



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application filed with the Inter-American Court of Human Rights
in the case of
Jorge Castañeda Gutman
(Case 12,535)
against the United Mexican States

DELEGATES:

Florentín Meléndez, Commissioner
Santiago A. Canton, Executive Secretary

ADVISORS:

Elizabeth Abi-Mershed
Juan Pablo Albán A.
Ariel E. Dulitzky
Mario López Garelli

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1889 F Street, N.W.
Washington, D.C., 20006

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**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE UNITED MEXICAN STATES**

**CASE 12,535
JORGE CASTAÑEDA GUTMAN**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) hereby files this application with the Honorable Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Honorable Court”) instituting proceedings against the United Mexican States (hereinafter “the State,” “the Mexican State,” or “Mexico”) in case number 12,535, *Jorge Castañeda Gutman*. The application contends that no simple and effective remedy exists under Mexico’s domestic State law by which to challenge the constitutionality of decisions prejudicial to one’s right to participate in government and that the impediment thus created had the effect of preventing Mr. Jorge Castañeda Gutman (hereinafter the “victim”) from being registered as an independent candidate for the office of President of Mexico.

2. The Commission requests that it may please the Court to adjudge and declare that the Mexican State failed to comply with its international obligations by its violation of Article 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) in relation to its obligations *erga omnes* to respect and ensure the human rights recognized in the Convention and to adopt domestic legislative measures to give effect to those rights, as established under articles 1(1) and 2 thereof.

3. The procedure required under the American Convention has been followed in processing the instant case, which is being filed with the Court in accordance with Article 33 of the Court’s Rules of Procedure (hereinafter “the Rules of Court”). Affixed as an appendix to this application is a copy of report 113/06, prepared pursuant to Article 50 of the Convention.¹

II. SUBMISSIONS

4. The purpose of this application is to request the Court to adjudge and declare that:

Mexico is responsible for violation, to the detriment of Jorge Castañeda Gutman, of the right to judicial protection protected under Article 25 of the American Convention on Human Rights, in relation to its obligations *erga omnes* to respect and ensure the Convention-protected human rights and to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms, pursuant to articles 1(1) and 2 of the Convention.

5. Accordingly, the Inter-American Commission requests that the Court order the State to:

a) Implement the legislative and other reforms necessary to adapt its domestic legal system to conform to Article 25 of the American Convention, particularly the pertinent provisions of the *Amparo* Act and the Federal Code of Electoral

¹ IACHR, Report No.113/06 (admissibility and merits), Case 12,535, *Jorge Castañeda Gutman*, Mexico, October 26, 2006, Appendix 1.

Institutions and Procedures (hereinafter "COFIPE"), so as to provide a simple and effective recourse by which to challenge the constitutionality of decisions prejudicial to one's right to participate in government;

- b) Compensate Mr. Jorge Castañeda Gutman for the damages caused by the violation of his rights; and
- c) Pay the legal fees and expenses that the victim incurred in prosecuting his case in the domestic courts and with the inter-American system for the protection of human rights.

III. REPRESENTATION

6. In keeping with articles 22 and 33 of the Rules of Court, the Commission has designated Commissioner Florentín Meléndez and Executive Secretary Santiago A. Canton as its delegates in this case. Attorneys Ariel E. Dulitzky, Elizabeth Abi-Mershed, Juan Pablo Albán Alencastro and Mario López Garelli, specialists with the Commission's Executive Secretariat, were designated to serve as legal advisors.

IV. JURISDICTION OF THE COURT

7. Under the terms of Article 62(3) of the American Convention, the Inter-American Court has jurisdiction to take up any case submitted to it seeking interpretation and application of the provisions of the Convention, provided that the States Parties to the case recognize or have recognized such jurisdiction.

8. The Court has jurisdiction to take up the present case. Mexico ratified the American Convention on March 2, 1981, and accepted the contentious jurisdiction of the Court on December 16, 1998.

V. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION²

9. On October 12, 2005, the Inter-American Commission received a petition lodged by Mr. Jorge Castañeda Gutman, which the Commission classified as number P1154/05. In his petition, the victim designated attorneys Fabián M. Aguinaco, Alberto Székely, Santiago Corcuera and José Miguel Vivanco to represent him.

10. At the same time, the victim and his representatives lodged a request seeking precautionary measures, which was classified as number MC 240/05.

11. During the Commission's 123rd regular session, the full membership decided to process the petition, pursuant to Article 30 of the Commission's Rules of Procedure. Accordingly, on October 17, 2005, the pertinent parts of the petition were forwarded to the State, which was given two months in which to present its observations and any information it deemed pertinent.

12. That same day, the Inter-American Commission agreed to seek the precautionary measures requested by the victim and his representatives, in order that the victim might be permitted to register as an independent candidate for the office of President of Mexico until such time as the IACHR decided the admissibility and merits of his case. In a communication dated October 17, 2005, the Commission asked the State to report, within ten days' time, what measures it had taken to protect Mr. Castañeda Gutman's rights.

² The proceedings recounted in this section are in the Commission's file on this case, Appendix 2.

13. On October 27, 2005, the Mexican State replied to the Commission's request for information concerning the precautionary measures ordered by the Commission. The State's response was that under Mexican law, Mr. Castañeda Gutman could not be registered as an independent candidate.

14. On October 28, 2005, the victim asked the IACHR to file a petition with the Inter-American Court seeking provisional measures, given the Mexican State's failure to comply with the requested precautionary measures.

15. On November 15, 2005, the Inter-American Commission filed a request with the Inter-American Court seeking provisional measures to have the Mexican State take the necessary measures to register Mr. Jorge Castañeda Gutman as an independent candidate for the office of President of the Republic until the organs of the inter-American system for the protection of human rights ruled on the admissibility and merits of the petition he had filed alleging violation of a number of rights protected under the American Convention.

16. On November 25, 2005, the Inter-American Court dismissed the request for provisional measures on grounds, *inter alia*, that the Commission was still considering the admissibility of the petition and that "to adopt the requested measures would be tantamount to deciding, *in limine litis* and by way of an incidental proceeding, issues central to the case and their consequences."³

17. On December 9, 2005, the Mexican State requested an extension of the deadline for filing its observations on the petition. On December 14, 2005, the Commission acceded to the request. Pursuant to Article 30(3) *in fine* of the Inter-American Commission's Rules of Procedure, the new deadline became January 17, 2006.

18. On January 17, 2006, the petitioner requested a hearing during the Commission's 124th regular session. His request was denied on February 8, 2006.

19. The State's response, submitted within the extended time period, was forwarded to the petitioner on January 18, 2006. On January 23, 2006, Mr. Castañeda Gutman submitted his observations on the State's response.

20. On January 27, 2006, the Commission notified the parties of its decision to proceed in accordance with Article 37(3) of the Commission's Rules of Procedure and, accordingly, requested both to present their final observations on the merits within no more than two months' time. It also registered the petition as Case No. 12,535, and deferred its treatment of admissibility until the debate and decision on the merits. At the same time, and pursuant to Article 48(1)(f) of the American Convention and Article 38(2) of its Rules of Procedure, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement.

21. On February 14, 2006, the petitioner sent a communication in which he stated that he had no interest in initiating a friendly settlement procedure until he knew what the State's position on the merits of the case would be.

