

# **Mexico and the Inter-American Court of Human Rights, in comparative perspective with the European Court of Human Rights**

**a conference by**



**and**



**Peace Brigades International, UK Section**

**7 June 2011, 4pm – 9pm**

**Venue: The Court Room (London, Senate House, First Floor), Malett Street, London WC1E 7HU, University of London**

## **1. Introduction**

Organised by Peace Brigades International (PBI), the Human Rights Consortium and the Institute for the Study of the Americas (University of London, School of Advanced Study), this conference will bring together a series of interdisciplinary panels and audience from non-governmental organisations (NGOs) and political, legal and academic sectors. Its aim is to increase understanding of the human rights situation in Mexico, especially with regard to the implementation of the rulings of the Inter-American Court of Human Rights (herein IACtHR). This topic will be explored in comparative perspective with the European Court of Human Rights, drawing attention to emblematic cases recently ruled on by the IACtHR, including those of Inés Fernández Ortega, and Valentina Rosendo Cantú, and Radilla Pacheco.

### **Peace Brigades International**

PBI is an international grassroots NGO that has promoted nonviolence and protected human rights since 1981. We send international volunteers to areas of conflict, providing protective accompaniment to human rights defenders threatened by political violence. For 30 years, we have protected the lives of hundreds of activists, proving that accompaniment deters violence and creates space for local activists to work. We are nonpartisan and do not interfere with the work of those we accompany, because we believe that a lasting peace cannot be imposed from outside but must come from the desires and initiative of local people. Further information on PBI is available at: [www.peacebrigades.org.uk](http://www.peacebrigades.org.uk)

### **The Institute for the Study of the Americas**

The Institute for the Study of the Americas was founded in August 2004 through a merger of the Institute of Latin American Studies (ILAS) with the Institute of United States Studies (IUSS). It is dedicated to teaching and research, and focuses on the Americas as a whole, with specific proper attention to Canada and the Caribbean. As well as serving and strengthening national networks of North Americanist, Latin Americanist and Caribbeanist scholars, the Institute actively maintains and builds ties with important academic, cultural, diplomatic and business organisations with interests in the region.

### **Human Rights Consortium**

The Human Rights Consortium focuses on enhancing the dissemination of the research and related activities of practitioners and scholars nationally and internationally. It aims to build upon the existing successes, networks and expertise of the School Members' Institutes and develop a particular forum of discipline-focused human-rights-led activities of benefit to the School and wider community. Further information on the Consortium is available at: <http://www.sas.ac.uk/574.html>. Further information on the range of scholarly and policy expertise offered by the Consortium is available at: <http://www.sas.ac.uk/577.html>.

## **2. Conference Programme**

### **16:00 – 16:15 Opening Remarks and Welcome**

### **16:15 – 17:45 Panel 1: Mexico and Compliance with the Inter-American Court of Human Rights**

#### **Brief**

Five high profile cases have been recently brought by the Inter-American Commission on Human Rights (herein the Commission) against the state of Mexico:

- Radilla Pacheco v. United States of Mexico (2009)
- González and Others (“Campo Algodonero”) v. United States of Mexico (2009)
- Fernández Ortega and Others v. United States of Mexico (2010)
- Rosendo Cantú and Other v. United States of Mexico (2010)
- Cabrera García and Montiel Flores v. United States of Mexico (2010)

The Inter-American Court of Human Rights’ judgements have expressed strong criticisms on each of these judicial processes and, to a certain extent, on the Mexican judicial system itself. In particular, the Court was highly critical of the use of military courts in cases in which military personnel are accused of human rights abuses against civilians. The Inter-American Court has also instructed Mexico to conduct proper investigations and prosecutions of these cases in civilian courts, provide full reparation, and introduce reforms to prevent such cases from happening again. In addition, the Inter-American Court issued protection orders (provisional measures) calling on the state to provide appropriate and comprehensive protection for human rights defenders at risk because of the cases they were pursuing before the Court. This opening session will explore these five cases, analyse the common themes which can be extracted from the Court’s rulings and discuss the extent to which the government of Mexico is taking pro-active steps to implement the Court’s findings.

