

# Mexico's Relationship with the Inter-American Court of Human Rights: Success or Failure?

## La relation du Mexique avec la Cour interaméricaine des droits de l'homme : succès ou échec?

Arturo Argente Villarreal and Karen Sigmond

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Le rôle du Canada à l'égard de la protection des droits de la personne au sein des Amériques

Canada's Role in Protecting Human Rights in the Americas

El papel de Canadá en la protección de los derechos humanos en las Américas

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Article abstract

*This article describes Mexico's path to the protection of human rights and its relation with the Inter-American Court of Human Rights. It analyzes two major cases against the Mexican Government (Castañeda Gutman and Gonzales et al "Cotton Field") and the contrasting results from the decisions of the Court. It questions whether being a part of this regional Court has led to the further protection of human rights by examining the aftermath of each one of the mentioned cases. It also considers other factors that must be addressed in order to see an increase in the protection of human rights in this country.*

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## Mexico's Relationship with the Inter-American Court of Human Rights: Success or Failure?

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ARTURO ARGENTE VILLARREAL\* AND KAREN SIGMOND\*\*

### ABSTRACT

*This article describes Mexico's path to the protection of human rights and its relation with the Inter-American Court of Human Rights. It analyzes two major cases against the Mexican Government (Castañeda Gutman and Gonzales et al "Cotton Field") and the contrasting results from the decisions of the Court. It questions whether being a part of this regional Court has led to the further protection of human rights by examining the aftermath of each one of the mentioned cases. It also considers other factors that must be addressed in order to see an increase in the protection of human rights in this country.*

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### KEY-WORDS:

*Human rights, Mexico, Inter-American Court of Human Rights, Castañeda Gutman, "Cotton Field".*

### RÉSUMÉ

*Le présent article décrit le chemin parcouru par le Mexique dans la protection des droits de la personne ainsi que sa relation avec la Cour interaméricaine des droits de l'homme. L'article analyse deux poursuites intentées contre le gouvernement mexicain (Castañeda Gutman et Gonzales et al « Cotton Field ») ainsi que les résultats contradictoires qui découlent des recommandations de la Cour. Dans l'article, nous nous demandons si le fait de faire partie de cette cour régionale a permis d'améliorer la protection des droits de la personne, tout en examinant les conséquences de chacune*

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des décisions mentionnées. Nous étudierons également d'autres facteurs qui devraient être pris en considération pour améliorer la protection des droits de la personne au Mexique.

#### MOTS-CLÉS :

*Droits de la personne, Mexique, Cour interaméricaine des droits de l'homme, Castañeda Gutman, « Cotton Field ».*

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## INTRODUCTION

The protection of human rights at the international and national levels is of pressing concern worldwide. Although international human rights law appears to have developed quickly after World War II, the enforcement of these rights should occur at the national level. For example, the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966), the *International Covenant on Economic, Social and Cultural Rights* (1966), to name a few, are basic documents in the protection of human rights and demonstrate the development of what is called first-generation rights to third-generation rights. The possibility of the State to guarantee such

rights moves along a spectrum, where the protection of third-generation rights will vary according to the economic development of the State. Whether third-generation rights can be guaranteed to every person within the territory is often questionable. For example, the right to a healthy environment may be at odds with the economic development of a country and the demand to provide basic needs such as food to survive. Therefore, each country moves at its own pace in the incorporation of the human rights protected by international conventions, agreements, declarations, into its own national legal system.

Meanwhile, regional systems have also been developed to protect human rights. These systems include not only their own conventions and basic documents to protect human rights in that region but also their own courts. These regional systems include the European System, the African System, and the Inter-American System. In the Inter-American System, the *American Convention on Human Rights* is one of many documents protecting basic human rights.

This article considers Mexico's participation in the Inter-American System, through its recognition of the Inter-American Court of Human Rights (hereafter Court or IACtHR), to demonstrate contrasting results from the decisions rendered by the Court. Part I provides a background of Mexico's participation in the regional court system through a general overview of the cases that have been presented against the country. Part II presents the case of *Castañeda Gutman v Mexico* and its effects on the national legislation. Part III studies the case of *Gonzalez et al ("Cotton Field") v Mexico*. It will summarize the decision and evaluate the impact of the remedies ordered by the Court on Mexico in order to evaluate whether their implementation led to a reduction of human rights violations against women. Parts II and III show differing results. Finally, Part IV makes observations about lessons to be learned by other countries, such as Canada, that have not accepted the jurisdiction of the Court.

## I. BACKGROUND

Although the *American Convention on Human Rights (Pact of San José, Costa Rica)* entered into force on July 18, 1978, Mexico did not ratify it until March 2, 1981, and its participation was initially limited. Even though it had not yet accepted the jurisdiction of the Court, Mexico was a noteworthy participant, since several Mexicans, such as Hector Fix-Zamudio and Sergio Garcia Ramírez, had been appointed as judges.

