

IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Case No. 12.579

Valentina Rosendo Cantú *et. al.*

v.

The United States of Mexico

WRITTEN COMMENTS OF:

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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INTEREST

1. Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers dedicated to promoting the rule of law and human rights internationally by protecting human rights advocates and advocacy rights. The mission of LRWC is fourfold:
 - a. To campaign for jurists and other advocates whose rights, safety or independence are threatened because of their human rights advocacy.
 - b. To produce legal analyses of national and international laws and standards relevant to the rule of law and advocacy rights.
 - c. To work in co-operation with other human rights organizations.
 - d. To engage in legal education and law reform in areas related to the implementation and enforcement of the rule of law and advocacy rights.

2. Lawyers' Rights Watch Canada is a non-profit society incorporated under the *Canada Corporations Act*, with its head office in Vancouver, British Columbia, Canada. LRWC has a charitable arm, LRW(Legal Research)C which engages in legal research and education and has charitable tax status pursuant to the laws of Canada. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations.

3. Founded in 2000, LRWC engages in public education, training programs, trial and country monitoring. Representatives participate in ECOSOC proceedings and attend and make statements and submissions to the United Nations Human Rights Committee. LRWC also engages in in-country investigations and prepares reports and analyses on issues related to the rule of law and advocacy rights. LRWC prepared a petition to the Inter-American Commission on Human Rights on behalf of lawyer Daniel Ponte in 2008. Additionally, LRWC's Mexico Monitors have participated in four separate in-country investigations in Mexico, most recently in December 2009.

4. The present case raises important issues of significance related to the rule of law and the rights of human rights advocates in Mexico, the Americas and beyond.
5. For the purposes of this *amicus curiae* and in light of LRWC's specific areas of expertise, LRWC intends only to discuss this case as it directly relates to the rule of law and advocacy rights. This in no way implies that Lawyer's Rights Watch Canada considers these to be the only issues of importance in this case.

DISCUSSION

Brief summary of Facts

6. On 16 February 2002, Valentina Rosendo Cantú, a member of the Me'phaa (Tlapanec) indigenous peoples, was washing clothes in the river in her isolated rural community, about 200 meters from her home. Eight soldiers arrived at the river asking her if she knew certain persons. When she said that she did not know the persons, one of the soldiers, who was pointing his gun at her, hit her in the stomach with the butt of his weapon. She was knocked over backwards by the blow and hit her mouth on a rock. One of the soldiers then violently grabbed her hair and removed her clothing. She was subsequently raped by two soldiers while the other six soldiers stood and watched.
7. Following the attack, Valentina went to the nearest public health clinic. She was refused help because the attending physician was afraid of the army.
8. Valentina subsequently walked eight hours to the general hospital in Ayutla de los Libres. She received no medical attention there because she was told she needed an appointment. She arranged an appointment and returned the next day on February 27 2002 and was seen by a physician. The physician examined her

stomach injury only. It was not until August 2002, six months after the attack, that Valentina received proper medical care.

9. Valentina reported the attack on 8 March 2002. After the file was transferred between several government offices, on 15 April the Public Prosecution Service for civil offences specializing in sex crimes and domestic violence of the Morelos Judicial District began a preliminary inquiry.
10. In March, 2002, the Secretariat of National Defence (SEDENA) issued a press release “rejecting the accusations made against military personnel for the alleged rape of a woman in the state of Guerrero.”¹ The statement included a thinly veiled accusation that Valentina was involved with criminal activity and therefore levying a false accusation. This statement was given one day prior to Valentina’s formal complaint with Guerrero’s State Attorney General for Justice. Soon after, the file was transferred to military jurisdiction to be prosecuted by the very entity that had rejected Valentina’s complaint outright and publically and falsely accused her of involvement in criminal activity.
11. The office of the Attorney General for Justice for the State of Guerrero declined jurisdiction in favour of the military justice system on April 8, 2002. The Public Prosecution Service for civil offences specializing in sex crimes and domestic violence of the Morelos Judicial District did the same on May 16, 2002.
12. Valentina lodged a suit for amparo (a judicial review remedy), requesting that the case be investigated and resolved under criminal jurisdiction because the military authorities lacked independence and impartiality. Her suit was dismissed.