#### **Panel Participants**

Chair: Dr. Par Engstrom, Human Rights Consortium

- Dr. Peter Watt, University of Sheffield
- Ms. Valentina Rosendo Cantú, Mexican Human Rights Defender
- Mr. Santiago Aguirre, Tlachinollan Human Rights Centre, Mexico City
- Mr Matthew Phillips, FCO Central America and Mexico Team

### **17:45 – 18:00 Break**

## **18:00 – 19:30 Panel 2: The Situation of Mexican Human Rights Defenders and Lessons Learned from the European Court of Human Rights**

### **Brief**

Lawyers and human rights defenders working in Mexico frequently face criminalisation, stigmatisation, death threats and even violent attack. Despite an elaborate international human rights framework and a series of reports from international agencies addressing this situation, delegitimisation of lawyers' and human rights defenders' crucial work continues on a daily basis in Mexico, whilst harassment of lawyers and defenders, and their families, remains common. Drawing on Peace Brigades International's practical experience in the states of Guerrero and Oaxaca, together with our speakers' expertise on both the current political and security situation in Mexico and the Inter-American system's human rights protection mechanisms, this session will analyse the ways in which Mexico's legal framework together with international human rights standards can be harnessed to improve the situation of activists and lawyers. The session will also explore the role and effectiveness of the Inter-American Court of Human Rights in comparison with the European Court of Human Rights, examining the different methods used by the two courts to secure member state compliance with their rulings and identifying best practice.

### **Panel Participants**

Chair: Sir Henry Brooke

- Lisa Maracani, Peace Brigades International Mexico project
- Mr. Rupert Knox, Amnesty International
- Courtenay Barklem, Law Society
- Juan Carlos Gutierrez , Mexican Human Rights Commission

**19:30 – 19:40 Closing Remarks**

**19:40 – 20:30 Wine Reception**

**Conference Close**

### **3. Mexico and the Inter-American human rights system**

Mexico is a country plagued by high impunity rates (approximately only 1.5% of all reported crimes lead to a conviction<sup>1</sup>) and in the grip of crime related violence which has spiralled out of control in the last few years (since December 2006 more than 34,000 killings have been recorded, the bloodiest year being 2010). In this context of violence and impunity, being a human rights defender is particularly tough. In October 2009, the Mexican Office of the United Nations High Commissioner for Human Rights (OHCHR) published a study of 128 cases of attacks against human rights defenders (herein HRDs), of which only 2 cases led to a conviction<sup>2</sup>. In November 2010, the OHCHR published an update reviewing 37 new cases. Of these, only in 23 cases did the victims decide to file a report, denoting a lack of confidence in the justice system and the rule of law.

Mexico has been instrumental in the development of many international human rights instruments, and has signed all major international human rights standards, particularly in the last 20 years; however, it has not yet ratified all its obligations into national law, and this has become particularly evident in its lack of compliance with international rulings and recommendations.

In little more than a year, there have been five rulings of the IACtHR against the Mexican State, finding it responsible for grave human rights violations, such as torture and enforced disappearance. The IACtHR's sentences specified a series of obligations for Mexico in order to bring justice to the victims and ensure non-recurrence. To date the rulings have not been implemented, causing serious concern with Mexican civil society and the international community. HRDs in Mexico are working in a climate of fear as they regularly receive threats and harassment designed to silence them and stop their work, while perpetrators enjoy a regime of systematic impunity. As a result of their vulnerability, the Commission has granted precautionary measures to several HRDs, calling on the state to provide effective and appropriate protection. However, Mexico seldom complies with these in a prompt, effective and appropriate manner. With the serious delays in implementing measures stipulated in the recommendations of the Commission and the judgements of the IACtHR, not only does Mexico fail to guarantee the fundamental human rights of its citizens, combat impunity, ensure accountability and deliver truth and justice for its victims, but it also displays contempt for the Inter-American system as a whole, and risks undermining its effectiveness.

### **4. Conference Objectives**

This conference will bring together an interdisciplinary panel and audience from NGOs, political, legal and academic sectors, with the aim of raising awareness of the human rights situation in Mexico, especially with regard to the weak implementation of the IACtHR rulings. The University of London and PBI UK hope the conference will act as a channel of communication between HRDs from Mexico, NGOs that work for human rights protection in the region, academics, and the public in the UK.

