

Mexico 2010:

Military impunity on trial.

**The cases of Valentina Rosendo Cantú, Inés Fernández Ortega and
the ecologists Rodolfo Montiel Flores and Teodoro Cabrera García**



FOREWORD

The official version of the celebration of the bicentennial of Mexican Independence contrasts markedly with the origin and roots of this epic moment in history. The poor people of Mexico who took part in this battle fought against abuses of power and for dignity. The strength of the people grew over a long history of resistance and struggles; the insurgent movement smoothed the way for starting a process of societal construction founded upon the dream of an independent and democratic Mexico.

In spite of the exemplary struggles by various generations in our country in order to overcome inequality and abuse of power, as of today this dream has not been translated into reality for thousands of Mexicans. On the contrary, the State aims to separate Mexico's Independence Day from the demands for social justice that inspired it. Those who commit human rights violations today want to transform these battles for human dignity into harmless legends that legitimize their power.

The current context with regards to human rights is bleak. Whilst the State demonstrates complicity and tolerance with those who violate human rights, other authorities within the same system act to punish and criminalize those who speak out and struggle for justice.

However, in the depths of Mexico, men and women with dignity are born, who know how to cultivate life from within the culture of their community; capable of risking their own lives to defend their communities and nature itself. In the south of Mexico many indigenous peoples have not only preserved the memory and culture of a diverse Mexico, but they have defended the patrimony that belongs to each and every one of us, by preserving the resources of future generations. In spite of their vulnerability they have stood up to the *caciques*¹ and the repressive forces of the State. They also have sufficient dignity not to be the accomplices of those who violate human rights.

¹ Cacique: local strongman with political and economic power.

Over the course of the past year, different struggles have found support in the Inter-American Court of Human Rights. The Mexican State has been called to face judgment regarding its responsibility for serious human rights violations committed against Inés Fernández Ortega, Valentina Rosendo Cantú and the ecologists Rodolfo Montiel and Teodoro Cabrera.

The cases of Inés Fernández Ortega and Valentina Rosendo Cantú show us the cruelty with which members of the military have acted against indigenous communities, where the women are seen as war booty. In 2002 the two women were raped with the aim of disseminating terror and damaging the communities where a peaceful resistance movement was developing, aimed at demanding collective rights and denouncing abuses by the armed forces. The Army, accustomed to impunity, never imagined that Inés and Valentina would have the strength and the courage to denounce the crimes and demand punishment for those responsible.

The case of Rodolfo Montiel and Teodoro Cabrera, in another region in Guerrero state, Petatlán and Coyuca de Catalán, represents an emblematic struggle for the defense of the forests, which clashed with the interests of *caciques* and the Army, linked to local power groups. In May 1999 they were arrested and tortured by soldiers and then convicted of fabricated crimes. In 2001 they were released but this did not constitute access to justice.

At the Human Rights Centres that have accompanied Valentina, Inés, Rodolfo and Teodoro, we have witnessed how poor men and women are victims of a system that systematically sides with those who abuse human rights; creating impunity. What is more, the victims suffer dangerous circumstances, threats and exile for daring to denounce these atrocities.

There is still a long road ahead in the struggle to consolidate human dignity and there is a long list of abuses by the State against those whose efforts make a more just society possible. We observe with hope the current processes through which the Inter-American Court

can contribute to establishing conditions for the full exercise of human rights in the country. Without a doubt this will contribute to achieving the objectives that inspired the Mexican people's struggle for independence 200 years ago.

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INTRODUCTION

In Mexico, the last decade has been characterized by a two-faced human rights panorama. On one hand, toward the outside world, the State projects an image of commitment to human rights and equality through the ratification of international treaties and the enactment of laws and programs that aim to demonstrate that it is fulfilling its human rights obligations to the population. On the other hand, inside the country, the face of human rights is a portrait of daily abuses, accompanied and encouraged by the omnipresence of impunity and the denial of justice to the victims, along with a failure to implement adequately and execute the programs and laws that have been created. This cycle of abuse, injustice and marginalization, documented over the years by numerous civil society organizations, as well as public human rights bodies, the media, international human rights institutions and others, demonstrates how far the Mexican reality diverges from the proclaimed rule of law.

In 2010 the contrast between the two faces of human rights in Mexico is being put to an historic test before the highest human rights authority in the Americas; the Inter-American Court of Human Rights (“Inter-American Court” or “Court”). This year, via public hearings, the international Court is analyzing three paradigmatic cases of some of the most relevant structural violations and institutional flaws in Mexico today, making way for the possibility that through its resolutions the Court can order a range of legal and public policy reforms that would start to revert the patterns of abuse that have been documented, closing to a certain extent the breach between the image that the State projects externally and the human rights reality inside the country.

The three cases in question relate to abuses committed by members of the Army in Guerrero state and have various characteristics in common; in particular the absolute impunity that has been maintained for years. It is precisely because of the impunity and the evident unwillingness of the State to respond

adequately to the serious human rights abuses that have been committed that the cases have arrived at the Inter-American Court of Human Rights, given that after exhausting all of the domestic remedies, none of the victims has achieved justice.

The first case regards the rape and torture of indigenous Me'phaa woman, **Valentina Rosendo Cantú**, which took place on 16th February 2002. Valentina Rosendo was 17 years old when she was raped and tortured by members of the Army after going to wash clothes in a stream near to her house in Barranca de Bejuco community in Acatepec municipality. The rape occurred whilst she was being interrogated about the location of several men identified as "hooded ones" (members of the guerrilla). In the days following these events she was denied medical attention at the public health clinic nearest to her community and as a result she had to walk for eight hours to Ayutla de los Libres city to see a doctor at the hospital, where once again she was denied the medical attention that she required. Since 2nd February 2010, Valentina and her daughter have had provisional measures from the Inter-American Court of Human Rights following a series of threats and harassment

against them that were reactivated once her case was presented to the Inter-American Court.

The second case regards the rape and torture of indigenous Me'phaa woman **Inés Fernández Ortega** by members of the military who raided her home in Barranca Tecuani; a community in the mountainous region of Ayutla de los Libres, on 22nd March 2002, and the subsequent denial of justice. Over the course of eight years following these events, both Inés and her family, who are active members of the Indigenous Tlapaneco/Me'phaa People's Organization (*Organización del Pueblo Indígena Tlapaneco/Me'phaa*, OPIT, also known as OPIM) and her defenders have been subjected to serious attacks and harassment. Since April 2009, 107 human rights defenders from the region, including Mexican organizations that have represented Inés Fernández before the Inter-American System, have provisional measures granted by the Inter-American Court.

The third case is derived from the arbitrary arrest, torture, unfounded imprisonment and other abuses committed, from 1999 onwards, against environmental defenders **Rodolfo Montiel Flores and Teodoro Cabrera García**, in retaliation for their successful activities defending the forest in Petatlán and Coyuca de Catalán, Guerrero. During their illegal detention, Mr. Montiel and Mr. Cabrera were tortured by members of the military until they signed confessions referring to fabricated crimes. During the criminal proceedings initiated against them with these false charges, the judicial authorities granted evidentiary value at all times to the confessions that were obtained under torture, demonstrating the judicial practice in Mexico of ignoring the presumption of innocence and omitting basic procedural rights. Even though in the end the two ecologist *campesinos*² were released from prison, for security reasons Mr. Montiel and Mr. Cabrera have been obliged to flee from their communities, which significantly hinders their ability to continue with their environmental activism.

² Campesino: a person who lives in the countryside and works the land.

In the three cases mentioned above, there are interlinking variables such as poverty, the marginalization of certain social groups, a lack of adequate control over the behavior of the security forces, in particular the Army, the absence of access to justice and a lack of basic conditions for human rights defenders to carry out their work in safety. This demonstrates, in the crudest manner, how the human rights of the indigenous peoples and *campesinos* in Guerrero are under siege. However, the cases' relevance is not limited to the context in Guerrero eight years ago; they also represent some of the most recurrent systematic violations currently taking place in the country. In this respect, they demonstrate how the Mexican justice system's design and implementation are open to abuse and prevent the victims of human rights violations from accessing justice, such as female victims of sexual violence who face obstacles and discrimination during every step on the search for justice or even access basic health services, or people who organize to defend their rights, who face harassment and threats, including arbitrary arrests, torture and real risks to their lives.

It is worth noting that even though the events reported originate from acts that took place during periods of government prior to President Felipe Calderón's, the absence of access to truth, justice and full compensation, constitutes a permanent violation of the rights of the victims and the executive, legislative and legal branches of all three levels of government, i.e. the State in its entirety, is responsible for taking measures to revert this unjust situation. On the other hand, it was during the current six-year term of government that the Inter-American Commission on Human Rights, the first level of the Inter-American System, formulated a series of recommendations to the Mexican State regarding its duty to ensure justice and compensate the damage caused in the three cases in question. The State did not comply with these recommendations. The State is responsible for taking adequate measures to investigate and compensate the human rights violations that are brought to its attention and to tackle the structural causes that favor the constant perpetration of similar abuses; none of which has happened in the three cases presented in this report.

For the reasons described above, it is of transcendent importance, that upon analyzing these cases, the Inter-American Court will have three opportunities to explore in detail fundamental issues within the current human rights agenda in Mexico and order, in a legally binding manner, the necessary reparations in order to revert the aforementioned patterns. In this report we note that having deposited the corresponding legal instrument, the Mexican State has accepted the jurisdiction of the Court over Mexico and the obligatory nature of the sentences emitted by this institution. Therefore, the reparations specified in these three cases will be binding for the State.

In virtue of the paradigmatic nature of the three cases mentioned above with regards to the human rights situation in the country and the importance of future sentences from the Inter-American Court, the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh), Tlachinollan Human Rights Centre (Tlachinollan) and the Centre for Justice and International Law (Centro por la Justicia y el Derecho

Internacional, CEJIL), the victims' representatives before the Court,³ have produced this report to present a summary and a brief analysis of the events and violations in each case.

The first section discusses the nature and powers of the inter-American system of human rights and then the context of militarization is briefly described, as well as the lack of protection for human rights defenders with regards to the three cases, which as will be seen later, constitutes a common factor in the stories of all the victims. In the following sections the details of each case are presented, highlighting why they are paradigmatic in nature and explaining the legal arguments and reparations proposed to the Inter-American Court. At the end we reflect upon the importance and the implications of the State's actions in reaction to these cases for the situation of human rights in Mexico.

³ The Indigenous Me'phaa Peoples' Organization (OPIM) is the other representative in the cases of Valentina Rosendo Cantú and Inés Fernández Ortega.

WHAT IS THE INTER-AMERICAN HUMAN RIGHTS SYSTEM?

INTRODUCTION

The Inter-American System for the protection of human rights consists of two bodies within the Organization of American States (OAS): the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. Its aim is to monitor respect for human rights and human rights guarantees in the Americas and in particular, supervise the compliance of OAS States with their international obligations acquired via the ratification of regional human rights treaties.

It is a system subsidiary to State protection mechanisms and justice systems. This means that the implementation of laws, policies and practices to guarantee people's fundamental rights, and the investigation, punishment and full reparation of all abuses against them, is the responsibility of each State. It is only when it becomes evident that a State is not fulfilling its duty in these matters, that

the victims of human rights violations may take their cases to the inter-American system.

The Inter-American Commission on Human Rights is the first instance for the victims of human rights violations who wish to present their cases before the inter-American system. The Commission decides whether the case is admissible and if it admits the case, it later conducts an in-depth analysis of the matter. If the Commission decides that the State is responsible for human rights violations, it emits its conclusions and recommendations in a confidential report to the accused State. If the State does not implement the Commission's recommendations to provide reparation for the violations, the Commission has two options: release a public merits report on the case, or instead, refer the case to the Inter-American Court; the highest judicial authority in the system. If indeed the Commission sends the case to the Court, this Tribunal will take responsibility for processing the case, receiving evidence, hearing the arguments and carrying out a detailed analysis of the case in order to emit a binding sentence to the State

in question. Therefore, the supranational human rights case before the system has two possible phases (Commission and Court), further analyzed in the following sections.

Cases taken before the inter-American system are decided within the legal framework of the human rights treaties adopted by the OAS. The central pillar of this legal framework is the American Convention on Human Rights. The Convention is a legally binding treaty ratified by the majority of States in Latin America, including Mexico. The Convention establishes a benchmark of fundamental rights, such as the right to life, not to be subjected to torture, liberty, not to suffer discrimination, freedom of expression, freedom of association, due process of law and efficient legal recourses in case of a human rights violation, among others.

The American Convention is complemented by a series of treaties on specific issues; the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Punishment and Elimination of Violence against

Women, known as the Belém do Pará Convention, are two such examples. The Mexican State has ratified all of the abovementioned treaties.⁴

I. THE INTER-AMERICAN COMMISSION

Created in 1959, the Inter-American Commission on Human Rights is composed of seven independent members who meet during sessions that last approximately two weeks and take place three times a year. They are normally held at the Commission's headquarters in Washington D.C. The Commission also carries out country visits to evaluate the general human rights situation in member countries; publishes thematic reports on the human rights situation in member States; organizes human rights seminars, conferences and meetings, orders precautionary measures for

⁴ The Mexican State ratified the American Convention on Human Rights on 24th March 1981; the Inter-American Convention to Prevent and Punish Torture on 22nd June 1987; the Inter-American Convention on the Prevention, Punishment and Elimination of Violence against Women (Belém do Para Convention) on 12th November 1998.

human rights defenders in grave and imminent danger; and maintains rapporteurships on different human rights issues.⁵

Individuals or groups who report violations by any State that has ratified the American Convention on Human Rights can directly request that the Inter-American Commission analyze the case, declare whether the State has violated human rights and issue the corresponding recommendations. Upon receiving the request, the Commission first checks whether the victims have exhausted all of the legal remedies available in their country to repair the alleged violations. If it determines that they have complied with this and other fundamental admissibility requirements, it will carry out a merits analysis of the case in light of the State's obligations. During the majority of its periods of sessions, the Commission dedicates a percentage of its time to public hearings on the admissibility or merits of particular cases that are under consideration. Sometimes

⁵ For more information on the scope of the Commission's work, please refer to www.cidh.org.

the victims participate in the hearing, giving evidence to support their cases.

When the Commission issues a merits report in favor of the petitioners, it transmits a series of recommendations to the State, in a confidential report, on how to remedy the violations that have been committed. However, if the State does not comply with these recommendations within the specified timeframe, the Commission can publish its conclusions and recommendations in another, public report. Instead of releasing the public report, if the Commission considers it necessary and the State has recognized the jurisdiction of the Inter-American Court,⁶ the Commission can send the case to the Court in order for this institution to issue a legally binding sentence and order the corresponding reparations.

⁶ The States that have ratified the American Convention have the option to recognize the jurisdiction of the Inter-American Court, so that this institution may try cases against them and the majority of the States (twenty-one of them) have done so. The Mexican State recognized the competence of the Inter-American Court to try cases against Mexico on 16th December 1998.

II. THE INTER-AMERICAN COURT

The Inter-American Court was established as a binding legal institution in 1979. It is composed of seven judges who are citizens of the Organization of American States' member States. They are chosen on their personal merits from jurists of the highest moral standing and competence in human rights. The Court holds various sessions each year, normally at its headquarters in San Jose, Costa Rica, but also in different member States that offer to host periods of sessions to publicize the work and jurisprudence of the Court. In addition to its jurisdiction over contentious cases, the Court has the authority to decree provisional measures for the protection of people in grave and imminent danger. It can also issue advisory opinions on the correct interpretation of human rights treaties.⁷

The Court's work in contentious cases began in the 1980s, when it analyzed and then issued a historic resolution in its first such case,

⁷ For more information on the scope of the Court's work, please refer to www.corteidh.or.cr

Velásquez Rodríguez vs. Honduras,⁸ on the pattern of forced disappearances perpetrated by the Honduran State during this decade. This case turned out to be of transcendent importance, due to both the legal analysis of the case and the exposition of the facts of the case contained in the sentence, which was established in accordance with the evidence examined and the testimonies presented before the Court in a public hearing. The evidence demonstrated that there was a systematic practice of disappearances in Honduras during the period under consideration. In fact, the sentence contributed in a significant manner to the current concept of forced disappearance and has fed into the jurisprudence of courts and other human rights authorities in different regions of the world. During the following decade, the Court received a growing number of cases and nowadays it resolves around fifteen such cases each year.

⁸ Inter-American Court, *Velásquez Rodríguez vs. Honduras*, (ser. C) No. 4 (29th July 1988).

Like the Commission, the Court will not exercise jurisdiction over the merits of a case until it has made sure that certain admissibility requirements have been fulfilled. Therefore, litigation before the Court includes an examination of the preliminary objections to admissibility that have been filed by the accused State. The admissible cases are then subjected to an in-depth analysis. The Court has the power to convene a public hearing and hear the testimonies of the victims and witnesses, as well as the reports and expert opinions offered by both parties.

Currently, both the Inter-American Commission and the victims participate in litigation before the Court; the latter act as an independent party, normally represented by one or more non-governmental human rights organizations. Whilst the Commission presents its analysis of the case to the Court, the victims and their representatives can present new or additional arguments beyond those offered by the Commission.⁹ The accused State participates in

⁹ Recent reforms to the regulations of the Inter-American Court modify certain aspects of the future role of the Commission in litigation before the Court. However, these changes had not been introduced when the cases in this report

all stages of the litigation, presenting its arguments and offering witnesses and experts, just as the victims and Commission do. The process consists of a written phase and an oral phase; the latter of which is the public hearing where the Court hears the arguments of both parties and the testimonies and expert evidence is gathered together. Even though this is only part of a longer and more complex process, the public hearing is especially relevant because it is the moment in which the judges can personally listen to the victims and the experts.

When the Court determines that a State is responsible for human rights violations, it issues a sentence in which it establishes which violations have occurred and orders the State to carry out the measures that are judged necessary to offer reparation to the victims and ensure that such events are not repeated in the future. Therefore, the reparations ordered by the Court often encompass, in addition to compensation for the victims, structural measures

were submitted to the Court. Therefore, the process described in this section still applies for these cases. Please refer to the current rules of procedure: www.cidh.org/Basicos/English/Basic18.RulesOfProcedureIACHR.htm.

such as the implementation of policies or mechanisms to revert a pattern of violations and the reform of laws that contain stipulations that are not compatible with the international obligations of the State. The Court reserves its jurisdiction to monitor compliance with its sentences and will issue periodic compliance orders as necessary in any given case.

