

ENTREVISTAS PBI MÉXICO

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The Radilla Case Before the Inter-American Court of Human Rights: Interview with Humberto Guerrero, legal director of the Mexican Commission for the Defence and Promotion of Human Rights

On Tuesday 15 December 2009, the Inter-American Court of Human Rights published its first judgement condemning the Mexican State in relation to a person detained and disappeared during the Dirty War. This was the case of Rosendo Radilla Pacheco. Mr Radilla was forcibly disappeared after being detained at a military checkpoint in Atoyac de Álvarez, in the state of Guerrero, in August 1974. The Court established the Mexican State's responsibility for the violation of Rosendo Radilla's rights to life, liberty and personal integrity.

PBI interviewed Humberto Guerrero, legal director of the Mexican Commission for the Defence and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, CMDPDH). The Commission acts as the Radilla family's legal representative in the case.

PBI : How did the CMDPDH feel when the Inter-American Court of Human Rights published its judgement on the Radilla case?

Humberto Guerrero : We were very happy; we have great expectations regarding the judgement and its implications. It represented the culmination of many years of struggle by the victims' relatives, and many years of legal preparation by the various lawyers who had already dealt with the case. The judgement represented the culmination of all this work by a large number of people. It represents a step forward for justice in Mexico.

What is your opinion of the advances made by the Mexican State in terms of complying with the judgement?

The steps taken have been a little "lukewarm", as there is little clarity as to how the government will fulfil certain very important aspects of the judgement. We recognise that the government has accepted the obligatory nature of the judgement and its resolutions, but, on the other hand, we have also noted

contradictory messages in regard to some aspects that are problematic for the government: the issue of investigations, or particular legislative reforms. That is where we are unclear as to what the government's real will is in terms of complying with the judgement.



Tita and Rosendo Radilla with relatives and lawyers, Court Hearing, San José Costa Rica, July 7th 2009. Humberto Guerrero, CMDPDH's lawyer, second from the right.

Do you believe that the investigations and legislative reforms will be difficult to carry out?

They will be difficult to carry out because of the current situation in Mexico. Right now, an institution like the Mexican military has a dominant role in security policy, and one element of the Rosendo Radilla case is that it constitutes a strong criticism of the very institution of the military and its role in Mexican history. This will be complicated, because investigating this case means investigating the Army's role in human rights violations in those years. This aspect could be problematic for many within Mexico's current government. In regard to reforms, certain Mexican Army officials have expressly stated that they disagree with the reforms ordered, stating that they believe that cases of military personnel should continue to be judged by the military justice system.

For that reason, despite the Mexican government's statements of good will to the press, their agreement to comply [with the judgement], at the same time there are contradictory messages from certain individuals. In Mexico's UPR [Universal Periodic Review], the topics of disappearances (like that of Mr. Rosendo Radilla) and the military justice system were dealt with, and certain recommendations made – recommendations that the Mexican Government decided not to accept. They have also said, diplomatically, that they are not rejecting these recommendations, but neither have they accepted them. As a result, we don't know where recommendations like this stand, or what the Mexican government's position is. I think by refusing to accept the recommendations, the implication is that the government is not entirely willing to carry out the required changes in these areas.

What is your opinion on the statements recently made by the UN's Human Rights Committee (in the fifth periodic report on Mexico, handed down in New York) in regards to the Radilla case and the reform of the military justice system?

The observations made by the Human Rights Committee confirmed what other United Nations mechanisms, like the Committee Against Torture (CAT) and the Human Rights Council itself, as well as the judgement of the Radilla case, have already stated. It is clearly no longer sustainable to claim that it is in accordance with international human rights law to judge military personnel within the military justice system when they commit crimes against civilians.

How has the coordination been between the Mexican State, the CMDPDH, and the victims, in terms of compliance with the judgement?

To date, it has been conducted on cordial terms with some initial, informal contact made by the government to the representatives. We have only had one formal meeting with the victims, the representatives and the government. This first formal meeting was quite cordial; I think certain positive agreements were made, but it is still early to form an opinion, an evaluation as to whether the government is showing genuine willingness to cooperate on the substantive issues. This will be seen when we enter into discussion on the issues of key importance for the victims – such as investigations [into the forced disappearance].

One indicator of the government's openness to cooperating in the fulfilment of this judgement will be the degree of participation of the victims permitted throughout the compliance process. The Court's judgement indicates that in certain very concrete points of compliance, the victims should be involved – such as the public recognition of responsibility; the written history of the life of the victim and the establishment of a memorial. If the State is genuinely willing to comply with the judgement, it must allow the victims to participate in the fulfilment of each part of the judgement. The degree to which the government does not allow this participation, or considers that there are aspects which are not appropriate for the victims' participation, will be an indicator of whether the Mexican Government is taking its compliance with this judgement as a formality, or a real commitment which ought to generate substantial changes within the government's own institutions.

The judgement is for the Radilla case, but what are its implications for the many other cases of forced disappearance from the "Dirty War", and the recognition of the prevailing [political] context of the period?

The judgement's very recognition of the context experienced in Mexico in those years is a great contribution to other similar cases. It means that Mr. Radilla's disappearance was not an isolated act, but rather was related and connected to other cases as part of a common strategy. It is clear that the judgement only speaks of one case, and of compensation for the victims of that case. However, by dealing with a case which was not isolated, but which occurred within a broader context, this investigation also implies the investigation of the broader context surrounding Mr

Radilla's disappearance. This can provide very valuable information for the progress of other cases, revealing what happened to many other people. I think that the initial contribution of the judgement in the Radilla case is the recognition of the broader context, providing an impetus to the legal defence strategy in other cases.

What is the relevance of this case in Mexico's current political context?

The Radilla case constitutes a strong criticism and review of the military's role in the history of Mexico. In today's context, it has been held that the Army's intervention in public security issues became necessary as a result of the corruption of police officers and State security forces – this is true, police corruption exists. However, we were told that resorting to the Army was because they were an irreproachable institution, incorruptible, with a clean record in terms of their relations with society at large. The Radilla case reveals that this is not true; that the Army has a history which has not been addressed; that modern Mexico has not been confronted with [the Army's] past. And this omission is the source of the human rights violations being committed by the military today.

Does the judgement set any kind of important legal precedent for other cases from Guerrero that are currently before the Inter-American Court?

The judgement can serve as a good reference point in terms of what compensation for damages should be provided for other victims. In addition, the judgement clearly establishes that in cases of forced disappearance, it is irrelevant how much time has passed or in what year the incident occurred. If the person remains "disappeared", with no knowledge of their whereabouts, then it is a forced disappearance and charges should accordingly be laid for the crime of forced disappearance. It cannot be considered a viable legal obstacle if there was no legal prohibition against forced disappearance, or no such crime legally defined, in the year the detention occurred. Basically, what the Court is saying to the authorities is, "There is no legal obstacle to your accusing those responsible of forced disappearance."

Regarding the cases of Inés Fernández, Valentina Rosendo and the environmentalists of the Sierra de Petatlán, I think that the whole discussion about the military justice system will now be a lot simpler. Once again in these cases, the issue of the Army's

participation and interaction with society must be dealt with. When the Radilla case reached the Inter-American Court, there were still many doubts as to how the military justice system functioned in Mexico: it was debated at length in the hearing and not even the judges understood it clearly. Since the Radilla case, there is greater clarity on this issue in the Inter-American Court and it will, in some ways, facilitate debate in subsequent cases. In terms of the impunity with which the Army operates as it undertakes its actions, the similarities between the cases will be evident. This will give the Court much greater clarity on the structural impunity that exists around human rights violations committed by the Army.

To what degree do you believe that the international community has contributed to the outcome of the case?

To a certain degree, the visibility of the case among the international community has provided a certain pressure on the government to deal with this case, and not to forget it. Previously, the international community also provided considerable support directly to the victims and to the Mexican Commission (as the legal representatives preparing the case). Various organisations provided support by sending *amicus curiae* documents to the Court, on very important matters under discussion – such as the military legal system, or reservations to treaties, etc. This also helped to elevate this case to its current status, and its significance in Mexico's still unsuccessful democratic transition. The international community's ongoing attention to this case will help ensure that the government continues its follow-up work. The international community should remain attentive to the compliance with this sentence, so it can be translated into concrete achievements.

Are there any concrete actions that the international community can take to ensure that there is follow-up to the [government's] compliance with the judgement?

I think it is important for the international community to keep questioning Mexico, not only about this case but also about the other cases judged in the Court – the Cotton Fields case (Campo Algodonero) – and those to come – Inés, Valentina, the environmentalists – on how this judgement will be complied with. I think that this is going to be very important, so that Mexico can finally take that step to become a country which [not only] ratifies treaties and conventions with international bodies, [but] that [also] translates them

into concrete advances within Mexico as it successfully incorporates international standards. Pressure from the international community will be important, as in the current context, too often, the position of the current government does not consider victims' or human rights organisations as partners in dialogue. It is hard to make the government listen or respond to requests from these kinds of organisations, and it is often necessary that the same demand comes from another source, from the international community, to whom the government tends to listen more because of international factors (economic considerations, or in relation to Mexico's image abroad). This helps to unblock dialogue processes that aren't functioning or to establish other processes – matters the victims or organisations cannot address through their own endeavours.

When is the first compliance report due before the Court?

At the end of the year – in December, when the judgement was published. The government will be presenting their first compliance report. Civil society representatives can make observations on the information provided by the government.

What are the next steps for the CMDPDH in terms of follow-up on this case?

Our priority is to begin working on the issue of investigation of Mr Radilla's whereabouts, as that is the family's priority. We want to try to ensure that those in charge of the investigation are people trained in the field, with a certain kind of sensibility for these cases. We also want to ensure that there is a certain degree of participation by various actors within the international community – like the United Nations, through their Mexican Office of the High Commissioner for Human Rights – or other international bodies or organisations – such as the International Committee of the Red Cross. They could become involved in other ways, e.g. in providing capacity building to the investigators in charge of the case; providing technical expertise on aspects like the locating of clandestine graves; or how to conduct the tasks involved in an exhumation. We will be seeking this type of support from the international community, in order to incorporate them into the investigations: quite a delicate area, and one which I think cannot be left in the hands of the government alone. At the end of the day, it is the government which has to take concrete actions, but it should be supported, attempts should be made to ensure that work is carried out jointly.

The PBI Mexico team began to provide accompaniment to Tita Radilla, vice-president of the Association of Relatives of the Detained, Disappeared, and Victims of Human Rights Abuses in Mexico (AFADEM) in August 2003. This organization belongs to the Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM). AFADEM, together with the Mexican Commission for the Promotion and Defense of Human Rights, has filed complaints against the Mexican government with the Inter-American Commission on Human Rights (IACHR) for the forced disappearance of Tita's father, Rosendo Radilla Pacheco.

More PBI interviews about the Radilla Case, available on line

[Entrevista 15 Head of the Mexican Ministry of Interior's Human Rights Unit comments on the IACHR judgement \(february 2010\)](#)

[Entrevista 14 Tita Radilla comments on the IACHR judgement on his father's case \(february 2010\)](#)

[Entrevista 6 AFADEM CMDPDH: Demand for Justice for the Disappeared from the Dirty War \(july 2009\)](#)