In the case of Radilla-Pacheco,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), pursuant with Articles 62(3) and 63(1) of the American Convention of Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles

30, 32, 38(6), 56(2), 58, 59, and 61 of the Rules of Procedure of the Court [FN1] (hereinafter "the Rules of Procedure"), issues the present Judgment.

[FN1] Pursuant with the stipulations of Article 72(2) of the Rules of Procedure of the Inter-American Court approved in its XLIX Regular Session, held from November 16 to 25, 2000, partially reformed by the Court in its LXXXII Regular Session, held from January 19th to 31, 2009, and in force since March 24, 2009.

I. INTRODUCTION OF THE CASE AND OBJECT OF CONTROVERSY

1. On March 15, 2008, pursuant with that stated in Articles 51 and 61 of the American Convention, the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the United States of Mexico (hereinafter "the State" or "Mexico"), which originated on the complaint filed on November 15, 2001 by the Mexican Commission for the Defense and Promotion of Human Rights and by the Association of Relatives of Disappeared Detainees and Victims of Violations of Human Rights in Mexico (hereinafter "the representatives"). On October 12, 2005 the Commission approved Report No. 65/05, [FN2] through which it declared the petition admissible. Later, on July 27, 2007 the Commission approved Report on Merits No. 60/07, [FN3] in the terms of Article 50 of the Convention, which included certain recommendations for the State. This report was notified to the State on August 15, 2007. On March 13, 2008, after having received the information provided by the parties after the adoption of the Report on Merits, and upon considering "that the State had not fully complied with its recommendations," the Commission decided to file the present case to the jurisdiction of the Court. The Commission appointed Messrs. Florentín Meléndez, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates and the attorneys Elizabeth Abi-Mershed, Deputy Executive Secretary, María Claudia Pulido, Marisol Blanchard, and Manuela Cuvi Rodríguez, specialists of the Executive Secretariat of the Commission, as legal advisors.

[FN2] In Admissibility Report No. 65/05, the Commission decided to declare admissible petition No. 777/01 with regard to the alleged violation of Articles 4, 5, 7, 8, and 25, in consistence with Article 1(1), of the American Convention, as well as Articles I, III, IX, XI, and XIX of the Inter-American Convention on Forced Disappearance of Persons (dossier of appendixes to the application, appendix 2, folio 56).

[FN3] In Report on Merits No. 60/07, the Commission concluded that the State was "[r]esponsible for the violation of Articles I and XVIII of the American Declaration on the Rights and Duties of Man, and for the violation o[f the] right[s] to life, to personal liberty, […] the right to humane treatment, to a fair trial, and to judicial protection, enshrined in Articles 2, 3, 4, 7, 5, 8, and 25 of the American Convention, all in connection with Article 1(1) of the same instrument." Likewise, the Commission considered that it was not necessary to go on the record "[r]egarding the alleged violations to Articles I, II, III, IX, XI, and XIX of the Inter-American Convention on Forced Disappearance of Persons" (dossier of appendixes to the application, appendix 1, folio 44).

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2. The facts of the present case refer to the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco, which supposedly occurred since August 25, 1974, in the hands of members of the Army in the State of Guerrero, Mexico. According to the Inter-American Commission, the alleged violations derived from this fact "continue to exist up to this date, since the State of Mexico has not established the whereabouts of the [alleged] victim, nor have his remains been found." According to that argued by the Commission, "more than 33 years after the occurrence of the facts, there is complete impunity since the State has not criminally punished those responsible, nor has it guaranteed the next of kin an adequate reparation."

3. Based on the aforementioned, the Commission requested that the Court declare the international responsibility of the State for the alleged violation of the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) of the same treaty in detriment of Rosendo Radilla-Pacheco. Likewise, it requested that the Court declare the international responsibility of the State for the alleged violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Judicial Protection) of the American Convention, in detriment of the following next of kin of Mr. Radilla-Pacheco: Victoria Martínez Nerí (deceased), Tita, Andrea, Rosendo, Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria, and Judith, all with the surnames Radilla Martínez. On the other hand, it requested that the Court declare the State's failure to comply with Article 2 of the American Convention (Domestic Legal Effects). Finally, the Commission requested that the Court order that the State adopt certain measures of reparation, both pecuniary and non-pecuniary.

4. On June 19, 2008 Messrs. Mario Solórzano Betancourt, Humberto Guerrero Rosales, and María Sirvent Bravo-Ahuja, of the Mexican Commission for the Defense and Promotion of Human Rights and Mrs. Tita Radilla Martínez and Mr. Julio Mata Montiel, of the Association of Relatives of Disappeared Detainees and Victims of Violations of Human Rights in Mexico, representatives of the alleged victims, filed their brief of pleadings, motions, and evidence (hereinafter "brief of pleadings and motions"), in the terms of Article 24 of the Rules of Procedure. In that brief they agreed with that argued by the Inter-American Commission in the application and they also argued the alleged violation of other rights enshrined in the American Convention and the Inter-American Convention on Forced Disappearance of Persons (hereinafter, "the Inter-American Convention on Forced Disappearance" or "CIDFP").

5. The representatives requested that the Court declare the State responsible for the violation of the rights enshrined in Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention in relation to Article 1(1) of the same treaty and Articles II and XI of the CIDFP, in detriment of Mr. Rosendo Radilla. Likewise, they argued that the State is responsible for the violation of Article 5 (Right to Humane Treatment) of the American Convention in relation to Article 1(1) of the same instrument, in detriment of the following next of kin of Mr. Radilla-Pacheco: Victoria Martínez Neri and Tita, Andrea, Romana, Evelina, Rosa, Ana, Agustina, María del Carmen, María del Pilar, Judith, Victoria, and Rosendo, all of them with the surnames Radilla Martínez, as well as of the "community" to which Mr.

Rosendo Radilla-Pacheco belonged." On the other hand, they requested that the State be declared responsible for the violation of Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation with Article 1(1) of said treaty and Articles I, subparagraph b), and IX of the CIDFP, in detriment of Mr. Rosendo Radilla and "his next of kin". Additionally, they requested that the Tribunal declare the violation of Article 13 (Freedom of Thought and Expression) in relation to Articles 8 (Right to a Fair Trial), 25 (Judicial Protection), and 1(1) (Obliation to Respect Rights), all of the American Convention, in consistence with Article I, subparagraphs a) and b), of the CIDFP, in relation with the "right to the truth" in detriment of "the next of kin" of Mr. Rosendo Radilla-Pacheco and the Mexican society as a whole. Finally, they requested that the Court declare that "[t]he State of Mexico is responsible for not adopting the legislative measures or that of any other nature necessary for the obtainment of justice and truth, thus violating Article 2 of the American Convention, in consistence with Article III of the [CIDFP]," and that "the reservation filed by the State of Mexico to Article IX of the [CIDFP] be declared null for going against [its] object and purpose."

6. On September 21, 2008 the State filed a brief through which it presented four preliminary objections, it responded to the application and it made its observations to the brief of pleadings and motions (hereinafter "respondent's plea"). Thus, the State requested that the Court declare admissible the following preliminary objections: i) lack of jurisdiction ratione temporis due to the date of deposit of its instrument of adherence to the American Convention; ii) lack of jurisdiction ratione temporis to apply the CIDFP, due to the deposit date of Mexico's adherence instrument; iii) lack of jurisdiction ratione materiae to use the Charter of the Organization of American States as grounds to hear the case, and iv) lack of jurisdiction ratione temporis to hear the alleged violations to Article 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention in detriment of Mr. Radilla-Pacheco. "Ad cautelam", regarding the merits, the State partially acknowledged its international responsibility for the violation of the rights enshrined in Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in detriment of Rosendo Radilla-Pacheco and his "next of kin". Likewise, the State acknowledged its responsibility for the violation of the rights enshrined in Articles 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in detriment of Mr. Radilla-Pacheco. Similarly, it accepted the alleged violation of Article 5 (Right to Humane Treatment) of the Convention, in detriment of "the next of kin" of Mr. Radilla-Pacheco. On the other hand, Mexico denied the violation of the rights acknowledged in Articles 3 (Right to Juridical Personality) in detriment of Rosendo Radilla-Pacheco, 5 (Right to Humane Treatment), in detriment of the community where Mr. Radilla-Pacheco lived; 13 (Freedom of Thought and Expression) in detriment of his next of kin; and 2 (Domestic Leal Effects), all of the American Convention. Finally, the State indicated it was willing to maintain the reparation proposal it had made in the proceedings before the Inter-American Commission. The State appointed Mrs. Mari Carmen Oñate Muñoz, Ambassador of Mexico in Costa Rica, as Agent in the present case; the appointment of Mrs. Zadalinda González y Reynero, Ambassador of Mexico before Costa Rica when the present Judgment was issued, later substituted this appointment.

7. On November 7th and 10, 2008 the Commission and the representatives presented, respectively, their written arguments to the preliminary objections filed by the State.

II. PROCEEDINGS BEFORE THE COURT

8. During the proceedings before this Court, the parties forwarded to the Court their main briefs (supra paras. 1, 4, and 6). The representatives and the Commission filed, respectively, the brief of arguments to the preliminary objections filed by the State (supra para. 7). Likewise, the President of the Court (hereinafter "the President"), ordered the receipt of statements offered before a notary public (affidavit) of two alleged victims, ten witnesses, and three experts offered by the Commission, the representatives, and the State, and regarding which the parties had the opportunity to present observations. Additionally, the President summoned the Commission, the representatives, and the State to a public hearing to hear the statements of two alleged victims, a witness, and an expert, as well as the final oral arguments of the parties on preliminary objections, and the potential merits, reparations, and costs. Finally, the President set August 14, 2009 as the parties' deadline for the filing of their corresponding final written arguments. [FN4]

[FN4] Cf. Case of Padilla Pacheco v. Mexico. Summons to Public Hearing. Order of the President of the Inter-American Court of Human Rights of May 29, 2009, Operative paragraphs one through four.

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9. The public hearing was held on July 7, 2009 during the LXXXIII Regular Session of the Court, at the Tribunal's headquarters in San Jose, Costa Rica. [FN5]

[FN5] The following appeared at this hearing: a) for the Inter-American Commission: Florentín Meléndez, delegate and Juan Pablo Albán Alencastro and Lilly Ching Soto, advisors; b) for the representatives of the alleged victims: Juan Carlos Gutiérrez Contreras, Mario Alberto Solórzano Betancourt, María Sirvent Bravo-Ahuja, Humberto Guerrero Rosales, and Alejandra Gonza, advisor; and c) for the State: Fernando Gómez-Mont, Secretary of the Interior of Mexico; Daniel Francisco Cabeza de Vaca Hernández, Sub-secretary of Legal Issues and Human Rights of the Secretariat of the Interior; Juan Manuel Gómez-Robledo Verduzco, Sub-secretary of Multilateral Issues and Human Rights of the Foreign Affairs Secretariat; José Luis Chávez García, Attorney General of Military Justice of the National Defense Secretariat; Pablo Ojeda; Coordinator of Advisors of the Secretary of the Interior; María Carmen Oñate Muñoz, Ambassador of the Mexican Embassy in Costa Rica, Secretariat of Foreign Affairs; Alejandro Negrín Muñoz, General Human Rights and Democracy Director of the Secretariat of Foreign Affairs; Jaime Antonio López Portillo Robles Gil, Human Rights Director of the National Defense Secretariat; Ricardo Trejo Serrano, General Director of Criminal Procedures of the Attorney General of the Republic; Guillermo Leopoldo Mendoza Argüello, Representative of the 5th Section of the General Staff of the National Defense Secretariat; Francisca Méndez Escobar, Head of the State Department and In Charge of Economic, Political, Legal, and Press Issues, Mexican Embassy in Costa Rica, and José Ignacio Martín del Campo, Case Director of the Secretariat of Foreign Affairs.

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10. On the other hand, the President requested that the State, in attention to the request made by the Commission in its application and the representatives in their brief of pleadings and motions, forward a copy of Preliminary Inquiry SIEDF/CGI/454/2007 in process before the Attorney General of the Republic in relation to the alleged forced disappearance of Rosendo Radilla-Pacheco. Through the notes of April 17th, May 11th and 19th, June 4th, June 16th, July 2nd and September 30, 2009 the State referred to the request made by the President and indicated, inter alia, that it was "[w]illing to present to the [… Court …] a copy of Preliminary Inquiry SIEDF/CGI/454/07 for its exclusive knowledge, in the understanding that the other parties to the proceedings may not have access to [its] content," based on several of the stipulations of the Federal Criminal Law and the Federal Law on Transparency and Access to Governmental Public Information. On May 26th, June 23rd, July 2nd, and October 8, 2009 the representatives forwarded their observations to the State's notes. The Commission referred to the matter in its brief of June 24, 2009.

11. On August 14, 2009 the Inter-American Commission, the representatives, and the State filed their final written arguments.

12. On September 18, 2009 the President required that the State present evidence to facilitate adjudication of the case, which was forwarded on October 8, 2009, within the established time-period. Likewise, on October 26, 2009 the President of the Tribunal requested that the parties present evidence to facilitate adjudication of the case, which was forwarded by the State on November 2, 2009.

13. Additionally, the Tribunal received 13 briefs in the quality of amicus curiae from different people and institutions. [FN6] Thus, on July 2, 2009 the Tribunal received from International Amnesty a brief regarding the interpretative statements and reserves made by Mexico to the American Convention and to the Inter-American Convention on Forced Disappearance of Persons. [FN7] On July 17, 2009 the Court received a brief from Mrs. María Valdés Leal on "the lack of compatibility of the protection of freedom in Mexico with international law." On July 20, 2009 the Tribunal received a brief from Mr. Erik Nelson Ramírez,, "member of the Masters' studies in Constitutional Procedural Law of the Panamerican University," Mexico City Campus, regarding "[t]he unconstitutionality of [m]ilitary [j]urisdiction in Mexico, when these are crimes in which civilians participate as passive subjects or offended parties." [FN8] On July 20, 2009 the Court received a brief from the Mexican Human Rights and Democracy Institute with considerations on the military criminal jurisdiction in Mexico and the actions of the Mexican army in tasks of public safety. [FN9] On July 22, 2009 the Court received a brief from Mrs. Victoria Livia Unzueta Reyes, through which she provided elements regarding the construction and operation of military justice in Mexico. [FN10] On July 21, 2009 the Tribunal received a brief from "a coalition of Mexican organizations who defend human rights", through which they presented their considerations regarding the application of military jurisdiction to cases of human rights violations in Mexico. [FN11] On July 21, 2009 the Court received a brief from the Spanish Association for International Human Rights Law, in which it presented considerations regarding the right to an effective appeal and to obtain fair and adequate reparation in cases of forced disappearance of persons. [FN12] On July 21, 2009 the Center for Justice and International Law filed a brief, through which it referred to the development of the notion of the forced disappearance of persons and the consequences of its

enshrinement in international human rights law. [FN13] On July 21, 2009 this Court received a brief from the Washington Office for Latin American Matters regarding the impact of the use of soldiers in public safety tasks in Mexico. [FN14] On July 22, 2009 the Court received a brief from the Clinic of Public Interest of the Division of Legal Studies of the Center for Economic Investigation and Teaching, through which it referred to military jurisdiction in Mexico. [FN15] On July 22, 2009 the Court received a brief from Mrs. Gabriela Rodríguez Huerta and Karen Hudlet Vázquez, in which they presented considerations on the validity of both the interpretative statement as well as the reservations made by Mexico to the Inter-American Convention on Forced Disappearance. [FN16] On July 24, 2009 students of the Masters Program in Human Rights and Democracy of the Latin American Faculty of Social Sciences, Mexico campus, forwarded a brief on "[t]he expansive application of the Mexican military jurisdiction in detriment of civilians that have been victims of violations to their fundamental rights." [FN17] On July 27, 2009 the Court received a brief from the Miguel Agustin Human Rights Center referring to the historical context within which it has been argued that the alleged violations to human rights occurred in detriment of Rosendo Radilla-Pacheco, specifically regarding "the investigations carried out by the State in reference to the crimes committed during the period known in Mexico as 'Dirty War'. [FN18]"

[FN6] On June 23, 2009 "some graduate students of the Law School of the Universidad Nacional Autónoma de México" presented to the Tribunal "a document […] in the quality of AMICI CURIAE." However, the mentioned document does not state the names and identification data of "the students" that present the brief, reason for which, following the instructions of the President of the Tribunal, the sender was requested, pursuant with Article 27(1) of the Rules of Procedure of the Tribunal, to indicate the name, signature and identification information of the people who signed the mentioned document. Said information was not received.

[FN7] Martin Macpherson, Director of the International Law and Organizations Program of International Amnesty, signed the brief.

[FN8] The original brief was not received.

[FN9] Rocío Culebra Bahena, Executive Director, signed the document.

[FN10] Victoria Livia Unzueta Reyes signed the brief.

[FN11] Stephanie Erin Brewer signed the brief. The amicus curiae brief was prepared and filed by the following organizations: World Association of Community Radios (AMARC-Mexico); Catholics for the Right to Decide (CDD); National Center of Social Communication (CENCOS); Human Rights Center Brother Francisco de Vitoria, O.P.; Miguel Agustín Pro Juárez Human Rights Center (Prodh Center); Human Rights Center of the Tlachinollan Mountain (Tlachinollan); Center for Social and Cultural Studies Antonio de Montesinos (CAM); Fundar, Analysis and Research Center; Mexican Institute of Human Rights and Democracy (IMDHD); National Network of Civilian Human Rights Organizations "Todos los derechos para todas y todos" (RedTDT), and Supportive Network Decade Against Impunity. Likewise, said brief was filed by the organizations: Human Rights Center Brother Bartolomé de las Casas (FrayBa) and Network for Childrens' Rights in Mexico. However, these last two did not confirm before the Court their participation in the same.

[FN12] Carmelo Faleh Pérez, Secretary of the Association, and Carlos Villán Duran, President of the Association, signed the brief.

[FN13] Messrs. Gisela de León, Luis Diego Obando, Viviana Krsticevic, and Vanessa Coria signed the brief.
[FN14] Maureen C. Meyer, Coordinator for the Mexico and Central America Program, signed the brief.
[FN15] Javier Cruz Angulo Nobara, professor; Benjamín Uriel Salinas Morales, Víctor Daniel Gutiérrez Morales, Anel Alejandra Valadez Murillo, and Marcos Zavala Cruz, students, signed the document.
[FN16] Gabriela Rodríguez Huerta, academic and professor of the Law School of the Instituto Tecnológico Autónomo de México (ITAM), signed the document.
[FN17] Sara Luz Enriquez Uscanga, Manuel Amador Velásquez, Mariana Castilla Calderas, Angélica Saucedo Quiñones, Claudia Liza Corona de la Peña, Yedana Renee García Flores, Silvana Cantú Martínez, Roberto Josué Bermúdez Olivos, Laura Rebeca Martínez Moya, Paulina Gutiérrez Jiménez, Ana Paula Hernández Pontón, Mario Patrón Sánchez, and Catherine Mendoza signed the brief.
[FN18] Luis Arriaga Valenzuela, Director, and Jorge Santiago Aguirre Espinosa, and Stephanie Erin Brewer, attorneys, signed the document. Said brief indicated that the Diego Lucero Foundation, the Guzmán Cruz Family, the Born in the Storm, and the Committee of the Mothers of Disappeared Victims of Chihuahua adhered to the same. However, these organizations did not confirm their participation before the Court.

III. PRELIMINARY OBJECTIONS

14. As stated, in its response brief to the application the State presented four preliminary objections regarding the temporary and material jurisdiction of this Tribunal to hear the present case. In this sense, the Court considers it necessary to reiterate that, as any body with jurisdictional duties, it has the power inherent to its attributions to determine the scope of its own jurisdiction (compétence de la compétence). In that sense, this Court has considered that it cannot leave the determination of which facts are excluded from its jurisdiction up to the States. [FN19] Taking into account the aforementioned, the Court will analyze the validity of the preliminary objections filed in the order in which they were presented.

[FN19] Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 74; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 45, and Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 41.

A. Lack of jurisdiction ratione temporis to hear the merits of the case due to the date of deposit of Mexico's adherence instrument to the American Convention

15. The State indicated that the Court "[l]acks jurisdiction ratione temporis to hear the merits of the case […], since [… it] signed its adherence instrument to the American Convention […] on March 2, 1981 and it deposited it at the General Secretariat of the OAS on March 24, 1981."

In this sense, it argued that at the time when the facts occurred in this case "there was no international obligation whatsoever over which [the] Court has jurisdiction." The State added that according to the American Convention, juridical obligations could not be applied retroactively. The State did not object the permanent or continuous nature of the forced disappearance of Mr. Rosendo Radilla-Pacheco, but indicated that "[t]here was no instrument based on which international responsibility could be attributed to it for those actions" on the date on which they occurred, that is, August 25, 1974. In this line, it argued that "[i]f the start of a State act does not have juridical relevance, due to non-existence of an obligation at the time it is carried out, the continuance of the same cannot have any either. Thus, even when facing a disappearance, the Inter-American Court does not have jurisdiction to hear actions that are legally irrelevant, regardless of the fact that they continue once the American Convention is ratified."

16. The Commission indicated it was not requesting a retroactive application of the Convention and agreed with the State in what refers to the fact that its obligations under the Convention start as of the date of its ratification. On their part, the representatives indicated that the State accepts it has full obligations enforceable as of March 24, 1981, date of its adherence to the Convention.

17. The facts that substantiate the Commission's application in the present case refer to the alleged arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco that occurred on August 25, 1974, that is, before the State's adherence to the American Convention. However, in the present case it is argued that the forced disappearance of Mr. Radilla-Pacheco "has a continuous or permanent nature," that up to this date his whereabouts are unknown, and that the investigations carried out in this sense have not produced any result whatsoever.

18. Therefore, the Court understands that the facts argued or the State's behavior that could imply its international responsibility continued to exist after the treaty had gone into force for Mexico and up to the present. The continuance of this situation has not been contested by the State. Mexico argues that, on the contrary, the continued nature of the forced disappearance of persons is irrelevant in this case.

19. In substantiation of its arguments the State has invoked the principle of non-retroactivity of treaties, contemplated in Article 28 of the Vienna Convention on the Law of Treaties (hereinafter "Vienna Convention"), according to which the States Parties will not be bound regarding acts, facts, or situations that occurred prior to the going into force of a treaty. [FN20]

[FN20] Article 28 of the Vienna Convention on the Law of Treaties states that: "[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with regard to that party."

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20. The Court observes that according to the mentioned principle, the general rule is that a treaty does not have retroactive application on the acts or facts that were committed prior to the

date on which in went into force, unless a different intention can be inferred from the same or has been made evident through other means. Now, it can be concluded from the same principle that as of the moment in which a treaty goes into force compliance of the obligations included therein are enforceable with regard to any action following that date. This corresponds to the principle pacta sunt servanda, according to which "[a]ll treaties in force bind the parties and shall be complied by them in good faith." [FN21]

[FN21] Article 26 of the Vienna Convention on the Law of Treaties. In the same sense Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, para. 99; I.C.J., Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections. Judgment of 2 December 1963, Report 1963, pages 18 and 27; and Permanent Court of International Justice, Case of the Free Zones of Upper Savoy and the District of Gex, Judgment of 7 June 1932, Series A/B No. 46, pages 161 and 162.

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21. From the aforementioned, it is clear that a fact cannot constitute the violation of an international obligation derived from a treaty unless the State is bound by that obligation at the time at which the fact occurs. The determination of that moment and its extension in time is therefore relevant for the determination not only of the international responsibility of a State, but of the jurisdiction of this Tribunal to apply the treaty in question.

22. In this sense, it is important to differentiate between instantaneous acts and acts of a continuous or permanent nature. [FN22] The latter "extend through the entire time period during which the fact continues and the lack of conformity with the international obligation is maintained." [FN23] Due to its characteristics, once the treaty goes into force, those continuous or permanent acts that persist after that date, may generate international obligations for the State Party, without this implying a violation to the principle of non-retroactivity of treaties.

[FN22] Cf. Eur. Ct. H.R., Case of Loizidou v. Turkey, Application no. 15318/89, Judgment of 18 December 1996, paras. 35 and 41.

[FN23] Article 14 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts. In this regard, Cf. James Crawford The International Law Commission's Articles on State Responsibility- Introduction, Text, and Commentaries, Cambridge, University Press, 2002. In the same sense, Case of Blake v. Guatemala. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40; Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161 para. 45; Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 29; I.C.J., United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment of 24 May 1980, para. 78; Eur. Ct. H.R., Case Papamichalopoulos and Others v. Greece, Judgment of 24 June 1993, paras. 40 and 46; Eur. Ct. H.R., Case Agrotexim and Others v. Greece, Judgment of 24 October 1995, para. 58, and H.R.C., Case Lovelace v. Canada, Communication CCPR/C/57/D/566/1993, July 23, 1996, para. 6(3), and Case of E. and A.K. v. Hungary, Communication CCPR/C/50/D/520/1992, May 5, 1994, para. 6(4).

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23. The forced disappearance of persons, whose continuous or permanent nature has been acknowledged repeatedly by International Human Rights Law, falls within this category of acts, [FN24] in which the act of disappearance and its execution start with the deprivation of freedom of the person and the subsequent lack of information on their fate, and it continues until the whereabouts of the disappeared person are known and the facts are elucidated.

[FN24] Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 155; Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 106, and Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 84. The European Human Rights Court has also considered the continuous or permanent nature of the forced disappearance of persons. Cf. Case of Cyprus v. Turkey, Application No. 25781/94, Judgment of 10 May 2001, paras. 136, 150, and 158, and Case of Loizidou v. Turkey, supra note 22, para. 41.

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24. Based on the aforementioned, the Court considers that the American Convention produces binding effects regarding a State once it is bound to the same. In the case of Mexico, at the time of its adherence to the same, that is, March 24, 1981 and not before that. Thus, pursuant with the principles of pacta sunt servanda, it is only as of that date, that the obligations of the treaty are in force for Mexico, and by virtue of that, it is applicable to those facts that constitute violations of a continuous or permanent nature, that is, those that occurred prior to the entry into force of the treaty and persist even after that date, since they are still being committed. Stating the contrary would be the same as depriving the treaty itself and the guarantee of protection established therein of its useful effect, [FN25] with negative consequences for the alleged victims in the exercise of their right to a fair trial.

[FN25] Cf. Case of Bulacio v. Argentina. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, para. 118; Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, para. 152, and Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 15, 2005. Series C No. 124, para. 165. In the same line, Cf. Eur. Ct. H.R. Klass and others v. Germany, Preliminary Objection, Judgment of 6 September 1978, para. 34, and Permanent Court of Arbitration, Dutch-Portuguese Boundaries on the Island of Timor, Netherlands v. Portugal Arbitral Award of 25 June 1914, pages 7 and 8.

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25. For all the aforementioned, this Court dismisses the present preliminary objection.

B. Lack of jurisdiction ratione temporis to apply the Inter-American Convention on Forced Disappearance of Persons based on the date of deposit of Mexico’s instrument of adherence to the mentioned Convention

26. Pursuant with the interpretative statement made upon ratifying the CIDFP, the State held that the Court lacked jurisdiction ratione temporis to apply the that instrument to facts that were not ordered, executed, or committed after the going into force of the mentioned treaty. On the other hand, Mexico argued that the Court lacked jurisdiction to determine if the reservation made to Article IX of the mentioned Convention [FN26] was or not compatible with international law, since the State had never invoked that reservation as justification for the failure to comply with its international obligations and because it was not the object of litis in the process before the Inter-American Commission. Finally, the State contested the legal interest of the representatives in requesting the nullity of the mentioned reservation.

[FN26] Upon ratifying the ICFDP Mexico made the following reservation: "The Government of the United Mexican States […] makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact."

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27. The Commission indicated that it had not invoked violations to the CIDFP, and therefore it would not go on the record regarding this matter. On their part, the representatives argued that the interpretative statement made by the State of Mexico did not affect the Tribunal's jurisdiction. Likewise, they held that both the CIDFP and the reservation to its Article IX had formed part of the litis within the national and international realm.

28. Regarding the jurisdiction ratione temporis to hear of alleged violations to the CIDFP, the Court observes that, upon ratifying said Convention on April 9, 2002, Mexico made the following "interpretative statement":

"Based on Article 14 of the Political Constitution of the United Mexican States, […] shall be understood that the provisions of said Convention shall apply to acts constituting the forced disappearance of persons ordered, executed, or committed after the entry into force of this Convention."

29. In this sense, the Tribunal warns that Article 14 of the Political Constitution of Mexico, referred to in the interpretative statement indicates, inter alia, that "[no] law will be given a retroactive effect in detriment of any person whatsoever." Based on the aforementioned, the State adduced that "Mexico's temporary limitation to the CIDFP is admissible […] since the […] Court can hear of forced disappearances executed after April 9, 2002. […] Since the limitation of the State of Mexico to the instrument […] refers to facts executed prior to April 9, 2002, the […] Court cannot hear of facts or acts that were committed or executed prior to April 9, 2002, and whose effects were completed in that act."

30. The "statement" made by Mexico allows the clarification of the sense or temporary scope regarding the application of the CIDFP. Based on the current sense of its terms it can be clearly concluded that the stipulations of the Convention are applicable to facts executed or committed after it has gone into force. In light of Article 31 of the Vienna Convention, this Tribunal has stated that the "current sense" of the terms cannot be a rule itself but it must be included within the context and, especially, within the object and purpose of the treaty. [FN27] Likewise, the Tribunal has stated that the "current sense of the terms" shall be analyzed as part of a whole whose meaning and scope shall be determined in function of the legal system to which they belong. [FN28]

[FN27] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 23; Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights. Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12, para. 21, and Article 55 of the American Convention on Human Rights. Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, para. 26.

[FN28] Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 113; Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, para. 78, and Article 55 of the American Convention on Human Rights. Advisory Opinion OC-20/09, supra note 27, para. 26. In the same sense, the International Court of Justice has stated that "[i]t cannot base its arguments on a strictly grammatical interpretation of the text. [The Court] shall seek an interpretation that is in harmony with the natural and reasonable way in which the text is read." (translation of the Secretariat) Cf. I.C.J., Case of the Anglo-Iranian Oil Company Case. (United Kingdom v. Iran), Preliminary Objection. Judgment of 22 July 1952, page 104.

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31. Thus, the correct interpretation of the terms "execute or commit" of Mexico's declaration to the CIDFP, cannot be any other that one consistent with the characterization the treaty itself makes of forced disappearance [FN29] and with the useful effect of its provisions, in a manner such that its application includes the acts of forced disappearance of persons that continue or remain beyond the date in which in went into force for Mexico, [FN30] that is, April 9, 2002, as long as the fate or whereabouts of the victim are not determined. [FN31]

[FN29] In this sense, the Court reiterates, pursuant with the relevant part of Article III of the CIDFP, that the crime of forced disappearance of persons "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim have not been determined."

[FN30] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 155; Case of Heliodoro Portugal v. Panama, supra note 24, para. 106, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 52.

[FN31] Cf. Article III of the CIDFP. In this sense, the criterion adopted by the Supreme Court of Justice of Mexico upon analyzing the going into force of the Inter-American Convention becomes relevant. The Supreme Court of Mexico established that "[the stipulations included in

the CIDFP] could not be applied to those behaviors that constitute a disappearance whose commission ceased before the new rule became compelling, but it shall not be interpreted in the sense that it not be applied to the typical behaviors of that crime that having been started prior to its validity, continue to be committed during it, since given that the crime of forced disappearance of persons has the nature of permanent or continuous the behaviors of the crime can continue to occur during the validity of the Convention." Cf. Supreme Court of Justice of the Nation of Mexico, Thesis: P./J 49/2004. "Forced Disappearance of Persons referred to in the Inter-American Convention of Belém, Brazil, of June ninth nineteen ninety four. The interpretative statement made by the Mexican government does not violate the principle of non-retroactivity of the law enshrined in Article 14 of the Constitution." Ninth Period, Instance: Full Source: Judicial Weekly Publication of the Federation and its Gazette. XX, July 2004 Page: 967. Jurisprudence Subject(s): Constitutional.

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41. In the case currently before us, it is argued that the forced disappearance of Mr. Radilla-Pacheco is still being committed. Therefore, the eventual application of the CIDFP to the present case is within the temporary jurisdiction of this Court.

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33. On the other hand, Mexico argued the lack of jurisdiction of the Tribunal to hear of the alleged nullity of the reservation made to Article IX of the CIDFP. In this sense, the Court observes that the State's argument corresponds to a preliminary objection, whose object is to prevent the Court from hearing of the alleged "nullity" of the mentioned reservation regarding "military criminal jurisdiction in cases of Forced Disappearance of Persons," and therefore of the application of said Article in the present case.

34. It has been a criterion held by this Tribunal that the American Convention grants it full jurisdiction over all matters regarding a case submitted to its knowledge, even over the procedural presumptions on which it substantiates the possibility to exercise its jurisdiction. [FN32]

[FN32] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 29; Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 40, and Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 35.

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35. The Court verified that during the proceedings before the Commission, the representatives argued the alleged violation of Article IX of the CIDFP. [FN33] In this sense they referred to the reservation made by the State, expressing that it "frustrate[d] the object and purpose of that Convention; additionally[, it would] prevent this instrument from complement[ing] the national legislation in [this] subject," [FN34] and they requested from the Commission that "it request that the State of Mexico withdraw the reservation and the

interpretative declaration made to the [CIDFP], because it transgresses [its] object and purpose […].” [FN35] In this sense, in its Report on Admissibility, the Commission admitted the petition filed, “with regard to the facts denounced and regarding Articles […] I, III, IX, XI, and XIX [of the mentioned Convention],” [FN36] even though in the Merits Report it considered that “it [was not] necessary to go on the record regarding the alleged violations to Articles I, II, III, IX, XI, and XIX of the [CIDFP].” [FN37] Based on the aforementioned, this Court considers that during the processing of the case before the Commission, the State had the opportunity to present its arguments in this sense and, before this Tribunal it has not proven a detriment to its right to a defense in that sense.

[FN33] Cf. Brief forwarded by the petitioners to the Inter-American Commission of Human Rights on January 05, 2006 (Dossier of appendixes to the application, Appendix 1(24), folios 329 through 333).
[FN34] Cf. Relevant Parts of the brief of June 18, 2002 forwarded by the petitioners to the Inter-American Commission of Human Rights (dossier of appendixes to the application, Appendix 1(4), folio 144).
[FN35] Cf. Brief forwarded by the petitioners to the Inter-American Commission of Human Rights on January 05, 2006 (dossier of appendixes to the application, Appendix 1(24), folio 431).
[FN36] Cf. Admissibility Report No. 65/05 of October 12, 2005 (dossier of appendixes to the application, appendix 2, folio 56).
[FN37] Cf. Report on Merits No. 65/05 of July 27, 2007 (dossier of appendixes to the application, appendix 1, folio 44).

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36. In what is relevant, the Court considers that the inclusion in the brief of pleadings and motions of the request for the Court to issue a ruling on the alleged nullity of the reservation made by Mexico to the CIDFP is linked to the alleged violation of that provision. On its part, the State has had the opportunity to present its defense arguments regarding those requests before this Tribunal.

37. Based on the previous considerations the Court dismisses this preliminary objection.

38. Finally, the Tribunal observes that in its final written arguments, the State invoked the “[l]ack of exhaustion of domestic remedies in order to appeal the nullity of the reservation presented by Mexico to Article IX of the CIDFP.” In this sense, in indicated that “[s]ince the [representatives had] introduce[d] a new aspect to the litis, the State of Mexico ha[d] the possibility to invoke the rule of lack of exhaustion of domestic remedies.” Regarding this request, it is enough to repeat that pursuant with Article 38(1) of the Rules of Procedure of the Court “the preliminary objections may only be presented in the respondent’s plea.” Thus, this Tribunal cannot consider that request, since it is time-barred.

C. Lack of jurisdiction ratione materiae to use the Charter of the Organization of American States (OAS) as grounds to hear the case

39. The State argued that the Inter-American Court lacked jurisdiction "[t]o use the Charter of the Organization of American States [issued in Bogota in 1948, hereinafter "Charter of the OAS"] as grounds to hear […] the present case." The State indicated that the representatives based the jurisdiction of this Tribunal not only on the American Convention but also on said Charter, which did not grant the Court "any authority whatsoever to act as its supervising body and guardian" and that, therefore, this Tribunal should disqualify itself from using said instrument as grounds for its jurisdiction to hear the merits of the present case.

40. The Commission did not present arguments in this sense, since, as stated, it was not arguing the alleged violation of the Charter of the OAS.

41. On their part, the representatives stated that they had not asked that the Court declare any violation whatsoever regarding the Charter of the OAS. They indicated that "[t]he Charter of the OAS, as well as the American Declaration of the Rights and Duties of Man should help to interpret and determine the scope of the obligations the States have and the moment at which they acquired those obligations that were perfected upon signing and ratifying the American Convention on Human Rights." In that sense, they added that it was an argument with the purpose of "including in the establishment of the international responsibility of the State of Mexico the obligations it acquired and it promised to fulfill as of 1948", date on which the Charter of the OAS was signed.

42. The representative's response makes it clear that there is no controversy regarding the State's argument in this sense. The Court states that, in effect, it does not have jurisdiction to apply stipulations of the Charter of the OAS within the framework of a contentious proceeding. [FN38]

[FN38] Cf. Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC 10/89 of July 14, 1989. Series A No. 10, para. 44, and Case of Bueno Alves v. Argentina, supra note 28, para. 58.

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43. Due to the aforementioned, the Tribunal considers that the preliminary objection filed has no purpose, thus, it shall be dismissed.

D. Lack of jurisdiction ratione temporis to hear of alleged violations to Mr. Radilla-Pacheco's right to life and to humane treatment (Articles 4 and 5 of the American Convention) in detriment of Mr. Rosendo Radilla-Pacheco

44. The Court observes that the objection filed by the State is based on the presumption according to which a disappeared person is considered dead once a considerable period of time has gone by without having news of their whereabouts or remains. The State indicates that, under an analysis of comparative law and jurisprudence, the death and alleged torture of Mr. Rosendo Radilla-Pacheco would have occurred prior to the date of ratification of the Court's contentious

jurisdiction on December 16, 1998, since as of the date of his arrest, on August 25, 1974, more than 24 years had gone by without any news of his whereabouts.

45. It is not possible for this Tribunal to reach at this stage of the proceedings the conclusion that results from the presumption argued by the State, without this implying pre-judgment on certain facts stated and the body of evidence provided. In effect, the presumption of death invoked by the State, as such, has a iuris tantum nature, that is, it admits evidence to the contrary. The same seeks to conclude that a missing person or a person there has been no news of, after a certain period of time has gone by without having any evidence of their whereabouts or fate, is presumed dead.

46. A presumption of this type must have at least the following elements in order to be made: a) there must be a fact or state of the situation, b) the non-existence of evidence that would allow to infer that said state of the situation is not so, c) the existence of a rule of presumption regarding the mentioned fact or state of the situation, and d) the conclusion of the presumption that can be reached after said analysis. Thus, to be analyzed in a comprehensive manner during this stage of the proceedings, the Court should consider and assess certain facts stated in the application that form part of the merits of the case, the non-existence of evidence that can prove the contrary, and the existence of a rule of presumption of death, in order to finally reach the conclusion established in the presumption.

47. Likewise, the Tribunal observes that the rules of presumption generally invert the burden of proof of certain facts in favor of any of the parties in the proceedings, when due to the absence of conclusive evidence the fact established in the presumption cannot be declared, this in order to reach legal certainty in the litigation of a case regarding the facts under analysis. In the case of the presumption of death due to forced disappearance, the burden of proof falls upon the party that had the alleged control over the detained person and their fate –generally the State-, who must prove the fact contrary to what is concluded from said presumption, that is, that the person has not died.

48. In this sense, it would be inadmissible that the party on which the burden to invalidate the presumption falls use it in order to exclude or limit, in an early manner through a preliminary objection, the Tribunal's jurisdiction over certain facts in a case of forced disappearance. On the contrary, the State would be using the presumption of death to once again invert the burden of proof on who argued it for the first time, that is the Commission and the alleged victims. The use of a presumption in this manner makes its existence ineffective and invalidates the sense of its existence within the law.

49. In any case, the Court warns that the presumption of death in cases of forced disappearance only leads to the conclusion that it be presumed that Mr. Rosendo Radilla died, but it does not lead to a certain determination or approximation of the exact date on which his death occured, which would be essential in order to accept the State's request.

50. Based on all the aforementioned, this Tribunal dismisses the present preliminary objection and it declares itself competent to analyze the facts that would allegedly violate Articles 4 and 5 of the American Convention in detriment of Mr. Radilla-Pacheco.

