

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\***  
**OF MAY 14, 2013**

**CASE OF RADILLA PACHECO v. MEXICO**  
**MONITORING 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" or "the Court") on November 23, 2009. In this Judgment, it was established that, on August 25, 1974, members of the Army of the United Mexican States (hereinafter "the State" or "Mexico") forcibly disappeared Rosendo Radilla Pacheco, in the systematic context of numerous forced disappearances of persons. Furthermore, the State itself acknowledged, on the one hand, that Mr. Radilla Pacheco had been illegally and arbitrarily deprived of his liberty by a public official and, on the other hand, that Mexico had delayed unjustifiably the investigations conducted into these facts. Consequently, the Court decided that the State was responsible for the violation, to the detriment of Mr. Radilla Pacheco, of Articles 3, 4(1), 5(1), 5(2) and 7(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1(1) of this instrument, and to Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "the ICFDP"). In addition, it declared the State's responsibility for the violation, to the detriment of the next of kin of Mr. Radilla Pacheco, of Articles 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof, owing to the suffering they endured as a result of his forced disappearance, and of Articles 8(1) and 25(1) of the Convention, in relation to its Articles 1(1) and 2 and to Articles I(a), (b) and (d), IX and XIX of the ICFDP, owing to the absence of a judicial response to clarify the facts of the case, and because it extended the competence of the military jurisdiction to crimes that were not strictly related to military discipline or legal rights intrinsic to the military sphere. Lastly, the Court determined that the State had failed to comply with the obligation to adopt provisions of domestic law established in Article 2 of the Convention, in relation to Articles I and III of the ICFDP, owing to the incomplete definition of the crime of forced disappearance of persons in the Federal Criminal Code.

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\* Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the deliberation of this Order pursuant to Article 19(1) of the Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009. In addition, Judge Eduardo Vio Grossi advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this Order.

2. The Orders on monitoring compliance with judgment issued by the Court on May 19, and December 1, 2011, and on June 28, 2012. In these Orders the Court declared that the following aspects of the Judgment remained pending:

- a) To conduct effectively with due diligence and within a reasonable time, the investigation and, as applicable, the criminal proceedings that are underway in relation to the detention and subsequent disappearance of Rosendo Radilla Pacheco, in order to determine the corresponding criminal responsibilities and apply the punishments and consequences that the law establishes (*eighth operative paragraph*);
- b) To continue the genuine search for, and the prompt discovery of, Mr. Radilla Pacheco or, if applicable, his mortal remains (*ninth operative paragraph*);
- c) 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 (*tenth operative paragraph*);
- d) To adopt, within a reasonable time, the pertinent legislative reforms to make article 215A of the Federal Criminal Code compatible with the relevant international standards and with the Inter-American Convention on Forced Disappearance of Persons (*eleventh operative paragraph*);
- e) To implement, within a reasonable time and with the respective budgetary allocation, permanent programs or courses to analyze the case law of the inter-American system for the protection of human rights concerning the limits of the military criminal justice system, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons (*twelfth operative paragraph*);
- f) To prepare a profile of the life of Rosendo Radilla Pacheco (*fifteenth operative paragraph*);
- g) To provide free psychological and/or psychiatric treatment immediately, adequately and effectively, through its specialized public health institutions, to those declared victims in the Judgment who request this (*sixteenth operative paragraph*), and
- h) To pay the amounts established in paragraphs 365, 370, 375 and 385 of the Judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, as applicable (*seventeenth operative paragraph*).

3. The reports of July 14, August 29 and November 30, 2011; January 18 and 26, March 2, May 30, July 3 and October 3, 2012, and January 3 and April 5, 2013, in which the State referred to compliance with the Judgment.

4. The briefs of October 17, 2011; January 12, February 17, April 9, June 22, August 3 and November 20, 2012, and February 22 and May 2, 2013, in which the representatives of the victims (hereinafter "the representatives") presented observations on the above-mentioned reports of the State (*supra* having seen paragraph 3).

5. The briefs of November 8, 2011; February 6, May 2, July 10 and December 28, 2012, and March 27 and May 3, 2013, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented observations on the information forwarded by the State and by the representatives (*supra* having seen paragraphs 3 and 4).

6. The private hearing held on June 22, 2012.<sup>1</sup>

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<sup>1</sup> This hearing was attended by: for the United Mexican States: Max Alberto Diener Sala, Assistant Secretary for Legal Affairs and Human Rights of the Secretariat of the Interior; Alejandro Alday González, Deputy Director General for Cases, Democracy and Human Rights of the Ministry of Foreign Affairs; Sergio Roberto Huerta Patoni, Coordinator of Advisers to the Deputy Secretary for Legal Affairs and Human Rights of the Secretariat of the Interior; Jorge Cruz Becerra, Director of International Cooperation with International Human Rights Organizations of the Prosecutor General's Office; José Roberto Ríos Vázquez, Area Director of the Prosecutor General's Office; Councilor Martha Eugenia Tapia Benavides, Chargé d'Affaires a.i. of the Embassy of Mexico in Costa Rica; Third

## **CONSIDERING THAT:**

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. According to Article 67 of the American Convention on Human Rights, the judgment of the Court must be complied with promptly and fully by the State. Furthermore, 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 State must ensure implementation at the national level of the Court’s decisions in its judgments.<sup>2</sup> The said obligation to comply with the decisions of the Court includes the State’s obligation to provide information on the measures taken in this regard. Prompt observance of the State’s obligation to inform the Court how it is complying with each aspect ordered by the Court is essential in order to assess the status of compliance with the Judgment as a whole.<sup>3</sup>
3. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of international law, 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 internal law as justification for its failure to perform a treaty.<sup>4</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>5</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>6</sup>

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Secretary Rafael Barceló Durazo, Head of Political Affairs and Human Rights of the Mexican Embassy in Costa Rica, and Juan Pablo Alemán Izaguirre, Deputy Director of Attention to Civil Society Organizations of the Unit for the Promotion and Defense of Human Rights of the Secretariat of the Interior. For the representatives of the victims: Tita Radilla Martínez, Octavio Amezcua Noriega, Isis Nohemí Goldberg Hernández and Valeria Moscoso Urzúa. For the Inter-American Commission on Human Rights: Karla I. Quintana Osuna, Executive Secretariat Specialist, and Silvia Serrano Guzmán, Executive Secretariat Specialist.

<sup>2</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, paras. 60 and 131, and *Case of Vélez Loor v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, second considering paragraph.

<sup>3</sup> Cf. *Case of the Five Pensioners v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of Kimel v. Argentina. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 5, 2013, second considering paragraph.

<sup>4</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Vélez Loor v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, third considering paragraph.