¹ Secretariat of National Defence, Press Release No. 025, March 7, 2002. “The Secretariat of National Defense rejects the accusations made against military personnel for the alleged rape of a woman in the state of Guerrero.” Annex 14 22 of the Inter-American Commission on Human Rights application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et. al.* against the United States of Mexico.

Valentina filed for a review of that decision, which was also dismissed. The reason for the decision was founded on Article 57 of the Code of Military Justice.

13. Valentina subsequently asked the Military Prosecution Service to refrain from asserting jurisdiction and to refer the investigation to the civilian Public Prosecution Service for Local Crimes Specializing in Sex Crimes and Domestic Violence of the Morelos Judicial District. The request was refused. On 20 January 2003, the Public Military Minister replied that there were no grounds for declining jurisdiction.²
14. On December 11, 2002, the National Human Rights Commission wrote to the Attorney General for Military Justice stating that their file on Valentina's case was being closed on the grounds that it had "no conclusive evidence that the victim was in fact sexually attacked by public servants of the Secretariat of National Defence."³
15. The investigation by the military justice system took place from 2002 to March 2004, when it was archived on the basis that the "investigation of the facts showed no breaches of military discipline or the participation of military personnel."⁴ The decision was based on hearsay witness statements, statements from 108 active members of the military on duty in the area the day of the assault, medical records, an inspection, and a line-up carried out with military personnel conducted outside Valentina's home. For this line-up, 50 armed soldiers were brought to Valentina's home. She was ordered to come out of her home and identify the alleged perpetrators from the group of 50 armed men.

² Agreement AP-I-3577, issued on January 20, 2003 by the Head of Preliminary Inquiries for the Central Sector of the Attorney General for Military Justice, Annex 22 of the Inter-American Commission on Human Rights application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et. al.* against the United States of Mexico.

³ Communication dated December 11, 2002, Exp. 2002/597/04, from Rodolfo H. Lara Ponte, Fourth General Inspector of the National Human Rights Commission, to the Attorney General for Military Justice, in respect of the complaint dealing with the alleged violations of the human rights of Valentina Rosendo Cantú, Annex 13 of the Inter-American Commission on Human Rights application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et. al.* against the United States of Mexico.

⁴ Reply from the State No. OEA-01787, dated July 6, 2007, Appendix 3 13 of the Inter-American Commission on Human Rights application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú *et. al.* against the United States of Mexico.

16. As of this writing, the case remains in the preliminary investigation stage.

Aspects of the case relating to the rule of law and advocacy rights

Militarization and underlying context of repression against organized indigenous movements in Guerrero

17. LRWC respectfully submits that the underlying context and experience of indigenous peoples, particularly organized indigenous peoples advocating for their human rights, is directly related to Mexico's violations of the American Convention in the instant case.

18. Guerrero is one of the poorest regions in Mexico. Indigenous communities are highly marginalized and discrimination by the authorities is widespread

19. Concomitantly, indigenous peoples face much higher levels of poverty than the non-indigenous population.

20. At the same time, the presence of the armed forces, the drug trade, and militia groups negatively affect indigenous communities in Guerrero. Militarization of the area through the heavy presence of the armed forces throughout the state in increasing levels since the mid 1990s has resulted in numerous allegations of troops intimidating communities, harassing and threatening individuals and violating human rights. Indigenous peoples in Guerrero have consequently suffered from, *inter alia*, abuses of power, arbitrary detention, extrajudicial execution, torture, and forced disappearances.

21. In December 2009, Lawyers' Rights Watch Canada participated in a delegation of lawyers who travelled to Mexico to investigate human rights concerns and the rule of law in the states of Guerrero and Oaxaca. The delegation was organized by the Bar Human Rights Committee of England and Wales and met with members of all levels of government, indigenous groups, lawyers and human rights defenders. The delegation's observations are summarized in a forthcoming report.⁵
22. LRWC submits that the repression and intimidation of human rights defenders in Guerrero is an inseparable component of the Mexican state's failure to provide an adequate effective remedy to the violation of Valentina and her family's rights under the *American Convention*.
23. Families and supporters of Valentina and Inés Fernandez Ortega, another Me'phaa woman from Guerrero whose case alleging rape and torture by the Mexican armed forces is currently under consideration by this Honourable Court, have been threatened, extrajudicially killed, and disappeared by unidentified persons.
24. Lorenzo Fernández Ortega, a leader with the Organization for Indigenous Me'phaa People (OPIM), one of the organizations representing Valentina in the present application, was kidnapped in 2008. His body was found shortly after, displaying signs of torture. Other members of OPIM have been imprisoned by Mexican authorities in circumstances that have been widely denounced for violating international law by local and international human rights observers, including Lawyers' Rights Watch Canada.⁶
25. OPIM President Obtilia Eugenia Manuel, who appeared before this Honourable Court as a representative of Valentina in the instant case, has been the target of

⁵ Recalling the Rule of Law: Report of the Lawyers' Delegation to Mexico, Bar Human Rights Committee, June 2010 (forthcoming July 2010, <http://www.barhumanrights.org.uk/>).

⁶ Standing up for Justice and Dignity, Human Rights Defenders in Mexico, Amnesty International, 2010, AMR 41/032/2009 at page 10.

numerous threats to her person and does not travel locally in Guerrero without the accompaniment of international human rights observers out of fear for her safety.

26. Valentina's lawyers from the Tlachinollan Human Rights Center have also received threats related to their work representing Valentina and similar indigenous people who are attempting to assert their human rights. Tlachinollan closed their offices in Ayutla de los Libres in March 2009 after an escalation in aggression and harassment towards members the lawyers and their families. LRWC has received reports that individual employees have had their work defending human rights and representing clients such as Valentina questioned by representatives of the Mexican state.

27. In its 2009 report on human rights defenders in Mexico, the Office of the UN High Commissioner for Human Rights in Mexico recorded 127 alleged attacks against defenders from 1 January 2006 to 30 May 2009. Of the 127 instances documented, ten were assassinations. Only two of the alleged attacks resulted in prosecution, resulting in an impunity rate of 98 per cent.⁷

28. Like the majority of cases documented by the UN High Commissioner for Human Rights in Mexico, the abuses experienced by Valentina, her family and representatives have not been adequately prosecuted and no one has been brought to justice. Protective measures have been ordered by this Honourable Court but they have not been adequately implemented by the Mexican state. LRWC respectfully submits that these threats and intimidation are directly related to the work Valentina and her representatives have done in furtherance of securing their rights under the *Convention*, including the current proceedings before this Honourable Court.

⁷ Naciones Unidas Derechos Humanos, Oficina del Alto Comisionado para los Derechos Humanos México, *Defender los derechos humanos: entre el compromiso y el riesgo: Informe sobre la situación de las y los defensores de derechos humanos en México*, 2009 at paras. 10 and 55.

29. LRWC submits that this context of repression against organized indigenous movements and their supporters in Guerrero contributes to human rights violations in the state and exacerbates the violations that Valentina has experienced as a result of her rape and torture. This repression has the effect of re-victimizing the victim and further traumatizing her and her supporters and is a gross violation of their *Convention* rights.

Problems related to the investigation of human rights violations in Mexico

30. Mexico has an obligation to investigate human rights abuses such as the rape and torture of Valentina Rosendo Cantú. Mexico's obligations under the *Convention* include not merely passively respecting rights; they impose an obligation to prevent human rights abuses and to provide remedies for violations.

31. Article 25 of the *Convention* provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, before a competent court or judge, that protects them against acts that violate his fundamental rights by the constitution, laws of the state concerned, or by this Convention.⁸

32. Article 1(1) provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

33. Article 8(1) states that:

⁸ *American Convention on Human Rights*, art. 25(1).

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

34. The obligation to punish torture (including rape as in the instant case) is also enshrined independently within the *Inter-American Convention to Prevent and Punish Torture* (at article 6), to which Mexico is a signatory.
35. This Honourable Court, in previous decisions, has held that “the State has the obligation to use all legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations and total defencelessness of victims and their relatives.”⁹
36. This Court has also held that states must “prevent, investigate and punish any violation of the rights recognized by the *Convention*.”¹⁰
37. The Court has consistently maintained that the *Convention* requires States Parties to provide effective judicial recourse to victims of human rights violations to meet their obligations under article 25. Those recourses must be in accordance with the rules of the due process of law.¹¹
38. As stated by the Inter-American Commission, the investigation must not be “the product of a mechanical implementation of certain procedural formalities without the state genuinely seeking the truth.”¹²

⁹ I/A Court H.R., *Case of Paniagua Morales et. al*, Judgment of March 8, 1998, at para. 173.

