

# DEMANDING JUSTICE *and* SECURITY

*Indigenous Women and  
Legal Pluralities in Latin America*



EDITED BY RACHEL SIEDER

978-0-8135-8793-6  
978-0-8135-8792-9  
978-0-8135-8795-0  
978-0-8135-8794-3  
978-0-8135-9069-1

Cataloging-in-Publication data is available from the Library of Congress.

A British Cataloging-in-Publication record for this book is available from the British Library.

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Manufactured in the United States of America

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## PREFACE

This book started life when a group of activist scholars, colleagues, students, and comadres decided we wanted to work together and learn from the different experiences and places where we conduct our research in Mexico, Guatemala, Colombia, Ecuador, and Bolivia. Our concern was to listen to how indigenous women are framing their demands for justice and security within their different organizational contexts and to understand their engagements with different forms of legality. Our hope was to witness and accompany, and to validate and amplify those claims through our scholarship and the different connections we could make. Building on our shared theoretical and methodological concerns, we devised a joint project, *Women and Law in Latin America: Justice, Security and Legal Pluralism*, as part of a collaboration between the Centro de Investigaciones y Estudios Superiores en Antropología Social (CIESAS) in Mexico City, where many of us are fortunate to be researchers, teachers, and students, and the Chr. Michelsen Institute in Bergen, Norway, where I am an affiliated senior researcher and part of an inspiring research network on law and gender. Great thanks are due to CIESAS and particularly its past and present directors, Virginia García Acosta and Agustín Escobar Latapí, for their unflagging support for the project and commitment to collaborative international research. In Bergen Siri Gløppen, director of Bergen's Centre for Law and Social Transformation, and Liv Tønnessen provided input and steadfast encouragement.

Central to our exchanges was the funding the project received from the Norwegian Research Council (project 199745), which enabled us to finance fieldwork, together with a series of workshops and meetings of the research team and representatives from organizations and communities. We are immensely grateful to the Council for their support. In 2011 we met in Cuetzalan, Puebla, at the Hotel Taselotzin, the first eco-tourist venture run by Nahuatl women from the organization Maseualsiuamej Mosenyolchicuani in the Sierra Norte. The space and care that Doña Rufi and her compañeras provided for us formed the perfect environment to listen, share, and strengthen our work together. In Mexico City, a workshop with Colombian psychologist Clemencia Correa helped us reflect on the challenges of working with histories of violence, and on the ethics of engagement, accompaniment, and mutual care. Earlier versions

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## Between Community Justice and International Litigation

The Case of Inés Fernández before  
the Inter-American Court

ROSALVA AÍDA HERNÁNDEZ CASTILLO

Based on an analysis of the case of Inés Fernández Ortega versus the Mexican state presented before the Inter-American Court of Human Rights (IACtHR), in this chapter I analyze the ways in which violence, racism, and gender inequalities affect the lives of Mexican indigenous women and determine their lack of access to justice. I also explore how Inés and the women in her organization appropriated human rights discourses and spaces of international justice as tools to denounce the violence, racism, and economic marginalization they and their communities face.

Human rights discourses are deployed in processes of resistance, but they are also being used as new forms of state control of social protest and can encourage neoliberal, individualized conceptions of the person. Here I analyze the complexities associated with processes whereby human rights discourses are *vernacularized* within a context of militarized violence and lack of access to justice. My research is based on collaborative workshops with Inés Fernández Ortega and women and men from her organization that formed part of the elaboration of an anthropological expert report presented to the IACtHR, together with ethnographic research within different national and international spaces for justice associated with the case.

Inés Fernández Ortega, a leader of the Organization of the Me-phaa Indigenous Peoples (OPIM) in Guerrero state, was raped by soldiers from the Mexican army. On March 22, 2002, eleven soldiers from the Forty-First Battalion arrived at Inés Fernández Ortega's home, located in the Barranca de Tecuani community, part of the municipality of Ayutla de los Libres in the state of Guerrero, Mexico. Three of the soldiers entered the room that was being used as a kitchen without the consent of Inés, who at the moment was accompanied only by her four children, who were all under the age of eighteen. The soldiers asked questions in Spanish, which she couldn't answer, after which one of them

raped her. Two days after the incident the victim presented a formal allegation to the Attorney General's Office (Ministerio Público of Ayutla de los Libres),<sup>1</sup> which determined that it was not the correct authority to investigate either the unauthorized and illegal entrance to Inés's property or the rape, due to the fact that the accused parties were part of the Mexican army. In May 2002, the local authorities forwarded the case to the military authorities.

As I analyze in this chapter, Inés Fernández Ortega's experience with the Attorney General (Ministerio Público) of Ayutla de los Libres and with the military authorities confirms a tendency towards triple discrimination within the Mexican legal system on the basis of class, race, and gender. She was denied the right to a translator and was examined by doctors who treated her with contempt and ended up "misplacing" the forensic tests they had conducted. After eight years trying to achieve justice in national courts, to no avail, she appealed to the inter-American human rights system.

The IACtHR became not just a space for the search for justice: throughout the lengthy litigation process, collective efforts coalesced and new leaderships were strengthened. Although repressive violence can often have a demobilizing effect, in this case the response was to strengthen local organization and particularly the leadership role of women, who have appropriated human rights discourses as tools for struggle. My analysis focuses on this double process of female victimization and personal reconstruction in the struggle for justice.

### Appropriation of International Litigation by Women's Struggles

As a legal anthropologist and a feminist, I face the dilemma of understanding statutory law as a cultural product of liberalism that must be critically analyzed, while simultaneously, as an activist, recognizing the possibilities it offers as a tool to build a fairer life for women. Feminist jurists and anthropologists have extensively analyzed the ways that power works through statutory law to reproduce the ethnocentric and patriarchal viewpoints that have hegemonized Western cultural imaginaries (see Engle Merry 1995; Facio 1992; Fineman and Thomadsen 1991; Hernández Castillo 2004). But they have also shown that in certain contexts law and state justice can be used by women to articulate different forms of resistance (Hirsch and Lazarus-Black 1994; Smart 1989; Sierra and Hernández 2005). In the case I discuss here, international justice had both a restorative effect on the lives of women who have been victims of sexual torture, and a political effect through denouncing gender violence by Mexican state security forces. It also played an important part in promoting legislative reforms in Mexico to limit military jurisdiction.