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<sup>1</sup> Milenio, "Paraiso de la Impunidad", 7 February 2011, <http://www.milenio.com/node/640639> El Universal, "En el sexenio, 34,612 muertes ligadas al crimen", 12 January 2011, <http://www.eluniversal.com.mx/notas/736870.html>

<sup>2</sup> Oficina En México del Alto Comisionado de Naciones Unidas para los Derechos Humanos (2009), *Defender los derechos humanos: entre el compromiso y el riesgo: Informe sobre la Situación de las y los Defensores de Derechos Humanos en México*, (United Nations: 2009).

The conference will aim to:

- Provide an opportunity to conceptualise and comprehend the issues faced by HRDs in Mexico through the experiences of Valentina Rosendo Cantú, a human rights defender from Guerrero working in Oaxaca and the subject of a recent who brought her case to the IACtHR case, and Santiago Aguirre, a human rights lawyer who has been representing her.
- Reiterate the concerns of the international community regarding Mexico's implementation of IACtHR decisions and the protective measures ordered by both the Court and the Commission.
- Focus upon the five recent IACtHR cases involving Mexico, which will allow for analysis, as well as the creation of a body of conclusions and recommendations concerning further advocacy work in relation to these cases.
- Discuss the best practices of both the IACtHR and the European Court of Human Rights (herein ECHR), in order to improve implementation levels in countries such as Mexico. Each has evolved significantly since its inception in terms of its institutions, procedures and caseload, and complexity of work, yet they both still face serious challenges.

Following the conference, PBI UK intends to publish a report with the findings and recommendations made by the participants. This will include a series of conclusions and recommendations on the cases of Inés Fernández Ortega and Valentina Rosendo Cantú, and comment on Mexico's compliance with IACtHR rulings. This report will become an advocacy tool that the international community can draw on to ensure that Mexico carries out a timely and appropriate implementation of the Court's rulings.

## **5. Timing**

After years of advocacy and multiple rulings by the IACtHR against Mexico, President Calderón has finally introduced a bill to reform the Military Code of Justice that he claims will address both domestic and international concerns about accountability for alleged human rights violations undertaken by the military. The bill was presented to the Senate in October 2010, ostensibly in response to the IACtHR rulings, and the Mexican Congress is now preparing for a critical debate about military jurisdiction.

Unfortunately, the bill does *not* conform to international standards, and would leave intact the structures that foster impunity for crimes committed by the armed forces. The reform proposes only to exclude three crimes from military jurisdiction: rape, torture and forced disappearance. Such a reform would exclude other types of human rights violations, such as extrajudicial execution, arbitrary detention, sexual abuse, and cruel and inhuman treatment. This would in essence permit military authorities, for instance, to classify torture as abuse of authority, or rape as lesser sexual assault. Human Rights Watch (HRW) has observed in an open letter to the Mexican Congress that there is a 'particularly worrying...track record of downgrading charges against soldiers'; HRW has also highlighted that amongst sixty-two human rights cases currently being tried under military jurisdiction and for which charges are

known, less than 5% would be affected by this proposed reform.<sup>3</sup> Additionally, the bill would create a Military Investigative Police Force which would be responsible for victim and witness protection in cases of military abuse, thus putting protection measures in the hands of the very institution that is under review for impunity in investigating human rights abuses. Mexican human rights NGO Miguel Agustín Pro Juárez Human Rights Centre (Prodh) which works with victims of military abuses, maintain that this proposal is a ‘cosmetic gesture meant to give the appearance of reforming what, in practice, [and] will continue to remain the same’; they also claim that if Calderón’s bill is passed, ‘the government will likely refuse to consider any further reforms in the short term, indefinitely stalling efforts by both governmental and non-governmental actors to bring Mexico into compliance with international law and end impunity for military crimes’.<sup>4</sup>

## **6. Mexico and the Inter-American Court of Human Rights: Two Years, Five Rulings**

One of the international community’s principal concerns regarding Mexico’s judicial system is its heavy reliance on military tribunals in cases where members of the armed forces are accused of violating the human rights of civilians. During Mexico’s ‘Dirty War’ of the 1960s, 1970s, and 1980s, the Army was used in counterinsurgency tasks and is alleged to have forcibly made hundreds of people disappear, as well as having been involved in extrajudicial executions, torture and rape. To date, the Army is involved in counterinsurgency tasks to a lesser degree, but it is being used in policing tasks, especially in the fight against organized crime. Since the beginning of the “war on drugs” in late 2006, reports filed against members of the military for alleged involvement in grave human rights violations against civilians, have escalated.<sup>5</sup> As in the past, victims who denounce these crimes, still face obstacles in obtaining justice and finding out the truth and are often subjected to harassment, intimidation and sometimes even physical abuse.

The Mexican Constitution stipulates that military jurisdiction cannot be used in cases involving civilians. However, Article 57 of the Military Code of Justice interprets the Constitution and broadens the application of military jurisdiction to include any crime committed by a soldier in service – which includes acts of human rights violations by soldiers against civilians. In a military court, prosecutors and judges are army officials in active service, bound by military discipline and obedience to their superiors. This goes hand over fist against the principle of judicial independence and separation of state powers. The IACtHR and the Commission, as well as other international courts and the UN Human Rights Committee, have repeatedly stated that the use of military jurisdiction should be exceptional in nature and restricted to legal matters relating to military functions (desertion, for example), and never in cases of serious human rights violations. However, in the five cases recently ruled upon by the IACtHR, the Commission decided to refer these matters to the Inter-

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<sup>3</sup> Human Rights Watch (2010), ‘Letter to the Senate and the House of Deputies’, 10 November 2010. Downloaded from: <http://www.hrw.org/en/news/2010/11/10/letter-president-senate-and-president-house-deputies>; Last access: 15 February 2011.

<sup>4</sup> Prodh Bulletin (2010), *Human Rights in Mexico*, Centro de Derechos Humanos Prodh: Miguel Agustín Pro Juárez, A.C., No. 39, December 2010, p. 10.

<sup>5</sup> Amnesty International, Mexico: Military abuses - Facts and Figures, 8 December 2009, <http://www.amnesty.org/en/for-media/press-releases/mexico-military-abuses-facts-and-figures-20091208>; HRW, Time to speak up on military abuse in Mexico, 17 May 2010, <http://www.hrw.org/en/news/2010/05/17/time-speak-military-abuse-mexico>

American Court because domestically, the victims were repeatedly denied access to justice in a civilian court.

#### **(a) The Disappearance of Rosendo Radilla Pacheco**

The IACtHR issued its first ruling against Mexico in November 2009. The Court found the Mexican State responsible for the forced disappearance of Mr. Rosendo Radilla Pacheco, detained in August 1974 at a military checkpoint in Atoyac de Álvarez, Guerrero.

The IACtHR established the responsibility of the Mexican State for the violation of Mr. Radilla's rights to life, liberty and personal integrity, as well as the failure to recognise Mr. Radilla's legal rights. In this case, the Court recognised the existence a period of massive and systematic violations of human rights during Mexico's so-called 'Dirty War' period, and recognised a worrying pattern of structural impunity and continuing legal obstacles to justice. These barriers still prevent Mexico successfully overcoming this dark period of its history and the establishment of an environment which guarantees protection against future violations.

The Court ordered the Mexican government to carry out a timely and efficient investigation into the fate of Mr. Radilla or the whereabouts of his remains. Additionally, the Court ruled that the Mexican State should compensate Mr. Radilla's family, and publicise the Court's judgement in the national media. Finally, it called for the necessary legislative reforms that would harmonise Article 57 of the Military Code of Justice with recognised international standards on the matter and the American Convention on Human Rights (1969), in order to prevent further cases of serious human rights violations by members of the armed forces from being investigated in military courts. A year later, the only step taken by the Mexico to comply with the Court's decision has been to publication of the Radilla case in the national media, while efforts to carry out an investigation in the civilian jurisdiction to find the remains of Mr. Radilla and establish the truth have been scarce and disappointing.

The case was brought to the IACtHR by Tita Radilla, Mr. Radilla's daughter, and represents just one of 1,200 similar cases in Mexico, with 640 coming from Guerrero state alone (including some 473 cases from Atoyac, the region where the Radilla family originates). PBI has accompanied Ms. Radilla since 2003 and throughout her case as a result of the harassment and intimidation which she consistently suffered.

#### **(b) The Cotton-field Case (*Caso Campo Algodonero*)**

In November 2001, the bodies of Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez were found in a cotton field in Ciudad Juárez. In 2002, representatives for the women initiated proceedings before the Inter-American Commission on Human Rights against the State of Mexico. They claimed that the State had violated the victims' rights as it did not take the necessary measures to prevent their murders, despite their knowledge about the widespread nature of gender violence in northern Mexico and particularly the area around Ciudad Juárez. The applicants also highlighted the lack of due process in the law enforcement agencies' investigations into the disappearances/murders of the women, together with the prevention of justice and failure to make reparations.

Various reports containing key recommendations concerning the issue were published by the Commission between 2005 and 2007. In mid-2007, the Commission concluded that Mexico had failed to implement the Commission's recommendations, and, accordingly, on 4

November 2007 the Commission filed a suit against Mexico in the Inter-American Court of Human Rights.

On 16 November 2009 the Inter-American Court of Human Rights found Mexico guilty of violating the right to life, personal integrity and personal liberty of the three women (as stipulated in the American Convention on Human Rights (1969)); the state failed to investigate the offences properly and thus failed in its duty to protect its citizens; Mexico violated the personal integrity of its citizens and violated the rights of the Child (as stipulated in the UN Convention on the Rights of Child (1989)). As part of its sentence, the Court ordered that reparations be paid to the family members of Ms. Ivette González, Ms. Herrera Monreal and Ms. Ramos Monárrez, and that changes be made to the Mexican judicial system.

### **(c) The Cases of Inés Fernández Ortega and Valentina Rosendo Cantú**

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

– Valentina Rosendo Cantú, in an interview with PBI.

In 2002, Inés Fernández Ortega and Valentina Rosendo Cantú, two indigenous Me’phaa women from the state of Guerrero, were raped and tortured by soldiers. When Fernández and Rosendo denounced the attacks, they were frequently met with obstacles in their search for justice and both of their cases were repeatedly referred to military courts. During their lengthy campaign for justice, both women were harassed, threatened, and subject to surveillance, as were members of their families, the Tlachinollan Human Rights Centre, some of the witnesses involved in the trials, and the Organisation of Indigenous Me'Phaa People (OPIM), an indigenous rights organization that has supported Ms. Fernández Ortega and Ms. Rosendo Cantú’s struggle for justice. These intimidations and violations continue to this day. Both the Commission and the Court recognised the risk to which they were exposed and ordered Mexico to provide effective and appropriate protection measures (precautionary and provisional protection measures). The measures have been poorly implemented by the Mexican state.

The Tlachinollan Human Rights Centre has maintained that the assaults against Ms. Fernández Ortega and Ms. Rosendo Cantú occurred within the context of a counter-insurgency strategy against guerrilla groups, that these rapes were part of an intimidation strategy against members of the public and thus constituted acts of torture. The Centre has requested an end to military presence in the region in order to guaranteed non-repetition. Ms. Rosendo Cantú continues to remain in hiding because of fears for her and her daughter’s safety. Ms. Fernández Ortega, who still lives in her community in Guerrero, also continues to be a target; moreover, some of her children have been attacked by strangers as they have left school. The attacks on Ms. Fernández Ortega and Ms. Rosendo Cantú, together with lawyers from the Tlachinollan Human Rights Centre, occur within a context of general repression of indigenous groups fighting for their rights in the state of Guerrero.

In 2009, due to Mexico's failure to guarantee due process and justice in these cases, the Commission sent the cases to the IACtHR. In its referral, the Commission stated Mexico's responsibility for the rape and torture of Ms. Fernández Ortega and Ms. Rosendo Cantú for 'the lack of due diligence in the investigation and punishment of those responsible for these crimes; for the lack of adequate compensation to the victim and her family; for the use of the military justice system to investigate and judge the human rights violations; and for the difficulties facing indigenous people, particularly women, in attempting to access justice'.

The IACtHR accepted jurisdiction over the cases and heard them in April and May 2010. In October 2010, the Court found the Mexican State responsible for violations of the American Convention on Human Rights (1969) and the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1987). The IACtHR issued rulings which demanded improvements in the procedures of investigation of rape cases and reiterated the need to end the application of military justice in cases of human rights abuses committed by soldiers against civilians. These cases indicate the serious deficiencies which persist in the Mexican justice system and which prevent access to justice, particularly for women and indigenous communities. They also show the consequences of impunity and the lack of due process resulting from military jurisdiction.

#### **(d) The case of Rodolfo Montiel Flores and Teodoro Cabrera García**

Mr. Cabrera García and Mr. Montiel Flores had been prominent activists in local protests in 1999 and were detained by military forces on 2 May 1999. Following their detention, Mr. Cabrera García and Mr. Montiel Flores were submitted to torture and inhuman and degrading behaviour. In 2001, their case was brought before the Commission by various human rights and environmental organisations.

In 2009, the Commission decided to pursue the case through the Inter-American Court of Human Rights. The Court's verdict, issued on 26 November 2010, found Mexico guilty of failing to protect Mr. Cabrera García and Mr. Montiel Flores. The Court ordered Mexico to make immediate changes in its use of the Military Code of Justice which, it emphasised, must not be used to try members of the armed forces alleged to have been involved in human rights abuses. In these cases, military personnel must, according to the Court, be tried in the civilian jurisdiction. The Court also ordered that Mexico pay reparations to Mr. Cabrera García and Mr. Montiel Flores.

#### **(e) Reiterated Demands from the International Community**

The IACtHR has reiterated the demand that military jurisdiction should not be applied in cases of suspected human rights violations against civilians.

The cases sketched above illustrate the need for Mexican authorities to address the issue of access to justice, particularly in cases regarding violence against women and military impunity. The Mexican state has failed to comply in good faith with international legal standards and the rulings of the court. Instead, the response by the Mexican state has been insufficient and inappropriate.

In March 2010, the United Nations Human Rights Committee examined Mexico's degree of compliance with the International Covenant on Civil and Political Rights (1966). Amongst other concerns expressed by the Committee, three key issues were highlighted:

- **Militarisation and military justice.** The Committee condemned the human rights violations committed by the armed forces and indicated that there was a *de-facto* state of emergency in some parts of Mexico. The experts reaffirmed the rulings of the IACtHR and stated that there was no justification for the use of military jurisdiction in cases of alleged human rights abuses.
- **The situation of human rights defenders.** The Committee expressed its concern about the vulnerability of HRDs in Mexico together with what it believed to be the criminalisation of social protest.
- **Compliance with IACtHR Rulings.** On several occasions the Committee members questioned the State of Mexico with regards to how it would comply with the IACtHR's Ruling in the Radilla case – especially when and how the government would undertake reform to Article 57 of the Military Code of Justice. The Mexican delegation, however, only answered that Mexico would fully comply with the sentence, but without specifying any mechanisms.

## **7. The European and American Judicial Human Rights Systems**

### **The American System**

The Inter-American Commission of Human Rights receives, analyses, and investigates individual petitions that allege violations of human rights, from both the Member States of the Organisation of American States (OAS) that have ratified the American Convention and those Member States that have not ratified it. These will only be received once all domestic procedures have been exhausted. In certain cases, it can submit cases to the IACtHR and will appear before this organ during the processing and consideration of such cases. Cases can only be referred to the Court by both the Commission and by a State party.

The Court has two functions: a judicial function and an advisory function. With respect to the judicial function, this can only be exercised where procedures before the Commission have been exhausted. In order for a case to be brought before the Court, State party in question must recognise the Court's jurisdiction. As of 30<sup>th</sup> June 2010, 21 States party to the American Convention have recognised the Court's contentious jurisdiction, including Mexico since 16<sup>th</sup> December 1998. Redress from the Court comes in both monetary and non-monetary forms.

In both a report from the Court to the OAS and a study by the Association for Civil Rights show that the percentage of cases in which there has been full implementation of the Courts judgments – both justice measures and general measures – is very low. While the Court has no specific follow up procedures in the Court's Rules of Procedures, four procedures have been taking place in order to improve compliance with the Court'.

1. Since 2001 the Court has been producing reports on States' compliance with its rulings for the OAS.
2. Compliance orders have been used to increase States' reporting requirements and have also often identified specific agents of the state as interlocutors for the implementation of court decisions as a way of encouraging State accountability and overcoming bureaucratic obstacles; the court has also begun the practice of 'compliance hearings'

which allow parties to present evidence and arguments in respect of implementation orally.

3. Some countries have implemented mechanisms within their national framework to ensure implementation.
4. It has been suggested that a group modelled on the Committee of the Council of Europe be created to enable States to discuss efforts to implement decisions; however, this has not yet been done.

### **The European System**

The European Court of Human Rights (ECHR) was established in 1959 by the European Convention on Human Rights. The Convention has since been supplemented by 14 protocols which have increased the scope of the rights guaranteed by the Convention and made the Court a permanent body with compulsory jurisdiction over 47 Member States; unlike the IACtHR, individuals may apply to the Court once they have exhausted the national appeals process. In a similar contrast to the Inter-American system, the ECHR stands alone, with the Commission having been removed in 1997. The court can only rule on whether an individual has had his/her rights violated by a state party, and applies the 'subsidiary principle', meaning that its decisions are not prescriptive but recognise States' primary role in implementation. Despite this, there has been a recent practice to give offending States specific instructions, but states are still free to come up with their own legal remedies to adverse rulings. Reparations ordered by the Court can be in the form of financial compensation, individual measures or general measures.

States implementation measures are monitored by the Committee of Ministers.<sup>6</sup> Within 6 months of the judgment, the responsible State has to inform the Committee about the steps taken to effectively implement the Court's ruling, including an 'action plan'. The Committee reviews the cases in its quarterly meetings and adopts a final resolution to complete cases. If the Committee finds that the State has not taken satisfactory measures to implement the Court's decision, it will not issue the final statement, rendering the responsible country subject to continual reviews and requests for explanations and action.

The recent Interlaken Declaration prioritised improving domestic capacity as a way to boost the implementation process. Some members have created national institutions to monitor compliance with both adverse judgments and the ECHR generally. In the UK, for example, there is the Parliamentary Joint select Committee on Human Rights which is empowered to monitor the implementation of judgments by liaising with the relevant ministers about what steps to take.

The implementation of general measures, however, is hard to monitor given the use of the 'subsidiary principle'. Furthermore, the court currently faces a backlog of 120,000 cases. Implementation is particularly a problem in certain states which lack the political will or capacity to implement judgments. The Committee may thus adopt interim resolutions, which usually contain information concerning the temporary measures already taken and set a provisional calendar for the reforms to be undertaken, encourage the respondent state to pursue certain reforms, or insist that the State take the measures needed to comply with the judgement. A number of outstanding cases, however, relate to 'repetitive cases', with States

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<sup>6</sup> The Committee of Ministers is assisted by a special department of the Council of Europe's Secretariat – the Department for the Execution of judgments of the ECHR and the Directorate General of Human Rights.

failing to have complied with earlier implementation obligations. Where there is persistent failure to implement, increasingly stronger worded interim resolutions may be adopted.

There is concern that there is a failure by States to implement orders to investigate and prosecute widespread human rights violations; often these limited corrective measures are chosen over widespread reform. That said, the Committee of Ministers can ultimately suspend or expel non compliant States under Articles 3 and 8 of the Statute of the Council of Europe. Protocol 14 also allows the Committee to seek an interpretative ruling from the Court where there remains disagreement as to the original ruling or bring infringement proceedings against a reluctant State.

## **8. Speakers' Biographies**

### **Mr. Par Engstrom**

Par Engstrom is a lecturer in human rights at the Human Rights Consortium, School of Advanced Study, and the University of London. He teaches human rights at the Institute of Commonwealth Studies and the Institute for the Study of the Americas. Par has a BA in Philosophy and Economics from University College London, an MSc in Latin American Studies from the Institute of Latin American Studies (currently the Institute for the Study of the Americas), and a DPhil in International Relations from Oxford University.

Par's current research interests focus on regional human rights institutions both comparatively and with a particular reference to the Inter-American human rights system and its capacity to shape domestic human rights politics in Latin America. His most recent publications include "Human Rights: Effectiveness of International and Regional Mechanisms" in *The International Studies Encyclopedia*, Robert A. Denemark (ed.), (Blackwell Publishing, 2010); and "Why the human rights regime in the Americas matters" (with Andrew Hurrell), in *Human Rights Regimes in the Americas*, Mónica Serrano and Vesselin Popovski (eds.), (United Nations University Press, 2010).

### **Ms. Valentina Rosendo Cantú**

Valentina Rosendo Cantú is a human rights defender and a Me'phaa indigenous woman, from the south-western state of Guerrero, Mexico. In 2002, at the age of 17, she was tortured by members of the Mexican military. After being denied justice by the State, she successfully took her case to the Inter-American Court of Human Rights. Valentina and her daughter continue to be subjected to threats, harassment and attacks as a result of her struggle for justice.

### **Mr. Santiago Aguirre**

Santiago Aguirre is a Mexican human rights lawyer. He has degrees in both Law and Social and Humanistic Studies, and has nine years of experience litigating and analysing human rights cases in Mexico. Santiago currently works at the Tlachinollan Human Rights Centre in Tlapa de Comonfort, Guerrero, and successfully represented both Valentina Rosendo Cantú and Inés Fernández Ortega at the Inter-American Court of Human Rights. Both Santiago and

other staff at the Tlachinollan Centre have received serious threats due to their work on these two cases.

### **Ms. Lisa Maracani**

Lisa Maracani is currently Project Coordinator of PBI's Project in Mexico. Previously she worked in the Mexico team at Amnesty International's International Secretariat, and prior to that she lived in Mexico, volunteering with two human rights organizations. She studied languages and then Conflict and Development at SOAS.

### **Dr. Peter Watt, University of Sheffield**

Dr Peter Watt is a lecturer at the University of Sheffield and is a specialist on Mexico's 'Dirty War' and drug trafficking. Peter Watt studied as an undergraduate at the University of Glasgow, completed a Masters degree at the University of Iowa (USA) and holds a PhD from the University of Aberdeen.

His doctoral thesis examined the relationship between the media, prominent intellectuals and the state during the Mexican government's dirty war against political opposition in the wake of the 1968 student movement. Other research interests include US-Latin American relations, new social movements in Latin America, and media in Latin America. At present he is working on a book on narco-trafficking in Mexico.

### **Sir Henry Brooke**

Sir Henry Brooke was educated at Marlborough College, Wiltshire, and later received a BA from Balliol College, Oxford University, in classical literature and ancient history. He was called to the Bar by the Inner Temple in July 1963, and practised for 25 years at 2 Crown Office Row and Fountain Court Chambers. He was appointed to the panel of Junior Counsel to the Crown (common law) in 1978, and took silk to become a member of the Queen's Counsel in 1981. He was invested as a Knight in 1988. In 1988, he was also appointed a High Court Judge at the Queen's Bench Division, a position which he held until 1996 when he was appointed Lord Justice of Appeal. From 2001 until 2004 he was the judge in charge of the modernisation of the English law courts, and from 2003 to 2006 he was Vice President of the Court of Appeal (Civil Division).

When he retired in 2006, Sir Henry was trained and accredited as a mediator by CEDR, ADR Chambers and the Regent's College School of Psychotherapy and Counselling, and has carried out over 125 mediations since January 2007. He is a member of the CEDR Solve Direct panel of mediators.

### **Courtenay Barklem**

Courtenay is a solicitor-advocate, and has been the human rights adviser at the Law Society since 2007. His role is to advise the Law Society on key human rights issues, both domestic and international, and to promote engagement among the legal profession in human rights

issues. He has a Masters in Human Rights Law from Birkbeck College, University of London.

Before specialising in human rights, he practised international construction law. During that time, he also worked pro bono on various human rights issues, in particular death penalty cases in the Caribbean and USA. In 2002/3, he spent 6 months on sabbatical working on capital defence in South Carolina.

He is a member of the executive committee of the Human Rights Lawyers Association and Peace Brigades International's Lawyers' Advisory Committee.

### **Juan Carlos Gutierrez Contreras**

Juan Carlos Gutierrez Contreras is a Mexican lawyer who specializes in criminal law and human rights. He holds a post-graduate degree in Criminology by the University of Salamanca, Spain, and is a PhD candidate at this same University.

Mr. Gutierrez worked as a consultant for the Office of the High Commissioner of Human Rights. Previously, he was regional Director of the Cooperation Programme between the European Union and Mexico, and from 2001 to 2004 he was director for the Americas at the Centre for Justice and International Law (CEJIL). He is currently the Director of the Mexican Commission for Defence and Promotion of Human Rights, as well as a Professor at the Latin-American Faculty on Social Sciences (FLACSO) and the Ibero-American University (UIA).

### **Mr. Matthew Phillips**

FCO head of the Central American and Mexico Team

### **Mr. Rupert Knox**

Rupert Knox is responsible for Amnesty International's human rights research on Mexico. He has travelled widely in Latin America and regularly leads AI's international research and lobbying visits to Mexico. He has held the post for 10 years, focusing on a wide range of human rights issues, including abuses committed by the Armed Forces. During his 15 years working in AI's America's Program he has also worked on Brazil, Colombia, Paraguay, Chile and Argentina. He is a graduate in Spanish and Latin American Studies and Philosophy.