

Rosendo Radilla v. The Mexican Government: Visibility and Invisibility of Crime and its Reparation*

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ABSTRACT

In November 2009, the Inter-American Court of Human Rights (IACoHR) ruled against the government of Mexico for the disappearance of Rosendo Radilla and other crimes that resulted from the case. Rosendo Radilla is one of the almost 600 victims of forced disappearances which occurred in the state of Guerrero during the political repression of the 1970s. The invisibility of the repression and its victims is maintained despite the political changes that have occurred at the federal and state level and the 2009 ruling, the only one up to this day regarding this type of crime.

This paper describes and locates the fundamental events from a historic perspective, focusing on a long period of notorious impunity and scarce visibility. Despite all the investigations and efforts that led to the ruling, the emblematic Radilla case has been kept out of the limelight in public spaces. The article considers the political behaviours and acts of the state which have enabled the perpetuation of unjust circumstances from a Human Rights perspective. The paper concludes that the Radilla case reveals a pattern of progress in the evolution of the Mexican institutions of justice as well as exposing some of its limitations, and the human rights organizations of the civil society are shown to undergo a social transformation that permitted the ruling of the IACoHR.

Key Words: IACHR, sentence, Radilla, Mexico, invisibility

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INTRODUCTION

Forced disappearance is an unpunished crime in Mexico. This crime involves state responsibility, as stated by the Inter-American Court of Human Rights (IACoHR) in its 2009 ruling on the Rosendo Radilla Pacheco case. This is the only ruling condemning the Mexican State for political repression during the Cold War.¹ At least four decades have passed since the context in which this disappearance took place. The number of victims indicates that the most affected area was the state of Guerrero, and more specifically the municipality of Atoyac de Álvarez. The numbers reveal a great concentration of the repression, since of the approximately 1,200 civilians that disappeared between the decade of the seventies up until the nineties, more than 600 belong to a single state, of the 32 states that comprise the Republic. Furthermore, more than 400 of those civilian victims belonged to a single municipality. These data show that in Atoyac, and in the Guerrero territory in general, forced disappearance was a devastatingly repressive instrument.

The number of victims of state violence also illustrates that during the same period in which several Latin American countries, with authoritarian and dictatorial regimes, suffered systematic violations of human rights, Mexico was not the exception. Arbitrary detention, torture, forced disappearance and extrajudicial executions also took place in Mexico, and in a highly focused fashion. However, the Mexican circumstances were not visible from the outside, especially due to an open-door policy for the politically prosecuted that established Mexico as “a land of asylum, a land of refuge”. This policy is related to its international stance, whose essence is the Estrada Doctrine; based on the principle of non-intervention that in turn implies a principle of non-alignment. From the latter it is possible to assert that a double-faced practice existed in Mexico, one towards the outside and another one inwards.

In these circumstances the investigation of the Rosendo Radilla case and its progress through the legal system is emblematic. This paper, by using of a historical method, reveals: a) the pattern of progress in the evolution of the Mexican institutions of justice (and the limitations of that progress), and b) the human rights organizations of Mexico’s civil society have undergone a social transformation which contributed to reaching the final sentence emitted by the IACoHR.

1 Mexico has a number of rulings of another nature and context for violations of Human Rights. Some of them also correspond to the state of Guerrero.

However, the repressive circumstances were also not clearly visible from the inside. This is due to the highly focused nature of the repression, especially within the rural environment, which reinforced its invisibility given the centrality with which the Mexican Republic operates. Additionally, the successful management of corporate rule and the hegemonic discourse allowed for the exclusion of the opposition for decades. Any discordant manifestation during the Cold War years was treated as a potential destabilization of the regime. For this reason, if repression was visible, it was immediately translated as a necessary evil in order to protect the state from the enemies of the nation. In this way, several reasons operate in conjunction to reinforce the invisibility of the repression and its victims, that has remained in place for many decades and that has only been uninterrupted in the rural areas affected and in several opposition spaces (social, associational, and unionized spaces).

It was only at the end of the last century when some official gestures started to break the implacable silence that had been imposed on those facts. Although undoubtedly the repression that affected the student movements of 1968 and 1971 was prioritized, it is possible to argue that once these repressive events were incorporated into the official discourse, they acted as a memory trope which increased the visibility of other violations. The latter shows the adaptability of the Mexican State, as it has attempted to manage issues that involve it in different types of extreme violations, as well as the adaptations of the victims, who employ strategic management of the repressed movements in order to raise and establish their memory.

The soft voice that was slowly heard in the national space has not been silenced, but it has not been raised. The interests of several groups linked to state power yesterday as well as today's power continue to silence it. In contrast to many Latin American countries, this situation has led to Mexico not registering even one case of conviction and ruling over the crime of forced disappearance. Thus, impunity had not ceased (López and Rivas 2014). Furthermore, impunity has been reinforced in a climate of growing violence, in contrast again to many other Latin American countries, although the reasons for this lie in other agents and interests. It is against this trend, with a greater and more prominent emphasis, that the ruling of the IACoHR against the Mexican State in the Radilla case is presented in the realm of international courts. Its strength contributes to a certain alteration of Mexico's image during the Cold War years, while seeking reparation for the permanent crime.

This paper claims that the characteristics of inclusion and exclusion

of the Mexican regime, its traditional dual policy (domestic and international), and its pronounced social, ethnic and regional stratification, produced a widespread national and international invisibility of the repression during the sixties and seventies that remains active despite political changes. The argument is built from a historical perspective that seeks to elucidate and locate the fundamental facts in a long period of notorious impunity, setting a framework for the specific case of Rosendo Radilla during the 40 years of his disappearance. Additionally, it will provide some speculation about the different political actions that encompass the emblematic Radilla case which proves unsatisfactory in the complete fulfillment of the ruling, and that illustrates the permanence of the alluded invisibility. However, this paper also displays the case as a success in judicial construction and international recognition, which modifies the traditional invisibility in the realm of violations, as, is noted towards the end of the paper. Finally, the conclusions enable us to review some of the main points of the argument.

THE RADILLA CASE IN CONTEXT: POLITICAL HISTORY IN 20TH CENTURY MEXICO

The political regime that emerged from the Mexican revolution was maintained with no important fissures until the middle of the century.² One hegemonic party (Partido Revolucionario Institucional, PRI) and a strong presidentialism were combined with a solid corporatism while all dissidence was excluded.

In time, the decline of the corporatist regime allowed expressions of opposition to the forms of inclusion imposed by the PRI party. Different cultural and socioeconomic groups within a diverse society, living in different locations within the immensity of Mexican regions and territories, converged in this opposition. Since the fifties, and with a stronger emphasis during the sixties, seventies, and even the eighties, opposition has been manifested in very different styles, resulting from union, labor, and guerrilla struggles; that is, from inside and outside of the political system. All of these received a repressive response with a high degree of violence. This aggressive response was enforced by government agents or by groups working for

2 The political context in this paper is drawn essentially from bibliohemerographic sources. Henceforth, the consulted materials are primary sources, documents of the case and of the Supreme Court.

them. In particular, two types of repressive practices occurred. The first and most visible one befell urban, union, and labor movements in which students were included. The other practice was hidden, selective, focalized and was specially directed towards rural organizations and armed groups.³ This is the case that Rosendo Radilla Pacheco exemplifies.

These were the years of the east-west confrontations, of the configuration of the domestic enemy that, in the reality of the Mexican politics, was simultaneous to the exercise of the state policy of refuge for thousands of persecuted people of different political and ideological postures. For this reason the state policies are characterized as dual, doubly functional postures for the same exercise of power.⁴ During the presidency of Luis Echeverría (1970-1976) in particular, although also during the administration of José López Portillo (1976-1982), these contradictory circumstances were manifest. It is worth noting that Echeverría occupied the position of Secretary of State when the Tlatelolco murders of October 2, 1968 took place; and during his presidency, in June 1971, the Halconazo incident occurred, both targeting the student movements.⁵ The latter was the last repressive event during those years of open, public visibility.⁶

Carlos Montemayor claims that 1968, as a political moment of great importance, was a laboratory of repressive experiments at great scale:

[...] the coordination between the police and the military with the Public Prosecutor and the judges [...] the modus operandi of the vast machinery

3 On the development of Mexican's guerrillas see Laura Castellanos.

4 For years this damaged the work of Human Rights activists who sought international solidarity, as noted by AFAFEM's president, Julio Mata: "Mexico, has been seen by other countries in the world [...] as a country in solidarity with movements of every kind [...] The image that it has in other countries, organizations, and even in many guerrilla groups, since the 70s, 80s and 90s was that of solidarity. When we, sometimes, went to Guatemala, Nicaragua, and El Salvador to ask for solidarity, only saying that in Mexico there were grave violations of Human Rights, organizations refused us. They did not allow us to say that about Mexico because that would have meant closing the doors of the Mexican State for them".

5 The Tlatelolco murders and the Halconazo refer to two of the main repressive actions against the student movement that occurred in Mexico City. The former happened on October 2nd 1968, when the paramilitary group Batallón Olimpia, the Federal Security Direction and the Mexican Army intervened. The latter is also known as Corpus Thursday. It took place on July 10th, 1971, the repression was led by a paramilitary group named Halcones.

6 While the political repression of the Dirty War is encircled in the temporal scope of 1965 to 1985, as pointed out by Montemayor "[...] in December 1997 another form of state violence erupted in Mexico through assault groups. Two years earlier, since 1995, these new groups were no longer comprised by military of policemen, but by indigenous paramilitaries" (Montemayor 2010, 194).

of the Public Prosecutor and the Judiciary had been applied to the repression of former social movements, particularly the those of railroad workers and teachers in the 50s. The difference then was the continuity in the chain of command, contingent on the operation of the police and military agents throughout the many decades of the Dirty War (Montemayor 2010, 193).

Since then, the government strategy of causing the disappearance of opposition members, guerrilla foci and everything considered as possible support or sympathy for the cause the former represented, became a practice. It was in this context that the events in Atoyac de Álvarez took place in order to apprehend the rural teacher and guerrilla fighter, Lucio Cabañas. Of the repressive campaigns that persisted until the death of the guerrilla leader, generals Arturo Acosta Chaparro and Francisco Quirós Hermosillo have been continuously accused of being responsible, and were in fact taken to court several years later (Díaz 2002, 13-15). In every one of the cases, the now defunct Federal Security Direction (DFS) was implicated in the kidnapping, torturing and disappearance of hundreds of people (Monge 2001, 22). Among the directors of the organization that have been identified as responsible of human rights violations are Miguel Nazar Haro and Luis de la Barreda. These events were continuously denied by the successive administrations while the repressive acts continued. Their veracity, however, tends to be confirmed by official declassified Mexican and North American documentation.

It cannot be denied that the hegemonic discourse of the time favored a justification of intolerance in that every independent attempt to organize was considered disruptive to the social order. The recurrence of the use of force from the state was justified by the existence of the “crime of social dissolution”. It was precisely this legal entity that was used for the ideological criteria of the time, and its annihilation was one of the main demands of the student movement of 1968.

Despite the reinforcement in the discourse of defense of democratic principles in international organizations, especially when president Luis Echeverría sought leadership of the Third World Movement, Mexico avoided its internal policies being shown to the outside.⁷ In this sense, Mexico shared repressive practices with the dictatorships of the Southern Cone, although not equal in magnitude, that violated human rights and that remain unresolved and without the application of justice. Thus, the two faces of the regime, its domestic and its foreign policy, were functionally

7 On the tensión between internal politics and international policies in terms of HR, see Maza (2008).

successful in keeping the regime alive without rejection at the international level and domestically hegemonic by the repression of the opposition.

The legitimacy of the claims of human rights violations gained momentum during the eighties when the first human rights organizations were established. By the nineties there were already nearly 200 organizations of the like in Mexico (Aguayo 1995, 358, 362). It was then that international attention started to focus on violations.⁸

Thus, Mexico was late to enter the Latin American and international human rights context, and even more so to officially acknowledge the necessity of reestablishing the truth of events linked to violations in recent history. This situation permitted the major violations due to political repression in those years to continue as being unrecognized and unpunished. The repression became a heritage from the past, and due to the lack of timing, in the perpetual play of progress and setbacks there was striving for its legality to be adjusted with international treaties on the matter.⁹

Within Mexico there were also state reactions that exposed the perception of the international climate on the matter. The first case was the creation of the National Commission on Human rights (CNDH) during the government of Salinas de Gortari (1988-1994). It was in this changing scenario that the first acknowledgement of those that had been disappeared for political reasons took place. According to Duran Ponte, the victims of the disappearances for political reasons are “mostly a product of the guerrilla, or of the Dirty War, that confronted the Party of the Poor against the Mexican army and police” (Durand Ponte 1994, 312-314).

The Mexican political regime started to become more prone, and thus more receptive, to opening towards the necessary inclusion of the opposition within a legal framework and to incorporate the official human rights discourse which was increasing in international visibility. This attempted simultaneity coincided with a political transition whose essence is still debated today. It was within this context that the victory of the Partido de la Revolución Mexicana (PRD) in Mexico City occurred, and the federal government was won by the Partido de Acción Nacional (PAN) in 2000 (Bizberg, Meyer and Alba 2006).

While these promising events for a democratic opening were happening, terrible repressive acts were also taking place, such as the killing of Aguas Blancas in the state of Guerrero on the 27th of November 1995, in

8 On the ascent of the human rights movement see Durand Ponte (1994).

9 In this context several international treaties are ratified and the National Program for the Promotion and Strengthening of HR is presented. Bustillos (2012, note 2) and in Maza (39-42).

which the state police murdered seventeen indigenous people. The massacre produced the main shift in Mexico's international image. Questioning about violations of the civil and rural population, and particularly of indigenous ethnic groups, became manifest. Human rights organizations within Mexico played a prominent role in the denunciation of these violations.

Since then, the Mexican government has favored a discourse supporting the defense and promotion of human rights that even includes emerging rights such as the right to the truth. Nevertheless, as denounced by human rights organizations, Mexico was fixed in a structure of impunity that had negative repercussions on the possible official will to resolve criminal acts and their corresponding legal proceedings (Sikkink 1996, 157).

In the midst of a complicated political process that was giving signs of change in many aspects of the Mexican political system and of the official version of recent history, the victims of the repression of the years of the Cold War increased in their relative visibility. Nevertheless, the imbalance between urban victims, those from student sectors, and in general those of the middle class, in contrast with the rural victims of lower socio-economic levels lingered. The latter remained hidden at the margins of national events, due to the lack of emphasis in the dominant discourse, as well as to the vast geographic territory and Mexican multiculturalism.

The new official version gained strength since the PRI's defeat in the year 2000. The promises of Vicente Fox's political campaign and the recommendation of the CNDH report of November 2001, regarding the need to investigate the events in the recent past and the violations of human rights for which the state may be responsible, requesting an ad hoc structure, took concrete shape.

President Vicente Fox (2000-2006) enabled this with the creation of the Special Prosecution for Social and Political Movements of the Past (FEMOSPP) in 2002, funded by the state. However, since its creation there were numerous omissions and deficiencies. Later, the direct or indirect involvement of the Prosecution officials related to the acts of oppression was denounced. President Felipe Calderón (2006-2012) surprisingly shut down the Prosecution Office after it delivered the final report. Perhaps this reaction was due to the publication of the draft of the National Security Archive, which contained a more detailed and forceful version of the criminal facts of the past for which the state was responsible, installed on the National Security Archive Website. The Mexican government could not intervene in this version, and it had been irremediably made public.¹⁰

The policy of defeating impunity has not been linear. It would seem that a cost-benefit analysis in the alliances of a Mexico that was attempting to transition away from “the old regime” since the year 2000 would illustrate a perverse relationship for contributing to the level of violations not being dependent on the signed treaties or on legislation. A game of perverse strategies for democratic institutionalization and the strengthening of the protection of human rights seemed to prevail. In Mexico this is added to the inheritance of violations of human rights committed within the framework of hidden and rural repression, not visible in the urban landscape or on public spaces. Thus, the closure of the possibility of national channels to denounce the crimes committed by federal agents on rural populations required reaching the level of an international tribunal such as the IACHR. But this demands an enormous amount of strength and competence from the human rights organizations in order to trigger the plea and introduce it in the court. This is not easy for those who historically have been marginalized by the set of conditions referred to above.

THE ROSENDO RADILLA PACHECO CASE

The case in question refers to the disappearance of a person in the context of the political repression of the sixties in Mexico, an event that triggered a lawsuit that demanded revelation of the crime and the whereabouts of the detainee. The litigation reached the IACHR and gave rise to the ruling of this court against the Mexican government in November 2009.

For human rights organizations in Mexico the disappearance of Rosendo Radilla constitutes a symbol of scarcely acknowledged political repression during the decades of the seventies and eighties, within the international environment of the Cold War and national security dictatorships in Latin America. It is symbolic as well because it is the first litigation of this type to enter the IACoHR and instigate a ruling.

Rosendo Radilla was detained and disappeared since the 25th of August 1974. His situation is exemplary of that of hundreds of people whose victimization is unseen because they are rural inhabitants of the southern region of Guerrero and in particular in the town of Atoyac de Álvarez. Additionally, these victims were invisible due to the features of targeted

10 See both versions at <http://www.gwu.edu/~nsarchiv/mexico/>

political repression against the civilian population. From those years and circumstances there is a balance of hundreds of detained and disappeared people throughout the country, of which 400 belong to the locality of Atoyac de Álvarez (Gutiérrez 2010, 14).

The year of Radilla's disappearance was perhaps the most violent one in terms of repression in Atoyac. This was the period in which the guerrilla led by Lucio Cabañas had kidnapped the senator and elected governor of Guerrero, Rubén Figueroa. The army unleashed a campaign against the movement that entailed a wave of terror against the civilian population. The army sought information about Figueroa as well as achieving the goal of isolating the guerrilla. It is evident that the motivation behind Rosendo Radilla's detention and later disappearance responds to his sympathies with the guerrilla movement, expressed in his corrido songs.

The IACoHR drafted a profile of him:

Rosendo Radilla Pacheco was involved in several political activities and social work in Atoyac de Álvarez, Guerrero; in particular, in the organization of coffee growers and farmers of the area. [...] Between June 1st 1955 and August 31st 1956 he was president of the Municipal Council of Atoyac de Álvarez. From 1956 to 1960 he was general secretary of the Farmer's Regional Committee. [...] In 1965 he participated in the funding of the Agrarian League of the South Emiliano Zapato [...] Mr. Rosendo Radillo Pacheco wrote corridos, a popular musical expression in which verses are narrated accompanied by a guitar. The corridos written by Rosendo Radilla Pacheco narrate several events that happened in Atoyac de Álvarez and the farmers' struggles as well as the social conflicts of the time" (IACHR 2009, 34-35).

At the moment of his detention he was accompanied by one of his sons. The fact that his arrest was so public allowed testimonies to be collected, all of them coinciding in that Rosendo Radilla was transferred to a military headquarters in Atoyac. These circumstances have also enabled it to become one of the most officially documented cases.¹¹

The story of the denunciation has many moments related to the recent political context in Mexico. The Radilla family reacted by publicly making the capture known, but not officially, that is, not to the law enforcement agencies. The prolonged silence of the victim's family, according to Miguel Concha "[...] was largely due to the feelings of fear, defenselessness and impotence that, caused by the government, ruled the life of the small

11 While it is presumed that he was murdered and buried in this military headquarters, there are also testimonies that offer other data. *La Jornada* (2000).

farmers' town, as a substantial part of state terrorism" (Concha 2007).

Certain signs of changes at state level triggered denunciations at different levels of jurisdiction. These signals were first seen when the National Commission on Human Rights was created in Mexico (CNDH by its Spanish acronym) and the the FEMOSPP was created subsequently. The first of the denunciations in national instances of law enforcement were presented "against those responsible" (CMDPDH 2008). Rosendo Radilla's daughter, Tita Radilla, presented the case to the Federal Public Prosecutor in the state of Guerrero. After seven years without results, in May 1999 she filed another petition to the Public Prosecutor of Common Jurisdiction in Atoyac de Álvarez. In both cases the grievance was rejected due to lack of evidence of responsibility. In 2010 a new denunciation was addressed to the Public Prosecutor of Federal Jurisdiction, in the state of Guerrero. This time it generated the Inquiry 268/CH3/2000.

In January 2001 the denunciation reached a national jurisdiction when it was presented to the General Prosecutor of the Nation (PGR by its Spanish acronym), and ratified March 20, 2001. Despite the fact that this procedure gave rise to the Inquiry 26/DAFMJ/2001, there was no progress. The national channels proved time and again the impossibility of progressing in the clarification of the disappearance and the notorious lack of will to generate a corresponding mechanism. Despite the signs of change in the field of human rights and the recent creation of the CNDH, in Mexico there still existed strong obstacles for making the repression of those years visible, and even more so, to locate those responsible for it. It was then, in November 2011 that the denunciation was presented to the Inter-American Commission on Human Rights (IACHR). This was possible due to a joint effort of the family members of the victims and of the organizations for the defense and promotion of human rights such as the Association of Family Members of the Detained-Disappeared and Victims of Human Rights Violations (AFADEM by its Spanish acronym) and the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH).

However, almost at the same time the report issued by the National Commission for Human Rights (CNDH) marked a turning point regarding several violations of Human Rights. The report (26/2001) included a recommendation in which the following steps for the formation of an *ad hoc* research structure to address the state's responsibility for having responded in an authoritative manner to a political problem, giving rise to "[...] the violation of human rights of hundreds of people by *ex profeso* groups within the security forces" (CNDH 2001).

In a game of official maneuvers that have not modified the firm structure of impunity regarding those events of which Radilla's case is an example, in 2002 the Mexican government made a historical acknowledgement, given its official and public nature, with the creation of the FEMOSPP.¹² The FEMOSPP was located in the Attorney General's Office (PGR). It immediately installed an office in Atoyac de Álvarez (Dutrénit and Varela, 2010). Nevertheless, for the Radilla case, the FEMOSPP did not offer considerable changes. In 2005 an arrest warrant against General Francisco Quirós Hermosillo was issued, but the proceedings ended with the latter's death which occurred before the proceedings even began. A brief report on the warrant illustrates the impediments that the Mexican law enforcers were creating against the case. Among the impediments was the prerogative for those accused of being involved in human rights violations to be tried in military, rather than civilian courts. As explained further on, the ruling had a repercussion on its modification.

[...] On August 11, 2005 the Attorney General consigned General Francisco Quirós Hermosillo as presumed guilty in the Radilla case, before the Second District Judge of the state of Guerrero, who declined competence in favor of the corresponding military court. Tita Radilla responded to this, on September 6, 2005, by filing for an injunction against the resolution of incompetence, which was denied; as a consequence, this led to a revision from the First Collegiate Criminal and Administrative Court in the Twenty-first Circuit, which in October 27, 2005 ruled that the First Military Judge had jurisdiction to hear the case. Afterwards, the Radilla case having been transferred to a military court, on November 29, 2005 the First Military Judge himself dismissed the case due to extinction of criminal action, because of the death of the accused, General Francisco Quirós Hermosillo (Bustillos 2012).

Finally, the FEMOSPP was deactivated abruptly in 2006 after having made public the *Historic Report to the Mexican Society 2006*. However, from this document the Radilla case is established as emblematic in that it shows the systematic plan for extermination present in those years while showing the permanence of a legal structure completely infiltrated by interests that are alien to the defense of people's rights. This condition of impunity has been sustained for decades. Thus, the internal channels for the Radilla case were shut down. The magnitude of the case and

12 Special Prosecutor Office for addressing events that probably constituted federal crimes committed directly or indirectly by public officials against people linked to social movements and former politicians.

the support of AFADEM and the CMDPDH from local denunciation up to regional action enabled the transferal of the litigation from the Mexican space to the international one, and contributed to the IACHR turning over the case to the IACoHR in 2008.

In the ruling of *Rosendo Radilla v. the United States of Mexico* (case 12.511) of November 2009, the IACoHR ruled against the government of Mexico for the crime of forced disappearance, granting international transcendence, visibility, to an event scarcely known at the national level and practically in-existent before then at the international level. The IACoHR also held that a pattern of systematic behavior against the so-called *enemies of the nation* was being carried out by the military, including the conflict of the guerrilla insurgency during the seventies and the more recent fight against organized crime (Villareal 2010). Regarding *Rosendo Radilla* in particular, the sentence referred to several different violations that were committed.

The Tribunal unanimously declared that the Mexican state: [...] is responsible for the violation of the rights of personal freedom, personal integrity, the recognition of the legal person and of life [...] against Rosendo Radilla Pacheco [...] is responsible for the violation of the right to personal integrity [...] against Tita and Andrea, and of Rosendo, all of them surnamed Radilla Martínez [...] is responsible for the violation of the rights to legal guarantees and legal protection [...] against Tita and Andrea, and of Rosendo, all of them surnamed Radilla Martínez [...] and neglected to comply with the obligation of adopting internal law dispositions [...] regarding the codification of the crime of forced disappearance of people [...]" (IACoHR 2009).

The ruling condemns the crime and demands several reparations. It is important to describe some of its considerations because they provide evidence of precisely what had been silenced and made invisible. In this sense, the court's ruling states that it constitutes *per se* a form of reparation, while requiring of the Mexican State:

[...] to efficiently conduct, with due diligence and within a reasonable timeframe, the investigation, and when appropriate, the criminal proceedings that pertain to the detention and following forced disappearance of Rosendo Radilla Pacheco, in order to determine the corresponding criminal responsibilities and to effectively apply the penalties and consequences provided by law [...] to continue with the effective search and immediate localization of Rosendo Radilla Pacheco, or of his mortal remains [...] to adopt in a reasonable timeframe the pertaining legal reforms in order to make Article 57 of the Military Justice Code compatible with international standards on the matter and to the American Convention on Human Rights

[...] to adopt in a reasonable timeframe the legal reforms in order to make Article 215 A of the Federal Criminal Code compatible with international standards on the matter and to the American Convention on Human Rights [...] to implement, in a reasonable timeframe and with the corresponding budget disposition, permanent programs and courses regarding the analysis of jurisprudence of the Inter-American System for the Protection of Human Rights in relation to the limits of the military criminal jurisdiction, as well as a training program on proper investigation and prosecution of constitutive facts of forced disappearance of people [...] to publish once, in the Official Gazette of the Federation and in another newspaper of broad national circulation, paragraphs 1 through 7, 52, 66, 114 and 358 of this ruling, without the footnotes, and its operative part, as well as to publish this ruling in its entirety on the official website of the Attorney General of the Republic [...] to perform a public act of acknowledgement of the responsibility regarding the events of the present case and honoring the memory of Rosendo Radilla Pacheco [...] to undertake a biography of the life of Rosendo Radilla Pacheco [...] and to pay the amounts established in paragraphs 365, 370, 375 and 385 of this ruling, as compensation for material and immaterial harm, and a full reimbursement of costs and expenses [...] (IACoH 2009).

It is necessary to emphasize what the Radilla case represents in terms of the permanent and unresolved aspects of the substantial obligations included in the ruling. The efforts to clarify the circumstances of his disappearance and to locate his remains have not been conclusive. It has been a very slow process, without locating key informants such as those involved in his detention and succeeding disappearance. Hence, the ruling does not lead to a proper and better-conducted search (examination of the terrain and location). All the protagonists of the excavation undertakings coincide in affirming there has been an absence of military information.¹³ Clearly, this indicates the government's non-compliance with the right to the truth. However, simultaneously, Supreme Court of Justice of the Nation (SCJN) was recognized by the United Nations in 2013 for its progress toward the judicial instrumentation of human right.¹⁴ This situation favors an international image that does not necessarily reflect the reality of the human rights situation and the persistent violations within the country. In the case of Rosendo Radilla the state has displayed a disposition of non-compliance with the right to the truth, emblematic

13 The author has conducted several interviews with human rights activists, litigants in the Radilla case before the IACoHR, and forensic anthropologists who have participated in the undertakings at Atoyac de Álvarez. They all coincide in confirming the absence of military information.

14 See previous section.

of a specific context that has claimed hundreds of victims.¹⁵

ACTION AND REACTION OF THE SCJN

During the first fortnight of November 2013 the news spread throughout the media that the records containing the files linked to the Radilla case in the Mexican Supreme Court of Justice (SCJN) had become a part of the World Memory Program of the United Nations for Educational, Scientific and Cultural Organization (UNESCO). This is a significant acknowledgement, as it means that the records had become part of humanity's heritage along with other transcendental records of various kinds such as the records on the construction and fall of the Berlin Wall, the criminal proceedings of the State against Nelson Mandela (253/1963) and Anne Frank's diary.

This recognition by the SCJN is based upon the legal brief "Varios" 912/2010, which documents the serious violations of human rights carried out against Rosendo Radilla. The recognition indicates the determination which was made, that the Mexican state is obligated to comply with the ruling of the CoIDH against it, and in particular, the obligation remains to establish guidelines to see to the full compliance with the reparation measures given to the Federal Judicial Power.

Not even a month had passed when the United Nations announced that the SCJN had been selected among the recipients of the 2013 Human Rights Award. The UN stated that the award was due to the SCJN reaching "important progress in the promotion of human rights through its interpretation and application of the Mexican Constitution and its obligations on the subject under international law" (*El Financiero* 2013).

These acknowledgements to the important advance in the instrumentation of justice in Mexico, especially the first, raise the following questions: up to what point does the recognition and international visibility of the case rectify the situation of human rights in Mexico and the circumstances of Radilla in particular? How does the success of the judicial construction for the promotion of human rights equate to the right to the truth for family members and to an implementation of authentic measures and programs of reparation in the Radilla case?

A brief look at the debates and conclusions of the SCJN between 2010 and 2011 makes it possible to identify the central aspects of the

15 On the right to the truth see (2007, 10).

legal instrumentation that motivated the recognition by the UN. First, the obligation to comply with the rulings of the CoIDH was designated as a matter for debate and discussion. In the same manner, the DDHH extended the role of the courts of justice to protecting the individual persons and their human rights, and questioned the jurisdiction of military courts in the case of crimes that affect human rights.

Among the topics debated by the SCJN in 2010 was the questioning of the compulsory nature of the IACoHR ruling, in particular because according to the Constitution, the Mexican Court is the maximum court in the country and in none of its articles does it recognize the international court as such. The same goes for the validity of the international rulings, and the matter of whether the IACoHR had acted in the most appropriate way in its ruling regarding the Radilla case (Méndez 2010, 706). That is, the discussion focused on whether the IACoHR had gone beyond its capacities by pronouncing a ruling in the Radilla case, thus not generating an obligation for the SCJN. Another of the matters discussed was that the sentence was not directed straightforwardly to the SCJN, and thus it was debated whether the latter should acknowledge being addressed by the ruling and pronounce a sentence in this direction to determine subsequent actions (SCJN, 29-30). Most of the Ministers argued that even though the ruling had not been addressed directly to the SCJN, it should nevertheless acknowledge it and pronounce a specific sentence. Thus, it was determined in the resolution 489/2010 of September 2010 that:

A statement must be issued regarding the possible participation of the Judiciary in the execution of the sentence ruled by the Inter-American Court of Human Rights in the case of Rosendo Radilla Pacheco against the United States of Mexico.¹⁶ Considering that Mexico recognized, in its general form and as binding, “the contentious competence of such jurisdictional organ on the cases regarding interpretation or application of the American Convention of Human Rights” (Fundación para el Debido Proceso 2010, 7).

It was established that “this acknowledgement of the jurisdiction of the contentious competence of the Inter-American Court of Human Rights implies that the obligation exists for the United States of Mexico to comply with the decision of this jurisdictional organ, as it is a constitutive part of the American Convention of Human Rights” (*ibid.* 8). Thus, stating that “the concrete obligations that the Judiciary is compelled to comply

¹⁶ Expediente varios 912/2010, p. 7.

with should be defined as well as the ways in which they are to be instrumented” (*ibid.*), the resolution gave rise to the preparation of a subsequent resolution that would address measures such as training for judges and the amendment of the law in matters of military courts that were explicitly mandated by the ruling of the IACHR (Méndez 2010, 706).

In July 2011 the study of the resolution of the IACoHR was finalized and confirmed the restriction on military courts in situations that affect civilians’ human rights.¹⁷ This had a positive effect on the Radilla case by guaranteeing that it would not return to military jurisdiction. This decision is generally, and specifically for this case, categorized as positive because the structure of Mexican justice has been highly questioned, even more so when extreme situations are considered, such as the litigations originated by violations committed by the military, when it was military courts that received and carried out such proceedings.

Additionally, the SCJN resolution 912/2010 of July 2011 contains a series of agreements of historical relevance for the Mexican judiciary system that is important to bear in mind. In it they refer to:

[...] the resolutions pronounced by 5 the international instance whose jurisdiction has been accepted by the Mexican State are mandatory for all its organs in their respective competences, having been part of a concrete litigation. Thus, for the judiciary they are binding not only in the concrete matters of the ruling, but in the totality of the criteria contained in the ruling through which the litigation is resolved.¹⁸

Undoubtedly the Radilla case, related to the disappearance of a person during the period of political repression in the seventies, can be considered paradigmatic of a repressive pattern that characterizes the period, even after it elapsed (Bustillos 2012). This is not only because it gave rise to a ruling of an international court against the Mexican State regarding its responsibility in human rights violations (IACHR 2009), but also because it led to a series of reforms within the Judiciary, where the most outstanding aspect is the establishment of a diffuse control regarding international conventions.

Nevertheless, in Mexico parts of the progress reached in 2011 seem to be reversing given the new modifications in the jurisprudence of human

17 In April 2014 the Senate approved the reform that restricts military courts.

18 This part of the agreement is the one that was recognized as a historic principle in favor of Human Rights, a point from which there would be a step back in 2013. *Fundación para el Debido Proceso 2010*, p. 27.

rights. Since September 2013, with the new reform, intentionality was changed under the argument of *giving legal and operational certainty to intention* (SCJN ruling on Controversy 293/2011) (SCJN 2013). This reform grants a margin of national appreciation, as sustained by the doctrine widely used by various international courts, translated in certain deference towards national authorities in order for the latter to decide on a given matter.

The seriousness of this new situation stems from a criteria established in order to solve conflicts generated between the different norms that today comprise the block of constitutionality.¹⁹ Facing “restrictions or limits, precisely when contradicting rules exist, when there is a tension between rights [...] priority must be placed on the constitutional norm” (SCJN 2013, 17). The consequences of this new interpretation and of the reform have recently led to a compatibility problem between the norms that comprise the constitutional framework. Indeed, when there are two applicable norms within the constitutional standard, an interpretation according to international treaties will be carried out and the *pro persona* principle will be applied. In turn, when the constitution explicitly establishes a restriction in the matter of human rights, priority will be given to this restriction above the contents of international treaties (Herrera García 2013, 3122).

Some civil society organizations argue that despite the constitutional reform of 2011 that should have represented a new frame of action, regressive postures had been evident on the subject of human rights. That is, some ministers sought to ignore the objective of the 2011 reform and return to a paradigm that would allow for violations of internationally acknowledged human rights. For example, Amnesty International recalls that the Vienna Convention on the Law of Treaties stipulates that states may not “invoke the dispositions of their domestic law as justification for failure to comply with a treaty”, a norm that is mandatory according to the organization. “Any ruling that has as a potential consequence the disregard of this principle, is not only unconstitutional, but it will also mean a step backwards for the protection of human rights in Mexico” (Yancuic 2013).

The decision of having the limits established in the Constitution prevail

19 Since the constitutional reform on human rights in 2011, the Constitution is no longer a closed document; that is, the Constitution is no longer the 136 items that compose it. Today, the Constitution is a living document composed of articles and all treaties with human rights standards that are incorporated through the latter with a constitutional article also enjoying constitutional status. All these policy documents (the Constitution and international treaties regarding human rights standards) are constitutional law.

in case of a conflict of principles has the practical effect of displacing the international source. This displacement entails a re-configuration of roles: the constituent's power of decision is strengthened at the same time that the risk of its constitutional decisions being judicially questioned is diminished. When we consider other countries where the submission of national jurisdiction to international legislation on the matter of human rights has been approved, the debate beyond its results seems archaic in light of international trends.

The SCJN thus carried out the discussion that stemmed from the Radilla case in order to comply with generating mechanisms that would situate Mexico within international law regarding human rights. At the same time, it seems that the ruling of the SCJN was carried out in order to prevent the generalized and uncontrolled extension of legal protection of human rights under the DDHH. It is evident that the argumentation was elaborated in a subtle and veiled tone, since it argues for the need to offer operational conditions to the 2011 reform. Moreover, emphasis is placed on prioritizing the protection of human rights, even if through a *pro homine* mediation.²⁰ The latter, it must be noted, depends on each judge. It seems that what is sought is to impede the repetition of a ruling such as the one issued in the Radilla case.

In any case, Mexico's progress in the judiciary instrumentation of human rights is a reality, particularly in the wake of the Radilla case. International acknowledgement of the case as well as of the progress that it promoted, have made manifest what used to be invisible in the Mexican regime, its two-faced policy and judicial structure. The victim and its context are rendered visible, as well as the national limitations that impede the formation of a justice system that will comply in practice with its theoretical obligations. However, this visibility has not produced a substantial change in the invisibility within national borders or in the right to the truth it demands. This may well mean that the violations of the past find an efficient competitor in the horrors of the present.

20 This is incorporated in many treaties regarding human rights. It means that the broadest law or the broadest interpretation of the law in favor of the person must always be used. The application of the law for judges at the national level constitutes a central aspect in order to certify compliance and validity. "From the latter stems the need for the judge to know and apply the different principles of interpretation of human rights without being limited to the traditional methods of interpretation, since the fundamental rights require a series of hermeneutical guidelines different from those that may be applied to other laws, and above all, different from the rules of interpretation of ordinary laws" (Castilla 2009).

CONCLUSIONS

It is evident that the Mexico of the seventies, when the emblematic disappearance of Rosendo Radilla took place, and the Mexico that received the ruling of the IACoHR are very different. The question now remains of how the ruling influences a change in the circumstances that until now have been opaque both domestically and internationally.

Mexico after the Mexican Revolution and the founding of the hegemonic party in 1929 served as the political space within which strong differences were settled without disrupting the general equilibrium up until the end of the last century. During that prolonged period, as Lorenzo Meyer states, a mechanism for settling formal and informal, even illegal, political agreements, was established. Corporate control of society, different forms of clientelism, the practice of selective repression and electoral fraud are all part of Mexico's recent history (Meyer 2001, 823-836). Another important aspect of the Mexico of that time was its external policy under the principles of the Estrada Doctrine.

The stability of the regime did not weaken until 1988 when an internal rupture within the PRI marked the change in the permanence of internal cohesion. While there were exemplary moments of a Mexico that fought for change, such as the movements of 1968 and 1971, and the political reform of 1977, it was a post-electoral conflict that strongly marked the tendency towards change since 1988. Procedural mechanisms began to be implemented, that would finally lead to a significant change in the social and political reality that demanded them (Favela 2005; Carr 1996). With no apparent institutional ruptures, the Mexico that had coincided with some Latin American countries during the sixties and seventies in its repressive practices, regained its closeness with the Latin American democratic processes.

Mexican procedural politics, which for many analysts led to the transition, and for others had led merely to an alternation of government parties, led to a divided government in the Congress and to the Partido de la Revolución Mexicana (PRD) obtaining the mayoral seat of Mexico City in 1994. It also led in 2000 to the triumph of the PAN political party in Federal Government (Labastida and López 2004; Middlebrook 1994).

Thus the PRI was ousted from the presidency after 71 years. Nevertheless, the political balance of party alternation in federal government did not satisfy the socially generated expectations, but showed the necessity of considering other dimensions of democratization, beyond its procedural borders.

During almost the entire century there had been a one-party system. In the eighties signs of change could be perceived when the government branches began to undergo multi-party integration. However, we must distinguish between administrations of different political parties, and diverse manners and customs in their exercise of power. That is, despite the relay of political elites no real change occurred in the ways of exercising power, in its essential features. Their social, economic and political strategies are quite similar, exclusive to a large extent, although ideologically distinguishable.

In any case, for the purpose of this paper, related to the unraveling of the criminal acts evidenced by the ruling of the IACoHR in the Rosendo Radilla case, significant changes were produced, but not all of them within the same scope. It is important to consider that in Mexico since 1984 there have been many political and constitutional reforms but there has not been a change of the constitutional system, of the core rules that constitute the political regime, as Francisco Valdes claims. This results in an ambiguity regarding the scope of human rights, gray areas that generate deep problems (Valdés 2010, 13-14). Reinforcing this assessment of weakness in the field of human rights is Marieclaire Acosta's contention that there is a need for greater political will in order to enforce the existing reforms and those that must be made (Acosta 2012, 19).

From the promises of president Fox, especially the one alluding to the demand for the clarification of political repression and its victims, it seems that the inherent strategy to deal with political dilemmas of those that obtained the electoral victories incited scarce compliance. In the case of the FEMOSPP, the routes to the prosecution of forced disappearances that were considered more viable were dismissed. Consigning them to the category of 'unlawful deprivation of freedom' implied that they were within the common jurisdiction and therefore could not be assimilated as crimes against humanity. With this, the systematic criminal actions of the state were legally denied, affirming national jurisdiction above international one (Méndez Silvia s/f, 9-10).

The situation that arose while complying with the IACoHR ruling was different, during Calderon's administration and since 2013, under the administration of PRI's Enrique Peña Nieto. Contradictory strategies are in evidence once again. On the one hand, work was done by the SCJN in order to generate mechanisms that would encompass Mexico within the international human rights treaties, with respect to the progress and setbacks already mentioned. On the other hand, the different procedures pertaining to the Executive branch did not have the scope or dimension

that the ruling called for. The result was that the victims, in this case, Rosendo Radilla, were maintained in the same situation of invisibility.

The IACoHR followed up on the compliance of the ruling in May 2011, and concluded the following: the only measure of reparation thoroughly followed was the publication in the Official Gazette (IACHR 2011). Later, in 2012, it recognized that the public act carried out in Atoyac de Álvarez had fulfilled what had been established in terms of restoring the dignity of the victim and acknowledging the state's responsibility (Díaz 2012). Nevertheless, it is feasible to consider it as a limited act of commitment outside the margin of national public opinion. Such was the strictly procedural character, that an agreement with the Radilla family was never reached, and the family members were in fact absent from the event. Some federal and state authorities such as the Secretary of State, Juan Marcos Gutiérrez, the Governor of the State of Guerrero, Ángel Aguirre Rivero, and the Foreign Affairs Secretary, Ambassador Patricia Espinosa Castellano, headed the event.

In his address, Secretary Juan Marcos Gutierrez publicly recognized the responsibility of the Mexican State for the disappearance of Mr. Radilla [...] Secretary Espinosa, in turn, emphasized that Mexico's foreign policy in terms of human rights is characterized by a complete openness to human rights international organizations; by Mexico being bound by international treaties on the subject; and by the establishment of mechanisms and procedures in order to fully comply with international organizations (Presidencia de la República 2011).

During that same year, facing the failure of complying with the ruling in several respects, the IACoHR convened representatives. The reasons that led to this measure are based on the denial of the PGR to give copies of the preliminary investigation to both the representatives of the victims and to the IACoHR itself. Furthermore, the representatives alleged that they were not informed about the course of investigations in order to locate the victim (Díaz 2012).

One year later, when the new President of the country, Enrique Peña Nieto, was already in office, an event took place that attempted to comply with another aspect of the reparations mandated by court. In the State Department located in Mexico City, where the agencies of the republic are concentrated, the biography of Rosendo Radilla was presented, entitled "Sirs, I am a farmer". In this occasion dozens of family members of the disappeared in Guerrero were present; however, different accounts of the events evidence the strict official control of the act. For example,

Radilla's daughter declared that the government had once again breached the agreement reached with the family.

At the last minute the location of the event was changed; it was agreed that it would be held at the Tolerance and Memory Museum. I heard about this when I arrived at Mexico City, it was due to this change that many of the people we had invited could not make it, they were not told. It was also agreed that there would be wide coverage by the media, but in the end the lawyers had to fight because they wanted the event to be private, to be hidden (Díaz 2013).

There were only a few official speeches, given by Lía Limón García, Undersecretary of Legal Affairs and Human Rights, by the head of the State Department, Miguel Ángel Osorio Chong, and a few words by Ana María Radilla. In this event the daughter of the community leader demanded effective investigations in order to locate all those who had been disappeared and to establish legal penalties for those responsible.

While Rosendo Radilla's daughter blamed the state for the continuous impunity, Osorio Chong ignored the crimes of the past in his speech. He only stated that Rosendo Radilla is part of history, but that "it is not time for us to be stuck in the past, but to question it with objectivity and seriousness in order to create a better future (Díaz 2013).

The latter, as well as the fact that the event was not widely diffused, forces us to assert that the right to individualized truth has not been fulfilled, nor has the right to justice. That is, debate was incited, procedures were initiated, among them some sporadic ones in order to locate the remains of the disappeared, but there has not been a substantial change that would correspond to compliance with the ruling. Along the same lines, we can say that compliance with society is not observed either. This is because the mandatory measures for reparation have not acquired public stature of an effective dimension, even less so those which designate expressions of the state's position regarding the committed crime.

Once again the domain of memory and oblivion, as social practices and as imminently political processes, result in a mechanism of government control. There is still a strong appropriation of the official narrative that silences the meaning of the first ruling of the IACoHR for Mexico in a situation of violations of human rights due to circumstances of political repression. Moreover, by showing that it was not merely one isolated case, the prevailing situation during the years of Rosendo Radilla's disappearance is evidenced.

The invisibility of the acknowledgements in the locality of Atoyac,

the lack of repercussion of the publication of the victim's biography and the biased treatment of the public event in Mexico City show the lack of a strong will to construct a memory of reparation and a social fabric capable of promoting the protection of human rights. That is, the pledge to combat impunity and reinforce democratic institutions is not being exerted (Mendoza García 2012). This invisibility contrasts sharply with the visibility that international recognition has shed upon the Radilla case. As mentioned, this has had a direct relationship with the work of the SCJN; however, the concrete situation shows no real modifications.

This leads to the conclusion that we are facing a tortuous path towards justice²¹ in terms of the conditions of visibility of rural populations and of the years of repression framed by the Cold War (Magdalena Gómez 2012). There is no strong political will to consistently undertake the investigation and proceedings of human rights violations. That is, to rearrange the events of the past, as well as to assign responsibility in the public space for the victims of the policy of exclusion and repression. Undoubtedly, within these issues there is a balance of forces in the state itself as well as in the Mexican society, as a product of the cost-benefit analysis made by groups with the largest political power, beyond their party affiliations. Thus, there are strong associations between those responsible in the past as well as in the present. Despite this fact, the weight of the litigation grew and reached the IACoHR who passed the first ruling against Mexico for a case that developed during the seventies. This ruling has had a significant effect on the legal framework in the country.

21 As stated in the title of Magdalena Gómez's paper "El sinuoso camino de la justicia en México" (2012).

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