



MEXICO BEFORE THE INTER-AMERICAN COURT



JUSTICE FOR VICTIMS OF FORCED DISAPPEARANCE

ROSENDO RADILLA PACHECO, CASE No. 12,511

“My father asked the soldiers, “What am I accused of?” And they answered, “Composing songs.” So he said, “That’s not a crime,” and the soldiers answered, “Yes, but you’re still screwed.”

Rosendo Radilla Martínez, son of Rosendo Radilla Pacheco and witness to his arrest

The ruling of the Inter-American Court of Human Rights on the forced disappearance of Rosendo Radilla Pacheco is the first **resolution** in which of an international tribunal declared the Mexican State guilty of a crime against humanity involving military personnel acting against civilians. Rosendo Radilla Pacheco was the victim of forced disappearance in August 1974. A social justice activist and mayor of the municipality of Atoyac de Álvarez in Guerrero, he was arrested at a military checkpoint whilst travelling with his youngest son. One of the last known facts about him his whereabouts was his transfer to Military Base No. 1 in Mexico City. Other individuals detained with him stated that Mr Radilla Pacheco was tortured while in detention. His forced disappearance is a paradigmatic case as, with its extensive documentation, it exemplifies what has occurred in many other, less well-documented cases.



Demonstration of relatives calling for justice

Ruling in Radilla Pacheco vs. Mexico

In November 2009, the Inter-American Court of Human Rights (IACtHR) found the Mexican State responsible for the forced disappearance of Rosendo Radilla, the violation of the right to due process, and his relatives’ right of access to justice. The ruling highlights the fact that the disappearance occurred in a broader context of human rights violations in the period known as “the Dirty War”. The IACtHR declared that the use of military tribunals, and the reservations made by the Mexican State to the Inter-American Convention on the Forced Disappearance of Persons, are incompatible with relevant international standards and the Court’s own jurisprudence.

During the hearing, the representatives of the Mexican State accepted responsibility for Rosendo Radilla’s forced disappearance, which they claim was an isolated incident through they denied that it was a result of State policy. They proposed a friendly settlement to Mr Radilla’s family, and rejected the Court’s jurisdiction over the case.

The IACtHR ordered Mexico to continue the search for the victim’s remains, and that legal proceedings be carried out in civilian tribunals. In addition, the IACtHR ordered Mexico to carry out legislative reforms so that Art. 57 of the Military Code of Justice and Art. 215A of the Federal Penal Code are brought in line with international human right standards. Specifically Mexico was ordered to restrict the use of military tribunals in cases of human rights violations against civilians, and to legis-

late on forced disappearance in accordance with the international conventions ratified by the Mexican State. The ruling also establishes the obligation to publish the text of the sentence, to conduct a public act of commemoration for Rosendo Radilla, and to fund a book about the case. Reparations to Mr Radilla’s relatives and to the members of the Association of Relatives of the Detained, Disappeared and Victims of Human Rights Violations in Mexico (AFADEM) have to be provided by the government.

Degree of implementation of the ruling

As of September 2010, no advances have been made in the investigation on the fate and whereabouts of Rosendo Radilla.

Regarding the legislative reforms required to make Article 57 of the Military Justice Code and the 215A of the Federal Penal Code compatible with international standards, in January 2010 the Permanent Commission of Mexico’s Congress requested the Mexican Government to comply with the Radilla ruling, including the necessary reforms to military legislation to ensure that human rights violations committed by the military are investigated and tried by civilian courts. In April 2010, the Mexican Senate approved a proposed reform to the National Security Law, which awaits the assessment of Congress. This reform does not include a reform of military jurisdiction, nor any adjustments to the Federal Penal Code which regards to forced disappearance.

“Until now, [...] we have seen no signs of the Mexican State’s political will to implement effective investigations to locate our loved ones. So while there is no will, I don’t believe there will be any results. [...] We want people now and for generations to come to know about these incidents so that they won’t happen again. We expect the Mexican State to recognize that these disappearances should never have occurred. Our relatives were people who fought for just causes and they deserve to be treated as such; not the way they are treated in the national archives, as wrongdoers and criminals. They suffered because of something that shouldn’t have happened.”

Tita Radilla, daughter of Rosendo Radilla, in interview with PBI, 1 February 2010

On 22 September, the Minister of the Interior Francisco Blake Mora informed the Senate that the Federal Executive Government would present a proposal to modify the military justice system so that *certain* crimes against civilians would be excluded from military justice.

Also in September, Mexico’s Supreme Court rejected the proposal elaborated by Justice José Ramón Cossío Díaz to look into whether military jurisdiction is in line with the Constitution and to accept the full implementation of the Radilla ruling. Instead, the Supreme Court decided to postpone the discussion in order to elaborate a new proposal and determine whether the sentence can be enforced and whether the Inter-American Court exceeded its authority when declaring Mexico’s reservation to the Inter-American Convention on Forced Disappearance not valid.

The reparations for of the relatives of Rosendo Radilla and the members of the AFADEM have yet to be provided. To date, the ruling has been published in the *Official Gazette of the Federation*, the daily newspaper *El Universal*, and on the web page of the Federal Attorney General’s Office (PGR).

Tita Radilla and the relatives of forcibly disappeared people who are working with AFADEM have expressed their deep concern at the lack of significant progress in the implementation of the sentence, and highlight the importance of being informed and consulted about its implementation.

Threats and harassment

Since August 200, PBI accompanies Tita Radilla Martínez, vice-president of AFADEM and representative of the relatives of victims of enforced disappearance in Atoyac. Tita requested accompaniment as a result of the acts of harassment and surveillance against her. PBI believes that Tita continues to be at risk because of the significance of the Rosendo Radilla case, and her work in defence of human rights.



Tita Radilla Martínez, vice-president of AFADEM

Forced disappearance in Mexico

Forced disappearance has been a persistent phenomenon in Mexico. In its report of 21 December 2009, the United Nations Working Group on Enforced or Involuntary Disappearances states that it has informed the Mexican Government of 10 cases of forced disappearance in the states of Guerrero, Nayarit, Hidalgo, Oaxaca, Michoacán, Tamaulipas and Morelos.

Article II of the Inter-American Convention on Forced Disappearance of Persons defines the crime as “*the act of depriving a person or persons of his or their freedom [...] perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person*”. This Convention was ratified by the Mexican Government in 2002, which made a reservation to exclude the Convention from being applied against military personnel in active service. Retroactive application of the Convention was prohibited for crimes committed before its ratification. Mexico has also signed and ratified the United Nations’ International Convention for the Protection of All Persons from Enforced Disappearance.

However, it has not accepted the jurisdiction of the Committee on Enforced Disappearances to consider individual claims, nor to collaborate in investigations or provide follow-up.

The phenomenon of forced disappearance in Mexico goes back to the 1960s, 70s and 80s, during the so-called “Dirty War”. In that period, the Mexican State implemented a policy to eliminate social, political and subversive groups demanding social justice. Mexican security forces systematically conducted executions, torture, forced disappearances, and serious human rights violations.

Forced disappearance during the Dirty War

The relatives of victims of forced disappeared denounced the facts publicly, filled complaints without results, and created associations to make their demands more visible. One of those organisations is AFADEM. Formally established in 1978, AFADEM seeks to establish the truth in cases of forced disappearance, and the investigation and sanctioning of those responsible so as to eradicate this human rights violation. Tita Radilla is one of its founders.



Rosendo Radilla, front row centre, with residents of Atoyac

AFADEM has documented some 1200 forced disappearances which were reported in the 1960s, 70s and 80s. Of these, 640 were committed in Guerrero, 473 of which occurred in the small municipality of Atoyac de Álvarez. In most cases, the Mexican Army is accused of being the perpetrator as it executed a State policy. After demanding investigations for decades, finally in 2000 the Mexican Human Rights Commission (CNDH) documented 532 cases, and urged the federal government to creation of a public prosecutor's office to pursue these crimes. In 2001, the Office of the Special Prosecutor for Social and Political Movements of the

Past (FEMOSPP) was established. It pursued some judicial actions, but no one has been found responsible for any crime. In 2006, the Office was closed down, and various versions of the report on the investigations undertaken were disseminated. None of them were officially published or endorsed. The remains of only two people were located, identified and returned to their relatives in February 2007.

Seeking justice for Rosendo Radilla

In Mexico, Mr Radilla's arrest and forced disappearance were publicly denounced by his family. The case was part of an investigation by the Mexican Human Rights Commission (CNDH), leading to a Special Report published in 2001. As a result of this report, FEMOSPP opened a case which was then transferred to the military justice system. An appeal made by the legal representatives of the relatives, challenging the military jurisdiction, was discarded. The military justice system initiated criminal proceedings case against one individual, but these were halted when the individual died.

Before the Inter-American Commission

In October 2005, the Inter-American Commission on Human Rights agreed to consider the case. In August 2007, it issued a recommendation to the Mexican State, asking it to investigate the disappearance. Forensic experts from the PGR, overseen by independent forensic experts working on behalf of AFADEM began excavations in the former military barracks of Atoyac in July 2008. The excavations lasted two weeks but no human remains were found. AFADEM stated that the PGR had only scanned 10% of the proposed sites, and asked them to prolong the excavations. On 13 March 2008, as a result of the Mexican Government's insufficient response to its recommendations, the Inter-American Commission filed a lawsuit with the Inter-American Court of Human Rights on the Rosendo Radilla case.

The ruling has been published by the Inter-American Court of Human Rights in Spanish:

www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf. The lawsuit filed by the Inter American Human Rights Commission, casefile No. 12,511, can be found on the website of this entity.

PBI has interviewed Tita Radilla, as well as her lawyers from the Mexican Commission for the Defence and Promotion of Human Rights and the former Head of the Mexican Ministry of Interior's Human Rights Unit, José Antonio Guevara. These *entrevistas*, can be found on the PBI Mexico web page: www.pbi-mexico.org. Further information can be found on the webpages of the Association of Relatives of the Detained, Disappeared and Victims of Human Rights Violations in Mexico (AFADEM): <http://espora.org/afadem/> and the Mexican Commission for the Defence and Promotion of Human Rights: www.cmdpdh.org.

The report of the United Nations Working Group on Enforced or Involuntary Disappearances, published on 21 December 2009, is available here: www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-31_AEV.pdf.

The draft FEMOSPP report (in Spanish) was published by The National Security Archive on 26 February 2006: www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB180/index.htm.

ME'PHAA WOMEN SEARCHING FOR JUSTICE

VALENTINA ROSENDO CANTÚ, CASE No. 12,579

INÉS FERNÁNDEZ ORTEGA, CASE No. 12,580

“Finally it has been recognised that we’ve always told the truth”

Valentina Rosendo in a press conference after the publication of the IACtHR rulings

Inés Fernández and Valentina Rosendo are two indigenous Me'phaa women from Guerrero state who were raped and tortured by members of the Mexican army in 2002. No proper investigation was ever carried out and nobody has been brought to justice for these crimes. In their long quest for justice, these two human rights defenders have had several fundamental rights violated by the Mexican state: their right to health, their right to a full impartial investigation and the sanctioning of their perpetrators, as well as the right to protection from harassment and violence. PBI carries out international accompaniment of Inés Fernández and Valentina Rosendo as they and their families are at constant risk of attack by those who try to silence them.



Inés Fernández Ortega (left) and Valentina Rosendo Cantú (right)

Rulings of the Inter American Court

The Inter American Court of Human Rights (IACtHR) declared proven, in its rulings of August 30 and 31, that Inés Fernández Ortega and Valentina Rosendo Cantú were raped and tortured by members of the Mexican Army. In Mexico, their complaints have been investigated by the military authorities, who have failed to identify the perpetrators and have left the crimes unpunished. After eight years of denial of justice in their own country, the rulings of the IACtHR confirm the injustice they suffered and support the demands of Inés, Valentina, their families and all those who provided them with legal advice and campaigned on their behalf.

In the rulings, the IACtHR ordered the Mexican State to provide comprehensive reparations and guarantee the safety of the two women and their families, as well as demanding that civilian authorities carry out an effective investigation into the rapes and bring those responsible before a civilian tribunal. The rulings also ordered disciplinary procedures against those officials who hampered the investigations with their negligence or who denied the right to adequate medical attention for both women. The IACtHR demanded that the Mexican State provide reparation of damages and the guarantee that the same will not happen to other women, by providing adequate medical services for victims of sexual violence, by training officials and by establishing an appropriate action protocol for such cases. Echoing the Rosendo Radilla sentence issued by the IACtHR in November 2009, these rulings reiterate the obligation to reform the Mexican military justice system to prevent military tribunals from taking over jurisdiction in cases of human rights violations committed by the military against civilians.

Complaints

After having to deal with numerous difficulties in accessing health-care services, seeking medical treatment and to document the attacks they suffered, both human rights defenders reported the attacks suffered. On 8 March 2002, Valentina Rosendo Cantú (who at that time spoke little Spanish) reported to the Public Prosecutor's Office in Ayutla, Guerrero State, that she had been sexually assaulted and beaten by Mexican Army personnel. She was accompanied by her husband and the General Inspector of the Guerrero State Human Rights Commission. One day before, the Ministry of National Defence (SEDENA) issued a press release denying all responsibility in the case. Inés Fernández Ortega reported her assault on 24 March 2002 with the assistance of an interpreter.

The jurisdiction for these investigations was transferred to the Military Prosecutor. Both claimants refused to accept this jurisdiction, considering it to be partial and because it violated their basic rights enshrined in the Mexican Constitution. Various unsuccessful appeals were made to federal civilian Courts and to the military justice system, asking for the cases to be returned to the civilian justice system.

Investigation by the military system authorities

The Military Prosecutor's Office closed the investigation of Valentina Rosendo Cantú's case in March 2004, indicating that “no infractions of military discipline, nor participation of military personnel in illicit conduct, had been proven”.

SEDENA reopened the case file in January 2008, and transferred it to the civilian justice system. In September 2009, it was returned to the military justice system, where the case remains. Inés Fernández Ortega's case was closed by the military justice system in February 2003, arguing that the claimant showed no interest in having the incident investigated. In 2006, the Attorney General's Office in Guerrero received statements made by Inés Fernández Ortega, and asked for the case file. Subsequently, the Specialised Public Prosecutor's Office for the Investigation of Sexual Crimes and Intra-family Violence, part of the Guerrero State Attorney General's Office, again declined jurisdiction in favour of the Military Attorney General's Office.

Before the Inter-American Commission

Inés Fernández and Valentina Rosendo were thus forced to seek justice outside on Mexico with the Inter-American Commission on Human Rights. The Commission accepted both cases in 2006, and subsequently recommended that the Mexican State undertake a series of measures to provide comprehensive reparation for the harm caused. Given the inaction of the Mexican State, in 2009 the Commission filled two lawsuits with the Inter-American Court of Human Rights which the Court agreed to hear. Inés Fernández's hearing took place on 15 April 2010 in Lima, Perú, whilst that of Valentina Rosendo was held on 27 May 2010 in San José, Costa Rica. In both cases, representatives of the Mexican State denied that army personnel had committed the crimes, although they recognised that the investigations had been deficient.

The legal team from the Tlachinollan Human Rights Center (*Centro de Derechos Humanos de la Montaña Tlachinollan*), representing Inés Fernández and Valentina Rosendo, asked for justice and safe conditions for the women and their families. They have also requested collective reparation measures for the other women of the Me'phaa communities where the rapes occurred, and an end to the military presence in the region as a guarantee of non repetition. According to the expert testimony provided at the hearings, the sexual assaults occurred within a broader context of militarisation and a counterinsurgency strategy against guerrilla movements. The experts considered that within this context, the rapes were intentional and constituted acts of torture. These acts of aggression have had a profound impact on the lives of the victims, their families, and their communities, and have led to the destruction of the social cohesion of the community.

Attacks and harassment

Inés Fernández and Valentina Rosendo have paid a very high price for their bravery in demanding justice. Both they and their families have been continually subjected to attacks, harassment and surveillance.



PBI accompanied Valentina Rosendo to her appearance as she provided her statement at the Inter-American Court in San José, Costa Rica

“For me it is very important to keep fighting, despite what has happened to me and despite the difficulties. I'm asking that the people who have harmed me – the soldiers who abused me in Barranca Bejuco, where I lived – are brought to justice. Many women who have suffered similar assaults never report them. They never raise their voices because of fear. They're married, and don't dare to report the crime; they remain silent. I go on so that justice can be done, both for me and for all of the women who have been abused by the army. I do it for myself, for my family, and so that no other women will suffer what I have suffered.”

Valentina Rosendo in an interview with PBI, 22 January 2010

In February 2008, Lorenzo Fernández, Inés Fernández's brother, who supported her in her search for justice, was tortured and murdered. Inés' husband, Fortunato Prisciliano, was attacked and received threats before he provided his testimony to the Inter-American Commission on Human Rights. Valentina Rosendo's parents and siblings have repeatedly been threatened, and have witnessed the harassment and threats she has suffered. Since November 2009, the daughters of Inés Fernández (Noemi, 17, and Ana Luz, 15) and of Valentina Rosendo (Yennis, 8) have been victims of robberies, attempted kidnappings and threats. Members of the organisations which provide a direct support to the women, the Organisation of the Indigenous Me'phaa People (*Organización del Pueblo Indígena Me'phaa*, OPIM) and the Tlachinollan Human Rights Center, have suffered serious attacks. Since 2002, Otilia Eugenio Manuel, the current president of the OPIM, who has publicly demanded justice for Valentina and Inés, and acts as Inés' interpreter has been subjected to acts of harassment and death threats aiming at silencing her. These attacks forced her to leave her home in Ayutla de Los Libres in February 2009. At the same time, in response to threats and attacks against its members, the Tlachinollan Human Rights Center was forced to close their Ayutla office too.



Representatives of Tlachinollan, the OPIM and Amnesty International demand justice and safe conditions for Inés and Valentina in a press conference

The contribution of Inés Fernández and Valentina Rosendo to their communities

Within their communities, Inés Fernández, Valentina Rosendo and their husbands supported the organisational processes of the OIPMT. The psychosocial effects of the rapes upon the women's lives, and on the lives of their families and communities, have been profound. The intensive work the women carried out in their communities before the attacks was destroyed. Inés lost her leadership abilities, and the women have since refused to meet, organise, make complaints or demand their rights for fear of suffering the same fate. Valentina had to leave her home because her community rejected her. In both cases, the social fabric of the local communities was destroyed.

Background

The State of Guerrero is home to four indigenous peoples: the Na Savi (Mixteco), Nahuatl, Amuzgo and Me'phaa (Tlapaneco). Their main activity is agriculture, carried out in a context of poverty, violations of basic human rights, and isolation.

The Independent Organization of the Mixtec and Tlapaneco People (OIPMT) was established by the indigenous people of the Guerrero's Costa Chica region in an attempt to, the OIPMT was formed as an attempt to organize efforts to improve the social and economic conditions of their communities. They demanded roads, schools, clinics, and agricultural subsidies, and promoted projects designed to establish and trade rural products.

In 1998, a community in the area was site of the *El Charco* massacre – an attack led by the Mexican Army on a community meeting being held in a primary school. Eleven people were killed, and 27 were detained. Since then, the region's indigenous communities have lived with an intense military presence deployed to combat the guerrilla groups that allegedly operate in the region, and the cultivation of narcotics crops. However, it is particularly the members of social organisations like the OIPMT which suffer harassment, intimidation, threats and attacks. This situation pushed the OIPMT to take on the demands for justice made by the victims of the *El Charco* massacre, and the acts of aggression against Inés Fernández and Valentina Rosendo. At a later date, the OIPMT divided into two organisations which continue campaign on these cases: the OPIM, and the Organisation for the Future of the Mixteco People (*Organización por el Futuro del Pueblo Mixteco*, OFPM).

The Inter-American Court of Human Rights sentences from August 30 (Inés Fernández) and 31 (Valentina Rosendo) 2010 can be found on the web page of the Court itself <http://www.corteidh.or.cr/>. The demands presented by the Inter American Human Rights Commission, cases 12.579 and 12.580, can be read on the website of this entity.

PBI has interviewed Valentina Rosendo Cantú, as well as her lawyers from the Tlachinollan Human Rights Center. These interviews, together with information on the attacks suffered by men and women human rights defenders in Guerrero and other Mexican States, can be found on the PBI Mexico web page: www.pbi-mexico.org.

The Tlachinollan Human Rights Center, Miguel Agustín Pro Juárez Human Rights Center and the Center for Justice and International Law (CEJIL) described the search for justice undertaken by Inés Fernández and Valentina Rosendo in their report *La impunidad militar a juicio* [Military Impunity on Trial], 2010: http://cejil.org/sites/default/files/la_impunidad_militar_a_juicio_casos.pdf

On the situation of human rights violations in the state of Guerrero: Amnesty International, Mexico: Indigenous women and military injustice, AMR 41/033/2004, 23 November 2004, p.12. Camacho, Zosimo, "Montaña de Guerrero pobreza y militarización" [Montaña región of Guerrero, poverty and militarisation] as well as *Revista Contralinea*, January 2007, N° 70 (in Spanish here: www.contralinea.com.mx/archivo/2007/enero/htm/montana_guerrero_militares.htm) For further information on the massacre of El Charco of 7 of juni 1998 see the webpage of *Liga Mexicana por la Defensa de los Derechos Humanos*, LIMEDDH, <http://www.derechos.org/limeddh/doc/charco.html>