

## Amicus Brief: Radilla-Pacheco v. United Mexican States

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To Whom it May Concern:

Please find attached an amicus brief submitted by the Boston University International Human Rights Clinic in support of Rosendo Radilla-Pacheco in the case of *Radilla-Pacheco v. United Mexican States*.

Respectfully Submitted,

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**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**Amicus Curiae Brief**

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**Re: Order for Monitoring Compliance concerning**  
***Rosendo Radilla-Pacheco v. United Mexican States***

**Presented by:**

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## I. Interest Statement of Amicus Curiae

1. The Boston University International Human Rights Clinic (IHRC) respectfully submits this brief *amicus curiae* in support of Rosendo Radilla-Pacheco in the case of *Radilla-Pacheco v. United Mexican States*.<sup>1</sup> Through years of extensive research and communication with the families of disappeared migrants in the Americas, the IHRC has highlighted the systemic failures of Mexico and other states in the Inter-American System to investigate forced and enforced disappearances, provide victims' families with remedies, and handle human remains in a humane and respectful manner.<sup>2</sup> We submit this brief to promote the interests of those families. Hundreds—if not thousands—of migrants go missing in Mexico each year,<sup>3</sup> and their families seek remedies similar to those sought by the Radilla-Pacheco family: the adequate investigation and prosecution of those responsible for the disappearance.<sup>4</sup> The interests of the IHRC are implicated in this case because full compliance with the recommendations of the Inter-American Court of Human Rights (“the Court”) in *Radilla-Pacheco* will impact the delivery of justice for all disappeared persons in Mexico and their families. This brief argues that Mexico's non-compliance with remedies ordered by the Court has inhibited access to justice for the Radilla-Pacheco family and other similarly situated families.

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<sup>1</sup> *Radilla-Pacheco v. Mexico*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209 (Nov. 23, 2009) [hereinafter *Radilla-Pacheco*, Merits (2009)].

<sup>2</sup> See Susan Akram et al., *Disappeared Migrants from Central America: Transnational Responsibility, the Search for Answers and Legal Lacunae*, BOS. UNIV. INT'L HUM. RTS. CLINIC 1, 2 (Jan. 19, 2021), <https://www.bu.edu/law/files/2021/01/Migrant-Disappearances.pdf> (defining forced disappearances as those that “occur when private, non-state actors cause the disappearances and the government is not involved, while enforced disappearances occur when government authorities are responsible for, take part in, or knowingly allow the disappearances to occur”). The Court in *Radilla-Pacheco* defined Mr. Radilla-Pacheco's disappearance as “forced” because it was committed by the Mexican military. In this *amicus* filing, we use the term forced disappearance to refer to Mr. Radilla-Pacheco's specific disappearance but use both “forced disappearance” and “enforced disappearance” to discuss the types of disappearances the IHRC has studied and those that we hope to prevent through the enforcement of the remedies ordered in *Radilla-Pacheco*.

<sup>3</sup> The actual number of missing migrants is likely much higher due to inadequate reporting and monitoring. The presence of organized criminal networks and rampant violence and corruption leave migrants traveling through Mexico particularly vulnerable. See, e.g., Ana Srovin Coralli, *Mexico's Search for Disappeared Migrants Has Evolved, but Challenges Remain*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/article/mexico-search-disappeared-migrants> (last visited Mar. 21, 2023); Missing Migrants Project, *The Americas*, INT'L ORG. MIGRATION, <https://missingmigrants.iom.int/region/americas> (last visited Mar. 21, 2023).

<sup>4</sup> See generally PBI MEXICO, *Association of Relatives of the Detained, Disappeared, and Victims of Human Rights Abuses in Mexico*, <https://pbi-mexico.org/who-we-work/risk-hrds-and-organizations/guerrero/association-relatives-detained-disappeared-and> (last visited Mar. 20, 2023).