22. On March 21, 2006, the Mexican State requested an extension of the time period for submitting its observations on the merits. The Commission acceded to its request on March 28,

³ I/A. Court H. R., *In the matter of Castañeda Gutman*. Request for Provisional Measures with respect to Mexico. Order of November 25, 2005, *Consideranda* six.

2006, granting the State a 10-day extension. The State submitted its reply on April 6, 2006, the date on which the extension expired. On April 10, 2006, the Inter-American Commission forwarded those observations to the petitioner.

23. On April 21, 2006, the petitioner sent another communication in which he presented additional observations. That communication was forwarded to the State on April 24, 2006. The State sent yet another communication, dated May 8, 2006, with its observations on the petitioners' brief and attaching the Supreme Court's ruling on the *amparo* on review No. 743/2005..

24. On October 26, 2006, during its 126th regular session, the Commission, by a majority vote of its members, approved Report 113/06 on Admissibility and Merits, prepared pursuant to Article 50 of the Convention. There it found that:

[...] by refusing to allow Jorge Castañeda Gutman to run as an independent candidate for the Office of President of Mexico, the State's international responsibility has been engaged for violation of the right to judicial protection (Article 25) and of its obligations to respect and ensure the Convention-protected rights and the duty to adopt the legislative measures necessary to give effect to those rights, as required under articles 1(1) and 2, respectively, of the American Convention.

25. In that Report on the Merits, the Commission made the following recommendations to the State:

1. That [...] it adapt its domestic legal system to conform to Article 25 of the American Convention, particularly the relevant provisions of the *Amparo* Act and COFIPE, to provide a simple and effective recourse by which to challenge the constitutionality of decisions prejudicial to one's rights to vote and participate in government.
2. That it adequately compensate Jorge Castañeda Gutman for the violations of his human rights established in the present report.

26. The Report on the Merits was sent to the State on December 21, 2006, which was given two months to report on the measures undertaken to comply with the recommendations contained therein, in keeping with Article 43(2) of the Commission's Rules of Procedure.

27. Pursuant to Article 43(3) of the Commission's Rules of Procedure, that same day, December 21, 2006, the Commission informed Mr. Castañeda Gutman that a report on the merits had been adopted and forwarded to the State; it asked him to convey, within one month's time, his position as to whether the case should be submitted to the Inter-American Court.

28. By a communication dated January 19, 2007, the victim, through his representatives, advised the Commission that he wanted his case to be submitted to the Court.

29. On February 21, 2007, the State submitted to the Commission its report on the measures planned in order to comply with the recommendations that the Commission made in this case. It also made observations on Report No. 113/06, Admissibility and Merits, and suggested a number of clarifications. In that communication the State maintained that the IACHR should clarify any possible reference to an "exigible right to nominate independent candidates." The State further contended, *inter alia*, that the "suggestion" that COFIPE should be amended was ill-advised since, it reasoned, COFIPE was not the proper body of laws to contain rules governing challenges to or tests of the constitutionality of laws.

30. In its February 21, 2007 communication, the State also wrote the following:

Existing guarantees of citizens' political rights can be reinforced by introducing into the domestic legal system a means to address individual citizens' questions as to the constitutionality of election laws

and that

the Federal Executive Branch's willingness to examine how best to adapt the domestic legal system so as to provide a simple and effective means to challenge the constitutionality of laws governing the right to participate in government, as the Inter-American Commission has recommended, is self-evident.

31. As for the Commission's second recommendation, the State underscored the fact that there was no misconduct on the part of its officials and that the violations established were a case of legal oversight

32. Having considered the State's report on the measures to comply with the recommendations contained in the report on the merits, and absent any progress toward effective compliance with those recommendations, the Commission decided to submit the case to the Inter-American Court.

VI. THE FACTS

A. Background

1. Mexican law relative to standing for popularly elected office.

33. Article 35 of the Constitution of the United Mexican States reads as follows:

The rights of citizenship are as follows:

- I. To vote at popular elections;
- II. To run for any popularly elected office, and to be appointed to any other employment or commission, provided one meets the legally established requirements;
- III. To associate together for purposes of discussing the country's political affairs;

34. Article 41 of Mexico's Constitution reads as follows:

I. Political parties are public-interest entities; the law shall prescribe the manner of their participation in the electoral process. National political parties shall have the right to participate in state and municipal elections.

The purpose of political parties shall be to promote the people's participation in the democratic way of life, to be instrumental in the selection of the people's representatives, and, as citizens' organizations, to afford citizens access to public office on their party's platform, principles and ideas and by a system of universal, free, secret and direct suffrage. Only citizens may freely and individually join political parties.

35. Article 82 of the Constitution provides that:

To be President, a person shall:

- I. Be a Mexican citizen by birth, in full enjoyment of his or her rights, the offspring of parents who are themselves Mexicans, and have lived in the country for at least 20 years;

- II. Be 35 years of age at the time of his or her election;
- III. Have resided in the country in the year leading up to election day. Absence from the country for an uninterrupted period of up to thirty days shall not affect the residency requirement;
- IV. Not be a member of any ecclesiastical hierarchy or a minister of any religion;
- V. If in the Army, not have been in active service during the six-month period prior to election day;
- VI. Not be a secretary, under secretary, head or secretary general of any government department, Attorney General of the Republic, or governor of any state or territory, unless he or she has resigned said position six months prior to election day; and
- VII. Not meet any of the grounds for disqualification stipulated in Article 83 of the Constitution.

36. Article 4 of COFIPE reads as follows:

1. Voting in elections is a right and an obligation exercised in order to fill popularly elected State offices. Citizens also have the right to enjoy, and political parties the obligation to ensure, equal opportunity and equal treatment for men and women alike in terms of access to popularly elected office.

37. Article 36 of COFIPE provides that:

National political parties have the following rights:

[...]

d) To nominate candidates in federal elections, under the terms of this Code.

38. Article 175 of COFIPE provides that “only national political parties shall have the right to apply to register candidates for popularly elected office.”

39. Article 178(3) of the Code reads as follows: “The nominating political party shall state in writing that the candidates whose registration it is seeking were selected in accordance with the statute of the nominating political party.”

2. The refusal to register Mr. Jorge Castañeda Gutman as an independent candidate for the Office of President of Mexico

40. On March 5, 2004, Mr. Jorge Castañeda Gutman filed an application with the Executive Director of Political Rights and Parties of the Federal Electoral Institute (hereinafter “the IFE”) to register as a candidate for the Office of President of Mexico in the elections that would be held on July 2, 2006. In his application, Mr. Castañeda Gutman reported the information necessary to show that he met the requirements stipulated in Mexico’s Constitution to stand for that elective office.⁴

41. In the section titled “the political party’s written statement that the candidate whom it seeks to register was selected according to the party’s statutes,” Mr. Castañeda’s submission to the IFE states the following:

[t]his item does not apply inasmuch as the undersigned, in exercise of his constitutional right, is applying to be registered as a candidate for the popularly elected office of President of the United Mexican States, without the intervention of any political party or coalition.⁵

⁴ Candidacy registration application, March 6, 2004, Annex 1.

⁵ Candidacy registration application, March 6, 2004, Annex 1.