<sup>5</sup> Cf. *Case of Castillo Petrucci et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph, and *Case of Vélez Loor v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, third considering paragraph.

<sup>6</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Vélez Loor v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, fourth considering paragraph.

5. First, the Court observes that, on July 14, 2011, the Supreme Court of Justice of the Nation (hereinafter "the Supreme Court" or "the SCJN") issued a "Ruling of the Court in Plenary" in the case file "Various matters 912/2010,"<sup>7</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 Judgment handed down in the case of *Radilla Pacheco* (*supra* having seen paragraph 1). In this ruling, the SCJN stated that the Judiciary was obliged 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." In addition, this ruling indicated that the decisions of the Inter-American Court with regard to Mexico and, in particular, the Judgment handed down in the case of *Radilla Pacheco* (*supra* having seen paragraph 1), "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 [...]." In addition, in this Ruling, the SCJN 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 judge or court."<sup>8</sup>

6. The Inter-American Court underlines that this Ruling of the Supreme Court of Justice of the Nation constitutes an important step forward as regards the protection of human rights, not only in the context of this case, but in all the domestic spheres of the Mexican State. Consequently, this Court assesses positively 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 effectively with due diligence and within a reasonable time, the investigation and, if applicable, the criminal proceedings that are underway in relation to the detention and subsequent disappearance of Rosendo Radilla Pacheco, in order to determine the corresponding criminal responsibilities and apply the punishments and consequences that the law establishes (eighth operative paragraph of the Judgment)***

7. The State indicated that "the investigation into the facts related to the forced disappearance of Mr. [...] Radilla Pacheco is being conducted under preliminary inquiry SIEDF/CGI/454/2007, for which the [Office of the Prosecutor General of the Republic (PGR)] is responsible." It also indicated that, despite the death of one of the accused in the criminal

<sup>7</sup> At the private session of the Prosecution Service held on September 20, 2011, the title of the case file "Various matters 912/2010 was approved by a unanimous 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>8</sup> Cf. Decision of the Plenary of the Supreme Court of Justice of the Nation of July 14, 2011, case file *Various matters 912/2010*. Published in the Official Gazette of the Federation on October 4, 2011. Annex to the State's brief of November 30, 2011 (file on monitoring compliance, tome III, folio 1497).

<sup>9</sup> Cf. Decision of the Plenary of the Supreme Court of Justice of the Nation of July 14, 2011, case file *Various matters 912/2010*. Published in the Official Gazette of the Federation on October 4, 2011. Annex to the State's brief of November 30, 2011 (file on monitoring compliance, tome III, folio 1512).

proceedings, "the necessary measures continue to be taken in order to prove the probable responsibility of the other members of the military services who were denounced." In this regard, it advised that, "in order to identify the individuals who took part in the facts and to prove the crime of forced disappearance of persons, in June and August 2012, statements were taken from [four] individuals who, at the time of the events, worked in the 27<sup>th</sup> military zone in the state of Guerrero." The State also indicated that "the Public Prosecution Service took the statement of one witness [...] who, at the time of the events, [...] was able to interview a General from the Atoyac de Álvarez Barracks, Guerrero, and who indicated that during their meeting he noted that, on a shelf, there were files that apparently belonged to those detained."

8. The State also indicated that "the Investigations Coordination Bureau of the [Prosecutor General's Office had] requested [the] service records of eight members of the Army [...] so as to be able to summon them to appear before the Social Agency of the Federation." According to the State, these soldiers were questioned regarding "the mass or clandestine graves and places where the deceased persons were buried." In addition, it advised that "plans are underway to continue taking statements from retired soldiers who had command functions in the 1970s and who were attached to the 27<sup>th</sup> Military Zone [...]."

9. Lastly, regarding the victims' access to the case file of the proceedings underway for the facts of the case, Mexico advised that "the representatives of the victims [had] full access and legal standing in the investigation of the facts, participating with the Public Prosecution Service as additional parties" and, also, that it had complied with the "undertaking made to the victims [...] to provide them with copies of the public version of the preliminary inquiry on a monthly basis," delivering these in keeping with a timetable established with the representatives. Also, "in compliance [with the] commitment made during the hearing on monitoring compliance held on June 22, 2012," before the Inter-American Court, the State forwarded "the digitized public version of the volumes of the preliminary hearing [...] that have been handed over to the next of kin of Mr. Radilla Pacheco".

10. The representatives appreciated "that the State [...] had taken the initiative to make [...] a more complete examination of the documentation and to receive testimony, mainly from individuals who were soldiers posted in the zone of conflict where [...] the facts occurred that resulted in the disappearance of [Mr.] Radilla Pacheco." However, they observed that "many of the people indicated as participants in the facts [...] are already deceased, [and that ...] it is regrettable that the Mexican authorities have taken so much time to further the investigations," because this has meant that "many lines of investigation have evaporated with the passage of time [...]." The representatives also indicated that the lines of investigation followed by the State have not taken into account the systematic pattern surrounding the facts of the disappearance of Rosendo Radilla Pacheco, as ordered in the Judgment. Thus, they underscored that, the probable perpetrators of the facts have still not been identified, and asked the Court to require the State to present more detailed information on the preliminary inquiry. Nevertheless, the representatives indicated their agreement regarding "the way in which [the State ...] has been complying" with the regular delivery of the file of the preliminary inquiry.

11. The Commission expressed its "concern [owing to] the State's failure to present complete and detailed information on the steps taken in the preliminary inquiry." It also indicated that, more than "three years after the Judgment was handed down [...] and almost forty years after the facts occurred, there is no evidence of any substantial progress in the investigation into the forced disappearance of Mr. Radilla Pacheco. In addition, it stated that "there is no evidence that those presumably responsible for the victim's disappearance have

been identified, or that the context in which the facts occurred has been taken into account." Lastly, the Commission considered that this situation was growing worse with the passing of time, because, according to the information forwarded by the State, "one of the individuals allegedly involved in the facts that being investigated has apparently died." Thus, it asked "the Court to require the State to present detailed and updated information on compliance with this aspect, including: (i) the specific results of the measures taken; (ii) the timetable for the measures to be taken, and (iii) the information obtained from State archives, and the use to which it will be put."

12. The Court appreciates the efforts made by the State under the preliminary inquiry being conducted by the authorities of the ordinary system of justice; in particular, the reception of the statements of 13 possible witnesses, who include members of the armed forces. However, from the information provided by the parties, the Court notes that statements remain pending that could lead to substantial progress in determining those responsible for the forced disappearance of Mr. Radilla Pacheco, and that individuals indicted in the proceedings have died as a result of the passage of time. In this regard, the Court recalls that the implementation of this measure of reparation not only involves the obligation to conduct investigations into the whereabouts of Mr. Radilla Pacheco, but also the efficient implementation, with due diligence and within a reasonable time, of investigations designed to determine the corresponding criminal responsibilities and the consequences that the law establishes, bearing in mind the systematic pattern that permitted the perpetration of grave human rights violations in this case.<sup>10</sup> The Court emphasizes that, around 39 years have passed since Mr. Radilla Pacheco was disappeared by State agents, and therefore urges the State to take, within a reasonable time, the measures that remain pending under the preliminary inquiry. In this regard, the Court recalls that the passage of time has a directly proportional relationship to the limitation – and, in some cases, the impossibility – to obtain evidence and/or testimony, making the practice of probative measures to clarify the facts under investigation, to identify the possible authors and participants, and to determine the eventual criminal responsibilities difficult and even nugatory or ineffective. Despite this, the national authorities are not exempt from making every effort required to comply with their obligation to investigate.<sup>11</sup>

13. Nevertheless, the Court appreciates the delivery of the public version of the preliminary investigation to the representatives, in keeping with the timetable agreed with the parties, and urges the State to continue complying with this undertaking. Lastly, based on the foregoing, the Court requests the State to provide recent information that is as complete as possible on the progress made in implementing this measure of reparation.

***B. Obligation to continue the genuine search for, and the prompt discovery of, Mr. Radilla Pacheco or, if applicable, his mortal remains (ninth operative paragraph of the Judgment)***

14. The State indicated that "the search for the disappeared Rosendo Radilla [Pacheco] has not only been effective, but also founded and motivated by investigations carried out by the Social Agency of the Federations since 2008[, with the full agreement of the victims and, also, characterized [...] by a high degree of professionalism of the experts from different disciplines and institutions [...].]" It also indicated that, "on October 31, 2011,

<sup>10</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, paras. 206, 215 and 222.

<sup>11</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 215.

excavation work was commenced in the area" of Atoyac, with the presence of a professional who provided psychosocial support to the victims' next of kin during the procedure. However, "no clandestine graves or evidence of skeletal remains were detected" on that occasion. The State also indicated that "the reports were received of the experts in social anthropology from the Prosecutor General's Office and from the National Institute of Anthropology and History (INAH)"; they had been requested by the latter institution, and "based on the recommendations made in the two reports, the Public Prosecution Service inspected the suggested areas on January 24, 2013," avoiding a repetition of certain places. In addition, the State indicated that, on February 12, 2013, following a working meeting in the offices of the PGR with INAH experts, "orders were given to scan the subsoil in three areas, [...] and this was done from March 11 to 16, 2013." Lastly, the State emphasized "that, during these procedures, access was provided to the next of kin of disappeared persons who were on the scene [...]."

15. The representatives indicated repeatedly that this measure "is the most important one as regards integral reparation for the human rights violations caused by the State, [...] because the uncertainty about [the whereabouts of Mr. Radilla Pacheco] prevents the victim's next of kin [...] from concluding their mourning process [...]." Furthermore, they welcomed the State's initiative "to undertake a thorough search for [Mr.] Radilla Pacheco, gathering relevant documentation and testimony that could reveal information on his whereabouts. However, once again, [they] regret[ted] that the Mexican State had delayed so long in undertaking this search, which seriously affects the possibilities of its success." In addition, they advised that, "even though the prosecution authorities [collected] information by recovering historical archives and testimony, this information has not yet been duly systematized." Lastly, they indicated that "from May 20 to June 1, 2013, the fourth stage of excavations in the former Atoyac Military Barracks will be carried out," and that they will be "monitoring the way in which the procedure is carried out," in order to provide the Court with information in this regard.

16. The Commission assessed positively the efforts made by the State "owing to the reports [of the experts in social anthropology] that would eventually assist in the search for Mr. Radilla [Pacheco]." It also stressed "the meeting that the State had held with the victim's next of kin to provide them with specific information on the plans to continue the search." Furthermore, it stated that it was awaiting the results of the fourth stage of excavations at the former Atoyac Military Barracks.

17. The Court underlines the efforts made by the State to find the remains of Mr. Radilla Pacheco, particularly the work of excavation and scanning that has been carried out in the area corresponding to the municipality of Atoyac, as well as the preparation of social anthropology reports in order to obtain new lines of investigation so as to locate them. The Court also appreciates the fact that the State has coordinated with the search measures taken by the victims, as ordered in the Judgment.<sup>12</sup> Consequently, the Court urges the State to continue the searches that are underway, within the framework of the communication that it has developed with the victims and their representatives. In this regard, the Court recalls that the effective search for and prompt finding of Mr. Radilla Pacheco or his mortal remains forms part of the next of kin's right to know the truth,<sup>13</sup> and will help alleviate the anguish and suffering caused to his family. Thus, the Court requires the State to provide

<sup>12</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 336.

<sup>13</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 336.

updated information on the measures taken to find Mr. Radilla Pacheco or, if applicable, his mortal remains.

**C. Obligation to adopt, within a reasonable time, the pertinent legislative reforms in order to make article 57 of the Code of Military Justice compatible with the American Convention on Human Rights, article 215A of the Federal Criminal Code compatible with the Inter-American Convention on Forced Disappearance of Persons, and both articles compatible with the relevant international standards (tenth and eleventh operative paragraphs of the Judgment)**

18. The State reiterated 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, partially annul, and add to, several provisions of the Code of Military Justice, [including its article 57, and ...] of the Federal Criminal Code[, including its article 215A...]." In this regard, the State advised that the Joint Committees on Justice and on Legislative Studies of the Senate had approved the report on the proposed decree, so that it had been forwarded to the Plenary of the Senate. However, "the senators had not reached a consensus for [the bill] to be discussed formally during the Plenary session [...]." Therefore, according to the State, "work was being done on a new bill that would permit compliance with the measure established by the Court [...]."

19. Furthermore, regarding the modification of the Code of Military Justice, the State reiterated that "the bill proposed to exclude from the military jurisdiction the crimes of forced disappearance of persons, torture and rape, so that these fall within the competence of the ordinary courts."<sup>14</sup> In addition, the State underlined that, under the above-mentioned ruling of July 14, 2011<sup>15</sup> (*supra* considering paragraph 5), the Plenary of the Supreme Court of Justice of the Nation had determined that national judges at all levels were obliged to exercise, *ex officio*, control of conformity with the Convention in the terms established by the Inter-American Court, and 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. The SCJN also established that ordinary justice would have competence to hear all the military cases that do not refer to military discipline alone.<sup>16</sup>

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<sup>14</sup> Cf. *Case of Radilla Pacheco v. Mexico. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights de 19 de mayo de 2011, seventeenth considering paragraph. In this Order, it was noted that, according to the State, the said initiative "establishes the obligation of the Military Public Prosecution Service to forward the summary of the findings of any inquiry it conducts and of those from which the possible perpetration of the crimes mentioned can be inferred to the Federation's Public Prosecution Service," and stipulated that "the measures taken that form part of the summary shall not lose their validity, even though [the Code of Military Justice] was applied when taking them and, subsequently, the Code of Criminal Procedure".

<sup>15</sup> Cf. Ruling of the Plenary of the Supreme Court of Justice of the Nation of July 14, 2011, Case file *Various matters 912/2010*. Published in the Official Gazette of the Federation on October 4, 2011. Annex to the State's brief of November 30, 2011 (file on monitoring compliance, tome III, folio 1471).

<sup>16</sup> The State also indicated that, on another occasion, the Supreme Court of Justice of the Nation had determined that "the Judiciary of the Federation must exercise, *ex officio*, a control of conformity with the Constitution and the Convention of article 57, paragraph II, of the Code of Military Justice. [...] Thus, the interpretation of this principle of the Code of Military Justice must be interpreted that, in the face of situations that violate the human rights of civilians, under no circumstance may the military justice system have jurisdiction [...]." Cf. Ruling No. LXXI/2011 (9). "*Restrictive interpretation of the military justice system. Incompatibility of the actual text of article 57, paragraph II, of the Code of Military Justice, with the provisions of article 13 of the Constitution, in light of Articles 2 and 8(1) of the American Convention on Human Rights*" of June 10, 2011. Annex to the State's brief of May 30, 2012 (file on monitoring compliance, tome IV, folios 2327 a 2328).

20. Furthermore, regarding the amendment of the Federal Criminal Code ordered in the Judgment, the State affirmed that it had proposed the definition of the crime of forced disappearance appropriately and based on the relevant international standards. In addition, it recalled that in the Order on monitoring compliance with judgment of May 19, 2011, the Inter-American Court had noted that this proposed reform incorporated the elements established in the Judgment and in the Inter-American Convention on Forced Disappearance for an appropriate definition of the crime.

21. For their part, regarding the amendment of the Code of Military Justice, the representatives indicated that "the [decree] that the Mexican State referred to [...] is not compatible with what was ordered [...] in the Judgment," because "it only proposes to exclude from the military criminal jurisdiction the crimes of forced disappearance of persons, torture and rape, so that these will fall within the competence of the ordinary courts, [reserving] the authority to investigate and to analyze whether the facts are in keeping with the legal assumptions [to] the Office of the Prosecutor General for Military Justice [...]." They indicated, also, that, "since October 2010, 16 amendments have been presented to the Congress of the Union to limit the competence of the military jurisdiction and, at this time, no report has been produced that results in a discussion in the chambers of the Congress of the Union." Consequently, they affirmed that "the only way in which the State can comply with [this measure of reparation is] by presenting and approving an initiative that is in accordance with the international standards for the protection of human rights established in the Judgment [...]."

22. Regarding the said Ruling of the SCJN of July 14, 2011 (*supra* considering paragraph 5), the representatives indicated that this "constitutes a progressive opinion, but it is not legally binding for other Mexican judges, because [the SCJN] has still not decided the contentious cases that it is hearing on this issue." They underscored that, "[f]or the said opinion to be obligatory for the authorities, the laws of Mexico establish that it is necessary to produce case law, which will not happen until the [SCJN] decides five cases in the sense indicated; that is, prohibiting the military jurisdiction from hearing cases of human rights violations." In addition, they indicated that this ruling "is far from constituting a guarantee that [all] cases of human rights violations will be heard promptly by ordinary courts," because, according to the representatives, "it is a rather fragile element that could change according to the composition of the highest court."

23. Now, regarding the required amendment of the Federal Criminal Code, the representatives considered that this obligation "will not be complied with until amendments are made to the law, [... adapting] the definition of forced disappearance to the provisions of the international standards." In addition, they indicated that compliance with the Judgment of the Inter-American Court is an obligation "for the State, not only the Executive"; hence, according to the representatives, "the authorities involved have the obligation to expedite the reforms to ensure that this is implemented."

24. Lastly, the representatives indicated that the document "Pact for Mexico" establishes that "the legal framework shall be updated to prevent and to punish effectively inhuman and degrading acts, as well as torture, cruelty and forced disappearance," and that "the framework for the justice system will be restructured so as to ensure that no one has privileges," and in order to restrict the competence of the military jurisdiction. However, they expressed their concern in view of the fact that compliance with this obligation was not a priority, because, according to this document, the State only planned to initiate the said process of legislative reform in the second half of 2013, despite the fact that more than three years have passed since the Judgment was handed down in this case.

25. The Commission indicated that the ruling of the Supreme Court of Justice of the Nation of July 14, 2011, "constitutes a significant step forward as regards limiting the military jurisdiction in Mexico and reveals the impact of the inter-American System [on the] protection of human rights in order to overcome obstacles in compliance with the international obligations of the State in this regard." However, it noted that this change in case law had to be incorporated into legislative reforms. In this regard, the Commission noted with concern that the State had "merely repeated information [... that] does not reveal specific progress in compliance with these measures of reparation," and "insists on promoting a legislative reform that would not be fully in line with the terms [of the Judgment]." In this regard the Commission asked the Inter-American Court to require the State to provide information on how the draft reform of article 57 of the Code of Military Justice was adapted to the standards established in the Judgment in relation to the intervention of the military jurisdiction in crimes committed by Army officials, and regarding the possible intervention of the military jurisdiction at the investigation stage "of a crime that is not an offense committed during the course of duties." In addition, it observed with concern that the legislative reform of article 57 of the Code of Military Justice "is in its initial stages, and no report has been approved," so that "the State continues to fail to comply with the order of the Inter-American Court." Lastly, it asked the Court to require further information on the reform of article 215A of the Federal Criminal Code and recalled that the Judgment maintains that the State "cannot merely present the bill with the above-mentioned modifications, but must "ensure its prompt approval and entry into force."

26. The Court reiterates that the ruling of the SCJN of July 14, 2011 (*supra* considering paragraph 5), makes a positive contribution to the protection and promotion of human rights in the Mexican State, among others, by requiring that members of the Judiciary exercise, *ex officio*, control of conformity with the Convention in the terms of the Judgment delivered by the Inter-American Court in this case.<sup>17</sup> Specifically, this "Ruling of the Plenary" 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>18</sup>

27. In addition, the case file before the Inter-American Court reveals that, from August 6 to September 13, 2012, "the Plenary of the SCJN took over the hearing of [13] cases related to the restriction of the military jurisdiction, in all of them deciding to refer the case to the ordinary justice system."<sup>19</sup>

<sup>17</sup> In the Judgment, the Inter-American Court established that "the Judiciary must exercise *ex officio* the control of conformity between domestic laws and the American Convention, pursuant to their respective terms of reference and the corresponding rules of procedure." *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 339.