IV. JURISDICTION

51. The Inter-American Court is competent to hear the present case, in the terms of Article 62(3) of the Convention, given that Mexico is a State Party to the American Convention since March 24, 1981 and it acknowledged the Court's contentious jurisdiction on December 16, 1998. Likewise, the State ratified the CIDFP on April 9, 2002.

V. PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

52. In the response to the application, the State made a partial acknowledgment of its international responsibility (supra para. 6), in the following terms:

- The State acknowledges "[i]ts international responsibility derived from the violation of Articles 5, 7, as well as the partial non-compliance of the obligations derived from Articles 8 and 25, all of the Convention, and in connection to 1(1) of the same instrument in detriment of Mr. Rosendo Radilla-Pacheco," and
- The State acknowledges "its international responsibility derived from the failure to comply with Article 5, as well as the partial non-compliance of the obligations derived from Articles 8 and 25, all of the Convention and in connection with 1(1) of the same document, in detriment of the next of kin of Mr. Rosendo Radilla-Pacheco".

53. In that sense, it indicated that:

- "[s]ince the criminal justice system of Mexico sought and started a criminal procedure against Mr. Francisco Quiroz Hermosillo, it is acknowledged that Mr. Rosendo Radilla-Pacheco was illegally and arbitrarily deprived of his freedom by a public official;"
- "[t]he State […] incurred in an unjustified delay in the investigations into the disappearance of Mr. Rosendo Radilla-Pacheco, the location of his remains, and the identification of those probably responsible for the criminal facts." Thus, "[i]n the case sub judice the State of Mexico has not been able to guarantee the petitioners that their right to a due process will be promptly guaranteed."
- "the State of Mexico is aware that the obligation to investigate and punish facts that presumably violate human rights cannot be transferred to the petitioners, but it is also important to point out that the investigation and punishment of those facts becomes more difficult when they are not denounced in a timely manner." This "resulted in a serious delay in the elucidation of the facts of the case, since the obtainment of evidence, both for the determination of the possible responsible parties, as well as for the location of the remains of Mr. Rosendo Radilla-Pacheco, becomes more complicated as time goes by."
- "[e]ven though the State admits the unjustified delay in this case, it also requests that the […] Court especially take into consideration the complexity of the present matter to determine the reasonability of the term for its resolution. The Court itself has admitted the difficulty that the investigation of a case that occurred a long time before the first cabinet complaints and even before non-jurisdictional bodies were presented by the next of kin and the representatives of the alleged victim implies."

• "[t]hus, it is said that there is a denial of justice, not due to the State's negligence or will to maintain impunity, but because it has not been possible to locate the remains of Mr. Rosendo Radilla-Pacheco or establish his whereabouts. […] It is undeniable that the unjustified delay in the investigations has caused detriment to the next of kin of Mr. Rosendo Radilla-Pacheco, since they have not been able to receive news about his whereabouts and fate. Additionally, the anguish characteristic of human nature that results from not knowing the fate of a loved one, force an acknowledgment of the State's responsibility regarding that situation, in violation of Article 5 of the American Convention on Human Rights."

54. On the other hand, the State contested the alleged impunity in the present case, "since the investigation continues," and because "there are enough elements to prove that currently the authorities are exhausting all legal means within their reach to avoid [it]." The State also indicated that the Court "shall declare itself incompetent to analyze the circumstantial context […] in this case." Finally, The State of Mexico denied its "international responsibility derived from the failure to comply with Articles 2, 3, and 13 of the Convention."

55. It shall be pointed out that with regard to the alleged violation to Article 4 (Right to Life) of the American Convention in detriment of Mr. Rosendo Radilla, the State did not express acknowledgment of its violation; however, it indicated that his death was presumed (supra para. 44). In this sense, it stated that "[e]ven though in the present case there is no convincing evidence proving that Mr. Rosendo Radilla-Pacheco was deprived of his life, the impossibility to obtain conclusive evidence, is not an obstacle to assume that […] he has not passed away. On the contrary, being consistent with the criteria of the […] Court, after 34 years without obtaining news of [his] whereabouts or fate […], it is reasonable to presume he has passed away."

56. The acknowledgment of responsibility expressed was reiterated during the public hearing held in the present case (supra para. 9), in which the State's representative indicated that:

The State's position is still the same as the one included in the respondent's plea, there has been no variation in this sense. What the State […] made emphasis on was the fact that Mexico does not object the facts and, taking into account the jurisprudence of [… the] Court, it can currently presume, with regret, that Mr. Rosendo Radilla has passed away.

57. With regard to the reparations requested, the State reiterated the proposal of comprehensive reparation presented during the process before the Commission. In what refers to the publication of the judgment, if it were a conviction, the State indicated it would submit to what the Court decided. Regarding the costs and expenses, it indicated that the Rules of Procedure of the Court state that said item will be included in the judgment, if it proceeds, which implies that not in all cases said items will be accepted or have to be satisfied. Thus, the State opposed certain expenses requested by the representatives of the alleged victims.

58. Regarding the universe of victims, beneficiaries of the reparations "[t]he State, in good faith, acknowledge[d] the family relationship of […] Tita, Andrea, and Rosendo, all of the surnames Radilla Martínez. […] However, it request[ed] that the […] Court […] not consider Victoria Martínez Neri, Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria, or Judith, all of the surnames Radilla Martínez, as victims in the present case since they were not

presented as such by the Commission at the correct procedural moment." Additionally, the State argued that in the present case "there is no reason for a reparation of a collective nature." The State indicated that "[t]here is no causal relationship whatsoever between the alleged violations to Mr. Radilla's rights and […] the alleged infringements to the community of Atoyac de Álvarez".

59. The Inter-American Commission indicated that "[w]ithout dismissing the value and importance of the acknowledgment of responsibility made by the State […], starting with its four preliminary objections, several of the arguments made […] by the State […] contest[ed] the facts supposedly acknowledged." In this sense, the Commission requested that the Court decide in the judgment the matters that remain in litigation. The representatives, on their part, indicated several facts regarding which they considered the State had accepted its responsibility and requested that the Tribunal decide on their scope.

60. Pursuant with Articles 56(2) and 58 of the Rules of Procedure, [FN39] and in exercise of its powers of international judicial protection of human rights, the Court can determine if an acknowledgment of international responsibility made by an accused State offers enough grounds, in the terms of the American Convention, to continue to hear the merits and determine the possible reparations and costs. [FN40]

[FN39] In what is relevant, Articles 56(2) and 58 of the Rules of Procedure of the Court state that:
Article 56. Discontinuance of a case
[…]
2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case or the claims of the alleged victims or their representatives, the Court shall decide, after hearing the opinions of the other parties to the case, whether to accept such acquiescence, and rule upon its juridical effects. In that event, the Court shall determine the corresponding reparations and costs.
Article 58. Continuation of a case
Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding paragraphs.
[FN40] Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, para 105; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 28, and, Case of Kawas Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of April 3, 2009 Series C No. 196, para. 23.

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61. Given that the proceedings before this Court refer to the protection of human rights, a matter of international public order that transcends the will of the parties, the Court shall make sure that the acts of acquiescence result acceptable for the purposes the Inter-American system seeks to fulfill. In this task it does not limit itself to verifying the formal conditions of the mentioned acts, but it shall confront them to the nature and gravity of the alleged violations, the

demands and interest of justice, the specific circumstances of the case in question and the parties' attitude and position. [FN41]

[FN41] Cf. Case of Myrna Mack Chang. Merits, Reparations, and Costs, supra note 40, paras. 106 through 108; Case of Ticona Estrada et al. v. Bolivia, supra note 23, para. 21, and Case of Kawas Fernández v. Honduras, supra note 40, para. 24.

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62. In what refers to the facts of the present case, the Court observes that the State did not clearly and specifically indicate the facts of the application that act as grounds for its partial acknowledgment of responsibility. However, upon accepting the alleged violations to Articles 5 and 7 of the American Convention, in relation to the obligation established in Article 1(1) of the same, this Tribunal understands that Mexico has also acknowledged the facts that, according to the application –factual framework of these proceedings-, make up these violations; that is, those regarding the arrest and subsequent disappearance of Mr. Rosendo Radilla-Pacheco in the hands of members of the Mexican army, as well as the infringement of the right to humane treatment in his detriment. Regarding this last matter, the Court observes that the State accepted the violation of Article 5 of the Convention, in detriment of his next of kin, for the partial non-compliance of Articles 8 and 25 of the American Convention. The State has accepted the unjustified delay in the investigations tending to determine the whereabouts of Mr. Radilla-Pacheco and to locate and punish those responsible; however, it has denied that impunity has persisted in this case and, even though it stated that there is a denial of justice in the present case, it indicated that it was not a result of the "State's negligence or willingness to maintain impunity." (supra para. 53)

63. Without detriment of the aforementioned, the Tribunal decides to accept the acknowledgment made by the State and consider it a partial admission of facts and partial acquiescence of the legal claims included in the Commission's application and in the representatives' brief of pleadings and motions.

64. On the other hand, the Tribunal warns that there is still controversy between the parties regarding the alleged violation to Articles 4 (Right to Life) and 3 (Right to Juridical Personality) in detriment of Rosendo Radilla-Pacheco, to Article 5 (Right to Humane Treatment), in detriment of "the community where Mr. Radilla-Pacheco lived", to Article 8 (Right to a Fair Trial), in relation to certain guarantees of the due process, to Article 13 (Right to the Freedom of Thought and Expression), in detriment of the next of kin of Mr. Rosendo Radilla in relation to the right to the truth, and 2 (Domestic Legal Effects), all of them contemplated in the American Convention, in relation to Article 1(1) of the same. Likewise, the controversy with regard to the alleged non-compliance of Articles I, II, III, IX, and XI of the CIDFP as well as the determination of the eventual reparations subsists.

65. Regarding the alleged victims, the State, in its response to the application, only accepted as such three of the twelve next of kin mentioned as alleged victims in the application under the argument that the other people (the wife and the other nine children of Mr. Radilla-Pacheco) were not mentioned in the Commission's report on merits. Therefore, the controversy regarding who shall be considered alleged victims subsists. Thus, the Court will proceed to their

determination in the corresponding chapter (infra paras. 104 through 113), on the base of its jurisprudence and the evidence presented in this sense.

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66. The Court values the acknowledgment and partial admission of the facts and the acquiescence regarding some of the claims made by the State. After having examined said acknowledgment, and taking into account that stated by the Commission and the representatives, it considers it necessary to issue a Judgment in which it shall determine the facts and all the elements of the merits of the matter, as well as the corresponding consequences in what refers to the reparations. [FN42]

[FN42] Cf. Case of Vargas Areco v. Paraguay. Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 155, para. 66; Case of Valle Jaramillo et al. v. Colombia, supra note 40, para. 47, and Case of Kawas Fernández v. Honduras, supra note 40, para. 35.

VI. EVIDENCE

67. Based on the stipulations of Articles 46, 47, and 49 of the Rules of Procedures, as well as with the jurisprudence of the Tribunal regarding evidence and its assessment, [FN43] the Court will proceed to examine and assess the documentary evidentiary elements forwarded by the parties on different procedural opportunities, as well as the statements offered through affidavit and those received in public hearing (supra paras. 8 and 9), as well as the evidence to facilitate adjudication of the case requested by the President (supra para. 12). For this, the Tribunal will obey the rules of competent analysis, within the corresponding legal framework. [FN44]

[FN43] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 76; Case of Garibaldi v. Brazil, supra note 32, para. 53, and Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 24, 2009. Series C No. 204, para. 32.

[FN44] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra note 43, para. 76; Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para 29, and Case of Garibaldi v. Brazil, supra note 32, para. 53.

A. Documentary, testimonial, and expert evidence

68. The statements offered before a public notary (affidavit) by the following alleged victims, witnesses, and experts were received: [FN45]

a) Andrea Radilla Martínez and Ana María Radilla Martínez. Alleged victims proposed by the Inter-American Commission. They testified, among other aspects, on the alleged forced

disappearance of Mr. Rosendo Radilla-Pacheco, the steps taken to locate his whereabouts, and the family situation after his alleged disappearance.

b) José Sotelo Marbán. Witness proposed by the Inter-American Commission. He testified, among other aspects, on the investigations carried out by the Special Prosecutors' Office for Social and Political Movements of the Past regarding the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco.

c) Angelina Reyes Hernández, Tomasa Ríos García, and Jovita Ayala Fierro. Witnesses proposed by the representatives. They testified, among other aspects, on the alleged "systematic and generalized pattern of lack of fair trials and access to the truth, and uncertainty and suffering in which the entire community of disappeared family members of Atoyac were placed."

d) Francisco Javier Aguilar Valdez. Specialist in Geophysics. Witness proposed by the State. He testified, among other aspects, on the nature, handling, and technical matters of the geo-radar operation, and regarding the scanning and excavation diligences carried out in the present case.

e) Martha Patricia Valadez Sanabria. Agent of the Public Prosecutors' Office of the Federation. Witness proposed by the State. She testified, among other aspects, on the state of the investigations that seek to locate the mortal remains of Mr. Rosendo Radilla-Pacheco.

f) Santiago Corcuera Cabezut. Member of the United Nations' Work Group on Forced Disappearances. Expert proposed by the representatives. He offered his expert opinion, among other aspects, on the international standards regarding the crime of forced disappearance and its implementation within national legislations.

g) Federico Andreu-Guzmán. Deputy General Secretary of the International Commission of Jurists. Expert proposed by the representatives. He offered his expert opinion, among other aspects, on the military jurisdiction of Mexico and the international standards on protection of human rights.

h) Carlos Montemayor [FN46]. University professor and, among others, historian, author, and specialized in social and political movements in Mexico. Expert proposed by the Inter-American Commission. He offered his expert opinion, among other aspects, on the historical context and the social and political movements in Mexico during the so-called "dirty war" in Mexico; the alleged patterns of forced disappearances and tortures and their alleged impunity during the sixties, seventies, and eighties.

[FN45] The Inter-American Commission did not present the statement of Mr. Enrique Hernández Girón. Likewise, the representatives of the alleged victims did not present the statements of Messrs. Julián del Valle and Enrique González Ruiz. On its part, the State did not present the statement of Mr. José Antonio Dávila Camacho.

[FN46] On June 22, 2009, the representatives informed the Tribunal that Mr. Carlos Montemayor, "due to reasons of force majeure could not go before the notary to ratify [his statement] however, [it was] signed on all its pages and a copy of his voter credential was included, [reason for which] [t]hey consider[ed] it should be […] admit[ted]."

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68. With regard to the evidence offered in the public hearing, the Court heard the statements and expert opinions of the following people: [FN47]

a) Tita Radilla Martínez. Alleged victim proposed by the Inter-American Commission. She testified, among other aspects, on the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco, the steps taken to locate his whereabouts, and the family situation after his alleged disappearance.
b) Rosendo Radilla Martínez. Alleged victim proposed by the Inter-American Commission and the representatives. He testified, among other aspects, on what he knew regarding the alleged arrest of Mr. Rosendo Radilla-Pacheco and the family situation after his alleged disappearance.
c) Miguel Sarre. Attorney and university professor. Witness proposed by the Inter-American Commission. He offered his expert opinion, among other aspects, on the criminal justice system of Mexico at the time the facts argued in the application occurred, the form of operation of the military criminal jurisdiction, and international human rights standards.

[FN47] On July 2, 2009, the representatives informed the Court that Mr. Maximiliano Nava Martínez, a witness proposed by the Inter-American Commission and the representatives "[c]ould not offer his testimony directly before the Tribunal, during the public hearing summoned," because of his age and deterioration of the state of his health.

B. Assessment of documentary evidence

70. In this case, as in others, [FN48] the Tribunal admits the evidentiary value of those documents presented in a timely manner by the parties that were not contested or objected, or whose authenticity was not questioned.

[FN48] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 140; Case of Garibaldi v. Brazil, supra note 32, para. 62, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 34.
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71. Regarding the observations made by the State in reference to different documents presented by the representatives, [FN49] the Court warns that they question the need to include those documents and they refer to the delimitation of their evidentiary value. In this regard, the Tribunal considers that the documents provided are useful for the resolution of the present case. However, in attention to the objections made, they will be assessed in the relevant parts of the present Judgment in what they adjust to the object of the present case, and taking into account that stated by the Court in Chapter VIII of this Judgment (infra. paras. 116 and 117).

[FN49] The State mentioned that Recommendation 26/2001 issued by the National Human Rights Commission could "[b]e taken into consideration [only] in what refers to the disappearance of Mr. Rosendo Radilla-Pacheco." In that sense, it argued that "[s]ince the [mentioned] recommendation […] refers to other cases that have not yet been examined by the Commission through the individual petition system, it cannot be heard by the […] Court, [… the latter shall] abstain from using [that] evidence […] as grounds for any type of context."

On the other hand, the State considered it "[i]nappropriate to take into consideration any evidence that [would] prove Mr. Rosendo Radilla-Pacheco's profile," since "[t]he existence of Mr. Rosendo Radilla-Pacheco was clear and that the way in which he led his daily life as a father, a member of a society, or in his work life was not in question […]."

Additionally, the State asked that the Court dismiss the evidence offered by the petitioners "regarding an alleged psycho-social infringement" of the community where Mr. Rosendo Radilla-Pacheco lived since it considered that "there had not been any violation to Article 5 of the [American] Convention in [their] detriment." That evidence refers to the following documents: a) Report on the psychosocial effects resulting from the forced disappearance of Rosendo Radilla, Antillón, Ximena. Forced disappearance during the dirty war: individual, family, and community psychosocial impact. The forced disappearance of Rosendo Radilla-Pacheco on Atoyac de Álvarez, Guerrero; b) Lira, Elizabeth. Psychosocial consequences of the political repression in Latin America. In: De la Corte, Luis, A. Blanco and J. M. Sabucedo (eds.) Psychology and Human Rights, Barcelona, Editorial Icaria Antrazyt, 2004; c) Center of Legal and Social Studies (CELS). Truth, justice, and mourning in public spaces and subjectivity. Report of the Human Rights situation in Argentina, chapter XII. Buenos Aires, 2000; and d) Mental Health Team of the Center of Legal and Social Studies (CELS). The reparation: legal and symbolic act. In: IIDH, Comprehensive Attention to the victims of torture in litigation proceedins. Psychosocial contributions. San José, IIDH, 2007.

Regarding the three reports of international bodies presented by the petitioners, the State indicated that none of them "deserve[d] to be include[d] in the body of evidence of the […] Court." Specifically, it stated that the Diagnosis on the situation of human rights in Mexico, 2004, from the United Nations High Commissioner's Office (OACNUDH), as well as the Report of the Special Rapporteur of the United Nations, Mr. Nigel S. Rodley, presented in accordance with order 1997/38 of the Human Rights Commission, along with the visit of the Special Rapporteur to Mexico E/CN.4/1998/38/Add.2, January 14, 1998, include "general" that is not related to the present case. Likewise, regarding the Report of the United Nations' Special Rapporteur on the independence of senior judges and attorneys, Mr. Doto Param Coomaraswamy presented, pursuant with order 2001/39 of the Human Rights Commission, along with the Report on the mission to Mexico, E/CN.4/2002/72/Add.1, January 24, 2002, the State indicated that "[i]t does not adjust either to the case sub judice, since his mandate is directed towards the supervision of the independence of superior judges and attorneys."

Regarding the report titled Non-extinguishable nature of the crimes against humanity versus the non-retroactive nature of criminal law: a false dilemma, of Mr. Federico Andreu-Guzmán, Legal Advisor for Latin America and the Caribbean of the International Justice Commission, and the report titled "Disappearance: A Permanent Crime, June 2002, of Mexico's International Amnesty, the State indicated that both refer to matters that "have already been studied and amply dealt with in different treaties and international courts." Regarding the Amicus Curiae before the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic of Peru, February 28, 2007, of the International Commission of Attorneys; the International Amnesty Report, Mexico: Under the Shadow of Impunity, and the three reports from Human Rights Watch, namely: Justice in Danger: Mexico's first serious initiative to refer to the abuses of the past could fail, New York, July 2003; Abuses and Neglect, Torture, Forced Disappearance, and Extra-Legal Execution in Mexico, New York, 1999, and Military Injustice, the reluctancy of Mexico to punish the army's abuses, New York, 2001, the State requested that the Court "dismiss them since they refer to a context that does not form part of the facts of the [present] case." Finally,

regarding the document titled Clarification and punishment of crimes of the past during the six-year period 2000-2006: Broken commitments and delayed justice, October 2006, the State indicated that "since the NGOs CMDPDH and AFADEM, which are the representatives of the alleged victims participated in their elaboration, […] its content is flawed from its origins."
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72. In what refers to the State's request to "leave out of the body of evidence" some of the works presented by the Inter-American Commission and the representatives, [FN50] the Court considers they are documentary evidence that can be admitted and assessed. They refer to written works that include statements or voluntary statements made by their authors for their public dissemination. In that sense, the assessment of their content is not subject to the formalities required for testimonial evidence. However, their evidentiary value will depend on what can be corroborated or up to what point they refer to aspects related to the specific case. Due to the aforementioned, and since the State has not contested the content of those books, the Court has decided to assess them taking into account the totality of the body of evidence and that stated in Chapter VIII of the present judgment (infra paras. 116 and 117), in all that refers to the case sub judice.

[FN50] The State referred to the text presented by the Inter-American Commission: Radilla Martínez, Andrea, Voces Acalladas (Vidas Truncadas), 2nd ed., Mexico, Editorial Program Nueva Visión 2007-Women's Secretariat of Guerrero-Universidad Autónoma de Guerrero-UAFyL, 2008. Likewise, it made reference to the following texts presented by the representatives: Montemayor, Carlos, Guerra en el paraíso, 2nd edition, Mexico, Seix Barral-Planeta-booket, 2002; Montemayor Carlos, La guerrilla recurrente, Mexico, Random House Editorial Group Mondadori-Colección Debate, 2007, and Moreno Barrera, Jorge, La guerra sucia en México. El toro y el lagarto 1968-1980, Libros para Todos, 2002.
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73. Regarding the report issued by the Special Prosecutors' Office for Social and Political Movements of the Past (hereinafter "Report of the Special Prosecutors' Office") offered by the Inter-American Commission and the representatives, the State indicated that "said document does not have an official nature nor has the government granted it an official validation," since "[i]t is a report that did not include the works developed by the cabinet area of the Public Prosecutors' Office itself, but instead only those of a specific area oriented to the recollection of material from files […], thus, it does not examine in detail specific cases." According to that indicated by the State, the General Office of Analysis, Investigation, and Documentary Information was the area of the Special Prosecutors' Office in charge of the elaboration of the mentioned report, and the same was made up by different people belonging to the Special Prosecutors' Office who did not enjoy the classification of agents of the public prosecutors' office nor did they have access to the actions of the preliminary inquiries. However, the State indicated that this general office was the "[o]nly one empowered to gather information considered useful for its analysis, classification, systematization, recording, and control, in order to evaluate if the information included historical data regarding the social and political crimes of the past, for the correct integration of the preliminary inquiries." In that sense, the State mentioned that "[o]nly with the results of the preliminary inquiries that make up the preliminary

examination could […] the historical truth […] be established and not solely based on the context established in the mentioned report, based on sources such as books, newspapers, magazines, web pages, legal instruments, and bibliographical sources[,] among others." Finally, the State reiterated that "even if the […] Court did not take into account the fact that the […] Report does not have an official nature for the State of Mexico, [its] content […] referring, in some of its parts, to the context in which the facts being examined occurred, should not be heard by the Court itself […] because that context occurred at a moment prior to the acknowledgment of the contentious jurisdiction […] by the State of Mexico, and also, even, before the acknowledgment and adherence to the American Convention itself." Therefore, the State requested that the Court "disregard" the mentioned report.

74. The Tribunal considers it appropriate to remember that, on other occasions, [FN51] it has decided to grant a special evidentiary value to the reports of the Commissions of the Truth or Historical Elucidation as relevant evidence in the determination of the facts and the international responsibility of the States. Thus, the Court has stated that, according to the object, procedure, structure, and purpose of its mandate, those Commissions may contribute to the construction and preservation of the historical memory, the elucidation of the facts, and the determination of institutional, social, and political responsibilities during specific historical periods of a society. [FN52]

[FN51] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 40, paras. 131 and 134; Case of Maritza Urrutia v. Guatemala. Merits, Reparations, and Costs. Judgment of November 27, 2003. Series C No. 103, para. 56; Case of the Plan de Sánchez Massacre v. Guatemala. Merits. Judgment of April 29, 2004. Series C No. 105, para. 42; Case of the Cruz Flores v. Peru. Merits, Reparations, and Costs. Judgment of November 18, 2004. Series C No. 115, para. 61; Case of Gómez Palomino v. Peru. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, para. 54; Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 72; Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 82; Case of La Cantuta v. Peru. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C No. 162, para. 80; Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 197; Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 128; Case of Heliodoro Portugal v. Panama, supra note 24, footnote 37, and Case of Anzualdo Castro v. Peru, supra note 44, para. 119.

[FN52] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 40, paras. 131 and 134; Case of Zambrano Vélez et al. v. Ecuador, supra note 51, para. 128, and Case of Heliodoro Portugal v. Panama, supra note 24, footnote 37.

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75. In the present case, the Court observes that persons who enjoyed the position of public officials, which has been acknowledged by the State, prepared the mentioned Report. In that sense, their actions, among them, the writing of the mentioned report, enjoy a relevance that cannot be ignored by the Tribunal. Added to the above, the Court points out that the State's defense falls upon the non-recognition of the report in its totality. However, in what refers to documentary evidence, the State did not invalidate the specific information included therein or

the sources consulted for its elaboration. Likewise, even though the State mentioned that the report does not analyze individual cases "in detail", the Tribunal points out that said document contains specific information on the alleged arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco, which has not been objected by the State. Similarly, the Court observes that as a historical report, the reference made to contextual facts, that is, those that refer to the general phenomenon of forced disappearance in Mexico, results relevant to this case, in attention to that established in paragraphs 116 through 117 of the present Judgment.

76. Based on the aforementioned, the Tribunal decides to grant evidentiary value to the Report of the Special Prosecutors' Office in all those aspects related to the factual grounds of the present case, taking into account the complete body of evidence, as well as that established by the Tribunal in Chapter VIII (infra paras. 116 and 117) of the present judgment.

77. Regarding "[t]he journalistic notes" presented by the representatives, the State mentioned that "[t]hey shall be assessed taking into account that they are drawn up with the objective of capturing the reader's attention and thus have the opportunity of achieving a greater marketing of the newspaper in which they are included; [and that] therefore, the veracity of said notes is decreased." In this sense, the Court verified that several of the press documents forwarded by the representatives are incomplete in their text and, therefore, the source, date, and page of the publication cannot be seen in several of them. However, none of the parties objected those documents based on that, nor did they question their authenticity. In that sense, as has been stated on multiple occasions, the Tribunal considers that the press documents can be assessed as long as they refer to public and notorious acts or statements made by State officials, or when they corroborate aspects regarding the case. [FN53] Therefore, in the present case, those documents that are complete or in which, at least, the source and date of the publication can be verified will be considered.

[FN53] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 146; Case of Anzualdo Castro v. Peru, supra note 44, para. 25, and Case of Garibaldi v. Brazil, supra note 32, para. 70.

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78. Regarding the documentary evidence that consists of a "[l]ist of probable responsible parties" in the present case, which was provided by the representatives, the State indicated that "[i]t is completely unnecessary since the […] Court does not have the ability to determine the criminal responsibility of specific individuals," reason for which it requested that the Tribunal dismiss it. The Court considers it appropriate to state, as it has done on other occasions, that "[i]t has the authority to establish the international responsibility of the States based on the violation of human rights, but not to investigate and punish the behavior of the State agents that participated in those violations." [FN54]

[FN54] Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 90 and Case of Lori Berenson Mejía v. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2004. Series C No. 119, para. 92.

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79. However, the Court observes that according to that mentioned by the representatives, the mentioned list "was prepared based on the documents that are present in the preliminary inquiry." Likewise, that the State did not invalidate said information, but instead their objection refers to the Tribunal's lack of jurisdiction to determine the individual criminal responsibility. Additionally, the Court points out that, despite the fact that it was requested by the President of the Court as evidence to facilitate adjudication of the case (infra paras. 88 through 92), the State did not forward to the Court a copy of the preliminary inquiry (infra paras. 89 through 92) based on which the representatives stated that the mentioned list was prepared. In that sense, given that said preliminary inquiry is only in the hands of the State, it corresponds to the latter to invalidate the veracity of the information included in the list in question.

80. According to the aforementioned, and to fact that the mentioned list of possible responsible parties is made up, among others, by names of different agents belonging to the State's security forces, the Court decides to grant evidentiary value to that document only in what it relates to the alleged international responsibility of the State in the present case, and it will consider it jointly with the rest of the body of evidence.

81. With regard to the alleged criminal accusation of June 15, 1976 forwarded by the representatives on June 22, 2009, they requested their admission as "supervening evidence" given that "the National Human Rights Commission […] [had] just provided Mrs. Tita Radilla" with a copy of the same. Additionally, the State mentioned that the representatives "incur[red] in a non-compliance of the basic procedural rules [Articles 37 and 46 of the Rules of Procedure] regarding the presentation of their evidence and [that], failing to tell the truth, [… they made] reference to a document that was never filed by the next of kin of Rosendo Radilla." Additionally, the State pointed out that the representatives did not justify why they were not aware of that document and the silence of Mrs. Tita Radilla in this regard.

82. The Court warns that, through the filing of this "supervening" document, the representatives wish to prove the existence of an alleged criminal accusation filed on June 15, 1976 with regard to the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco. On this subject, the Tribunal observes that Article 46(3) of the Rules of Procedure invoked by the representatives upon forwarding the mentioned document contemplates the Court's possibility to admit evidence regarding "supervening facts" at procedural moments different to those stated in said provision. The fact referred to by the representatives occurred approximately 32 years before the filing of their brief of pleadings and motions. In that sense, it cannot be considered supervening and, therefore, the Tribunal does not admit as evidence the copy of the alleged accusation forwarded by the representatives.

83. In relation to the Evaluation Report on the Follow-Up of Recommendation 26/2001 of the National Human Rights Commission of August 25, 2009, forwarded by the representatives on September 30, 2009 as "new documentary evidence", the State requested the Tribunal that it be assessed "according to the rules of competent analysis and only in what refers to the disappearance of Mr. Rosendo Radilla-Pacheco."

84. In this sense, in application of Article 46(3) of the Rules of Procedure, the Tribunal admits as evidence the report presented by the representatives, which refers to the follow-up of Recommendation 26/2001 of the National Human Rights Commission, presented in a timely manner in the instant case and whose evidentiary value has already been determined (supra para. 71). Likewise, the Court points out that said document is related to the factual grounds of the present case and, in that sense, will be assessed in those parts relevant for this judgment in what they adjust to its object taking into account that stated in Chapter VIII (infra. paras. 116 and 117).

85. Regarding the decision of the Federal Institute of Access to Public Information of May 29, 2009, forwarded by the representatives on June 23, 2009, in reference to the Tribunal's request that the State forward a copy of Preliminary Inquiry SIEDF/CGI/454/07 (supra para. 10); and the decision of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit of November 24, 2005, requested by this Tribunal as evidence to facilitate adjudication of the case, forwarded by the State on November 2, 2009 (supra para. 12), the Court includes them in the body of evidence in the terms of Article 47(1) of the Rules of Procedure, so they may be assessed within the totality of the evidence and pursuant with the rules of competent analysis.

86. On the other hand, the Tribunal observes that several documents mentioned by the Inter-American Commission and the representatives were not provided to the Court, but a direct electronic link to a Web page was sent. [FN55] In this sense, the Court observes that the documents provided in this manner are useful and that the parties had the possibility to locate them and object them. Therefore, these documents are accepted and included in the case file, since neither the legal certainty nor procedural balance was affected. [FN56]

[FN55] Documents mentioned by the Inter-American Commission: Report on the Human Rights Situation in Mexico (1998). OEA/Ser.L/V/II.100 Doc. 7 rev. 1. September 24, 1998, available at: http://www.cidh.oas.org/countryrep/Mexico98sp/indice.htm (last visit: July 13, 2009); United Nations, Report from the Work Group on Forced Disappearance, E/CN.4/1997/34 available at: http://daccessdds.un.org/doc/UNDOC/GEN/G96/144/02/IMG/G9614402.pdf?OpenElement (last visit: July 13, 2009); Special report on the complaints regarding forced disappearances occurred in the 70s and beginning of the 80s, of November 27, 2001, available at: http://www.cndh.org.mx/lacndh/informes/espec/qjdesfor/expedientes/RURAL/fr_rural.htm (last visit: July 13, 2009); Law on Regulatory Protection of Articles 103 and 107 of the Political Constitution of the United States of Mexico, published in the Federation's Official Gazette on January 10, 1936, available at: http://www.scjn.gob.mx/PortalSCJN/Transparencia/MarcoNormativo/SCJN/LeyAmparo/ (last visit: July 13, 2009); Office of the United Nations High Commission for Human Rights in Mexico, 2003, The situation of human rights in Mexico, 2003, Chapter 2.1.6.2, "The people that have not been located, are in isolation, or disappeared", available at: http://www.sre.gob.mx/derechoshumanos/docs/Diagnostico.pdf (last visit: July 13, 2009).
Documents quoted by the representatives: Special Prosecutors' Office for Social and Political Movements of the Past (FEMOSPP), Attorney General of the Republic, Historic Report of the Mexican Society - 2006, available at: http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB209/

(last visit: July 13, 2009); National Human Rights Commission, Special Report on Complaints Regarding Forced Disappearances occurred in the 70s and beginning of the 80s, November 2001, available at: http://www.cndh.org.mx/lacndh/informes/espec/desap70s/index.html (last visit: July 13, 2009); The crime of forced disappearance of persons is of a permanent or continuous nature: SCJN, at: http://www2.scjn.gob.mx/consultas/Comunicados/Comunicado.asp?Pagina=listado.asp&Numero=674 (last visit: July 13, 2009); Human Rights Watch, The inconclusive change, Mexico, 2006, available at http://www.hrw.org/spanish/informes/2006/mexico0506/mexico0506spweb.pdf (last visit: July 13, 2009); National Human Rights Commission, Recommendation 26/2001 of November 27, 2001, available at: http://www.cndh.org.mx/recomen/2001/026.htm (last visit: July 13, 2009); http://www.jornada.unam.mx/2007/10/17/index.php?section=politica&article=016n1pol (last visit: July 13, 2009); http://www.jornada.unam.mx/2007/03/05/?section=politica&article=010n1pol&partner=rss (last visit: July 13, 2009); http://www.pgr.gob.mx/que%20es%20pgr/organigrama/organigrama.asp?id=32 (last visit: July 13, 2009); Complaint filed by Tita Radilla for harassment of the Army against the Afadem in Atoyac, La Jornada Guerrero, May 26, 2008, available at: http://www.lajornadaguerrero.com.mx/2008/05/26/index.php?section=politica&article=006n1pol (last visit: July 13, 2009); 22UN DOC. E/CN.4/2000/68. February 29, 2000, available at http://www.hri.ca (last visit: July 13, 2009); Statement on the Fundamental Principles of Justice for the Victims of the Crime and Abuse of Power, adopted by the General Assembly of the United Nations Organization, in its order 40/34 of November 29, 1985, available at http://www.unhchr.ch/spanish/html/menu3/b/h_comp49_sp.htm (last visit: July 13, 2009); National Population Council (CONAPO), Secretary of the Interior, available at http://www.conapo.gob.mx/prensa/2008/bol2008_05.pdf;
http://www.ifai.org.mx/resoluciones/2007/3084.pdf (last visit: July 13, 2009).
[FN56] Cf. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26; Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009, Series C No. 195, para. 108, and Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197, para. 46.

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87. Regarding the "new documentary evidence" forwarded by the representatives on August 17, 2009 as an appendix to the brief of final arguments (supra para. 11), the State requested that the Tribunal "[n]ot admit [it] because it was time-barred." In this sense, the Court points out that during the public hearing (supra para. 9) some judges requested information to the State, the Inter-American Commission, and the representatives with regard to different aspects related to the Mexican military jurisdiction. However, the Tribunal states that some of the documents presented by the representatives are not linked to the information requested by the judges. [FN57] Likewise, one of the documents does not indicate the name of the author or the sources of information contained therein, thus the Tribunal cannot assess it correctly. [FN58] Therefore, in application of Article 47(1) of the Rules of Procedure, only the documents related with the information required by the judges are included into the body of evidence of the present case.

[FN59] Their content will be assessed in the measure in which it is useful for the elucidation of the questions made during the mentioned public hearing.

[FN57] Those documents are: appendixes A.1. Legislative Initiatives. Related to the Military Jurisdiction; appendixes A.2. Legislative Initiatives. Related to National Security; appendixes B. Doctrine; appendixes C: Reports; appendixes D: Newspaper articles, and Appendix E.2: Other documents. Recommendations issued by the CNDH to Sedena "in Calderón's six-year period" (dossier of appendixes to the final arguments of the representatives, folios 2763 through 3098 and 3112 through 3115).

[FN58] Said document corresponds to appendix E.4: Summaries of actual cases of violations by soldiers against civilians (dossier of appendixes to the final arguments of the representatives, folios 3119 through 3137).

[FN59] Those documents correspond to: appendix E.1: Other documents. Requests for information on Military justice - folios 700175808, 700176008, 700176108, 700176308, 700176408, 700176508, 700176608, 700176808, 700176908, 700177008, 700177108, and, 700177308-; appendix E.3: Order of January 12, 2009, upon request of information recorded under folio 700002709, through the System of Federal Governmental Public Information, National Defense Secretariat. Laisson Unit, Access to Information. Official Letter No. AI/0117 (dossier of appendixes to the final arguments of the representatives, folios 3100 through 3111 and 3116 through 3118).

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88. On the other hand, the Tribunal points out that the President requested that the State forward a copy of Preliminary Inquiry SIEDF/CGI/454/07, regarding the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco, for its inclusion in the body of evidence of the present case (supra para. 10). However, the State did not present said copy. Int his regard, the State mentioned that "if the […] Court were to forward the mentioned preliminary inquiry to the Inter-American Commission […] and to the petitioners, the correct development of the obtainment of justice enshrined in Articles 21 and 102 of the Political Constitution of the United States of Mexico, pursuant to which the prosecution and research of the crimes committed within its territory is the exclusive power of the State of Mexico, would be affected." Additionally, the State mentioned that "[t]he evidentiary elements presented up to this moment by the parties in controversy are evidently sufficient for the resolution of the case." Therefore, it requested that the Tribunal "[p]roceed to the resolution of the case with the ample evidentiary elements that have been filed throughout the processing of the case."

89. As it has done on previous occasions, [FN60] the Court considers it appropriate to point out that the reservation of information from people outside the process in the preparation stage of criminal investigations is established in different domestic legislations. In this case, the accused State has mentioned the aforementioned as grounds to not send to the Court the documents requested with regard to the domestic criminal proceedings referring to the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco. The restriction mentioned could result justifiable in the domestic proceedings, since the diffusion of certain contents during a preliminary stage of the investigations could obstruct them or cause damages to the people. However, for the effects of the international jurisdiction of this Tribunal, it is the State who has

control of the means for the clarification of the facts occurred within its territory and, therefore, its defense cannot fall upon the impossibility of the defendant to present evidence that, in many cases, cannot be obtained without the cooperation of state authorities.

[FN60] Cf. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 98 and Case of González et al. v. Mexico. Request of Expansion of the Alleged Victims and Refusal to Forward Documentary Evidence. Order of the Inter-American Court of Human Rights of January 19, 2009, considering clause number fifty-nine.

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90. In the same sense, the European Human Rights Court rejected arguments filed by a State with the purpose of not sending information of a criminal case file that was open and that said Court had requested. In effect, the European Tribunal considered it insufficient to argue, inter alia, that the criminal investigation was pending and that the case file included documents classified as secret. [FN61]

[FN61] Cf. Eur. Ct. H.R., Case of Imakayeva v. Russia, Application no. 7615/02, Judgment of 9 November 2006, paras. 122 and 123.

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91. The Tribunal points out that, previously, in a case against the State of Mexico, it had already stated that when the records of the investigation are under reservation, it corresponds to the State to send the copies requested informing of that situation and of the need, convenience, or appropriateness of maintaining the due confidentiality of that information, which will be carefully evaluated by the Tribunal, for the effects of including it into the body of evidence of the case, respecting the principle of adversarial proceedings in what corresponds. [FN62]

[FN62] Cf. Case of González et al. (“Cotton Field”) v. Mexico, Order of the Inter-American Court, supra note 60, considering clause number sixty-one.

