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The Radilla judgement is a legal obligation for Mexico

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.

José Antonio Guevara , Human Rights Officer at Mexico's Ministry of Interior explains to PBI how the Mexican government will comply with this judgement.

How does the Mexican State value the fact that the Inter-American Court [of Human Rights] has handed down this judgement in favour of the plaintiffs?

With the recognition of the contentious jurisdiction of the Inter-American Court of Human Rights (IACHR) in 1998, and the previous ratification of the American Convention on Human Rights in the 1980s, Mexico recognises that the IACHR's judgements are final and indisputable. The Radilla judgement is therefore considered a legal obligation, with which the State must comply in its entirety.

To date, what concrete steps has the Mexican State taken to comply with this judgement?

The Federal Government has recognised the obligatory nature of the [Court's] judgements in two press releases issued in December [2009] (one was released when the judgement of the Cottonfields (Campo Algodonero) case was handed down, the other at the time of the Radilla judgement). Regarding the Radilla judgement, the State has begun to respond to the deadlines established by the Court.



José Antonio Guevara, Human Rights Officer at Mexico's Ministry of Interior

According to the terms set out, the entire judgement was published on the web page of the Federal Attorney General's Office (PGR) within the two-month time period dictated. Similarly, the judgement was published on 9 February 2010 in the Diario Oficial de la Federación [Official

Newspaper of the Federation] and in El Universal (a widely distributed Mexican newspaper), easily complying with the six-month time limit. This is a demonstration of the Mexican Government's good faith in working to comply with this judgement.

While it is clear that the judgement is an obligation of the Mexican State, compliance is not the work of just one entity, but rather a wide range of authorities and structures. Accordingly, meetings have been held to determine which government body is responsible for compliance with each part of the judgement. Mexico does not have the kind of legal system where judgements are incorporated and responsibilities are naturally distributed among different governmental and State entities, so we need a coordinated effort.

To comply with this judgement, in addition to the responsibilities which correspond to the PGR to conduct investigations, other dependencies or entities that provide healthcare and immediate services for the victims must also become involved. Likewise, the support of both the Government of the State of Guerrero and the Municipality of Atoyac is required to place the commemorative plaque. The Legislative Branch is called on to approve the legal reforms dictated by the Court. The judgement is very clear in stating that the legal reforms are not considered complete if they are only prepared by the Executive Branch; the reforms must be implemented.

Until now, the advances which have been made are in terms of dialogue between different bodies, so the Ministry of the Interior, as coordinator of the State's response, can meet with the [government] representatives and with the victims to share the plan for compliance with the judgement. The judgement requires that its demands be fulfilled within one year.

What contact has there been with Mr Radilla's relatives in regards to judgement compliance?

We have had informal communication with the Radilla family's lawyers, asking that they start considering various aspects [of the judgement] that must be implemented in consultation with the victims. We have had contact, but not in a

formal way; this is in order to maintain discretion, as we are still in a phase of preparation and coordination in order to be able to make a clear offer.

This judgement is on the case of Mr Radilla. What scope does the judgement have in regards to the many other cases of forced disappearance during the so-called Dirty War, and the recognition of the broader context of the period?

The judgement in some ways falls short in regards to the broader context, and the effects that could have fostered the promotion of policies with greater scope. It does not demand reconciliation policies to respond to that painful period in our history, as has occurred in cases from other countries. It is a judgement which refers to just one case, and as such provides certain points that we must comply with – but it does not ask that we go beyond that to deal with other cases which, for example, the Mexican National Human Rights Commission (Comisión Nacional de Derechos Humanos) has knowledge of from that period.

What are the most controversial points in the judgement? Will they be more difficult to implement?

I wouldn't term them as controversial, but because of the time that has passed, everything related to locating Mr Radilla's remains and bringing those responsible to justice will be complex. Not for lack of will, but because of the nature of this kind of [human rights] violation and the passing of time. We therefore have the challenge of undertaking investigations in an appropriate manner, bearing in mind the time elapsed and the complexity of the violation, the number of people implicated, etc.

Other issues which, by their very nature, are complex are those related to the legal reforms, as they involve multiple actors, like the two Chambers of Congress and a significant number of political parties. The judgement asks for two major reforms: to Article 215A of the Penal Code, and to Article 57 of the Military Justice Code. Regarding the first, I think we should go beyond the penal concept itself and call for the phenomenon of forced disappearance to be legislated on in a comprehensive way. Several

obligations derived from the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance remain to be legislated and we should take advantage of this effort to seek compliance. In terms of the second, there will doubtless be a range of opinions as to how this reform ought to be implemented.

How will the Inter-American Court follow up on compliance with this judgement?

The Court has its own follow-up mechanisms. In December, when a year will have passed from the notification of the judgement, we will be obliged to present a compliance report which will be made available to the plaintiffs and relatives. They will then give their opinion on the measures adopted, and the Court will inform us of their position in order to permit effective compliance with the judgement. Public opinion will also be following up on our compliance.

How is the case relevant in Mexico's current context?

I believe it has great relevance. It sends a clear message as to how the international system functions in a subsidiary manner. It is therefore a general invitation to justice authorities to carry out their investigations, given that impunity or lack of investigation into crimes can lead to a pronouncement by the Inter-American Court. In the current context of [legal] reforms, the [international] justice system urges us to take more seriously the work which ought to be undertaken by attorney general's offices, in order to appropriately investigate and bring to trial those responsible for crimes that constitute human rights violations. If not, the Inter-American Court of Human Rights will call our attention to cases where we have not fulfilled our duty of investigation, trial, and punishment, [of] any violation of the American Convention on Human Rights. This is the most important outcome of the judgement, a call to make our justice system more efficient, even before the reform approved last year comes into effect.

For more information on the case of Rosendo Radilla, the Court's judgement, and the context of forced disappearances in Mexico, see:

Association of the Family Members of the Detained, Disappeared, and Victims of Human Rights Violations in Mexico (AFADEM): <http://espora.org/afadem/>.

*Díaz, Gloria Leticia. "México en la Corte Interamericana: vano mea culpa". In *Proceso*, No.1706, 12 July 2009, pp 11-13.*

Association of the Family Members of the Detained, Disappeared, and Victims of Human Rights Violations in Mexico (AFADEM): <http://espora.org/afadem/>.

Inter-American Court of Human Rights, judgement handed down on 23 November 2009 in the Radilla Pacheco case (in Spanish): www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf.

Mexican Commission for the Defence and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos): www.cmdpdh.org

PBI Mexico, Human Rights Defenders in the State of Guerrero (December 2007): www.pbi-mexico.org