<sup>18</sup> *Cf. Ruling of the Plenary of the Supreme Court of Justice of the Nation of July 14, 2011, Case file Various matters 912/2010.* Published in the Official Gazette of the Federation of October 4, 2011. Annex to the State's brief of November 30, 2011 (file on monitoring compliance, tome III, folio 1512).

<sup>19</sup> *Cf. Note of September 17, 2012, signed by Justice Juan N. Silva Meza, President of the SCJN. Annex 6 to the brief of October 3, 2012 (file on monitoring compliance, tome V, folio 2899).*

28. In addition, the Court appreciates the efforts made by the State to amend article 57 of the Code of Military Justice. Despite this, the Court reiterates what it stated in the Order on compliance in this case issued on May 19, 2011, 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 committed by military personnel."<sup>20</sup>

29. Nevertheless, the Court underlines the efforts made by the State to make the definition of the crime of forced disappearance contained in article 215A of the Federal Criminal Code compatible with the relevant international standards. However, the Court reiterates that, in order to comply with this aspect of the Judgment, "the State should not merely 'present' the corresponding bill, but also ensure its prompt approval and entry into force, according to the respective procedures established in domestic law."<sup>21</sup> The Court also recalls that the said bill must respect the corresponding criteria described in the Judgment in this case.<sup>22</sup> Lastly, based on the foregoing, the Court asked the State to forward updated information on the effective implementation of the reforms that were ordered to the Code of Military Justice and to the Federal Criminal Code.

**D. *Obligation to implement, within a reasonable time and with the respective budgetary allocation, permanent programs and courses relating to the analysis of the case law of the inter-American system for the protection of human rights in relation to the limits of the military criminal justice system, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons (twelfth operative paragraph of the Judgment)***

30. The State advised that it had offered various training sessions, courses, seminars and conferences to the judges of the Judiciary of the Federation, the agents of the Public Prosecution Service of the Prosecutor General's Office (PGR), and the judges and members of the Defense Secretariat (SEDENA) and the Navy Secretariat (SEMAR).

31. Regarding the implementation of the training sessions for officials of the Federation's Judiciary, the State advised that, under the ruling issued on July 14, 2011, in the case file "Various matters 912/2010" (*supra* considering paragraph 5), the Plenary of the Supreme

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<sup>20</sup> Cf. *Case of Radilla Pacheco v. Mexico. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 19, 2011, twenty-first and twenty-second considering paragraphs.

<sup>21</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 344.

<sup>22</sup> In the Judgment, the Court referred to two elements of this provision that were not compatible with the ICFDP. First, it indicated that "the said provision restricts the authorship of the crime of forced disappearance of persons to 'public servants,'" while Article II of the ICFDP indicates that States must "ensure the punishment of all the 'authors, accomplices and accessories to the crime of forced disappearance of persons', whether they are agents of the State or 'persons or groups of persons acting with the authorization, support or acquiescence of the State.'" The Judgment also establishes that "the forced disappearance of persons is characterized by the refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of the individuals," and that "[t]his element must be present in the definition of the crime, because it allows forced disappearance to be distinguished from other illegal acts with which it is usually related, such as kidnapping or abduction, and murder, so that appropriate probative criteria can be applied and punishments imposed on all those implicated in its perpetration that take into consideration the extreme gravity of this crime." Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, paras. 320 to 324.

Court had outlined a series of actions designed to implement training courses on the standards of the inter-American system for the protection of human rights "in relation to the limits of the military jurisdiction, judicial guarantees and judicial protection, and also the international standards applicable to the administration of justice and [...] the proper prosecution of the crime of forced disappearance." It also indicated that, on September 23 and 24, 2011, the SCJN had organized an introductory training seminar for approximately 1,800 of the country's federal judges and magistrates focused, among other matters, on examining the judgments of the Inter-American Court in cases relating to Mexico, including the Judgment handed down in the case of *Radilla Pacheco*.<sup>23</sup> In addition, it stressed, from 2010 to 2012, "jurisdictional and juridical" officials had taken part in different academic programs and seminars on topics such as the forced disappearance of persons and the military jurisdiction. Furthermore, the State advised that the Judiciary of the Federation had implemented "itinerant workshops [on] the impact of the constitutional reform of *amparo*, and of human rights, on jurisdictional activities," which were organized in three stages<sup>24</sup> and in conjunction with the Federal Council of the Judicature, the Ministry of Foreign Affairs, the National Commission of Superior Courts of Justice, the Mexican Association of Dispensers of Justice, and the Office in Mexico of the United Nations High Commissioner for Human Rights. According to the State, one of the objectives of these workshops was "to share with the heads of district and circuit courts different ways of applying extensive control of conformity with the Convention by examining a practical case on the issue of forced disappearance and the military jurisdiction."

32. Regarding the training of agents of the Public Prosecution Service of the Prosecutor General's Office (PGR), the State indicated that, from July 9 to 30, 2011, it had imparted the course "Forced disappearance of persons and international criminal law on human rights," in the National Institute of Criminal Science. Moreover, among other training activities,<sup>25</sup> on May 19 and August 10, 2012, the Deputy Ombudsman for attention to victims and community services of the PGR imparted a 50-hour specialization course on "Human rights, and forced disappearance of persons" to 37 PGR officials.

33. Furthermore, regarding the training for members of the military forces, the State advised that the Defense Secretariat (SEDENA) had imparted different courses addressed at this sector, particularly "as part of the module on 'Human rights and international humanitarian law' that is one of the Officers' Training Courses,<sup>26</sup> [...] and of the courses of

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<sup>23</sup> This seminar was offered in the following places: Puebla, León, Saltillo, Mazatlán, Tuxtla Gutiérrez and the Federal District. According to the State, around 90 speakers took part, including the Justices of the Supreme Court of Justice of the Nation, members of the Federal Council of the Judicature, and representatives of the Inter-American Commission and the Inter-American Court of Human Rights, the Juridical Research Institute of the *Universidad Nacional Autónoma de México* (UNAM), the Institute of Public Policies of Mercosur, the Latin American School of Social Sciences (FLACSO), the Electoral Court of the Judiciary of the Federation, the Ministry of Foreign Affairs, and the Secretariat of the Interior.