International law is increasingly becoming a last resort for Latin American women whose human rights are violated by representatives of their states (directly or through omission) and whose demands for justice go unresolved by

their national justice systems. In many instances strategic litigation has served to challenge gender discrimination and obtain legislative changes in favor of women's rights. For example, the case of *Maria da Penha v. Brazil*, presented to the IACtHR in 2006, resulted in the approval in that country of one of the most progressive laws on domestic violence anywhere in the region (known as the Maria da Penha Law; see MacDowell Santos 2007). Last, the case of *González et al. v. Mexico*, known as the Cotton Field case because the petition was lodged by the mothers of eight young women whose bodies were found in a cotton field in Ciudad Juárez, Chihuahua, is considered paradigmatic in strategic litigation in favor of women's rights because of the resulting international acknowledgment of the structural causes of gender violence.<sup>2</sup>

While it is true that these paradigmatic cases tend to be positively evaluated by feminist organizations based on their impacts on gender jurisprudence and public policies, we know very little of the concrete effects of processes of denunciation on the women who have had the courage to confront state powers and take their cases beyond national borders. It was this concern that made me hesitate when I was first invited to participate as an expert witness before the IACtHR in the case of Inés Fernández Ortega. I was asked to present an anthropological expert witness report that could help to explain the community impact of sexual violence considering the indigenous cultural context in which the aggression took place. These expert witness reports, also known as anthropological affidavits, are elaborated by specialists and outline the cultural context of the defendant or the plaintiff in any given case. The main objective of these reports is to provide information to the judges on the importance of cultural differences in understanding a specific case.<sup>3</sup> In *Inés Fernández Ortega v. Mexico*, we were required to analyze the impact of this sexual assault and the impunity surrounding the case on the community. We inquired specifically into how the cultural concepts of personhood, violence, and lack of justice influenced how the rape and the latter context of impunity were dealt with.

The Inter-American Commission on Human Rights and the legal representatives of Inés Fernández decided to invite me as an expert witness, taking into consideration my previous academic work on the intersection of indigenous collective rights and gender rights, and my advocacy for a gender agenda that considers the cultural diversity of women in Mexico. But I had many doubts: did she really want to take her case to that international court, or did the human rights organizations that supported her pressure her into "strategic litigation"?

It was with those questions in mind that in March 2009 I first arrived in Barranca Tequani, a Me'phaa community with a population of about five hundred inhabitants in the municipality of Ayutla de los Libres, in the state of Guerrero, where I met Inés Fernández Ortega, a small woman with a piercing look and an inner strength you can feel when she looks you in the eyes. She dispelled my fears, telling me, "I'm the one who wants to present the complaint so

that justice is done, so the *guachos* [soldiers] know that they can't get away with it, so my daughters and the girls in the community don't have to go through what I did, so all the women in the region can walk in the mountains without being afraid."<sup>4</sup> Her conviction that the submission at the IACtHR was necessary not only for her but for all Me'phaa women made it clear to me that she was a very different community leader from many others I had met.

Inés's legal representatives from the Tlachinollan Human Rights Center of the Mountain of Guerrero also put her needs and decisions at the forefront of their strategies. For the Human Rights Center the presentation of her case at the IACtHR was not an end in itself, but part of what they call an "integral defense of the person," which places the victims of human rights violations, and not the litigation itself, at the center of their efforts. It was this political outlook on international litigation on the part of Tlachinollan, as well as Inés's resolve to take her complaint outside the country, that convinced me to embark on the long voyage that took me in April 2010 to Lima, Peru, where I participated in the public hearing convened by the Inter-American Court. My role was to inform the judges of the content of the expert report I had elaborated together with the ethnologist Héctor Ortiz in the previous months, which formed part of the documentary evidence presented by Inés Fernández's legal representatives.

One of the objectives of the expert testimony was to demonstrate that the sexual violence suffered by Inés had affected not only her and her family, but also the women of her community and her organization. The elaboration of the report brought me close to Inés and the women in the Organization of Me'phaa Indigenous Peoples (OPIM); I learned not only of their courage, but also of their collective solidarity and communal cohesion. I came to understand that the need for an expert opinion of this type was established not only by the legal representatives, but by Inés herself, who from the very beginning of the process insisted that her rape constituted part of a series of aggressions against her people and her organization, and that it therefore could not be treated in isolation. Her conviction forced her lawyers to argue in favor of community reparations for this case of individual rape, a legal strategy that had never been used before at the IACtHR. It was because of Inés Fernández's steadfast decision to use the court as a space to denounce a whole chain of violence—of which her rape was just one link—that it was necessary to draft the anthropological expert report.

### Searching for Justice at the Local Level

After her sexual assault Inés first resorted to her community assembly to ask for support in making a legal complaint, but the support of community authorities was conditional at best and was later withdrawn due to fear of army reprisals. She then went to the state Public Prosecutor's Office (Ministerio Público), where the racism that permeates Mexico's justice system became evident. In

common with the situation in most of Mexico's indigenous regions, the attorney general with jurisdiction over Ayutla de los Libres is a mixed-race government official, unfamiliar with the indigenous languages that are spoken in the region (Mepha'a, Tu'un sávi, or Mixteco) and does not have the support of a translator or an interpreter, which is why Inés requested the help of Otilia Eugenio, a leader of OPIM, to present her allegation. In our interviews with Inés Fernández, she talks about the poor treatment and lack of interest on the part of the judicial authorities, the same authorities who determined that they could not take on the case, due to the fact that the accused parties were part of the Mexican army, which is why they decided to turn it over to the Military Attorney General (Ministerio Público Militar).

