

**ORDER OF THE**

**INTER-AMERICAN COURT OF HUMAN RIGHTS\***

**OF AUGUST 21, 2013**

**CASE OF CABRERA GARCÍA AND MONTIEL FLORES v. MEXICO**

**MONITORING OF COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "this Court") on November 26, 2010. In the foregoing Judgment, it was established that Messrs. Cabrera García and Montiel Flores were arrested by an Infantry Battalion of the Mexican Army in the State of Guerrero and subject to cruel, inhumane, and degrading treatment. As such, the Court declared that the United Mexican States (hereinafter the "State," the "State of Mexico," or "Mexico") was responsible for the violation, to the detriment of Messrs. Cabrera García and Montiel Flores, of their rights to personal liberty, humane treatment [personal integrity], fair trial, and the obligation to investigate acts of torture recognized in Articles 5(1), 5(2), 7(3), 7(4), 7(5), and 8(3) of American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1(1) of the foregoing treaty. Likewise, the Court considered that the State violated the right to a fair trial [judicial guarantees] and the right to judicial protection enshrined in Articles 8(1) and 25(1), respectively, in relation to Articles 1(1) and 2 of the Convention. Moreover, it declared the responsibility of the State for the violation of the obligation contained in Article 2, in relation to Articles 8 and 25 of the Convention, by extending the jurisdiction of the military courts to crimes that are not strictly related to the military discipline or to military legal interests. In conjunction, the Court found that the State violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores.

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\* Judge Eduardo Ferrer Mac-Gregor Poisot, of Mexican nationality, did not participate in the hearing or deliberation of this Order, pursuant to that provided in Article 19(2) of the Statute of the Court and 19(1) of the Rules of Procedure of the Court.

2. The reparations ordered in the Judgment were:
  12. The State shall, within a reasonable period, conduct an effective criminal investigation into the facts of this case, particularly into the alleged acts of torture committed against Messrs. Cabrera and Montiel, to determine the corresponding criminal liabilities and, if applicable, effectively apply the penalties and consequences established by law; also, it shall impose the appropriate disciplinary, administrative or criminal measures if the investigation into the aforementioned facts reveals procedural or investigative irregularities in relation thereto, according to [...] this Judgment.
  13. The State shall, within the term of six months, issue the publications ordered, under the terms of [...] this Judgment.
  14. The State shall pay each of the victims once only, within a term of two months, the amount specified in [...] this Judgment, to cover specialized medical and psychological treatment, as well as for medicines and other related expenses.
  15. The State shall introduce, within a reasonable time, the appropriate legislative reforms in order to bring Article 57 of the Code of Military Justice into line with international standards on the matter and with the American Convention on Human Rights, and adopt the pertinent legislative reforms so that individuals subject to intervention by the military courts have an effective remedy to challenge their jurisdiction, under the terms of [...] this Judgment.
  16. The State shall adopt, within a reasonable period of time and within the framework of existing register of detainees in Mexico, appropriate supplementary measures in order to reinforce the operation and usefulness of said system, according to the terms of [...] this Judgment.
  17. The State shall continue to implement training programs and permanent courses for the diligent investigation of cases of cruel, inhuman or degrading treatment and torture, as well as to strengthen the State's institutional capabilities by means of training programs for the Mexican Armed Forces on the principles and rules governing the protection of human rights, including the restrictions to which they are subject, according to [...] this Judgment.
  18. The State shall pay the amounts specified in [...] this Judgment, as compensation for pecuniary and non-pecuniary damages and reimbursement of legal costs and expenses, where applicable, within the term of one year, under the terms of paragraphs 260 to 261.
3. The reports of December 21, 2011 and December 20, 2012, in which the State referred to its compliance with the Judgment.
4. The briefs of March 16, 2012 and February 13, 2013, in which the representatives of the victims (hereinafter "the representatives") presented observations on the aforementioned State's reports.
5. The briefs of May 2, 2012 and May 30, 2013, through which the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted observations on the information provided by the State and the representatives.

## CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. In conformity with the provisions of Article 67 of the American Convention, the State must promptly comply with the judgments of the Court in their entirety. Moreover, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the States must ensure the implementation at the domestic level of the Court’s decisions in its judgments.<sup>1</sup> The foregoing obligation includes the duty of the State to report to the Court on the measures adopted to comply with the rulings of the Court. The prompt implementation of the State’s obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.<sup>2</sup>

3. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of international responsibility of the State, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its domestic law as justification for its failure to comply with its already established international responsibility.<sup>3</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>4</sup>

4. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>5</sup>

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<sup>1</sup> Cf. *Case of Baena Ricardo et al. V. Panamá*. Jurisdiction. Judgment of November 28, 2003. Series C No. 104, paras. 60 and 131, and *Case of Abrill Alosilla et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 3.

<sup>2</sup> Cf. *Case of Five Pensioners V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause 5, and *Case of Abrill Alosilla et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 6.

<sup>3</sup> Cf. International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Abrill Alosilla et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 4.

<sup>4</sup> Cf. *Case of Castillo Petruzzi et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause 3, and *Case of Abrill Alosilla et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 4.

<sup>5</sup> Cf. *Case of Ivcher Bronstein V. Perú*. Jurisdiction. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Abrill Alosilla et al. V. Perú*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 5.

5. As a preliminary issue, the Court observes that on July 14, 2011, the Supreme Court of Justice of the Nation (hereinafter “the Supreme Court of Justice” or “the SCJN”) issued a “Ruling of the Court in Plenary” in the case file “Various matters 912/2010<sup>6</sup>,” in which it described the specific obligations of the Mexican State and, in particular, of the Judiciary of the Federation, as a result of the issuance of the November 23, 2009 Judgment in the case of *Radilla Pacheco v. Mexico*, preliminary objections, merits, reparations and costs. In this judgment, the Supreme Court of Justice stated that the Judiciary was obligated to exercise, *ex officio*, control of conformity between domestic laws and the American Convention and that, to this end, it must take into account Article 1 of the Mexican Constitution, which, following the reform of July 10, 2011, establishes that “[l]aws relating to human rights shall be interpreted in accordance with [the] Constitution and with the international treaties on this matter, at all times giving preference to the greatest protection for the individual.” The aforementioned ruling further indicated that the decisions of the Inter-American Court with respect to Mexico and, in particular, the Judgment handed down in the case of *Radilla Pacheco v. Mexico*, referred to above, “are obligatory for all the organs [of the State] within their respective terms of reference [...]. Therefore, not only the specific operative paragraphs of the Judgment, but also all the criteria contained in the Judgment deciding this litigation are binding for the Judiciary. Furthermore, it shall be considered that the rest of the case law of the Inter-American Court, arising from the judgments in which the Mexican State is not a party, provides guiding criteria for all the decisions of the Mexican judges, provided that these are the most favorable for the individual [...].”<sup>7</sup> In addition, pursuant to this ruling, the Supreme Court of Justice also established that “the military justice system may not, under any circumstance, be used in situations that violate human rights of civilians,” because the latter have the right to “be subject to the jurisdiction of an ordinary court or tribunal.”<sup>8</sup>

6. The Inter-American Court highlights that this Agreement of the Supreme Court of Justice of the Nation, issued in connection to the case of *Radilla Pacheco*, and which impacts the proper implementation of the decision in the case of *Cabrera García and Montiel Flores* regarding the limits of military jurisdiction, constitutes an important step forward in regards to the protection of human rights, not only within the framework of this case, but in all domestic spheres of the Mexican State. Consequently, this Court appreciates the considerations made by the highest court of the State, which are extremely significant for the enhancement of human rights in the region.

**A. *Obligation to conduct an effective criminal investigation into the facts of this case, particularly into the alleged acts of torture committed against Messrs. Cabrera and Montiel, to determine the corresponding criminal liabilities and, if applicable, effectively apply the penalties and consequences established by law; also, to impose the appropriate disciplinary, administrative or criminal measures if the investigation into the***

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<sup>6</sup> In the private hearing held with Ministers on September 20, 2011, the bolded font of the file “Various 912/2010” was approved unanimously by 11 votes. Available at: [http://fueromilitar.scjn.gob.mx/Resoluciones/Varios\\_912\\_2010.pdf](http://fueromilitar.scjn.gob.mx/Resoluciones/Varios_912_2010.pdf).

<sup>7</sup> Cf. Agreement of the full court of the Supreme Court of Justice of the Nation on July 14, 2011, Case file *Varios 912/2010*. Published in the Official Gazette of the Federation on October 4, 2011.

<sup>8</sup> Cf. Agreement of the full court of the Supreme Court of Justice of the Nation on July 14, 2011, Case file *Varios 912/2010*. Published in the Official Gazette of the Federation on October 4, 2011.

***aforementioned facts reveals procedural or investigative irregularities in relation thereto (twelfth operative paragraph of the Judgment)***

7. The State indicated that “on July 15, 2011, the Office of the Prosecutor General of the Republic, by instruction of the *Unidad Especializada en la Investigación de Delitos contra el Ambiente y Previstos en Leyes Especiales* [Specialized Investigative Unit into Crimes Against the Environment and those Provided for in Special Laws] [(hereinafter UEIDAPLE)], initiated preliminary inquiry number 173/UEIDAPLE/LE/12/2011, in which [...] offenses under the Federal Act to Prevent and Punish Torture, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores, are being investigated.” It reported that “the inquiry is currently underway” and that, in the course of the investigation, “the integration of certified copies was ordered of the complaint records on the present case composed by the National Commission on Human Rights, and of Criminal Case 61/99 of the Fifth District Court in Criminal Matters of the state of Guerrero, related to the proceedings brought against Messrs. Teodoro Cabrera and Rodolfo Montiel for crimes against health and possession of firearms.”

8. Moreover, the State noted that “[o]n March 7, 2012, the UEIDAPLE obtained an expert opinion on the subject of the methods of injury [...] to Messrs. Cabrera García and Montiel Flores[, which is] the basis for the practice of the Specialized Medical Psychological Evaluation for Possible Cases of Torture and/or Ill-treatment (Istanbul Protocol).” It added that on “October 24, 2012, the UEIDAPLE sought to amplify the expert opinion [...] of the methods of injury from the following documentation submitted by the [Inter-American] Court”: i) “[e]xpert opinion issued by Ana C. Deutsh, expert in Clinical Psychology with experience in evaluating victims of torture”; ii) [e]xpert opinion issued by José Quiroga, co-founder and [m]edical [d]irector of the Rehabilitation Program for Victims of Torture in Los Angeles, California”; iii) “the documentary produced by Dr. José Eric Muñiz Torres”; and, iv) expert opinion of [D]r. Juana Ma. Del Carmen Gutiérrez Hernández.” On another note, the State reported that “on November 23, 2012, a meeting was held [...] where] the representatives agreed to communicate the dates on which it would be possible to perform [the evaluation in accordance with the Istanbul Protocol], tentatively proposing the month of January, 2013 for Mr. Teodoro Cabrera García, and February of 2013 in the case Mr. Rodolfo Montiel Flores.”

9. The representatives indicated that, in regards to the twelfth operative paragraph of the Judgment, the State had limited itself to “i) [i]nitiating the preliminary inquiry 173/UIEDAPLE/LE/12/2011[,] and ii) [a]dding to the record of proceedings [...] documents contained in other files previously started [...] such [...] as: the records of preliminary inquiries opened and subsequently archived by the Prosecutor General for Military Justice [...], the complaint file of the National Commission on Human Rights, and the criminal proceedings brought against the victims based on false accusations of criminal charges by members of the military.” They added that, “in meetings with various competent authorities of the [Office of the Prosecutor General of the Republic], [they] have proposed that the inquiry move forward by performing other measures, such as, for example, taking statements from the alleged suspects identified by their full name by Rodolfo Montiel Flores, as well as taking steps to identify other members of the military who were allegedly present or involved in the different moments of torture.”

10. In this regard, the representatives stated that, indeed “on March 7, 2012, an expert report was produced regarding the ‘methods of injury,’ [but that] the victims and their representatives had not been given access to [this] report,” and that they understood that this report “consisted of reviewing documents already in existence to get an idea of the physical traces previously reported or detected; in other words, it does not represent a new test or evaluation, but rather a study or summary of the documents that were already in the case file.” Furthermore, the representatives argued that “[t]he delay in performing the investigation [on the part of the State] has [been due] to the insistence of the authorities in conducting a medical-psychological evaluation[,] even though both victims had provided new detailed statements to the [Office of the Prosecutor General of the Republic] to facilitate the investigation and identification of the parties responsible, and even when numerous examinations and medical evidence of torture already exist, the authorities of the [Office of the Prosecutor General of the Republic] maintained the position that, before anything else, it was necessary to perform a medical-psychological evaluation in accordance with the Istanbul Protocol for each of the victims.” Referring to the evaluation in accordance with the Istanbul Protocol, the representatives added that “with respect to Mr. Teodoro Cabrera, [it was completed] during the week of January 14 to 18 of 2013 [...] [and, with respect to Mr. Rodolfo Montiel], it [was] schedule[d] for the week of February 18 to 21 of [2013].”

11. Furthermore, regarding the inclusion of the affidavit of the expert Juana Ma. Del Carmen Gutiérrez Hernandez in the record of the proceedings, the representatives argued that “this document does not represent a medical examination of the victims, but rather [...] a biased summary of medical records [...] that were in the file, which failed to analyze certain other tests that detected traces of torture[. In light of this, they considered that] such document is not a valid source for the investigation of torture.” Lastly, the representatives requested that the Court declare that “the State has not yet complied with the orders in the twelfth operative paragraph of the [J]udgment” and that it “urge the State of Mexico to take concrete action to comply in full and as soon as possible with the obligation to investigate the acts of torture reported by Messrs. Cabrera and Montiel.”

12. The Commission positively acknowledged “the opening of the preliminary inquiry of the ordinary courts. However, [it noted] that no significant progress has been made.” Moreover, it considered that in “relation [t]o the transfer of documents from other case files to the investigation of acts of torture, [...] the only evidence from such files that should be included and assessed in the new inquiry should be that which contributes to the investigation into acts of torture.” In this regard, the Commission expressed its concern over “the lack of substantial progress in the inquiry in the more than one year since the [first] report of the State.” In addition, the Commission noted that “it hopes that [...] the State will provide information regarding the progress of what it has reported so far, as well as sufficient information on the strategy it is following in the inquiry and the timeline in which it expects to achieve concrete advances.” As a final point, the Commission noted that, “the State failed to indicate whether the pending investigation has looked into the procedural irregularities that occurred during the course of the proceedings.”

