

# MEXICO

## MILITARY INJUSTICE Mexico's Failure to Punish Army Abuses

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## ACKNOWLEDGMENTS

We dedicate this report to the memory of Digna Ochoa, a courageous lawyer who devoted her life to defending the victims of human rights abuses in Mexico. Digna never shied away from taking on the most sensitive cases—including several of those documented in this report—even in the face of repeated harassment and threats against her life. When asked last April if she was afraid she might be killed, she responded, “I knew from the outset that this line of work involved risks.” Asked if she ever considered quitting, she said no.

On October 19, 2001, Digna Ochoa was found dead in her Mexico City law office. She had been shot in the head. A note left by her side warned members of the human rights organization where she had worked until recently that the same could happen to them.

Digna Ochoa’s example of dedication and courage lives on as an inspiration to us as we continue her struggle for the respect of fundamental human rights in the region.

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## I. SUMMARY

Over the past decade Mexico has increasingly relied on its army to police its countryside—combating insurgent groups in the mid-1990s and waging war on the illegal drug trade in recent years. Unfortunately, the Mexican government has not found an adequate way to police the army itself. Under the current system, soldiers who commit abuses in the line of duty are legally accountable to military authorities, but neither they nor the military court system are accountable to civilians. This arrangement has resulted in human rights violations going unpunished.

When President Vicente Fox took office in December 2000, bringing an end to seven decades of one-party rule in Mexico, he promised to take aggressive steps to improve Mexico's human rights record. He appointed several people known for their advocacy of human rights to important official posts from which they have since begun to implement changes. Under Fox's leadership Mexico has become active in promoting the concept of the universality of human rights principles and in opening the country to scrutiny by international human rights monitors, something that previous governments considered anathema.

At the same time, President Fox has also declared his intention to wage a "war without quarter" against drug trafficking, raising concerns that aggressive policing practices by the armed forces could take insufficient account of the protection of human rights. Recently, in releasing prisoners Rodolfo Montiel Flores and Teodoro Cabrera García, President Fox himself showed an awareness of this problem. The two men, environmentalists from the state of Guerrero, had been abused by soldiers who arrested them in 1999. In ordering their release, President Fox cited several international human rights treaties binding on Mexico and stated that his action was meant to demonstrate his government's commitment to human rights norms.

Human Rights Watch visited Guerrero state in southwestern Mexico in April and June of 2001 to examine how the Mexican government has handled abuse allegations by Montiel and Cabrera and other civilians in the region. Guerrero is an important site of illegal drug cultivation and trafficking and has one of the highest levels of military activity in the country. Examining human rights cases there from 1997-2001, we found a disturbing pattern of abuse and impunity:

- soldiers have been able to use their policing power to commit serious human rights violations against civilians;
- the government has failed to investigate and punish alleged abuses;
- this failure has exacerbated a climate of fear and distrust that reinforces the impunity of military personnel in the region.

Underlying this pattern of abuse and impunity is a simple matter of jurisdiction. At present, abuses committed by military personnel are not subject to the jurisdiction of civilian courts. Instead, exclusive authority to investigate and prosecute these abuses is granted to the military justice system. But, as this report shows, the army prosecutor's office has proven to be unable to properly investigate human rights cases.

Under international law, the Mexican government has an obligation to investigate and punish all serious human rights violations committed by army personnel. Currently it is failing to meet this obligation.

Based on this research, Human Rights Watch believes that Mexico will only be able to fulfill this obligation to punish army abuses once it ends military jurisdiction over all cases involving human rights violations.

## II. BACKGROUND

### Counterinsurgency and Counternarcotics

The Mexican military has played an increasingly active role in matters of public security in recent years—from combating insurgents to fighting the war on drugs. The size and budget of the armed forces expanded significantly during the 1990s in order to sustain large-scale troop deployments in the countryside.<sup>1</sup>

These increases were triggered in part by the 1994 armed uprising of the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN) a guerrilla organization in the southern state of Chiapas. After an initial response that involved the use of extreme force against the rebels and their sympathizers, the Mexican government settled on a policy aimed at preventing the EZLN's territorial expansion through a massive deployment of troops in rural Chiapas. In 1996, another guerrilla organization, the Popular Revolutionary Army (Ejército Popular Revolucionario, EPR), appeared in Guerrero and several other states, leading the government to launch counterinsurgency operations in these areas too.

The other major reason for the increased military presence in the Mexican countryside has been the war against the illegal drug trade. Mexico is the principle site of transshipment of drugs to the United States, with over 80 percent of U.S.-bound cocaine passing through Mexican territory.<sup>2</sup> Regional counternarcotics efforts of the 1990s led those involved in the illegal trade to shift supply routes from the Caribbean to Mexico, and, within Mexico, from the Gulf Coast to the states along the southwestern coast, including Guerrero.<sup>3</sup>

Mexico is also a major narcotics producer, supplying 29 percent of the heroin and 70 percent of the marijuana imported into the United States.<sup>4</sup> During the 1990s, Guerrero had Mexico's highest increase in marijuana cultivation. This growth reflected the fact that farmers could make as much money from one kilo of marijuana as from one ton of corn.<sup>5</sup>

While the Mexican army's involvement in counternarcotics operations dates back to the 1940s,<sup>6</sup> it was in the 1980s that the government first began to rely heavily on the military to combat drug trafficking.<sup>7</sup> In 1987, President Miguel de la Madrid declared drug trafficking to be a "national security problem."<sup>8</sup> In 1996, President Ernesto Zedillo invited the country's top military leaders to join the National Public Security Council, thus giving the armed forces a direct role in setting policy for public security and anti-narcotics efforts.<sup>9</sup> Most recently, in January 2001, President Vicente Fox declared his intention to fight a "war without quarter" against drug traffickers.<sup>10</sup>

The army currently deploys over 20,000 soldiers in counternarcotics operations, including eradication and interdiction efforts.<sup>11</sup> The majority of complaints of army abuses submitted by civilians to the government's National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) have involved troops participating in counternarcotics operations.<sup>12</sup>

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<sup>1</sup> Under President Ernesto Zedillo (1994-2000), military expenditures averaged 5 percent of the federal budget, up from 2 to 3 percent under previous presidents. The size of the armed forces rose from 170,000 personnel in 1986 to 240,000 in 1999. Roderic Ai Camp, *Politics in Mexico* (New York: Oxford University Press, 1999), pp. 131.

<sup>2</sup> *Ibid.*, p. 210.

<sup>3</sup> Jesus Aranda, "El Pacífico, principal ruta de ingreso de drogas," *La Jornada* (Mexico City), April 22, 2001.

<sup>4</sup> Larry Storrs, "Mexico-US Relations: Issues for the 106<sup>th</sup> Congress," Congressional Research Service, January 28, 2000. [Cited in Centro de Investigaciones Políticas y Económicas de Acción Comunitaria, Centro Nacional de Comunicación Social, Global Exchange, *Always Near, Always Far: The Armed Forces in Mexico*, (Mexico, D.F.: 2000), p. 200.]

<sup>5</sup> María Celia Toro, *Mexico's "War" on Drugs: Causes and Consequences* (Boulder, Colorado: Lynne Rienner Publishers, Inc., 1995), p. 39.

<sup>6</sup> "Monopolizan militares combate antinarco," *Reforma* (Mexico City), March 17, 2001.

<sup>7</sup> Toro, "War" on Drugs, p. 30.

<sup>8</sup> *Ibid.*, p. 31.

<sup>9</sup> Camp, *Politics*, p. 132.

<sup>10</sup> Mayolo López, "Declara Fox 'guerra' al narco," *Reforma*, January 24, 2001.

<sup>11</sup> The number provided by the Mexican army has been reported as ranging from 21,179 [María Idalia Gómez and Martha Anaya, "Mantendrá la Sedena su lucha contra el narco," *Milenio*, January 25, 2001] to 27,000 [Jesus Aranda, "La participación del Ejército en el combate al narco ha costado 924 millones de pesos: Vega," *La Jornada*, May 23, 2001].

<sup>12</sup> In May 2001, Military Attorney General, Brig. Gen. Jaime Antonio López Portillo told reporters that since Fox's inauguration in December 2000, the CNDH had received eighty complaints against military personnel, of which fifty-four

The counterinsurgency mindset appears to be reproduced in the army's approach to the drug war, as officers rely on information from their perceived political allies for information about who to target in their operations. In this way, the military operations in Guerrero have tended to coincide with local political struggles, producing a pattern in which *caciques*—or political bosses—are able to bring the firepower of the army to bear upon their political opponents by denouncing them as guerrillas or drug traffickers.

### **Mexican Law and Military Justice**

The army's participation in civilian law enforcement is sanctioned by the Mexican Constitution, but only so long as it is requested by civilian authorities, does not violate the rights of individuals, and is carried out in strict accordance with the constitution and the law.<sup>13</sup>

Soldiers are authorized to detain civilians only when they possess an arrest warrant to do so, or when they catch a person in the act of committing a crime (*in flagrante delicto*). Once detained, civilians must be turned immediately over to civilian authorities.<sup>14</sup>

When soldiers commit abuses against civilians, they are subject to the jurisdiction of the military justice system.<sup>15</sup> While the Mexican Constitution defines military jurisdiction as covering only "offenses against military discipline,"<sup>16</sup> the Code of Military Justice provides an expansive notion of such offenses that includes "offenses under common or federal law . . . when committed by military personnel on active service or in connection with active service."<sup>17</sup>

### **International Law and Military Justice**

Mexico is party to several international treaties that prohibit human rights violations, including torture, arbitrary detention and extrajudicial execution.<sup>18</sup> The Mexican government's obligation under these treaties is not only to *prevent* violations, but also to *investigate* and *punish* any violations that do occur.

