

## HUMAN RIGHTS FORUM

## A Case of Military Rape

### Indigenous Women Seek Justice in Chiapas

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Eight years ago the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) found the Mexican federal government responsible for the rape and illegal detention of Ana, Beatriz and Celia González Pérez and their mother, Delia (pseudonyms). In 1994, Army personnel at a military checkpoint in rural Chiapas gang-raped the sisters within earshot of their mother. The soldiers accused the sisters of being Zapatista guerrilla rebels and threatened to kill them if they reported the attacks. In its 2001 finding, the Inter-American Commission, which monitors human rights violations, recommended that the case immediately pass from military to civilian courts. This was the first case in the Inter-American system to recognize the indigenous identity of a rape victim, and it argued for special reparations for exacerbated suffering. But since the IACHR does not have enforcement power over OAS members, the case has languished without resolution. Human rights experts in Mexico have called the case's military classification "de facto amnesty."

Currently the case can move from military to civilian courts upon the completion of two of the women's statements—a formality that has proven impossible. Rights organizations lacked crucial Tzeltal-speaking translating and advocacy staff until recently. Also, few depositions have been scheduled, and those that were scheduled have been at the last minute and then cancelled. Before the 2001 IACHR finding, the army had attempted to close the case, arguing that the claimants "no tienen interés jurídico" (lack legal interest). In a 2004

report commenting on six cases of military rape in the state of Guerrero, Amnesty International pointed out the untenability of arguing legal disinterest of indigenous women who do not present themselves at military installations for legal proceedings when military institutions are both "juez y parte" (judge and litigant).

Despite compelling medical evidence that meets United Nations standards for proving rape, the IACHR's ruling in favor of the aggrieved family is challenged by the hubris of the Mexican state. Dismissing the need for civilian jurisdiction, on February 23, 2009 the head of the newly created Human Rights office of Mexican Defense Ministry told reporters that the IACHR "hasn't proved" that military jurisdiction promotes soldiers' impunity. On March 21, the IACHR held an informal negotiation session with one IACHR commissioner, representatives of the Mexican army, and the legal team of the aggrieved women. The session signals that the Inter-American Commission has renewed pressure on the state. The IACHR's interest comes because of an increase in police and military sexual assault against indigenous *campesino* women that occurs within the context of expanded militarization. The Mérida Initiative, which provides US funds for the Mexican military's war on drug cartels, does not help the situation. Despite Mexico's human rights noncompliance in 2008, the US House of Representatives was expected to re-authorize the \$1.4 billion aid package at the time of this writing.

Concurrent with IACHR pressure, there is a renewed grassroots commitment to getting the case resolved and providing the González family with justice and reparations. Much of the logistical support for the case is provided by the

Chiapas Women's Rights Center, a legal advocacy and training organization founded by Mercedes Olivera Bustamante, a Mexican feminist anthropologist. The Center promotes the role of cultural expertise in facilitating dialogue between human rights workers and victims/survivors of violence. It places indigenous women's rights advocates on cases originating in their home regions. The sisters, through the Center's translating team, have come forward with a written statement of their desire to complete the depositions, placing blame on the state for the long delay.

On the US side of the border, the Comité Reparaciones para las Hermanas González has formed through the volunteer efforts of law students, anthropology graduate students, and indigenous rights activists. The Comité is advised by indigenous women scholar-activists and coordinates directly with the aggrieved family and their logistical team. It has two goals: to create links of solidarity between the sisters and US-based grassroots organizations that combat violence against indigenous women, and to generate political pressure on the Mexican state from indigenous women's and human rights organizations north of the Rio Grande. Having worked with the González family since 1994, I am heartened by the IACHR's March negotiation session. It is an important step in a very difficult case. It is also a test for the IACHR itself. This case can establish military violence against women as incontrovertible fact, which would allow international legal bodies to evaluate ongoing army deployment in Mexico and prevent future acts of violence.

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## The Headscarf Debate in Bulgaria

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Since the controversial French decision to ban Islamic headscarves in public schools in 2004, European governments have increasingly been challenged to create their own public policies on the wearing of the veil. Across the Continent, Muslim minorities have demanded protection of their religious freedoms in the midst of a growing wave of Islamophobia. The reactions of EU member states have been remarkably diverse, with some countries instituting very open policies while others contemplate bans similar to those in France and Turkey.

Given their impact, legal regulations on the wearing of religious symbols are debated and promulgated at the highest levels of government.

Theory and methods drawn from the anthropology of public policy can help illuminate why different EU states have chosen to regulate the Islamic headscarf in such vastly different ways. Anthropology of public policy allows us to follow these new regulations from parliamentary debates

through local media to municipal school districts and the level of individual practice. Examining the different national and local contexts within which the meaning of the Islamic headscarf is defined is key to untangling the diversity of attitudes toward religious freedoms, a task to which anthropology is ideally suited.

Bulgaria, a recently admitted EU member and the member state with the largest Muslim minority, is a

case in point. Although events in Bulgaria may seem to resemble those that led to the French banning of the headscarf in public schools, upon closer inspection it becomes obvious that the circumstances are very different. Unlike in Germany, Britain or France, Bulgaria's Muslims have been living in the country for hundreds of years, a legacy of the Ottoman Empire. Since 2006, there have been two complaints filed with a national Commission

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for Protection against Discrimination by students who wanted to wear their headscarves to public secondary schools, which I examine here.

In the first case, two girls attended a school in the south central city of Smolyan where the headmaster had instituted a mandatory uniform requirement for all students. Since the heads-

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carf was not part of the uniform, the headmaster decided that the girls could only pursue their secondary education (which is not mandatory in Bulgaria) if they came to school bareheaded. In this case, the anti-discrimination commission ruled in favor of the headmaster, claiming that the public schools were secular and that the state had a duty to promote gender equality. Just one year later, three teenagers attending a school in the town of Devin filed another complaint. In this case, the secondary school did not have a mandatory uniform requirement. The commission subsequently argued that the girls were allowed to wear their headscarves since they were not in violation of any pre-established uniform code.

Although there was briefly talk of a French-style law banning headscarves in all public schools, nothing has come to pass. The issue has devolved down to the local level where individual headmas-

ters have the right to institute mandatory uniform policies at their own discretion. Ultimately, then, the status of the Islamic headscarf is in legal limbo, with individual schools being able to make their own policies. If a headmaster wants to ban headscarves at her school, she can do so with a uniform requirement. The anti-discrimination commission will find no fault, even if the uniform policy was clearly put in place to discriminate against Muslim girls.

Given that Bulgarian public opinion is generally opposed to the headscarf, and that many individual citizens are fearful of what a right-wing political party calls the “re-Islamification” of the country, it is striking that there have been no further complaints filed with the anti-discrimination commission. Indeed, on a visit to the Rhodope in January 2009, I noticed that there were more young women wearing the headscarf than ever before. Many of them told me they were wearing the scarves to school without protest from headmasters. Have Bulgarians suddenly become tolerant and welcoming of ethnic and religious pluralism? Not really. Bulgaria is suffering from a demographic collapse, with secondary schools

across the country closing for lack of students. In regions where the Muslim birthrate far exceeds the Christian one, individual headmasters have great incentives to be tolerant of the Islamic headscarf if it means steady enrollment of Muslim students. Thus, the exigencies of population decline mitigate the need for any national legislation on the Islamic headscarf. Outcomes like these can only become visible when scholars critically examine how laws, regulations and policies impact the day-to-day lives of people who decide to embrace, co-opt, subvert or resist them for their own purposes.

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# Decentering the Anthropologist

## Legal Enforcement of Research Ethics

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In 1938, an anthropologist in her early 30s arrived on a US Navy vessel in Guam, where she was to conduct fieldwork for a few months and serve as consultant on “native affairs” to the island’s US Naval governor. The Navy assigned a young assistant to her and let her settle in a large beachfront property that had been used as a weekend retreat by officers and their families. Meals were provided by the Navy corpsman and his family next door. An official car was made available to her. As she told me many years later, she had no reason to doubt that the indigenous people of Guam would accommodate her. Not that anyone, to my knowledge, was coerced into talking to her; as a white woman working on behalf of the US Navy in an American colony she simply was in control.

When I arrived in Guam more than half a century later to study the impact of colonial institutions on local politics, the situation was different. I had no affiliation with the island’s government. I could not count on anyone’s cooperation. I depended on the kindness of strangers, and on funding that allowed me to buy a dented, roach-infested Mazda, rent an equally infested apartment, and shop at Cost-U-Less. I never really felt in control—not even when ultimately writing my ethnography of Guam. Ethical dilemmas loomed large. Within a truthful narrative, the integrity and trust of many had to be preserved. Control and ethics go together. The more a researcher is able to create and control the research environment and command research subjects, the greater her liability. In this light, my own ethical predicament

appears insignificant compared to that of my Navy-employed predecessor, who conducted her research in the guise of a colonial mistress. A loss of control over one’s research may be offset by a gain in ethical virtue, among other benefits.

Although various kinds of institutional review boards and ethical codes guide and manage contemporary research throughout the world,

judicial systems have rarely engaged in this process, but this is changing. In 1997, the European Council, which convenes the heads of government of the European Union member countries and defines their common political goals, adopted the Convention on Human Rights and Biomedicine. Ratifying the Convention requires European governments to introduce a legally enforceable regulation of research. In my adopted country of Sweden, six regional ethical review boards, and a central one to which researchers can appeal, were created as independent authorities. All board members are appointed by the government. For five years now, ethical reviewing in Sweden has not been a matter of academic self-regulation but a legal procedure.

The Swedish reform has had consequences. For one thing, the wide field of human subjects research has been subjected to legal reasoning, with all that this entails in terms of analytical clarification and narrow definitions. More importantly, however, the focus has shifted from the researcher and her concerns to the protection of those who are being researched. The law makes clear that it is incumbent on review boards to protect the

dignity and safety of the research subject. This is to be accomplished not with an endless list of provisions, but by empowering the research subject. The entire legislation is geared toward enabling the research subject to, at all times, be in control of her own involvement in research.

In the US, federal regulations affirm the functions of Institutional Review Boards, which may be, and on occasion have been, set up as commercial businesses that specialize in research review (see the Association for the Accreditation of Human Research Protection Programs, Inc, at www.aahrpp.org). Does this not amount to a privatization of state-mandated rights? If we as researchers

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in the field of anthropology want to make good on our often stated promise to maintain the rights, dignity and safety of research subjects (or “informants”) who work with us, we ought to commit to the legal protection of their rights. This will leave little room for paternalism (the anthropologist knows best what is good for her “informant”) and self-pity (the anthropologist is powerless and a victim herself). Turning the recognized necessity to conduct ethnographic research ethically into a matter of legally enforceable rights and protections would require us to take political action and to decenter ourselves as anthropologists: no more peddling in exotica or speaking on behalf of another. *Ici on s'honore du titre de citoyen!* We shall be citizens among citizens.

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