### *Considerations of the Court*

13. The Court recalls that in the Judgment in this case, it was decided that<sup>9</sup>: i) it was necessary that the abovementioned facts are effectively investigated by ordinary forums and jurisdiction in a proceeding conducted against the alleged perpetrators of the offenses committed personal integrity; ii) the State shall effectively carry out the criminal investigation into the facts of this case, especially into the allegations of torture against Messrs. Cabrera and Montiel, in order to determine the corresponding criminal responsibilities and, if it were the case, effectively apply the punishments and consequences established by law; iii) this obligation shall be complied with within a reasonable period of time, which includes due diligence in the investigation into the different hypotheses of the reasons that would have given rise to the attacks against personal integrity against Messrs. Cabrera and Montiel; iv) it is important that the standards set forth in the Istanbul Protocol are used in order to strengthen the due diligence, suitability and effectiveness of the respective investigation; and v) in the event procedural and investigative irregularities related to the facts are proven while under investigation, it will be appropriate to adopt the pertinent disciplinary, administrative or criminal actions.

14. In view of the information provided by the State, the Court appreciates the efforts carried out by the State in the context of the preliminary investigation conducted by the Office of the Prosecutor General. Furthermore, the Court highlights the diligences carried out by the State to comply with the Istanbul Protocol by requiring, in accordance with the latter, a medical-psychological evaluation of the victims in order to determine whether or not they suffered torture. Nevertheless, as indicated by the information offered by the parties, this Court finds that in the more than two years since the preliminary investigation began, there has been few judicial proceedings aimed at determining the alleged perpetrators of the facts of this case.

15. Taking into account the foregoing, the Court emphasizes that approximately 13 years have elapsed since Messrs. Cabrera García and Montiel Flores were arrested and subjected to cruel, inhumane, and degrading treatment. Therefore, it urges the State to complete, within a reasonable period of time, the pending diligences in the preliminary investigation. In this sense, the Court reiterates that the passing of time holds a direct proportional relationship with the limitation –and in some cases, the impossibility- to obtain the evidence and/or testimonies, making the execution of evidentiary diligences with the objective of clarifying the facts of the investigation, the identification of the possible perpetrators and participants, and the determination of the possible criminal responsibilities difficult or even null or ineffective. Without detriment to the foregoing, the national authorities are not exempt from making all efforts necessary in complying with their obligation to investigate.<sup>10</sup>

16. Moreover, the Court holds that the State did not provide information regarding the decision that “in the event procedural and investigative irregularities related to the facts are proven while under investigation, it will be appropriate to adopt the pertinent

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<sup>9</sup> Cf. *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 215.

<sup>10</sup> Cf. *Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 150, and *Case of Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 215.

disciplinary, administrative or criminal actions." Thus, the Court does not have evidence to assess the progress towards compliance with this point.

17. Finally, in view of all the foregoing, the Court requests the State to submit information that is current and as complete as possible with respect to the progress in the implementation of this measure of reparation.

**B. Obligation to, within the term of six months, issue the publications ordered (thirteenth operative paragraph)**

18. The State indicated that:

- a) "[o]n June 7, 2011, the 'Agreement by which the publication was ordere[d] of the [J]udgment rendered on November 26, 2010 by the [Court] in the case of [...] *Cabrera García and Montiel Flores v. Mexico*' was published in the Official Gazette of the Federation";
- b) "[o]n June 7, 2011, the official summary of the Judgment was published in the newspaper '*El Universal*,' and on June 24 of that same year, it was also published in the widely-circulated state newspaper, '*El Sur Periódico de Guerrero*'";
- c) "[t]he [J]udgment, in its entirety, was published on June 7, 2011 on the website of the Ministry of the Interior. For its part, on June 24, 2011, the government of the state of Guerrero published the [J]udgment on its official website";
- d) "[o]n June 16, 2011, the publication of the [J]udgment was transmitted via the broadcaster, '*XEZV, La voz de la Montana*,' with coverage in Tlapa, Guerrero. Similarly, on July 1 and 7 of 2011, respectively, the summary of the [J]udgment aired via radio broadcast on '*Radio Coral*,' covering Petatlan, and on '*Soy Guerrero*,' located in Coyuca de Catalán, Guerrero"; and
- e) "[o]n August of 2011, the Supreme Court of Justice of the Nation published the [J]udgment in Volume XXXIV of the *Semanario Judicial de la Federación* [Judiciary Weekly Magazine] and in its Gazette."

19. Based on the foregoing, the State "consider[ed] that it ha[d] complied with this requirement and request[ed] [the Court] to rule in this respect."

20. The representatives indicated that, regarding the publication of the Judgment, "despite several delays in meeting the six-month deadline, [the Judgment] has been published in all the indicated mediums. Therefore, they request[ed] that the [Court] declare that this operative paragraph has been complied with." It is important to point out that, in regard to the web publication of the Judgment, the representatives noted that "the content was uploaded on April 30, 2012," and not on June 24, 2011 as indicated by the State in its second report dated December 20, 2012.

21. The Commission "consider[ed] it important that the State submit copies of the publications in the *Semanario Judicial de la Federación* [Judiciary Weekly Magazine] and the Gazette." In addition, the Commission stated that "it hopes that, along with the information on the publications, the State provide information regarding the availability of [the] link [to the electronic address] for a period of one year."



## *Considerations of the Court*

22. In the Judgment, the Court ordered the State to: i) publish the official summary of the Judgment issued by the Court in a newspaper with wide national circulation and in a newspaper of a large circulation in the state of Guerrero; ii) fully publish this Judgment in the official web site of the Federal State and of the state of Guerrero, taking into account the characteristics of the publication ordered, which shall remain available for, at least, one year; and iii) broadcast the official summary, at least once, on a radio station to which the members of the municipalities of Petatlán and Coyuca de Catalán have access. Said publications and radio broadcast shall be made within six months following notice of this Judgment.

23. According to the statements made by the parties and the Commission, the Court has been able to verify that the publications ordered in the Judgment<sup>11</sup> and the broadcast of the summary on a radio station<sup>12</sup> were carried out, as well as the fact that the summary published by the State on the website of the state of Guerrero remained there for more than one year.<sup>13</sup> Therefore, the Court declares that the State has complied in full with the obligation contained in the thirteenth operative paragraph of the Judgment.

### ***C. Obligation to pay each of the victims once only, within a term of two months, the amount specified in the Judgment, to cover specialized medical and psychological treatment, as well as for medicines and other related expenses (fourteenth operative paragraph)***

24. The State reported that, on June 21, 2011, it had paid “Mr. Teodoro Cabrera García and Mrs. Ubalda Cortés Salgado (on behalf of Mr. Rodolfo Montiel Flores) the amounts of \$90,374.25 (ninety thousand three-hundred seventy-four pesos and 25/100 M.N.), to each of them, for specialized medical and psychological treatment, as well as for medicines and other related expenses.” Based on the foregoing, the State “request[ed that the Court] consider that it has completely complied with the fourteenth operative paragraph.”

25. Regarding the foregoing, the representatives confirmed that “the victims ha[d] received the ordered amount,” and, thus, requested that the Court find that the fourteenth operative paragraph had been complied with.

