



Through this ground-breaking case, the Inter-American Court of Human Rights set an important precedent: creating reparations for the entire indigenous community in the case of human rights violations against one member of that community.

VICTIMS' RIGHTS IN MULTICULTURAL CONTEXTS: THE CASE OF INÉS FERNANDEZ AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS

SUMMARY

What advances can we identify in international human rights regimes that incorporate alternative cultural understandings of reparations in their verdicts? This Brief responds to this question through a detailed study of the case of Inés Fernández, an indigenous *Me'phaa* woman from the state of Guerrero, Mexico, a victim of torture and rape by members of the Mexican military in 2002. In 2010, the Inter-American Court of Human Rights sentenced the Mexican State and established a series of obligatory measures of reparations and reforms designed to establish new conditions for the non-repetition of such acts. Most importantly, for the first time ever, the court granted collective reparations to a community in response to acts of sexual violence committed against an indigenous woman of that community. International standards tend to view reparations in cases of rape as directed at the individual who suffered these acts. However, respecting indigenous viewpoints requires amplifying the understanding of reparations to incorporate what justice and reparations signify in particular cultural contexts. The ruling therefore sets an important precedent for implementing the right to reparations for indigenous peoples, not only in Latin America, but in other regions as well.

VICTIMS' RIGHTS AND REPARATIONS IN LATIN AMERICA

In countries with histories of internal conflict, dictatorships and authoritarian rule, one of the central pillars of transitions to democracy and democratic consolidation is state recognition of the human rights violations committed against citizens by its own agents. To confront violations committed in the past and establish conditions for their non-repetition, states require judicial frameworks that recognise victims' rights, including the right to reparations.

In conflict-ridden regions and in contexts of armed conflict, sexual violence constitutes systemic acts of violence against women and children, as human rights reports on Latin America and other regions show.¹ Human rights documents and testimonies from Latin America highlight how indigenous women are at greater risk of suffering human rights violations, partly because of the conditions of vulnerability in which they live, including racialised conditions of poverty and gender inequality as

¹ Nobel Women's Initiative. 2011. [War on Women: Time for Action to End Sexual Violence Against Women](#). Nobel Women's Initiative, Ottawa.



well as militarisation of daily life.² The persistence of racism against indigenous people in general is oftentimes expressed against indigenous women through acts of sexual violence.

The significance of state reparations has been highlighted by truth commissions in contexts of transitional justice in countries, such as Guatemala and Peru, and by research from countries still immersed in armed conflict, such as Colombia. Reparations are an important strategy to respond to the particular claims of women members of ethnic minorities or indigenous peoples, as part of the need to address past human rights violations and advance democratic state-building.³ In these cases, the right to reparations and to access justice needs to respond to the different cultural significance and meaning posited by ethnic and racial minority groups, including indigenous peoples.

INTERNATIONAL HUMAN RIGHTS STANDARDS IN GENDERED MULTICULTURAL CONTEXTS

In the past twenty years, international human rights regimes have made important advances in victims' rights. The UN declaration on the fundamental principles of justice for victims of crimes and abuse of power, adopted by the General Assembly in 1985, formalised international recognition of rights for victims, including victims of crimes and abuses of power. In relation to redress and restitution, it recognises victims' rights to justice, fair treatment, prompt reparations and redress, defined as "restitution and/or compensation, and necessary material, medical, psychological and social assistance and support".⁴

In Latin America, the [Inter-American Court of Human Rights](#)⁵ (the "Inter-American Court") defines a victim as a person whose rights have been violated by the state, and reparations are understood as part of victims' rights to compensation for the human rights violations they endured. The victim has the right to reparations for the harm caused, to the state's punishment of those found guilty, and to a guarantee of non-repetition of the acts that motivated that violation.

Such declarations establish victims' rights in universal terms, regardless of the differing cultural meanings, recognition of collective rights, and types of vulnerabilities due to gender, sexual orientation, race or ethnicity. In terms of women's rights, the Declaration of Belem Do Para establishes women's rights to reparations along these lines, stating states' obligations to "establish the juridical and administrative mechanisms necessary to effectively offer redress, reparations and other forms of effective and just forms of compensation."⁶ Other international declarations, primarily the Nairobi Declaration on Women and Girl's Rights to Remedy and Reparation, have made important advances in women's right to reparations, primarily in terms of sexual violence.⁷

While these international standards respond to the specific act of violence against women and, thus, to the need for gender-specific reparations, they are more limited in terms of taking into account culture, ethnicity and race. In particular, international standards tend to view reparations in cases of rape as directed at the individual who suffered these acts. However, respecting indigenous viewpoints requires amplifying the understanding of reparations to incorporate what justice and reparations signify in particular cultural contexts.

INTRODUCTION TO THE CASE

Latin America is home to the first court case to establish an international legal precedent recognising culturally-specific reparations for sexual violence: the case of Inés Fernandez vs. Mexico, and the court's ruling against the Mexican State in August 2010. The case is significant in its advancement of indigenous women's rights in Latin America. But more importantly, it establishes a precedent for expanding the reach of human rights for minority ethnic and racial groups more generally in non-Western contexts.

To provide a detailed account of the case, as well as situate it within broader discussions of indigenous, and ethnic

² Amnesty International. 2011. "[This is What We Demand. Justice!](#)" [Impunity for Sexual Violence Against Women in Colombia's Armed Conflict](#). Amnesty International, London.

³ Boesten, J., Fisher, M. 2012. [Sexual Violence and Justice in Post-War Peru](#), Special Report 310. United States Institute for Peace, Washington, DC.

⁴ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#). United Nations General Assembly, 1985.

⁵ For additional background information about the Inter-American Court and the rest of the Inter-American Human Rights System (IAHRS), see the [ELLA Learning Material: The Role of the IAHRs in the Promotion of the Right to Information](#). To learn about other human rights cases brought before the Inter-American Court, see the [ELLA Guide to Human Rights in Latin America](#).

⁶ [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para"](#). Inter American Commission on Human Rights, 1994.

⁷ [Nairobi Declaration on Woman and Girl's Rights to Remedy and Reparation](#). 2007. In particular, the Nairobi Declaration recognizes that gender-based violence, particularly sexual violence, is a weapon of war, and states that women victims must be active participants in the definition of the terms of reparations and redress as defined by their own needs.



Photo: Inés Fernández presenting her testimony
Source: [Tlachinollan Human Rights Centre](#)

and racial minority rights’ to reparations, research for this Brief was conducted through archival investigations, including documents on victim’s rights to reparations, international declarations on women’s rights and indigenous people’s rights, primary sources from the [Inter-American Commission on Human Rights](#), and human rights documents on indigenous women, sexual violence and conflict.⁸ To frame the discussion, theoretical articles were also consulted on the debates surrounding individual and collective rights, regulatory and emancipatory effects of international legal regimes and the construction of concepts of rights and justice from the viewpoint of indigenous people. Finally, additional information comes from the descriptions offered in public events of the participation of the human rights defenders and cultural experts in the case.

INÉS FERNÁNDEZ VS. THE MEXICAN STATE: BACKGROUND ON THE CASE

Inés Fernandez is an indigenous *Me’phaa* woman from one of the most impoverished regions of the country, the coastal region of the state of Guerrero.⁹ During the past four decades, this part of Mexico has been subject to a constant military presence, both as part of counter-insurgency operations against political-military guerrilla organisations, and as part of military actions to eradicate the poppy cultivation controlled by local narco-traffickers.

In her testimony at the Inter-American Court, Fernández related the acts of violence perpetrated against her. On 22 March 2002, she and her four children were in their house when she observed a group of soldiers approaching on the road. Three of these soldiers entered her house

without her permission, while the rest remained outside. They began to interrogate her about the whereabouts of her husband, as he was accused of having stolen meat. Fernández expressed feeling great fear and was unable to respond given that she does not speak Spanish, but rather her indigenous language of *Me’phaa*. The soldiers started shouting at her, repeating the questions and pointing at her with their rifles. They then tortured and raped her.¹⁰