Over the course of the last two decades, the Inter-American Court has consolidated its reputation in the region and on a global level as a result of its jurisprudence on different human rights issues and the important impact that it has had in various countries in the Americas. Among others, it is known for *Barrios Altos vs. Peru*, a case regarding a massacre perpetrated by members of the armed forces under the regime of Alberto Fujimori, a crime that remained in impunity because of two amnesty laws that were passed to protect those responsible for human rights violations between 1980 and 1995.¹⁰ In 2001 the Court issued a merits judgment on the case

¹⁰ Inter-American Court, *Barrios Altos vs. Peru* (ser. C) No. 75 (14th March 2001), para. 2 (i)-(m).

and declared that the amnesty laws were incompatible with the American Convention, because one of the fundamental obligations in the Convention is the duty to investigate and sanction human rights violations.¹¹ After issuing this sentence, Peru initiated trials against numerous people who were allegedly responsible for crimes of State, including high level officials from the armed forces.¹² Four years later, the Supreme Court of Justice in Argentina cited this jurisprudence of the Inter-American Court when it annulled Argentina's amnesty laws, opening the way for prosecuting hundreds of State agents involved in crimes against humanity committed during Argentina's Dirty War.¹³ Another sentence from the Inter-American Court resulted in a constitutional reform in Chile

¹¹ Id., paras. 41-44.

¹² See Human Rights Watch, World Report 2002, *Peru: the role of the international community: the Organization of American States*, available at http://www.hrw.org/wr2k2/americas9.html#international_community; Inter-American Court, *Barrios Altos vs. Peru* (Compliance with Sentence) (22nd September 2005), para. 15(a), 18(a), disposition 1(b).

¹³ Supreme Court of Justice 14/6/05, "Simon, Julio Hector for illegal deprivation of freedom, etc," Judgments (2005-328-2056), Case file S.1767. XXXVIII, para. 23, available in Spanish only at www.csjn.gob.ar.

regarding freedom of expression,¹⁴ whilst more recently, Nicaragua demarcated and provided deeds for the ancestral lands of the Awas Tingni indigenous people, in compliance with a sentence from the Court that established that the right to property includes the right of indigenous communities to collective possession of their traditional lands.¹⁵

In 2009 the Inter-American Court had the opportunity to analyze two transcendental problems within Mexico, upon considering a case related to the phenomenon of feminicides committed in Ciudad Juarez and another regarding the impunity and failure to investigate State crimes committed during the period known as the Dirty War. With regards to the first issue, in the case of *Cotton Fields vs. Mexico*, the Court analyzed numerous deficiencies in the behavior of the authorities following the murder of three young

¹⁴ Inter-American Court, *Olmedo Bustos and others vs. Chile*, (ser. C) No. 73 (5th February 2001); *Olmedo Bustos and others vs. Chile*, (Compliance with the Sentence) (28th November 2003), para. 19.

¹⁵ Inter-American Court, *Mayagna (Sumo) Awas Tingni community vs. Nicaragua*, (ser. C) No. 79 (31st August 2001); Inter-American Commission, *IACHR hails titling of Awas Tingni lands in Nicaragua*, Press release 62/08, 18th December 2008, available at <http://www.cidh.oas.org/Comunicados/English/2008/62.08eng.htm>.

women in Juarez in 2001. It declared the State responsible for the violation of the right to life, personal integrity, non-discrimination and access to justice, among others, as well as for failing to comply with fundamental obligations established in the Belém do Pará Convention, regarding the prevention, investigation and punishment of violence against women. It ordered the State to adopt certain measures to provide reparation, including measures for improving the authorities' procedures following women's disappearances.¹⁶ In the second case, *Radilla Pacheco vs. Mexico*, the Court declared the State responsible for violating the rights to life, personal integrity and legal guarantees, among others, following the forced disappearance of Mr. Rosendo Radilla Pacheco by the Army in 1974. Among other reparation measures, the Court ordered the State to reform the military justice system to avoid human rights violations being investigated under military jurisdiction, a practice that violates the American Convention on

¹⁶ Inter-American Court, *Cotton Fields vs. Mexico*, (ser. C) No. 205 (16th November 2009).

Human Rights.¹⁷ As of the publication of this report, Mexican society continues to await full compliance with both international sentences.

CONCLUSION

Given that it is not possible to achieve justice in Mexico in the cases of indigenous Me'phaa women Inés Fernández Ortega and Valentina Rosendo Cantú and ecologists Rodolfo Montiel and Teodoro Cabrera, the organizations that present this report have requested the Inter-American Court to declare the Mexican State's international responsibility for these cases and order the corresponding reparations.

¹⁷ Inter-American Court, *Radilla Pacheco vs. Mexico*, (ser. C) no. 209 (23rd November 2009).

As with the other paradigmatic cases tried by the Court from the region, we hope that the proven facts established before the Court and the Court's declaration of the violations committed will serve as a basis for Mexico to implement both the individual and structural reparation measures ordered by the Court. Therefore, the sentences announced by the Inter-American Court with regards to these cases do not represent the end of the process, but rather the beginning of a phase of reparation and the implementation of concrete reforms aimed at putting an end to the patterns of abuse and impunity reported, which are emblematic of the situation in this country. It will be up to the State to comply with the rulings in good faith and in keeping with its legal obligations, so that Mexico's residents never again suffer violations of their fundamental rights such as those committed against the victims of the cases currently in litigation before the Inter-American Court.

THE CONTEXT IN WHICH THE THREE CASES TOOK PLACE

INTRODUCTION

The cases of the indigenous Me'phaa women Valentina Rosendo Cantú and Inés Fernández Ortega, as well as the ecologist *campesinos* from the Sierra of Petatlán, Rodolfo Montiel and Teodoro Cabrera, demonstrate situations and structural conditions that prevent the fulfillment of human rights. Even if these cases illustrate the persistent denial of rights that is rooted in the history of Guerrero state, it is also true that they show a panorama of the human rights situation in Mexico. Therefore, the cases being analyzed by the Inter-American Court in 2010 refer to a regional reality that is also to a great extent and increasingly clearly, a national reality.

Similarly, the cases of Valentina Rosendo Cantú, Inés Fernández Ortega, Rodolfo Montiel and Teodoro Cabrera reveal the opprobrious aspects of a past that will not stay behind us, but

rather, is repeated and intensified in the present. Indeed, even though the context in which these cases took place at the end of the 1990s and beginning of the first decade of this century, seems a long time ago, it has not lost relevance in the present day and on the contrary, the situation has become worse. Far from revealing a past of human rights violations, these cases can be considered an advanced warning of realities and situations that today have spread across the entire Republic.

Three aspects of these cases confirm this phenomenon: the consequences of militarization that they illustrate; the risks that stalk human rights defenders which they demonstrate and the institutionalization of impunity that they document. Now we will explore each of these aspects in detail.

I. THE CONSEQUENCES OF MILITARIZATION ON HUMAN RIGHTS

Historically, Guerrero has been one of the poorest and most marginalized states in the country. Moreover, the exercise of power

in this part of Mexico has been characterized by its violent, patrimonial and *cacique*-dominated aspects. Therefore, the collective struggles and demands for human rights have been constant in Guerrero. Since the 1960s, the indigenous and *campesino* people have understood that the political structures, justice system, police and soldiers act against them and in favor of the regional *caciques* who oppress and exploit them. From then onwards their social struggle was politicized. Confronted with a lack of opportunities for political participation, they opted for peaceful mobilization. Such mobilizations were suffocated violently by the police and the Army. The most exemplary cases of State violence in the face of popular organization include the massacre of 30th December 1960 in Chilpancingo, following a peaceful student and teacher demonstration; another on 18th March 1967 in Atoyac de Álvarez and the massacre of coconut harvesters in Acapulco on 20th August 1967.

The violence exercised against social movements, the extreme poverty experienced by the indigenous and *campesino* people and

the closing off of channels for political and institutional participation to resolve these social problems, accompanied by State repression, led various groups to take up arms to make their demands.

In the seventies, with the appearance of various armed movements in Guerrero, the federal and state governments resorted to the militarization of the state. The Army played a lead role in combating the insurgency. Its disproportional and arbitrary behavior did not obey the rule of law. It carried out thousands of serious human rights violations against rural inhabitants who were not participating in any conflict, such as torture, forced disappearances and extrajudicial executions. Of the almost one thousand two hundred forced disappearances that according to the records took place in Mexico in the sixties, during what was named the 'dirty war', almost half took place in Guerrero. In 1974, during the peak of the counterinsurgency campaign, there was a de facto suspension of civil guarantees in which the political authorities faded into the background and soldiers occupied the territories of rural

communities and started to act as political authorities. In spite of the Army's responsibility in the commission of serious human rights violations, nobody has been put on trial.

In the eighties the Army's role in the repression of political opposition and organized communities was reduced. However, this institution began to take on other roles in public life which did not conform to its constitutional mandate either. Slowly, the Army became responsible for the eradication of illegal crops in the Montaña and Sierra regions of the state. In this context it continued to commit serious human rights violations. The militaristic logic remained untouched: if before the civilian population were suspected guerrillas, now they had become suspected drug producers.

The panorama changed in 1994, with the uprising of the Zapatista National Liberation Army (EZLN) on 1st January. The Mexican Army once again intensified its counterinsurgency work. In Chiapas, thousands of members of the Mexican Army were deployed to the

indigenous communities of the region to carry out counterinsurgency tasks, leading to serious human rights violations, such as the rape of Tseltal sisters Ana, Beatriz and Celia Gonzalez Perez by members of the Armed Forces.

In addition to this, in the 1990s a process of legislative changes commenced which generated a legal framework conducive to covering up the behavior of the Army in these public security tasks and even in its policing and investigative roles. In this context, a General Law was created that established the Rules for the Coordination of the National Public Security System and the Preventive Federal Police. Consequently, in 1995 police officers started to be replaced by soldiers in positions responsible for public security and justice. At the same time the Army began to assist the police, creating what are known as Mixed Operation Bases (Bases de Operaciones Mixtas, BOM), which are checkpoints established in different places, but primarily on main roads, to search the vehicles and people that travel along them. The first BOMs were created in 1993 and 1998 in Chiapas and Guerrero, respectively; states with

elevated levels of marginalization and poverty, where the presence of armed insurgency groups has been documented.

In 1996, following the public appearance of the Popular Revolutionary Army (EPR), at the entrance to Aguas Blancas in Coyuca de Benítez municipality, Guerrero state was militarized again. Just as in the sixties, the Army returned to occupy indigenous territories, made incursions into the villages, destroyed crops, raided homes and summarily detained, tortured and executed the *campesinos* and indigenous people. On record are the rapes of Delfina Flores Aguilar and Aurelia Mendez Ramirez; indigenous women who reported being sexually abused in December 1997, as well as the rape of Victoriana Vazquez Sanchez and Francisca Santos Pablo, indigenous Amuzgo women from Xochistlahuaca municipality, Guerrero, who were sexually abused in 1999.

In order to justify their presence in the indigenous and *campesino* communities, the military commanders claimed that they worked in the eradication of drug crops and the application of the Federal

Firearms and Explosives Law. However, during the incursions, checkpoint searches and arrests of indigenous inhabitants, the counterinsurgency objectives of the deployment were clear. When they were arrested people were interrogated about the activities of the EPR (often being questioned about “hooded ones” or members of the Guerrilla).

In the context of the combat against guerrilla groups and growing militarization in the state, the El Charco massacre took place in the mountainous zone of Ayutla. At four o'clock in the morning on 7th June 1998 a group of *campesinos* and indigenous people were spending the night in the village primary school, after holding an assembly, when hundreds of soldiers surrounded the building and opened fire on them, killing eleven and injuring six. The Army claimed that in the group there had been guerrilla fighters from the Insurgent People's Revolutionary Army (Ejército Revolucionario del Pueblo Insurgente, ERPI) and that the indigenous people died as a result of an attack on the Mexican Army and the legitimate response of this armed institution.

The human rights violations committed against Rodolfo Montiel, Teodoro Cabrera, Valentina Rosendo Cantú and Inés Fernández Ortega occurred in this context. The rape and torture suffered by Valentina Rosendo Cantú and Inés Fernández Ortega took place in the context of the militarization of the indigenous territories of the Costa-Montaña region of Guerrero state. When hundreds of soldiers made incursions into Ayutla and Acatepec municipalities with the pretext of searching for members of the EPR, the abuses were committed against the indigenous population without any links to this insurgent group.

Since then until the present day, the Army has continued to patrol the indigenous Me'phaa and Na'savi communities in both municipalities. The military presence is part of a strategy with the officially accepted objective of preventing the emergence of guerrilla groups, but which in reality affects social movements because they are considered a potential enemy, to be undermined and destroyed, starting with their community organization and

culture. Therefore, the Army has not simply been present; it has raided homes, detained indigenous inhabitants, destroyed their crops and tortured and raped the women in the region. These abuses have been extensively documented by international human rights organizations such as Amnesty International.¹⁸

In the case of Rodolfo Montiel and Teodoro Cabrera, their arrest, torture and subsequent unfair trial took place in the context of the militarization and counterinsurgency efforts in the Sierra de Petatlán and Coyuca de Catalán regions, as demonstrated by the fact that the soldiers deliberately tried to link the ecologist *campesinos* to armed groups. In the Sierra, the Army, acting to promote the interests of local *caciques* who saw the *campesino* organization as a threat to their interests, repressed their collective efforts to defend the environment. Therefore, what happened to Montiel and Cabrera is one of the many abuses caused by the presence of the Army in this area.

¹⁸ Mexico: Indigenous Women and Military Injustice. Amnesty International Office: AMR 41/033/2003, 23rd November, pages 11 and 12.

To date, military troops are still present in the vicinity Petatlán and Coyuca de Catalán. With their support, civilian armed groups have also proliferated and they continue the Army's work suffocating and controlling the efforts of *campesinos* in the Sierra to organize.

However, the cases of Valentina Rosendo, Inés Fernández, Rodolfo Montiel and Teodoro Cabrera don't only demonstrate the consequences of militarization in Guerrero state. Their experiences as victims are now a common reality for many people because under the government of Felipe Calderon, militarization has spread across the country. Based on the premise of combating organized crime at any cost, human rights have been ignored. The requirements for tapping phones and searching homes have been made extremely flexible; *arraigo*, or detention without trial, has been enshrined in the Constitution and there is a very ambiguous definition of organized crime that favors the criminalization of social protest and does not meet the criteria outlined in the Palermo Convention.

In this context of intensifying militarization, human rights violations have increased significantly. Between 1st January 2007 and 31st July 2009, the national media registered hundreds of cases of human rights violations committed by soldiers in numerous states including Guerrero, Tamaulipas, Chihuahua, Michoacán, Sinaloa, Nuevo León, Chiapas, Oaxaca, Veracruz, Baja California, Estado de México, Morelos, Tabasco, Aguascalientes, Coahuila, Durango, Guanajuato, Querétaro, Sonora, Yucatán, Tlaxcala, San Luis Potosí, Puebla and the Federal District.¹⁹ Also, the number of complaints received by the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) against the National Defense Department (Secretaría de la Defensa Nacional, Sedena) multiplied

¹⁹ Data collected by Center Prodh. Please refer to the following documents (available in Spanish only) *No Más Abusos, Boletín Informativo sobre Abusos en el Contexto de los Operativos Militarizados 2009*, No. 1. September 2009, available at www.nomasabusos.org/sept.pdf and *¿Comandante Supremo? La ausencia de control civil sobre las Fuerzas Armadas al inicio del sexenio de Felipe Calderón*, January 2009, available at www.centroprodh.org.mx/Publicaciones/InformeAbusosMilitaresCOMP090309.pdf, pages 24-26.

almost ten times over in the first three years of Calderon's government; increasing from 182 in 2006 to 1,791 in 2009.²⁰

By showing the human rights consequences of militarization, the cases of Inés Fernández Ortega and Valentina Rosendo Cantú, along with the case of Rodolfo Montiel and Teodoro Cabrera, have significant implications regarding the situation currently faced in this country.

II. HUMAN RIGHTS DEFENDERS AT RISK

The cases being analyzed by the Inter-American Court also demonstrate the risks faced in Guerrero and Mexico as a whole by human rights defenders.

The Inter-American Commission on Human Rights acknowledges in its "Report on the situation of human rights defenders in the

²⁰ See the annual reports of the National Human Rights Commission, available in Spanish at www.cndh.org.mx/lacndh/informes/informes.htm.

Americas," published in 2006, that the basic analysis framework for deciding who should be considered a human rights defender is contained in the *Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms*, adopted by the United Nations. Article 1 of this declaration establishes that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels..."²¹

Therefore, a person's actions are the main criterion to define whether he or she is a human rights defender and other qualities are not considered pertinent, such as whether or not the person receives payment or professional recognition for this work. From

²¹ IACHR, *Report on the situation of Human Rights Defenders in the Americas*. OAS/Ser.L/V/II.124, Doc 5 rev. 1, 7th March 2006, para. 13, citing the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, approved by the UN General Assembly on 9th December 1998, A/RES/53/144.

this perspective, any person who in any way protects, promotes or defends any human right in favor of individuals or groups- including any civil, political, economic, social, cultural or environmental rights- should be considered a human rights defender.

It is clear that the work of human rights defenders can take different forms, from legal work and the promotion of human rights and training of community promoters, to the public denunciation of violations and demanding that the State respects human rights.

This broad definition of human rights defenders is fully expressed in contexts such as Guerrero. In this state it is possible to see leaders and members of social organizations or organized movements who, even though they don't carry out legal work as such or belong to a human rights organization, can be considered human rights defenders because of their work.

Given their special characteristics, it is these human rights defenders who face the greatest risks and vulnerability, a fact acknowledged by the IACHR. Indigenous, *campesino*, community

and trade union leaders constitute the sectors that are most exposed to facing repression for their work. When this happens, such risks not only loom over individuals, but they are genuine threats to society as a whole, because these human rights defenders are closely linked to the daily reality of the most vulnerable groups and the discrimination they face.

In Guerrero people become human rights defenders through their struggles; they are created defending what legitimately belongs to them. In this state we find that various human rights defenders are indigenous, some even monolingual, born into extreme marginalization and poverty. These inequalities lead them to demand respect for the fundamental rights of indigenous and *campesino* peoples and work toward alternative forms of development. The cases of Inés Fernández and Valentina Rosendo, along with the cases of Rodolfo Montiel and Teodoro Cabrera, are a clear demonstration of this.

Montiel and Cabrera were victims of serious human rights violations because of their commitment to the defense of Guerrero's forests. Specifically, the strength and widespread legitimacy of the Organization of Ecologist Campesinos from Petatlán Sierra and Coyuca de Catalán, attracted repression sponsored by local *caciques*, in conspiracy with the federal and state government and especially, the Mexican Army. The human rights violations were not solely against Rodolfo Montiel and Teodoro Cabrera; they also extended to other members of the organization, such as Felipe Arreaga, who was named a prisoner of conscience by Amnesty International. Rodolfo Montiel and Teodoro Cabrera, consistent defenders of the right to a healthy environment, suffered human rights violations for defending human rights, as has also happened to other community environmentalists such as Aldo Zamora in the state of Mexico. Their struggle for the environment unleashed a harsh and lasting repression: nowadays the ecologist *campesinos* from Guerrero live outside of the state and are unable to return to their home communities because of the persistent threats.

In the case of Rodolfo Montiel and Teodoro Cabrera, the threats and risks also spread to those who at the time were responsible for their legal defense. Members of the Miguel Agustín Pro Juárez Human Rights Center were harassed during the legal process and whilst the ecologists were still in prison, lawyer Digna Ochoa was found dead in her office; she had acted as their legal representative at the beginning of their trial. To date, the circumstances of her death have still not been clarified.

It is a similar situation in the cases of Inés Fernández and Valentina Rosendo. Both Me'phaa women have maintained their demand for justice in adverse circumstances, with strength and dignity, to the extent that by giving their testimonies and speaking out in different spaces, they have also become human rights defenders. Likewise, both they and those who have accompanied them have suffered harassment and threats. The Indigenous Me'phaa People's Organization as a whole (Organización del Pueblo Indígena Me'phaa, OPIM), has presence in the indigenous communities in

Ayutla and Acatapec municipality, and its members have been the object of threats, persecution, imprisonment for fabricated crimes, torture and even extrajudicial executions.²²

Various threats have materialized. The case of Inés Fernández illustrates this because she and her family have been receiving threats since 2003 and in spite of having reported these acts and indicated who is responsible, the perpetrators have never been sanctioned. In 2008, Lorenzo Fernández Ortega, Inés's brother and a distinguished member of the OPIM, was murdered and his body was found bearing visible signs of torture. This crime remains in impunity. The same year, the Mexican Army arrested five indigenous leaders of the OPIM who were accused with falsified evidence of having committed a murder. Amnesty International declared them prisoners of conscience. Four of them were released

²² Some of the aggressions suffered by the OPIM and the Organization for the Future of the Mixtec Peoples (OFPM), such as threats, ill-treatment, injuries and extrajudicial executions, are detailed in the following investigations and legal files: AMPE/05/2007; ALLE/SC/01/032/2008; ALLE/SC/01/065/2006; ALLE/SC/02/095/2007; FEIDG/003/2009; MOR/SC/02/226/2009; GRO/SC/033/2009. To date, the investigations have not advanced and no one has been charged.

on 19th March 2009, because there was no evidence to put them on trial, but Raúl Hernández Abundio remained in prison until 2010. Likewise, on 13th February 2009, indigenous men Raúl Lucas Lucía and Manuel Ponce Rosas, President and Secretary, respectively, of the Organization for the Future of the Mixtec People (Organización para el Futuro del Pueblo Mixteco, OFPM), an organization that shares the same origin and line of work as the OPIM, were arbitrarily detained by people who said they were police. They were disappeared and on the 20th of the same month and year, their bodies were found with visible signs of torture.

In this context Tlachinollan Human Rights Centre has received a series of threats and attacks which have still not ceased to date. Consequently, they have had to close their office in Ayutla. The risks have become so extreme that the Inter-American Court of Human Rights granted provisional measures to 107 human rights defenders in Guerrero, belonging to the OPIM (including Inés Fernández and her family), the OFPM and Tlachinollan, on 30th April 2009.

In demonstrating the risks that human rights defenders face in Mexico, the cases that are being heard by the Inter-American Court are of significance on a national level. In recent years, the risks for human rights defenders have been increasing. This is illustrated by the cases registered by the United Nations Office of the High Commissioner for Human Rights in Mexico, between 2006 and August 2009, in which 10 people were killed and 26 criminal trials were initiated, affecting 32 human rights defenders. Likewise, in its study of 128 cases of attacks and acts of aggression against Mexican human rights defenders between 2006 and August 2009, it was possible to verify that more than 98% of those cases remain in impunity.²³

Therefore in Mexico, the people and civil and social organizations that demand justice for the victims of human rights violations face not only a campaign aimed at undermining their work as human rights defenders, but they also suffer persecution, harassment and

²³ Office of the High Commissioner for Human Rights. Defending Human Rights: Between Commitment and Risk. Report on the Situation of Human Rights Defenders in Mexico, 2009, available in Spanish at www.hchr.org.mx/documentos/libros/informepdf.pdf.

threats which have the sole objective of stopping their work, silencing their complaints and violating the right to defend human rights.

III. MILITARY JURISDICTION: THE INSTITUTIONALIZATION OF IMPUNITY

Finally, another aspect present in both the cases of the Me'phaa women and the ecologist *campesinos* relates to the impunity that has prevailed. There has been no light shed upon these cases, those responsible have not been punished, the damages have not been fully compensated and the necessary measures have not been adopted to guarantee that such events are not repeated.

In the case of Rodolfo Montiel and Teodoro Cabrera, the torture that they suffered went unpunished, and even though they were released in what was a tacit acknowledgment of their innocence, they still have to live with the criminal records that resulted from a flawed legal process.

In the cases of Valentina Rosendo and Inés Fernández, the rape and torture that they suffered also remains in impunity, because nobody has been duly punished. Furthermore, the State insistently denies what happened and the context in which it occurred.

The cases faced by the Mexican State are an example of the impunity that repeatedly prevails in cases of human rights violations. In these cases it is possible to witness the consequences of a collapsed and profoundly unjust legal system that protects the impunity of the powerful, whilst it disproportionately punishes the most vulnerable people for the exclusion and discrimination they suffer.

In addition to this, the cases of the ecologist *campesinos* and the Me'phaa women illustrate a specific aspect of the institutionalization of impunity that characterizes the national reality. In each of the cases, a factor that has made a decisive

contribution to the human rights violations that remain in impunity is military jurisdiction.

This means that the military authorities assumed jurisdiction for investigating the abuses committed by other members of their own institution. Such conduct is a practice that is deeply rooted in this country and which almost invariably results in impunity. As a result, upon carrying out arbitrary arrests, rapes and other physical and psychological forms of torture such as those described here, those responsible know and trust in the fact that they are very unlikely to be punished.

The legal foundation for military jurisdiction is article 13 of the Constitution. This article imposes a clear limit on the extension of Army jurisdiction upon establishing that:

Military jurisdiction exists for crimes and infractions against military discipline; but the military courts must not in any case or for any reason, extend their

jurisdiction over people who do not belong to the Army. When a civilian is involved in a military crime or infraction, the corresponding civilian authority will try the case.

As can be seen, in accordance with the Constitution, military jurisdiction should apply only to crimes against military discipline, such as insubordination or desertion. On the other hand, when a crime affects human rights or when there is an infraction against military discipline and human rights resulting from the same events, the jurisdiction over human rights matters must belong to civilian courts. Article 13 also establishes that military jurisdiction cannot be exercised over a civilian.

However, the Code of Military Justice, the secondary set of rules issued by presidential decree in 1933 to regulate article 13 of the Constitution, in no way conforms to the requirements established within the Constitution, establishing in its article 57.II that crimes against military jurisdiction include, among others, all those “that

are committed by soldiers whilst in service or carrying out service-related tasks...” By means of the aforementioned regulation, the Code of Military Justice converts the military justice system into a personal jurisdiction applicable in practice to all crimes committed by soldiers on duty.

This is why nowadays human rights violations are routinely investigated and judged within the military system. This system lacks independence as a result of its structure, given that it is a system under the National Department of Defense, in which the authorities responsible for investigating and judging offences belong to the same institution as those accused of committing abuses. On the other hand, the empirical evidence regarding the role of military jurisdiction in maintaining impunity is overwhelming: the statistics announced by the Ministry of the Interior allow us to confirm that only one soldier has been

sentenced for human rights violations committed during this six-year period of government.²⁴

The extension of military jurisdiction over human rights violations in Mexico also constitutes a permanent violation of international law, both on a regional and universal level.²⁵ In particular the Inter-American Court has established unequivocally that the American

²⁴ It was a nine month prison sentence given to a soldier who fatally shot a civilian. See Document 100-243, issued by the Ministry of the Interior, 20th October 2009, available in Spanish at www.hrw.org/es/news/2009/11/20/carta-respondiendo-al-secratario-de-gobernaci-n-de-m-xico-fernando-francisco-g-mez-m. The document identified nine cases of alleged human rights violations; only three correspond to events that occurred after 2006; out of these, two resulted in convictions. One of these was a traffic incident so therefore the document allows us to conclude that there is only one conviction (of nine months) for a probable human rights violation, in which the aforementioned life was lost.

²⁵ It is worth mentioning that the Special Rapporteur on Torture from the United Nations indicated after a mission to Mexico that “Military personnel appear to be immune from civilian justice and generally protected by military justice” and he recommended that “Cases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice.” Report by the Special Rapporteur on Torture, E/CN.4/1998/38/Add.2, 14th January 1998, paras. 86 and 88. Similar recommendations have been directed to Mexico from the Committee against Torture, the Rapporteurs on Violence against Women, Indigenous Peoples, Extrajudicial Executions and the Independence of Judges and Lawyers, the Working Group on Arbitrary Arrest and different member states of the UN Human Rights Council.

Convention on Human Rights requires military jurisdiction to be limited to those crimes that affect military discipline, which in no case may include human rights violations.²⁶ We note that the Court had the opportunity to establish its position on this issue in 2009 in the aforementioned case *Radilla Pacheco vs. Mexico*.²⁷ The occurrences in that case took place within the 1960s dirty war and they show a pattern of forced disappearances, torture and executions committed systematically with the aim of repressing opposition movements; a practice that has had a particularly serious impact in Guerrero. In this context, Mr. Rosendo Radilla

²⁶ See for example, Inter-American Court, Rochela Massacre vs. Colombia, (ser. C), No. 163 (11th May 2007), paras. 200 and 204; La Cantúta vs. Peru (ser. C) No. 162 (2nd November 2006), para. 142. It is also pertinent to note that in the case of *Ana, Beatriz and Celia Gonzalez Perez vs. Mexico*, in which members of the Army raped three indigenous women, the Inter-American Commission observed that these acts “cannot in any way be considered as events that affect the legal goods linked to the military order... therefore the investigation of the events in this case under military jurisdiction is totally inappropriate.” IACHR, case 11.565, Report 53/01, 4th April 2001, available at <http://www.cidh.oas.org/women/Mexico11.565eng.htm>, para. 82.

²⁷ Inter-American Court, *Radilla Pacheco vs. Mexico* (ser. C), No. 209, (23rd November 2009). The non-governmental organizations Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH) and the Association of Family Members of Detained or Disappeared People and Victims of Human Rights Violations in Mexico (AFADEM) defended the case before the Inter-American Court.

Pacheco was arbitrarily arrested and disappeared by members of the Army in August 1974. Even after decades of struggle by Mr. Radilla's family when a legal process was initiated against one of the accused, the civilian authorities, as is routine practice, remitted the case to military jurisdiction. Upon analyzing this case the Inter-American Court reiterated that military jurisdiction should only be used when trying "crimes or offenses that based on their own nature threaten the juridical rights of the military order itself" and that "regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance."²⁸ It also stated that "when the military courts hear of acts that constitute violations to human rights against civilians they exercise jurisdiction... with regard to the civilian victim."²⁹ Based on its analysis, the Court declared that article 57 of the Code of Military Justice is incompatible with the American Convention and ordered the State to reform it.³⁰ To date, the reform remains pending.

²⁸ *Id.*, paragraphs. 272, 274.

²⁹ *Id.*, paragraph. 275.

³⁰ *Id.*, para. 342.

The need for a reform on this matter is clear when one recalls that in Mexico no legal remedy exists to combat impunity by contesting the application of military jurisdiction to human rights violations.³¹

This was confirmed in 2009 by the National Supreme Court (Suprema Corte de Justicia de la Nación, SCJN) in a case that originated in the execution of four civilians in March 2008 in Sinaloa state. The family of the dead victims requested an injunction against the application of military jurisdiction in this case, pointing out the unconstitutional nature of article 57 of the Code of Military Justice. The SCJN assumed jurisdiction over the injunction request, filed by Reynalda Morales Rodriguez. The proposed sentence, authored by Justice Jose Ramon Cossio, adopted the arguments offered by the victim's representatives. However, the majority of the Supreme Court avoided analyzing the merits of the case saying that the victims do not have the legal right to request an injunction

³¹ The right to an effective remedy against any human rights violation is established in many treaties, including article 2 of the International Covenant on Civil and Political Rights; article 13 of the Convention Against Torture; article 25 of the American Convention on Human Rights and Article 8 of the Inter-American Convention to Prevent and Punish Torture.

to question the competence of military jurisdiction over their cases.³²

This is why currently, even when among the Justices of the Supreme Court there are those who acknowledge that the Code of Military Justice is unconstitutional,³³ the victims of military abuses do not have any way to question the application of the Code to their cases. Instead, having suffered human rights violations, the victims and their families are obliged to watch how an authority lacking in jurisdiction and independence carries out an investigation or legal process that is very likely to end in impunity. This is the process that the victims in the following three cases have

³² The majority of Justices considered that Mrs. Morales did not have the right to request an injunction, primarily because her request did not fit the hypotheses foreseen in article 10 of the Amparo Law, which limits the rights of victims and damaged parties to requesting injunctions related to reparations, decisions not to prosecute and other limited matters. See Article 10 of the Amparo Law, Regulatory of Articles 103 and 107 of the Political Constitution of the United States of Mexico. The SCJN maintained that the right to request that civilian jurisdiction tries a case of human rights violations is not established in the aforementioned article 10 or in article 20 of the Constitution.

³³ Please refer to the Individual Vote of Justice Jose Ramon Cossio Diaz with regards to the Amparo case 989/2009.

experienced. Each of these cases is now before the Inter-American Court precisely because in Mexico it is not possible to obtain justice following the commission of abuses by the military that affect the human rights of civilians.

CONCLUSION

The cumulative effect of the factors analyzed in this section – militarization in Guerrero state, institutionalized impunity for the pattern of abuses committed as a result, and the lack of security for human rights defenders – has enabled and encouraged the commission of the serious acts described in the following sections. Understood in this manner it is clear that the issue of impunity for military abuses is not an academic debate and much less an abstract issue: it is a practice that has already led to the arbitrary arrest, torture, rape and sexual abuse of countless civilians, men and women, and every day new people become victims. In the specific cases described in this report, the close relationship between impunity and other structural patterns of human rights

violations becomes evident, including the use of illegal arrest as a method for deterring social activism; the use of torture to extract confessions from people in custody and the rape and torture of indigenous women. These cases are discussed in detail in the following sections.

VALENTINA

What I am asking is for the soldiers to be punished.
I have not been able to return to my community for 8 years,
8 years of impunity, and it's not just me,
there are many women raped by the Army
who haven't reported it,
out of fear.
I am so scared of meeting soldiers again.
I live in great fear.
I cannot return while the soldiers are there.
27th May 2010

Statement by Valentina Rosendo Cantú,
during the public hearing before the Inter-American Court

INTRODUCTION

In indigenous territories, militarization and the risks faced by those who attempt to organize to defend their rights often make women more vulnerable to human rights violations. This is demonstrated by the case of Valentina Rosendo Cantú.

Valentina Rosendo Cantú was born on 14th February 1985 in the indigenous community of Caxitepec, Acatepec municipality, Guerrero, Mexico. She is the daughter of Maria Cantú Garcia and Victoriano Rosendo Morales. She is the oldest of 10 children. Valentina and her family belong to the Me'phaa (Tlapaneco) indigenous group. At the time of the occurrences, she was only partially able to speak, read and write Spanish.

Like the vast majority of indigenous girls from the region, Valentina was responsible for looking after her parents and her brothers and sisters, by learning how to work in the fields. Likewise, she learned how to rear animals, as do the rest of the women from the region.

Valentina received her primary education in the community, but given the lack of schools, she had to move to Chilpancingo to study at secondary school. While she was there she had to live with a woman who offered her lodgings, basic food and allowed her to attend school, in return for working both in the home and in their business.³⁴

She only stayed there for a few months and then she had to return to her home in Caxitepec to look after her mother, who suffered from health problems, in order to fulfill her role as the eldest daughter, as dictated by the community's customs.

In November 2000, six months after returning to her community, Valentina married Fidel Bernardino Sierra, from Barranca Bejuco. She was 15 and he was 24 years old. Once she was married she

³⁴ According to the standards established by the International Labour Organization, under many circumstances this practice is defined as one of the worst forms of child labour, prohibited by Convention 182 of the ILO, which was signed and ratified by Mexico on 30th June 2000.

went to live in her husband's community Barranca Bejuco, Acatepec municipality, Guerrero, located an hour and a half's walk away from Caxitepec. In spite of having moved to a different community she still visited her family very frequently.

Valentina Rosendo and Fidel Bernardino had a daughter named Yenis Bernardino Cantú, three months before the rape that Valentina suffered at the hands of soldiers.

I. THE RAPE OF VALENTINA ROSENDO CANTÚ BY MEMBERS OF THE MEXICAN ARMY

a) 16th February 2002

On 16th February 2002, at approximately two o'clock in the afternoon, Valentina Rosendo Cantú left her house to go to a stream and wash her clothes, at about 200 meters from her house, in a completely uninhabited area. That day, Valentina left her three-month old daughter with her sister-in-law, Estela Bernardino Sierra.

After washing her clothes for an hour, Valentina saw eight soldiers from the Mexican Army arrive. The soldiers appeared on the path that heads toward Caxitepec and they had a civilian with them, who was tied up as if detained or being held prisoner.

Two of the soldiers approached Valentina whilst the other six surrounded her, so that she ended up alone in the middle. The first soldier started to interrogate her insistently and aggressively. He asked her where the “hooded ones” were to be found and she replied that she did not know who they were. In response one of them pointed his weapon at her, threatening to shoot her as he said “so you’re not from Barranca Bejuco?” Valentina responded that she was from Caxitepec. Then, another soldier showed her a photograph of another person, whilst he continued to interrogate her as to whether she knew the man in the photo; once again she answered that she didn’t. Immediately, the same soldier showed her a piece of paper with a list of names on it and he read out the names of eleven people and asked her again if she knew them.

Valentina insisted that she did not know these people because she was scared that they would do something to her. However, the names of her husband Fidel Bernardino Sierra and other members of his family were on the list, including Ezequiel Sierra Morales, who at that time was the municipal delegate of Barranca Bejuco and member of the Independent Organization of Mixtec and Tlapaneco Peoples (Organización Independiente de Pueblos Mixtecos y Tlapanecos, OIPMT), the organization which preceded the OPIM.

Given the lack of positive answers from Valentina, the soldier hit her in the stomach with his weapon and she fell backwards onto some stones. When she tried to get up a soldier grabbed her by the hair and yelled at her “what do you mean you don’t know, when you are from Barranca Bejuco” and he threatened her saying that if she didn’t tell them who the hooded ones were they would kill her and all of the people in Barranca Bejuco community.

Then two soldiers held down the Me’phaa woman, in full view of the rest of the soldiers and the civilian who was with them. They

struck Valentina in the face and then they took off her clothes and one of them raped her. Afterwards the other soldier who had been interrogating her raped her as well.

Afterwards, Valentina ran through the hills to her mother- and father-in-law's house, where she waited for her husband, Fidel Bernardino, and later told him what had happened to her. Later Fidel went to the village to report what had happened to the community authorities.

It is worth mentioning that according to official Army documents, on the day that these events took place, the 41st Infantry Battalion of the Mexican Army was carrying out activities in two Operations Bases near to Barranca Bejuco, called "Rios" and "Figuroa."³⁵ The "Rios" Operations Base was located just outside of Mexcaltepec

³⁵ Radio message No. 2/5179 on 2nd March 2002, issued by the headquarters of the IX Military Region, sent to the Military Prosecutor's Office in document 16319 on 6th March 2002, sheets 277 to 285 of the case file; SEDENA, 35th Military Zone, "ACATEPEC Movement Order," on 28th January 2002, Chilpancingo, Guerrero, sheets 305-311 of the case file.

community in Acatepec municipality, Guerrero, which is one hour away from Barranca Bejuco community, where Valentina lived.³⁶

b) The medical attention that Valentina Rosendo Cantú received from the Guerrero health authority immediately after being raped

Immediately after being raped Valentina had intense pain in her stomach and there was blood in her urine, so she decided to visit a doctor to receive medical attention. On 18th February 2002, Valentina Rosendo, with her three-month old daughter on her back, and her husband walked for an hour to the public health clinic in Caxitepec municipality, the closest place to her house,³⁷ to receive medical attention after the rape.

³⁶ In spite of this, when the complaint became public, in a press release dated 7th March 2002, the National Department of Defense (SEDENA) denied the accusations against military personnel by Valentina Rosendo and even denied the existence of military presence in the area, without having initiated an investigation into what happened. SEDENA, Press release no. 25, 7th March 2002, incorporated into the complaint file CODDEHUM-VG/065/2002/II from the Commission for the Defense of Human Rights in Guerrero (CODDEHUM), initiated on 7th March 2002.

³⁷ In Barranca Bejuco there is no clinic or doctor to attend to health emergencies in the community, as is the case in various indigenous regions of Guerrero.

However, upon hearing what had happened to her, the doctor that attended her did not want to treat her, saying that he did not want problems with the soldiers. Moreover, he told her that he did not have the necessary equipment and that it would be better if she went to Ayutla de los Libres town. Fidel insisted that he treat her because Valentina felt very ill, so the doctor gave her some tablets for the pain and he “recommended” that she go to the General Hospital in Ayutla de los Libres.

Days later, when Valentina had partially recovered in her house, once again, she and her husband, carrying her child, walked for almost eight hours to get to Ayutla de los Libres General Hospital. However, Valentina was not given treatment because she didn't have an appointment, even though she reported that she had been the victim of rape at the hands of soldiers and needed medical attention for the pain. They told her to return the next day, so her family had to spend the night in Ayutla de los Libres.

The next day, on 26th February, Valentina and Fidel returned to the hospital where she was partially attended to by a general doctor, who carried out an incomplete physical examination and only recorded having detected an injury in the abdomen.

c) The investigation

On 16th February 2002, when Fidel went to the Municipal Delegation in Barranca Bejuco community to inform them about what had happened and proceed with the legal complaint, the Community Assembly agreed that all of the men in the community would hide in the mountains in response to the threat from the soldiers. The men hid for two days, leaving the women and children on their own.

The next day the delegate and the representative of Barranca Bejuco went to Chilpancingo city to tell the president of Acatepec, Guerrero, about what had happened. He promised to go to the

community on 26th February 2002 to address the situation, but he never arrived.

Given the lack of a response from the municipal authorities, on 26th February 2002, Fidel and Valentina asked for help from the Independent Organization of Mixtec and Tlapaneco Peoples (OIPMT). The OIPMT offered their support and decided to present a complaint regarding the rape of Valentina Rosendo Cantú before the public human rights institutions.

On 26th February Valentina Rosendo and Fidel Bernardino presented a complaint before the National Human Rights Commission. In turn, on 7th March of the same year, the Commission for the Defense of Human Rights in Guerrero (Comisión para la Defensa de los Derechos Humanos en el Estado de Guerrero, CODDEHUM) also registered the complaint.

Days after registering the complaint before the CNDH, on 6th March, some soldiers went to the place known as “Encino Amarillo” where

Valentina lived with her in-laws. They found Valentina there and in an intimidating manner they took her statement, without any prior warning or notification and in an atmosphere of fear and pressure.

At the same time, the CODDEHUM began to document the complaint in collaboration with the CNDH, the competent authority given that the Army is a federal entity. On 8th March 2002 it informed the Public Prosecutor’s Office of the events and an investigation was initiated.

Immediately afterwards the General Representative of the CODDEHUM recorded the testimonies of Valentina Rosendo and her husband Fidel. Likewise, the CODDEHUM’s doctor certified that Valentina Rosendo had external physical injuries on her face and that it was painful for her to walk as a result of the blow she received to the stomach. Finally, the General Representative accompanied Valentina Rosendo and her husband to present a formal complaint before the Public Prosecutor’s Office in Allende Judicial District for rape, torture, illegal deprivation of freedom as

well as any other offences identified during the course of the investigation.

When they arrived, the official from the Public Prosecutor's Office refused to receive the complaint after being informed about the type of crime that was being reported, arguing that in Ayutla city there was a special committee responsible for attending to sexual crimes, whose representative wasn't available at the time.

They waited for about an hour for the official in charge of the special committee to arrive, but when she did, she said that she could not receive the complaint because she had finished work at three o'clock and therefore someone else was responsible for initiating the inquiry. After an argument she finally agreed to open Investigation ALLE/SC/02/62/2002 into the rape and she took Valentina Rosendo Cantú's statement.

In spite of the fact that the official from the Public Prosecutor's Office realized that Valentina Rosendo Cantú was not able to speak

or understand Spanish fully upon making her formal statement, given that she spoke Me'phaa (Tlapaneco), she did not designate an interpreter and just recorded that when the complainant did not understand some words, her husband helped her in an improvised manner.

Having registered the complaint, the Representative of the CODDEHUM demanded from the Public Prosecutor's Office that the victim be examined immediately by a female forensic doctor. The response from the Public Prosecutor's Office was that they did not have a female forensic doctor and that the only doctor they had was not there at the time.

Meanwhile, once again, 30 soldiers from the Mexican Army deployed at the "Rios" operations base, went to Valentina Rosendo's house in order to carry out proceedings in a confrontational manner, without Valentina receiving any form of assistance. During these proceedings, they asked Valentina to come out of her house in front of all of the soldiers and identify her

aggressors. However, she felt threatened for obvious reasons and refused to identify anyone.

On 19th March 2002, Valentina went to the Public Prosecutor's Office in the Morelos Judicial District, in Tlapa de Comonfort city, in order to request that the gynecological exam be carried out in Tlapa because she did not have enough money to travel to Chilpancingo, a city located eight hours away from Barranca Bejuco on public transport. One month after the rape took place, Valentina Rosendo underwent a gynecological exam by a male forensic doctor belonging to the Guerrero State Department of Justice (PGE), in the Public Prosecutor's Office building, in Morelos Judicial District. It was not possible to find direct evidence of rape but the external physical injuries were still evident.

Later, the investigation was obstructed by a conflict over the jurisdiction which emerged when the Investigation file was sent to Morelos Judicial District. This agency reassigned the case number MOR/AEDS/025/2002 to the investigation file.

Even though there had been no progress reported in the investigation, on 16th May 2002, the Head of the Public Prosecutor's Office specializing in sexual crimes and intra-family violence from the Morelos Judicial District, declined jurisdiction in favor of military jurisdiction reasoning that:

(...) the proceedings carried out in the course of the investigation whereby VALENTINA ROSENDO CANTÚ is allegedly the victim of RAPE, committed against her by MEMBERS OF THE MEXICAN ARMY, who were on active service at the time of these events and therefore it is not within our competence (...) because it is competence of Military Jurisdiction, based on the rules established in articles 13 and 21 of the Federal Political Constitution and article 57, Fraction II, paragraph A) of the Code of Military Justice (...) ONLY AGREEMENT:- Send the Document to the General Director of Preliminary Investigations (...) so that he

can **order the corresponding person to send the investigation that we are dealing with to the Official from the Military Prosecutor's Office (...)**³⁸

Valentina Rosendo was not notified that they had declined jurisdiction until 6th June 2002, and therefore once she found out about this decision she registered an injunction request via her legal representatives, contesting military jurisdiction over the investigation.

On 30th August 2002, the First District Judge declared the injunction request registered by Valentina Rosendo to be inadmissible, arguing that he could not process it until the Military Prosecutor's Office accepted jurisdiction of the investigation and therefore he dismissed the request. Following this verdict, Valentina asked for the injunction request to be reviewed. On 12th November 2002, the tribunal confirmed the inadmissibility of the injunction request,

³⁸ Ministerial agreement from the Public Prosecutor's Office in Morelos Judicial District, on 16th May 2002, sheets 79 and 91 of the case file.

reiterating that until military jurisdiction accepted the case the rights of the complainant had not been affected.

Consequently, on 28th November 2002, Valentina presented a written complaint to the Head Military Prosecutor's Office of the 35th Military Zone, based in Chilpancingo, Guerrero, asking for him to indicate firstly if he accepted the case or not and should he decide to accept, requesting that he abstain from investigating the case.

After a month without receiving any reply, Valentina and her representatives went to the Military Prosecutor's Office of the 35th Military Zone, where they were informed that the investigation had been sent to Mexico City to the Central Sector of the Department of Military Justice.

On 20th January 2003, the Central Sector of the Military Department of Justice announced that it accepted the case, given that the events reported, if they did indeed take place, occurred whilst the

soldiers were on active service. Following this verdict, on 11th February 2003, Valentina Rosendo Cantú once again registered an injunction appeal. This appeal was rejected again on 9th May 2003.

Meanwhile, on 29th July 2003, the Public Prosecutor's Office summoned Valentina Rosendo in order to look at a photograph album of the soldiers who were operating near to Barranca Bejuco on the day that she was attacked. When Valentina did not arrive (there is no indication in any record that Valentina was notified), the Public Prosecutor's Office concluded that there were no further procedures to be carried out and they requested for the case file to be closed.³⁹ On 26th February 2004 the case was closed because it had not been proven that Valentina was a victim of rape at the hands of military personnel.

Given the impunity in this case Valentina Rosendo presented a request to the Inter-American Commission on Human Rights on 10th

November 2003, accusing the Mexican State of bearing responsibility.

Six years after the Public Prosecutor's Office had remitted the investigations to military jurisdiction, citing lack of competence, on 15th May 2008, the investigations were reopened within civilian jurisdiction, as a result of the repeated complaints from Valentina and in particular, in the context of her request to the Inter-American Commission.

On 16th May 2008, The Guerrero State Attorney General asked the Attorney General of the Republic (PGR) for his collaboration to: a) expand upon Valentina Rosendo's original statement and b) designate an expert to make a portrait to fit the description given by Valentina of her aggressors. On 14th August 2009, Valentina Rosendo went to the Public Prosecutor's Office to expand upon her initial statement. The other proceedings took place on the same day. However, instead of speeding up access to justice from this moment, on 30th October 2009, the Department of Justice's Office

³⁹ Agreement from the Military Prosecutor's Office on 8th August 2003.

for the Investigation of Sexual Crimes and Intra-Family Violence notified Tlachinollan of a decision to decline jurisdiction in favor of the Military Department of Justice, in order for this authority to continue investigating the acts committed against Valentina. In other words, even though Valentina turned once again to the civilian justice system, her case was remitted for the second time to military jurisdiction. At this time the Inter-American Court was already hearing the case (which was submitted to the Court in August 2009). Currently, Valentina's case remains in impunity and under military jurisdiction.

d) Some of the consequences of the rape of Valentina Rosendo Cantú

The damage caused to Valentina cannot be analyzed without considering the particular implications of the rape by two soldiers of her as a wife, a mother and a woman. The rape caused devastating effects in Valentina's life. She suffered stigmatization in her community and she was obliged to leave because through

different channels the information spread that if Valentina were to continue denouncing the crime, economic benefits to stimulate agriculture would be taken away from the community and the military incursions would continue. However, she not only left the community; her relationship with her husband and his family also broke down.

All of the plans that she and her daughter had for their lives and her roots in the indigenous community where she lived with her family were destroyed. On her own, she had to take responsibility for providing for her daughter and go to live in the city, where she has had to work in various jobs in order to earn a living for herself and her daughter. She was not only a victim of insensitivity and disrespect from the officials who attended her, but she has also witnessed how her case has remained in impunity through the years due to the Mexican State's repeated refusal to acknowledge what happened and carry out diligent investigations that determine the responsibility of the eight soldiers involved in the events of 16th February 2002.

e) The aggressions, threats and harassment suffered by Valentina, her family and her defenders during the investigation of her case

The presentation of a legal complaint regarding the rape of Valentina Rosendo initiated a chain of acts against her and her family's life and integrity. However, they intensified in the context of her case being sent to the Inter-American Court; those responsible being fully identified; her case being remitted back to military jurisdiction.

On 17th November 2009, Valentina Rosendo Cantú registered a complaint regarding the threats made against her, by whoever was found to be responsible, given that for several days, she had been photographed and harassed by a person as she carried out different daily activities, which implied that her moves were being monitored. Later, on 11th December 2009, at approximately 18:00,

unidentified people tried to abduct Valentina's eight-year old daughter, Yenis Bernardino Cantú, as she left school.⁴⁰

Similarly, on 20th January 2010, Valentina reported that when her father arrived to visit her where she used to live, he told her that a person who is also a family member from Caxitepec and collaborates informally with the Army, visited Maria Cantú Garcia, Valentina's mother, in order to tell her that her daughter Valentina and the latter's father Victoriano Rosendo, were in grave danger "because they are searching for them to kill them." This person also said that "the money that she gets from the lawsuit is not going to be any good to her because she is going to be dead." It is important to emphasize that this was not the first time that Valentina's family had received warnings of this kind.

As a result of this situation, on 2nd February 2010, the Inter-American Court ordered the Mexican State to adopt provisional

⁴⁰The official complaint regarding these events was presented on 15th December 2009 by Valentina Rosendo Cantú, within investigation number GRO/SC/125/2009.

measures for Valentina and her daughter because there is a well-founded fear that the threats against her and/or her family could be carried out causing irreparable damage.

II. THE CASE BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Given the evident delay and inefficiency of the national justice system, Valentina Rosendo Cantú turned to the Inter-American Commission on Human Rights in November 2003; the case was presented to the Commission by Valentina herself, the OIPMT and the non-governmental organizations Tlachinollan, CEJIL and Center Prodh. The lawsuit presented alleged the State's responsibility for the violation of the right to personal integrity (art. 5 of the American Convention on Human Rights); liberty (art. 7); due legal process (art. 8); legal protection (art. 25); articles 3, 4, 7, 8 and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará

Convention) and article 2 of the Inter-American Convention to Prevent and Punish Torture.

After verifying that the petitioners had exhausted domestic remedies, on 21st October 2006, the Commission approved the Admissibility Report. On 27th March 2009, it announced that it had approved the merits report in which it declared the violation of the right to personal integrity (art. 5); liberty (art. 7); due legal process (art. 8); honor and dignity (art. 11); the rights of the child (art. 19); the right to legal protection (art. 25), article 7 of the Belém do Pará Convention and articles 1, 6 and 7 of the Inter-American Convention to Prevent and Punish Torture.

The Commission recommended that the State adopt a series of measures to compensate the damages generated by the violation of Valentina Rosendo's rights, granting the State two months to fulfill them. Later, the IACHR granted an extension of one month to the State. However, the Mexican State did not comply with the recommendations and therefore on 2nd August 2009, the

Commission decided to submit the case to the Inter-American Court of Human Rights.

III. THE CASE BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The OPIM, Tlachinollan and CEJIL, the victim's representatives before the Court, allege that the acts committed against Valentina violated the following obligations established in the American Convention on Human Rights, the Belém do Pará Convention and the Inter-American Convention to Prevent and Punish Torture:

The right to a life free from violence. Valentina's rape was a form of violence that constituted both torture and violence against women; therefore it was a violation of her right to personal integrity and a failure to fulfill the obligations to prevent and eradicate violence against women, contained in

article 7 of the Belém do Pará Convention. It is important to mention that both the Belém do Pará Convention and the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) recognize the close relationship between violence against women and discrimination.

The right to health. Even though Valentina went to the health care institution nearest to her community, she was denied medical attention. She did not have access to adequate health services as a female victim of violence. Therefore even the most basic aspects of this right were violated.

The right not to suffer discrimination. Valentina was a victim of multiple forms of discrimination as a child and a poor indigenous female; firstly in terms of the rape that she suffered at the hands of soldiers; secondly, as a result of the lack of access to State health services to obtain treatment as a victim of violence; and thirdly, as a result of the lack of access to justice on equal terms with other members of the population.

The right not to be tortured. Valentina's rape was a form of torture. It was a) an intentional act that b) caused severe physical and mental suffering to the victim and c) it was carried out with an aim or objective.

The right to personal integrity of Valentina Rosendo Cantú's family. Likewise, the impunity that exists in this case caused damage not only to Valentina's psycho-emotional integrity, but also to everyone in her family.

The right to the protection of dignity and respect for private life. Valentina's rape was an attack against her private and family life.

The right to due process and legal guarantees. The rape was not investigated in an acceptable manner; it was left to biased and incompetent authorities from military jurisdiction and the State did not offer any domestic remedy to contest the

extension of military jurisdiction over the investigation of the aforementioned violations.

The right to be protected by special measures as a child. According to international law, Valentina was a child when she was attacked by the soldiers. Therefore, the State should have adopted special measures to protect her; however, this did not happen.

The obligation to adapt national legislation to the requirements of inter-American instruments ratified by the State. In Mexico, secondary regulations have been interpreted in a way that allows military jurisdiction to try cases of human rights violations without the victims being able to contest this process; contravening inter-American standards on this matter.

Besides the announcement of a verdict that finds the State responsible for the abovementioned human rights violations, being before the Inter-American Court means that for the first time

Valentina can testify before an impartial justice system and it is possible that the damages she suffered will be compensated. For the Court, the comprehensive reparation of human rights violations is not just financial compensation, but also the adoption of measures aimed at stopping such violations from occurring again in the future.

In Valentina's case the following comprehensive reparation measures and non-repetition guarantees have been requested from the Inter-American Court.

- **Carry out a serious and effective investigation of the events to identify and punish all of those who participated in them.** This should be carried out by an authority specialized in the investigation of violence against women, within civilian jurisdiction.
- **Create protocols to offer suitable treatment to female victims of violence.** In order to achieve this we ask the Court

to order the State to refer to the Guidelines for Medico-Legal Care for victims of sexual violence by the World Health Organization. These measures should be accompanied by a training and awareness-raising program directed at the officials in charge of applying the protocols.

- **Create an office for attention to female victims of violence, staffed by trained experts and the necessary resources, located in an accessible location for the indigenous women of the Costa-Montaña region of Guerrero.** The office should operate under the Public Prosecutor's Office and aim to guarantee that these women receive adequate treatment when they arrive in search of justice.
- **The reform of the legal framework in Mexico with regards to military jurisdiction.** In order to guarantee that the victims of military abuse have access to justice, the State must reform article 57 of the Code of Military Justice so that human rights violations are excluded from this jurisdiction.

Moreover, the State is obliged to offer an effective judicial recourse to victims so that they can contest the application of military jurisdiction to their cases, which is currently impossible due to the restrictive judicial interpretation of the Amparo Law.

- **The publication of the sentence issued by the Inter-American Court.** The publication of the sentence has been requested so that the truth may be known about these events.
- **A public apology and acknowledgement of responsibility.** The State must offer a public apology to the victim and her family, with the participation of the highest level authorities from the institutions responsible for the violations committed against Valentina.

CONCLUSION

What happened to Valentina took place in a context of human rights violations committed by the Mexican Army, against members of indigenous communities belonging to social organizations, in line with counter-insurgency and anti-drug trafficking policies carried out by the Mexican State since the 1990s. In this context, women from indigenous communities, particularly those who participate in social organizations or are identified with them, are a particular target of attacks from the Army, as a war strategy and a message of domination and power. In addition to this there is the pattern of impunity that prevails in cases of human rights violations by soldiers, which are investigated under military jurisdiction.

Likewise, in Valentina Rosendo's case the lack of institutions able to attend appropriately to indigenous women who are victims of sexual violence in the region is clear.

Valentina Rosendo Cantú has maintained her demand for justice, in the most adverse circumstances, for almost a decade. Today, awaiting the imminent resolution of her case by the Inter-American Court, she is about to see her case analyzed for the first time under fair conditions.

The Court's analysis of the case, on the other hand, will allow an in-depth examination of the prevailing backwardness in terms of access to justice for women in Mexico, particularly those who live in militarized indigenous territories.

INÉS

Since 2002 I was active as part of a group of women in my community who organized so that there would be education, doctors to look after the women and children. The government didn't let me participate, they saw that I was advocating and instead of support they sent the soldiers to hurt us. (...) I have reported it and the soldiers continue coming up to the communities, I don't want to see them, It hurts me to talk about what happened. They destroyed me, my home, my husband and my children, when the soldiers are there I feel very afraid (...)

Testimony of Inés Fernández Ortega,
8th March 2010. Source: CIMAC News

INTRODUCTION

The case of Inés Fernández Ortega demonstrates the human rights consequences, particularly upon women, generated by the militarization of indigenous territories. It is representative of the repercussions of the deployment of Army troops to carry out tasks that fall outside of their jurisdiction and also the effects of a militaristic logic that considers the organizational efforts of indigenous peoples and *campesinos* to be sources of insurrection.

Inés Fernández was born on 24th March 1977 in El Camalote indigenous community, Ayutla de los Libres municipality, Guerrero, Mexico. She is the daughter of María Lidia Ortega and sister of Ocotlán and Lorenzo Fernández Ortega.⁴¹ Inés and her family belong to the Me'phaa (Tlapaneco) indigenous group.

⁴¹ The body of Lorenzo Fernández Ortega, an active member of the OPIM who had supported his sister in her search for justice, was found in February 2008, with evident signs of torture. To date, there have not been any advances in investigating what happened.

Since she was a young child, Inés has been responsible for looking after her parents and siblings. Like other indigenous women from the region, she learned how to tend to the fields, for example, growing hibiscus and sweet corn, along with other regional products and raising animals in her backyard. She studied at primary school and was one of the only women in her community who managed to finish these basic studies. It was impossible for her to continue studying due to lack of resources.

When she was fifteen years old she married Fortunato Prisciliano Sierra and went to live with him in his hometown and neighboring community Barranca Tecuani. Once she was married, Inés worked herding goats, an activity that she carried out with Fortunato. Inés Fernández and Fortunato Prisciliano Sierra had six children. When the attack against her occurred only the first four had been born and they were nine, seven, five and three years old, respectively.

As a consequence of the context of repression of indigenous peoples and communities, in 1998, various Na'savi and Me'phaa men and women formed the Independent Organization of Mixtec and Tlapaneco Peoples (OIPMT), with the objective of fighting for better social and economic conditions for local inhabitants. Later, their movement also fought for justice following the events of the El Charco massacre, in which various indigenous people were murdered by soldiers.

Afterwards the OIPMT divided into the Independent Mixtec People's Organization⁴², in defense of the Na'Savi indigenous people, and the Indigenous Me'phaa People's Organization (OPIM), in defense of the Me'phaa indigenous people, both based in the municipal town of Ayutla de los Libres, Guerrero.

As of 1999, Fortunato was an active member of the OIPMT and later continued participating in the OPIM. His decision to participate

⁴² Organización Independiente del Pueblo Mixteco, OIPM, later to be called the Organization for the Future of Mixtec Peoples, OFPM.

in this organizational effort was founded in his desire to defend the interests of his people; especially with regards to the search for justice following abuses committed by soldiers in his community. Fortunato started to introduce new members from Barranca Tecuani, La Cienaga and Barranca Bejuco and consequently began to carry out an important role within the organization.

Inés Fernández started to participate in the OPIM in 2000, when she was invited by Fortunato. With the support of Obtilia Eugenio Manuel (leader of the OPIM) and Andrea Eugenio Manuel, Inés received training in women's rights and gradually she became a promoter of women's rights within her community; supporting and accompanying other women when they had to visit the local police chief to report domestic violence. As a consequence, Inés played an increasingly valuable role for the women and men in her community.

I. THE RAPE OF INÉS FERNÁNDEZ BY SOLDIERS FROM THE MEXICAN ARMY

a) 22nd March 2002

On 22nd March 2002, at approximately three o'clock in the afternoon, eleven soldiers arrived at Inés Fernández's house, whilst she was in the kitchen preparing fruit flavored water for her four children who were in the adjoining room.

Eight of the soldiers stayed out on Inés's patio, where she had left some beef that Fortunato had obtained after killing one of his bulls that fell into a ravine. The meat was hanging on four strings and was intended for their own consumption.

The other three soldiers entered without permission into the kitchen of the house, aiming at Inés with their weapons and interrogating her about her husband and regarding the beef that was hanging out on the patio. The soldiers asked her "where did

your husband go to steal the meat? Where did your husband go to steal the meat? Are you going to speak? Where did he go? Aren't you going to speak?" Inés didn't answer because she doesn't speak Spanish.

In response to her silence one of the soldiers interrogated her again shouting that she had better tell them where her husband was, whilst the three soldiers pointed their weapons at her chest. One of the soldiers grabbed her by both hands and told her to lie on the floor while he continued to interrogate her.

Inés lay down on the floor and without any concern for the presence of her children, the soldier raped her. Inés was able to make out that her attacker bore the insignia of the 41st Infantry Battalion on his uniform. Meanwhile, the other two soldiers surrounded her and observed what was happening.

Inés's oldest daughter, upon seeing that the soldiers were attacking her mother, ran out, taking her siblings to their grandfather's

house, nearby. When they arrived at their grandfather's house they told him what was happening, but in a state of fear and confusion he did not leave the house or let his grandchildren go out.

Once the soldier had finished raping her, the soldiers left Inés's house and they went toward the mountain, in the direction of Yerba Santa community, where there was a military encampment of the 41st Infantry Battalion of the 35th Military Zone.

At this time Inés was able to get up and she went to the door to close it, fearing that more soldiers would come in and continue attacking her. She saw that the soldiers had stolen almost all of the beef that was on the patio. Inés stayed in the kitchen until her father-in-law, her children and later her husband, Fortunato Prisciliano Sierra, arrived. After the rape, Inés suffered serious physical problems.

According to official Army documents, on the day of the events, the 41st Infantry Battalion of the Mexican Army was at the "Mendez"

operations base, located on this day at the outskirts of Yerba Santa and Barranca Tecuani communities. That day, according to their own information, a part of the squad had left the base to carry out activities aimed at combating organized crime and the drug trade near to Barranca Tecuani, applying the Federal Firearms and Explosives Law and the Permanent Struggle against the Drug Trade.

b) The investigation

On 22nd March 2002, Fortunato, Inés's husband, went looking for the local police chief in Barranca Tecuani, Simon Maurilio Morlaes, to tell him about what happened and proceed with the formal complaint.

The police chief asked Fortunato how he was going to make a formal complain when the soldiers are the law. Other men said they should go to the military encampment to complain but the police chief responded "how are we going to go to the encampment when they have their weapons?!"

The following day, on 23rd March 2002, Fortunato went to look for Obtilia Eugenio Manuel, leader of the Indigenous Me'phaa People's Organization, in the town of Ayutla de los Libres, which is located seven hours away from Barranca Tecuani, on foot. After being told about what happened, Obtilia Eugenio Manuel called the Commission for the Defense of Human Rights in Guerrero (CODDEHUM) to tell this body about the human rights violations to which Inés had been subjected.

The same day a representative from the CODDEHUM went to the OPIM's office to meet with Obtilia Eugenio Manuel and Cuauhtémoc Ramírez, also a leader of the OPIM, who went to see Inés at her home in Barranca Tecuani to see what her situation was and take down her testimony. They found her ill, weak and crying. After speaking to her they took her with her husband to Ayutla to see a doctor.

At this time the CODDEHUM began their investigation and documentation of the case and they opened complaint file number CODDEHUM-VG/081/2002-III.⁴³ Therefore, on 24th March 2002, Inés Fernández Ortega, accompanied by Obtilia Eugenio Manuel, the former's husband Fortunato Prisciliano and the General Representative from the CODDEHUM, Lawyer Hipólito Lugo, went to the Public Prosecutor's Office in Allende Judicial District, based in Ayutla de los Libres, in order to report what happened.

However, when they told the official who received them that they wanted to report a rape, before initiating proceedings, he asked Inés if she knew who had raped her. Mrs. Fernández replied, via

⁴³ Nevertheless, on 1st April 2002, the CODDEHUM had to send the complaint to the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) given the alleged participation of soldiers in the events reported by Inés Fernández, given that this is the competent body for investigating complaints against federal authorities. As a result, the CNDH opened case file 2002/810-4. Having examined the complaint the CNDH issued Recommendation No. 48/2002, in which it determined that public servants from the National Department of Defense and the State Department of Justice had violated the human rights of legality and the judicial security of the victims through actions to delay justice and irregularities in the investigations.

Obtilia Eugenio, that they were soldiers. The official said that he could not register the complaint at that time and that they should return later.

Following the refusal from the Public Prosecutor's Office, the representative from the CODDEHUM intervened to ask him to register the complaint, telling him that otherwise his refusal to attend to them would be documented. Moments later, the official from the Public Prosecutor's Office agreed reluctantly to take Inés's initial statement. In an improvised manner he named Obtilia Eugenio Manuel as the expert interpreter in the Tlapaneco language to facilitate the formal complaint by Mrs. Inés Fernández, because the Department of Justice lacked interpreters.

As a consequence of the formal complaint, an investigation was initiated into the crimes of rape, breaking and entering, abuse of authority and any others that resulted from the investigation, and case file number ALLE/SC/03/76/2202 was opened. On the same day, 24th March 2002, the Public Prosecutor's Office requested a

gynecological examination of Mrs. Inés Fernández and the dispatch of the corresponding certificate.

However, Inés refused to undergo the examination because the doctor was a man. According to the testimony given by Inés before the Inter-American Court, the male doctor pressured her, saying: “if they were men and not women that raped you, why won’t you let me examine you?”

Given the lack of female forensic staff, Inés went to Ayutla de los Libres General Hospital accompanied by Obtilia Eugenio and the Representative from the CODDEHUM, in search of a female doctor. However, there was no female doctor that could attend to Mrs. Fernández.

Inés returned to the General Hospital on 25th March 2002 to try once more for a medical examination by female staff. On this occasion a female general practitioner was present and she carried out a medical assessment on Inés, in the presence of her translator

Obtilia Eugenio. The examination lasted for one hour. The doctor took samples and wrote a medical note.

However, the results of this examination were not sent to the Public Prosecutor’s Office. On 5th April 2002, Inés went to the General Hospital to request the medical report and the results of the laboratory studies. The Director of the Hospital informed her that the studies had not been carried out in that Hospital because they did not have the necessary reagents to carry out the analyses.

The Public Prosecutor’s Office twice asked the Director of the General Hospital to send them the gynecological report and the samples obtained during the examination carried out on Inés, in order to carry out an expert test in forensic chemistry. On 26th April 2002 the Public Prosecutor’s Office was informed that both the samples and the results of the medical report had been sent to the Department of Health in Chilpancingo, Guerrero.

In the end, it turned out that in spite of the actions carried out by the victim and her representatives to document the rape, the gynecological report derived from the examination carried out on Inés three days after being raped by soldiers, was never issued. The studies requested by the doctor who examined Inés were never carried out.

On 17th May 2002, the Public Prosecutor's Office declined jurisdiction in favor of military jurisdiction, considering that the reported rape could infringe military discipline. However, Inés was not notified that they had declined jurisdiction. She found out later when she asked the Public Prosecutor's Office for information on any advances in the investigations. She requested that they give her the agreement whereby they remitted the case to military jurisdiction, but the Public Prosecutor's Office refused to give it to her because the case file was not in their hands.

On 6th June 2002, the Military Prosecutor's Office requested information regarding the samples taken from Inés during the

medical examination. Consequently, on 11th June 2002, the Guerrero State Department of Health sent them the (unstudied) samples which had not been handed over to civilian jurisdiction, even though they had been requested.

On 9th July 2002, after carrying out various chemical studies, an expert from the General Management of Expert Services from the Guerrero State Department of Justice, issued a medical report in which he found in the samples taken from Inés on 25th March, "the presence of semen in the two swabs obtained and with regards to the smears analyzed sperm cells WERE identified."

Via a document dated 16th August 2002, the Coordinator of Forensic Chemistry from the General Office of Expert Services informed that the samples were spoiled during the study. That is to say, he informed that the evidence had been destroyed. Once the evidence had been destroyed through the negligence of the authorities and the intervening experts, on 27th September 2002, six months after initiating the investigation into the rape suffered

by Inés Fernández Ortega, the Military Prosecutor's Office summoned the victim.

Meanwhile, Inés Fernández had repeatedly contested the remission of her case to military jurisdiction but her complaint was never heard. On 9th February 2003, Mrs. Fernández registered an injunction, claiming the unconstitutionality of military jurisdiction to investigate the case, given that this implied applying a special jurisdiction to a civilian victim and given the lack of independence and impartiality of military jurisdiction. The injunction request was declared inadmissible in a verdict announced on 3rd September 2003, indicating that Mrs. Fernández lacked standing to demand constitutional protection. On 19th September 2003 Mrs. Fernández registered an appeal and on 27th November 2003 a further verdict was issued confirming the original injunction ruling.

On 17th February 2003 the Military Prosecutor's Office proposed that the file be closed. Even though on this occasion their decision was not accepted, they insisted on 30th December 2004 arguing

that "THERE WAS NO INFRINGEMENT OF MILITARY DISCIPLINE." Once again, this decision was revoked, before being reiterated once again on 28th March 2006. On this occasion the Public Prosecutor's Office ordered the remission of the investigation to the Guerrero State Department of Justice in order for them to investigate whether any civilian had been responsible for the rape of Inés Fernández Ortega, given that, according to their logic, there was no evidence to incriminate members of the Army.

Therefore, on 3rd January 2007 the investigation was reopened in ordinary jurisdiction by the Public Prosecutor's Office in Allende Judicial District. The procedures carried out under ordinary jurisdiction were rejected by Mrs. Inés Fernández Ortega given the exclusion of soldiers as suspects in the rape she suffered at her home on 22nd March 2002.

On 14th August 2009, Inés went to the Public Prosecutor's Office to extend her statement. During this procedure she reiterated her accusation against the soldiers that raped her, but instead of

facilitating the justice process, it had the opposite effect. On 30th October 2009, in an irregular manner, the Office Specialized in the Investigation of Sexual Crimes and Intra-family violence from the Guerrero State Department of Justice, notified Tlachinollan of a ruling declining jurisdiction in favor of the Military Department of Justice, in order for this authority to continue investigating the acts committed against Inés. Currently, Inés's case remains in impunity and in military jurisdiction.

Apart from the legal process and its implications, the significance of the search for justice for Inés and its subsequent refusal cannot be ignored. Every one of the procedures and steps taken meant that she had to travel from her community to a city, such as Ayutla, incurring significant expenses and making a considerable effort. This had direct consequences on her family life because often she had to leave her oldest daughter Noemi in charge of her younger children. On the other hand, every visit to the Public Prosecutor's Office meant returning to the authority that had treated her in a humiliating manner and had allowed for vital evidence in her case

to be lost. Furthermore, when the Armed Forces claimed jurisdiction of the case, just the fact that the Military Prosecutor's Office was in charge of the case caused Inés feelings of impotence and frustration, knowing that her attackers had become the judges in the case against them.

c) The aggressions, threats and harassment suffered by Inés, her family and members of the OPIM during investigations into the case

The presentation of a formal complaint regarding the rape of Inés Fernández initiated a series of acts against the integrity of the victim, her family and members of the OPIM, in particular her defender and interpreter, Obtilia Eugenio Manuel, above all, when the case was registered before the Inter-American Commission in June 2004.

During the first months of 2002, Obtilia was threatened on four occasions. In December 2004 she received an anonymous message

with a death threat that referred to the cases of Inés Fernández and Valentina Rosendo. Since then, the threats, monitoring, surveillance of her house, intimidating phone calls, etc., have been repeated on various occasions each year.⁴⁴

As a result of the situation described, on 14th January 2005, the Inter-American Commission accredited the existence of imminent risk and granted precautionary measures to Obtilia, her husband Cuauhtémoc Ramirez, her sister Andrea Eugenio Manuel and her three children, from the Me'phaa community of Barranca de Guadalupe and members of the OPIM.⁴⁵

Later, more threats were made against Cuauhtémoc Ramírez Rodríguez for his work on the cases taken up by the organization. The threats and acts also affected Inés Fernández and her husband Fortunato Prisciliano Sierra. On 16th January 2003, 22 members of

⁴⁴ Silenced. Violence against human rights defenders in southern Mexico. Peace Brigades International. Mexico Project Information Bulletin. Ayutla Special. May 2009. Page 8.

⁴⁵ Please refer to the report of precautionary measures granted by the IACHR in 2005, para. 5. At <http://www.cidh.oas.org/medidas/2005.eng.htm>

the 48th Infantry Battalion of the Mexican Army entered Barranca Tecuani. Four armed soldiers went to the house of Fortunato Prisciliano and Inés Fernández and they asked repeatedly for Fortunato Prisciliano to withdraw the complaint. He refused to do so. Two days later, on 18th January, the same soldiers approached Fortunato Prisciliano again, but he insisted that he was not going to withdraw the complaint. The soldiers camped in the municipality for ten days, intimidating and harassing local residents.⁴⁶

On another occasion Fortunato Prisciliano Sierra was beaten by Mr. Alfonso Morales Silvino, who had previously had legal action taken against him for threatening Obtilia Eugenio Manuel and another two people. He warned Fortunato not to continue denouncing Inés's case because it would turn out badly for them.

⁴⁶ Amnesty International, Call to Urgent Action UA 33/03. Fear for safety. Mexico. 3rd February 2003. Inés Fernández, her husband Fortunato Prisciliano Sierra. Other residents of Barranca Tecuani, Guerrero state. Available in Spanish at <http://www.amnestyusa.org/spanish/urgente/accion/mexico02032003.html>.

Given the persistent threats and aggressions against Inés and Fortunato, on 4th September 2007, the Commission granted them precautionary measures to guarantee their lives and integrity and those of their children.⁴⁷

Later, in one of the most serious acts against Inés and her family during the investigative proceedings into her case, on 10th February 2008, her brother and member of the OPIM, Lorenzo Fernández Ortega, was found dead with serious signs of torture. According to Fortunato Prisciliano Sierra, in January 2008 Lorenzo Fernández told him that “he was very afraid that something was going to happen to him, to them or to someone from the OPIM, because there were many strange people that had approached him, asking questions about the organization and the formal complaints that he had supported in El Camalote and also he had noticed in the night time armed people circling his house and the houses of other members of the organization in a very suspicious manner, as if looking for

something.” Sadly, the preceding threats were fulfilled. To date there have been no advances in the investigations.

In addition to this long list of threats, on 11th April 2008, fifteen arrest warrants were issued against leaders and members of the OPIM and on 17th April, five of them were arrested, accused of the murder of Alejandro Feliciano Garcia, without any convincing proof and violating their procedural guarantees. The indigenous leaders who were arrested were Raúl Hernández Abundio, Manuel Cruz Victoriano, Orlando Manzanares Lorenzo, Natalio Ortega Cruz and Romualdo Santiago Enedina. Given that the evidence indicated that their unfair imprisonment aimed to inhibit the organizational efforts of the Me’phaa people, Amnesty International declared the five members of the OPIM imprisoned in Ayutla prisoners of conscience.

The pattern of threats and harassment against the OPIM, in particular against Otilia Eugenio Manuel, worsened in 2009 and 2010, also extending to members of the organization Tlachinollan,

⁴⁷ These were assigned number MC-167-07.

the legal representatives in Inés's case since the beginning of the investigations. This fact, combined with the lack of effective protection for Inés, her family and members of the OPIM and Tlachinollan, merited the adoption of provisional measures by the Inter-American Court in favor of Inés Fernández and her family, members of the OPIM and the organization Tlachinollan.⁴⁸

However, these did not put a stop to the threats. In the context of the public hearing into the case, convened by the Inter-American Court, Otilia Eugenio Manuel was threatened again. Weeks later, one of Inés's daughters was attacked by unknown men, who threatened her alluding to her mother's case.

⁴⁸ Inter-American Court, Fernández Ortega and others, regarding Mexico. Resolution of 30th April 2009.

II. THE CASE BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Given the inaction of the Mexican justice system, Inés Fernández Ortega turned to the Inter-American Commission on Human Rights on 27th May 2004. The case was taken before the Commission by Inés, the OPIM and the non-governmental organizations Tlachinollan and CEJIL. The State was accused of bearing responsibility for the violation of the right to personal integrity (art. 5 of the American Convention); liberty (art. 7); due legal process (art. 8); honor and human dignity (art. 11); protection of the family (art. 17); right to private property (art. 21); legal protection (art. 25), articles 3, 4, 7, 8 and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Para Convention) and article 2 of the Inter-American Convention to Prevent and Punish Torture.

The Commission presented its admissibility report in the case on 21st October 2006 and notified that the merits reports had been

approved on 25th November 2008. In this report the Commission recommended that the State adopt a series of measures for the comprehensive reparation of the rights violated, granting the State two months to comply. Later, the IACHR granted a three-month extension to the State. Given that the Mexican State failed to comply with the recommendations, on 7th May 2009, the Commission decided to submit the case to the Inter-American Court of Human Rights.

III. THE CASE BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

The OPIM, Tlachinollan and CEJIL argue that the acts of the State violated the following obligations established in the American Convention on Human Rights, the Belém do Pará Convention and the Inter-American Convention to Prevent and Punish Torture:

- **The right to a life free from violence.** Inés's rape constituted a form of torture and also implied discrimination. Therefore,

the violation of the right to personal integrity must be understood in this case in a broader sense: as a transgression of women's right to a life free from violence as regulated in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

- **The right not to be tortured.** Inés's rape constitutes a form of torture. It was a) an intentional act; b) it caused severe physical and mental suffering to the victim and c) it was committed with a predetermined objective.
- **The right to personal integrity of Inés Fernández Ortega's family.** The impunity in this case affected not only Inés's psycho-emotional integrity but also that of every member of her family nucleus.

- **The right to the protection of dignity and a private life.** Inés's rape constituted an attack on her private and family life.
- **The right to freedom of association.** Freedom of association includes, among other things, the right of individuals to form organizations and work collectively to defend human rights. Therefore, this right was violated because the evidence suggests that there is a close link between Inés's rape and her and her husband's participation in the OPIM, as well as the later acts of harassment, attacks and even the murder of one of the people involved in Inés Fernández's defense.
- **The right to due process and judicial guarantees.** The rape was not investigated in an adequate manner; the investigation was left to biased authorities in military jurisdiction. Furthermore, the State did not offer any internal remedy for contesting the unfair extension of

military jurisdiction over the investigation of the violations in question.

- **Obligation to adapt internal legislation to the requirements of Inter-American instruments ratified by the State.** The secondary laws in Mexico have been interpreted in a way that permits military jurisdiction to try cases of human rights violations without the victims being able to contest this process; contravening inter-American standards on the subject.

Besides the issuance of a verdict that declares and analyzes the responsibility of the State for the abovementioned human rights violations, the Court's analysis will allow Inés access to an impartial justice system and reparations for the first time. As mentioned in previous sections, the comprehensive reparation of human rights violations is not just financial compensation for the damages caused, but also the adoption of measures aimed at stopping such violations from occurring again in the future.

In Inés's case the following reparation measures and non-repetition guarantees have been requested from the Inter-American Court:

- **Fair compensation for the victim and her family and the provision of any medical and psychological treatment** that they may require as a result of the violations committed against them.
- **An investigation and trial by civilian authorities and punishment for the violations committed against Inés Fernández Ortega.** Inés has a right to justice, which means all of those responsible must be tried and punished in accordance with the law and by a competent and impartial authority.
- **The reform of Mexican legislation with regards to military jurisdiction.** In order to guarantee that the civilian victims of military abuses have access to justice it is necessary for the

State to reform article 57 of the Code of Military Justice so that human rights violations are excluded from this jurisdiction. Likewise, the State is obliged to offer an efficient legal remedy to the victims so that they can contest the application of military jurisdiction to their cases, which is currently impossible due to the restrictive interpretation of the Amparo Law.

- **The publication of the sentence released by the Inter-American Court.** In order for the truth to be known about these events, the dissemination of the sentence has been requested. This includes the sentence being announced in Me'phaa in the region where the events occurred.
- **A public apology and acknowledgement of responsibility.** The State must offer a public apology to the victim and her family, involving the highest level authorities from the institutions responsible for the violations committed against Inés.

- **The establishment of a community centre in the Me'phaa communities of the Ayutla region.** In this way Inés can continue with her work as a promoter of the human rights of the women in her community.
- **Open an office specialized in attending to female victims of violence in Ayutla City.** So that the treatment that Inés received from the authorities when she made a formal complaint is not repeated, we request the creation of an office in Ayutla, specialized in attending to female victims of violence and accessible to the indigenous women of the Costa-Montaña region.

CONCLUSION

As in the case of Valentina Rosendo Cantú, what Inés Fernández Ortega has experienced demonstrates the risks faced by those who dare to denounce the impunity that protects the soldiers; both the murder of Lorenzo Fernández Ortega and the threats suffered by Otilia Eugenio Manuel and the rest of the members of the OPIM leave no shadow of doubt in this respect.

For years, Inés and Valentina have persisted in a dignified and courageous manner in their demand for justice. In addition to this, in itself sufficient reason for the respective processes to have important relevance, there is the paradigmatic nature of the cases. What Inés and Valentina have experienced shows the recurrent nature in Mexico of issues such as the lack of access to justice for female victims of violence; the abuses generated by an increasing lack of civilian controls over the Armed Forces and the persecution faced by those who organize to defend the human rights of

indigenous peoples. Therefore, they are cases that make obvious the outrageous human rights situation in Mexico.

In addition to this, it is important to note that both Inés and Valentina currently have provisional measures from the Inter-American Court of Human Rights following the aggressions and harassment they have faced because of the reactivation of their cases on a local and international level.

It is for all of these reasons that upon analyzing Inés Fernández's case, the Inter-American Court can issue a sentence that allows Inés access to the justice that she has fought for during almost a decade and, at the same time, the Court can contribute to rectifying the serious deficiencies with regards to human rights in our country.

RODOLFO AND TEODORO

When there are trees along one ridge and also on another ridge
next door,
then the clouds crash and the water falls,
but if there are no trees on one of the ridges, the clouds pass
overhead
and only one or two drops fall,
so we lose the crops, which harms the *campesinos*
and the professionals who eat the *campesinos'* produce.
The government has the solution within its grasp:
but it is not persecuting the *campesinos*, or imprisoning them or
killing them,
but instead, supporting with productive projects that don't harm
the environment... Each tree they cut down is like a bomb that goes
off and the springs disappear,
the sea rises and with deforestation and burning of the land the
plants die;

that is to say, they kill the ecosystem and our lands erode and every
day
they become less fertile and the *campesino* loses out; the rays of
the sun become hotter, it's as if they are closer,
as if they beat down with new force.

- Words of Rodolfo Montiel during his imprisonment

INTRODUCTION

Rodolfo Montiel Flores and Teodoro Cabrera Garcia are *campesinos* from the Costa Grande region of Guerrero state. Both of them are married and have children. Before the events described below, both supported their families by growing corn, beans and other crops that they sowed on plots of land in their communities.

In the 1990s the *campesino* communities that lived in the woodland areas of the Costa Grande witnessed one of the most aggressive logging campaigns in the history of the region, carried out by a transnational corporation from the United States. Faced with the devastating effects of the logging on the environment, Rodolfo Montiel and other *campesinos* decided to found the Organization of the *Campesino* Ecologists from Sierra de Petatlán and Coyuca de Catalán (Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán, OCESP). Teodoro Cabrera participated actively in the organization and both Mr. Montiel and

Mr. Cabrera have received prestigious international awards for their work in defense of the forests.

In May 1999, in retaliation for their work in defense of the forests, Mr. Montiel and Mr. Cabrera were arbitrarily arrested by members of the Army, detained in military premises and tortured. Later, they were imprisoned, judged and sentenced for fabricated crimes, based on the confessions that were forced out of them under torture. Even though Mr. Montiel and Mr. Cabrera left prison at the end of 2001, thanks to strong national and international pressure (which included them being named prisoners of conscience by Amnesty International), the State has not acknowledged their innocence and the ecologist *campesinos* have not been able to return to their communities because of the well-founded fear that their lives would be in danger. On the other hand, the violations committed against them remain in absolute impunity, given that the corresponding investigations (carried out by the military) have offered no results.

The case of Rodolfo Montiel and Teodoro Cabrera is not isolated. On the contrary, it took place amid a context of attacks and repression against environmental defenders. Likewise, both the use of torture to obtain false confessions, along with the behavior of the legal authorities who granted evidentiary value to the aforementioned confessions, are generalized practices in the Mexican legal system. Finally, the investigation of serious human rights violations against civilians under military jurisdiction is a systematic practice that is increasingly relevant with regards to the military public security operations deployed in many areas of the country.

For all of the abovementioned reasons, the case of Mr. Montiel and Mr. Cabrera is a fundamental opportunity for the Inter-American Court of Human Rights to make a statement; not only upon this specific case of the ecologists, but also regarding the reality that prevails in Mexico today and which results in serious and systematic human rights violations.

I. THE ARBITRARY ARREST, TORTURE AND UNFAIR IMPRISONMENT OF RODOLFO MONTIEL AND TEODORO CABRERA

a) The work of Rodolfo Montiel and Teodoro Cabrera to protect the forests against illegal and excessive logging⁴⁹

The Costa Grande region of Guerrero state has a great wealth of forests. In the mountainous area of the Sierra de Petatlán and Coyuca de Catalán, forests abound, which makes the area particularly attractive for the exploitation of natural resources.

In 1995 the Governor of Guerrero at that time, Ruben Figueroa, signed an agreement in which he granted the United States transnational company Boise Cascade, one of the largest logging companies in the world, exclusive rights to exploit the woodlands

⁴⁹ For a detailed description of the defense of the environment carried out by Mr. Montiel and Mr. Cabrera as part of the Organization of Ecologist *Campesinos* (OCESP), please refer to Camacho, Jimena, *Lumbre en el monte. La historia de Rodolfo Montiel y la lucha de los campesinos ecologistas de Guerrero, (Fire in the Mountain. The story of Rodolfo Montiel and the struggles of the ecologist campesinos in Guerrero)*. Itaca Editorial. La Jornada Ediciones, Mexico: 2004. Spanish only.

belonging to the *ejido*⁵⁰ lands of the Costa Grande region in Guerrero.

International environmental organizations have denounced that Boise Cascade, limited in its logging activities in the United States and Canada by the more rigorous application of environmental laws in these countries, established itself in Guerrero state precisely because the context of poverty and lack of adequate controls over the exploitation of forest resources allowed the company to log without limits.⁵¹ Rodolfo Montiel explains, *“Before, there were other logging companies, but none of them were like Boise Cascade; it left the forests bare, they took old and young trees. Lands where there used to be pine trees were left clean, with nothing but pasture. They made springs and animals disappear.”*⁵²

Likewise, the company Costa Grande Forest Products, a subsidiary of Boise Cascade, began the exploitation of 24 *ejido* lands that made

⁵⁰ Ejido: land belonging to a cooperative of *ejidatarios* (land owners).

⁵¹ Camacho, page 46.

⁵² *Id.*, page 45.

up the Ruben Figueroa Alcocer Union in order to exploit the resources of Petatlán and Coyuca de Catalán, following the intervention of regional *caciques* who were in charge of the union and benefitted from the exploitation of the forests.⁵³

Upon witnessing the disproportionately aggressive logging, the *campesinos* from the region began to hold meetings to discuss how to stop the destruction of the woodlands. This was how, in 1998, various *campesinos* created the Organization of *Campesino* Ecologists from the Sierra de Petatlán and Coyuca de Catalán (OCESP), with the objective of stopping excessive logging. Rodolfo Montiel was one of the founders of the organization, in which Teodoro Cabrera also participated. The OCESP was officially established on 13th April 1998.

Among other activities, the OCESP was dedicated to visiting different communities in the area to give talks to raise awareness and urge the *campesinos* to join in the defense of the environment.

⁵³ *Id.*, page 46.

The OCESP attracted over 100 members, representing 11 communities.⁵⁴

In February 1998, the OCESP presented a formal complaint on behalf of over 100 *campesinos* before the Department of the Environment and Natural Resources and in March of the same year they presented a formal complaint before the Federal Department for the Protection of the Environment (Procuraduría Federal de Protección al Medio Ambiente, PROFEPA). The OCESP also sent various documents to members of the State Congress, local representatives of the PROFEPA and the governor of Guerrero. Given their failure to respond, members of the OCESP held demonstrations and installed peaceful blockades on the route that

⁵⁴ Cienfuegos, Enrique and Carlsen, Laura, "Un caso de derechos humanos, ecología e integración económica: los campesinos ecologistas de la Sierra de Petatlán y Coyuca de Catalán" (A case of human rights, ecology and economic integration: the ecologist *campesinos* from Sierra de Petatlán and Coyuca de Catalán) in Carlsen, Laura et al. (Coord.), *Enfrentando la globalización. Respuestas sociales a la integración económica de México (Confronting globalisation: Social answers to the economic integration of Mexico)*, Miguel Ángel Porrúa – Global Development and Environmental Institute, Tufts University, Mexican Action Network on Free Trade and the National Autonomous University, Mexico: 2003. Available in Spanish only.

Boise Cascade trucks tried to use to transport the products obtained by logging.

It is important to emphasize that the deforestation denounced by the ecologist *campesinos* was fully proven over time. In accordance with statistics from the National Commission for the Study and Use of Biodiversity (Comisión Nacional para el Conocimiento y Uso de la Biodiversidad, CONABIO), a body of the Federal Executive Branch, in just eight years (1992-2000), Petatlán and Coyuca de Catalán lost approximately forty percent of their forests (that is to say, 86,000 hectares of forests), which was demonstrated via an analysis of satellite images taken in eighteen parts of the region.⁵⁵

It is just as important to acknowledge that the serious deforestation in Guerrero exemplifies a problem that affects numerous regions of the country and which the Mexican authorities and existing

⁵⁵ Greenpeace. *Montiel y Cabrera: los campesinos ecologistas presos y torturados*. (Montiel and Cabrera: the imprisoned and tortured ecologist *campesinos*) Environmental Case files, Mexico: 2000, page 9. Available in Spanish only.

mechanisms for the protection of the environment have been generally incapable of confronting. According to the *Diagnosis of the human rights situation in Mexico* carried out by the United Nations Office of the High Commissioner for Human Rights in Mexico (2003):

In recent times the ecological devastation and environmental alterations in diverse regions of Mexico have increased: deforestation, soil erosion, pollution and over-exploitation of water resources and growing desertification, are the main characteristics of a phenomenon that the government itself has described as “apocalyptic”. (...) The rate of deforestation in Mexico is very high. Between 1990 and 2000 the deforestation was, on average, 631,000 hectares per year, which is equivalent to 1.1% of the national territory. (...) The ecological, social and economic costs are incalculable...⁵⁶

⁵⁶ United Nations Office of the High Commissioner for Human Rights, *Diagnóstico sobre la situación de los Derechos Humanos en México (Diagnosis of the human rights situation in Mexico)*. 2003, pages 119-20, available in Spanish at www.hchr.org.mx/documentos/libros/8diagnosticoCompleto.pdf.

The structural problems that were identified in the Diagnosis include: the absence of comprehensive protection for the environment by various governmental departments; limits upon social participation in environmental matters; the fact that “processes to make the right to a healthy environment justiciable are practically inexistent” and the presence of *caciques* in various regions of the country.⁵⁷ Such problems demonstrate the importance of defense activities carried out by civilian organizations such as the OCESP, because such actions respond precisely to the current lack of ability or willingness of various state authorities to stop abuse and environmental destruction.

Indeed, the result of the OCESP’s actions was that the same year (1998), the company Boise Cascade left the region. The committed and successful work of the OCESP and in particular Rodolfo Montiel and Teodoro Cabrera, has been widely recognized by important organizations for the defense of the environment and human rights.

⁵⁷ *Id.*, pages 120-22.

Consequently, in April 2000, Rodolfo Montiel received the Goldman environmental prize, considered the Nobel Prize of environmental defense.⁵⁸ In February 2001, the international organization Sierra Club awarded him the Chico Mendes environmental prize⁵⁹ and in May 2001, the Don Sergio Mendez Arceo Foundation awarded its human rights prize of the same name to both ecologists.⁶⁰

As the ecologist *campesinos'* activism achieved greater protection for the forests of Guerrero, it resulted in an increase in the monitoring of the Mexican Army in the area, as well as in the

⁵⁸ The environmental award was created to honour those people who have stood out for their work in defense of the environment. The Goldman Environmental Prize, *Rodolfo Montiel Flores*, www.goldmanprize.org/node/135

⁵⁹ The Chico Mendes award is granted by Sierra Club, an environmental organization founded in 1892, to a person or organization that has demonstrated extraordinary bravery in their effort to protect the environment, risking their lives, their family and their employment. The award was personally presented by Mrs. Ethel Kennedy, president of the Robert F Kennedy Human Rights Centre. Sam Parry (Sierra Club), *In defense of environmentalists*, www.sierraclub.org/planet/200201/humanrights.asp.

⁶⁰ The Don Sergio Mendez Arceo National Human Rights Award is granted to acknowledge, stimulate and support organizations, groups or people who have stood out for their bravery in the defense and promotion of a culture of respect for human rights in Mexico. For further information, available in Spanish, please refer to www.fundaciondonsergio.org/premio.html.

repression and murder of various members of the OCESP in retaliation for their efforts to prevent illegal and excessive logging.⁶¹ It was in the context of these events that in May 1999, the arbitrary arrest, torture and later imprisonment of Mr. Rodolfo Montiel and Mr. Teodoro Cabrera took place.

⁶¹ Please refer to Camacho, page 64. The violent repression of the OCESP took place with a broader pattern of attacks suffered by environmental defenders in various states. Among many other examples, one could mention the illegal detention of tarahumara indigenous leader Isidro Baldenegro Lopez in March 2003 and Hermenegildo Rivas Carrillo, from Guadalupe y Calvo municipality, Chihuahua, falsely accused of the illegal possession of weapons in retaliation for their activism, which had contributed to the prohibition of logging in the area; as well as the 2007 murder of environmentalist Aldo Zamora, who was ambushed along with his brother Misael (both of whom were Ildefonso Zamora's sons; a well-known defender of the Ocuilan forests in Mexico state). Centro de Derechos Humanos y Ambiente, (CEDHA), *El costo humano de defender la planeta (The human cost of defending the planet)* 2002-2003 Report, page 37; Center Prodh 2007 annual report: *Hacia 2012, reformas estructurales y mano dura: el cerco en torno a los derechos humanos (Human Rights Under Siege: Structural Reforms and Institutionalized Repression Under the Calderón Administration)* chapter V, pages 116-18, available in Spanish at www.centroprodh.org.mx. As we detail below, other well-known members of the OCESP have also suffered serious attacks, such as the arbitrary arrest and imprisonment of environmentalist leader Felipe Arreaga in November 2004 and the attempted murder of renowned defender Albertano Peñaloza in May 2005, in which two of his children died and another two were injured.

b) The arbitrary arrest and torture of Rodolfo Montiel Flores and Teodoro Cabrera García

On 2nd May 1999, at approximately 10:30 in the morning, around 40 members of the Army, belonging to the 40th Infantry Battalion entered into Pizotla community, Ajuchitlan del Progreso municipality, Guerrero, where Teodoro Cabrera lived. From this moment the community was held under siege by the Armed Forces.

Members of the Army arrived shooting at a group of people who were gathered outside of the Cabrera family's house, among whom were Teodoro Cabrera himself and Rodolfo Montiel. Under attack, three people from the group, Rodolfo Montiel, Teodoro Cabrera and Salome Sanchez Ortiz, ran toward the mountains, an uninhabited part of the community full of shrubbery and stones. One of the shots hit Salomé Sánchez who died instantly. Teodoro Cabrera received a bullet wound by his left ear.

Mr. Montiel and Mr. Cabrera managed to hide among the bushes, but when the soldiers set fire to the mountain, they had to abandon their refuge. At this moment they were arbitrarily arrested, without any warrant from the competent authority and without having committed any crime.

Once under arrest, the ecologists were beaten by the soldiers, who threatened to kill them. Afterwards, their feet and hands were bound and they were forced to lie face down on the riverbank of the Pizotla River, until the following day, without being allowed to speak with their families. On the second night they were taken once more to the mountain, where their captors told them they knew where their families were and started to beat them again, accusing them of being members of the Popular Revolutionary Army (Ejército Popular Revolucionario, EPR).

Rodolfo Montiel was kicked and punched; they took off his clothes and pulled his testicles until he lost consciousness due to the pain, and they applied electric shocks to his leg. During this time he was

interrogated about his activities related to the OCESP and pressured to say that he belonged to an armed group. As expressed by Mr. Montiel in his testimony before the Inter-American Commission on Human Rights in October 2006:

The torture consisted in taking us to the mountain, making us lie down, pulling us by the neck, one soldier got on my stomach and supported himself on my shoulders and jumped up and down. Meanwhile another one pulled my pants down and pulled my testicles. After this they poured water over the thigh of my right leg and they gave me electric shocks. They also shined a blue light in my face and told me to tell them where my friends were, that I belonged to the EZLN (Zapatista Army) and the EPR, to tell the truth. I told them I don't belong to any armed group, that I belong to an ecologist *campesino* organization; they should know that, because they confiscated the organization's seal and some papers with the official logo, flyers that showed that I was inviting people to a meeting.

Teodoro Cabrera was a victim of similar torture. Moreover, the soldiers subjected him to a mock execution- putting the barrel of a gun in his mouth whilst telling him he was going to die.

On Tuesday 4th May 1999, Mr. Montiel and Mr. Cabrera were taken by helicopter to the 40th Infantry Battalion, located in Altamirano City, Guerrero. There they were separated and beaten. Later, they were taken to a room where they were kept tied up and blindfolded and threatened with being killed and abandoned in a mass grave.

On the Battalion's premises, using a series of tortures, the soldiers obliged the ecologist *campesinos* to sign some documents without reading them beforehand. They were confessions prepared by the soldiers, in which the ecologists admitted to committing various crimes, such as carrying prohibited firearms and drug offences.

On 6th May, Rodolfo Montiel and Teodoro Cabrera were taken to the offices of the Public Prosecutor's Office in Coyuca de Catalán. It was

not until the following morning that the ecologists appeared before a judicial authority for the first time.

c) The flawed legal process against Teodoro Cabrera Garcia and Rodolfo Montiel Flores and the sentencing of the victims based on confessions made under torture

The Federal Public Prosecutor's Office in Coyuca de Catalán sent Mr. Montiel and Mr. Cabrera before the First Instance Judge of the Mina Judicial District. They appeared in court on 7th May⁶² and were accused of various fabricated crimes. The judge ruled that the arrest of Mr. Montiel and Mr. Cabrera was legal, even though five days had passed since their arrest.⁶³ Likewise, in their first judicial

⁶² It is worth noting that the Public Prosecutor's Office charged them before a state judge even though the allegations being investigated were clearly of federal jurisdiction.

⁶³ Article 16 of the Constitution, both today and at the time of the events, establishes that the arresting authority, if it is not the Public Prosecutor's Office, will present the detained person before the Public Prosecutor's Office without delay. The same article establishes a period of 48 hours in which the detainee must be either released or presented before the judicial authority by the Public Prosecutor's Office (96 hours in the case of organized crime, which was not

statements, both ecologists said they had been tortured by the members of the Army. However, the judge neglected his duty by not investigating these allegations.

On 12th May 1999 the First Instance Judge issued a preliminary detention order against the ecologists and remitted the proceedings to the Fifth District Judge of the Twenty-First Circuit, based in Iguala city, Guerrero and competent to try federal crimes. On 13th July 1999, the ecologist *campesinos* told this judge that they had been the victims of torture perpetrated by members of the Army. However, the Fifth District Judge did not open an investigation into the allegations either. It was not until August 1999, when the Miguel Agustín Pro Juárez Human Rights Center took on the defense of the ecologist *campesinos* and made a formal request, that the judge ordered the Federal Public Prosecutor's

presented as an argument in this case). Therefore, the constitutional length of the detention must not be more than 48 hours, plus the amount of time that is strictly necessary for the authority that carried out the arrest to present the detainee before the Public Prosecutor's Office.

Office to investigate the alleged acts of torture. This investigation was sent to military jurisdiction and there were no results.

During Rodolfo Montiel and Teodoro Cabrera's trial in the Fifth District Court, their defense presented various witnesses who, upon being questioned, demonstrated the contradictory nature of the accusation made against the ecologists.⁶⁴

During the imprisonment of the ecologists, Amnesty International declared them prisoners of conscience because of their work in

⁶⁴ For example, whilst the version of the soldiers in their statements is that they had presented the victims before a Public Prosecutor's Office on 4th May, during the face to face meetings carried out between the ecologists and the soldiers that arrested them during the legal process, the soldiers admitted that they never presented the ecologists before that Public Prosecutor's Office, but rather, they took them to the 40th Battalion in Altamirano and afterwards to the Federal Public Prosecutor's Office in Coyuca de Catalán. This exemplifies how the soldiers falsified their testimonies in order to cover up the prolonged retention of the ecologists during almost 5 days. On the other hand, the contradictions in the soldiers' statements regarding the weapons that were allegedly confiscated from the ecologists on the day of the events, indicates the false nature of the accusations. During the legal process eye-witnesses from the time of the arrest and later detention were presented, who confirmed the version of events maintained by Mr. Montiel and Mr. Cabrera and therefore their innocence of the crimes of which they were accused.

defense of the forests in Guerrero and requested that the Mexican State release them immediately and unconditionally.⁶⁵

In spite of the incoherence of the accusations formulated against them, on 28th August 2000, the Fifth District Judge convicted Rodolfo Montiel and Teodoro Cabrera. Mr. Montiel was given a six year and eight month prison sentence and a fine of nine hundred and sixty pesos for Growing Marijuana as well as Carrying a Firearm without a Permit and Carrying a Firearm for the Exclusive Use of the Army and National Air Force. Mr. Cabrera was given a ten year prison sentence and a fine of two thousand seven hundred pesos for Carrying a Firearm for the Exclusive Use of the Army and National Air Force.

The sentence issued by the Fifth District Judge gave particular relevance to the victims' confessions, obtained under torture. Regarding this matter the judge stated:

⁶⁵ Amnesty International, *Mexico: Prisoners of Conscience: Rodolfo Montiel and Teodoro Cabrera, ecologists*. April 2000, Index AMR 41/13/00/s, available at <http://www.amnesty.org/en/library/info/AMR41/013/2000>.

[...] in our legal system it is not sufficient for someone to allege that they were physically or morally abused in order to be freed, given that in principle he or she must prove that this violence took place and then, demonstrate that this was a means of obtaining a confession, which, at most, would invalidate it. However, if in spite of this fact there is evidence to accredit their responsibility for a crime, they can be condemned for it (...)⁶⁶

As can be appreciated in the previous extract, the judge imposed the burden of proof upon the victims to demonstrate that they had been tortured; a highly unreasonable requirement given that the authorities have control over the detained people and the obligation to investigate any allegations of torture. Far from safeguarding the human rights of the victims not to be obliged to incriminate themselves, it is evident that in this case the judge

admitted *prima facie* the validity of confessions obtained under torture and the statements of the soldiers themselves, in spite of the reports of abuse made by the victims on repeated occasions. In other words, he presumed the guilt of Mr. Montiel and Mr. Cabrera, searching, essentially from the first moment, for a way to disprove their version of events and favor the version offered by the soldiers.

This behavior is incompatible with the minimum guarantees of due process of law, which include the presumption of innocence. Indeed, the case of the ecologists exemplifies the insurmountable failures inherent in an evaluation of evidence that favors the statements of state officials (in this case members of the Army) because of the simple fact that they are state officials, while ruling out the evidence presented by the accused. In this case, the fact that the accusations against the ecologists were made by state agents should not have been taken to mean they were true; on the contrary, given that the members of the Army had control over the ecologists during their detention, they had the opportunity to

⁶⁶ First instance sentence of the Fifth District Judge, on 28th August 2000, Case number 61/99, sheet 40 of the sentence.

manipulate or falsify pieces of evidence, as well as to oblige the detainees to sign false confessions.

It is important to note that the judge's behavior in this case in no way constitutes an isolated case. At the time of the events and to date, in Mexico evidentiary value is attributed in a routine manner to confessions and statements made without sufficient judicial control; that is to say, made before an authority that is not from the judicial branch. Even if the constitutional reform of the justice system adopted in June 2008 could contribute to eliminating this serious human rights violation by establishing an accusatory and oral legal process, based upon the presentation of all evidence before the judicial authority, this modification to the legal system still hasn't come into force.⁶⁷ Therefore, nowadays statements such as those extracted from the ecologist *campesinos* are still granted

⁶⁷ Decree by which various dispositions of the Political Constitution of the United States of Mexico are reformed and altered, published in the Official Federal Newspaper on 18th June 2008, second article, first paragraph: *"The accusatory legal process envisaged in article 16, paragraph two and thirteen; 17, paragraph three, four and six; 19, 20 and 21, paragraph seven of the Constitution, will come into force as established by the corresponding secondary legislation, without exceeding a period of eight years, starting from the publication of this Decree."*

evidentiary value, which provides an incentive for the practice of torture and cruel, inhuman or degrading treatment and means that officials from the Public Prosecutor's Office routinely extract statements from the detainees in their custody without judicial control.

In this respect, even though Mexico has a Federal Law to Prevent and Punish Torture (promulgated in 1991), which in article eight establishes that "No confession or information that has been obtained under torture can be used as proof," what happens in practice is completely contradictory to this norm.⁶⁸ Indeed, following a visit to Mexico in 2003, the United Nations Committee against Torture expressed the following:

Examination of the information collected during the course of this procedure, without distortion by authorities, and the description of cases of torture, most of which occurred in

⁶⁸ Article 8, Federal Law to Prevent and Punish Torture, available at www.ordenjuridico.gob.mx/Federal/Combo/L-135.pdf.

the months prior to the visit and the previous year and were received directly from the victims, their uniformity in terms of the circumstances in which they were produced, the objective of the torture (almost always for obtaining information or a self incriminating confession), the similarity of methods used and their territorial distribution, has led the members of the Committee to conclude that these are not exceptional cases or examples of occasional excesses on the part of certain police agents but, on the contrary, that the use of torture by these agents is habitual and is used systematically as a further resource of criminal investigations and is always available when the investigation requires it.⁶⁹

⁶⁹ Report on Mexico prepared by the Committee in the context of the Article 20 of the Convention, dated May 25, 2003 (CAT/C/7528), paras. 218-19. Our emphasis. The Committee later reiterated “its concern due to information indicating that in numerous cases dominant probative value is still given to the first statement made before the attorney general (the public prosecutor statement) with respect to all subsequent statements made before a judge”. *Cfr.* Examination of reports presented by participating states in compliance with Article 19 of the Convention, February 6, 2007. (CAT/C/MEX/CO/4).

In the case of the ecologist *campesinos* Rodolfo Montiel and Teodoro Cabrera, the victims’ defense appealed the conviction announced by the Fifth District Judge, arguing that confessions made under torture are not valid. In order to prove the torture to which Mr. Montiel and Mr. Cabrera had been subjected, the defense offered as documentary proof an expert medical report by two forensic experts from the international organization *Physicians for Human Rights* who, after an exhaustive examination carried out on the ecologists, concluded that they had indeed been tortured in the way that they described.⁷⁰ However, when the First Unitary Tribunal of the Twenty-First Circuit announced the verdict of the appeal on 26th October 2000, it confirmed the ecologist *campesinos*’ convictions, once again considering the confessions extracted under torture to be valid, without even admitting the report presented by *Physicians for Human Rights*. Later, upon being obliged to admit the expert opinion following an injunction in favor

⁷⁰ Report issued by Drs. Christian Tramsen and Morris Tidball-Binz, Physicians for Human Rights, 31st July 2000.

of the ecologists, the Unitary Tribunal admitted the document but dismissed its contents and once again confirmed the conviction.

Mr. Montiel and Mr. Cabrera's legal defense then registered a direct injunction appeal against the appeal sentence. As a result, on 14th August 2002, the Second Collegiate Circuit Court based in Chilpancingo, Guerrero, decided to absolve Rodolfo Montiel of the crime of Growing Marijuana due to lack of evidence. Likewise, the Court exonerated Mr. Montiel of the crime of Carrying a Prohibited Weapon given that there were a series of contradictions in the accusations made by the soldiers who arrested him. This demonstrated the fabrication of the accusations against the ecologists by the soldiers. In spite of this, this court confirmed the guilt of Mr. Montiel and Mr. Cabrera for Carrying Weapons for the Exclusive Use of the Army, once again granting evidentiary value to the confessions obtained under torture. Following this verdict, all of the national legal remedies available to Rodolfo Montiel and Teodoro Cabrera to prove their innocence had been exhausted.

d) The victims' release

The case of the ecologist *campesinos* received a high level of public attention because of the evidence of torture and the unjust nature of their detention. Therefore, as a result of multiple expressions of solidarity by national and international organizations, on 8th November 2001, the Department of Public Security granted Rodolfo Montiel and Teodoro Cabrera their freedom, under the argument that the punishment imposed was incompatible with their state of health.⁷¹ President Fox gave specific orders to free the ecologist *campesinos*,⁷² without acknowledging the victims' innocence in any way.

⁷¹ It is important to highlight that a few weeks beforehand, Digna Ochoa y Placido, a human rights defender who had represented the ecologists, was found dead in her office, an occurrence that generated a widespread public demand for justice in the case.

⁷² Declaration by President Vicente Fox Quesada in the Venustiano Carranza Hall of his official residence in Los Pinos. Mexico, Federal District on 8th November 2001.

e) Lack of investigation into the torture suffered by the victims

On 30th September 1999, the Federal Public Prosecutor's Office, assigned to Coyuca de Catalán, opened an investigation into possible acts of torture, in response to the corresponding instruction given by the Fifth District Judge upon the request of the victims' defense. However, no investigative activities were carried out. Just over a month later, in November 1999, the Federal Public Prosecutor's Office declared its incompetence to continue with the investigations and ceded jurisdiction to military jurisdiction, arguing that those likely to be responsible for the crime were soldiers on duty.

After civilian jurisdiction declined jurisdiction, the Military Public Prosecutor opened its own investigation. However, on 13th June 2000, without having carried out even the most basic proceedings in the investigation into the reported occurrences, the investigations into torture were suspended. On 3rd November 2001, after having been reopened for some time as a result of external

pressure, the investigation was settled definitively by the military ministerial authority, who proposed closing the investigation.⁷³ The decision was not personally notified to the victims and their representatives.

To date, no soldier has been charged in a court of law for the torture to which Mr. Montiel and Mr. Cabrera were subjected. This is all the more serious because it encourages the unlimited repetition of similar abuses in the present day. On the other hand, none of the civilian actors who intervened in the legal investigation have been questioned regarding their actions, omissions or acquiescence despite the evident illegal and arbitrary nature of the detention and multiple acts of torture.

⁷³ Decision not to exercise legal action by the Chief of Military Justice and Lawyer Andres Cortes Rios, Investigative Agent from the Military Prosecutor's Office, assigned to the Department of Investigations of the Military Department of justice, on 3rd November 2001, page 52.

f) The current situation of the ecologist *campesinos*

Given the lack of conditions to guarantee their security, Rodolfo Montiel and Teodoro Cabrera had to leave their communities to safeguard their own and their families' physical integrity and consequently, they lost the opportunity to continue participating actively in the OCESP, as well as access to their lands, which were their source of economic income. Montiel was even obliged to leave the country and request political asylum in the United States.

To date, Mr. Montiel and Mr. Cabrera are affected by the physical and psychological consequences of the torture that they suffered. Also, their families, after going through an initial period without any contact following the arbitrary arrest of the ecologists, spent two and a half years separated from the victims because of their unfair imprisonment, which has had a lasting impact on their lives. In Rodolfo Montiel's case, the family separation continues because to

date, his wife and children have not been able to enter into his new country of residence and be reunited with their loved one.

During the imprisonment of Rodolfo Montiel and Teodoro Cabrera, the OCESP continued its collective environmental work, with Felipe Arreaga and his wife Celsa Valdovinos particularly excelling and intensifying their ecological activism with *campesino* women in Zapotillal community in Petatlán municipality, as well as with men and women from other parts of the region. In this way a new environmentalist *campesino* organization was created: the Organization of Women Ecologists from Sierra de Petatlán (Organización de Mujeres Ecologistas de la Sierra de Petatlán, OMESP).

In response to the important work carried out by Felipe Arreaga and Celsa Valdovinos in 2004, once more false legal accusations were made against various members of the OCESP. In fact on 3rd November of the same year, Felipe Arreaga was arrested, accused

of a murder that he did not commit.⁷⁴ After more than ten months of unfair imprisonment and having been recognized as a prisoner of conscience by Amnesty International, Felipe Arreaga was absolved of the charges against him. Furthermore, on 19th May 2005 there was an ambush against a well-known member of the OCESP, Albertano Peñaloza Dominguez, as he was returning home with his four children. During the ambush two of his children were killed and the other two were seriously injured.

To date, Albertano Peñaloza, like Rodolfo Montiel and Teodoro Cabrera, lives outside of Guerrero state because of the attack in which two of his children were killed. Considering this situation, it is clear that at no point has the Mexican State guaranteed the minimum conditions necessary for the ecologist *campesinos* to exercise their right to defend the environment.

⁷⁴ An illustrative example is that this accusation was based on the testimony of a person who died two years before the events took place, which was accepted by the Public Prosecutor's Office in charge of the case. See Tlachinollan Human Rights Centre. *Desde el corazón de la tierra: resistir para vivir (From the Heart of the Earth: resist to live)*. (2005-2006 Annual Report), pages 30-31, available in Spanish at www.tlachinollan.org/dhginf/12informe_web.pdf.

II. THE CASE BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Given the impossibility of accessing justice on a national level, the ecologist *campesinos* turned to the Inter-American Commission on Human Rights in 2001; the case was taken before the Commission by Mrs. Ubalda Cortés (Rodolfo Montiel's wife) and Mrs. Ventura López (Teodoro Cabrera's wife), as well as by the non-governmental organizations Center Prodh, Tlachinollan, CEJIL, Sierra Club and Greenpeace.

After establishing that the petitioners had exhausted all available domestic remedies, in February 2004 the Commission admitted the case by approving Admissibility Report 11/04,⁷⁵ assigning them case number 12.449. On 23rd October 2006 a public hearing was held in which Mr. Rodolfo Montiel gave his testimony regarding his work as

⁷⁵ IACHR, Petition 735/01, Report 11/04, 27th February 2004, available at <http://www.cidh.org/annualrep/2004eng/mexico.735.01eng.htm>.

an environmental defender and the human rights violations that he was subjected to from May 1999 onward. On 30th October 2008, the Commission approved its merits report on the case, in which it declared the international responsibility of the Mexican State for violations of the right to personal integrity, liberty, legal guarantees (right to due legal process) and the obligation to harmonize domestic legislation with the requirements of the American Convention on Human Rights. The Commission also issued various recommendations for the State to make amends for the violations committed.

As a result of the State's repeated failure to comply with these recommendations, the Commission submitted the ecologist *campesinos'* case to the Inter-American Court on 24th June 2009.

III. THE CASE BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

At present, the case of Rodolfo Montiel and Teodoro Cabrera is being litigated before the Inter-American Court. The victims' representatives before the Court, Center Prodh, CEJIL and Tlachinollan, argue that the case includes violations of the following obligations established in the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture:

- **The right to liberty and personal security.** Among other violations, the ecologists' arrest was illegal and arbitrary; they were not able to contact anyone; they were not taken without delay before a competent authority (they were detained for several days in a military facility) and there was no effective judicial control over the legality of the detention.

- **The right to personal integrity.** The ecologists were tortured by State agents; the torture was not investigated in a serious and impartial manner by competent authorities and the violations committed against the ecologists, as well as the impunity in this case, have caused serious suffering both to Mr. Montiel and Mr. Cabrera and their families.
- **The right to freedom of association.** Freedom of association includes, among other things, peoples' right to form organizations and work collectively to defend human rights and the environment. Therefore, State actions with the aim of preventing groups of people from carrying out such work violate the right to freedom of association. In this case, the violations committed against the victims represent reprisals for their participation in the OCESP. Moreover, the State did not take adequate measures to enable members of this organization to carry out their work with the minimum acceptable safety conditions.
- **The right to due process and judicial guarantees.** The violations committed against the victims were not investigated in an adequate manner; the State did not offer any internal remedy to contest the unfair extension of military jurisdiction over the investigation of these violations; the presumption of innocence was not respected and evidentiary value was given to confessions obtained without judicial control and via acts of torture.
- **The obligation to adapt domestic legislation to the requirements of inter-American instruments ratified by the State.** Mexican legislation, as it has been interpreted, allows military jurisdiction to try cases of human rights violations and does not offer any remedy for the victims to challenge this practice that openly violates international human rights law. On the other hand, the national legal framework allows evidentiary value to be given to declarations obtained without judicial control, which favors the admission of

confessions extracted under torture, a practice that is strictly prohibited under international law.

Apart from obtaining a sentence that establishes the State's responsibility for the serious human rights violations committed against Mr. Montiel and Mr. Cabrera, the aim of litigating this case before the Inter-American Court is for this institution to order the necessary measures to make amends for the damages caused and guarantee that such events do not take place again within Mexico's territory; taking into consideration the fact that comprehensive reparations for human rights violations includes not only compensation, but also the adoption of policies and practices aimed at effectively protecting the rights that were violated in a specific case.

In the ecologists' case the following comprehensive reparation measures and non-repetition guarantees have been requested from the Inter-American Court:

- **Fair compensation for the victims and their families and any medical or psychological care** that they may require. Likewise it is requested that **the Mexican State take measures to allow the Montiel Cortes family to be reunited.**
- **The elimination of Rodolfo Montiel and Teodoro Cabrera's names from any criminal register.**
- **An investigation, trial and punishment for the violations committed against Rodolfo Montiel, Teodoro Cabrera and their families by civilian authorities.** Both the ecologist *campesinos* and society at large have a right for the violations in this case to be clarified and the truth explained. Likewise, the victims have a right to justice, which means that all of those responsible must be sanctioned in proportion to the severity of the abuses committed.

- **The reform of the legislative framework with regards to military jurisdiction.** As mentioned previously, in order to guarantee that the victims of military abuses have access to justice, the State must reform article 57 of the Code of Military Justice so that human rights violations are excluded from this jurisdiction. Likewise, the State is obliged to offer an efficient judicial remedy to the victims so that they can challenge the application of military jurisdiction to their cases, which is currently impossible due to the restrictive judicial interpretation of the Amparo Law.
- **The reform of the Mexican legal framework with regards to torture.** Apart from the obligation to ensure that torture is classified properly in all of the states (which means a legislative reform in Guerrero), Mexico must carry out the necessary reforms, to take effect immediately, so that declarations obtained from people accused of a crime without judicial control, don't have any evidentiary value in criminal proceedings. That is to say, in order for a confession

or declaration to be admitted as evidence, it must be made before a judicial authority.

- **The adoption of an efficient register of the people arrested by the security forces.** The unfair detention and torture of people in military premises is not a phenomenon unique to the ecologists' case. On the contrary, nowadays the situation has worsened due to an increase in detentions by members of the Army under the framework of operations against organized crime. Often the time that elapses between a person's arrest and their presentation before the public prosecutor's office extends in an unjustified manner, above all when the person is allegedly detained *in flagrante*. This is the period during which the detained person is frequently the victim of abusive acts. In this context, one of the deficiencies of the legal system is the lack of an adequate register of these detentions. Even though registers exist, in many cases they lack the necessary information and are not completed immediately, which facilitates the

preparation of false information by the agents who carry out the detention.⁷⁶ Therefore, it is necessary for the State to create registers in the places where the detained people remain before being presented before a judge. The registers should document the chain of custody of the detainee from the moment of his or her arrest, specifying the time, place and circumstances in which it took place, the place where they will be transferred and their likely time of arrival, the legal situation of the detainee and the names of the people who had physical and legal custody of the detainee at all times.

- **A campaign to raise awareness about the importance of human rights and environmental defenders in Mexico.** Human rights and environmental defenders are currently victims of persecution, repression and attacks. As one of the measures to revert this situation, the State must carry out a

⁷⁶ See Lawyers' Committee for Human Rights and the Miguel Agustín Pro Juárez Human Rights Center, *Legalized Injustice: Mexican Criminal Procedure and Human Rights*, May 2001, pages 38-39.

national campaign to disseminate information on the importance of defenders' work. In recognition of the work carried out by the ecologist *campesinos* in particular, we think it would be appropriate for the State to change the name of the current National Award for Ecological Merit: Social Category⁷⁷ to National Award for Ecological Merit "Ecologist *Campesinos* of Guerrero."

- **The publication of the sentence issued by the Inter-American Court.** In order for society to know the truth about what happened, the victims have requested the dissemination of the sentence both in newspapers and by radio in Petatlán and Coyuca de Catalán.
- **A public apology and acknowledgement of responsibility.** The State must offer a public apology to the victims and

⁷⁷ The National Award for Ecological Merit, granted annually by the Department for the Environment and Natural Resources (Secretaría del Medio Ambiente y Recursos Naturales, SEMARNAT), has a special category for community environmental defenders named "Social Category".

their families, as well as commit to implementing the necessary reforms to guarantee the safety of environmental defenders, eradicate the use of torture to obtain confessions and punish those who commit serious human rights violations, through the participation of the highest level authorities from the institutions responsible for the violations in this case.

CONCLUSION

Nowadays, Rodolfo Montiel and Teodoro Cabrera are considered symbols of the rural ecology movements that *campesino* and indigenous communities have taken up in diverse regions of the country to defend their natural resources from the threat of State and non-State actors. Yet as long as the serious human rights violations committed against them remain in impunity and the structural failures that allowed them to take place persist, Mr. Montiel and Mr. Cabrera will also continue to be a symbol of the

risk involved in defending the environment, as well as the abuses that countless detained people are subjected to across Mexico.

Therefore, it is essential that the Mexican State fully comply with the sentence issued by the Inter-American Court, making amends for the damage suffered by the victims and their families and taking the necessary measures to dismantle the structures that permit arbitrary arrest; the use of torture to extract confessions; imprisonment on the basis of invalid evidence; the application of military jurisdiction to human rights violations; and the repression of organizations dedicated to the defense of human rights and the environment.

CONCLUSION

The cases described in this report are examples that are as eloquent as they are representative of the structural human rights violations inherent in the current practices of the institutions charged with providing security and justice, as well as of the discrimination based on gender or indigenous identity and the repression of the communities that organize to defend their human rights. They demonstrate how instead of guaranteeing protection for human rights, the Mexican legal system becomes the ideal instrument for abuse of authority and at the same time, it neglects the obligation to seek justice in cases of serious human rights violations by State agents.

Impunity, as acknowledged by the Inter-American Court, is an incentive for the chronic repetition of abuse.⁷⁸ This observation is demonstrated by the situation in Mexico. It is demonstrated by the

⁷⁸ For example, see Inter-American Court, Panel Blanca vs. Guatemala (ser. C) No. 37 (8th March 1998), para. 173.

numerous examples of attacks and abuse highlighted in this report in the years following the three main cases, as well as the countless cases that are currently still being documented by civil society organizations. Mexico cannot advance toward a democratic rule of law and equality for all whilst the legal structures and practices that operate remain intact and allow the repeated and unpunished violation of such fundamental human rights as physical and sexual integrity, liberty, the presumption of innocence, access to justice and the right to defend human rights.

The panorama that emerges is what led the Special Rapporteur on Extrajudicial Executions to conclude, following a visit to the country in 1999, that in Mexico the following conditions prevail:

deeply rooted problems regarding impunity for human rights offenders, the overall ineffectiveness of the justice system and a lack of transparency in the work of state institutions which affect the country and its population as a whole. These are key issues which the Mexican authorities will have to address as a matter of

urgency if they are to give credence and validity to their stated commitment to break the vicious circle of violence and impunity which has marred the country's human rights record for so long.⁷⁹

Having verified that there have been no significant improvements in the situation during the time elapsed, we can affirm that in addition to the victims of the cases in Guerrero presented in this report, others have taken place and that currently, every day an undetermined but significant number of civilians join the ranks of the growing number of people and communities who continue waiting for justice following attacks on their integrity and human dignity.

In spite of the disheartening picture painted in these pages, we note that the problems identified are not insuperable. Carrying out coordinated and decisive actions, the State can advance toward

⁷⁹ Report by the Special Rapporteur on Extrajudicial Executions, E/CN.4/2000/3/Add.3, 25th November 1999, para. 23.

respect for human rights. In particular, compliance with the reparation measures ordered by the Inter-American Court, which are binding upon the State, is not only an international obligation, but also an opportunity for the State to advance significantly toward the elimination of impunity and the implementation of the necessary reforms to put an end to systematic abuse, such as the admission of statements obtained without judicial oversight during legal processes, the extension of military jurisdiction over human rights violations and acts of aggression against human rights and environmental defenders.

We conclude by recalling that the current cycle of abuses of power, opacity and impunity, is not foreign to any of us, but rather it affects society as a whole: it prevents our access to the truth about what happens in the country and it undermines the collective security of the population, since the justice system and other State institutions are incapable or unwilling to protect those whose fundamental rights are affected by actions or omissions of the State, or those who organize to defend their human rights.

In this situation, it is fundamentally important that, following the announcement of the sentences by the Inter-American Court, civil society remains attentive to monitor, request, and guide the State through the process of fulfilling these sentences, ensuring that the rulings not only bring closure to the long processes followed by the victims in these cases, but also make way for the necessary actions to guarantee that these abusive acts never happen again.

Regardless of the consequences that the Court's rulings generate, the struggles that Inés, Valentina, Teodoro and Rodolfo have maintained for years offer hope. The courageous manner in which they have persisted with their struggle despite the most adverse circumstances shows that it is possible to raise one's voice against impunity and abuses of power; it is this perseverance born out of the victims' suffering that gives meaning to the cases taking place in international courts. The State's reactions to the sentences issued must respond to the commitment of these men and women who, with their testimonies, show us what it means to live in Mexico today.