26. In this sense, the Commission “t[ook] note of the information received and considere[d] that the State had complied with the present obligation.”

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<sup>11</sup> Cf. Publication in the Official Gazette of June 7, 2011 (case file of monitoring of compliance with judgment, tome I, folios 72 to 106); Publication of June 7, 2011, in the newspaper “El Universal” (case file of monitoring of compliance with judgment, tome I, folio 117), and Publication of June 24, in the newspaper of State-wide circulation “El Sur, periódico de Guerrero” (case file of monitoring of compliance with judgment, tome I, folios 118).

<sup>12</sup> Audio of the radio transmissions of the Judgment carried out on June 16, and on July 1 and 7, 2011 (case file of monitoring of compliance with judgment, tome I, folio 122).

<sup>13</sup> Proof of the publications on the web page of the Secretariat of the Interior and on the official portal of the government of the state of Guerrero (case file of monitoring of compliance with judgment, tome I, folios 125 and 126).

### *Considerations of the Court*

27. The Court finds that the State made the payments to cover medical and psychological treatment.<sup>14</sup> In this regard, the Court notes that it appreciates the efforts by the State to promptly meet the terms of this obligation, and declares that the State has complied with the fourteenth operative paragraph of the Judgment.

***D. Obligation to introduce, within a reasonable time, the appropriate legislative reforms in order to bring Article 57 of the Code of Military Justice in conformity with international standards on the matter and with the American Convention on Human Rights, and adopt the pertinent legislative reforms so that individuals subject to intervention by the military courts have an effective remedy to challenge their jurisdiction, under the terms of the Judgment (fifteenth operative paragraph)***

28. The State reported that, "on October 19, 2010, the Federal Executive had submitted to the Congress of the Union the initiative for the issue of a decree which would reform, repeal, and add to several provisions of the Code of Military Justice, the Statutory Law on the Judicial Power of the Federation, the Federal Criminal Code, the Code of Criminal Procedure, and the Act Establishing the Minimum Standards on the Rehabilitation of Convicts." It added that "[o]n April 19, 2012, the Joint Committees on Justice and on Legislative Studies of the Senate had approved the report on the foregoing proposed decree, and had forwarded it to the Plenary of the Senate."

29. Moreover, the State noted that "in the ruling adopt[ed] within the case file of Various matters 912/2010<sup>15</sup>, the Supreme Court of Justice of the Nation [...] had determined that national judges at all levels were obligated to exercise, *ex officio*, control of conformity with the Convention in the terms established by the Inter-American Court[. I]n the above-mentioned ruling, the [Supreme Court of the Nation] established that the judges of the ordinary justice system must hear all the cases of human rights violations presumably committed by members of the Armed Forces, and, in that sense, determined that the ordinary courts would have competence to hear all military cases that do not refer solely to military discipline."<sup>16</sup>

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<sup>14</sup> Copy of the receipts of payment by the State in favor of Messers. Teodoro Cabrera García and Ubalda Cortés Salgado in representation of Mr. Rodolfo Montiel Flores (case file of monitoring of compliance with judgment, tome I, folios 66 to 70).

<sup>15</sup> Published in the Official Gazette of the Federation on October 4, 2011.

<sup>16</sup> "Interpretive Restriction of the military forum. Incompatibility of the current draft of Article 57, section 11, of the Code of Military Justice, with that provided in Constitutional Article 13, in light of Articles 22 and 8(1) of the American Convention on Human Rights" which determines that: "the Judiciary of the Federation must exercise control of conformity with the Convention *ex officio* in regard to Article 57, section 11, of the Code of Military Justice, since the current draft of the text is incompatible with that provided in Article 2 of the American Convention on Human Rights [...]. As such, the interpretation of this concept of the Code of Military Justice must be carried out in the sense that given the situations that affect human rights of civilians, under no circumstance can the military jurisdiction function, because when the military courts hear cases involving acts that consist of human rights violations against civilians, they exercise jurisdiction not only in regard to the accused, who must be a person with active military status, but also in regard to the civilian victim, who has the right to participate in the criminal proceeding not only in regard to the respective

30. Additionally, the State indicated that “parallel to the legislative process, the Supreme Court of the Justice of the Nation, through the General Agreement No. 6/2012, decided to gather all the *amparos* under review, the direct *amparos*, and the jurisdictional conflicts being tried by the circuit courts *en banc* in which it subsists to analyze the competence of the military courts to hear offenses committed by members of the military against civilians. Under this tenor, [the Supreme Court of the Justice of the Nation took up] 26 *amparos* on review, one direct *amparo*, and one jurisdictional conflict related to the competence of the military courts [...] [; for its part], the plenary of the [Supreme Court of the Justice of the Nation] took up 13 cases involving the limits of the military courts, ruling, in all of them, to transfer the proceedings to the ordinary courts.”<sup>17</sup>

31. In regard to the reforms to establish an effective remedy to challenge the jurisdiction of the military courts, the State reported that “[o]n June 6, 2011, the ‘Decree amending, supplementing, and repealing various provisions of Articles 94, 103, 104, and 107 of the Political Constitution of the United States of Mexico’ was published in the Official Gazette of the Federation,” which would lead to the creation of “an effective remedy for the defense of human rights.” In particular, the State indicated that, “in its first subsection, Article 103 states that the [c]ourts of the Federation shall rule on disputes arising from violations of human rights and the guarantees for their protection recognized and provided for by [the] Constitution, as well as by international treaties to which [M]exico is a State Party to.” It further stated that “[t]he constitutional reform on human rights elevates all human rights contained in the international treaties to a constitutional level.” It added that “[t]he amendment to the *amparo* appeal hearing [...] broadened the origin of the *amparo* appeal hearing with respect to violations of human rights recognized in the international treaties.” Furthermore, the State noted “that the decree of modification to the Code of Military Justice [...] sets forth” Article 740, which establishes a process for jurisdictional challenges before the authorities hearing the matter.<sup>18</sup> For these reasons, the State argued that “currently, in Mexico, the ability of victims or persons directly harmed, such as family members, to challenge the jurisdiction of the military courts through the constitutional process is already guaranteed.”

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reparation of the damage, but also in regard to the effective use of their rights to the truth and justice.” Second Report of the State of Mexico on the measures adopted in compliance with the Judgment issued by the Inter-American Court of Human Rights in the case of Cabrera García and Montiel Flores V. México (case file of monitoring of compliance with judgment, tome I, folio 322).

<sup>17</sup> Jurisdictional Conflicts 38/2012 and 60/2012, review *amparos* 133/2012, 770/2011, 60/2012, 61/2012, 62/2012, 63/2012, 217/2012, 252/2012, 224/2012 and direct *amparo* 15/2011. Second report of the State of Mexico on the measures adopted in regard to the compliance with the Judgment issued by the Inter-American Court of Human Rights in the Case of Cabrera García and Montiel Flores V. México (case file of monitoring of compliance with judgment, tome I, folio 322).