## II. Background of the Case

2. Mexico has had nearly fifteen years to fully implement the judgment ordered by this Court in *Radilla-Pacheco v. United Mexican States*. The disappearance underlying the case is still more distant: Mr. Radilla-Pacheco, a musician and political and social activist, was arrested by the Mexican Army and later disappeared in Guerrero on August 25, 1974.<sup>5</sup> In 2009, the Court found that Mexico violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights and Articles 1, 3, 9 and 11 of the American Convention on Forced Disappearance of Persons for its role in his disappearance.<sup>6</sup> To remedy these violations, the Court ordered Mexico to change its criminal legislation, train relevant investigative bodies, and narrow the military court's jurisdiction.<sup>7</sup> These systemic changes would allow for proper investigation into Mr. Radilla-Pacheco's disappearance, identification of the location of Mr. Radilla-Pacheco's remains, and the prosecution of those responsible.<sup>8</sup> In 2011, the Court found that Mexico's legislative and judicial obligations were not fulfilled, impeding the ability to locate Mr. Radilla-Pacheco's remains and prosecute those responsible for his disappearance.<sup>9</sup> Mexico's continued non-compliance with recommended legislative and judicial reform hinders justice for the Radilla-Pacheco family and perpetuates a system of impunity for the disappeared and their families. The Court's continued exercise of its monitoring function is essential to ensure Mexico's full compliance with the Court's recommendations.

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<sup>5</sup> See *Radilla-Pacheco*, Merits (2009).

<sup>6</sup> See *id.* ¶ 3.

<sup>7</sup> *Id.* ¶ VI.

<sup>8</sup> See *id.*

<sup>9</sup> *Radilla-Pacheco v. United Mexican States*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (May 19, 2011) [hereinafter *Radilla-Pacheco*, Monitoring Compliance (2011)].

### III. Argument

#### A. Only Full Compliance with this Court's Decision in *Radilla-Pacheco* Will Satisfy Mexico's Obligations.

3. Although Mexico has made progress toward abiding by the Court's 2009 decision ordering changes to criminal legislation, training for relevant investigative bodies, and limits on the military courts' jurisdiction, Mexico has yet to fully comply with the remedies ordered in *Radilla-Pacheco*.<sup>10</sup> Mexico must adopt the Court's ordered legislative and judicial reforms in full in order to deliver justice to the victims in this case and to ensure systemic changes that will prevent forced disappearances from occurring in the future.
4. Mexico has implemented two of the Court-ordered remedies, demonstrating that, with political will, it is capable of compliance. The Court has justifiably applauded Mexico's compliance with paragraph 12 of the operative section of the judgment in *Radilla-Pacheco*, which asks the state to implement training programs on the limits imposed by Inter-American jurisprudence on military criminal jurisdiction and on proper investigatory and prosecutorial techniques in cases of forced disappearance.<sup>11</sup> The Court similarly praised Mexico's recent compliance with paragraph 11 of the operative section of the judgment, which ordered Mexico to amend Article 215A of the Federal Criminal Code to ensure that it is compatible with the Inter-American Convention on Forced Disappearance of Persons and other relevant international standards pertaining to forced disappearance.<sup>12</sup>
5. Mexico must now comply with the remaining remedies ordered by the Court in order to ensure that forced disappearances within its territory are a thing of the past. While incremental efforts to comply with the remaining remedies ordered in *Radilla-Pacheco* have also been applauded by international and domestic human rights advocates,<sup>13</sup> the

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<sup>10</sup> See *Radilla-Pacheco v. Mexico*, Supervisión de Cumplimiento de Sentencia, Resolución de la Corte de Derechos Humanos (24 de junio, 2022) [hereinafter *Radilla-Pacheco*, Supervisión de Cumplimiento (2022)]; *Radilla-Pacheco*, Merits, ¶¶ 11-12 (2009).

<sup>11</sup> See *Radilla-Pacheco*, Supervisión de Cumplimiento, 1-2, n.5 (2022).

<sup>12</sup> *Id.*

<sup>13</sup> See *CEJIL Celebrates the Historic Reform of the Code of Military Justice in Mexico*, CENTRO POR LA JUSTICIA Y EL DERECHO INTERNACIONAL (May 2, 2014), <https://cejil.org/en/press-releases/cejil-celebrates-the-historic-reform-of-the-code-of-military-justice-in-mexico/>; see also INT'L JUST. RES. CTR., *Mexico Adopts Legislation Limiting*

Court has deemed that *all* ordered remedies, including additional legislative and judicial action, are required to remediate Mexico's violations of the Convention.<sup>14</sup> Specifically, it remains necessary for Mexico to amend its military justice code, prosecute those responsible for Mr. Radilla-Pacheco's disappearance, and provide reparations to his family. Absent these additional measures, Mexico will neither redress the wrongs in this case, nor prevent impunity in other, similar cases of disappearances in which the State is implicated. Full compliance with the orders specified in operative paragraphs 8, 9, 10, and 15 of the judgment in *Radilla-Pacheco* are necessary to ensure that Mexico can prevent forced disappearances by agents of its military in the future and to restore justice and dignity to the family of Mr. Radilla-Pacheco.