<sup>24</sup> The first stage was held during March and April 2012; the second stage, in May 2012, and the third stage on December 6, 2012, and it culminated on February 28, 2013. According to the State, the workshops included lectures in different cities attended by 820 heads of federal courts and tribunals. In addition, "36 discussion and analysis roundtables were organized with personnel from the Inter-American Commission and the Inter-American Court of Human Rights as the main speakers," and with the participation of 891 judges. Also, special material had been designed to study "precedents of forced disappearance of persons, the military jurisdiction, due process of law, and judicial protection," and this was distributed to participants.

<sup>25</sup> For example, "on March 14, 2011, a conference was held in the PGR on 'The INAH: Tasks and responsibilities'" relating to the performance of functions relating to the prosecution of cases. In addition, a course on the "investigation and prosecution of acts that constitute forced disappearance of persons" was held in this entity from November 28 to 30, 2011.

<sup>26</sup> According to the information provided by the State, these courses were held in the following entities: "*Heroico Colegio Militar, Colegio del Aire, Escuela Médico Militar, Escuela Militar de Odontología, Escuela Militar de*

the General and Air Force Chief of Staff of the War College, [in which] the rights to judicial guarantees and to judicial protection [are studied]." In addition, the State provided information on a course offered in the Center for Advanced Studies of the Army and the Air Force, and in the course of the Joint Chief of Staff of the War College on the analysis of the case law of the inter-American system for the protection of human rights in relation to judicial guarantees and judicial protection, the limits to the military criminal jurisdiction, and the forced disappearance of persons. In this regard, the State indicated that "the Navy Secretariat (SEMAR) imparted courses on the analysis of the case law of the inter-American system to the personnel attached to the different naval commands [...] on the limits to the military criminal jurisdiction, and on the rights to judicial guarantees and to judicial protection." In addition, it indicated that, by February 27, 2013, 165,903 marines had been trained, so that "95% of the operational and non-operational personnel have received training on human rights, and the remaining 5% corresponds to personnel who have recently been incorporated or who have been appointed to other offices."

34. Lastly, the State forwarded information on the approval of the 2008-2012 National Human Rights Program, in which the President of the Republic ordered the different entities with competence in this area to "incorporate into their preliminary budgets of expenses, resources to ensure compliance with the objectives and goals of [the said program] in the context of the programming of public expenditure and the applicable provisions."

35. For their part, the representatives stated, in relation to the training of agents of the Public Prosecution Service of the Prosecutor General's Office, that the courses mentioned by the State had been imparted without consulting the victims or their representatives. In addition, they indicated that the State had not sent them any information about the implementation of other training courses on scientific and specialized investigation techniques for cases of forced disappearance, or information that revealed the State's intention to implement permanent training programs. Nevertheless, the representatives acknowledged the implementation of training sessions on human rights for officials of the Federation's Judiciary. However, they indicated that these sessions related to human rights in general or specific topics that had little or no relationship to the limits to the military jurisdiction or to the forced disappearance of persons. Lastly, regarding the training for officials of the Defense Secretariat (SEDENA) and the Navy Secretariat (SEMAR), the representatives acknowledged that these were imparted "structurally and permanently" in these institutions; however, they indicated that it would be desirable to have information on the specific content. In this regard, they considered that "while the Mexican State does not establish these training sessions on disappearances permanently, and using intensive programs outlined by the [Inter-American] Court, it cannot be considered that this operative paragraph of the Judgment has been fulfilled [...]."

36. The Commission assessed positively the courses and workshops on human rights imparted in the different State agencies, especially programs focused on "the limits of the military criminal jurisdiction, [...] judicial guarantees and judicial protection, and the proper investigation and prosecution of the forced disappearance of persons." However, it indicated that some of them were not adapted to the topics ordered by the Court in its Judgment. In addition, it indicated that these programs are not offered permanently, so that the obligation on this aspect has not been met. Consequently, the Commission asked the Court to require "the State to provide a detailed plan that describes the way in which [this type of program] has been incorporated, or will be incorporated" permanently into training for State agents, and with the topics established by the Court.

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*Enfermeras, Escuela Militar de Oficiales de Sanidad, Escuela Militar de Transmisiones and Escuela Militar de Materiales de Guerra.*

37. The Court recalls that, in the Judgment, it ordered the implementation of “[p]ermanent programs or courses relating to the analysis of the case law of the inter-American system for the protection of human rights in relation to the limits of the military criminal justice system, as well as the rights to judicial guarantees and to judicial protection, [...] for the members of all the Armed Forces, including the agents of the Public Prosecution Service and judges, as well as for agents of the Public Prosecution Service of the Prosecutor General's Office and judges of the Federation's Judiciary [...].” Furthermore, it ordered the implementation of “[a] training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons, for the agents of the Public Prosecution Service of the Prosecutor General's Office and judges of the Federation's Judiciary, with jurisdiction in the investigation and prosecution of acts such as those that occurred in this case [...].”<sup>27</sup>

38. In this regard, the Court appreciates the numerous activities undertaken by the Mexican State designed to implement the permanent training programs and courses ordered in the Judgment. In this way, from the information provided by the State, the Court notes that different courses have been implemented on the case law of the inter-American system and the limits of the military criminal justice system, as well as on judicial guarantees and judicial protection, for members of the Armed Forces, through the Defense Secretariat and the Navy Secretariat.<sup>28</sup> In addition, the Court observes that training has been provided on the proper investigation and prosecution of acts that constitute forced disappearance of persons to agents of the Public Prosecution Service of the Prosecutor General's Office,<sup>29</sup> and on the inter-American system and the limits to the military criminal justice system, judicial guarantees and judicial protection, and the due investigation and prosecution of acts that constitute forced disappearance of persons to the judges of the Federation's Judiciary.<sup>30</sup>

39. Taking into account all the actions described by the State, which reflects its commitment to continue developing and implementing these training courses within the different echelons of the State, the Court considers that Mexico has complied with this measure of reparation.

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<sup>27</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 347.

<sup>28</sup> The Secretariat of Defense provided information on training session on “Analysis of case law of the inter-American system for the protection of human rights in relation to the limits to the military criminal justice system, and the rights to judicial guarantees and to judicial protection.” Cf. Note of the Secretariat of Defense to the Unit for the Promotion and Defense of Human Rights dated February 28, 2013. Annex 7 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3359). The Navy Secretariat advised that training sessions had been provided on the inter-American human rights system, among other topics. Cf. Note of the Navy Secretariat to the Unit for the Promotion and Defense of Human Rights dated February 27, 2013. Annex 8 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3363).

<sup>29</sup> Cf. “Course of specialization in human rights and forced disappearance of persons.” Annex 7 to the brief of October 3, 2012 (file on monitoring compliance, tome V, folio 2911).