<sup>18</sup> Cf. Article 740 of the decree of the modification of the Code of Military Justice, which notes: “When the lack of jurisdiction is based on Article 13 of the Constitution or in Article 58 of this Code, the motion to contest jurisdiction can be opposed at any time and can be resolved without being processed. This lack of jurisdiction can be declared by a judge *ex officio*. If one with competence challenges, the case file will be forwarded in order for the case to be resolved to the Supreme Court of Justice of the Nation. The victims, the offenders, their family members, or any person that is affected by the intervention of the military forum, when dealing with the crimes referred to in Article 58 of the Code can challenge the jurisdiction by way of a brief addressed to the authority that knows of the proceeding. In the case that such jurisdiction is held, the case file shall be forwarded to the Supreme Court of Justice of the Nation.” Second Report of the State of Mexico on the measures adopted in compliance with the Judgment issued by the Inter-American Court of Human Rights in the case of Cabrera García and Montiel Flores V. México (case file of monitoring of compliance with judgment, tome I, folio 323).

32. In this regard, the representatives confirmed that “[i]t is true that [...] the initiative was approved by the senatorial committees [...] and subsequently forwarded to the Plenary of the Senate[, but] the State fail[ed] to report that the Senate coordinators of the *Partido Revolucionario Institucional* [Institutional Revolutionary Party] (PRI for its acronym in Spanish) and the *Partido Acción Nacional* [National Action Party] (PAN for its acronym in Spanish) had withdrawn the initiative, thereby preventing that it be voted on.”

33. In reference to the remarks from the State on the position of the Supreme Court of Justice as to the jurisdiction of the military courts to decide issues related to violations of human rights of civilians, the representatives commented that “these measures have not yet led to the issuance of compulsory jurisprudence to define the precise scope of the competence of military courts in binding terms –solely- for the judicial authorities of the country.” They further noted that “the proposal cited by the State in its report [...] is an isolated theory [and not a binding one, and that t]his proposal and the criteria derived from the gathering of a set of cases on the issue of military courts [by the Supreme Court of Justice] in 2012 are not binding, since, in Mexico, it is necessary to reiterate the same criteria in five consecutive sentences for the establishment of a jurisprudential thesis.”

34. Regarding the right to challenge the jurisdiction of the military courts, the representatives expressed that, in relation with the constitutional reform on June 6, 2011, “[...] the law regulating those constitutional provisions, namely, the new *amparo* law, should have been enacted on October 4, 2011.” Given all of the above, the representatives asked this Court to declare that the fifteenth operative paragraph of the Judgment has not been fulfilled.

35. For its part, the Commission stated that “more [than] two years after the ruling ordering the reform of the aforementioned laws, they ha[ve] not yet been approv[ed] by the Senate. That is, the legislative modifications ordered by the Court in its Judgment have not yet materialized.” Thus, the Commission “remain[ed] waiting for the State to present specific information about whether or not the draft amendment to the Code of Military Justice is currently in legislative proceedings, clarify at which stage of such process it is at, and the likelihood of its [approval]. Similarly, the Commission remain[ed] waiting for the State to forward its observations on the concerns expressed by the representatives regarding the various aspects of its content. Finally, the Commission reiterate[d] that the decisions adopted by the Supreme Court of Justice involve a significant change in the perspective of the highest court as to the incompatibility of the military courts to hear cases of human rights violations.”

#### *Considerations of the Court*

36. Just as in the case of *Radilla Pacheco*, and reiterated in the cases of *Fernández Ortega and Rosendo Cantú*, it was decided in the present Judgment that Article 57 of the Military Criminal Code is incompatible with the American Convention. Consequently, the Court reminded the State that it has an obligation to introduce, within a reasonable period of time, the appropriate legislative reforms in order to make the aforementioned provision compatible with international standards in this regard and with the American Convention, under the terms established in this Judgment.<sup>19</sup> On

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<sup>19</sup> Cf. *Case of Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, paras. 341 and 342, and *Case of Cabrera García and*

another note, the Court established that it had been proven that Messrs. Cabrera and Montiel did not have access to an adequate and effective remedy that would have enabled them to challenge the intervention of the military courts in the proceedings to examine the alleged acts of torture committed against them and, thus, as was determined in the cases of *Fernández Ortega and Rosendo Cantú*, Mexico was ordered to adopt, also within a reasonable period of time, the appropriate legislative reforms to allow individuals affected by the actions of the military courts to have access to an effective remedy to challenge their jurisdiction.<sup>20</sup>

37. In this regard, the Court reiterates that the ruling of the SCJN of July 14, 2011 (*supra* considering paragraphs 5 and 29) makes a positive contribution to the protection and promotion of human rights within the Mexican State, among others, by requiring that members of the Judiciary exercise, *ex officio*, control of conformity with the Convention in the terms set forth by the case law issued by the Inter-American Court on this issue.<sup>21</sup> Specifically, through this "Ruling of the Plenary," it was determined that:

"Article 57, paragraph II, of the Code of Military Justice, is incompatible with the provisions of [...] Article 13 [of the Federal Constitution...] in light of Articles 2 and 8(1) of the American Convention [...] because establishing which crimes are against the military discipline does not guarantee to civilians or their next of kin who are victims of human rights violations [that] they can be subject to the jurisdiction of an ordinary judge or court. Consequently, since the second paragraph of Article 1 of the Federal Constitution provides that the norms relating to human rights will be interpreted in the terms of the Constitution and in accordance with the relevant international treaties, always giving preference the greatest protect for the individual, it should be considered that, under no circumstance, can the military justice system operate in relation to situations that violate the human rights of civilians."<sup>22</sup>

38. Furthermore, the Court appreciates the efforts made by the State to amend Article 57 of the Code of Military Justice. However, notwithstanding the foregoing, the Court reiterates what it stated in the Order on monitoring compliance issued on May 19, 2011 in the case of *Radilla Pacheco v. Mexico*, in which it ordered the same measure of reparation, to the effect that the initiative presented to the Congress of the Union on October 19, 2010, "is insufficient because it does not comply fully with the standards indicated in the Judgment," since it would allow the Military Public Prosecution Service to investigate crimes perpetrated against civilians by military personnel, and because "the said reform only establishes that the military jurisdiction will not be competent [to deal with] forced disappearance of persons, torture and rape

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*Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 234.

<sup>20</sup> Cf. *Case of Fernández Ortega et al. V. México.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 240; *Case of Rosendo Cantú and otra V. México.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 223, and *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 235.

<sup>21</sup> The Inter-American Court has established that "the Judiciary [must] exercise a 'control of conformity with the Convention' *ex officio* between the domestic norms and the American Convention, in the framework of the respective jurisdictions and the respective procedural regulations." *Case of Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 339, and *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 225.

<sup>22</sup> Agreement of the Full court of the Supreme Court of Justice of the Nation of July 14, 2011, Case file *Varios 912/2010.* Published in the Official Gazette of the Federation on October 4, 2011.

committed by military personnel.”<sup>23</sup> Therefore, the Court urges the State to provide updated information regarding the effective implementation of the amendments to the Code of Military Justice that was ordered.

39. With respect to adapting domestic legislation to guarantee the existence of an effective remedy to challenge the jurisdiction of the military courts, the Court appreciates the change to the Constitution promulgated on January 6, 2011, in which the process of the *amparo* was modified. However, the State did not explain how such reform would have a concrete impact on the existence of an adequate and effective remedy to challenge the jurisdiction of the military criminal courts. Furthermore, the Court notes that the State advised that it would be processing a new law of *amparo*, as well as reforms to the Code of Military Justice in this sense. However, the Court reiterates that, in order to comply with this part of the Judgment, “the State shall not limit its actions to ‘promoting’ the corresponding bill, but it shall guarantee its prompt sanction and entry into force, pursuant with the procedures established in its domestic legal system in that sense.”<sup>24</sup> Therefore, the Court orders that the State submit detailed information regarding its compliance with this point.