*1. Mexico Must Still Comply with the Court's Order to Limit Military Courts' Jurisdiction.*

6. Mexico's failure to amend further Article 57 of the Code of Military Justice, as required by the Court, has continued to allow the military to circumvent proper investigations into allegations of human rights abuses.<sup>15</sup> The Court ordered Mexico to amend Article 57 in accordance with international standards so that the jurisdiction of military courts only extends to matters directly related to military functions and not to cases involving civilians or allegations of human rights abuses.<sup>16</sup> Despite Mexico's insistence that its 2014 reforms to Article 57 went far enough,<sup>17</sup> the reforms remain insufficient to bring Mexico into compliance with the Court's order, since they continue to allow the military courts to prosecute cases involving human rights abuses allegedly committed by members of the military against their fellow members of the military.<sup>18</sup>

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*Military Courts' Jurisdiction Over Soldiers' Human Rights Abuses* (May 19, 2014), <https://ijrcenter.org/2014/05/19/mexico-adopts-legislation-limiting-military-courts-jurisdiction-over-soldiers-human-rights-abuses/>.

<sup>14</sup> See INT'L JUST. RES. CTR., *supra* note 13; see also Antonio Augusto Cançado Trindade, EL EJERCICIO DE LA FUNCIÓN JUDICIAL INTERNACIONAL: MEMORIAS DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS 37 (2011).

<sup>15</sup> See *Radilla-Pacheco*, Supervisión de Cumplimiento, 2 n.6, "Resuelve," ¶ 2(c) (2022); *Radilla-Pacheco v. Estados Unidos Mexicanos*, Supervisión de Cumplimiento de Sentencia, Resolución de la Corte Interamericana de Derechos Humanos, "Resuelve," ¶ 17, 20, 23 (17 de abril, 2015) [hereinafter *Radilla-Pacheco*, Supervisión de Cumplimiento (2015)]; *Radilla-Pacheco v. Mexico*, Merits (2009).

<sup>16</sup> *Radilla-Pacheco*, Merits (2009).

<sup>17</sup> INT'L JUST. RES. CTR., *supra* note 13 (noting that the 2014 reforms limit the scope of Mexico's military courts' jurisdiction when investigating civilians' claims of human rights violations committed by members of the military).

<sup>18</sup> See *Radilla-Pacheco v. Mexico*, Supervisión de Cumplimiento ¶¶ 17, 20, 23 (2015).

Consequently, Mexican military courts' jurisdiction still extends beyond "directly linked functions of the military."<sup>19</sup> Because Mexico has failed to further amend Article 57, the Court should not alter its 2022 judgment of non-compliance.<sup>20</sup>

7. Mexico's failure to comply with this aspect of the Court's decision is particularly disturbing given the Mexican military's long history of, and continued role in, perpetrating disappearances.<sup>21</sup> Justice will remain elusive if allegations of human rights violations brought by members of the military cannot be adjudicated in civilian courts.<sup>22</sup> As this Court has concluded, Mexico's legislature must implement reforms further limiting the jurisdiction of military courts if the rights to a fair trial and judicial protection for all those who accuse the Mexican military of human rights abuses—particularly those involving forced disappearances—are to be fulfilled.<sup>23</sup> Until the shortcomings in Article 57 are addressed, the Court must continue to monitor and ensure Mexico's compliance with the remedy ordered in paragraph 10 of the operative section in its judgment on the merits.

2. *Mexico Must Provide Reparations to the Family and Prosecute those Responsible for Radilla-Pacheco's Forced Disappearance.*

8. The remaining Court-ordered remedies with which Mexico has not yet complied are designed to redress the wrongs done to Mr. Radilla-Pacheco and his family: prosecute the perpetrators of Mr. Radilla-Pacheco's forced disappearance, effectively investigate Mr. Radilla-Pacheco's disappearance and identify his remains, and provide medical and psychological services to his family.<sup>24</sup> While these orders are case-specific, their implementation implicates Mexico's duty to all victims of forced disappearance and their families. Complying with these aspects of the decision would also contribute to

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<sup>19</sup> See *id.*; INT'L JUST. RES. CTR., *supra* note 13.

<sup>20</sup> See *Radilla-Pacheco*, Supervisión de Cumplimiento, 2 n.6 (2022).

<sup>21</sup> See Akram, et al., *supra* note 2, at 69 (noting that Mexico's deployment of troops in the wake of the War on Drugs and the U.S.-backed Merida Initiative resulted in the deployment of at least 96,000 troops and "26,000 disappeared at the hands of security forces").

<sup>22</sup> See INT'L JUST. RES. CTR., *supra* note 13.

<sup>23</sup> *Radilla-Pacheco*, Merits, ¶ 10 (2009).

<sup>24</sup> *Radilla-Pacheco*, Merits, ¶¶ 8, 9, 15 (2009) (ordering the prosecution of those responsible for Mr. Radilla-Pacheco's disappearance, an effective search for Mr. Radilla-Pacheco's remains, and state provision of medical and psychological care to Mr. Radilla-Pacheco's family).

Mexico's capacity to effectively investigate and prosecute disappearances that occur today, including the persistent disappearances of migrants within Mexico's borders.<sup>25</sup>

9. The perpetrators of Mr. Radilla-Pacheco's forced disappearance have still not been brought to justice, nor have charges been brought against many of the primary perpetrators of state-sponsored disappearances during Mexico's Dirty War.<sup>26</sup> This deficiency involves both a failure to prosecute and a failure to investigate. Without proper investigations into forced and enforced disappearances within Mexico, it is difficult to successfully prosecute those responsible for past disappearances, let alone those occurring in the future.<sup>27</sup>

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<sup>25</sup> Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-repetition, *Mexico: U.N. Experts Regret Impunity for Crimes of "Dirty War"*, Special Procedures (Nov. 29, 2019), <https://www.ohchr.org/en/press-releases/2019/11/mexico-un-experts-regret-impunity-crimes-dirty-war> (arguing that improving capacity to investigate Mr. Radilla-Pacheco's remains in the Mexico PGR prosecutor's office will allow the PGR to investigate others disappeared in Mexico's Dirty War).

<sup>26</sup> Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-repetition, *supra* note 25; PBI Mexico, *10 Years Searching for Justice* (2019), <https://pbiousa.org/content/10-years-searching-justice> (explaining that, as of 2019, there have been no leads on Mr. Radilla-Pacheco's whereabouts despite six excavations and arguing that the State's continued effort to conceal facts from the public about disappearances committed by the military further excuses Mexico from holding those responsible to account); *Radilla-Pacheco*, Supervisión de Cumplimiento, 2 n.6 (2022); Miguel Alcaraz, *Radilla Pacheco v. Mexico: balance sobre la audiencia de supervision de sentencia*, ANIMAL POLITICO (March 20, 2023), <https://www.animalpolitico.com/analisis/organizaciones/verdad,-justicia-y-reparaci%C3%B3n/radilla-pacheco-vs-mexico-balance-sobre-la-audiencia-de-supervision-de-sentencia> (documenting the failure of Mexico to effectively address their orders to investigate Mr. Radilla-Pacheco's disappearance); Eva Aviles, *Cinismo y actual criminal: el Estado mexicano se queda sin respuestas ante la Corte Interamericano en audiencia Radilla-Pacheco*, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (Mar. 15, 2023), <https://cmdpdh.org/2023/03/15/comunicado-cinismo-y-actuar-criminal-el-estado-mexicano-se-queda-sin-respuestas-ante-la-corte-interamericana-en-audiencia-radilla-pacheco/> (documenting Mexico's national search commission's failure in dedicating appropriate resources to the search for Mr. Radilla-Pacheco); David Marcial Perez, *Mexico's Death Flights: 50 Years of Impunity*, EL PAIS (May 13, 2021), <https://english.elpais.com/usa/2021-05-13/mexicos-death-flights-50-years-of-impunity.html> (citing former governor of the State of Guerrero, Rogelio Ortega).

<sup>27</sup> Mexico's establishment of a Specialized Prosecutor's Office for the Search of Disappeared Persons, under the Prosecutor's Office for Human Rights, Crime Prevention and Community Services of Mexico's Office of the General Prosecutor (PGR) creates the infrastructure necessary for Mexico to carry out its obligations, but experts continue to insist that investigatory steps taken thus far are inadequate. See Rose-Marie Belle Antoine et al., *The Human Rights Situation in Mexico*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II. Doc. 44/15, ¶¶ 132-38, 470-78 (Dec. 31, 2015). The Commission found that the Law for the National Registry of Data of Missing or Disappeared Persons needed to be strengthened, as its data was unreliable and not disaggregated by type of disappearance. *Id.* ¶¶ 470-78. It also found that the forensic commission created by the PGR was in sufficiently politically insulated and was limited in scope to certain regions of Mexico. *Id.* ¶¶ 470-78. Finally, the Commission found that without a national forensic organization that is politically insulated and governed by scientific and technical standards, forensic teams will not be able to remove bodies during investigation, resulting in the loss of crucial evidence. *Id.* ¶¶ 132-38.

10. Successful investigations and prosecutions require adequate financing, skilled forensic teams, and transparency throughout the investigative process.<sup>28</sup> The Court’s review of the sufficiency of Mexico’s compliance with these aspects of the *Radilla-Pacheco* decision can help ensure that Mexico commits the necessary resources and implements the necessary reforms to support *all* investigations and prosecutions of disappearances in Mexico.
11. Likewise, by ensuring that Mexico has made sufficient psychological care available to the family of Mr. Radilla-Pacheco, the Court will set precedent for the benefits Mexico is expected to provide to the families of other victims of forced and enforced disappearance.<sup>29</sup>

**B. Mexico’s Partial Compliance Constitutes Non-compliance.**

12. Since Mexico has only partially complied with the Court-ordered remedies in *Radilla-Pacheco*, the Court should continue to insist that Mexico bring itself into full compliance. The Court’s decisions are binding on Mexico as a State Party to the American Convention on Human Rights, which requires the States Parties to “undertake to comply with the judgment of the Court in any case to which they are parties.”<sup>30</sup> Implicit in Article 68 of the American Convention on Human Rights is the obligation for States to implement the Court’s judgments completely, promptly, and in good faith.<sup>31</sup> As this Court is aware, Article 63.1 grants the Court a wide margin of judicial discretion to determine the necessary steps the State must undertake to remedy Convention violations.<sup>32</sup>

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<sup>28</sup> Rose-Marie Belle Antoine et al., *supra* note 27, ¶¶ 131-33 (noting that Mexico’s shortcomings in investigating forced and enforced disappearances have driven the call for an Independent Forensic Services Agency to investigate disappearances); U.N. COMM. ENFORCED DISAPPEARANCES, *Mexico: Prevention Must be Central to National Policy to Stop Enforced Disappearances*, (Apr. 14 2022), <https://www.ohchr.org/en/press-releases/2022/04/mexico-prevention-must-be-central-national-policy-stop-enforced> (noting that a lack of forensics resources has made it extremely difficult to investigate disappearances in Mexico); Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-repetition, *supra* note 25 (noting a lack of transparency in investigations).

<sup>29</sup> *Radilla-Pacheco*, Merits, ¶ 15 (2009).

<sup>30</sup> Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 144 U.N.T.S. 123 art. 68 [hereinafter American Convention].

<sup>31</sup> *See id.*; *see also* Gerold W. Libby, *American Bar Association Section of International Law and Practice Report to the House of Delegates: Honduras Urged to Comply with Judgments of the Inter-American Court of Human Rights*, AM. LAW. 251, 254 (1993).

<sup>32</sup> *See* Libby, *supra* note 31.

13. Mexico's implementation of the remedies ordered by the Court, like all States Parties' implementation of Court judgments, must be consistent with the "object and purpose" of the provisions of the Convention.<sup>33</sup> Moreover, Mexico is obliged to conform to the Court's interpretation of the Convention and ensure that all organs of the State adhere to that interpretation.<sup>34</sup> As the Court put it in *Gelman v. Uruguay*, anything else risks rendering "compliance with the judgment illusory."<sup>35</sup>
14. As Judge Cançado Trindade, former President of the Court, explained, the Court cannot allow for partial compliance with its judgments.<sup>36</sup> The Court is an international tribunal exercising judicial authority, not a "conciliatory organ" that exists to persuade States to implement its decisions.<sup>37</sup> Therefore, partial compliance with the Court's decision constitutes non-compliance.<sup>38</sup> While partial compliance may do some good to provide recompense to victims, the Court's orders are intended as holistic solutions to redress serious violations of human rights: States cannot pick and choose with which remedies to comply, or the degree to which they comply. This Court must ensure that Mexico complies in full with remedies ordered by the Court, both to conform to the Court's authority as accepted by States Parties and to ensure that the protections afforded by the Convention are realized.
15. Over the last fourteen years, this Court has issued six Orders Monitoring Compliance in *Radilla-Pacheco*.<sup>39</sup> Yet, Mexico remains non-compliant with the full scope of the Court's judgment. The Court must continue to seek full compliance with its judgment to ensure

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<sup>33</sup> See *Gelman v. Uruguay*, Monitoring Compliance with Judgment, ¶ 102 (20 March 2013) [hereinafter *Gelman*, Monitoring Compliance (2013)] ("[A]ll [the State's] authorities, including judges and organs responsible for the administration of justice, are also bound by the treaty and the judgments of the Court"); see also Advisory Opinion OC-1/82, Inter-Am. Ct. H.R. (ser. A) No. 1, ¶ 69 (Sept. 24, 1982) ("[T]he mere fact of being a Party to the Convention means that all public authorities and all the organs of State . . . are bound to the treaty. This obliges them to exercise control of conformity with the Convention *ex officio*, considering the treaty itself and its interpretation by the Inter-American Court, within the framework of their respective spheres of competence and of the corresponding procedural rules, . . . or through the identification, prosecution, and deciding of situations and specific cases, bearing in mind the treaty and, as appropriate, the jurisprudential precedents and guidelines of the Court").

<sup>34</sup> See *Gelman*, Monitoring Compliance, ¶ 102 (2013).

<sup>35</sup> *Id.* ¶¶ 57, 68.

<sup>36</sup> Cecilia M. Bailliet, *Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America*, 31 NORDIC J. HUM. RTS. 477, 479 (2013) (quoting Antonio Augusto Cançado Trindade, EL EJERCICIO DE LA FUNCIÓN JUDICIAL INTERNACIONAL: MEMORIAS DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS 37 (2011)).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Inter-Am Ct. H.R., Cases in the Monitoring Compliance with Judgment Stage (Mexico) (Mar. 20, 2023, 3:27 PM), [https://www.corteidh.or.cr/supervision\\_de\\_cumplimiento.cfm?lang=en](https://www.corteidh.or.cr/supervision_de_cumplimiento.cfm?lang=en).

justice for Mr. Radilla-Pacheco, his family, and the many victims of forced disappearance in Mexico.

**C. The Court’s Insistence on Full Compliance Combats Systemic Non-compliance by States.**

16. Mexico’s non-compliance in *Radilla-Pacheco* is regrettably not unique, as non-compliance remains a challenge across the Inter-American System.<sup>40</sup> Mexico’s failure to implement domestic legislative reform or investigate violations reflects an unfortunate pattern in many States’ responses to the Court’s judgments. While States generally satisfy orders of monetary reparations, they often fail to address the more comprehensive—and arguably more consequential—legislative reforms and investigative obligations.<sup>41</sup> Because partial compliance is tantamount to non-compliance, the Court must not allow States, like Mexico here, to repeatedly ignore Court-ordered reparations, particularly when they involve important remedies designed to facilitate systemic reform.
17. As of the most recent Annual Report of the Inter-American Court of Human Rights, 258 of the Court’s cases are at the monitoring compliance stage with 1,373 ongoing measures of reparation outstanding.<sup>42</sup> Mexico’s partial compliance with the Court’s judgments is illustrative of this systemic issue, with non-compliance in ten out of twenty-four orders issued between 2009 and 2022 in nine different cases.<sup>43</sup>
18. In several other cases involving Mexico, the Court has had to issue three or more orders to ensure Mexico complies with the judgment.<sup>44</sup> Moreover, the Court’s orders in cases involving Mexico reveal that Mexico regularly has paid monetary reparations to

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<sup>40</sup> Fernando Basch et al., *The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance with its Decisions*, 7 SUR INT’L J. HUM. RTS. 9, 20 (2010).

<sup>41</sup> *Id.* at 21. As Basch et al. have noted, “[n]on-compliance with measures required by the [Court] has been shown to be notably widespread. Half of the remedies recommended, agreed upon, or ordered in the decisions surveyed were not satisfied and only 36% of them were totally satisfied. Only in exceptional cases, moreover, after a long period of time[,] total compliance occurs.” *Id.* at 28.

<sup>42</sup> Inter-Am. Ct. H.R., 2021 Annual Report 61.

<sup>43</sup> Cases in the Monitoring Compliance with Judgment Stage (Mexico), *supra* note 39.

<sup>44</sup> See *Radilla-Pacheco*, Supervisión de Cumplimiento, 2 n. 6 (2022); see also *Women Victims of Sexual Torture in Atenco v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (5 de abril, 2022) [hereinafter *Women Victims*, Supervisión de Cumplimiento (2022)]; *Cabrera Garcia and Montiel Flores*, Supervisión de Cumplimiento (2020); *Castañeda Gutman v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (28 de agosto, 2013) [hereinafter *Castañeda Gutman*, Supervisión de Cumplimiento (2013)].

victims,<sup>45</sup> published the Court’s judgments,<sup>46</sup> and assumed international responsibility for violations.<sup>47</sup> However, Mexico routinely fails to comply with more substantive elements of the Court’s judgments, including investigations into the facts giving rise to violations<sup>48</sup> and amending domestic law to comply with the American Convention.<sup>49</sup> In this case, Mexico has not complied with three of the Court’s orders to amend domestic law to bring it into conformance with international standards.<sup>50</sup>

19. This reality has led Humberto Guerrero, legal director of the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH), to describe Mexico’s reception to the Court’s orders as “lukewarm.” He noted, while “the government has accepted the obligatory nature of the judgement and its resolutions[,] . . . we have also noted contradictory messages in regard to some aspects that are problematic for the government: the issue of investigations, or particular legislative reforms.”<sup>51</sup> Full compliance with the recommendations in *Radilla-Pacheco* requires a commitment from Mexico on the national level to undertake serious reforms. The Court can aid in this process by continuing to hold Mexico accountable for these critical and comprehensive remedies and by providing Mexico with as much specificity on the imperatives of its orders as it can. Unless and until the systemic government deficiencies that allowed Mr.

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<sup>45</sup> See *Alvarado Espinoza et al. v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (7 de octubre 2019) [hereinafter *Alvarado Espinoza et al.*, Supervisión de Cumplimiento (2019)]; see also *García Cruz and Sánchez Silvestre v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (2 de septiembre, 2022) [hereinafter *García Cruz*, Supervisión de Cumplimiento (2022)].

<sup>46</sup> See *García Cruz*, Supervisión de Cumplimiento (2022); see also *Women Victims*, Supervisión de Cumplimiento (2022).

<sup>47</sup> See *González et al. (“Campo Algodonero”) v. México*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (21 de mayo, 2013) [hereinafter *González et al.*, Supervisión de Cumplimiento (2013)]; see also *García Cruz*, Supervisión de Cumplimiento (2022).

<sup>48</sup> See *García Cruz*, Supervisión de Cumplimiento (2022); see also *Rosendo Cantú et al.*, Supervisión de Cumplimiento (2020); *Cabrera Garcia and Montiel Flores*, Supervisión de Cumplimiento (2020).

<sup>49</sup> See *García Cruz*, Supervisión de Cumplimiento (2022); see also *Women Victims*, Supervisión de Cumplimiento (2022); *Gonzalez et al.*, Supervisión de Cumplimiento (2013).

<sup>50</sup> See *Radilla-Pacheco*, Supervisión de Cumplimiento, 2 n. 6 (2022); *Cabrera Garcia and Montiel Flores v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (24 de junio, 2020) [hereinafter *Cabrera Garcia and Montiel Flores*, Supervisión de Cumplimiento (2020)]; *Rosendo Cantú et al. v. Mexico*, Supervisión de Cumplimiento, Resolución de la Corte Interamericana de Derechos Humanos (12 de marzo, 2020) [hereinafter *Rosendo Cantú et al.*, Supervisión de Cumplimiento (2020)].

<sup>51</sup> PBI MEXICO, *PBI México Radilla Case Before the IACHR: Interview with Humberto Guerrero, legal director of the Mexican Commission for the Defence and Promotion of Human Rights*, <https://pbi-mexico.org/news/2010-04-23/pbi-mexico-radilla-case-iachr-interview-humberto-guerrero-legal-director-mexican> (last visited Mar. 9, 2023).

Radilla-Pacheco's human rights to be violated are fundamentally restructured, such violations will continue to occur in Mexico.

#### IV. **The Path Towards Justice: Mexico's Full Compliance with *Radilla-Pacheco*.**

20. Reforms to Mexico's judicial system and its criminal code show real progress and strengthen the possibility of full compliance with the Court's orders in *Radilla-Pacheco*.<sup>52</sup> Through the commitment of dedicated advocates and public officials willing to take responsibility for the State's past crimes and bring Mexico's institutions into compliance with international standards for the prevention and redress of forced and enforced disappearances, Mexico has implemented the remedies ordered in paragraphs 11 and 12 of the operative section of the Court's judgment. Mexico's 2014 reforms to Article 57 further align Mexican practice with the requirements of the Inter-American human rights system.
21. Mexico cannot stop now. As the Court must conclude, justice has not yet been delivered. The Court cannot find full compliance in the face of Mexico's failure to implement further reforms to the military justice system, to further investigate Mr. Radilla-Pacheco's disappearance, and to provide medical and psychological care to Mr. Radilla-Pacheco's family.
22. The IHRC is cognizant that a civilian- and human rights-minded judiciary, coupled with adequate investigatory and prosecutorial resources in Mexico, is crucial for delivering justice to all those disappeared in Mexico and their families throughout the Americas. We

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<sup>52</sup> See, e.g., Christina M. Cerna, *Status of Human Rights Treaties in Mexican Domestic Law*, 20 AM. SOC'Y INT'L L. 4 (2016). Cerna explains that, in 2011, Mexico reformed its constitution to raise all human rights norms within treaties recognized by the state of Mexico to the constitutional level, the highest recognized level of Mexican law. *Id.* In 2013, Mexico's Supreme Court reaffirmed this commitment by interpreting the constitutional reform as jettisoning a hierarchy between the human rights expressed in Mexico's constitution and the human rights articulated in international treaties. It stated that the human rights expressed in Mexico's constitution and those laid out in international human rights treaties were to be protected equally by the Mexican judiciary. *Id.* On April 25, 2014, the Mexican Supreme Court declared that jurisprudence of the Inter-American Court is binding on all Mexican judges, whether Mexico is a party to the case in question or not, and that interpretation should be made favorable to the petitioner (heeding the Court's doctrine of "*pro persona*," which asks that domestic jurisprudence be applied most favorably to advance human rights protections). *Id.* For additional analysis, see Global Legal Monitor, *Mexico: New Amparo Law is Enacted*, LIBR. CONG. (Apr. 30, 2013), <https://www.loc.gov/item/global-legal-monitor/2013-04-30/mexico-new-amparo-law-is-enacted/> (explaining that the 2013 reforms allow the Mexican Supreme Court to remove governmental authority that does not comply with an *amparo* ruling and that, in the wake of Mexico's constitutional reforms, a Mexican citizen can pursue an *amparo* order for a state violation of rights guaranteed by international human rights treaties).

ask that the Court carefully evaluate Mexico's latest efforts at compliance: Nothing short of absolute compliance with each ordered remedy, consistent with the object and purpose of the Convention, will be sufficient to ensure that Mexico meets its obligations to the Inter-American Court.

V. **Conclusion**

23. For the reasons stated above, Boston University School of Law International Human Rights Clinic urges the Inter-American Court of Human Rights find that Mexico remains out of compliance with paragraphs 8, 9, 10, and 15 of the operative section ordered in *Radilla-Pacheco*.

Date: March 24, 2023

Respectfully Submitted,

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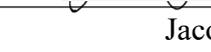
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