¹⁰ I/A Court H.R. , *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C. No. 4, paragraph 166.

¹¹ I/A Court H.R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C. No 140, at para. 169.

¹² IACHR, Report No. 55/97, Case 11.137, *Juan Carlos Abella et al*, Argentina, November 18, 1997, at para. 412.

39. This obligation includes the obligation to provide a “serious investigation” of human rights violations in its jurisdiction, identifying those responsible, imposing the appropriate punishment and ensuring the victim receives adequate compensation. If the state permits the violation to go unpunished and the victim’s full enjoyment of her rights is not restored as soon as possible, then the state has failed in its obligation to protect.¹³

40. LRWC submits that in Valentina’s case the investigation was clearly inadequate and not serious by any measure and is a violation of Mexico’s obligations under articles 25(1) read in conjunction with 1(1), and 8(1). In the *Street Children Case*, the persons responsible for human rights abuses had not been identified or penalized by judicial decisions. This Court held that the fact that the state had not punished the perpetrators of the crimes was enough to conclude that the State had violated article 1(1) of the *Convention*.¹⁴

41. In addition to the above noted violations of the *Convention*, the failure to provide an effective remedy for raped indigenous women such as Valentina breaches Mexico’s obligations under other international human rights treaties; including the *International Covenant on Civil and Political Rights*, the *Inter-American Convention for the Prevention and Punishment of Torture*, and the *UN Convention Against Torture*. Because of the particular context of Valentina’s case, involving an indigenous woman who was the victim of a crime directly related to her status as a woman, LRWC submits that the state has violated its obligation to protect the right to live free of violence and discrimination contained at article 7 of the *Convention of Belém do Pará*. As Valentina was a minor child when she was raped and tortured, Mexico’s failure also contravenes article 19 of the *Convention on the Rights of the Child*, which requires States Parties to provide minor children with the protection of the state.

¹³ I/A Court H.R. Godínez Cruz Case, Judgment of January 20, 1989, Series C. No. 5, at paras 184 and 187. See also I/A Court H.R. , Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C. No. 4

¹⁴ I/A Court H.R., *The Street Children Case (Villagrán Morales et al.)*, judgment of November 19, 1999, Series C No. 63, at para. 228.

Independence of the judiciary and impartiality in Mexico's military justice system

42. Once again, article 8(1) of the *Convention* provides that “every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law.”
43. The criteria used to evaluate judicial systems are enshrined in international human rights norms such as United Nations Basic Principles on the Independence of the Judiciary.
44. These Basic Principles include “the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”¹⁵ The judiciary is to “decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”¹⁶
45. Other international standards require that the selection and appointment of judges be “carried out according to objective and transparent criteria based on proper professional qualification.”¹⁷
46. LRWC submits that the Mexican military justice system does not comply with the above noted international standards.

¹⁵ UN Basic Principles on the Independence of the Judiciary, art. 1.

¹⁶ *Ibid.*, art. 2.

¹⁷ Universal Charter of the Judge, art. 9.

47. Generally, international human rights bodies object to the use of military courts in cases such as the instant case, which involve human rights abuses allegedly committed by members of the armed forces against civilians. In order to comply with its obligations under the *Convention*, Mexico must limit military jurisdiction to offences that are narrowly related to military discipline. Human Rights abuses against civilians have no relation to military discipline.
48. The Inter-American Commission on Human Rights has also stated that military jurisdiction is not an appropriate judicial forum for the prosecution of civilian human rights abuses. “When the state permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised.”¹⁸ According to the Commission, the result is “*de facto* impunity which has a corrosive effect on the rule of law and violates the principles of the *American Convention*.”¹⁹
49. This Honourable Court, for its part, has stated in its previous jurisprudence that military jurisdiction should have a “restrictive and exceptional scope”²⁰ and be applied only to members of the armed forces for the commission of crimes that may affect military interests.²¹
50. These decisions are echoed by other international human rights bodies, such as the former United Nations Human Rights Commission, which recommended that cases involving alleged human rights abuses should be transferred to civilian courts.²²

¹⁸ IACHR, Admissibility, *Valentina Rosendo Cantú et al. v. Mexico*, October 21, 2006, at para. 28 and Annual Report 1995, Report No. 10/95 (Case 10.580, *Manuel Stalin Bolaños Quiñonez*), Ecuador at para. 48.

¹⁹ IACHR, Case 11.565, *Ana, Beatriz y Celia González Pérez v. Mexico*, at para. 81.

²⁰ Corte IDH. *Caso Radilla Pacheco Vs. México*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 23 de Noviembre de 2009. Serie C No. 209; I/A Court H.R., *Durand and Ugarte v. Peru*, judgment of August 16, 2000, Series C, No. 89 (2001), at para. 117.

²¹ I/A Court H.R., *Case of Almonacid et al*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, at para. 131.

²² UN Human Rights Commission, “Promotion and Protection of Human Rights through Action to Combat Impunity, Report of independent expert Diane Orentlicher,” E/CN.4/2005/102/Add.1.

51. The lack of judicial independence and impartiality in Mexico's military justice system has been well-documented. In 2006, the Inter-American Commission on Human Rights reported that Mexican military prosecutors lack "the necessary independence and autonomy to carry out an impartial investigation of human rights violations allegedly committed by members of the armed forces."²³
52. The UN Special Rapporteur on the Independence of Judges and Lawyers, concluded in 2002 that "many prosecutions of military personnel accused of human rights violations [...] are not pursued" and that "the public has no confidence in military courts" and civilian witnesses are unwilling "to appear before military courts to give evidence against military personnel."²⁴
53. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has found that the Mexican military justice system does not "confirm to the Basic Principles on the Independence of the Judiciary" and is "arbitrary." The Special Rapporteur further stated that "there is a reluctance on the part of the competent Mexican authorities to hold members of the military forces accountable for extrajudicial killings and other human rights violations."²⁵
54. The Mexican legal framework for the military justice system is set out in the Mexican Constitution and the Mexican Code of Military Justice. Article XIII of the Constitution states that no one can be tried according to private laws or by special courts, and that military jurisdiction should only be recognized for the trial of crimes against military discipline, and that the military courts shall not extend jurisdiction over persons who do not belong to the army. Whenever a civilian is

²³ IACHR, Case 12.130. Merits. Miguel Orlando Muñoz Guzman," judgment of February 28, 2006, at para. 85.

²⁴ UN Commission on Human Rights, "Civil and Political Rights, Including Questions of: Independence of the Judiciary, Administration of Justice, Impunity," Report of the Special Rapporteur on the Independence of Judges and Lawyers, Addendum, Report on the Mission to Mexico, E/CN.4/2002/Add.1, January 24, 2002

²⁵ UN Commission on Human Rights, "Civil and Political Rights, Including Questions of Disappearances and Summary Executions," Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum, Visit to Mexico, E/CN.4/2000/3/Add.3 at paras. 44 and 102.

involved (“complicado”) in a military crime or violation, the respective civilian authority should deal with the case.

55. LRWC notes that the word “involved” or “complicado” has a definition distinct from “accused.” LRWC submits that “complicado” refers to all parties involved in the crime, not merely the accused. Nevertheless, despite the clear wording of Article XIII, Mexican courts have interpreted this article to read in “accused” in place of “involved” and thereby to extend military jurisdiction to crimes involving civilians. With respect, such interpretations follow neither the letter nor the spirit of the Mexican constitution.

56. Article 57(2, clause a) of the Code of Military Justice defines “acts of military discipline” as those “que fueren cometidos por militares en los momentos de estar en servicio o con motivo de actos del mismo.” Article 37 of the Regulations of the Internal Service of the Army Corps, defines “acts of services” in the following manner:

"se llaman actos de servicio los que ejecutan los militares aislados o colectivamente en cumplimiento de órdenes que reciban o en el desempeño de las funciones que les competen según su categoría y de acuerdo con las leyes, reglamentos y disposiciones del Ejército."

57. Regardless of whether Mexico’s military justice system is in compliance with the Mexican Constitution, LRWC submits that it is not in compliance with Mexico’s obligations under the *Convention*. The Court’s jurisprudence on this point is clear. Mexico has an obligation to prosecute abuses, notwithstanding any provisions in domestic law that might prevent it.²⁶ Domestic law cannot be used to evade Mexico’s obligations under international law.

²⁶ I/A Court H.R. *Loayza Tamayo Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgement of November 27, 1998, Series C No. 42, paragraph 170, citing: I/A Court H.R., *The “Panel Blanca” Case (Paniagua Morales et al.)*, Judgement of March 8, 1998, Series C No. 37.

Access to justice for indigenous people in Mexico

58. LRWC respectfully submits that the United States of Mexico has failed in its obligations to respect the right to a hearing by a competent, independent, and impartial tribunal, provided for in article 8(1) of the *Convention* and the requirement to provide prompt and effective recourse for acts that violate the individual's fundamental rights even though such violation may have been committed by persons acting in the course of their official duties under article 25(1).
59. Access to justice by indigenous peoples is affected by poverty, violence, and exclusion, all of which lead to further violations of human rights. Indigenous peoples comprise the most economically and socially disadvantaged segment of Mexican society and are concentrated in the poorest states: including Guerrero. As stated above, many of these indigenous people live a highly militarized environment, where there have been reports of violence against members of the community by the military. Sexual abuse by members of the Mexican military against indigenous women has traditionally gone unpunished, creating a climate of impunity for perpetrators. Impunity serves only to further exclude the indigenous population and perpetuate the cycle of violence committed by the military on the indigenous population.
60. Access to justice for human rights violations committed by the military is further obfuscated due to Mexico's reliance on the military justice system for prosecuting such crimes. Notwithstanding numerous recommendations by various international and human rights bodies to limit the scope of the military justice system because it fails to provide adequate recourse to victims of crime by

members of the military, Mexico continues its use for crimes that are in no way connected to military interests.

61. Structural deficiencies within Mexico's military system prevent it from providing an effective remedy for human rights abuses. Military proceedings are not transparent but rather operate as closed proceedings. Military justice systems are not accountable to the general public but rather to the military. It is quite simply not a system designed with the intent of providing justice to victims. Additionally, the system does not function with the competence of a criminal justice system; appropriate examinations are not conducted and evidence pertaining to cases in the military justice system is often lost or destroyed. These factors together prevented Valentina and prevent the many other women in her situation from accessing justice when their human rights are violated.

62. This Honourable Court has held that the right of access to justice is not exhausted by the mere commencement of domestic proceedings. To fulfill the right, the State must ensure that victims and their families are informed of the truth of what happened and to sanction those responsible. Furthermore, this must take place within a reasonable time.²⁷

63. Although more than 8 years have passed since the commission of the offence against Valentina, the investigation is still at a preliminary stage. By any measurement, Mexico has failed to meet its obligations under article 8(1) of the *Convention*.

64. In addition to these structural deficiencies, the denial of basic needs such as medical attention prevented Valentina from accessing justice. This problem is common for indigenous women reporting grave human rights violations such as sexual assault.

²⁷ I/A Court H.R. *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, series C No 140, at para. 71.

65. The failure of the Mexican authorities to take into account Valentina's position as an indigenous woman who experienced rape and torture also prevented her from adequately accessing justice. This additionally contributed to the violations of the rights to humane treatment and privacy under articles 5(1) and 11 of the *Convention*, read in conjunction with Article 1.1 that she suffered.

66. Due to this culture of impunity and inability to provide an adequate remedy for victims of human rights violations, Mexico has failed to uphold its obligations under sections 8 and 25 of the *Convention*. Additionally, in this case and others before it, the militarization of the indigenous regions of the country and the associated violence and impunity has resulted in a denial of justice specifically to members of the indigenous population of Mexico. As such, LRWC submits that Mexico has also failed to meet its obligations under section 1 of the *Convention* to ensure that all persons under its jurisdiction are able to freely and fully exercise their freedoms, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

CONCLUSION

67. Mexico's inadequate investigation and prosecution of the abuses suffered by Valentina, the lack of independence of its military justice system, and the overall lack of access to justice of Valentina and other indigenous women in her situation is a violation of Mexico's international human rights obligations. These violations are exacerbated by the underlying context of repression and human rights violations associated with organized indigenous peoples and their representatives in Guerrero.

68. LRWC seeks an order requiring the Mexican state to immediately take effective measures to bring itself into compliance with its international obligations. Any such remedial action must include guaranteeing the security of Valentina, her family, and her representatives.

All of which is respectfully submitted,

For Lawyers' Rights Watch Canada

Dated: June 9, 2010

Cara E.I. Gibbons, LRWC Director