***E. The State shall adopt, within a reasonable period of time and within the framework of existing register of detainees in Mexico, appropriate supplementary measures in order to reinforce the operation and usefulness of said system (sixteenth operative paragraph)***

40. Regarding the supplementary measures to reinforce the operation and usefulness of the existing register of detainees in Mexico, the State noted that, “[t]he Administrative Register of Detentions is one of the databases comprising the National Public Security System [...]. This Register consists of information furnished by police officers from the three branches of government that perform arrests, who must also provide immediate notification to the National Information Center through the Endorsed Police Report.” It added that, “[a]ll of the authorities at the three levels of government to which the law applies are required to share their databases with the Center” and that “[t]o date, the national databases under the responsibility of the National Information Center have accumulated 3,250,093 notifications of arrests between 2010 and 2012.”

41. Furthermore, the State reported that “[o]n February 28, 2012, the Secretariats of the Interior, the Defense, the Navy, and the Public Security, and the Public Prosecution Service of the Prosecutor General’s Office celebrated and made available the ‘Covenant of collaboration in the context of respect for human rights,’ whose purpose was to establish protocols on issues of chain of custody, legitimate use of force and detention.” It further stated that “on April 23, 2012, such protocols were published in the Official Gazette,” and that, therein, “it was established [...] that security forces and authorities in the administration and enforcement of justice have an obligation to develop the endorsed police report, so that an arrest can be properly registered by the National Center of Information.”

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<sup>23</sup> *Case of Radilla Pacheco V. México*. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 19, 2011, Considering clauses 21 and 22.

<sup>24</sup> *Case of Radilla Pacheco V. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 344.

42. On another note, the State also referred to the SIREN (Detainee Registration System), which “seeks to establish a record of arrests of persons turned over to the public prosecution service of the federation or delivered or detained by the Public Prosecution Service Police. Under this tenor, this registry is meant for arrests carried out by agents of the Public Prosecution Service Police of the [Prosecutor General’s Office], parallel to the Administrative Register of Detentions.”

43. Regarding the foregoing, the representatives recalled “that in the case of the ecologist peasants, the prolonged and unlawful arrest and restraint were carried out by members of the military, and are not included in the Administrative Register of Detentions,” just as they are not included in the SIREN. Consequently, the representatives further stated that “[a]ditionally, it is relevant to mention that from the information presented, [they can] conclude that the SIREN did not guarantee access to [the] information referred to in roman numeral iii) of the operative paragraph at hand, keeping in mind that the goal of the measure ordered is precisely to avoid situations in which family members or other concerned persons cannot properly access information regarding the whereabouts of the person detained that is sufficient, up-to-date, and accurate.”

44. With respect to this issue, the representatives concluded by stating that “the State has not made available any information to reach a conclusion that it is organizing the adequate register of detentions performed by members of the armed forces, who continue making thousands of arrests without having the authority to do so and without an adequate system of control.”

45. For its part, the Commission “acknowledge[d] the information furnished by the State and value[d] its efforts to comply with this point. However, the Commission observe[d] that with regard to the Administrative Register of Detentions and the Approved Police Report, the State did not submit the documents relevant to these systems, which are necessary to properly understand their scope and operation, as well as their relationship to the SIREN. The Commission [took] note of the concerns expressed by the representatives regarding both the [Administrative Register of Detentions], as well as the SIREN in terms of the limitations in their scope and access to family members or persons close to the detainees, given their reserved nature. The Commission concluded by stating that “[it consider[ed] that it [was] necessary to have additional information on the points in question.”

#### *Considerations of the Court*

46. In the Judgment, the Court observed that, pursuant to the General Law of the National Public Security System, the information contained in the Register may be provided to anyone who requests information about an individual under arrest, which allows for compliance with the purpose of assisting in the defense of the detainees’ rights. At that time, the Court deemed it appropriate to require the adoption of measures to ensure that increased public access to such information does not affect the right to private life - among other rights - of detainees. In light of the foregoing, the Court found that the following supplementary measures should be adopted in order to reinforce the operation and usefulness of this system: i) continuous updating; ii) interconnection between the database of the register and any other relevant databases, establishing a network that allows each detainee to be easily located; iii)

guarantee that the register respects the requirements of access to information and privacy; and iv) an oversight mechanism to ensure that authorities comply with the requirement to update the register.<sup>25</sup>

47. The Court appreciates the important steps taken by the State towards compliance with the operative paragraph in question. Nevertheless, the State did not present concrete information on the manner of implementation of the supplementary measures that the Court ordered to reinforce the Register of Detentions, nor did it specify whether the activities carried out by the armed forces would be included in the register. It is particularly relevant that the State submit detailed information and supporting documentation to assess if the four points outlined in paragraph 243 of the Judgment have been fully complied with.

***F. The State shall continue to implement training programs and permanent courses for the diligent investigation of cases of cruel, inhumane or degrading treatment and torture, as well as to strengthen the State's institutional capabilities by means of training programs for the Mexican Armed Forces on the principles and rules governing the protection of human rights, including the restrictions to which they are subject, according to the Judgment (seventeenth operative paragraph)***

48. The State reported that it has conducted training programs in various organs of its administration, as well as its military forces. In the Secretariat of the Navy (hereinafter "SEAMAR"), the State affirmed that "for the purpose of informing naval personnel about the limits that their activities as law enforcement agents should be subject to, the SEMAR and the International Committee of the Red Cross (hereinafter 'ICRC'), have coordinated various training activities, among them: Workshop on the use of force administered in the First Naval Region (Tuxpan, Veracruz) from March 6-8, 2012, with 99 marines in attendance [;] Workshop on the use of force administered in the Second Naval Region (Ensenada, Baja California) from April 16-18, 2012, with 61 marines in attendance[;] Workshop on the use of force administered in the High Command Headquarters (Mexico, Federal District) from May 23-25, 2012, with 30 marines in attendance[;] Workshop on the use of force administered in the Fourteenth Naval Zone (Puerto Chiapas, Chipas) from July 10-12, 2012, with 44 marines in attendance[;] Workshop on the use of force administered in the High Command Headquarters (Mexico, Federal District) from August 1-3, 2012, with 30 marines in attendance[;] and Workshop on the use of force administered in the Sixth Naval Region (Manzanillo, Colima) from July 10-12, 2012, with 46 marines in attendance."

49. The State added that "[in] conjunction with the trainings and academy classrooms, from October of 2011 to April of 2012, training modules on human rights were transmitted through the *Red Satelital de Televisión Educativa* [Satellite Television Education Network] (EDUSAT). These training modules were carried out in coordination with specialized personnel of the National Commission on Human Rights (hereinafter 'NCHR'). Through this system, 30,709 individuals received training. On another note, on September 4, 2012, the SEMAR and the CNDH executed four *Convenios de Colaboración para Capacitación a Distancia y Presencial* [Covenants of Collaboration for Distance and In-Classroom Learning] on the subject of human rights, whose aim is to

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<sup>25</sup> Cf. *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 243.



lay the foundation for collaboration and support between both institutions for the implementation of activities, programs, and dissemination of human rights training, as well as for the formation of the Masters in 'Education and Human Rights.'"