42. In a reply dated March 12, 2004, the IFE denied Mr. Castañeda Gutman's application to register as a candidate for public office. In so doing, it invoked a clause in the Mexican Constitution which states that "the purpose of political parties is ... to afford [citizens] access to public office," and a provision of the Federal Code of Electoral Institutions and Procedures (COFIPE) which states that "only national political parties shall have the right to apply to register candidates for popularly elected office."⁶ In its communication, the IFE also cited jurisprudence to the effect that neither the Federal Constitution nor any international treaty is violated if the refusal to register a candidate is based on a legal provision stipulating that only political parties have the right to nominate candidates.⁷ The IFE's letter to Mr. Castañeda ends with the following observations:

[t]he right to be nominated for and run for federal elective office can only be exercised through one of the political parties registered with the Federal Electoral Institute.

Finally, Article 177, paragraph 1, insert e) of the Code specifies that the time period for registering candidates for the office of President of the United Mexican States is the period from January 1 through 15 of the election year.

For all the foregoing reasons, your application to register as a candidate for the office of president cannot be accepted. I enclose herewith the documents submitted with the application filed with this Institute.

B. The judicial process that Mr. Jorge Castañeda Gutman instituted when his application to register as an independent candidate was denied

43. On March 29, 2004, the victim filed an action seeking *amparo* relief with Mexico City's Seventh Administrative Law District Court⁸, which agreed to hear the matter by order of March 30 of that year. The case was registered as number 374/2004.⁹

44. On May 25, 2004, the Judge summoned the political parties registered with the IFE to intervene in the proceedings as aggrieved third parties [*"terceros perjudicados"*].¹⁰ The hearing required under the Mexican Constitution when adjudicating actions seeking *amparo* relief was held on June 17, 2004. There, Mr. Castañeda produced evidence, raised objections and made arguments to refute those made by the responsible authorities to have the case dismissed.

45. On July 16, 2004, the Seventh Administrative Law Court denied the petitioner's suit on the grounds of Article 73, section VII of the *Amparo* Act, which states that an action seeking *amparo* relief is inadmissible against decisions of electoral bodies.¹¹

⁶ Memorandum DEPPP/DPPF/569/04 signed by the Executive Director of Political Rights and Parties of Mexico's Federal Electoral Institute, dated March 11, 2004, Annex 2.

⁷ The Judicial Branch's Federal Electoral Tribunal. Superior Chamber, Thesis S3EL 048/2002. Trial for protection of the citizen's political-electoral rights. SUP-JDC-037/2001 - Manuel Guillén Monzón.- October 25, 2001, Annex 11.

⁸ Action filed by Mr. Jorge Castañeda Gutman seeking *amparo* relief, March 29, 2004, Annex 3.

⁹ March 30, 2003 Order, Mexico City's Seventh District Court in Administrative Law, Annex 4.

¹⁰ Procedural decision, May 25, 2004, Mexico City's Seventh District Administrative Law Court, Annex 5; Summonses that Mexico City's Seventh District Administrative Law Court sent to various Mexican political parties to intervene in the proceedings as aggrieved third parties." Annex 6.

¹¹ Ruling of July 16, 2004, Mexico City's Seventh District Administrative Law Court, Annex 7.

46. Mr. Castañeda Gutman then filed for a review of the ruling of the Seventh District Administrative Law Court. Because the petition seeking review of the *amparo* decision raised legal and constitutional issues, the Circuit Tribunal that heard the request for review of the *amparo* ruling issued its decision on the legal questions on November 11, 2004, and suggested that the Supreme Court should examine the constitutional issues.¹²

47. The Supreme Court received the case on December 2, 2004, and listed it as number 51/2004PL. On April 7, 2005, by a nine-vote majority, the Supreme Court, *en banc*, decided it would exercise its review authority and referred the matter to the Office of the Chief Justice of the Tribunal for the proper processing.¹³

48. On May 2, 2005, the Chief Justice of the Supreme Court received the case file and ordered it registered as number 743/2005. At its sessions of August 8 and 16, 2005, the Court, *en banc*, took up the appeal filed by the victim filed seeking review of the *amparo* ruling; it also took up a cross-appeal that the Executive Director of Political Privileges and Parties of the Federal Electoral Institute filed seeking review of the judgment.¹⁴

49. By six votes, Mexico's highest court upheld the lower-court ruling on review and dismissed the petition seeking *amparo* relief from articles 175, 176, 177, paragraph I, section E and 178 of the COFIPE, the constitutionality of which the appellant was challenging. It did not examine the merits of the case. The Supreme Court also decided to dismiss the petition seeking *amparo* relief from the decision by IFE's Executive Director for Political Privileges and Parties, which appears in the March 11, 2004 decision, and which was the decision that triggered Mr. Jorge Castañeda Gutman's action for protection of fundamental rights. Dissenting from the majority were Justices Cossio Díaz, Góngora Pimentel,¹⁵ Sánchez Cordero, Díaz Romero and Silva Meza, who believed that the Court should have examined the merits of the case.

50. Pursuant to Article 177 of the COFIPE, in the period from January 1 and 15, 2006, the Federal Electoral Institute received the applications for registering candidates for the office of President of Mexico. Mr. Jorge Castañeda Gutman did not file another application during that period.

VII. THE LAW

A. Violation of the right to judicial protection in relation to the obligation *erga omnes* to respect and ensure human rights (articles 25 and 1(1) of the American Convention)

51. In the report that the IACHR adopted on the situation of human rights following its *in loco* visit from July 15 through 24, 1996, it examined the observance of a number of rights protected under the American Convention. As for appeals on election-related matters, the Inter-American Commission observed that:

only political parties may present candidates and appeal the results of elections, with the exception of the remedy of review. Consequently, current Mexican electoral legislation does

¹² November 11, 2004 ruling, Fourteenth Administrative Law Tribunal of the First Circuit, Annex 8.

¹³ Ruling of August 16, 2006, Supreme Court of Justice of the Nation, Annex 9.

¹⁴ Ruling of August 16, 2006, Supreme Court of Justice of the Nation, Annex 9.

¹⁵ Separate opinion of Justice Genaro David Góngora Pimentel, Annex 10.

not permit the citizen to pursue remedies in electoral matters, except for the remedy of review.¹⁶

52. In that same report, the Commission wrote that:

[t]he Constitution of the United Mexican States provides that voting and being elected to office are both an obligation and a right of Mexican citizens. It also sets forth the requirements to be met by citizens who aspire to an office representing the people. These requirements do not include nomination by a political party. However, the regulatory law, in other words, the COFIPE, states in article 175, paragraph 1, that "... national political parties have the exclusive right to request that candidates be placed on the ballot for election to public office."

Under these conditions, any independent candidacy is invalidated from the outset. It has not been possible thus far to find a way to ensure the stability and strengthen the party system in a manner compatible with the constitutional right of citizens to be elected to public office without necessarily having to do so under the auspices of a political party.¹⁷

[...]

In light of the situation reviewed above, the IACHR makes the following recommendations to the Mexican State:

[...]

