

## Summary of the Interamerican Court of Human Rights' Verdict in the Rosendo Radilla Case



The Inter-American Court of Human Rights (henceforth the Court) has recently condemned Mexico for the forced disappearance of Rosendo Radilla Pacheco and recognised the existence of a context of massive and systematic violations of human rights during Mexico's "Dirty War" period. The sentence ordered the reform of the Code of Military Justice, to prevent further cases of serious human rights violations by members of the armed forces from being investigated in military courts.

The Association of Relatives of the Disappeared and Victims of Violations of Human Rights in Mexico (AFADEM) and the Mexican Commission for the Defence and Promotion of Human Rights (CMDPDH) believe that the ruling is a historic achievement of the movement of relatives and victims of crimes of the past, which opens a path of hope for ending impunity. The Court found that structural impunity and legal barriers for the victims constitute the link between the Mexico of the "Dirty War" era and the Mexico of today, invalidating the Mexican government's dispute of the Court's jurisdiction and ordering that these obstacles be overcome.

Among the most important elements of the Court ruling were: the competence of the Court over the case; the recognition of the historical context of the enforced disappearance of Mr Radilla Pacheco; the violation of due process and access to justice for him and his family; the identification of the incompatibility with international standards of the application of military justice in cases of serious human rights violations; the inadequacy of domestic legislation with the international definition of enforced disappearance; and finally, reparations and assistance for the victims.

The Court considered that the forced disappearance of the victim is a continuous violation which continues to the present day. The Mexican State violated the obligation to safeguard the rights of Mr Radilla Pacheco, creating an international responsibility not only for the violation of freedom, personal integrity, life, and the physical and psychological integrity of their families by members of its armed forces, but also for failing to investigate and punish these acts since 1974. The Court held that the lack of diligence in investigating the disappearance and the breach of commitments made by the Mexican state effectively created a state of impunity, in total disregard of its obligation to ensure access to justice to its citizens.

In relation to the investigation of serious human rights violations such as enforced disappearance by military courts, the IACHR concluded that in a democratic state, military courts should have a restrictive and exceptional scope. Thus, the investigation by elements of the military of violations allegedly committed by the armed forces can never be considered legitimate and are excluded from the jurisdiction of military law. Furthermore, the Court ruled that the definition of forced disappearances in the Mexican Federal Penal Code is a barrier to ensuring the punishment of all potential perpetrators, accomplices and accessories, including any state authorities or organs.

The Mexican state was ordered to make a public act of acknowledgement of responsibility in relation to the facts of this case and place a memorial plaque in the city of Atoyac de Alvarez, Guerrero, in reparation to Mr Radilla Pacheco's memory. As part of the reparation, the government is to pay a sum of money to the family of the victim and the organisations that headed the litigation, and grant free and immediate access to psychological and/or psychiatric aid to the immediate family members of the disappeared.

*This summary has been adapted with permission from the Mexican Commission for the Defence and Promotion of Human Rights press release from the 16<sup>th</sup> December, 2009*

*Tita Radilla Martínez, daughter of Mr Radilla and accompanied by PBI since 2003, recently returned to Mexico after participating in a PBI-organized tour of Spain, England and Germany in November this year. During her tour, Ms Radilla met with parliamentarians, lawyers, judges, journalists and academics, requesting close international attention to the Mexican State's implementation of the IACHR's sentence. PBI congratulates Ms Radilla on the court's decision, and asks that the international community pay special attention to Mexico's compliance with the sentence.<sup>1</sup>*

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<sup>1</sup> The sentence (in Spanish) can be found at [www.corteidh.or.cr/casos.cfm?idCaso=330&CFID=270645&CFTOKEN=78215771](http://www.corteidh.or.cr/casos.cfm?idCaso=330&CFID=270645&CFTOKEN=78215771).