50. As for the training activities undertaken on the part of the Secretariat of National Defense, the State reported the following: "[w]ithin the 'Program of Promotion and Strengthening of Human Rights and Humanitarian International Law S.D.N.,' the following activities have taken place: Conference/Workshop 'Optional Protocol of the Convention Against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishments and other international instruments on human rights aimed at preventing and eradicating torture'[:]; Conference/Workshop 'The Federal Act to Prevent and Punish Torture'[:]; Conference 'Legal Implications for acts violating human rights'[:]; Conference 'Code of conduct for public officers of the Mexican Army and Air Force'[:]; Conference 'Searches, arrests, illegal detention, and abuses of authority (torture, isolation, threats, harm, and homicides)'[:]; Conference 'Article 8 of the Federal Act on Administrative Responsibilities of Public Officers'[:]; Course 'What is torture? And analysis of cases in which military personnel has been identified as likely responsible for this type of conduct'[:]; and, Course 'Framework for the participation of military personnel in support of public safety to avoid the commission of human rights violations.'" The State added that "[t]he course 'Forensic investigation and documentation for the implementation of the Istanbul Protocol,' which is directed at personnel of the Health service and of Military Justice, was implemented. The court was offer[ed] three times per year in the Military Academy of Human Resource Management."

51. Regarding the activities implemented by the Public Security Secretariat (hereinafter "PSS"), the State indicated that it reinforced "its 'Program for the Promotion of Human Rights through the provision of permanent courses and trainings for public officials.' In this regard, 604 live training events were offered from December of 2011 to November of 2012. During these events, 58,003 public officials of the Central Sector of the PSS, as well as command and operational members of the Federal Police Divisions, participated. It should be noted that the Federal Police personnel is approximately 37,000 members, and some of these officials have completed two or more trainings on human rights. The *Programa de Fomento y Promoción de los Derechos Humanos* [Program on Development and Promotion of Human Rights] was developed, both in classrooms and through distance learning, with the collaboration of the NHRC, the ICRC, the Office of the United Nations High Commissioner for Human Rights in Mexico (hereinafter 'OUNHCHR'), the International Organization for Migration, the Latin American Institute for Educational Communication, the National Autonomous University of Mexico, the Ibero-American University, and non-governmental organizations specializing in human rights."

52. The State reported that, the Secretariat of Health, "along with the participation of the CNDH, the Pan-American Health Organization, and the local health departments, has held six events titled 'Workshop on human rights and fundamental freedoms of persons with mental disabilities for the prevention of cruel, inhumane, and degrading treatment' with a total of 393 attendees."

53. As for the Office of the Prosecutor General of the Republic, the State noted that "it administered the following training courses: 'Course on Human Rights and Prevention of Torture,'" which was offered on five occasions from April 9, 2012 to

August 31, 2012, and in which 70 public officials participated [, and] the 'Course on the application of the specialized medical-psychological evaluation for cases of possible torture,' which was taught 13 times from January 23, 2012 to December 9, 2012, and in which 423 public officials of the PGR participated." Similarly, the State reported that, "from 2008 to 2011, the Office of the Prosecutor General of the Republic has implemented the course titled 'The implementation of the Istanbul Protocol in the Institutions of [M]exican State,' in the following states of the Republic: Puebla, Oaxaca, Quintana Roo, Sinaloa, Nayarit, State of Mexico, Guerrero, Monterrey, Yucatan, Tlaxcala, and Chiapas."

54. With regards to the programs carried out by the Office of the Prosecutor General of Justice of the state of Guerrero, the State indicated that "[i]n August of 2012, the Office of the Prosecutor General of Justice of the state of Guerrero offered a 'Course on Human Rights' at the Institute of Vocational Training, which was aimed at deputy prosecutors, experts, and agents of the State Police."

55. As to the Federal Council of the Judicature, the State reported that "in coordination with the Ministry of Foreign Affairs, the National Commission of Superior Courts of Justice, the Mexican Association of [D]ispensers of Justice, and the OUNHCHR, it had organized the event 'Itinerant Workshops: The Impact of the Constitutional Reform of *Amparo* and of Human Rights on Jurisdictional Activities.'" Furthermore, "[i]n April of 2012, it launched the 'Integral Master Program in Human Rights and Democracy,'" organized in conjunction with the Latin American School of Social Sciences, and the OUNHCHR." Similarly, it implemented the "Itinerant Introductory Seminar on the Constitutional Reform of Human Rights," directed at heads of the superior courts of justice. Along the same lines, "[i]n September and October of 2012, in conjunction with the *Procuraduría Social de Atención a las Víctimas de Delitos* [Social Services Office for Attention to Crime Victims], the 'Interdisciplinary Seminar on discussions regarding the right to reparations for violations of human rights,' was developed; the objective of this seminar was to analyze the relationship between the constitutional reform of human rights, the reform of the criminal justice system, and the reform of *amparo* in the sphere of the right to reparations."

56. The State further indicated that "[t]he Judiciary of the state of Guerrero has launched a professionalization program for public officials, through which the following activities have been implemented: Seminar on 'Constitutional Reforms on Human Rights and *Amparo*,' taught on August 30, 2012 and September 1, 2012, and which was directed at public officials of the Judiciary in Chilpancingo, Guerrero. The conference 'Strengthening the Ethical Culture in the Judiciary in the State of Guerrero' was held on August 25, 2012 in Chilpancingo, Guerrero. On July 3, 2012, the conference 'The Ethics of the Judiciary' was delivered to public officers of the judiciary and of administrative support. The magisterial conferences 'Human rights in the system of protection to women in criminal proceedings' and 'Precautionary measures as mechanisms of protection for women who have been victims of violence' were held on November 6, 2012. On December 3, 4, and 5, 2012, a workshop was held titled 'International instruments of protection for human rights in constitutional reforms.'"

57. Regarding the information set forth by the State in the preceding paragraphs, the representatives expressed that "[o]n July 26, 2012, [they forwarded] to the Secretariat of the Interior a proposal on the trainings with guidelines they consider[ed] necessary for full compliance with this operative paragraph." The representatives noted

that they had not received a response regarding their request and, thus, urged the State “to present data or figures on the results [of the programs and trainings].”

58. For its part, the Commission stated that “[it] takes note of the efforts by the State of Mexico to comply with this paragraph. Nevertheless, it observe[d] the absence of precise information regarding the specific contents of the trainings, in light of the orders of the Court[, since] [b]ased on the available information, it is not possible to conclude that the trainings conducted up to this point are sufficient to satisfy this measure of non-repetition, with the degree of specificity in its content as well as the level of performance required to have the effect for which it was conceived.”