As stated by Manuel Becerra Ramírez, a leading Mexican scholar, the position of the Mexican government on the jurisdiction of the Court had been one of “caution.”<sup>1</sup> Mexico sought to protect its national sovereignty for many years, but in 1998, the government finally changed its position and accepted the jurisdiction of the Court.<sup>2</sup> Since then, there has been a movement for the adoption of laws and even the modification of its Constitution to promote the protection of human rights. Unfortunately, despite legal changes, human rights violations are on the rise.

## A. General Overview of Cases Against Mexico

When Mexico accepted the jurisdiction of the Court, it was subject to actions initiated by the Inter-American Commission on Human Rights or by other Member States. Thus far, the cases have all been initiated by Mexicans against the Mexican Government. Table 1 lists the cases that have been adjudicated by the Court against Mexico.

**Table 1. Cases against Mexico**

Date	Title
November 26, 2013	Case of <i>García Cruz and Sánchez Silvestre v Mexico</i>
May 15, 2011	Case of <i>Rosendo Cantú et al v Mexico</i>
May 15, 2011	Case of <i>Fernández Ortega et al v Mexico</i>
November 26, 2010	Case of <i>Cabrera García and Montiel-Flores v Mexico</i>
August 31, 2010	Case of <i>Rosendo-Cantú et al v Mexico</i>
August 30, 2010	Case of <i>Fernández Ortega et al v Mexico</i>
November 23, 2009	Case of <i>Radilla Pacheco v Mexico</i>
November 16, 2009	Case of <i>González et al (“Cotton Field”) v Mexico</i>
August 6, 2008	Case of <i>Castañeda Gutman v Mexico</i>
September 3, 2004	Case of <i>Alfonso Martín del Campo Dodd v United Mexican States</i>

Source: Inter-American Court of Human Rights, “Decisions and Judgments” (2008), online: <[www.corteidh.or.cr/cf/jurisprudencia2/busqueda\\_caso\\_contencioso.cfm?lang=en](http://www.corteidh.or.cr/cf/jurisprudencia2/busqueda_caso_contencioso.cfm?lang=en)>.

1. Manuel Becerra Ramírez, “México y la Corte Interamericana de Derechos Humanos” in Manuel Becerra Ramírez, ed, *La Corte Interamericana de Derechos Humanos a Veinticinco Años de Su Funcionamiento* (Mexico: Universidad Nacional Autónoma de México, 2007) 317 at 318.

2. Decision published in the *Diario Oficial de la Federación* (Federal Gazette) on December 8, 1998.

Table 1 shows the cases that went through the entire process. In order for a final decision to occur, a case has to go through many legal and financial obstacles. First, the alleged victim(s) must exhaust the domestic remedies in Mexico; then, they have to present a petition to the Commission, which will render a decision; and finally, if the Commission deems it appropriate, it will submit the case to the Court. The Court never hears thousands of human rights violations.

Unfortunately, since the acceptance of the Court's jurisdiction, human rights violations have not decreased but rather increased exponentially in Mexico. According to the Human Rights *World Report 2017*, "[d]uring the administration of President Enrique Peña Nieto, security forces have been implicated in repeated, serious human right violations—including extrajudicial killings, enforced disappearances, and torture—during efforts to combat organized crime."<sup>3</sup> In terms of enforced disappearances, "in August 2016, the government reported that the whereabouts of more than 27,000 people who had gone missing since 2006 remain unknown."<sup>4</sup> Regarding military abuses, "as of July the CNDH had received almost 10,000 complaints of abuses by the army since 2006—including more than 2,000 during the current administration. It found in more than 100 cases that military personnel committed serious human rights violation."<sup>5</sup> The report goes on to other human rights areas that are of serious concern because of the lack of protection offered by the State of Mexico. Amnesty International reports even higher numbers of human rights violations in these same areas.<sup>6</sup>

The rise of human rights violations has many causes. The study of these causes and grounds is beyond the scope of this paper. However, Mexico's position in comparison to other Latin American countries in terms of petitions received by the Inter-American Commission on Human Rights demonstrates that it is in a dire situation regarding the protection of human rights.

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3. Human Rights Watch, "World Report 2017" at 425, online: <[www.hrw.org/sites/default/files/world-report-download/wr2017-web.pdf](http://www.hrw.org/sites/default/files/world-report-download/wr2017-web.pdf)>.

4. *Ibid.*

5. *Ibid* at 426.

6. Amnesty International, "Mexico 2016/2017" (2017), online: <[www.amnesty.org/en/countries/americas/mexico/report-mexico/](http://www.amnesty.org/en/countries/americas/mexico/report-mexico/)>.

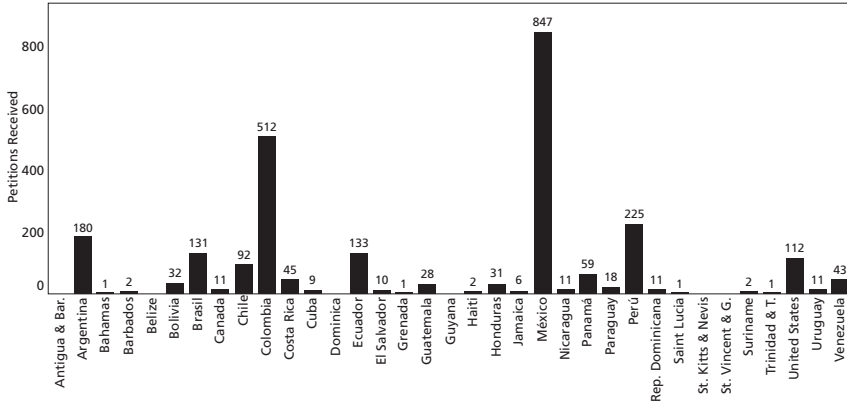
**Table 2. Petitions received by IACtHR in 2016—Comparative<sup>7</sup>**

Select statistics to display:  
Petitions Received

Select in the Year:  
2016

**IACHR**  
Inter-American Commission  
on Human Rights

2016: Petitions Received



Given the continued violations of human rights, one could question whether a judgment by the Court has any impact. The following two sections present cases against Mexico and the results, if any.

## II. MEXICO'S EVOLUTION OF POLITICAL RIGHTS—INDEPENDENT CANDIDATES AND THE CASE OF *CASTAÑEDA GUTMAN V MEXICO*

### A. Background

Manuel González Oropeza mentions that the term “independent candidate” refers to at least two types—citizen candidates and non-registered candidates. For this author, citizen candidates “are those who are allowed, according to electoral provisions, to participate in the elections by simply fulfilling eligibility requirements established in the law. The non-registered candidates are those that are written in by the voters in the blank space established in the voter ballot.”<sup>8</sup>

7. Inter-American Commission on Human Rights, “Statistics” (2017), online: <[www.oas.org/en/iachr/multimedia/statistics/statistics.html](http://www.oas.org/en/iachr/multimedia/statistics/statistics.html)>.

8. Manuel González Oropeza, “Las candidaturas independientes” (2010) 227 *Este País* 48 [translation by the authors of this article].

The discussion about independent candidates should be considered in a historical context. From its recent origin, Mexico has attempted to establish a democracy by ensuring that access to power is done in a plural and representative manner. It was thought that the only possible way to accomplish this feat was through the building of a party system.<sup>9</sup> However, independent candidates are not new in the Mexican legal system; they were included in the Federal Electoral laws of 1911, 1916, and 1918.<sup>10</sup>

Furthermore, the concept of independent candidates has passed through several stages in the Mexican constitutional law and in the jurisdictional activity of the country's courts. Even though independent candidates disappeared at the federal level, there was no express prohibition at the state level until the constitutional modification of November 13, 2007, which amended Article 116,<sup>11</sup> as discussed below.

Before the 2007 amendment, independent candidates were gaining ground at the state level. For example, in 1998, the citizen Maria del Rosario Elizondo Salinas participated as a candidate without registration with a political party and won the municipality of Jimenez in the State of Tamaulipas. The electoral administration authority first refused to issue the certification of the majority. Notwithstanding, the electoral tribunal of the entity confirmed her victory in deciding that it constituted an option that allowed a citizen that had no preference for any of the registered political parties to "propose a person to his satisfaction, this being an alternative manner to be able to be a part of the public powers, in case a majority of votes was acquired."<sup>12</sup>

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9. It is not a coincidence that the Federal Labour Law of 1946 established in Article 60 "only political parties can register candidates."

10. Pablo Javier Becerra Chávez, "Las candidaturas independientes en México. Una vía para ampliar la participación ciudadana" in Karolina Gilas & Eduardo Medina Torres, eds, *Candidaturas independientes: desafíos y propuestas* (Mexico: TEPJF, Instituto Electoral de Morelos, Tirant lo Blanch, 2014) 199.

11. *Decreto que reforma los artículos 60, 85, 99, 108, 116 y 112; adiciona el artículo 134 y deroga un párrafo al artículo 97 de la Constitución Política de los Estados Unidos Mexicanos*, Diario Oficial de la Federación on November 13, 2007.

12. Angel Miguel Sebastián Barajas, "Nota Informativa sobre el caso de la C. María del Rosario Elizondo Salinas, Electa Presidenta Municipal de Santader Jiménez, Tamaulipas, como candidata no registrada en 1998" (2013) at 3, online: <portales.te.gob.mx/candidaturas/sites/default/files/NOTA%20INFORMATIVA%20SOBRE%20CASO%20DE%20CANDIDATA%20NO%20REGISTRADA\_0.pdf> [translation by the authors of this article].



In another case in Michoacán in 2001,<sup>13</sup> a citizen tried to register as an independent candidate. After a negative decision at the local institute, the person went to the *Tribunal Electoral del Poder de la Federación* (National Electoral Tribunal). This court held that even though there was no express provision in the Constitution regarding the right of a citizen to aspire to be an independent candidate, the right to be elected was a fundamental right and, because there was no express restriction (that which is not prohibited is permitted), the candidacy was allowed.<sup>14</sup>

In 2004, in Veracruz, the Superior Chamber of the State Electoral Court established an important criterion. An unregistered candidate tried to become part of the municipal government. The court decided that, pursuant to state law, an unregistered candidate could not obtain the majority certificate, and that if he did, the votes cast in his favour should not be considered null or valid but should be counted separately in a specific third category.<sup>15</sup>

These cases constitute some examples of how the movement for independent candidates began. However, it was at the federal level that this concept was yet to be developed. When a Mexican national argued that the prohibition of independent candidates in elections constituted a violation of his political rights, he brought the discussion to both a national and an international level. Fortunately, Mexico had agreed to the jurisdiction of the Court, and Jorge Castañeda Gutman formed part of both the academic and political universe in Mexico. It was the perfect combination for a challenge to the Mexican legal and political system.

## B. The Case of *Castañeda Gutman v Mexico*

The year 2005 was important for the development of Mexican democracy. A citizen, Jorge Castañeda Gutman, made a request to the *Instituto Federal Electoral* (Federal Electoral Institute) to register as a

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13. Electoral del Poder Judicial de la Federación, Michoacán, October 25, 2001, SUP-JDC-037/2001 (Mexico).

14. Lucero Ramírez León, "Candidaturas Independientes" in Fernando Pérez & Lucero Ramírez León, eds, *La reforma política vista desde la investigación legislativa* (Mexico: Senado de la República, 2010) 63, online : <archivos.juridicas.unam.mx/www/bjv/libros/7/3198/7.pdf>.

15. Tribunal Electoral del Poder Judicial de la Federación, Veracruz, December 22, 2004, SUP-JDC-713/2004 (Mexico). The State Electoral Court does not proceed.

candidate for the Presidency of the Federal Republic. When the Institute denied his petition, he appealed, arguing that if the legislator did not contemplate independent candidates, then his political rights, as established in Articles 35 and 41 of the Mexican Constitution, were violated.

The Supreme Court of Justice of the Nation (hereafter Supreme Court), in reviewing the *amparo* appeal 743/2005, decided to dismiss the case, arguing it impermissible in the electoral subject. In this case, the Supreme Court did not analyze the merits of the case regarding independent candidates but argued that the *amparo* appeal was not the ideal manner to challenge an electoral law. The only way to challenge the validity of an electoral law was through an unconstitutionality action initiated by the legislative minorities, the political parties, the Attorney General for the Republic, and the Human Rights Commission.<sup>16</sup> The Supreme Court argued that the legislator had the power to legislate the concept of independent candidates in all the electoral codes of the country but did not declare it “mandatory,”<sup>17</sup> so the power to legislate on the concept was optional. If the legislature decided to regulate the concept of independent candidates in electoral laws, it would not be violating Article 41 of the Constitution<sup>18</sup> because the exclusivity in the political parties to determine such candidates had not been established. The Supreme Court decided that only the legislature could regulate this concept and that it should verify the access to financing and to communications media, and consider accountability for handling public resources that represent the constitutional principles in the electoral subject. The legislative branch is the one that should act to supplement what is established in the Constitution and the international treaties.<sup>19</sup>

Through the *Castañeda Gutman* case the topic of independent candidates became important for the development of Mexican democracy because the discussion reached an international level. The Court issued a condemnatory decision against the Mexican State for lacking effective

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16. *Political Constitution of the United Mexican States*, Diario Oficial de la Federación on February 5, 1917, art 105.

17. Miguel Carbonell, “Las candidaturas independientes según la Suprema Corte de Justicia” (2007) 141 *Lex Difusión y análisis*, tercera época 11, online: <[www.miguelcarbonell.com/artman/uploads/1/candidaturas\\_independientes.pdf](http://www.miguelcarbonell.com/artman/uploads/1/candidaturas_independientes.pdf)>.

18. *Ibid.*

19. *Ibid.*

recourse in constitutional control of electoral laws.<sup>20</sup> It also considered that beyond the characteristics of an electoral process (universal, equal, secret, and that reflects the free will of the people), the *American Convention on Human Rights* sets standards by which States could and should legitimately regulate political rights, so long as such regulations comply with the legality requirements and had a legitimate end, and that such regulations were necessary and proportional. In other words, it had to be reasonable and in accordance with the principle of a representative democracy. In the *Castañeda Gutman* decision, the Court, in carrying out the conventionality analysis of Article 175 of the *Código Federal de Instituciones y Procedimientos Electorales de 1990* (Federal Electoral Code, repealed by the current code), decided that the system of exclusive nomination by the political parties as well as the one that allows for independent candidates, in themselves, are compatible with the right to be elected as stated in Article 23 of the *American Convention*. The IACtHR, in a *lege ferenda* consideration,<sup>21</sup> recognized that in the Inter-American context, there was a risk of a crisis regarding political parties, legislative powers, and public leaders. In that sense, taking into account their historical and political development, States should evaluate the measures that allow for the strengthening of political rights and democracy, independent candidates being one of these mechanisms, among many others.

### C. After *Castañeda Gutman* (2008)

One of the most significant reforms to the Mexican legal system regarding the protection of human rights took place in 2011. On June 11 of that year, modifications were made to 11 articles of the Mexican Constitution. "The main theme of the modification focused on the enhancement of human rights protection through the adoption of, among other mechanisms, the *pro homine* principle and the international human rights standards."<sup>22</sup> Article 1 of the Constitution now

20. *Castañeda Gutman v Mexico* (2008), Inter-Am Ct HR (Ser C) No 184, online: <[www.corteidh.or.cr/docs/casos/articulos/seriec\\_184\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf)>.

21. A Latin expression that means "future law" or "with a view to a future law" or "with the proposal of new law," a recommendation that should be taken into consideration for a future reform to the law. See Agustín W Rodríguez & Beatriz Galleta de Rodríguez, *Diccionario Latín Jurídico, Locuciones latinas de aplicación jurídica actual* (Buenos Aires: García Alonso, 2008) at 70.

22. Víctor Manuel Collí Ek, "Improving Human Rights in Mexico: Constitutional Reform, International Standards, and New Requirements for Judges" (2012) 20:1 Human Rights Brief 7 at 7, online: <[digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1850&context=hrbrief](http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1850&context=hrbrief)>.

reads: "In the United States of Mexico, all persons shall enjoy the rights recognized by the Constitution and international treaties to which the Mexican State is party, as well as guarantees for their protection, the exercise of which may not be restricted or suspended, except in cases and under conditions established by this Constitution." This reform initiated a transformation towards human rights protection, at least on paper. It began a series of discussions on the role of the judicial branch and particularly of the judges regarding the constitutional interpretation and the application of international treaties in individual cases. The role of the Court and of its cases in the national context was questioned.

The issue before the federal courts was regarding the status of adverse judgments by the Court in Mexican domestic law.<sup>23</sup> Were those judgments binding? The Mexican Circuit Courts came into conflict regarding this issue. "[T]he First Circuit decision declared that 'international jurisprudence was useful to help orient domestic courts in human rights matters,' whereas the Eleventh Circuit declared that 'international jurisprudence in human rights matters was obligatory.'"<sup>24</sup> In an opinion of July 14, 2011, the Supreme Court stated that the Court's jurisprudence served as "guidance," but in 2014, it decided "that the jurisprudence of the Court is binding on all Mexican judges (both federal and state), provided that the interpretation is the one more favorable to persons (the principle *pro persona*)."<sup>25</sup> It was a huge step forward for the protection of human rights in Mexico.

Another key moment that soon followed was the Structural Reform of 2012. In this reform, the right for which Castañeda had fought for was finally granted in Mexico. Article 116 of the Mexican Constitution was modified to allow for independent candidates. The following year, in 2013, further modifications were made to allow for independent candidates at the state level. The reforms had tangible results. In 2015, Jaime Rodríguez Calderón—"El Bronco"—was the first person to win a governorship running as an independent candidate in one of Mexico's most important states.<sup>26</sup> Furthermore, the 2018 presidential

23. See *Radilla Pacheco v Mexico* (2009), Inter-Am Ct HR (Ser C), No 209, to be discussed below.

24. Cristina M Cerna, "Status of Human Rights Treaties in Mexican Domestic Law" (2016) 20:4 American Society of Intl L, online: <[www.asil.org/insights/volume/20/issue/4/status-human-rights-treaties-mexican-domestic-law](http://www.asil.org/insights/volume/20/issue/4/status-human-rights-treaties-mexican-domestic-law)>.

25. *Ibid.*

26. Randal C Archibold, "Tough-Talking El Bronco Wins Mexican Governor's Race", *The New York Times* (8 June 2015), online: <[www.nytimes.com/2015/06/09/world/americas/el-bronco-jaime-rodriguez-calderon-governors-race-nuevo-leon.html?\\_r=0](http://www.nytimes.com/2015/06/09/world/americas/el-bronco-jaime-rodriguez-calderon-governors-race-nuevo-leon.html?_r=0)>.

elections could have an independent candidate on the ballot. Given the results of this case, it appears that Mexico's relationship with the Court has resulted in the protection of human rights, but the following section describes a different case, with contrasting results.

### III. THE CASE OF *GONZALES ET AL ("COTTON FIELD") V MEXICO*

#### A. Background

The "*Cotton Field*" case, decided in 2009, followed a long history of documented and undocumented violence against women in Mexico. In the early 1990s, Ciudad Juárez, the border city where the case began, had a reputation for violence and a rise in homicides against women. The problem became so severe that the city earned international fame as "The Capital of Women Murders,"<sup>27</sup> derived from an observed pattern of violence and homicides against women in the area. There was an increase in the numbers of girls and women that disappeared and were found dead. Many of these young women worked in the booming *maquiladora* industry established along the border. As the numbers of victims increased, a pattern seemed to develop. The crimes had common factors; "the women were abducted and kept in captivity, their next of kin reported their disappearance and, after days or months, their bodies were found on empty lots with signs of violence, including rape and other types of sexual abuse, torture and mutilation" of certain parts of the body, including the absence of breasts or genitalia.<sup>28</sup> Prior to the judicial decision, there were 113 women murdered following this pattern.

Mexico denied that there was a pattern in the motives for the women's murders, but it had previously told the Committee on the Elimination of Discrimination against Women that the murders were "all influenced by a culture of discrimination against women based on the erroneous ideas that women are inferior."<sup>29</sup> The decision includes

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27. Katrin Tiroch, "Violence Against Women by Private Actors. The Inter-American Court's Judgment in the Case of *Gonzalez et al ("Cotton Field") v Mexico*" (2010) 14 Max Planck Yearbook of United Nations L 371 at 372, online: <[www.mpil.de/files/pdf3/mpunyb\\_09\\_tiroch\\_14.pdf](http://www.mpil.de/files/pdf3/mpunyb_09_tiroch_14.pdf)>.

28. *González et al ("Cotton Field") v Mexico* (2009), Inter-Am Ct HR (Ser C) No 205, at paras 125, 138, online: <[www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)> ["*Cotton Field*"].

29. *Ibid* at para 132.

reports from various international organizations. For example, Amnesty International is quoted as stating that:

[T]he characteristics shared by many of the cases reveal that the victim's gender appears to have been a significant factor in the crime, "influencing both the motive and the context of the crime, and also the type of violence to which the women were subjected."<sup>30</sup>

Furthermore, the United Nations Special Rapporteur on violence against women stated that, violence against women in Mexico "can only be understood in the context of socially entrenched gender inequality."<sup>31</sup>

## B. The Case of *Gonzales et al ("Cotton Field") v Mexico*

The case before the Court arose from the murder of women and girls in what was called the "*Cotton Field*." As is stated by Yakin Ertürk, the United Nations Special Rapporteur on violence against women, in her mission report to Mexico in 2006, "violence against women in Mexico typically resembles only the tip of an iceberg with more systemic and complex problems lurking below the surface."<sup>32</sup> The "*Cotton Field*" case exposes a long history of abuses and human rights violations against women in Mexico which arise from the following facts. On November 4, 2007, the Inter-American Commission presented an application against the United Mexican States based on Mexico's alleged responsibility in the disappearance and subsequent death of three young women, two of whom being minor. The bodies of Claudia Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramon Monárrez were found on November 6, 2001, in a cotton field in Ciudad Juárez. According to the Commission, the State had international responsibility for:

[T]he lack of measures for the protection of victims, two of whom were minor children, the lack of prevention of these crimes, in spite of full awareness of the existence of a pattern

30. *Ibid* at para 133.

31. Yakin Ertürk, Commission on Human Rights, *Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women*, UNESCOR, 62<sup>nd</sup> Sess, UN Doc E/CN.4/2006/61/Add.4 (2006) at para 7.

32. Just Associates (JASS), "UN Special Rapporteur on Violence Against Women Visits Mexico After Nine Years" (July 23, 2014), online: <[justassociates.org/en/article/special-rapporteur-violence-against-women-visits-mexico-after-nine-years](http://justassociates.org/en/article/special-rapporteur-violence-against-women-visits-mexico-after-nine-years)>, citing Yakin Ertürk, *ibid*. [JASS].

of gender-related violence that had resulted in hundreds of women and girls murdered, the lack of response of the authorities to the disappearance [...]; the lack of due diligence in the investigation of the homicides [...], as well as the denial of justice and the lack of an adequate reparation.<sup>33</sup>

The legal basis for the State's responsibility was a violation of several rights found in two conventions. First, there was an alleged violation of the following articles of the *American Convention on Human Rights*: Article 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child), and 25 (Right to Judicial Protection), among others. Second, a claim was made of the failure to comply with Article 7 of the *Convention of the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)*.<sup>34</sup>

In its response to the application, Mexico challenged the jurisdiction of the Court regarding the *Convention of Belém do Pará* and partially acknowledged its international responsibility regarding the first part of the investigations, admitting that there had been irregularities. It denied violating the women's rights to life, humane treatment, dignity, and personal liberty of the deceased because state agents did not participate in the murders. The Court took into account Mexico's partial acknowledgment when ultimately deciding the case.

The Court's decision found that Mexico was internationally responsible, for several reasons:

(i) not having taken measures to protect the victims, two of whom were minor children; (ii) the lack of prevention of these crimes, despite full awareness of the existence of a pattern of gender-related violence that had resulted in hundreds of women and girls murdered; (iii) the lack of response of the authorities to the disappearances; (iv) the lack of due diligence in the investigation of the homicides, as well as the denial of justice; and (v) the lack of an adequate reparation. The Court also declared the State responsible for the violation of the human rights of the mothers and next of kin of the victims.

It ordered Mexico to compensate the victim's families; pay costs and expenses; investigate, prosecute and punish those responsible;

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33. "Cotton Field", *supra* note 28 at para 2.

34. *Ibid* at para 3.

acknowledge publicly international responsibility; commemorate the victims with a monument; publish the judgment; and reform legislation, among a long list of actions Mexico was to implement.

### C. After the “*Cotton Field*” Case

In response to the Court’s decision, Mexico complied with some Court orders. It published the decision. It organized a public act acknowledging responsibility and established a monument to commemorate the women who had died in Ciudad Juárez. It compensated the families monetarily and established protocols for finding missing women. It also passed the *General Law of Access for Women to a Life Free of Violence* (2007) and implemented major reforms to its criminal justice system in 2008, which included changes to the criminal procedure by introducing oral, adversarial procedures, alternative dispute resolution mechanisms, greater emphasis on due process rights, modification to police agencies and their role in criminal investigations, and tougher measures for combating organized crime.<sup>35</sup> Despite the laws to protect women, reforms to the criminal justice system, and a decision from an international court, violence against women is on the rise.

Given the poor government response, many national and international non-governmental organizations have stepped up their efforts. They oversee government actions (or inaction), raise awareness, and keep the protection of women in the national debate. One such organization, Just Associates (JASS), commented that:

Although Mexico has made important advances in the institutionalization of women’s human rights through new federal legislation, commissions, institutions, senate committees and one-stop shops for victims of violence, advances in the law are often accompanied by poor implementation.<sup>36</sup>

A participant at an event with civil society groups added that, “[i]t’s been three steps forward and five steps back since the 2006 report.”<sup>37</sup>

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35. See David A Shirk, “Justice Reform in Mexico: Changes and Challenges in the Judicial Sector” (2010) Woodrow Wilson International Center for Scholars, Working Paper, online: <[www.cwagweb.org/wp-content/uploads/2016/08/Justice-Reform-in-Mexico\\_Woodrow-Wilson.pdf](http://www.cwagweb.org/wp-content/uploads/2016/08/Justice-Reform-in-Mexico_Woodrow-Wilson.pdf)>.

36. JASS, *supra* note 32.

37. *Ibid.*



Women continue to be vulnerable in Mexico. The “*Cotton Field*” case brought international attention to violence against women in Mexico, but it appears that the Mexican government has always another higher priority than dealing with this problem. Human rights advocates continue to be murdered,<sup>38</sup> journalists are being killed more frequently than before,<sup>39</sup> and the recommendations have done little to put into practice measures that would prevent the continuance of violence and gender-based crimes against women. The violence has not ceased. The acceptance of the jurisdiction of the Court has not had the desired result in the protection of women’s human rights.

By 2014, the situation for women had become intolerable. Mexico’s representative for United Nations Women (entity for gender equality), Ana Guezmé, has noted that, “[v]iolence against women isn’t an epidemic, it’s a pandemic in Mexico.”<sup>40</sup> In places where the drug battleground is rampant, northeastern Mexico, “the number of women slain jumped over 500 percent between 2001 and 2010.”<sup>41</sup> According to the National Observatory Against Femicide, about 4,000 women disappeared in Mexico in 2011–2012.

The problem of violence against women has not been contained; it has spread. Human rights groups are now concerned about a different part of Mexico, the State of Mexico (near Mexico City). In this area, “2,318 women have been murdered over the course of nine years, according to the watchdog group National Femicide Observatory

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38. On May 10, 2017 Miriam Rodríguez, an activist who searched for missing people, was shot dead. “Mexico’s National Human Rights Commission said Rodríguez’s death underscored the government’s failure to keep the public safe and prevent rights violations of people working as human rights advocates.” See “Miriam Rodríguez Who Probed Daughter’s Death Is Killed”, *Aljazeera* (May 12, 2017), online: <[www.aljazeera.com/news/2017/05/miriam-rodriguez-probed-daughter-death-killed-170512053930965.html](http://www.aljazeera.com/news/2017/05/miriam-rodriguez-probed-daughter-death-killed-170512053930965.html)>.

39. Azam Ahmed, “In Mexico, ‘It’s Easy to Kill a Journalist’”, *The New York Times* (April 29, 2017), online: <[www.nytimes.com/2017/04/29/world/americas/veracruz-mexico-reporters-killed.html](http://www.nytimes.com/2017/04/29/world/americas/veracruz-mexico-reporters-killed.html)>.

Mexico is one of the worst countries in the world to be a journalist today. At least 104 journalists have been murdered in this country since 2000, while 25 others have disappeared, presumed dead. On the list of the world’s deadliest places to be a reporter, Mexico falls between the war-torn nation of Afghanistan and the failed State of Somalia. Last year, 11 Mexican journalists were killed, the country’s highest tally this century.

40. Anahi Rama & Lizbeth Díaz, “Violence Against Women ‘Pandemic’ in Mexico”, *Reuters* (March 7, 2014), online: <[www.reuters.com/article/us-mexico-violence-women-idUSBREA2608F20140307](http://www.reuters.com/article/us-mexico-violence-women-idUSBREA2608F20140307)>.

41. *Ibid*, referring to a study by Mexico’s National Commission to Prevent and Eradicate Violence Against Women.

(OCNF).<sup>42</sup> In the municipality of Ecatepec, 600 women were killed between 2012 and 2016.

As we have shown, the positive effects produced by the “*Cotton Field*” decision have been minimal. It could be said that the Mexican government has failed to respond to the degree that was expected after the decision. Women in Mexico are still waiting for their rights to be protected.

It is worth noting that this case, unlike the *Castañeda Gutman* case, involves many other factors that should be mentioned. Corruption continues to plague the nation. According to Transparency International, Mexico is ranked 123/176 (the higher the number, the more corrupt it is).<sup>43</sup> Impunity is rampant. Mexicans do not trust the institutions. Only 7 of 100 crimes are reported and of those reported, only 4.46% result in convictions.<sup>44</sup> The rule of law does not exist or is very weak. In this context, progress in the protection of women’s rights is moving at an extremely slow pace, putting women at high risk with “gender alerts” repeatedly issued.

#### IV. LESSONS FROM MEXICO TO COUNTRIES THAT HAVE NOT ADHERED TO THE JURISDICTION OF THE COURT

As we can see, the *Castañeda Gutman* case before the Court had a positive impact on protecting the political rights of Mexicans. It was one of the many factors that set into motion legislative reforms that eventually resulted in the possibility of independent candidates in Mexico at all levels. If this case had not been taken to the Court, this right may not have received as much attention as it did and may not have been protected, at least not with the speed at which it occurred.

The Supreme Court’s decision in response to another case before the Court, the *Radilla Pacheco v Mexico* case, also led to a new legal

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42. Susana Urra, “Mexican Deputies Toughen Up Femicide Legislation: Lower House Passes Reform to Place Suspects in Pre-Trial Detention and Prevent Them from Fleeing Justice”, *El País* (6 February 2017), online: <[elpais.com/elpais/2017/02/06/inenglish/1486380569\\_447772.html](http://elpais.com/elpais/2017/02/06/inenglish/1486380569_447772.html)>.

43. Transparency International, “Corruption Perceptions Index 2016” (2016), online: <[www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016)>.

44. Christopher Woody, “Mexico Can Catch All the Drug Kingpins It Wants, but There’s a Different Problem Driving Crime”, *Business Insider* (February 6, 2016), online: <[www.businessinsider.com/impunity-and-crime-rates-in-mexico](http://www.businessinsider.com/impunity-and-crime-rates-in-mexico)>.

scenario for the protection of human rights. Judges could take a more active role and apply Court decisions in their courts, applying the "control of conventionality doctrine." Under this doctrine, "the States must conform their domestic legislation not only to the American Convention but also to the Inter-American Court's interpretation of the terms of the Convention."<sup>45</sup>

The internationalization of Mexican legal actors is now a must. Mexican judges and lawyers must now consider the recommendations of the Court's decisions as part of their practice. Public and private universities in Mexico must adapt their curriculum to include not only human rights topics but also the jurisprudence established by international human rights courts, particularly the Court, in the interpretation of the *American Convention of Human Rights*, among others, and recommendations issued in the cases. It means that law professors and students must analyze international and national decisions, so all legal actors are forced to update their knowledge and understanding regarding international law and human rights case law.

## CONCLUSION

The path Mexico undertook to seek the protection of human rights is based on its own history, culture, legal system, and political and economic development. It did not immediately accept the jurisdiction of the Court. Mexico wanted to protect its national sovereignty and it resisted the risk of exposure that accepting the jurisdiction would bring. As can be seen in the cases against Mexico, accepting jurisdiction opened the country to the international spotlight, but in some cases, the international spotlight and pressure have not had the expected results. The "*Cotton Field*" case held Mexico responsible, and Mexico was supposed to act to prevent future crimes against women, but the numbers indicate that women continue to suffer human rights violations, and the impact of the decision appears to be null.

On the other hand, the *Castañeda Gutman* case appears to have had different results. It brought the issue of independent candidates and the denial of political rights into the national discussion. The Mexican Constitution and electoral laws were modified, and the right for which Castañeda Gutman had fought was eventually granted in the national legal system.

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45. Cerna, *supra* note 24.

For Mexico to make further progress in the protection of human rights, it must address deep-rooted problems. Corruption and impunity must cease to exist. The rule of law must prosper, and legal institutions must be strengthened. The fragility of the system contributes to a lack of punishment for human rights violations, which in turn contributes to their increase. All actors, including lawyers, students, judges, the police, state attorneys, the military, politicians, courts, universities, non-governmental organizations, professional legal associations, and society in general should contribute to the creation of a human rights culture that will take Mexico to a new level.

Finally, the acceptance of the jurisdiction of the Court and the cases brought against Mexico have led to a new mindset in the Mexican legal system, actors, and education. For the protection of human rights, this new mindset is a step in the right direction.