A number of studies in Mexico regarding indigenous women's access to state justice have revealed the ways in which gender-discriminatory ideologies and a lack of cultural sensitivity on the part of those who administer justice have affected the relationship between this sector of the population and national law (see Hernández Castillo 2004, 2016; Sierra Camacho 2004). These studies demonstrate that systems of class, gender, and ethnic oppression are mutually constituted and have a direct effect on poor indigenous women's lack of access to legal recourse. Afro-American feminists have proposed an *intersectional* theoretical approach as a means for analyzing how socially constructed categories of discrimination, such as class, gender, race/ethnicity, and generation, interact simultaneously, creating contexts of social inequality (see Crenshaw 1991; Hill Collins 1990). In this sense, Inés's testimony allows us to access the privileged viewpoints of those who have experienced the multiple forms of oppression that characterize Mexican society as a whole.

The simultaneous interaction of these forms of exclusion became evident in the revictimization that Inés suffered when trying to gain recourse to the state legal system. The lack of knowledge of indigenous languages on the part of officials and the high level of monolingualism and illiteracy of the female indigenous population hinder their access to justice. Studies on access to justice indicate that Inés's experience is the norm for indigenous men and women in the state justice system, even though the 2001 reform to article 2 of the Constitution establishes the right of access to a translator and anthropological expert opinion (see OACNUDH 2013). The requirement to provide interpreters is also established in the Federal Penal Code (CPF) and the Federal Code of Penal Procedures (CFPP), but the responsibility for determining what constitutes sufficient fluency in Spanish is left up to the Public Prosecutor (MP), which means that in practice the right to an interpreter depends on what the MP considers "sufficient."

This violation of indigenous people's linguistic and cultural rights is not only the product of a lack of staff and adequate training; it goes hand in hand with degrading and racist treatment by government employees, which in many

ways reproduces the racial hierarchies that characterize Mexican society as a whole. In the case of indigenous women, the structural racism reproduced by state institutions is aggravated by gender discrimination, which often revictimizes them by treating cases of sexual violence with an insensibility that takes the form of symbolic violence. This was the case of the forensic doctor who first attempted to attest to the rape of Inés Fernández. When she requested that a female doctor examine her, he responded, "What difference does it make if a man examines you? It wasn't women who raped you."<sup>5</sup>

For ten years Inés traveled the roads of the Costa Chica region of Guerrero in pursuit of justice, suffering the racism and misogyny of government employees. During this *via crucis* she faced death threats, community criticism, family tensions, and the murder of her brother Lorenzo, who had been her main source of support in the lawsuit and who was tortured and executed by "unidentified individuals" in February 2008. Going out to demand justice meant Inés often had to leave her children in the care of Nohemí, her youngest daughter, then a preteen who had to take on the family's responsibilities when her parents traveled to the municipal center of Ayutla de los Libres, to Tlapa, to Chilpancingo, or even to Washington, DC. In her search for justice, Inés gradually built networks of solidarity, finding allies who accompanied them during those nine years, such as members of the Tlachinollan Human Rights Center, Peace Brigades International, and the Mexico team of Amnesty International, among others. Staff from some of these organizations traveled with her to present their cases before the Inter-American Commission on Human Rights in Washington, DC.

Cultural identities and regional history influenced the specific ways in which Inés experienced the rape and her subsequent efforts to seek justice. Inés had started to organize around the rights of women and their communities, and her rape was understood and experienced by her and her family in the light of a historic memory that links the army's presence to the violence and impunity that has dominated the region since the 1970s as a result of the so-called dirty war.<sup>6</sup> Added to this is the more recent memory of the El Charco massacre in 1998,<sup>7</sup> precisely in the municipality of Ayutla de los Libres where OPIM has its headquarters. In the context of this recent history, rape and torture are experienced as part of a *continuum of violence* that has marked the relationship between indigenous peoples in the region and Mexico's armed forces.

The murder of Lorenzo Fernández Ortega, Inés's brother and a member of OPIM in February 2008, together with anonymous death threats against the organization's president, Obtilia Eugenio Manuel, and the issuing of arrest warrants and detentions of five of its leaders in April of the same year spread fear and a sense of vulnerability among OPIM members and residents of the region, reviving memories of a recent past of violence and impunity.

The expert report elaborated for Inés's lawsuit demonstrated how sexual violence is experienced as something affecting the entire community. For

Me'phaa people the individual and the collective are closely related, so that violence experienced by an individual is lived as an offense against the entire community, producing an imbalance within the collective. This imbalance expresses itself as medical pathologies, since events that cause pain manifest themselves in an illness called *gamitú* or *susto* (fright), which has affected several of the women close to Inés. Only justice and the assurance that these events will not be repeated can reestablish the community's equilibrium. As one of the women I interviewed told me, "As long as there is no justice, our spirits are not at peace, there is a lot of fear and we can't sleep in peace, because we know that if what the *guachos* [soldiers] did isn't punished, they can do it again. Lack of justice causes *va jui* and *gamitú*."<sup>8</sup>

An indication of this collective sense of injury is the fact that the reparations Inés requested at the IACtHR are not only for her personal benefit, but also for the girls and women in her organization and her community. These women's testimonies and actions speak of experiences that are lived not as personal offenses, but rather as a part of a *continuum* of violence that has affected their communities and organizations. As a consequence the justice they seek is not limited to imprisonment of their assailants, but includes the demilitarization of their regions, the end of impunity, and legislative reforms that allow real access to justice by women in general and indigenous women specifically. It was these reparations I had to justify in the IACtHR, my first experience in international litigation.

### The Hearing before the IACtHR—An Ethnographic Approach to International Litigation

While it is true that legal anthropology has shown a particular interest in ethnographies of dispute processes in spaces of community justice (see Collier [1973] 1995; Moore 1996; Nader 1978, 1990; Sierra Camacho 1992, 2004) and, to a lesser extent, in the spaces of state justice (see Barrera 2012; Baitenmann, Chenaut, and Varley 2008; Engle Merry 2000; Latour 2002), there are very few ethnographic descriptions of the "cultural rituals" that develop in the spaces of international justice.<sup>9</sup>

Some authors have shared their theoretical reflections regarding experiences of cultural expert work in spaces of international justice (see Hale 2006; Anaya and Grossman 2002) or in the UN gatherings where women's rights are discussed (Engle Merry 2006), pointing to the cultural dimension of discourses and practices produced in such spaces. However, the idea appears to prevail that so-called indigenous law and community justice are full of "culture," while international law and its justice procedures are simply "transparent" expressions of the exercise of law. In this section I approach international litigation as a space of dispute where cultural models and power relations manifest

themselves among all the actors participating in a legal *performance*. Following Leticia Barrera's methodological proposal, I assume that "hearings are not discrete acts, but choreographed events calculated to create an effect, and they involve discourse repertoires that are oriented toward the interests of the audience to which they are addressed" (2012: 141). The participants in this particular *legal performance* at the IACtHR included not only the parties involved, but also a wider audience of law students, members of human rights organizations, indigenous women organized against military violence, and feminist groups.

The court was established in 1979 as an autonomous judicial institution of the Organization of American States, with the purpose of applying the American Convention on Human Rights and other international treaties.<sup>10</sup> It is a space of international justice that aims to monitor and sanction member states that violate human rights. The court is headquartered in San José, Costa Rica, where that country's government donated a space that would serve to hold all hearings. However, as of May 2005, the court decided to hold itinerant sessions in the various member states in order to publicize the work of the inter-American human rights system. The trial of *Inés Fernández Ortega v. Mexico* took place at the Palace of Justice in Lima, Peru, a gray, granite, neo-classical structure built in 1939, a symbol of judicial power in Peru. Two white marble sculptures of lions frame the entrance and give the building an air of grandeur that contrasts with the squalor of some of the streets in Lima's historic center.

The three experts who would declare on behalf of Inés's legal representatives arrived at the building on April 15, 2010: the Colombian psychologist Clemencia Correa, the Peruvian lawyer Marcela Huaita, and myself as the team's cultural anthropologist. Inés's legal team was composed of the lawyers Vidulfo Rosales, Alejandro Ramos, and Jorge Santiago Aguirre, and the anthropologist Abel Barrera Hernández, from the Tlachinollan Human Rights Center; and, from the Center for Justice and International Law (CEJIL), the lawyers Gisela de León and Agustín Martín. Inés's advanced pregnancy had prevented her from traveling to Lima, and the court had declined the team's petition for her to be substituted by the OPIM's president, Obtilia Eugenio, who had served as her translator since her first complaint to the Public Prosecutor's Office in Ayutla de los Libres. We were all aware of the power of Inés's spoken testimony, and her absence increased her legal representatives' concern. Her description of events, and that of her husband Fortunato Prisciliano Sierra and her daughter Noemí as witnesses, was presented before a Notary Public in Guerrero and handed in writing to the court (a format legally known as an affidavit). The strength of Inés's voice filled the courtroom through a video presented at the beginning of the hearing.

Upon entering the Palace of Justice, the first thing that caught our attention was the presence of a large group of Peruvian indigenous women dressed

in traditional outfits who waited patiently for the hearing to begin. We later learned that they were members of the National Coordination of Women Affected by the Internal Armed Conflict and the National Federation of Peasant, Artisan, Indigenous, Native and Salaried Women, organizations that have been supporting women victims of sexual violence of Peru's twenty-year internal armed conflict (1980–2000). Several of the women approached me after the hearing and spoke with emotion of how important it was for them that an indigenous woman like themselves would dare to confront the army and take her government to an international court; Inés Fernández's example motivated them to think of the IACtHR as a space to look for justice. Two of them handed me brief written messages for Inés expressing their admiration.

The presence of these peasant women, most of them Quechua speakers, made the space of the court feel like a place of the people, contrasting with the formality of the bench and the overall environment of the Palace of Justice itself. Since it was a public hearing, several law schools took their students to witness the first international trial carried out by the Inter-American Court in Peruvian territory. The spectators' bustle turned to silence when the seven judges entered: five men—Leonardo A. Franco, Manuel E. Ventura Robles, Alberto Pérez Pérez, Eduardo Vio Grossi, and Alejandro Carlos Espinosa—and two women—Margarette May Macaulay and Rhadys Abreu Blondet. Their black and red togas gave the ritual a solemnity that reminded me of the public defense of theses in European universities. The paraphernalia of the ritual emphasized the distance separating the judges from the people witnessing the trial. The Quechua women, for whom Inés's case resonated with their own memories of military violence, were silent witnesses to a justice ritual that had little to do with the forms of community justice in which many of them had participated.

As an expert witness who would present an oral opinion to the court, I could not be present at the entire hearing, so I was led to a small room in the back of the building where I nervously awaited my turn to speak. Before leaving the courtroom I was able to witness the ostentatious arrival of the delegation representing the Mexican state, composed of more than twenty government officials in addition to the legal team.<sup>11</sup> The public officials were accompanied by a group of aides who carried about twenty boxes of documents. This extensive delegation with their "mysterious" documents contrasted with Inés's team of five lawyers with portfolios in their hands. We later learned that the documents were simply reports on the various programs on "transversalization of the gender perspective" promoted by the Mexican government in its public policies, which were presented as "proof" that the state is concerned about women's rights.

The distribution of both teams in the space of the trial proceedings, the ways in which they communicated internally, and the manner in which they addressed the magistrates demonstrated the power inequalities between the



representatives of the state and those of Inés. The government's legal team opted for a strategy that began with a partial recognition of the responsibility of the Mexican state for the crimes of omission and delay in the administration of justice. Without presenting witnesses or experts to support its defense, the team began its participation in the hearing by stating that the Mexican state acknowledged

First, that the absence of specialized medical care for Mrs. Fernández Ortega, which should have included the psychological and not merely the physical aspect, and which should have been provided immediately, constitutes a flagrant violation of Article 8.1 of the American Convention. Second that the destruction of the scientific evidence taken from the victim also constituted a flagrant violation of Article 8.1 of the American Convention. Third, that despite the efforts made by the authorities, there have been delays and absence of due diligence in the investigations; therefore, there have been different violations to Articles 8.1 and 25 of the American Convention and, consequently, also of Article 5.1 thereof, with regard to the mental integrity of Mrs. Fernández Ortega. This is . . . the state's acknowledgement of international responsibility for violations of the American Convention . . . that it has come here to present today . . . so that the Court may order the reparations required by international law and by its jurisprudence.<sup>12</sup>

This acknowledgment excluded the direct responsibility of the Mexican army for the sexual torture of Inés, and the impact that "military institutional violence" had on her family and community during these ten years, as well as the violations of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which these acts implied. In other words, although the state began the trial by acknowledging its responsibilities, the Tlachinollan and CEJIL team still had much to demonstrate to obtain the conviction expected by Inés.

When my turn came to speak, the other two expert witnesses had already given their declarations and I was unaware of how the hearings had proceeded up to that point. I began my declaration with a presentation lasting about twenty minutes, where I summarized the main arguments contained in our expert report, based on field research and interviews with Inés, her family, and members of her community. In the report we discussed (1) the impact of the rape of Mrs. Fernández Ortega on the indigenous community of Barranca Tequani, and especially the impact on the women; (2) the alleged harm to the social fabric of the community and the alleged impunity in the case; and (3) possible measures for reparations.<sup>13</sup>

The judges' questions had to do with clarifications of parts of the document presented and the oral testimony I had just given. Judge Margarette May Macaulay, an Afro-Caribbean magistrate from Jamaica, seemed to be best acquainted with the expert report and later confronted the Mexican state's legal representatives most emphatically. While all the judges followed a pre-established protocol and consistently based their questions on previously presented documentary evidence, Judge Macaulay was clearly committed to Inés's case. Her trajectory as a defender of women's rights and promoter of legislative reforms against domestic violence and sexual harassment in her own country meant she approached the case with a level of cultural and political capital that the other judges seemed to lack. After the hearing I learned that she was a member of the steering committee of the Caribbean Association of Feminist Research and Action. The presence of judges like Macaulay in the IACtHR is in part a consequence of the involvement of the Latin American feminist movement in the inter-American human rights system.

While it is true that the gender sensitivity of some of the judges may have helped bring about the guilty verdict that was ultimately obtained, the cultural arguments did not resonate to the extent I had anticipated in either the discourse of Inés's legal representatives or the recapitulations by the members of the court. To my surprise, neither CEJIL nor Tlachinollan's lawyers incorporated the arguments presented in our cultural expert report regarding the community impact of Inés Fernández's rape in their final statements. In the workshops in Guerrero, Inés and members of OPIM had strongly insisted on the demand for demilitarization of the region as a *guarantee of no repetition*. Based on this collective reflection we included in the expert report, under reparations demanded, a clause that stated,

The removal of military forces from the region is seen by many residents as an indispensable measure to guarantee no repetition. The very presence of military forces without the corresponding application of current international legislation regarding armed conflicts creates a situation of ambiguity which means that neither the military officers nor the residents of the region know whether the population is recognized as civilians or as non-belligerent forces. This results in mutual mistrust that fosters conflicts and hence human rights violations. This ambiguity could be resolved by the Mexican state's acknowledgement of the capacity of indigenous communities to decide on fundamental aspects that concern them according to their culture, as stipulated in Article 2 of the Mexican Constitution regarding autonomy, and in Article 6 of Convention 169 regarding the right of consultation. (see Appendix I in Hernández Castillo 2016)

This argument was not incorporated into the oral statements presented by Inés's legal representatives. We later learned that it had initially been included

in their written statements, but they eventually decided to leave it out because they calculated that there was little chance that it would be accepted by the court. This omission made me question the importance that human rights activists themselves give to cultural expert opinion.

Five months later, on August 20, 2010, the court released its final judgment, declaring that Inés Fernández Ortega had been raped and tortured by members of the Mexican army in a context of poverty, discrimination, and what the court termed “military institutional violence.” The court’s decision itself was a form of reparation, since it finally acknowledged the legitimacy of her complaints after so many years of struggle. The judgment consists of sixteen resolutions, in which the judges demand that reparations be made by punishing the guilty; publicly acknowledging the state’s responsibility; modifying and implementing public policies that promote and facilitate indigenous women’s access to justice; implementing reparations at the community level such as the construction of a women’s rights center and a shelter; implementing legislative reforms that limit military jurisdiction and that establish that human rights violations committed by military personnel must be tried in civilian courts; providing educational support for Inés’s children and medical and psychological care for them and their families; and monetary compensations for Inés and her close relatives who were affected by the violence.<sup>14</sup> The judgment makes a number of mentions of our expert report (paras. 243, 244, and 267–270) and acknowledges the importance of the cultural context for determining reparations.<sup>15</sup>

In spite of my initial skepticism due to the scarce attention that was paid to the cultural expert opinion in the oral statements during the trial, the judgment demonstrated that international law is gradually beginning to integrate cultural context into its interpretation of the human rights of indigenous peoples. While it is true that in several previous cases the court had mandated community reparations, these had always been in situations of collective impacts on peoples or communities.<sup>16</sup> This was the first case where the violations of the human rights of an individual resulted in a judgment in favor of community reparations. Inés’s concern that her case be judged in the context of a history of violence suffered by her people and that measures be taken to end that *continuum* of violence seemed to have been at least partially addressed in the court’s judgment.

### The Ritual of Forgiveness? Public Acknowledgment of Responsibilities

The Act of Public Acknowledgment of Responsibilities by the Mexican State for the case of Inés Fernández took place on March 6, 2012. Inés had refused to travel to Mexico City to receive the government’s apology, rather demanding that the act whereby the Mexican state would publicly acknowledge its responsibility be

held in the municipal center of Ayutla de los Libres, and that the special guests be her colleagues from the various organizations in the region.

Surrounded by their many bodyguards and security details, the state’s representatives arrived at the main square of Ayutla de los Libres: Secretary of the Interior Alejandro Poiré, Attorney General of the Republic Marisela Morales, the governor of the state of Guerrero, Ángel Aguirre, the Director of Human Rights of the National Defense Secretariat, General Rafael Cázares Anaya, and a dozen other lower government officials who competed with each other to occupy the first rows of seats so they could appear in the photos. On the podium beside Ines were her husband, Fortunato Prisciliano Sierra, the president of OPIM, Obtilia Eugenio, and the director of Tlachinollan, the anthropologist Abel Barrera. The two faces of contemporary Mexico were present on that stage, making no eye contact and with their backs almost turned to each other, manifesting the class and race barriers that divide these two worlds. The face of power allowed no emotion to surface, and the face of Inés, the defiant face of resistance, was supported by the cheers of the peasant men and women who had traveled from distant parts of the coastal and mountain regions of Guerrero to witness the public act. Among the audience were the authorities of the Community Police of Guerrero, peasants from Atoyac de Álvarez and from Xochistlahuaca, students from the Rural Teacher’s School of Ayotzinapa, and opponents of the La Parota Reservoir, among others.<sup>17</sup> Inés addressed all of them in Me’phaa with a warning:

Listen to me all of you, men, women, and children: government officials, even if they say that they’re on your side, they will not keep their promises. Do not believe them. They committed this crime against me because we are poor. And not only against me, against other people as well. . . . The governor, even though he is here today, will not comply. That is why I had to look for justice elsewhere, because here they ignored me. He must tell us today what he can and cannot do. The government doesn’t let us organize. Soldiers stop us from moving around freely in our communities. They are always nearby, sometimes in civilian clothes, not necessarily in uniforms. At this very moment they are here amongst us. (transcription of the translation of Inés Fernández Ortega’s speech in the Public Act of Acknowledgment of Responsibilities, March 6, 2012, Ayutla de los Libres)

The loudspeakers in the square continued to broadcast the resonant voice of Inés’s translator. I felt chills when I heard her say “they are here amongst us,” realizing that there were many armed men in civilian clothes in the audience, identified by OPIM colleagues as members of paramilitary groups linked to the mayor of Ayutla, Armando García Rendón. Once again, Inés raised her voice to denounce the charade that was taking place by presenting a public apology

without imprisoning the people responsible for her rape and their accomplices, who moved about freely in Ayutla's main square.

### From Victim to Human Rights Defender

During the ten years since she was raped, Inés has chosen to remain in Barranca Tequani, even though a part of her community has criticized and turned their back on her. In her testimonies she narrated how at first the community organized to expel the military from their communal lands, where they had set up camp. However, over time this social cohesion broke down because of differences over strategies to confront the threat posed by the army. In one interview, Inés said, "Before I was raped, the community was united, but the government and fear divided us. Alfonso Morales, one of the people who works for the Army, told the women that they shouldn't accuse the *guachos* [soldiers] because they would get in trouble. They are afraid that the same thing that happened to me will happen to them, and because of that they no longer want to support me or organize themselves."<sup>18</sup>

However, communal links of solidarity among those who agree with Inés's call for justice were reconstituted in the collective space of OPIM, where she found the support denied to her by some of her colleagues from Barranca Tequani. "OPIM is now my family and my community, they suffered injustice with me, they are like my father and mother."<sup>19</sup> The support of other women in OPIM has enabled Inés to reassume her local leadership role and begin discussing the terms of implementation of the IACtHR's reparations judgment.

Inés has decided to share her story with whoever wants to hear it. As a result, her testimony is available on the Internet through a documentary titled *Mirando hacia adentro: la militarización en Guerrero* (Looking Within: Militarization in Guerrero), where she tells not only of the violence she has suffered, but also of her experiences in the struggle for justice.<sup>20</sup> Inés Fernández's colleagues Cuauhtémoc Ramírez, Valentina Rosendo Cantú, Andrea and Obtilia Eugenio, Fortina Fernández, and Orlando Manzanares have united to denounce the prevailing violence against women and impunity of the perpetrators.

The gender violence revealed in Inés testimony has occurred at the same time as the government's ratification of international conventions in favor of women's rights and the implementation of legislative reforms that supposedly foster "the elimination of all forms of violence against women." It is in this context of impunity that Inés demanded justice in the name of all those other women who have opted for silence out of fear. For Inés, justice means not just jailing the soldiers who raped her, but stopping counterinsurgent violence in the Me'phaa region, demilitarizing the communities, and providing security so that children can walk the mountain roads without being assaulted. A specific demand was to have a shelter in the municipal seat of Ayutla de los Libres, so

that their daughters would not have to work as live-in domestic servants in the homes of mestizos when they go to the municipal capital to attend school. The center envisaged by the members of the OPIM would enable young people to learn about their rights and become human rights promoters, challenging racism and misogyny in the state justice system. These were some of the demands that grew out of the collective workshops to discuss the community reparations to be requested of the court.<sup>21</sup>

During the public act of acknowledgment of responsibilities, Inés added a new demand to her list of community reparations. She personally handed the Secretary of the Interior a document previously drafted by OPIM demanding the implementation of a development plan for the region. By referring to the problems of extreme poverty and marginalization that furnish the context for the lack of access to justice and health services, Inés took advantage of the high-ranking government official's arrival to denounce the persistence of not only military and paramilitary violence, but also structural violence. In the event, this supposed "development plan" turned out to be a double-edged sword, since it enabled state and federal government officials to legitimize themselves in the eyes of the local population by handing out limited resources for micro projects. Some leaders in the region speak of the "danger of the goats," since funds are being delivered to purchase farm animals as a way of building new loyalties to the government. The time-honored policy of co-optation that had characterized PRI administrations for over seventy-five years returned with the presidency of Enrique Peña Nieto and, in Guerrero, with the government of former PRI member Ángel Aguirre Rivero, then governor for the Party of the Democratic Revolution.<sup>22</sup> Organizations are facing new challenges with the increasingly violent presence of organized crime, which provides the justification for militarizing the region and deepens a policy of co-optation that puts their autonomy at risk.

Although the soldiers who participated in the sexual assault were eventually jailed, most reparatory measures continue to be unfulfilled. The government has complied (albeit after the established deadlines) only with the stipulation to publish the judgment, publicly acknowledge responsibilities, and attend to some of the measures of compensation, expenses, and costs determined by the IACtHR. International litigation generated numerous contradictions: on one hand, the judgment helped strengthen the OPIM and, more specifically, Inés's leadership at the local level; on the other, it justified greater subsequent intervention in the region's organizational dynamics by state agents. However, the process that followed the court hearing allowed Inés and the female members of OPIM to reflect collectively on the roots of the violence affecting their lives and the lives of their daughters, and on the strategies needed to confront it. Inés's voice has been multiplied by the women in her organization, who have taken their experiences to Washington, DC, Spain, Cuetzalan Puebla, the Community Police

of Guerrero, Tlaxcala, and various forums in Mexico City, where they have denounced the use of sexual violence as a form of torture and the impacts of militarization in the Mountain and Costa Chica regions of Guerrero.

Thanks to her efforts and her courage in demanding justice, Inés Fernández, together with Valentina Rosenda Cantú and Tita Radilla—daughter of a peasant leader murdered during the “dirty war”<sup>23</sup>—was able to get IACtHR to declare the Mexican state guilty, forcing it to modify the Code of Military Justice and limit military jurisdiction.<sup>24</sup> After these historic cases, human rights violations by military personnel can no longer be tried by military public prosecutors, but must go through the civilian justice system. In the current context of militarization in the name of the “war on drugs,” it is essential that military officers are unable to hide human rights violations in their networks of complicities.<sup>25</sup> The human rights reform approved by the Mexican federal legislature in June 2011 is closely related to these three cases. Thanks to those women’s struggles, the human rights agreements ratified by the Mexican state have been incorporated into the Mexican Constitution, strengthening the legal framework for access to justice for all Mexicans.<sup>26</sup>

Inés Fernández’s insistence on including all the women of her organization as beneficiaries of the court’s sentence set a precedent in international litigation, since it was the first time that it was acknowledged that the harm done to an individual (in this case the rape of Inés) could affect her entire community when that person’s cultural context is taken into account in order to understand how gender violence is experienced and how justice is imagined.

In spite of the Mexican state’s dilatory tactics in implementing the sentence, Inés and the women in OPIM have continued with their processes of organization and reflection, discussing the objectives and structure of the Community Center for the Rights of Me’phaa Men and Women that they plan to build as part of the reparations ordered by the court. As part of this process, they have approached other indigenous women fighting for women’s rights based on their own culture, such as the women in the Community Police of Guerrero and Nahuatl women from the Cuetzalan Indigenous Women’s Home of Puebla.<sup>27</sup> If the purpose of the use of sexual violence as a form of torture was to terrorize and demobilize women, the courage and communal solidarity of the women in OPIM have challenged these counterinsurgency strategies. Rather than eliminating indigenous leaderships, the effect has been the emergence of new women’s rights defenders who, like Inés, speak out not only to denounce personal experiences of violence, but also to demand justice for all those whose lives are affected by militarization and violence by government security forces.

## Conclusions

It is not my place to evaluate the negative or positive impact that Inés’s decision to publicly denounce her rape has had on her life; only she can know whether the risks she has taken have been compensated by the court’s judgment, by the declaration of “most sincere apologies” pronounced by the Secretary of the Interior, or by the conviction that her voice has become the voice of many other silenced women. Only she knows “what is in her heart,” but from the little I have come to know her, I am sure that her answer would not be simple.

Following the public act of acknowledgment of responsibilities described in this chapter, the context of militarization and paramilitarization in Guerrero has worsened. In February 2013, two hundred members of the Mexican army entered Barranca Tequani without requesting the permission of the community’s authorities, spreading fear and insecurity among the region’s residents (see *La Jornada de Guerrero*, February 7, 2013). The creation of self-defense groups in Ayutla de los Libres in early 2013 united in the Union of Peoples and Organizations of the State of Guerrero (UPOEG) greatly complicated the political landscape. Leaders of the OPIM leaders denounced the UPOEG as being infiltrated by paramilitaries responsible for the murder of Inés’s brother. Although they acknowledge the inefficiency of the state’s security forces and their frequent complicity with organized crime, the OPIM has been highly suspicious of the self-defense groups that emerged in numerous municipalities of Guerrero from 2013 onward.<sup>28</sup> In this complex context of militarization and paramilitarization, the construction of a Community Center for the Rights of the Me’phaa People has constituted a considerable challenge. Although Inés and the OPIM women were able to purchase a plot of land in Ayutla de los Libres and a symbolic ceremony was held to set the first stone, collective planning has been interrupted due to the lack of security.

On a personal level I was greatly enriched by the teachings of Inés and the OPIM, their courage, their sense of collective solidarity, and their ways of “knowing and being in the world.” During the past decade the so-called “transversalization of the gender perspective in public policies” has had very little impact on ordinary people’s access to justice. A feminist agenda is partially incorporated or, at worst, simply tolerated, when its struggle is circumscribed to the space of the family. Yet for indigenous women, state violence is also characterized by racism; the failure of the state justice apparatus to recognize their language or cultural context increases their invisibility and hence their vulnerability. The erasure of their experiences signals old and new forms of colonialism. The voices of women like Inés Fernández denounce and unveil neocolonial strategies that use sexual violence as a tool for counterinsurgency.

## ACKNOWLEDGMENTS

A previous version of this chapter was published in my book *Multiple Injustices: Indigenous Women, Law, and Political Struggle* (University of Arizona Press, 2016). In that longer version I included the case of Valentina Rosendo Cantú. Here I focus on the case of Inés Fernández Ortega, for the obvious reason that I developed the cultural report surrounding her case, but her case has been closely related to that of Valentina, a member of the same organization who was also raped by the military one month previously.

## NOTES

1. In most common law jurisdictions, the attorney general is the main legal advisor to the government, and in some jurisdictions he or she may also have executive responsibility for law enforcement and public prosecutions or even ministerial responsibility for legal affairs more generally.
2. Inter-American Court of Human Rights 2009a.
3. For an English version of the Expert Witness Report for *Inés Fernández Ortega v. Mexico*, see Appendix 1 of Hernández Castillo 2016.
4. Interview with Inés Fernández, Barranca Tequani, March 13, 2009, translated by Andrea Eugenio.
5. Ibid.
6. For a description of the impact of the “dirty war” in the state of Guerrero, see Comisión de la Verdad del Estado de Guerrero 2014. A historical analysis of guerrilla movements in Guerrero and state violence can be found in Bartra 1996.
7. The massacre of El Charco took place on June 7, 1998, in the municipality of Ayutla de los Libres, Guerrero, when members of the Mexican army murdered eleven peasants as they slept in the local elementary school, after participating in a community assembly to discuss production projects. The army accused the peasants of being guerrilla fighters.
8. Interview with María Sierra Librada, Barranca Tequani, March 13, 2009.
9. For notable exceptions, see Maxine Clark 2009 and various contributions to Maxine Clark and Goodale 2009.
10. The American Convention on Human Rights has been ratified by twenty-five American nations: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. This regional treaty is mandatory for all the signatory states and is the result of a process that began at the end of World War II, when the nations of the Americas met in Mexico and decided that a declaration on human rights should be drafted in order to be eventually adopted as a convention. That declaration, the American Declaration of the Rights and Duties of Man, was approved by the Organization of American States member states in Bogota, Colombia, in May 1948. See [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).
11. The IACtHR judgment reports the following participants for the Mexican state delegation: Juan Manuel Gómez Robledo, Assistant Secretary for Multilateral Affairs and

- Human Rights of the Secretariat for Foreign Affairs; Alejandro Negrín Muñoz, Director General of Human Rights and Democracy of the Secretariat for Foreign Affairs; Rogelio Rodríguez Correa, Deputy Director for International Affairs of the General Directorate of Human Rights of the National Defense Secretariat; Yéssica de Lamadrid Téllez, Director General for International Cooperation of the Office of the Attorney General of the Republic; Carlos Garduño Salinas, Deputy Director General of the Unit for the Promotion and Defense of Human Rights of the Secretariat of the Interior; Jorge Cicero Fernández, Head of the Mexican Foreign Ministry in Peru; Rosa María Gómez Saavedra, Secretary for Women’s Affairs of the state of Guerrero; María de la Luz Reyes Ríos, Director General of the Ombudsman of the General Secretariat of the government of the state of Guerrero; José Ignacio Martín del Campo Covarrubias, Director of International Litigation on matters relating to human rights of the Secretariat for Foreign Affairs; Luis Manuel Jardón Piña, Head of the Litigation Department of the Legal Office of the Foreign Ministry; Katya Vera, Head of International Litigation on matters relating to human rights of the Secretariat for Foreign Affairs; and Guadalupe Salas y Villagomez, Deputy Director General for Policy of the Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking.
12. Participation of the Mexican state’s legal representative at the Inter-American Court of Human Rights, at its XLI Extraordinary Period of Sessions in Lima, Peru, April 15, 2010.
  13. These were the three topics that the Inter-American Commission on Human Rights requested that we develop in our expert report.
  14. See Inter-American Court of Human Rights 2010a, 2010b.
  15. See Inter-American Court of Human Rights 2010a.
  16. See Inter-American Court of Human Rights 2004, 2005.
  17. Three months after the Acknowledgment of Responsibilities by the Mexican government in the case of Inés Fernández on December 12, 2011, the students of the Rural Teacher’s School Raúl Isidro Burgos, better known as Escuela Normal Rural de Ayotzinapa, blocked the highway that connects Mexico City to Acapulco, demanding government support for their institution. The ensuing confrontation with the federal and state police resulted in the deaths of Jorge Alexis Herrera Pino and Gabriel Echeverría de Jesús. This led to renewed student demonstrations in Chilpancingo and Mexico City, supported by nongovernmental organizations for the defense of human rights, demanding a political trial against Ángel Aguirre Rivero, the governor of the state for the PRD party. A few days after the events, the state attorney resigned, stating that the scene of the students’ murder had been accidentally contaminated. Three years later a new case of government repression against the students of Ayotzinapa took place. On the evening of September 26, 2014, a group of students from that institution hijacked buses in order to participate in demonstrations in Mexico City. Officers with the municipal police of Iguala, allegedly in complicity with members of the criminal organization Guerreros Unidos, attacked the group of students on the orders of José Luis Abarca Velázquez, then mayor of Iguala. The event culminated in the abduction of forty-three students, and a total of six people were murdered, including students and other civilians, and twenty-five people wounded. The news of this aggression shocked people around the world, and international human rights organizations demanded that the Mexican state conduct a thorough investigation and punish the material and intellectual authors of these crimes.
  18. Inés Fernández interview.

19. Ibid.
20. See <https://www.youtube.com/watch?v=k9pOrnYJQNM>.
21. Minutes of the Workshop on Community Reparations organized with Inés Fernández and OPIM members in Ayutla de los Libres, February 2009.
22. Ángel Aguirre was governor of the state of Guerrero between April 1, 2011, and October 23, 2014, when he was asked to resign in the wake of the case of the students abducted from Ayotzinapa and murdered in Iguala (see note 17).
23. Rosendo Radilla was a social leader from the municipality of Atoyac de Álvarez, Guerrero, who worked for his people's health and education and was elected mayor. On August 25, 1974, he was illegally detained at a military checkpoint and was last seen in the former Military Headquarters of Atoyac de Álvarez, Guerrero. Thirty-four years later, his whereabouts remain unknown. His daughter, Tita Radilla, took the case to the IACtHR and obtained a guilty verdict against the Mexican state.
24. See Inter-American Court of Human Rights 2009b.
25. This constitutional reform has met with considerable resistance from military powers. For an analysis of the challenges implied in transferring cases of human rights violations committed by the army to civilian jurisdiction, see chapter 8, by Mariana Mora.
26. For the full text of the 2011 constitutional reform, see <http://www2.scjn.gob.mx/red/constitucion/inicio.html> or Fix-Zamudio 2011.
27. See chapter 4, by María Teresa Sierra, and chapter 2, by Adriana Terven Salinas.
28. See *La Jornada de Guerrero* (February 7, 2013), <http://www.lajornadaguerrero.com.mx/2013/02/07/>.

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