<sup>30</sup> Cf. “Legal framework and precedents concerning the forced disappearance of persons and the military jurisdiction,” subject matter of the “Itinerant workshops: the impact of the constitutional reforms of *amparo* and human rights on jurisdictional tasks.” Annex 16 to the brief of May 30, 2012 (file on monitoring compliance, tome IV, folio 2410). The State also forwarded the basic documents, timetable, and speakers responsible for the itinerary workshops. Cf. Annexes 13, 14 and 15 to the State's brief of May 30, 2012 (file on monitoring compliance, tome IV, folios 2393, 2403 and 2406). In addition, it sent the Court the content of the “Diploma course on human rights imparted to the Federation's Judiciary.” Cf. Annex 6 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3353).

**E. Obligation to produce a profile of the life of Rosendo Radilla Pacheco (fifteenth operative paragraph of the Judgment)**

40. The State advised that, based on the discrepancies with the victims and their representatives concerning the publication of the profile of the life of Rosendo Radilla Pacheco, it had undertaken to make the publication again, but of an electronic version provided by the representatives. It indicated that the preliminary version of the text had been sent to the representatives on July 23, 2012, and, following its revision, it was returned on August 2, 2012, with some observations. According to the State, on September 7, 2012, the work of preparing the profile for publishing commenced and on October 8, 2012, the State, the victims and their representatives agreed on the content of the text and on the front page of a final version of the document. The State also indicated that, on December 21, 2012, the Secretariat of the Interior gave the victims' representative 1,945 copies of the book entitled "*Señores, soy campesino. Semblanza de Rosendo Radilla Pacheco, desaparecido.*" Lastly, it advised that on March 1, 2013, senior authorities of the Federal Government, together with Ana María Radilla Martínez and Rosendo Radilla Martínez, representing Rosendo Radilla Pacheco's 11 children, made a public presentation of the book.

41. The representatives indicated their agreement with the publication of the profile published by the Mexican State.

42. The Commission appreciated "the efforts made by the State and the representatives to complete the edition and publication" of the profile of the life of Mr. Radilla Pacheco, and considered that the State had complied with this aspect of the Judgment.

43. The Court assesses the measures taken by the State to publish a new profile of the life of Mr. Radilla Pacheco, as well as the organization of an act to present it, with the participation of senior Government officials. Based on the information provided by the parties, the Court finds that the State has complied fully with this measure of reparation.

**F. Obligation to provide free psychological and/or psychiatric treatment immediately, adequately and effectively, through its specialized public health institutions, to those declared victims in the Judgment who request this (sixteenth operative paragraph of the Judgment)**

44. The State indicated that, as established in the working meeting held with the victims and their representatives on May 23, 2012, the Guerrero Victims' Center of Attention of the *Procuraduría Social de Atención a las Víctimas de Delitos* (hereinafter PROVÍCTIMA) would provide the psychological care ordered in the Judgment. It also reported that, during this meeting, "[t]his offer was formally accepted" by Tita Radilla Martínez, declared victim and injured party in the Judgment, and by another seven family members who are not considered injured parties in the Judgment. The State also indicated that the "Radilla sisters [also] requested psychological care" for María del Carmen, Victoria and Rosa, all with the surnames Radilla Martínez, since they did not attend the said meeting, as well as "support for the children of the deceased [...] Andrea Radilla Martínez," declared victim and injured party in the Judgment. Thus, according to the State, on August 22, 2012, the representatives forwarded the data and requirements of each of the "114 persons who w[ould] be beneficiaries of the care" that, in good faith, it had undertaken to provide. In this way, according to the State, since June 2012, every month and continuously, PROVÍCTIMA

provides the required psychological care.<sup>31</sup> In addition, the State indicated that, "in addition to the psychological care ordered by the Court [...], all the members of the family of Rosendo Radilla Pacheco were being offered comprehensive medical care." In this regard, it indicated that, on March 21, 2013, a meeting had been held in order "to hear the requirements of the [victims] with regard to the psychological and medical care [provided], based on which, several measures are currently being planned."

45. The representatives indicated that they had reached agreement with the State that psychological care would be provided to the victims through PROVÍCTIMA, once a month, in the place whether they reside. In addition, they stated that, in an act of good faith, Mexico had accepted to provide these services to all the other daughters of Rosendo Radilla Pacheco who had not been declared victims en the Judgment, as well as to other family members. Thus, the victims and their representatives considered that the State's willingness was a positive factor. Nevertheless, in their observations of May 2, 2013, the representatives indicated that this "care was offered without any type of planning or agreement with the victims [...] about the profile of the professional who would be responsible for providing the psychological care. Owing to this lack of planning, towards the end of 2012, the psychological care was interrupted, because [...] the victims had no confidence in it." "In this regard, to ensure that the psychological care provided to the Radilla Martínez family complies with basic criteria that are appropriate for the problem [of forced disappearance of persons], both the victims and the representatives ask[ed] that the State certify before the victims and before [the Inter-American Court], the experience and level of specialization in this area of the professionals appointed to treat the victims [...]." They also asked the Court to require the State to present "the work plan that w[ould] be followed for this care (initial comprehensive diagnosis, therapeutic plan, informed consent, prognosis based on the diagnosis and the work plan, general follow-up, [...] etc.)," to ensure that "the care provided to the victims meets the highest professional standards and that its continuity is guaranteed." In this way, they indicated that, "currently, [they were] awaiting the offer of psychological care to be presented by the State, [which would] be consulted with the victims in order to obtain their consent to this care." Lastly, they asked the Court not to find that this measure of reparation had been complied with, "until an agreement is reached on the type of psychological care that will be provided to the victims and until these rehabilitation services have been provided for a reasonable time [...]."

46. The Commission "appreciate[d] the meeting that had been held between the parties and recalled that, over the last year, disagreements had arisen regarding the type of services that the beneficiaries receive, the specialty of the institutions, and the failure to differentiate the service from that provided to the rest of the population." In addition, it stated that "the implementation of the health measures should be differentiated, individualized, preferential, comprehensive, and provided by specialized institutions and personnel." Thus, it indicated that it "awaited information on the agreements reached at the meeting of March 2013, as well as on the steps taken to comply with them."

47. The Court recalls that, in the Judgment, the State was ordered to provide free psychological and/or psychiatric treatment immediately, adequately and effectively, through its specialized public health institutions to Tita, Andrea and Rosendo, all with the surnames

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<sup>31</sup> The State advised that the following had received psychological care: Agustina, María del Pilar, Judith, Ana María, María del Carmen, Evelina, Romana and Victoria, all with the surnames Radilla Martínez. Furthermore, it indicated that it had not been possible to provide care to Tita Radilla Martínez, because she had repeatedly refused to receive it. Cf. Annex 9 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3366).

Radilla Martínez, if they requested this, following a physical and psychological evaluation.<sup>32</sup> Furthermore, it urged the State "based on its acknowledgement of international responsibility in this case, [...] to consider granting, in good faith, adequate reparation to the other members of Rosendo Radilla Pacheco's family, [...] without them having to take legal action [...]."<sup>33</sup>

48. In this regard, the Court observes that the State offered psychological care to those declared victims in the Judgment and to other members of Rosendo Radilla Pacheco's family, through an institution specialized in attending victims of crime, pursuant to the agreement reached with the representatives on May 23, 2012<sup>34</sup> (*supra* considering paragraphs 44 and 45). The Court appreciates the initial agreement reached by the parties and, particularly, the undertaking made by the State, in good faith, to provide psychological and medical care and attention through the *Procuraduría Social de Atención a las Víctimas de Delitos* (PROVÍCTIMA), not only to those declared victims in the Judgment, but also to other next of kin who request this within the framework of this agreement.<sup>35</sup> Nevertheless, of those declared victims in the Judgment, only Tita Radilla Martínez "accepted" this attention, because the representatives did not request the implementation of this measure of reparation in favor of Rosendo Radilla Martínez under the said agreement, and Andrea Radilla Martínez is deceased. In addition, the information provided by the State<sup>36</sup> and the representatives reveals that, subsequently, Rita Martínez refused to receive the required treatment owing to her concerns about the aptness of the professionals of the said institution (PROVÍCTIMA) to provide psychological attention to the next of kin of a person forcibly disappeared. Consequently, the Court decides that the State must forward the Court, together with its next report on compliance with the Judgment (*infra* operative paragraph 3), the necessary documentation to prove the capacity of the said professionals to attend this type of victim. In addition, the Court asks the representatives to advise whether Rosendo Radilla Martínez has asked that the State provide him with psychological and/or psychiatric attention.

**G. Obligation to pay the amounts established in the Judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, as applicable, within one year of notification of the Judgment (seventeenth operative paragraph of the Judgment)**

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<sup>32</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 358.

<sup>33</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 328.

<sup>34</sup> Cf. Agreement dated May 23, 2012, signed by the Unit for the Promotion and Defense of Human Rights of the Secretariat of the Interior and PROVÍCTIMA (file on monitoring compliance, tome IV, folios 2182 and 2183). The Court notes that, in the note of PROVÍCTIMA of June 11, 2012, addressed to the Unit for the Promotion and Defense of Human Rights of the Deputy Secretariat for Legal Affairs and Human Rights the State indicated that "the psychological care ordered will continue to be provided until a psychological report is issued determining that it is not necessary for them to continue receiving [the said] care [...]." Cf. Annex 9 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3373).

<sup>35</sup> The documentation provided by the State includes two notes from PROVÍCTIMA addressed to the Unit for the Promotion and Defense of Human Rights of the Deputy Secretariat for Legal Affairs and Human Rights, dated February 28 and June 11, 2013, advising that psychological care had been provided to some of Mr. Radilla Pacheco's next of kin who were not declared victims in the Judgment. Cf. Annex 9 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3366).

<sup>36</sup> Cf. Annex 9 to the State's brief of April 5, 2013 (file on monitoring compliance, tome V, folio 3366).

49. The State indicated that it had deposited the amounts ordered in the Judgment in the *Banco del Ahorro Nacional y Servicios Financieros, S.N.C.* (BANSEFI), and had reported the payment before the Tenth District Civil Court in the Federal District. In this regard, it advised that, "on September 22, 2011, C. Justino García Téllez, widower of Andrea Radilla Martínez, and the executor of her will, went to the Court to collect two [cheques ...] for the amounts allocated" in the Judgment in favor of the latter, equivalent to US\$40,000.00 and US\$325.00. Also, "in a decision of June 8, 2012, the judge [of the case ...) decided the admissibility of handing over the deposit slips corresponding to Tita [Radilla Martínez], for pecuniary and non-pecuniary damage, and also costs and expenses, and to Rosendo Radilla Martínez, for pecuniary and non-pecuniary damage." In addition, "on July 19, 2012 [the said] judge [...] decided that the deposit slips in favor of Rosendo Radilla Pacheco should be delivered to his heirs, through the person holding his power of attorney, Rosendo Radilla Martínez." According to the State, the corresponding deposit slips have already been exchanged in BANSEFI. Consequently, it considered that this measure of reparation had been accomplished.

50. The victims and their representatives expressed their satisfaction for the fulfillment of the payment of the compensation ordered by the Court. For its part, the Commission "appreciate[d] the information presented by the State with regard to the payment of the amounts established in the Judgment."

51. The Court understands that the information provided by the parties reveals that the State has complied fully with this measure of reparation.

**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 the Statute, and 31(2) and 69 of its Rules of Procedure,

**DECIDES THAT:**

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

- a) To implement, within a reasonable time and with the respective budgetary allocation, permanent programs or courses analyzing the case law of the inter-American system for the protection of human rights in relation to the limits of the military criminal jurisdiction, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons, pursuant to the twelfth operative paragraph of the Judgment.
- b) To produce a profile of the life of Rosendo Radilla Pacheco, pursuant to the fifteenth operative paragraph of the Judgment.
- c) To pay the amounts established in paragraphs 365, 370, 375 and 385 of the Judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, as applicable, pursuant to the seventeenth operative paragraph thereof.

2. It will maintain open the proceeding of monitoring compliance in relation to operative paragraphs 8, 9, 10, 11 and 16 of the Judgment, regarding the obligations of the State:

- a) To conduct effectively, with due diligence and within a reasonable time, the investigation and, as appropriate, the criminal proceedings that are underway in relation to the detention and subsequent forced disappearance of Rosendo Radilla Pacheco, in order to determine the corresponding criminal responsibilities and to apply the punishments and consequences that the law establishes;
- b) To continue with the genuine search and prompt discovery of Mr. Radilla Pacheco or, if applicable, his mortal remains;
- c) 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;
- d) To adopt, within a reasonable time, the pertinent legislative reforms to make article 215A of the Federal Criminal Code compatible with the relevant international standards and with the Inter-American Convention on Forced Disappearance of Persons, and
- e) To provide free psychological and/or psychiatric treatment immediately, adequately and effectively, through its specialized public health institutions, to those declared victims in the Judgment who request this.

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

4. The United Mexican States must present to the Inter-American Court of Human Rights, by September 7, 2013, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by this Court that remain pending, as indicated in considering paragraphs 7 to 29 and 44 to 48, 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 on the reports of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving them.

6. The Secretariat of the Court shall notify this Order to the United Mexican States, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary