Inter-American System

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1. INTRODUCTION

During the period covered by this report, the Inter-American Court on Human Rights (hereinafter the ‘Court’) issued several decisions on merits and reparations, including: Garibaldi vs Brazil, González et al. (‘Cotton Field’) vs Mexico, Barreto-Leiva vs Venezuela, Usón-Ramírez vs Venezuela, Radilla-Pacheco vs Mexico and ‘Las Dos Erres’ Massacre vs Guatemala. Also, the Court adopted interpretation judgments clarifying aspects of previous decisions on the merits and reparations in the following cases: Escher et al. vs Brazil and Acevedo-Buendía et al. (‘Discharged and Retired Employees of the Office of the Comptroller’) vs Peru.

Also, the Court adopted Advisory Opinion OC-20 interpreting the scope of Article 55 of the American Convention on Human Rights (hereinafter ‘American Convention’ or ‘Convention’), which regulates the appointment of ad hoc judges in contentious proceedings before this Tribunal.

Finally, the Court issued its new Rules of Procedure after a consultative process with different actors in the Inter-American Human Rights System, including States, the Inter-American Commission on Human Rights (hereinafter ‘Commission’) and civil society representatives. The new Regulations came into force on 1 January 2010.

The present report will analyse the Court’s decisions in González et al. (‘Cotton Field’) vs Mexico, Radilla-Pacheco vs Mexico and ‘Las Dos Erres’ Massacre vs Guatemala. These judgments refer to social issues and political processes of profound relevance in the countries in which the facts of these cases occurred.

The González et al. Case refers to the disappearance, torture and murder of three young women in the context of violence against women that has prevailed in Ciudad Juárez, Mexico since 1993 and the deficient State response in the investigation of
those crimes. The situation of Ciudad Juárez attracted the attention of international and local governmental and non-governmental organisations that published reports extensively documenting the violence affecting women in that city. The Court’s judgment identifies the State’s duties in a context of gender-based violence and concludes on a number of violations to rights protected by the American Convention and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ‘Convention of Belém do Pará’ (hereinafter ‘Convention to Prevent Violence against Women’). The Radilla-Pacheco Case\(^2\) refers to the disappearance of a community activist during the so-called ‘dirty war’ in the 1970s in Mexico. This case was one of several emblematic cases investigated by a Special Prosecutor’s Office created by the Mexican President in 2001 to determine the fate of the victims’ of forced disappearance in the 1970s and 1980s, and identify and punish the perpetrators. Despite these efforts, the Radilla-Pacheco Case remains unresolved and impunity prevails regarding the perpetrators of his forced disappearance. Finally, the Las Dos Erres Massacre Case\(^3\) is an emblematic example of the crimes committed in Guatemala against civilians during the civil war that affected that country for more than 30 years. This case involves the lack of investigation and punishment of the perpetrators of the extrajudicial execution of 251 persons who lived in the ‘Las Dos Erres’ community. Two core issues developed in this case involve the practice of sexual violence perpetrated against women during the conflict and the pattern of separating children from their families and replacing their identity after State agents had murdered the members of their community. The Court found that these practices involved violations of the American Convention and the Convention to Prevent Violence against Women.

Finally, this report briefly covers the issues addressed by the Court in Advisory Opinion 20 in which this Tribunal analysed the appointment of \textit{ad hoc} judges under Article 55 of the American Convention. Due to space constraints, consideration of the new Rules of Procedure of the Court will be provided in a future submission of this report.

The full text of the Judgments and Advisory Opinion mentioned in this report can be found in English on the website of the Court at: www.corteidh.or.cr.

\textit{González et al. (the ‘Cotton Field’ Case) vs Mexico}
The ‘Cotton Field’ Case involves the disappearance and subsequent death of three women whose bodies were found in a cotton field in Ciudad Juárez on 6 November 2001. The victims, Claudia Ivette González, Laura Berenice Ramos Monárrlez and Esmeralda Herrera Monreal, were young women of 20, 17 and 15 years of age, all of


\(^3\) Inter-American Court of Human Rights, \textit{‘Las Dos Erres’ Massacre vs Guatemala}, judgment of 24 November 2009, Preliminary Objection, Merits, Reparations and Costs, Series C, No. 211.
them from a humble background. Their murders occurred within the context of the gender-based violence perpetrated against women in Ciudad Juárez, Mexico between 1993 and 2003. The situation which transpired in Ciudad Juárez during that period has been well-documented by national and international governmental and non-governmental human rights organisations.

The Court concluded that since 1993 there has been an increase in the murders of women in Ciudad Juárez, with at least 264 victims until 2001, and 379 up to 2005. Some of these crimes appear to have involved extreme levels of violence, including sexual violence and, in general, they have been influenced by a culture of gender-based discrimination which, according to various probative sources, has had an impact on both the motives and the method of the crimes, as well as on the response of the authorities.

The three victims in this case were young, underprivileged women, one a student and the other two workers, as were many of the victims of the murders in Ciudad Juárez. They left their homes one day and their bodies were found days or weeks later in a cotton field with signs of sexual abuse and other ill-treatment. In the days between their disappearance and the discovery of their bodies, their mothers and next of kin approached the authorities looking for a response but were met with value judgements concerning the conduct of the victims and with no concrete action designed to find them alive, apart from the reception of statements.

The Court noted the ineffective responses and the indifferent attitudes documented in relation to the investigation of the crimes, and concluded that Mexico's response appeared to have permitted the perpetuation of the violence against women in Ciudad Juárez. The Court found that, up until 2005, most of the crimes had not been resolved, and murders with characteristics of sexual violence presented higher levels of impunity.

In the present case, Mexico made a partial acknowledgment of international responsibility regarding the violations of Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention as a result of procedural and other irregularities that occurred during the first stage of the investigations between 2001 and 2003. Moreover, the State acknowledged that these circumstances caused anguish and suffering to the victims' next of kin, in violation of Article 5 (right to humane treatment) of the American Convention. Mexico, however, rejected the alleged violations of the rights to life, humane treatment and liberty resulting from the State's alleged failure to prevent and investigate the disappearance, ill-treatment and subsequent death of the three victims in the instant case.

Also, Mexico challenged the jurisdiction of the Court to find violations of Article 7 of the Convention to Prevent Violence against Women arguing that this treaty did

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4 Article 7 of the Convention to Prevent Violence against Women states: 'The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from
not grant the Court the power to monitor compliance with the obligations arising from that provision. Mexico alleged that Article 12 of the Convention to Prevent Violence against Women refers expressly to the Commission as the organ responsible for monitoring compliance with Article 7 of that treaty through the individual petition procedure, which clearly excludes the jurisdiction of the Court to find violations of that provision. The Court rejected that interpretation and concluded that Article 12 provides that the Commission will consider any complaints submitted to it in light of the norms and procedures established in the American Convention. In that vein, Article 51 of the American Convention provides that if a State has recognised the contentious jurisdiction of the Court, the Commission may submit a case for consideration by that Tribunal. Thus, a combination of the systematic and teleological interpretations of the provision under analysis, coupled with the principle of effectiveness and the sufficiency of the principle of literal interpretation, shows that the Court was granted jurisdiction to find violations of Article 7 of the Convention to Prevent Violence against Women. Furthermore, the Court has found jurisdiction and applied that Convention in previous cases, including Miguel Castro-Castro Prison vs Peru, Rios et al. vs Venezuela and Perozo et al. vs Venezuela. Though in those cases the Court did not have to justify the bases for applying the Convention to Prevent Violence against

engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women; c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and h. adopt such legislative or other measures as may be necessary to give effect to this Convention.'

5 Article 12 of the Convention to Prevent Violence against Women provides: 'Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.'


Women, they provide clear evidence that the Court has been consistent in finding jurisdiction to review alleged violations of Article 7 of that treaty.

The primary question before the Court was whether the violence perpetrated against the victims, which ended their life, can be attributed to Mexico. The Court analysed whether Mexico took the appropriate measures to prevent the disappearance, ill-treatment and death suffered by the three victims and whether it investigated these crimes with due diligence. In sum, the Court considered whether Mexico complied with the obligation to ensure Articles 4 (right to life), 5 (right to humane treatment) and 7 (right to personal liberty), in relation to Articles 1(1) (duty to respect rights) of the American Convention and Article 7 of the Convention to Prevent Violence against Women, which complements the duty to prevent and punish in cases of violence against women. Also, the Court analysed whether the State investigated the murder of the three victims with due diligence as required by Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 (domestic legal effects) thereof.

The Court reasoned that the duty to prevent under Article 1(1) of the American Convention involves all measures of legal, political, administrative and cultural nature necessary to ensure the protection of the rights enshrined in the Convention. In cases of violence against women, this obligation is reinforced by the duty to prevent and punish gender-based violence established in Article 7 of the Convention to Prevent Violence against Women. The duty to prevent is of means and not of result; thus, failure to comply with this obligation is not proved solely on the basis of the existence of a violation to a particular right.

The Court found that, prior to November 2001, Mexico failed to adopt any measures of prevention that would have reduced the risk faced by women, despite the fact that the State was fully aware of the existence of a wave of violence perpetrated against women at the time. Nonetheless, the Court acknowledged that the failure to prevent the disappearance of the victims does not per se result in the State's international responsibility because, even though the State was aware of the situation of risk for women in Ciudad Juárez, it was not established that it knew of a real and imminent danger for the victims in this case. Even though the context of this case and the State's international obligations impose on it a greater responsibility with regard to the protection of women in Ciudad Juárez, these factors do not impose unlimited responsibility for any unlawful act against such women. The specific circumstances of the case and the discharge of the obligation to guarantee must be taken into account.

Next, the Court analysed the duty of prevention in light of two different contexts. The first context related to the period prior to the disappearance of the victims; the second one referred to the period that extended between the victims' disappearances and the discovery of their remains. In regard to the first period, the Court found that Mexico was not responsible for the violation of the duty to prevent because it was not proven that the State was aware of a real and imminent danger to the lives of the victims and decided not to take any actions. In regard to the second period, according
to the circumstances surrounding these cases, the State did not prove that it had adopted reasonable measures to find the victims alive. It did not act promptly during the first hours and days following the reports of the disappearances, losing valuable time. In the period between the reports and the discovery of the victims’ bodies, the State merely carried out formalities and took statements that, although important, lost their value when they failed to lead to specific search actions. In addition, the attitude of the officials towards the victims’ next of kin, suggesting that the missing persons’ reports should not be dealt with urgently and immediately, led the Court to conclude that there were unjustified delays following the filing of missing person reports.

The Court found that, because of the foregoing, the State did not act with the required due diligence to prevent the death and abuse suffered by the victims and did not act, as could reasonably be expected, to end their deprivation of liberty. This failure to comply with the obligation to guarantee is particularly serious owing to the context of which the State was aware – which placed women in a particularly vulnerable situation – and of the even greater obligations imposed in cases of violence against women by Article 7(b) of the Convention to Prevent Violence against Women. In addition, the Court found that the State did not prove that it had adopted norms or implemented the necessary measures, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention to Prevent Violence against Women, that would have allowed the authorities to provide an immediate and effective response to the reports of disappearance and to adequately prevent the violence against women. Furthermore, the State did not prove that it had adopted norms or taken measures to ensure that the officials in charge of receiving the missing reports had the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.

The Court held that the State violated the rights to life, humane treatment and personal liberty recognised in Articles 4, 5, and 7 of the American Convention, in relation to the general obligation to guarantee contained in Article 1(1) and the obligation to adopt domestic legal provisions contained in Article 2 thereof, as well as the obligations established in Article 7(b) and 7(c) of the Convention to Prevent Violence against Women, to the detriment of the three victims in this case.

The Court accepted the State’s acknowledgment of responsibility for the procedural irregularities committed in the first stage of the investigation. Moreover, the Court concluded that there were a number of additional deficiencies during the second stage of the investigations, including irregularities in the handling of the evidence, the fabrication of charges against alleged guilty parties, the delay in the investigations, the absence of gender-based considerations when analysing the murder of the three victims in this case and the failure to investigate State agents for serious negligence resulting from their role in the investigations. All of these irregularities proved that Mexico failed to carry out an effective investigation in violation of the rights of the victims’ next of kin of access to justice and to effective judicial protection under
Articles 8, 25, 2 and 1(1) of the American Convention. Also, these circumstances prevented the victims' relatives and society as a whole from learning the truth about the fate of the three victims in this case. Furthermore, Mexico's failure to investigate the crimes perpetrated against the victims also involved an additional violation of the duty to guarantee the rights embodied in Articles 4, 5, 7, in relation to Articles 2 and 1(1) of the American Convention, as well as Articles 7(b) and (c) of the Convention to Prevent Violence against Women, to their detriment.

Additionally, the Court found that the violence against women in the instant case constituted a form of discrimination in violation of the obligation not to discriminate under Article 1(1) of the American Convention, in relation to Articles 4, 5 and 7 thereof to the detriment of the victims, as well in relation to the right to access to justice and judicial protection embodied in Articles 8 and 25 of the same treaty to the detriment of the victims' next of kin.

Also, Mexico violated the rights of the child, embodied in Article 19 of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of two of the victims, who were minor children at the time of their disappearance and subsequent murder.

Finally, the Court ruled that the suffering experienced by the victims' next of kin as a result of the treatment and murder of the three victims as well as the prevailing impunity in the case constituted cruel and inhuman treatment in violation of Article 5 of the American Convention. The suffering experienced by the relatives of Esmeralda Herrera Monreal was even more profound because they were forced to leave their country and seek asylum in the United States to protect their life and integrity.

To redress the human rights violations of the victims, the Court awarded pecuniary and non-pecuniary reparations and reimbursement of costs and expenses to the victims' next of kin. In addition, Mexico was ordered to complete the investigations to identify and punish those responsible for the gender-based disappearance, ill-treatment and murder of the victims. The State must ensure that the investigation includes a gender perspective, that the State organs involved are provided with all the necessary human and material resources and that the results of the proceedings are published for the benefit of the Mexican society as a whole. Also, when appropriate, State agents involved in the different stages of the investigation must be prosecuted for their serious negligence in the prosecution of these cases.

As measures of satisfaction and guarantees of non-repetition, Mexico was ordered to publish selected parts of the instant judgment, hold a public event to acknowledge international responsibility and erect a monument in Ciudad Juárez to remember the victims murdered in this case. Also, the State must harmonise all the protocols, manuals, judicial investigation criteria, expert services and delivery of justice used to investigate forced disappearances, sexual abuse and murder of women with existing standards in international human rights law. In addition, Mexico must create a web page with information regarding the women who have disappeared since 1993 and
remain missing as of today to favour that anyone who has information on the fate of these victims may provide it to the appropriate authorities. The website must be updated regularly. Furthermore, Mexico must create a database with information of all disappeared women and girls at the national level; a database of genetic information belonging to the victims' next of kin; and a database with genetic information and tissue samples from the bodies of unidentified women murder in the state of Chihuahua.

Also, the Court ordered the State to continue implementing permanent education and training programmes and courses in human rights and gender. These programmes and courses must be addressed to the police, prosecutors, judges, military officials, public servants responsible for providing services and legal assistance to victims of crime, and any local or federal public officials who participate directly or indirectly in prevention, investigation, prosecution, punishment, and reparation. In addition, taking into account the situation of discrimination against women acknowledged by the State, the State was also ordered to offer a programme of education for the general public of the state of Chihuahua, in order to overcome this situation. To this end, the State must submit an annual report indicating the activities it has implemented in this regard for three years.

Ultimately, as a measure of rehabilitation, the Court ordered the State to make available appropriate and effective medical, psychological or psychiatric treatment, immediately and free of charge, through specialised State health institutions to all the next of kin considered victims in the case.

**Radilla-Pacheco vs Mexico**

The Radilla-Pacheco Case involves the forced disappearance of Rosendo Radilla-Pacheco, which occurred on 25 August 1974 at the hands of members of the Army in the state of Guerrero, Mexico.

Mr Radilla-Pacheco was involved in political and social activities in Atoyac de Álvarez, Guerrero, specifically in the organisation of coffee growers and farmers of the area. Mr Radilla-Pacheco also composed *corridos*, a popular musical Mexican expression that recounts epic verse accompanied by a guitar. The *corridos* composed by Radilla-Pacheco talk about different facts that occurred in Atoyac de Álvarez, and the lower class' social battles of the time.

On 25 August 1974, Radilla-Pacheco, 60 years old, and his 11 year old son were travelling 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.

The bus was stopped at a second military checkpoint located at the entrance of the Cuauhtémoc Colony between Cacalutla and Alcholoya. 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 Radilla-Pacheco, who was arrested allegedly because he composed *corridos*. Rosendo Radilla-Pacheco asked the soldiers to let his son 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.

Subsequently, he was transferred to the Military Barracks of Atoyac de Álvarez. He was kept there in a clandestine manner for several weeks, where he was seen for the last time, with his eyes blindfolded and signs of physical beatings. More than 35 years after his arrest, the next of kin of Radilla-Pacheco still do not know his whereabouts. The authorities to this date have not offered a clear response regarding his fate.

Upon knowing of his arrest, the next of kin of 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, they restrained from filing formal accusations regarding the facts. On 27 March 1992 the victim's daughter filed a criminal complaint for the forced disappearance of her father at the federal prosecutor's office in the state of Guerrero. A new complaint was filed on 14 May 1999 before the local prosecutor's office of the state of Guerrero. Both complaints were dismissed for lack of evidence regarding the alleged perpetrators. Later, on 9 January 2001, a criminal complaint was filed with the office of Mexico's Attorney General regarding the victim and other individuals' forced disappearances. Upon recommendation from the Mexican National Human Rights Commission, on 27 November 2001, the President of Mexico ordered the creation of a Special Prosecutors' Office to investigate the forced disappearances which transpired in the 1970s and 1980s, including the forced disappearance of Radilla-Pacheco. Despite a number of steps taken by the Special Prosecutor's Office, the investigation was not successful in identifying the perpetrators and the location of the victim's remains. On 30 November 2006, the Special Prosecutor's Office was closed and 122 inquiries, including Radilla-Pacheco's case, were transferred back to the Attorney General's Office which has continued with the investigations.

At the time at which Radilla-Pacheco was detained and disappeared numerous forced disappearances of persons occurred throughout the Mexican territory. The National Human Rights Commission of Mexico, within the framework of the Special Program for Alleged Disappeared Persons, examined 532 case files of complaints regarding the forced disappearance of persons perpetrated during the "

\[\text{phenomena classified as the "Dirty war of the seventies."}\] The National Commission concluded that in at least 275 cases of those examined several of the rights of those people reported as disappeared were violated. After the Special Prosecutor's Office was created, this body investigated the 532 cases and received additional complaints. In 2006, the Special Prosecutor's Office presented a *Historic Report to the Mexican Society*, in which it documented a pattern of arrests, torture, and forced disappearances of alleged
members of the armed groups and other individuals accused of providing them support which occurred during the 1970s and beginning of the 1980s in Mexico.

Mexico challenged the jurisdiction of the Court to hear this case because the alleged arrest and subsequent forced disappearance of Rosendo Radilla-Pacheco occurred before Mexico's accession to the American Convention on 24 March 1981. Moreover, Mexico challenged the jurisdiction of the Court to apply the Inter-American Convention on Forced Disappearances of Persons (hereinafter 'Convention on Forced Disappearances') because Mexico ratified this treaty with an interpretative declaration stating that the Convention would only apply to forced disappearances 'ordered, executed or committed after [its] entry into force'. Since the Convention on Forced Disappearances only entered into force for Mexico upon its ratification on 9 April 2002, the facts related to this case, Mexico argued, were excluded from its scope of application.

The Court rejected the first preliminary objection because the forced disappearance of persons has a continuous and permanent nature which persists in time until the whereabouts of a victim are established. Even if Radilla-Pacheco's forced disappearance occurred in August 1974, the uncertainty over his fate persisted after Mexico's ratification of the American Convention. Thus, since that date, Mexico's obligations arising out of the American Convention are fully applicable to that State. This interpretation does not imply a retroactive application of the American Convention in violation of Article 28 of the Vienna Convention on Law of Treaties because it involves application of this treaty to conduct that continued to occur after Mexico submitted its ratification. Also, the Court rejected the second preliminary objection because it concluded that 'executed' and 'committed' must be interpreted consistently with the characterisation that the Convention on Forced Disappearances makes of this conduct as a continuous and permanent crime. Forced disappearances which continue to be 'executed' after the entry into force of the Convention on Forced Disappearances, in other words situations in which the victim's whereabouts remained unknown beyond that date, fall within the scope of application of that treaty. Thus, the Court had jurisdiction to apply the Convention on Forced Disappearance to the Radilla-Pacheco Case because the victim's fate remained unknown beyond 9 April 2002, when this treaty came into force for Mexico.

In regard to the merits, Mexico acknowledged partial international responsibility for the violation of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 25 (right to judicial protection), in relation to Article 1(1) (obligation to respect rights) of the American Convention to the detriment of Radilla-Pacheco. Also, it acknowledged responsibility for the breach of Articles 8, 25 and 5, in relation to Article 1(1) of the American Convention to the detriment of the victim's next of kin. Mexico did not acknowledge international responsibility for the violation of Article 4 (right to life), but consented that given the passage of time it was presumed that Radilla-Pacheco was dead. Violation of additional provisions of the American
Convention alleged by the Commission and/or the victim's representatives, including Articles 2 (domestic legal effects), 3 (right to juridical personality) and 13 (freedom of thought and expression), as well as the validity of a reservation submitted by Mexico to the Convention on Forced Disappearances remained contested.

The Court concluded that despite the victim's forced disappearance occurred before Mexico's ratification of the American Convention, it would consider the full set of facts in this case as background to determine the State's international responsibility. Next, it found that the disappearance of Radilla-Pacheco was not only in breach of the right to personal liberty, but it was also framed within a pattern of massive arrests and forced disappearances that placed the victim in a grave situation of suffering irreparable damages to his personal integrity and his life. Bringing individuals before State agents that practiced torture and murders with the tolerance of the State constituted a violation of the duty to prevent violations to the right to humane treatment and life, even if in the particular case the actual torture or deprivation of life was not proven. Moreover, forced disappearances violated per se the right to humane treatment of the victims because the prolonged isolation and the coactive solitary confinement to which they were exposed could be characterised as cruel and inhuman treatment.

Additionally, the Court based on a recent decision concluded that Radilla-Pacheco's forced disappearance involved the violation of the right to juridical personality enshrined in Article 3 of the American Convention. In Anzualdo Castro vs Peru, the Court reversed its previous case-law rejecting consideration of the right to juridical personality as part of the multiple rights breached in a forced disappearance and concluded that the nature of this crime places the victims in a situation of legal uncertainty that prevents them from exercising their rights in general, and particularly the right to an effective remedy.

In sum, the victim's forced disappearance involved a breach of Articles 7, 5, 3 and 4 of the American Convention, in relation to Article 1(1) of that treaty, to the detriment of Rosendo Radilla-Pacheco.

The Court also found the State responsible for the violation of the right to humane treatment enshrined in Article 5 of the American Convention to the detriment of Rosendo Radilla-Pacheco's next of kin. The Court concluded that the violation to the right to humane treatment of the victim's next of kin occurred based on the situations and circumstances lived by them during his disappearance. First, the forced disappearance in itself constituted an infringement of the mental and moral integrity of the victim's family members. Second, the delay and lack of progress in the investigations pursued to identify the perpetrators and locate the victim's remains exacerbated the feelings of frustration and distrust in the State and its institutions. Third, stigmatisation and indifference shown to the request of the victim's next of

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kin throughout the years has also increased their suffering and anguish. Finally, the victim's forced disappearance had a traumatic impact on the family as a whole, due to the need to restructure the roles played by each of its members with caused an alteration of their life projects.

Furthermore, after a lengthy analysis, the Court concluded that Mexico had failed to diligently pursue an investigation into Radilla-Pacheco's forced disappearance in violation of Articles 8, 25, 1(1) and 2 of the American Convention and Articles IX, I(d) and XIX of the Convention on Forced Disappearances. First, lack of an effective investigation in the ordinary jurisdiction resulted in absolute impunity because the perpetrators of the forced disappearance have not been identified and punished. Moreover, the ineffectiveness of the investigation has prevented the State from establishing the location of the victim's remains. The investigations carried out by the National Human Rights Commission did not substitute Mexico's duty to investigate and punish the perpetrators of the victim's forced disappearance by the competent judicial authorities with strict respect of the due process rights enshrined in Article 8 of the American Convention. Despite the successive investigations carried out by different organs of the State, including the Special Prosecutor’s Office created to investigate the forced disappearances which occurred in the 1970s and 1980s, Mexico has not ensured the victim's next of kin rights to access justice and to an effective remedy after 35 years of his disappearance.

Second, Mexico's prosecution of one of the alleged perpetrators in the military jurisdiction has also contributed to the impunity in this case and, consequently, to the violation of the victim's next of kin right to a competent court. The Court has consistently stated in its case-law that the application of military jurisdiction must be exceptional and restricted only to the prosecution of acts of military service which affect the sphere of the military order. Human rights violations of the grave nature of a forced disappearance can never be characterised as an act of military service and, therefore, the perpetrators of such crimes must be investigated and prosecuted by ordinary courts. Thus, the deprivation of the victim's next of kin from having access to the ordinary courts in the present case constituted a breach of the obligations arising out of Articles 8, 25 and I(1) of the American Convention. The fact that victims have the right to appeal the decision of the military courts to the federal jurisdiction through an amparo remedy was not considered sufficient by the Court. According to this tribunal, the right to a competent court must be ensured to the victims from the moment the first tribunal assumes the investigation of the case. Moreover, Mexico's military law extending jurisdiction to all crimes committed by active soldiers regardless of the nature of the crime and the individual affected is not compatible with the principles of due process enshrined in the American Convention and, in consequence, constitutes an additional violation of Article 2 of that treaty.

Finally, the Court found that the reservation filed by Mexico with respect to Article IX of the Convention on Forced Disappearances was incompatible with
the object and purpose of that treaty. Article IX prohibits the assertion of military jurisdiction in the prosecution of perpetrators of forced disappearances and states that this crime cannot be characterised as part of the military duties of a member of the armed forces. Mexico's reservation excluded application of this provision by stating that its Constitution recognised the application of military jurisdiction in cases in which a crime was perpetrated by a member of the armed forces in active service. The main purposes of the Convention on Forced Disappearances are to ensure the effective prevention, punishment and eradication of crime. According to the Court, one of the rights protected by that treaty which is essential for the punishment of the perpetrators of a forced disappearance is the right to a competent court. Since Mexico's reservation excludes the jurisdiction of the ordinary courts in cases in which the alleged perpetrator is a member of the military in active service and deprives the victims or their next of kin of their right to a competent court, this reservation affects one of the core goals of the treaty and must, in consequence, be found invalid. The Court concluded that since the reservation is invalid, Article IX was applicable to Mexico. Thus, in the present case, assertion of military jurisdiction to investigate one of the alleged perpetrators of the victim's forced disappearance was found in violation of that provision as well as Articles I(d) and XIX of the same treaty.

Furthermore, the Court dismissed the alleged violation of Article 13 of the American Convention submitted by the representatives who argued that the prevailing impunity in this case affected the right of the victim's next of kin to know the truth. The Court concluded consistently with its previous case-law that the right to truth is not an independent right which protection is afforded by the right to access to information. According to this tribunal, the right to truth is included within the

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10 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. Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

11 The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on 9 June 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognises 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.

12 Article I(d) provides: 'The State Parties to this Convention undertake: d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.'

13 Article XIX states: 'The 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.'
protection afforded to victims or their next of kin under Articles 8 and 25 of the American Convention.

To redress the human rights violations of the victim and his next of kin, the Court awarded pecuniary and non-pecuniary reparations and ordered the reimbursement of costs and expenses to the victim's next of kin. Also, the Court ordered the State to complete the investigation of the facts and identify and punish the perpetrators for the victim's forced disappearance. Within this duty, Mexico was ordered to trust the investigation only to ordinary courts and prosecute those responsible for the crime of forced disappearance, which the State incorporated into the federal legislation in 2001. The Court considered that this did not violate the principle *nullum crimen nulla poena sine lege praevia* because the victim's forced disappearance continued to be perpetrated after the adoption of the legislation typifying this crime at the federal jurisdiction. Furthermore, as part of the measures of satisfaction and the guarantees of non-repetition, Mexico was ordered to find the remains of Radilla Pacheco and return them to his next of kin for proper burial. In addition, Mexico had to amend the military laws extending jurisdiction to military courts when an active soldier perpetrated a common crime and amend the definition of forced disappearance to make it compatible with international standards. Finally, Mexico was ordered to train public officials on human rights, publish the relevant parts of the present judgment and publicly acknowledged international responsibility for the forced disappearance of Radilla-Pacheco.

'Las Dos Erres' Massacre vs Guatemala

The 'Las Dos Erres' Case involves the determination of Guatemala's international responsibility for the lack of investigation, prosecution and punishment of those responsible for the perpetration of a massacre of 251 individuals in the community of 'Las Dos Erres', La Libertad, Department of Petén, which occurred between 6–8 December 1982. The massacre was performed by the specialised group within the armed forces of Guatemala named *kaibiles*. The community's inhabitants included children, women, and men. The individuals executed had previously suffered blows and mistreatment, and several women had been raped and beaten.

Between 1962 and 1996, there was an internal armed conflict in Guatemala, which resulted in great human, material, institutional, and moral costs. It was estimated that the number of dead and disappeared in the internal armed conflict reached over 200,000 people. During the internal armed conflict the State applied the 'National Security Doctrine'. Within the framework of this doctrine, military intervention increased to address subversion, a concept which included any person or organisation who represented any type of opposition to the State, which was equated to the idea of the 'internal enemy'.

On 23 March 1982, as a result of a coup d'état, a military junta was installed. In April 1982, the military junta dictated the 'National Security and Development Plan',
which established national goals in military, administrative, legal, social, economic, and political terms. This plan identified the main areas of the conflict. Military acts, performed 'with the knowledge of or by order of the highest authorities of the State', consisted mainly of killings of defenceless population, known as massacres and 'scorched earth operations'. It was reported that approximately 626 massacres were committed through 'acts of cruelty' aimed at eliminating persons or groups of persons 'defined as the enemy' and intended to 'provoke terror among the population'.

Among the actions committed by State agents is the massacre of the 'Las Dos Erres' community. The 'Las Dos Erres' community was founded in 1978 during a heavy migration of poor people looking for land, and as an effect of the colonisation promoted by the government agency Fomento y Desarrollo de Petén. Between 1979 and 1980 people came to 'Las Dos Erres' from eastern and southern Guatemala. In December 1982 there were approximately 300 to 350 inhabitants.

During 1982, the presence of rebel forces (Fuerzas Armadas Reberdes or 'FAR') increased in the areas neighbouring Las Dos Erres, such as in the village of Las Cruces. In September of that same year, there was a confrontation between the members of the FAR and State agents in Las Cruces. Consequently, the military commissioner organised a Civil Defense Patrol (PAC) in 'Las Dos Erres', with the goal of patrolling the area of Las Cruces along with the PAC. The inhabitants of 'Las Dos Erres' indicated that they would only accept to be part of a PAC to patrol their own community, but not the community of Las Cruces. As a result of this response, the inhabitants of 'Las Dos Erres' were accused of being members of the guerrilla.

When the rumour that the inhabitants of 'Las Dos Erres' were part of the guerrilla was already circulating in the area, a military convoy was ambushed by the FAR only a few kilometres from Las Erres, and the FAR took 19 army rifles. In response, military zone 23 of Poptún requested the deployment of a special squad of kaibiles in order to recover the rifles. On 4 December 1982, a squad of 17 kaibiles arrived by airplane to the airbase in Santa Elena, Petén, from Retalhuleu. They joined up with a group of 40 kaibiles posted in military zone 23 of Poptún.

On 6 December 1982, a military action was prepared for the specialised Armed Forces group, during which the superiors of the squad met with the kaibiles and told them to dress as guerrillas to confuse the population and destroy the community, anything seen moving had to be killed. At around 9 p.m. they left the military base of Santa Elena toward 'Las Dos Erres', aboard civil trucks. On 7 December 1982, at dawn, the Guatemalan kaibiles soldiers arrived at 'Las Dos Erres' and began removing people from their homes. The men were locked up in the community's school, and the women and children in the evangelical church. While confined they were beaten, and some died from the blows.

At around 4:30 p.m. the kaibiles took the men out of the school, blindfolded and hand-tied, and led them to an unfinished well were they were shot. Afterward, the women and children were taken to the same place. Along the way girls were raped by
the kaibiles. Upon reaching the well, the kaibiles made the victims kneel and asked them whether they were part of the guerrilla, and at that point they struck them on the head with an iron mallet or shot them, throwing the corpses inside the well. In the end, 251 people were murdered, many women were raped and at least one child was kidnapped and taken by one of the kaibiles who later registered him as his son and changed his name and surname. Another child survived the massacre and was able to escape after witnessing the excruciating suffering of those who were subject to torture and later deprived of their lives.

The investigations of the massacre did not begin until 1994, during which some exhumation measures were performed. However, the alleged indiscriminate and permissive use of judicial resources, the unjustified delay by the judicial authorities, and the lack of an exhaustive investigation, prosecution, and punishment of those responsible have resulted in an ongoing situation of impunity. As of today, the proceedings opened to investigate the facts that transpired in the ‘Las Dos Erres’ massacre continue to be pending.

First, the Court determined the alleged victims in the present case. In following its previous case-law, the Court concluded that it is the Commission’s responsibility to identify the victims and to list them in the report in which it decides on the admissibility and merits of a petition. Given the principle of legal certainty, it is not permitted to include additional victims once the Commission has made its decision and submitted the case for consideration of the Court. The Commission limited the scope of the victims to two survivors and 155 relatives of those who were murdered in the massacre. The Commission excluded the persons who were deprived of their life in the massacre because the Court was not competent to hear the facts that transpired before 9 March 1987, when Guatemala accepted the contentious jurisdiction of the Court. Despite different allegations made by the representatives, the Court concluded that the two survivors and the 155 relatives of those murdered in the massacre were the victims in the instant case.

Guatemala partially acknowledged international responsibility for the failure to provide an effective investigation into the facts of the massacre and identify, prosecute and punished those responsible for the murders after 27 years of the occurrence of the facts. However, Guatemala challenged the jurisdiction of the Court to hear arguments presented by the representatives regarding the violation of Articles 4 (right to life), 5 (right to humane treatment) and 1(1) (obligation to respect rights) of those tortured and executed during the massacre. According to the representatives, the Court had jurisdiction to find violations of these rights, because the lack of investigation into the murders has continued beyond the date in which Guatemala accepted this tribunal’s contentious jurisdiction and, in consequence, the duty to ensure protection for the rights to life and humane treatment has been breached in the instant case. The Court dismissed the representatives’ claims because the persons who were deprived of their lives were not considered victims in the instant proceedings. Nonetheless, the Court
concluded that it had jurisdiction to review the alleged violation of Article 5 in regard to the relatives of those who perished in the massacre due to the continuous nature of the anguish and suffering experienced as a result of the lack of investigation into the murders of their loved ones.

Furthermore, Guatemala challenged the Court's jurisdiction to deal with the alleged violations of Articles 17 (rights of the family), 18 (right to a name), and 19 (rights of the child) of the American Convention in detriment of the two survivors who were children at the time the massacre occurred. The representatives based those violations on Guatemala's failure to provide special measures to protect these children after the massacre and, in regard to one of the survivors, for the separation from his family and the substitution of his name. The Court asserted jurisdiction to review these alleged violations because it concluded that these breaches had persisted in time and beyond the date of Guatemala's acceptance of its contentious jurisdiction.

As to the merits, the Court concluded that the State should have initiated, without delay, a serious, impartial and effective investigation of all of the facts of the massacre related to the violation of the right to life and other violations against humane treatment in conformity with Articles 8 (right to a fair trial) and 25 (right to judicial protection), in relation to Article 1(1) of the American Convention. Also, the Court found that this obligation was strengthened by Guatemala's ratification of the Inter-American Convention to Prevent and Punish Torture (hereinafter 'Convention against Torture'), which includes specific obligations to investigate and punish those responsible for acts of torture. Likewise, Guatemala's ratification of the Convention to Prevent Violence against Women created for the State new obligations to prevent and punish acts of violence against women. The facts that transpired in 'Las Dos Erres' massacre showed that women were subject to extreme violence, including rape and forced abortions. These circumstances were not unique in the instant case, but were part of a broader practice of sexual violence perpetrated by State agents against women during the armed conflict in Guatemala. In sum, Guatemala's failure to carry out an effective investigation into the arbitrary deprivation of life of 251 individuals and the alleged torture and acts of violence against women breached Articles 8, 25, 1(1) of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention against Torture and Article 7(b) of the Convention to Prevent Violence against Women.

The Court also held that Guatemala violated the obligations to respect rights and adopt domestic legal effects enshrined, respectively, in Articles 1(1) and 2 of the American Convention due to the lack of adoption of legal and practical measures to ensure that certain remedies, such as the appeal for legal protection (amparo), is not used as a tool to obstruct the investigation of gross human rights violations.

In regard to the two children who survived the massacre, the Court analysed whether Guatemala was responsible for violating their rights under Articles 17, 18, 19 and 5 of the American Convention on Human Rights. The Court established that one of the survivors, Ramiro Osorio Cristales, was a six year old child at the time of
the massacre and lived with his family. After witnessing the execution of his mother and sister, he was taken by one of the *kaibiles* involved in the massacre to his home. Later, the *kaibil* registered the child under his last name and that of his wife. Osorio Cristales' case was not isolated. As proven by the Court, his case was linked to a systematic practice according to which children were separated from their families after the massacres were perpetrated by Guatemalan State agents. On many occasions, the children were abducted and illegally retained by the soldiers themselves. Moreover, in many cases the children had their name changed and, consequently, their identity denied. The Guatemalan authorities were aware of the existence of the practice and did nothing to stop or remedy the situation of the affected children. In the case of Ramiro Osorio Cristales, for example, he was denied information on the existence of some members of his biological family until 1999, when he was contacted by State authorities to testify on the events that transpired at 'Las Dos Erres'. Later on, and after confirming the kinship to his biological family through a DNA test, he changed his name and surname back to that of his biological family in 2002. The Court found that Guatemala owed Osorio Cristales special measures of protection under Article 19 of the American Convention because he was a child at the time the massacre occurred. The fact that Guatemala was responsible for the separation of his family and for the denial of his identity constituted violations to Articles 17, 18 and 19 of the American Convention.

The Court also found that Guatemala violated the right to humane treatment recognised in Article 5 of the American Convention, to the detriment of the victims in the present case. In addition to the suffering experienced as a result of the violent death of their relatives, they have faced the indifference of the State to their search for justice. The impunity has created in the victims a sense of anger, frustration and a fear for retaliation. In regard to the two children who survived the massacre, the Court found that the suffering they experienced was even more profound due to the fact that they were children at the time the massacre occurred. Guatemala owed them special measures of protection under Article 19 of the Convention, but failed to ensure them such protection and caused them to experience extreme suffering. Thus, Guatemala violated Articles 19 and 5 of the American Convention in regard to these two victims.

To redress the human rights violations of the victims, the Court awarded pecuniary and non-pecuniary reparations and reimbursement of costs and expenses to the victims. Also, the Court ordered the State to complete the investigation of the facts and identify and punish the perpetrators and masterminds of the human rights violations carried out as part of the 'Las Dos Erres' massacre. Furthermore, Guatemala was ordered to identify the remains of all of those arbitrarily deprived of their life and return them to his next of kin for proper burial. In addition, Guatemala had to amend the *amparo* law to make it compatible with the American Convention. Also, Guatemala had to implement training courses on human rights for different State authorities. As
part of the measures of satisfaction, rehabilitation and guarantees of non-repetition, the Court ordered Guatemala to publish certain sections of the instant judgment, hold a public act in which it acknowledges international responsibility for the facts that transpired at the ‘Las Dos Erres’ massacre, create a monument honouring the victims of the massacre, provide the medical and psychological treatment required by the surviving victims, and create a web page for the search of children abducted and retained illegally.

On 8 February 2010, the Supreme Court of Guatemala declared the immediate implementation of the Court’s judgment in the present case and ordered the competent court to continue with the prosecution of the alleged perpetrators charged with the crimes committed in the ‘Las Dos Erres’ community.

Advisory Opinion OC-20 (Article 55 of the American Convention)
On 14 August 2008, Argentina submitted an Advisory Opinion request pursuant to Article 64 of the American Convention. The advisory request sought the interpretation of Article 55 of the American Convention, particularly in regard to the appointment of ad hoc judges in contentious cases arising from individual complaints and the impact that the appointment of such judges may have on the right of equality of arms of the parties participating in those proceedings. Also, Argentina sought a determination on whether participation of national judges in proceedings brought against the State of their nationality affected the parties' right to an independent and impartial judge. In this vein, Argentina posed the following questions to the Court:

1. In accordance with the terms of Article 55(3) of the American Convention on Human Rights, should the possibility of appointing a Judge ad hoc be limited to those cases in which the application submitted to the Court arises from an inter-state petition?
2. For those cases arising from an individual petition, should a Judge who is national of the respondent State Party disqualify himself from taking part in the deliberation and decision of the case in order to guarantee an impartial and unbiased decision?

With respect to the first question, the Court concluded that an interpretation of Article 55(3) in light of the object and purpose of the American Convention, its context and drafting history, restricts the appointment of ad hoc judges only to proceedings concerning inter-State communications. The application of this provision,

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14 Article 55 of the American Convention states: '1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case. 2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an ad hoc judge. 3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an ad hoc judge. 4. An ad hoc judge shall possess the qualifications indicated in Article 52. 5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.'
therefore, cannot be extended to the processing of cases which originate in individual complaints. Also, the Court considered that the previous practice requesting States to appoint *ad hoc* judges in individual cases when there was no national judge sitting in the bench has not crystallised into a customary international rule. First, the previous practice regarding the appointment of *ad hoc* judges was based on a procedural rule that the Court perceived was in need of amendment given the changes incorporated in the system strengthening the participation of victims and their representatives in the proceedings before this Tribunal. Also, if the practice had crystallised into a customary rule, its application was void because it breached the principle of equality and non-discrimination considered by the Court as a *jus cogens* rule. According to the Court, if the other parties in the proceedings were not granted the power to appoint *ad hoc* judges, sustaining an interpretation that would allow States to do so would impair the principle of equality of arms. In addition, the Court rejected arguments suggesting that the presence of a national of a respondent State in the Court benefits the process because the *ad hoc* judge can provide guidance and information on the laws and practices of that State. The Court stated that there are many stages in the contentious proceedings in which the Court can gather the necessary information to familiarize itself with the laws and practices of a particular country. Moreover, *amicus* submissions can also help the Court in that process. Finally, the Court disregarded arguments suggesting that the appointment of *ad hoc* judges contributed to ensure a diverse representation of legal systems in the composition of the Court. The role of selecting judges who represented the different legal traditions of the hemisphere was the task of the States themselves when nominating and electing judges to sit at the Court, and not a function of this Tribunal.

As to the second question, the Court concluded that the judges who are nationals of a respondent State in a case arising out of an individual complaint must exclude themselves from the proceedings to ensure an independent and impartial decision. The right of the judge to sit in a case brought against his or her State of nationality must be acknowledged only in inter-State communications, where it is clear that representation of the State party’s interests must be ensured. This interpretation takes into account that the Court has jurisdiction to review both inter-State petitions and those originating in individual complaints. Thus, traditional notions of international law cannot be used as the guiding principles to interpret the jurisdiction of a Tribunal created by a human rights treaty such as the American Convention.

After the adoption of Advisory Opinion OC-20, the Court amended its Rules of Procedure to make them consistent with its new interpretation of Article 55 of the American Convention.15

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15 See Articles 19 and 20 of the new Rules of Procedure of the Court.