To adopt the necessary measures so that the right to vote and to be elected provides for the most ample and participatory access of candidates to the electoral process, as an element of consolidation for democracy. [...].¹⁸

53. The general recommendation that the Inter-American Commission made in its 1998 report has not been implemented

54. In an earlier case already decided by the Commission and similar to that of Mr. Castañeda Gutman, candidates nominated by an independent movement were not allowed to stand for election to Peru's Congress. In that case, "in order not to definitively vitiate the petitioner's rights," in 1995 the Commission requested that the list of candidates be provisionally registered until a decision was reached on the merits of the case. In the report on the merits, the Inter-American Commission resolved to recommend to the State that it "adopt measures aimed at modifying the provisions of Article 181 of the 1993 Constitution and Article 13 of the Organic Elections Law, providing for an effective and simple recourse, in the terms of Article 25(1) of the Convention, to oppose the decisions of the National Elections Board that may violate the guarantee of political participation for citizens."¹⁹

55. Article 25 of the American Convention provides as follows:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

¹⁶ IACHR, *Report on the situation of human rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Original: Spanish, Chapter VI, par. 449.

¹⁷ IACHR, *Report on the situation of human rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Original: Spanish, Chapter VI, par. 446.

¹⁸ IACHR, *Report on the situation of human rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Original: Spanish, Chapter VI, par. 502.

¹⁹ IACHR, Report 119/99, Case 11.428, *Susana Higuchi Miyagawa*. Peru, October 6, 1999, Recommendations, par. 1.

recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

56. In the instant case, the Inter-American Commission contends that the Mexican State failed to afford Mr. Castañeda a simple, rapid and effective recourse to seek protection of his constitutional rights.

57. The Inter-American Court has held that States Parties to the American Convention have an obligation to provide effective judicial remedies to victims of human rights violations, remedies that must be substantiated in accordance with the rules of due process, all in relation to the general obligation to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction.²⁰ The Inter-American Court has also stated that the principal purpose of international human rights law is to protect persons from a State's abusive exercise of its power. Hence, "the inexistence of effective domestic remedies places the victim in a situation of defenselessness."²¹ Therefore, the absence of an effective remedy to violations of the rights recognized in the Convention is itself a violation of the Convention.²² Moreover, time and time again the Inter-American Court has held that the existence of the guarantee of an effective judicial recourse is one of the basic pillars not only of the American Convention, "but also of the rule of law itself in a democratic society, in the terms of the Convention."²³

58. An effective judicial remedy is one capable of producing the result for which it was designed.²⁴ To be considered "effective", a judicial remedy does not have to be decided in favor of the party alleging violation of his rights; effectiveness does, however, imply that a judicial body has examined the merits of a case.²⁵ In an earlier case in which a domestic court claimed that it did not have legal jurisdiction to examine an alleged violation of rights, the Commission concluded that:

Article 25(2)(a) expressly establishes the right of any person claiming judicial remedy to "have his rights *determined* by the competent authority provided for by the legal system of the state."

^[25] *To determine* the rights involves making a determination of the facts and the alleged right--with legal force--that will bear on and deal with a specific object. This object is the claimant's specific claim. When in this case the judicial tribunal denied the claim and declared "the matters

²⁰ I/A Court H. R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 163; I/A Court H. R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, par. 142; and I/A Court H. R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, par. 76.

²¹ I/A Court H.R., *The Constitutional Court Case (Aguirre Roca, Rey Ferry and Revoredo Marsano v. Peru)*. Series C. No. 71, Judgment of January 31, 2001, Series C No. 71, par. 89.

²² *Ibid.*

²³ *Ibid.*, par. 90.

²⁴ See I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, paragraph 66.

²⁵ IACHR, Report No. 30/97, Case 10,087, *Gustavo Carranza* (Argentina), September 30, 1997, par. 74.

interposed to be non-justiciable” because “there is no legal jurisdiction with regard to the matters set forth and it is not appropriate to *decide* thereon,” it avoided a determination of the petitioner’s rights and analyzing his claim’s soundness, and as a result prevented him from enjoying the right to a judicial remedy under the terms of Article 25.²⁶

59. Jorge Castañeda Gutman filed a petition seeking *amparo* relief with Mexico’s highest court. He was seeking a finding to the effect that Article 175 of COFIPE was inapplicable, unconstitutional and contrary to the American Convention. In the proceedings before the Commission, the victim explained that the review he was seeking was declared inadmissible because of the procedural pre-eminence attributed to Article 73, subparagraph VII of the *Amparo* Act, which provides that actions seeking *amparo* relief are inadmissible against decisions of electoral bodies. With that the Supreme Court closed the only door available to the victim to run as an independent candidate. The victim made clear that his suit was not intended to challenge decisions or declarations of electoral bodies, but rather the law itself.

60. In an action seeking *amparo* relief, a judge is free to declare a law unconstitutional in the specific case, but not in general.²⁷ As for legitimation, *amparo* is much more inclusive than an action challenging the constitutionality of the law. In that sense, *amparo* would have been the ideal course of action had it not been for the fact that it is not allowed in election-related matters.

61. The Commission considers that a State may have reasons for giving a specialized body sole jurisdiction in election-related matters, in order to avoid disperse and even conflicting rulings that could undermine the legal certainty of the electoral processes. And it is not unreasonable, *per se*, to confine the use of *amparo* to certain issues, provided another similar legal recourse that is both rapid and simple is made available. In the instant case the evidence being made available to the Court will show that taken as a whole, the system of available remedies left the victim with no means to access the courts for protection of his fundamental rights guaranteed in the American Convention.

62. The mechanism that Article 25 of the American Convention establishes is absolutely vital to the protection of individual rights, and is an essential part of the system of protection established under the Convention. The Inter-American Court has held that judicial guarantees can never be suppressed or rendered ineffective, not even during states of emergency, as they protect rights that are not subject to derogation or suspension by a state of emergency.²⁸ The Court has also written that “the purpose of the international law of human rights is to provide the individual with the means to protect universally recognized human rights from the State.”²⁹

63. The right to effective judicial protection that the American Convention recognizes is not satisfied merely by providing access to a remedy and conducting proceedings thereon. For the mechanisms of judicial protection to be truly effective, the organ to which the complainant turns must arrive at a reasoned conclusion and a decision on the merits of the case. Summing up, that decision on the merits is the object and purpose of the right to judicial remedy recognized in the American Convention.

²⁶ Ibid, par. 77 (emphasis in the original).

²⁷ See, in this regard, Article 76 of the *Amparo* Act, which provides that “[a] decision delivered on a petition seeking *amparo* relief shall only concern the private individual or private or official corporate entity that sought that relief, and shall, when so warranted, provide the requested relief or protection in the specific matter that the petition concerns, and shall make no blanket statements as to the law or act that prompted the petition.”

²⁸ I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*, Advisory opinion OC-9/87, October 6, 1987, par. 25.

²⁹ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, par. 73.

64. The action that triggered the petitioner's complaint was the March 12, 2004 communication from the IFE's Executive Director of Political Rights and Parties, in which he wrote that the provisions of COFIPE Article 175 precluded registration of Jorge Castañeda Gutman's candidacy.³⁰ The IFE official also expressly stated the other grounds for the refusal: that the case law of the Federal Electoral Tribunal (hereinafter "TRIFE") had already determined that COFIPE Article 175 was not unconstitutional.³¹ On March 29, 2004, the petitioner filed an action for *amparo*, which the Seventh Administrative Law Court denied on July 16, 2004, invoking Article 73, paragraph VII of the *Amparo* Act, which provides that a petition seeking *amparo* relief is inadmissible against decisions of electoral bodies.

65. The pertinent part of the Seventh Administrative Law Court's decision reads as follows:

If, in the exercise of his political-electoral right to run for elective office, a citizen believes that right to have been violated along with other equally important basic rights, such as the right to equality or freedom of association, for example, that alone would not make *amparo* admissible. It is true that *amparo* is the proper remedy against violations of individual guarantees. However, violations of those fundamental rights cannot be examined separately if alleged to have been committed when the citizen exercised his electoral-political right, as that electoral-political right is such an intimate part of articles 41 and 116, paragraph IV of the Constitution, and as *amparo* is inadmissible against violations of the basic political-electoral right.³²

66. Jorge Castañeda Gutman then turned to the Supreme Court seeking a review of that ruling. He argued that no clause in the Constitution precluded *amparo* as a remedy in electoral matters or gave political parties the exclusive right to register candidates. The Constitution has supremacy over both the COFIPE provision and the clause in the *Amparo* Act; the petitioner reasoned that both these provisions were contrary to the rights protected under the American Convention, which was the case he made to Mexico's highest court. The Supreme Court, however, decided to uphold the ruling being appealed and to dismiss the *amparo* with regard to the articles of the COFIPE whose constitutionality the petitioner was challenging. It also declined to grant *amparo* relief with respect to the IFE's decision that appears in the communication of March 11, 2004.

67. In practice, Mexico's legal system provides no mechanism by which private individuals like Mr. Castañeda Gutman can challenge the constitutionality of election laws. The right to effective judicial protection in the instant case necessarily involves a full and in-depth debate, both timely and effective, as to the constitutionality of certain election laws and their compatibility with international human rights law.

68. It might be instructive to examine how the Mexican courts have interpreted the concept of political rights. That interpretation comes from the jurisprudence cited by the Supreme Court in its ruling of August 16, 2005, which decided *Amparo* on Review 743/2005. Mexico's jurisprudence draws a sharp distinction between individual guarantees protected by means of *amparo* on the one hand, and political rights on the other. The latter fall into an entirely different category and are subject to *amparo* protection only exceptionally. For example, one point made is

³⁰ Memorandum DEPPP/DPPF/569/04 signed by the Executive Director of Political Rights and Parties of Mexico's Federal Electoral Institute, dated March 11, 2004, Annex 2.

³¹ Judicial Branch's Federal Electoral Tribunal, Superior Chamber. Thesis S3EL 048/2002. Trial for the protection of the citizen's political-electoral rights. SUP-JDC-037/2001 - Manuel Guillén Monzón.- October 25, 2001, Annex 11.

³² July 16, 2004 Ruling. Mexico City's Seventh Administrative Law District Court. Annex 7..

that “political rights are non-justiciable and cannot be litigated before the courts; clearly, then, they are not protected by that constitutional remedy; furthermore, under Article 103 of the Constitution, *amparo* protects the natural or civil rights of man.”³³ Elsewhere, the Supreme Court held that “the action of *amparo* is only admissible against violations of individual guarantees, which should be understood as those that attend the individual person, and not those that attend the citizen.”³⁴

69. The IACHR has written that *amparo* “is a procedural institution that originated in nineteenth-century Mexico. Its purpose is to protect persons from any official act (broadly construed) which causes harm to a person's legal interests and which is deemed to violate the rights enshrined in the Constitution. *Amparo* proceedings seek to invalidate the act in question or to render it without effect on the grounds of unconstitutionality or illegality in the specific circumstances in which it occurred.”³⁵ *Amparo* “is one of the judicial mechanisms for the protection of fundamental rights referred to in Article 25 of the Convention.”³⁶

70. In his case before the Mexican Supreme Court, the petitioner argued that his rights under articles 1 and 133 of the Constitution had been violated by “legislative oversight or inaction” on the part of the Federal Congress or the Federal Executive Branch, which did nothing to amend COFIPE so as to allow independent candidates to run for elective office without party affiliation. Jorge Castañeda Gutman argued before the Supreme Court that the lack of comprehensive regulation leaves “the individual’s right to vote and to run for office, with or without party affiliation, devoid of its meaning, purpose and force” and constitutes discrimination.

71. In its ruling on this case, the majority opinion delivered by Mexico’s highest court on this case reads as follows:

As the plaintiff contends, political rights are counted among human rights, having qualities common to all human rights: universality, inalienability and indivisibility. In other words, violation of one human right presupposes the violation of all human rights. This means that the State has an obligation not to encumber the exercise of those rights in any way. Moreover, political rights are recognized in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the American Declaration of the Rights and Duties of Man (1948), and the American Convention on Human Rights (1969), which the Mexican State has signed.

However, although civil and political rights are counted among human or fundamental rights, and as such must be more carefully protected, this does not alter the fact that under Article 35, paragraph II of the Constitution, running for elective public office is essentially a political privilege that citizens enjoy and whose exercise is necessarily informed by the constitutional provisions regulating the election or selection of those who hold office in the three branches of government.

When ruling on various constitutionality challenges, the Court *en banc* has held that exercise of the rights and guarantees recognized in the Federal Constitution - Article 35(II) included- necessarily relates to the electoral system that the Constitution establishes. Therefore, exercise of those rights goes to very foundation that the Constitution establishes in electoral matters, as it is so very instrumental in renewing the make-up of the branches of government

³³ Fifth Session, Full Court. Source: The Federation’s Judicial Weekly Digest, Volume XXIV, p. 598, cited in the August 16, 2005 Supreme Court Decision, p. 179.

³⁴ Seventh Session, Full Court. Source: The Federation’s Judicial Weekly Digest, Volume 71, part one, p 21, cited in the August 16, 2005 Supreme Court Decision, p. 181.

³⁵ IACHR, *Report on the situation of human rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, Original: Spanish, par. 93.

³⁶ *Idem*, p. 101.

and public entities. Therefore, any examination of the exercise of these rights and guarantees must be done in relation to articles 41 and 116, paragraph IV of the Constitution, which govern these matters.³⁷ (emphasis in the original)

72. The Supreme Court also observed that “in the instant case an action for *amparo* is being used to contest a violation of political rights. Even though political rights are a fundamental right, they involve electoral questions, i.e., the possibility of running for publicly elected office as an independent candidate.”³⁸ In the end, the Supreme Court held that “the basic rights that the plaintiff claims were violated cannot be examined without factoring in the electoral issue [...], which necessarily precludes *amparo* as proper procedure.”³⁹ At the same time, the Supreme Court held that the proper recourse to challenge election laws was the constitutionality challenge, which, under Article 105.II of the Constitution, is not available to individuals.⁴⁰

73. At a recent academic meeting, one of Mexico’s Supreme Court justices offered up the following explanation of democracy and the legal debate that the case of Jorge Castañeda Gutman set off:

[i]n this discussion, political rights were said to be grounds for declaring the action seeking *amparo* relief to be improper procedure. However, Article 73 of the *Amparo* Act does not contain any basis for that legal argument, nor does it support the repeated claims made by certain parties regarding an action seeking *amparo* relief. Constitutional review is still not allowed in cases involving political rights. The Supreme Court has held that the Electoral Tribunal does not have jurisdiction to decide constitutionality issues, even leaving election laws aside. And so, many of the essential elements of a democratic system are lacking in the system of justice.⁴¹

74. In the admissibility section of report No. 113/06 (Appendix 1), the Inter-American Commission held that the dictates of the law are such that a writ of *amparo* is clearly precluded as

³⁷ Supreme Court of Justice of Mexico, *Amparo* Review 743/2005, Ruling of August 16, 2005, pp. 196 and 198.

³⁸ Judgment of August 16, 2005. Supreme Court of Justice, Annex 9, p. 206.

³⁹ Judgment of August 16, 2005. Supreme Court of Justice, Annex 9, pp. 208 and 209.

⁴⁰ Constitutionality challenges must be brought within thirty days following issuance of the law, by:

- a) The equivalent of at least thirty-three percent of the membership of the Chamber of Deputies of the National Congress, against Federal or Federal District laws issued by the Congress of the Union;
- b) The equivalent of at least thirty-three percent of the membership of the Senate, against Federal or Federal District laws enacted by the Congress of the Union or international treaties that the Mexican State enters into;
- c) The Attorney General of the Republic, against Federal or Federal District laws and international treaties that the Mexican State enters into;
- d) At least thirty-three percent of the membership of a state legislative body, to challenge laws enacted by that body;
- e) At least thirty-three percent of the membership of the Federal District’s Assembly of Representatives, against laws enacted by that Assembly, and
- e) Political parties registered with the Federal Electoral Institute, through their national leaderships, to challenge federal or local election laws; and state-registered political parties, through their leadership, solely to challenge election laws enacted by the legislative body of the state that registered them.

⁴¹ Cossío Díaz, José Ramón, “*El papel de los abogados y la necesidad de una teoría de la Constitución para México*”, in Fix-Fierro, Héctor, (editor) “*Del Gobierno de los Abogados al Imperio de las Leyes*”. Estudios sociojurídicos sobre educación y profesiones jurídicas en el México contemporáneo, IJ-UNAM, 2006, p., 308.

a remedy for rectifying the situation denounced. Then, too, TRIFE was not the proper forum for Mr. Castañeda Gutman to turn to for protection of his political-electoral rights.

75. For Mr. Jorge Castañeda Gutman to be able to register as an independent presidential candidate in time for the July 2006 elections, the country's courts would have to have moved quickly to determine whether COFIPE was compatible with the Constitution and the American Convention. The law that the IFE invoked in refusing to register Mr. Jorge Castañeda Gutman's candidacy was Article 175 of COFIPE, which meant that the constitutionality test was the only avenue to pursue to show that the article did not apply in the victim's specific case. In other words, for a finding that Article 175 was not applicable law in this specific case, it would have to be found to be invalid or unconstitutional; under Article 10 of the General Election Challenge Law, however, TRIFE does not have jurisdiction to do this. The issue in this case was not a clarification of procedure or of the nature of an organization; the issue was the fact that the registration requested was not permitted under Article 175 of COFIPE. Had the Court agreed to hear the challenge and to rule on the merits, it would have had to examine the lawfulness and legal force of the article in question.⁴²

76. During the IACHR's proceedings on this case, Mr. Jorge Castañeda Gutman argued that the Mexican Constitution does not give political parties exclusive rights to register candidates; on the other hand, COFIPE, which ranks lower in the hierarchy of laws- does give parties that prerogative and in so doing denies what Mr. Castañeda Gutman considers to be his constitutional right to run as an independent candidate in his country's presidential election. Article 25 of the American Convention requires, *inter alia*, that the States parties afford everyone with a simple and prompt recourse to protect the fundamental rights recognized by the constitution or laws of the State concerned. Protection of the constitutional right asserted by the petitioner required a simple, prompt and effective recourse to present his case and receive a timely ruling.

77. Mexican law does not afford that recourse, since the *amparo* remedy is not available for election-related matters and an appeal to TRIFE was precluded because it does not have competence with respect to constitutionality challenges. The petitioner tried unsuccessfully to have the Mexican courts take up and decide an *amparo* action on what was clearly an election-related matter. Knowing that all other avenues were closed to him, he pressed the action for *amparo* relief and lost his case. The Supreme Court's dismissal of the case ended once and for all the petitioner's quest for a timely determination of his rights.

78. The Commission is petitioning the Court to adjudge and declare that the Mexican State is responsible for violation of the victim's right to protection against actions taken by the authorities that he believes violate his fundamental rights; in so doing, the State violates, to the detriment of Jorge Castañeda Gutman, the right to judicial protection recognized in Article 25 of that international instrument, in relation to Article 1(1) thereof.

⁴² Further, had Mr. Castañeda Gutman prevailed, the laws regulating the electoral process would have had to undergo significant amendment, thereby enabling other independent candidates to run for elective office. The finding in Mr. Castañeda Gutman's favor would have required that TRIFE amend Article 10 of the General Election Law, and to establish new law to regulate the requirements for registration of independent candidates. Clearly, a TRIFE ruling to that effect would not stop with Mr. Castañeda's individual case; it would have necessitated an examination of the broader issue of COFIPE's application to the electoral process in preparation at that time.

B. Failure to observe the obligation to adopt legislative measures to give effect to Convention-protected rights (Article 2 of the American Convention)

79. Article 2 of the Convention provides that:

[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

80. The Inter-American Court has held the following with respect to this provision:

[t]he general obligations of the State, established in Article 2 of the Convention, include the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees.⁴³

81. The Court has also written that Article 2 of the Convention is such that the adjustment of the domestic legal system will require the adoption of measures whose purpose is twofold: i) to eliminate any laws and practices that imply a violation of the guarantees provided in the Convention, and ii) enactment of laws and the cultivation of practices conducive to effective observance of those guarantees.⁴⁴ Indeed, the first such purpose is fully realized only when the second materializes.⁴⁵

82. The Commission notes that the State has indicated its willingness to embark upon a dialogue with the various political actors with a view to adopting “a system that enables it to address citizens’ individual questions as to the constitutionality of the electoral laws.”⁴⁶

83. The Commission is compelled to note, however, that as of now, no judicial mechanism is in place to protect the political rights of persons who wish to run as independent candidates in Mexico’s elections. The State itself has suggested that the process leading up to the system’s eventual reform would be long and complex, requiring “in-depth analysis and study”, “a full discussion of the options available,” followed by an “effort to build a consensus on the subject with the representatives of the legislative branch and, most especially, those in the justice system charged with enforcing the reform.”⁴⁷

84. Although the State ratified the Convention on March 2, 1981, the State has left in force legislation that expressly precludes the petition seeking *amparo* relief as a recourse for appealing decisions of electoral bodies.⁴⁸

⁴³ I/A Court H.R., “*The Last Temptation of Christ*” (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73, par. 85.

⁴⁴ I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006 Series C No. 154, par. 118; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 83; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 91; I/A Court H.R., *Case of the “Mapiripán Massacre”*. Judgment of September 15, 2005. Series C No. 134, par.109.

⁴⁵ I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006 Series C No. 154, par. 118; I/A Court H.R., *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133, par. 87; I/A Court H.R., *Case of the Indigenous Community Yakyé Axa*. Judgment of June 17, 2005. Series C No. 125, par. 100; I/A Court H.R., *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, paragraphs. 91 and 93.