#### *Considerations of the Court*

59. The Court established, in the Judgment, that the training programs and courses should include, where pertinent, the study of the provisions contained in the Istanbul Protocol.<sup>26</sup> Therefore, as it has done previously<sup>27</sup>, the Court required the State to continue implementing permanent training programs and courses on diligent investigation in cases of cruel, inhumane or degrading treatment and torture. Moreover, it indicated that such courses should be imparted to Federal officials and Guerrero state officials, and particularly, to members of the Public Prosecutor’s Office, the Judiciary, the Police and health sector personnel with competence in such cases and whose functions require them to assist victims alleging violations of their personal integrity. Furthermore, this Court considered it important to strengthen the State’s institutional capabilities through training programs for the Mexican Armed Forces on the principles and standards for the protection of human rights, including the restrictions to which they are subject<sup>28</sup>, in order to avoid the repetition of events similar to those of this case.<sup>29</sup>

60. On the basis of the information offered by the State in the first and second report of compliance with the Judgment, and despite the fact that the representatives argued that they had not gotten a response to the “training proposal with guidelines [they] consider[ed] necessary,” the Court notes that the State, through the various federal and state authorities, has carried out numerous activities following the notification of the Judgment to implement the orders of the Court with respect to the establishment of educational programs directed at state officials with competence in such cases and whose functions require them to assist victims alleging violations of their personal integrity. The Court finds that the vast majority of the activities are related to the reparation provided for in the Judgment. Consequently, the State has complied with the present operative paragraph of the Judgment and is encouraged to continue with these training processes.

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<sup>26</sup> Cf. *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 245.

<sup>27</sup> Cf. *Case of González and others (“the Cotton Fields”) V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No.205, para. 541, and *Case of Rosendo Cantú and others V. México, Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, paras. 245 and 246.

<sup>28</sup> Cf. *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 245.

<sup>29</sup> Cf. *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 245.

***G. Obligation to pay the amounts specified in the Judgment, as compensation for pecuniary and non-pecuniary damages and reimbursement of legal costs and expenses, where applicable, within the term of one year from the date of notification of the Judgment (eighteenth operative paragraph)***

61. As to the amounts established as compensation for pecuniary and non-pecuniary damage to Messrs. Cabrera García and Montiel Flores, on October 13, 2011, the State delivered to Mr. Teodoro Cabrera García “two checks, one for compensation for pecuniary damage, in the amount of \$64,832.35 (sixty-four thousand eight hundred and thirty-two pesos and 35/100 M.N.), and another as compensation for non-pecuniary damage, in the amount of \$235,754.00 (two hundred thirty-five thousand seven hundred and fifty-four pesos and 00/100 M.N.).” As to Mr. Montiel Flores, given that he resides abroad, the State reported that “on October 13, 2011, two checks for the same amounts and compensations were delivered to Mrs. Ubalda Cortés Salgado, who received them in the name of and on behalf of Mr. Rodolfo Montiel Flores.”

62. With respect to the costs and expenses, the State reported that “on October 12, 2011, [...] it deposited, to a bank account provided by the Center for Justice and International Law (CEJIL), the following amounts: US\$ 20,658.00 (twenty thousand six hundred and fifty-eight dollars of the United States of America) for legal fees, and US\$ 17,708.00 (seventeen thousand seven hundred and eight dollars of the United States of America).” Under the same concept, “on December 8, 2011, the State delivered to Mr. José Rosario Marroquín, Director of the Center for Human Rights Miguel Agustín Pro Juárez, A.C., two checks for the following [...] amounts: \$204,009.72 (two hundred and four thousand and nine pesos and 72/100 M.N.) [...], and \$118,372.08 (one hundred and eighteen thousand three hundred seventy-two pesos and 8/100 M.N.).”

63. The representatives of the victims expressed their satisfaction with the compliance of payment of compensatory damages ordered by the Court.

64. On its behalf, the Commission “value[d] the information presented by the State in relation to the payment of the amounts set forth in the [J]udgment.”

*Considerations of the Court*

65. Based on the information provided by the parties<sup>30</sup>, the Court concludes that the State has complied in full with the payments of compensation for pecuniary and non-pecuniary damages and for reimbursement of legal costs and expenses set forth in the eighteenth operative paragraph of the Judgment.

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<sup>30</sup> Cf. Copy of the receipts of payments carried out by the State in favor of Teodoro Cabrera García and Rodolfo Montiel Flores, for pecuniary and non-pecuniary damages, as well as to the Center for Justice and International Law and the Centro de Derechos Humanos Miguel Agustín Pro Juárez, A. C. for costs and expenses (case file of monitoring of compliance with judgment, tome I, folios 130 a 160).

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise of its authority to monitor compliance with its decisions and, pursuant to Articles 33, 62(1), 62(3), and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

**DECIDES:**

1. As indicated in the pertinent considering paragraphs of this Order, the State has fully complied with its obligations to:

a) make the publications ordered in the various means of communication in conformity with paragraph 217, in accordance with the provisions of the thirteenth operative paragraph of the Judgment;

b) to allocate the amount established in paragraph 221 of the Judgment, for specialized medical and psychological treatment, as well as medicines and other related future expenses, according to the fourteenth operative paragraph thereof;

c) to continue to implement training programs and permanent courses on diligent investigation in cases of cruel, inhumane or degrading treatment and torture, as well as to strengthen the institutional capacities of the State by means of the training programs for the Mexican Armed Forces on the principles and rules governing the protection of human rights, including limitations that constrain them, in accordance with the seventeenth operative paragraph of the Judgment; and

d) to pay the amounts set in paragraphs 253, 260, and 261 of the Judgment as compensation for pecuniary and non-pecuniary damage and reimbursement of legal costs and expenses, if applicable, under the terms of the eighteenth operative paragraph therein.

2. It will maintain open the proceedings of monitoring compliance in relation to operative paragraphs 12, 15, and 16 of the Judgment, regarding the obligations of the State:

a) to effectively carry out, within a reasonable period of time, the criminal investigation into the facts of this case, especially into the allegations of torture against Messrs. Cabrera and Montiel, in order to determine the corresponding criminal responsibilities and, if it were the case, effectively apply the punishments and consequences established by law. Likewise, in the event procedural and investigative irregularities related to the facts are proven while under investigation, it will be

appropriate to adopt the pertinent disciplinary, administrative or criminal actions, in accordance with paragraph 215 of the Judgment;

b) to adopt, within a reasonable time, the pertinent legislative reforms to make Article 57 of the Code of Military Justice compatible with the relevant international standards and with the American Convention on Human Rights, as well as to adopt the appropriate legislative reforms to allow individuals affected by the actions of the military courts to have access to an effective remedy to challenge their jurisdiction, in accordance with the provisions of paragraph 235 of the Judgment; and

c) to adopt, within a reasonable period of time and within the framework of the registry of detainees that is kept in Mexico at present, the supplementary measures so as to reinforce the operation and usefulness of said system, in conformity with the terms of paragraph 243 of the Judgment.

3. The State must adopt all the measures necessary to effectively and promptly comply with the aspects pending compliance indicated in the second operative paragraph, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

4. The State must present to the Inter-American Court of Human Rights, by no later than December 15, 2013, a report indicating all of the measures adopted to comply with the reparations ordered by the Court that remain pending, as indicated in the considering paragraphs 13 to 17, 36 to 39, and 46 to 47, as well as in the second operative paragraph of this Order. Subsequently, the State must continue reporting to the Court in this regard every three months.

5. The representatives of the victims and the Inter-American Commission on Human Rights must present any observations they deem pertinent regarding the reports of the State referred to in the preceding operative paragraph, within four and six weeks, respectively, upon receipt.

6. To require the Secretariat of the Court to notify this Order to the United States of Mexico, the Inter-American Commission, and the representative of the victims.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary