



SOLICITORS' INTERNATIONAL

HUMAN RIGHTS GROUP

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Concerns of the Solicitors' International Human Rights Group in Relation to the Arrest, Detention and Treatment of Raúl Hernández Abundio

This report from the Solicitors' International Human Rights Group (SIHRG) concerns the arbitrary arrest, ill-treatment and unlawful detention of Raúl Hernández Abundio, a human rights defender and a member of the Me'phaa People's Organisation (OPIM).

The Solicitors' International Human Rights Group (SIHRG) promotes awareness of international human rights within the legal profession and mobilises solicitors into effective action in support of those rights. The Group encourages human rights lawyers overseas and conducts related missions, research, campaigns and training.

Since 2002, OPIM has worked to defend the human rights of indigenous people in the in the municipality of Ayutla de los Libres and Acatepec, located in Costa-Montaña, region of Guerrero, Mexico. This organisation is dedicated to empower economic, cultural and politically indigenous communities and denounce systematic violations of their human rights.

Since its foundation, members of the OPIM have been threatened and harassed for their valuable work denouncing human rights violations by civilian and military authorities in the area. These threats intensified when the organisation began campaigns on behalf of two indigenous women who were allegedly raped by members of the Mexican army in 2002, and on behalf of fourteen Me'phaa men who had to undergo a forced sterilisation in the community of El Camalote in 1998. The latter case was reported to the National Human rights Commission (Comisión Nacional de Derechos Humanos – CNDH), who issued recommendation no. 66/2007 on 17th December 2007, demanding that those responsible for the forced sterilisation be prosecuted and the victims compensated.

In retaliation for the work of OPIM members who advocate for State accountability in relation to human rights violations against indigenous peoples in the state of Guerrero, leaders and members of the organisation have been the targets of constant treats and physical and verbal attacks.

On 11 April 2008, arrest warrants were issued for Mr Hernández and 14 other members of the OPIM (all of whom are human rights defenders and Me'phaa indigenous) on suspicion of the murder of Alejandro Feliciano García, whose body was found on 31 December 2007.

On 17th April 2008, Mr. Hernández and four of the other 14 suspected OPIM members were arrested for the above murder. The names of the other four men arrested are: Manuel Cruz Victoriano, Orlando Manzanares Lorenzo, Natalio Ortega Cruz and Romualdo Santiago Enedina.

It was immediately clear that these were politically motivated arrests, which were aimed at preventing the members of OPIM from carrying out their work protecting the rights of indigenous people. The OPIM members allege that whilst they were in detention, they were psychologically tortured to make them confess to a crime which they did not commit. Human rights organisations around the world such as Amnesty International launched appeals demanding the immediate release of all five men.

The escalation of acts of aggression led the Inter-American Commission on Human Rights to grant on 26th June 2008, precautionary measures to 41 members of the Organisation (including the 15 members who were the subject of the arrest warrants) with the aim of preserving their lives and physical integrity.

On 15th October 2008, a federal judge granted an injunction in relation to four of the detained men, excluding Mr. Hernández. The judge ruled that the evidence presented did not implicate them in the murder. The Office of the Attorney General (Procuraduría General de la República, PGR) appealed the verdict. However, on 18 March 2009 a Federal Circuit Court confirmed the injunction, and the following day the four prisoners were released but Mr. Hernández remained in custody.

However, the precautionary measures were not fully implemented by the Mexican State. On 9th April 2009, as a consequence of the increase in acts of aggression, which culminated on 13 February 2009, in the forced disappearance and extra-judicial execution of human rights defenders Raúl Lucas Lucía and Manuel Ponce Rosas, (President and Secretary of the Organisation for the Future of Mixtec peoples (OFPM) respectively), and the non-implementation of the aforementioned measures, the President of the Inter-American Court of Human Rights demanded that the Mexican State adopt provisional measures to guarantee the life and physical integrity of Raul Hernandez and another 106 human rights defenders in the state of Guerrero.

Later on 12 February 2010, the Second Court of the 21st Federal ruled in favour of the cancellation of the arrest warrants against five more of the original 15 accused members of the OPIM, namely, Cuauhtémoc Ramírez Rodríguez, Braulio Manzanarez Lorenzo, José Eugenio Cruz, Félix Ortega Dolores and Merced Santiago Lorenzo.

These two decisions by the federal circuit courts demonstrate that the police and the Office of the General Attorney have been acting against OPIM members with insufficient evidence.

Recently, on 26th May 2010, judicial authorities (the judge of First Instance of the Judicial District of Allende, Alfredo Sanchez Sanchez, based in Ayutla, accompanied by an Assigned Attorney, Ruben Rosas Figueroa, and Regional Commander of State Police, Thomas Chege Espíndola) found that the only witness that had directly accused Mr. Hernandez lied, because of the distance, geographical features of the terrain and the poor visibility when the event took place, it was not possible that the witness could identify Raúl as he assures in his statement.

According to article 20 (a) (viii) of the Mexican Constitution, a judge may only convict when the guilt of the accused is certain. Therefore, the official recognition made by the court should be sufficient to promote the abandonment of the prosecution against Raúl Hernández.

On 14th June 2010 the defence lawyers for Raúl Hernández called for the case to be resolved promptly, according to the due process of law, and demanded that Mr Hernández be released as a result of the evidence submitted, which proved his innocence.

Two years since Raúl Hernández Abundio arrest, he still remains in custody for a crime that he did not commit. There are seven defence witnesses who testify that Mr Hernández was not at the scene of the crime at the time and date of the murder. These witnesses state that he was carrying out other work with local authorities, in his role of Commanding Officer of his community police. It is clear that the case against him is unfounded and brought by the authorities as revenge for his work protecting the rights of the community and exposing the abuses by local political figures and authorities.

Mr Hernández has been arrested and detained on politically motivated charges. He is facing a trial based on false charges. He is detained in conditions which do not meet minimum standards. As set out below, this is a clear and fragrant breach of Mr. Hernández's human rights by the Mexican authorities. SIHRG calls on the Mexican Government to immediately release Mr Hernández and instigate an effective and impartial investigation into the events surrounding his arrest, ill treatment and prolonged detention.

Arbitrary Arrest and Detention

The arbitrary arrest and continued detention of Mr. Hernández is contrary to the fundamental rights guaranteed by the Mexican Constitution. Article 14 provides that no person shall be deprived of liberty or rights without trial by a duly created court, and Article 16 provides that *"no order of arrest or detention shall be issued against any person other than by a competent judicial authority, and unless same is preceded by a charge, accusation, or complaint for a credible party or by other evidence indicating the probable guilt of the accused"*. Furthermore, Article 20 sets out a number of guarantees to be afforded to the accused in criminal cases, which are not being followed.

In the case of Raul Hernandez the Mexican authorities have also violated the right to be tried within a reasonable period, which in Mexico is defined in Article 20(a)(vii) of the Federal Constitution. During the more than two years that he has been kept in detention, his defence has been unable to provide evidence, which is incompatible with international standards concerning due process of law, as the excessive time that the victim has been detained cannot be attributable to the his defence. On contrary, the delay on the legal proceedings is a common feature in the Mexican legal system where the legal process is slow: Court orders which resolved the parties' arguments are not issued quickly and hearings are held in very long intervals of time.

The politically motivated arbitrary arrest and detention of Mr. Hernández is also a breach of the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights both of which Mexico is a signatory. The right to be free from arbitrary arrest and detention is a fundamental right that is guaranteed by Article 9 of the ICCPR and Article 7 of the American Convention on Human Rights. These articles further provide that anyone arrested is either entitled to a trial within a reasonable time or entitled to be released. The immediate release of Mr. Hernández must be ordered if the Mexican authorities are to comply with their legal obligations.

Treatment

Mr Hernández has also alleged that he has been subjected to psychological torture at the hands of the Mexican authorities. He stated that he was subjected to threats of suffocation when the police said during interview that they would place a bag over his head in order to make him confess to his involvement in the murder.

This treatment is a flagrant breach of the Mexican Constitution, which specifically states at Article 19 that any ill-treatment during arrest or confinement and any molesting without legal justification shall be punishable by law and repressed by the authorities.

The absolute prohibition on torture and degrading/inhuman treatment is reflected in the ICCPR (Art 10), the American Convention (Art 5), the Inter-American Convention to Prevent and Punish Torture and the United Nations Convention Against Torture (Art 2). These international provisions to which Mexico is a signatory not only prohibit the state from carrying out torture but require it to take legislative, administrative, judicial or other measures to prevent torture. There is a positive obligation on the State to ensure personnel are appropriately trained and instigate prompt and impartial investigations wherever there are reasonable grounds to believe that an act of torture has been committed.

Detention Conditions

We understand that whilst Mr Hernández has been detained in a prison in Ayulta, there have been no medical staff and inadequate medical treatment. He and the other indigenous prisoners have been fed “bad” meat and have not had

sufficient water. He has also not been the given the water, that his wife has brought to the prison for him.

This lack of medical staff and treatment, poor food and lack of water are breaches of the UN Standard Minimum Rules for the Treatment of Prisoners. Rule 20(1) of which states with regards to food: “[s]hall be provided by the administration at the usual hours with food of nutritional value, adequate for health and strength, of wholesome quality and well prepared and served.” Rule 20(2) states, “Drinking water shall be available for every prisoner whenever he needs it.” Rule 22(1) is also clear on the requirement for adequate health care. It states, “The medical services should be organised in close relationship to the general health administration of the community or nation.”

These conditions and treatment are also contrary to the Inter-American Principles and Good Practice on the Protection of Persons Deprived of their Liberty in the Americas. Principle X provides that persons deprived of their liberty shall have the right to health. This includes adequate medical care and the permanent availability of suitable and impartial medical personnel. In relation to the provisions of water, Principle XI Paragraph 1 states “[s]hall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.”

Remedies

The serious and egregious breaches of Mr Hernández’s human rights must not be tolerated. The Mexican authority’s flagrant disregard for human rights undermines the rule of law and this matter must be vigorously and promptly investigated.

Given the clear indications of ill treatment of Mr. Hernández by agents of the state, the Mexican authorities are called upon to comply with their domestic and international legal obligations. The authorities must investigate these claims and punish those responsible.

SIHRG urgently call upon the Mexican Government to:

- Ensure that Raúl Hernández Abundio is released immediately and unconditionally, any failure to do so will be legally challenged.
- Promptly instigate an effective, thorough and independent investigation into the allegations of arbitrary arrest, detention and ill-treatment of Mr Hernández and the other members of the OPIM. The findings of this inquiry must be made public, those responsible must be brought to justice and Mr Hernández must be compensated. This is in accordance with Mexico’s obligations to provide an effective remedy as stated in the International Covenant on Civil and Political Rights and the American Convention on Human Rights.
- Take immediate steps to ensure that the treatment of prisoners and the conditions of the prison in Ayulta, are in accordance with international standards.

- Conform with the provisions of the UN Declaration on Human Rights Defenders, especially its Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”, Article 6(b), which states that “everyone has the right, individually and in association with others (...) to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms”, and its Article 12(2), which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the [...] Declaration”.

Concluding Remarks

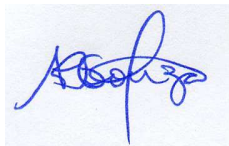
SIHRG is extremely concerned about this case and alongside other NGOs, human rights organisations and concerned members of the public we will continue to watch developments very closely.

We will not hesitate to take further steps to try to protect the human rights of Mr Hernández. However, we trust that the Mexican Government will act immediately to comply with its domestic and international legal obligations. Its intervention will be greatly appreciated all over the world. We expect a full response to this report and look forward to hearing from the Mexican authorities as a matter of utmost urgency.

Signed

A black and white photograph of a handwritten signature in black ink on a light-colored surface. The signature is cursive and appears to read 'Lionel Blackman'.

Lionel Blackman
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A blue ink handwritten signature on a light-colored surface. The signature is cursive and appears to read 'Ana Paula de Souza'.

Ana Paula de Souza
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