a preliminary objection on the Court's jurisdiction only to voluntarily withdraw it later shows its resistance and dissatisfaction over the Court's resolution.<sup>151</sup>

Second, Judge Abreu Blondet writes that the Court could have provided several of the remedies it denied to the victims of this case, specifically, designing a policy that guarantees indigenous women's access to justice, creating multidisciplinary health services for victims of rape and devising participatory programs that would integrate victims of rape with the larger community.<sup>152</sup> If the Court can determine that a State had violated the Convention, the Court can also determine appropriate measures, even if the parties did not propose them.<sup>153</sup>

## 2. Concurring Opinion of Judge *ad hoc* Alejandro Carlos Espinosa

In a separate opinion, Judge Espinosa writes to argue for a broader harmonization of Mexico's military justice code with the American Convention than ordered by the Court.<sup>154</sup> While the Court had ordered Mexico to revise only Article 57, section II, subsection (a) of the State's Military Justice Code, Judge Espinosa writes that the revision should be expanded to cover subsections (b) through (e) of the same section.<sup>155</sup>

## IV. REPARATIONS

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148. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Rhadys Abreu Blondet, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶¶ 2, 3 (Aug. 31, 2010).

149. *Id.* ¶ 3.

150. *Id.* ¶ 4.

151. *Id.* ¶ 3.

152. *Id.* ¶ 5.

153. *Id.* ¶¶ 8-11.

154. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of *Ad Hoc* Judge Alejandro Carlos Espinosa, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 3 (Aug. 31, 2010).

155. *Id.*

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

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

1. Investigate and Identify, Prosecute and Punish Those Responsible

The Court ordered the State to conduct an efficient criminal investigation of Ms. Rosendo Cantú's case and to ensure that she participates in all stages of the proceeding.<sup>156</sup> Specifically, the Court ordered the State to carry out all investigations regarding Ms. Rosendo Cantú's case in an ordinary jurisdiction and not a military jurisdiction.<sup>157</sup> Furthermore, the Court ordered the provisional measures to remain in force.<sup>158</sup>

2. Adapt Domestic Law to International Standards

The Court ordered the State to change its legal standards regarding the subject matter jurisdiction of military courts to comply with the American Convention.<sup>159</sup> The Court also noted that Ms Rosendo Cantú could not effectively petition against the decision to let the military jurisdiction govern her case and ordered the State to provide effective remedies to people who wish to contest military jurisdiction.<sup>160</sup>

3. Publically Acknowledge Responsibility

The Court ordered the State to publicly acknowledge international responsibility regarding the facts of the case, making reference to the human rights violations considered in this judgment.<sup>161</sup> The State must make the announcements in both Spanish and the Me'paa languages and the audience should include high-ranking officials of both the national and regional level (Guerrero), the victims of the case and the victims'

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156. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

157. *Id.* ¶ 212.

158. *Id.* ¶ 215.

159. *Id.* ¶ 220.

160. *Id.* ¶ 223.

161. *Id.* ¶ 226.

community members.<sup>162</sup>

#### 4. Publish the Judgment

The Court ordered the State to broadcast relevant parts of the judgment on a radio channel that has coverage in the victim's community and to publish parts of the judgment in a national newspaper, the Official Gazette of the Federation, and the National Secretary of Defense website.<sup>163</sup> The broadcast and the publication should be carried out in both Spanish and the Me'paa languages.<sup>164</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary Damages

The Court ordered the State to pay \$5,500 to Ms. Rosendo Cantú for her lost income.<sup>165</sup>

##### 2. Non-Pecuniary Damages

The Court ordered the State to pay Ms. Rosendo Cantú \$60,000 for the serious human rights violations she suffered during the rape, for the inability to bring justice to her case, and for the changed living conditions she had to endure as a result of her rape.<sup>166</sup>

The Court ordered the State to pay \$10,000 to Ms. Bernardino Rosendo the negative effects of Ms. Rosendo Cantú's rape.<sup>167</sup>

##### 3. Costs and Expenses

The Court ordered the State to pay \$14,000 to CEJIL, \$10,000 to Tlachinollan and \$1,000 to Ms. Rosendo Cantú.<sup>168</sup>

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162. *Id.*

163. *Id.* ¶ 228.

164. *Id.* ¶ 229.

165. *Id.* ¶ 274.

166. *Id.* ¶ 279.

167. *Id.*

168. *Id.* ¶ 286.

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

\$100,500

*C. Deadlines*

The Court ordered the State to carry out the investigation and prosecute those responsible within a reasonable time.<sup>169</sup> The Court also ordered the State to adapt domestic laws that follow the international standards of justice within a reasonable time.<sup>170</sup> The Court gave the State a year to publically acknowledge responsibility and a year to publish portions of the Judgment.<sup>171</sup> The Court also ordered the State to pay the pecuniary and non-pecuniary damages to the victims within one year of the notification of the judgment.<sup>172</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**December 29, 2010:** Four months after the Court issued its judgment, the State submitted a request for interpretation.<sup>173</sup> The State requested that the Court clarify whether its determination on the soldier's participation in Ms. Rosendo Cantú's case qualifies as prejudgment on their responsibility.<sup>174</sup> Furthermore, the State asked the Court to determine whether its judgment on the military jurisdiction's involvement in Ms. Rosendo Cantú's case constitutes prejudgment.<sup>175</sup>

**February 11, 2011:** After receiving a request to respond to the State's petition for clarification, the Commission replied that the State had ample opportunity to litigate the issues and there was no reason to reopen the case.<sup>176</sup> Similarly, on the same date, Ms. Rosendo Cantú's representatives argued that the State was merely attempting to change the results of the case and that there was no aspect in the judgment that

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169. *Id.* ¶ 211.

170. *Id.* ¶ 223.

171. *Id.* ¶¶ 226, 229.

172. *Id.* ¶ 287.

173. *Id.* ¶ 2.

174. *Id.*

175. *Id.*

176. *Id.*

required clarification.<sup>177</sup>

**May 15, 2011:** The Court issued its Interpretation of Judgment on Preliminary Objection, Merits, Reparation and Costs.<sup>178</sup>

After ruling that the State made a timely request for interpretation, the Court proceeded to clarify the meaning of its judgment.<sup>179</sup> The Court emphasized that the interpretation will not involve any contests to the Court's judgments and orders.<sup>180</sup> Further, the Court mentioned that the interpretation could not address any factual and legal issues determined in the Judgment.<sup>181</sup>

The State requested interpretation on several points.<sup>182</sup> First, the State argued that the Court was not competent to decide on the criminal responsibility of the soldiers involved in Ms. Rosendo Cantú's rape because the domestic investigation was still ongoing.<sup>183</sup> Second, the State pointed out case law in which the Court specifically ruled that it would not make judgments on individual criminal responsibility.<sup>184</sup> Third, the State emphasized that it will determine the criminal responsibility of the soldiers in its ordinary domestic court.<sup>185</sup> Fourth, the State argued that the Court's finding that the soldiers committed the rape did not follow the appropriate procedures for determining military personnel responsibility as prescribed in the American Convention and the Mexican Constitution.<sup>186</sup> Fifth, the State requested that the Court clarify the meaning of the scope of paragraphs 104, 106 and 161 of the Judgment.<sup>187</sup> Finally, the State expressed concern that the Court did not follow the presumption of innocence before proven guilty.<sup>188</sup>

The Court summarized the State's arguments into two main points: whether the Court is competent to determine individual criminal responsibility and whether the Court violated the principle of presumed innocence.<sup>189</sup>

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177. *Id.* ¶ 5.

178. Rosendo Cantú v. Mexico, Interpretation of Judgment on Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (May 15, 2011).

179. *See id.* ¶¶ 8-11.

180. *Id.*

181. *Id.* ¶ 12.

182. *Id.* ¶¶ 15-20.

183. *Id.* ¶¶ 15, 16

184. *Id.* ¶ 16.

185. *Id.* ¶ 17.

186. *Id.* ¶ 18.

187. *Id.* ¶ 19.

188. *Id.* ¶ 20.

189. *Id.* ¶ 25.

The Court summarized its ruling finding Mexico internationally responsible for Ms. Rosendo Cantú's case and how it reached that ruling.<sup>190</sup> Then, the Court pointed out that the State mostly did not refer to specific operative paragraphs of the judgment, which is required for interpretation of judgment requests.<sup>191</sup> While the State does request clarification of operative paragraph 10, which orders the State to conduct timely and efficient investigation under ordinary jurisdiction, the Court explained that the meaning of the paragraph is clear.<sup>192</sup> Furthermore, the State exhibited its correct understanding of the operative paragraph when it referred to it in the request for interpretation.<sup>193</sup> The Court also observed that the State is trying to contest the legal and factual conclusions that were already determined in the Judgment, which is unacceptable.<sup>194</sup>

Even assuming that the State's request for interpretation was proper, the Court still found that the State's argument that the Court determined the individual criminal responsibilities had no basis.<sup>195</sup> While the Court did determine the international responsibility of Mexico, it left it to the Mexican domestic courts to determine the individual responsibilities of each soldier involved in Ms. Rosendo Cantú's case.<sup>196</sup> As such, the Court found that Mexico's contention that the Court violated the principle of presumption of innocence baseless; the presumption of innocence principle pertains only to individual actors, but the Court only identified the international responsibility of the State.<sup>197</sup>

Finally, regarding the State's request to clarify the meaning of the military judgment's non-involvement in domestically adjudicating Ms. Rosendo Cantú's case, the Court emphasized that the meaning of the judgment is clear.<sup>198</sup>

As such, the Court rejected the State's request to interpret the judgment.<sup>199</sup>

## VI. COMPLIANCE AND FOLLOW-UP

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190. *Id.* ¶¶ 27, 28.

191. *Id.* ¶ 29.

192. *Id.* ¶ 30.

193. *Id.*

194. *Id.* ¶ 31.

195. *Id.* ¶ 32.

196. *Id.*

197. *Id.* ¶ 34.

198. *Id.* ¶ 36.

199. *Id.* "Decides" ¶ 1.

**November 25, 2010:** The Court issued a monitoring compliance judgment.<sup>200</sup> The Court ruled that Ms. Rosendo Cantú gave express consent for the State to broadcast its international responsibility about her case on a radio station that has coverage in Guerrero.<sup>201</sup> The Court determined, however, that Ms. Rosendo Cantú did not consent to publish parts of the Court's judgment on a national newspaper, a widely circulated newspaper in Guerrero and publish the entire Judgment in a federal State website and Guerrero State website.<sup>202</sup> Therefore, the Court completed monitoring compliance of this order.<sup>203</sup> The Court ordered the State to continue complying with all pending orders from its Judgment.<sup>204</sup> The Court required the State to submit a bi-weekly report about the implementation and effects of the measures.<sup>205</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

[Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 216 \(Aug. 31, 2010\).](#)

[Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Rhadys Abreu Blondet, Inter-Am. Ct. H.R. \(ser. C\) No. 216 \(Aug. 31, 2010\).](#)

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200. Rosendo Cantú v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 25, 2010).

201. *Id.* "Decides" ¶ 1.

202. *Id.* "Decides" ¶ 2.

203. *Id.* "And Resolves" ¶ 2.

204. *Id.* "Decides" ¶¶ 1-3.

205. *Id.* "Decides" ¶ 2.



[Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Ad Hoc Judge Alejandro Carlos Espinosa, Inter-Am. Ct. H.R. \(ser. C\) No. 216 \(Aug. 31, 2010\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Rosendo Cantú v. Mexico, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 25, 2010\).](#)

5. Review and Interpretation of Judgment

[Rosendo Cantú v. Mexico, Interpretation of Judgment on Preliminary Objections, Merits, Reparations and Costs, Order of the Court, Inter-Am. Ct. H.R. \(May 15, 2011\).](#)

*B. Inter-American Commission*

1. Petition to the Commission

[None]

2. Report on Admissibility

[Rosendo Cantú v. Mexico, Admissibility Report, Inter-Am. Comm'n H.R., Case No. 12.579 \(Oct. 21, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[Rosendo Cantú v. Mexico, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.579 \(Aug. 2, 2009\).](#)

#### VIII. BIBLIOGRAPHY

Gretchen Peters, *Rebels Gains Ground in Guerrero: Military Abuses in the Mexican State are Driving More Disaffected Poor Toward Rebels for Protection*, CHRISTIAN SCIENCE MONITOR (May 10, 2002), <http://www.csmonitor.com/2002/0510/p07s01-woam.html>.