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92. Therefore, the Court considers that the State’s negative to forward some documents cannot result in detriment of the victims. Thus, the Tribunal will consider as established the facts presented in this case by the Commission and complemented by the representatives, when they can only be invalidated through the evidence should have forwarded by refused to do so. The Court, and not the parties, shall determine the necessary quantum of evidence in each specific case.

C. Assessment of the statements of the alleged victims, of the testimonial and expert evidence

93. Regarding the statements offered by the alleged victims, the witnesses, and the experts at the public hearing and through sworn statements, the Court considers them appropriate only in what they adjust to the object that was defined by the President of the Tribunal in the Order that indicated they be received (supra para. 8) and along with the other elements of the body of evidence, taking into account the observations made by the parties. [FN63] According to the jurisprudence of this Tribunal, the statements offered by the alleged victims (infra para. 111) cannot be assessed in an isolated manner, but within the totality of the evidence of the proceedings, [FN64] since they are useful in the measure in which they may offer more information on the alleged violations and their consequences.

[FN63] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Garibaldi v. Brazil, supra note 32, para. 64, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 35.
The State mentioned that the statements offered by Andrea Radilla Martínez, Ana María Radilla Martínez, and José Sotelo do not adjust in some parts to the object determined through the Order of the President of the Tribunal of May 29, 2009 (supra para. 8) or they do not refer to things they know as facts. On the other hand, the representatives stated that the majority of the "diligences" described in the testimony of Mrs. Martha Patricia Valadez Sanabria are "[c]abinet statements made by Mrs. Tita Radilla." Also with regard to that statement, they made some precisions regarding different dates on which apparently some persons were summoned to testify within preliminary inquiry SIEDF/CGI/454/07.
[FN64] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 70; Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 74, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 37.

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94. The State indicated that the testimonies offered by Mrs. Angelina Reyes Hernández; Tomasa Ríos García, and Jovita Ayala Fierro, witnesses offered by the representatives, do not adjust to the object defined by the President of the Tribunal through Order of May 29, 2009 (supra para. 8). In this sense, the Court warns that those statements refer, among others, to different facts that are not part of the factual grounds of the present case, such as situations regarding the alleged disappearance of their next of kin. In that sense, the Tribunal decides to consider them only in what they adjust to the object for which the President requested them.

95. In reference to the statement offered by Mr. Santiago Corcuera Cabezut, the State expressed "[i]ts surprise with [his] comment […] in the sense [that] he received help from another person for the offering of 'his' expert opinion, as appears in a footnote in his brief." Likewise, the State indicated that said statement does not adjust "[t]o the object for which it was requested […]" since in some of its paragraphs it refers to the case of Mr. Radilla-Pacheco.

96. In this sense, the Court considers that the mentioned statement (supra para. 95) was only signed and provided by Mr. Corcuerta before a notary public, with which its "personal" presentation is satisfied. In that sense, the Tribunal decides to grant it evidentiary value in all that

in which it, in effect, adjusts to the object delimited by the President of the Court (supra para. 68).

97. Regarding the statement of Mr. Federico Andreu, the State referred to a series of objections related to the study of the merits of the present case. The Tribunal considers it appropriate to point out that, unlike witnesses, who shall avoid offering personal opinions, experts may offer technical or personal opinions as long as they refer to their special area of expertise or experience. Additionally, the experts can refer both to specific matters of the litis as well as to any other relevant aspects of the litigation, as long as they limit themselves to the object for which they were summoned. [FN65] The expert's conclusions must be well grounded. In that sense, the Court has already established that even when the experts' statements include elements that support the arguments of one of the parties, this per se does not disqualify the expert. [FN66] Now, the State's objections shall be considered when the Tribunal analyzes the merits of the matter. The Tribunal will assess Mr. Federico Andreu's statement along with the body of evidence and pursuant with the rules of competent analysis.

[FN65] Cf. Case of Reverón Trujillo v. Venezuela. Summons to the Public Hearing. Order of the President of the Court of September 24, 2008, Considering clause number eighteen; Case of González et al. ("Cotton Field") v. Mexico. Summons to Public Hearing. Order of the President of the Inter-American Court of Human Rights of March 18, 2009, Considering clause number seventy-five.

[FN66] Cf. Case of Escué Zapata v. Colombia. Summons to the Public Hearing. Order of the Inter-American Court of Human Rights of December 20, 2006, considering clause number twenty-one; Case of Reverón Trujillo v. Venezuela. Order of the Inter-American Court, supra note 65, considering clause number thirty-four; Case of Radilla-Pacheco v. Mexico, Order of the President of the Inter-American Court, supra note 4, considering clause number forty-six.

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98. With regard to the statement offered by Mr. José Sotelo, in its final written arguments the State mentioned that "[i]t refers to facts beyond the evidence (points 1, 2, 3, 5, 6, and 7 of [his] statement) […]", which "[m]akes it susceptible of being dismissed." Likewise, the State objected his statement "[s]ince he cannot verify the facts it refers to [because] the investigations on the fate or whereabouts of Mr. Rosendo Radilla-Pacheco [fell] upon the agents of the Public Prosecutors' Office of the Federation, who had under their responsibility the integration of the corresponding preliminary inquiry." In that sense, it indicated that Mr. Sotelo "[i]s not nor has he been an agent of the Public Prosecutors' Office of the Federation, reason for which, taking into account the object for which he was proposed by the [I]nter-American Commission, he is not suitable to act as a witness […]." The State expressed that the Court shall take into consideration that "[t]he statement is based on the witness' subjective assessments, [which] contravene [the] Court's jurisprudential criterion […]."

99. The Tribunal considers that the State's objections regarding Mr. José Sotelo's suitability to act as a witness in the present case are time-barred. However, the Tribunal observes that Mr. Sotelo's statement does not adjust in its totality to the object specified by the President of the Tribunal (supra para. 69). Specifically, in the points indicated as (1), (2), (3), and (5) [FN67] of

his statement, the witness refers to facts that are not part of the object of his statement. Additionally, in points (6) and (7), the witness refers to personal opinions and conclusions that are also not related to the object of his statement. [FN68] In that sense, the Court will not grant the information referred to in those sections any evidentiary value whatsoever.

[FN67] Mr. José Sotelo refers basically to the conditions in the elaboration of the Report named "The Mexican Army and the Dirty Way in Guerrero" and of the "General Historic Report ¡Que no vuelva a suceder!"; as well as the alleged political context of the guerrilla in the State of Guerrero and the State's apparent policy in matters of forced disappearances.
[FN68] Mr. Sotelo mentioned that "[h]e was presenting his position […] with regard to the conceptualization and methodology followed in the preparation of the Report tending to recreate the 'historical truth' of the facts, differentiating it from the 'legal truth', [and that] he contest[ed] the position of the State of Mexico, which he considers would have to be officially validated […]." Likewise, Mr. Sotelo mentioned that "[h]e conclude[d] with the presentation […] of the conditions he consider[ed] necessary to overcome the current state of disintegration of social fabric as a result of the impunity and lack of interest of the State of Mexico in achieving justice, informing of the truth, and repairing the damage."
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100. However, the Court considers that point (4) of the statement offered by Mr. Sotelo, regarding the case of Mr. Radilla-Pacheco, is in accordance with the object for which it was ordered (supra para. 68). In this regard, the State did not invalidate the specific information in said section instead it only mentioned that the veracity of those documents had not been determined by the Public Prosecutors' Office. However, the Tribunal points out that it corresponds to the State to invalidate those documentary sources before the Court, regardless of the different processes it shall carry out at a domestic level. In that sense, the Court grants Mr. José Sotelo's statement evidentiary value only in what refers to that stated in point (4) of the same. Said statement will be considered taking into consideration the totality of the body of evidence in the present case.

101. The Court observes that in some parts of the statement offered by Mrs. Martha Patricia Valadez Sanabria, the witness issued personal opinions regarding the actions carried out by the "Federation's social representation." [FN69] Therefore, the Court will not grant those parts evidentiary value.

[FN69] Mrs. Valadez Sanabria stated that: "Of all the diligences previously reviewed, it should be pointed out that the social representation of the Federation, did not skimp on presenting all the evidence that Could elucidate the facts denounced […] Likewise, the investigating authority did not limit itself to receiving certain statements and carrying out cabinet inspections, but it also turned to experts in different fields […]; that is, since the start of the preliminary inquiry in the year 2002 and up to the consignment in 2005, the agent of the Public Prosecutors' Office of the Federation has been effective in its actions […] and therefore […] it has developed its activity pursuant with the principles of effectiveness, certainty, legality, impartiality, and professionalism."

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102. On the other hand, the representatives stated that "due to reasons of force majeure," Mr. Carlos Montemayor could not go "to the notary [to] ratify" his written statement and that, however, that document was signed on all its pages, and a copy of his voter credentials was enclosed, with which they considered it could be "duly admitted." In this regard, the State indicated that "[t]he statement does not comply with the formal requirements ordered and [that] therefore it should not be admitted." The Court considers that the representatives did not offer a reason to validly justify an inevitable obstacle for offering Mr. Montemayor's statement before a notary public. Therefore, the Tribunal decides not to admit said statement.

103. With regard to "[t]he written expansion of the expert report […]" offered by Mr. Miguel Sarre filed by the latter on August 14, 2009, the State requested that the Tribunal "[f]latly dismiss [that] brief […] by virtue of [its] time-barred presentation." In that regard, the Court observes that during the public hearing held in the present case, the President of the Tribunal informally asked Mr. Sarre if he would deliver to the Court, at that time, his written expert opinion. However, she did not ask that he forward it at a later time. According to that stated in the Order of the President of the Tribunal (supra para. 8), Mr. Sarre had to offer his statement orally during the public hearing. [FN70] In that sense, the Tribunal decided not to admit the "written expansion of the expert report" offered by Mr. Miguel Sarre.

[FN70] Cf. Case of Radilla-Pacheco v. Mexico. Order of the President of the Inter-American Court, supra note 4, fourth operative paragraph.

VII. PRIOR CONSIDERATIONS (Determination of the alleged victims in the present case)

104. Before ruling on the merits of the present matter, this Court considers it necessary to specify, in the present chapter, the next of kin of the alleged victim, Mr. Rosendo Radilla-Pacheco, regarding whom it will analyze the existence of possible violations to their human rights.

105. In the application, the Inter-American Commission indicated that "[t]he next of kin of Rosendo Radilla-Pacheco are his spouse, Mrs. Victoria Martínez Neri (deceased) and his twelve children Tita, Andrea, Rosendo, Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria, and Judith, all of surnames Radilla Martínez." The representatives agreed with the list of the alleged victims presented by the Commission.

106. In its response to the application, the State indicated that "[i]n good faith, it acknowledge[d] the family relationship of Messrs. Tita, Andrea, and Rosendo, all of surnames Radilla Martínez," with Mr. Rosendo Radilla-Pacheco. However, it asked the Court "[n]ot to consider Victoria Martínez Neri, or Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria or Judith, all of surnames Radilla Martínez, [alleged] victims in the present case, since they were not presented as such by the Commission at the correct procedural moment." In this regard, it stated that in "the Report [on Merits] No. 60/07 of July 27, 2007, the Commission only

mentioned Mr. Rosendo Radilla-Pacheco as an [alleged] victim and made brief references to three of his next of kin: Tita Radilla, Andrea Radilla, and Rosendo Radilla Martínez, but it never referred to them as [alleged] victims." According to the State, in that report the Commission did not mention "Victoria Martínez Neri or Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria, and Judith, all of surnames Radilla Martínez, as injured parties, which it does do so in its application."

107. In response to that requested by the State, in their final written arguments the representatives stated that the alleged victims in the present case have been "[d]uly identified with their voter credentials and acknowledged as victims in the [Commission's] application in its paragraph 75." The Inter-American Commission did not make any comments in this regard.

108. The Court has established that the alleged victims must be established in the application and in the Commission's report according to Article 50 of the Convention. Additionally, pursuant with Article 34(1) of the Rules of Procedure, the Commission, and not this Tribunal, shall identify with precision and at due procedural time, the alleged victims in a case before this Court. [FN71]

[FN71] Cf. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, para. 98; Case of Perozo et al. v. Venezuela, supra note 56, para. 50, and Case of Garibaldi v. Brazil, supra note 32, para. 24.

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109. In this regard, the Tribunal warns that the Report on Merits adopted by the Commission in this case, mentioned Mr. "[R]osendo Radilla-Pacheco and his next of kin, Tita radilla Martínez, Andrea Radilla Martínez, and Rosendo Radilla Martínez" as victims of the rights enshrined, inter alia, in Articles 8 and 25 of the American Convention. [FN72] At the same time, said report recommends that the State "[a]dequately repair the next of kin of Mr. Rosendo Radilla-Pacheco, Tita Radilla Martínez, Andrea Radilla Martínez, and Rosendo Radilla Martínez, for the violations of human rights established in the […] report […]." [FN73] In the rest of the document there are no specific references to any other of the next of kin of the alleged victim, only generic mentions to the same. [FN74] An expanded list with the names of thirteen of Mr. Radilla-Pacheco's next of kin is presented before the Inter-American Commission after the adoption of that report, on September 18, 2007, through a brief in which the representatives stated their position on the submission of the case to this Tribunal. [FN75] Thus, in the application filed by the Commission before the Court thirteen of Mr. Radilla-Pacheco's next of kin, that is, his 12 children and deceased wife, are identified as alleged victims.

[FN72] Cf. Report on Merits No. 60/07, adopted by the Inter-American Commission of Human Rights on July 27, 2007 (dossier of appendixes of the application, appendix 1, folio 41).
[FN73] Cf. Report on Merits No. 60/07, adopted by the Inter-American Commission of Human Rights on July 27, 2007 (dossier of appendixes of the application, appendix 1, folio 45).

[FN74] Cf. Report on Merits No. 60/07, adopted by the Inter-American Commission of Human Rights on July 27, 2007 (dossier of appendixes of the application, appendix 1, folios 21 through 23).
[FN75] Cf. Brief of the representatives addressed to the Inter-American Commission, of September 18, 2007 (dossier of appendixes to the application, appendix 1(32), folios 594 through 595).
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110. Pursuant with the jurisprudence of this Tribunal, the determination made by the Commission in its application regarding who should be considered next of kin of the alleged disappeared victim shall correspond to that decided by it in the Report on Merits. Legal certainty demands, as a general rule, that all the alleged victims be duly identified in both briefs, not making it possible to add new alleged victims in the application, without this resulting in a detriment to the right to defense of the accused State. In this case the Commission has not argued difficulties in the timely determination of all the next of kin of Mr. Rosendo Radilla as alleged victims. Likewise, it cannot be concluded from the case file that this is one of those cases in which, due to its characteristics, the determination of the same is a complex task, which would make other considerations by this Tribunal necessary.

111. Based on the aforementioned and taking into consideration the acknowledgment made by the State, it decides to only consider Mrs. Tita and Andrea and Mr. Rosendo, all of them with the surnames Radilla Martínez, as alleged victims. The Court regrets that, due to procedural reasons, this Tribunal cannot consider the other next of kin of Mr. Rosendo Radilla-Pacheco, whom it presumes suffered in equal conditions, as alleged victims. However, it points out that the non-determination of violations in their detriment by this international instance does not prevent or discard the possibility that the State, in good faith, adopt reparation measures in their favor (infra para. 328).

112. Finally, the Court warns that the representatives argued that, as a community leader, the forced disappearance of Rosendo Radilla had a specific impact on “the community” where he lived. In this sense, they indicated that “based on interviews with key persons in the community we have determined the moral damage the disappearance of Rosendo Radilla, as well as prior (context) and subsequent (impunity) circumstances, have caused the community.” Based on this, they asked that the Tribunal declare a violation to the right to humane treatment, acknowledged in Article 5 of the Convention, in relation to Article 1(1) of the same instrument, in detriment of said “community”.

113. In this regard, the Tribunal observes that, besides constituting general mentions on alleged affected parties, “the community” where Mr. Rosendo Radilla-Pacheco lived, or in any case, its members, were not included by the Inter-American Commission as alleged victims in its application or in the Report according to Article 50 of the Convention. Consequently, since they were not specifically identified at the correct procedural moment, the Tribunal cannot consider them alleged victims in the present case, reason for which it shall not issue a ruling regarding the alleged violations in their detriment.

VIII. REGARDING THE FORCED DISAPPAREANCE OF ROSENDO RADILLA-PACHECO (ARTICLES 7 [FN76], 5 [FN77], 4 [FN78], AND 3 [FN79] OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) [FN80] OF THE SAME AND ARTICLES I, II, AND XI [FN81] OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE)

[FN76] Article 7(1) of the American Convention states that "[e]very person has the right to personal liberty and security."

[FN77] Article 5 of the American Convention states, in what is relevant, that:

Every person has the right to have his physical, mental, and moral integrity respected.

No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.

[FN78] Article 4(1) of the Convention states, in what is relevant, that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

[FN79] Article 3 of the Convention establishes that "[e]very person has the right to recognition as a person before the law."

[FN80] Article 1(1) of the Convention states that "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

[FN81] Article I of the Inter-American Convention establishes that:

The States Parties to this Convention undertake:

a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; and

d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in the […] Convention.

Article II of the same states that:

"for the purposes of the […] Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

Likewise, Article XI establishes that:

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.
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114. The Commission and the representatives argued different violations to the American Convention as a result of the alleged forced disappearance of Mr. Rosendo Radilla-Pacheco, which, according to that indicated, happened within a specific context.

115. In this sense, the Court considers it convenient to state that in its response to the application, the State of Mexico argued that given the fact that it acknowledged the contentious jurisdiction of the "[I]nter-American Court on December 16, 1998, this is 24 years after the occurrence of the facts analyzed in case 12,511[, the] Court [is prevented from] hearing the social, political, or economic circumstances that surrounded the facts of the case, when they occurred in 1974." Likewise, it indicated that the claim through which the Court is asked to hear of the context of this case "is inadmissible based on reasons derived from the nature itself of the Inter-American human rights protection system." In that sense, it indicated that "[t]he facts referred to by the petitioners in a partial manner, shall not be taken into consideration since they have not been the object of treatment before the system of individual petitions […]."

116. In this sense, this Tribunal considers it necessary to reiterate that, pursuant with its jurisprudence, the principle of non-retroactivity and the optional clause of acknowledgement of this Court's contentious jurisdiction does not imply that an act that occurred prior to the same shall be excluded of all consideration when it can be relevant for the determination of what occurred. [FN82] In this sense, the Court observes that in order to decide the different cases submitted to its knowledge it has had to take into account the context, since the political and historical surroundings are determining factors in the determination of the juridical consequences in the case, including both the nature of the violations to the Convention and the corresponding reparations. [FN83] Therefore, the analysis of the alleged disappearance of Mr. Radilla-Pacheco cannot be isolated from the means in which those facts allegedly occurred nor can the corresponding juridical consequences be determined within the gap created by decontextualization, since there are arguments according to which the alleged forced disappearance of Rosendo Radilla-Pacheco was not an isolated case in Mexico.

[FN82] Cf. Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 82, and Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations, and Costs. Judgment of March 1, 2005. Series C No. 120, para. 27.
[FN83] Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, paras. 53 and 63; Case of the Miguel Castro Castro Prison, supra note 51, para. 202; and Case of the Rochela Massacre v. Colombia. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 163, para. 76.
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117. Thus, in seeking to establish the background that could result in international responsibility in the present case, the Court will analyze the context in which it has been argued

that the facts of the present case occurred. However, the Tribunal will take into consideration that, according to the State itself, they occurred before Mexico acknowledged the contentious jurisdiction of the Tribunal.

118. Before proceeding to examine the arguments presented by the Commission and the representatives, the Court will determine the proven facts regarding the alleged forced disappearance suffered by Mr. Rosendo Radilla-Pacheco and the context in which they allegedly occurred, in attention to the body of evidence and the partial acknowledgement of international responsibility made by the State (supra paras. 52, 53, and 62).

119. In this sense, it shall be reiterated that, even though the burden of proof of the facts on which the argument is based corresponds to the claimant, in the proceedings on violations of human rights the State's defense cannot fall upon the claimant's impossibility to provide evidence when it is the State who has control of the means to clarify the facts occurred within its territory. Below, we will examine the evidence that takes into consideration this extreme and that, without detriment to it, is capable of creating the conviction of the truth of the facts argued. [FN84] The Court considers it appropriate to reiterate that, given that the State did not forward a copy of preliminary inquiry SIEDF/CGI/454/2007 (supra para. 88), the facts mentioned below have been determined based on the evidence presented to the Tribunal and in the parties' statements that were not invalidated or contested.

[FN84] Cf. Case of Velásquez Rodríguez, supra note 24, para. 135; Case of Ríos et al, supra note 60, para. 198, and Case of Kawas Fernández v. Honduras, supra note 40, para. 83.

A. Background: Facts regarding the arrest and subsequent disappearance of Mr. Radilla-Pacheco

A1. The alleged victim, Rosendo Radilla-Pacheco

120. Mr. Rosendo Radilla-Pacheco was born on March 20, 1914 at Las Clavellinas, State of Guerrero, Mexico. [FN85] On September 13, 1941 he married Victoria Martínez Neri, [FN86] with whom he had twelve children, namely: Romana, Andrea, Evelina, Rosa, Tita, Ana María, Agustina, María del Carmen, María del Pilar, Judith, Rosendo, and Victoria, all of surnames Radilla Martínez. [FN87]

[FN85] Cf. Copy of the baptism certificate of Mr. Rosendo Radilla-Pacheco, issued by the Parrish of Santa María de la Asunción de Atoyac de Álvarez, Guerrero, on September 5, 2007 (dossier of appendixes to the application, appendix 5, folio 911).
[FN86] Cf. Copy of the marriage certificate issued by the Parrish of Santa María de la Asunción de Atoyac de Álvarez, Guerrero, undated (dossier of appendixes to the application, appendix 6, folio 913).
[FN87] Cf. copy of each of their voter's cards (dossier of appendixes to the application, appendix 7, folios 915 through 926, and dossier of merits, volume I, appendix 7, folio 265)

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121. Rosendo Radilla-Pacheco was involved in different activities of the political life and in social works in Atoyac de Álvarez, Guerrero, specifically in the organization of coffee growers and farmers of the area. [FN88] Thus, Mr. Rosendo Radilla-Pacheco was part of the Agricultural Unit of the Coffee Sierra of Atoyac de Álvarez. Between June 1, 1955 and August 31, 1956 he was president of the Municipal Council of Atoyac de Álvarez. In September 1956 he carried out actions as Municipal President. From 1956 to 1960 he was the general secretary of the Regional Farmers' Committee. In 1961 he was president of the parent association of the Board in Favor of the Federal School Modesto Alarcón. In 1965 he participated in the foundation of the Agricultural League of the South Emiliano Zapata. [FN89] Among his different occupations, we can also mention the growing of coffee and coconut, as well as the purchase and sale of cattle. [FN90]

[FN88] Cf. Radilla Martínez, Andrea. Voces Acalladas (Vidas Truncadas), 2nd ed., Mexico, Editorial Program Nueva Visión 2007-Secretariat of Women of Guerrero-Universidad Autónoma de Guerrero-UAFyL, 2008 (dossier of appendixes to the application, appendix 8, folios 955 through 958; dossier of appendixes to the brief of pleadings and motions, appendix B(12), pages 58 through 64); statement issued by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009; statement issued by Mrs. Andrea Radilla Martínez before notary public (affidavit) on June 10, 2009 (dossier of merits, volume IV, folio 1156); official letter sent by the Federal Director of Education of the State of Guerrero to Mr. Rosendo Radilla-Pacheco on November 1, 1961 (dossier of appendixes to the brief of pleadings and motions, appendix B(1), folio 1248); official letter addressed to the President of the Truck Drivers' Union, among others, by Mr. Rosendo Radilla-Pacheco on June 6, 1971 (dossier of appendixes to the brief of pleadings and motions, appendix B(2), folio 1249); official letter sent by the General Director of Elementary Education in the "B" type Calendar States and Territories of the Department of School Control to the Federal Director of Education in Chilpancingo, Guerrero on March 8, 1962 (dossier of appendixes to the brief of pleadings and motions, appendix B(4), folio 1251); uer Perfil Biográfico de Rosendo Radilla-Pacheco. Mexico. March 2002 (dossier of appendixes to the brief of pleadings and motions, appendix B1, folio 95); official letter sent by the State Director and Federal Delegate of Tourism of the State of Guerrero to Mr. Rosendo Radilla-Pacheco, on December 17, 1955 (dossier of appendixes to the brief of pleadings and motions, appendix B(5), folio 1252); minutes of a meeting held on March 6, 1955 in which Mr. Rosendo Radilla-Pacheco, among others, participated (dossier of appendixes to the brief of pleadings and motions, appendix B(6), folio 1253); official letter sent by the Head of "Cooperarative Rural Medical Services" in Atoyac, Guerrero, to Mr. Rosendo Radilla-Pacheco on July 22, 1958 (dossier of appendixes to the brief of pleadings and motions, appendix B(8), folio 1255); official letter sent by the Executive Member of the Office of "Public Information" and Hygienic Education to Mr. Rosendo Radilla-Pacheco on March 30, 1959 (dossier of appendixes to the brief of pleadings and motions, appendix B(9), folio 1256), and appointment as "honorary auxiliary of hygienic education, granted by the Secretary of Health and Assistance to Mr. Rosendo Radilla-Pacheco, on September 15, 1959 (dossier of appendixes to the brief of pleadings and motions, appendix B(10), folio 1257).

[FN89] Cf. Radilla Martínez, Andrea. Voces Acalladas (Vidas Truncadas), 2nd ed., Mexico, Editorial Program Nueva Visión 2007-Secretariat of Women of Guerrero-Universidad Autónoma de Guerrero-UAFyL, 2008 (dossier of appendixes to the application, appendix 8, folios 946, 952, 955, 956, and 965; dossier of appendixes to the brief of pleadings and motions, appendix B(12), pages 41, 53, 58, 61, and 79)
[FN90] Cf. Statement offered by Andrea Radilla Martínez before notary public (affidavit) on June 10, 2009 (dossier of merits, volume IV, folio 1156); statement offered by Mrs. Ana María Radilla Martínez before notary public (affidavit) on June 10, 2009 (dossier of merits, volume IV, folio 1164); statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009, and statement offered by Mrs. Tita Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009.
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122. Mr. Rosendo Radilla-Pacheco composed "corridos", a popular musical Mexican expression that recounts epic versus accompanied by a guitar. The corridos composed by Mr. Rosendo Radilla-Pacheco talk about different facts that occurred in Atoyac de Álvarez, and the peasant's social battles of the time. [FN91]

[FN91] Cf. Compact disc that includes "corridos" of Mr. Rosendo Radilla-Pacheco (dossier of appendixes to the application, appendix 9; dossier of appendixes to the brief of pleadings and motions, appendix B(11)) and Radilla Martínez, Andrea. Voces Acalladas (Vidas Truncadas), 2nd ed., Mexico, Editorial Program Nueva Visión 2007-Secretariat of Women of Guerrero-Universidad Autónoma de Guerrero-UAFyL, 2008 (dossier of appendixes to the application, appendix 8, folios 958 through 962; dossier of appendixes to the brief of pleadings and motions, appendix B(12), pages 65 through 72).
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123. According to that stated by the representatives, there are reports from the "Federal Security Office", included in preliminary inquiry SIEDF/CGI/453/07, that detail the activities carried out by Mr. Radilla-Pacheco. The Court verified that in a document dated September 26, 1965 of the Federal Security Office, reference is made to Mr. Rosendo Radilla-Pacheco's participation in presiding the "inaugural act of the Extraordinary Peasant Congress of the Revolutionary League of the South 'Emiliano Zapata' and of the C.C.I." [FN92] Likewise, the representatives stated that in a document dated "21 VI 82", whose heading states "Background of Rosendo Radilla-Pacheco", it is established that:

On February 17, 1962, he attended the signing of the Summons of the Civic War Committee of which he is a member and in which the people in general were invited to a rally that would be held in Boca de Arroyo, municipality of Atoyac de Álvarez, Guerrero[.]Later, on June 23rd of the same year, he signed a manifesto of the Civic War Association, of which he was also a member.
In said document he tried to influence public opinion, so it would not choose bad leaders, evoking the times of General Raúl Caballero Aburto and he invited to the mentioned Association's State Convention to be held in Acapulco, Guerrero.

From 13.45 to 17.10 hours of September 26, 1965, Radilla-Pacheco presided over the inaugural act of the Peasant Congress of the Revolutionary Agricultural League of the South "Emiliano Zapata" and of the CCI holding the meeting at the former Bullring of Iguala, Guerrero […]. [FN93]

[FN92] Cf. Record of the receipt of the document and authenticity of documents. A.P. PGR/FEMOSPP/033/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(13), folios 1870 through 1872), and document identified as "D.F.S.-26-IX-65. State of Guerrero", signed by Fernando Gutiérrez Barrios, Federal Security Director, included in Preliminary Inquiry PGR/FEMOSPP/033/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(13), folios 1873 through 1874).
[FN93] The State did not object the existence of this document, proven only based on the dossier of preliminary inquiry SIEDF/CGI/454/2007, copy of which it did not forward to the Tribunal (supra para. 92).

A2. Arrest and subsequent disappearance of Mr. Rosendo Radilla-Pacheco

124. On August 25, 1974 Rosendo Radilla-Pacheco, 60 years old, and his son Rosendo Radilla Martínez, 11 years old, were traveling on a bus from Atoyac de Álvarez to Chilpancingo, Guerrero. The bus was stopped at a military checkpoint were soldiers made all the passengers get out to inspect them and their belongings. Later, all the passengers got on the bus again and continued their journey. [FN94]

[FN94] Cf. Statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009; statement offered on July 31, 2003 by Mr. Rosendo Radilla Martínez before the Special Prosecutors' Office for Social and Public Movements of the Past, in Preliminary Inquiry PGR/FEMOSPP/051/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(19), folio 1898), and Case File CNDH/PDS/95/GRO/S00228.000, Case of Mr. Radilla-Pacheco Rosendo, Civic War Association and Revolutionary League of the South "Emiliano Zapata", Special Report on the Complaints in Matters of Forced Disappearances Occurred in the Decade of the 70s and Beginning of the 80s (dossier of appendixes to the application, appendix 2, folios 868 through 869, and dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1681 through 1682).
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125. The bus was stopped at a second military checkpoint located "at the entrance of the Cuauhtémoc Colony [between] Cacalutla and Alcholoa." The soldiers asked the passengers to get off the bus so they could check it inside. After the revision, the soldiers informed the passengers they could get on the bus again, except for Mr. Rosendo Radilla-Pacheco, who was arrested because "he composed corridos" (supra para. 122). Mr. Radilla-Pacheco stated that was not a crime, however, a soldier responded: "for the meantime you're screwed." [FN95]

[FN95] Cf. Statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009; statement offered on July 31, 2003 by Mr. Rosendo Radilla Martínez before the Special Prosecutors' Office for Social and Public Movements of the Past, in Preliminary Inquiry PGR/FEMOSPP/051/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(19), folio 1899), and Case File CNDH/PDS/95/GRO/S00228.000, Case of Mr. Radilla-Pacheco Rosendo, Civic War Association and Revolutionary League of the South "Emiliano Zapata", Special Report on the Complaints in Matters of Forced Disappearances Occurred in the Decade of the 70s and Beginning of the 80s (dossier of appendixes to the application, appendix 2, folios 868 through 869, and dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1681 through 1682).

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126. Mr. Rosendo Radilla-Pacheco asked the soldiers to let his son, Rosendo Radilla Martínez, go since he was a minor, which the soldiers accepted. At the same time, he asked his son to inform his family that the Mexican Army had arrested him. [FN96] Mr. Radilla-Pacheco "[w]as put at the order of the Military Zone of [Guerrero]." [FN97]

[FN96] Cf. Statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009 and statement offered on July 31, 2003 by Mr. Rosendo Radilla Martínez before the Special Prosecutors' Office for Social and Public Movements of the Past, in Preliminary Inquiry PGR/FEMOSPP/051/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(19), folio 1899)

[FN97] Cf. Record of the receipt of the document and authenticity of documents. A.P. PGR/FEMOSPP/033/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(14), folios 1875 through 1877), and document of the Secretariat of the Interior identified as "D.F.S.-8-VIII-75", included in Preliminary Inquiry PGR/FEMOSPP/033/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(14), folios 1881).

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127. In this sense, both the National Commission and the Special Prosecutors' Office considered the case of Mr. Rosendo Radilla-Pacheco as a fully proven forced disappearance. Specifically, the Report made by the Special Prosecutors' Office refers to Mr. Rosendo Radilla-Pacheco's arrest at the "[c]heckpoint of the Col. Cuauhtémoc (Chilpancingo), […] on August 25, 1974. The reason argued was because he composed corridos. He continues to be missing." [FN98] On its part, the National Commission stated that "[m]embers of the Mexican army, attached to the State of Guerrero, incurred, on September 28, 1974 [sic] in the illegal exercise of their position, upon arbitrarily arresting Mr. Rosendo Radilla-Pacheco, who far from being put at the disposal of the immediate authority […] was check[ed] into military installations, being this the last time news was recorded on his whereabouts, reason for which besides the illegal detention, the mentioned military members are considered responsible for [his] disappearance […]." [FN99]

[FN98] Cf. Historial Report for the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the Past, Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 640).
[FN99] Cf. File CNDH/PDS/95/GRO/S00228.000, Case of Mr. Radilla-Pacheco Rosendo, Civic War Association and Revolutionary League of the South "Emiliano Zapata", Special Report on Complaints in Matters of Forced Disappearances Occurred in the Decade of the 70s and Beginning of the 80s (dossier of appendixes to the application, appendix 2, folio 869 and dossier of appendixes to the brief of pleadings and motions, appendix C, folio 1682).
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128. After his arrest, Mr. Radilla-Pacheco was seen at the Military Barracks of Atoyac de Álvarez with signs of physical abuse. Mr. Maximiliano Nava Martínez testified that:

"Four days after his arrival [at the military barracks of Atoyac de Álvarez], Mr. Rosendo Radilla-Pacheco was taken away […] one of the detainees said: 'that man composed a corrido on the massacre of May 18th', which caught their attention and they separated him from the rest of the group. […]"
"They separated him once again from the group and when they brought him back he had his hands tied and his eyes were covered with his handkerchief, a red paliacate. [T]hey tried to put cotton that had been wet with an unknown substance in his eyes, under the bandage; he was telling them not to put anything in his eyes; that his crime did not call for that, reason for which he resisted. For the time being they resisted. When they took someone out they told us that the heavy players were going to enjoy a banquet."
"Two days later they took him away […], in a red pick-up truck [sic], saying that in a little while they would come back for those of us left there, once 'they were finished with these bodies'. From that point on [he] did not see [him] again." [FN100]

[FN100] Cf. Hand-written statement signed by Maximiliano Nava Martínez on September 30, 1982 (dossier of appendixes to the brief of pleadings and motions, appendix D(22), folios 1914 and 1915).
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129. In that same sense, in a statement offered before the Special Prosecutors' Office, Mr. Nava Martínez indicated that:

"[…] on August 25, 1974, he heard a male singing a corrido, he was singing loudly with a guitar […], it was the first time he had heard the corrido he was singing […] singing [at the military barracks of Atoyac de Álvarez] against the government[;] the person was at a distance of about ten meters [...] he remembers him and saw him because they would act as if they got tired and they would put their hands on the blindfolds and however they could they would remove the blindfolds from their eyes and he could observe it was a male, with a mustache who was singing and was not wearing the blindfold on his eyes and who was singing and playing the guitar […] once outside the barracks [… some people] came to comment on who the person who had been singing the corrido was, saying among them that it was Mr. Rosendo Radilla-Pacheco, who lived in San Vicente de Benítez with his wife[,] but he never saw him again […]." [FN101]

[FN101] Cf. Statement of Mr. Maximiliano Nava Martínez offered before the Special Prosecutors' Office on September 26, 2003 (dossier of appendixes to the brief of pleadings and motions, appendix D(25), folios 1925 and 1926).

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130. Likewise, the case file includes the statement of Mr. Enrique Hernández Girón, who expressed he was detained on August 25, 1974 along with Mr. Radilla-Pacheco at the Barracks of Atoyac de Álvarez, Guerrero. Specifically, he stated that

"[h]e was put in a long room in which […] he could see […] there were more people […] of the male sex […], but they were all blindfolded[,] there were so many they did not fit inside […there], through the blindfold he was able to see [that] Mr. Rosendo Radilla-Pacheco, who he had met a long time ago since he was from [Atoyac,] was next to [him], that he even talked to [him …], that he was also blindfolded, […] that after talking on that first night they took him outside and beat him, and that they took all of them outside in that same way to beat them at night, [Mr. Hernández Girón] was there for approximately one month and five days[,] but that when he left [Rosendo Radilla-Pacheco] remain[ed] there[,] he saw him all those days in the inside of the room […] and that up to this date he is still missing […]." [FN102]

[FN102] Cf. Statement of Mr. Enrique Hernández Girón offered before the Special Prosecutors' Office on December 10, 2003 (dossier of appendixes to the brief of pleadings and motions, appendix D(29), folios 1947 through 1948).

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131. Upon knowing of his arrest, the next of kin of Mr. Rosendo Radilla-Pacheco took a series of steps in order to determine his whereabouts, especially through contact with relatives or friends that worked for the State. However, the next of kin have adduced that, due to the conditions of repression that existed at that time, acknowledged by the State, they restrained from filing formal accusations regarding the facts (infra paras. 194 and 196). In this regard, Mrs. Tita Radilla, upon filing a complaint on May 14, 1999 (infra para. 183), indicated that "[t]he person who came forward to demand news regarding any relative at that time was detained, we had to disappear from the region in order to avoid being arrested." [FN103]

[FN103] Cf. Complaint filed before the Agent of the Public Prosecutors' Office of the Common Jurisdiction of the city of Atoyac de Álvarez, Guerrero, on May 14, 1999 (dossier of appendixes to the brief of pleadings and motions, appendix D(20), folios 1906 through 1907).

B. The context in which the facts of the present case occurred

132. It has been documented that at the time at which Mr. Rosendo Radilla-Pacheco was detained and disappeared numerous forced disappearances of persons occurred throughout the

Mexican territory. [FN104] Thus, it can be concluded from the body of evidence that the National Human Rights Commission of Mexico, [FN105] within the framework of the Special Program for Alleged Disappeared Persons, [FN106] examined 532 case files of complaints regarding the forced disappearance of persons perpetrated during the "[p]henomena classified as the 'Dirty war of the seventies'." [FN107] Based on that investigation, the National Commission issued Recommendation 026/2001, [FN108] in which it indicated that it had sufficient elements to conclude that in at least 275 cases of those examined the several of the rights of those people reported as disappeared were violated. [FN109]

[FN104] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 871; dossier of appendixes to the respondent's plea, appendix V(2), page 1) and Historical Report for the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the Past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, pages 503 through 530).

[FN105] On June 6, 1990 the National Human Rights Commission was created through a presidential decree as a decentralized body of the Secretariat of the Interior (dossier on merits, volume III, appendix V(1), folios 845 and 846). Subsequently, through a reform to Article 102, section B, of the Political Constitution of the United Mexican States, published in the Official Gazette of the Federation on September 13, 1999, said body was granted constitutional status (dossier of appendixes to the respondent's plea, appendix V(4), pages 1 and 2).

[FN106] The Constituent Council of the National Human Rights Commission agreed the "[c]reation of a program addressed to the search of missing persons," after which on September 18, 1990 the Special Program for the Alleged Disappeared Persons was created. Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the respondent's plea, appendix V(2), page 1)

[FN107] To these effects, said National Commission carried out field investigations and had direct contact with the next of kin of the disappeared, gathered documents in the General Archive of the Nation, the National Library and Newspaper Library, the Library of the Attorney General of the Republic, the Mexico Library, and the Archives of the Center of National Research and Security Center, requested information from the Attorney General of the Republic on aggrieved parties and the complaints filed, it analyzed case files and carried out visual inspections at different governmental instances, among others. Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folios 871, 872, and 889, and dossier of appendixes to the respondent's plea, appendix V(2), pages 1, 2, 17, and 18). The Report of the Special Prosecutors' Office states that the period called "dirty war" is named this way in direct reference to the way in which the counterinsurgence actions were carried out to contain armed groups considered violators of the law. Cf. Historical Report for the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the Past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 279).