Fernández first presented a criminal case at the Mexican Public Minister’s Office on 24 March 2002, and on 18 April 2002 she presented an amplification of the case. She also submitted written testimony on 25 March 2002 to the Human Rights Commission in her home state of Guerrero. For the next seven years, Fernández’ human rights continued to be violated as she tried repeatedly to access justice. For example, the investigation of the case was transferred to military jurisdiction rather than to the civilian prosecutor’s office, state health officials lost key evidence and hampered the collection of evidence that was central to linking the events with potential perpetrators. Fernández and her family were threatened and harassed, they believe by members of the army. Her brother was mysteriously assassinated after actively supporting her struggle for justice. She also suffered racism and gender discrimination when seeking access to adequate healthcare. Finally, after exhausting all possibilities to seek justice within the Mexican system, the case eventually reached the Inter-American Human Rights System, first to the [Inter-American Human Rights Commission](#) and eventually to the Inter-American Court.

INDIGENOUS WORLD VIEW: A RELEVANT VARIABLE

Central to her case was the role of two cultural experts and a psychologist who presented evidence of the effects of the rape and of subsequent human rights violations during Fernández’ attempts to access justice through the Mexican legal system. These experts undertook in-depth interviews with the victim, as well as with male and female members of her community and her indigenous organisation so as to contextualise the event, including situating the acts of

⁸ The documents presented to the Inter-American Court by the cultural experts have yet to be made public, so though they were consulted for this document, they cannot be specifically cited here. The other publications consulted are cited throughout the Brief.

⁹ For additional background information about the *Me’phaa* people, see: Comisión Nacional Para el Desarrollo de los Pueblos Indígenas ([National Commission for the Development of Indigenous Peoples – CDI](#)). [Monograph on the Tlapaneco – Me’phaa People \(in Spanish\)](#). Online publication.; Overmyer-Velázquez. R. 2010. [Folkloric Poverty: Neoliberal Multiculturalism in Mexico](#). Pennsylvania State University Press, University Park.

¹⁰ [Ruling of the Inter-American Court of Human Rights](#), 30 August 2010, Fernández Ortega *et al.* vs. Mexico. Page 9.



torture and rape as part of systemic violations of indigenous rights and women's rights. Similarly, they systematised the particular cultural significance of justice, reparations and the necessary conditions to prevent the repetition of such acts.

Based on the findings, the experts provided an assessment of three key issues:

- Impact of the act of sexual violence on the indigenous community, primarily the women
- Effects of the act of rape and perpetrators' subsequent impunity on community social cohesion
- Possible measures of reparations and redress

The cultural experts testified that for *Me'phaa* people, the individual cannot be separated from the community. Therefore, the victim experienced the acts of torture and sexual violence as having impacts on her entire community and its social-cultural fabric. Acts of violence against one of its members thus affect communal structures, social relations and spirituality as a whole.

The experts also argued that to ensure the non-repetition of the human rights violations, the Inter-American Court needed to include collective reparations in the sentence, reparations that could create conditions of greater security for the women of the community. This included establishing a health clinic and a boarding house for young women who attend school, so that they do not need to travel great distances, reducing their vulnerability to unequal access to education. The role of these experts created the possibility for the judges to issue a sentence that includes culturally appropriate notions of collective reparations, an area underdeveloped in international human rights systems.¹¹

A GROUND-BREAKING RULING

The experts' testimony and recommendations were incorporated by the judges and presented in the verdict delivered in August 2010. In its pioneering ruling, the court recognised that reparations may require mechanisms that respond to the entire indigenous community, not

just the individual. The Court considered this necessary for the victim's reintegration in the life of the community and to respond to the strengthening of communal social-cultural ties. In terms of the specific reparations of the ruling, the court mandated the state's obligation to provide resources for a community school promoting women's rights and education under the direction of the community. Similarly, the verdict established the state's obligation to channel the funds necessary for the community to build a women's community centre. The content of the verdict translates into actions that respond to differentialised understandings of women's rights as expressed in international declarations and treaties such as the Nairobi declaration and Belem Do Para.

