

ENTREVISTAS PBI MÉXICO

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Entrevistas is a publication of PBI Mexico that highlights situations that increase risks to the physical or psychological integrity of Mexican human rights defenders, or that damage the legitimacy of their work. The opinions expressed in this publication do not necessarily reflect the opinions of PBI Mexico

Interview with Inés Fernández's legal representatives from the Tlachinollan Human Rights Centre : Abel Barrera (director), Vidulfo Rosales, Alejandro Ramos and Santiago Aguirre (lawyers) in Lima, Peru, following the hearing of her case in the Inter-American Court of Human Rights

In Lima, Peru, on Thursday 15 April 2010, the Inter-American Court of Human Rights held a public hearing of the claims made by indigenous Me'phaa woman, Inés Fernández Ortega, against the Mexican State. Mrs. Fernández alleges that she suffered torture and sexual assault at the hands of military personnel in 2002. Her lawyers from Tlachinollan Human Rights Centre argued that Inés Fernández's experience highlights the recurring issues in Mexico, such as the lack of access to justice for women victims of violence; violations caused by the increasing absence of civilian monitoring of the Armed Forces; and the persecution facing those who organise to defend the rights of indigenous peoples. The State repeatedly refused to acknowledge that members of the Armed Forces had raped Inés Fernández, although in the course of the hearing, it did recognise that it had conducted an inadequate investigation into the matter.

PBI has provided accompaniment to both the Organisation of the Indigenous Me'phaa People (Organización del Pueblo Indígena Me'phaa, OPIM) (since 2005) and Inés Fernández, as well as the members of the Tlachinollan Human Rights Centre since 2003. A PBI Mexico representative attended the hearing in Peru, and conducted this interview with Inés Fernández's lawyers from Tlachinollan afterwards.

PBI: What did you think of the hearing?

Vidulfo Rosales (VR): We think it was important. It was a space in which Inés could speak to, not directly but via video link-up, the judges of the Court to ask for justice. It was clear that the existence of the rape itself had been sufficiently proven. The expert evidence provided was solid. The experts were able to show the personal impact caused by the rape, how Inés's life had been destroyed by it, how it has affected her family. In addition, the expert anthropological evidence showed that the rape was not isolated in the community context, and that it is all part of a repressive pattern. This was what the expert Aída Hernández showed: that is a pattern going back to 1998, part of a chain of violent events like the Charco massacre, and part of an ongoing timeline of events that was demonstrated in 2002 by Inés's rape. This continues with the repressive acts in response to the ongoing complaints against military presence in the area. The judges' concern for the impact on Inés and her daughters, and for the aspect of militarisation, was also clearly expressed. Certain questions were asked

of the Mexican State in regard to the regulatory framework that allows the military to conduct tasks related to investigations, and I understand that the State could not answer that question. There is convincing evidence to show that the rape occurred, and that State representatives perpetrated it.



Tlachinollan's lawyers and CEJIL's representatives, Court hearing, Lima, April 15th 2010.

What is the importance of this case in relation to the current context in Mexico?

Abel Barrera (AB): Firstly, [it is important] because any discussion about the Army has been banned by the Mexican State in the sense that it does not want its behaviour as a body which violates human rights to be brought into question. And, unfortunately, what has happened with the militarisation in the fight against drug trafficking is that the Army is now the main perpetrator of human rights violations in Mexico. This is shown in the figures provided by the National Human Rights Commission (Comisión Nacional de Derechos Humanos) and, in Guerrero, by the State Human Rights Commission (Comisión Estatal de Derechos Humanos). The most serious factor is that there is no monitoring, either in the legal or the institutional spheres, of a force which really is not used to treating citizens according to their rights. It is therefore very worrying, because [militarisation] is a strategy appropriate only for war that is worsening the lives of Mexican citizens. It is occurring within a context where the institutions meant to implement justice have collapsed from corruption and the inefficacy of their investigations. We see how these institutions are withering, and they [the government] want to strengthen the political system by force. The only result is that the conflict is overflowing and that innocent blood continues to flow, shed by people who have nothing to do with this war.

What were the most significant allegations Tlachinollan made in the hearing?

Santiago Aguirre (SA): During the hearing, we felt it was very important to highlight the context surrounding the events on trial. By the very nature of the Inter-American System, [rights] violations are sometimes analysed without an appropriate evaluation of the prevailing context. In Inés's case, it is very important to know that her rape occurred in a broader context of militarisation and deployment of security forces – including the Army – to undermine indigenous and peasant organisations in Guerrero in the late 1990s. This continues to have an impact until today. Afterwards, for us, the rape itself has been more than proved. We had no fear that they [the Court] would ask us to further consolidate the evidence for what actually occurred. So what we tried to focus on was the legal claim that insisted that the rape also constituted torture. It is a very important aspect that the Court can analyse, which has been little examined in the System's jurisprudence – we thought that analysis could be conducted based on this case. In any case, this is what shows the serious nature of the harm caused to Inés. Another important argument was to

show the refusal to administrate justice, and Inés's long process seeking a response [from the State]; these elements were underpinned by deep-seated discrimination. Inés, in addition to being raped and tortured, was discriminated against on various occasions throughout the process. And finally, in our allegations we tried to highlight some of the most important compensation elements that can be ruled in this case. It was very important to Tlachinollan to place emphasis on collective compensation, and to highlight the community-level impact of what happened to Inés as an indigenous woman.

What were the most important compensation elements that you outlined in the hearing?

Alejandro Ramos (AR): [We asked that] the compensation be provided collectively, not only for Inés but for all the Me'phaa people. For example, as compensation, the experts spoke about establishing a women's centre in the city of Ayutla [de los Libres], where Me'phaa women could have a space to share experiences, become aware of their rights, and learn how to defend them. Also, the guarantee of nonrepetition is fundamental, principally because Inés and all the Me'phaa people do not want the Mexican Army to have any presence in their territory. If the Army stays, the people will remain vulnerable; another rape, like Inés's, could happen. For the Me'phaa, it is fundamental that this crime is not repeated.

What is your opinion of the Mexican State's response to the Court?

SA: It is distressing to see that so many years after these events occurred, with so much evidence, and such an insistent demand for justice, the State continues to protect those responsible and to deny the very existence of the rape. On the other hand, another noteworthy element of the State's response is that they recognised the irregularities committed during the investigation. So this recognition has the effect of the State accepting before the Court that it violated human rights in not conducting an effective investigation. There is a clear contradiction in the State's position, because while it accepted its responsibility for not having conducted an effective investigation, it roundly refused that it had been soldiers [who committed the crime]. These two positions are incompatible.

What did you think of the judges' statements in the hearing?

VR: I think the Court was very interested in the way the case was established. I noted that they were very concerned about the issues, very involved. Normally the Court isn't very participative, but here just about all the judges asked questions and showed interest. The questions were very important. This reaction from the Court, this interest that they showed in the hearing, leaves us satisfied for now. They were very concerned about the issue of monitoring [military personnel] and the lack of a legal framework in Mexico that subsequently allows the Mexican Army to systematically violate human rights. They were also strongly affected by the issue of collective compensation.

SA: Yes, it's important to note that until now, when there have been cases involving indigenous peoples that have requested collective compensation from the Inter-American System, it has primarily been in cases of land and territory (considered under property law), or cases of collective impacts produced by something like a massacre. But this was the first argument explaining how a violation of an individual's civil and political rights, of women's rights, can also have a collective dimension, community-wide impact, when the victim is an indigenous person.

Do you expect a favourable judgement for Inés? If so, what kind of precedent could such a judgement set, both within and outside of Mexico?

SA: Tlachinollan believes that the judgement will be favourable. The evidence is very solid, and Inés's demands for justice have continued all this time. For us, the most important thing is that she, her family, and the OPIM can access justice and live in safety. If the judgement helps in that, the aim of our work has been achieved. And if, in addition, the judgement allows the System's jurisprudence to develop, then that contribution is also important. But primarily, Inés must be central to the process. Regarding the jurisprudential development, we believe that the case could be important in evaluating – within the Inter-American System – appropriate investigations into cases of sexual assault. It could also be significant in establishing the grounds on which an act of sexual assault by State agents, outside of detention centres, can be considered torture. This aspect has been debated in international jurisprudence. The Court can establish clear criteria on this issue. In addition, jurisprudence could be developed in terms of collective compensation. Consistent with the comparisons provided in the expert evidence, we have

tried to set out an argument that the need for military presence in communities within indigenous territories should be submitted to monitoring processes. These should be established by previous, informed consultation with the indigenous peoples, addressing their traditional authorities and respecting their internal regulation systems.

What has been the cost for Inés and her family, for you, for the members of the OPIM, in this process of seeking justice?

AB: First, the very fact that she has had the courage to report [this crime] has caused Inés both personal and family-related harm, as well as community and economic repercussions. What's more, Inés never imagined that in daring to make a report, she would not only be met with discriminatory treatment but would also receive threats. This is the other fundamental issue for Mexico, about which Inés's case is paradigmatic: reporting a crime places people's lives at risk, more so in serious cases of human rights violations. I believe that not even those of us taking Inés's case to trial, nor Inés, nor the OPIM, believed that this would unleash a strategy of aggression against all of us: to silence us, to contain the situation, and – especially – to make worry and fear stop us from fighting for Inés's case. Let's recall that even Lorenzo, Inés's brother, was assassinated in this context, and that his case has yet to be solved.

We are living in very difficult times in Mexico: if reporting crimes doesn't work, if you continue to complain and force the authorities to do their job, you become victim of attacks, aggression, threats. The aim is to avoid that any victims achieve justice. Imagine Inés's case: a woman who didn't speak Spanish, who suffered the stigma of being raped, who could not feed her children, who lived in the countryside, and – even so – dared to demand answers from one of the State's most aggressive entities, the Army. Really, the fact that she is still alive is the best that we could have hoped for. The risk is very great, and for this reason there are 107 human rights defenders who have provisional measures (including Inés's and Valentina's cases).

Do you think that the Court hearing this case could send a message to the indigenous peoples of Guerrero?

AB: Yes. We want to force the State to regulate the Armed Forces, to punish those responsible, and to know that Mexican citizens are not going to relinquish our rights. We are demanding respect for our rights. A democratic State cannot trample over our dignity, and much less the dignity of the indigenous peoples – who

are the poorest, the most discriminated against, the most excluded, and the ones who suffer the ravages of militarisation. That is, not only is there historic, structural injustice, but in addition a systemic aggression against the life and peace of Mexico's indigenous peoples. And, well, it's paradoxical that the government is assigning more funds to the Army while it continues to sink indigenous peoples into neglect.

This is where we see the paradox of a government that chooses force, invests in weapons, and leaves the poorest people defenceless. It is really they who have given a name, a history, an identity, to our country. We do not want our country to bleed anymore; we want it to be another kind of democratic force – like that represented by the Inter-American Court – that obliges the government to comply with its international obligations.

At the request of the Tlachinollan Human Rights Center, Peace Brigades International has accompanied Otilia Eugenio Manuel, Andrea Eugenio Manuel, Cuauhtemoc Ramirez Rodriguez, Ines Ortega and Valentina Cantu members of the Organization of the Indigenous Me'Phaa People (OPIM), since February 2005 in Ayutla de los Libres, Guerrero and in the nearby communities of Barranca de Guadalupe, El Camalote, and Barranca de Tecuani. The OPIM was founded in 1998 by Otilia Eugenio Manuel and Cuauhtémoc Ramírez Rodríguez. The organization has been committed to the defense and promotion of indigenous people's rights in the Costa Chica region of Guerrero. The accompaniment began following a series of death threats to Otilia Eugenio Manuel shortly after she denounced the militarization in the region. Members of the OPIM continue to be victims of threats, harassment and incarceration. Five members of the OPIM were adopted by Amnesty International as prisoners of conscience, four of them were released but Raul Hernández still detained. Among the aggressions denounced by the OPIM against members of their organization, the raping of the Me'phaa indigenous women Valentina Rosendo Cantu and Ines Ortega Fernandez in 2002 stand out.

PBI interviews with members of the OPIM available on line

[Entrevista 13 Valentina Cantú before the Inter-American Court of Human Rights \(January 2010\)](#)

[Entrevista 12 Raul Hernández, prisoner of conscience \(December 2009\)](#)

[Entrevista 10 Cuauhtémoc Ramirez, secretary of the OPIM \(December 2009\)](#)

Project Bulletin May 2009 :

[Silenced: Violence against Human Rights Defenders in the South of Mexico](#)