[FN108] The recommendation was issued based on that stated in Articles 102, section B, of the Political Constitution of the United Mexican States; 1, 3, 6, fractions I, II, III; 15, fraction VII; 24, fraction IV, 44, 46, and 51 of the Law of the National Human Rights Commission. Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to

the application, appendix 3, folio 873, and dossier of appendixes to the respondent's plea, appendix V(2), page 3)
[FN109] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 872; dossier of appendixes to the respondent's plea, appendix V(2), page 2).
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133. The forced disappearances examined occurred in specific political, social, and economic circumstances. [FN110] In this regard, the National Commission established that

[…] in the scenario of the presidential succession of 1970, while a political-electoral battle was being developed in plain sight without surprises, scores of activists were found in secrecy, dedicated full-time to their own tasks, as a prior and necessary step for the subsequent development of the actions. […]
Between 1973 and 1974 the guerrilla actions and the counter insurgence were exacerbated. The Communist League 23 de Septiembre went on to occupy the top position in the confrontation with the federal government as of the failed kidnapping and subsequent murder of the businessman from Nuevo Leon, Eugenio Garza Sada, in September 1973. This event is followed by a time marked by drastic measures against the guerrilla: the illegal arrest, torture, and forced disappearance and, even, probable extralegal executions of militants and leaders. […]
[…]
Other important groups of the Mexican guerilla were the "Agricultural Brigade for Executions of the Party of the Poor", led by Professor Lucio Cabañas, whose presence was basically in the State of Guerrero. […] Its main actions were, besides ambushes to the Army and the security forces, the kidnapping in 1974 of the governor elect of Guerrero, Rubén Figueroa.
The group commanded by Professor Genaro Vázquez Rojas, the "National Civic Revolutionary Association" (ACNR) also had impact on the public opinion, with its main presence also in Guerrero; it was an organization that did not survive, as part of the guerrilla, the death of its leader in February 1972. Its most well known action was the kidnapping of Jaime Castrejón Díez, at that time rector of the Universidad Autónoma de Guerrero, who was exchanged for a dozen inmates of the armed movement, who were sent to Cuba by the Mexican government.
[…]
Against these groups, the anti-subversive policy was characterized, at least until 1981, for having practically unlimited powers. Its operation was the responsibility of groups specially formed by some corporations of the [S]tate's safety (White Brigade or Special Brigade) led by the Federal Security Office [...]
[…] the violence continued until the beginning of the eighties and it was translated into armed actions, confrontations, with the continuance of the excessive behavior of anti-subversive organizations and the subsequent forced disappearances that engrossed the relationship of illegal facts [...]. [FN111]

[FN110] In that sense, the Commission indicated that it does not seek to "[p]resent a specific story or chronicle regarding the events occurred in [that] period, instead[,] it ma[de] reference to the context in which the disappearances object of the investigation of [the] National Commission occurred and[,] due to the diversity of the sources consulted, [the] statements could lack

precision, which [did] not imply any judgment of value on behalf of [the] Commission regarding the groups referr[ed] to therein." Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 877 and dossier of appendixes to the respondent's plea, appendix V(2), pages 6 and 7).
[FN111] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folios 879 through 881, and dossier of appendixes to the respondent's plea, appendix V(2), pages 8 through 10).
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134. From the investigations carried out, the National Commission observed that in those times "[t]he government instances that constitutionally had the task of seeking justice and protecting the rights of citizens, showed their incapacity and negative to prevent, investigate, and punish the facts, as well as offer the necessary help to the people interested in investigating the whereabouts of the victims of arbitrary arrests and forced disappearances." [FN112]

[FN112] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 891 and dossier of appendixes to the respondent's plea, appendix V(2), pages 19).
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135. The Court observes that the National Human Rights Commission has not been the only body of the State dedicated to the documentation and investigation of this type of facts. The National Commission recommended to the Executive, inter alia, "[t]hat it issue instructions to the Attorney General of the Republic in order to appoint a special prosecutor, so it c[ould] take charge of the investigation and prosecution, in its case, of the crimes that [could] result from the facts to which Recommendation [026/2001] [made] refer[ence]." [FN113] The Federal Executive adopted the recommendation and once this Special Prosecutors' Office was created in the year 2002, it examined the 532 case files processed by the National Commission, and received different complaints throughout 2002 and up to 2006. [FN114]

[FN113] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 909 and dossier of appendixes to the respondent's plea, appendix V(2), page 36).
[FN114] Cf. Statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier on merits, volume IV, folio 1423), and Evaluation Report on the Follow-up of Recommendation 26/2001, National Human Rights Commission, of August 25, 2009 (dossier on merits, volume IX, folio 3014). In the respondent's plea, the State mentioned that "[t]he Special Prosecutors' Office […] started working in 2002 with the initial receipt of the 532 case file gathered by the [National Commission] and, later, with the different complaints they received during 2002 and up to 2006, year in which through an agreement of the Attorney General of the Republic […]" the Special Prosecutors' Office was closed and the investigations were transferred to the General Investigation Coordination (dossier on merits, volume II, folio 659).
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136. In the year 2006, the Special Prosecutors' Office presented a "Historic Report to the Mexican Society" (supra paras. 73 through 75), in which it made reference to the existence, at the time at which Rosendo Radilla-Pacheco was arrested, of a pattern of arrests, torture, and forced disappearances of militant members of the guerrilla or people identified as its supporters. In the same, it indicated that:

In a one-year term – from November 22, 1973 through November 19, 1974- we found in the reports of the National Defense Secretary, the recording of 207 detainees by the Army reported as 'packages'. All these arrests were illegal. The detainees were interrogated, tortured, and many of them were forced to be informants. They were not put at the orders of a competent authority. They were kept in military prisons and clandestine detention centers for very long periods of time and many of them are missing. [FN115]
[…]
"The explicit objective of torturing detainees was to obtain information. The methods were not important. Since the inmate was never handed over to the competent authority, he could be submitted to all types of torture, including, damage to their faces, third-degree burns, making them drink gasoline, breaking the bones of the body, cutting or slicing of the bottom of their feet, giving them electrical shocks on different parts of their bodies, tying them from their testicles and hanging them, introducing glass bottles in women's vaginas and submitting them to humiliation, introducing hoses in their anus in order to fill them with water and then beat them." [FN116]

[FN115] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 606).
[FN116] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 612).
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137. The Report of the Special Prosecutors' Office documented military actions deployed in the State of Guerrero that reveal what could have been the background for the arrest of Mr. Radilla-Pacheco. That report indicated that "[i]t was estimated that for 1971 the Army had 24,000 soldiers, a third part of all its members, concentrated in Guerrero" and that, during that time, the Peasant Brigade for Executions of the Communist Party of the Poor, led by Lucio Cabañas "was who had control of an ample area" of the sierra, reason for which "[t]he army harass[ed] the communities [and] arrest[ed] the inhabitants accusing them of supplying Lucio." [FN117] In this regard, it points out that after the kidnapping of the then governor elect of the State of Guerrero, Rubén Figueroa, by the Peasant Brigade, occurred on June 6, 1974, weeks before the arrest of Mr. Rosendo Radilla-Pacheco (supra paras. 124 through 126), "[t]he Army's response was brutal against the peasant communities, which it considered the bases of the guerrilla movement." [FN118] According to the report, the Army sought "[t]he annihilation of any traces of the guerrilla, throwing blood and fire to any one who was a member or suspicious

of being a supporter of the guerrilla, either within the Party of the Poor or the left wing […]." [FN119]

[FN117] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 333 and 342).
[FN118] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 367).
[FN119] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past. Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 368).

C. Forced disappearance as a multiple violation of human rights and the duties of respect and guarantee

138. As stated in the chapter on preliminary objections of the present Judgment, the phenomena of forced disappearances of persons requires a systematic and comprehensive analysis, reason for which this Tribunal considers it appropriate to reiterate the legal grounds that substantiate the need of a comprehensive perspective of forced disappearance in reason of the plurality of behaviors, that joined together toward a single purpose, permanently violate juridical rights protected by the Convention.

139. In International Law this Tribunals' jurisprudence has been precursor of the consolidation of a comprehensive perspective of the gravity and continued or permanent and autonomous nature of the figure of forced disappearance of persons. The Court has reiterated that it constitutes a multiple violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, implying other related violations, especially grave when it forms part of a systematic pattern or practice applied or tolerated by the State. Forced disappearance constitutes an inexcusable abandonment of the essential principles on which the Inter-American System is based [FN120] and its prohibition has reached a nature of jus cogens. [FN121]

[FN120] Cf. Case of the Serrano Cruz Sisters, supra note 19, paras. 100 through 106; Case of Heliodoro Portugal v. Panama, supra note 24, para. 118, and Case of Anzualdo Castro v. Peru, supra note 44, para. 59. The CIDFP states in paragraph 4 of its preamble that "[t]he forced disappearance of persons of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights"
[FN121] Cf. Case of Goiburú et al. v. Paraguay, supra note 83, para. 84; Case of Tiu Tojín v. Guatemala, supra note 24, para. 91, and Case of Anzualdo Castro v. Peru, supra note 44, para. 59.

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140. The pluri-offensive and continued or permanent characterization of forced disappearance is inferred not only from the definition included in Article III of the Inter-American Convention on Forced Disappearance, to which Mexico is party since March 9, 2002, its travaux préparatoires, [FN122] preamble and regulations, [FN123] but also from other definitions included in different international instruments, [FN124] that, similarly, mention the following as concurring and constitutive elements of forced disappearance: a) the deprivation of freedom; b) the direct intervention of state agents or their acquiescence, and c) the refusal to acknowledge the arrest and reveal the fate or whereabouts of the interested person. [FN125] Additionally, the jurisprudence of the European Human Rights System, [FN126] as well as that of several Constitutional Courts of the American states and high national courts [FN127] coincide with the indicated characterization.

[FN122] Cf. Annual Report of the Inter-American Commission of Human Rights 1987-1988, Chapter V.II. This crime "is permanent when it is no consummated in an instantaneous manner but permanently and it is prolonged throughout the time in which the person continues to be missing." (OEA/CP-CAJP, Report of the President of the Work Group In Charge of Analyzing the Project of the CIDFP, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of 25.01.1994, p. 10).

[FN123] Article II of the CIDFP states that "[f]orced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantee." Article III of that instrument states, in what is relevant, that: said crime will be considered continued or permanent as long as the fate or whereabouts of the victim are not established."

[FN124] Cf. Economic and Social Council of the United Nations, Report of the Work Group on Forced or Involuntary Disappearance of Persons. General Observation to Article 4 of the Statement on the Protection of all Persons against Forced Disappearance of January 15, 1996. (E/CN. 4/1996/38), para. 55, and Article 2 of the International Convention for the Protection of all Persons against Forced Disappearances.

[FN125] Cf. Case of Gómez Palomino v. Peru, supra note 51, para. 97; Case of Ticona Estrada v. Bolivia, supra note 23, para. 55; and Case of Anzualdo Castro v. Peru, supra note 44, para. 60.

[FN126] Cf. Eur. Ct. H.R., Case of Kurt v. Turkey, 15/1997/799/1002, 25 May 1998, paras. 124 through 128; Case of Cakici v. Turkey, Application no. 23657/94, 8 July 1999, paras. 104 through 106; Case of Timurtas v. Turkey, Application no. 23531/94, 13 June 2000, paras. 102 through 105; Case of Tas v. Turkey, Application no. 24396/94, 14 November 2000, paras. 84 through 87; Case of Cyprus v. Turkey, supra note 24, paras. 132 through 134 and 147 through 148.

[FN127] Cf. Case of Marco Antonio Monasterios Pérez, Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007 (declaring the pluri-offensive and permanent nature of the crime of forced disappearance); Supreme Court of Justice of the Nation of Mexico, Thesis: P./J. 87/2004, "Forced disappearance of persons. The term for its expiration shall start to be computed as of the moment in which the victim is found or his whereabouts are established" (stating that forced disappearances are permanent crimes and that

the expiration shall be computed as of the moment in which its commission ceases); Case of Caravana, Criminal Chamber of the Supreme Court of Chile, judgment of July 20, 1999; Case of immunity of Pinochet, Supreme Court of Chile in Full, judgment of August 8, 2000; Case of Sandoval, Court of Appeals of Santiago, Chile, judgment of January 4, 2004 (all stating that the crime of forced disappearance is continuous, against humanity, non-extinguishable, and non-amestiable); Case of Vitela et al., Federal Chamber of Criminal and Correctional Appeals of Argentina, judgment of September 9, 1999 (stating that forced disappearances are continuous crimes against humanity); Case of José Carlos Trujillo, Constitutional Court of Bolivia, judgment of November 12, 2001 (in the same sense); Case of Castillo Páez, Constitutional Court of Peru, judgment of March 18, 2004 (stating, based on that ordered by the Inter-American Court in the same case, that forced disappearance is a permanent crime until the whereabouts of the victim are established); Case of Juan Carlos Blanco and Case of Gavasso et al., Supreme Court of Uruguay, judgment of October 18, 2002 and judgment of April 17, 2002, respectively (in the same sense).

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141. From the aforementioned, it can be inferred that, since one of the objectives of forced disappearance is to prevent the exercise of the appropriate legal recourses and procedural guarantees, once a person has been submitted to a kidnapping, detention, or any form of deprivation of freedom with the objective of causing their forced disappearance, if the victim itself cannot access the recourses available, it is fundamental that the next or kin or other people close to him be able to access prompt and effective proceedings or judicial recourses as means to determine their whereabouts or state of health or to individualize the authority that ordered the deprivation of freedom or made it effective. [FN128]

[FN128] Cf. obligation referred to in Article X of the CIDFP. Likewise, the Case of Anzualdo Castro v. Peru, supra note 44, para. 64.

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142. In this regard, pursuant with Article I, subparagraphs a) and b), of the CIDFP, the States Parties undertake to not practice or tolerate the forced disappearance of persons under any circumstance and to punish those responsible within the realm of their jurisdiction. This is in accordance with the State's obligation to respect and guarantee the rights included in Article 1(1) of the Convention, which as has been established by this Court, can be fulfilled in different ways, in function of the specific right the State shall guarantee and of the specific needs of protection. [FN129] In that sense, this obligation implies the duty of the States Party to organize all the structures through which the exercise of public power is expressed, in a way such that they are capable of legally guaranteeing the free and full exercise of human rights. [FN130] As part of that obligation, the State is in the juridical duty to "[r]easonably prevent human rights violations and to seriously investigate with the means within its reach the violations committed within its jurisdiction in order to identify those responsible, impose upon them the appropriate punishments and guarantee the victim an adequate reparation." [FN131]

[FN129] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113; Case of Perozo et al. v. Venezuela, supra note 56, para. 298, and Case of Anzualdo Castro v. Peru, supra note 44, para. 62.
[FN130] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 166; Case of Kawas Fernández v. Honduras, supra note 40, para. 137, and Case of Anzualdo Castro, v. Peru, supra note 44, para. 62.
[FN131] Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 174; and Case of Anzualdo Castro v. Peru, supra note 44, para. 62.
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143. In definitive, any time there are reasonable motives to suspect that a person has been submitted to forced disappearance an investigation shall be started. [FN132] This obligation exists regardless of the filing of a complaint, since in cases of forced disappearance international law and the general duty to guarantee, impose the obligation to investigate the case ex officio, without delay, and in a serious, impartial, and effective manner. This is a fundamental and conditioning element for the protection of certain rights affected by these situations, such as personal freedom, the right to humane treatment, and to life. [FN133] Without detriment of the aforementioned, in any case, all state authorities, public officials, or individuals who have received news about acts destined to the forced disappearance of persons, shall denounce them immediately. [FN134] The obligation to investigate persists until the person deprived of liberty or his remains are found.

[FN132] Cf. Article 12(2) of the International Convention for the protection of all persons against forced disappearance and Article 13 of the Declaration on the protection of all persons against forced disappearances. Additionally, the Declaration and Action Program of Vienna approved by the Global Human Rights Conference on June 25, 1993, establishes that: "[a]ll the States are compelled, under any circumstance, to start an investigation as long as there are motives to believe that a forced disappearance has occurred within a territory subject to its jurisdiction and, if the accusations are confirmed, prosecute the authors of the facts" (para. 62).
[FN133] Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 145 and Case of Anzualdo Castro, v. Peru, supra note 44, para. 65.
[FN134] Cf. Case of Anzualdo Castro v. Peru, supra note 44, para. 65.
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144. For an investigation to be effective, the States must establish an adequate regulatory framework in order to develop the investigation, which implies regulating the forced disappearance of persons as an autonomous crime in their domestic legislations, since criminal prosecution is an adequate instrument for preventing future violations of human rights [FN135] (infra paras. 317 through 318)

[FN135] Cf. Case of Gómez Palomino v. Peru, supra note 51, paras. 96 and 97; Case of Heliodoro Portugal v. Panama, supra note 24, paras. 188 and 189, and Case of Anzualdo Castro v. Peru, supra note 44, para. 66.

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145. From all the aforementioned, it can be concluded that the acts that constitute a forced disappearance have a permanent nature and that their consequences imply multiple offenses to the rights of people acknowledged in the American Convention while the whereabouts of the victim are not known or their remains have not been located; therefore, the States have the corrollary duty to investigate it and, eventually, punish those responsible, pursuant with the obligations derived from the American Convention, and specifically, from the Inter-American Convention on Forced Disappearance of Persons.

146. In that sense, the analysis of forced disappearance shall include the totality of the facts presented for the Tribunal's consideration in the present case." [FN136] Only then will the legal analysis of the forced disappearance be in accordance with the complex violations of human rights it entails, [FN137] with its continued or permanent nature, and with the need to consider the context in which the facts occurred, in order to analyze its prolonged effects in time and focus comprehensively on its consequences, [FN138] taking into consideration the corpus juris of protection, both Inter-American and international.

[FN136] Cf. Case of Heliodoro Portugal v. Panama, supra note 24, para. 112, and Case of Ticona Estrada v. Bolivia, supra note 23, para. 56, and Case of Anzualdo Castro v. Peru, supra note 44, para. 67.

[FN137] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 185; Case of Ticona Estrada v. Bolivia, supra note 23, para. 70, and Case of Anzualdo Castro v. Peru, supra note 44, para. 67.

[FN138] Cf. Case of Goiburú et al. v. Paraguay, supra note 83, para. 85, and Case of Anzualdo Castro v. Peru, supra note 44, para. 67.

C.1 Rights to personal freedom, to humane treatment, life, and to the acknowledgment of juridical personality

147. The Commission argued, in separate sections, that the State was responsible for having illegally deprived Mr. Radilla-Pacheco of his freedom, and of not having taken him before a competent judge. Likewise, it stated that said detention had occurred "[w]ithin a context of arrests and tortures of detainees," that there were serious indicia that Mr. Radilla-Pacheco had been submitted to tortures, and that the State had not carried out a serious and objective investigation of those facts. It added that since "[3]3 years" had gone by "since the date of his arrest, without any news on his whereabouts […] there [were] sufficient elements of conviction to consider that [Mr.] Rosendo Radilla-Pacheco lost his life in the hands of members of the Mexican army." It also indicated that the State had failed to comply with its obligation to guarantee the right to life of Mr. Rosendo Radilla-Pacheco through a serious, diligent, and impartial investigation, and that the ones it had started had "[s]hown delays and lack of

effectiveness." Finally, the Commission argued that the forced disappearance generated a violation of the acknowledgment of the alleged victim's juridical personality, since the precise objective of forced disappearance is to extract the individual from the protection due to them, with the clear and deliberate intention of eliminating the possibility that the person file legal actions, excluding them from the legal and institutional system.

148. The representatives coincided with the arguments presented by the Commission. Additionally, they asked the Court to declare the violation of Article 7 of the Convention, in relation with Articles II and XI of the CIDFP. In this regard, we shall reiterate that this Tribunal has established that the alleged victim, his next of kin, or his representatives may invoke rights different to those included in the Commission's application, based on the facts presented by the latter. [FN139] On the other hand, the Court observes that the representatives did not argue the violation to the right to the acknowledgment of juridical personality, established in Article 3 of the American Convention.

[FN139] Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98, para. 155; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2009 Series C No. 198, para. 97, and Case of Escher et al. Brazil, supra note 64, para. 191.

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149. The State, on its part, acknowledged its international responsibility for the violation of the rights acknowledged in Articles 5 and 7 of the American Convention, in detriment of Mr. Radilla-Pacheco (supra para. 52). In this sense, it acknowledged that a public official had illegally and arbitrarily deprived Mr. Radilla-Pacheco of his freedom. Likewise, the State indicated that it is reasonable to presume his death (supra para. 53). Additionally, it stated that, pursuant with that established by this Court in its decisions, when "[t]he disappearance of the victim is argued a sentence shall not be issued for violations to the right to juridical personality, since that right has its own juridical content."

150. The Tribunal considers as sufficiently proven the fact that Mr. Rosendo Radilla-Pacheco was arrested by Army soldiers, at a military checkpoint located at the entrance of the Colony of Cuauhtémoc, in Atoyac de Álvarez, Guerrero, on August 25, 1974, and subsequently transferred to the Military Barracks of Atoyac de Álvarez. He was kept there in a clandestine manner for several weeks, where he was seen the last time, with his eyes blindfolded and signs of physical beatings. More than 35 years after his arrest, the next of kin of Mr. Radilla-Pacheco still do not know his whereabouts, despite the steps taken. The authorities continue to deny the whereabouts of the victim, since up to this date they have not offered a clear response regarding his fate.

151. The pattern of the arrests made in those years leads to the conclusion that Mr. Rosendo Radilla-Pacheco was arrested for being considered a supporter of the guerrilla. Arrests like these were made without a warrant issued by a competent authority and in a clandestine manner, seeking to extract the individual from the protection of the law, in order to break their personality and obtain confessions or information on the insurgence (supra para. 136). In this sense the

National Human Rights Commission stated that a document located in the files of the currently extinct Federal Safety Office of Mexico refers to the then prevailing situation in the area corresponding to the Sierra of Atoyac de Álvarez, Guerrero, mainly, to the actions of the organization known as the "Party of the Poor". Said document mentions that even though the "[h]abitants of the region" did not participate in the actions of this "clandestine" group, they did not denounce them either due to fear of that organization, which means that it had "[t]he support and the liking of the habitants of the Area." Specifically, according to that indicated by the National Commission, said document states that:

In order to be able to thwart the activities carried out by this group, within urban and rural means, it [was] necessary to employ the same techniques as them, using banging forces that act in a clandestine manner directly against the members already identified and located, in order to break them morally and materially, until achieving their complete destruction." [FN140]

[FN140] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 883 and dossier of appendixes to the respondent's plea, appendix V(2), page 12).

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152. Thus, the disappearance of Mr. Radilla-Pacheco is not only, from all points of view, contrary to the right to personal liberty, but it is also framed within a pattern of massive arrests and forced disappearances (supra paras. 132 through 137), which leads to the conclusion that it put him in a grave situation of risk of suffering irreparable damages to his personal integrity and his life. In this sense, the ruling of the National Human Rights Commission, which determined the following, stands out:

Based on the modus operandi of the public officials involved and their actions outside the law, as well as the statements gathered by [the] National Commission of those who suffered acts characteristic of torture and who later obtained their freedom, were very probably submitted to the same practice as the victims of forced disappearance, which was used as a means to obtain confessions and information in order to locate other people." [FN141]

[FN141] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 899 and dossier of appendixes to the respondent's plea, appendix V(2), page 27).

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153. In that sense, for the Court it is evident that the military authorities that arrested Mr. Radilla-Pacheco were responsible for the protection of his rights. The Tribunal has established that the bringing of detainees before official repressive bodies, state agents, or individuals that act with its acquiescence or tolerance, that without punishment practice torture and murder represents, in itself, an infringement to the duty to prevent violations to the rights to humane treatment and life, even in the assumption that the acts of torture or deprivation of life of the person in the specific case cannot be proven. [FN142] Additionally, this Court has held that

forced disappearance violates the right to humane treatment because "[t]he mere fact of a prolonged isolation and a coactive solitary confinement, represents cruel and inhuman treatment [...] contradicting paragraphs 1 and 2 of Article 5 of the Convention." [FN143]

[FN142] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 16, para. 175; Case of Ticona Estrada v. Bolivia, supra note 23, para. 59, and Case of Anzualdo Castro v. Peru, supra note 44, para. 85.
[FN143] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, paras. 156 and 187; Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171, and Case of Anzualdo Castro v. Peru, supra note 44, para. 85.

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154. Taking into account the aforementioned, the Court concludes that the State is responsible for the violation of the right to liberty and humane treatment, and to life of Mr. Rosendo Radilla-Pacheco, in relation to that stated in Articles I and XI of the CIDFP.

155. Regarding the alleged violation of Article 3 of the Convention (supra para. 147), the Court has considered that the content itself of the right to acknowledgment of juridical personality is that the person be acknowledged

[i]n any part as a subject of rights and obligations, and to enjoy fundamental civil rights[, which] implies the capacity of being the bearer of rights (capacity and enjoyment) and duties; the violation of that acknowledgment presumes disregarding in absolute terms the possibility to be a bearer of [civil and fundamental] rights and duties. [FN144]

[FN144] Cf. Case of Bámaca Velásquez, Merits. Judgment of November 25, 2000. Series C No. 70, para. 179; Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, para. 166, and Case of Anzualdo Castro v. Peru, supra note 44, para. 87.

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156. This right represents a parameter to determine if a person is or not entitled to the rights in question, and if they can exercise them, [FN145] reason for which the violation of that acknowledgment makes the individual vulnerable with regard to the State or individuals. [FN146] Therefore, the content of the right to acknowledgment of juridical personality refers to the corollary general duty of the State to offer the means and juridical conditions so that right can be freely and fully exercised by their bearers, [FN147] or in its case, the obligation to not violate that right.

[FN145] Cf. Case of the Sawhoyamaxa Indigenous Community v. Parauay. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, para. 188; Case of the Saramaka

People v. Suriname, supra note 144, para. 166, and Case of Anzualdo Castro v. Peru, supra note 44, para. 88.
[FN146] Cf. Case of the Girls Yean and Bocico v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005. Series C No. 130, para. 179; Case of the Saramaka People v. Suriname, supra note 144, para. 166, and Case of Anzualdo Castro v. Peru, supra note 44, para. 88.
[FN147] Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra note 145, para. 189; Case of the Saramaka People v. Suriname, supra note 144, para. 167, and Case of Anzualdo Castro v. Peru, supra note 44, para. 88.
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157. In its judgment issued in the case of Anzualdo Castro v. Peru, this Tribunal considered that, in cases of forced disappearance, in response to the multiple and complex nature of this grave violation of human rights, its execution can include the specific infringement of the right to the acknowledgment of juridical personality. Beyond the fact that the disappeared person cannot continue to enjoy and exercise others, and eventually all the rights to which it is also entitled, their disappearance seeks not only one of the most grave forms of extraction of a person from all realms of the legal system, but also deny their existence and leave it in a state of limbo or an undetermined juridical situation in what refers to society and the State. [FN148] In the case currently before us, this translates into a violation of the right to acknowledgment of Mr. Rosendo Radilla-Pacheco's juridical personality.

[FN148] Cf. Case of Anzualdo Castro v. Peru, supra note 44, para. 90.

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158. In consideration of the aforementioned, the Court concludes that the State is responsible for the violation of the rights to personal liberty, to humane treatment, to the acknowledgment of juridical personality and to life of Mr. Rosendo Radilla-Pacheco, by virtue of the forced disappearance of which he is a victim, carried out by state soldiers. In that sense, the State has the duty to guarantee the rights through the prevention and diligent investigation of the forced disappearance. This forces the State to start serious and effective investigations tending to determine his fate or whereabouts, identify those responsible and, if it were the case, impose the corresponding punishments. The disregard for the fate of Mr. Radilla-Pacheco, his whereabouts or that of his remains is still present up to this date, without there being an effective investigation tending to find out where he is, which makes the non-compliance of this duty evident. The Court will analyze in Chapter IX of this Judgment what refers to the State's duty to investigate. For the determination of the violations argued, it is enough to mention that in this case the State has not effectively guaranteed the rights included in the stipulations analyzed.

159. In conclusion, the State is responsible for the violation of Articles 7(1) (Personal Liberty); 5(1) and 5(2) (Right to Humane Treatment); 3 (Right to Juridical Personality); and 4(1) (Right to Life), in detriment of Mr. Rosendo Radilla-Pacheco, based on the failure to comply

with the duty to guarantee and respect those rights, established in Article 1(1) of the American Convention, all of them in relation with Articles I and XI of the CIDFP.

C.2 Right to humane treatment of the next of in of Mr. Rosendo Radilla-Pacheco

160. The Commission and the representatives argued that the State is responsible for the violation of the right to humane treatment of the following next of kin of Mr. Rosendo Radilla-Pacheco, namely, his twele children: Tita, Andrea, Rosendo, Romana, Evelina, Rosa, Agustina, Ana María, Carmen, Pilar, Victoria, and Judith, all or surnames Radilla Martínez. In this regard, the Tribunal turns to that stated in Chapter VII of this Judgment, in the sense that only Mrs. Tita and Andrea and Mr. Rosendo, all of surnames Radilla Martínez will be considered alleged victims (supra para. 111).

161. The Court in numerous cases has considered that the next of kin of the victims of violations of human rights can be, at the same time, victims. [FN149] Specifically, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to psychic and moral integrity of the next of kin of the victim is a direct consequence, precisely, of that phenomenon, which causes them a severe suffering due to the fact itself, which is increased, among other factors, by the constant negative of the state authorities to provide information regarding the whereabouts of the victim or to start an effective investigation in order to clarify what occurred. [FN150]

[FN149] Cf. Case of Castillo Páez v. Peru. Merits. Judgment of November 3, 1997. Series C No. 34, Fourth operative paragraph; Case of Kawas Fernández v. Honduras, supra note 40, para. 128, and Case of Anzualdo Castro v. Peru, supra note 44, para. 105.
[FN150] Cf. Case of Blake v. Guatemala. Merits, Judgment of January 24, 1998. Series C No. 36, para. 114; Case of Ticona Estrada v. Bolivia, supra note 23, para. 87, and Case of Anzualdo Castro v. Peru, supra note 44, para. 105.

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162. In this regard, this Tribunal has considered that it can declare the violation of the right to mental and moral integrity of the next of kin of the victims of certain violations of human rights applying a presumption iuris tantum regarding mothers and fathers, sons and daughters, spouses, and life partners (hereinafter “direct relatives”), as long as this responds to the specific circumstances of the case. In the case of those direct relatives, it is the State who shall invalidate said presumption. [FN151]

[FN151] Cf. Case of Valle Jaramillo et al. v. Colombia, supra note 40, para. 119, and Case of Kawas Fernández v. Honduras, supra note 40, para. 128.

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163. Taking into consideration the circumstances of the present case, the Tribunal assumes, in principle, that the forced disappearance of Mr. Radilla-Pacheco resulted in an infringement on

the mental and moral integrity of his children Tita, Andrea, and Rosendo, of surnames Radilla Martínez.

164. The State has not invalidated said presumption, on the contrary, it admitted that "[t]he anguish characteristic of human nature upon not knowing the fate of a loved one, necessarily implies an acknowledgment of the State's responsibility for said situation, in violation of Article 5 of the American Convention on Human Rights" in detriment of said next of kin (supra paras. 52 and 53).

165. The statements offered before this Tribunal by the next of kin of Mr. Radilla-Pacheco are revealing in this sense. Mr. Rosendo Radilla Martínez, son of the victim, referred to the effects, on his family and on him specifically, of the State's negative to offer information on his father's whereabouts, and he indicated that:

"In fact [it caused] a lot of damage. […] a]fter a long wait my mother passed away in 84, after being in a coma for a year. […] S]he waited for my father for a long time; she even ironed his clothes, she would arrange his clothes and say 'Rosendo is going to come in through that door, Rosendo is going to come in through that door' […] and my father never returned. I think that […] the pain I felt upon my mother's death has been overcome […] She] is somewhere, her remains have been deposited in a mausoleum and I think I am resigned to the fact that my mother passed away. But not knowing where my father is, where he was left, what happened to him, that does affect me, in fact it affects me deeply […]
[T]he suffering we have been submitted to has been very deep, […] and we need to close this chapter of our lives […] we have a prolonged mourning, […] we always carry this mourning with us, […] we are not at peace neither during the day nor the night because we remember him and we do not know what happened to him. [...] The most important thing would be for them to hand over my father's corpse, his body, his remains […]. [FN152]

[FN152] Cf. Statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009.
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166. In this regard, the Court remembers that in other cases it has considered that the continuous deprivation of the truth regarding the fate of a disappeared person constitutes a form of cruel and inhuman treatment for the close relatives. [FN153]. In the present case, the relationship between the suffering of the next of kin of Mr. Rosendo Radilla-Pacheco with the violation of the right to know the truth is clear for this Tribunal (infra paras. 180 and 313), and it illustrates the complexity of the forced disappearance and the multiple effects it causes.

[FN153] Cf. Case of Trujillo Oroza v. Bolivia. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, para. 114; Case of La Cantuta v. Peru, supra note 51, para. 125, and Case of Anzualdo Castro v. Peru, supra note 44, para. 113.
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167. Likewise, the Tribunal has reiterated that when facing the facts of the forced disappearance of persons, the State also has the obligation to guarantee the right to humane treatment of the next of kin through effective investigations. Even more so, the Court has considered the absence of effective recourses as a source of suffering and additional anguish for the victims and their next of kin. [FN154] In the present case, all the steps carried out by the next of kin of Mr. Radilla-Pacheco, due to his disappearance, and before different institutions and state dependencies to determine his whereabouts, as well as to impulse the corresponding investigations have been proven before the Court (infra paras. 183 through 189 and 260 through 264).

[FN154] Cf. Case of Blake v. Guatemala, supra note 150, para. 114, Case of Heliodoro Portugal v. Panama, supra note 24, para. 174, and Case of Anzualdo Castro v. Peru, supra note 44, para. 113.

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168. The delay and lack of effectiveness of those investigations (infra paras. 201, 212, 214, 234, and 245) has exacerbated in the next of kin of Mr. Radilla-Pacheco the feelings of impotence and distrust in the State's institutions.

169. Likewise, the moral infringement suffered by the next of kin of Mr. Radilla-Pacheco, product of the stigmatization and indifference this type of cases received by the authorities has been proven. Mrs. Tita Radilla Martínez stated that:

[t]hey did not take [them] into account [… t]hey wanted to present an accusation and […] at the Public Prosecutors' Office [they] told them 'no, […] that already passed'. Thus, they never received the correct treatment. [… S]he remembers when they made the accusation at the [Attorney General of the Republic], before the [Special] Prosecutors' Office, the Public Prosecutor told a friend, 'hey lady wouldn't it be easier for her to find a new husband instead of looking for this one'. […] They would ask people […] '¿did your relative hang around with Lucio Cabañas? […] you are also responsible, because if your relative was in the armed movement, you are to blame'. [FN155]

[FN155] Cf. Statement offered by Mrs. Tita Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009.

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170. In similar terms, Mrs. Andrea Radilla Martínez testified that:

She file[d] a criminal accusation in 1992 before the Public Prosecutors' Office with the help of representatives of the National Human Rights Commission, in a very tense environment because she felt she was facing the dock because of the very unfriendly treatment of the Agent, and the looks of his colleagues, all of which seemed to question [her] based on the stigma brought upon her because she was the daughter of a detainee who disappeared during the dirty war. [FN156]

[FN156] Cf. Statement offered by Mrs. Andrea Radilla Martínez before notary public (affidavit on June 10, 2009 (dossier on merits, volume IV, folio 1159).

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171. Additionally, the Court observes that according to the report on the psychosocial effects on the next of kin of Mr. Rosendo Radilla, his disappearance has had a traumatic and differentiated impact on the family as a whole due to the forced restructuring of roles of each one of its members with the evident effects on each of their life projects. [FN157] Both Mr. Rosendo Radilla Martínez [FN158] and Mrs. Andrea Radilla Martínez offered statements in that sense. The latter testified that:

[Her] life changed completely, from feeling protected, supported, and at peace, se went on to feeling responsible for [her] mother and her responsibilities, [s]he fe[lt] interrogated, watched, and that everybody turned their back on her, anguish went on to be [her] natural state. [FN159]

[FN157] Cf. Antillón Najlis, Ximena, Forced Disappearance during the dirty war: psychosocial effect on individuals, the family, and the community. The forced disappearance of Rosendo Radilla-Pacheco in Atoyac de Álvarez, Guerrero (dossier of appendixes to the brief of pleadings and motions, appendix K, folio 2270).
[FN158] Cf. Statement offered by Mr. Rosendo Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009.
[FN159] Cf. statement offered by Mrs. Andrea Radilla Martínez before notary public (affidavit) (dossier on merits, volume IV, folio 1159).

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172. Taking into account the aforementioned, this Tribunal concludes that the violation to the right to humane treatment of the next of kin of Mr. Rosendo Radilla-Pacheco has occurred based on the situations and circumstances lived by them during the disappearance of the latter. These infringements, included comprehensively in the complexity of forced disappearance (supra paras. 138 through 146), subsist while the factors of impunity that were verified persist. [FN160] Therefore, the State is responsible for the violation of the right to humane treatment of Tita, Andrea, and Rosendo, all of surnames Radilla Martínez, acknowledged in Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) of the same.

[FN160] Cf. Case of Goiburú et al. v. Paraguay, supra note 83, para. 103; Case of La Cantuta v. Peru, supra note 51, para. 126, and Case of Anzualdo Castro v. Peru, supra note 44, para. 114.

IX. REGARDING THE RIHT TO ACCESS JUSTICE AND THE OBLIGATION TO CARRY OUT EFFECTIVE INVESTIGATIONS ARTICLES 8(1) (RIGHT TO A FAIR TRIAL) [FN161] AND 25(1) (JUDICIAL PROTECTION), [FN162]IN RELATION WITH ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) AND 2 [FN163] (DOMESTIC LEGAL EFFECTS) OF THE AMERICAN CONVENTION AND ARTICLES I, SUBPARAGRAPHS

A) AND B), IX, AND XIX [FN164] OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE

[FN161] Article 8(1) states that:
Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
[FN162] Article 25(1) states that:
Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
[FN163] Article 2 states that:
Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
[FN164] Article IX states, in what is relevant, that:
Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.
The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.
Article XIX states that:
The states may express reservations with regard to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.
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173. In the present chapter the Tribunal will examine the arguments regarding the right to a fair trial and the obligation to carry out effective investigations, in relation to the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco. In first term, the Court will analyze the lack of diligent and effective investigations within the ordinary justice system. Later, the Tribunal will assess the application of military jurisdiction in the present case.

174. Before referring to those aspects, it is appropriate to mention that the State requested that the Tribunal "[e]specially assess the diligences carried out by the National Human Rights Commission within the investigation in different cases of alleged forced disappearances occurred in the seventies and eighties." In that sense, the State referred specifically to the investigation carried out by said organization regarding the specific case.

175. The Tribunal observes that, according to that indicated by the State, the National Human Rights Commission is an "organization of constitutional status" that is part of the "national non-jurisdictional system for the protection of human rights" with the power "[t]o hear complaints

against any public authority or official, with the exception of those of the Judiciary of the Federation, as well as electoral, labor, and jurisdictional matters." Among others, "[i]ts work consists of investigating and documenting abuses to human rights and in using a series of instruments to resolve the cases;" in that sense, the "recommendation" is the most common instrument used. The State also indicated that "[w]hen generalized practices or systematic abuses are documented, the National Commission may publish a 'special report' or a 'general recommendation' that usually proposes how the authority shall approach the documented abuse." [FN165]

[FN165] The Court also observes that additionally, the State indicated that "[i]n Mexico, the criminal legal proceedings start when the investigating authority, in this case, the agent of the public prosecutors' office of the federation, knows of an alleged criminal act, that is, when it receives noticia criminis". Likewise, it indicated that "[d]espite the acknowledgment of the actions of the autonomous human rights jurisdictional body in this case, according to Mexican legislation […] the complaints before the [National Commission do not] constitute strictu sensu an acknowledgement of noticia criminis."

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176. The Court observes that, as a result of the investigation carried out in the specific case, the National Commission generically stated that "[m]embers of the Mexican army attached to the State of Guerrero" arbitrarily detained Mr. Rosendo Radilla-Pacheco, who is still missing (supra para. 127). [FN166] In this regard, the representatives argued that even though the investigation carried out by the National Commission "[i]s very valuable and its conclusions provide valuable elements of elucidation of the facts[, these] do not substitute the Public Prosecutors' Office's activity."

[FN166] Cf. Exp. CNDH/PDS/95/GRO/S00228.000, Case of Mr. Radilla-Pacheco Rosendo, Civic War Association and Revolutionary League of the South "Emiliano Zapata", Special Report on the Complaints in Matters of Forced Disappearance Occurred in the Decade of the 70s and Beginning of the 80s (dossier of appendixes to the application, appendix 2, folio 869, and dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1679 through 1683).

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177. In effect, in Recommendation 26/2001, the National Commission stated that "[i]ts ability to issue a ruling with regard to the commission of any crime was limited, since its jurisdiction in this matter corresponds exclusively to the Public Prosecutors' Office[, for which] neither [the] National Commission, nor any other federal or local public authority, different to the Public Prosecutors' Office can state their opinion in this regard and it corresponds only to the Judiciary to indicate if a person is the author of or responsible for a criminal act. [FN167]"

[FN167] Recommendation 26/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folio 890 and dossier of appendixes to the respondent's plea, appendix V(2), page 18).

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178. The Inter-American Court has already established that the obligation to investigate the facts, prosecute, and, if that is the case, punish those responsible of a crime that constitutes a violation of human rights is a commitment that results from the American Convention, and that the criminal responsibility shall be determined by the competent judicial authorities, strictly following the rules of the due process established in Article 8 of the American Convention. [FN168]

[FN168] Cf. Case of Huilca Tecse v. Peru. Merits, Reparations, and Costs. Judgment of March 3, 2005. Series C No. 121, para. 106.

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179. In this regard, the Court considers it appropriate to reiterate, as it has done in other cases, that the "historical truth" documented in the reports and recommendations of bodies such as the National Commission, does not complete or substitute the State's obligation to also establish the truth through judicial proceedings. [FN169] This does not obstruct the Court from taking into consideration the documents prepared by that National Commission when they refer to the State's alleged international responsibility.

[FN169] Cf. Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 150, and Case of Anzualdo Castro v. Peru, supra note 44, para. 180.

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180. Additionally, the Court has considered that, within the framework of Articles 1(1), 8, and 25 of the American Convention, the next of kin of the victims have the right, and the States the obligation, to have the facts effectively investigated by State authorities and, in that sense, to know the truth of what occurred. Specifically, the Court has established the content of the right to know the truth in its jurisprudence in cases of forced disappearance of persons. In that sense, it has confirmed the existence of a "[r]ight of the next of kin of the victim to know its fate and, if it were the case, where his remains are." [FN170] Additionally, in a subsequent manner, in this type of cases it is understood that the next of kin of disappeared persons are victims of the facts that constitute forced disappearance, which grants them the right to have the facts investigated and that those responsible be processed and, if it were the case, punished. [FN171] Thus, the Court recalls that the right to the truth is included within the right of the victim or his next of in to obtain from the State's competent bodies the elucidation of the violating facts and the corresponding responsibilities, through the investigation and prosecution established in Articles 8 and 25 of the Convention. [FN172] Therefore, in this case it will not issue a ruling in reference to the argument on the alleged violation of Article 13 of the American Convention made by the representatives (supra para. 5).

[FN170] Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 181; Case of La Cantuta v. Peru, supra note 51, para. 231, and Case of Anzualdo Castro v. Peru, supra note 44, para. 118.
[FN171] Cf. Case of Blake v. Guatemala, supra note 150, para. 97; Case of Heliodoro Portugal v. Panama, supra note 24, para. 146, and Case of Anzualdo Castro v. Peru, supra note 44, para. 118.
[FN172] Cf. Case of Gómez Palomino, supra note 51, para. 78; Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 150, and Case of the Rochela Massacre v. Colombia, supra note 83, para. 147.

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181. According to the aforementioned, without harming the actions carried out by the National Human Rights Commission with regard to the forced disappearance of Mr. Rosendo Radilla-Pacheco, especially in what refers to the alleged participation of state agents, the Court considers that the study on the right to a fair trial and the State's obligation to carry out effective investigations in the present case shall be limited to the actions carried out within the jurisdictional realm.

A. Actions within the ordinary jurisdiction

182. In this section, the Court considers it necessary to refer to the general processing of the investigation of the facts of the specific case within the ordinary jurisdiction to, later, make the specific analysis of the actions carried out by the State of Mexico. Before that, it shall be reiterated that, given that the State did not forward a copy of preliminary inquiry SIEDF/CGI/454/2007), the facts mentioned below have been determined based on the evidence present in the Tribunal's case file and on the statements made by the parties that were not invalidated or contested (supra para. 92).

183. On March 27, 1992 Mrs. Andrea Radilla Martínez filed a criminal accusation before the Agent of the Federal Public Prosecutors' Office in the State of Guerrero for the forced disappearance of her father and against whoever resulted responsible. [FN173] Subsequently, on May 14, 1999 Mrs. Tita Radilla Martínez filed another criminal accusation before the Public Prosecutors' Office of the Common Jurisdiction of the City of Atoyac de Álvarez, Guerrero, for the forced disappearance of her father and against whoever resulted responsible. [FN174] Both accusations were sent by the Public Prosecutors' Office to "[r]eservation due to lack of indicia for the determination of the probable responsible parties." [FN175]

[FN173] Cf. Written records of appearance prepared by the Agent of the Federal Public Prosecutors' Office, in the city of Chilpancingo, Guerrero, on March 27, 1992 (dossier of appendixes to the brief of pleadings and motions, appendix D(21), folios 1908 through 1912).
[FN174] Cf. Brief of the application filed before the Agent of the Public Prosecutors' Office of the Common Jurisdiction of the city of Atoyac de Álvarez, Guerrero, on May 14, 1999 (dossier of appendixes to the brief of pleadings and motions, appendix D(20), folios 1906 through 1907).
[FN175] Cf. Respondent's plea (dossier of merits, volume II, f. 695), and brief of final arguments of the State (dossier of merits, volume IX, f. 2786).

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184. On October 20, 2000 Tita Radilla Martínez filed a new criminal accusation for the forced disappearance of Mr. Rosendo Radilla-Pacheco, among other people. [FN176] Said accusation was filed before the Public Prosecutors' Office of the Federal Jurisdiction, State Delegation in the State of Guerrero, resulting in Preliminary Inquiry 268/CH3/2000. [FN177] Subsequently, this authority declared itself incompetent for territorial reasons and forwarded the records to another Guerrero State Delegation of the Attorney General of the Republic. [FN178] As a result, on January 4, 2001 the Federal Prosecutors' Office prepared Preliminary Inquiry 03/A1/2001. [FN179]

[FN176] Cf. Complaint of October 20, 2000 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folios 1759 through 1773).
[FN177] Cf. Agreement to start preliminary inquiry 268/CH3/2000, of October 26, 2000 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folios 1776 through 1777), and statement offered by Attorney Martha Patricia Valadez Sanabria before a notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1424).
[FN178] Cf. Agreement of the Agent of the Public Prosecutors' Office of the Federation Head of the Third Agency of Criminal Proceedings, Guerrero State Delegation, of December 6, 2000 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folios 1822 through 1826); official letter of the State Delegate to the Attorney General of the Republic, of December 14, 2000 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1828); agreement of the Agent of the Public Prosecutors' Office of the Federation Head of the Third Agency of Criminal Proceedings of the Guerrero State Delegation, of December 29, 2000 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1827); official letter of the Agent of the Public Prosecutors' Office of the Federation Head of the Third Agency of Criminal Proceedings of the Guerrero State Delegation, of January 3, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1829), and agreement of the Agent of the Public Prosecutors' Office of the Federation Head of the First Agency of the Guerrero State Delegation, of January 4, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1774).
[FN179] Cf. Official letter signed by the Agent of the Public Prosecutors' Office of the Federation Head [sic.] of the First Agency of Criminal Proceedings, Guerrero State Delegation, of January 4, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1775), and statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1424).
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185. On January 9, 2001 Mrs. Tita Radilla Martínez, among other people, filed another criminal accusation before the Attorney General of the Republic, with regard to the alleged forced disappearance of her father, along with other people. Said accusation gave way to Preliminary Inquiry 26/DAFJM/2001. On March 20, 2001 Mrs. Tita Radilla Martínez ratified said accusation. [FN180]

[FN180] Cf. Agreement of the Agent of the Public Prosecutors' Office of the Federation, commissioned at the Special Prosecutors' Office, of September 20, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(5), folio 1751). The Court observes that the representatives indicated that on November 28, 2000, Tita Radilla Martínez, among others, filed a criminal accusation before the Attorney General of the Republic, with regard to the forced disappearance of her father and other people. This accusation is in the Tribunal's case file (dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1476 through 1479), even though it is dated November 29, 2000, it is not signed and has no acknowledgement of receipt.

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186. In attention to Recommendation 026/2001, issued by the National Human Rights Commission through Presidential Agreement of November 27, 2001, the Special Prosecutors' Office was created [FN181] (supra para. 135). At this Public Prosecutors' Office Preliminary Inquiry PGR/FEMOSPP/001/2002, regarding, among others, all the complaints filed before the National Human Rights Commission for forced disappearances during the decade of the 70s and beginning of the 80s in Mexico [FN182] (supra para. 135).

[FN181] Cf. Recommendation 026/2001 of the National Human Rights Commission (dossier of appendixes to the application, appendix 3, folios 908 through 909, and dossier of appendixes to the respondent's plea, appendix V(2), page 36). Agreement of the Executive Power, Presidency of the Republic, through which it orders several measures in order to obtain justice for crimes against people linked to social and political movements of the past, of November 27, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix H(2), folios 2143 through 2144, and dossier of appendixes to the respondent's plea, appendix VI(1)); and statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1423).

[FN182] Cf. Consultation of lack of jurisdiction due to the subject by the Agent of the Public Prosecutors' Office of the Federation, Head of the First Agency of Criminal Proceedings, Guerrero State Delegation, of April 26, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folios 1849 through 1851). Official letter of the State Delegate of Guerrero, of the Attorney General of the Republic, of May 27, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1853); agreement of the Agent of the Public Prosecutors' Office of the Federation, Head of the First Investigative Agency, Guerrero State Agency, of June 5, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1852); consultation of lack of jurisdiction due to attributions signed by the Agent of the Public Prosecutors' Office of the Federation, Head of the First Agency of Criminal Proceedings, Guerrero State Delegation, of June 10, 2002 (dossier of appendixes to the brief of pleadings and motion, appendix D(6), folios 1854 through 1856); official letter of the State Delegate of Guerrero, of the Attorney General of the Republic, of June 20, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1858); agreement of the Agent of the Public Prosecutors' Office of the Federation, Head of the First Investigative Agency, Guerrero State Delegation, of July 8, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1857), and statement offered by Attorney Martha

Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1423).

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187. Before the Agent of the Federation's Public Prosecutors' Office, commissioned at the Special Prosecutors' Office, on May 11, 2002 Mrs. Tita Radilla Martínez ratified the accusation that had already been presented on March 20, 2001 (supra para. 185). [FN183] On September 19, 2002 she expanded her statement before the Special Prosecutors' Office. [FN184] Based on the aforementioned, the Special Prosecutors' Office broke down the specific case, with which on September 20, 2002 it started Preliminary Inquiry PGR/FEMOSPP/033/2002. [FN185] Subsequently, it included in this Inquiry the accusation filed by Mrs. Tita Radilla Martínez within Preliminary Inquiry 26/DAFM/2001 (supra para. 185) and the case file regarding Preliminary Inquiry 03/A1/2001 [FN186] (supra para. 184), also regarding the forced disappearance of Mr. Rosendo Radilla-Pacheco.

[FN183] Cf. Transcript of the appearance of Tita Radilla Martínez before the Agent of the Public Prosecutors' Office of the Federation, commissioned in the Special Prosecutors' Office, on May 11, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(2), folios 1736 through 1743).

[FN184] Cf. Expansion of the statement offered by Tita Radilla Martínez before the Agent of the Special Prosecutors' Office of the Federation, commissioned in the Special Prosecutors' Office (dossier of appendixes to the brief of pleadings and motions, appendix D(4), f. 1747 through 1749 a).

[FN185] Cf. Agreement entered by the Agent of the Public Prosecutors' Office of the Federation, commissioned to the Special Prosecutors' Office, on September 20, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(5), folios 1750 through 1752); judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First circuit in the Criminal Jurisdiction Conflict 6/2005, of October 27, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix G(6), folios 2094 and 2095), and statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1423).

[FN186] Cf. Official Letter of the Agent of the Public Prosecutors' Office of the Federation, Head of the First Investigative Agency, on July 22, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1757); legal certification of the Agent of the Public Prosecutors' Office of the Federation, commissioned to the Special Prosecutors' Office, of October 25, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(6), folio 1755).

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188. On August 11, 2005 an alleged author of the crime of deprivation of freedom in its modality of plagiarism and kidnapping in detriment of Mr. Radilla-Pacheco, was brought before the District Judge on Duty at the State of Guerrero within Preliminary Inquiry PGR/FEMOSPP/033/2002. [FN187] On that same day the Special Prosecutors' Office started Preliminary Inquiry PGR/FEMOSPP/051/2005, "[t]o continue with [the] integration [of the inquiry] until its complete perfection and determination […]." [FN188] On April 28, 2006 said

case file was included into Preliminary Inquiry PGR/FEMOSPP/057/2002, [FN189] into which 122 preliminary inquiries were included "[a]ll of which had in common the alleged disappearance that [occurred] between July 14th and November 19th, 1974." [FN190]

[FN187] Cf. Statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1430 through 1431); judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit in the Conflict of Criminal Jurisdiction 6/2005, of October 27, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix G(6), folios 2094 through 2095).
[FN188] Cf. Statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1432).
[FN189] Cf. Statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1432 through 1433).
[FN190] Cf. Systematization of the entire Preliminary Inquiry: SIEDF/CGI/454/2007 (dossier of appendixes to the brief of pleadings and motions, appendix D(1), f. 1726).
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189. Later on, through Agreement A/317/06 of the Attorney General of the Republic, of November 30, 2006, Agreement A/01/02, which appointed the Special Prosecutors' Office, was abrogated. [FN191] Said agreement also ordered that the preliminary inquiries carried out by the Special Prosecutors' Office be turned over to the General Investigation Coordination, of the same Attorney General's Office, [FN192] where Preliminary Inquiry SIEDF/CGI/454/2007 was started on February 15, 2007. [FN193] 122 inquiries are included within the latter, one of which is the one regarding the present case. [FN194]

[FN191] Cf. Agreement A/317/06 of the Attorney General of the Republic, of November 30, 2006 (dossier of appendixes to the respondent's plea, appendix VI(2), pages 1 through 3), and statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1422 through 1423).
[FN192] Cf. Agreement A/317/06 of the Attorney General of the Republic, of November 30, 2006 (dossier of appendixes to the respondent's plea, appendix VI(2), page 2).
[FN193] Cf. Statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1422 through 1423), and systematization of the entire Preliminary Inquiry: SIEDF/CGI/454/2007 (dossier of appendixes to the brief of pleadings and motions, appendix D(1), f. 1726).
[FN194] Cf. Evaluation Report to the Follow-Up of Recommendation 26/2001, National Human Rights Commission, of August 25, 2009 (dossier of merits, volume IX, folio 3062), and statement offered by Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1422 through 1423).

A1. Regarding the lack of a diligent and effective investigation in the criminal realm

190. The Court has considered that the State is in the obligation to provide effective judicial recourses to the people that argue they are the victims of violations of human rights (Article 25), recourses that shall be substantiated pursuant with the rules of the due process of law (Article 8(1)), all within the general obligation, that falls upon the same States, to guarantee the free and full exercise of the rights acknowledged by the Convention to all those people under its jurisdiction (Article 1(1)). [FN195]

[FN195] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 32, para. 91; Case of Kawas Fernández v. Honduras, supra note 40, para. 110, and Case of Anzualdo Castro v. Peru, supra note 44, para. 122.

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191. The right to a fair trial requires that the determination of the facts under investigation and, if it were the case, of the corresponding criminal responsibilities be made effective in a reasonable period of time, reason for which, in attention to the need to guarantee the rights of the affected parties, [FN196] a prolonged delay can constitute, in itself, a violation of the right to a fair trial. [FN197] Additionally, since it is a forced disappearance, the right to a fair trial includes that the investigation of the facts try to determine the fate or whereabouts of the victim (supra para. 143).

[FN196] Cf. Case of Bulacio v. Argentina, supra note 25, para. 114; Case of Kawas Fernández v. Honduras, supra note 40, para. 112, and Case of Anzualdo Castro v. Peru, supra note 44, para. 124.

[FN197] Cf. Case of Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs. Judgment of June 21, 2002. Series C No. 94, para. 145; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 154, and Case of Anzualdo Castro v. Peru, supra note 44, para. 124.

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192. Even though the Court has established that the duty to investigate is one of means and not results, [FN198] this does not mean, however, that the investigation may be carried out as "a mere formality condemned beforehand to be unsuccessful." [FN199] In this regard, the Tribunal has established that "each of the state's actions that make up the investigation process, as well as the investigation in its totality, shall be oriented toward a specific purpose, the determination of the truth and the investigation, persecution, capture, trial, and if it were the case, the punishment of those responsible for the facts." [FN200]

[FN198] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 177; Case of Kawas Fernández v. Honduras, supra note 40, para. 101, and Case of Heliodoro Portugal v. Panama, supra note 24, para. 144.

[FN199] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 177; Case of Kawas Fernández v. Honduras, supra note 40, para. 101, and Case of Heliodoro Portugal v. Panama, supra note 24, para. 123.

[FN200] Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru, Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131, and Case of Kawas Fernández v. Honduras, supra note 40, para. 101.

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193. Now we shall analyze if the State has carried out the criminal investigations with due diligence and within a reasonable period of time, and if they have been effective recourses that can guarantee the alleged victims' right to a fair trial. For that effect, the Tribunal will examine the corresponding domestic proceedings.

(a) First criminal accusations: 1992-1999

194. The Commission and the representatives argued that the next of kin of Mr. Rosendo Radilla-Pacheco did not file a formal complaint of the facts when they occurred due to the social and political context existing at that time, when the next of kin of the victims did not file accusations due to the fear of retaliations or of being arrested by soldiers. The representatives stated that, despite the aforementioned, the next of kin publicly denounced his disappearance and they turned to several state authorities trying to obtain help in his search. [FN201] In that sense, they indicated that the State was aware of his arrest and disappearance since the facts occurred.

[FN201] Mrs. Andrea Radilla Martínez indicated in a statement offered on March 27, 1992 that: "[a]long with [her] husband and other family members they proceed[ed] to start the search [for Rosendo Radilla-Pacheco] in [the] city of Chilpancingo, Guerrero, reason for which they proceed[ed] to look for […] the person who at that time occupied the position of secretary of the Governor in office, […] based on a close family relationship [and he told them] he could do nothing for [them] and even less so for [her] father, since he was unable to act due to the fact they were dealing with military authorities […];" "[they later traveled] to the Port of Acapulco, Guerrero[, to] visit a relative, who was a member of the Mexican army, [whose] ranking was of private, […] in order to know if through some of his colleagues located at that Port [he] knew or had heard through others of the whereabouts of [her] father, without obtaining any positive response in this sense […] this visit to the Port was approximately eight days after the date of the arrest of [Rosendo Radilla-Pacheco];" "[a]pproximately fifteen days after they returned from Port of Acapulco [she] traveled along with a friend […] to the Military Zone of [the] city of Chilpancingo, to ask about [her] father's whereabouts, since [her friend] had a friend who at that time was a soldier [… who] told [them] not to worry, because if [her] father was innocent, they would let him go[, even though] it was well known by all the people that lived in [that] city that the Army only arrested people who had connections with the guerrilla, [thus, she was not] very satisfied [with] the answer provided by that officer […];" "approximately one month later [they travelled] to [M]exico City to meet with the […] representatives of Governor Rubén Figueroa Figueroa […] since from a military doctor […] she know through rumors that [her] father was imprisoned in Military Field Number One in [M]exico City[, the doctor] had found out because a man […] sent his wife a letter which included a list of people who were detained among which he included the name of [Rosendo Radilla-Pacheco], reason for which this doctor told [them] to go directly to [M]exico City [… and that] they try that [her] father send [them] a message […] since without that document it was impossible for him to try to speed up his location […];" and,

that "[they did not file] a formal complaint before the Attorney General of the State or before the Attorney General of the Republic for the disappearance of [Rosendo Radilla-Pacheco], limiting her actions only to demands to see him through the National Front Against Repression […] through manifestations, rallies, and sit-ins." (dossier of appendixes to the brief of pleadings and motions, appendix D(21), folios 1909 through 1910).

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195. On its part, the State indicated that "[…] popular demonstrations [… do not] constitute strictu sense an acknowledged form of noticia criminis", reason for which it insisted that it was on March 27, 1992 when it formally knew of the facts through the filing of the first criminal accusation. Based on the aforementioned, the State mentioned that the facts were denounced 18 years after they occurred, and that "[s]aid fact [was] not attributable to the State."

196. In this sense, the Tribunal verifies that during the public hearing the State indicated that "[t]he crime was not tended to in a timely manner in great measure because of the political context and institutional framework that […] existed at that time […]." In this sense, the consequences that result from the delay in the start of the investigations cannot be attributed in any way whatsoever to the victims or their next of kin.

197. As previously stated, any state authority or public official that has received news of acts destined to the forced disappearance of persons, shall denounce it immediately (supra para. 143). In cases of forced disappearances of persons, the formal complaint regarding the facts does not fall exclusively on the next of kin of the victims, especially when it is the government itself who hinders it. In the present case, it is clear that it was Mr. Radilla-Pacheco's next of kin who initially, by their own means, carried out several actions tending to find him, despite the difficulties that characterized the existing political context.

198. On the other hand, from the facts of the case it can be concluded that on March 27, 1992, Mrs. Andrea Radilla Martínez, and on May 14, 1999 Mrs. Tita Radilla Martínez, respectively, filed criminal accusations for the arrest and forced disappearance of their father, "against those who resulted responsible." (supra para. 183) During the public hearing (supra para. 9), Mrs. Tita Radilla stated that at first the Agent of the Public Prosecutors' Office did not want to receive the accusation of May 14, 1999 because they were going to "fire him". Likewise, she stated that "[a]t a certain point a car full of soldiers arrived outside the Public Prosecutors' Office, [that] they did nothing, they just stood there," and that they had to "pressure" the Public Prosecutors' Office, saying they were going to go on a hunger strike. The accusation was finally received close to 12 midnight.

199. The Tribunal observes that in the accusation of May 14, 1999 (supra para. 183), Mrs. Tita Radilla also referred to the negative of the cabinet authority to receive that accusation, and stated that, among others, the person that had helped her had told her that the action had expired because "[s]he waited twenty-five years to denounce [the forced disappearance of Mr. Radilla-Pacheco]," [FN202] to which Tita Radilla responded that an agreement should be issued substantiating and motivating why the action had expired. These facts were not contested by the State.

[FN202] Cf. Accusation filed before the Agent of the Public Prosecutors' Office of the Common Jurisdiction of the city of Atoyac de Álvarez, Guerrero, on May 14, 1999 (dossier of appendixes to the brief of pleadings and motions, appendix D(20), folio 1906).

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200. The State of Mexico made no reference whatsoever to the possible processes or specific actions carried out as a consequence of the complaints filed in 1992 and 1999. However, it indicated that they were sent to reservation "for lack of indicia for the determination of the possible responsible parties." [FN203] (supra para. 183) The aforementioned confirms that, even when it had received a formal communication of the facts, the State did not act consequently with its duty to immediately start a comprehensive investigation.

[FN203] Cf. Respondent's plea (dossier on merits, volume II, folio 695) and brief of final arguments of the State (dossier of merits, volume IX, folio 2786).

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201. For the Court, the lack of a State response is a decisive element upon assessing if their has been a non-compliance with the content of Articles 8(1) and 25(1) of the American Convention, since they are directly linked to the principle of effectiveness that shall be met by the development of those investigations. [FN204] In the present case the State, after receiving the complaint filed in 1992, should have carried out a serious and impartial investigation, with the objective of offering, within a reasonable period of time, a determination resolving the merits of the circumstances brought before it.

[FN204] Cf. Case of García Prieto et al. v. El Salvador, supra note 19, para. 115; Case of Heliodoro Portugal v. Panama, supra note 24, para. 257, and Case of Ticona Estrada v. Bolivia, supra note 23, para. 79.

(b) Investigations as of the year 2000

b.1) Effectiveness of the investigations

202. The State made reference to a series of diligences carried out, mainly, as of the year 2002, [FN205] as of the creation of the Special Prosecutors' Office (supra para. 186), based on which they requested that the Court "[w]eigh the enormous efforts made to achieve the elucidation of the facts." In this sense, it argued that in the present case "there is no impunity, since the investigation continues [and] the authorities are exhausting all the means within their reach to avoid [it]." In any case, the Tribunal observes that the State of Mexico itself indicated during the public hearing of the case (supra para. 9) that "[u]p to now, after multiple efforts that can be found in the case file, […] it has not been able to completely elucidate how the facts occurred."

[FN205] Cf. Respondent's plea (dossier of merits, volume II, folios 695 through 715).

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203. Upon analyzing the effectiveness of the investigations carried out in the present case, the Court has not failed to notice that from the context in which the disappearance of Mr. Radilla-Pacheco is enclosed (supra paras. 132 through 137) the probable existence of different degrees of responsibility in facts such as the present can be concluded. During the public hearing, making general reference to the period in which the facts occurred, the State mentioned that "[t]he government was an entity centralized in the presidential figure where there was not an exogenous or endogenous counterweight to limit said power, in which verticality also regulated the inside, and there was no institutional framework that could submit governmental instances to an accountability process."

204. In this sense, the Historical Report of the Special Prosecutors' Office establishes that:

"[i]t has been verified that the authoritarian regimen, at the highest levels of command, prevented, criminalized, and fought against different sectors of the population that had organized themselves to demand a greater democratic participation in the decisions that affected them, and of those who wanted to put a stop to authoritarianism, patrimonialism, and the structures of mediation, and oppression. The fight undertaken by the authoritarian regimen against these national groups […] went beyond the legal framework and incurred in crimes against humanity and violations to International Humanitarian Law [sic], which culminated in massacres, forced disappearances, systematic torture, and genocide […] The State's institutions were used to this effect, thus perverting them." [FN206]

[FN206] Cf. Historical Report to the Mexican Society, Special Prosecutors' Office for Social and Political Movements of the past, Attorney General of the Republic, 2006 (dossier of appendixes to the application, appendix 4, page 6).

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205. In this regard, the Tribunal observes that during a period of approximately 5 years, that is, from May 11, 2002, date on which the Special Prosecutors' Office started the investigations corresponding to the present case (supra para. 187), up until February 15, 2007, date on which the General Investigation Coordination settled the preliminary inquiry in which the facts of the present case are being investigated (supra para. 189), only one person was brought before the judicial authority as probable responsible of the commission of the crime of illegal deprivation of freedom in its modality of plagiarism and kidnapping against Mr. Radilla-Pacheco [FN207] (supra para. 188). The Court points out that the State did not refer to other specific diligences related to the probable responsibility of other people. In that sense, the representatives indicated that, "[t]hey had found […] important historical evidence that incriminate several high commands of the Armed Forces. However, the [Special Prosecutors' Office] only summoned 3 members of the Armed Forces [that] were already imprisoned for other crimes to testify, and […] ignored following-up on other lines of investigation." The State did not object this matter.

[FN207] Cf. Testimony offered by the Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1430).

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206. As has been established on other opportunities, the Court considers that the authorities in charge of the investigations had the duty to guarantee that throughout the course of the same the systematic patters that permitted the commission of grave violations of human rights in the present case would be assessed. [FN208] In seeking to guarantee its effectiveness, the investigation should have been carried out taking into account the complexity of this type of facts and the structure in which the people probably involved in the same are located, pursuant with the context in which they occurred, thus avoiding omissions in the gathering of evidence and in the follow-up of the logical lines of investigation. [FN209]

[FN208] Cf. Case of the Massacre of la Rochela v. Colombia, supra note 83, para. 156; Case of Tiu Tojín v. Guatemala, supra note 24, para. 78, and Case of Anzualdo Castro v. Peru, supra note 44, para 154.

[FN209] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 82, paras. 88 and 105; Case of the Massacre of la Rochela v. Colombia, supra note 83, paras. 154 and 158, and Case of Anzualdo Castro v. Peru, supra note 44, para. 154.

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207. On the other hand, in relation with the determination of the whereabouts of Mr. Rosendo Radilla-Pacheco, the Court verifies that within Preliminary Inquiry 26/DAFMJ/2001 (supra para. 185), on May 15, 2001 a cabinet inspection was carried out in the yard of a property located in Tres Pasos del Río, Municipality of Atoyac de Alvarez, Guerrero, during which they found, among other things, bone fragments that were identified as non-human, prior expert reports in the fields of criminal sciences, photography, and anthropology. [FN210] In this regard, the representatives stated that said diligence was carried out "[w]ithout informing the next of kin" and "[u]nexpectedly" during the night. They argued that an excavation where they found bone remains, was carried out and that these were collected "[w]ithout any care or protection whatsoever," and that they were taken destroying "[t]he forensic anthropological context." Likewise, they stated that "[t]he next of kin did not have trustworthy experts [and that] after some time they informed them they were animal remains, leaving the next of kin with serious doubts because of the way in which the diligence was carried out," and because those who were present, such as Mrs. Tita Radilla, saw pieces of clothing around the remains." The State did not make any specific reference to this matter. The Court considers that the facts mentioned by the representatives have ben established, since they can only be disproven through the case file of preliminary inquiry SIEDF/CGI/454/2007, which the State should have forwarded but refused to do so (supra paras. 88 through 92).

[FN210] Cf. Informative card prepared by the Director of Support to Public Prosecutors' Offices and Judicial Warrants of the Attorney General of the Republic in Preliminary Inquiry 26/DAFMJ/2001, of July 3, 2001 (dossier of appendixes to the brief of pleadings and motions,

appendix C, folios 1368 through 1371); official letter of the Agent of the Public Prosecutors' Office of the Federation, Holder of Table VI, Office of Support to Public Prosecutors' Office and Judicial Warrants of the Attorney General of the Republic, of May 16, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1313 through 1314), and official letter from the Physical Anthropologist, Mr. Arturo Romano Pacheco, of May 23, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix C, folios 1315 through 1354).

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208. Likewise, it shall be pointed out that it was not until six years later that new diligences were carried out with regard to the search for the whereabouts of Mr. Rosendo Radilla-Pacheco, specifically, in what is currently known as the "city of services", at the property of the Municipal Council of the City of Atoyac de Alvarez, Guerrero, and where the Military Barracks of Atoyac de Álvarez were previously located. The State made reference to the diligences carried out in this sense since October 22, 2007. [FN211] Similarly, the witness Martha Patricia Valadez Sanabria mentioned a series of diligences that were practiced as of December 4, 2007. The State indicated that during the last excavation diligences non-human remains were found, and that the latter was informed to Mrs. Tita Radilla and the archeology expert accredited by her. The execution of those excavation diligences can also be concluded from the statemente offered by Mrs. Valadez Sanabria. [FN212]

[FN211] Cf. Respondent's plea to the application (dossier of merits, volume II, folios 708 through 712).

[FN212] Cf. Statement offered by the Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1439 through 1440).

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209. However, the Tribunal has verified that based on the investigations that were transferred to the General Investigation Coordination, the diligences have been addressed mainly to the "location" of Mr. Radilla-Pacheco, and not to the determination of other possible responsible parties. The aforementioned is confirmed with that indicated by the witness Martha Patricia Valadez Sanabria. [FN213] Likewise, the State of Mexico itself indicated that "[t]he recent diligences that are being carried out follow specific, true, and effective lines of investigation in order to locate Mr. Rosendo Radilla-Pacheco or explain his whereabouts."

[FN213] Cf. Statement offered by the Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folios 1434 through 1441). Besides the scanning and excavation diligences, the witness only referred to a "[l]egal certification filed on February 5, 2009, before the agent of the public prosecutors' office of the federation, attached to the General Investigation Coordination, María Sirvent Bravo Ahuja, to the effect of informing herself and going over the general status of preliminary inquiry SIEDF/CGI/454/2007 […]." Similarly, she stated that "[o]n June 17, 2009, she received and added to the inquiry, a certified copy of different legal certifications regarding the criminal proceedings started in the military jurisdiction against Francisco Quiros [sic] Hermosillo […]."

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210. The Court considers it convenient to state that, pursuant with the Presidential Agreement through which the Special Prosecutors' Office was created, the latter responded to "[t]he demands of elucidation of the facts and of justice for those who had allegedly disappeared for political reasons," which "[d]emand[ed] a clear response from the authorities informing of the truth […] based on a reconciliation that respected their memory and helped the achievement of justice." [FN214] In that sense, according to that indicated by the State, one of the objectives of the tasks of the Special Prosecutors' Office was the documentary and historical investigation "[w]ith the final purpose of elucidating the facts and spreading upon the record the historical truth" in the commission of the "crimes" that were being investigated." [FN215]

[FN214] This Presidential Agreement also stated that "[t]he unavoidable search of the truth, necessarily, impl[ied] a revision of the past facts and [that] in that sense, there [was] an ample social consensus to respond to that complaint and set the conditions for a national reconciliation as a fundamental requirement to strengthen [the] institutions, the constitutional state and democratic legitimacy." Cf. Agreement of the Executive Branch, Presidency of the Republic, through which several measures are ordered for the serving of justice for crimes committed against people linked to social and political movements of the past, of November 27, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix H(1), folio 2143 and dossier of appendixes to the respondent's plea, appendix VI(1), page 1).
[FN215] Cf. Respondent's Plea (dossier of merits, volume II, folio 659) Cf. similarly, the General Organization Manual of the Attorney General of the Republic, published in the Official Gazette of the Federation on April 25, 2005, part that refers to the Special Prosecutors' Office for Social and Political Movements of the Past (dossier of appendixes to the respondent's plea, Appendix VI(4), pages 125 through 130)

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211. The Special Prosecutors' Office was closed based on the argument that "[t]he level of progress in the investigations carried out," made it appropriate that the preliminary inquiries and the pending criminal proceedings be taken before other administrative unit of the Attorney General's Office, who should follow those investigations "with identical dedication." [FN216] In that sense, the case files were transferred to the General Investigation Coordination (supra para. 189). In this regard, the Court points out that the National Human Rights Commission of Mexico has considered that the work carried out by the Attorney General of the Republic "[h]as not achieved the necessary progress and [its] results have not been significant in the investigations initially carried out by the then Special Prosecutors' Office […]." [FN217]

[FN216] Cf. Agreement A/317/06 of the Attorney General of the Republic, of November 30, 2006 (dossier of appendixes to the brief of pleadings and motions, appendix H(3), folios 2164 through 2165 and dossier of appendixes to the respondent's plea, appendix VI(2), page 2).
[FN217] Said Commission has also stated that this "[h]as resulted in a constantly growing number of people, mainly next of kin of the victims of the crime, stating their non-conformity toward the Public Prosecturs' Office, which […] has not offered them a satisfactory response to

their demands to effectively exercise their right to a fair trial […].” Cf. Report on the Evaluation of the Following of Recommendation 26/2001, National Human Rights Commission, of August 25, 2009 (dossier of merits, volume IX, folios 3016 through 3017).

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212. Based on the aforementioned, the Court considers that, even though several diligences have been carried out, the investigation carried out by the State has not been done with due diligence, thus guaranteeing the reestablishment of the rights of the victims and avoiding impunity. The Tribunal has defined impunity as “the lack of a complete investigation, persecution, capture, prosecution, and conviction of those responsible for the violations of the rights protected by the American Convention.” [FN218] In cases of forced disappearance of persons, impunity must be eradicated through the determination of responsibilities, both general –of the State- and individual –criminal and of any other nature of its agents or individuals -. [FN219] In compliance with this obligation, the State shall remove all the obstacles, de facto and de jure, that maintain impunity. [FN220]

[FN218] Cf. Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits, supra note 43, para. 173; Case of the Miguel Castro Castro Prison v. Peru, supra note 51, para. 405, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 69.

[FN219] Cf. Case of Goiburú et al. v. Paraguay, supra note 83, para. 131; Case of Perozo et al. v. Venezuela, supra note 56, para. 298, and Case of Anzualdo Castro v. Peru, supra note 44, para. 125.

[FN220] Cf. Case of La Cantuta v. Peru, supra note 51, para. 226; Case of Kawas Fernández v. Honduras, supra note 40, para. 192, and Case of Anzualdo Castro v. Peru, supra note 44, para. 125.

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213. Additionally, in the present case the commitments assumed by the State since the creation of the Special Prosecutors’ Office have not been fulfilled. After almost three years since the General Investigation Coordination assumed the investigations again, the State has also failed to prove the existence of a renewed commitment with the determination of the truth taking into consideration the victims’ dignity and the seriousness of the facts.

214. In that sense, it does not escape the Tribunal that 35 years after Mr. Rosendo Radilla-Pacheco was detained and disappeared, and 17 years after the first criminal accusation in this regard was formally filed (supra para. 183), there has not been a serious investigation leading to both determine his whereabouts and to identify, prosecute and, if it were the case, punish those responsible for those facts

215. It is appropriate to remember that in cases of forced disappearance, the prompt and immediate action of physical and judicial authorities through the order of the timely and necessary measures addressed to the determination of the whereabouts of the victim is essential. [FN221] Likewise, the Court reiterates that the passing of time holds a direct proportional relationship with the limitation –and in some cases, the impossibility-to obtain the evidence and/or testimonies, making the execution of evidentiary diligences with the objective of

clarifying the facts object of investigation, [FN222] the identification of the possible authors and participants, and the determination of the possible criminal responsibilities difficult or even null or ineffective. Without detriment of the aforementioned, the national authorities are not exempt from making all efforts necessary in complying with their obligation to investigate.

[FN221] Cf. Case of Anzualdo Castro v. Peru, supra note 44, para. 134.
[FN222] Cf. Case of Heliodoro Portugal v. Panama, supra note 24, para. 150; Case of Perozo et al. v. Venezuela, supra note 56, para. 319; and Case of Anzualdo Castro v. Peru, supra note 44, para. 135.

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216. The Court has also warned that the obligation to investigate is maintained "whoever the agent to whom the violation may eventually be attributed is, even individuals, since, if their acts are not investigated seriously, they would result, in some way, assisted by the public power, which would compromise the State's international responsibility." [FN223]

[FN223] Cf. Case of Velásquez Rodríguez. Merits, supra note 24, para. 174; Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C No. 5, para. 188, and Case of Kawas Fernández v. Honduras, supra note 40, para. 78.

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217. From all the aforementioned, it results evident that the facts of the present case are in impunity, contrary to that argued by the State. The Court does not consider necessary any greater detail in this sense.

b.2) Accumulation of the preliminary inquiry

218. The representatives stated that the transfer of the investigations to the General Investigation Coordination caused a delay in the investigations, since the case files were tended to "from their beginning" by agents of the Public Prosecutors' Office who had different specializations. They also argued that said entity did not have enough administrative budget to carry out in full its investigation tasks. Finally, the representatives mentioned that the fact that 122 cases had been brought together since April 2006 (supra para. 188) "[i]mplied that diligences be carried out in each of these in a more sporadic manner, which can be concluded from the reading of the case file." The Court points out that these arguments were not contested by the State.

219. However, the Court also observes that in the Evaluation Report on the Follow-up of Recommendation 026/2001 of the National Human Rights Commission, it refers to the fact that the General Investigation Coordination stated word by word to said instance that "[b]ased on the facts denounced with regard to Rosendo Radilla-Pacheco, and 136 other people, preliminary inquiry SIEDF/CGI/454/2007 […] is being processed; [and that] said cabinet investigation has brought together 122 inquiries, since the facts under investigation refer to those that occurred within the period from July 14th through 19, 1974, in the settlements of the Sierra Madre del Sur

of the State of Guerrero, where it is probable that the disappearance of 137 persons occurred." [FN224] Said document also states that the General Investigation Coordination literally informed that "[i]n that investigation, the agent of the Public Prosecutors' Office of the Federation has carried out different diligences tending to locate the whereabouts not only of a single person, but of any of those mentioned in the different accusations filed before the cabinet instance, among them Rosendo Radilla-Pacheco." [FN225]

[FN224] Cf. Report on the Evaluation of the Following of Recommendation 26/2001, National Human Rights Commission, of August 25, 2009 (dossier of appendixes, volume IX, folio 3062).
[FN225] Cf. Report on the Evaluation of the Following of Recommendation 26/2001, National Human Rights Commission, of August 25, 2009 (dossier of appendixes, volume IX, folio 3063).

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221. The Court reiterates that the due diligence in the investigation of the facts of the present case demands that the latter be carried out taking into account the complexity of the facts, the context in which they occurred, and the patterns that explain their commission (supra para. 146). In the Court's opinion, the fact that the investigation of the arrest and subsequent disappearance of Mr. Radilla-Pacheco is added to another 121 inquiries is in agreement with the aforementioned elements.