These aspects of the verdict establish an important precedent for framing reparations in the light of indigenous cultural worldviews, including by considering what is meaningful to victims as part of their access to justice, particularly for indigenous women. In this sense, the case of Inés Fernández versus the Mexican State represents an important advancement in terms of the ability of international human rights legal frameworks to respond to indigenous rights to justice. This has important implications for advancing victims' rights for reparations in multicultural contexts, including indigenous peoples, afro-descendants and other ethnic minorities. The ruling also strengthens international legal standards for these groups, particularly for women members, expanding the standards to take into account the specific cultural settings in which acts of state violence occur.

Two years after the verdict, the Mexican State has yet to fully comply with its obligations, particularly in terms of its obligations of reparations and access to justice for the victim. In addition, there has been no progress in the investigations of the rape and the possible perpetrators, primarily due to the lack of cooperation on the part of the Secretary of Defence.¹² Though the community is still struggling to force the state to comply with the ruling, the case is still considered groundbreaking in its establishment of legal precedence.

¹¹ For a summary of the testimonies presented by these experts, refer to pp. 73-91 of the [Ruling of the Inter-American Court of Human Rights](#), 30 August 2010, Fernández Ortega *et al.* vs. Mexico.

¹² Tlachinonollan. 2012. [Inés Fernández Ortega y Valentina Rosendo Cantú: El Camino Para el Cumplimiento de las Sentencias Dictadas por la Corte Interamericana de Derechos Humanos \(Inés Fernández Ortega and Valentina Rosendo Cantú: The Journey for Compliance of the Sentences Handed Down by the Inter-American Court of Human Rights\)](#). Tlachinonollan, Guerrero.

CONTEXTUAL FACTORS

ENABLING THIS GROUNDBREAKING RULING



The commitment on the part of the local human rights organisation, the [Tlachinollan Human Rights Centre](#), was central to the presentation of the case in the Inter-American Court and the strong verdict against the Mexican State. In particular, their focus on elaborating an integral strategic legal case that included not only judicial strategies based on international human rights standards, but also strategies to provide mental health and psychosocial support to the victim. They also chose to implement an awareness campaign, including producing documentary videos, to present the Fernández case in public debates and shed light on the impact of the militarisation of indigenous regions of Guerrero State. The combination allowed for Fernández to be an active participant in the legal proceedings and to define the terms of reparations based on her own customs and traditions.

The verdict's inclusion of *Meph'aa* indigenous understandings of justice and reparations was influenced by the role of highly

trained cultural experts and legal anthropologists. They participated in the hearings and submitted documents on *Me'phaa* cultural worldviews and the impact the human rights violations had on Fernández as an indigenous woman. Of particular relevance was the trained anthropologist, acting as the cultural expert, who collected indigenous *Me'phaa* women's understanding of justice in the community of the victim. The role of these experts in legal issues and anthropology substantiated and translated the meanings of justice of Fernández and the women in her community into possible reparations.

The awareness and sensitivity of the Inter-American Court judges was heightened by the submission of complimentary documents, specifically *amicus curae*, that provided legal arguments focused on the respect for indigenous rights and women's rights and argued for the need to respond to reparations from an indigenous cultural context.

LESSONS LEARNED

1 In non-Western contexts, acts of violence perpetrated against an individual cannot necessarily be addressed through individual reparation to the victim, but must respond to the community or to the collective that is similarly harmed by such human rights violations. The Mexican case shows that it is possible to expand and adapt concepts of victims' rights to incorporate the collective rights of their communities, including notions of justice and reparations that are not adequately addressed in Western human rights terms and concepts.

2 To enact structural changes that prevent the repetition of violence, particularly sexual violence against ethnic and racial minorities, victims' rights to reparations must take into account particular understandings of justice in specific cultural contexts. This case highlights some effective strategies in this regard: educating judges about the intersections of indigenous or minority rights and women's rights; engaging human rights defenders and social scientists trained in these sets of collective rights; and the active participation of victims in defining meaningful terms of reparation based on their particular cultural contexts.

3 To advance victims' rights in cases where state agents are implicated and there exists a lack of effective conditions for transparent investigations and sentencing of perpetrators, it is often necessary to channel such cases to international human rights systems, including international courts. This is of particular relevance in countries where transitions to democracy have had limited impact or in regions still immersed in armed conflict. Overall, this case shows that the Inter-American Court can play a proactive role in establishing new human rights precedents.

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