This second set of duties is, in part, a corollary to the first, reflecting the view that effective prevention requires investigation and punishment. The Inter-American Court of Human Rights, for example, has held that "the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."<sup>19</sup>

The duty to investigate and punish also derives from the right to a legal remedy that these treaties extend to victims of human rights violations. The American Convention on Human Rights, for example, states that every individual has "the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in

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related to counternarcotics operations [Jesus Aranda, "Apoyan procuradores el retiro del Ejército de tareas antinarco," *La Jornada*, May 4, 2001].

<sup>13</sup> Mexican Supreme Court ruling "Rangel, Leonel Godoy," 3 S.J.F. 434, 435 (9<sup>a</sup> época 1996).

<sup>14</sup> Article 16, Constitution of the Republic of Mexico.

<sup>15</sup> Some Mexican legal experts insist that the Mexican Constitution does not grant military jurisdiction over cases involving civilian victims. However, in practice, Mexican judges and prosecutors interpret the Constitution to grant jurisdiction over these cases to the military.

<sup>16</sup> Article 13, Constitution of the Republic of Mexico.

<sup>17</sup> Code of Military Justice. art. 57 (Mex.).

<sup>18</sup> International Covenant on Civil and Political Rights, ratified by Mexico on March 23, 1981; American Convention on Human Rights, ratified by Mexico on March 24, 1981; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, ratified by Mexico on January 23, 1986; Inter-American Convention to Prevent and Punish Torture, ratified by Mexico on June 22, 1987.

<sup>19</sup> Inter-American Court, Paniagua Morales *et al.*, Judgment of March 8, 1998, para. 173.

the course of their official duties.”<sup>20</sup> The Inter-American Court has held that this right imposes an obligation upon states to provide victims with effective judicial remedies.<sup>21</sup>

Not any sort of investigation will suffice to fulfill this obligation. The Inter-American Commission on Human Rights has found that, “when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised.”<sup>22</sup> The result is “de facto impunity which ‘has a corrosive effect on the rule of law and violates the principles of the American Convention.’”<sup>23</sup>

The necessary independence does not exist when military authorities investigate abuses committed by military personnel and prosecute them in military courts. International human rights bodies have consistently rejected this practice and called on states to transfer jurisdiction over human rights cases from military to civilian authorities.<sup>24</sup> The U.N. Human Rights Committee (HRC), which monitors states’ compliance with the International Covenant on Civil and Political Rights (ICCPR), has repeatedly called on states parties to subject military personnel alleged to have committed human rights violations to civilian jurisdiction. For example, in 1997 it urged the Colombian government to take “all necessary steps . . . to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts,” specifically recommending “that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts.”<sup>25</sup> The Committee has made similar recommendations to the governments of Chile and Peru, on the grounds that the “wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel . . . contribute[s] to the impunity which such personnel enjoy against punishment for serious human rights violations.”<sup>26</sup>

In the case of Mexico, the U.N. Special Rapporteur on Torture issued a report on Mexico in 1998 that found that “[m]ilitary personnel appear to be immune from civilian justice and generally protected by military justice.”<sup>27</sup> The report recommended that “Cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice.”<sup>28</sup>

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<sup>20</sup> Article 25. Similarly, the Inter-American Convention to Prevent and Punish Torture requires states to “take effective measures to prevent and punish torture” and “other cruel, inhuman, or degrading treatment or punishment within their jurisdiction” (Article 6). It also requires states parties to guarantee that “any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case,” and that “their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process” (Article 8).

<sup>21</sup> Inter-American Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, paras. 166, 174, 176. See also Inter-American Court, Loayza Tamayo Case, Judgment of November 27, 1998, para. 169.

<sup>22</sup> IACHR, 1995 Annual Report, Report N° 10/95 (Case 10.580. Manuel Stalin Bolaños Quiñonez), Ecuador, para. 48

<sup>23</sup> IACHR, 2000 Annual Report, Report N° 53/01 (Case 11.565. Ana, Beatriz y Celia González Pérez), Mexico, para 81. [Citing IACHR, 1995 Annual Report, Report N° 10/95 (Case 10.580. Manuel Stalin Bolaños Quiñonez), Ecuador, para. 48.]

<sup>24</sup> Principle 5 of the Basic Principles on the Independence of the Judiciary (adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders) states that: “Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

<sup>25</sup> UN Doc. CCPR/C/79/Add. 76 - 3 May 1997. Paragraph 34.

<sup>26</sup> UN Doc. CCPR/C/79/Add. 104 - 30 March 1999, Paragraph 9. And UN Doc. CCPR/C/79/Add. 67 - 25 July 1996. Paragraph 23. Similarly, the Inter-American Court has held that “[i]n a democratic State governed by the rule of law, the scope of authority of criminal military courts must apply on a limited and exceptional basis.” And that “[m]ilitary officers must be prosecuted for the commission of only those offenses and infractions that, because of their nature, have an adverse effect on the assets of the military.” [Inter-American Court, Case of Durand and Ugarte, Ruling of August 16, 2000, para. 117.]

<sup>27</sup> United Nations, *Question of the human rights of all persons subjected to any form of detention or prison and, in particular, torture and other cruel, inhuman, or degrading treatment or punishment*. Report of Special Rapporteur Nigel Rodley, submitted pursuant to Resolution 1997/38 of the Commission on Human Rights, E/CN.4/1998/38/Add.2, January 14, 1998, para. 86.

<sup>28</sup> *Ibid* (para. 88[j]).

### III. MILITARY JUSTICE IN MEXICO

When President Vicente Fox took office in December 2000, he vowed to bring an end to the climate of impunity that had flourished under previous governments. He promised, in particular, that his administration would intervene to resolve several high profile human rights cases involving the army.<sup>29</sup> On November 8, 2001, he took an important step toward fulfilling this promise by ordering the release of prisoners Rodolfo Montiel Flores and Teodoro Cabrera García, who had been subject to abuses by the soldiers who arrested them in 1999. Yet to date, disappointingly, there have been no significant steps taken to address the broader problem which the Fox government inherited: Mexico's persistent failure to investigate and punish army abuses.

#### Past Failures

This failure had been pointed out by international human rights monitors on several occasions during the 1990s. A 1995 Human Rights Watch report, for example, examined the military attorney general's investigation of human rights violations that took place during and after the 1994 uprising in Chiapas, including the killings of eleven people during an army occupation of a public hospital in Ocosingo.<sup>30</sup> The report documented severe weaknesses in the methodology of the military investigations that suggested an unwillingness on the part of the army to investigate its own ranks.

Another 1994 case from Chiapas, involving the alleged torture and rape of civilians by soldiers, was examined by the Inter-American Commission on Human Rights, which found in 2000 that "the investigation into the facts related to this case by the military courts [had been] completely inappropriate."<sup>31</sup> The Commission concluded that the Mexican government had failed to fulfill its obligation "to organize the government apparatus, and, in general, all structures through which State power is exercised, in such a way that they are capable of ensuring the full and free exercise of human rights in a legal context."<sup>32</sup>

#### Recent Guerrero Cases

In order to determine whether this pattern of failure has persisted, and to better understand its causes, Human Rights Watch conducted extensive interviews in seven Guerrero communities in March, April and June of 2001. Human Rights Watch also met with the military attorney general and members of his staff to discuss how the Office of the Prosecutor of Military Justice (Procuraduría General de Justicia Militar, PGJM) has handled abuse allegations in the Guerrero state.<sup>33</sup>

The attorney general and his aides received Human Rights Watch hospitably and provided helpful information during our meeting. However, the officials' answers to the questions put by Human Rights Watch indicated that they did not recognize the serious problems that plague the military justice system.

Those problems, illustrated in the following five cases, which took place between 1997 and January 2001, include the system's lack of transparency before Mexican society, and its lack of accountability before civilian authorities. Partly as a result of these shortcomings, soldiers are able to use their policing powers to commit

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<sup>29</sup> One case was that of Brigadier General José Francisco Gallardo, who was jailed in 1993 after expressing his views on the army's human rights practices. Another case was that of environmental activists Rodolfo Montiel and Teodoro Cabrera, discussed below [Juan Manuel Venegas and Victor Ballinas, "Ordena el Presidente intervenir a favor de Montiel y Cabrera," *La Jornada*, February 7, 2001].

<sup>30</sup> Human Rights Watch/Americas (now the Americas Division of Human Rights Watch), "Army Officer Held "Responsible" For Chiapas Massacre; Accused Found Dead at Defense Ministry," *A Human Rights Watch Report*, vol. 7, no. 7, June 1995.

<sup>31</sup> IACHR, 2000 Annual Report, Report N° 53/01 (Case 11.565. Ana, Beatriz y Celia González Pérez), Mexico, para. 82.

<sup>32</sup> *Ibid.*, para. 85. The U.S. State Department also concluded, in a 1995 report, that Mexico "failed to sanction any military personnel or government officials for committing abuses" during the 1994 Chiapas rebellion. [U.S. State Department, *Country Reports on Human Rights Practices, 1995*].

<sup>33</sup> Human Rights Watch interview with Military Attorney General, Brig. Gen. Jaime Antonio López Portillo Robles Gil, Col. Rubén Palacios Vargas, Lt. Col. Aníbal Trujillo Sánchez, Maj. Carlos Sergio Ruvalcaba, Maj. Jesús Rosario Aragón Valenzuela, Maj. Andrés Cortes Ríos, Mexico City, June 13, 2001. Also present at the meeting were two officials from the Defense Secretariat (Secretaría de la Defensa Nacional, SEDENA), as well as two from the Foreign Ministry's human rights office.

abuses against civilians, and civilians in turn are inhibited from contributing to the army's efforts to investigate them.

### ***El Cucuyachi***

The first case, involving the detention and torture of Martín Barrientos Cortés in May 1997, highlights two basic problems that plague the military justice system: a lack of transparency and a lack of accountability. These problems are compounded by a climate of fear that inhibits civilians from pursuing cases in the military justice system.

#### **The Detention**

The army arrived in El Cucuyachi on the morning of May 28, 1997, according to residents of this small town in the municipality of Atoyac de Alvarez. The Barrientos family saw two army helicopters and several trucks drop off some 150 soldiers. The family went about their business, until Patricia Barrientos saw her brother, seventeen-year-old Martín, sitting blindfolded by the river that ran less than a hundred meters from their house. He was surrounded by soldiers. Patricia Barrientos returned home and told other family members who then went to a clearing where they could view the river. They then watched as the soldiers escorted Martín Barrientos away down the road that led out of town.<sup>34</sup>

María Cortés, Martín's mother, asked a neighbor who was an army veteran to speak with the soldiers. The neighbor visited the camp the army had set up on a nearby hill and reported back that the officer there had told him that Martín Barrientos would be interviewed and then released. But when the troops left El Cucuyachi two days later, Martín had still not returned.<sup>35</sup>

According to Martín Barrientos's own account, he had been returning on foot from working in the fields outside of town when a group of soldiers stopped him. They accused him of being a member of the EPR guerrilla organization, blindfolded him and brought him to the river in town to wait. Then they led him out to the road and, after another long wait, put him in a truck, lying face down, with soldiers' feet on his back. As the truck drove, its metal floor heated up, burning his chest. After two hours, he was taken out of the truck and put into a room, still blindfolded. From what he could hear outside, he was certain he was in a military base.<sup>36</sup>

Martín Barrientos described the next few days as filled with torture. His captors stripped him, doused him with cold water, sat him in a chair with his hands tied behind his back, and gave electric shocks to his feet, thighs, thorax, nipples, and shoulders. After shocks for periods of fifteen minutes, his captors would allow him to rest, then subject him to beatings and more shocks, he said. One time they had him lie on a table while they filled his mouth and nose with some sort of "dirty water" that burned where it touched him. His captors demanded information about the EPR. But he insisted that he knew nothing about the guerrillas. They kept him this way for about a week—hands tied, blindfolded and subject to beatings and torture.<sup>37</sup>

After the army left El Cucuyachi, María Cortés went looking for her son. She visited the military bases in the region, but the officers she spoke with insisted they had no idea where her son was. She filed an *amparo* petition (similar to a writ of habeas corpus) with the public ministry in Atoyac de Alvarez.<sup>38</sup> With the help of a local member of the national congress, she obtained a meeting with an army general from the nearby military base. She recalled that "he smiled and said that he didn't know where Martín was."<sup>39</sup>

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<sup>34</sup> Human Rights Watch interviews with Onofio Barrientos García, María Elena Cortés Ponce, Narcisa Barrientos Cortés, Patricia Barrientos Cortés, El Cucuyachi, Atoyac de Alvarez, Guerrero, April 3, 2001. The town has a long history of violence, dating back to the 1970s when the army rooted out a guerrilla movement in the region, and picking up again in the 1990s when local caciques affiliated with the ruling PRI party retaliated against locals who had voted them out of municipal office. More recently, the presence of a new guerrilla organization, the EPR, has brought the army back to the region.

<sup>35</sup> Ibid.

<sup>36</sup> Human Rights Watch telephone interview with Martín Barrientos Cortés, Mexico City, April 5, 2001. CNDH, *Recomendación 100/97*, Mexico City: 1997, pp. 250-1.

<sup>37</sup> Ibid.

<sup>38</sup> Under Mexican law, an "*amparo*" petition can be filed to challenge the unconstitutional actions of authorities or the constitutionality of laws. Federal and state-level attorneys general's offices contain what in Mexico is referred to as the "public ministry," which is responsible for the investigation of crimes and prosecution of those responsible, including human rights violators.

<sup>39</sup> Human Rights Watch interview with María Elena Cortés, El Cucuyachi, Atoyac de Alvarez, Guerrero, April 3, 2001.

Martín Barrientos told Human Rights Watch that after a week in detention, the soldiers took him to a new location, which he overheard his captors saying was the 27<sup>th</sup> Military Zone in Atoyac, where he was kept for five more days before being released.<sup>40</sup>

María Cortés was at the house of her aunt in Atoyac when Martín was brought in a car, accompanied by three men who wore civilian clothes but had military-style haircuts and builds. “We’re just lending him to you,” she recalls them warning her. “But later we’ll take him back.”<sup>41</sup>

### **Investigation of Army Conduct**

A few days after his release, Martín Barrientos met with members of the Miguel Agustín Pro Juárez Human Rights Center (Centro de Derechos Humanos “Miguel Agustín Pro Juárez or PRODH) and filed a complaint with the Mexican government’s National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH). A team of doctors sent by the CNDH examined Barrientos and found evidence of torture on his body.<sup>42</sup> The CNDH included the Barrientos case in its public report, titled “Recommendation 100/97,” which documented sixteen cases from the state of Guerrero. The report concluded that these cases appeared to involve illegal detention and torture by the military and called on the military prosecutor’s office to investigate the alleged violations.

The PGJM responded to the CNDH’s recommendation by opening investigations into the sixteen cases and closing them all shortly thereafter on the grounds that the PGJM could find no evidence that the military bore responsibility for the alleged violations.<sup>43</sup>

PGJM officials told Human Rights Watch that they made this determination in the majority of cases because the civilians who had filed written complaints with the CNDH refused to come forward and ratify these denunciations in person before army prosecutors. Without ratified denunciations, the prosecutors were prohibited by law from proceeding with formal investigations into these cases. In those cases where victims did ratify their complaints, the PGJM had opened formal investigations, PGJM officials said, but then found that local witnesses either refused to testify before them or gave testimony that contradicted the allegations.<sup>44</sup>

Martín Barrientos did make the required denunciation. However, according to the PGJM, the subsequent investigation found no evidence of military involvement in the alleged abuses. A PGJM investigator told Human Rights Watch that Barrientos had not been able to identify his captors and had described them only as men with a “military appearance” (i.e., physical traits such as military-style haircuts but not actual uniforms). The PGJM also claimed that its investigation had determined that no troops had been in El Cucuyachi on the date of the Barrientos detention.<sup>45</sup>

### **Assessment**

The PGJM’s account of what took place in El Cucuyachi directly contradicts the information that Human Rights Watch obtained from Martín Barrientos and his family, who insist that the military were present in the town on the day of his detention, and that the men who detained Barrientos were uniformed soldiers.

A full assessment of the PGJM’s determination is difficult, however, because the evidence and legal argumentation upon which it was based is not available to the public. Human Rights Watch asked both the PGJM and the CNDH for documents detailing the PGJM’s decision to close the investigations into the sixteen cases. Both refused on the grounds that they were prohibited by law from divulging such documents.

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<sup>40</sup> Human Rights Watch telephone interview with Martín Barrientos Cortés, Mexico City, April 5, 2001.

<sup>41</sup> Human Rights Watch interview with María Elena Cortés, El Cucuyachi, Atoyac de Alvarez, Guerrero, April 3, 2001.

<sup>42</sup> An initial exam by a CNDH medical examiner turned up no evidence of torture. The following day, however, a doctor sent by the PRODH conducted an examination and found injury on the nose and signs of electrical shocks. Three months later, the CNDH consulted with the PRODH doctor, and sent a team of medical examiners, along with two doctors, who this time did find evidence of blows to the nose and electrical shocks on other parts of his body [CNDH, *Recomendación 100/97*, Mexico City: 1997, p. 271].

<sup>43</sup> PGJM officials told Human Rights Watch that the investigations could be reopened should new evidence emerge [Human Rights Watch interview with PGJM, Mexico City, June 13, 2001].

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

The only civilians allowed access to the document detailing the basis of the PGJM's decision to close an investigation are the victims, their relatives and lawyers. These are also the only civilians allowed to challenge the PGJM's decision—but they must do so within two weeks of when the decision is made.<sup>46</sup>

The CNDH told Human Rights Watch that in none of the sixteen cases it investigated did the victims challenge the decision to close the investigation. The PRODH told us that it wanted to file a challenge in the Barrientos case in court, but Martín Barrientos and his family requested that they not do so. The reason for this request, according to the PRODH, was that the family had been receiving threats and feared reprisals by the army.

María Cortés told Human Rights Watch that, upon returning home after his detention, Martín Barrientos had lived in constant fear and suffered from insomnia. After a few months, he decided to leave the region for his own safety and live in another part of the country. When Human Rights Watch asked Martín Barrientos if his captors had told him anything before setting him free, he cut short the interview and refused to speak to Human Rights Watch again.

It is conceivable that the PGJM made fair and informed decisions to close the investigations of the sixteen cases. But if they did not, no one would know and no one would be able to hold them accountable, unless the victims and their families challenged the decision. What stopped them from making these challenges in El Cucuyachi, and possibly in the other cases, was the fear of retaliation.

### *Pizotla*

The second case illustrates how the policing powers that Mexican law grants to soldiers increases civilians' vulnerability to army abuses. It concerns the detention of environmental activists Rodolfo Montiel and Teodoro Cabrera in the community of Pizotla in May 1999.<sup>47</sup> The two were convicted on drugs and weapons charges, based in part on confessions that they allege were obtained through torture, and in part on physical evidence that the military says it found on them in Pizotla.

#### **The Raid**

On the morning of May 2, 1999, Ubalda Cortés was at the home of her aunt, Ventura López, in Pizotla, a small village ten hours by foot from the nearest road, in the mountains of western Guerrero. Pizotla is among the poorest communities in one of Mexico's poorest states. Some fifty families live under thatched roofs covering dirt floors. Their huts have no walls, so the interiors are visible from outside, and on that morning Cortés and López could see from the kitchen, into the adjacent hut where their husbands, Rodolfo Montiel and Teodoro Cabrera, were talking with three other men who had come to look at the clothes that Ubalda Cortés, an itinerant merchant, had brought to sell.<sup>48</sup>

The shooting began suddenly, with no warning, Cortés and López told Human Rights Watch. They both saw their husbands fleeing out the other side of the house and they attempted to flee themselves, only to be stopped by soldiers who surrounded the house and then set about searching through their belongings inside. The two women did not know what had become of their husbands until later in the day when they spied them from a distance, lying face down by the nearby river, with their hands pulled behind their backs, surrounded by soldiers.<sup>49</sup>

Like Cortés and López, Rodolfo Montiel told Human Rights Watch that the first he knew of the raid was when he heard the shooting. He said he had been chatting with some men in Teodoro Cabrera's house when it began, and he immediately ran outside, fleeing the house, thinking that he was being attacked by gunmen from a local political boss who, he believed, had tried to kill him in the past. He and Cabrera crossed the river at the edge of town and hid in the woods on the other side for several hours, until the soldiers set fire to the underbrush, forcing them to come out and surrender. The soldiers took them to the river and tied their hands behind their backs.<sup>50</sup>

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<sup>46</sup> Human Rights Watch interview with Víctor Manuel Martínez Bulle-Goyre, First Investigator of CNDH, Mexico City, April 3, 2001.

<sup>47</sup> Montiel was a founding member of the organization of Campesino Environmentalists, formed in February 1998. With that organization, the two men had been engaged in efforts to bring an end to illegal deforestation in the region.

<sup>48</sup> Human Rights Watch interviews with Ubalda Cortés and Ventura López, Iguala, Guerrero, April 4, 2001.

<sup>49</sup> Ibid.

<sup>50</sup> Human Rights Watch telephone interview with Rodolfo Montiel, Mexico City, April 6, 2001.

The army gave a different account of events in Pizotla. It claimed that soldiers on a counternarcotics patrol had learned of an armed band operating in the region. Arriving in Pizotla, they saw five armed men run out of a house and open fire on them. They returned the fire, killing one of the men, Salomé Sánchez Ortiz. The other four men fled. The soldiers were able to cut off the escape of Montiel and Cabrera and, after a standoff of several hours, to force their surrender. The two were still armed when they were captured, and once in custody, Cabrera told them that he had a marijuana field five kilometers away. They found a gun at the side of the dead man, along with a sack containing marijuana and poppy seeds.<sup>51</sup>

If the army's account of the events is true, then the detention was legal: Montiel and Cabrera (and the dead man, Salomé Sánchez Ortiz) were caught *in flagrante*, shooting at the soldiers with illegal weapons. If the account of the Pizotla residents is true, then the detention was arbitrary from the outset, and the killing of Salomé Sánchez Ortiz may have been an extrajudicial execution.

### **The Detention**

While there is disagreement about what led to the detention, several facts are beyond dispute. One is that the military held the two men in Pizotla until the morning of May 4 when a helicopter took them to a military base in the town of Ciudad Altamirano, Guerrero, where they were kept for at least the rest of that day, before being turned over to the civilian authorities. This two-day detention was a clear violation of Mexican law, which requires that civilians arrested *in flagrante* be turned over to civilian authorities “without delay.”<sup>52</sup>

Another fact not in dispute is that Montiel and Cabrera made various statements describing what had taken place during their detention—and the details changed with each successive statement. The first of these, drawn up at the end of their two-day detention by the military, stated that they agreed fully with the army's account of what had taken place, but also volunteered further information: Montiel said he had taken the soldiers to see a marijuana field that belonged to him, while Cabrera claimed to be a member of the EPR.

The next statements were drawn up at the public prosecutor's office two days later. There, Cabrera denied all the charges against him while Montiel now said he had possessed one, not two guns, and that his marijuana field was smaller than previously indicated. Both said they had been beaten while in the military base.

The next statements were made the day after before a judge. This time both said they had been threatened and tortured in Pizotla. Cabrera said that soldiers had put a pistol in his mouth and told him to say what they wanted.

Finally, several weeks later, after establishing contact with the PRODH, Montiel and Cabrera denied all the charges against them. Their “amended declarations” stated that the reason they had confessed earlier was that they had been tortured, both in Pizotla and at the army base. The torture, they alleged, included beatings, electrical shocks, pulling their testicles, and shining a light into their eyes.

### **Prosecution of Civilians**

A federal judge would have the task of determining which version of events was true. In June 1999, Montiel and Cabrera were transferred to a prison in the city of Iguala to be tried in a federal court on drugs and weapons charges. The presiding judge, Moclovio Murillo Chávez, told Human Rights Watch that cases like this one, in which soldiers allegedly catch civilians *in flagrante*, come before the courts in Guerrero “all the time.”<sup>53</sup>

The case came down to deciding which testimonies were more credible—those of the soldiers or those of the detainees, and, among the latter, those given immediately after the detention or those given later on. Two legal principles guide Mexican judges when they decide such cases. First, when defendants provide conflicting testimony at different times, their earliest declarations are given greater evidentiary weight under the “principle of

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<sup>51</sup> Sentencia, Toca Penal 406/2000, Magistrado del Primer Tribunal Unitario del Vigésimo Primer Circuito, October 26, 2000, pp. 528-30. And CNDH, *Recomendación 08/2000*. Mexico City: July 14, 2000.

<sup>52</sup> Article 16 of the Mexican Constitution provides that civilians detained *in flagrante* must be turned over to the public ministry “without delay.” The CNDH found that the army had violated that constitutional provision when it did not use helicopters it had at its disposal to transport Montiel and Cabrera from Pizotla on the day they were detained [CNDH, *Recomendación 08/2000*].

<sup>53</sup> Human Rights Watch interview with Federal Judge Moclovio Murillo Chávez, Iguala, Guerrero, April 4, 2001.

procedural immediacy.”<sup>54</sup> Second, according to Judge Murillo, when differences arise between the testimony of civilian defendants and military personnel, the latter “enjoy a presumption of good faith.”<sup>55</sup>

An exception to these rules is when the civilian testimony has been obtained through torture. Under Mexican law, confessions obtained through torture are not admissible as evidence in a trial. However, according to Judge Murillo, the defendants have the burden of proving that torture took place.<sup>56</sup>

### **Investigation of Army Conduct**

Was there any evidence that that the two men had been tortured?

Doctors from the public prosecutor’s office conducted medical exams on May 6, four days after the two men were detained, and reported finding no signs of recent physical abuse. Yet, the PRODH lawyers questioned the validity of these findings and in August 1999, at their request, the judge instructed the public prosecutor to investigate the torture allegations of Montiel and Cabrera. The public prosecutor waited a month to open the investigation, and two months later ceded jurisdiction over the investigation to the PGJM.

A year later, in July 2000, doctors from an international nongovernmental organization, Physicians for Human Rights - Denmark, examined Montiel and Cabrera and determined that the two displayed physical symptoms that were “consistent with the allegations of the time and methods of torture suffered,” and, in each case “lead to the conclusion that the events must have taken place at the time and in the way described by the examinee.”<sup>57</sup>

Also in July 2000, the CNDH released the findings of its own investigation into the army’s handling of the case. It found that the army had committed human rights and due process violations. One was illegal prolonged detention: the military had failed to turn the prisoners over to civilian authorities as soon as they could.<sup>58</sup> Another was the planting of evidence that incriminated the detainees.<sup>59</sup> The CNDH also documented contradictions and misleading statements on the part of the military personnel who testified against Montiel and Cabrera. As for the torture charge, the CNDH requested information from the army, and when the army failed to provide it, the CNDH applied the legal presumption that the alleged torture did occur.<sup>60</sup>

In August 2000, after reviewing the CNDH findings, Judge Murillo Chávez issued a guilty verdict in both cases, sentencing Montiel to six years and eight months in prison on one drugs charge and two weapons charges, and Cabrera to ten years in prison on one weapons charge.<sup>61</sup> Despite highly questionable assertions in the testimony provided by the soldiers who detained the two men, their version of events enjoyed the “presumption of good faith.”<sup>62</sup> Despite serious contradictions in the self-incriminating statements by the defendants, these

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<sup>54</sup> For more on the principle of procedural immediacy, see Human Rights Watch, *Systemic Injustice: Torture, “Disappearance,” and Extrajudicial Execution in Mexico* (New York: Human Rights Watch, 1999), pp. 41-42.

<sup>55</sup> Human Rights Watch interview with Federal Judge Moclovio Murillo Chávez, Iguala, Guerrero, April 4, 2001. Human Rights Watch consulted with three Mexican lawyers who insisted that this principle has no basis in Mexican law, but acknowledge that it is common practice for judges to give greater weight to the testimony of military and police personnel [Human Rights Watch telephone interviews and written correspondence, August 30 – September 5, 2001].

<sup>56</sup> Not only must they prove that torture occurred, they must also establish a clear causal link between it and the confession. For a further discussion of how Mexican procedural guarantees fail to exclude from judicial proceedings evidence obtained through torture, see Human Rights Watch, *Systematic Injustice*, p. 40.

<sup>57</sup> Symptoms included difficulty urinating, shrunken testicles and severe pain in the back and legs [Dr. Christian Tramsen and Dr. Morris Tidball-Binz, Physicians for Human Rights - Denmark, “El caso de Rodolfo Montiel Flores y Teodoro Cabrera García, campesinos mexicanos y activistas ecologistas,” unpublished document provided by PRODH to Human Rights Watch].

<sup>58</sup> CNDH, *Recomendación 08/2000*.

<sup>59</sup> It concluded, for example, that Montiel could not have had the second gun he was charged with possessing.

<sup>60</sup> This legal presumption is established by Art. 70, Ley de la Comisión Nacional de Derechos Humanos.

<sup>61</sup> Montiel had claimed in his second declaration that he had only had one gun, and the CNDH concluded that he could not have had two.

<sup>62</sup> The soldiers claimed, for instance, that Montiel had two guns in his possession when detained. However, the initial internal army report, issued by the commander of the 35<sup>th</sup> Military Zone out of which the soldiers operated on May 2, 1999, indicated that Montiel had only one gun [CNDH, *Recomendación 08/2000*]. The agent of the public ministry who conducted a visual inspection in Pizotla on May 5, 1999, did not report having seen any guns on Montiel [CNDH, *Recomendación 08/2000*]. The soldiers also testified that the prisoners did *not* accompany the soldiers to the marijuana field, which raises the question of how they knew the marijuana field belonged to Montiel [Sentencia, Toca Penal 406/2000, Magistrado del Primer

confessions were given greater weight than their later statements. And despite evidence of torture documented by Physicians for Human Rights - Denmark, the judge chose to rely on the initial findings provided by the public prosecutor's office.

The conviction provoked an outpouring of protests from local and international nongovernmental organizations. In January 2001, President Fox responded to these protests by promising that his government would conduct a thorough investigation of the case. What this meant was having the human rights office of the Foreign Ministry provide legal advice to the PRODH lawyers handling the two men's appeal, and leaving it to the military prosecutor's office to investigate the torture allegations.

The PGJM told Human Rights Watch that it had maintained an active investigation into the torture allegations ever since 1999 when the federal prosecutor's office had ceded jurisdiction over the case. However, according to the PRODH, it was only after President Fox made his announcement that military prosecutors took what must be, under Mexican law, the first step in this sort of criminal investigation—having the alleged victims ratify their denunciations. In other words, an active investigation had not taken place.

Meanwhile, in July 2001, a federal court upheld the conviction of Montiel and Cabrera and they remained in prison until November, when President Fox issued an order for their release as a demonstration of his government's commitment to human rights norms.

### **Assessment**

As this case shows, the system currently in place in Mexico creates conditions where civilians like Montiel and Cabrera can be convicted on the basis of evidence obtained through army abuses. It can be extremely difficult to prove these abuses occurred, especially when the investigation is carried out by the PGJM. By planting evidence,<sup>63</sup> the soldiers involved gave themselves grounds to detain the two men, and then by failing to hand them over promptly to the civilian authorities, they had the opportunity to torture or intimidate them into making false confessions. The soldiers would be able to get away with this abuse so long as civilian prosecutors cede jurisdiction, military prosecutors fail to investigate, and the army disregards the recommendations of the CNDH.

There is credible evidence that military personnel tortured the Pizotla detainees. And it is clear that the due process violations that were committed—including prolonged detention and the altering of evidence—would have allowed the soldiers to cover up the use of torture.

When arrests take place in remote areas, it may be difficult for arresting soldiers to wait for civilian authorities to arrive and conduct an investigation. But as the CNDH pointed out in its analysis of this case, on this occasion the army had helicopters available which it could have used to fly in civilian authorities to the scene immediately after the arrests. And as the next case shows, even when civilian authorities are able to reach the site without undue delay, the military may effectively thwart their ability to carry out an adequate investigation.

### ***El Charco***

The third case offers a disturbing example of how military obstruction of investigations by civilian authorities can reinforce impunity for human rights abusers within the military. It concerns a June 1998 shooting in which soldiers killed eleven people and wounded five others in circumstances that have yet to be clarified but may have constituted serious human rights violations. Despite credible evidence that the army subjected survivors of the shootings to arbitrary detentions and torture, the PGJM concluded that no wrongdoing had occurred. The army's mishandling of the evidence and the witnesses at the scene prevented civilian authorities from making an independent determination of what had actually taken place.

### **The Shooting**

On the evening of June 7, 1998, around sixty people gathered in a two-room schoolhouse in the Mixteco Indian community of El Charco, in the municipality of Ayutla de los Libres. They had come from villages

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Tribunal Unitario del Vigésimo Primer Circuito, October 26, 2000]. The soldiers claimed that the prisoners had told them they were members of the EZLN, which would make little sense given that the EZLN did not operate in Guerrero [Sentencia, Toca Penal 406/2000, Magistrado del Primer Tribunal Unitario del Vigésimo Primer Circuito, October 26, 2000].

<sup>63</sup> The CNDH conclude that at least some of the evidence was planted, while Montiel and Cabrera insist that all of it was.

throughout the region for a meeting led by members of the EPR guerrilla organization, several of whom had brought weapons with them. It was dark when the meeting ended, and a downpour had begun, so most of the people decided to spend the night in the building.<sup>64</sup>

Sometime after midnight, the people in the school awoke to the sound of soldiers yelling outside in the darkness. "Come out, dogs," they heard the soldiers yell, followed by threats that they would be killed if they did not come out and surrender. Afraid of what might await them outside, they stayed in the building.<sup>65</sup>

Forty minutes passed and then shooting began. According to the PGJM, soldiers opened fire after guerrillas in the school building shot at them.<sup>66</sup> The witnesses who spoke with Human Rights Watch either denied that the guerrillas fired at the soldiers, or insisted they did not know whether or not the guerrillas fired. (It was night and the guerrillas were staying in a separate room of the schoolhouse, witnesses told Human Rights Watch)<sup>67</sup>

The shooting stopped after a short time and the villagers, still afraid to go outside in the dark, remained huddled in the schoolhouse until dawn. Once it became light outside, they began exiting the school, one by one, with their hands held over their heads. The soldiers yelled for them to get on the ground, and they did so, crawling out onto the basketball court immediately in front of the school.<sup>68</sup>

Then, according to the eye-witnesses, the soldiers opened fire. Guerrillas and civilians were struck down at the entrance to the schoolhouse. Several civilians, according to eyewitnesses, were shot as they lay on the basketball court. One survivor told Human Rights Watch that he saw an unarmed man by his side on the court killed by a bullet, and saw two other dead civilians lying nearby. Another survivor was shot in the arm. A third survivor crawled to the edge of the court, stood up to run, but was shot in the foot and fell to the ground.<sup>69</sup>

There were no army casualties.

### **The Detention**

When the shooting stopped, the soldiers rounded up the civilians and, according to eyewitnesses, subjected them to beatings. The survivor with the wounded foot told Human Rights Watch that soldiers pummeled his chest with a rock as he lay on the ground bleeding. The survivor with the wounded arm also said that he was beaten by soldiers.

Both of them were boarded onto helicopters along with other wounded civilians and flown to the naval hospital in Acapulco. One told Human Rights Watch that he was kept there for a week, deprived of food, and left with his wound untreated. He was interrogated day and night, and threatened that he would be killed if he did not "tell the truth" about his guerrilla affiliation. Then he was transferred to the public hospital and from there to a jail in the city of Chilpancingo. After three months he was tried and convicted of weapons crimes, and jailed for a year.

The other wounded witness told Human Rights Watch that he was deprived of food for three days, interrogated by soldiers about "people who use firearms," and threatened with severe punishment if he did not confess. He signed many papers without knowing their contents, he said. He was transferred from the hospital to a prison where he spent eleven months.<sup>70</sup>

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<sup>64</sup> Human Rights Watch conducted five private interviews with survivors of El Charco on Marcy 30-31, 2001, in various communities within the municipality of Ayutla de los Libres. Human Rights Watch has omitted the witnesses' names to protect their security.

<sup>65</sup> Ibid.

<sup>66</sup> CNDH, *Recomendación 20/2000*.

<sup>67</sup> Human Rights Watch interviews with El Charco survivors.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Testimony collected by Mexican human rights organizations from three survivors not interviewed by Human Rights Watch also recounted beatings inflicted on civilians in El Charco and later in a military base. See Instituto Guerrerense de Derechos Humanos, Centro de Derechos Humanos "Tlachinollan," Centro de Derechos Humanos "La Voz de los Sin Voz," Centro de Derechos Humanos "Miguel Agustín Pro Juárez," *Informe de la Misión de Observación a la Comunidad El Charco, Guerrero*, June 7, 1998.

Six of the detainees were later convicted on charges of illegal weapons possession and conspiracy to rebel based in part on evidence provided by the military, as well as confessions that they allege were obtained through torture.<sup>71</sup>

### **Investigation of Army Conduct**

On the day of the shooting, military personnel took charge of documenting what had taken place at the site. They collected material evidence and took statements from witnesses. The evidence was then used to convict some of the detainees on criminal charges in civilian courts.

Mexican law does not authorize the army to investigate civilian crimes. However, the federal judge who convicted several of the detainees pointed out that military authorities are authorized to investigate the conduct of military personnel and in the process may collect evidence that can be used in the civilian courts.<sup>72</sup>

In El Charco, the military's investigation of the soldiers' conduct prevented the civilian authorities from investigating that of the civilians. A subsequent investigation by the CNDH found that the army had removed crucial evidence from the scene of the shooting before civilian authorities could examine it. More disturbing still, it found that the army had failed to turn over civilian detainees immediately to civilian authorities, instead removing them to a military base. There, it had assigned the same lawyer, a military officer, to provide legal counsel to both the detained civilians and the soldiers who participated in the operation. And later it had submitted an official account of events to the federal prosecutor's office that the CNDH found to be full of "irregularities," including information that contradicted the testimony of the army personnel, multiple statements recorded as having been given at the exact same time to the same agent, and statements attributed to non-Spanish-speaking men with no indication that they had been provided with translators.<sup>73</sup>

The PGJM told Human Rights Watch that it had opened an investigation in response to the CNDH's findings, but had found no grounds for bringing criminal charges. The military prosecutors insisted that there had been no problems with the initial investigation into the shooting, other than some "minor" flaws, such as typographical errors. They dismissed charges that the scene of the shooting had been mishandled, claiming that the civilian authorities had been asked to give authorization before the evidence was removed. They also dismissed the claim that the civilians had been detained illegally, insisting that the civilians taken to the military base "were not detainees," but rather "witnesses."

### **Assessment**

The PGJM's account of its investigation in El Charco is untenable. The civilians who were brought to the military base clearly believed they were being detained. Several of them would soon face criminal prosecution and be convicted in part on the basis of evidence gathered by the military. The civilian authorities who, according to the PGJM, had authorized the removal of evidence from the scene of the shooting, actually told the CNDH the opposite—that the army removed the evidence "without prior notice" to them.<sup>74</sup>

We are left then with credible testimony that the army committed serious abuses in El Charco. If the soldiers intentionally killed unarmed citizens, or armed guerrillas who had surrendered, such killings could constitute extrajudicial executions. Even if the soldiers responded to gunshots by guerrillas, as the PGJM claimed, the large number of casualties, and the fact that, according to eyewitnesses, many of those killed or wounded were unarmed civilians, suggest that the army may have responded with excessive use of lethal force.<sup>75</sup>

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<sup>71</sup> Human Rights Watch interviews, Ayutla de los Libres, March 30-1, 2001.

<sup>72</sup> The evidence provided by the military must be ratified or corroborated by civilian authorities if it is to have probative value [Human Rights Watch interview with Xóchitl Guido Guzmán, Magistrate of the Fourth Collegiate Tribunal of the XXI Circuit, Acapulco, Guerrero, April 2, 2001].

<sup>73</sup> CNDH, *Recomendación 20/2000*, Mexico City: September 29, 2000.

<sup>74</sup> CNDH, *Recomendación 20/2000*.

<sup>75</sup> The CNDH did not address the issue of whether excessive force was used, or extrajudicial executions carried out. The case was also investigated by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, who concluded "that there is a strong case for investigating extrajudicial killings by the armed forces in this incident." She noted that the testimonies of witnesses "indicate strongly that excessive force was used by the armed forces." She also noted that "The fact that there were no military casualties would not seem to support the Government's claim" that the civilian casualties were the result of an "armed clash" [U.N. Doc. E/CN.4/2000/3/Add.3 (November 35, 1999) *Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Addendum, Visit to Mexico*, para. 64].

Human Rights Watch has received credible testimony that, after the shooting, civilians were subject to torture during their arbitrary detention by the military. And this arbitrary detention—itsself a serious violation—created the circumstances in which such torture could take place. The fact that several of the detainees gave self-incriminating statements shortly afterward, which they later recanted, strongly suggests that some form of coercion took place while they were in detention.

Whether or not military authorities engaged in an intentional cover-up, they succeeded in making it impossible to determine whether or not the more serious violations actually took place.

### *El Nogal and Las Palancas*

The fourth case demonstrates not only an unwillingness on the part of the PGJM to investigate alleged army abuses, but also a readiness to proffer blatantly unreliable information. It involves the killing of one civilian and the detention of five others on February 2000 in two villages in the mountains of western Guerrero.

#### **The Killing of Salvador Cortez**

The soldiers arrived in El Nogal at around 8:30 a.m. on the morning of February 18, 2000, according to witnesses who spoke with Human Rights Watch. One witness, a woman whom we will call Carmen, was standing in the doorway of one of the town's four houses and watched their truck come down the road from the nearby town of Las Palancas. As it passed, she saw that it was full of soldiers. Another town resident who was standing in the doorway told Carmen, with apparent surprise, that among the troops were several of this person's nephews, wearing uniforms and carrying weapons, even though they were not themselves soldiers.<sup>76</sup>

The truck stopped in front of another house where 33-year-old Salvador Cortez was doing maintenance on his motorcycle. Carmen saw Cortez leave the motorcycle and approach the cabin of the truck. She heard him greet the people sitting there and then heard someone inside respond with abusive language. She saw Cortez raise his hands in the air, turn, begin to run, and then fall to the ground under a hail of bullets.<sup>77</sup>

Another witness who spoke with Human Rights Watch was a man who had been working for Cortez, extracting wood from the nearby *ejido* (or community-owned property) of Río Frío. They had worked late the previous day and returned to El Nogal on a motorcycle, arriving with an empty gas tank. Hearing the truck outside, this man walked out of the house to ask if they had gas to spare, and he saw Cortez leave the motorcycle and approach the truck, presumably with the same intention. Although it looked like a civilian vehicle, the witness saw that the back was full of soldiers. He heard Cortez speak to people in the cabin and be answered with abusive language from inside. He saw Cortez raise his hands in the air, turn and begin to move away from the truck. He heard gunshots from the truck and saw Cortez fall to the ground. This witness then fled into the woods behind the house and was followed by gunshots. A bullet grazed his knee (he showed Human Rights Watch the scar), but he was able to escape.<sup>78</sup>

A third witness had been behind her house feeding her pigs when she heard the shooting. When she went around front, she saw the soldiers and recognized four civilians with them who, like her husband, were members of the *ejido* community. Three of these men were dressed as soldiers.<sup>79</sup> Her fourteen-year-old daughter also heard the shooting from where she was eating breakfast inside the house. When she went outside, she recognized two civilians from her father's *ejido* among the soldiers.<sup>80</sup>

A few minutes after the shooting, the first witness, Carmen, walked over to where the soldiers were gathered. She saw Cortez's corpse and saw soldiers come out of the house with a gun and lay it next to him. She also found that one of her neighbors, Elba García, had been wounded, with a gunshot to the torso. Two other pick-up trucks arrived with soldiers and armed civilians, who promptly changed out of their army uniforms and left in the pick-ups. Also in the truck were five men she knew. Their arms were tied behind their backs.<sup>81</sup>

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<sup>76</sup> Human Rights Watch interview (identity protected for security reasons), Acapulco, Guerrero, March 31, 2001.

<sup>77</sup> Ibid.

<sup>78</sup> Human Rights Watch interview (identity protected for security reasons), Las Humedades, Guerrero, June 17, 2001.

<sup>79</sup> Human Rights Watch interview (identity protected for security reasons), Las Humedades, Guerrero, June 17, 2001.

<sup>80</sup> Human Rights Watch interview (identity protected for security reasons), Las Humedades, Guerrero, June 17, 2001.

<sup>81</sup> Human Rights Watch interview (identity protected for security reasons), Acapulco, Guerrero, March 31, 2001.

### **The Detention of the Garcías**

Two of the men brought with their hands tied by the military were Alvaro García Avila and Alfredo García Torres. They had been detained earlier that morning in Las Palancas, they told Human Rights Watch, by a group of about thirty soldiers accompanied by seven armed civilians. The group had arrived while they were sleeping, entered their homes, ordered the men to leave, and then claimed that they had found weapons inside.<sup>82</sup> The three other men detained with them, including García Avila's brother Juan, were taken from neighboring homes.

In El Nogal, the detained men were taken out of the truck, blindfolded, boarded onto a helicopter and flown to the military base in the nearby city of Petatlán. There they were held from about 11:00 a.m. until 8:00 p.m., still blindfolded and with their hands tied. They were given neither food nor water.<sup>83</sup>

García Avila and García Torres told Human Rights Watch they were badly beaten and tortured at the military base. García Torres said that soldiers beat him, threatened to kill him, and placed bags over his head to suffocate him. The soldiers accused him of having killed several police officers in 1999.<sup>84</sup> They also accused him of being a guerrilla and demanded he tell them the whereabouts of the guerrilla commander. García Avila also reported being beaten and asked about this person. That night, they were transferred into the custody of the public prosecutor in Zihuatanejo. They were beaten again and forced to sign confessions.<sup>85</sup>

### **Prosecution of Civilians**

Alvaro García Avila and his brother, Juan García Avila, were convicted on weapons charges, based on the testimony of three soldiers, as well as their own initial declarations in which they admitted to possessing illegal firearms. The judge disregarded subsequent declarations in which the two denied the charges to which they had confessed, claiming that the previous statements had been made under coercion. Their new version was corroborated by all the civilian witnesses called to testify, as well as by a fourth soldier. Nevertheless, the judge, applying the principal of "procedural immediacy," chose to rely on the recanted confessions.<sup>86</sup>

In the same trial, García Torres was convicted on drugs charges, based on the testimony of the soldiers who said they captured him while he was carrying three kilos of poppy seed down the road from the house. Although he had never confessed to this, the judge dismissed his testimony denying his guilt, and the corroborating testimony of eyewitnesses, on the grounds that they "lack[ed] juridical relevance before the direct and categorical accusations made by the captors."<sup>87</sup> García Torres was also convicted of the murder of four judicial police, a crime which the soldiers who detained him in Las Palancas claimed he voluntarily confessed to en route to the military base in Petatlán.

### **Investigation of Army Conduct**

According to the Garcías and the civilian witnesses interviewed by Human Rights Watch, the army committed several serious abuses when it raided Las Palancas and El Nogal, including the extrajudicial execution of Salvador Cortez, the torture of the Garcías, and the planting of evidence. Moreover, the army's failure to turn the detainees immediately over to civilian authorities violated Mexican law.

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<sup>82</sup> Human Rights Watch interviews with Alvaro García Avila and Alfredo García Torres, Acapulco, Guerrero, March 31, 2001.

<sup>83</sup> Ibid.

<sup>84</sup> On March 5, 1999, judicial police arrived in the community of Rancho Nuevo where, the day before, a memorial service had been held for Alvaro García's brother, Otoniel García Torres, who had been shot to death two weeks earlier. According to community members, Otoniel García had attempted to prevent illegal foresting by an official in the *ejido* of Rio Frio. The official responded by seeking the help of a local political boss, who in turn hired the police to carry out the killing. According to community witnesses, the police arrived shooting and the locals responded, killing four police and three *madrinas* (paramilitaries) who had accompanied them. [Undated letter by Luis Torres, signed by Estafania Torres, Marria Cruz Yañez, Salud Torres Montiel, Guadalupe Torres, Epifanio Peralta, Conseción Segura. Also, Human Rights Watch interviews with Alvaro García Avila and Alfredo García Torres, Acapulco, Guerrero, March 31, 2001.]

<sup>85</sup> Human Rights Watch interviews with Alvaro García Avila and Alfredo García Torres, Acapulco, Guerrero, March 31, 2001.

<sup>86</sup> Sentencia, Toca Penal 79/2000, Magistrate of the Second Unitary Tribunal of the XXI Circuit, January 31, 2001.

<sup>87</sup> Ibid, p. 124.

The PGJM told Human Rights Watch that the events in El Nogal and Las Palancas were under investigation, but it had effectively ruled out any wrongdoing on the part of the military. PGJM officials said they had taken one hundred declarations from witnesses, among them civilians, and that all the witnesses—including those arrested—corroborated the soldiers’ account of what had taken place.<sup>88</sup>

According to that account, the soldiers had caught the five men in Las Palancas, *in flagrante*, illegally possessing drugs and firearms. The soldiers had driven the detainees to El Nogal, where they were attacked by a group of armed civilians. The soldiers repelled the aggression by opening fire. In the exchange of shots, a man was killed and a woman injured. Four civilians fled the scene of the shooting, leaving weapons behind them.<sup>89</sup> When Human Rights Watch asked about allegations that armed civilians had participated with the military in the arrest and the shooting, the PGJM officials dismissed the possibility.

### **Assessment**

The PGJM’s account contradicted all the testimony gathered by Human Rights Watch. The four witnesses interviewed by Human Rights Watch who were present in El Nogal all stated that there were armed civilians with the army, that Salvador Cortez was unarmed, and that the soldiers and armed civilians opened fire without provocation, killing Cortez and wounding Elba García. Two of these witnesses not only saw the shooting, but also witnessed men planting a gun on Cortez’s body. All four insisted that they had never been interviewed by military investigators.

El Nogal is a four-house town. There is no way the PGJM could have conducted a thorough investigation of what took place there without interviewing the four witnesses who spoke with Human Rights Watch. Their account of events differed completely from the account of events PGJM officials claimed that they had received from the “hundred” witnesses they interviewed.

### ***Lindavista***

The most recent case examined is the only one in which soldiers now face prosecution in military courts. The crime was the shooting death in January 2001 of fourteen-year-old Esteban Martínez Nazario in the community of Lindavista. The investigation and prosecution came only after community members took extraordinary measures for which they have since faced threats.

### **The Shooting**

On the afternoon of January 16, 2001, twenty-year-old Ricardo Martínez Nazario was returning home with his brother, fourteen-year-old Esteban, from an unsuccessful effort to corral cattle in the hills several miles from the town of Lindavista, in the municipality of San Miguel Totolapan. As they descended a steep grassy slope, they noticed a group of soldiers below them, but continued downhill, unaware of any danger. Then they saw that two of the soldiers were aiming rifles in their direction and heard one yell at them to run or be killed. The brothers turned and fled uphill. Ricardo outpaced Esteban. He heard gunshots behind him and saw bullets strike the ground ahead. He managed to get away and, overwhelmed by fear, continued his flight all the way to his home, hoping Esteban would follow.<sup>90</sup>

Esteban did not follow and after several hours Ricardo returned to the site with his father to look for him. They were unable to see much in the dark and they got no response when they called out his name.<sup>91</sup>

The following morning at dawn, their mother, Paulina Nazario, walked two hours to the army camp outside of town and spoke to the commanding officer, explaining to him what had happened. According to Nazario, the officer told her that his troops had not been anywhere near the area where she said the shooting had

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<sup>88</sup> Although they had already reached a conclusion, the PGJM told Human Rights Watch that the investigation of the alleged violations was still underway—not because there was any doubt of what took place, but because the CNDH has been investigating the case and the PGJM wanted to make sure that its own conclusions were solid. Also, they were awaiting the results of further laboratory work. [Human Rights Watch interview, Mexico City, June 13, 2001.]

<sup>89</sup> Ibid.

<sup>90</sup> Human Rights Watch interview with Ricardo Martínez Nazario, Lindavista, Guerrero, June 15, 2001.

<sup>91</sup> Ibid.

taken place. He suggested the armed men must have been common criminals, or soldiers under someone else's command.<sup>92</sup>

She left and found the town *comisario* (an elected local official), then returned with him to speak with the officer again. At their request, the officer agreed to help search for the child. He and his troops accompanied Ricardo and a group of townspeople to the site of the shooting. When they arrived, Ricardo found bullet casings scattered on the ground and pocketed five of them. Then they found Esteban, lying face down, rolled up in a fetal position, dead. A bullet had ripped through his thigh, and one of his eyes was burst from its socket.<sup>93</sup>

The townspeople lifted Esteban's body and carried it back to town. Ricardo noticed that, after accompanying them a short way, the soldiers left the group and returned to the site. When he himself returned there a week later, he found that the rest of the bullet casings had been removed, and an effort had been made to brush away boot prints from the ground.<sup>94</sup>

### **The Community Reacts**

The killing would probably have gone uninvestigated, community members told Human Rights Watch, had not something extraordinary happened. This belief, they said, was based on experience: six other townspeople had been killed by soldiers in the previous fifteen years, and none of the killings had been investigated.<sup>95</sup>

The most recent prior killing took place in 1998, and followed a very similar pattern. Two brothers, José and Rosendo Barragán Rojas, had been returning to town, also after an unsuccessful effort to corral cattle in the nearby hills. According to Rosendo Barragán, the two were walking down the side of a narrow ravine when they heard gunfire. They tried to run but José Barragán was stuck by a bullet in the back. Unlike Ricardo Martínez, Rosendo Barragán stayed with his brother, holding him in his arms as he bled to death. Soldiers surrounded the two of them and he begged them to call for medical attention. But they ignored his requests and kept the two surrounded for the hour it took for José to die. Then they tied up Rosendo Barragán and beat him, leaving him on the ground overnight. The next day he was taken to Coyuca de Catalán where he was jailed overnight and told he would have to confess to drugs and weapons charges or face grave consequences. The following day he gave a self-incriminating statement which he later recanted at his trial. Soldiers testified that the two had been caught armed in a poppy field—a charge denied by the Lindavista residents who went to fetch José Barragán's corpse. Rosendo Barragán was allowed to pay a fine and be released on parole. Before leaving jail, he alleges, a military officer told him that if he tried to make a denunciation, "I will bury you." Barragán heeded the warning and did not denounce the killing. Community leaders also kept silent out of fear, they say. They insist that no investigation into the killing of José Barragón ever took place.<sup>96</sup>

In the case of Esteban Nazario, when members of the community saw the boy's body, they became infuriated, and reacted in a way they never had before.<sup>97</sup> "In the past people were scared," one former *comisario* told Human Rights Watch. "But this time they said, 'This has got to stop or they'll keep killing us.'"<sup>98</sup>

A town meeting was called and a decision made to demand that the government ensure that, this time, justice would be done. Some 600 men and women marched out to the army camp and demanded answers from the army commander there. According to witnesses, the officer insisted that his troops had had nothing to do with the killing. So the community members surrounded the camp and announced that they would not leave—nor allow any soldiers to leave—until government authorities were sent to investigate the killing.<sup>99</sup>

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<sup>92</sup> Human Rights Watch interview with Paulina Nazario, Lindavista, Guerrero, June 15, 2001.

<sup>93</sup> Human Rights Watch interview with Ricardo Martínez Nazario, Lindavista, Guerrero, June 15, 2001.

<sup>94</sup> Ibid.

<sup>95</sup> Five of the civilian victims named were José Barragan Rosas (killed October 3, 1998), Joaquin Marquez (killed November 28, 1993), Alejandro Ollorzabal (killed November 6, 1988), Yolanda Ceron Marino (killed October 9, 1986), Miguel Hernandez Marquez (killed October 9, 1986).

<sup>96</sup> Human Rights Watch interview with Rosendo Barragán Rojas, Lindavista, Guerrero, June 15, 2001. Human Rights Watch interview with former town *comisario* (name withheld for security reasons), Lindavista, Guerrero, June 16, 2001.

<sup>97</sup> PRODH interview with a community leader (name withheld for security reasons), Lindavista, Guerrero, May 3, 2001.

<sup>98</sup> Human Rights Watch interview with former town *comisario*, Lindavista, Guerrero, June 16, 2001.

<sup>99</sup> Human Rights Watch interviews with former town *comisario* and Paulina Nazario. PRODH interview with community leader.

Twelve hours later, at 1:00 a.m., the colonel of the 27<sup>th</sup> Infantry Battalion arrived in a military convoy. At dawn, three top state government officials followed by helicopter. By noon, a contract was drawn up in which the state and army promised to investigate the shooting and punish whoever was responsible for it. It was signed by the colonel, the state officials, and the Lindavista community leaders.<sup>100</sup>

### **Investigation of Army Conduct**

PGJM officials told Human Rights Watch that they were in the process of prosecuting six men for their role in the killing. Five were soldiers who were charged with “violence against a person leading to homicide.” One was an officer who was charged with providing misleading information to investigators. All six were in jail at the time of Human Rights Watch’s meeting with the PGJM officials.

### **Assessment**

According to Lindavista residents, the outcome of José Barragán’s killing was more typical than that of Esteban Martínez. The reason the latter case turned out differently, they believe, is that they did something they had not dared to do before. They protested.

In this sense, the Martínez case is the exception that proves the rule about the military justice system. The only case in which the PGJM initiated the prosecution of military personnel for human rights abuses was the one in which the community had taken a drastic measure to demonstrate that they would not accept anything less than a proper investigation of the crime.

Unfortunately, the community leaders who organized the protest say that they have since received threats from the army and now live in constant fear. The principal organizer of the community action told Human Rights Watch that he was so fearful that, after talking to national and international press, he had decided that he could no longer speak about the case for fear of reprisals being taken against him and his family.

## **IV. CONCLUSION AND RECOMMENDATIONS**

The military attorney general and other PGJM officials assured Human Rights Watch that they were committed to the protection of human rights in Mexico. They acknowledged the existence of widespread distrust among civilians toward military justice officials (and justice officials generally). They said that this distrust makes it more difficult for them to function effectively, as civilians are frequently unwilling to assist them in their investigations and prosecutions. They suggested that one way to improve the military justice system would be through more active participation of civilians in the investigation and prosecution as *coadyuvantes* (or co-prosecutors).

Human Rights Watch appreciated the PGJM officials’ willingness to discuss these issues and to answer our questions. We agree that there should be more active civilian involvement in the investigation and prosecution of human rights cases. We also agree that it is important to acknowledge the distrust that impedes that participation.

We were troubled, however, by the PGJM’s tendency to shift the burden of responsibility to civilians rather than recognize the failings of the system itself. When discussing specific cases, the only possible shortcoming of their investigations that PGJM officials would acknowledge was that civilians did not provide information to substantiate claims of alleged abuses. Either civilians refused to file the formal denunciation that prosecutors needed to open formal investigations, or they refused to provide the corroborating information needed to establish grounds for prosecution.

What the PGJM did *not* acknowledge were the reasons civilians distrust the military justice system. One of these is the widespread perception that the PGJM does not seriously investigate or prosecute cases of abuse by the military, and has not done so in the past. According to the state’s number-two civilian prosecutor, the Lindavista case was the first time in Guerrero that soldiers were to be prosecuted for crimes committed while on duty.<sup>101</sup> The accuracy of this perception is supported by the cases that Human Rights Watch has investigated.

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<sup>100</sup> Ibid. Human Rights Watch obtained a copy of the document that community leaders provided to *The Washington Post*.

<sup>101</sup> Miguel Barreto Sedeno, cited in Kevin Sullivan, “Village’s Rage Rattles an Army,” *Washington Post*, June 21, 2001.

Despite repeated requests from Human Rights Watch, the PGJM failed to provide any information that might contradict it.<sup>102</sup>

Another reason to distrust the PGJM is that there is no mechanism that holds it accountable when it fails to carry out proper investigations. Although the civilian CNDH has examined such failures, its authority is limited to making recommendations that military justice authorities do a better job. The military has generally responded by carrying out superficial investigations and concluding on the basis of these that no violation was committed by army personnel. Even where the CNDH doubts the seriousness of the PGJM's response, it cannot compel the PGJM to re-open an investigation.

A third reason for distrust is the lack of transparency of the military justice system. PGJM officials are prohibited by law from making public documents from judicial proceedings. While the CNDH can demand information from the military, and can share this information in its own published reports, it cannot turn military documents over to the public. Only the victims and their relatives can gain access to case documents, but to do so they must seek participation as *coadyuvantes* during the process, or file a judicial appeal known as an *amparo* petition in the weeks immediately following the PGJM's closure of the case.

But neither option has been available in practice. The Mexican secretary of defense acknowledged recently that the system of *coadyuvancia* has not been active in recent years.<sup>103</sup> And the *amparo* option is complicated by the restricted time period in which petitions must be submitted (within two weeks of the PGJM's closure of the case), and because it requires legal resources that many victims and their families simply cannot afford. Consequently, the only information about the cases that reaches the public is what the military chooses to divulge. The resulting lack of transparency is conducive to incompetence and abuse of authority.

Finally, however committed the PGJM may be to improving its ability to prosecute human rights cases through greater civilian participation, there remains a fundamental problem that is sure to frustrate its efforts: fear.

Human Rights Watch encountered a pervasive fear of military authorities among the communities we visited in Guerrero. Some witnesses grew visibly nervous when discussing army abuses, others refused to discuss these abuses with us. One of the most disturbing moments of our mission was when a community leader from the town of Lindavista told us that he could not discuss the public protest which he had led demanding an investigation into the killing of a town resident by soldiers. He feared he would suffer reprisals from the military if he continued talking publicly about what had occurred in the town. "We're out here in a remote place," he explained. "If anything happens to us, who's going to help us?"<sup>104</sup>

The fear is compounded by the belief that reprisals can come under color of the law. In Pizotla, Las Palancas, and El Charco, civilians allege that they were convicted on trumped up charges by soldiers as a form of reprisal. One of the Lindavista leaders also told us that, since the protest in January 2001, he had been arrested on minor weapons charges and told by the arresting officer that he had been singled out because he had been "agitating" in the community.<sup>105</sup>

Two features of the criminal justice system facilitate this sort of abuse of authority. One is the principle of "procedural immediacy," which makes it difficult for civilian defendants to recant coerced confessions by giving greater evidentiary weight to the first statements they give. Judges have commonly interpreted this principle in such a way that, for confessions to be disregarded, defendants must prove they were tortured—something which it is often very difficult or impossible to do given that certain forms of torture produce no lasting physical evidence. The second feature is the tendency of courts, when faced with contradictory testimony from civilians and military personnel, to grant the latter a presumption of greater veracity.

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<sup>102</sup> Human Rights Watch requested that the PGJM provide it with numbers of prosecutions of human rights cases in recent years. The PGJM initially promised to do so. But despite repeated requests transmitted through the Foreign Ministry (the mode of transmission indicated by the PGJM), no such information was made available.

<sup>103</sup> In June 2001, defense secretary Ricardo Clemente Vega García ordered the PGJM "to activate" the system of *coadyuvancia* [Jesus Aranda, "Sedena se abre a la participación civil en pesquisas de abuso military," *La Jornada*, June 11, 2001].

<sup>104</sup> Human Rights Watch interview with community leader (identity protected for security reasons), Lindavista, Guerrero, June 16, 2001.

<sup>105</sup> Human Rights Watch interview with community leader (identity protected for security reasons), Lindavista, Guerrero, June 16, 2001.

Under the current system, civilians whose rights have been abused by the army should be able to turn to the PGJM to offer them protection and redress. But the civilians we spoke with did not differentiate one branch of the army from another. Indeed, in one community they complained that the army had summoned people who had denounced human rights abuses to give statements at a military facility. What might have been a good-faith effort by PJGM officials to gather evidence was perceived by community members to be harassment.

Even if the PGJM were fully committed to combating human rights abuses by the army, it would be difficult to convince civilians that military prosecutors are able to act independently of the interests of the army. The PGJM prosecutors are uniformed soldiers, trained by an institution that places a premium on loyalty and discipline.

The military justice system is fundamentally unfit to handle human rights cases. A more active *coadyunvancia* system and greater transparency could alleviate the problem somewhat. But the only real solution is an end to military jurisdiction over human rights cases.

## **Recommendations**

Human Rights Watch calls on the Mexican government:

- To promote the early adoption of legislation to ensure that all investigations and prosecutions of alleged crimes involving military personnel that may constitute human rights violations are conducted under strict civilian jurisdiction.
- To ensure that the alleged human rights violations discussed in this report—in the El Cucuyachi, Pizotla, El Charco, El Nogal, Las Palancas and Lindavista cases—are thoroughly and impartially investigated and that any military or other officials found to have committed human rights violations are brought to justice.
- To ensure that army personnel engaged in internal security activities abide by international standards of law enforcement conduct—using deadly force only as a last resort to protect life, and turning detained civilians over to proper civilian authorities without undue delay.
- To ensure that military investigators do not interfere with investigations into alleged human rights violations that are conducted by their civilian counterparts in the public prosecutor's office.
- To ensure that abuse victims and their representatives are given access to investigation records and kept apprised of the status of criminal proceedings against army personnel accused of human rights abuses, consistent with protecting the efficacy of the investigation and the rights of the accused.
- To provide information regularly to the public regarding the number of investigations of alleged army abuses that are underway and the status and disposition of those cases, and to publish the findings of such investigations.
- To develop legislation that would exclude from judicial processes evidence obtained through human rights violations (including an express statutory presumption of coercion for confessions obtained following prolonged detention).
- To require the effective assistance of a lawyer during the interrogation of criminal suspects, and to require that self-incriminating declarations have legal value only when they are made in the presence of a judge.