⁴⁶ Communication from the State dated February 21, 2007. File of proceedings with the IACHR, Appendix 2.

⁴⁷ Communication from the State dated February 21, 2007. File of proceedings with the IACHR, Appendix 2..

⁴⁸ Article 73.VII of the *Amparo* Act.

85. Having said this, when the legislative branch is derelict in its duty to repeal and/or not adopt laws that are contrary to the American Convention, the judicial branch is obligated by the duty to ensure set forth in article 1(1) of the Convention, and must, therefore, refrain from applying any law or provision that is not in keeping with the Convention.⁴⁹

86. Domestic judges and courts are subject to the rule of law and, therefore, are obliged to apply the existing norms of the legal system. However, when a State has ratified an international treaty like the American Convention, its judges, being part of the apparatus of the State, are also bound by the American Convention, which requires them to ensure that the effects of the Convention's provisions are accomplished.⁵⁰

87. As the Court has held,

The Judicial Branch must exercise a kind of "check of Convention-compliance" of the domestic laws applied in concrete cases, to ensure that they are consistent with the American Convention on Human Rights. In so doing, the Judicial Branch must take into consideration the Convention itself, and the interpretation of the Convention by the Inter-American Court, which is the final authority for the Convention's interpretation.⁵¹

88. In order to be in compliance with the obligation to ensure in the instant case, the Mexican court authorities should have examined the merits of the arguments made by the victim in his unsuccessful *amparo* petition, rather than declare his petition inadmissible *in limine litis*.

89. Assuming, *arguendo*, that Article 73, paragraph VII of the *Amparo* Act had not been applied in the instant case, that alone would not have sufficed to satisfy the State's obligations under Article 2 of the Convention in the instant case. Firstly, as previously stated, under Article 2, States have a legislative obligation to do away with any law or provision that violates the Convention. Secondly, the precedents cited by the courts may change, and they may opt to again invoke a provision that remains in effect for the domestic legal system.⁵²

90. For all the foregoing reasons, the Commission is petitioning the Court to adjudge and declare that Mexico has failed to fulfill its obligation to adjust its domestic legal system to conform to the object and purpose of the American Convention, by keeping intact provisions that unreasonably restrict the possibility of challenging, through the judicial system, decisions made by electoral bodies, in violation of Article 2 of the Convention. It has also failed to fulfill its duty to ensure the right to judicial protection, in keeping with Article 1(1) of the Convention.

VIII. REPARATIONS AND COSTS

91. Given the facts alleged in the present application and based on the *jurisprudence constante* of the Inter-American Court, which holds that "any violation of an international obligation that has caused harm carries with it the obligation to make adequate reparations for that

⁴⁹ See in this regard, I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006. Series C No. 154, par. 121.

⁵⁰ See in this regard, I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006. Series C No. 154, par. 124.

⁵¹ See in this regard, I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006. Series C No. 154, par. 124. (Translation by the Commission).

⁵² See in this regard, I/A Court H.R. *Case of Almonacid Arellano*. Judgment of September 26, 2006. Series C No. 154, par. 123.

violation,⁵³ the IACHR is filing with the Court its claims for the reparations and costs that should be required of the Mexican State by virtue of its responsibility for the human rights violations committed against Jorge Castañeda Gutman.

92. Bearing in mind the Rules of Court, which grant the individual autonomous representation, the Commission will simply outline below the general criteria for reparations and costs that it believes the Court should apply in the instant case. The Commission understands that under Article 63 of the American Convention and Article 23 *et al* of the Rules of Court, the alleged victim and his duly accredited representatives are entitled to submit their pleadings, motions and evidence.

A. Obligation to make reparations

93. One of the essential functions of justice is to redress the harm caused to the victim. This function can materialize through rectification or restitution, and not simply through some compensation that does nothing to restore the moral balance or return that which was taken.

94. Article 63(1) of the American Convention provides as follows:

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

95. The jurisprudence *constante* of the Court has been that "Article 63(1) of the American Convention contains a rule of customary law that is one of the basic principles of contemporary international law regarding the responsibility of States. Thus, an unlawful act attributable to a State immediately engages the latter's international responsibility for violation of the international provision, with the consequent duty to make reparations and to have the consequences of the violation remedied."⁵⁴

96. Reparations are vital to ensuring that justice is done in an individual case and are the vehicle that carries the Court's decision beyond the realm of moral condemnation. Reparations are measures intended to cause the effect of the violations committed to disappear. Reparation of the damage caused by breaching an international obligation requires, whenever feasible, full restitution (*restitutio in integrum*), which involves reestablishment of the situation before the violation.

97. The obligation to make reparations, which is regulated in every respect (scope, nature, modes and establishment of beneficiaries) by international law, cannot be modified by the State nor can the latter avoid complying with it by invoking provisions of its domestic law.⁵⁵

⁵³ I/A Court H.R. *La Cantuta Case*. Merits, Reparations and Costs. Judgment of November 29, 2006 Series C No. 162, par 199; I/A Court H.R. *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 413; I/A Court H.R. *Case of the Severed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006, Series C No. 158, par 141.

⁵⁴ I/A Court H.R. *La Cantuta Case*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C No. 162, par. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 414; I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia)*. Judgment of July 5, 2006, Series C No. 150, par. 116.

⁵⁵ I/A Court H.R. *La Cantuta Case*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C No. 162, par. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 415; I/A Court H.R. *Case of the Severed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006, Series C No. 158, par. 143.

98. In the instant case, the Inter-American Commission has shown that the State incurred international responsibility for violation of the right to judicial protection, to the detriment of Jorge Castañeda Gutman, and for noncompliance with its obligation to adapt its domestic legal system to conform to the object and purpose of the Convention.

B. Reparations

99. The United Nations Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms classified the components of that right into four general categories: restitution, compensation, rehabilitation, and guarantees of non-repetition.⁵⁶ In the opinion of the United Nations Special Rapporteur on the Question of the Impunity of the Perpetrators of Human Rights Violations, these measures include the following: cessation of continuing violations, verification of the facts, full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim, apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations, preventing the recurrence of violations, etc.

100. The Court, for its part, has written that measures of reparation cause the consequences of the violations committed to cease.⁵⁷ Such measures include the various ways in which a State can face up to the international responsibility it incurred, which under international law consist of restitution, indemnization, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁸

101. The United Nations Commission on Human Rights has found that

[i]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁹

102. Based on this background information, the Commission considers, firstly, that the State has an obligation to prevent the recurrence of the human rights violations at issue here and therefore begs the Court to order the Mexican State to adopt, as a matter of priority, the legislative,

⁵⁶ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117. E/CN.4/Sub.2/1996/17.

⁵⁷ I/A Court H.R. *La Cantuta Case*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C No. 162, par. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 416; I/A Court H.R. *Case of the Severed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C No. 158, par. 144.

⁵⁸ See United Nations, Final Report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, E/CN.4/Sub.2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, par. 31; I/A Court H.R., *Suárez Rosero Case. Reparations* (Art. 63.1 American Convention on Human Rights)(. Judgment of January 20, 1999, Series C No. 44, par. 41.

⁵⁹ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees. Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, paragraph 7.

administrative or other measures necessary to ensure that, henceforth, the constitutionality of the decisions adopted by electoral bodies and institutions may be subject to constitutionality challenges.

103. The Commission notes in this regard the assertion that the State made in its communication of February 21, 2007⁶⁰ to the effect that

it has given thought to the idea of forming a high-level working group, composed of the Secretariat of Government, the Secretariat of Foreign Affairs, the Office of the Legal Counsel of the Federal Executive Branch and the Federal Electoral Institute, which will conduct the analysis required in order to be able move toward the creation of the simple and effective remedy of which the Commission speaks [and] [will] generate a broad discussion of the available options and look to build a consensus on the subject with representatives of the Legislative Branch and, especially, with the court authorities responsible for their enforcement.

104. Secondly, the nature of the facts in the instant case demands that the State adopt measures providing just satisfaction to the victim. The Commission is therefore petitioning that, notwithstanding any specific claims that Mr. Castañeda's representatives may propose, the Court orders the following:

- That the judgment that the Honorable Court delivers be printed in a publication with nationwide circulation; and
- That the State publicly acknowledge responsibility for the violations it has incurred.

C. Costs and expenses

105. The *jurisprudence constante* of the Court is that costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victim or his representatives to obtain international justice entails disbursements and financial commitments that must be compensated.⁶¹ The Court has also held that the costs to which Article 56(1)(h) of the Rules of Court refers include the reasonable expenses necessary to accede to the American Convention's organs of compliance and include the expenses and fees of those who provide legal counsel.

106. In the instant case, the Inter-American Commission is asking the Court, once it has heard from the victim's representatives, to order the Mexican State to pay the duly established costs and expenses.

IX. CONCLUSION

107. The absence of a simple and effective remedy in Mexico's domestic legal system to challenge the constitutionality of decisions prejudicial to one's right to participate in government and the impediment thus created, which prevented Mr. Jorge Castañeda Gutman from being registered as an independent candidate for the office of President of Mexico, constitute violations of the right protected under Article 25 (right to judicial protection) of the American Convention on Human Rights, in relation to the State's obligation *erga omnes* to respect and ensure Convention-protected

⁶⁰ See Appendix 2.

⁶¹ I/A Court H.R. *La Cantuta Case*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C No. 162, par. 243; I/A Court H.R. *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 455; I/A Court H.R. *Case of the Severed Congressional Employees (Aguado Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 152.

rights, as established in Article 1(1) thereof, and the duty to adopt domestic legislative or other measures to give effect to those rights, as provided in Article 2.

X. PETITUM

108. Based on the arguments of fact and of law stated above, the Inter-American Commission on Human Rights asks the Court to adjudge and declare that

Mexico is responsible for violation, to the detriment of Jorge Castañeda Gutman, of the right to judicial protection recognized in Article 25 of the American Convention on Human Rights, in relation to its obligations *erga omnes* to respect and ensure the Convention-protected human rights and to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms, pursuant to articles 1(1) and 2 of the Convention.

And that the State therefore be ordered to:

- a) Advance the legislative and other reforms needed to adapt its domestic legal system to conform to Article 25 of the American Convention, particularly the pertinent provisions of the *Amparo* Act and the Federal Code of Electoral Institutions and Procedures (“COFIPE”), so as to provide a simple and effective recourse by which to challenge the constitutionality of decisions prejudicial to one’s right to participate in government;
- b) Compensate Mr. Jorge Castañeda Gutman for the damages caused by the violation of his rights; and
- c) Pay the legal fees and expenses that the victim incurred in prosecuting his case in the domestic courts and with the inter-American system.

XI. EVIDENTIARY SUPPORTS

A. Documentary evidence

109. Listed below is the documentary evidence available at this time:

- APPENDIX 1.** IACHR, Report No. 113/06 (admissibility and merits), Case 12,535, *Jorge Castañeda Gutman*, Mexico, October 26, 2006.
- APPENDIX 2.** File of the proceedings before the Inter-American Commission on Human Rights.
- ANNEX 1.** Application to register as a candidate, March 5, 2004.
- ANNEX 2.** Memorandum DEPPP/DPPF/569/04 signed by the Executive Director of Political Rights and Parties of Mexico’s Federal Electoral Institute, dated March 11, 2004.
- ANNEX 3.** Petition seeking *amparo* relief, filed by Jorge Castañeda Gutman on March 29, 2004.
- ANNEX 4.** March 30, 2004 Order of Mexico City’s Seventh Administrative Law District Court.
- ANNEX 5.** May 25, 2004, Order of Mexico City’s Seventh Administrative Law District Court.
- ANNEX 6.** Summons that Mexico City’s Seventh Administrative Law District Court issued to a number of Mexico’s political parties to intervene in the proceedings as “aggrieved third parties.”

- ANNEX 7.** July 16, 2004 ruling by Mexico City's Seventh Administrative Law District Court.
- ANNEX 8.** November 11, 2004 ruling of the Fourteenth Administrative Law Tribunal of the First Circuit.
- ANNEX 9.** August 16, 2005 ruling by the Supreme Court of Justice of the Nation.
- ANNEX 10.** Separate opinion of Justice Genaro David Góngora Pimentel.
- ANNEX 11.** Superior Chamber of the Electoral Tribunal of the Federal Judicial Branch, Thesis S3EL 048/2002. Trial for the protection of the citizen's political-electoral rights. SUP-JDC-037/2001 - Manuel Guillén Monzón.- October 25, 2001.
- ANNEX 12.** Curriculum of Dr. Lorenzo Córdova Vianello, expert witness offered by the Inter-American Commission.
- ANNEX 13.** Copy of the power of attorney granted to Fabián M. Aguinaco, Alberto Székely and Santiago Corcuera, in the presence of Notary No. 116. of the Federal District, Ignacio Morales Lechuga.

110. The Commission is also asking the Honorable Court to kindly request the Mexican State to send certified copies of all documents related to the petition for *amparo* relief filed by Mr. Jorge Castañeda Gutman, and an authenticated copy of the applicable laws and provisions.

B. Expert evidence

111. The Commission asks the Court to receive the testimony of the following expert:

- Dr. Lorenzo Córdova Vianello, an expert in Mexican electoral law and former advisor to the General Counsel of the Federal Electoral Institute. The expert will testify about the mechanisms available in Mexico today to challenge the constitutionality of decisions that affect political or electoral rights; how the remedy of *amparo* is prohibited in regard to election-related issues; the jurisprudence of the Mexican courts on challenges to the constitutionality of decisions that affect political or electoral rights, and other matters pertinent to the object and purpose of this application..

XII. PARTICULARS ON THE ORIGINAL PETITIONER AND VICTIM

112. In keeping with Article 33 of the Rules of Court, the Inter-American Commission is presenting the following information: the original petition was lodged by Mr. Jorge Castañeda Gutman, the victim in these events.

113. Mr. Castañeda Gutman has authorized attorneys Fabián M. Aguinaco, Alberto Székely and Santiago Corcuera to represent him in the legal proceedings before the inter-American system for the protection of human rights, as shown in the attached power of attorney.⁶² The common domicile of the attorneys for the victim is [REDACTED]

⁶² Annex XX, Copy of the power of attorney signed in the presence of Notary No. 116 of the Federal District, Ignacio Morales Lechuga.

Washington, D.C.
March 21, 2007