

## ENTREVISTAS PBI MEXICO

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### **Demand for justice before the Inter-American Court of Human Rights on behalf of the disappeared from the *Dirty War* in Mexico. Tita and Rosendo Radilla Martínez testify on July 7<sup>th</sup>**

*Peace Brigades International accompanies Tita Radilla, vice-president of the Association of Relatives of the Detained, Disappeared, and Victims of Human Rights Abuses in Mexico (AFADEM) since 2003. AFADEM works toward justice and to clarify cases of disappearances from the so-called Dirty War in Mexico in the 70's and 80's, when more than 450 people were disappeared in the municipality of Atoyac de Álvarez, Guerrero. Tita Radilla has taken charge of the fight on behalf of the family members of the disappeared. After more than 35 years of working for justice in the case of the disappearance of her father, Rosendo Radilla Pacheco, his case reached the Inter-American Court of Human Rights in San José, Costa Rica. Tita and Rosendo Radilla appeared in court, and gave testimony regarding the state's responsibility in the disappearance of their father. Their demand exemplifies the cases of hundreds of other disappeared people and the impunity that surrounds these cases. PBI was present at the hearing, and interviewed Tita and Rosendo Radilla, as well as their lawyers María Sirvent and Mario Solorzano from the Mexican Commission for the Defense and Promotion of Human Rights.*

#### **Why have you continued to work for justice in your father's case?**

**Tita:** Someone from the family had to represent his case, right now it's my turn, before it was my mom, my brothers. I think that there should be justice in this case as well as in all the other cases of forced disappearances. It is necessary to know what happened to them, where they are, and most importantly know their whereabouts and have them returned to us.

**Rosendo:** I believe that today is a very important day, mostly because the Mexican government had to appear in the Inter-American Court of Human Rights because it had not upheld the law in Mexico. We hope that the Court finds on behalf of the Radilla Martínez family since the human rights violations by the Mexican State and its military have been clearly demonstrated [today].

#### **How did your father's disappearance affect your life?**

**Tita:** Since his disappearance it has been really difficult to continue on with our daily lives.



*Rosendo Radilla and Tita Radilla with Florentín Melendez, Commissioner from the Inter-American Commission on Human Rights*

**Rosendo:** As she said, I said earlier, before it was better, we were happier, [ever since his disappearance] I have tried to survive but it has been difficult. I have the memory of what happened with me each day and night.

## What are you asking of the Mexican State?

**Tita:** We are asking that they carry out real and effective investigations, that will shed light on the whereabouts of our disappeared family members. We do not want them to continue doing the same proceedings in which they just investigate the testimonies given by the families, but that they really investigate those that are responsible.

## What do you hope a sentence can accomplish for other cases of the disappeared?

**Tita:** I hope that a favorable sentence will be issued by the Court so that the Mexican State has to really investigate, to look for the whereabouts of the disappeared and give the families the justice they deserve.

## How was the hearing today?

**Tita:** The hearing was good because I felt like the judges were really interested [in the case] and they were listening to us. The efforts of the lawyers were incredible. The Inter-American Commission on Human Rights are experts on the subject and I felt like we had a very good defense. Also the accompaniment by PBI, and from Ximena (from the Mexican Commission for the Defense and Promotion of Human Rights) has helped us a lot, it has given us strength and support to be in this Court and feel calm.

**Rosendo:** The judges said that this case is important, and it is one that has provided a lot of evidence. I think that the lawyers did a really good job. The Mexican government's defense was more political than legal. We hope for a favorable resolution from the Court because the arguments of the Mexican State have been more political than legal.

## How does PBI's accompaniment help you?

**Tita:** PBI's presence has been really important for me in this process; their accompaniment gives us strength. For me, personally, it gives me a sense of security, and gives me strength. Also their presence influences the Mexican State to see that we have an international interest and support for our case.

**Rosendo:** I think it is important for PBI to watch cases such as this one, because they are very delicate cases where it has been really difficult to attain justice and clarify what happened. I think that where there is impunity there is danger. It is really good that PBI provides these accompaniments, especially for my sister Tita. I am personally very grateful to PBI.

**Tita:** I would also like to thank all of those that have been involved, those that have been supporting us, in solidarity with us, we owe many thanks to the embassies, and to all of the people that have gotten involved and helped us continue. I think that we would have never been able to do it alone.

**Rosendo:** Yes. I think that the solidarity is very important in this case. Many people have supported us, including some people that we have never met. They say that where there is a real need for truth, in a case that needs to be clarified, "many people will always be present," and we see this. I think that there have been many people that have supported us, I am grateful for the solidarity with the Radilla family.



*Tita Radilla, María Sirvent, Rosendo Radilla and Alejandra Nuño from the Center for Justice and International Law (Cejiil)*

*María Sirvent and Mario Solorzano, lawyers from the Mexican Commission for the Defense and Promotion of Human Rights, who litigate the case of Rosendo Radilla*

## **PBI: What is the relevance of the case of Rosendo Radilla for human rights in Mexico?**

**María Sirvent:** For many reasons, it's of incredible relevance. First, it is a paradigmatic case, that reflects hundreds of other cases of disappeared people. None of these cases have achieved any form of real justice on an internal level for more than 35 years. This is a new opportunity. With an eventual favorable sentence from the Court, the State can activate mechanisms and open pathways to achieve truth, justice, and reparations. For example, [the Court] could order a reform of military jurisdiction which would be very relevant. This is important because it is the first case (of forced disappearance from the Dirty War) that has come before the Court. Those who are allegedly responsible are members of the military, which is very relevant to the current context in which the military once again has a strong presence on the streets, and is a political ally of the executive branch of the government in the fight against drug-trafficking. This case is part of a chapter in our history that has been closed, and since the Special Prosecutor closed, nobody has talked about this, so this presents a new opportunity to open up this chapter of history again. It is also an opportunity so that the Court can understand the context, and see that this case follows a systematic and general pattern; it is

an opportunity to give dignity to the disappeared and the victims.

**Mario Solorzano:** I think that it is fundamental that the Court determines that in the time period that Rosendo was seized, the state apparatus - the military, judges, public ministries, police, mayors, and countless authorities, worked together and allowed these actions to take place - not only the forced disappearances but executions and torture, all which remained in impunity. This is important because it seems like nothing happened in Mexico [during this time period], in comparison to what happened in other parts of Latin America. However, while it did not take place on the same scale as in other countries, Mexico also used force, especially armed forces, to combat insurgent groups whose demands were focused on social justice. The open combat between the armed forces and armed insurgent groups was the only strategy of the state, and the state had no real intention to attend to underlying problems. Mexico finally got on the bandwagon with the rest of Latin America in fighting against the insurgent groups, violating a countless number of human rights.

The first step is to understand how the state operated in order to understand how it was possible to commit such crimes to humanity. It is important to understand that citizens who were not at all involved, who were merely sympathizers in the shared ideologies of social justice, had to suffer a complete military occupation, as one of the judges in the hearing pointed out. The law did not support this, but it happened. From this point forward there needs to be structural reforms that can stop the state from using its power like this again.



*The Mexican state, the Inter-American Commission on Human Rights, and lawyers from the Mexican Commission for the Defense and Promotion of Human Rights prepare for the hearing at the Inter-American Court of Human Rights.*

The problem is that these events took place in the 70's, and Mexico accepted the competence of the Inter-American Court in 1998. For the Court to determine that these crimes against

humanity actually happened, first they must determine if the subject is within their jurisdiction. Once they do this, they can declare that crimes against humanity can be prosecuted from the moment in which they are committed and that there is no time limit on being judged for these crimes.

One of the structural reforms that should be considered (in Mexico), is a reform of the military justice code, to make sure that any member of the military who commits a crime - homicide, kidnapping, forced disappearance, torture, or execution - should be judged before ordinary tribunals and not by military tribunals, which is what currently takes place. The *Amparo* Law should also be reformed.

Here the Court has an opportunity to define criteria regarding its own ability to declare invalid or void reservations that the State presents to a human rights treaty due to incompatibility with the goal and finality of the treaty. In this case Mexico placed a reservation to the Inter-American Convention on Enforced Disappearances. This treaty emphasizes that cases of forced disappearance cannot be judged by the military, however the Mexican State put a reservation to uphold military jurisdiction in such cases. Here, the Court has the opportunity to say if this is valid or not.

Looking at the context that surrounds the disappearance of Rosendo, the Court can work on actions or reparations that can have an impact on the community, not just for the Radilla family. One must look for a symbolic impact in terms of reparations for all people who suffered these state crimes against humanity. On August 14th we have to turn in our final written statements - together with the state and the Inter-American Commission. Once they are turned in, the Court will analyze the situation, and we are confident that we will have a sentence by the end of the year.

**PBI: Who will monitor the compliance of a future sentence by the Court?**

**Maria:** The court itself. They can hold private or public hearings about compliance with the sentence.

**Mario:** This point is one of the deficiencies of the Mexican justice system. Currently there is no mechanism that exists to follow up on, and monitor compliance with sentences from international tribunals regarding human rights, and it is important to create this mechanism. This is the fourth case from Mexico that has been sent to the Inter-American Court, and the creation of a mechanism to make sure that these sentences are carried out is urgent. Until it exists, the Human Rights Section in the Department of Foreign Affairs, or the Human Rights Unit of the Department of the Interior must coordinate with the rest of the authorities and others who are involved in the sentences issued by the Court. They might create a working group, and would have to invite the family members and their legal representatives in order to determine in what way they should comply with the eventual sentence, but

all of this is up to their discretion. If the sentence orders possible modifications to military jurisdiction, an issue which the military has always been reluctant to change, there could be difficulties in moving forward.

**PBI: What happens if the State doesn't comply with the sentence?**

**Mario:** The states have between six months and a year to follow through with a sentence, and if they fail to do this, the rules of the Court as stated in the Inter-American Convention on Human Rights state that each year there will be a revision of the information that the state has presented, indicating the level of compliance with a sentence. If this is unsatisfactory, the Court will indicate it in their Annual Report to the General Assembly of the Organization of American States, OAS, where they will make specific reference to the states that have not complied with sentences. This is the only mechanism involving political pressure that the Court can use to make the Mexican State fulfill their sentences; there are no sanctions for non-compliance. They could also appeal to the democratic clause in the Free Trade Agreement with the European Union to create some pressure.

**PBI: What happens if the Court does not sentence Mexico?**

**María:** There are aspects of this case that have already been won. The state accepted the facts. The Court can decide that since 1998, (the year when Mexico accepted the jurisdiction of the Court) several human rights violations have continued to

take place in terms of access to justice that have infringed on the rights of the Radilla family. The Court could also recognize the ongoing crime of forced disappearance given that the whereabouts of Rosendo Radilla are still unknown. There are things that we think we have won, such as the acknowledgement that this disappearance took place in a political context saturated by [similar] crimes. The majority of the human rights violations from this time period have been proven and accepted by the state - the challenge of collective reparations must still be addressed.

**PBI: How can this case affect the other families of the disappeared?**

**María:** An open point in this case is that of collective reparations - seeing what the Court can accomplish in a sentence in terms of creating mechanisms to search for the disappeared and to provide reparation of damages. These mechanisms constitute a good for the whole society and could benefit all of the family members of the disappeared.

A public acknowledgement of the responsibility of the state in the case of Rosendo Radilla could be framed in the acknowledgement that there are other disappeared people. If someone of high status goes to Atoyac and makes a statement of public apology, this could be understood as a reparation for all of the family members of the disappeared. We also insist that a special unit for investigating cases of forced disappearances be created, with their own interdisciplinary personnel, and that the report by the Special Prosecutor ([or Social and Political Movements of the Past (FE-MOSPP)]) be made public.

*For more information about Rosendo Radilla's case before the Inter-American Court of Human Rights, as well as more information about disappearances in Mexico during the Dirty War:*

Mexican Commission for the Defense and Promotion of Human Rights: [www.cmdpdh.org](http://www.cmdpdh.org)

Inter-American Court of Human Rights: <http://www.corteidh.or.cr>

"México en la Corte Interamericana," *Proceso*, July 12 2009.

PBI Mexico, *Human Rights Defenders in the State of Guerrero*, December 2007: <http://www.pbi-mexico.org>