222. However, the Tribunal points out that in order for an investigation of forced disappearance in the terms mentioned by the General Investigation Coordination to be carried out effectively and with due diligence, [FN226] it requires the use of all means necessary to fulfill those actions and essential and timely inquiries promptly in order to clarify the fate of the victims and identify those responsible for their forced disappearance, [FN227] especially, those regarding the present case. For this, the State shall provide the corresponding authorities with the logistical and scientific resources necessary for the gathering and processing of the evidence and, specifically, of the powers to access the appropriate documents and information for the investigation of the facts denounced and obtain indicia or evidence of the location of the victims. [FN228] In this regard, the Court considers that, without detriment to the need to obtain and assess other evidence, the authorities in charge of the investigation shall pay special attention to the circumstantial evidence, the indicia, and the presumptions, [FN229] which result especially important when dealing with cases of forced disappearance, "since this form of repression is characterized for trying to suppress any element that may be able to prove the arrest, whereabouts and fate of the victims." [FN230] The aforementioned is crucial in a case such as the present, in which the facts occurred approximately 35 years ago and in which the formal accusation of the facts was not filed immediately due to the specific context created by the State itself at that time.

[FN226] Cf. Inter-American Convention on forced disappearance of persons, Articles I(b) and X and International Convention for the protection of all persons against forced disappearances. Article 12.

[FN227] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 174; Case of Heliodoro Portugal v. Panama, supra note 24, para. 144, and Case of Anzualdo Castro v. Peru, supra note 44, para. 135.
[FN228] Cf. Case of Tiu Tojín v. Guatemala, supra note 24, para. 77, and Case of Anzualdo Castro v. Peru, supra note 44, para. 135.
[FN229] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 130; Case of Escher et al. v. Brazil, supra note 64, para. 127, and Case of Anzualdo Castro v. Peru, supra note 44, para. 38.
[FN230] Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 131; Case of Kawas Fernández v. Honduras, supra note 40, para. 95, and Case of Anzualdo Castro v. Peru, supra note 44, para. 38.
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b.3) Other arguments regarding the effectiveness of the investigations

263. On the other hand, the representatives indicated that Mr. Zacarías Barrientos, who apparently witnessed many of the arrests and subsequent disappearances carried out during the seventies, was murdered in the year 2003 after offering his statement before the Special Prosecutors' Office, therefore arguing that the State did not take the necessary measures for his protection. Likewise, they expressed that the State did not take the precautions necessary in order to maintain contact with Mr. Gustavo Tarín, who allegedly is an important witness in the elucidation of the facts.

224. The representatives also expressed that the investigation of the Special Prosecutors' Office during its first years was characterized by an alleged lack of sensitivity upon treating the "survivors" and the "next of kin" when carrying out cabinet diligences and that on several occasions the "next of kin" reported that the agents of the Federal Public Prosecutors' Office attached to the Special Prosecutors' Office treated the plaintiffs, the collaborator, and the witnesses as criminals and not as victims.

225. Regarding these matters, the Court considers that, first of all, the arguments of the representatives do not refer to a situation directly related to the investigation carried out in relation with the forced disappearance of Mr. Radilla-Pacheco, and that, second, they refer to an alleged situation that implies several of the "survivors" and "next of kin", without specifying an actual scenario regarding the investigation of the facts in the specific case. Therefore, the Tribunal will not issue a ruling in this regard.

b.4) Promotion of the investigations

226. During the public hearing Mrs. Tita Radilla stated (supra para. 9) that the excavations at the municipality of Atoyac had been carried out based on the references of the next of kin, according to which it had been said that there were human remains in what was the former military barracks. In that sense, she indicated that those responsible have not been investigated nor have the latter stated "where they left [their] next of kin," among them, Mr. Rosendo Radilla-Pacheco. Mrs. Tita Radilla added that only one percent of the total property was excavated.

227. In this regard, in the statement offered by Mrs. Valadez Sanabria, it is indicated that on December 4, 2007 Mrs. Tita Radilla expanded her statement and "[r]equested [that] the investigations seeking the location of possible graves that could exist in the inside of the former Military Barracks of Atoyac de Álvarez, Guerrero, currently named City of the Services, be carried out, for which she mentioned the possible clandestine burial areas […]." [FN231] Likewise, in said statement the witness mentioned that on that same day a visual inspection was carried out in the "City of Services" where different sites were determined based on that stated by Mrs. Radilla Martínez and other people, "[t]hey are those in which based on rumors, it is presumed that people that were detained in the seventies and transferred to the then Military Barracks of Atoyac de Álvarez could be buried […]." [FN232]

[FN231] Cf. Statement offered by the Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1434).
[FN232] Cf. Statement offered by the Attorney Martha Patricia Valadez Sanabria before notary public (affidavit) on June 18, 2009 (dossier of merits, volume IV, folio 1435).

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228. During the public hearing, Mrs. Tita Radilla also stated that "[f]or weeks [they would go with the agents of the Special Prosecutors' Office to the] General Archive of the Nation seeking documents[, and that] they found statements from [their] next of kin who had been detained and were disappeared," as well as photographs in which they could observe signs of torture on several of them. Mrs. Radilla indicated that the Special Prosecutors' Office told them they were going to request said documents and that they would give them a copy; however this never happeneved because those documents were "confidential" based on the fact that the preliminary inquiry had already been opened. Mrs. Radilla also stated that for ten days "[t]hey were with [the Special Prosecutors' Office] at Isla Marías checking all the files that were there." [FN233]

[FN233] Cf. Statement offered by Mrs. Tita Radilla Martínez during the public hearing held before the Inter-American Court on July 7, 2009.

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229. The Tribunal observes that the State mentioned that within preliminary inquiry PGR/FEMOSPP/033/2002 (supra para. 188), "[p]ersonnel specialized in historical tradition from the Special Prosecutors' Office helped, supported, and oriented 10 people from Guerrero, among which Mrs. Tita Radilla Martínez was present, in the search for information included in the case files located in gallery 1 of the General Archive of the Nation, regarding the disappearance of their next of kin. [FN234]" In the case file there is a request for documents made by Mrs. Tita Radilla on December 12, 2002 to the General Archive of the Nation. [FN235] On the other hand, the State mentioned that "[d]iligences were carried out at [I]slas Marías upon Mrs. Tita Radilla's suggestion." [FN236]

[FN234] Cf. Respondent's plea (dossier of merits, volume II, folio 698).

[FN235] Cf. Request of documents made by Tita Radilla Martínez, General Archive of the Nation, on December 12, 2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(12), folio 1867).
[FN236] Cf. Respondent's plea (dossier of merits, volume II, folio 713).
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230. Likewise, the representatives also stated that "[t]he case file is full of documents that the next of kin themselves presented as evidence." During the public hearing (supra para. 9), Tita Radilla stated that "[t]he majority of what is stated in the inquiries […] is data we provided, [our] statements," and that, in fact, "[t]he Public Prosecutors' Offices told [them that] if they had witnesses [they should] bring them." Therefore, she stated that said task corresponded to the public prosecutors' office, but that with the objective of helping "[t]he progress of the investigations, on many occasions […] they transported the witnesses so they could testify […]."

231. The State did not contest these aspects specifically. The Court considers that the facts stated by the representatives have been proven, since they can only be disproven through the case file of preliminary inquiry SIEDF/CGI/454/2007, which the State should have forwarded but refused to do so (supra para. 92).

232. The Court verifies that even though the State has carried out several efforts with regard to the scanning and excavation diligences mentioned (supra para. 208), the investigation has not had in its totality the drive characteristic of the State. The Tribunal points out that said diligences were carried out based on that stated by Tita Radilla herself and other people, and that the State is not inquiring the alleged responsible parties directly. In fact, throughout the processing of the present case, the State of Mexico did not refer to any other possible diligences regarding the search for the whereabouts of Mr. Rosendo Radilla.

233. In order for a criminal investigation to constitute an effective recourse for guaranteeing the right to a fair trial of the alleged victims, as well as to guarantee the rights that have been affected in the present case, it shall be complied with seriously and not as a mere formality condemned beforehand to being unsuccessful, and it shall have a sense of being and be assumed by the States as their own juridical duty and not as a mere process of individual interests, which depends on the procedural initiative of the victim or his next of kin or of the private provision of evidentiary elements. [FN237]

[FN237] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 24, para. 177; Case of Kawas Fernández v. Honduras, supra note 40, para. 101, and Case of Anzualdo Castro v. Peru, supra note 44, para. 123.
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234. The Tribunal takes into account that the State has not carried out many diligences in the investigation of those responsible for the arrest and subsequent disappearance of Mr. Radilla-Pacheco. In that sense, the Court concludes that the investigation is not being carried out in a serious, effective, and exhaustive manner.

(c) Legal classification applied in the presentation before the judge

235. The representatives stated that the only presentation of an alleged responsible party made by the Special Prosecutors' Office before a judge was in August 2005 for the crime of "illegal deprivation of freedom in its modality of plagiarism or kidnapping," and not for 'forced disappearance of persons' […]." According to the representatives, the Special Prosecutors' Office stated that "[w]hen the illegal acts were committed the crime [of forced disappearance] had not been defined." In that sense, they stated, among other things, that "[t]he State of Mexico defined [that crime] on April 25, 2001 in the Federal Criminal Code," reason for which being that the forced disappearance was a "continued" crime when the case was presented, "[t]he crime was still being committed and[,] therefore[,] the State could apply that legal classification already contemplated in the national legislation." The representatives argued that "[t]he deficient presentation […] implied ignoring the seriousness of the crimes […]," and the context in which they were committed.

236. The State indicated that "[t]he cabinet authority brought forth […] on August 11, 2005, the General Francisco Quirós [sic] Hermosillo, who it considered the probable responsible party for the commission of the crime of illegal deprivation of freedom in its modality of plagiarism or kidnapping, established and punished by [the] Criminal Code […] in force at the time the criminal acts occurred." The Tribunal observes that during the processing of the case before the Inter-American Commission, the State offered greater detail in this sense and indicated that "[l]ikewise, the [CIDFP] would be inapplicable, given the Interpretative Declaration the [State] introduced upon its ratification, which prevents its retroactive application." [FN238] Before the Inter-American Commission, the State added that "[i]n the assumption […] that the application of the crime of forced disappearance were feasible […], there is an unsurpassable obstacle, which consists in the fact that the elements of the crime require that the author of the crime be a public official, […] being that in the present case, the defendant Francisco Quiroz Hermosillo retired, that is, left the active service of the National Mexican Army, as of June 15, 2000 […]; reason for which at the moment the legal classification went into force in the federal Mexican punitive law […] he was no longer a public official […]." [FN239]

[FN238] Cf. State's communication of June 5, 2006 (dossier of appendixes to the application, appendix 1(25), folio 475).

[FN239] Cf. State's communication of June 5, 2006 (dossier of appendixes to the application, appendix 1(25), folio 477).

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237. During the processing before the Commission, the State also mentioned that "[t]he forced disappearance of persons is committed by public officials and the modality of plagiarism or kidnapping of the crime of illegal deprivation of freedom can also be committed by public officials and not only by individuals." Additionally, the State argued that both are considered grave crimes pursuant with federal legislation on criminal procedures, reason for which both establish a maximum punishment of 40 years in prison; both have the nature of being permanent or continued crimes, defined by the Federal Criminal Code; and that the "[s]tart of the

calculation of the term for the statute of limitation in both crimes, starts once it has ceased[, that is,] once the whereabouts of the victim are known or the victim is freed." [FN240]

[FN240] Cf. State's communication of June 5, 2006 (dossier of appendixes to the application, appendix 1(25), folio 477).

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238. In this regard, the Court has established that the forced disappearance of persons is a differentiated phenomena, characterized by the multiple and continuous violation of several rights protected in the Convention. [FN241] In that sense, and in attention to the specifically grave nature of the forced disappearance of persons, [FN242] the protection that could be offered by the existing criminal regulations regarding plagiarism or kidnapping, torture, or homicide, among others, is not enough. [FN243]

[FN241] Cf. Case of Gómez Palomino v. Peru, supra note 51, para. 92; Case of Heliodoro Portugal v. Panama, supra note 24, para. 181, and Case of Anzualdo Castro v. Peru, supra note 44, para. 59.

[FN242] Pursuant with the Preamble of the CIDFP, forced disappearance "is an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being," and its systematic practice "constitutes a crime against humanity."

[FN243] Cf. Economic and Social Council of the United Nations. Report of the Work Group on Forced or Involuntary Disappearance of Persons, General Observation to Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearances of January 15, 1996. (E/CN. 4/1996/38); Case of Heliodoro Portugal v. Panama, supra note 24, para. 181. On the crime of illegal deprivation of freedom in its modality of plagiarism and kidnapping in Mexico, Cf. Article 366 of the Federal Criminal Code (dossier of appendixes to the respondent's plea, appendix III(3), page 86)

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239. The Court observes that the crime of forced disappearance has been in force in the Mexican legal system since the year 2001 (infra para. 319), that is, prior to the presentation of the preliminary inquiry before the District Judge on duty in August 2005 (supra para. 188). In that sense, the Tribunal reiterates, as it has done in other cases, that since this is a crime of permanent execution, upon going into force the legal definition of the crime of forced disappearance of persons in the State, the new law results applicable since the criminal behavior is still in execution, without this representing a retroactive application. Courts of the highest Hierarchy of the States of the American continent, such as the Supreme Court of Justice of Peru, the Constitutional Court of Peru, the Supreme Court of Justice of Venezuela, the Consitutional Court of Colombia, [FN244] and even, the Supreme Court of Justice of the Nation of Mexico (supra note 31), have issued rulings in this same sense.

[FN244] Cf. Supreme Court of Justice of Peru, judgment dated March 20, 2006, Case File: 111-04, D. D Cayo Rivera Schreiber; Constitutional Court of Peru, judgment of March 18, 2004, case

file N° 2488-2002-HC/TC, para. 26 (at http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html) and judgment of December 9, 2004, case file N° 2798-04-HC/TC, para. 22 (at http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html); Supreme Court of Justice of the Nation of Mexico, Thesis: P./J. 49/2004, supra note 31; Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007, and Constitutional Court of Colombia, Judgment C-580/02 of July 31, 2002.
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240. For this Tribunal the State's argument according to which in this case there was an "unsurpassable obstacle" for the application of the crime of forced disappearance of persons in force in Mexico, based on the fact that the alleged responsible party had gone into retirement prior to the going into force of the criminal definition, is inadmissible. The Court considers that as long as the fate or whereabouts of the victim have not been established, the forced disappearance remains invariable regardless of the changes in the nature of "public official" of the author. In cases such as the present, in which the victim has been missing for 35 years, it is reasonable to assume that the characteristic required by the active subject can vary in time. In that sense, if the State's argument were to be accepted, impunity would be favored.

241. Taking into account the aforementioned, this Court considers that pursuant with the principle of nullum crimen nulla poena sine lege praevia, the figure of forced disappearance constitutes the legal classification applicable to the facts of the present case.

(d) Reasonable term for the duration of the investigations

242. The Commission and the representatives stated that there is a delay in the investigation of the facts.

243. On its part, the State acknowledged that there has been a delay in the investigations starting with the filing of the first criminal accusation, that is, as of March 27, 1992, since it has not been able to determine the whereabouts of Mr. Rosendo Radilla-Pacheco. However, it indicated that "[t]he case sub judice is complex from its origin […]," based mainly on the time that has gone by since the facts occurred, reason for which it requested that the Tribunal take this into consideration "[w]hen determining the reasonability of the term for its resolution."

244. Article 8(1) of the American Convention establishes as one of the elements of the due process that the courts decide the cases submitted before them within a reasonable time period. In this regard, the Court has considered it necessary to take into consideration several elements in order to determine the reasonability of the term in which a process is developed: a) complexity of the matter, b) procedural activity of the interested party, c) behavior of the judicial authorities, [FN245] and d) infringement generated to the juridical situation of the person involved in the proceedings. [FN246] However, the appropriateness of applying those criteria to determine the reasonability of the term of a process depends of the specific circumstances, [FN247] since in cases such as the present the State's duty to fully satisfy the requirements of justice prevails over the guarantee of a reasonable term. [FN248] In any case, it corresponds to the State to prove the reasons why a process or set of processes have taken a specific period of time that exceeds the

limits of the reasonable term. If it does not prove it, the Court has ample powers to make its own estimates in this sense. [FN249]

[FN245] Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations, and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77; Case of Anzualdo Castro v. Peru, supra note 44, para. 156, and Case of Garibaldi v. Brazil, supra note 32, para. 135.
[FN246] Cf. Case of Valle Jaramillo et al. v. Colombia, supra note 40, para. 155; Case of Anzualdo Castro v. Peru, supra note 44, para. 156, and Case of Garibaldi v. Brazil, supra note 32, para. 135.
[FN247] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 133, para. 171; Case of García Asto and Ramírez Rojas. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 25, 2005. Series C No. 137, para. 167, and Case of Anzualdo Castro v. Peru, supra note 44, para. 156.
[FN248] Cf. Case of La Cantuta v. Peru, supra note 51, para. 149, and Case of Anzualdo Castro v. Peru, supra note 44, para. 156.
[FN249] Cf. Case of Anzualdo Castro v. Peru, supra note 44, para. 156.

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245. In the present case, the Court warns that the inquiry of the facts has certain complexity, since it is a forced disappearance in execution for more than 35 years. However, when the two first accusations were filed, the authorities did not carry out an exhaustive investigation (supra para. 201). Even though the Special Prosecutors' Office started, among others, the investigation of the facts, the Court points out that, for this, a period of almost 10 years went by since the first complaint was filed in 1992. It is not possible to separate this from the State's omission itself. Likewise, during the subsequent investigations Mrs. Tita Radilla Martínez has assumed an active position as "collaborator", bringing before the authorities the information she has obtained and driving the investigations. However, the preliminary inquiry is still open more than seven years after the Special Prosecutors' Office started the investigations. In all, more than 17 years have gone by since the cabinet authority was made formally aware of the forced disappearance of Mr. Rosendo Radilla-Pacheco, without the State having validly justified the reason for this delay. All the aforementioned, seen jointly, has excessively surpassed the term that can be considered reasonable for these effects. Therefore, the Court considers that the State failed to comply with the requirements of Article 8(1) of the Convention.

(e) Right to participate in the criminal proceedings

246. The representatives argued that the Attorney General of the Republic has not provided Mrs. Tita Radilla Martínez with copies of the case file of the preliminary inquiry carried out with regard to the facts of this case, reason for which they stated that her participation as a collaborator in the proceedings, as well as that of her legal representatives "was limited." [FN250] In that same sense, they stated that the negative to issue copies of the case file constituted a violation "to the right victims have to obtain all adequate means for the preparation of their defense and to adequately exercise their right to collaboration, violating Article 8(2)(c) of the American Convention." On the other hand, the representatives indicated that once the case had been brought before the Second District Court in the State of Guerrero (supra para. 188),

"[n]either the judicial officials nor the Agent of the Public Prosecutors' Office of the Federation attached to the Court, allowed them to revise the actions within the criminal case, despite their nature of victim and claimant […]," in violation of the victims' rights. The Commission did not present arguments regarding this specific matter.

[FN250] They indicated that during the processing of the integration of the inquiry in the Special Prosecutors' Office –FEMOSPP- "there was a contradicting change of attitude and criteria with regard to the granting of copies of the diligences. At the beginning they were granted on several occasions, however, at the end their granting was denied."

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247. Pursuant with the right acknowledged in Article 8(1) of the American Convention, in relation with Article 1(1) of the same, this Tribunal has established that the States have the obligation to guarantee that, during all the stages of the corresponding proceedings, the victims can present arguments, receive information, provide evidence, make allegations, and, in synthesis, defend their interests. [FN251] Said participation shall seek a fair trial, the knowledge of the truth of what happened, and the granting of fair reparations. [FN252] In that sense, the Court has established that the domestic legislation shall organize the corresponding process pursuant with the American Convention. [FN253] The state's obligation to adjust domestic legislation to the conventional stipulations includes the constitutional text and all the legal stipulations of a secondary or regulatory nature, in such a way that can be translated into the effective practical application of the human rights protection standards. [FN254]

[FN251] Cf. Case of Baldeón García, supra note 51, para. 146; Case of Heliodoro Portugal v. Panama, supra note 24, para. 247, and Case of Anzualdo Castro v. Peru, supra note 44, para. 183.
[FN252] Cf. Case of Valle Jaramillo v. Colombia, supra note 40, para. 233, and Case of Kawas Fernández v. Honduras, supra note 40, para. 194.
[FN253] Cf. Case of Valle Jaramillo v. Colombia, supra note 40, para. 233; Case of Heliodoro Portugal v. Panama, supra note 24, para. 247, and Case of Kawas Fernández v. Honduras, supra note 40, para. 188.
[FN254] Cf. Case of Zambrano Vélez et al. v. Ecuador. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause number forty-nine.

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248. In this regard, Article 20, section C, fraction II of the Political Constitution of the United Mexican States is relevant; according to the same the "victim or [the] injured party [has the right to c]ollaborate with the Public Prosecutors' Office; to have received from them all the data or evidentiary elements they have, both in the investigation and in the proceedings, to have the corresponding diligences resolved, and to participate in the trial and file the appeals in the terms established by law. [FN255]" Likewise, Article 141, fraction II, of the Federal Code of Criminal Proceedings establishes that "[i]n all criminal proceedings, the victim or the parties injured by any crime will have the right to: […] collaborate with the Public Prosecutors' Office. [FN256]" In this same line, Article 16 of the same code states that "[o]nly the defendant, his defense

attorney, and the victim or injured party and/or their legal representative will have access to the case file of the preliminary inquiry […].” [FN257]

[FN255] Cf. Political Constitution of the United Mexican States (dossier of appendixes to the respondent’s plea, appendix III(6), page 14).
[FN256] Cf. Federal Code of Criminal Procedures (dossier of appendixes to the respondent’s plea, appendix III(4), page 27).
[FN257] Cf. Federal Code of Criminal Procedures (dossier of appendixes to the respondent’s plea, appendix III(4), page 5).

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249. The Tribunal observes that, according to that stated by the representatives, and according to what can be concluded by the few documents provided by them, Mrs. Tita Radilla Martínez has had access to the case file of the preliminary inquiry in which the facts of the present case are being investigated. Without detriment of the aforementioned, their arguments seek to prove that she: 1) did not have access to the dossier of criminal case 46/2005 processed before the Second District Court in the State of Guerrero and 2) she has not been issued copied of the preliminary inquiry that is being carried out by the Attorney General of the Republic in this case, all this in violation of her right to “adequately exercise collaboration.”

250. Regarding access to the dossier of criminal case 46/2005, the Court has verified that Mrs. Radilla Martínez formally requested before the Second District Court in the State of Guerrero her verification as collaborator in the same, as well as access to the dossier and the decisions adopted by the Court. [FN258] Before the apparent negative, Mrs. Radilla Martínez filed a complaint before the National Human Rights Commission. [FN259]

[FN258] Cf. Complaint filed by Mrs. Tita Radilla Martínez through which she requested her accreditation as collaborator in criminal case 46/2005 before the Second District Court in Acapulco de Juárez, uerrero, of September 1, 2005 (dossier of appendixes to the brief of pleadings nd motions, appendix E(1), folio 1979); brief filed by Mrs. Tita Radilla Martínez before the Second District Court in Acapulco de Juárez, Guerrero, through which she requested the issuance of copies of all that acted in criminal case 46/2005, of September 1, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix E(2), folio 1981), and brief filed by Mrs. Tita Radilla Martínez before the Attorney General of the Republic, Delegation of the State of Guerrero, through which she requested her accreditation as collaborator in criminal case 46/2005 processed before the Second District Court in Acapulco de Juárez, Guerrero, on September 1, 2005 (dossier of appendixes to the brief of pleadings and arguments, appendix E(3), folios 1982 through 1983).
[FN259] Cf. Complaint filed by Mrs. Tita Radilla Martínez before the National Human Rights Commission on August 31, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix E(4), folios 1984 through 1985). In it she stated that “[t]he fact that the authorities mentioned have illegally and illegitimately denied [her] access to case file 46/2005, le[ft her] defenseless, since it [did] not allow [her] to know the grounds and reasons the District Judge had

to declare himself unfit and [that,] therefore violate[d her] right […] to appeal, through adequate and effective legal means, the decision the affect[ed her] juridical interests."

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251. The Court does not have the decisions through which the authorities of the mentioned Court prevented Mrs. Tita Radilla Martínez or her legal representatives from accessing the case file in question. However, it is reasonable to assume that they have not provided them since they argue they did not have access to said case file. In that sense, the Tribunal points out that the State did not contest those facts either.

252. In this regard, the Tribunal considers that access to the case file is a requirement sine qua non of the victim's procedural intervention in the proceedings in which it is constituted as a collaborative party or plaintiff, pursuant with domestic legislation. Even though the Court has considered it admissible that in certain cases there be reservation of the diligences carried out during the preliminary investigation in criminal proceedings, [FN260] in order to guarantee the effectiveness of the administration of justice, in no case can the reservation be invoked to prevent the victim from accessing the dossier of a criminal process. The State's power to avoid the spreading of the content of the proceedings, if this were the case, shall be guaranteed adopting the necessary measures compatible with the exercise of the victims' procedural rights.

[FN260] Cf. Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, paras. 54 and 55.

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253. In that sense, on one hand, it is evident for this Tribunal that upon denying Mrs. Tita Radilla-Pacheco, in her condition of injured party, access to the dossier of criminal case 46/2005 processed before the Second District Court in the State of Guerrero, the State failed to comply with its obligation to respect her right to intervene in the process.

254. Regarding the issuance of copies of the case file of the preliminary inquiry carried out by the Attorney General of the Republic in this case, the Court warns that the requests made in this sense have been declared inadmissible by that institution, based on Article 16, second paragraph, of the Federal Code of Criminal Proceedings. [FN261]

[FN261] Cf. Agreement issued by the Attorney General of the Republic in attention to the petition made by Mrs. Tita Radilla Martínez requesting a single copy of preliminary inquiry number PGR/FEMOSPP/033/2002 (dossier of appendixes to the brief of pleadings and motions, appendix D(30), folio 1954). The Court warns that Article 16, second paragraph, of the Federal Court of Criminal Proceedings states that "Only the defendant, his defense counsel and the victim or injured party and/or his legal representative, if any, may have access to the actions of a preliminary inquiry. Any public employee that violates the reservation of the information of the preliminary inquiry or provides a copy of the documents included in it, will be subject to the corresponding proceeding to determine their administrative or criminal responsibility." Cf. (dossier of appendixes to the respondent's plea, appendix III(4), page 5).

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255. Regarding this matter, the State indicated that "[i]t has guaranteed full access of the collaborator Tita Radilla Martínez, either personally or through her legal representatives, to the case file that is currently included as the investigation of the facts." However, in the processing before this Tribunal, it has repeated the legal impossibility that falls upon the Public Prosecutors' Office to issue copies of ongoing preliminary inquiries (supra para. 88), reason for which there is no controversy regarding these facts.

256. The Court considers that, in cases such as the present, the denial to issue copies of the investigation to the victims constitutes a disproportionate burden in their detriment, not compatible with their right to participate in the preliminary inquiry. In the case before us, this was translated into a violation of Mrs. Tita Radilla Martinez's right to fully participate in the investigation. In this sense, the States shall have mechanisms that are less damaging to the right to a fair trial while protecting the diffusion of the content of the ongoing investigation and the integrity of the case files.

257. In any case, the Tribunal points out that the Federal Law on Transparency and Access to Public Governmental Information in force in Mexico, in its Article 14, fraction III, effectively states that "preliminary inquiries" will be considered reserved information." [FN262] However, in that same provision, said Law also stats that "[t]he nature of the reservation cannot be invoked when dealing with the investigation of grave violations of fundamental rights or crimes against humanity." [FN263]

[FN262] Published in the Official Gazette of the Federation on June 11, 2002, Text in Force (http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf). In its Article 13, fraction V, it states that "Reserved information will be understood as the one whose diffusion may: […] Cause a serious damage to the activities of verification of compliance with the laws, prevention or prosecution of crimes, the serving of justice, the collection of contributions, immigration control operations, procedural strategies in legal or administrative proceedings as long as the resolutions do not become enforceable."

[FN263] In this regard, Article 36 of the Rules of Procedure of the Federal Law on Transparency and access to Public Governmental Information, published in the Official Gazette of the Federation on June 11, 2003 (http://www.ifai.org.mx/AcercaIfai/Marco), states that "[f]or the effects of Article 14 of the Law, grave violations to fundamental rights and crimes against humanity will be understood as those defined as such in the treaties ratified by the Senate of the Republic or in the resolutions issued by international organizations whose competence is acknowledged by the State of Mexico, as well as in applicable legal stipulations."

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258. Taking into account the aforementioned, and in application of Article 29(b) of the American Convention, the Court considers that it should be understood that the victims' right in this case to obtain copies of the preliminary inquiry carried out by the Attorney General of the Republic is not subject to reservations of confidentiality, since it refers to the investigation of crimes that constitute grave violations to human rights, such as the forced disappearance of Mr.

Rosendo Radilla-Pacheco. Therefore, the victims in the present case shall have access to the case file and the right to request and obtain copies of the same, since the information included in it is not subject to reservation.

259. Therefore, the Tribunal considers that the State violated Mrs. Tita Radilla Martinez's right to participate in the investigation and criminal process regarding the facts of the present case and, therefore, Article 8(1) of the American Convention.

B. Actions of the military jurisdiction

260. The Second District Court in the State of Guerrero issued a ruling in which it ordered the arrest of Mr. Francisco Quiroz Hermosillo and declined its competence in reason of the jurisdiction in favor of the corresponding Military Court. The matter fell upon the First Military Judge attached to the First Military Region (hereinafter, "First Military Judge"), who accepted the competence and, therefore, ordered that file 1513/2005 be opened. [FN264]

[FN264] Cf. Judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First circuit in the Conflict Regarding Criminal Jurisdiction 6/2005, of October 27, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix G(6), folios 2095 through 2096), and statement offered before notary public (affidavit) by Attorney Martha Patricia Valadez Sanabria (dossier of merits, volume IV, folio 1431).

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261. The Agent of the corresponding Military Public Prosecutors' Office filed an appeal for reversal against the order through which the First Military Judge accepted the jurisdiction set forth. On October 27, 2005 the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit (hereinafter, "First Collegiate Court") resolved that said military court was competent to hear the case in question. [FN265]

[FN265] Cf. Judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First circuit in the Conflict Regarding Criminal Jurisdiction 6/2005, of October 27, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix G(6), folios 2096 through 2140), and statement offered before notary public (affidavit) by Attorney Martha Patricia Valadez Sanabria (dossier of merits, volume IV, folio 1431 and 1432)

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262. On the other hand, on September 6, 2005 Mrs. Tita Radilla Martínez filed a request for protection against the resolution of lack of jurisdiction of the Second District Court. [FN266] The Sixth District Court in the State of Guerrero (hereinafter, "Sixth District Court") flatly disregarded this accusation. [FN267]

[FN266] Cf. Request for legal protection signed by Tita Radilla Martínez, of September 6, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix F(2), folios 1989 through 2029).
[FN267] Cf. Judgment of the Sixth District Court in the State of Guerrero, of September 6, 2005, dossier PRAL. 854/2005 (dossier of appendixes to the brief of pleadings and motions, appendix F(4), folios 2030 through 2039).
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263. On October 6, 2005 Mrs. Tita Radilla Martínez filed an appeal for review against the mentioned ruling. [FN268] On November 24, 2005 the First Collegiate Court ruled on that appeal, deciding to confirm the dismissal of the request for protection. [FN269]

[FN268] Cf. Appeal for review filed in legal representation of Tita Radilla Martínez, of October 6, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix F(6), folios 2050 through 2070).
[FN269] Cf. Judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit, of November 24, 2005 (dossier of evidence to facilitate adjudication of the case presented by the State on November 2, 2009, folios 3223 and 3224).
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264. After different processes before the First Military Court and the Fourth Military Judge, on November 29, 2006 the latter issued a ruling of dismissal due to the extinction of the criminal action because of the death of the defendant, who passed away on November 19th of that year. [FN270]

[FN270] Cf. Statement offered before notary public (affidavit) by Attorney Martha Patricia Valadez Sanabria (dossier of merits, volume IV, folio 1432), and brief of pleadings and motions (dossier of merits, volume I, folio 357 and 358). Respondent's plea (dossier of merits, volume II, folio 704).
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265. From the aforementioned, it can be concluded that the competence of the military jurisdiction to hear and rule on the facts regarding the arrest and subsequent forced disappearance of Mr. Radilla-Pacheco was appealed through two processes. The first of them, through an appeal for reversal filed by an agent of the military public prosecutors' office against a ruling through which a military judge accepted the jurisdiction to hear the facts (supra para. 261). Said appeal for reversal resulted in a ruling of a collegiate Circuit Court that ruled in favor of the competence of the military jurisdiction (supra para. 261). On the other hand, Mrs. Tita Radilla filed an appeal of relief against the decision of a district court through which it had declared itself unfit to hear the facts of this case and it forwarded the case file to the military justice (supra para. 262). Said appeal was dismissed, reason for which subsequently Mrs. Tita Radilla filed an appeal for revision, which was also dismissed (supra paras. 262 through 263). The Court referred to these two matters separately.

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266. The Inter-American Commission stated that the military criminal jurisdiction constitutes a violation of Articles 8 and 25 of the American Convention, since it does not comply with the standards of the Inter-American system regarding cases that involve violations to human rights, mainly in what refers to the principle of the competent court.

267. On its part, the representatives argued that the criminal proceedings followed before the military justice system for the forced disappearance of Mr. Rosendo Radilla-Pacheco violates Articles 8 and 25 of the American Convention, as well as Article IX of the CIDFP, "[b]ecause the courts are not competent to hear a case of grave violations to human rights and infringe the principles of independence and impartiality." The representatives also indicated that the State violated Articles 8 and 25 of the Convention, in relation with Article 2 of the same, "[f]or not having generated or modified the domestic legislation to prevent the military jurisdiction from hearing the cases that imply violations of human rights."

268. The State argued that military jurisdiction is legally acknowledged in Mexico and that the term "military jurisdiction" included in the Constitution does not imply a privilege or "perk" for the members of the armed forces, "[b]ut a specialized jurisdiction that hears of the offenses and crimes against military discipline […]." In that sense, it indicated that Article 13 of the Constitution refers to the persons accused of a crime and not to the alleged victims, thus "[w]hen a civilian is the victim of a crime committed by a soldier, the competent authority to prosecute the crime are the military courts […]." Additionally, it indicated that "[b]y exception, when soldiers commit a crime of the common federal order and they are not performing an act of military service, that is[,] they are enjoying time off […] they will not be tried by the military courts, but by civil ones, since the infringement of the juridical rights occurs in detriment of the society in general […]."

269. The State indicated that "[w]hen crimes of a common or federal nature are committed by soldiers, said substantive Codes are applied based on attracting competence in what refers to the crime and the punishment, but the military criminal proceedings are governed by the Code of Military Justice, […] in the terms [of] Article[s] 57 and 58 [of that] military code." In this sense, it indicated that Article 57 of the Code of Military Justice establishes two assumptions in order for a crime to be considered as committed against military discipline: 1) when it is contemplated in the second book of the Code of Military Justice [regarding the "crimes, offenses, criminals, and punishments"], as long as the active subject in the commission of the crime is a soldier, that is, is active in the Armed Forces; and, 2) when a soldier commits crimes of the common or federal order "[and] any of the criteria included from subparagraph a) to subparagraph d) of fraction II of Article 57 are updated." Similarly, it stated that "[t]he rulings issued by the military [courts] are susceptible to being reviewed by federal authorities through the figure of appeal of relief," and that this maintains the guarantee of a competent tribunal in those cases in which the victim of a crime is a civilian, "[s]ince in no way whatsoever, do the rulings of military courts become legally unappealable."

B1. Competent jurisdiction

270. According to the arguments of the Commission, the representatives, and the State it can be concluded that, in the present case, one of the subjects that shall be covered by this Tribunal is the one regarding the application of military jurisdiction to facts such as the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco, which, as has been established in this Judgment, constitute violations to the rights acknowledged in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention (supra para. 159).

271. In this regard, the Tribunal observes that, as can be concluded from the facts (supra paras. 260 through 264), on October 27, 2005 the First Collegiate Court decided that the First Military Court was competent to hear the case against Mr. Francisco Quiroz Hermosillo. Additionally, that in its decision, the First Collegiate Court stated that said person was in the position of Lieutenant Colonel of the Infantry of the Mexican Army, attached to the Large Coast of the State of Guerrero in the population of Atoyac de Álvarez, and that he was in charge "[o]f the revision posts the armed institution had at the mentioned locations […]." Likewise, it established, among others, that from Article 13 of the Political Constitution of the United States of Mexico [FN271] (hereinafter, "Constitution") and from Article 57, fraction II, subparagraph a) of the Code of Military Justice, [FN272] it can be inferred that "[t]he military courts will hear of the crimes against military discipline, […] and said category includes the crime[s] of common or federal order, when they are committed by soldiers, in the exercise of their duties." Finally, it stated that given that the fact that had probably been committed by Mr. Quiroz Hermosillo was that of illegal deprivation of freedom in its modality of plagiarism or kidnapping, established and punished by the "[C]riminal Code for the District and Federal Territories in Common Matters and for the entire Republic in Matters of the Federal Jurisdiction, in force at the time of the commission of the criminal event," said crime was considered contrary to military discipline, thus it was "[a]n exclusive power of the military justice to hear and decide upon this matter. [FN273]"

[FN271] Article 13 of the Constitution states that:
No one can be prosecuted by exclusive laws or special courts. No person or corporation may enjoy jurisdiction or more emoluments than those that are considered compensation for public services and are established by law. The military jurisdiction subsists for the crimes and offenses against military discipline; but military courts may under no conditions and due to no reason whatsoever extend their jurisdiction over people that do not belong to the army. When a civilian is involved in a crime or offense of a military nature, the corresponding civil authority will hear the case.
Cf. Political Constitution of the United Stated of Mexico (dossier of appendixes to the respondent's plea, appendix III(6), page 8).
[FN272] The Code of Military Justice states, in its relevant parts, that:
Article 57.- The crimes against military discipline are:
[…]
II.- those of the common or federal order, when any of the following circumstances are present in their commission:
a).- That they be committed by soldiers during times of duty or based on the actions of the same;

[…]
Cf. Code of Military Justice published in the Official Gazette of the Federation on August 31, 1933, text in force (http://www.diputados.gob.mx/LeyesBiblio/pdf/4.pdf).
[FN273] Cf. Judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit in the Conflict Regarding Criminal Jurisdiction 6/2005 of October 27, 2005 (dossier of appendixes to the brief of pleadings and motions, appendix G(6), folios 2128, 2129, and 2135).
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272. The Tribunal considers it appropriate to state that it has repeatedly established that the military criminal jurisdiction in democratic states, in times of peace, has tended to be reduced and has even disappeared, reason for which, if a State conserves it, its use shall be minimum, as strictly necessary, and shall be inspired on the principles and guarantees that govern modern criminal law. In a democratic State of law, the military criminal jurisdiction shall have a restrictive and exceptional scope and be directed toward the protection of special juridical interests, related to the tasks characteristic of the military forces. Therefore, the Tribunal has previously stated that only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order itself. [FN274]

[FN274] Cf. Case of Castillo Petruzzi et al. v. Peru, supra note 54, para. 128; Case of Durand and Ugarte v. Peru. Merits. Judgment of August 16, 2000. Series C No. 68, para. 117; Case of Cantoral Benavides v. Peru. Merits. Judgment of August 18, 2000. Series C No. 69, para. 112; Case of Las Palmeras v. Colombia. Merits. Judgment of December 6, 2001. Series C No. 90, para. 51; Case of 19 Tradesmen v. Colombia. Merits, Reparations, and Costs. Judgment of July 5, 2004. Series C No. 109, para. 165; Case of Lori Berenson Mejía v. Peru, supra note 54, para. 142; Case of the Mapiripán Massacre v. Colombia, supra note 129, para. 202; Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No 135, paras. 124 and 132; Case of the Pueblo Bello Massacre v. Colombia, supra note 133, para. 189; Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 131; Case of La Cantuta v. Peru, supra note 51, para. 142; Case of the Massacre of La Rochela v. Colombia, supra note 83, para. 200; Case of Escué Zapata v. Colombia, supra note 56, para. 105, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 118.
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273. Likewise, this Court has established that, taking into account the nature of the crime and the juridical right damaged, military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights [FN275] but that instead the processing of those responsible always corresponds to the ordinary justice system. [FN276] In that sense, the Court, on multiple occasions, has indicated that "[w]hen the military jurisdiction assumes competence over a matter that should be heard by the ordinary jurisdiction, it is violating the right to a competent tribunal and, a fortiori, to a due process," which is, at the same time, intimately related to the right to a fair trial. [FN277] The judge in charge of hearing a case shall be competent, as well as independent and impartial. [FN278]

[FN275] Cf. Case of the Massacre of La Rochela v. Colombia, supra note 83, para. 200 and Case of Escué Zapata v. Colombia, supra note 56, para. 105.
[FN276] Cf. Case of Durand and Ugarte v. Peru, supra note 274, para. 118; Case of La Cantuta v. Peru, supra note 51, para. 142; and Case of the Massacre of La Rochela v. Colombia, supra note 83, para. 200.
[FN277] Cf. Case of Castillo Petruzzi et al. v. Peru, supra note 54, para. 128; Case of Palamara Iribarne v. Chile, supra note 274, para. 143, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 118.
[FN278] Cf. Case of Ivcher Bronstein. Merits, Reparations, and Costs. Judgment of February 6, 2001. Series C No. 74, para. 112; Case of 19 Tradesmen, supra nota 274, para. 167, and Case of Escué Zapata v. Colombia, supra note 56, para. 101.

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274. Therefore, taking into account the constant jurisprudence of this Tribunal (supra paras. 272 and 273), it shall be concluded that if the criminal acts committed by a person who enjoys the classification of active soldier does not affect the juridical rights of the military sphere, ordinary courts should always prosecute said person. In this sense, regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance.

275. The Court points out that when the military courts hear of acts that constitute violations to human rights against civilians they exercise jurisdiction not only with regard to the defendant, which must necessarily be a person with an active military status, but also with regard to the civil victim, who has the right to participate in the criminal proceedings not only for the effects of the corresponding reparation of the damage but also to exercise their rights to the truth and to justice (supra para. 247). In that sense, the victims of the violations of human rights and their next of kin have the right to have said violations heard and resolved by a competent tribunal, pursuant with the due process of law and the right to a fair trial. The importance of the passive subject transcends the sphere of the military realm, since juridical rights characteristic of the ordinary regimen are involved.

276. The Tribunal points out that, during the public hearing (supra para. 69), the expert Miguel Sarre Iguíniz warned on the extension of military jurisdiction in Mexico and stated that Article 57, fraction II, subparagraph a) of the Code of Military Justice "[is beyond the] written [and] closed scope […] of military discipline […]," besides the fact that "[n]ot only is it more ample regarding the active subject, but it is more ample because it does not consider the passive subject […]." Similarly, the expert Federico Andreu-Guzmán, in the statement offered before the Tribunal (supra para. 68), stated that among the elements characteristic of the Mexican military criminal jurisdiction was "[a]n extensive realm of material competence, which surpasses the framework of strictly military crimes," and that "[t]hrough the figure of the crime of duty or with occasion of the service enshrined by Article 57 of the Code of Military Justice, the Mexican criminal jurisdiction has the characteristics of a personal jurisdiction linked to the defendant's condition of soldier and not to the nature of the crime." [FN279]

[FN279] Cf. Statement issued by Mr. Federico Andreu-Guzmán before notary public (affidavit) on June 22, 2009 (dossier of merits, volume IV, folio 1319).

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277. In the present case, there is no doubt that the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco, in which military agents participated (supra para. 150) are not related in any way whatsoever with the military discipline. From those behaviors juridical rights such as life, personal integrity, personal liberty, and the acknowledgment of the juridical personality of Mr. Rosendo Radilla-Pacheco have been affected. Likewise, in a Constitutional State, the commission of acts such as the forced disappearances of persons against civilians by the members of the military can never be considered as a legitimate and acceptable means for compliance with the military mission. It is clear that those behaviors are openly contrary to the duties of respect and protection of human rights and, therefore, are excluded from the competence of the military jurisdiction.

278. From all the aforementioned, it can be concluded that the decision of the First Collegiate Court (supra para. 261) generated the application of a personal jurisdiction that operated without taking into account the nature of the implicated acts, which resulted in Mr. Francisco Quiroz Hermosillo being processed before the military courts until the discontinuance of the proceedings due to his passing away (supra para. 264).

279. Now, the State of Mexico indicated that the decisions issued by military courts are susceptible of being revised by the ordinary authorities through the "figure" of appeal of relief, with which, in its opinion, the guarantee of a competent tribunal is protected in those cases in which the victim of a crime considered of a military nature is a civilian.

280. In this regard, the Court considers it appropriate to underline that criminal proceedings should be considered as a whole throughout their different stages, both the ones that correspond to the first instance and those regarding the ulterior instances. Therefore, the concept of a competent tribunal and the principle of the due process of law are valid throughout these stages and are projected during the different procedural instances. [FN280]

[FN280] Cf. Case of Castillo Petruzzi et al. Merits, Reparations, and Costs, supra note 54, para. 161.

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281. In the present case, the mere possibility that the decisions issued by military courts can be "revised" by federal authorities does not satisfy the principle of a competent tribunal, since the judge shall be competent sin the first instance. In the present case, the Court has already stated that the military courts are not competent to hear of the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco.

282. From the aforementioned, the Court concludes that the State violated the principle of a competent tribunal upon exceeding the sphere of military justice in the present case in violation

of the parameters of exceptionality and restrictive nature that characterize the military criminal jurisdiction. In that sense, given that the military courts are not competent, the Tribunal considers that it is not necessary to issue a ruling regarding the alleged lack of independence and impartiality argued by the representatives (supra para. 267).

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283. On the other hand, upon analyzing the different arguments offered by the State through which it explains the exercise of military jurisdiction in the present case, the application of Article 57, fraction II, subparagraph a), of the Code of Military Justice in the decision of the First Collegiate Court (supra para. 261) grabs the attention of the Tribunal. Said stipulation refers to the extension of military jurisdiction to cover crimes of the ordinary jurisdiction when they are "[c]omitted by soldiers when they are active or based on acts of the same." (supra para. 272)

284. In this regard, the Tribunal points out that even though different legislations establish the competence of military jurisdiction on crimes whose origin is within the ordinary jurisdiction when they are committed by active soldiers, it is necessary to clearly establish the direct and proximal relationship with the military function or with the infringement of juridical rights characteristic of the military order.

285. During the public hearing (supra para. 9) the Tribunal requested that the State indicate if there is a jurisprudential development at a domestic level that allows a differentiation between the acts considered committed "in service or based on acts of the same." In this regard, in its final written arguments the State of Mexico made reference to different jurisprudential criteria that upon being read, however, do not offer any clarification whatsoever regarding the request made by the Court. Instead, those jurisprudential criteria reiterate the content of Article 57 of the Code of Military Justice without clarifying it. [FN281]

[FN281] Cf. Final written arguments presented by the State (dossier of merits, volume IX, folios 2837 through 2847). The State made reference to the following jurisprudential criteria: 1) "Army, members of the". Registry No.: 904,118. Jurisprudence. Subject(s): Criminal. Fifth Period. Instance: First Chamber. Source: Appendix 2000. Volume: Volume II, Criminal, Jurisprudence SCJN. Thesis: 137. Page: 95; 2) "Military jurisdiction, competence of the". Registry No.: 918,432. Jurisprudence. Subject(s): Criminal. Fifth Period. Instance: Full. Source: Appendix 2000. Volume: VII, Conflicts of Competence, Jurisprudence. Thesis: 30. Page: 41; 3) "Soldiers on duty, crimes committed by. Competence of military jurisdiction". Registry No.: 918,435. Jurisprudence. Subject(s): Criminal. Sixth Period. Instance: Full. Source: Appendix 2000. Volume: VII, Conflicts of Competence, Jurisprudence. Thesis: 33. Page: 47; 4) "Crimes against military discipline". Jurisprudence Thesis 148/2005. Approved by the First Chamber [of the Supreme Court of Justice of the Nation], in session held on October twenty-six two thousand five; 5) "Essentially military crime, murder committed by a soldier during acts of service." Registry No.: 815,198. Isolated thesis. Subject(s): Criminal. Fifth Period. Instance: Full. Source: Reports. Report 1949. Thesis: Page. 110; 6) "Soldiers, crimes committed by, against the discipline. Competence." Registry No.: 235,610. Isolated thesis. Subject(s): Criminal. Seventh Period. Instance: First Chamber. Source: Weekly Judicial Publication of the Federation. Second

Part. Thesis: 75. Page: 34; 7) “Health, crime against. Soldiers as active subjects. Lack of competence of the military jurisdiction, if they are not in service”. Registry No.: 234,262. Isolated thesis. Subject(s): Criminal. Seventh Period. Instance: First Chamber. Source: Weekly Judicial Publication of the Federation. 181-186 Second Part. Thesis: Page: 101; 8) “Service. Soldiers in”. Registry No.: 206,199. Isolated thesis. Subject(s): Criminal. Eighth Period. Instance: First Chamber. Source: Weekly Judicial Publication of the Federation. VII, June 1991. Thesis: 1a. XIV/91. Page: 76, and 9) “Military Jurisdiction. Is an Exception”. Registry No.: 234,996. Isolated thesis. Subject(s): Criminal. Seventh Period. Instance: First Chamber. Source: Weekly Judicial Publication of the Federation. 115-120 Second Part. Thesis: Page 51.

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286. The Court considers that Article 57, fraction II, subparagraph a) of the Code of Military Justice is an ample and imprecise provision that prevents the determination of the strict connection of the crime of the ordinary jurisdiction with the military jurisdiction objectively assessed. The possibility that the military courts prosecute any soldier who is accused of an ordinary crime, for the mere fact of being in service, implies that the jurisdiction is granted due to the mere circumstance of being a soldier. In that sense, even when the crime is committed by soldiers while they are still in service or based on acts of the same, this is not enough for their knowledge to correspond to the military criminal justice.

287. Based on the aforementioned, it is possible to consider that the stipulation under study operates as a rule and not as an exception, a necessary characteristic of military jurisdiction for it to comply with the standards established by this Court. [FN282]

[FN282] Cf. Case of Las Palmeras v. Colombia, supra note 274, para. 51; Case of La Cantuta v. Peru, supra note 51, para. 142, and Case of the Massacre of La Rochela v. Colombia, supra note 83, para. 200.

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288. With regard to the general obligation of adjusting the domestic legislation to the Convention, the Court has stated on several opportunities that “[i]n international law, a rule of customary law indicates that a State that has signed an international agreement, should introduce in its domestic legislation the modifications necessary to guarantee the execution of the obligations assumed.” [FN283] In the American Convention, this principle is enshrined in its Article 2, which establishes the general obligation of each of the State Parties to adjust its domestic legislation to its stipulations, in order to guarantee the rights acknowledged by it, which implies that the measures of domestic legislation must be effective (principle of effet utile). [FN284]

[FN283] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 68; Case of Zambrano Vélez et al. v. Ecuador, supra note 51, para. 55, and Case of Heliodoro Portugal v. Panama, supra note 24, para. 179.

[FN284] Cf. Case of Garrido and Baigorria v. Argentina, supra note 283, para. 68; Case of Zambrano Vélez et al. v. Ecuador, supra note 51, para. 55, and Case of Heliodoro Portugal v. Panama, supra note 24, para. 179.

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289. Therefore, the Tribunal considers that the State failed to comply with the obligation included in Article 2 of the American Convention, in connection with Articles 8 and 25 of the same, upon extending the competence of the military jurisdiction to crimes that do not have a strict connection with military discipline or with juridical rights characteristic of the military realm.

B2. Effective recourse to challenge the military jurisdiction

290. Both the Commission and the representatives of the alleged victims argued that Article 25(1) of the Convention has also been infringed because the next of kin of Mr. Rosendo Radilla-Pacheco could not contest the forwarding of the case to military jurisdiction (supra paras. 266 through 267).

291. The Court has stated that Article 25(1) of the Convention contemplates the obligation of the States Parties to guarantee access, to all of the people under its jurisdiction, to an effective judicial recourse against acts that violate their fundamental rights. [FN285]

[FN285] Cf. Case of Velásquez Roríguez v. Honduras, supra note 24, para. 91; Case of Acevedo Buendía et al. v. Peru, supra note 139, para. 69, and Case of Kawas Fernández v. Honduras, supra note 40, para. 110.

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292. In this regard, it can be concluded from the facts of the present case that once the Second District Court decided to decline its competence in favor of the military jurisdiction, Mrs. Tita Radilla-Pacheco filed an appeal for protection to revoke that decision. However, this complaint was dismissed in first instance (supra para. 262) since based on Article 10 of the Law on the Appeal of Relief "[t]he injured party or victim of the crime, can only try appeals for guarantees when it refers to any act […] related directly and immediately with the reparation of the damage […]." [FN286] Said decision also indicated that:

[i]n the Mexican legal system, the proceedings of a criminal nature are carried out only between the defendant and the Public Prosecutors' Office, bearer of the criminal action, who exercises the monopoly of the same and, therefore, is entitled to carry out the defenses during the proceeding of each and everyone of the acts that occur during the same and that affect its correct performance, [among] which […] there are procedural issues such as those that refer to the Tribunal before which the case shall be resolved based on jurisdiction, a matter that may be analyzed through the means of defense presented before the competent instances in terms of Article 367, fraction VIII of the Federal Code of Criminal Procedures; an appeal that […] can only be filed by the Public Prosecutors' Office, but not by the victim or its legal representatives, even if they are collaborators of the Social Representative […]. [FN287]

[FN286] Cf. Judgment of the Sixth District Court in the State of Guerrero, of September 6, 2005, dossier PRAL. 854/2005 (dossier of appendixes to the brief of pleadings and motions, appendix F(3), folio 2033).
[FN287] Cf. Judgment of the Sixth District Court in the State of Guerrero, of September 6, 2005, dossier PRAL. 854/2005 (dossier of appendixes to the brief of pleadings and motions, appendix F(3), folios 2036 through 2037).

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293. Mrs. Tita Radilla Martínez filed an appeal for revision against said decision. The Tribunal observes that, by "reason of duty", it corresponded to the same First Collegiate Court that resolved the matter regarding the jurisprudential conflict (supra para. 265) to hear the appeal for revision mentioned. From the decision of November 24, 2005, requested by this Tribunal as evidence to facilitate adjudication of the case (supra para. 12) it can be concluded that the First Collegiate Court established that they would not "[s]ubmit to study the appealed ruling or the infringements proposed by [Mrs. Tita Radilla Martínez]," since what was being claimed referred to the jurisdictional conflict that had already been resolved. In that sense, said Collegiate Court stated that a cause different to that invoked by the Second District Court (supra para. 292) to dismiss the appeal of relief had "supervened" and that, therefore, that stated in Article 73, fraction XVI, of the Law on the Appeal of Relief, according to which, this does not proceed "[o]nce the effects of the act claimed has ceased" was applicable. [FN288] Therefore, based on the fact that the jurisdiction had already been solved in favor of the military jurisdiction in the same matter, the First Collegiate Court confirmed the dismissal of the appeal for protection filed by Mrs. Tita Radilla Martínez.

[FN288] Cf. Judgment of the First Collegiate Court in Criminal and Administrative Matters of the Twenty-First Circuit, of November 24, 2005 (dossier of evidence to facilitate adjudication of the case presented by the State on November 2, 2009, folios 3203, 3205, and 3214).

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294. From the aforementioned, it can be clearly concluded that Mrs. Tita Radilla was deprived of the possibility to contest the jurisdiction of military courts to hear matters that, due to their nature, shall correspond to the authorities of the ordinary jurisdiction.

295. In this sense, the Court has mentioned that the States have the responsibility to enshrine in provisions and to guarantee the due application of effective recourses and the guarantees of the due process of law before the competent authorities that protect all the people under its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations. [FN289]

[FN289] Cf. Case of Baena Ricardo et al. Competence. Judgment of November 28, 2003. Series C No. 104, para. 79; Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C No. 107, para. 145, and Case of

Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, supra note 139, para. 72.

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296. In this sense, the Court has established that in order for the State to comply with that stated in Article 25 of the Convention, it is not enough for the recourses to exist formally, but instead it is necessary that they be effective in the terms of that precept. [FN290] The Court has reiterated that said obligation implies that the recourse be suitable to fight the violation and that its application by the competent authority be effective. [FN291]

[FN290] Cf. Case of Ximenes Lopes v. Brazil. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 4; Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, para. 131, and Case of Escher v. Brazil, supra note 64, para. 196.
[FN291] Cf. Case of Maritza Urrutia v. Guatemala, supra note 51, para. 117; Case of Claude Reyes et al. v. Chile, supra note 290, para. 131, and Case of Escher v. Brazil, supra note 64, para. 196.

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297. The Court points out that, as previously stated in this judgment (supra paras. 247 and 275), the victim's participation in criminal proceedings is not limited to the mere reparation of the damage but, mainly, to making effective their rights to know the truth and to a fair trial before competent courts. The aforementioned necessarily implies that, at a domestic level, there shall be adequate and effective recourses through which the victim has the possibility to contest the jurisdiction of the judicial authorities that will eventually exercise their jurisdiction over matters regarding which they consider they do not have competence.

298. Therefore, in the present case the appeal of relief was not effective in allowing Mrs. Tita Radilla Martínez to contest the hearing of the arrest and subsequent forced disappearance of her father, Mr. Rosendo Radilla-Pacheco, by the military jurisdiction, which constitutes a violation of Article 25(1) of the Convention.

B3. Military justice in the Inter-American Convention on Forced Disappearance

299. The representatives argued that the application of military jurisdiction in this case also constitutes a violation of Article IX of the CIDFP.

300. It has already been established in this Judgment that there is no doubt that acts such as the forced disappearance of Mr. Rosendo Radilla-Pacheco are not related in any way whatsoever with military discipline and, therefore, they are excluded of the competence of military jurisdiction (supra para. 277). As has already been stated (supra paras. 272 and 273), the military criminal jurisdiction shall be directed toward protecting special juridical interests, related to the tasks the law assigns to military forces. Establishing the contrary, would threaten the principle of the competent tribunal, [FN292] in light of Article 8(1) of the American Convention. This is what is sought by Article IX of the CIDFP.

[FN292] Cf. Case of Cantoral Benavidez v. Peru, supra note 274, para. 113; Case of Escué Zapata v. Colombia, supra note 56, para. 105, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 118.

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301. The Court observes that Mexico made a reservation to the mentioned Article IX of the CIDFP, according to which it stated that its domestic legal system acknowledges "the jurisdiction of war, when the soldier has committed any crime while in service." (infra para. 306) The representatives requested that the Tribunal declare the "nullity" of the reservation made by the State, because it "[c]ontested the objective and purpose of the treaty and [because it was] contrary to the jurisprudence of the international organizations in charge of the protection of human rights throughout the hemisphere […]." They argued that "[t]he reason of being [of this] Article […] is to protect the victims of forced disappearances from their aggressors –that according to the systematic practice in the countries of Latin America- […] has been carried out by members of the Army. Therefore, the presentation of a reservation that allows the prosecution of soldiers that commit the crime of forced disappearance of persons by the military jurisdiction, is a reservation that should be declared null […]." The Commission did not present arguments in this regard. The State on its part questioned the Court's jurisdiction to issue a ruling with regard to the reservation made (supra para. 33).

302. Regarding the power to make reservations, Article XIX of the CIDPF indicates that "[t]he states may express reservations with respect to [this] Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions."

303. The jurisdiction of the Inter-American Court to determine the validity of a reservation, in light of the mentioned Article XIX of the CIDFP, can be clearly concluded from Article XIII of said instrument, in relation with Article 62 of the American Convention, which establish the Court's ability to hear the matters related with the compliance of the commitments acquired by the State Parties to the CIDFP. This jurisdictional power covers not only the analysis of substantive rules, that is those that include the protected rights, but also the verification of the compliance with all procedural rules in which the interpretation and application of the same is involved. In this tenor, the Court has established that the reservations made by the State Parties "are included in the treaty itself, thus it is not possible to interpret it completely, with regard to the State that makes the reservation, without interpreting the reservation itself." [FN293]The Human Rights Committee of the United Nations has expressed a similar position. [FN294]Likewise, in the case of Belilos v. Switzerland, the European Court of Human Rights reaffirmed its jurisdiction to exercise control of the validity in matters of reservations. [FN295]

[FN293] Cf. Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 45.

[FN294] Said Committee has stated that "It must necessarily be the Committee who decides if a specific reservation is compatible with the objective and purpose of the [International] Pact [on

Civil and Political Rights]. This is due in part […] to the fact that it refers to an inadequate task for the State Parties in relation with the human rights treaties and, in part, to the fact that it is a task that the Committee cannot elude while fulfilling its tasks. In order to know the scope of its duty to examine compliance of the Pact by a State by virtue of that stated in Article 40 or a communication presented in accordance with the First Optional Protocol, the Committee shall necessarily adopt an opinion on the compatibility of the reservation with the objective and purpose of the Pact and with international law in general. Given the special nature of the human rights treaties, the compatibility of a reservation with the objective and purpose of the Pact in relation with a juridical principle shall be objectively established and the Committee is in especially adequate conditions to carry out that task […]." Cf. General Observation No. 24: General Observation regarding matters related to the reservations made based on the ratification of the Pact or its Optional Protocols or the adherence to the same, or with regard to the statements made pursuant with Article 41 of the Pact, CCPR/C/21/Rev.1/Add.6, para. 18.
[FN295] The European Court indicated that: "The silence of the depositary and the Contracting States [with regards of the reservations and interpretative declarations contained in Switzerland's instrument of ratification] does not deprive the Convention's institutions of the power to make their own assessment," (translation of the Secretariat), Cf. Eur. Ct. H.R., Case of Belilos v. Switzerland, Application no. 10328/83, 29 April 1988, para. 47.
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304. This Court has repeatedly stated that the modern treaties on human rights, as is the case of the CIDFP, "are not multilateral treaties of a traditional type, concluded in function of a reciprocal exchange of rights for the mutual benefit of the contracting States. Its objective and purpose is the protection of the fundamental rights of human beings […]. Upon approving these human rights treaties, the States submit to a legal order within which they, for the common good, assume several obligations, not with regard to other States, but towards individuals under their jurisdiction." [FN296] The International Court of Justice and the Human Rights Committee have had the same understanding. [FN297]

[FN296] Cf. The Effect of Reservations on the Entry into Force of the American Convention on Human Rights. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29. In the same sense, Cf. Case of the Mapiripán Massacre v. Colombia, supra note 129, para. 104; Case of the Pueblo Bello Massacre v. Colombia, supra note 133, para. 51, and Case of López Álvarez v. Honduras. Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141, para. 40.
[FN297] ICJ, Reservations to the convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, May 28, 1951, page 23. C.D.H., General Comment No. 24, supra note 294, para. 17.
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305. Taking into account the aforementioned, prior to the ruling on the alleged violation of Article IX of the CIDFP, this Court shall determine if the reservation made by Mexico to that provision satisfies the requirements established in Article XIX of that instrument, that is, if it is compatible with the objective and purpose of the treaty and if it refers to specific stipulations (supra para. 302). Compliance with these requirements does not constitute a mere formality; it is

a material condition of the treaty that shall be met in order to guarantee that the reservation made does not exceed the limits of that expressly permitted in the same. [FN298]

[FN298] As has been considered by the European Court of Human Rights. Cf. Case of Belilos v. Switzerland, supra note 295, para. 59.

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306. The Court observes that the State's reservation was presented in the following terms:

The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact.

307. Regarding its compatibility with the objective and purpose of the treaty, the Tribunal warns that, through the reservation, Mexico establishes that the military jurisdiction is competent to hear a case of forced disappearance if a member of the armed forces commits the crime while on duty. This implies a reference to a jurisdiction that in order to be applied requires a personal, not a material, classification. It is not stated that an analysis of the juridical interests behind the crime is necessary, nor is the military discipline or any other military juridical interest used as a point of reference. Likewise, upon adding a reservation to Article IX of the CIDFP, the State of Mexico is establishing a general rule on the competence of the military criminal jurisdiction. As has been mentioned by this Court, [FN299] military justice is of an exceptional nature that necessarily requires a justification in the specific case (supra para. 272).

[FN299] Cf. Case of Cantoral Benavides v. Peru. Merits, supra note 274, para. 113; Case of 19 Tradesmen, supra note 274, para. 165, and Case of Tiu Tojín v. Guatemala, supra note 24, para. 118.

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308. The objective and purpose of a treaty such as the CIDFP is the effective protection of the human rights acknowledged therein. In terms of its Article I, its specific purpose is to guarantee the effective prevention, punishment, and suppression of the practice of forced disappearance of persons, avoiding its effects, namely, the multiple violations of human rights. For this, said Convention has stipulated a series of obligations, through which the State Parties undertake: "a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; and d) To take legislative, administrative, judicial,

and any other measures necessary to comply with the commitments undertaken in this Convention."

309. One of the rights protected in the CIDFP, which tends to achieve the effective punishment of the authors of the crime of forced disappearance, is that of a competent tribunal, necessarily linked to the right to a due process of law and to a fair trial, acknowledged in Articles 8(1) and 25(1) of the American Convention (supra para. 273), rights that are nonrevocable. Thus, Article IX of the CIDFP, beyond being a rule on jurisdiction, acknowledges the right to a competent tribunal. In effect, through this provision, the State Parties to the CIDFP undertake to respect the right to a competent judge to hear the criminal case regarding the crime of forced disappearance, which is a common judge, since, as previously stated, the juridical right protected transcends military interests (supra para. 275).

310. The Court has established that "a reservation that suspends the entire fundamental right whose content is nonrevocable shall be considered as incompatible with the object and purpose of the Convention and, therefore, incompatible with the same. The situation could be different if the reservation only restricts certain aspects of the domestic legislation nonrevocable without depriving the right of its basic content." [FN300] Upon making this determination the Tribunal shall examine if even when the reservation only restricts some aspects of a nonrevocable right, it prevents giving the treaty its full sense and useful effect. [FN301]

[FN300] Cf. Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83, supra note 293, para. 60.
[FN301] Cf. Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83, supra note 293, para. 61, and Case of Velásquez Rodríguez v. Honduras, supra note 32, para. 30.

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311. As previously stated, the reservation to Article IX of the CIDFP implies disregard of the human right to a competent tribunal, in the due investigation and eventual punishment of those responsible for the commission of the forced disappearance of persons. The need to guarantee that this type of cases be investigated in an impartial manner before the competent instances pursuant with international obligations, transcends the States' interests. The eradication of the impunity of grave violations of human rights, [FN302] such as the one that occurred in the present case, has a collective guarantee, reflected in the clear and growing interest of the entire society and all Democratic Constitutional states to strengthen the international protection mechanisms in the field. The Court considers that the right to a competent tribunal, acknowledged in Article IX of this Convention, is indispensable for the achievement of the purposes established therein.

[FN302] Cf. Resolution regarding disappeared persons and assistance to their next of kin, AG/RES. 2513 (XXXIX-O/09), approved by the General Assembly of the OAS on June 4, 2009, fourth and sixth operative paragraphs, at http://www.oas.org/dil/esp/AG-RES2513-2009.doc; Resolution regarding disappeared persons and assistance for their next of kin, AG/RES. 2231

(XXXVI-O/06), approved by the General Assembly of the OAS on June 6, 2006, third and seventh operative paragraphs, in http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Sto%20Domingo/Esp/AG%20RES%202232%20spanish.doc; Resolution on the right to the truth, 2005/66, apprived by the Human Rights Commission of the United Nations on April 20, 2005, second to fourth operative paragraphs, at http://ap.ohchr.org/documents/S/CHR/resolutions/E-CN4-RES-2005-66.doc; Resolution on the matter of Forced or Involuntary Disappearances, 59/200, approved by the General Assembly of the United Nations on March 23, 2005, 4th operative paragraph, at http://www.acnur.org/biblioteca/pdf/3758.pdf; Resolution on Forced or Involuntary Disappearances 2004/40, approved by the Human Rights Commission on April 19, 2004, Operative paragraphs 7(b), 7(c), and 7(d), at http://www2.ohchr.org/spanish/issues/disappear/docs/E-CN4-RES-2004-40.doc; Resolution on the matter of forced or involuntary disappearances, 2003/38, approved by the Human Rights Commission on April 23, 2003, Operative paragraphs 5(c), 5(d), and 5(d), at http://www2.ohchr.org/spanish/issues/disappear/docs/E-CN4-RES-2003-38.doc

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312. Taking into account all the aforementioned, this Tribunal considers that the reservation made by Mexico does not satisfy the first requirement established in Article XIX of the CIDFP, therefore it shall be considered invalid. In this sense, it is evident that the application of the military jurisdiction in the present case, for which the State extended the competence of the military jurisdiction to facts that are not strictly related to military discipline or with juridical acts characteristic of the military realm, is contrary to the provision included in Article IX of the mentioned treaty, to which Mexico has clearly been compelled.

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313. Based on the aforementioned, the Court considers that the investigation of the arrest and subsequent disappearance of Mr. Rosendo Radilla-Pacheco has not been diligent, has not assumed in its totality as a duty characteristic of the State, nor has it been effectively addressed to the identification, prosecution, and eventual punishment of all those responsible or to the determination of the whereabouts of Mr. Radilla-Pacheco. Likewise, the Tribunal considers that upon expanding the competence of the military jurisdiction to crimes that are not strictly related to military discipline or with juridical rights characteristic of the military realm, the State has infringed the right to a competent tribunal of the next of kin of Mr. Rosendo Radilla-Pacheco, who also did not have a recourse that allowed them to contest the prosecution of the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco by the military jurisdiction. All this in detriment to their right to know the truth.

314. Due to the aforementioned, the Tribunal concludes that the State violated the rights acknowledged in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the same and I subparagraphs a) and b) and IX of the CIDFP, as well as with Articles I(d) and XIX of the CIDFP. [FN303]

[FN303] Cf. Case of Kimel v. Argentina. Merits Reparations, and Costs. Judgment of May 2, 2008. Series C No. 177, para. 61.

X. NON-COMPLIANCE OF ARTICLE 2 (DOMESTIC LEAL EFFECTS) OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 7(6) THEREOF, [FN304] AND OF ARTICLES I d) AND III OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS [FN305]

[FN304] Article 7(6) of the American Convention states, in what is relevant, that:
Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
[FN305] Article III of the CIDFP states that:
The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

A. Definition of the crime of forced disappearance of persons

315. The representatives argued that the State has failed to comply with its obligation to adequately define the crime of forced disappearance, since "[t]he elements of the crime […]described in the Federal Criminal Code do not coincide in several aspects with the definition contemplated in Article II of the [CIDFP], as stipulated by the Court's jurisprudence." They argued that "[t]his has allowed that the case of Mr. Rosendo Radilla remain in complete impunity." The Commission did not present arguments in this sense. The State, on its part, indicated that "[i]t understands and shares the position of the [representatives], in the sense that there are still matters that deserve to be examined and that shall be reformed in order to achieve a greater serving of justice. However, it has been proven that Mexico has effective laws in force that help to serve justice in matters of all types, including, of course, criminal ones." In this regard, it indicated that the crime of forced disappearance of persons "is punished by the Federal Criminal Code" since June 1, 2001. Therefore, it requested that the Court declare "[t]hat a conviction for violations to Article 2 of the Convention is not admissible."

316. In the previous chapter it was established that the only mention of an alleged responsible made by the Special Prosecutors' Office was for the crime of "illegal deprivation of liberty in its modality of plagiarism or kidnapping" and not for the crime of forced disappearance of persons in force in Mexico (supra para. 238). This decision has had negative consequences on the

effectiveness, diligence, and exhaustiveness of the investigations and on the determination of the corresponding individual responsibilities (supra paras. 238 through 240). In this regard, the Tribunal recalls that, according to that indicated by the State, the application of the legal classification of forced disappearance of persons in this case was not possible since it "requires that the active subject of the crime be a public official, but when the legal classification came into force the defendant Francisco Quiros [sic] Hermosillo went into retirement." (supra para. 236)

317. The Court has repeatedly established that the States Parties to the American Convention have the general duty to adjust their domestic legislation to the provisions of that treaty in order to guarantee the rights enshrined in it (supra para. 144). [FN306] In the case of the forced disappearance of persons, this obligation is corresponded with Article I d) of the CIDFP, which stipulates that the State Parties to the same undertake to take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken by them.

[FN306] Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs. Judgment of February 5, 2001. Series C No. 73, para. 87; Case of Heliodoro Portugal v. Panama, supra note 24, para. 179, and Case of Anzualdo Castro v. Peru, supra note 44, para. 161.

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318. Specifically, the obligation to adopt domestic measures implies that the States shall define the crime of forced disappearance, and Article III of the CIDFP is expressed in this sense. The Court has established that the description of the crime of forced disappearance of persons shall be done taking into consideration Article II of the mentioned Convention, which establishes a minimum standard regarding its correct legal classification within the domestic legal system. [FN307] The Article in question stipulates that:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

[FN307] Cf. Case of Heliodoro Portugal v. Panama, supra note 24, para. 189.

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319. The Court warns that the crime of forced disappearance is punished in Article 215-A of the Federal Criminal Code since the year 2001, in the following terms:

The crime of forced disappearance of persons is committed by the public official who, regardless of his participation in the legal or illegal arrest of one or several persons, causes or maliciously maintains their concealment under any type of detention.

320. In this sense, the Tribunal observes, first of all, that the mentioned stipulation restricts the commission of the crime of forced disappearance of persons to "public officials". In that sense, regarding the active subject of the crime the Court has established that, in terms of Article II of the CIDFP, the provision that describes the elements of the crime shall guarantee the punishment of all the "authors, accomplices, and accessories of the crime of forced disappearance of persons," whether agents of the State or "people or groups of people that act with the authorization, support, or acquiescence of the State." [FN308]

[FN308] Cf. Case of Gómez Palomino v. Peru, supra note 51, para. 101.

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321. The Court has reiterated that it is a basic principle of the law on State's international responsibility, acknowledged by International Human Rights Law, that all States are internationally responsible for any act or omission of any of its powers or bodies in violation of the rights internationally enshrined. [FN309] From this point of view, the legal classification of forced disappearance of persons of the Federal Criminal Code of Mexico presents an obstacle to the guarantee of punishment of "all the authors, accomplices, and accessories" arising from "any of the powers or bodies of the State." In order to satisfy the minimum elements of the correct legal classification of the crime, the nature of the "State agent" shall be established in the most ample way possible.

[FN309] Cf. Case of Velásquez Rodríguez, supra note 24, paras. 164, 169, and 170; Case of Albán Cornejo et al. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, para. 60; and, Case of Heliodoro Portugal v. Panama, supra note 24, para. 140.

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322. Similarly, the Tribunal warns that Article 215-A of the mentioned Federal Criminal Code does not refer to "persons or groups of persons acting with the authorization, support, or acquiescence of the state," In this regard, it mentioned that the punishment for the criminal actions of individuals can be concluded from Article 212, second paragraph, of the mentioned Federal Criminal Code, according to which "the same punishments established for the specific crime will be imposed on any person who participates in the perpetration of any of the crimes established in this Title or the following one." [FN310] Despite the aforementioned, it is not clear to this Tribunal if the intervention of "any person" as a participant in the crime, in the sense of the mentioned Code, is equivalent to the idea that the perpetrator of the same, that is, the active subject, is an individual that acts "with the authorization, support, or acquiescence of the state." This idea acknowledges both the actions of individuals as perpetrators of the crime, under certain circumstances, and the different forms of participation of State agents in it.

[FN310] Article 366 of the Federal Criminal Code specifies those punishments (dossier of appendixes to the respondent's plea, appendix III(3), pages 86 and 87).

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323. On the other hand, as has been previously stated by this Tribunal, the forced disappearance of persons is characterized by the negative to acknowledge the deprivation of liberty or to offer information regarding the fate or whereabouts of the persons and by not leaving prints or evidence. Said element shall be present in the definition of the crime, because this allows a differentiation between forced disappearances and other crimes with which it is normally related, such as plagiarism or kidnapping and homicide, with the objective of applying the adequate evidentiary criteria and imposing the punishments that take into consideration the extreme seriousness of this crime to all those implied in it. [FN311] In the present case, the Court observes that Article 215-A of the Federal Criminal Code does not include that element, thus the definition of the crime is incomplete.

[FN311] Cf. Case of Gómez Palomino, supra note 51, para. 103; Case of Heliodoro Portugal v. Panama, supra note 24, paras. 196 and 197. In the same sense, the expert opinion offered by Mr. Santiago Corchera Cabezut before notary public (affidavit) on June 19, 2009 (dossier of merits, volume IV, folio 1251).

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324. The Court values positively the efforts made by Mexico to adjust its domestic legislation to its international obligations. Even though the legal classification currently in force permits the punishment of certain behaviors that constitute forced disappearance of persons, an adjustment that makes the international regulations in force in this subject fully effective cannot be concluded from it. Thus, the Inter-American Court considers that the State has failed to fully comply with the obligations imposed by Article 2 of the American Convention in relation with Articles I and III of the CIDFP, in order to duly guarantee the investigation and possible punishment of the facts that constitute forced disappearance in the present case.

B. Effective recourse for the protection of the right to personal liberty (habeas corpus or appeal of relief)

325. The Inter-American Commission argued that [t]he next of kin of Rosendo Radilla did not have access to [a] recourse that protected them from the violations to their human rights. Despite the fact that at the time of the facts the Mexican legislation already contemplated the figure of the appeal of relief, equivalent to the habeas corpus, which is applied to clarify the whereabouts of a disappeared person, said appeal lacks effectiveness in view of the stipulations of Articles 17 and 117 of the Law on the Appeal of Relief." In that same sense, the representatives argued that in Mexico the appeal of relief "[i]s not effective in finding a person who has been the victim of a forced disappearance," since "it does not comply with the requirements necessary in order to be considered an effective recourse pursuant with the criterion of the Inter-American Court on matters of forced disappearances," reason for which "the appeal of relief [is ineffective] for those cases."

326. In the present case, the Court considers that no specific relationship between the facts of the forced disappearance of Mr. Rosendo Radilla-Pacheco and the alleged ineffectiveness of the appeal of relief of liberty established in Article 117 of the Mexican Law on the Appeal of Relief

has been proven. The next of kin of the victim did not file the appeal of relief referred to. Thus, the Court does not warn, nor do the representatives specifically substantiate, that in the case sub judice this alleged lack of effectiveness was a real obstacle for the determination of the whereabouts of Mr. Rosendo Radilla-Pacheco. Therefore, it shall not issue a ruling in that sense.

XI. REPARATIONS (Application of Article 63(1) of the Convention) [FN312]

[FN312] Article 63(1) of the Convention states that:
If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

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327. It is a principle of international law that any violation of an international obligation that has caused damage entails the obligation to repair it adequately. [FN313] That obligation is governed by International Law. [FN314] The Court has based its decisions in this sense on Article 63(1) of the American Convention. In the present chapter, the Tribunal will examine the claims made, in this subject, by the Inter-American Commission and the representatives, with the objective of ordering the measures tending to repair the damages caused to the victims.

[FN313] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller"), supra note 139, para. 108, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 94.
[FN314] Cf. Case of Aloeboetoe et al. v. Surinam. Reparations and Costs. Judgment of September 10, 1993. Series C No. 15, para. 44; Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller"), supra note 139, para. 108, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 94.

A. Injured Party

328. The Tribunal reiterates that it considers as injured parties, in the terms of Article 63(1) of the Convention, those who have been declared victims of any violation to a right enshrined in the same. The victims in the present case are Mr. Rosendo Radilla-Pacheco, and his children Tita, Andrea, and Rosendo, all of surnames Radilla Martínez (supra para. 111), reason for which they will be considered beneficiaries of the reparations ordered by this Court. Without detriment of the aforementioned, the Tribunal urges the State to, in attention to its acknowledgment of international responsibility in the present case, to recommendation 026/2001 of the National Human Rights Commission, and to the demands for justice, consider granting in good faith adequate reparation to the other next of kin of Mr. Rosendo Radilla-Pacheco (supra para. 111)

without the need of a judicial action on their part, taking into consideration that established in the present Judgment.

B. Obligation to investigate the facts and identify, prosecute, and, in its case, punish the responsible parties

329. The Commission requested that the State be ordered to carry out a complete, impartial, effective, and prompt investigation of the facts with the objective of establishing and punishing the intellectual and material responsibility of all those who participated in the forced disappearance of Mr. Rosendo Radilla-Pacheco. The representatives, on their part, asked that the Court order the State to use all the means available to make said investigation expedite and that the facts be heard before the ordinary justice system.

330. The State did not refer specifically to this measure of reparation. However, it mentioned that "[t]he investigation [of the disappearance of Mr. Rosendo Radilla] is still open and diligences are still being practiced in order to determine [his] whereabouts […] and[,]if it proceeds, of those responsible […]." Likewise, it acknowledged its obligation to avoid impunity in all cases of violations of human rights.

331. In the present case the Court established that the investigation regarding the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco has not been carried out with due diligence. Likewise, the Tribunal considers that upon expanding the competence of the military jurisdiction to acts that constitute a forced disappearance of persons, the State has violated the right of the next of kin of Mr. Rosendo Radilla-Pacheco to a competent tribunal. All this in detriment of the right to know the truth regarding those facts (supra paras. 166 and 313). Therefore, as it has done on other occasions, [FN315] the Court rules that the State shall effectively and with the proper due diligency carry out the investigation and, if it were the case, the criminal proceedings that are in process with regard to the facts of the present case, in order to determine the corresponding criminal responsibilities and effectively apply the punishments and consequences established by law. This obligation shall be complied with within a reasonable period of time, following the criteria established regarding investigations in this type of cases (supra paras. 142 through 145).

[FN315] Cf. Velásquez Rodríguez, supra note 24, para. 174; Case of Kawas Fernández v. Honduras, supra note 40, para. 191, and Case of Garibaldi v. Brazil, supra note 32, para. 169.

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332. Similarly, the State shall guarantee, through its competent institutions, that the ongoing preliminary inquiry on the facts that constitute the forced disappearance of Mr. Rosendo Radilla is kept before the ordinary jurisdiction. Whenever new criminal cases are opened against alleged responsible parties who are or have been military officers, the authorities in charge shall guarantee that they will be brought before the common or ordinary jurisdiction and, under no circumstance, in the military or war courts. Additionally, in order to comply with that ordered, the State shall guarantee that the future references made to the facts of this case, will be in reference to the crime of forced disappearance. In this sense, it is important to reiterate that since

it is a crime of a permanent execution, that is, whose consummation is prolonged in time, when it comes into force in the domestic criminal law, if the criminal behavior continues, the new law is applicable (supra para. 239).

333. The Court considered as established that the forced disappearance of Mr. Radilla-Pacheco occurred within the framework of a context of forced disappearances of persons (supra para. 132 through 137). In this sense, as it has done in other cases, it determined that the authorities in charge of the investigations have the duty to guarantee that in the course of the same the systematic patterns that allowed the commission of grave violations of human rights in the present case and the context in which they occurred will be assessed taking into account the complexity of this type of facts and of the structure in which the persosn probably involved in the same are located, thus avoiding omission in the gathering of the evidence and in the following of logical lines of investigation. [FN316] (supra paras. 221 through 222)

[FN316] Cf. Case of the Massacre of la Rochela v. Colombia, supra note 83, para. 157.

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334. Finally, the Court reiterates that during the investigation and the prosecution, the State shall guarantee the victims full access and the capacity to act during all the stages (supra para. 247). Additionally, the results of the proceedings shall be made public with the objective of informing the Mexican society of the truth of the facts. [FN317]

[FN317] Cf. Case of the Carcazo v. Venezuela. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 118; Case of Kawas Fernández v. Honduras, supra note 40, para. 194, and Case of Anzualdo Castro v. Peru, supra note 44, para. 183.

C. Measures of satisfaction and guarantees of non-repetition

C1. Determination of the whereabouts of Rosendo Radilla-Pacheco

335. The Commission requested that the Court order the State to locate the whereabouts of Mr. Radilla-Pacheco, or, in its defect, hand over his remains to his next of kin. The representatives requested to the Court that the State comply with the aforementioned, through the corresponding exhumations in presence of his next of kin, their experts, and legal representatives. The State, on its part, informed that it has performed certain diligences to determine the whereabouts of the victim or his remains (supra paras. 207 through 208).

336. In the present case it has been established that Mr. Rosendo Radilla-Pacheco continues to be missing (supra para. 158). Therefore, the State shall, as a means of reparation of the victims' right to the truth, [FN318] continue with an effective search and immediate location of him, or that of his remains, either through a criminal investigation or through another adequate and effective procedure. The diligences performed by the State in order to determine the whereabouts of Mr. Radilla-Pacheco or, if it were the case, the exhumations in order to locate his remains

shall be carried out in agreement and the presence of the next of kin of Mr. Rosendo Radilla, as well as the experts, and legal representatives. Additionally, in the event that the remains of Mr. Radilla-Pacheco are located, they shall be delivered to his next of kin prior genetic proof of the relationship, as soon as possible and without any cost whatsoever. The State shall cover the funeral costs, according to the beliefs of the Radilla Martínez family and in common agreement with them.

[FN318] Cf. Case of the Caracazo v. Venezuela. Reparations and Costs, supra note 317, para. 122; Case of Ticona Estrada v. Bolivia, supra note 23, para. 84, and Case of Anzualdo Castro v. Peru, supra note 44, para. 185.

C2. Reforms to legal stipulations

i) Constitutional and legislative reforms in matters of military jurisdiction

337. The representatives asked this Court to order that the State make a reform to Article 13 of the Constitution, which regulates military jurisdiction, based on the fact that, "[e]ven though in principle the article does not seem to generate any problem whatsoever, the interpretations that have been made of the same[, …] result in the need to request its reform in order to reach the necessary precision, which shall prevent that members of the Mexican army be prosecuted by military courts even when they have committed violations of human rights."

338. For this Tribunal, not only the suppression or issuing of the regulations within the domestic legislation guarantee the rights enshrined in the American Convention, pursuant with the obligation included in Article 2 of that instrument. The development of State practices leading to the effective observance of the rights and liberties enshrined in the same is also required. Therefore, the existence of a regulation does not guarantee in itself that its application will be adequate. It is necessary that the application of the regulations or their interpretation, as jurisdictional practices and a manifestation of the state's public order, be adjusted to the same purpose sought by Article 2 of the Convention. [FN319] In practical terms, the interpretation of Article 13 of the Political Constitution of Mexico shall be coherent with the conventional and constitutional principles of the due process of law and the right to a fair trial, included in Article 8(1) of the American Convention and the relevant regulations of the Mexican Constitution.

[FN319] Cf. Case of Castillo Petruzzi et al. v. Peru, supra note 54, para. 207; Case of Ximenes Lopes v. Brazil. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, para. 83, and Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 118.

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339. With regard to judicial practices, this Tribunal has established, in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system. [FN320] But once a State has ratified an international treaty such as the American Convention, its judges, as part of

the State's apparatus, are also submitted to it, which compels them to make sure that the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation. In other words, the Judiciary shall exercise a "control of conventionality" ex officio between domestic regulations and the American Convention, evidently within the framework of its respective competences and the corresponding procedural regulations. Within this task, the Judiciary shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it. [FN321]

[FN320] Cf. Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 124, and Case of La Cantuta v. Peru, supra note 51, para. 173.

[FN321] Cf. Case of Almonacid Arellano et al. v. Chile, supra note 19, para. 124; Case of La Cantuta v. Peru, supra note 51, para. 173, and Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 169, para. 78. The Tribunal observes that the conventionality control has already been exercised in the domestic judicial realm in Mexico. Cf. Direct Administrative Appeal of Relief 1060/2008, First Collegiate Court in Administrative and Labor Matters of the Eleventh Circuit, judgment of July 2, 2009. That decision established that: "the local courts of the State of Mexico shall not limit themselves to the mere application of local laws but they are also compelled to apply the Constitution, international treaties or conventions, and the jurisprudence issued by the Inter-American Court of Human Rights, among other bodies, which forces them to exercise a control of conventionality among domestic regulations and supranational ones, as was considered by the First Chamber of the Supreme Court of Justice of the Nation […]."

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340. Therefore, it is necessary that the constitutional and legislative interpretations regarding the material and personal competence criteria of military jurisdiction in Mexico be adjusted to the principles established in the jurisprudence of this Tribunal, which have been reiterated in the present case (supra paras. 272 through 277).

341. As per this understanding, this Tribunal considers that it is not necessary to order the modification of the regulatory content included in Article 13 of the Political Constitution of the United Mexican States.

342. Despite the aforementioned, the Court stated in Chapter IX of the present Judgment that Article 57 of the Military Criminal Code is incompatible with the American Convention (supra paras. 287 and 289). Therefore, the State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make the mentioned provision compatible with the international standards of the field and of the Convention, pursuant with paragraphs 272 through 277 of this Judgment.

ii) Adequate definition of the crime of forced disappearance of persons: reforms to Article 215-A of the Federal Criminal Code pursuant with international instruments

343. The representatives requested that the Court order that the State "[e]xecute the legislative measures necessary to specifically adjust its domestic legal framework to its international commitments within the Inter-American realm of human rights." The Commission did not file any claim in this regard. On its part, the State mentioned that the State of Mexico "[i]s promoting a bill on forced disappearance of persons that will correct any deficiency in the harmonization of Mexican legislation with international standards in this regard."

344. In the present Judgment the Court established Article 215 A of the Federal Criminal Code, which punishes the crime of forced disappearance of persons, does nt fully and effectively adjust to international regulations in force in this subject (supra para. 324). Therefore, the State shall adopt all the measures necessary to make that legal classification compatible with the international standards, paying special attention to that stated in Article II of the CIDFP, pursuant with the criteria previously established in paragraphs 320 through 324 of the present judgment. This obligation is binding for al the state's powers and bodies as a whole. In that sense, the State shall not limit its actions to "promoting" the corresponding bill, but it shall guarantee its prompt sanction and entry into force, pursuant with the procedures established in its domestic legal system in that sense.

C3. Training legal agents and education in human rights

345. The representatives requested that this Tribunal order that the State train "[a]ll public officials who in the normal development of their tasks are in contact with the next of kin of victims of forced disappearance […] so they know how to deal with the considerations necessary […]" with those people.

346. Given the specific circumstances of the present case, this Tribunal considers it important to strengthen the institutional capacities of the State of Mexico, through the training of public officials, in order to avoid facts as those analyzed in the present case from happening again. With regard to the training in matters of the protection of human rights, the Court, in it jurisprudence, has considered that this is one form of offering public officials new knowledge, of developing their capacities, allowing their specialization in certain innovative areas, preparing them to fill different positions and adapting their abilities in order to offer a better performance in the tasks assigned. [FN322]

[FN322] Cf. Case of Claude Reyes et al. v. Chile. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2008, Considering clause number nineteen, and Case of Escher et al. v. Brazil, supra note 64, para. 251.

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347. Similarly, this Tribunal has reiterated that the State's obligation to adequately investigate and punish, in its case, those responsible, shall be diligently complied with in order to avoid impunity and the repetition of this type of facts. Therefore, the Courts orders that, without detriment to the training programs for public officials in matters of human rights that already exist in Mexico, the State shall implement, within a reasonable period of time and with the corresponding budgetary stipulation:

a) Programs or permanent courses regarding the analysis of the jurisprudence of the Inter-American Human Rights Protection System in reference to the limits of military criminal jurisdiction, as well as the rights to judicial guarantees and judicial protection, as a way of preventing that cases of violations of human rights be investigated and prosecuted by that jurisdiction. Those programs will be addressed to the members of all the Military's Forces, including agents of the Public Prosecutors' Office and judges, as well as the agents of the public prosecutors' office of the Attorney General of the Republic and judges of the Judiciary of the Federation, and

b) A training program on the due investigation and prosecution of facts that constitute the forced disappearance of persons, addressed to agents of the Public Prosecutors' office of the Attorney General of the Republic and judges of the Judiciary of the Federation, who have jurisdiction in the investigation and prosecution of facts such as the ones that occurred in the present case, in order to provide those officials with the legal, technical, and scientific elements necessary to comprehensively evaluate the phenomenon of forced disappearance. Specifically, in this type of cases the authorities in charge of the investigation shall be trained in the use of circumstantial evidence, indicia, and presumptions, the assessment of the systematic patterns that may lead to the facts under investigation and the location of persons who have suffered a forced disappearance. (supra para. 206 and 222).

348. Within the aforementioned programs, special reference shall be made to the present Judgment and to the human rights international instruments to which Mexico is a Party.

C4. Publication of the relevant parts of the present Judgment

349. The representatives requested the publication of the judgment "[s]o that the general population be informed of the judgment issued by [the] Court and its scope." In this regard, the State indicated that if appropriate, this measure would be subject to that ordered by the Court.

350. As stated by this Tribunal in other cases, [FN323] the State shall publish in the Official Gazette of the Federation and in another newspaper of ample national circulation, for a single time, paragraphs 1 through 7, 52 through 66, 114 through 358 of the present Judgment, without the footnotes, and its operative paragraphs. Additionally, as has been ordered by the Tribunal on previous occasions, [FN324] the present Judgment shall be published in its totality on the official website of the Attorney General of the Republic and be available for a one-year period. For the publications in the newspapers and on the Internet the terms of six and two months, respectively, computed as of the notification of the present Judgment, are set.

[FN323] Cf. Case of Barrios Altos v. Peru. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5(d); Case of Escher et al., supra note 64, para. 239, and Case of Garibaldi v. Brazil, supra note 32, para. 157.

[FN324] Cf. Case of the Serrano Cruz Sisters v. El Salvador, supra note 82, para. 195; Case of Escher et al. v. Brazil, supra note 64, para. 239, and Case of Garibaldi v. Brazil, supra note 32, para. 157.

C5. Public act of acknowledgment of international responsibility

351. The representatives requested that the Court order the State to hold a public act of acknowledgment of international responsibility for the facts of the present case through the head of State. In this regard, the State indicated that "[i]n consultation with the next of kin of the victim, it would hold an act of acknowledgment of […] responsibility with regard to the violations determined [by the Court]." Likewise, it indicated that it would offer an apology to the next of kin of the victim.

352. The Court values positively the offering made by the State regarding this form of reparation, given the importance and positive effects this modality of reparations has for the victims of violations of human rights. On previous occasions, the Court has valued favorably those acts that seek to recover the memory of the victims, the acknowledgment of their dignity, and the consolation of their relatives. [FN325]

[FN325] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 133, para. 254; Case of Ximenes Lopes v. Brazil, supra note 319, para. 227, and Case of the Miguel Castro Castro Prison v. Peru, supra note 51, para. 430.

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353. Taking into account the aforementioned, this Tribunal considers it necessary that the State hold a public act of acknowledgment of responsibility with regard to the facts of the present case and in satisfaction of the memory of Rosendo Radilla-Pacheco. Reference shall be made, in that act, to the violations of human rights declared in the present Judgment. Likewise, it shall be carried out through a public ceremony in the presence of high national authorities and the next of kin of Mr. Radilla-Pacheco. The State and the next of kin of Mr. Radilla-Pacheco and/or their representatives, shall agree on the modality of compliance with the public act of acknowledgment, as well as the specific aspects required, such as the place and date on which it will be held.

354. Additionally, with the objective of preserving the memory of Mr. Rosendo Radilla-Pacheco within the community to which he belonged, in the same act of acknowledgment of responsibility, if possible, or after it, the State shall, in coordination with the victims, place a commemorative plaque of the facts of his forced disappearance in some part of the city of Atoyac de Álvarez.

C6. Reestablishment of the memory: bibliographic sketch of the life of Mr. Rosendo Radilla-Pacheco.

355. The representatives requested that with the objective of recalling the life and works carried out by Rosendo Radilla-Pacheco in benefit of the community of Atoyac, the State be order to distribute the bibliographical book written by Andrea Radilla Martínez on her father. Likewise, that in his memory, the State transmit the video made on the period of the dirty war on official spaces and on prime time. In its proposal of reparation, the State offered to make a

bibliographical sketch of the life of Mr. Rosendo Radilla-Pacheco, accompanied either by the reproduction of official documents regarding this case (admissibility reports, orders, expert reports) or with oral testimonies on his trajectory, gathered in situ, for which the State would hire an investigator. According to that indicated, the edition of the book would have images on a gray scale and 1000 copies would be printed.

356. The Court considers that the historical vindication and the dignity of Mr. Rosendo Radilla-Pacheco is of utmost importance, reason for which it values and accepts the proposal made by the State in the present case, as a guarantee of non-repetition, since these initiatives are important both for the preservation of the memory and satisfaction of the victims, and the recovery and reestablishment of the historical memory within a democratic society. Based on the aforementioned, the Court considers that the State shall execute the proposal to prepare a bibliographical sketch of the life of Mr. Radilla-Pacheco, in the terms proposed in the previous paragraph, through a publication, as of the investigation in situ and of the reproduction of the corresponding official sources. Said publication shall be made within a one-year term. Additionally, this measure shall be fulfilled with the participation of the victims.

C7. Psychological attention

357. The representatives requested that the Court order the State to provide free medical and psychological assistance to the next of kin of Mr. Radilla-Pacheco in a public or private institution, as well as medications, without cost, for the treatments diagnosed.

358. This Tribunal, having verified the damages suffered by the victims in the present case, which were established in Chapter VIII of the present Judgment, considers it convenient to order that the State offer free psychological and/or psychiatric attention immediately, adequately, and effectively, through its specialized public health institutions, to the victims that so request it. For this, it shall take into consideration the special sufferings of the beneficiaries through the prior realization of a physical and psychological assessment. Likewise, the corresponding treatments shall be offered for as long as considered necessary and it shall include the free supply of the medications that could eventually be required.

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359. Regarding the other means of reparation requested by the representatives in its brief of pleadings and motions, [FN326] the Court considers that the issuing of the present Judgment and the reparations ordered in this chapter are sufficient and adequate for the reparation of the consequences of the violations suffered as a consequence of the forced disappearance of which Mr. Rosendo Radilla-Pacheco and his next of kin were victims. Those measures of reparation requested in a time-barred manner by the representatives in the final written arguments will not be considered by the Tribunal.

[FN326] The representatives requested: i) the inclusion of the period named “dirty war” in the subject of history at public schools and “the elaboration of a textbook as well as documentaries regarding the ‘dirty war’; ii) the establishment of the “day of disappeared-detainees;” iii) the

creation of commemoration spaces for the next of kin of the disappeared persons that may enable the intergenerational transmission of the memory of the "dirty war"; iv) public access to the historical archive gathered by the investigators attached to the General Office of Historical Investigation of the Special Prosecutors' Office and the diffusion of the Historical Report to the Mexican society; v) the creation of a "memorial" museographic space of the "dirty war" at Atoyac de Álvarez; vi) the construction of a monument at the public plaza of Atoyac to remember the disappeared persons; vii) the establishment of a mechanism for the follow-up and verification of compliance of the reparation, made up be people of a well known moral authority within the society; viii) the opening of channels for the community's political participation; ix) the formation of mutual support groups with the next of kin of disappeared persons and psychosocial support with trustworthy people of the next of kin, trained in the consequences of political violence and psychosocial trauma, and x) the creation of the Committee for the Search of People who Disappeared due to Political Motives. In their final arguments, the representatives requested, in a time-barred manner, other reparations, namely: i) the creation of a genetic bank for the identification of possible remains of disappeared persons; ii) the reform to the law on responsibility for damages so it will be a law for the comprehensive reparation of the damage, and iii) the issuance of a law on cooperation with the bodies of the Inter-American System.

D. Indemnifications, compensations, costs, and expenses

D1. Pecuniary damages

360. The Court has developed in its jurisprudence the concept of pecuniary damages and the assumptions under which it shall be compensated. [FN327]

[FN327] This Tribunal has established that pecuniary damages assumes "the loss or detriment of the income of the victims, the expenses made due to the facts and the pecuniary consequences that have a causal relationship with the facts of the case." Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para 43; Case of Escher et al. v. Brazil, supra note 64, para. 224, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 111.

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361. The Commission requested that the Court set, in equity, the amount of the compensation corresponding to the consequential damages and future losses. The representatives, on their part, made specific requests regarding pecuniary damages, which they included in the demand for future losses and consequential damages. The State, in its proposal of reparation presented to this Tribunal, reiterated its will to acknowledge as compensation for pecuniary damages the following items regarding future losses and consequential damages, the latter provided that the next of kin of Mr. Radilla-Pacheco prove the expenses incurred in.

362. As previously established by the Court, the reparations shall have a causal relationship with the facts of the case, the violations declared, the damages proven, as well as with the

measures requested to repair the corresponding damages. Therefore, the Tribunal shall observe said concurrence in order to issue a rulin in due manner and pursuant with law. [FN328]

[FN328] Cf. Case of Ticona Estrada et al., supra note 23, para. 110, and Case of Garibaldi v. Brazil, supra note 32, para. 186.

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i) Loss of income

363. Regarding the loss of income of Mr. Rosendo Radilla-Pacheco, the representatives stated that the amount of $343,816.95 Mexican pesos (three hundred forty three thousand eight hundred sixteen pesos with ninety five cents) was what corresponded to loss income, based on an estimate made taking into account the national consumer price index from the month of October 1974 through September 1980 minus 25% of the personal expenses he could have incurred in, and that at the time of his disappearance Mr. Rosendo Radilla-Pacheco was 60 years old, he was a coffee grower, a cattle breeder and fully enjoyed his physical and mental capacities. [FN329] Likewise, they stated that as of the day of the arrest and subsequent disappearance of Mr. Rosendo Radilla, the family, which at the time consisted of 12 children, stopped receiving an income, since its main supplier was Mr. Rosendo Radilla-Pacheco.

[FN329] Even though the representatives stated that 64 was the life expectancy at the time of his disappearance, they considered that 65 would have been the age at which Mr. Rosendo Radilla-Pacheco would have stopped working and perceiving income from his regular activities, without arguing or proving this statement.

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364. On its part, the State offered as compensation for the item of "lost income" an amount of $65,640.98 Mexican pesos (sixty five thousand six hundred and forty pesos with ninety eight cents), estimated taking into account the age of 61 as Mexico's life expectancy index for men in the year 1974, information gathered on the minimum wages in force in the municipality of Atoyac de Álvarez and adjustments for general salary increases, both during the period.

365. The Court observes that neither the representatives nor the State presented documents proving the salaries or income perceived by Mr. Rosendo Radilla-Pacheco at that time. However, taking into account the State's proposal and the victim's probable life expectancy, this Tribunal decided to set, in equity, the amount of US$ 12,000 (twelve thousand dollars of the United States of America) or its equivalent in Mexican pesos, in the concept of loss of income of Mr. Radilla-Pacheco, which shall be distributed in equal parts between his successors. Said amount shall be paid within the term set by the Court for that effect (infra para. 386)

ii) Consequential damages

366. With regard to the expenses incurred in while obtaining information on the whereabouts of Mr. Rosendo Radilla-Pacheco, the representatives pointed out that the actions carried out by

his next of kin in order to locate him since the day of his disappearance, implied trips to different parts of the country, as well as several diligences and judicial processes, reason for which they indicated they incurred in expenses of approximately $ 17,400.00 Mexican Pesos (seventeen thousand four hundred Mexican pesos); however, the next of kin do not have receipts due to the time that has gone by, which is why they asked the Court to set, in equity, the compensation for this aspect. Likewise, they asked the Court to set, in equity, an amount as compensation for the expenses incurred in due to the health sufferings and psychological disorders suffered by Mr. Radilla-Pacheco's children as a result of his forced disappearance. Finally, they requested an adequate compensation for what they considered damage to the family's assets, since Mr. Radilla-Pacheco's family was forced to sell several properties in order to pay the expenses generated by the search for him and payment of the family's daily needs.

367. The State held that "[t]he next of kin of the victim who have a right to the reparation have not proven up to this moment if they incurred in additional expenses that could be included in this item, such as medical or psychological attention;" however, the State was willing to make this reparation as soon as the next of kin of Mr. Rosendo Radilla-Pacheco proved "[t]he expenses already referred to."

368. The Court acknowledges that the actions and processes carried out by the next of kin of Mr. Radilla-Pacheco to locate him generated expenses that shall be considered consequential damages, especially what refers to the actions tending to discover his whereabouts before different authorities, and it will so include them upon setting the corresponding compensation in the present section. However, regarding the mentioned loss of several properties the Radilla Martínez family apparently had, the Tribunal warns that from the evidence provided by the representatives sufficient elements that could allow it to establish the alleged damage and its connection to the facts of the forced disappearance of Mr. Radilla-Pacheco cannot be inferred; therefore, it will not set a specific amount in this regard.

369. With regard to the alleged expenses for medical and psychiatric attention incurred in by the victims in the present case, the Court warns that the representatives did not present evidence, either receipts, medical histories or certificates, among others, based on which it could establish that in fact they received medical attention due to the effects of these facts and that they incurred in other expenses in this sense. Similarly, the representatives did not present an estimate of those expenses. Even though the Court has established that due to the nature and seriousness of the facts that constitute a forced disappearance, the victims in the present case have suffered grave psychological effects that result evident (supra paras. 168 through 172), in order for the Court to be able to order the reimbursement for consequential damages, they must be proven. Due to the aforementioned, it is not appropriate to set an amount in this regard in the present case.

370. Therefore, the Court sets, in equity, a compensation of US $ 1,300.00 (one thousand three hundred dollars of the United States of America) pursuant with that indicated in this section (supra paras. 161 through 172). That amount shall be delivered in equal parts to the beneficiaries in the present case (supra para. 328).

D2. Non-pecuniary damage

371. The Court has developed in its jurisprudence the concept of non-pecuniary damages and the assumptions in which it shall be compensated. [FN330]

[FN330] The Tribunal has established that non-pecuniary damage "may include both the suffering and the afflictions caused to the direct victim and his next of kin, the damage to values that are very important to the persons, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his next of kin." Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Escher et al. v. Brazil, supra note 64, para. 224, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 111.

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372. The Commission requested that the Tribunal order the payment of a compensation, in equity, for the non-pecuniary damage resulting from the forced disappearance of Mr. Radilla-Pacheco "[d]ue to the grave circumstances of the present case, the intensity of the sufferings the corresponding facts caused the victims and his next of kin, [and] the alterations of the living conditions of the [same]." The representatives also asked the Court to set, in equity, a compensation for this item.

373. The State mentioned that "[u]sing as a reference the judgment of the […] Court in the case of the Serrano Cruz Sisters v. El Salvador, [it offered] as a reparation measure to the next of kin of the victims, based on equity and as compensation for non-pecuniary damages, the payment of US $30,000.00 (thirty thousand dollars [of the United States of America]) for the next of kin of Mr. Rosendo Radilla-Pacheco" entitled to the reparation.

374. The international jurisprudence has repeatedly established that the judgment can constitute per se a form of reparation. [FN331] However, considering the circumstances of the case sub judice, the sufferings that the violations committed caused the victims in the present case, as well as the variation in their living conditions and the other non-pecuniary consequences suffered by the latter, the Court considers it appropriate to set, in equity, an amount as compensation for non-pecuniary damages. [FN332]

[FN331] Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 57; Case of Escher et al. v. Brazil, supra note 64, para. 233, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 100.
[FN332] Cf. Case of Neira Alegría et al. v. Peru, supra note 331, para. 56; Case of Kawas Fernández v. Honduras, supra note 40, para. 184, and Case of Garibaldi v. Brazil, supra note 32, para. 193.

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375. In attention to the compensations ordered by the Tribunal in other cases on forced disappearances of persons, and in consideration of the circumstances of the present case, the entity, nature, and seriousness of the violations committed, the suffering caused to the victims and the treatment they have received, the time that has gone by since the disappearance started,

the denial of justice, as well as the change in the conditions of their lives, and the other non-pecuniary consequences suffered by them, the Court considers it appropriate to set, in equity, the amount of US $80,000.00 (eighty thousand dollars of the United States of America) in favor of Rosendo Radilla-Pacheco, as compensation for the concept of non-pecuniary damages. At the same time, for the same concept, the Tribunal sets in equity the compensation of US $40,000.00 (forty thousand dollars of the United States of America) in favor of Messrs. Tita Radilla Martínez, Andrea Radilla Martínez, and Rosendo Radilla Martínez, each, in this concept.

D3. Costs and Expenses

376. As stated by the Court in previous opportunities, the costs and expenses are included within the concept of reparation enshrined in Article 63(1) of the American Convention. [FN333]

[FN333] Cf. Case of Garrido and Baigorria v. Argentina, supra note 283, para. 79; Case of Escher et al. v. Brazil, supra note 64, para. 255, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 115.

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377. The Commission requested to the Court that "[o]nce it has heard the victims' representatives, it order that the State pay the costs and expenses duly proven by them[,] in attention to the special characteristics of the case."

378. The representatives indicated that "[b]oth the next of kin and the AFADEM [Association of Relatives of Disappeared Detainees and Victims of Human Rights Violations] and the CMDPDH [Mexican Commission for the Defense and Promotion of Human Rights] have incurred in expenses during the search for justice and truth in the present case," both at a national level and before the Inter-American Commission, along with expenses in the concept of "[r]ent, delivery of documents, telephone calls, and copies, among others." Based on the aforementioned, they determined through two general lists that refer to annual expenses, the different expenses in which both organizations had incurred throughout the litigation of the case.

379. In response to a request from the President of the Court, which seeks that the representatives indicate if they had reached any type of agreement with the next of kin of Mr. Radilla-Pacheco with regard to the costs and expenses of the litigation, the representatives stated that on February 6, 2009, AFADEM and the CMDPDH had signed an agreement that specifies in its clauses:

TEN.- In what refers to any pecuniary reparation for the material and/or moral damage obtained in reason of the litigation of the cases or their resolution by any other process will be handed over in their totality to the family of the specific case in question, except when the expenses and costs set correspond exclusively to the AFADEM and the CMDPDH in a proportional manner in order to recover the amounts paid throughout the litigations and actions carried out with regard to these.
TEN a).- The CMDPDH in no case and for no reason whatsoever will receive payment from any of the victims or the AFADEM for the services rendered and will only receive what is

established by the competent authority strictly in reference to payment of the expenses and costs derived from the tasks performed in the cases. [FN334]

[FN334] Cf. Agreement of the framework for the institutional collaboration between the Association of Relatives of Disappeared Detainees and Victims of Violations of Human Rights (AFADEM) and the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH) of February 6, 2009 (dossier of merits, volume IX, folios 3004 through 3006).

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380. The State, on its part, in the respondent's plea, "consider[ed] it fair to propose the amount [of] US$ 18,000.00 [eighteen thousand dollars of the United States of America, or its equivalent in pesos,] to the petitioners," taking into consideration that from the information established in the report itself of the Inter-American Commission it can be concluded that the next of kin of Mr. Radilla carried out, as of 1990, activities "before the non-jurisdictional body for the protection of human rights" in order to achieve justice.

381. In what refers to the reimbursement of the costs and expenses, it corresponds to the Tribunal to prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated throughout the course of the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international human rights protection jurisdiction. This assessment can be achieved based on the principle of equality and taking into account the expenses stated by the parties, as long as their quantum is reasonable. [FN335]

[FN335] Cf. Case of Garrido and Baigorria v. Argentina, supra note 283, para. 82; Case of Valle Jaramillo et al. v. Colombia, supra note 40, para. 243, and Case of Dacosta Cadogan v. Barbados, supra note 43, para. 119.

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382. The Court observes that the representatives requested the reimbursement of several expenses incurred in for the payment of rent of the commercial establishments where both organizations, AFADEM and CMDPDH, operated; in fact, some of the expenses claimed by the organization AFADEM included rent from the year 1978 up to 2008. In this sense, it shall be pointed out that this Court's jurisdiction arises as of 1998, reason for which the reparations requested in matters of costs and expenses shall be in accordance with this temporary competence. Similarly, the Court observes that the representatives requested the reimbursement of a set of trips to the "UN" in the amount of $325,000.00 Mexican pesos (three hundred and twenty-five thousand pesos). Additionally, they requested the reimbursement of activities of the international day of the disappeared detainee, the international week of the disappeared-detainee, and the month of the disappeared-detainee in Mexico and the Caribbean for a total of $83,700 Mexican pesos (eighty three thousand seven hundred pesos). The Court considers that all these expenses do not have a direct and exclusive relationship with the litigation of the present case before the Inter-American system. Additionally, the request for reimbursement in the concept of rent of the commercial establishments is inadmissible due to lack of reasonability. Therefore,

said expenses will not be taken into account upon determining the amount of costs and expenses to be ordered by the Tribunal. Finally, the Court observes that part of the evidentiary substantiation of the costs and expenses is not strictly related with the litigation of the present case before the Inter-American system or domestic authorities, but instead they are part of different projects developed by the AFADEM and the CMDPDH.

383. The Tribunal considers that the breakdown and other evidence documents forwarded by the representatives do not allow a determination of the relationship with the present case of some of the lodging, transportation, telephone and messenger service expenses mentioned. Due to the lack of evidentiary precision, the Court will assess in equity an amount in the concept of costs and expenses that shall reasonably include these concepts presumably incurred in during the litigation of the present case in the domestic and Inter-American jurisdictions by the next of kin of Mr. Rosendo Radilla or by the organizations that represent them.

384. On the other hand, the representatives requested the reimbursement of a total of $2,910,686.99 Mexican pesos (two million nine hundred ten thousand six hundred and eighty six pesos with ninety nine cents) in favor of the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH), in the concept of costs and expenses that include airplane tickets, travel expenses, copies, mail services, messenger services, telephone calls, rent for the commercial establishment, electricity, trips of Mrs. Tita Radilla Martínez and Mr. Julio Mata (AFADEM), fees, and workshops. In this sense, it was verified that the representatives incurred in expenses related with the processing of the present case before this Tribunal, such as fees, transportation expenses, and messenger and communication services, and even the transfer of attorneys and a witness from Mexico to the Court's headquarters in San Jose, Costa Rica.

385. In consideration of all the aforementioned, the Court sets in equity the total amount of US $25,000.00 (twenty-five thousand dollars of the United States of America) in favor of the Association of Relatives of Disappeared Detainees and Victims of Human Rights Violations in Mexico and the Mexican Commission for the Defense and Promotion of Human Rights, for the concept of the costs and expenses incurred in throughout the litigation of the present case. Said amount shall be handed over by the State to Mrs. Tita Radilla Martínez, who will then pass it on to the representatives of those organizations, as corresponds. Those amounts include the future expenses in which the Radilla Martínez family and the representatives may incur in at a domestic level or during monitoring of compliance with this Judgment.

D4. Modalities of compliance with the payments ordered

386. The State shall pay the compensations ordered for pecuniary and non-pecuniary damages directly to their beneficiaries, and the payment for costs and expenses directly to Mrs. Tita Radilla Martínez, all within a one-year term computed as of the notification of the present Judgment, in the terms of the following paragraphs.

387. The payments corresponding to the compensations for pecuniary ad non-pecuniary damages suffered directly by Mr. Rosendo Radilla-Pacheco (supra paras. 365, 370, and 375), will be distributed in equal parts among his sucessors.

388. If the beneficiaries were to pass away before the delivery of the corresponding compensations, they shall be delivered directly to their successors, pursuant with the applicable domestic law.

389. The State shall fulfill its obligations by tendering United States dollars or an equivalent amount in Mexican currency, using for the corresponding estimate the exchange rate between both currencies in force in New York, United States of America the day prior to the day payment is made.

390. If, for reasons attributable to the beneficiaries of the compensations or their successors, respectively, it is not possible for them to receive the amounts within the indicated period, the State shall deposit those amounts in their favor in an account or a deposit certificate in a solvent Mexican financial institution, in United States dollars, and in the most favorable financial conditions permitted by law and banking practices. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

391. The amounts assigned in the present Judgment as compensations and reimbursement of costs and expenses shall be delivered in whole to the persons indicated, pursuant with the stipulations of this Judgment, without deductions derived from possible taxes.

392. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Mexico.

XII. OPERATIVE PARAGRAPHS

1. Therefore,

THE COURT

DECIDES,

unanimously

1. To reject the preliminary objections filed by the United States of Mexico, pursuant with paragraphs 14 through 50 of the present Judgment.
2. To accept the partial acknowledgment of international responsibility made by the State, in the terms of paragraphs 52 through 66 of the present Judgment.

DECLARES,

unanimously, that,

3. The State is responsible for the violation of the rights to personal liberty, to humane treatment, to juridical personality, and to life, enshrined in Articles 7(1), 5(1), 5(2), 3, and 4(1) of the American Convention on Human Rights, in relation with the obligation to respect and guarantee included in Article 1(1) of the same and with Articles I and XI of the Inter-American

Convention on Forced Disappearance of Persons, in detriment of Mr. Rosendo Radilla-Pacheco, in the terms of paragraphs 120 through 159 of the present Judgment.

4. The State is responsible for the violation of the right to humane treatment enshrined in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation with Article 1(1) thereof, in detriment of Mrs. Tita and Andrea and Mr. Rosendo, all of surnames Radilla Martínez, in the terms of paragraphs 160 through 172 of the present Judgment.

5. The State is responsible for the violation of the rights to a fair trial and judicial protection, acknowledged in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation with Articles 1(1) and 2 of the same and Articles I subparagraphs a), b), and d), IX, and XIX of the Inter-American Convention on Forced Disappearance of Persons, in detriment of Mrs. Tita and Andrea and Mr. Rosendo, all of surnames Radilla Martínez, in the terms of paragraphs 173 through 314 of the present Judgment.

6. The State failed to comply with the duty to adopt domestic legal effects established in Article 2 of the American Convention on Human Rights, in relation with Articles I and III of the Inter-American Convention on Forced Disappearance of Persons and regarding the legal classification of the crime of forced disappearance of persons, in the terms of paragraphs 315 through 324 of the present Judgment.

AND, STATES,

unanimously, that

7. This judgment constitutes per se a form of reparation.

8. The State shall effectively carry out, with the due diligence and within a reasonable period of time, the investigation and, if it were the case, the criminal proceedings established with regard to the arrest and subsequent forced disappearance of Mr. Rosendo Radilla-Pacheco, in order to determine the corresponding criminal responsibilities and effectively apply the punishments and consequences established by law, in the terms of paragraphs 329 through 334 of the present Judgment.

9. The State shall continue with the effective search for and the immediate location of Mr. Rosendo Radilla-Pacheco or, in its case, of his remains, in the terms of paragraphs 335 through 336 of the present Judgment.

10. The State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make Article 57 of the Code of Military Justice compatible with the international standards in this subject and the American Convention on Human Rights, in the terms of paragraphs 337 through 342 of the present Judgment.

11. The State shall adopt, within a reasonable period of time, the appropriate legislative reforms in order to make Article 215 A of the Federal Criminal Code compatible with the international standards in this subject and the Inter-American Convention on Forced Disappearance of Persons, in the terms of paragraphs 343 through 344 of the present Judgment.

12. The State shall implement, within a reasonable period of time and with the corresponding budgetary disposition, programs or permanent courses regarding the analysis of the jurisprudence of the Inter-American Human Rights Protection System in reference to the limits of military criminal jurisdiction, as well as a training program on the correct investigation and prosecution of facts that constitute the forced disappearance of persons, in the terms of paragraphs 345 through 348 of the present Judgment.

13. The State shall publish in the Official Gazette of the Federation and in another newspaper of ample national circulation, for a single time, paragraphs 1 through 7, 52 through 66, 114 through 358 of the present Judgment, without the footnotes, and its operative paragraphs, and publish this Judgment in its totality on the official website of the Attorney General of the Republic, in a six and two-month term, respectively, as of the notification of this Judgment, in the terms of paragraphs 349 through 350 of the same.
14. The State shall hold a public act of acknowledgment of responsibility with regard to the facts of the present case and in order to preserve the memory of Mr. Rosendo Radilla-Pacheco, in the terms of paragraphs 351 through 354 of the present Judgment.
15. The State shall prepare a bibliographical sketch of the life of Mr. Rosendo Radilla-Pacheco, in the terms of paragraphs 355 through 356 of the present Judgment.
16. The State shall provide free psychological and/or psychiatric attention immediately, adequately, and effectively, through its specialized public health institutions, to the victims declared in the present Judgment and that so request it, in the terms of paragraphs 357 through 358 of the same.
17. The State shall pay the amounts set in paragraphs 365, 370, 375, and 385 of the present Judgment, in the concept of compensation for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses, as corresponds, within a one-year term computed as of the notification of the present Judgment, in the terms of paragraphs 360 through 392 of the same.
18. The Court will monitor full compliance of this Judgment, in exercise of its powers and in compliance of its duties pursuant with the American Convention, and will consider the present case concluded when the State has fully complied with that stated herein. The State shall, within a one-year term computed as of the notification of this Judgment, present the Court with a report on the measures adopted to comply with it.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on November 23, 2009.

Cecilia Medina Quiroga
President

Diego García-Sayán
Manuel Ventura Robles
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary