

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 19, 2011**

CASE OF RADILLA PACHECO v. UNITED MEXICAN STATES

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Preliminary Objections, Merits, Reparations and Costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 23, 2009, whereby it held that:

[...]

8. The State shall effectively carry out, with due diligence and within a reasonable time, the investigation and, if applicable, criminal proceedings 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 accordance with paragraphs 329 through 334 of the [...] Judgment.

9. The State shall continue with the effective search for and the immediate location of Mr. Rosendo Radilla Pacheco or, if applicable, of his remains, in accordance with paragraphs 335 through 336 of the [...] Judgment.

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

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

12. The State shall implement, within a reasonable time and with the corresponding budgetary allocation, programs or permanent courses on the analysis of the jurisprudence of the inter-American System of Human Rights Protection regarding the limits of military criminal jurisdiction, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons, in accordance with paragraphs 345 through 348 of the [...] Judgment.

13. The State shall publish once in the Official Gazette of the Federation and in another newspaper of ample national circulation paragraphs 1 through 7, 52 through 66, 114 through 358 of the [...] Judgment and its operative paragraphs, without the footnotes. In addition, the State shall 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 th[e] Judgment, in accordance with paragraphs 349 through 350 therein.

14. The State shall hold a public act of acknowledgment of responsibility with regard to the facts of the present case and to restore the memory of Mr. Rosendo Radilla Pacheco, in accordance with paragraphs 351 through 354 of the [...] Judgment.

15. The State shall prepare a bibliographical sketch of the life of Mr. Rosendo Radilla Pacheco, in accordance with paragraphs 355 through 356 of the [...] 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 [...] Judgment that request it, in accordance with paragraphs 357 through 358 therein.

17. The State shall pay the amounts awarded in paragraphs 365, 370, 375, and 385 of the [...] Judgment as compensation for pecuniary and non-pecuniary damages, and the reimbursement of costs and expenses, as appropriate, within a one-year as of the date that notice of the [...] Judgment is served, in accordance with paragraphs 360 through 392 therein.

[...]

2. The communications of April 27, May 12, and December 1, 15, and 29, 2010, as well as the communications of 28 January and 15 February 2011, in which the United Mexican States (hereinafter "the State" or "Mexico") submitted information on its compliance with the Judgment issued by the Court in the present case (*supra* Having Seen 1).

3. The briefs of December 15, 2010 and March 3, 2011, through which the representatives of the victims (hereinafter "the representatives") submitted their observations on the information submitted by the State (*supra* Having Seen 2).

4. The communications of February 8, and April 13, 2011, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the information submitted by the State and the representatives (*supra* Having Seen 3).

5. The communication of December 16, 2010, in which the Human Rights Committee of the Bar of England and Wales and the Solicitor's International Human Rights Group submitted an *amicus curiae* brief.

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

2. Mexico is a State party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since March 24, 1981, and it acknowledged the contentious jurisdiction of the Court on December 16, 1998. Furthermore, the State ratified the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002.

3. Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties." To this end, States should ensure the domestic implementation of provisions set forth in the Court's rulings.¹

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of the Ituango Massacres v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of December 22, 2010, Considering Clauses 3 and 4, and *Case of Tibi v. Ecuador*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 3, 2011, Considering Clause 3.

4. In virtue of the definitive and non-appealable nature of the Court's Judgments, according to the provisions of Article 67 of the American Convention, the State should fully comply with such Judgments.

5. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international responsibility of the State, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, ignore their international responsibility.² The treaty obligations of State Parties are binding on all branches and bodies of the State.³

6. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

A. *Obligation to investigate the facts of the case (Operative Paragraph 8 of the Judgment)*

7. The State reported on various measures undertaken as of March 22, 2010 in preliminary inquiry SIEDF/CGI/454/2007, which is overseen by the Attorney General's Office and seeks information on what happened to Mr. Rosendo Radilla Pacheco. The State reported that "various meetings [...] were held in order to develop a work plan with the victims' next of kin [...] for the purpose of continuing with investigations[.]" Additionally, the State indicated that "Tita Radilla Martínez's legal representatives [...] have had full access to the investigation['s files] every time they have requested it."

8. The representatives indicated that "to date, no military or civilian authority with power over the Armed Forces that were active at the time of [Mr.] Radilla [Pacheco]'s disappearance has been called to give a statement." They also affirmed that none of the actions that the Attorney General's Office has carried out "has been directed toward [military and civilian] officials who were employed at the time that [Mr.] Radilla [Pacheco] was detained/disappeared." According to the representatives, the only "relevant [measures] carried out that are vaguely linked to the Armed Forces [are] those related to the

² Cf. *International responsibility for the issuance and application of laws that violate the Convention* (Art. 1 and 2 of the American Convention on Human Rights). Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Miguel Castro Castro Prison v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of December 21, 2010, Considering Clause 6, and *Case of Tibi v. Ecuador*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause 3.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause 3; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, Considering Clause 6, and *Case of Tibi v. Ecuador*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause 4.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgement of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, Considering Clause 7, and *Case of Tibi v. Ecuador*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause 5.

excavations at the ex-military barracks in Atoyac de Álvarez, Guerrero State.” Additionally, the representatives stated that the Attorney General’s Office “has not addressed the last proposals [they] made during the preliminary inquiry,” and “the Public Ministry has not taken concrete actions demonstrating that investigations in the case are advancing effectively.” Finally, the representatives indicated to the Tribunal that although they have had full access to the preliminary inquiry’s files at the Attorney General’s Office, they have been denied copies of those files, which “restricts [the] right to participate in the investigation and violates [...] the victims’ right to access justice.” Additionally, the representatives stated that “they were denied participation” in an ministerial inspection, “which consisted of a search for registries in cemeteries in the area of unknown persons that died in the 70’s,” since authorization had not been granted to them.

9. The Inter-American Commission affirmed that it “value[d] the [State’s] efforts to reactivate the investigations of the case.” However, it observed that “no significant advances had been verified [in those investigations] since the date that the [J]udgment was issued.” For that reason, it indicated that “the State should carry out all efforts necessary to act with due diligence and take relevant actions that will lead to effective compliance with these aspects of the Judgment.” Finally, the Commission “showe[d] concern over the information submitted by the representatives with respect to the State’s refusal to give them copies of the investigations, given that this situation was evaluated by [the Court] in its [J]udgment, in which it indicated that this [was] incompatible with their right to access justice.”

10. The Court observes that the State undertook measures in the aforementioned preliminary inquiry, which is being carried out by civilian authorities, as ordered in the Judgment. However, from the information presented by the State, it is not possible for the Court to ascertain how the preliminary inquiry complies with the standards set out in the Judgment with respect to the elements that must be considered in the investigation of facts such as those that occurred in this case.⁵ The Tribunal reminds the parties that in this case, the obligation to investigate entails not only the duty to search for Mr. Radilla Pacheco, but also to undertake effective investigations with due diligence and in a reasonable time that could lead to a determination of criminal responsibility and to the effective implementation of any possible criminal punishments and other consequences provided for by the law. The Court highlights that 37 years have passed since Mr. Radilla Pacheco disappeared at the hands of State agents. Due to the foregoing, it is necessary that the State submit updated, detailed, and complete information on all of the actions it is undertaking with respect to the investigation into the facts of this case, in such a way that the Court may verify that the investigations are being carried out in accordance with the purpose of this reparation measure.

11. Additionally, as to the State’s refusal to provide copies of the preliminary inquiry’s files so indicated by the representatives (*supra* Considering Clause 8), this point was specifically addressed by the Court in its Judgment, indicating that this refusal was “incompatible with the right to participate in the preliminary inquiry[, which] translated into a violation of Tita Radilla Martínez’s right to fully participate in the investigation.” The Court held that “the victims in the present case must have the right to access the case file, as well as to request and obtain copies of it, given that the information contained therein is not subject to confidentiality” because it relates to grave human rights violations. Additionally, with respect to the alleged denial of the representatives’ participation in an examination of cemetery registries, the Court reminds the parties that in its Judgment it repeated that

⁵ Cf. *Case of Radilla Pacheco V. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 206, 215 and 222.

"during the investigation and prosecution, the State shall guarantee the victims full access and the capacity to act at all stages."⁶ Therefore, in its next report, the State must submit information regarding these statements made by the representatives.

B. The obligation to continue with the effective search for and the immediate location of Mr. Radilla Pacheco or, if applicable, of his remains (Operative Paragraph 9 of the Judgment)

12. The State indicated that from October 19 to 28, 2010 new excavations aimed at locating Rosendo Radilla Pacheco were carried out at the place "where he presumably disappeared." It indicated that "it has continued these efforts in full agreement with the victims and their representatives," and that the excavations have been carried out by experts proposed by Ms. Tita Radilla Martínez. The State affirmed that on October 28, 2010, the excavation concluded "without having found clues, evidence, or skeletal remains."⁷ It also indicated that "the archeological expert [proposed by Ms. Radilla Pacheco] was asked to conclusively certify his experience[...], documenting cases [in which he has intervened as part of the Forensic Anthropology Foundation of Guatemala, the methodology used, and the results obtained." The State also indicated that the expert "was asked to state the similarities or analogies between those cases and [this one]. Once [this] requirement is fulfilled, [...] the agent of the Federal Public Ministry of the Federation shall proceed according to the law."

13. The representatives affirmed that actions carried out by the Attorney General's Office "still do not reflect the seriousness necessary in this case, as the most important measure ordered in the investigation since the Judgment was handed down is the excavation ordered in the former military barracks of Atoyac de Álvarez[, but] this excavation was ordered in places that had already been investigated in 2008." In that regard, they indicated that the experts proposed by Ms. Tita Radilla, who were accredited during the preliminary inquiry, issued a series of recommendations after excavations concluded on October 28, 2010. They stated that despite the fact that these experts "were authorized by the [Attorney General's Office], the [agent] of the Public Ministry has questioned their recommendations and[,] thus[,] measures aimed at searching for Mr. Rosendo Radilla Pacheco's skeletal remains have been delayed." This agent indicated to the representatives that "excavations could not continue until the expert of the Forensic Anthropology Foundation of Guatemala could prove the Foundation's experience." Finally, the representatives stated that the agent of the Public Ministry, in charge of executing the aforementioned preliminary inquiry, told them that the Ministry did not have the resources necessary to continue with excavations or to hire experts in forensic archeology, and thus "the cost of hiring experts would be charged to [the representatives if they] offere[d] them as collaborators in the measures carried out, even if the Attorney General's Office were to decide to consider them as official experts and not as independent experts."

⁶ *Case of Radilla Pacheco v. Mexico, supra note 5, para. 334.*

⁷ It indicated that during the excavations, representatives of the National Commission on Human Rights, the Unit for the Promotion and Defense of Human Rights of the Ministry of the Interior, and the "Office of the High Commissioner of the United Nations [...] were present. Additionally, personnel of the Social Communications Department of the Attorney General's Office were also present. The latter "took on the task of ensuring that the media was given access to the place and of issuing various bulletins that were presented" through the web page of the Attorney General's Office. Other members of the organization that represents the victims that are not accredited in proceedings were allowed to be present "in order to strengthen the psycho-social support of Rosendo Radilla Pacheco's next of kin."

14. The Commission “recogniz[ed] the actions undertaken by the State in the search for and locating of Mr. Radilla Pacheco or his mortal remains.” However, “it observe[d] that [the State had not] reported on any other follow-up action.” Thus, it requested that the Court require the State to “report on other measures undertaken, as well as the follow-up and continuity it has given to those that have already been carried out.” Finally, the Commission highlighted that it is necessary to prevent the occurrence of “undue delays in the State’s compliance with this reparation measure.”

15. The Court observes that the State has reported on excavations aimed at locating Mr. Radilla Pacheco. However, these excavations took place ten months after notice of the Judgment was served. However, from the information presented by the State (*supra* Considering Clause 10), it is not possible for the Court to ascertain how the excavations comply with the standards set out in the Judgment with respect to the elements that must be considered in the investigation of facts such as those that occurred in this case, including locating Mr. Radilla Pacheco. The Tribunal has not been informed of other investigations that the State may have been carrying out to that end.

16. Additionally, the Tribunal notes that the State has permitted Ms. Tita Radilla Martínez’s participation, through her representatives and experts, in the aforementioned excavations. However, the Court notes that the representatives affirm that they were informed by a State agent that the excavations could not continue due to a lack of resources and that the continuation of the excavations depended on the accreditation that Ms. Radilla Martínez’s expert could provide for his expertise and on the representatives’ financing the cost of the expert’s reports. The Court highlights that in the Judgment it indicated that “for an investigation into a forced disappearance [...] to be carried out effectively and with due diligence, all means necessary must be used to promptly implement all measures and inquiries that are timely and necessary to bring the victims’ fate to light and identify those responsible for their disappearance, particularly the disappearance that occurred in this case.” For this purpose, the State must provide the corresponding authorities with the logistic and scientific resources necessary to collect and process evidence and, in particular, the power to access relevant information and documents in order to investigate the alleged facts and obtain clues or evidence of the location of the victims.”⁸ Consequently, the State and the representatives are asked to submit updated and detailed information on this matter.

C. Regarding the obligation to adopt appropriate legislative reforms in order to make Article 57 of the Code of Military Justice compatible with both international standards on the subject and the American Convention on Human Rights (Operative Paragraph 10 of the Judgment)

17. The State indicated that “the federal executive organ submitted a reform initiative to the Congress of the Union which includes the amendments ordered by the Inter-American Court to Article 57 of the Code of Military Justice.” It affirmed that “the initiative proposes the exclusion of the crimes of forced disappearance of persons, torture, and rape from military jurisdiction so that they fall under [ordinary] jurisdiction.” The initiative also “provides for the obligation of the Military Public Ministry to submit records of investigations, from which it may be possible for the crimes to be inferred, to the Public Ministry of the Federation,” and that “the measures that constitute the record shall not lose their validity, even when if they were carried under [the Code of Military Justice] and

⁸ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 222.

subsequently under the Code of Criminal Procedure." The reform initiative also includes modifications to the Organic Law of the Federal Judicial Branch in order to give "district court judges criminal jurisdiction so that they can try crimes committed by members of the military under the terms proposed." Last, the State indicated that "the discussion and, if applicable, the modification and approval of [the] legislative reform shall be [...] the task of the Federal Judicial Branch."⁹ Finally, it indicated that the State manifested that "although the operative paragraphs of the [Judgment] did not provide for the withdrawal of the reservation made by the [State] on Article IX of the [Inter-American Convention on the Forced Disappearance of People,] it did analyze the matter." Thus, the State has "*motu proprio* initiated the corresponding internal processes to eventually retract the reservation, and this process is linked to the initiatives for the reforms of the Code of Military Justice brought before the Congress of the Union."

18. The representatives stated that "the reform proposed by the Federal Executive [...] does not conform with guidelines for independence and impartiality guarantees required under Article 8(1) of the American Convention." They also indicated that "the initiative only proposed the exclusion of the crimes of forced disappearance of persons, torture, and rape from the military criminal jurisdiction so that they fall under the [ordinary] jurisdiction, [but] the power to investigate and the power to analyze whether the facts fall under a normative category remains in the hands of the Office of the Prosecutor General of Military Justice." They stated that with this reform, "there is a risk that the crimes may be reclassified so as to prevent them from being tried in a civilian court" and that there is a risk that the facts may be manipulated. The representatives also indicated that there continues to be "a lack of domestic recourses for questioning the jurisdiction of military authorities to prosecute and/or adjudicate the facts."

19. The Commission affirmed that it "value[d] the State's legislative initiative." However, it "observe[d] that pursuant to the proposed reform, Article 57 of the Code of Military Justice d[id] not fully adhere to the standards established [in the J]udgment." It indicated that, in particular, "it consider[ed] that the law should be written in such a way so that it is clear that the military jurisdiction should only intervene when crimes or wrongs are committed by military personnel and, by nature, affect juridical rights that are unique to the military." Additionally, it stated that it observed from the proposed reform that, "it would be possible for the military jurisdiction to intervene in the investigation of a crime that does not belong to it and that this intervention could limit proceedings in the ordinary jurisdiction

⁹ The following is the text of the initiative reform:

Article 57.- ...

I. ...

II. ...

a). ...

The crimes of Forced Disappearance of Persons, Rape, and Torture, provided for under Articles 215-A, 265, and 266 of the Federal Criminal Code, as well as Articles 3 and 5 of the Federal Law for the Prevention and Punishment of Torture, committed to the detriment of civilians, shall fall under the jurisdiction of the Federal Tribunals.

When investigations into the a crime evidence the probable commission of one of those crimes signaled in the preceding paragraph, the Military Prosecutor must immediately, through the corresponding agreement, detail proceedings carried out and records made in the preliminary inquiry and turn the information over to the Attorney General's Office. The proceedings detailed will not lose their validity, even when they were carried out under this Code and, later, under the Code of Criminal Procedure.

b). a e). ...

In cases under Section II where both members of the military and civilians are implicated, the former shall be tried by military courts, except in cases falling under the second paragraph of subsection a) of Section II. In such cases, the corresponding federal tribunals shall have jurisdiction, notwithstanding the jurisdiction of the military tribunals over crimes committed against military discipline.

...

inasmuch as its legal force is recognized over that of the ordinary jurisdiction, which are two aspects that are not compatible with regional standards." Finally, it indicated that "the State should continue with its reform initiatives, taking into account the full application of the standards set out [in the J]udgment so that the scope of military criminal jurisdiction 'is restricted and exceptional and that it is directed only toward 'the protection of special military interests linked to functions that are unique to the armed forces'."

20. The Tribunal observes that the State has carried out efforts to reform Article 57 of the Code of Military Criminal Justice. The Court considers it appropriate to recall that the Judgment established that, "taking into account the nature of the crime and the judicial right harmed, criminal military jurisdiction is not competent to investigate and, if applicable, try and punish the perpetrators of human rights violations. Instead, proceedings against those responsible should always be carried out in an ordinary jurisdiction."¹⁰ Based on the foregoing, in its Judgment, the Court found the State of Mexico responsible because the cited provision is "vague and imprecise, [and] impedes a determination of the strict connection between the crime belonging to the ordinary jurisdiction and military service, objectively assessed,"¹¹ and because "it extend[ed] military jurisdiction to crimes that do not have a strict connection to military discipline and to juridical rights that are unique to the military sphere."¹²

21. With this in mind, the Court deems that although the State's efforts to amend Article 57 of the Code of Military Justice are a positive step, the proposed initiative is insufficient because it does not fully comply with the standards specified in the Judgment. This reform only sets forth that military jurisdiction shall have no jurisdiction in cases related only to forced disappearance, torture and rape committed by soldiers. However, in the Judgment, the Court reiterated its constant jurisprudence that, "the military justice system should only try military for the commission of crimes or offenses that by their very nature violate the legal rights of the military,"¹³ so that human rights violations committed by soldiers against civilians can not be subject to the jurisdiction of military courts.¹⁴

¹⁰ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 273.

¹¹ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 286.

¹² *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 289.

¹³ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 277. *Cfr.* also *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 128; *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 117; *Case of Caso 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. Merits, Reparations and Costs*. Judgment of November 25, 2004. Series C No. 119, para. 142; *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 202; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 134, para. 124 and 132; *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 189; *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 131; *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 142; *Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 200; *Case of Escué Zapata v. Colombia. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165, para. 105; *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 118; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, paras. 108 and 110; *Case of Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C. No. 215, para. 176; *Case of Rosendo Cantú et al. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C. No. 216, para. 160, and *Case of Cabrera*

22. At the same time, the Court observes that, according to the proposed reform, the measures carried out by the public ministry prior to its “release” to the ordinary jurisdiction would be valid. In the Judgment, the Court referred to the military jurisdiction's lack of competence not only to try and, if applicable, punish those responsible, but also to investigate all acts that violate the human rights of civilians.¹⁵ From the foregoing, it is evident that the military prosecutor does not have competence to investigate such human rights violations either. Therefore, the Court urges the State to adopt measures directed toward amending Article 57 of the Code of Military Justice to make it compatible with the standards set out in the Judgment.

23. As to the representatives' observation regarding the lack of domestic recourses to dispute the military forum's jurisdiction, the Court considers that though it discussed the matter in its Judgment, the order that the State reform Article 57 of the Code of Military Justice was limited to adapting this article to the standards of exceptionality and restriction that characterize criminal military jurisdiction. Thus, the Tribunal shall not rule on the representatives' additional allegations.

D. Obligation to adopt legislative reforms appropriate for the purpose of making Article 215A of the Federal Criminal Code compatible with international standards on the subject and with the Inter-American Convention on the Forced Disappearance of Persons (Operative Paragraph 11 of the Judgment)

24. The State indicated that the same initiative mentioned in the section above “includes reforms to the Federal Criminal Code on the topic of forced disappearance that fully comply with the Judgment.” The text of the proposed reform states that “the public servant who, on his own or through others, commits, permits, authorizes, or supports the deprivation of liberty of one or more persons and intentionally brings about or maintains that person or persons hidden in any way, or refuses to acknowledge that deprivation of liberty, or to inform on the whereabouts of the person, is considered to have committed the crime of forced disappearance of persons.” Additionally, the State maintained that the crime “may also be committed by a private individual when he or she acts on the order, or with the acquiescence or support, of a public servant.” The initiative also proposes that the crime prescribe after thirty-five years, a prohibition of amnesty, pardons and “pre-release benefits,” or any other substitutes regarding this crime and that, pursuant to Article 215B of the Federal Criminal Code, the sentence for public servants who commit this crime should be 20 to 50 years in prison, and that the sentence for private individuals be set at 10 to 25 years in prison.¹⁶

García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgement of November 26, 2010, Series C. No. 220, para. 206.

¹⁴ Cf. *Case of Radilla Pacheco v. Mexico*, supra note 5, para. 274.

¹⁵ Cf. *Case of Radilla Pacheco v. Mexico*, supra note 5, para. 273.

¹⁶ The State manifests that the following is the text of the initiative reform:

Article 215 A. The public servant who, on his own or through others, commits, permits, authorizes, or supports the deprivation of liberty of one or more persons and intentionally brings about or maintains that person or persons hidden in any way, or refuses to acknowledge that deprivation of liberty, or to inform on the whereabouts of the person commits the crime of forced disappearance of persons.

The crime defined in the preceding paragraph may also be committed by a private individual when he or she acts on the order, or with the acquiescence or support, of a public servant.

This crime prescribes after a period of thirty-five years.

Amnesty, pardons, pre-release benefits, or other substitutes are not applicable to this crime.

25. The representatives indicated that the period of prescription of 35 years for the crime of forced disappearance included in the proposed reform “does not meet standards set forth by the [Inter-American Convention on Forced Disappearance of Persons].” They affirmed that “if the reform is approved as the Federal Executive Branch proposes, the State of Mexico [will continue] infringing Article 2 of the American Convention.”

26. The Commission stated that it valued “the legislative initiative of the State and consider[ed] that it [was] a step forward in the process of achieving compliance.” In particular, it considered that the inclusion of elements such the refusal to acknowledge the deprivation of liberty or to give information on the disappeared person that distinguish this crime from other crimes often related to the forced disappearance of persons, as well as the prohibition of privileges in its prosecution, to be “positive aspects” of the initiative. However, it indicated that the proposed reform still fails to conform “integrally with the standards established [in the J]udgment and those established in the Inter-American Convention on Forced Disappearance of Persons.” The Commission indicated that “the definition of the perpetrator of the crime should be broad so as to ensure the punishment of all “principals, accomplices, and accessories to the crime, regardless of whether they are State agents or persons or groups that act with the authorization, support, or acquiescence of the State.” Additionally, it stated that “the standards of application of the quantum of the sentence are based on the perpetrator’s status as a ‘public servant’ or a ‘private individual,’ which is incompatible with Article III of the Inter-American Convention on Forced Disappearance of Persons, which establishes the possible mitigating factors that could apply in cases of forced disappearance.” Last, the Commission manifested its concern that “a period of prescription be provided for this crime despite the fact that the Inter-American Convention on Forced Disappearance of Persons establishes the imprescriptibility of that crime as a general rule.” In any case, the State “did not specify whether the established period of prescription of 35 years is compatible with the exceptions established by the Inter-American Convention on Forced Disappearance of Persons in Article VII therein.”

27. The Court observes that the State has begun to adopt measures for the purpose of reforming Article 215A of the Federal Criminal Code that defines the crime of forced disappearance of persons. In order to analyze whether the proposed reform presented by the State adheres to the standards set out by the Court, it is necessary to specify that in its Judgment, the Tribunal only referred to two elements of that article that were incompatible with the Inter-American Convention on Forced Disappearance of Persons. First, the Court indicated that this law limited the possible perpetrator of the crime of forced disappearance of persons to “public servants,” while Article II of the Inter-American Convention on Forced Disappearance of Persons establishes that States must ensure that all “those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories” receive punishment, whether they are State agents or “persons or groups of persons acting with the authorization, support, or acquiescence of the State.”¹⁷ Furthermore, the Judgment established that the forced disappearance of persons “is characterized by a refusal to acknowledge the deprivation of liberty or to provide information on the fate or whereabouts of persons,” and that this element should be present in the definition of the crime because it allows for a “distinction to be made between forced disappearance and other crimes that are usually associated with it, such as kidnapping and homicide, so that adequate evidentiary standards may be applied and

¹⁷ The Court affirmed that “[f]or [...] a correct definition of the crime, the condition of “State agent” must be set in the broadest possible way. *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 320 and 321.

sentences that consider the extreme gravity of this crime may be imposed on all those implicated.”¹⁸ Consequently, the Court will limit its analysis to these two issues.

28. The Court affirms that in its proposed reform, the State has incorporated the elements indicated by the Tribunal for an adequate definition of the crime of forced disappearance in accordance with the Inter-American Convention on Forced Disappearance of Persons. It is evident from the information provided by the State that this crime can be committed by private individuals when acting “under the order, or with the acquiescence or support” of a public servant. Additionally, the proposed reform sets forth that the crime can be committed by any public servant or private individual who, among other things, “refuses to acknowledge the deprivation of liberty or to provide information as to his whereabouts.” In this regard, the Court takes note of the reform initiative proposed by the State to amend section 215A of the Federal Criminal Code in accordance with the standards specified in the Judgment and the Inter-American Convention on Forced Disappearance, and it will continue to monitor the aforementioned legislative reform procedure until it is fully compatible with said standards.

E. Obligation to implement permanent programs or courses on the analysis of the jurisprudence of the inter-American System of Human Rights Protection regarding the limits of military criminal jurisdiction, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons (Operative Paragraph 12 of the Judgment)

29. The State indicated that the Attorney General’s Office “is working on the creation, implementation and release of a training and/or specialization program for public servants who are part of the Office of the General Coordinator of Investigation that addresses the orders of the Court.” It affirmed that “a training session led by the expert Santiago Corcuera, former member of the United Nations Working Group on Enforced or Involuntary Disappearances, has been scheduled for the first two months of 2011 for the personnel of the Office of the General Coordinator of Investigation.” Additionally, it reported that “ministerial personnel of the Attorney General’s Office attended the Central American Seminar on the Search for Disappeared Persons and Forensic Investigations: Implementation of the International Council of Minimum Principles and Norms regarding psycho-social work in cases of [F]orced Disappearance, Arbitrary Executions, and Forensic Investigation of Grave Human Rights Violations, held on September 16, 17, and 18, 2010, in the city of Antigua, Guatemala.” This seminar “contributed to the reaffirmation of the knowledge of those public servants who attended for the purpose of carrying out excavations” in order to locate Mr. Radilla Pacheco. Moreover, the State referred to a series of activities carried out as part of the “permanent training in human rights” offered by the Attorney General’s Office. Additionally, the State referred to activities carried out by the Supreme Court of Justice of the Nation for the promotion, diffusion, and application of human rights, as well as “activities carried out by the Federal Council of the Judiciary.”

30. The representatives affirmed that although “the activities indicated by the State are positive under the framework of the general training in human rights that all public servants should receive, [...] they do not have anything to do with that ordered by the Inter-American Court [in the Judgment].” They stated that the activities “were not aimed at the Armed Forces,” they “did not specifically discuss the analysis of the jurisprudence of the Inter-American System [...] in relation to the limits of the military criminal jurisdiction,” and “they did not discuss the proper investigation and adjudication of facts that constitute

¹⁸ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 323.

forced disappearance of persons,” and were not “aimed at Public Ministry agents from the Attorney General’s Office or at judges of the Judicial Branch of the Federation.” They also stated that the training scheduled for the first two months of 2011, to be led by the former member of the United Nations Working Group on Enforced or Involuntary Disappearances, still has not been carried out.

31. The Commission stated that it “value[d] the activities carried out by the State regarding promotion and training on human rights aimed at officials of various State institutions.” Additionally, it “considere[d] that the efforts to address the special requirements established by the Court in the [J]udgment should be incentivized.”

32. The Court observes that in its Judgment it specified the type of activities (as well as the subjects they should cover and the persons who should participate in them) that the State must impart in order to comply with this reparation measure.¹⁹ The Court values that the State trains its officials on human rights issues. However, the Tribunal observes that the State has extensively referred to a series of activities that are not related to the reparation ordered in the Judgment. The only concrete information submitted by the State related to its compliance with the specific orders of the Court is that related to the planning of a training session to be imparted to personnel of the Attorney General’s Office by the former member of the United Nations Working Group on Enforced or Involuntary Disappearances during the first two months of 2011, as well as the attendance of personnel of that body to a seminar carried out in Antigua, Guatemala. The Court was not informed of activities aimed at the training of judges of the Judicial Branch of the Federation on this subject, nor on the permanent courses or programs on “the limits of the military jurisdiction [and] the rights to due process and judicial protection.” The Court highlights the importance of the activities ordered as guarantees of non-repetition, as they have a reach that goes beyond that of this specific case. Thus, the State must submit concrete information to the Court on the measures carried out to strictly comply with this aspect of the Judgment to fulfill the aims of the reparation measure.

F) Obligation to publish the Judgment in the Official Gazette of the Federation and in another widely circulated national newspaper, as well as in the web page of the Attorney General’s Office (Operative Paragraph 13 of the Judgment)

33. The State reported that on February 17, 2010, “paragraphs 1 to 7, 52 to 66, and 114 to 358, as well as the Operative Paragraphs of the Judgment, were published without footnotes” in the Official Gazette of the Federation and in the *El Universal* newspaper. It submitted these publications to the Tribunal. Additionally, it indicated that on “January 21, 2010, the Attorney General’s Office published the [J]udgment issued on November 23, 2009 on its web page” and it specified the corresponding web address.²⁰ Finally, in response to statements made by the petitioners with respect to the visibility of the publication on the Attorney General’s Office web page, the State indicated that it “took the measures necessary so that the [J]udgment could be accessed from the home page of the Attorney General’s Office.”

34. The representatives affirmed that the State “unilaterally published the Judgment.” They also indicated that they were informed of the publication the day after it was carried

¹⁹ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 347.

²⁰ <http://www.pgr.gob.mx/prensa/2007/docs08/sentenciacoideh.pdf>.

out, and that they were never contacted for the purpose of concerting “a date for the publication.”

35. The Commission stated that “the information available indicates that the State has complied with this order of the [J]udgment.”

36. The Court observes that the information provided by the parties indicates that the State fully complied with this reparation measure before the deadline established in the Judgment expired.

G) Obligation to carry out a public act of acknowledgement of responsibility with regard to the facts of the present case and in order to restore the memory of Mr. Rosendo Radilla Pacheco and to place a plaque in the city of Atoyac de Álvarez (Guerrero) commemorating his forced disappearance (Operative Paragraph 14 of the Judgment)

37. With respect to the public act of acknowledgement, the State affirmed that “over the course of 2010, it [...] has reiterated to the representatives of the victims its willingness to carry out [that] ceremony as soon as possible and to arrive at a consensus on the way this reparation measure should be complied with.” It indicated that it understood that this reparation measure should be carried out within one year, as the Judgment does not set out a deadline for compliance. With respect to the commemorative plaque, it affirmed that “the State submitted a proposal for its text and reiterated its willingness to comply with the [J]udgment, as well as its understanding that the unveiling of the plaque should also be carried out within one year,” as the Judgment does not set out a specific deadline for compliance, and it should be carried out “in the context of the public act of acknowledgement of responsibility.”²¹ It indicated that the representatives considered that the plaque should also include “an acknowledgement of the context of the systematic human rights violations that occurred during the so-called ‘Dirty War,’” but that the State considered that it had made an effort to include in its proposal practically all of the representatives’ suggestions and that, in its opinion, “the text of the proposal fully complies with the orders of the [J]udgment.” The State also indicated that the representatives had expressed that “the unveiling of the plaque does not have to be carried out within one year as of the publication of the [J]udgment, and that they had other reasons that they would have to carefully consider in order to come to an agreement on the fulfillment of this order.” Thus, the State signaled its commitment to “maintaining channels of communication open with the representatives of the victims for the purpose of coming to an agreement on the public act of acknowledgment of responsibility and on the unveiling of the plaque, and its commitment to informing the Court on the results of these measures.”

²¹ The State proposed the following text for the commemorative plaque:

The State of Mexico unveils this plaque in memory and as an acknowledgment of its international responsibility for the human rights violations derived from the forced disappearance of Mr. Rosendo Radilla Pacheco, social defender, on 25 August 1974.

This is done in compliance with the order of the Inter-American Court of Human Rights which handed down a Judgment in the Case of Rosendo Radilla Pacheco v. United Mexican States on 23 November 20[09].

This lamentable event has given invaluable lessons to the Mexican nation.

The State of Mexico recognizes the inexhaustible and continuous search of victims for justice, truth, and reparation.

38. The representatives stated that no agreement exists with respect to the “realization of the act and the unveiling of the commemorative plaque.” They also expressed their willingness to “maintain the channel of communication with the State open in order to come to an agreement with respect to this point, considering the integrality of the [...] document’s contents.”

39. The Commission did not submit observations regarding this point.

40. The Tribunal reminds the parties that in its Judgment it ordered the way in which the public act of acknowledgement of responsibility should be carried out, including particularities such as that the place and date on which it is held should be agreed upon with Mr. Radilla Pacheco's next of kin or their representatives.²² The Court also indicated that the unveiling of the commemorative plaque could be carried out during the public act or at a later time.²³ The State has submitted information on the efforts made in order to comply with this reparation measure. However, the Court does not have sufficient information on the part of the representatives as to the aspects of the text proposed by the State for the commemorative plaque text and the realization of the public act of acknowledgment of responsibility with which they disagree. The Tribunal highlights that it is necessary that all parties submit specific and detailed information so that the Court may adequately evaluate advances in compliance with the reparation measures ordered.

41. With respect to the representatives’ affirmation that the text of the plaque should refer to the context in which Mr. Radilla Pacheco's forced disappearance took place, the Court reminds the parties that the Judgment indicated that, “Mr. Radilla Pacheco's forced disappearance c[ould] not be isolated from the circumstances in which they [...] occurred, and the corresponding legal consequences c[ould] not be determined in the vacuum created by decontextualization.”²⁴ Notwithstanding the agreements that the representatives and the State may come to, the Court considers it important that the text of the plaque mention that context. That said, with regard to the compliance periods of both reparation measures, the Court considers that although the Judgment did not establish deadlines both should be complied with as soon as possible, provided that the representatives and the State make the necessary agreements, so that the reparation measure fulfills its purpose. The Tribunal values that the State initiated measures to carry out the act of acknowledgment of responsibility and the unveiling of the plaque before the one-year deadline for the submission of its report on compliance with the Judgment. Therefore, the Court urges the representatives and the State to maintain communications going with the purpose of complying with these reparation measures.

H. Obligation to prepare a biographical sketch of the life of Mr. Rosendo Radilla Pacheco (Operative Paragraph 15 of the Judgment)

42. The State indicated that it had already received the representatives authorization for the publication of the biographical sketch ordered by the Court, with an edition of 1000 copies, which, considering the representatives' requests, will include “the full text of the book *Voces Acalladas* [Silenced Voices] written by Ms. Andrea Radilla,” as well as additional

²² Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 353.

²³ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 354.

²⁴ *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 116.

information regarding the fact that the sketch was written pursuant to the Judgment delivered by the Court in this case.

43. The representatives indicated that “compliance with the publication of the biographical sketch is in progress.”

44. The Commission indicated that “the implementation of this form of reparation is still in progress and that agreements [...] have been reached in order to implement it.

45. The Court values the actions taken by the State to comply with the publication of the biographical sketch that is the object of this reparation measure. Based on the information provided by the State, the Tribunal awaits information on the publication of the work.

I. Obligation to provide psychological and/or psychiatric assistance through specialized public health institutions to the victims that request it (Operative Paragraph 16 of the Judgment)

46. The State reported that the representatives rejected the Public Security Secretariat's offer of “psychological assistance, through the Comprehensive System of Assistance for Victims (SIAV, in Spanish), for all of Mr. Rosendo Radilla's next of kin, regardless of whether they had been designated as beneficiaries by the Court [...] in its [J]udgment.” Therefore, “the Ministry of the Interior informed the victims and their representatives that it is negotiating so that the psychological assistance be provided through the National Human Rights Commission, and the psychiatric assistance, if required, through a public health institution in the state of Guerrero.”

47. The representatives stated that the State continues to “negotiate with the National Human Rights Commission concerning the psychological assistance, and it is unkow[n] which health institution of the state of Guerrero will provide the psychiatric assistance.”

48. The Commission indicated that it “considere[d] the fact that the parties have reached agreements on implementation of this reparation measure to be positive”; therefore, it requested that the Court require the State to submit “updated information on the measures carried out to comply with this order of the [J]udgment.”

49. The Court values the State's offer to provide psychological and/or psychiatric assistance not only to the victims declared in the Judgment, but also to other relatives of Mr. Rosendo Radilla Pacheco. However, it notes that, to date, the State has not provided psychological and/or psychiatric care for the victims in this case, as ordered in the Judgment, because it has not yet been determined which public institutions will be charged with that task. Therefore, the Court finds that the State must continue with appropriate steps so that the victims begin to receive the required attention as soon as possible.

J) Obligation to pay the compensation awarded as pecuniary and non-pecuniary damages and costs and expenses (Operative Paragraph 17 of the Judgment)

50. The State reported that it had “made the necessary resources available in order to pay [the compensations] as indicated in the [J]udgment.” However, “the corresponding amounts have not been paid [...] due to circumstances beyond the control of the State.” It indicated that it has proposed to the representatives diverse procedures for payment, such

as "a procedure before a civil judge or public notary," the deposit of the appropriate amounts in "an account or deposit certificate in a solvent Mexican banking institution and in the most favorable financial conditions permitted under Mexican law and banking practice," and even the option requested by the petitioners that "the compensations be deposited at the Inter-American Court." However, it indicated that the representatives have only accepted "the compensation of one of the victims, Ms. Andrea Radilla Martínez, via voluntary jurisdiction before a notary public." According to the State, the other beneficiaries of indemnifications have expressed their desire not to receive the amounts ordered in the Judgment until progress is made in the ongoing criminal investigation into the forced disappearance of Mr. Rosendo Radilla. Thus, the State noted that "with the purpose of fulfilling this obligation, the funds will remain available at the Ministry of Interior until the next of kin of the victims wish to receive it."

51. With respect to the indemnification for Mr. Rosendo Radilla Pacheco, the representatives indicated that the forms of compliance offered by the State are "unacceptable," as they require the presentation of a "declaration of death" by a judge or a death certificate, including the "new method of payment consisting of a voluntary jurisdiction proceeding before a notary public in Mexico City." In that regard, they stated that "it is highly shameful to the family of Mr. Rosendo Radilla Pacheco to force them to initiate the procedure of declaration of death, as they have taken all necessary actions to achieve justice and learn of his whereabouts for over 35 years." Thus, Tita and Rosendo Radilla Martínez, Mr. Rosendo Radilla Pacheco's children, decided "not to accept, for the moment, the compensation corresponding to [their father]," nor the compensation "allocated directly to them." Finally, they requested, "as a preferred alternative to a deposit in a Mexican financial institution," that the amounts be deposited at the Inter-American Court of Human Rights, as "this alternative would give greater confidence to the victims and create less emotional distress."

52. The Commission noted that "the implementation of this reparation measure cannot become a factor that re-victimizes Mr. Radilla Pacheco's relatives [...]." In this regard, it indicated that the State must "provide special attention to the needs and desires of the beneficiaries of reparations," and it noted that the indemnification payment for Ms. Andrea Radilla Martínez has been agreed upon. Finally, it emphasized that neither the State nor the representatives had submitted information on the payment of costs and expenses.

53. From the submissions of the representatives and the State, the Court observes that there are two different controversies: one the one hand, that related to the payment of the indemnification corresponding to Mr. Rosendo Radilla Pacheco, and on the other hand, that related to the payment to other beneficiaries. The Court considers it appropriate to clarify that the Judgment, in a general manner, established that the State must pay the indemnifications directly to their beneficiaries within one year as of the date on which the Judgment was served.

54. With respect to the indemnifications corresponding to Mr. Radilla Pacheco, the Court ordered in the Judgment that the compensation corresponding to Mr. Radilla Pacheco be distributed equally among his heirs. In this regard, the Court considers that it is acceptable that domestic procedures be used in order to achieve payment of the corresponding indemnifications. However, these procedures cannot generate a disproportionate burden to victims that unnecessarily impedes the implementation of this reparation measure in their favor. Additionally, the Court notes that, in its Judgment, it did not provide for receiving deposits for the payment of indemnification for Mr. Radilla Pacheco as a possibility.

However, the Court highlights that the State proposed a method of payment in a Mexican financial institution which conforms to the Judgment if it were necessary for the compensation to be paid in that manner.²⁵ Considering that the deadline established in the Judgment for compliance with this reparation measure in favor of Mr. Radilla Pacheco has elapsed, the Tribunal requests that the State submit specific and detailed information on the statements made by the representatives that payment may not be carried out through a voluntary jurisdiction proceeding before a notary public. Likewise, the Court requests that the representatives provide specific and detailed information as to the reasons why they do not want payments to be made through a deposit in a Mexican banking institution.

55. The Court notes that the State manifested that the representatives authorized the compensation payment for Ms. Andrea Radilla Martínez, daughter of Rosendo Radilla Pacheco, through voluntary jurisdiction before a public notary. Additionally, both the State and the representatives indicated that Ms. Tita and Mr. Rosendo Radilla Martínez have not accepted payment of their indemnifications. According to the State, this is because they consider that there has been no progress in investigations. This statement was not denied by the representatives. In this regard, the Court reiterates, first, that the Judgment established a one-year deadline for the State's compliance with this reparation measure and, second, that the Judgment did not condition the payment of indemnifications on the progress of investigations into the facts of this case. The payment of indemnifications is an autonomous obligation which is independent of other forms of reparations ordered from the State. Therefore, given that the State indicated that it was able to make the payments corresponding to Ms. Rita and Mr. Rosendo Radilla Martínez, among others, and given that these beneficiaries do not wish to receive payment, the Court considers that the requirements set out in paragraph 390 of the Judgment for the State to proceed, following the criteria in that paragraph, with compliance with this reparation measure through a bank deposit in a Mexican financial institution have been satisfied.

56. Furthermore, the Court notes that neither the representatives nor the State have submitted information concerning the payment of costs and expenses. The Court therefore requests both parties to present relevant information to it.

K. Request of the victims' representatives for a hearing to monitor compliance

57. The representatives stated that in virtue of the "current contradictions between the State and the representatives of the victims with regard to full compliance with the Judgment," and "with the purpose of requesting the Court to urge the United Mexican States to effectively comply [therewith]," they requested that the Tribunal hold a "hearing to monitor compliance with the [J]udgment at the next Regular Period of Sessions."

²⁵ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 5, para. 390. "If, for reasons attributable to the beneficiaries of the compensations or their heirs, respectively, it were 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 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."

58. The Court considers that this Order clarifies those issues over which there is controversy regarding compliance with the Judgment. Therefore, the Tribunal does not consider a hearing for monitoring compliance with this Judgment to be necessary at the moment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions and in accordance with Articles 33, 61(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Article 25(1) and 30 of the Statute, and Article 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with Considering Clause 19 of the present Order, the State has complied with the following operative paragraph of the Judgment:

a) To publish once in the Official Gazette of the Federation and in another widely circulated newspaper paragraphs 1 through 7, 52 through 66, 114 through 358 of the Judgment and its operative paragraphs, without the footnotes. Also, the State shall 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 the Judgment (*Operative Paragraph 13 and Considering Clause 36*).

2. In accordance with the relevant Considering Clauses of this Order, the following Operative Paragraphs of the Judgment are still pending fulfillment:

a) The effectively carry out, with due diligence and within a reasonable time, the investigation and, if applicable, 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 (*Operative Paragraph 8 and Considering Clause 10 and 11*);

b) To continue with the effective search for and the immediate location of Mr. Radilla Pacheco or, if applicable, of his remains (*Operative Paragraph 9 and Considering Clauses 15 and 16 of the Judgment*);

c) To adopt appropriate legislative reforms in order to make Article 57 of the Code of Military Justice compatible with both international standards on the subject and the American Convention on Human Rights (*Operative Paragraph 10 and Considering Clauses 20 to 22*);

d) To adopt legislative reforms appropriate for the purpose of making article 215A of the Federal Criminal Code compatible with international standards on the subject and with the Inter-American Convention on the Forced Disappearance of Persons (*Operative Paragraph 11 and Considering Clauses 27 and 28*);

- e) To implement, within a reasonable time and with the corresponding budgetary allocation, programs or permanent courses on the analysis of the jurisprudence of the inter-American System of Human Rights Protection regarding the limits of military criminal jurisdiction, as well as a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons (*Operative Paragraph 12 and Considering Clause 32*);
- f) To hold a public act of acknowledgement of responsibility with regard to the facts of the present case and in order to restore the memory of Mr. Rosendo Radilla Pacheco and to place a commemorative plaque in the city of Atoyac de Álvarez (Guerrero) for his forced disappearance (*Operative Paragraph 14 and Considering Clauses 40 and 41*);
- g) To prepare a biographical sketch of the life of Mr. Rosendo Radilla Pacheco (*Operative Paragraph 15 and Considering Clause 45*);
- h) To provide free psychological and/or psychiatric attention immediately, adequately, and effectively, through its specialized public health institutions, to the victims declared in the Judgment that request it (*Operative Paragraph 16 and Considering Clause 49*), and
- i) To pay the compensation awarded in paragraphs 365, 370, 375 and 385 as pecuniary and non-pecuniary damages and costs and expenses (*Operative Paragraph 17 and Considering Clauses 53 to 56*).

AND RULES:

1. To request the United Mexican States to take the measures necessary to effectively and promptly comply with the Operative Paragraphs of the Judgment pending fulfillment, indicated in Declarative Paragraph 2 *supra*, in accordance with Article 68(1) of the American Convention on Human Rights.
2. To request the United Mexican States to submit to the Court, no later than August 29, 2011, a detailed report on measures taken in order to comply with its orders on reparations still pending fulfillment, as set forth in Considering clauses 7 to 56 of this Order. Subsequently, the United Mexican States must submit a report on its compliance every three months.
3. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit their relevant observations on the State reports of the United Mexican States mentioned in the Operative Paragraph 2 of this Order, within four and six weeks, respectively, following the receipt of said reports.
4. To keep the procedure open to monitor compliance with the points of the Judgment that are pending fulfillment, as stated on Declarative Paragraph 2.
5. To request the Secretariat of the Inter-American Court of Human Rights to notify this Order to the United Mexican States, the Inter-American Commission on Human Rights and the representatives of the victims.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary