

SYSTEMIC INJUSTICE:

**Torture, "Disappearance," and Extrajudicial
Execution in Mexico**

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I. SUMMARY AND RECOMMENDATIONS

Torture, “disappearances,” and extrajudicial executions remain widespread in Mexico, despite numerous legal and institutional reforms adduced by successive Mexican governments as evidence of their commitment to protecting human rights. Indeed, reforms have taken place, but they have failed to abate, much less resolve, these serious, seemingly intractable problems. In part, this is because political leaders have been unwilling to ensure that existing human rights-related laws are applied vigorously; authorities are more likely to close ranks and deny that even well-documented abuses ever took place than they are to insist that those responsible be brought to justice.

The problem, however, runs far deeper than official toleration of abuses and impunity. Human rights violations also stem from the justice system’s ineffective protection of individual guarantees and its lax approach to human rights abuses. Through willful ignorance of abuses or purposeful fabrication of evidence, prosecutors routinely prosecute victims using evidence obtained through human rights violations, including torture and illegal detention, and judges avail themselves of permissive law and legal precedent to condemn victims while ignoring abuses. Faced with this deeply troubling reality, the Mexican government has opted to treat human rights as an issue to be managed politically, countered with facile statistics, or handled through insufficient reforms or initiatives.

Based on research conducted over two years, this report documents cases of torture, “disappearance,” and extrajudicial execution in five Mexican states, examining the violent abuses committed by police or soldiers and the actions of political leaders, prosecutors, and judges that followed. It demonstrates how and why the formal system of human rights protections in Mexico fails as victims pass from the hands of police or soldiers to prosecutors and judges. The cases permit an analysis of three interrelated stages in human rights cases: violations of individual guarantees prior to violent abuse, including illegal arrest and detention in excess of legally mandated limits; the violent human rights violations that followed, such as torture and “disappearance”; and the way prosecutors and judges dealt with the victims, including their use of confessions that followed improper or prolonged detention or torture and the citation by judges of legal precedent allowing them to avoid questioning such evidence. The Mexican government has failed to structure the justice system—understood to encompass police, prosecutors, and the courts—such that the goals of investigating crimes and punishing criminals are consonant with the aims of protecting human rights and promoting the rule of law. This failure is evident whether the victim is a suspected robber, accused drug trafficker, or alleged leftist guerrilla.

The victims of the abuses analyzed in this report suffer not only the physical and psychological trauma linked to their experiences, just as their family members,

grieving for an executed or “disappeared” loved one, endure not only the pain of their loss or uncertainty about the victim’s fate. In the face of such torment, victims and their family members must also abide a justice system more likely to prosecute the victim using evidence obtained through abuse than it is to see the perpetrators sent to prison. Indeed, it was the double affront of torture, “disappearance,” and extrajudicial execution accompanied by the active or tacit complicity of prosecutors and judges that led Human Rights Watch to begin this project.

The problem is limited neither geographically nor by the type of crime imputed to the victim. To establish the territorial breadth of the justice system’s failure, we drew case studies from the poor and predominantly rural south of Oaxaca, the industrialized central region of Morelos and Jalisco, and the northern border states of Baja California and Tamaulipas. To demonstrate the variety of circumstances in which the justice system fails, we scrutinized cases that took place in incidents related to counterinsurgency, drugs, and common crime.

Mexico’s geographic diversity and complex political and judicial structures make it impossible to assert that a single government agency is responsible for committing or tolerating the vast array of human rights violations that take place—the evidence points at times to state or federal authorities, police or army officials, prosecutors, medical personnel, or judges. Some abuses are committed in a local context, while others are carried out in the name of the national interest. These complexities, however, should not detract from one fundamental reality: Mexico’s federal government is obligated under international law to ensure that all people under its jurisdiction are able to fully exercise their human rights, to be free from torture and other abuses, and to have effective access to judicial remedies when violations take place. When such violations occur, the federal government is responsible. At the same time, the government must ensure that the agents responsible for committing violations are brought to justice. Based on the American Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which Mexico has ratified, this norm applies whether the party responsible for the human rights violation is federal, state, or municipal.

To understand why the government has failed to address adequately Mexico’s human rights violations, this report reviews official rhetoric on human rights and recent human rights-related legal and institutional reforms. It also addresses the National Program for the Promotion and Strengthening of Human Rights, which was announced by federal authorities in late December 1998. Largely since the election of President Carlos Salinas de Gortari (1988-1994), Mexico’s highest-ranking political leaders have acknowledged that human rights violations take place, and important reforms have been undertaken. Among the positive changes must be counted the creation in 1990 of the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH), which has often played a very important

role in promoting respect for human rights in specific cases and on thematic issues; the passage of the 1991 Federal Law to Prevent and Punish Torture and subsequent constitutional reforms that bolstered the rights of detainees; and electoral reforms prior to the July 1997 elections, which were fundamental in permitting the freest elections ever held in Mexico.

Unfortunately, egregious human rights violations have persisted despite such measures. By documenting abuses, then following the victims through the justice system, this report sheds light on how and why the Mexican government's stated policy of protecting human rights and punishing human rights violators has failed. At the same time, the report includes recommendations for Mexican authorities, foreign governments, and international organizations.

Torture, "Disappearances," and Extrajudicial Executions

Human rights violations related to the real or assumed political affiliation of victims, or their purported allegiance to a leftist guerrilla group, tend to receive greater press attention in Mexico and abroad than those committed in other contexts, such as drug trafficking and common crime. Politically motivated cases of human rights violations, however, are by no means the only, or even the most common, cases in which abuses occur in Mexico. Three Tamaulipas state cases investigated in detail by Human Rights Watch, for instance, show the breakdown of the state justice system in cases of common crime, including robbery, murder, and possession of drugs. State authorities not only failed to provide proper oversight in these cases, they justified the actions of their subordinates.

All the force of the prosecutor's office was thrown against Juan Lorenzo Rodríguez Osuna, a victim of arbitrary detention and torture who was wrongly prosecuted and found guilty of murder. For two years at this writing, his family has fought for justice, as Rodríguez Osuna has languished in prison.

In Tamaulipas, the Rodríguez Osuna case most clearly demonstrates the inadequacy of the court's handling of human rights issues. The state judge who sentenced Rodríguez Osuna on murder charges went out of her way to exclude evidence that favored him, while admitting incriminating evidence obtained under conditions that violated human rights standards. For instance, she admitted a statement made by an alleged accomplice of Rodríguez Osuna even though the declarant retracted the statement on the grounds that he signed it under psychological torture and without his lawyers present. Several documents supposedly issued by the court were in fact written on the prosecutor's stationery, suggesting collusion between the prosecutor and judge.

A federal judge also sentenced Rodríguez Osuna on drug charges based solely on the same retracted statement made by the alleged accomplice, despite the fact that no physical evidence linked him to the drugs he was said to have possessed. A

federal appeals court eventually overturned the drug conviction, but the prosecution and trial-level sentence demonstrated nonetheless the failure of the justice system to include adequate human rights criteria in prosecution and sentencing; the prosecution should never have gone forward in the first place.

This report's Tamaulipas state chapter also documents the case of José Alfredo Ponce Reyes, a victim of reckless police violence. Officers opened fire on Ponce Reyes then abandoned him when they believed him to be dead. Shot through the head, Ponce Reyes in fact survived but is confined to a wheelchair and unable to speak. For their part, the officers eventually walked free after providing contradictory statements to investigators. Before filing light charges against the police—"causing wounds" and "abuse of authority"—the prosecutor failed to interview a key witness who contradicted the police version of events.

In the case of Erick Cárdenas, Tamaulipas authorities failed to expend much energy at all investigating his torture and death in police custody. Arrested after an alleged street fight, Cárdenas was found dead in his cell soon after entering custody. Although officials insisted that he had hanged himself, the physical evidence, including signs of torture such as skinned testicles, suggested he was killed in jail. At the time that Human Rights Watch interviewed the victim's mother, a year after her son died, investigators had still not taken her testimony, even though she was one of the last people to see Cárdenas before the alleged street fight.

In contrast to Tamaulipas, many abuses in Oaxaca state stem from federal counterinsurgency efforts. Since 1996, the Popular Revolutionary Army (Ejército Popular Revolucionario, EPR) has operated there, carrying out bloody attacks on official targets. In response, civilian and military authorities have acted with a vengeance against suspected members of the armed group. A crackdown characterized by illegal detention, torture, and the extraction of confessions made under duress began in September of that year, focusing on the Loxicha region, where officials believed the EPR was particularly well organized. This report focuses on four torture and wrongful prosecution cases and an extrajudicial execution that took place during those operations. The picture that emerges is one of uncontrolled use of force in fighting the EPR compounded by a lack of concern on the part of officials throughout the justice system.

Victims in Oaxaca recounted to Human Rights Watch how police and soldiers carried out their work. After one day without food, for instance, one victim recalled, "They kept asking me to incriminate other people as members of the EPR and to sign blank sheets of paper. I refused. It was there that they started to beat me. They stripped me and attached electrodes to my testicles." Finally, after more torture and threats against his family, the man signed blank pieces of papers. Rather than release him, however, as authorities promised, he was prosecuted and spent a year in jail before an appeals judge finally released him for lack of evidence. Other

victims were prosecuted on evidence consisting of only hearsay and their own forced confessions. Some of the wrongly detained men were eventually released, in one case by a judge who refused to accept patently false statements—like those made in Spanish by a man who spoke only an indigenous language and had no translator.

It is encouraging that, on appeal, these men were released. Nonetheless, the prosecutor and trial-level judge accepted evidence that strongly suggested that it had been fabricated and the declarants tortured. Given that such problems are part of a pattern, not an anomaly, authorities cannot justify tolerating poor judicial processes on the grounds that the appeals process may correct them. The responsibility of the government to ensure that human rights standards are met during criminal investigations starts when the detainee enters custody and continues throughout the process.

To make matters worse in these Oaxaca cases, prosecutors ignored the torture suffered by detainees even when the victims managed to receive medical documentation showing that they had been tortured. Only after four such victims were eventually released did prosecutors begin to investigate their allegations of torture, but they did so because a Mexico City-based human rights group pushed them to and conducted much of the groundwork necessary for a prosecution to move forward. The prosecution has been seriously hampered by the delay of more than a year.

This report also documents the April 1997 extrajudicial execution in Oaxaca of Celerino Jiménez Almaraz. Police, who believed him to be linked to the EPR, claim he was killed in a shoot-out. The evidence, however, indicates he was chased from his home then shot at close range. Oaxaca state prosecutors initially assigned the case to police investigators from the same unit responsible for the killing. Seven months later, and only after sustained protest by a Mexico City human rights group, they switched jurisdiction for the investigation. Nonetheless, the investigation has moved slowly. At this writing, eighteen months have passed since the execution but, despite strong evidence, those responsible for the abuse remain free.

The “disappearance” cases documented in this report also demonstrate how serious abuses go unquestioned by prosecutors and judges. At the same time, they display the variety of contexts in which human rights violations take place in Mexico. “Disappearances”—secret, unacknowledged detentions followed by concealment of the victim’s whereabouts, which might be temporary or prolonged—take place in circumstances related to Mexico’s counterinsurgency campaign, counternarcotics initiatives, and common crime. “Disappearance” is a human rights violation that requires particularly urgent action by authorities, because it is so frequently accompanied by torture and murder. Quickly establishing

the whereabouts of the victim in such cases can make the difference between freedom and prolonged suffering or death.

In the context of counternarcotics, three cases documented below demonstrate the failure of federal and state prosecutors to take seriously the crime of “disappearance,” or worse, their ready prosecution of the victims without questioning how they came into official custody. In the case of Rogelio and Raúl Verber Campos and Cecilio Beltrán Cavada, from Baja California state, for instance, exactly one year passed between the time that family members filed a complaint about their “disappearance” with federal prosecutors in January 1997 and the time these relatives were interviewed about the case. State prosecutors who received a similar complaint never followed up at all. The whereabouts of the victims, believed to have been detained by the army, remain unknown.

In the cases of Alejandro Hodoyán and Fausto Soto Miller, the evidence shows that soldiers illegally detained the men separately and held them in unacknowledged detention beginning in September 1996. Both victims later reported weeks of torture. When soldiers were finished pumping Hodoyán and Soto Miller for information on a drug cartel, they turned them over to civilian prosecutors, who did not show the least concern for how they had come to be in military custody or the treatment they received there. Hodoyán was given immunity from prosecution and sent to the United States. U.S. officials, more interested in obtaining information on drug trafficking than in protecting human rights, became complicit in the initial “disappearance” of Hodoyán, even though the victim was a U.S. citizen. Weeks into his secret military detention, an agent of the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) interviewed Hodoyán in custody, recognizing that the man was being held illegally. Hodoyán eventually identified himself as a U.S. citizen, and the ATF agent reported the situation to the U.S. Embassy, but nothing was ever done to aid the victim, despite his family’s desperate pleas to U.S. and Mexican officials for help. In fact, the interview with the ATF agent led to greater U.S. interest in officially obtaining information from Hodoyán, and he was eventually transferred from military custody to Mexican prosecutors in Mexico City to U.S. prosecutors in San Diego, California. Hodoyán fled the United States and, once back in Mexico, was again “disappeared,” this time after being picked up by a group of men that included a person identified by Hodoyán’s mother, who witnessed the abduction, as a federal police agent; Hodoyán’s whereabouts remain unknown at the time of this writing.

Soto Miller was also turned over to prosecutors, but unlike Hodoyán, he was swiftly prosecuted. Based on what appears to be a fabricated story, officials charged him with drug-related crimes they said he committed while, all indications suggest, he was in fact in unacknowledged military detention. He was sentenced to forty years in prison. The Mexican federal attorney general’s office did not respond to

written questions submitted by Human Rights Watch on the Hodoyán and Soto Miller cases.

If the Verber Campos-Beltrán Cavada case shows the failure of state and federal prosecutors to investigate “disappearances” and the Hodoyán and Soto Miller cases demonstrate the active complicity of the federal attorney general’s office, the Morelos state cases documented in this report describe a third type of responsibility on the part of the Mexican government: the failure to ensure that state-level justice systems function properly. In Morelos, state police ran a kidnapping ring and benefited from the tolerance of prosecutors, who failed to investigate the kidnappings or related “disappearances” by the police. In January 1998, federal authorities finally stepped in to prosecute Morelos state officials who ran or covered up the kidnapping ring, which turned out to be led by the state’s anti-kidnapping police unit. That month, the leader of the anti-kidnapping police was caught trying to dispose of the body of a kidnapping victim who had died unexpectedly, which led to intense national and international press attention. Only after the scandal did authorities act, despite prior accounts of wrongdoing by Morelos state police and prosecutors.

The anatomy of the Morelos police operation is shown in the José Alberto Guadarrama García case, documented below. Morelos anti-kidnapping police “disappeared” Guadarrama García in March 1997, but prosecutors failed to move against one officer in the unit even after gathering substantial evidence to implicate him. Seven months after Guadarrama’s abduction, and after intense pressure from Mexican and international human rights groups and the Inter-American Commission on Human Rights, authorities sought and obtained an arrest warrant for the officer. By that time, however, the officer had fled.

In Mexico, a writ of *amparo*—a constitutional challenge to the actions of officials—should be the mechanism by which courts require authorities to produce “disappeared” people. In practice, however, *amparo* is ineffective because judges refuse to provide the writs unless it is clear where the victim is being held, officials fail to seek victims vigorously in cases in which writs have been issued, or the government agents responsible for the “disappearance” simply deny holding the victims.

Human Rights Deficiencies in Mexico's Justice System

Both in practice and *de jure*, Mexico's justice system is fundamentally ambiguous about what to do with evidence obtained during or following human rights violations, including illegal arrests and searches, prolonged detention, and torture or other forms of coercion. The problem is not so much that prosecutors and judges interested in working in concert with human rights standards can find no statutory basis for doing so. In fact, the constitution and laws on the books could be read to require the dismissal of evidence obtained through human rights violations and the prosecution of public officials guilty of accepting or admitting such evidence. The problem lies in the fact that the law is often vague on these issues, and courts often rule in favor of accepting impugned evidence.

With respect to evidence obtained through human rights violations, Mexican law is clearest on confessions made under torture. Such statements are invalid in court, although the prohibition on their use is not effectively enforced. Further, standards have not been developed to ensure that other coercive situations, such as arbitrary arrest, invalidate the evidence obtained through the abuse. Arbitrary arrest and detention in excess of the maximum time allowed by law are crimes committed by public servants, but they do not necessarily affect the legal status of the detainee once charged. Similarly, as Mexican courts have ruled, illegal arrest and detention do not necessarily constitute grounds for rejecting statements made during or afterward. As a result, federal and state prosecutors either fail to question police about the circumstances surrounding arrest and detention, or, to facilitate prosecution, they participate in the fabrication of evidence. For their part, judges disregard indications of police or prosecutorial wrongdoing.

Human Rights Watch does not assert that all prosecutors and judges accept human rights violations committed in the process of law-enforcement work and prosecution. This report includes analysis of court decisions rejecting the use of evidence obtained through abuse. Human Rights Watch seeks to underscore, however, that Mexico's laws and the interpretation given them by judges leave plenty of room for judges to ignore human rights abuses if they so desire. As the cases in this report indicate, they choose to do so all too often. The problem is threefold. First, the burden to prove coercion rests with witnesses, victims, and defendants, who often must try to establish what happened to them against the wishes of prosecutors. Given the inherently coercive nature of any detention, courts should insist that procedural safeguards—including how and when police are to turn over detainees to prosecutors, the amount of time detainees can remain in custody before being turned over to a judge, and the scrupulous observation of requirements that declarants be accompanied by a legal counsel or a “person of confidence”—are followed to minimize the chance that coercion will lead to false conclusions reached through the judicial process. At the same time, judges should insist that if violations

of this type are alleged, prosecutors carry out an investigation of the allegations. Violations of these safeguards should lead to the presumption that subsequent statements were coerced; this presumption could then be reversed if prosecutors proved that no coercion took place.

Second, even if coercion is likely or proven to have taken place, many judges go out of their way to accept impugned evidence. Key to their ability to do so is the “principle of procedural immediacy”—the concept in Mexico that the first statement made by a detainee has greater value than later statements. In other Latin American countries, the principle is understood to establish that whatever statements are given before or during trial should be made in the presence of the person who will make the decision as to whether the defendant is innocent or guilty. This is because the judge can evaluate the statements within the controlled context in which they are made. In Mexico, however, the idea behind the principle is that a detainee’s first official statement, made before a prosecutor, has less chance of being coached than later statements made before prosecutors or judges, even though in Mexico the reality has been that a detainee’s first statement has a greater chance of being coerced. When a detainee goes before a judge and retracts a statement made to a prosecutor, claiming coercion, judges can cite this principle to avoid determining whether or not the detainee was coerced and without questioning the police and prosecutors who may be acting in bad faith. Judges cited this principle in four cases reviewed in this report, to the extreme in one Tamaulipas case of convicting a man solely on the basis of a retracted statement.

Finally, Mexico’s system of public defenders is so notoriously weak—to the point that the United Nations (U.N.) special rapporteur on torture reported in 1998 that “the public defender cannot be relied on to defend”—that the existence of formal procedural guarantees provides few real protections for victims. In an attempt to diminish coercion in the taking of statements by prosecutors, in 1990 Mexico instituted a system of the “person of confidence”—an individual named by the accused to be present when any statement is made. In a legal system in which individual guarantees are routinely ignored by judges, however, this system, like that of the public defenders, fails to provide real safeguards.

Mexico must shift the attitude of police, prosecutors, and judges from an ends-justify-the-means approach to a rule-of-law approach: human rights violations suffered by suspects or other detainees must be deemed unacceptable under any circumstances, and Mexico must develop and apply standards to exclude from the judicial process evidence obtained through abuse. The inadmissibility of evidence obtained through human rights violations would exclude unreliable evidence from the judicial process and, at the same time, provide a disincentive to abusive authorities who would see cases thrown out of court because of serious human rights violations committed during investigation or prosecution. To help ensure that

all statements or confessions used in the judicial process are made freely, Mexico should promote constitutional changes that would give validity only to statements made before a judge.

Any effective government effort to eliminate from the judicial process evidence, statements, and confessions obtained through the violation of human rights must also include the establishment of an effective system of accountability for public servants, including police, prosecutors, and judges—ensuring, of course, that the independence of the judiciary is not compromised. At each stage of the process, well-documented, suspected, or reported abuses must be thoroughly investigated, and confirmed complaints should lead to the dismissal of evidence obtained by abusive practices. Mexico's judges should be given explicit responsibility for ensuring that witnesses, suspects, the accused, and the sentenced suffer no human rights violations. Already existing federal and state judicial councils—responsible for administering courts—must include human rights protection in their evaluation of judges. Prosecutors who commit or consent to violations should be punished by their superiors, but judges must also reject prosecutorial malfeasance. In turn, prosecutors must hold police responsible for abuses committed in the course of law-enforcement work. Mexican law already penalizes “crimes against the administration of justice,” which could be interpreted to include the acceptance by prosecutors or judges of evidence obtained through human rights violations. Such standards could form the backbone of aggressive campaigns by the federal attorney general and judicial councils against those who continue to prosecute or sentence without giving due consideration to human rights concerns.

In consonance with the purposes of Mexican and international law, the government must ensure that human rights standards are applied in such a way that two mutually reinforcing goals are met. First, Mexico's justice system must eliminate evidence that is unreliable because it was coerced or fabricated. At the same time, the exclusion of illegally obtained evidence must serve the purpose of deterring police and prosecutorial misconduct, another fundamental policy objective of laws aimed at preventing torture and other abuses.

Shades of Justice

As pervasive and deeply rooted as Mexico's human rights problems are, it would be wrong to assert that no human rights violation is ever investigated, or that no violator is ever prosecuted, jailed, or even sentenced. To understand how and why the system so routinely fails, therefore, this report also examines cases in which some progress on human rights was made. Toward this end, on numerous occasions in 1998 Human Rights Watch requested information from Mexico's Foreign Ministry and Office of the Federal Attorney General (Procuraduría General de la

República, PGR) regarding human rights cases they deemed successful. We sought cases in which torture had been documented and the responsible state agent sentenced and jailed for the crime. Neither government agency provided Human Rights Watch with the name, much less the details, of any public official sentenced for torture, although they did provide a total of eight cases that showed some advances in prosecuting torturers. In three of those cases, police officials were in jail awaiting trial. In one, a prison guard who had been charged with torture had fled, and in the rest authorities had yet to be charged or judges had yet to issue arrest warrants.

Human Rights Watch documented three additional cases, not submitted by the government, in which advances of some sort were made. In one of them, four Mexico City public security police officers are serving sentences for an extrajudicial execution. The sentences followed intense lobbying by the victim's family and a Mexican human rights group. In another case, a Mexico City judicial police officer was sentenced to two years in prison for failing to stop a subordinate from torturing a detainee, but he was released after paying a fine. The torturer himself was detained and charged with torture but released after an error by the Mexico City prosecutor; federal authorities who could have charged the torturer chose not to. In the third case, Mexico City prosecutors charged a torturer with "abuse of authority" but amended the charges to reflect torture after Mexico City's official human rights commission urged them to do so. The officer responsible fled.

Human Rights Watch recognizes the breadth of penalties that can be applied to public servants who violate human rights—from administrative actions such as poor performance reviews, suspension from work, or firing to criminal prosecution. Given the severity of the cases documented in this report, however, authorities must vigorously pursue criminal prosecution of those responsible, in addition to any administrative sanctions they may apply. The penalties applied must be commensurate with the human rights crimes committed.

The obstacles to justice in human rights cases are immense in Mexico. In the eleven cases reviewed in which some progress was made, intense press attention, the insistence of victims' family members, or pressure from governmental or nongovernmental human rights groups played a key role. In ten of the cases, human rights groups essentially carried out the investigative work that prosecutors failed to do, documenting both the foot-dragging or covering-up that took place and the evidence of abuse that authorities sought to ignore. Even that was often not enough, however. Prosecutors had to be pushed to move cases forward.

The sheer number of abuses in Mexico makes it impossible for human rights organizations to take action on all cases. It is the rare case that receives the time, money, and energy needed to ensure that prosecutors take the incremental steps necessary to see justice done. Foot-dragging is an effective strategy on the part of

authorities uninterested in prosecuting human rights violators, both because new cases will undoubtedly come along to distract even the most committed nongovernmental human rights groups and because time diminishes the likelihood that valuable evidence, including the physical markings of torture and the testimony of victims and witnesses, will be available. The CNDH plays an important role in ensuring that otherwise forgotten cases receive attention. However, it handles only a portion of Mexico's human rights cases and does not track the final outcome of the cases on which it works, so no reliable information exists linking its labor to the final disposition of human rights violators.

To overcome these serious obstacles, political leaders must shed their reticence to take action against state agents who commit human rights violations. They must do much more than make pronouncements of concern about human rights in general. The prosecution of human rights violators must be actively and publicly promoted. At the same time, the CNDH and PGR should develop systems to track human rights cases from inception to completion, including the sentences issued by judges, so that reliable statistics and case information are available nationally showing how such cases are handled and why impunity is such a problem in Mexico.

The Mexican Government's Approach to Human Rights

President Ernesto Zedillo has recognized that human rights violations take place in Mexico, but his government, like those of his predecessors, has not been willing to recognize the breadth of the problem or to systematically promote the prosecution of the state agents responsible for abuses. Mexican and international human rights organizations, intergovernmental human rights agencies, and the government's own National Human Rights Commission have documented serious and widespread human rights violations that still receive scant attention from Mexican policy-makers. Individual cases of abuse are more likely to be ignored or denied than resolved, and the government selectively rejects what it deems foreign intervention in its human rights affairs. Nonetheless, the Zedillo administration has also made noteworthy advances, such as finally recognizing the jurisdiction of the Inter-American Court of Human Rights in late 1998.

On December 21, 1998, the federal government announced the National Program for the Promotion and Strengthening of Human Rights. The program was touted as an initiative conceived to achieve eight overall goals, including the consolidation of a culture of respect for human rights and of the institutional entities responsible for protecting them, the design of mechanisms to identify positive and negative aspects of Mexican human rights policy, and the dissemination of information about human rights. Several of the specific proposals contained in the program would indeed constitute important contributions to the protection and

promotion of human rights, provided that authorities take the issues more seriously in the future than they have in the past.

While laudable in its recognition of the need for such a program and its inclusion of an array of government agencies, it suffers inherent weaknesses. For example, it does not describe the government's diagnosis of the human rights violations that take place in Mexico. It provides no reflection on how serious and widespread they are, why they take place, or why prior attempts to resolve them have failed. Without establishing priorities, it refers in only general terms to human rights abuses such as torture and impunity, and calls on public servants to counter them. If the program is to succeed, it must have a clearly defined sense of the problem before attempting to resolve it; given that federal authorities have tended to minimize the seriousness of human rights violations in Mexico, it is not clear that such a sense exists or, if it does, that it accurately reflects the true nature of human rights violations in the country. In this regard, detailed prior consultations with Mexican governmental and nongovernmental human rights organizations would have been valuable but did not take place.

To its credit, the current Mexican administration has allowed unprecedented access to Mexico by U.N. and Organization of American States (OAS) human rights bodies, including the U.N. special rapporteur on torture, who visited Mexico in 1997, and the OAS's Inter-American Commission on Human Rights, which carried out an on-site study in 1996; both issued comprehensive reports in 1998 based on their findings. The government also invited the U.N. high commissioner for human rights to visit the country.

Nonetheless, this openness has not been accompanied by a willingness to recognize publicly the scope of the problems identified by these international bodies or to follow their recommendations. The government, for instance, has steadfastly refused to comply with recommendations made by the OAS commission in specific cases in which it found that Mexico had committed human rights violations. At this writing, the government had taken no appreciable steps to implement recommendations contained in the comprehensive reports published by the U.N. special rapporteur or the Inter-American Commission on Human Rights.

The government is often quick to counter human rights criticism with facile statistics. When the U.N. Committee against Torture discussed Mexico in 1997, for example, the Foreign Ministry responded by asserting that there is no impunity for torturers in Mexico because 69 percent of the CNDH's recommendations on 105 torture cases had been fully implemented and another 30 percent had been partially fulfilled. Citation of CNDH statistics, however, was meaningless regarding what actually happened to people accused of torture, since CNDH recommendations typically call for prosecutors to open an investigation, a recommendation that can be completely fulfilled without significantly moving an investigation forward. In fact,

the CNDH does not track what happens to perpetrators once they are charged. Human Rights Watch's review of CNDH torture cases from Oaxaca and Tamaulipas—included in the respective chapters covering abuses in these states—shows, in fact, that most officials accused of torture by the CNDH never go to jail.

Criticism of the misleading use of CNDH statistics should not be confused with criticism of the CNDH itself. The government's federal commission has often played an important role in documenting abuses in specific cases and on thematic issues. Many cases that never receive public attention are moved forward after commission intervention. At this writing, legislative initiatives are pending in Mexico to increase the independence of the CNDH vis-à-vis the executive, which has always exercised control over its budget and named its president. The CNDH is not as consistent in tackling cases as it could be, and its mandate does not include labor-related or electoral human rights issues. Perhaps its greatest weakness, however, stems from the fact that its recommendations have no binding force on the authorities who receive them and it has not developed an effective way to shame officials into complying. Similarly, Mexico's Congress has not used CNDH recommendations to pressure federal authorities or state governors to improve their human rights records.

If the Mexican government has been ineffective in countering human rights violations, it is not for lack of human rights guarantees in the constitution or legislation expressly protecting against certain abuses, like torture. Indeed, in some areas, guarantees have been strengthened in recent years. Most important were constitutional amendments in 1993 that removed legal value from testimonies taken by judicial police. In an effort to eliminate police abuse of detainees, the reforms established that only statements made before a prosecutor or judge could be used in court. At the same time, the constitutional reforms established that it would be a crime for prosecutors not to ensure that detainees had legal representation during pre-trial proceedings; prior to the change, detainees had a right to request a lawyer in such circumstances, but if they did not expressly ask for one, prosecutors did not have to make sure one was present. The 1991 Federal Law to Prevent and Punish Torture, which is binding for federal public servants, expressly establishes that no confessions made under torture are accepted in court. These initiatives were positive but insufficient to resolve Mexico's serious human rights problems.

Some constitutional changes, however, have weakened human rights safeguards, and new reforms pending at this writing stand to further deteriorate human rights conditions in Mexico. In 1994 and 1995, for instance, reforms gave prosecutors greater latitude to carry out arrests without court order. In December 1997, President Zedillo sent a package of reforms to Congress designed to fight crime, a growing concern in Mexico. Arguing that criminals are more sophisticated

now than in the past, the president's proposals included measures such as making it easier for prosecutors to press charges against suspects with less evidence—to the point of not requiring proof that a crime had even been committed—and allowing police to consider a suspect “caught in the act” if the suspect was found up to seventy-two hours after the crime was committed. Given that Mexico's procedural safeguards are already ineffective, the changes would merely increase the chances that people were wrongly prosecuted.

In September 1998, President Zedillo announced a National Crusade Against Crime based on the proposed legal reforms; to complement the reforms, the government announced what it called “Strategies and Actions of the National Public Security Program,” consisting of eight subjects on which federal and state authorities would focus attention in order to fight crime. Training, hiring more law enforcement and court personnel, and establishing centralized data bases were among the steps promised by the government. Funding would be increased to reach these goals. Several of the proposals to fight crime, such as creation of new nationwide data bases and expanding citizen participation in oversight of police, would lend themselves to the protection of human rights.

The public security and human rights programs announced by the federal government may work at cross-purposes, however, when it comes to promoting human rights. The former is premised on a belief that the current state of crime in Mexico demands limiting individual guarantees, a formula likely to lead to greater abuses. Although the human rights program notes that better training of police under the security initiative will lead to greater respect for human rights, this report demonstrates that the government must integrate detailed human rights strategies into its law-enforcement initiatives.

Months after it announced its strategies for fighting crime, the federal government said in November that it would create a new police force, called Federal Preventive Police, designed to prevent crimes of a federal nature and to assist federal judicial police in carrying out investigations. Before moving forward with the creation of a new police force, the government should publicly provide a clear strategy for ensuring that human rights violations committed by these officers will be investigated and that the offending authorities will be prosecuted. The new police force offers an opportunity to include mechanisms from the outset that will ensure the protection and promotion of human rights.

Mexico's pattern of negligence in ensuring that human rights protections are effective amounts to a policy of permission for those safeguards to fail. Missing from the government's human rights strategy is attention to specific cases of human rights violations and the structural deficiencies that facilitate them. Rather than denounce human rights violators and insist that they be brought to justice, the government points to the formal laws and structures that should protect human

rights as a measure of its commitment. Instead of insisting that procedural guarantees be scrupulously followed, the Zedillo administration is pushing to loosen those guarantees. The starting point for the government's strategy for promoting human rights must be recognition that Mexico's formal human rights protections are not effective because laws, practice, and legal precedent conspire against them.

Recommendations

To the Federal Government of Mexico:

Toward the development of a national human rights strategy

1) The federal government should reformulate its National Program for the Promotion and Strengthening of Human Rights to clearly and publicly specify the exact nature and cause of the human rights violations that are the program's subject, describe how serious and widespread they are, and explain why prior attempts to resolve them have failed. In a prior diagnostic phase, as in subsequent initiatives designed to address human rights violations, the government should seek input from governmental and nongovernmental human rights organizations. The program should contain a timetable for achieving its goals and should seek to develop consensus within Mexico regarding the nature of human rights violations and the best way to address them.

2) President Zedillo should match his rhetorical commitment to human rights protection and promotion of the rule of law with an action-oriented policy of tolerating no human rights violations. Prosecutors must be instructed to swiftly investigate and prosecute suspected human rights violators, and their bosses must be held accountable if they do not. Federal funding destined for state governments should be used as a lever to press state governors to adopt positive human rights measures of their own.

Toward the development of a human rights legislative agenda

3) The government should promote legislation to "federalize" the crimes of torture, extrajudicial execution, and "disappearance" such that these crimes would be under federal jurisdiction regardless of the official responsible. The government should also federalize cases of grossly abusive arbitrary detention that lead to violations of the right to life or physical integrity.

4) The government should promote legislation that would give federal authorities responsibility for prosecuting human rights cases of any type if it determines that a systematic or widespread practice of such violations takes place within a state and that state officials routinely fail to prosecute them. As part of such a program, the federal government should take all necessary steps to ensure that the state justice system is strengthened to the point of being able to adequately handle human rights cases, at which time authority for prosecuting human rights cases would be returned to state officials. The government should develop clear and public guidelines for determining when a systematic or widespread practice takes place and when a state justice system would be deemed capable of reassuming jurisdiction over cases of human rights violations.

5) The government, after consulting with governmental and nongovernmental human rights organizations, should develop legislation that would exclude from judicial processes evidence obtained through human rights violations, including torture and “disappearance” and serious cases of arbitrary or prolonged detention. Given the difficulty victims sometimes have in proving torture or coercion, the legislation should include an express statutory presumption of coercion for statements or confessions obtained following prolonged detention.

6) To minimize the opportunity and rationale for police and prosecutors to coerce detainees, federal authorities should promote reforms requiring the presence of a judge for any declarations to have legal value as evidence.

7) The federal government should evaluate its National Crusade Against Crime with an eye toward ensuring that measures proposed and adopted do not limit the rights of suspects.

8) Legislation should be promoted to criminalize “disappearances” and to ensure that the statute of limitations for the crimes of torture, “disappearance,” and extrajudicial execution are substantial and in accordance with the gravity of these crimes.

Toward the development of more effective institutions

9) The PGR should establish a system to closely track the progress and outcome of human rights prosecutions and the performance of prosecutors in such cases. Judges’ sentences in such cases should be reviewed to discern the

ways in which prosecutions succeed or fail, so that more effective prosecutorial strategies can be developed. The work of prosecutors in human rights cases should be part of their official job evaluations.

10) As the government considers the development of data bases related to human rights issues, it should ensure that they are designed to track complaints and the outcome of complaints. Data bases should be designed in consultation with governmental and nongovernmental human rights organizations. The tracking of CNDH recommendations should be in addition to the tracking of complaints within the PGR and other government agencies.

11) The federal government should promote reforms to the Federal Judicial Council that would give the council explicit responsibility for reviewing the work of judges as it relates to human rights. The council should document cases in which judges accept evidence obtained through human rights violations or otherwise fail to ensure that procedural or individual guarantees are observed throughout the legal processes in cases that come before them. Appropriate administrative or criminal punishment should be pursued against judges who do not adequately handle human rights violations in the cases that come before them. Funding should be provided to enable monitoring and follow-up.

12) The government should develop mechanisms to permit strong, independent monitoring of police and detention facilities. It should strengthen the independence of authorities in a position to evaluate the human rights-related actions of law-enforcement personnel, such as medical examiners in police and prison facilities, so that they work independently from prosecutors and police. The government should facilitate the establishment of community-based boards to oversee the work of police and channel complaints to authorities; they should be permitted to monitor police detention centers. Unannounced inspections of detention centers should be permitted.

13) The government should overhaul the public defenders' institution to ensure that public defenders are equipped, trained, sufficiently independent, and paid enough to ensure an adequate defense of their clients.

14) The CNDH should closely track the final outcome of the cases it documents, including which government officials ultimately serve prison sentences based on CNDH documentation. The CNDH should also develop

strategies for increasing public pressure on government officials who fail to carry out CNDH recommendations.

15) Before moving forward with the creation of a new Federal Preventive Police, the government should publicly announce a clear strategy for ensuring that human rights violations committed by these officers will be investigated and that the offending authorities will be prosecuted. Such a strategy could include mechanisms to incorporate human rights criteria in the job-performance reviews of officers and to develop a data base of human rights complaints and investigations relating to them.

Regarding the international community

16) The Mexican government should comply with the rulings of the Inter-American Commission on Human Rights regarding specific cases, such as that of Gen. Francisco Gallardo, the Ejido Morelia case, and Aguas Blancas. It should announce publicly a detailed plan for complying with recommendations made in the commission's September 1998 report on the human rights situation in Mexico.

17) The Mexican government should follow up the general request that it made for technical assistance from the United Nations Commission on Human Rights with actions designed to develop a specific and far-reaching program to be implemented as soon as possible. The program should include an evaluation of the ways in which Mexico's legal system fails to adequately address human rights violations, despite formal human rights protections included in the law.

18) The Mexican government should follow up its stated intention to invite the United Nations special rapporteur on extrajudicial, summary, or arbitrary executions with a formal request for a visit as soon as possible.

19) The government should revise visa requirements for human rights monitors who wish to travel to Mexico to ensure that visas are given quickly and without conditions that would hamper their work, such as excessive limitation on the amount of time they can spend in the country. Similarly, monitors should not be required to provide detail about whom they plan to interview and the locations they plan to visit. The requirements should be clear and the subject of legislation, not simply established by internal regulations developed by the Ministry of Government.

To Mexico's Congress:

- 1) Mexico's Congress should ensure that the CNDH is able to function as an agency independent of the federal government.
- 2) Given that the federal government provides funding to states for multiple purposes, Congress should play a more active role in monitoring the human rights records of state governments with an eye toward developing transparent mechanisms that could condition federal aid to state governments that engage in a consistent pattern of gross human rights violations.
- 3) Mexico's Congress should urgently conduct a thorough review of Mexican legal precedents related to human rights, including the "principle of procedural immediacy," to identify those that effectively weaken human rights protections by allowing judges to avoid questioning evidence suspected to have been obtained through human rights violations. Legislation should be promoted that would address such doctrines.
- 4) Congress should enact legislation requiring the presence of a judge for a declaration to have any legal value as evidence.
- 5) Congress should enact legislation to criminalize "disappearances" and ensure that the statute of limitations for the crimes of torture, "disappearance," and extrajudicial execution are substantial and in accordance with the gravity of these crimes.
- 6) Congress should pass legislation giving federal and state judicial councils responsibility for guaranteeing that judges properly ensure that procedural and human rights standards are observed throughout the legal processes in cases that come before them. Funding should be provided to ensure that monitoring and follow-up are possible.

To the United States Government:

- 1) The State Department should more publicly voice concern about human rights violations in Mexico and give the subject greater priority at bilateral meetings with Mexican government officials.

2) U.S. officials should be required to ensure that information they gather from sources in Mexico is obtained in strict accord with human rights standards and that any reasonable concern about human rights violations committed against sources is investigated.

3) The United States government should undertake an exhaustive investigation into the serious mishandling of the “disappearance” of U.S. citizen Alejandro Hodoyán to determine why U.S. embassy officials and law-enforcement agents took no action to assist him, though they knew that Hodoyán was in secret military custody. Further, the investigation should focus on how and why U.S. government officials later accepted custody of Hodoyán to debrief him about drug trafficking, even though his initial detention so blatantly violated the law. The results of the investigation should be made public, and effective measures should be implemented to prohibit similar cases in the future.

4) United States Agency for International Development (USAID) judicial exchange initiative in Mexico should include detailed analysis of the ways in which laws and legal practice in Mexico perpetuate human rights violations. Training designed to overcome such problems should be included in the program.

To the European Union:

- 1) Following the recommendation of several committees of the European Parliament, the Council of Ministers should instruct the European Commission to work with the Mexican government to ensure that funds for democracy and human rights projects, under Article 39 of the Agreement on Economic Partnership, Political Coordination, and Cooperation, become available as soon as possible.
- 2) The Council of Ministers should ensure that when the European Commission and representatives of member states work with the Mexican government on the annual evaluation of the implementation of the agreement, there will be an explicit review of the human rights situation in Mexico and Europe, as recommended by the European Parliament's committees on foreign affairs and cooperation and development.
- 3) The Council of Ministers should solicit written reports, to be made public, on the human rights situation in Mexico well in advance of the annual review of the agreement, thereby allowing both the council and European Parliament to evaluate the information received within the context of the review. The council should request documentation from all governmental and nongovernmental sources interested in supplying it. The Council of Ministers should hold public hearings at which these sources could explain their material and answer questions, as the European Parliament has already done.
- 4) The European Parliament should maintain the valuable attention it has paid to human rights in Mexico and, in particular, the ways in which the European Union can promote human rights there. It should continue to hold periodic hearings on human rights in Mexico and maintain Mexican human rights on its agenda for working with other bodies of the European Union.
- 5) The European Commission should name at least one full-time official in its mission in Mexico City to be responsible for documenting and reporting on the human rights situation in the country.
- 6) European Union member states represented in Mexico should undertake a coordinated effort to monitor and promote human rights in the country.

To the United Nations and the Organization of American States:

1) U.N. Secretary-General Kofi Annan and High Commissioner for Human Rights Mary Robinson should maintain the important attention they have given to Mexico during 1998. They should continue to reach out to Mexican human rights groups for information on human rights violations in the country.

2) High Commissioner Robinson should take the opportunity offered by the Mexican government's invitation to visit to develop a comprehensive diagnosis of Mexico's human rights problems. She should insist upon being permitted to develop and recommend effective measures to address those problems.

3) The Inter-American Commission on Human Rights should maintain its investigations into individual cases and should use its broad experience on Mexico to promote human rights reforms there. The commission should actively urge the Mexican government to act on the recommendations contained in its September 1998 comprehensive report on human rights in Mexico.

II. PERSISTENT VIOLATIONS IN A CHANGING MEXICO

The Government's Approach to Human Rights Violations

During the last twenty years, successive Mexican presidents have revamped and reorganized everything from the electoral system to the economy to the tax code, amending or jettisoning outdated laws and facilitating the country's increasing insertion into the global economy. Human rights and the administration of justice have also been the explicit subject of many reforms. Yet human rights violations remain widespread and serious in Mexico. In part, this seeming paradox can be explained by the government's consistent failure to ensure that laws designed to protect human rights are enforced and that human rights violators are prosecuted. The problem also stems from a justice system that, in practice, does not adequately reject and penalize the use of evidence obtained through human rights violations. And in part, Mexico's continuing human rights problems can be attributed to the government's preference for rhetoric designed to mollify domestic and international critics over action that would resolve specific human rights problems.

To bolster their case that Mexico assiduously protects human rights, authorities adduce a series of legal reforms and newly established institutions designed to protect human rights. The logical conclusion, as the Foreign Ministry argued in May 1997, is that, "Mexico has advanced in its fight against torture. Errors of the past have been corrected, and the path has been adjusted when it became evident that the strategies that were followed did not lead to the sought-after result."¹ In 1998 a new foreign minister joined the Mexican cabinet and immediately distinguished herself from her predecessor by demonstrating greater openness to dialogue with certain human rights entities. Nonetheless, the Foreign Ministry continued to insist that great strides had been made in protecting human rights. "During recent years, Mexico has made a great effort to strengthen the protection and enforceability of human rights," the ministry affirmed after the Inter-American Commission on Human Rights issued a report in September 1998 on human rights problems in Mexico. "This has been done through multiple reforms of domestic legislation and the creation or restructuring of the national institutions responsible

¹ Foreign Ministry, press release 142, May 9, 1997. Translation by Human Rights Watch.

for [human rights]. At the same time, intense efforts to combat and eradicate impunity have been undertaken.”²

² Foreign Ministry, press release, September 28, 1998. Translation by Human Rights Watch.

One way that authorities make this argument is by citing misleading statistics suggesting that serious abuses, like torture, are properly investigated and that their authors are successfully prosecuted.³ In May 1997 the Foreign Ministry cited CNDH figures to conclude, “It is very clear that there is no impunity in Mexico for acts of torture, because of the 105 National Human Rights Commission recommendations that proved that torture had taken place, seventy-two have been totally fulfilled and thirty-two are partially completed.”⁴

The truth is that CNDH recommendations—findings in a specific case and the measures it deems necessary to resolve the problems encountered—are often counted as fulfilled without anyone actually being held accountable for abuses, since the recommendations frequently only call on prosecutors to open an investigation, not bring violators to justice. In fact, the CNDH cases from Tamaulipas and Oaxaca analyzed in this report demonstrate this very point. At the same time, CNDH statistics on torture are partial at best, since the entity does not tabulate torture cases documented by state human rights commissions and nongovernmental organizations (NGOs).

³ Human Rights Watch recognizes that punishment for human rights violations can include sanctions in addition to prosecution, such as the levying of fines, suspension, or termination of employment. Given the seriousness of the crime of torture, however, the violation should be punished by prosecution in addition to any other administrative penalties applied.

⁴ Foreign Ministry, press release 142, May 9, 1997. Translation by Human Rights Watch.

Indeed, the government's November 1996 report to the U.N. Committee against Torture briefly notes that of 1,022 recommendations issued by the CNDH from its inception in 1990 to the end of 1996, 105 proved that torture had taken place.⁵ Only eight people were ever convicted of torture, however, and three of them were later acquitted.⁶ In 1997, the Office of the Federal Attorney General informed the U.N. special rapporteur on torture that results from the 1990s were actually slightly worse, consisting of only four confirmed convictions.⁷ In June 1998, the attorney general's office told Human Rights Watch that six people were serving sentences for torture.⁸

At the same time, authorities argue that great strides have been made in protecting human rights by citing the reform or creation of human rights-related laws and institutions, as did the Foreign Ministry in response to the 1998 report issued by the Inter-American Commission on Human Rights. This misleading argument on the part of government officials falsely equates the existence of laws and institutions with the effective application of those laws and the adequate functioning of those institutions. Although their existence is clearly positive, it is not enough to bring Mexico into line with its international human rights obligations. As described in this report's chapter on these obligations, Mexico must ensure that its human rights-related laws and institutions are *effective*.

The Government's Response to Human Rights Criticism

Mexican human rights groups, international organizations, other governments, and intergovernmental organizations have all strongly criticized Mexico's human rights practices. Depending on the source, timing, and topic of the criticism, the official response has varied—from hostile rejection to measured promise to study the problems identified.

When Rosario Green took the helm at the Foreign Ministry in January 1998, the ministry moved away from the knee-jerk rejection of all foreign comment on Mexican human rights problems that had characterized the tenure of her

⁵ United Nations, "Consideration of Reports Submitted by States Parties Under Article 19 of the Convention" (New York: United Nations Publications, November 27, 1996), CAT/C/34/Add.2, p. 16. The number of officials guilty of torture was likely to be much higher because in Mexico, torture is often carried out by more than one official at a time.

⁶ Ibid.

⁷ United Nations, "Question of the Human Rights of All People Submitted to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," (New York: United Nations Publications, January 14, 1998), E/CN.4/1998/38/Add.2, para. 56.

⁸ Human Rights Watch interview, Eduardo López Figueroa, director, Internal Affairs Bureau of the Office of the Federal Attorney General, Mexico City, June 12, 1998.

predecessor. While the swift and unequivocal dismissal of foreign comment still took place in some cases, as when U.N. High Commissioner for Human Rights Mary Robinson expressed concern about Chiapas in June 1998, a more measured response was given in other instances, including in reaction to the Inter-American Commission's 1998 Mexico study, which was greeted with a commitment to carefully analyze the report and its recommendations. The rejection of Robinson came amid intense political debate in Mexico over the government's handling of incidents in Chiapas and so may have been determined by its potential impact on the domestic political equation.⁹

⁹ The Foreign Ministry later invited Mary Robinson to visit Mexico. At this writing, neither the timing nor the agenda for the trip has been announced.

The issue of human rights in Chiapas remained one of the most sensitive to government officials. Perhaps in response to the growing influence of human rights groups, Mexican officials strongly criticized local human rights organizations and tried to divide Mexican groups from their international counterparts. In July, for instance, President Zedillo lashed out at Mexican human rights groups in Chiapas, criticizing those who urged international human rights defenders to visit the state. He suggested that encouraging such visits was at odds with promoting respect for the constitution and the rule of law.¹⁰

The government also announced new restrictions on foreign human rights monitors conducting research in Mexico. In May 1998 the Ministry of Government developed new requirements for human rights visas, including a thirty-day waiting period, a ten-day maximum stay, and a maximum of ten people for any human rights delegation; the new rules provide for facilitated extension of visas in emergencies and for extending the trip beyond ten days in exceptional circumstances.

People soliciting visas must provide a "work plan," which, in practice, has led government officials to request details of all people to be interviewed and all communities to be visited. To receive a visa, the applicant must also submit a copy of the organization's articles of incorporation and must demonstrate that the group has either consultative status with the United Nations or has been in existence for at least five years. The decision on who will and will not receive a visa is now made by a centralized office in the Ministry of Government, not in each consulate, as before. The visa requirements are currently issued by the ministry, and they are not established by any law.

Although the Ministry of Government announced that the new rules would eliminate the arbitrary decision-making on visas that had been criticized by human rights groups, including Human Rights Watch, the new process is no less arbitrary. Members of human rights organizations who have applied for visas since the new requirements came into effect have reported confusing and contradictory responses from Mexican consular officials. Several delegations have reported having visa requests denied. During 1998, the Mexican government expelled numerous foreign observers for Chiapas without providing them even minimal due process.

¹⁰ Presidency of Mexico, "Versión Estenográfica de las palabras del presidente Ernesto Zedillo, durante la evaluación del Programa Estatal de Alfabetización, que encabezó en la Escuela Secundaria Técnica No. 42, de este municipio," Simojovel, Chiapas, July 1, 1998.

To its credit, during 1998 Mexico recognized the jurisdiction of the Inter-American Court of Human Rights. It also announced in August 1998 that it would invite the U.N. special rapporteur on extrajudicial, summary, or arbitrary executions to visit Mexico. During 1996 and 1997, the government permitted human rights investigative teams from the Inter-American Commission on Human Rights and the United Nations Committee against Torture to visit Mexico.

Even though the government has touted such visits as proof of its openness to human rights scrutiny, it has not acted on their recommendations. In fact, the Mexican government has expressly rejected findings of the Inter-American Commission on several Mexican cases, most notably that of Brig. Gen. Francisco Gallardo, who has languished in military prison since 1993 in retaliation for his call for greater respect for human rights within the Mexican army. Mexican military authorities charged the general with corruption and destruction of army property, court-martialed him, and sentenced him on March 11, 1998, to fourteen years and eight months in prison after the Inter-American Commission recommended his immediate release in 1996.¹¹ Similarly, the government failed to implement the commission's recommendations on the Ejido Morelia case, in which three men were detained and executed by soldiers in Chiapas state in 1994, the Manriquez case, analyzed in this report, and the Aguas Blancas case, in which police massacred seventeen people in Guerrero state in 1995.

The National Human Rights Commission

The CNDH has often been the subject of criticism, but it has unquestionably played an important role in promoting human rights in Mexico. The institution is most often criticized for its organic links to the executive branch of government; because its mandate restricts it from working on labor- or election-related human rights issues; and because its findings, published in the form of recommendations containing case details, are not obligatory. Indeed, the president of the CNDH is named by Mexico's president, and the institution's budget is entirely provided by the executive branch.¹² At this writing, it appears likely that the CNDH will be granted

¹¹ Inter-American Commission on Human Rights, "Report No. 43/96, Case 11.430," in Organization of American States, *Annual Report of the Inter-American Commission on Human Rights 1996* (Washington, DC: Organization of American States, 1997), p. 513.

¹² Human Rights Watch interview, Mireille Roccatti, president of the CNDH, Mexico

greater autonomy from the executive branch with respect to both its funding and the appointment of its president.

The CNDH's recommendations are not binding on those who receive them, and it has not developed any effective way to shame authorities into seeing that justice is done in cases it documents. There is no penalty, except political, if a government official fails to follow recommendations made by the commission. Relatively few CNDH cases, however, receive the political attention that would lead to the stigmatization of these officials. The CNDH does not publicize details on who, if anyone, went to jail because of a human rights violation documented by the institution. In fact, the commission does not even track such information, so there is no true measure of how the CNDH ultimately influences the justice system when it comes to human rights violations. Statistics produced by the CNDH—on the number of judicial investigations begun, the number of officials indicted, and the number of recommendations fulfilled by authorities—provide a glimpse of part of the judicial process but do not help analyze impunity in Mexico.

The commission was founded at a time when Mexico's human rights record was coming under greater international scrutiny than ever before, as the country prepared to begin negotiations for the North American Free Trade Agreement (NAFTA) and privatization of state-owned enterprises attracted international investment on an unprecedented scale. Indeed, the CNDH may very well have been conceived to feign an interest in human rights protection on the part of the government. However, the work of the commission on specific cases and issues shows that it has become much more than an adornment. Although it is not as consistent as it could be, in 1998 alone, the CNDH has released hard-hitting reports on torture and "disappearances" committed by the army and strongly criticized government actions against alleged supporters of the leftist Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional, EZLN). In less visible cases, too, CNDH recommendations, although not binding, have led to positive developments.

The commission has the authority to compel officials to provide all relevant documents in the cases it examines, so its recommendations often contain important details—from police, the military, and prosecutors—that are not available elsewhere. The CNDH sends its own medical staff to examine victims or carry out exhumations, providing important first-hand human rights documentation. The commission also produces invaluable resource material, such as the 1998 *Manual For Human Rights Documentation*, published in book and compact disc format,

which lists all relevant Mexican and international human rights standards, presented by type of violation.

The National Human Rights Program

On December 21, 1998, the federal government announced the creation of the National Program for the Promotion and Strengthening of Human Rights, an initiative developed jointly by the Ministry of Government, the Foreign Ministry, the Office of the Federal Attorney General, and other government agencies. The initiative was touted as an effort to achieve eight overall goals, including the consolidation of a culture of respect for human rights and of the institutional entities responsible for protecting them, the design of mechanisms to identify positive and negative aspects of Mexican human rights policy, and the dissemination of information about human rights.¹³

The program is positive insofar as it will provide much-needed attention to human rights issues in Mexico. Indeed, the program may aid in the promotion of human rights to the extent that it identifies weaknesses in the government's human rights policies, collects detailed information on cases of human rights violations, reviews Mexican reservations to human rights treaties, and provides human rights education for the public and government employees. In order for the program to be successful, however, authorities will have to develop and implement human rights policies that they have so far failed to produce.

For the most part, the solutions proposed by the program are too vague to permit an analysis of whether or not significant change in Mexican human rights policy will be forthcoming. The program does not appear to establish a well-defined agenda on human rights. It does not provide a diagnosis of the human rights

¹³ "Programa Nacional de Promoción y Fortalecimiento de los Derechos Humanos," document sent to Human Rights Watch by Mexico's Foreign Ministry on December 23, 1998, p. 4. The ministries and agencies listed in the program as having taken on human rights commitments are the Ministry of Government, the Mexican Social Security Institute, the Institute of Social Security of Government Employees, the Foreign Ministry, the Ministry of National Defense, the Ministry of the Navy, the Ministry of Public Education, the Ministry of Health, and the Office of the Federal Attorney General.

violations that will be the subject of the program—how serious and widespread they are, why they take place, and why prior attempts to resolve them have failed. For the program to succeed, it must have a clearly defined sense of the problem before attempting to resolve it; given that federal authorities have tended to minimize the seriousness of human rights violations in Mexico, it is not clear that such a sense exists or, if it does, that it accurately reflects the true nature of human rights violations in the country. In this regard, detailed consultations with Mexican governmental and nongovernmental human rights organizations would have been valuable but did not take place.

In announcing the initiative, Government Minister Francisco Labastida noted that the government had been working on the program for some four months prior to its launch.¹⁴ Rather than signal the beginning of a process to diagnose Mexico's human rights problems and establish a strategy to address them, however, the program announces human rights initiatives that will be undertaken, such as a national campaign against violence, torture, and impunity. Several key human rights issues are not mentioned, including the military justice system and labor rights. The Ministry of Labor was not even among the ministries involved in developing the program, and it took on no commitments under the initiative. The absence of the Ministry of Labor is a serious oversight, given its strong positions against labor rights taken in the context of NAFTA.¹⁵

¹⁴ Foreign Ministry, "Transcripción de las palabras del Licenciado Francisco Labastida Ochoa, Secretario de Gobernación, durante la presentación del Programa Nacional de Promoción y Fortalecimiento de los Derechos Humanos, celebrada en el Salón de Consejos de la Secretaría de Relaciones Exteriores," December 21, 1998.

¹⁵ See, for example, Human Rights Watch, "Your Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector," *A Human Rights Watch Report*, Vol. 10, No. 1(B), December 1998, pp. 36-41. In response to a case filed under the NAFTA labor side agreement, for instance, the Mexican Labor Ministry has argued that forced pregnancy testing of female job applicants in export-processing zones (*maquiladoras*) does not constitute sex discrimination.

The program notes that its initiatives will be undertaken in coordination with the National Human Rights Commission, provides for periodic review of its success, and solicits input from human rights organizations. It is not clear when or how often such review will take place or the role that nongovernmental human rights groups will play.

III. HUMAN RIGHTS AND THE JUSTICE SYSTEM IN MEXICO

Mexico's Justice System

More than a legal system, Mexico maintains a legal “thicket,” in the words of José Luis Soberanes, director of the Institute of Legal Studies at Mexico's National Autonomous University (Universidad Nacional Autónoma de México, UNAM) until late 1998.¹⁶ Mexico's justice system reflects the federal nature of the country's political system. Each of the country's thirty-one states maintains an independent justice system, while a federal justice system handles federal crimes. In addition, multiple thematic tribunals exist on a federal and, often, a state level; separate tribunals exist for labor conciliation and arbitration, electoral issues, agrarian problems, and military matters, for instance. While each thematic tribunal operates under the jurisdiction of the executive branch, their decisions can be appealed on constitutional grounds to the federal court system.

Federal-jurisdiction crimes include drug trafficking and organized crime and human rights violations committed by federal authorities. Murder, robbery, and kidnapping fall under state jurisdiction.

Mexico's justice system provides for expansive federal-court authority for reviewing the actions of government authorities and laws. The writ of amparo gives federal Mexican courts jurisdiction to entertain any case involving a violation of the Mexican federal constitution through a challenge filed before a federal district court. A challenge could also be made to review a final judgment rendered by a state court that allegedly misapplied state law. The benefit of amparo holds only for the individual case in which the writ was filed.

¹⁶ José Luis Soberanes, “Informe sobre México,” in Jorge Correa Sutil, ed., *Situación y políticas judiciales en América Latina* (Santiago, Chile: Universidad Diego Portales, 1993), p. 430.

Since 1984, the federal government has invested in improving the federal system, increasing salaries, modernizing installations, and multiplying the number of courts throughout the country.¹⁷ For instance, Supreme Court legal precedents are available on CD Rom and the Internet, and the federal government compiles statistics on the issues handled by the federal courts.¹⁸ The degree to which state justice systems suffer resource problems varies markedly, but many lag far behind the federal; poor salaries, lack of typewriters and other materials, and a workload that far surpasses the ability of even the most capable judges are the norm.¹⁹ According to *At the Door of the Law*, a book of essays by Mexican lawyers on problems with the country's legal system, "All indications are that the double system of jurisdictions sharpens the deficiencies of the justice system. On the one hand, this regime does not even fulfill the stated purpose of its existence: that there be local, autonomous justice that is independent of the federal. On the other hand, the autonomy of local justice systems leaves them heterogenous in quality, efficiency, and the way they function in general."²⁰

According to the UNAM's Soberanes, if the court system is to function properly, it would first need a major overhaul. In order to get to the heart of the problem, he argues, authorities would have to increase the budget of the state and federal court systems, with more and better-paid judges carrying less burdensome workloads. It would also be necessary to give them better training and to change the way they are named and promoted, in order to guarantee their independence from the executive branch and ensure that their job security did not depend on political caprice.²¹ And of course, better training and salaries would also be necessary for

¹⁷ Héctor Fix Fierro, ed., *A la puerta de la ley: El estado de derecho en México* (México, DF: Cal y Arena, 1994), p. 59.

¹⁸ *Ibid.*, p. 63.

¹⁹ *Ibid.*, p. 60.

²⁰ *Ibid.*, p. 61. Translation by Human Rights Watch.

²¹ The Inter-American Commission on Human Rights reported in a September 1998 comprehensive study on human rights in Mexico, "The very constitutional structure of the courts casts doubt on whether they are genuinely independent vis-à-vis the Executive Branch. Indeed, the only members who cannot be removed from office in the entire judicial branch are the justices of the Supreme Court. The fact that circuit magistrates and district judges are subject to transfer until appointed to a new position undermines the principle of genuine unremovability, which is an essential requirement for an independent judicial branch. Moreover, the fact that lower court judges are not unremovable at all, together with the absence of anything that could be called a genuine legal career, gives cause for real concern." The report further notes that Mexico is moving toward the creation of a career service in the judiciary and that some judgeships are now decided by open competition. The report finds, however, that despite the competitions, the Mexican system falls short of establishing a full judicial career service. Inter-American Commission on Human Rights,

prosecutors, police, and public defenders.²² The overloading of prosecutors, for example, causes serious bottlenecks in Mexico City. While each prosecutor had to resolve sixty-three crimes per year in 1950, that number had gone up to 130 per year in 1980, 140 in 1990, and 219 in 1995,²³ despite an increase in the total number of prosecutors.

Investigating Crimes and Prosecuting Criminals

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. Through a process known as prior investigation (*averiguación previa*), the prosecutor investigates crimes and identifies the suspect or suspects based on physical evidence and interviews with witnesses, victims, and the accused. Once that is done, the case file is turned over to a judge, who may issue an arrest warrant. If the suspect is arrested in the act of committing a crime, the judge will simply certify that the arrest was legitimate. In either case, the suspect will then give a statement to the judge, known as a preparative statement (*declaración preparatoria*). Based on this information, the judge decides whether or not the prosecution should move forward. If the prosecution is to proceed, the prosecutor's office continues gathering information. There are no jury trials in Mexico, and courts cannot conduct investigations on their own.

"Report on the Situation of Human Rights in Mexico," (Washington, DC: Organization of American States, September 24, 1998), OEA/Ser.L/V/II.100, paras. 395 and 398.

²² Human Rights Watch interview, José Luis Soberanes, Mexico City, June 5, 1998.

²³ Rafael Ruiz Harrell, *Criminalidad y mal gobierno* (Mexico City: Sansores & Aljure, 1998), pp. 66-67.

Mexico's system of criminal prosecution has been criticized by analysts who maintain that it gives too much authority to prosecutors, who are empowered not only to investigate and obtain evidence but also to validate the evidence they find. According to such critics, prosecutors effectively act as judges, because the results of their actions are accorded the status of proof. That is, they not only seek information, they determine the role it will play in the prosecution. Further, prosecutors take these actions while responsible for prosecuting, not impartially judging the innocence or guilt of the accused.²⁴ Given the inherently limited scope of this report, Human Rights Watch cannot explore this issue in depth.

²⁴ See Miguel Sarre, "En busca de un sistema acusatorio," in Jalisco State Human Rights Commission, *Gaceta 9* (Guadalajara: Comisión Estatal de Derechos Humanos de Jalisco, May-September, 1997), pp. 22-30.

Prosecutors are not responsible for investigating crimes alone; they work with judicial police, medical examiners, and other technical experts. In theory, the judicial police take orders from prosecutors, although in practice judicial police often appear to work on their own. Given a long history of abuses by judicial police, successive reforms have limited their authority in the investigative process. Prior to 1984, for instance, judicial police could initiate investigations, but now they may only work on cases assigned to them by prosecutors.²⁵ Before 1993, statements taken by judicial police were admissible in court. Now only statements made before a prosecutor or judge can be so admitted. Although it was positive that police lost the authority to take statements that would be admissible as evidence in court, the reform was insufficient; Human Rights Watch believes that only statements made before a judge should be admissible as evidence.

The Public Defender's Office and "Person of Confidence"

Mexico's constitution now ensures that all people subject to investigation or prosecution have the right to be assisted by a lawyer during investigative and trial-related proceedings. If a person cannot afford or does not wish to hire counsel, the court will appoint a public defender.²⁶ Until 1993, legal defense was guaranteed only during the trial period, not during pre-trial proceedings such as the taking of statements by prosecutors; this was because the constitution only guaranteed the right to *name* a defender for pre-trial proceedings, not to *have* one. Constitutional reforms of 1993 then took precedence over the Supreme Court's ruling that it was up to the detainee to seek a legal defender and that prosecutors could not be held responsible if no lawyer was sought.

Reforms in 1990 created what is called a "person of confidence," an individual trusted by the detainee or declarant who may be present during questioning and other legal processes. If the person of confidence is not a lawyer, a public defender will be named to provide assistance. The suspect may also choose to represent himself or herself.

Even when public defenders are present, the law as written has not always been effective. The chief obstacles to the public defender's work include the large caseload, a lack of professional and non-professional staff, poor training of the lawyers on staff, and corruption, according to people who have studied the system.²⁷ In several cases documented in this report, public defenders appeared more

²⁵ Jorge Garduño Garmendia, *El ministerio público en la investigación de delitos* (México, DF: Noriega Editores, 1991), p. 27.

²⁶ Constitution, Article 20(IX).

²⁷ National Human Rights Commission, "Proyecto modelo de ley de defensoría de oficio del fuero común" (Mexico City: Comisión Nacional de Derechos Humanos, 1992), p. 8.

interested in supporting the prosecution than in aiding their supposed clients. In the Rodríguez Osuna case from Tamaulipas state, for instance, a public defender testified against his alleged client, asserting that his client had voluntarily made a statement to prosecutors with the public defender as counsel, even though the client had retained private counsel and retracted his statement on the grounds that it had been extracted under torture. The judge in the case appeared uninterested in the retraction or alleged irregularities, convicting on the basis of the client's retracted statement.

The person of confidence is open to the same abuse. In the Soto Miller temporary "disappearance" case, for instance, the victim's two people of confidence actually worked for the prosecutor's office and have failed to appear in court to answer questions about what happened when the victim made his alleged confession.²⁸ They had not been chosen by Soto Miller. In the García Carrillo case, brought to the attention of Human Rights Watch by the PGR and discussed in the chapter "Impunity and Punishment for Human Rights Violations," police tortured the victim and then provided him with a "person of confidence" who may have had the confidence of the police but did not enjoy the same status with the victim. The prosecutor in the case indicted the victim using the statement he made under such conditions.

Problems with the system of public defenders have been pointed out again and again over the years. In 1992, the CNDH proposed changes to laws regulating state public defenders' offices, noting, "Over the eighteen months of its existence, the National Human Rights Commission has seen many diverse cases that have highlighted a painful reality—that the institution of the public defender does not function as it should. This constitutes a human rights violation in itself, but at the same time is the method through which other constitutional guarantees and prerogatives are violated."²⁹ Since then, the situation has not improved, as the U.N. special rapporteur on torture found in 1997. "Often victims were unaware that one of the persons around them was in fact a defender, supposedly on his/her side," the U.N. official found. "In brief, the public defender cannot be relied on to defend."³⁰

²⁸ This problem has been documented by Human Rights Watch in the past. See Human Rights Watch/Americas, "Mexico: Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas," *A Human Rights Watch Report*, Vol. 8, No. 3(B), February 1996, pp. 13-14.

²⁹ National Human Rights Commission, "Proyecto Modelo," p. 7. Translation by Human Rights Watch.

³⁰ United Nations, "Question of the Human Rights of All People Submitted to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (New York: United Nations Publications, January 14, 1998), E/CN.4/1998/38/Add.2, para. 81.

Human Rights Protections Under Mexican Law **Constitutional and procedural guarantees**

Article 16 of Mexico's constitution requires that authorities who carry out searches make arrests only with a court order. For an arrest warrant to be issued, the prosecutor who solicits it must show a judge that physical evidence of the crime exists, the suspect is linked to the commission of the crime, and information exists that supports the suspect's probable responsibility for the crime. Once the suspect has been arrested, he or she must be placed before a judge "without any delay."³¹ There are two exceptions to the need for a judicial order for detention: in case of urgency³² or when a criminal is caught *in flagrante* or *quasi-in flagrante*.³³ In such cases, a judge must immediately certify that the arrest was legal and, if not, release the detainee.

Article 16 provides that prosecutors, after taking charge of a detainee, have up to forty-eight hours to decide whether to free the suspect or turn him or her over to a judge. Failure to do so constitutes a criminal offense. In cases involving organized

³¹ Constitution, Article 16.

³² In order to be "urgent," a crime must be "serious" under Mexican law and there must be a "founded risk that the suspect will avoid justice."

³³ Quasi in flagrante includes a suspect who, no longer in the act of committing the crime, is physically pursued by police immediately after doing so, or when the suspect is identified by a third party and then immediately caught with some evidence that would allow the "founded presumption of guilt." Federal Criminal Procedures Code, Article 193. In the Mexico City penal procedural code, this was amended on May 13, 1996, to indicate that such flagrancy would work only within seventy-two hours of a "serious" crime, if no investigation had been begun, and if the investigative pursuit of the crime had not been interrupted. National Human Rights Commission, "Detención arbitraria, inexecución de órdenes de aprehensión y abusos en su cumplimiento," 1996, p. 49.

crime, the maximum time period is doubled, to ninety-six hours. Other procedural guarantees include the right of suspects or formally accused people to review the evidence against them, provide prosecutors with evidence in their favor, and face and question their accusers. A translator must be provided when needed.

Once a suspect is charged and turned over to a judge, the judge has a maximum of seventy-two hours to move forward with the prosecution or release the detainee, according to Article 19. If the custodial authorities fail to receive orders from the judge within seventy-two hours, the constitution requires them to bring the failure to the attention of the judge. If, three hours after doing so, they do not receive word, they are to release the suspect.

Judges are required to certify the validity of all arrests. In practice, however, cases in which torture and temporary “disappearances” take place are also often accompanied by falsification of police records related to the arrest, and judges in such cases often fail to question suspect or patently false police versions of how detainees came into custody. At the same time, higher courts have ruled that even if lower courts improperly certified arrests, once a judge certifies the indictment, the defendant can be tried.

Article 20 of the constitution provides that no one can be obliged to make a self-incriminating statement to authorities and that any statement made before anyone other than a prosecutor or judge is invalid. It further holds, “All incommunicado detention, intimidation or torture will be punishable under criminal law and is prohibited.”

Mexican law also provides for constitutional appeal known in Spanish as *amparo*. It can be used to challenge the unconstitutional actions of authorities or the constitutionality of laws.

The importance of individual and procedural guarantees

Procedural guarantees related to search, arrest, legal defense, and time periods allotted to police, prosecutors, and judges to carry out their functions serve a fundamental purpose in the protection of human rights. Due process rights, if respected, provide certainty to those subject to police or prosecutorial action about the proceedings underway and those to come. Héctor Faúndez Ledesma, a leading human rights jurist in Latin America, writes of the right to adequate legal representation, “In effect, it is very probable that of all the rights that a person subject to criminal prosecution enjoys, this is the most important, since it permits him to know and exercise fully his other rights.”³⁴ With certainty about the legal

³⁴ Héctor Faúndez Ledesma, *Administración de justicia y derecho internacional de los derechos humanos* (Caracas: Universidad Central de Venezuela, 1992), p. 310. Translation by Human Rights Watch.

process, people subjected to it are much less open to coercion by police or prosecutors. At the same time, procedural guarantees minimize the ability of police or prosecutors to physically or psychologically torture detainees, because they eliminate the amount of time that detainees are unaccounted for.

In Mexico, procedural guarantees take on particular importance, because torture and other serious abuses often follow arbitrary arrest, in which a suspect is detained without court order or other legally founded justification, or prolonged detention, in which the suspect is held in excess of the legally imposed limits. The cases documented in this report conform to this pattern, but it is a practice that has also been well identified by the CNDH. A 1996 commission study of 505 cases found that in more than 30 percent the victim had been arbitrarily detained, and in most of those cases had also been physically mistreated, held incommunicado, or held in detention in excess of the legally defined maximum time.³⁵ Often, when physical abuse was meted out, the detention coincided with the amount of time the wounds took to heal.³⁶ When physical violence was used in arbitrary detention cases, the CNDH found, it was usually aimed at obtaining confessions or signatures on blank paper that was later used by authorities to write a confession.³⁷ Asking for a non-existent search warrant is a good way to get yourself threatened or beaten, according to the CNDH; those responsible for the abuse make a show of mistreating the victim and threatening reprisals if the case is denounced.³⁸

The Inter-American Commission on Human Rights has also studied the problem in Mexico. Referring to what it termed the "systematic" problem of illegal detentions in Mexico, the commission determined,

[T]he most delicate aspect of the problem is that this type of human rights violation often marks the beginning of a chain of violations of other rights, which generally includes the right to personal integrity and legal guarantees. The relationship between illegal detention and the violation of an individual's personal integrity and legal rights is not a function of circumstance. Rather, it is the logical consequence of the relationship of dependency that is often found between the administrative and judicial authorities.³⁹

³⁵ National Human Rights Commission, "Procuración de justicia y derechos humanos," 1996, pp. 20 and 40.

³⁶ *Ibid.*, p. 41.

³⁷ *Ibid.*, p. 20.

³⁸ *Ibid.*, p. 39.

³⁹ Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Mexico," para. 219.

Human Rights Deficiencies in Mexican Law and Legal Precedent

Despite relatively strong constitutional guarantees, Mexican laws and their interpretation have contributed to serious human rights problems. With a few important exceptions, there is no explicit prohibition on the use in court of evidence obtained through human rights violations. The law bars the admission of statements made during torture or made after being held by prosecutors beyond the forty-eight-hour time limit allowed for a decision about whether to indict. At the same time, the law prohibits the use of evidence obtained in violation of the law.

The problem with these standards is that, in practice, they do not lead to the effective exclusion of evidence obtained through human rights violations. Arbitrary detention and a detention in excess of the maximum time allowed by law are crimes, at least insofar as they constitute abuse of authority, but they do not necessarily affect the legal status of the detainee once a judge has confirmed the charges. Similarly, illegal arrest and detention do not necessarily constitute grounds for rejecting statements made afterward.

Even after passage of the 1991 Federal Law to Prevent and Punish Torture, motivated in part to ensure that coerced confessions be banned from the legal process, Mexican courts have ruled that confessions given after arbitrary detention are valid as long as the victim admits guilt. The Second Collegiate Court of the Sixth District ruled in 1993, for instance, that even though an arrest had been carried out illegally, the confession made by the victim was valid since he had confessed to the deputy director of investigations of the Office of the Federal Attorney General.⁴⁰

As shown in this report, torture often takes place during illegal detentions; even if a detainee is not tortured at the time of making a statement, torture by police prior to delivery to prosecutors can be just as effective in ensuring that a confession turns out as police desire. Mexican law, however, leaves it up to detainees to prove that their statements were made as a result of the torture they suffered, a tremendously difficult task even if physical evidence of torture exists.

Courts have also ruled that arbitrary arrest does not constitute grounds for releasing the detainee once the detainee has been charged. The Second Collegiate Court of the Sixth District ruled in 1993, for example, that arbitrary arrest “in no

⁴⁰ *Semanario Judicial de la Federación*, Octava Época, Tomo XI, May 1993, p. 308. Available: [HTTP://info1.juridicas.unam.mx/jurinfo/penal/PENAL69/PEN34410.HTM](http://info1.juridicas.unam.mx/jurinfo/penal/PENAL69/PEN34410.HTM) [December 14, 1998].

way implied that the indictment is unconstitutional.” The court based its judgment on the fact that the validity of the indictment depended on the strength of the evidence against the accused and that whether or not the detention was arbitrary would not change the strength of that evidence.⁴¹

⁴¹ Ibid., p. 322.

In 1990, the Criminal Procedures Code was reformed to exclude from the judicial process statements made during prolonged detention, a positive change based on the presumption that in such circumstances the authorities involved had tried to coerce the declarant into making a self-incriminating statement.⁴² Nonetheless, in order for this prohibition to have any meaning, authorities must be able to clearly establish the details surrounding arrest, including the exact time the detainee came into police custody, was turned over to prosecutors, and then handed over to a judge. For their part, judges must insist that such detail is reliably documented. The failure of authorities to offer such detail, or the existence of serious doubts about the veracity of the information provided, should lead to the presumption that the arrest was improper; the presumption should be reversed if authorities prove that no irregularities took place.

Authorities' lack of concern about human rights violations committed during detention and the judicial process undercuts formal human rights protections established in the law. Several cases in this report demonstrate how judges can go out of their way to accept impugned testimonies without addressing the declarant's allegations of torture or inadequate legal defense. Key to their ability to do so is the "principle of procedural immediacy"—the concept in Mexico that the first statement made by a detainee has greater value than later statements.⁴³ This legal

⁴² Sergio García Ramírez, *Proceso penal y derechos humanos* (Mexico City: Porrúa, 1993), p. 59.

⁴³ The Mexican use of this concept appears unique. In most countries, the idea of procedural immediacy means that a statement made before a judge can be deemed by that judge to be worthy of more credence than a statement made elsewhere. In fact, the Inter-American Commission on Human Rights has termed the Mexican usage of the term "erroneous." According to the commission, "The Mexican State is construing the [principle of procedural immediacy] in a way which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons." Inter-American Commission on Human Rights, "Report on the Situation

precedent—based on Supreme Court rulings—was cited, for example, in the Rodríguez Osuna case from Tamaulipas state, in which the judge accepted a statement against the defendant made by another man who had apparently been forced into declaring, even though the man had retracted his statement. Serious doubts were also raised about how he had come into detention and about whether he had appropriate legal counsel when he made the statement. Rather than express concern about the alleged coercion, the judge cited procedural immediacy to accept the statement that incriminated Rodríguez Osuna while opting to ignore the retraction because several other pieces of irrelevant evidence were said to support the declarant's initial statement. This legal precedent was also cited in the Soto Miller temporary "disappearance" case, several Oaxaca torture cases, and the Manuel Manríquez torture case, all documented in this report.

Judges have also cited procedural immediacy to reject retractions even when torture is evident. In the case of seven people detained in 1995 in Yanga, Veracruz state, a judge admitted that several of the detainees showed signs of having been beaten. The CNDH eventually issued a recommendation finding that they had been tortured. Nonetheless, the judge ruled, "The retractions should not be given value on the basis of the alleged unconstitutional acts in which the apprehending agents probably engaged. Given the principle of procedural immediacy, their first depositions are the ones that should take precedence over their later ones, because they were closer to the time of the facts and without sufficient time for thinking about them or electing what to say."⁴⁴

As with confessions or statements, Mexican law does not invalidate physical evidence obtained through human rights violations. Mexico's federal criminal procedures code establishes that evidence obtained through illegal searches cannot be accorded the status of clear proof (*prueba plena*), but it can be used to support other evidence and in sentencing.⁴⁵

Not all Mexican courts disregard human rights concerns in issuing judgements. In fact, some have underscored that violations of procedure invalidate the resulting judicial processes. For instance, the Second Court of the Eighth Circuit ruled that the existence of human rights violations committed during detention do not constitute irreparable acts once a judge has confirmed the indictment of the detainee:

Even when the lower court has certified the indictment, if the appeals magistrate indicates that Article 16, paragraph six, of the Constitution was violated to the detriment of the detainee, he can and should legally order the release of the detainee, despite the indictment, because the indictment, based on an illegal detention, must also be considered in violation of the Constitution.⁴⁶

⁴⁴ See Human Rights Watch/Americas, *Torture and Other Abuses*, p. 17.

⁴⁵ Federal Criminal Procedures Code, Article 284.

⁴⁶ Segundo Tribunal Colegiado del Octavo Circuito, Amparo en revisión, 314/94. *Semanario Judicial de la Federación*, Octava Época, Tomo XV, January 1995, p. 223. Available: [HTTP://info1.juridicas.unam.mx/jurinfo/penal/PENAL76/PEN37556.HTM](http://info1.juridicas.unam.mx/jurinfo/penal/PENAL76/PEN37556.HTM).

Similarly, a judge in 1995 threw out a confession made by a woman who had been illegally detained, arguing that the court had to consider her confession forced if the safeguards in Article 16 of the constitution had not been met.⁴⁷ Because of the judge's ruling, the woman was freed. In its response to the Mexico report issued by the Inter-American Commission on Human Rights, the Mexican government presented other court decisions that showed that judges had rejected coerced confessions or that such confessions had been accepted only if additional evidence supported them.⁴⁸

Mexico's justice system, like all others, must balance the goal of discovering the truth in criminal cases with preserving the dignity of those who pass through the system and respecting the rule of law. Indeed, those who drafted Mexico's current constitution argued for clearly demarcating the powers of prosecutors and judges, noting, "During the period since the revolution until now, Mexican judges have been in charge of investigating crimes and seeking evidence, just as in colonial

⁴⁷ See Human Rights Watch/Americas, *Torture and Other Abuses*, p. 11. Despite this positive ruling, the woman's confession was used by other courts to convict people she was forced into naming in the confession—another indication of the lack of consistency related to human rights criteria in Mexican courts.

⁴⁸ Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Mexico," paras. 316 and 317. A court unidentified in the report ruled in 1975, "The detention of the accused carried out by police before a complaint had been made implies that the person was coerced and, consequently, the implausibility of the confession." Another court ruled in 1986, "On their own, confessions obtained through prolonged and unjustified detention by police lack probative value. The word of authorities who act arbitrarily also lacks probative value on its own, since it is logical to suppose that the charges they lodge against the detainees are an attempt to justify their arbitrary action."

times. To do so, they have always felt authorized to carry out veritable assaults against prisoners in order to get them to confess, which, without a doubt, strips the judiciary of its natural function."⁴⁹ From this argument sprang the protections contained in Article 16 of the constitution, which establishes limitations on the circumstances in which police and prosecutors can carry out searches or arrests, limits the amount of time they can hold detainees before turning them over to a judge, and caps the time period judges have to decide whether or not to issue arrest warrants, move forward with prosecutions, and make other decisions related to the fate of detainees.

Mexican jurist Sergio García Ramírez, who is now a judge on the Inter-American Court of Human Rights, has noted,

⁴⁹ Cited in National Human Rights Commission, "Detención arbitraria, inejecución de órdenes de aprehensión y abusos en su cumplimiento," *Materiales de Trabajo*, 1996, p. 21. Translation by Human Rights Watch.

In a just state of law, criminal prosecution implies and demands the existence of an effective system of individual guarantees. These guarantees confer legitimacy and rationality on the prosecution, distancing it from a situation in which violence is simply employed over an individual. Without such guarantees we would witness only an unequal confrontation in which force, with no real link to reason, would prevail. In a state of law, the observation of these effective guarantees alone validates the determination of the historical truth, which is the logical purpose of criminal prosecutions. In other words, the search for truth is not an end that justifies the means.⁵⁰

The points made in García Ramírez's somewhat theoretical analysis have also been applied in Mexico, although rarely. The balance between seeking information for prosecution and seeking information at any cost, including the violation of human rights, was the subject of debate in 1990, for instance. At that time, the criminal procedure code was amended to presume that statements made to police during prolonged detentions were coerced and should be ignored. Similarly, the legislative history of Mexico's 1991 Federal Law to Prevent and Punish Torture shows that the Senate commissions that reviewed the law argued that public servants, "whatever their position, should carry out their work in strict accord with the law and, with respect to the investigation of crimes, should seek whatever proof is necessary; but never, under the pretext of seeking the truth, should harm be caused to suspects."⁵¹ The principle underlying these arguments, however, has not been extended to cover other procedural irregularities in Mexico.

Procedural guarantees exist not only in order to provide legal certainty to those in custody and to remove arbitrary authority from police, prosecutors, and judges. They also ensure that procedures used to find evidence, and hence the truth, lead to the discovery of accurate information. If procedural guarantees were scrupulously followed, police and prosecutors would have less opportunity to coerce detainees. If the violation of these procedural safeguards led to a presumption in court that the detainee was coerced, and coercion led to the elimination of the evidence obtained in that manner, police and prosecutors interested in ensuring that evidence held up in court would be forced to adhere to procedural guidelines. There should be no question in the minds of police,

⁵⁰ García Ramírez, *Proceso penal*, pp. 39-40.

⁵¹ Cited in *Ibid.*, p. 343.

prosecutors, and judges that evidence obtained through human rights violations will be thrown out. As part of a federal effort to strengthen the protection of human rights, the government should also promote legislation that would give legal validity only to declarations made before a judge.

International law recognizes the importance of following procedural safeguards, and establishes guidelines for admissibility of evidence obtained in violation of those guarantees. The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment includes the need for authorities to record the time at which the detainee was brought into custody and when he or she first appeared before a judge or other judicial authority. It also holds that detainees are entitled to legal counsel. Further, the principles, which form part of the body of international law representing consensus of the international community on such safeguards, establish, "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person."⁵² They continue, "Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person."⁵³

Responsibility for Ensuring the Protection of Human Rights

⁵² General Assembly Resolution 43/173, "United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," December 9, 1988, Principles 12, 17, and 21.

⁵³ *Ibid.*, Principle 27.

Mexican law requires that authorities protect human rights and not violate constitutional guarantees, but the Mexican government must do much more to ensure that these standards are observed. While many of the violations documented in this report, like torture, constitute crimes in and of themselves, the negligent response of public officials to those human rights violations also constitutes a breach of the law. Federal prosecutors and judicial police, for instance, are bound to safeguard the “legality” of the process and to “always act in accord with the law and to respect human rights.”⁵⁴ Violation of this law can lead to suspension or firing. At the same time, Mexican law provides for prison time for “crimes against the administration of justice.” It is a crime, for instance, for a public servant to “impede or delay, maliciously or through negligence, the administration of justice” or to “carry out an act or engage in an omission that produces harm or provides someone with an undue advantage.”⁵⁵ These crimes carry a penalty of between one and six years in prison; Human Rights Watch is aware of several cases in Mexico in which charges were brought against a federal prosecutor using this provision of the penal code.

In certain cases, including torture, prosecutors are required to open investigations with or without a complaint from the victim. However, even in cases that require a complaint to be filed, if a prosecutor learns of an abuse, he or she is required to bring it to the attention of the victim.⁵⁶ The victim could press charges, then. The prosecutor’s failure to raise the issue with the victim, therefore, constitutes a failure to live up to the administrative requirements of the job and could constitute a crime against the administration of justice.

Judicial Reforms in Mexico

Any discussion of judicial reforms in Mexico must begin with a distinction between the law as written, the law as applied, and the law as interpreted by the courts. Indeed, Mexico has a long tradition of incorporating broad human rights protections in its constitutions.⁵⁷ But constitutional human rights protections have not been consistently enforced. “The great theme of our constitutional history has been the separation, if not abyss, between standards and reality, the almost congenital inability of the former to significantly modify the latter,”⁵⁸ according to *At the Door of the Law*.

⁵⁴ Basic Law of the Office of the Federal Attorney General (Ley Orgánica de la Procuraduría General de la República), Article 51(I).

⁵⁵ Penal Code, Article 225(VIII and VII).

⁵⁶ Basic Law of the Office of the Federal Attorney General, Article 8(I).

⁵⁷ Fix Fierro, ed., *A la puerta de la ley*, p. 17.

⁵⁸ *Ibid.* Translation by Human Rights Watch.

José Luis Soberanes of the UNAM has bluntly noted the difficulty in promoting effective legal reforms in Mexico, highlighting at the same time the importance of undertaking effective reforms: "In effect, delivery of justice in Mexico depends on a structure that is complicated, slippery, and often corrupt. It seems unreformable because the foremost enemies of change are the very judicial functionaries who are ready to fight for the defense of their antiquated and poorly functioning judicial system and, yes, their privileges and sinecures."⁵⁹ Mexican legal experts have also criticized some judicial reforms as motivated more by political expedience than by need.⁶⁰

⁵⁹ José Luis Soberanes, "Informe sobre México," p. 429. Translation by Human Rights Watch.

⁶⁰ Judicial reforms carried out in 1994 and 1995, for instance, followed campaign promises made by Ernesto Zedillo when he was a presidential candidate. They were submitted to Congress just days after he became president and were approved only ten days later after no public debate. See Sergio García Ramírez, *Poder judicial y ministerio público* (Mexico City: Porrúa, 1997), pp. 41-44.

Reforms this decade have focused on both improving human rights guarantees and improving the efficiency of police work, goals that in Mexico have often, though unnecessarily, been at odds. Without doubt, the need to improve the work of police and prosecutors is great. Indeed, in 1995, only 2.5 percent of the 218,599 crimes reported in Mexico City resulted in the indictment of a suspect.⁶¹ Compared with major cities such as Paris, Rome, London, Madrid, Rio de Janeiro, São Paulo, and New York, Mexico City registers the worst crime-resolution rate.⁶² The argument often made by authorities to justify this poor showing is that the nature of crime has changed, while laws have not.⁶³ Rafael Ruiz Harrell, a critic of this justification, summarizes the official view as follows: "If we want to reduce the level of impunity it is necessary, therefore, to update the law, strengthen sanctions, and limit cases that allow release on bail. Above all else, it is imperative to establish more elastic terms for police action—and restrict suspects' guarantees."⁶⁴ From a human rights standpoint, this approach is troubling because it leads to greater limitations on individual guarantees; when a central problem in human rights cases in Mexico is the violation of individual guarantees leading to torture, "disappearance," or extrajudicial execution, greater, not weaker, protections should be sought. The fight against crime in Mexico, dubbed the "National Crusade against Crime," cannot justify violating or restricting human rights.

⁶¹ Ruiz Harrell, *Criminalidad y mal gobierno*, p. 61.

⁶² *Ibid.*, p. 64.

⁶³ *Ibid.*, p. 62.

⁶⁴ *Ibid.*

To analyze all aspects of the legal reforms that have taken place in Mexico in recent years is beyond the scope of this report. We focus instead on the most salient issues relevant to individual guarantees and impunity. In 1990, 1993, 1994-1995, and 1996 legal reforms were enacted, some of which strengthened and some of which weakened human rights protections.⁶⁵ The 1990 reforms were focused expressly on strengthening human rights protections, invalidating statements made by detainees if they were held beyond legally mandated limits and giving the National Human Rights Commission authority to solicit information from public officials, for instance.⁶⁶ Other positive changes followed. For instance, Article 20 of the constitution was amended in 1993 so that detainees' statements to police would lack legal value as evidence in criminal cases, an important step toward stripping police of one of their strongest justifications for torturing detainees. In practice, police do not now take statements from detainees to be used in court. As positive as this change has been, though, police are still able to coerce detainees by threatening or torturing them prior to their issuance of official declarations. Nonetheless, statements taken by prosecutors have been shown to have serious problems as well, leading to the conclusion that only statements made before a judge should be accepted in court.

The prohibition in court of statements taken by police was one in a series designed to reduce the prevalence of torture; others included establishing criminal penalties for prosecutors who failed to ensure that detainees were represented by a legal defender during pre-trial proceedings and clarification of time limits for prosecutors to bring detainees to a judge.⁶⁷ Similarly, after Article 21 of the constitution was reformed in 1994, victims could challenge the decision by prosecutors not to press charges against alleged criminals, including human rights violators, although at this writing authorities had yet to pass a law that would implement this constitutional right.⁶⁸

⁶⁵ Part of this chapter draws on an article published by the author in June 1998. See Joel Solomon, "Derechos humanos y combate a la delincuencia," *La Jornada* (Mexico City), June 28, 1998.

⁶⁶ For a full discussion of the 1990 reforms, see García Ramírez, *Proceso penal*. The provision that statements made to police are invalid if made during a detention that exceeded the maximum time limit was based on the supposition that police tried to pressure the detainee into incriminating him or herself.

⁶⁷ For a detailed analysis of the anti-torture reforms, see Luis de la Barrera Solórzano, *La lid contra la tortura* (Mexico City: Cal y Arena, 1995).

⁶⁸ A debate exists in Mexico about whether the proper way for this right to be exercised is through specific legislation or through the process of constitutional challenge known as amparo. The Inter-American Commission on Human Rights has welcomed the constitution's recognition of the right to challenge a prosecutor's decision not to prosecute,

but has strongly criticized Mexico for failing to take the steps necessary to ensure that this right can be exercised simply, swiftly, and effectively. Although Mexico's Supreme Court has held that a prosecutor's decision not to prosecute can be subject to amparo, the commission has deemed this step positive but insufficient, because the ruling did not create obligatory legal precedent. The commission has recommended to the Mexican government that it regulate Article 21 of the constitution with a specific law. See Inter-American Commission on Human Rights, Report No. 48/97, Case 11.520, February 18, 1998, reprinted in Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights* (Washington, DC: Organization of American States, 1998), pp. 681-91.

During 1993 and 1994, however, additional constitutional reforms came into effect that limit individual guarantees. For instance, prosecutors were given the authority to carry out arrests in certain cases without a court order, even if the suspect was not caught in the act.⁶⁹ This authority, according to jurist Ignacio Burgoa, “opens the door to unlimited subjective actions by administrative authorities. . . to limit personal liberties.”⁷⁰ July 1996 reforms to Articles 16, 20, and 22 of the constitution gave broader power to prosecutors to fight crime, including phone-tapping, expanded authority to request that judges deny bail, and a wider range of instances in which they can confiscate goods.⁷¹ Later that year, the Law to Fight Organized Crime entered into force, doubling the time prosecutors can hold suspects before turning them over to a judge—from forty-eight to ninety-six hours.

Soon after becoming president in 1994, Ernesto Zedillo proposed structural reforms to Mexico’s court system, including modifications to the Supreme Court and the creation of a Federal Judicial Council, responsible for the administration of the courts and oversight, discipline, and naming of judges. Following the reforms, the number of Supreme Court justices dropped from twenty-six to eleven, and their appointment must be confirmed by the Senate. “This [structural reform] may prove important for the future independence of the court,” according to Beatriz Magaloni, a lawyer who has worked on human rights issues, “particularly in consideration of the growing strength of opposition parties and the likelihood of a more effective

⁶⁹ Prosecutors can make such arrests “Only in urgent cases, when the matter relates to a serious crime as defined by law, and when there is a founded risk that the suspect could flee from the law, and only if the prosecutor cannot get to a judge. . . .” Translation by Human Rights Watch.

⁷⁰ Ignacio Burgoa, *Las garantías individuales* (Mexico City: Editorial Porrúa, 1996), p. 621.

⁷¹ Mariclaire Acosta, “El caso mexicano: otra vuelta de tuerca,” *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, March 1997, p. 4.

system of checks and balances.”⁷² The Federal Judicial Council may help to professionalize the judiciary and could potentially play an important role in promoting human rights by overseeing the work of judges with respect to human rights issues. The councils could document cases in which judges accept evidence obtained through human rights violations or otherwise fail to ensure that procedural or individual guarantees were observed throughout the legal processes in cases that come before them. Appropriate administrative or criminal punishment could be pursued against judges when such cases occur.

⁷² Beatriz Magaloni, “Judicial Reform Starts at the Top,” *Los Angeles Times*, July 25, 1997. Nonetheless, in certain circumstances the president may simply name Supreme Court justices; if the Senate twice rejects the president’s list of three candidates, the president can fill the position unilaterally.

No matter how successful structural reforms may ultimately be, however, they alone would not resolve the underlying human rights problems inherent in the Mexican justice system. As García Ramírez has suggested, the changes that took place in 1994 were “macro,” rather than “micro” reforms, far from the sphere in which the majority of incidents and interactions that influence the administration of justice take place. Rather, he has argued, the area in which the day-to-day problems of millions of individuals are laid out and resolved “. . . is made up of the sum of the organs, procedures, and measures that take place on the lower rungs of system: police offices, prosecutors’ offices, courts belonging to justices of the peace, trial-level courts, the specialized thematic courts (labor, administrative, agrarian, children), etc.”⁷³

In December 1997, President Zedillo sent new proposed legal reforms to the Senate. Behind the proposals lies the fallacy that “certain legal requisites, developed in their context to confront a criminality lacking in the sophistication that is evident today, limit the ability of authorities to act.”⁷⁴ In essence, President Zedillo argued that human rights guarantees constitute a straitjacket in the fight against increasingly sophisticated crime.

Among the most questionable proposed reforms were changes in the requirements for obtaining an arrest warrant and for a judge to jail an indicted suspect. If finally approved, the reforms would make it much easier for suspects to be jailed on weaker evidence and without certainty that a crime had even been committed. The attorney general of Mexico has explained that the reforms are an attempt to “define, clarify, and make more precise the responsibilities of the judges and the responsibilities of the prosecutors within the realm of criminal procedure,” and that they are aimed at harmonizing “due process-related guarantees with repairing the harm done to victims and with society’s legitimate interest in punishing criminals that have harmed and offended it.”⁷⁵ However, the reforms would open the

⁷³ García Ramírez, *Poder judicial y ministerio público*, pp. 34-35.

⁷⁴ Ernesto Zedillo, “Iniciativa de reforma a los artículos 16, 19, 20, 22 y 123, Apartado B, fracción XIII, de la Constitución Política de los Estados Unidos Mexicanos,” December 3, 1997, p. 2. Translation by Human Rights Watch.

⁷⁵ Jorge Madrazo, speech on the proposed law, December 7, 1997, provided to Human Rights Watch by the Office of the Federal Attorney General.

door even wider to all kinds of abuse already prevalent in the justice system. They would increase the chances that an innocent person would be subjected to unjust prosecution, which is particularly serious given Mexico's weak public defender's office.

According to an analysis by the Citizens' Legislative Proposal Workshop, a group of jurists and human rights experts, "... it would be wrong to believe that the way to resolve the very serious and intolerable problem of public insecurity ... is precisely to create a new cause for public insecurity, which is what would result from reducing through these reforms constitutional guarantees that protect citizens in general from authorities. [Similarly, insecurity would result from] giving authorities more discretionary power, which would allow them to limit these guarantees more easily."⁷⁶ Mireille Roccatti, president of the CNDH, told Human Rights Watch the same thing in different words. "We'd be creating a monster," she warned, since "the authorities are often the very ones responsible for [criminal acts]."⁷⁷

To accompany the legal reforms, the government developed what it called "Strategies and Actions of the National Public Security Program," which consist of eight focal points for attention from federal and state authorities. Training, testing, hiring more law enforcement and court personnel, and establishing centralized data bases were among the steps promised by the government.⁷⁸ Funding would be increased to reach these goals. Several of the proposals to fight crime, such as creation of new nationwide data bases and expanding citizen participation in oversight of police, would lend themselves to the protection of human rights.

Unfortunately, human rights violations were not included in the problems to be addressed by these programs, and the strategies announced by the government did

⁷⁶ Citizens' Workshop on Legislative Proposals (Taller Ciudadano de Propuesta Legislativa), "Las reformas constitucionales en materia penal, irrelevantes para el restablecimiento de la seguridad pública," no date, p. 1. Translation by Human Rights Watch.

⁷⁷ Human Rights Watch interview, Mireille Roccatti, Mexico City, June 8, 1998.

⁷⁸ Government Ministry, "Estrategias y Acciones del Programa Nacional de Seguridad Pública: Los Ocho Ejes," November 16, 1998.

not make any reference to improving the way authorities monitor or respond to human rights abuses. In fact, expanding personnel without attending to underlying human rights concerns may worsen human rights problems. An explicit human rights focus should be an integral part of any government strategy designed to address public security problems.

After announcing its strategies for fighting crime, the federal government said it would create a new police force, called Federal Preventive Police, designed to prevent crimes of a federal nature and to assist federal judicial police in carrying out investigations. Before moving forward with the creation of a new police force, the government should publicly provide a clear strategy for ensuring that human rights violations committed by these officers will be investigated and that the offending authorities will be prosecuted. The new police force offers an opportunity to include, from the outset, mechanisms to enhance the protection and promotion of human rights.

IV. MEXICO'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Mexico is bound by human rights treaties violated repeatedly in the cases documented in this report.⁷⁹ In addition, these cases highlight the frequent disregard for other, non-binding international standards regarding actions and use of force by police, which represent the international community's statement of adequate treatment of detainees and suspects by authorities.

The Mexican government has rejected Human Rights Watch's use of international standards to analyze human rights practices in Mexico, arguing that "unilateral reports"—those produced outside the framework of an international body like the United Nations—lack "legal value" and "minimize the value of international law."⁸⁰ However, Mexico is legally bound by the human rights treaties it has ratified; to suggest that it is wrong for any group or observer to point out how and when Mexico fails to live up to these obligations is simply to seek an excuse for noncompliance.

Torture

⁷⁹ The country's constitution gives ratified treaties the status of domestic law. Article 133 of the constitution holds, "This Constitution, the laws of Congress based on it, and all treaties in accord with it. . . will be the supreme law of the Union." Translation by Human Rights Watch.

⁸⁰ This approach was used in a press release issued by Mexico's Foreign Ministry on April 29, 1997, in response to the Human Rights Watch report *Implausible Deniability: State Responsibility for Rural Violence in Mexico*, published in April 1997.

Mexico has ratified two treaties that focus exclusively on the prohibition of torture and two others that include express prohibitions against this human rights violation.⁸¹ Authorities are responsible for fully investigating allegations of torture *and any situation in which there is reasonable ground to believe torture may have taken place*, even if the victim does not explicitly allege to have suffered torture.⁸² The failure to investigate and to act on the findings of the investigation constitutes a violation of specific provisions of international law. Torturers must be brought to justice. Further, statements given under conditions of torture or cruel and unusual punishment cannot be used as evidence.⁸³ Prosecutors and judges have the responsibility to investigate any reasonable ground of torture. Prior to using the statement of a suspected torture victim, a prosecutor would have to establish that the statement was not made in circumstances defined as torture by international law.⁸⁴

Torture is not only a heinous act and very serious crime. The abuse when linked to the judicial process may distort proceedings long after the act took place. A detainee tortured by police then turned over to a civilian prosecutor may, with good reason, testify as the police ordered out of fear of being tortured further, even if the victim never sees the officers again. For these reasons, judges must take extremely seriously their responsibility to ensure that any act of torture documented or suspected or alleged to have taken place is investigated. A judge who cites Mexican legal precedent that permits clearly torture-induced statements to be used

⁸¹ 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. Torture is also prohibited under: Article 7 of the International Covenant on Civil and Political Rights, ratified by Mexico on March 23, 1981; and Article 5 of the American Convention on Human Rights, ratified by Mexico on March 24, 1981.

⁸² Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Articles 12 and 13; Inter-American Convention to Prevent and Punish Torture, Article 8.

⁸³ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Articles 15; Inter-American Convention to Prevent and Punish Torture, Article 10.

⁸⁴ Article 1(1) of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment provides a standard definition of torture: "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or the person acting in an official capacity."

in court violates provisions of binding international law; likewise, under binding international standards, judges cannot accept evidence if there are reasonable grounds for suspecting that it was obtained through torture.

Mexico is also required to ensure that torture is punishable under its laws. The Federal Law to Prevent and Punish Torture establishes a solid domestic standard to fight torture, and most Mexican states have similar laws on the books. The law, however, is not rigorously enforced. Torturers, if charged at all, may be accused of a lesser crime, such as “abuse of authority.”

“Disappearance”

“Disappearances” take place when a state agent—or a person acting with official authorization, support, or acquiescence—deprives someone of liberty without providing information about the detention, or denies having that person in custody, thereby rendering ineffective all legal remedies or judicial guarantees that might otherwise have protected the victim.⁸⁵

When such abuses take place, multiple violations of international human rights standards occur, including the right to judicial protection and the right to personal liberty. Often, such cases also involve torture and the violation of the right to life. As the Inter-American Court of Human Rights has found,

The forced disappearance of human beings is a multiple and continuous violation of many rights under the [American Convention on Human Rights] that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee’s right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest. . . . Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person. . . . In addition, investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are

⁸⁵ The United Nations Declaration on the Protection of all Persons from Enforced Disappearance, approved by General Assembly resolution 47/133 of December 18, 1992, describes in more detail that “disappearances” take place when “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”

disappeared are often subjected to merciless treatment, including all types of indignities, torture, and other cruel, inhuman and degrading treatment. . . .⁸⁶

⁸⁶ Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), paras. 155 and 156.

The U.N. Declaration on the Protection of All Persons from Enforced Disappearance notes that the practice undermines “the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity. . . .”⁸⁷ The declaration further urges, “Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.”⁸⁸ Mexico’s penal code does not criminalize “disappearances,” although the CNDH has drafted a legal proposal to codify the crime.⁸⁹

In eight years of existence, the CNDH has received more than 1,100 complaints of “disappearances” that reportedly took place since 1969. In these cases, 209 people have been found alive, and ninety-eight others have been found dead. The number of reported cases surged between 1974 and 1978, when guerrilla movements in Mexico grew, and again after 1994, when guerrilla movements and drug trafficking gained momentum.⁹⁰

⁸⁷ Declaration on the Protection of All Persons from Enforced Disappearance, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992). Adopted by General Assembly resolution 47/133 of December 18, 1992.

⁸⁸ Declaration on the Protection of All Persons from Enforced Disappearance, Article 3.

⁸⁹ National Human Rights Commission, “Anteproyecto de Tipo Penal de Desaparición Forzada o Involuntaria de Personas,” no date.

⁹⁰ National Human Rights Commission, *Informe anual de actividades mayo 1997-mayo 1998* (Mexico DF: Comisión Nacional de Derechos Humanos, 1998), p. 751.

Extrajudicial Execution

Extrajudicial executions occur when a public authority arbitrarily and deliberately takes the life of a human being in circumstances other than those related to the legitimate use of force in situations such as may occur in an armed confrontation or in carrying out the death penalty.⁹¹ Executions of this type are also considered to have taken place when public officials tolerate or acquiesce to killings by nongovernmental actors. International law clearly prohibits extrajudicial executions as a violation of the right to life.⁹²

Several cases analyzed in this report include extrajudicial execution. In such cases it is common for authorities to assert that the victim committed suicide, or died in an armed confrontation. For example, in the case of Celerino Jiménez Almaraz, documented in the chapter on Oaxaca state, authorities insist that the victim died in a shoot-out, even though medical evidence suggests that he was shot at close range. In the Cárdenas Esqueda case, analyzed in the Tamaulipas chapter, authorities insisted that the victim killed himself.

Violations of Procedural Guarantees

⁹¹ Human Rights Watch opposes the use of the death penalty in any circumstances, given the inherently arbitrary nature of its application and the cruelty of the punishment. However, even given this opposition, we must conceptually distinguish the death penalty, applied after a judicial proceeding, from the taking of life without a proper judicial decision.

⁹² Article 6 of the International Covenant on Civil and Political Rights holds that "No one shall be arbitrarily deprived of his life." Article 4 of the American Convention on Human Rights establishes a similar guarantee.

Due process guarantees are essential for the proper functioning of any judicial system. International law requires that criminal suspects, whether or not they are in detention, benefit from procedural guarantees that ensure that the process is fair.⁹³ Chief among these guarantees is the right to an adequate legal defense. International law also establishes procedural guarantees related to arrest and detention and prompt access to a judge once an individual has been charged with a crime.⁹⁴

The violation of procedural guarantees also frequently takes place in Mexico in the form of illegal detentions or searches, prolonged detentions, and the falsification of evidence. The torture, “disappearance,” and extrajudicial execution cases documented in this report were often accompanied by overt or suspected violations of this nature. Violations of these guarantees facilitate torture by limiting opportunities for establishing accountability and restricting the victims’ access to safeguards, like access to a defense lawyer.

Responsibility to Ensure the Full Exercise of Human Rights and an Effective Remedy for Violations

⁹³ International Covenant on Civil and Political Rights, Article 14 and American Convention on Human Rights, Article 8.

⁹⁴ International Covenant on Civil and Political Rights, Article 9 and American Convention on Human Rights, Article 8.

The Mexican government is obliged under international law to ensure that all people under its jurisdiction are able to exercise their human rights.⁹⁵ Federal authorities, therefore, are required to take action when they learn of human rights violations. When officials deny that violations occur, as often happened in cases documented in this report, or sit back passively as violations take place, such as they did in Morelos state, as described below, they violate this obligation. Although Mexican law provides the amparo mechanism to challenge arbitrary acts by government officials and to obtain a court order for authorities to present someone who has been detained, the mechanism fails to function effectively in “disappearance” cases. The existence of a procedure is not enough to satisfy its obligations under international law; the procedure must also be effective.

In a ground-breaking legal decision, the Inter-American Court of Human Rights interpreted the American Convention on Human Rights to require governments to take affirmative action toward this end, including measures to prevent human rights violations:

This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.⁹⁶

It is not enough for authorities to pass laws protective of human rights and establish formal structures to implement them. The state can be held liable under international law for human rights violations, including “disappearances,” when judicial mechanisms are ineffective for resolving these problems. According to the court, “The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply

⁹⁵ Article 1(1) of the American Convention on Human Rights holds, “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 2(1) of the International Covenant on Civil and Political Rights contains substantially similar wording.

⁹⁶ Inter-American Court of Human Rights, Velásquez Rodríguez judgement of 1988, para. 166.

with this obligation—it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.⁹⁷ The passage of the 1991 Federal Law to Prevent and Punish Torture was important, but, by failing to implement effective policies to eradicate torture, it is insufficient by itself to bring Mexico into compliance with international human rights standards.

⁹⁷ *Ibid.*, para. 167.

Authorities must also ensure that victims of human rights violations have an effective remedy for the violation suffered.⁹⁸ Impunity for human rights violations, therefore, is not simply an added insult and injury to the victim, it is in itself a violation of human rights standards. Torture must be investigated by authorities whether or not the victim files a formal complaint. In the Rodríguez Tapia case in Baja California, described below, for example, federal authorities acted in consonance with this requirement after a man was tortured to death by federal police in Baja California state in 1997. Within months, the police officer had been investigated, indicted, and jailed.

Rehabilitation for and Compensation to Victims of Violations

International human rights law requires governments whose agents engage in serious human rights violations to compensate the victims. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, for instance, requires governments to ensure an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible; if a torture victim dies as a result of the torture he or she suffered, the victim's dependents also have a right to compensation.⁹⁹ The American Convention on Human Rights establishes the right to compensation for any person sentenced by a final judgement through a miscarriage of justice,¹⁰⁰ and the Inter-American Court of Human Rights has authority to order governments to pay damages in cases in which it determines that rights protected by the convention were violated.¹⁰¹ The court has used this authority, for instance, in cases of "disappearance."¹⁰²

⁹⁸ International Covenant on Civil and Political Rights, Article 2(3) and American Convention on Human Rights, Article 25.

⁹⁹ Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Article 14(1).

¹⁰⁰ American Convention on Human Rights, Article 10.

¹⁰¹ American Convention on Human Rights, Article 63(1).

¹⁰² *See*, for instance, Inter-American Court of Human Rights, Godínez Cruz Case,

The International Covenant on Civil and Political Rights holds that any victim of unlawful arrest or detention shall have an enforceable right to compensation.¹⁰³ However, when Mexico ratified the covenant, it issued a reservation to the article that establishes this guarantee. Asserting that Mexico's constitution and laws guarantee due process rights, the Mexican government argued that reparations would only be made in cases in which wrongful detentions resulted from a false denunciation or complaint.¹⁰⁴ Mexico's National Human Rights Commission criticized the limitation contained in the reservation. Noting that illegal detentions are the "daily bread of our country" and that they stem from so many illegitimate causes, "reparations should not be limited only to cases that come from 'falsehood in the denunciation or complaint.'"¹⁰⁵

International Standards on Police Actions and Use of Force

In addition to binding treaties that bear on the actions and use of force by police, the United Nations has developed detailed principles, minimum rules, and declarations on the subject. Taken together, both sources of standards "offer a comprehensive and detailed international legal framework for ensuring respect for human rights, freedom and dignity in the context of criminal justice," according to the United Nations' Centre for Human Rights.¹⁰⁶

There can be no doubt that arbitrary and physically abusive actions by police violate international human rights standards. As described above, the International Covenant on Civil and Political Rights and the American Convention on Human Rights prohibit the arbitrary searches, detentions, and arrests that are commonplace in Mexico, as well as torture and other mistreatment committed by police officers.

¹⁰³ International Covenant on Civil and Political Rights, Article 9(5).

¹⁰⁴ National Human Rights Commission, *Las reservas formuladas por México a instrumentos internacionales sobre derechos humanos* (Mexico City: Comisión Nacional de Derechos Humanos, 1996), p. 62.

¹⁰⁵ *Ibid.*, pp. 67-68.

¹⁰⁶ Centre for Human Rights, *Human Rights and Law Enforcement* (New York: United Nations, 1997), pp. 25-26.

At the same time, the U.N. Code of Conduct for Law Enforcement Officials expressly limits the use of force by police to situations in which it is “strictly necessary and to the extent required for the performance of their duty.”¹⁰⁷ Although the code is not binding international law, it constitutes authoritative guidance for interpreting international human rights law regarding policing.

¹⁰⁷ Code of Conduct for Law Enforcement Officials, Article 3.

Similarly, the U.N.'s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials holds, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."¹⁰⁸ Firearms may only be used in very specific circumstances, according to the principles: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury [or] to prevent the perpetration of a particularly serious crime involving grave threat to life."¹⁰⁹

Federal Responsibility for Violations by State or Local Authorities

Mexico's federal government is responsible for ensuring that all people in the country or subject to its jurisdiction can freely exercise the human rights defined by the treaties to which it is party. In federal systems of government like Mexico's, the central government cannot avoid its international human rights responsibilities by claiming an abuse was committed by a state-level authority, not a federal official; a hands-off approach to such cases would violate both hemispheric and world-wide standards.¹¹⁰ Given that one of the federal government's international human rights

¹⁰⁸ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, General Provision 4.

¹⁰⁹ Ibid., General Provision 9.

¹¹⁰ Article 28 of the American Convention on Human Rights holds, "With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention." Article 50 of the International Covenant on Civil and Political Rights reads, "The provisions of the present Covenant shall extend to all parts of the federal States without any limitations

obligations involves ensuring that human rights can be enjoyed, the government has the affirmative obligation to make sure that state police, prosecutors, and judges act in accord with the human rights principles found in international law.

In order for Mexico to fulfill its obligations under international law, the government must develop effective mechanisms for taking action on serious human rights violations committed by state- or municipal-level officials, even when no federal authority was directly involved in the commission of the abuse. Torture, “disappearance,” extrajudicial execution, and grossly abusive arbitrary detention that lead to violations of the right to life or physical integrity should be among the human rights violations subject to obligatory federal jurisdiction. Currently, only torture is covered under a federal law, but the law only gives federal officials responsibility for handling cases of torture committed by federal agents. Just as certain crimes already fall under federal jurisdiction regardless of who commits the offense or where it takes place—including drug trafficking and other organized criminal enterprises—serious human rights violations should be designated federal crimes regardless of the agent who commits them. By clarifying which authorities are responsible for resolving these human rights cases and eliminating the need for thirty-one separate state jurisdictions to make appropriate reforms as a prerequisite to resolving them, federal authorities would be in a better position to fulfill their international obligation to ensure that human rights violations are properly resolved throughout the country. Federal attention to these crimes should not come at the expense of strengthening state justice systems.

Human rights violations other than torture, “disappearance,” extrajudicial execution, and grossly abusive arbitrary detention that lead to violations of the right to life or physical integrity should also come under federal jurisdiction when a systematic or widespread practice of such violations takes place and when state governments fail to prosecute them.

V. TORTURE AND EXTRAJUDICIAL EXECUTION IN TAMAULIPAS STATE

Tamaulipas state, on the northern border with the United States, demonstrates the complexity of human rights problems in Mexico. Abuses there do not stem from the armed conflicts present in southern Mexico, yet arbitrary detention, torture, and extrajudicial execution take place. Both state and federal authorities demonstrate a lack of interest in ensuring that detainees benefit from fair judicial processes and that human rights violators are brought to justice. When questioned on the patently false information used to prosecute Juan Lorenzo Rodríguez Osuna, for instance, the state attorney general told Human Rights Watch, “I would be remiss in my duties if I didn’t prosecute him.”¹¹¹ It is a sad irony of the cases reviewed here that the victims of human rights violations were more often successfully prosecuted than the human rights violators.

The recent cases described below are not isolated. They clearly conform to a pattern documented for at least a decade by the Tamaulipas-based Center for Border Studies and Promotion of Human Rights (Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos, CEFPRODHAC) and the CNDH. To provide this context, and demonstrate that the patterns of abuse extend through multiple years, this chapter reviews nine torture cases documented by the CNDH in Tamaulipas between 1990 and 1996.

Juan Lorenzo Rodríguez Osuna

On November 28, 1996, State Judicial Police (Policía Judicial del Estado, PJE) arrested Juan Lorenzo Rodríguez Osuna in Tampico. Two days later, a state prosecutor accused him of committing a gruesome double murder that had allegedly taken place on November 13, 1996. Federal prosecutors also eventually charged him with drug trafficking. The irregularities—involving police, prosecutors, and the judge—began early and continued throughout the case. Despite this, Rodríguez Osuna was sentenced on state charges to twenty-five years in prison for murder and, in federal court, to ten years for drug trafficking. At this writing, the state murder charge has been appealed to a federal court, and the drug conviction has been overturned on appeal.

¹¹¹ Human Rights Watch interview, José Herrera Bustamante, Reynosa, Tamaulipas, November 21, 1997.

In a report filed on the day of the arrest, police said they set out in search of Rodríguez Osuna after hearing another man, Carlos Gutiérrez Zubieta, confess to being Rodríguez Osuna's accomplice in the double murder.¹¹² According to the report, police, in the company of the witness, pulled over Rodríguez Osuna, who was driving in his truck. After the detainee allegedly insulted them, the officers took him to the station. The report continues: "Once at the station and after calming down, Juan Lorenzo Rodríguez Osuna, in the presence of Carlos Gutiérrez Zubieta, admitted having killed" the homicide victims.¹¹³ According to Rodríguez Osuna, events unfolded differently. Police detained him, he maintains, then tortured and interrogated him for several hours, holding a gun to his head and repeatedly making him get in and out of the vehicle in which they held him.

Police taped an interrogation of Rodríguez Osuna that they said took place on November 28, 1996. On the tape, after the detainee repeatedly denies having committed the murder, he finally confesses. Attorney General José Herrera Bustamante told Human Rights Watch that Rodríguez Osuna's attorney was present during the interrogation,¹¹⁴ which is denied by the detainee. Even though the tape was made by police, who are not permitted to take admissible statements from detainees, the judge accepted it as evidence.

The CNDH strongly criticized the state prosecutor in the case for consenting "to the arbitrary detention carried out by the judicial police."¹¹⁵ The commission went on to criticize the fact that the prosecutor did not document the time or place of detention, nor when the police brought him to the police station—details that are fundamentally important for establishing the exact time at which the detainee came

¹¹² State Judicial Police of Tamaulipas, police report submitted by Alberto Balmori Garza, Juan José Camarillo Garza, José Carlo Enriquez Noyola, and Eusebio Rodríguez Matamoros, November 28, 1996.

¹¹³ Ibid.

¹¹⁴ Human Rights Watch interview, José Herrera Bustamante, Reynosa, Tamaulipas, November 21, 1997.

¹¹⁵ National Human Rights Commission, Recommendation 117/97, in *Gaceta* 89 (Mexico City: Comisión Nacional de Derechos Humanos, December 1997), p. 61.

into police custody and, therefore, whether or not police had time to coerce him prior to handing him over to prosecutors. Authorities assigned a law student who had finished his course work but not received his degree as Rodríguez Osuna's public defender until his family assigned a private attorney, leading the CNDH to conclude that the defense until the private attorney took over had been "inadequate."¹¹⁶

Gutiérrez Zubieta was initially charged with aiding Rodríguez Osuna, but the judge eventually changed the accusation to "covering up" the murder, arguing that he had failed to report Rodríguez Osuna's acts earlier. Gutiérrez Zubieta told the prosecutor on November 28 that Rodríguez Osuna alone shot the two victims, then borrowed a knife and carved them up, threatening Gutiérrez Zubieta that he would be killed if he fled or reported the incident. Then, in the early morning of November 30, 1996, police say that Gutiérrez Zubieta awoke and demanded to amplify his statement. According to the official version of events, Gutiérrez Zubieta, who told the prosecutor he had forgotten two important points, requested that a particular public defender represent him as he amplified his statement; a police officer was dispatched to wake and bring the public defender to the prosecutor's office. This took place even though Gutiérrez Zubieta had a private attorney.

¹¹⁶ Ibid., p. 63.

Gutiérrez Zubieta's amplified statement says that Rodríguez Osuna made him return to the scene of the crime the next day. There, Gutiérrez Zubieta claimed, Rodríguez Osuna made sure his victims were dead, mutilated them beyond recognition, and covered the bodies with branches. The declarant also added that after the murder, as the two returned to town in separate cars, Rodríguez Osuna signaled with his headlights to have him pull over. During that time, the amplified declaration states, Rodríguez Osuna carried three large bundles from the vehicle he was driving to the side of the road, although Gutiérrez Zubieta did not know what was in the bundles.¹¹⁷ Police allegedly went to the spot where Gutiérrez Zubieta said the bundles had been dropped and found that they contained marijuana. It is this amplified statement that served as the only basis for the federal drug charge against Rodríguez Osuna. The statement also served to provide the state appeals judge who confirmed the murder sentence, Félix Fernando García Ortegón, with the only explanation of motive for the murder.¹¹⁸

¹¹⁷ Amplification of declaration made by Carlos Alfonso Gutiérrez Zubieta, November 30, 1996.

¹¹⁸ According to the judge, "The motive that moved him to commit the crime was the fact that he wanted to take possession of the shipment of drugs that the deceased (José Gerardo Eraña) carried hidden in a double bed of his vehicle." Supreme Court of Justice of the State of Tamaulipas, sentence in criminal case 377/97, March 19, 1998, p. 38. Translation by Human Rights Watch.

Less than twenty-four hours after allegedly amplifying his statement on November 30, 1996, Gutiérrez Zubieta refused before a state judge to reconfirm it. Before a federal prosecutor on December 3, he again denied amplifying the statement. The case file that summarizes the proceedings from the point of view of the prosecutor's office notes that Gutiérrez Zubieta "did not want to sign, and Commander Yáñez told him that he was going to kill his family. [Gutiérrez Zubieta] commented that he wasn't going to sign if he didn't have his lawyer, so a guy who looked like a lawyer was called, but the declarant said that he was not his lawyer and that he did not know who that person was."¹¹⁹ According to the prosecutor's summary, he finally signed the document under pressure. The statement was used in the murder case against Rodríguez Osuna.

Like the prosecutor, the state judge hearing the murder case was unconcerned about the serious allegations made by Rodríguez Osuna about his arrest and treatment and by Gutiérrez Zubieta's retraction of the amplified statement. In fact, the judge, Laura Andrea Gallegos Núñez, went out of her way to exclude evidence that favored Rodríguez Osuna. The autopsy of the two alleged murder victims suggests that Rodríguez Osuna could not have murdered the victims in the way described and that the bodies had been moved to the spot where they had been found. It also gives reason to believe that the bodies may not belong to the two people identified as the murder victims. She rejected these findings by saying the autopsy lacked credibility, but she did cite the autopsy when information could be used against Rodríguez Osuna. The bodies were quickly cremated, so no further examination of the victims could take place.

In reviewing the case file, Human Rights Watch also found three documents supposedly issued by the judge that were, in fact, issued on the prosecutor's stationery. Further, the judge showed a clear lack of concern for the procedural problems that had taken place in the case during the detention and prosecutor's investigations. She argued, for instance, that the tape of the interrogation submitted as evidence many months after the detention should be accepted as evidence because Rodríguez Osuna had recognized that it was his voice on the tape and that "the declarant did not question in any way the motive for his making the statement as he did." She contradicted herself shortly thereafter, however, when she noted that he "illogically [affirmed] that he had been threatened, with a pistol to his head, but

¹¹⁹ Ministerial Declaration made by Carlos Alfonso Gutiérrez Z., December 3, 1996.

from the content of the tape, it is not evident that any such threat existed.”¹²⁰ The judge also accepted Gutiérrez Zubieta’s amplification without questioning why he refused to ratify it.

The federal judge who heard the drug case, José Elías Gallegos Benítez, appears to have used all possible room for discretion in condemning Rodríguez Osuna to ten years’ imprisonment. There was no physical evidence linking the accused man to the marijuana; only Gutiérrez Zubieta’s retracted statement linked Rodríguez Osuna to the drugs. As he did in state court, Gutiérrez Zubieta denied making the statement again in federal court. In a May 27, 1997 federal proceeding in which Gutiérrez Zubieta and Rodríguez Osuna faced each other, the following exchange took place:

Rodríguez Osuna: “Why are you blaming me for this crime?”

Gutiérrez Zubieta: “I was threatened into signing the declaration.”

Rodríguez Osuna: “Who threatened you into signing the declaration against me?”

¹²⁰ State Criminal Court of the Seventeenth Judicial District, sentence in criminal case 363/96, September 30, 1996, p. 23. Translation by Human Rights Watch.

Gutiérrez Zubieta: “Commander Yáñez was the one who threatened me, putting a pistol to me. When I declined to sign it, he threatened my family. For those reasons I acceded to signing the declaration.”¹²¹

The judge, however, cited the principle of procedural immediacy to accept the retracted amplified statement made by Gutiérrez Zubieta, arguing that supporting evidence existed.¹²² In fact, of the seven pieces of “corroborating” fact, two were restatements of the charges and the rest were mere conjecture, such as the fact that the prosecutor had indeed found the marijuana and that the truck in which it was allegedly transported by Rodríguez Osuna was found to have a double bed.¹²³ With respect to the retraction, the judge argued, “It cannot be taken into consideration and is ineffective for stripping the validity from the first declaration [the amplification], given that there is insufficient evidence to support the veracity of his word, and, given the principle of procedural immediacy, the first statement made by the declarant should prevail.”¹²⁴ The judge also cited precedent on “ineffective retractions” that itself cited the principle of procedural immediacy.¹²⁵

¹²¹ Transcript of court session, May 27, 1997.

¹²² Tenth Federal Judicial District in Tamaulipas, sentence in criminal case 1/97, November 13, 1997, pp. 69-71.

¹²³ *Ibid.*, p. 70.

¹²⁴ *Ibid.*, p. 71. Translation by Human Rights Watch.

¹²⁵ *Ibid.*, p. 72.

Even though the judge cited other evidence that he said allowed him to favor the amplification of the declaration over the retraction, doing so also conveniently allowed him to avoid examining alleged human rights violations. Indeed, rather than question the way in which Gutiérrez Zubieta gave his alleged amplification, the judge found, “What Carlos Alfonso Gutiérrez Zubieta said turns out to be inexact, with respect to the fact that he was not assisted by his lawyers”¹²⁶ Rather, the judge argued, he had been aided by the law student who testified that Gutiérrez Zubieta had solicited his services. The case file makes no reference to any investigation of the circumstances under which the amplification was made.

Initially sentenced to ten years for possession of marijuana, the conviction was thrown out on appeal, essentially because Gutiérrez Zubieta’s alleged amplified declaration did not indicate that he actually saw Rodríguez Osuna with the marijuana.¹²⁷ The appellate judge did not raise questions about any of the procedural problems encountered in the process. The Office of the Federal Attorney General informed Human Rights Watch that the federal prosecutor who indicted Rodríguez Osuna on drug charges had been punished for doing so, although the office did not specify the type of punishment he received.¹²⁸ It is encouraging that, on appeal, the federal drug conviction was thrown out. Nonetheless, the prosecutor and trial-level judge accepted evidence that strongly suggested that it had been fabricated and the declarant tortured, and the judge cited legal precedent to avoid showing concern. Given that such problems are part of a pattern, not an anomaly, authorities cannot justify tolerating poor judicial processes on the grounds that the appeals process may correct them. The responsibility of the government to ensure that human rights standards are met during criminal investigations starts when the detainee enters custody and continues throughout the process.

José Alfredo Ponce Reyes

Believing José Alfredo Ponce Reyes to be the man responsible for stealing a six-pack of beer from a Reynosa city convenience store, public security police

¹²⁶ Ibid. Translation by Human Rights Watch.

¹²⁷ First Unified Federal Court of the Nineteenth District in Tamaulipas, sentence in criminal matter 185/97-1-B, June 19, 1998, pp. 86-87.

¹²⁸ Human Rights Watch interview, Eduardo López Figueroa, director, Internal Affairs, Office of the Federal Attorney General, Mexico City, June 12, 1998.

approached him as he sat in his truck on September 5, 1997. When Ponce Reyes tried to flee, the police opened fire and gravely wounded the man, who was brain-damaged in the incident. According to police, Ponce Reyes's vehicle struck an officer, and they fired their weapons in the air in an attempt to get him to stop. Evidence exists to suggest that the police opened fire needlessly and recklessly, including testimony from an eyewitness who has said that no police officer was hit by Ponce Reyes's truck. After the shooting, police abandoned the victim and fled the scene, later giving contradictory statements to investigators about the way in which they fired their weapons.

Regardless of the circumstances of the shooting, the government failed to respond correctly to the incident. A proper investigation would probably have clarified any doubts about whether police acted appropriately or recklessly and should have led to their punishment, at a minimum, for having abandoned the victim. The investigation was marred by problems. For instance, the prosecutor failed to take testimony from the only eyewitness before concluding his investigation and submitting the case to a judge; the testimony was taken after the case was filed.

Police said they were searching for a man in a similar truck who had just stolen a six-pack of beer from a nearby Seven Eleven. They found no beer in the truck and did not encounter the knife used by the assailant. Ponce Reyes's truck had Wisconsin license plates, from the United States, similar in appearance to the Texas plates the Seven Eleven clerk had noted were on the get-away vehicle. The officers initially told investigating judicial police officers that they shot at the truck's tires.¹²⁹ In later statements, however, four of the five municipal police officers told prosecutors that they only fired warning shots into the air.¹³⁰ When the prosecutor indicted the officers, he made reference to the police report that said the officers shot at the truck's tires, but he never sought to clarify the contradiction. The fifth officer—from the passenger seat of the police car that blocked Ponce Reyes in front—claimed that his Uzi fired accidentally when he was knocked to the ground by a fleeing Ponce Reyes.¹³¹ "I had the Uzi in my hand, and since the chamber was full, it fired," officer José Eduardo Ramírez González, who was in the passenger seat, told the prosecutor. "I didn't fire my weapon at that person or his vehicle."

An eyewitness explained to Human Rights Watch that Ramírez González's version of events was not correct, asserting that the officer had not left his patrol car

¹²⁹ Police report filed by the Delta Group, September 5, 1997.

¹³⁰ Statement by the accused Juan Eduardo Garza Betancourth, September 5, 1997; statement by the accused Efrén Federico Alonso Méndez, September 5, 1997; statement by the accused Marcial Donato Díaz, September 5, 1997; and statement by the accused Rito Martínez Zúñiga, September 5, 1997.

¹³¹ Statement by the accused José Eduardo Ramírez González, September 5, 1997.

and that he had not been struck by Ponce Reyes's vehicle. "Only one [police officer] got out of the car," the witness said. "The copilot absolutely did not get out of the car," the witness said, "and José did not hit anyone when he took off."¹³²

¹³² Human Rights Watch interview, witness, Reynosa, November 21, 1997.

The prosecutor indicted the five officers the day after the incident, charging them with “abuse of authority” and “causing wounds.”¹³³ Despite the fact that state judicial police investigations immediately turned up the name of the same eyewitness interviewed by Human Rights Watch,¹³⁴ the prosecutor did not take her statement until more than a month after the incident—long after he formulated his charges.¹³⁵ Although the case file indicates that the prosecutor had asked police to notify the witness that her statement was wanted, the witness only gave her statement after a sister of the wounded man sought out the prosecutor in mid-October.¹³⁶ This witness’s testimony would have had direct bearing on the version of events given by police. Her testimony directly contradicted the officers’ statements that one of them had been hit by Ponce Reyes’s car. Similarly, officials failed to take testimony from other witnesses to the aftermath, such as family members. “Not once did the police or prosecutor take my statement,” the victim’s mother told Human Rights Watch.¹³⁷

The physical evidence seemed to contradict the police officers’ statements; Human Rights Watch examined Ponce Reyes’s truck, for instance, finding what looked like eleven holes made by what appeared to be bullets of three different calibers. Although Human Rights Watch could not determine with precision the details of the bullet holes, the Human Rights Commission of Tamaulipas State noted in a report on the case that the bullet holes came from more than one weapon.¹³⁸

¹³³ File 892/97, document 1951, September 6, 1997.

¹³⁴ Police report, September 5, 1997.

¹³⁵ Human Rights Watch interview, witness, Reynosa, November 21, 1997.

¹³⁶ *Ibid.*

¹³⁷ Human Rights Watch interview, María Elena Reyes de Ponce, Reynosa, November 21, 1997.

¹³⁸ Tamaulipas State Human Rights Commission, Recommendation 34/98, April 6, 1998, p. 20. The commission wrote that “the bullets found in José Alfredo Ponce Reyes’s truck were fired by the weapons in possession of the Preventive Police agents.”

On September 8, a judge ruled that the police should be released on bail, since the crimes they were accused of committing were “not serious” according to the state penal code, even though the victim’s life was in danger. The following day, the judge decided to move forward with the prosecutor’s charge of causing wounds but ruled that there were no grounds that the officers had abused their authority. He argued: “There is no indication that the indicated preventive [police] agents went overboard in the exercise of their functions.”¹³⁹ The judge accepted the argument that the Uzi accidentally fired when an officer was knocked to the ground and that the other officers shot only into the air. The officers were released on bail that was, according to the victim’s father, paid by the municipal government.¹⁴⁰

When he indicted the officers, the state-level prosecutor noted that a federal crime may also have been committed by some of them. Two of the weapons used by the officers—a .45 automatic and the Uzi—appeared to be for the “exclusive use of the army,” as established by the Federal Law of Firearms and Explosives.¹⁴¹ He resolved to bring his finding to the attention of the federal prosecutors,¹⁴² then turned over a certified copy of the file to his federal counterpart. The federal prosecutor never filed weapons charges, according to the Center for Border Studies and Promotion of Human Rights.¹⁴³

In this case, police used excessive force to stop a fleeing suspect. As the United Nations Basic Principles on the Use of Force and Firearms by Law

¹³⁹ Second State Criminal Court of the Sixth District of Tamaulipas, resolution of judicial situation, criminal case 314/997, September 9, 1997.

¹⁴⁰ Letter from Heriberto Ponce to Dante Schiaffini Barranco of the National Human Rights Commission, May 27, 1998.

¹⁴¹ Article 11(d) of this law holds, “Arms, munitions and materials for the exclusive use of the army, navy and air force are the following: automatic pistols, carbines and rifles, submachine guns, and [machine guns] of all calibres.” Translation by Human Rights Watch.

¹⁴² Office of the State Attorney General of Tamaulipas, indictment, September 6, 1997.

¹⁴³ Human Rights Watch telephone interview, Arturo Solís, president, Center for Border Studies and the Promotion of Human Rights, July 8, 1998.

Enforcement Officials maintains, police officers shall not use their firearms unless they do so against the imminent threat of death or serious injury. Even if Ponce Reyes had initially posed a threat to one of the police officers, firing at the fleeing suspect after he had passed the officer would have been excessive. The police officers then abandoned Ponce Reyes when they thought he was dead. Their version of events—that they shot into the air or, in one case, fired accidentally—does not coincide with that of an eyewitness or with their initial statement to investigating police. In addition, the witness contradicts the police version indicating that the Uzi fired after the officer holding it was knocked to the ground by Ponce Reyes's truck. Further, the variety of bullet holes in the truck indicates that at least two separate weapons were fired at the vehicle, which makes it impossible for the accidental firing theory to be correct.

A prosecutor took testimony from a key eyewitness long after the case was submitted to the judge and never took statements from family members who were on the scene shortly after the incident. Though he did have indications that the police had given two versions of their targets upon firing, he never followed up on this key contradiction. When he indicted the officers, he did so for minor charges, failing, for instance, to charge them with attempted murder. His failure to make even a mild case for “abuse of authority” led a judge to throw out the charge.

To his credit, the prosecutor did turn the file over to the federal prosecutors to investigate the possible arms law violation, but federal prosecutors never followed up on the issue.

Erick Cárdenas Esqueda

Municipal police in Nuevo Laredo detained Erick Cárdenas Esqueda, a teenager, on January 4, 1997, allegedly for participating in a street fight. Two hours later, he was found dead in his cell. Police maintain that he hanged himself, but physical evidence suggests he was tortured and then murdered. Authorities have failed to investigate the incident properly.

When discovered in the jail cell, Cárdenas Esqueda's body rested as if sitting on a cement bench, head tilted forward. A shirt, tied around his neck, extended to the bars of the window above. Police asserted that the bruises on Cárdenas's face resulted from the street fight that allegedly motivated his arrest. Cárdenas's body, however, also showed wounds that would have been impossible to receive in a fight but would have been consistent with torture: according to the state medical examiner's report, Cárdenas's testicles had been skinned.¹⁴⁴ Family members and witnesses said that the victim showed no bruises prior to his detention. “On the night that it took place, he had a problem with some neighbors. He came home afterward,

¹⁴⁴ Medical report, January 5, 1997.

but I clearly saw that he had not been beaten in the face. There was no blood,” Patricia Esqueda, Cárdenas’s mother, related to Human Rights Watch.¹⁴⁵ This was because the fight was broken up by neighbors before it came to blows, she said. Her testimony was consistent with that of witnesses to the detention.¹⁴⁶

Evidence of murder also exists. According to photographs of Cárdenas taken after he died and reviewed by Human Rights Watch, his back showed two vertical indentations as if he were pulled back with extreme force into the bars of his cell. The marks could not have come from when he allegedly hanged himself, because the bars on which the shirt was tied were above, not behind, him.

¹⁴⁵ Human Rights Watch interview, Patricia Esqueda de Cárdenas, Nuevo Laredo, November 20, 1997.

¹⁴⁶ Center for Border Studies and Promotion of Human Rights, “Caso Erick,” Acta No. 03-97, Enero 1997.

There have been several irregularities in the case. Police detained Cárdenas without a warrant. At the time of arrest, there was no disturbance, according to witnesses interviewed by the Center for Border Studies and the Promotion of Human Rights, so there could not have been an “in flagrante” excuse for picking him up. Further, if Cárdenas had been badly beaten prior to detention, and had skinned testicles, police should have taken him to a hospital or provided medical attention at the station, which they did not do. Not until nine hours after the alleged suicide did authorities notify Cárdenas’s mother. Almost a year later, investigators had still not taken official testimony from the mother, even though she saw her son just before his arrest and subsequent death.¹⁴⁷

The National Human Rights Commission in Tamaulipas

The CNDH has issued at least ten recommendations involving torture in Tamaulipas from as early as the commission began to function in 1990. As explained above, Human Rights Watch reviews these cases here in order demonstrate that the abuses they feature are neither new nor isolated. Indeed, a review of CNDH torture cases from Tamaulipas, in the years 1990 to 1996, clearly shows how the system constructed to protect human rights and investigate and punish violations breaks down consistently at the three fundamental stages: police, prosecutors, and courts.

Police and torture

The most egregious abuses in the state occur at the police level in a predictable pattern. Almost without fail, in cases in which Federal Judicial Police were involved, the detainees were illegally held and tortured prior to being turned over to prosecutors. Common to almost every case is prosecutors’ lack of initiative to follow up on torture allegations or medical exams that describe torture. In some cases, prosecutors simply fail to investigate torture, or they charge police with lesser crimes, such as “abuse of authority.” In other instances, even if the human rights violator is indicted, authorities do not follow up on arrest warrants.

¹⁴⁷ Human Rights Watch interview, Patricia Esqueda de Cárdenas.

Each of these problems was clearly displayed in the case of Moisés Córdoba Sánchez, a sixteen-year-old who was tortured to death in a Tamaulipas prison on May 13, 1994. Prison guards bound, gagged, and stripped him, then forced him to dance naked. His tormentors raped him with a nightstick, then beat him with broom handles, apparently killing him. Afterward, in an informal punishment room, they applied electrical current to his body to make it appear he had been electrocuted. Prison officials alleged that the inmate had committed suicide by biting exposed wires in the punishment room, a finding supported by a deficient medical exam by the doctor who initially examined the body. However, an examination of the body conducted by the CNDH, after an exhumation, showed that it would have been difficult for the inmate to have killed himself by biting the wire.¹⁴⁸ Rather, the CNDH concluded, the evidence led to the “well-founded presumption” that the victim was dead when brought to the punishment room and that the guards tried to make his death look like a suicide. Prison authorities were indicted for abuse of authority, battery, and making false statements, but not for torture or murder.¹⁴⁹ According to the Center for Border Studies and Promotion of Human Rights, the responsible parties remained free as late as August 1997.¹⁵⁰

Torture also takes place after arbitrary or prolonged detentions, when authorities detain a suspect without a warrant or other valid justification or when they hold a detainee in excess of legally allowable limits. In the CNDH cases analyzed here, police detentions ranging from four days to a week were standard practice. On November 19, 1990, for instance, Federal Judicial Police officers detained Martín Arroyo Luna and José Brito Navarro for possession of illegal arms and other alleged crimes.¹⁵¹ The detention itself did not violate the law, since the detainees were caught in flagrante. However, police proceeded to hold them far beyond the allowed time before turning them over to prosecutors, and tortured them in the meantime. Three days after their arrest, the victims confessed before the regional PJF commander under duress.¹⁵² The case file contains multiple records of medical exams confirming that they had been tortured.¹⁵³ According to the CNDH,

¹⁴⁸ National Human Rights Commission, Recommendation 24/95, in *Gaceta 55* (Mexico City: Comisión Nacional de Derechos Humanos, February 1995), p. 177.

¹⁴⁹ National Human Rights Commission, *Informe anual de actividades mayo 1994-mayo 1995* (Mexico City: Comisión Nacional de Derechos Humanos, 1995), p. 115.

¹⁵⁰ Center for Border Studies and Promotion of Human, *Casos presentados al relator de la ONU en su visita a México*, August 1997, p. 9. Human Rights Watch did not obtain more recent data on the whereabouts of the perpetrators.

¹⁵¹ National Human Rights Commission, Recommendation 73/91, August 23, 1991 (original version), p. 2

¹⁵² *Ibid.*, p. 4

¹⁵³ *Ibid.*

eleven officials were eventually fired, but none appeared to have been prosecuted.¹⁵⁴

¹⁵⁴ National Human Rights Commission, *Tercer informe semestral junio-diciembre de 1991* (Mexico City: Comisión Nacional de Derechos Humanos, 1991), p. 81. In this report, the commission noted that the recommendation had been completely fulfilled. The officers who were fired were not included in the report's list of state agents who had been prosecuted. Subsequent commission reports simply list the recommendation as fulfilled, without updating the 1991 commission report with respect to this case.

On June 12, 1996, when inmates at the Reynosa Social Rehabilitation Center escaped, prison guards captured and tortured two men, Armando Santos Orozco and Walter Ricardo Kavieses Soto. They appear to have executed a third man, Cecilio Hernández Herrera, whose death they tried to make seem like a suicide. According to testimony of one of the escaped prisoners, Hernández Herrera had shot and wounded a prison guard while escaping.¹⁵⁵ The CNDH found that prison officials' assertion that the man had killed himself was not probable, given that the bullet that killed him entered from the left side of his head but the gun was found near his right hand.¹⁵⁶ The CNDH also decried the prosecutor's failure to investigate the case properly.¹⁵⁷ None of the cases had been properly investigated by the time the CNDH issued its latest annual report, and no action appeared to have been taken with respect to the prosecutor who performed negligently in the false suicide incident.¹⁵⁸

Medical exams

¹⁵⁵ National Human Rights Commission, Recommendation 105/96, in *Gaceta* 76 (Mexico City: Comisión Nacional de Derechos Humanos, November 1996), p. 140.

¹⁵⁶ *Ibid.*, p. 145.

¹⁵⁷ *Ibid.*

¹⁵⁸ National Human Rights Commission, *Informe anual de actividades mayo 1996-mayo 1997* (Mexico City: Comisión Nacional de Derechos Humanos, 1997), pp. 186-87.

In several cases, the CNDH condemns medical reports in Tamaulipas as blatantly contradictory and incomplete. Lucas Mota Gallegos, Angel Rodríguez Aldaba, Rodrigo García Nino, and Ernesto Gallegos Hernández were arrested by the PJJ on January 12, 1991, for drug possession and detained for two days during which time they signed confessions.¹⁵⁹ Medical reports about the detainees' condition contained "obvious contradictions."¹⁶⁰ In one exam, the doctors concluded that there appeared to be "no recent external injuries on any of the detainees." Another doctor, however, had reported just three days earlier that Lucas Mota Gallegos had a two-day-old head wound. According to the CNDH, a further exam was "conclusive in indicating that the wounds [received during torture] were inflicted with the aim of causing physical damage."¹⁶¹ Arrest warrants were issued against three of the officers, who were detained. The CNDH never published follow-up information indicating what happened to the officers accused of torture. The torture victims were found guilty of drug-related crimes and sentenced in January 1992. One of the victims was also sentenced on a weapons charge.¹⁶²

Prosecutors' reluctance to use medical exams clearly stymies their progress on torture cases, as happened in the Arroyo Luna and Brito Navarro case, described above. Equally obstructive is the simple lack of medical documentation of torture. For instance, in Recommendation 4/94, the CNDH found that PJJ agents had illegally detained and tortured Manuel Equihua Cervantes and Fidel Martínez Flores in Reynosa city in September 1989. Medical examiners failed to note the bruises that resulted, however, so the PGR decided not to press torture charges against the officers.¹⁶³ According to the CNDH, the PGR reported in August 1994 that no

¹⁵⁹ National Human Rights Commission, Recommendation 91/92, May 11, 1992 (original version), p. 82

¹⁶⁰ *Ibid.*, p. 88

¹⁶¹ *Ibid.*, p. 89

¹⁶² *Ibid.*, p. 88.

¹⁶³ National Human Rights Commission, Recommendation 4/94, *Gaceta* 45 (Mexico City: Comisión Nacional de Derechos Humanos, April 1994), p. 48.

action would be taken against the officials implicated in torture because, “Even if the victim, Manuel Equihua Cervantes, had bruises at the moment he made his preparatory declaration before the judge who tried him, they were never documented by medical examiners.”¹⁶⁴ Given the lack of documentation, the PGR asserted that it would not file charges against the officers believed responsible. The other abuses could not be investigated because of the statute of limitations.

Prosecutors and torture

¹⁶⁴ National Human Rights Commission, *Informe anual de actividades mayo 1994-mayo 1995*, p. 447.

Prosecutors have two important roles to play in ending torture. First, they must consistently question evidence that may have been received through torture. In order to do so, they must also guard against the commission of procedural irregularities such as arbitrary detentions, which often precede torture. Second, they must fully investigate and prosecute allegations of torture, ensuring that lesser charges are not substituted for torture. In the Córdoba case, described above, in which prison guards raped and killed a sixteen-year-old boy, the prosecutor failed to charge prison officials with torture or homicide, for instance. The same can be seen in other CNDH cases, such as the detention and torture of Martín Moreno Espinoza in Reynosa on April 8, 1993. Moreno Espinoza slipped into a coma and died in August 1993, but despite medical reports showing that he had been tortured, and witness testimony corroborating the torture, the prosecutor merely opened a “battery” investigation into the municipal Preventive Police who had detained him.¹⁶⁵ However, the officers were not even indicted on the lesser charge.¹⁶⁶ After the CNDH issued its recommendation, fourteen municipal Preventive Police in Reynosa were indicted for torture. The prosecutor was eventually suspended for fifteen days without pay for unduly dragging his feet in the investigation.¹⁶⁷ In addition, three of the officers were punished administratively with thirty-day suspensions without pay.¹⁶⁸ However, a judge never accepted the evidence of torture, so arrest warrants were never issued.¹⁶⁹

¹⁶⁵ National Human Rights Commission, 137/95, in *Gaceta* 64 (Comisión Nacional de Derechos Humanos, November 1995), pp. 233-35.

¹⁶⁶ National Human Rights Commission, *Informe anual de actividades mayo 1995-mayo 1996* (Mexico City: Comisión Nacional de Derechos Humanos, 1996), p. 106.

¹⁶⁷ National Human Rights Commission, *Informe anual de actividades mayo 1996-mayo 1997*, p. 542.

¹⁶⁸ National Human Rights Commission, *Informe anual de actividades mayo 1995-mayo 1996*, p. 108.

¹⁶⁹ National Human Rights Commission, *Informe anual de actividades mayo 1996-mayo 1997*, p. 542.

Additional cases documented by the CNDH

In addition to the CNDH cases from Tamaulipas documented above, the commission has investigated the following torture cases in the state since 1990:

- In Recommendation 1/92, the CNDH found that PJF officers held Salvador Valero Saucedo, Santos Valero Saucedo, Reynaldo Estrada Montes, Perfecto Mireles Guzmán, and Juan Piña Ochoa in Reynosa for four days longer than permitted by law before turning them over to prosecutors. Arrested on April 25, 1990, they were accused of drug-related crimes. During the detention, they were repeatedly beaten and forced to sign confessions, and they were indicted.¹⁷⁰ The CNDH did not provide follow-up information on the beatings but did report—without elaboration—that the recommendation that the officers be investigated for the prolonged detention had been completely fulfilled.¹⁷¹ As described above, the fact that the recommendation was considered “completely fulfilled” does not necessarily mean that the perpetrators were ever brought to justice.
- In November 1991, the commission issued Recommendation 105/91, regarding the incommunicado detention and torture of Eloy Izazaga Acosta by Federal Judicial Police agents. Izazaga was forced to sign a false declaration admitting to transporting drugs. In fact, the doctor who practiced a medical exam on the detainee when he entered prison found that there was a well-founded possibility that he had been tortured.¹⁷² Federal prosecutors eventually requested four arrest warrants for officials believed responsible. Of those requests, two were denied by the court and one was thrown out because of a procedural error committed by the prosecutor.¹⁷³ As of 1994, the most recent information on the case provided by the CNDH, the remaining warrant had been issued but not served.¹⁷⁴

¹⁷⁰ National Human Rights Commission, Recommendation 1/92, in *Gaceta* 19 (Mexico City: Comisión Nacional de Derechos Humanos, February 1992), pp. 23- 24.

¹⁷¹ National Human Rights Commission, *Informe anual de actividades mayo 1992-mayo 1993* (Mexico City: Comisión Nacional de Derechos Humanos, 1993), p. 193.

¹⁷² National Human Rights Commission, Recommendation 105/91, November 4, 1991 (original version).

¹⁷³ National Human Rights Commission, *Informe anual de actividades mayo 1992-mayo 1993*, p. 183.

¹⁷⁴ National Human Rights Commission, *Informe anual de actividades mayo 1993-mayo 1994* (Mexico City: Comisión Nacional de Derechos Humanos, 1994), p. 514.

- In March 1994, the CNDH issued Recommendation 40/94, which found that PJF agents had illegally detained Trinidad Díaz García in July 1989, entering his home without a warrant and arresting and torturing him. The prosecutor held the victim in detention for too long before turning him over to a judge, failed to investigate the PJF abuses, and did not take judicial note of the victim's bruises. The medical examiner similarly failed to take note of the signs of torture.¹⁷⁵ The PGR decided to take no action against the officials, arguing that the statute of limitations prohibited them from doing so.¹⁷⁶

¹⁷⁵ National Human Rights Commission, Recommendation 40/94, in *Gaceta* 45 (Mexico City: Comisión Nacional de Derechos Humanos, April 1994), p. 369.

¹⁷⁶ National Human Rights Commission, *Informe anual de actividades mayo 1996-mayo 1997*, p. 312.

VI. TORTURE AND EXTRAJUDICIAL EXECUTION IN OAXACA STATE

Located in the south of Mexico, Oaxaca is one of the country's poorest and most topographically and ethnically diverse states. Together with Guerrero, it is one of two states where EPR guerrillas have been most active and where authorities have reacted most harshly to suspected members of the group. The Loxicha region of Oaxaca became the focal point for the government's search for EPR members after Fidel Martínez, a former treasurer of San Agustín Loxicha, was killed in an EPR attack on a naval base on August 28, 1996. On that same day, the EPR attacked several targets throughout Mexico.

Unlike the EZLN in Chiapas, the EPR has conducted periodic armed attacks against government targets since its first armed appearance. In response, the government appears to have developed a strategy designed to obtain information from sources at all costs, while weakening the political or peasant-based organizations that authorities believe are linked to the guerrilla movement. In the cases documented below, torture and false confessions were used to implicate people as members of the guerrilla group. For the most part, neither prosecutors nor judges expressed concern about the abusive manner in which suspects came into custody or the torture suffered by detainees. In fact, the procedures used by prosecutors ranged from the highly questionable to the deeply disturbing. In several torture cases documented by the Mexico City-based Christian Action to Abolish Torture (Acción de los Cristianos para Abolir la Tortura, ACAT), prosecutors took no action on their own to investigate, despite medical records showing that the detainees had been tortured.

On September 25, soldiers and state and federal police carried out raids leading to the arrest of eleven people from San Agustín Loxicha, including the mayor and much of the town council. Over the following months, joint police-military operations netted further detainees. According to a group of Mexican NGOs and a defense lawyer handling Oaxaca cases, officials arbitrarily detained 127 people—torturing one hundred of them—and carried out thirty-two illegal searches and five executions.¹⁷⁷ In researching this report, our fieldwork focused on four representative torture and false-prosecution cases and an extrajudicial execution. The picture that emerges is one of uncontrolled abuse of force in the

¹⁷⁷ Acción de los Cristianos para la Abolición de la Tortura, Brigadas pro-Derechos Humanos Observadores por la Paz, Centro de Derechos Humanos "Fr. Francisco de Vitoria," Liga Mexicana por la Defensa de los Derechos Humanos, Unión de Pueblos contra la Represión en la Región Loxicha, Abogado Defensor Israel Ochoa Lara, and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, "Informe sobre hechos de tortura y otros tratos crueles, inhumanos o degradantes ocurridos en la región de Los Loxicha y otros lugares del Estado de Oaxaca," August 1997.

name of fighting the EPR, combined with a lack of concern on the part of officials throughout the justice system.

The abuses documented in the context of anti-EPR counterinsurgency are not the only human rights abuses that take place in Oaxaca. For this reason, we supplement our fieldwork with eight torture cases handled by the CNDH between 1990 and 1996, concluding that the problems identified in the EPR-related cases investigated by Human Rights Watch are neither new nor unique.

The Loxicha Region: Abuses in the Search for EPR Suspects Illegal detention, forced confession, and torture

One of several sweeps through the Loxichas region occurred on November 7, 1996, three months after coordinated EPR attacks took place in several Mexican states. Nineteen people were arrested. Illegal arrests were followed by torture and prosecution. After his eventual release, one of the victims, Amadeo Valencia Juárez, explained to Human Rights Watch the circumstances of his detention and the torture to which he was subjected:

At 5:00 a.m. on November 7 I heard footsteps outside, then banging on my door. Men dressed in black uniforms broke in and starting asking, "where are your guns." Then they searched the house. They took me to the municipal government building, where they made me kneel on the ground with my hands behind my head; the army was there, along with state and federal judicial police. At around 6:00 a.m., they took nine of us to the San Martín Ranch. They threatened to kill me, but left me and several others on the truck while they beat the ones they took off the truck. At around 5:00 p.m. they took all of us to Crucesita, where they kept us in a small, dark room for two days without giving us any food or water. We used bags and empty bottles if we had to go to the bathroom.

They kept asking me to incriminate other people as members of the EPR and to sign blank sheets of paper. I refused. It was there that they started to beat me. They stripped me and attached electrodes to my testicles. "You're a member of the armed group," they said. "I'll let you go if you accuse your *compañeros*." On November 8, they tortured me again, promising to let me go if I signed blank sheets of paper, but this time they threatened to kill my family if I didn't. So, I signed the blank pages. But they didn't let me go. I spent nine months in Ixtotel prison in Oaxaca, then five months in Almoloya in Mexico state.¹⁷⁸

¹⁷⁸ Human Rights Watch interview, Amadeo Valencia Juárez, January 28, 1998,

Similarly, Gerardo Ramírez Hernández told Human Rights Watch that his captors repeatedly ordered him to accuse other detainees, then forced him to sign blank sheets of paper.¹⁷⁹

Questionable or illegally obtained statements were then used by prosecutors in building their case. For instance, court documents confirm that a prosecutor used the statements of three detainees who accused another man of direct EPR participation, even though the detainees's declarations were made in Spanish, a language they do not speak; none of the three had a translator.¹⁸⁰ Prosecutors also used hearsay testimony against Prisciliano Enríquez Luna: one of the detainees testified that he had been told that Enríquez Luna was a member of the EPR; based on that evidence and his own forced declaration, Enríquez Luna spent a year in jail.¹⁸¹

The prosecutor in these cases alleged that the detainees had been arrested while at his office. He said he had issued the arrest warrants himself, without going to a judge, according to a lawyer for several of the detainees.¹⁸² Using “urgency” provisions in the criminal code, the prosecutor argued—contradictorily—that the suspects had voluntarily gone to the prosecutors' office but that they would flee if he did not arrest them then and there. Without wasting time considering the detainees' mutually reinforcing allegations of the mass arrest and subsequent torture, the judge accepted the prosecutor's story. The judge did so despite evidence that the prosecutor had falsely accused at least some of the detainees, bringing into question the prosecutor's actions in the case. In other cases, the judge accepted retracted confessions on the grounds that the detainees had failed to prove that they were retracting their statements because of physical and psychological threats.¹⁸³

Oaxaca, Oaxaca.

¹⁷⁹ Human Rights Watch interview, Gerardo Ramírez Hernández, January 28, 1998, Oaxaca, Oaxaca.

¹⁸⁰ Sentence in criminal case 316/97-II, December 5, 1997, p. 111.

¹⁸¹ *Ibid.*, p. 113.

¹⁸² Human Rights Watch interview, Israel Ochoa, January 28, 1998, Oaxaca, Oaxaca.

¹⁸³ *Ibid.*, p. 104.

After winning an appeal, six of the November 7, 1996, detainees were released a year later, a positive development given the procedures used against them. The judge threw out statements falsely attributed to the men who did not speak Spanish, because they did not have a translator.¹⁸⁴ He made no comment, however, regarding what kind of procedure could have been used to obtain such declarations. The cases raises serious concern about how the prosecutions could have moved forward in the first place, and why accusations of torture were not investigated. Roberto Antonio Juárez, Priciliano Enriquez Luna, and Virgilio Cruz Luna were released without charge, but their accusations of torture—supported by medical documentation—were not investigated until they were released. Only after ACAT took up the cases did prosecutors begin to investigate, but ACAT was required to conduct much of the research that would permit the investigation to move forward. Given that authorities did not move on the case while the victims were in detention, the prosecutor rightly argued that, after their release, it was much harder to locate them for investigation-related interviews.

Extrajudicial execution

On April 24, 1997, Celerino Jiménez Almaraz died in Santa María Jalatengo, San Mateo Río Hondo municipality. According to his wife, he was arbitrarily detained and executed. According to police, the man ambushed police officers and died after being wounded in an armed confrontation. In our investigation, we found compelling evidence that the man was, in fact, executed by police. At this writing, authorities have done little to clarify the incident.

María Estela García Ramírez, who was married to the victim, explained to Human Rights Watch how police entered her home on the night of April 24, shooting into the air and then following her husband as he tried to flee.

They didn't ask for anyone in particular. My husband tried to run, but they shot him in the left foot. He made it out the door, but I didn't know how much farther he got. Later, we followed the trail of small drops of blood to a place where there was a lot of blood and regurgitated food.¹⁸⁵

¹⁸⁴ Ibid., p. 111.

¹⁸⁵ Human Rights Watch interview, María Estela García Ramírez, Mexico City, September 3, 1997.

Police gave a completely different story to investigators. According to a report filed by two state judicial police group leaders, sixteen state judicial police agents gathered at midnight in Santa María Jalatengo to begin a hike to Juquilita, San Agustín Loxicha, in order to serve two arrest warrants. The police divided into two groups, one of which included five officers. According to testimony from the police, about ninety minutes into the strenuous hike, the first group was ambushed, and the five officers responded by throwing themselves to the ground, returning the fire, and calling for support from the second group. The assailants moved from about twenty meters to four or five meters from the police before the shooting ended. When it did, the police said, they found an injured Jiménez Almaraz. According to several police statements, officers “immediately” carried him back to the trucks at Jalatengo.¹⁸⁶

On June 6, one of the group leaders who initially reported on the attack filed an additional report, adding a detail that had not been mentioned by any of the officers who had given testimonies after the incident. According to officer Hugo T. Chávez Cervantes, when police discovered the injured man, they asked his name and where he lived, and were told that he lived in Los Limares. “So we proceeded to interview people who live in the community, to see if they knew a Celerino Jiménez Almaraz, which they strongly denied.” Chávez continued that only after conducting these interviews did they proceed back to the trucks at Jalatengo.¹⁸⁷ According to the police, Jiménez Almaraz died while being transported back to town.

¹⁸⁶ The police version of events is taken from internal police documents filed by officers after the incident and by statements made to prosecutors.

¹⁸⁷ Hugo T. Chávez Cervantes, report filed with the director of the State Judicial Police, June 6, 1997.

The physical evidence was consistent with an execution, not a death in a shoot-out in the dark. According to the medical examiner, the body had seven seven-millimeter holes formed in a circle with a twenty-centimeter radius in the front left side of the thorax. The left forearm bore five seven-millimeter bullet wounds. The trajectory of the bullets was from up to down.¹⁸⁸ This finding suggests that Jiménez Almaraz was shot at close range by someone with the time to aim carefully, not at all the circumstances described by the police in their reports. Further evidence that the man was executed came from the prosecutor himself, who examined the body and reported that the wounds on the thorax showed a “gunpowder tattoo” and that those of the forearm were “impregnated with gunpowder.”¹⁸⁹ Gunpowder markings such as these could only result from close-range firing, not the four or five meters that police say was the closest they got to the alleged assailants when they were exchanging gunfire. Also inconsistent with the suggestion of a shoot-out was the prosecutor’s inability to find bullet casings when he examined the site of the alleged confrontation the following day.¹⁹⁰

On the evening following the incident, the prosecutor began a murder investigation. However, the same judicial police officers involved in the confrontation, from Pochutla, were assigned to carry out the investigation, in an obvious conflict of interest. The Fray Francisco de Vitoria Center for Human Rights (Centro de Derechos Humanos “Fray Francisco de Vitoria”), which had been handling the case on behalf of the victim’s wife, asked state prosecutors to transfer responsibility for the investigation from Pochutla to the state attorney general’s central office in Oaxaca city. At the same time, the center provided an address in Oaxaca to receive all notifications of official, case-related actions, such as requests the prosecutors might make to interview witnesses.¹⁹¹

In November 1997, the attorney general’s office shifted responsibility for the case to Oaxaca investigators but notified the center neither of the change in oversight nor of February 1998 summonses for Jiménez Almaraz’s family members to testify, even though the center legally represented the family. Similarly, authorities did not notify the center of a summons for Jiménez Almaraz’s widow, which had been left with her family members in rural Oaxaca, an area to which the widow, fearing for her safety, had not returned since shortly after the attack that killed her husband. By failing to utilize the Oaxaca city address, prosecutors effectively ensured that the human rights group would not be able to assist the victim’s family members and make sure they were not coerced during their

¹⁸⁸ Autopsy report on Celerino Jiménez Almaraz, April 24, 1997.

¹⁸⁹ Prosecutor’s report on transport of cadaver, April 24, 1997.

¹⁹⁰ Prosecutor’s report on physical inspection of the scene, April 24, 1997.

¹⁹¹ The center is based in Mexico City and does not maintain an office in Oaxaca. It provided the address of a Oaxacan human rights group to receive official notifications.

testimonies, and it guaranteed that the victim's widow would not learn of the summons for her to testify. It was not until September 1998, when a center staff person based in Mexico City visited the family, that the center learned of the summonses and brought the widow to testify.¹⁹² A request made by the center in September 1998 to obtain a copy of the case file was rejected by the prosecutor, thereby making the center's examination of the prosecutor's actions difficult and impeding the center from submitting case documents to intergovernmental or international human rights organizations.

¹⁹² Human Rights Watch interview, Adriana Carmona, Centro de Derechos Humanos "Fray Francisco de Vitoria," Washington, DC, December 6, 1998.

The National Human Rights Commission in Oaxaca

Consistent with the pattern found in CNDH cases from other states, torture in cases in Oaxaca often followed arbitrary arrest and incommunicado detention. In many Oaxaca torture cases, medical examiners failed to document abuses or prosecutors failed to initiate torture investigations, or both. The victims, however, were consistently prosecuted for crimes they may or may not have committed, while judges rarely paid attention to the procedural irregularities or torture documented during the process.

As of June 1998, based on the most recent CNDH information available, no torturer has been sentenced based on CNDH recommendations related to Oaxaca. In three cases, federal prosecutors decided not to press charges, sometimes based on questionable reasoning suggesting that the victim had been pressured into changing his story. For instance, Federal Judicial Police agents arbitrarily detained Donato Geminiano Martínez on August 17, 1993, torturing him in order to force him to confess to a drug-related crime.¹⁹³ The federal prosecutor failed to investigate the torture, despite the evident wounds.¹⁹⁴ The first medical exam carried out on August 17, when Martínez was first picked up, showed no signs of physical mistreatment; an exam after the incommunicado detention showed signs of torture.¹⁹⁵ After the CNDH issued its recommendation in May 1995, the PGR began an investigation, but reported that Martínez retracted his earlier allegation that he had been tortured, saying instead that he had received his wounds in a motorcycle accident the day before his arrest.¹⁹⁶ However, the motorcycle incident would not have explained why medical exams documented bruises only after he had been in detention, nor why the initial prosecutor had failed to investigate the allegations of torture.

¹⁹³ National Human Rights Commission, Recommendation 57/95, in *Gaceta* 58 (Mexico City: Comisión Nacional de Derechos Humanos, May 1995), pp. 47 and 52.

¹⁹⁴ *Ibid.*, p. 52.

¹⁹⁵ *Ibid.*

¹⁹⁶ National Human Rights Commission, *Informe anual mayo 1996-mayo 1997*, pp. 493-94.

Torture prosecutions were not even successful in cases in which medical documentation showed signs of torture. State judicial police detained Otilio López Aragón and Armando López Pimentel on October 20, 1992, holding them illegally for two days and torturing them to induce self-incriminating statements.¹⁹⁷ Medical exams confirmed the torture. In its 1996 annual report, the CNDH reported that three officers had been charged with “abuse of authority,” not torture, but no arrest warrant had been executed.¹⁹⁸ On May 10, 1996, the officers voluntarily turned themselves in, but they were released with a warning.¹⁹⁹

In one of the only CNDH Oaxaca cases in which authorities were punished in relation to torture, the victim was so badly injured that he later died of his wounds. On December 3, 1995, Federal Judicial Police in Salina Cruz detained Rafael Toledo Nolasco, whom they accused of having drugs and a weapon reserved for the exclusive use of the armed forces.²⁰⁰ They beat him so severely during the detention and later at the attorney general’s office that he died a month later. Before he died, however, he was turned over to a federal prosecutor, charged, and transferred to a detention center. Prosecutors never questioned why he was in such a precarious physical condition, and decided not to press charges against the officers.²⁰¹ After the

¹⁹⁷ National Human Rights Commission, Recommendation 172/93, in *Gaceta* 39 (Mexico City: Comisión Nacional de Derechos Humanos, October 1993), pp. 105 and 110-11.

¹⁹⁸ National Human Rights Commission, *Informe anual mayo 1995-mayo 1996*, p. 354.

¹⁹⁹ National Human Rights Commission, *Informe anual mayo 1996-mayo 1997*, p. 403.

²⁰⁰ National Human Rights Commission, Recommendation 106/96, in *Gaceta* 76 (Mexico City: Comisión Nacional de Derechos Humanos, November 1996).

²⁰¹ *Ibid.*

CNDH issued Recommendation 106/96 on November 6, 1996, detailing the problems in the case, the Office of the Federal Attorney General suspended for thirty days the prosecutor who failed to investigate Toledo Nolasco's physical condition. They fired the prosecutors who decided not to press charges against the police, ordering that they be barred from working for the institution for ten years. The two police officers were fired and eventually charged with torture and murder. A judge issued arrest warrants for the men, but the former officers fled and remain at large.²⁰²

Additional Cases Documented by the CNDH

²⁰² Office of the Federal Attorney General, "Resultados obtenidos por la Procuraduría General de la República en materia de lucha contra la impunidad y de los trabajos de la CNDH," document prepared for Human Rights Watch, June 1998.

- Federal Judicial Police detained and tortured Rufino José Jiménez on October 7, 1991, forcing him under torture to sign a self-incriminating statement, according to the CNDH. He was indicted, prosecuted, and sentenced for possession and sale of marijuana, possession of marijuana seeds, and possession of a weapon reserved for the use of the army.²⁰³ The prosecutor never investigated Jiménez's allegation that he was tortured. The PGR decided not to press charges against the police, citing an assertion by the victim's defense lawyer to the effect that his defendant was not tortured during interrogation and that Jiménez had told him that his wounds had been caused during a struggle over a weapon with one of the arresting agents.²⁰⁴

- On August 28, 1993, municipal authorities in San Miguel Huautepec, and the son of one of them, tortured sixteen-year-old Tomás José Gómez Guerrero, tying his hands and feet, hitting him, and subjecting him to mock execution.²⁰⁵ The men accused the youth of having hit a municipal police officer. Two days later, he was turned over to a nearby state prosecutor, who failed to document the physical evidence of the beating Gómez Guerrero had suffered, even though a medical examiner had already certified the wounds.²⁰⁶ Gómez Guerrero was prosecuted for allegedly having hit the police officer. Arrest warrants were eventually issued against two of the authorities, for abuse of authority and illegal detention, but an appeals judge ruled that the warrants should not be executed.²⁰⁷

²⁰³ National Human Rights Commission, Recommendation 8/94, in *Gaceta* 45 (Mexico City: Comisión Nacional de Derechos Humanos, April 1994), pp. 74-75.

²⁰⁴ National Human Rights Commission, *Informe anual mayo 1995-mayo 1996*, pp. 401-02.

²⁰⁵ National Human Rights Commission, Recommendation 39/94, in *Gaceta* 45 (Mexico City: Comisión Nacional de Derechos Humanos, April 1994), p. 360.

²⁰⁶ *Ibid.*, p. 367.

²⁰⁷ National Human Rights Commission, *Informe anual mayo 1994-mayo 1995*, p. 469-70.

VII. "DISAPPEARANCES" AND THE JUSTICE SYSTEM

The very nature of "disappearances"—whereby authorities secretly detain and hold victims incommunicado, often torturing them to extract information—makes solution of such cases through the justice system extremely difficult. Such cases require urgent reaction from authorities, since they are often followed by murder. Appealing to authorities to utilize the police and court systems often seems a hopeless cause, since by definition the detention has not officially been acknowledged and is usually being deliberately kept secret. Authorities committed to the protection of human rights insist on searching for the victims until they are located. Officials who are not equally committed may perform perfunctory searches, at best. In the cases reviewed in this chapter, police and prosecutors took the latter approach. In some cases, half-hearted searches were undertaken, while in others as much as a year went by before family members of the victims were even called to provide information. In several "disappearance" cases documented below, victims were transferred from unacknowledged military detention to the official custody of prosecutors, who failed to acknowledge any wrongdoing on the part of military officials involved. In others, the whereabouts of the victims remain unknown.

In the 1970s, as many as 400 real or alleged leftist guerrillas "disappeared" as part of a dirty war undertaken by the military in Mexico. These abuses conformed to a pattern practiced by military governments throughout Latin America during that time period, and took place in the context of Mexican guerrilla movements in several states. Current "disappearances" in Mexico fall into three main types. The first, reminiscent of the 1970s, consists of "disappearances" related to the conflict between government forces and the EPR. In some instances, these "disappearances" are temporary and followed by acknowledged detention and prosecution. In other cases, the victims' whereabouts remain unknown. Such cases are not examined in this study.²⁰⁸

²⁰⁸ For further information on "disappearances" carried out in the context of counterinsurgency operations, see Inter-American Commission on Human Rights, "Report on the Human Rights Situation in Mexico," para 145; Centro de Derechos Humanos "Fray Francisco de Vitoria" and Comisión Mexicana para la Defensa y Promoción de los Derechos

Humanos, "Informe sobre desapariciones forzadas en México," October 1997; Centro de Derechos Humanos "Miguel Agustín Pro Juárez," "Desapariciones forzadas o involuntarias: 1986-1988," 1998; and Amnesty International, "Mexico 'Disappearances:' a Black Hole in the Protection of Human Rights," May 7, 1998.

Another type of “disappearance” takes place in the context of drug trafficking and counternarcotics efforts. The Mexican military has taken on a fundamental role in the battle against drug traffickers in Mexico. The Alejandro Hodoyán and Fausto Soto Miller cases, documented below, are examples of drug-related temporary “disappearances” carried out by the military. These cases may have taken place in a context in which one Mexican drug cartel was using active-duty army personnel in a battle for supremacy over another. But even if the motivation of the officers who commanded the operations involving Hodoyán and Soto Miller were private, the abuses were committed by state agents, and civilian prosecutors were ready to accept both detainees when the army was through with them without asking any questions.

The Inter-American Court of Human Rights has annunciated standards for official responsibility for “disappearances” carried out by authorities acting in a private capacity. “Any exercise of public power that violates the rights recognized by the Convention is illegal,” the court noted, continuing,

This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.²⁰⁹

The clandestine incarceration of Hodoyán and Soto Miller was illegal and should have been the subject of investigation and prosecution. In the case of Hodoyán, a U.S. citizen, a U.S. law-enforcement agent interviewed him several weeks into his detention, and although he knew that Hodoyán was being illegally held and reported this to the U.S. Embassy, no action was taken to assist the man. In fact, closing their eyes to the manner in which Hodoyán was detained, U.S. officials arranged to further debrief the victim in the United States, where he was eventually sent; when he later fled the United States, he was “disappeared” again, and remains missing as of this writing. A witness to the second “disappearance” identified a member of a federal counternarcotics police unit as having carried out the second “disappearance.” In the Soto Miller case, the victim was sentenced to forty years in

²⁰⁹ Inter-American Court of Human Rights, Velázquez Rodríguez judgement of 1988, para. 170.

prison for a crime he was said to have committed when, all indications are, he was actually in unacknowledged military detention.

Finally, “disappearances” have also been carried out by police-led gangs involved in drugs and kidnappings, as in the case of José Alberto Guadarrama, from Morelos state, documented below. Guadarrama, a former state judicial police officer, was apparently detained by other officers. Police were able to commit this abuse by virtue of the authority vested in them by the government and were encouraged to do so by the consistent failure of the state to investigate or punish such crimes. The Guadarrama case, it turns out, was symptomatic of a broader problem in Morelos state, where the highest-ranking police officials were eventually jailed after police were caught dumping the body of a kidnap victim in neighboring Guerrero state.

Alejandro Hodoyán

On September 11, 1996, soldiers detained Alejandro Hodoyán, a U.S. citizen by birth, in Guadalajara, Jalisco state. They believed him to be a member of the Arrellano Félix drug cartel. Although Hodoyán was held in secret detention by the military, police may also have been involved. After pumping him for information on the Arrellano Félix operation for several months, soldiers turned him over to federal prosecutors. Both military and civilian officials hoped that he would testify against other alleged members of the Arrellano Félix drug cartel, including his own brother. Hodoyán was eventually given immunity from prosecution in Mexico if he would do so.²¹⁰ U.S. officials were also interested in debriefing Hodoyán. Alerted that a potentially valuable source of information was in military custody, an agent of the Bureau of Alcohol, Tobacco, and Firearms (ATF) interviewed Hodoyán several weeks into his secret detention. Later claiming incompetence on the part of a key embassy official, U.S. consular authorities did nothing to help Hodoyán. More interested in the source’s information than in protecting human rights, U.S. law-enforcement authorities also did nothing to aid the man, thereby becoming complicit in the violations he suffered. In fact, without being bothered by the way Hodoyán had come to be detained, or the treatment he received, they arranged for him to be sent to the United States to serve as a witness in drug cases.

In order to get the victim to cooperate, the army subjected him to successive rounds of torture. According to an unsigned statement he later gave to his family,

²¹⁰ Julia Preston, “Mexican Tale: Drugs, Crime, Torture and the U.S.,” *New York Times*, August 18, 1997.

soldiers tortured him intermittently for weeks. He recalled that on the day of his detention,

They put a pillow case over my head, with me lying down on a bed, one person on top of my upper body and another on my legs. My arms were handcuffed to the head of the bed and my feet to the other part, where the feet go. They started to throw water on my face, which was covered by the pillow case. I started to suffocate. That’s when the questions started.²¹¹

The questions on his first day of detention had to do with people he had recently met whom the soldiers believed were involved with drug trafficking. Faced with answers they found unacceptable, the soldiers threw him in a car, drove him around, then returned to what Hodoyán believed to be the same location. This time, they wrapped him in a blanket with his head and feet protruding from the ends. Again they threw water on his covered head, and applied electric current to the soles of his feet and eyelids. They questioned him more about people and phone numbers he had with him when detained. After two more days of torture, then some sleep, Hodoyán was questioned on September 14 about the assassination of federal prosecutor Ernesto Ibarra Santés, stationed in Baja California, who had been gunned down that same day in Mexico City. Hodoyán was also questioned about a July 22, 1996 shootout between soldiers and drug traffickers in Guadalajara in which two soldiers had died. The Arrellano Félix brothers had attempted to kill rival drug trafficker Amado Carrillo, killing the soldiers instead.²¹²

²¹¹ Unsigned statement by Alejandro Hodoyán, March 3 and 4, 1997. The statement was made after Hodoyán’s release from military custody and before he again “disappeared.” After the second “disappearance,” the document was signed by the family members to whom he recounted the events.

²¹² Preston, “Mexican Tale.”

When Hodoyán failed to arrive in Tijuana as expected on September 11, his family began to search for him, seeking help from both Mexican and U.S. officials. His family heard nothing from him until the following month. According to the *New York Times*, which covered the Hodoyán story as part of a Pulitzer Prize-winning series on drug trafficking in Mexico, soldiers broke Hodoyán in a matter of days, turning him into a consummate source of information. In reference to the army general who headed the government's counternarcotics agency at the time, the newspaper reported, "In late October General Gutiérrez Rebollo was sufficiently confident of his new informant's cooperation that he allowed him to call his family and tell them he was still alive."²¹³ After the first phone call, his family told Human Rights Watch, they installed a caller identification apparatus on the telephone; when he called again, they noted the number from which he had called, then called back. The line was answered, "Fifth [military] region."²¹⁴

A U.S. State Department official familiar with the case told Human Rights Watch that several weeks after his "disappearance," a U.S. law enforcement agent—identified in the *New York Times* as belonging to the ATF—interviewed Hodoyán. "In the course of the interview and after considerable time, he learned that the guy might have had a claim to U.S. citizenship," the official told Human Rights Watch. Implying that the agent knew that Hodoyán was in illegal detention, he continued, "When he realized that, the agent knew he [the agent] didn't want to be there. He told the appropriate U.S. embassy officials about the guy, and the officials all relied on the appropriate authority, the consul general, to do something about it."²¹⁵ Apparently, the consul general never did.

The Office of the Federal Attorney General did not respond to Human Rights Watch's request for information about the Hodoyán case, but even if Hodoyán's own statements are not taken into account, it is clear that he was held illegally by the military. In court documents from an unrelated case involving military corruption, soldiers admitted to holding Hodoyán. Sgt. Vicente Ruiz Martínez testified on March 8, 1997, for instance, that he had guarded Hodoyán in Guadalajara and also during a trip made by the detainee to Mexico City on September 14, 1996; another soldier testified that he participated in the detention in September of a man whose nickname was "Alex," which is what Hodoyán's family called him.²¹⁶ If the detention had been legal, he would have been held in civilian, not military custody, even if soldiers participated in the original arrest.

²¹³ *Ibid.*

²¹⁴ Human Rights Watch interview, family members of Alejandro Hodoyán, Baja California, May 4, 1998.

²¹⁵ Human Rights Watch interview, Washington, D.C., September 4, 1998.

²¹⁶ Ministerial declaration of Vicente Ruiz Martínez, March 18, 1997 and declaration of Cabo de Trans. Ramón Caetano Polino Alcalá, February 19, 1997.

The encounter with the U.S. agent led to interest from U.S. law-enforcement agencies in a more thorough debriefing of the captive, but not, apparently, in providing a remedy for the egregious human rights violation he was suffering during his clandestine detention. In mid-December, Hodoyán signed papers allowing U.S. officials to take him to San Diego, a trip that finally took place in February 1997. On February 20, disheartened by the questioning aimed at incriminating his brother, Hodoyán left the hotel in which he was located and returned to his family in Tijuana in a psychologically troubled state.²¹⁷

On March 5, armed men pulled him from the passenger seat of a car that his mother, Cristina Palacios Roji Siliceo, was parking in Tijuana. She recalled,

²¹⁷ Human Rights Watch interview, members of Alejandro Hodoyán's family, Tijuana, Baja California, May 4, 1998.

When I got into the parking spot, I turned to get some documents from the back. I saw a van pull up very quickly, and the first thing I saw was two men getting out with machine guns. “What’s going on?” I asked my son. “Once again, the same guys,” he responded. They grabbed him by the neck. I was yelling, “Who are you? What do you want? Where are you taking him?” The same guy who had put Alex in the van aimed at me—I was looking at him for two or three seconds, which is why I didn’t forget his face. When they put him in the van, the doors were left open, so I ran and got in. “Leave him alone. Leave him alone,” I yelled. My son told me, “Go away, Mom.” The guy took my arms and threw me out.²¹⁸

Palacios Roji Siliceo immediately went to prosecutors, having a clear image in her head of the man who had faced her with his weapon drawn. She had noted, too, the van’s license plate number. The plate number was eventually traced back to a vehicle that had been impounded and was in the custody of Federal Highway Police. Investigators had Palacios Roji Siliceo speak to an official artist, who, based on her description, reproduced the face of the man she remembered. Eventually, she identified the man from a picture in a PGR employment file, and, as part of the investigation, identified him in person in September 1997.²¹⁹ According to a Mexican newspaper, the man was Ignacio Weber Rodríguez, the head of anti-drug intelligence at what was, at the time of Hodoyán’s “disappearance,” the National Institute for the Combat of Drugs, the PGR’s counternarcotics agency.²²⁰ The PGR did not respond to a Human Rights Watch request for information on the status of the case against the agent.

²¹⁸ Human Rights Watch interview, Cristina Palacios Roji Siliceo, Tijuana, Baja California, May 4, 1998.

²¹⁹ Ibid.

²²⁰ Anita Snow (Associated Press), “Anti-Drug Chief Weber Accused in Kidnap, Torture,” *The News*, September 4, 1997.

It is not at all clear what officials are doing to locate the victim, and as of mid-August 1998, the Hodoyán family had no information regarding the prosecution of the man identified by Hodoyán’s mother as responsible for the abduction.²²¹ Human Rights Watch is aware of no punishment for authorities who participated in or tolerated the arbitrary detention, “disappearance,” or torture that began in September 1996. Moreover, the case raises serious questions about the willingness of prosecutors to use blatantly illegal processes, including “disappearance,” in the name of fighting drugs. The seamless transfer of Hodoyán from secret military detention to official custody, and then to the United States, demonstrates a troubling ends-justify-the-means approach to Mexican and U.S. counternarcotics efforts.

U.S. complicity in the initial “disappearance” of Hodoyán is deeply troubling. Even if the State Department’s version of events is true—that the failure of consular officials to aid Hodoyán stemmed solely from the consul general’s negligence²²²—U.S. law-enforcement officials moved forward with plans to further interview Hodoyán after the ATF agent learned that he was a U.S. citizen and in secret military custody.

Fausto Soto Miller

According to Fausto Soto Miller, soldiers detained him on September 12, 1996, tortured and interrogated him, held him in unacknowledged detention for sixteen days, then turned him over to civilian prosecutors. During this period, his family searched for him in vain. For their part, prosecutors announced that Soto Miller had been detained on September 27—not the 12th—while caught in the act of guarding a drug lord’s safehouse. The Mexican press quoted a statement by the military labeling Soto Miller a leading drug trafficker.²²³ According to his family, Soto Miller had nothing to do with drug trafficking but was picked up because

²²¹ Human Rights Watch telephone interview, Cristina Palacios Roji Siliceo, August 13, 1998.

²²² Human Rights Watch interview, State Department official, Washington, D.C., September 4, 1998.

²²³ “Positiva, la intervención del Ejército contra el narcotráfico,” *Excelsior* (Mexico City), August 12, 1997.

Alejandro Hodoyán, who had been detained by the same soldiers the day before, had had his name with him.²²⁴ Whether or not Soto Miller is linked to the drug cartel, all the evidence suggests that his version of temporary “disappearance” and prosecution on fabricated charges is correct.

In a letter from prison, Soto Miller recalled his treatment when detained on September 12. In addition to referring to his torturers by name, he described their acts:

²²⁴ Human Rights Watch interview, family members, Mexico City, June 6, 1998.

The first of them connected cables to my toes, and he turned on the power. Later, he beat my heels with a board. The second person interrogated me and threatened me. They also tortured me by placing rags over my face, asphyxiating me, and putting water up my nose and in my mouth to choke me, in those moments applying electrical current that got progressively stronger.²²⁵

Soldiers in Guadalajara held him for sixteen days before turning him over to civilian prosecutors. During the time he was in unacknowledged detention, soldiers' inquiries included questions about the July 22, 1996 confrontation between drug traffickers and soldiers in Guadalajara. They also flew him to Sinaloa state to identify houses belonging to drug traffickers.

Evidence from an unrelated court case corroborates Soto Miller's version of events. In the trial of Gen. Jesús Gutiérrez Rebollo, the former anti-drug chief jailed for his ties to traffickers, Sgt. Vicente Ruiz Martínez recalled how on September 12 and 13, 1996 he was in Guadalajara, where he helped to guard several detainees.²²⁶ On September 14 he was sent to Mexico City, and he returned the next day; rather than remain in Guadalajara, though, the soldier was immediately ordered to travel to Culiacán, Sinaloa state. In his testimony about those events, he recalled that on the airplane, “they brought onto the plane one of those who had been at the Fourth Company and whom he knows goes by the name of Fausto Miller. . . .”²²⁷

²²⁵ Fausto Soto Miller, letter from prison, October 10, 1997. Translation by Human Rights Watch.

²²⁶ Ministerial declaration of Vicente Ruiz Martínez, March 18, 1997.

²²⁷ Ibid.

Even though Soto Miller had been in detention since September 12, the federal prosecutor's office falsely announced in early October 1996 that they had arrested Soto Miller on September 27, alleging that he was a body guard of Tijuana drug cartel leader Ramón Arrellano Félix.²²⁸ They filed drug trafficking and arms charges against him, asserting that he had been arrested in an Arrellano Félix safe house containing multiple high-caliber weapons and marijuana.²²⁹ According to court documents, Federal Judicial Police said that the arrest was made when they coincidentally flew over the house in a helicopter and noticed two vehicles in a partially covered garage that matched the description of the vehicles used in the July 22 confrontation with soldiers.²³⁰ When they saw Soto Miller run from the house, according to the official police report, they called for backup, and the suspect was apprehended. When arrested, the officers reported, Soto Miller spoke about the illegal contents of the safe house and his own participation in the Arrellano Félix gang. These same topics formed the substance of the official statement he was alleged to have made to prosecutors on the day of his alleged arrest.²³¹

According to Soto Miller, however, the soldiers who had illegally detained him on September 12 turned him over to federal prosecutors on September 27. The prosecutors forced him to sign a prepared statement that he was not allowed to read, which he signed "Fausto Lie" (Fausto Mentira), instead of Fausto Miller. According to his public defender, the detainee did not have a lawyer with him when forced to sign the statement.²³² Instead, as Mexican law permits, he had "people of confidence" there. According to the public defender, however, the "people of confidence" were actually employees of the attorney general's office; neither

²²⁸ Juan Manuel Venegas, "Culpa Lozano a los hermanos Arellano Félix del asesinato de Ibarra Santés," *La Jornada*, October 3, 1996.

²²⁹ First Federal District Court in the State of Mexico, sentence in criminal case 105/96, May 29, 1998.

²³⁰ *Ibid.*

²³¹ *Ibid.*

²³² Human Rights Watch telephone interview, Héctor Sergio Pérez Vargas, July 2, 1998.

responded to summonses to explain what happened during the time the statement was signed.²³³

²³³ Ibid.

Soto Miller was tried and convicted on June 1, 1998, and sentenced to forty years in prison for possession of prohibited weapons, possession of drugs, and criminal association based on what was alleged to have happened on September 27. In sentencing the defendant, the judge, Humberto Venancio Piñeda, rejected Soto Miller's retraction of the statement he was forced to sign. Rather than requiring clarification of the procedures used in the case, the judge argued, "Regarding the affirmations made repeatedly by the accused that he was detained on September 12 . . . there are no documents that sufficiently prove it such that the retraction should be given legal validity."²³⁴ Army officers identified by Soto Miller as participating in the September 12 detention or subsequent torture denied such involvement in court, and the judge cited their denials in his sentence.²³⁵ The judge refused to admit as evidence the court documents from the Rebollo case indicating that Soto Miller had been in detention since September 12, in part because the statements were not made in his courtroom.²³⁶ Overall, the judge showed greater interest in convicting the defendant than in ensuring that serious human rights violations had not taken place during the judicial process.

The judge did express concern about Soto Miller's story of detention and torture, ordering the prosecutor to investigate it. According to Soto Miller's defense lawyer, the prosecutor said he found no evidence of torture or illegal detention, although the investigation officially remains open.²³⁷ Soto Miller's defense lawyer has appealed the conviction.

As in the Hodoyán case, the Soto Miller incident raises several profoundly troubling issues: soldiers carried out the "disappearance" in violation of international law, but the justice system appeared ready to overlook the problem in the name of fighting drug trafficking. The federal attorney general's office did not answer Human Rights Watch queries about this case.

"Disappearance" and the Failure of the Morelos State Justice System

On January 28, 1998, Federal Highway Patrol officers discovered the commander of the Morelos state Special Anti-Kidnapping Group and two state judicial police officers disposing of the tortured body of Jorge Nava Avilés.²³⁸ The

²³⁴ First Federal District Court in the State of Mexico, sentence in criminal case 105/96, May 29, 1998, p. 67.

²³⁵ *Ibid.*, p. 70.

²³⁶ *Ibid.*, p. 68.

²³⁷ Human Rights Watch telephone interview, Héctor Sergio Pérez Vargas, July 2, 1998.

²³⁸ The Morelos case preceded a similar problem in Chihuahua state, where the leaders of a federal unit responsible for investigating drug-related kidnappings were reportedly found to be responsible for some of the kidnappings they were supposed to be investigating.

victim, who had been kidnapped the day before, reportedly died during a torture session. The Morelos law-enforcement officers tried to dump the body in Guerrero state, along the highway between Iguala and Cuernavaca. The case, which received widespread press attention, led to the downfall of many Morelos public officials, including the governor of the state, who resigned. After investigating the Nava Avilés case, the CNDH described the extent of the involvement of Morelos state officials in crime and cover-up:

In the state of Morelos, some members of the justice system have generated a climate of public insecurity, a product of the wave of kidnappings, homicides, torture, abuse of authority, and other illegal acts, committed by or consented to by those members. This has caused a climate of corruption and impunity that benefits the intellectual and material authors of these crimes. This situation has resulted in the justice system not carrying out its appropriate functions, such as investigating and prosecuting crimes.²³⁹

The federal government quickly took control of the case under anti-organized crime laws; the state attorney general and head of the state judicial police were charged with trying to covering up the Nava Avilés torture and murder.²⁴⁰ While it is encouraging that federal authorities acted so quickly in the case, it is equally noteworthy that they had failed for years to pay attention to evidence that Morelos police agents were engaged in kidnappings, “disappearances,” and torture. Press reports from Morelos often repeated accusations made by victims and their family members regarding the involvement of police officials in such illegal acts. Indeed, at the time of the Nava Avilés murder, federal authorities had been engaged in discussions about the “disappearance” in early 1997 of José Alberto Guadarrama from Morelos—and its concomitant exposé of the problems in Morelos—with the Inter-American Commission on Human Rights.

“For at least two years it has been clear that the justice system was rotten,” says Morelos state congressman Juan Ignacio Suárez Huape.²⁴¹ “There were

²³⁹ National Human Rights Commission, Recommendation 25/98, in *Gaceta 92* (Mexico City: Comisión Nacional de Derechos Humanos, March 1998), p. 142. Translation by Human Rights Watch.

²⁴⁰ “Former Morelos judicial officials released on bail,” *Universal Journal*, March 10, 1998; “Conceden libertad bajo caución a Pedro Merlo y Miyazawa,” *La Jornada*, March 10, 1998.

²⁴¹ Human Rights Watch telephone interview, July 15, 1998.

protests, but on the state level, the leaders were involved with the criminals. On the federal level, there was no response, given the influence of [ex-Governor] Jorge Carrillo Olea. Despite the evidence, the investigations went nowhere." In December 1997, Suárez Huape organized a roundtable discussion on "disappearances," torture, and impunity.²⁴² Only after the Nava Avilés killing however, did prosecutors use the documentation he had long collected to prosecute state officials.

Prior cases had long gone uninvestigated because the very state officials responsible for doing so were involved in many of the kidnappings. One such case involved José Alberto Guadarrama García, a former state judicial police officer in Morelos state, who was detained in Emiliano Zapata city on March 26, 1997, by members of the state judicial police anti-kidnapping squad.

²⁴² See "Desaparición forzada de personas, tortura e impunidad en Morelos," a report produced by the Morelos state Congress's Justice and Human Rights Commission, based on a roundtable discussion held on December 9, 1997.

Elvira García Avelar, Guadarrama's mother, was with him when he was arrested, and she identified one of the arresting officers as José Luis Beltrán Velázquez, from the anti-kidnapping squad. Responding to a complaint the next day, state prosecutors initiated a fruitless search for the victim. On March 29, according to ACAT and the Center for Justice and International Law (CEJIL), which filed a complaint about the "disappearance" before the Inter-American Commission on Human Rights, family members of the victim were told by a guard at a state attorney general's detention center that Guadarrama had been brought in on the 26th but that he was sent to a state prison. Family members did not find him at the state prison, and the same official at the detention center later denied that Guadarrama had been taken there.²⁴³

Authorities did open an investigation into the "disappearance," during which Beltrán Velázquez denied any responsibility for the incident.²⁴⁴ On April 4, Guadarrama's mother filed a request for amparo, roughly similar to habeas corpus, naming Mexico City and Morelos state justice and police authorities as responsible for the detention.²⁴⁵ On May 21, a judge denied the writ on the grounds that the authorities said to be responsible for the detention had denied the accusation and García Avelar had not proven that they were responsible.²⁴⁶

Authorities failed to move on the case until late October 1997, after ACAT and CEJIL filed their complaint with the Inter-American Commission. On October 28, an arrest warrant was issued for Beltrán Velázquez, who had long since resigned from the police force and gone into hiding.

As the Inter-American Court of Human Rights has ruled, federal governments cannot avoid responsibility for the actions of state-level authorities by claiming that their federal system of government shields them when federal agents are not involved in human rights violations. Official tolerance of human rights violations is itself a human rights violation. This principle clearly holds in the case of Mexico.

²⁴³ Acción de los Cristianos para Abolir la Tortura and Center for Justice and International Law, document submitted to the Inter-American Commission on Human Rights, August 22, 1997.

²⁴⁴ Comparecencia Previa Presentación de José Luis Velázquez, April 3, 1997.

²⁴⁵ Request for amparo, April 2, 1997 (received April 4, 1997), Elvira García Avelar.

²⁴⁶ Judgement of amparo 233/97, May 21, 1997, Cuernavaca, Morelos.

The Suspected “Disappearance” of Verber, Verber, and Beltrán

Rogelio Verber Campos, Raúl Verber Campos, and Cecilio Beltrán Cavada were last seen on January 6, 1997, in Baja California state. Two days later, the Verber family received a phone call from a man who refused to identify himself, indicating that the Verber Campos brothers had been detained by a group of people dressed in dark uniforms and driving a Suburban vehicle with polarized windows. A few hours later, they received another call, this time indicating that the brothers had been moved to a military base.²⁴⁷ In this case, no direct evidence links government officials to the fate of the missing men. Human Rights Watch’s fear that they may have been “disappeared” by state agents, however, has been strengthened by authorities’ failure to investigate the case properly, despite repeated efforts by the families of those involved.

The Verber family had been under suspicion by the authorities for drug-related offenses. On September 12, 1996—one day after Alejandro Hodoyán “disappeared” and the same day that soldiers illegally detained Fausto Soto Miller—soldiers surrounded the family home in Tijuana. Federal attorneys, acting with a warrant, searched the premises for the Arellano Félix brothers, finding neither the brothers, nor drugs, nor guns.²⁴⁸ Rogelio Verber, the father of the missing brothers, informed Human Rights Watch that, off and on after September 12 and prior to the “disappearance” of his sons, he had observed unmarked cars parked outside his house.²⁴⁹

On January 10, 1997, the families of the three men filed a request for amparo in state and federal courts, arguing that the men were being held by the military. In response, a federal judge ordered an end to the incommunicado detention.²⁵⁰ On behalf of the judge, an agent of the court went to police offices and military bases in Tijuana on January 10. None admitted to holding the men; at the Tijuana military

²⁴⁷ Human Rights Watch interview, Rogelio Verber, father of the missing brothers, Tijuana, Baja California, June 3, 1998.

²⁴⁸ Office of the Federal Attorney General, National Institute for the Combat of Drugs, Acta Circunstanciada, September 12, 1996.

²⁴⁹ Human Rights Watch interview, Rogelio Verber.

²⁵⁰ Ruling on amparo, Judge Pablo Jesús Hernández Moreno, January 10, 1997.

garrison, the agent was told to come back later by officials who refused to give their names.²⁵¹ The following day, the agent was told that the men were not there. Similar searches carried out after family members named additional possible places of detention were also fruitless.

²⁵¹ Report filed by court agent, January 1997.

On January 13, Raúl and Rogelio Verber's father sought help from the state police,²⁵² but state authorities never interviewed him about the complaint he had filed.²⁵³ Eighteen months later, using the control number that prosecutors assigned to the case when the complaint was initially lodged, Human Rights Watch sought information regarding what action had been taken on behalf of the brothers. "No such file exist," was the official response.²⁵⁴ On March 4, 1997, the Verber family and relatives of several other missing men filed a formal complaint with the PGR. Displaying an outrageous disregard for the urgency required, it was one year later to the day that federal authorities finally interviewed the Verber family about the complaint.²⁵⁵

Unlike the Hodoyán and Soto Miller cases, in the Verber and Beltrán case there is no hard evidence to link the "disappearance" of the three men to state agents. We know, however, that the Verber family had been under surveillance since soldiers moved against Hodoyán and Soto Miller. The failure of federal authorities to investigate the case promptly raises serious questions regarding the government's concern for finding the missing men.

²⁵² Office of the State Attorney General of Baja California, Volante de Canalización, January 13, 1997.

²⁵³ Human Rights Watch interview, Rogelio Verber.

²⁵⁴ Human Rights Watch telephone interview, Leonardo Cortez Téllez, director of investigations, Baja California state attorney general's office, June 3, 1998.

²⁵⁵ Human Rights Watch interview, Rogelio Verber.

VIII. IMPUNITY AND PUNISHMENT FOR HUMAN RIGHTS VIOLATIONS IN MEXICO

"Impunity" may be the most common word employed by nongovernmental human rights organizations to describe the Mexican government's response to abuses. For its part, Human Rights Watch has scarcely issued a report on Mexico without examining the failure of the government to respond adequately to human rights violations. Indeed, the theme of impunity runs throughout this report. However, as pervasive as the state's negligence is, it would be incorrect to assert that no human rights violators are ever investigated, prosecuted, or brought to justice in Mexico. To understand how and why the system so routinely fails, therefore, we must also ascertain how, why, and to what extent the system sometimes works.

This chapter draws on five cases of torture, or torture combined with execution, that were submitted to Human Rights Watch by the PGR and four torture or execution cases submitted by Mexico's Foreign Ministry, all of them provided in response to numerous Human Rights Watch requests for cases that these entities felt had been properly handled by authorities. It also reviews two cases investigated by nongovernmental human rights organizations in which police officers guilty of torture or extrajudicial execution have been brought to justice, and certain torture cases handled by the Mexico City Human Rights Commission (Comisión de Derechos Humanos del Distrito Federal, CDHDF), a governmental agency. In addition, it draws on cases analyzed in prior chapters of this report.

On numerous occasions during 1997 and 1998, Human Rights Watch solicited information from the Foreign Ministry and PGR regarding human rights cases they believed had been dealt with properly by authorities.²⁵⁶ Such information would

²⁵⁶ Human Rights Watch meeting, Armando Alfonzo, personal secretary to Attorney General Jorge Madrazo, September 1, 1997; letter to Armando Alfonzo, September 9, 1997; Human Rights Watch meeting, Attorney General Madrazo, January 26, 1998; letter to Attorney General Madrazo, February 14, 1998; Human Rights Watch meeting, Ambassador

permit Human Rights Watch to factor into its analysis the government's response to frequent criticisms of impunity. After all, precisely at the time that Human Rights Watch was beginning field work for this report, the Foreign Ministry was arguing that there was no impunity for torture in Mexico.²⁵⁷

Aida González, technical secretary of the Foreign Ministry's Interministerial Commission for Attention to Mexico's International Human Rights Commitments, and María Amparo Canto, the commission's congressional liaison, January 20, 1998; letter to María Amparo Canto, February 8, 1998; letter to María Amparo Canto, March 13, 1998; and Human Rights Watch meeting, María Amparo Canto, June 5, 1998.

²⁵⁷ Foreign Ministry, press release 142, May 9, 1997.

In response to the Human Rights Watch requests, the Foreign Ministry sent a package to Human Rights Watch in March 1998 that consisted only of a 1992 press release issued by the CNDH (regarding a case in which no action was taken against alleged torturers), a section on torture from the commission's 1997 annual report, the Mexican Constitution, state and federal laws, and United Nations materials. After receiving the information, Human Rights Watch again solicited case-specific detail. On August 28, 1998, we received a package containing eleven cases culled from CNDH materials. Eight of the eleven did not relate to torture or other violent abuses committed by state agents, so we do not review them here.²⁵⁸ Of the three cases relevant to the Human Rights Watch request—regarding torture committed by police or soldiers—no official was actually in custody.

The PGR also prepared a report for Human Rights Watch that included statistics and information on five human rights cases.²⁵⁹ Four out of five came to the attention of the attorney general's office through the CNDH, an indication of the commission's importance as well as a sign that the PGR should develop better procedures for encouraging direct complaints and learning of cases on its own; as

²⁵⁸ One of the eight cases involved a murderer who had been wrongly released from prison. He was not a government employee, however.

²⁵⁹ Office of the Federal Attorney General, "Resultados obtenidos por la Procuraduría General de la República en materia de lucha contra la impunidad y de los trabajos de la CNDH," document prepared for Human Rights Watch, June 1998. The five selected cases were not presented as the only successfully resolved cases but rather as examples of the types of success achieved by the Office of the Federal Attorney General. In discussing the office's report with Human Rights Watch, the office's director of internal affairs stressed that during 1997 more public servants were fired than fined, the opposite of 1996 and an indication of what he said was an improvement in the quality of sanctions imposed on office employees. He also pointed out that since December 1996, when Jorge Madrazo took over as attorney general, they had given 184 human rights courses to 8,682 people.

effective as the CNDH is on some cases, it cannot substitute for rapid action on human rights cases by the authorities who are initially responsible for handling them. Human Rights Watch notes that in none of the cases was a torturer serving a sentence. In one case, the accused fled, and in two others judges had yet to issue the requested arrest warrants. However, in two of the cases, torturers and two accomplices were in jail awaiting trial. Of the five cases documented below, the Rodríguez Tapia torture-murder deserves particular attention, because the PGR learned of the abuse through the press, not the CNDH, and within months had succeeded in putting the police officer who had tortured and killed Rodríguez Tapia behind bars while the case is being investigated.

Shades of Justice

Two fundamental measures of success in human rights cases are whether the officials responsible for torture, “disappearance,” or extrajudicial execution serve prison time, and whether the government compensates the victim. By these measures, Mexico’s record is exceedingly poor. At its rhetorical best, the Foreign Ministry argues that only eight people have been successfully prosecuted for torture, but the ministry does not even assert that those torturers are actually serving their sentences. In its most recent annual report, the CNDH noted that between May 1997 and May 1998 a total of thirty-nine public servants were indicted for human rights crimes based on commission recommendations, an increase over the twenty-eight documented in its prior annual report but a marked decrease from the 161, ninety-six, and seventy in years past.²⁶⁰ The commission, however, does not maintain statistics on the final outcome of the cases it documents, so no global figures regarding convictions are available.

Despite daunting obstacles, in rare cases prosecutors have obtained guilty sentences against torturers or authorities responsible for extrajudicial executions. In the Manríquez case, documented below, a Mexico City police officer who permitted a subordinate to torture was sentenced under the Federal Law to Prevent and Punish Torture, although he was released after paying a fine, rather than serving time in prison, and the accused torturer himself was freed on a technicality. The Garci Crespo case, also analyzed below, led to the sentencing of four Mexico City public security police officers for the victim’s extrajudicial execution.

Short of serving prison time, human rights violators may be detained during prosecutorial investigation or prior to sentencing, although these measures do not ensure ultimate punishment. Three federal police agents in cases described to

²⁶⁰ National Human Rights Commission, *Informe anual mayo 1997-mayo 1998*, p. 681; *Informe anual mayo 1996-mayo 1997*, p. 623; *Informe anual mayo 1995-mayo 1996*, p. 577; *Informe anual mayo 1994-mayo 1995*, p. 579; *Informe anual mayo 1993-mayo 1994*, p. 681.

Human Rights Watch by the PGR were arrested and jailed pending the outcome of their trial. It is far more common, however, for human rights abusers to have arrest warrants pending against them, to be at liberty while the subject of a half-hearted investigation, or not to be investigated at all.

It is insufficient for representatives of the executive branch of government to argue that their responsibility lies only in investigating charges of torture and, if warranted, indicting suspects. First, prosecutors control the speed and seriousness of their investigations, both of which frequently limit the success of prosecutions. Second, human rights violations and procedural errors—including the failure to adequately investigate allegations of torture or other irregularities—routinely go unpunished, meaning that public officials accept, and therefore encourage, such violations.

It is also insufficient for the Mexican government to be satisfied with partial steps toward justice in torture cases. Administrative actions against torturers or those who permit it may be taken in addition to criminal actions, but they cannot substitute for prosecution and punishment by time in prison. Similarly, the opening of a criminal investigation for torture is a positive step, but it does not satisfy international law requirements that torturers go to prison.

Overcoming Obstacles in Human Rights Cases

From the cases analyzed in this report, it is clear that time plays an important role in impunity in Mexico, because the justice system's slowness in prosecuting perpetrators allows them to flee, valuable evidence is lost, or family members and human rights groups pushing for justice are forced to give up. In the Guadarrama case, for example, the officer responsible for the "disappearance" was able to watch without fear as the judicial process went nowhere; despite detailed information indicating that he was responsible, authorities did not act against him until Mexican and international human rights groups took up the case. When authorities finally indicted the suspect seven months after the "disappearance," and long after sufficient evidence existed to move against him, the officer slipped away.

Given that so many torture victims in Mexico are themselves prosecuted, the passage of time also makes it more difficult to obtain valuable evidence in torture cases. If torture victims remain in jail or prison for extended periods of time, they may be subject to prolonged pressure to retract their complaints. Several cases in Oaxaca, documented above, appear to have followed this pattern. At the same time, if prosecutors delay in taking statements from torture victims while they are in jail, and thus easily accessible, they may find it difficult to do so if the victim is released, as happened in several EPR-related torture cases documented in the chapter on Oaxaca.

The results generated by Mexico City's official human rights commission also highlight an important aspect of Mexico's justice system: with the right pressure from the right government official, the system can be pushed to prosecute human rights violators. In one case followed by the commission, city prosecutors charged torturers with "abuse of authority," a charge for which bail is available. When the commission's president learned of the lesser charge, he urged prosecutors to amend the case to reflect that the victim had been tortured, and he eventually succeeded. By the time the charge had been changed, however, the suspects had fled.

The Sisyphean role of Mexican governmental and nongovernment human rights organizations in promoting justice for human rights violations is important to highlight. Human rights cases in Mexico usually follow a pattern: the authorities initially deny that any violation took place, even in the most blatant cases. This leaves human rights groups saddled with the responsibility of documenting the abuses the state ignores. Even then, when the authorities ignore even the most well-documented cases, human rights groups are burdened with creating public pressure in favor of prosecution.

The sheer number of abuses in Mexico, however, makes it impossible for human rights organizations to take action on all cases. First, prosecutors must be hounded to investigate. When prosecutors do not, human rights groups often find themselves gathering the information that would permit an indictment, locating witnesses, for instance, and bringing them to prosecutors. Second, organizations spend valuable time meeting with authorities to urge them to ensure that prosecutors act on the information they do have, or to request copies of case files that would allow them to evaluate progress. Third, working with the news media to stimulate public pressure on government officials is time-consuming, and human rights groups easily produce more information than journalists can cover.

Victims' relatives also often play an important role in moving cases forward. In the Garci Crespo case, a family member worked full time for almost two years to persuade reluctant authorities to indict the police officers responsible for the extrajudicial execution of Garci Crespo. Those officers are now in prison, serving sentences. In Tamaulipas state, the parents of Juan Lorenzo Rodríguez Osuna have worked nationally and internationally on behalf of their son, traveling to Mexico City, sending expensive packages of materials to human rights organizations, and hiring private lawyers.

The inescapable conclusion of this chapter is that if the victim or the victim's family has time, money, and education, it is more likely that a human rights violator will be punished or a wrongly prosecuted individual freed without charge. Years of fighting through the courts or the news media may be necessary to obtain even a partial victory, so only those willing and able to put in a long-haul fight can hope for such results. Hiring a private lawyer, being able to travel to Mexico City or

other areas to promote the case, and understanding the local and foreign news media are the keys to having a realistic chance of success.

Cases Deemed Successful by the PGR

Torture and execution victim Rafael Toledo Nolasco

On December 3, 1995, Federal Judicial Police in Salina Cruz, Oaxaca, detained Rafael Toledo Nolasco, whom they accused of possession of illegal drugs and a weapon reserved for the exclusive use of the armed forces. They beat him so seriously during the detention and later at the attorney general's office that he died a month later. Before he died, however, he was turned over to a federal prosecutor, charged, and transferred to a detention center. Prosecutors never questioned why he was in such a delicate state of health, and decided not to press charges against the officers.²⁶¹ After the CNDH issued recommendation 106/96 on November 6, 1996, detailing the problems in the case, the PGR suspended for thirty days the prosecutor who failed to investigate Toledo Nolasco's physical condition. They fired the prosecutors who decided not to press charges against the police, ordering that they be barred from working at the institution for ten years. The two police officers were fired and eventually charged with torture and murder. A judge issued arrest warrants for the men, but the former officers fled and remain at large.²⁶²

Extrajudicial execution victim José Soto Medina

On October 21, 1994, Federal Judicial Police agents illegally entered the home of José Soto Soto and Rosaura Medina Barajas, on the El Limoncito ranch, Apatzingán municipality, Michoacán state. They detained Soto Soto and his son Wulfrano Soto Medina, but executed another son, José Soto Medina. The police planted a gun on the victim and asserted that he had repeatedly shot at them before being killed himself. A CNDH examination of the body, however, showed that the victim was killed by a gunshot from between 25 and 35 centimeters away and that, before being shot, he had been beaten with what appeared to be a rifle butt. Based on this evidence, the commission concluded that José Soto Medina had been

²⁶¹ National Human Rights Commission, Recommendation 106/96, in *Gaceta* 76 (Mexico City: Comisión Nacional de Derechos Humanos, November 1996).

²⁶² Office of the Federal Attorney General, "Resultados obtenidos."

executed. Although police asserted they entered the home to serve an arrest warrant, no warrant for arrest or search was ever found. In a process plagued by irregularities, the prosecutors simply accepted the police version of events and decided not to prosecute the officers involved in the death of Soto Medina. In contrast, Soto Soto and Soto Medina were charged with drug and weapons violations.²⁶³

²⁶³ National Human Rights Commission, Recommendation 112/96, in *Gaceta* 76 (Mexico City: Comisión Nacional de Derechos Humanos, November 1996), pp. 239-40, 246, and 247.

A prosecutor who participated in the detention was eventually charged with “crimes against the administration of justice,” but an arrest warrant issued against him had not, according to the PGR’s information, been executed as of June 1998. The administrative investigation into one police official stalled but remains open, as the official absconded. Arrest warrants were solicited for seven other police officers, accused of “crimes against the administration of justice,” carrying out an illegal search, and violation of individual guarantees, but as of this writing a judge had not issued the warrants.²⁶⁴

Torture victim Donaciano Tapia Villalobos

On August 21, 1995, Federal Judicial Police agents detained Donaciano Tapia Villalobos and his brother-in-law, Victorino Jiménez Bera, in La Peñita de Jaltemba, Nayarit state. They were accused of possession of opium paste. According to Tapia Villalobos, the federal police transported him to the police station in the bed of a pickup truck, turning the muffler to face toward the bottom of the truck bed, stripping off his shirt, forcing him face down on the bed of the truck, and beating him on the back. Police reported that the detainee was burned when he voluntarily laid face down on the truck bed for the duration of the journey to the police station. The prosecutor to whom police delivered Tapia Villalobos failed to document the burns and bruises suffered by the detainee, and the medical examiner at the PGR documented only the burns, not the bruises. The statement initially made by Tapia Villalobos to the prosecutor was forced and later disavowed by the victim.²⁶⁵

After receiving a CNDH recommendation on February 20, 1997, the PGR conducted an administrative investigation that resulted in the firing of the two police officers responsible for transporting Tapia Villalobos to the station. One was prohibited from working for the force for five years and the other barred for ten.²⁶⁶ The prosecutor was fired, but the medical examiner faced no sanction. At the same time, one federal police officer was indicted on torture and abuse of authority

²⁶⁴ Office of the Federal Attorney General, “Resultados obtenidos.”

²⁶⁵ National Human Rights Commission, Recommendation 4/97, in *Gaceta* 79 (Mexico City: Comisión Nacional de Derechos Humanos, February 1996), pp. 61-64 and 71.

²⁶⁶ Office of the Federal Attorney General, “Resultados obtenidos.”

charges and arrested on July 21, 1997. Two other officials were arrested for covering up the abuse.²⁶⁷

Torture victim Juan Antonio García Carrillo

²⁶⁷ Office of the Federal Attorney General, “Resultados obtenidos.”

Federal Judicial Police arbitrarily detained Juan Antonio García Carrillo on November 6, 1995, in Piedras Negras, Coahuila state, holding him incommunicado until November 8. They beat him and threatened to puncture his testicles with syringes if he did not give the police the information they wanted. When the detainee asked for an explanation, he was hit in the right eye, causing blurred vision.²⁶⁸ The CNDH concluded that he was a victim of torture, since “there is proof that the wounds suffered by Juan Antonio García Carrillo in particular were maliciously produced by the arresting agents, not as a consequence of his detention, but with the intention to get him to confess to criminal acts he never committed.”²⁶⁹ The following day, police tried to force him to sign a false confession, providing him with a “person of confidence” who was not, in fact, of his own choosing. He, along with three other people, was accused of possession of heroin. Three of the four were indicted, but two of those, including García Carrillo, were eventually acquitted almost a year later. To his credit, the judge hearing the case refused to accept the testimony forcibly extracted from García Carrillo and the other detainees.²⁷⁰

Two police officers were indicted on abuse of authority charges, despite the fact that the CNDH had documented that torture had taken place. As of this writing, arrest warrants had not been issued; nor had the PGR finished administrative investigations into the officials who failed to act properly in the case: the prosecutor who charged the detainees based on fabricated evidence and failed to question the mistreatment they suffered; the detainees’ public defender; and medical personnel who failed to document the physical evidence of abuse.²⁷¹

Torture-murder victim Agustín Rodríguez Tapia

Federal Judicial Police acting without a warrant or other legal cause detained Agustín Rodríguez Tapia on August 9, 1997, and took him to the PGR office in Mexicali, Baja California state. They beat him during the detention and again at the PGR office. As a result of the beatings, Rodríguez Tapia died.

²⁶⁸ National Human Rights Commission, Recommendation 69/97, in *Gaceta* 84 (Mexico City: Comisión Nacional de Derechos Humanos, July 1997, p. 254.

²⁶⁹ *Ibid.*, p. 267. Translation by Human Rights Watch.

²⁷⁰ *Ibid.*, pp. 260 and 262.

²⁷¹ Office of the Federal Attorney General, “Resultados obtenidos.”

The PGR informed Human Rights Watch that within hours of learning of the abuse through a newspaper account, an investigator was sent to check into the story.²⁷² An investigation was opened on August 27, 1997, and three police officers were indicted a month later, one for murder, one for covering up the abuse, and all three for abandoning a person in need.²⁷³ On October 26, 1997, a judge issued an arrest warrant for the officer charged with murder and abandonment, who was subsequently jailed. The judge denied the request for arrest warrants against the other two officers. The PGR also has administrative investigations pending against all three officers.

Cases Deemed Successful by the Foreign Ministry

Torture of José Pedro Luis Huerta Galiote

On January 27, 1992, agents of the Judicial Police of Puebla state arbitrarily detained José Pedro Luis Huerta Galiote, whom they accused of raping the son and daughter of the woman with whom he lived. Police held Huerta Galiote incommunicado until January 30, beating him and applying electrical current to his body, causing him to pass out several times. On one occasion when Huerta Galiote was passed out, police inserted a nail into his head.²⁷⁴ Medical personnel failed to take note of his physical condition.

In a series of indictments beginning in April of 1994, police, medical personnel, and prosecutors were charged with crimes ranging from abuse of authority and battery to crimes against the administration of justice. Several police officers and medical examiners were fired, but no public official was ever sentenced

²⁷² Human Rights Watch interview, Eduardo López Figueroa, director, internal affairs, Office of the Federal Attorney General, Mexico City, June 12, 1998.

²⁷³ Office of the Federal Attorney General, "Resultados obtenidos."

²⁷⁴ National Human Rights Commission, Recommendation 145/92, in *Gaceta* 26 (Mexico City: Comisión Nacional de Derechos Humanos, September 1992), pp. 118-49.

for the torture of Huerta Galiote or for failing to investigate or document the abuse properly. Huerta Galiote is serving a twenty-four-year sentence for rape.²⁷⁵

**Torture of Omar Carreño Muñoz, Luis Alberto Chávez Sarabia,
Francisco Javier Reyes Guzmán, and José de Jesús López Bogarin in
Sinaloa**

²⁷⁵ National Human Rights Commission, Coordinating Office for Follow-up on Recommendations (Coordinación de Seguimiento de Recomendaciones), "Recomendación 145/92, 12/Ago/92, Puebla," no date, pp. 4, 14-15. Document sent to Human Rights Watch by Mexico's Foreign Ministry on August 28, 1998.

On January 20, 1994, four inmates in a Mazatlán, Sinaloa state prison—Omar Carreño Muñoz, Luis Alberto Chávez Sarabia, Francisco Javier Reyes Guzmán, and José de Jesús López Bogarin—were taken from their cell after allegedly taunting guards. They were kicked and beaten, then made to lie face down while guards poured pails of cold water and rocks over their backs every five minutes for ninety minutes.²⁷⁶

In September 1995, a judge issued arrest warrants for six prison guards for the treatment received by the four prisoners in January of the prior year, but they were accused of abuse of authority and battery, not torture.²⁷⁷ The CNDH did not provide follow-up information indicating whether the arrest warrants were served.

Torture of Evangelina Arias de Bravo

After Octavio Bravo Arias allegedly stole money from the National Bank of the Army, Air Force and Navy (Banco Nacional del Ejército, Fuerza Aérea y Armada, or Banjército) in 1991, soldiers illegally detained the suspect's mother, Evangelina Arias de Bravo, and forced her to sign a document promising to repay the money they said her son had stolen. She was held in Veracruz state between August 26 and September 3, 1991, and tortured psychologically. They told her that they had her grandchildren in custody and that they were going to force her pregnant daughter to abort her fetus. She signed the document, and Banjército used it to file a successful court case against her in which her house was seized in lieu of payment.²⁷⁸

²⁷⁶ National Human Rights Commission, Recommendation 47/94, in *Gaceta* 46 (Mexico City: Comisión Nacional de Derechos Humanos, May 1994), p. 25.

²⁷⁷ National Human Rights Commission, Coordinating Office for Follow-up on Recommendations, "Recomendación 047/94, 30/Mar/94, Sinaloa," no date, p. 11. Document sent to Human Rights Watch by Mexico's Foreign Ministry on August 28, 1998.

²⁷⁸ National Human Rights Commission, Recommendation 114/96, in *Gaceta* 76 (Mexico City: Comisión Nacional de Derechos Humanos, November 1996), pp. 263-64.

Arias de Bravo filed a complaint with federal prosecutors, who turned the case over to the military, but military investigators failed to investigate thoroughly, lost the file, then closed the case without taking action against the soldiers who had forced her to sign the document.²⁷⁹

After the CNDH issued a recommendation, military prosecutors reopened the case and eventually informed the commission that three officers would be charged with torture for their role in the episode. A court eventually reversed the decision to seize Arias de Bravo's home.²⁸⁰ The CNDH did not provide follow-up information regarding whether the officers were actually indicted.

Success and Failure in Two Cases Handled by NGOs

Eduardo Garci Crespo

²⁷⁹ Ibid.

²⁸⁰ National Human Rights Commission, Coordinating Office for Follow-up on Recommendations, "Recomendación 114/96, 15/Nov./96, Federal," no date, p. 8. Document sent to Human Rights Watch by Mexico's Foreign Ministry on August 28, 1998.

On March 30, 1995, public security police officers killed Eduardo Torres Garci Crespo, a pilot with Mexicana airlines.²⁸¹ The officers tried to detain the man in the early morning as he drove through Mexico City's Roma neighborhood. Possibly fearing a robbery, the driver did not heed police calls to stop, so the officers, in four cars, followed Garci Crespo while firing their weapons. The police overtook Garci Crespo at his parents' house, where one of the officers shot him between the eyes.²⁸²

Following the shooting, the officers repaired to a restaurant until, forty-five minutes later, they received a call related to the murder. They returned to the scene and pretended to investigate, interviewing witnesses and carrying the body to the funeral vehicle.²⁸³

On April 4, 1995, prosecutors announced that three of the four officers involved in the incident had been arrested; the man believed responsible for shooting Garci Crespo fled but was later captured. For the following year, however, the case progressed little, and the victim's family complained of repeated irregularities, such as the inability of the victim's legal representatives to present their side of the case in court, the refusal of authorities to provide the defense team with a copy of the case file, and, when the file was finally turned over, the fact that 600 of its 1,500 pages were illegible.²⁸⁴ A tape of the police communications during the chase subsequently disappeared.²⁸⁵

On September 2, a judge sentenced each of four former public security police officers to more than thirty-six years in prison for aggravated homicide and abuse of authority.²⁸⁶ The officer who had fled was found and included in the sentence.

Manuel Manríquez

Manuel Manríquez was detained in Mexico City on June 2, 1990, without an arrest warrant. Subjected to torture, he was forced to confess to a murder. The three

²⁸¹ Miguel Agustín Pro Juárez Human Rights Center, press release, September 3, 1996.

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ Miguel Agustín Pro Juárez Human Rights Center, press release, no date.

²⁸⁵ Miguel Agustín Pro Juárez Human Rights Center, press release, September 3, 1996.

²⁸⁶ *Ibid.*

courts that ended up hearing his case originally or on appeal accepted his torture-based confession and never questioned the lack of an arrest warrant or the case's other procedural defects, such as the refusal of authorities to let the defendant attend all hearings related to the trial. According to a judge who eventually heard the torture case, Manríquez

was taken to the office of the Judicial Police of Iztapalapa Delegation, where they blindfolded him and interrogated him on several occasions, beating him to get him to confess to two homicides. . . . He was beaten day and night. The beatings were on all of his body, and they caused lesions inside his mouth. In addition they burned his testicles with lit cigarettes, and put "Peking chile" up his nose.²⁸⁷

Manríquez was found guilty of murder, based in part on his forced confession. The judge who first heard the case cited the confession in the sentence and argued that it was valid even if Manríquez had retracted it. To accept the forced confession, the judge cited the "principle of judicial immediacy," whereby the first confession has more validity than others. On appeal, other courts also used this tortured confession.²⁸⁸

Almost five years after the detainee was tortured, Mexico City prosecutors charged two police agents—Fernando Pavón Delgado and José Luis Bañuelos Esquivel—with torture.²⁸⁹ On November 24, 1995, the agents were arrested. Bañuelos, the alleged perpetrator of the torture, appealed the arrest order on the grounds that a Mexico City prosecutor had filed charges under a federal law, the 1991 Law to Prevent and Punish Torture. On November 27, 1996, a judge ruled in

²⁸⁷ Sentencia, Causa Penal 112/95, Juez Décimo Segundo de Distrito en Material Penal en el Distrito Federal, November 21, 1996, pp. 66-67.

²⁸⁸ Center for Justice and International Law, legal brief filed before the Inter-American Commission on Human Rights, May 22, 1996, p. 2.

²⁸⁹ AP 50/ACI/245/94-03 and SC/11982/92. Juzgado Sexagésimo Tercero de lo Penal del Distrito Federal, Causa 175/95.

favor of Bañuelos, ordering his immediate release, but noting that a federal prosecutor could still file charges. The federal prosecutor never filed the torture charge against Bañuelos. Six days earlier, a Mexico City judge handed Pavón, who had not appealed the arrest warrant, a two-year sentence.²⁹⁰ As Bañuelos's superior, Pavón was found guilty of torture for having failed to prevent the abuse by turning the detainee over to prosecutors within the time period allowed by law. Police held Manríquez for five days. The judge allowed Pavón to substitute a fine for prison time.²⁹¹

²⁹⁰ Resolución, Toca Penal No. 11/96-I, pp. 7-8.

²⁹¹ *Ibid.*

Meanwhile, the torture victim remains in prison. Shortly after the EPR carried out its first public, armed actions in 1996, authorities transferred the detainee to a maximum security prison, arguing that he was a member of the armed group. "There are reasons to believe that these inmates are part of the political organization called PROCUP-PDLP, which supports the activities of the EPR," explained the Ministry of Government.²⁹² After intense lobbying by human rights lawyers, Manríquez was returned to a Mexico City prison.

Human Rights Commission of the Federal District

Founded in 1994, Mexico City's official Human Rights Commission of the Federal District functions analogously to the CNDH, but its attention is focused exclusively on Mexico City. Its recommendations, which consist of detailed case information and non-binding suggestions for action to be taken by Mexico City officials in human rights cases, have been relatively few in number but forceful and well-documented. They have also been effective in stimulating investigations into serious human rights violations, if not leading to sentences for human rights violators. According to Luis de la Barra, the commission's president, thirty-four city officials are under criminal investigation for torture at the time of this writing, following commission recommendations.²⁹³ One public servant has been sentenced to nine years and three months in prison, but is not serving his sentence because he fled.²⁹⁴ De la Barra also notes that after the commission documented a case of torture that took place in a building housing offices of the city attorney general and judicial police, the prosecutor installed closed-circuit television monitors, in accordance with the commission's recommendation.

²⁹² Government Ministry, press release 278/96, September 6, 1996.

²⁹³ Human Rights Commission of the Federal District, "Un refugio probado," April 21, 1998, p. 6.

²⁹⁴ Human Rights Commission of the Federal District, document given to Human Rights Watch on September 8, 1997.

The commission highlights one of the key assertions of this report—that with appropriate political will, torture cases can be moved through the system. On March 21, 1995, according to Federal District commission recommendation 12/95, guards at the Men’s Preventive Custody-South facility tortured Adrián Marcos Hernández, who had earlier that day refused a request from one of his torturers to relinquish a piece of clothing. According to the guard, the inmate had refused to obey an order to stop using the clothing to block the guards’ view of a visiting area. Later that day, the guard entered the man’s cell and, along with another prison employee, brought him to a staff doctor. The doctor examined the man and determined that he had not been beaten. From there, they brought him to a room in another building, where he was beaten by two guards, including the one who had tried to take his clothing. The following day, a fellow inmate brought the victim to a staff doctor, who gave him pills for the pain but refused to fill out a report on the incident. On March 25, a staff doctor finally conducted a medical exam on the victim, but only after the commission intervened.²⁹⁵

City prosecutors charged the guards with abuse of authority, not torture, prompting the commission’s president to write to the city attorney general to urge that the case be reviewed and that prosecutors charge the guards with torture. “By issuing charges of abuse of authority—which carries a low penalty—and not with torture—which is severely punished, in accord with the seriousness of the criminal act—the opportunity is lost to give the mentioned abuse of authority the just punishment that it deserves.”²⁹⁶ In response, the city broadened the charges to include torture.²⁹⁷ But even so, the system showed its weakness. When the charge was changed to torture, the prison guards fled.

²⁹⁵ Human Rights Commission of the Federal District, Recommendation 12/95, September 4, 1995, mimeo, pp. 7-8, 15, and 22-23.

²⁹⁶ Luis de la Barreda Solórzano, letter to then-Attorney General José Antonio González Fernández, January 12, 1996.

²⁹⁷ Armando Victoria Santamaría, Procuraduría General de Justicia del Distrito Federal, March 28, 1996.

IX. THE ROLE OF THE INTERNATIONAL COMMUNITY

While Mexican government officials and opposition politicians trumpet their disdain for foreign intervention on human rights issues, foreign governments—particularly the United States and members of the European Union—are increasingly active in monitoring and commenting on Mexico's human rights abuses, especially those related to the troubled southern state of Chiapas. Similarly, the human rights bodies of international organizations such as the United Nations and the Organization of American States are playing a greater role in Mexico now than at any time in the past.

Raising the sovereignty flag, however, is a politically expedient method for Mexico to deflect criticism, sidetrack debate, and raise the political stakes for countries that do speak out on the country's human rights record. On numerous occasions in 1998, for instance, Mexican authorities successfully deflected foreign concern over human rights problems by engaging in political debates on sovereignty, thereby eliminating all discussion of the substance of the underlying human rights issues. Such was the case when, during a U.S. Senate hearing on June 16, 1998, Secretary of State Madeleine Albright answered a query from Sen. Patrick Leahy by replying that Mexico was aware of U.S. concerns about Chiapas and noting that the U.S. was "pressing" Mexico for a peaceful solution. A diplomatic row ensued, covered intensely in the Mexican press, over whether the secretary meant to say the United States was pressuring Mexico or was simply voicing concern. Absent from the debate was any focus on the human rights violations that had occurred in Chiapas. Similarly, the government's expulsion of foreign monitors in Chiapas in April 1998 shifted the debate from what the foreigners had observed to the fact that they had done so.

The Mexican government has strongly criticized Human Rights Watch for calling on foreign governments to express public and private concern about human rights conditions in Mexico. In April 1997, on the day that Human Rights Watch published *Implausible Deniability: State Responsibility for Rural Violence in Mexico*, the Mexican Foreign Ministry responded to what it described as the "curious" timing of the report, since President Bill Clinton planned to visit Mexico two weeks later:

Moreover, in the press release it issued today, Human Rights Watch/Americas suggests that the visiting head of state underscore during his visit the importance of strengthening the rule of law in the country and the need to end impunity for political violence. This organization seems to forget that Mexico is a sovereign country and,

therefore, that it does not receive instructions from any foreign government at all.²⁹⁸

A yawning gap exists, however, between receiving orders from abroad and acknowledging criticism or even suggestions on issues related to internationally recognized human rights standards. It is the province of all people and governments to support the protection and promotion of human rights in any country, and Mexico's compliance or failure to comply with international human rights standards is a matter of public interest both within and outside Mexico's borders. The Universal Declaration of Human Rights, a cornerstone of international human rights standards, proclaims, ". . . every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . ."²⁹⁹ Raising human rights concerns abroad becomes even more necessary when countries increasingly integrate their economies, coordinate cross-border initiatives such as anti-narcotics measures, and agree to cross-border training of military personnel, as have Mexico and the United States. Indeed, Human Rights Watch believes that these realities confer on the United States the responsibility to encourage greater respect for human rights in Mexico, and on Mexico to promote greater respect for human rights in the United States. Similarly, by signing a trade, political, and cooperation agreement with the European Union, Mexico has expressly committed itself to cross-border scrutiny of its human rights practices.

United States Human Rights Policy Toward Mexico

Policies and assistance

The State Department is well aware of the serious human rights violations that take place in Mexico. The most recent *Country Reports on Human Rights Practices* noted,

²⁹⁸ Foreign Ministry, press release 134, April 29, 1997. Translation by Human Rights Watch.

²⁹⁹ The Universal Declaration of Human Rights was adopted and proclaimed by United Nations General Assembly resolution 217 A(III) on December 10, 1948.

Major abuses included extrajudicial killings, disappearances, torture, illegal arrests, arbitrary detentions, poor prison conditions, lengthy pretrial detention, lack of due process, corruption and inefficiency in the judiciary, illegal searches, violence against women, discrimination against women and indigenous persons, some limits on worker rights, and extensive child labor in agriculture and in the informal economy.³⁰⁰

The State Department has also held important meetings with Mexican human rights organizations and carried out human rights fact-finding missions headed by State Department officials from Washington, D.C. These efforts send a pro-human rights message to Mexican government officials and human rights monitors alike. When it comes to establishing U.S. policy toward Mexico, however, human rights occupies a place on the bilateral agenda far behind trade, immigration, and drugs. The State Department treads very lightly with respect to human rights in Mexico, failing to take public positions on key human rights issues, such as the arbitrary expulsion of U.S. citizens from Mexico. When two U.S. citizens were expelled in April 1998, U.S. officials only raised with their Mexican counterparts concern over whether U.S. embassy personnel had been adequately notified. No concern was raised over the arbitrary expulsion itself.

At the same time, the United States armed forces are increasingly training Mexican soldiers and providing assistance to Mexican civilian agencies involved in counternarcotics initiatives. Mexico receives more International Military Education and Training (IMET) funding than any other Latin American or Caribbean country, at an estimated cost of U.S. \$1 million for 190 Mexican trainees in 1998, with a similar amount requested for 1999. Another \$5 million is expected to be spent during 1998 on International Narcotics Control initiatives in Mexico; \$8 million has been requested for the following year. These funds will be disbursed to the PGR, the Northern Border Response Team (a joint civilian-military task force), and other Mexican agencies.

The Pentagon also spent more than \$28 million training Mexicans in 1997, and it is expected to spend slightly more than \$20 million for training in 1998. These funds—known as Section 1004, after its location in the 1991 Defense Authorization Act—are for counternarcotics initiatives only, including U.S. military training of foreign police forces. However, the Defense Department is not required

³⁰⁰ U.S. Department of State, *Country Reports on Human Rights Practices for 1997* (Washington, DC: U.S. Government Printing Office, February 1998), pp. 570-71.

to break down its spending by category. Under this program, the United States trained 829 Mexicans, many of them from Mobile Air Special Forces Groups (Grupos Aeromóviles de Fuerzas Especiales, GAFE).

The United States has also delivered aircraft and helicopters to Mexico under the president's Emergency Drawdown Authority (EDA). In 1996 and 1997, the United States transferred fifty-three UJ-1H helicopters and three C-26 aircraft. Another twenty helicopters were transferred through the Excess Defense Articles (EDA) program. End-use monitoring of these helicopters has been weak, according to the General Accounting Office (GAO). The U.S. embassy in Mexico City was found to have kept incomplete records of the use of the helicopters, while the U.S. military's ability to provide adequate oversight was limited by the end-use monitoring agreement itself.³⁰¹

United States Agency for International Development (USAID) programs in Mexico, valued at \$15 million for fiscal year 1998 and \$13 million for 1999, included a judicial exchange initiative focused on bringing together U.S. and Mexican judges. The programs do not include an explicit human rights focus.

Human rights concerns with U.S. assistance to Mexico

The United States has encouraged Mexico's military to play a larger role in counternarcotics efforts. As the United States encourages Mexico's military to become further involved in civilian-related law enforcement activities, the U.S. government has not enunciated a medium- or long-term plan to strengthen civilian institutions so that Mexico's army will not indefinitely need to play the role it has currently assumed, and the United States has not made Mexico's development of such a plan a condition of U.S. training. United States support of Mexico's army in these roles may undermine the civilian institutions that should undergird any democratic society.

Although training is ostensibly for anti-narcotics matters, the reality in Mexico is that troops engaged in fighting the production or traffic of illegal drugs are likely to be called to engage in counterinsurgency as well. Guerrero state, for instance, produces drugs and has a guerrilla presence; soldiers working on one issue cannot realistically be expected not to engage in the other.

³⁰¹ Adam Isacson and Joy Olson, *Just the Facts: A Civilian's Guide to U.S. Defense and Security Assistance to Latin America and the Caribbean* (Washington, DC: Latin America Working Group, 1998), p. 60.

At the same time, serious human rights violations have been documented in U.S.-supported anti-drug operations, as indicated by the Hodoyán and Soto Miller cases, analyzed in the chapter on “disappearances,” and in cases involving U.S.-trained soldiers. The United States became complicit in the Hodoyán “disappearance” by failing to aid the U.S. citizen who was encountered in military custody. Apparently more interested in pumping the man for information on drug trafficking, U.S. officials did nothing to assist the victim. In Jalisco state, U.S.-trained Mexican soldiers participated in the arbitrary detention and torture of some twenty people on December 14 and 15, 1997, one of whom was killed.³⁰² The soldiers planned the attack in advance, apparently after someone stole one of their weapons, and the victims were brought to and tortured at the military base.³⁰³ According to Mexico’s *La Jornada* newspaper, the Pentagon confirmed that six of the soldiers had been trained under the Pentagon’s Section 1004 program.³⁰⁴ The soldiers have been arrested but are facing trial in military, not civilian, court.³⁰⁵ “The United States played no role in monitoring these soldiers after training,” a State Department official told Human Rights Watch. “That is the policy because it is not practical to follow each and every one of them. At the same time, the fact is that the Mexican government would never stand for it.”³⁰⁶

If the United States is to persist in training Mexican law-enforcement agents, it cannot continue to tread lightly with regard to human rights issues simply because the Mexican government would reject it. The responsibility engendered by U.S. training, funding, and equipping of Mexican officials makes promoting and protecting human rights there a necessity, not an option.

The European Union

³⁰² Human Rights Watch telephone interview, María Guadalupe Morfín, president, Jalisco State Human Rights Commission, August 5, 1998.

³⁰³ Ibid.

³⁰⁴ Jim Cason and David Brooks, “Violaron derechos humanos en Jalisco militares entrenados en EU,” *La Jornada*, June 28, 1998.

³⁰⁵ Human Rights Watch telephone interview, María Guadalupe Morfín.

³⁰⁶ Human Rights Watch interview, August 5, 1998.

On December 8, 1997, Mexico and the European Union signed an economic partnership, political coordination, and cooperation agreement, bringing to a close negotiations that included intense scrutiny of Mexico's human rights record.³⁰⁷ In June of the previous year, Mexico and the European Commission, responsible for negotiating with non-E.U. states, had agreed on terms for the pact, but the union's Council of Ministers rejected the deal on the grounds that Mexico had excised the standard human rights and democracy clause from the agreement.³⁰⁸ Mexico had reportedly objected to the clause's inclusion of domestic policies within the realm of issues open to evaluation by the Europeans. Eventually, Mexico relented, and the clause was included in the agreement signed in December.

As part of the accord signed in December, Mexico and the E.U. agreed to an interim agreement regulating trade negotiations, which entered into force on July 1, 1998. Before it became effective, members of the European Parliament issued recommendations with regard to the accord. The committees on foreign economic affairs, foreign affairs, security and defense policy, and cooperation and development urged the Council of Ministers to ensure that funds for democracy and human rights projects would come available at the same time that the agreement entered into force. The latter two committees also urged the Council of Ministers to take steps to ensure that during the annual meetings of the Joint Committee, which will review the implementation of the accord, explicit attention be paid to human rights issues. In order for either of these suggestions to come to fruition, however, either the Europeans or the Mexicans will have to insist on them.

Funding for democracy and human rights projects and an annual review of Mexico's human rights practices could play an important role in promoting human rights in Mexico. Given that the agreement is conditioned upon respect for human rights and democratic principles, it could serve to press Mexico for important improvements, either expressly or tacitly.

The European Union should build on the solid human rights foundation it has developed with Mexico to ensure that the new economic partnership, political coordination, and cooperation agreement becomes an instrument through which the effective protection of human rights is encouraged in Mexico. The various components of the E.U. should work rapidly to ensure that funds for democracy and human rights projects in Mexico become available as soon as possible; a review of human rights conditions in Mexico takes place as part of any annual evaluation of the functioning of the accord; written reports and oral testimonies on human rights

³⁰⁷ Mexico and the European Union will begin negotiations on trade issues in late 1998.

³⁰⁸ The clause reads, "Respect for democratic principles and fundamental human rights, proclaimed by the Universal Declaration of Human Rights, underpins the domestic and external policies of both Parties and constitutes an essential element of this Agreement."

are solicited from governmental and nongovernmental sources as part of the annual review process; and the permanent mission of the European Commission in Mexico City is staffed with at least one full-time human rights monitor who is provided the resources necessary to report exhaustively on human rights conditions there.

The United Nations and the Organization of American States

After years of requesting permission to conduct an official mission to Mexico, U.N. Special Rapporteur on Torture Nigel Rodley conducted research in Mexico in August 1997. He released a detailed report in January 1998, concluding, "Torture and analogous mistreatment occur with frequency in many parts of Mexico, although the information received by the Special Rapporteur does not permit the conclusion that it is a systematic practice in all parts of the country."³⁰⁹ The report made detailed recommendations.

The special rapporteur's scrutiny was followed in June 1998 by interest in Chiapas by U.N. High Commissioner for Human Rights Mary Robinson, who expressed concern about human rights violations there. She announced that her office stood ready to provide technical assistance if it was requested by the Mexican government. Although she was strongly rebuffed by the government at the outset, Mexican authorities hinted in early August, when Secretary-General Kofi Annan visited Mexico, that she might be permitted to visit Chiapas. According to the office of the high commissioner for human rights, in mid-August the Mexican government, through its mission at the United Nations in Geneva, requested technical assistance from the office of the high commissioner. "The request was general and could serve as the basis for discussion with the Mexican government about what the assistance might consist of," the office told Human Rights Watch.³¹⁰ Despite the fact that the U.N. Human Rights Committee confirmed the Mexican request for assistance, Mexico's Foreign Ministry denied that a request had been made.

The details of the technical human rights assistance have yet to be ironed out between the high commissioner and Mexican government. If the Mexican government were to permit it, the commission could send an evaluation team to conduct research on ways in which the Mexican government could improve its human rights record, and could make public its report and recommendations.

³⁰⁹ Inter-American Commission on Human Rights, "Report on the Situation of Human Rights in Mexico," para. 78.

³¹⁰ Human Rights Watch telephone interview, September 2, 1998.

Both the secretary-general and high commissioner for human rights have met with Mexican human rights organizations, the former during his trip to Mexico and the latter in Geneva. These meetings served both as a positive message of support for the human rights community and as an important opportunity for the United Nations officials to receive first-hand information about human rights violations in Mexico.

The Inter-American Commission on Human Rights, an organ of the Organization of American States, is also playing an increasingly active role in Mexico. The September 1998 commission report on Mexico provided important analysis of the overall human rights situation in Mexico. The commission has also investigated multiple individual cases of human rights violations in Mexico and pushed Mexican authorities to resolve the problems found.

Taken together, the U.N. and the OAS have worked to legitimate the cause of international attention to human rights violations in Mexico, although the Mexican government has not openly accepted their recommendations. Rather, the international attention appears to be considered by authorities as one more political inconvenience among others to be weathered.

The Organization of American States and the United Nations should persist in their efforts to investigate human rights conditions in Mexico and to publish detailed reports and recommendations on their findings. In particular, the Inter-American Commission on Human Rights should maintain its investigations into individual cases and should use its broad experience on Mexico to promote human rights reforms there. The United Nations should continue to make known its availability to assist the Mexican government through the office of the high commissioner for human rights.

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I. INTRODUCTION

More often than not, Mexico is overlooked when lists of countries that violate internationally recognized human rights are compiled. That this is so is more a testament to the Mexican government's careful cultivation of its pro-human rights image than its care to ensure that individual human rights are respected. This report aims a spotlight at an array of abuses that have become an institutionalized part of Mexican society: killings, torture, and other mistreatment by the police during criminal investigations and, especially, in Mexico's efforts to curb narcotics trafficking; other violations of civil liberties in the criminal justice context; disappearances; election-related violence; violence related to land disputes; abuses directed against independent unions; and violations of freedom of the press.

With the notable exception of election-related violence, most of the human rights abuses described here fit into patterns that have been prevalent for years. Torture, for example, commonly was inflicted on political prisoners in the late 1960s and early 1970s, and has become more widespread since then. Violence in land disputes is another long-standing problem; and the methods now used to silence the press and to keep union members in line are consistent with past practices.

What is new is the increase in domestic and international attention to human rights conditions in Mexico. Part of the explanation for this opening lies in political changes that have occurred in Mexico in recent years. Since 1929, Mexico's one-party political system has dominated most sectors of Mexican society, including state and local governments, the major public and private enterprises that drive Mexico's economy, organized labor, farm labor, and the news media. The ruling party, the Institutional Revolutionary Party, or "PRI," and the government are so entangled that distinguishing between them is often difficult. Members of the PRI represent a wide range of political viewpoints and have traditionally debated differences of opinion away from the public eye. As elsewhere, party loyalty is rewarded with posts in government and other political and economic favors; in Mexico, the benefits also often include immunity from prosecution for criminal acts. At the apex of this system is a powerful president who commands the loyalty of those in his party, the government, and the armed forces; and who handpicks his successor.

During the 1980s Mexico's economy suffered a series of reversals that

shook the political system. The crisis was so great that the PRI lost control of a significant faction of its membership which broke away and formed a new political party, the Democratic Revolutionary Party, or "PRD." In the 1988 presidential elections the PRD, together with several small leftist political parties that had little political clout but whose existence helped bolster the impression that Mexico is a democracy, nominated Cuauhtémoc Cárdenas, the son of one of Mexico's most popular presidents. *Perredistas* (members of the PRD) claim that but for electoral fraud perpetrated by the PRI, Cárdenas would now be president, and even by official tallies he won a significant portion of the vote.¹

Cárdenas's success brought politics in Mexico out into the open and emboldened *perredistas* at the state and local levels to try their hand at electoral politics. It also encouraged the activities of a wide variety of non-governmental organizations, including peasant groups not affiliated with the government's official peasant organization, labor groups similarly independent of the official labor organization, and human rights organizations. As a consequence, there has been a heightening of political tensions in Mexico unlike any seen for nearly two decades, coupled with a significant increase in reports of alleged denials of political rights as well as other human rights violations.

Another part of the explanation for the increased attention to human rights conditions in Mexico results from President Carlos Salinas de Gortari's administration's enthusiasm for Mexico's "war on drugs." To combat drug trafficking, the Federal Judicial Police have appointed an elite squad of officers, many of whom formerly served in earlier incarnations of repressive public security units, and are widely reputed to be corrupted by involvement in or covering up of drug trafficking. The squad enjoys unhindered freedom to locate and destroy drugs and arrest those participating in drug trafficking, and operates with near absolute impunity. Federal narcotics police are accountable for a large number of the cases of murder, torture, and abuse of due process in Mexico today. Extortion and robbery are also frequent elements of Federal Judicial Police operations. The blatant nature of these atrocities, combined with the fact that under the pretext of drug investigations many of Mexico's middle and upper class families are experiencing treatment previously reserved for the more anonymous poor, has led to an increase in publicity about human rights abuses.

Journalists and human rights activists who report on abuses by the

Federal Judicial Police do so at considerable risk. One distinguished Mexican journalist told Americas Watch that he was warned by a high level government official not to cover human rights violations by this police force because no one in the government would be able to protect him if they retaliated. On May 21, 1990, Norma Corona Sapién, a leading human rights monitor from Sinaloa who had the courage to denounce abuses by the Federal Judicial Police, was gunned down in the street near the university where she taught.² She died instantly.

Many obstacles to accurate reporting and adequate investigation of human rights abuses remain. The Mexican government is highly sensitive about its national and international human rights image. When embarrassing allegations of human rights violations are made, damage control measures are quickly adopted. For example, following the earthquake in 1985, when tortured bodies were discovered in the ruined headquarters of the Attorney General of the Federal District, the government immediately adopted legislation and ratified international treaties condemning torture.³ That this was more of a public relations ploy than a real attempt to curb torture, however, is indicated by the fact that increasingly sophisticated methods of physical and psychological torture are used routinely in law enforcement to this day.

Another obstacle is created by the government's tight control over the news media. As Chapter VIII of this report discusses, most human rights abuses in Mexico are never publicized. Follow-up stories about incidents that are reported are even rarer. Accordingly, it is difficult for independent observers to discover whether or not these cases have been adequately resolved or to assess claims by the government that it is doing what it can to prevent and punish rights abuses.

Mexico's federal system also provides cover for human rights abuses. Despite the enormous influence of the President, the federal government, and the PRI at the state and local levels, federalism provides federal officials with the excuse that prevention, investigation, and prosecution of human rights abuses are state responsibilities over which they have no control. Lawyers and activists who attempt to press for investigations and prosecutions of human rights abuses, as well as legislative changes aimed at preventing future abuses, must mount separate campaigns and divide slim resources among each of Mexico's thirty-one states, its Federal District, and the federal government.

Mexico's geography is another impediment to investigation and

reporting of human rights abuses. Many of the non-election related killings and disappearances in recent years have occurred in rural areas that are accessible only by several hours walk and in which the local population does not speak Spanish. Full investigation of these violations would require substantial translator support and an extended time commitment, which would strain the resources of international human rights organizations and of Mexico's fledgling domestic human rights monitoring groups.

Finally, Mexico's foreign policy has deflected attention from abuses of human rights that occur within its borders. As a Third World leader, Mexico has been a strong advocate of non-interference in nations' domestic affairs. At the same time, it has created the illusion that it is a rights respecting nation by promoting human rights in international fora, and by carefully honing its image as a country of safe haven for political opponents of repressive governments. Other governments, and particularly the United States, have been reluctant to criticize human rights abuses occurring in Mexico. Mexico has historically been hypersensitive to statements or acts by foreign governments that could be interpreted as attacks on its sovereignty, and substantial U.S. and other foreign economic and political interests are at risk if Mexico's umbrage is too great. Moreover, because most human rights abuses are hidden from public view, it has been easy for other governments not to notice them.

A disturbing unifying element to human rights abuses in Mexico is the excessive use of violence. As this report details, in the penal system, torture of arrestees is routine, and takes precedence over modern police investigation techniques. In rural areas, evictions of peasant families often occur without warning in the pre-dawn hours and are carried out by police teams that far outnumber those being evicted. In the electoral sphere, violence directed at political activists engaged in sit-ins at municipal palaces in small towns has continued even after the activists are in custody. And, as described above, officers of the Federal Judicial Police's anti-narcotics division routinely commit criminal acts far worse than those they are trying to stop.

One or both of two conclusions must be drawn from this pattern of excessive violence and abuse: either the Mexican government has adopted a policy of tolerating such behavior, or it has lost control over its police, security, and prosecutorial agencies. It is true that in a handful of highly publicized cases Mexican police have been arrested for torture or killing.

Yet convictions on charges that reflect the seriousness of these acts are rare, and the number of arrests is minuscule compared with the extent to which such practices occur. More fundamentally, neither President Salinas nor any other official at the highest ranks of government has made it clear to security officers in the field that they must desist from all abuses of internationally recognized human rights or face immediate arrest and prosecution.

Recent events portend that rather than moving towards improvements in human rights conditions, Mexico may be heading for a period of increased violent abuses and suppression of dissent. One indicator is the government's response to the occupation of municipal palaces and other acts of protest in Guerrero and Michoacán that culminated in the dispatch of 500 to 1500 troops to assist police efforts to retake the municipal palaces in Michoacán. Subsequent statements by powerful public officials with close ties to the PRI and the President suggest concern about the re-emergence of guerrilla groups that could pose a national security threat. In a story published in *Unomasuno*, the Secretary General of the PRI-affiliated Confederation of Mexican Workers (CTM), Fidel Velázquez Sánchez, is reported to have said "[T]here are many armed people in Mexico who have plans to destabilize the country...." Velázquez Sánchez said that "authorities at the highest levels know there are opposition members -- specifically the PRD -- who are involved with drug traffickers because the weapons they use to occupy mayoralties cannot come from anywhere else." The article adds: "Concerning the possibility of the re-emergence of guerrilla groups in Mexico, the CTM leader pointed out that he does not exactly know if this will happen; nevertheless, he said, 'it is already worrisome that there are so many armed people in the country.'"⁴

Governmental concern about the re-emergence of armed leftist insurgents appears in other contexts as well. When questioned about why so many police were sent unannounced to evict peasant communities in Chiapas, one government official replied to Americas Watch that there were fears that the peasants, known to be aligned with an independent but left-leaning peasant organization, were armed with sophisticated weapons. And in the three days following the murder of two guards at the offices of the newspaper *La Jornada* on April 2, 1990, more than one thousand judicial police from the Federal District rounded up and arrested 166 people associated with leftist groups, and relatives of known leftists living in and around Mexico City. Most were subsequently released, apparently

because there was no evidence that they were involved.

Despite fears expressed by some of the re-emergence of an organized and armed leftist insurgency that threatens Mexico's national security, there is no evidence to indicate that this concern is well-founded. Many leftist political groups operate in Mexico, most of which focus their attention on one or two issues of concern to their constituents. While members of some groups, particularly in rural areas, possess firearms, the same may be said of peasants who are associated with the PRI-affiliated National Peasant Confederation, and of those who are not politically active. The far greater threat to Mexico's national security is the undisciplined, corrupt, and violent practices of elements of its police and security forces. Systematic reform of these forces is needed immediately if Mexico is to curb future human rights violations.

There are also hints that Mexico may be seeking to expand its military capacity, even though the nation faces no serious external military threat to national security.⁵ Increasing reliance on the military to resolve political problems and police matters such as drug trafficking is worrisome, especially given the extensive abuses of human rights committed by the military in quelling small guerrilla movements in the late 1960s through the 1970s.

One positive development during the Salinas administration has been the creation of a Human Rights and Refugee Affairs Directorate in the Ministry of Government. The Director General, Lic. Luis Ortiz Monasterio, serves as an ombudsman for domestic and international human rights and refugee groups, and his jurisdiction extends to Mexico's judiciary and state governments. Although he has no independent power to prosecute rights abuses, Ortiz Monasterio is highly respected, both inside the government and by human rights activists. One project with which he was involved was the amnesty of more than 1000 prisoners whose cases had political overtones. Among those amnestied were many peasant activists who had been imprisoned on charges arising in the context of land disputes. Another pilot project is an ombudsman program under which an officer from the Human Rights Directorate is based in a state that has a high level of conflict over land questions. The hope is that a permanent federal human rights presence will serve as a deterrent to those who would perpetrate rights abuses, and will also keep the Human Rights Directorate better apprised of rural violence in that state.

On June 6, 1990, the Salinas administration took another positive step

when it established a new National Human Rights Commission composed of distinguished journalists, academics, writers, and other prominent citizens. The Human Rights Directorate will serve as a technical arm for this body which is also based in the Ministry of Government, but has been promised a high degree of autonomy to carry out its work. While the Commission will not have any independent power to prosecute complaints, its President will report bi-annually to President Salinas.

Another positive development has occurred at the state level. Several states, including Aguascalientes and Morelos, have appointed human rights ombudsmen or commissions to receive complaints about human rights violations occurring in those states.

While Americas Watch applauds these developments, we note that Mexico historically has opted for form over substance in the promotion and protection of human rights. If Mexico rigorously adhered to the provisions of its Constitution and statutes, Mexico's human rights record would be exemplary. In fact, the laws are ignored. Similarly, while the appointment of federal and state human rights officers is laudable, such appointments, in and of themselves, are far from sufficient. What continues to be lacking in Mexico is the political will to achieve real reforms in this area. Such reforms would require, among other things: reining in the police and security forces and prosecuting and punishing those who commit abuses; ensuring that federal, state, and local elections are free and fair so that they do not give rise to what often appear to be well-founded allegations of fraud; overhauling land reform procedures to eliminate bureaucratic delays, to prevent vigilante acts orchestrated by *caciques* (landholders and other rural bosses with significant political and economic power), and to ensure due process and basic protections to all land claimants; respecting the integrity of a free press; and respecting the rights of independent political parties, trade unions, and peasant organizations.

Chapter Notes

1. Mexico's one major independent conservative party, the National Action Party, or "PAN," also ran a candidate in the 1988 elections who won a significant number of votes. In July 1989, its gubernatorial candidate in the state of Baja California was officially declared the winner. For the first time in more than half a century the PRI does not control the gubernatorial palace in every Mexican state.
2. For further information about her case, see Chapter II.
3. For further discussion of the discovery of tortured bodies in the earthquake rubble, see Chapter II.
4. Vázquez, Antonio "CTM Leader Links Opposition to Drug Trafficking," *Unomásuno*, April 11, pp. 1, 7. Reprinted in FBIS-LAT-90-075, April 18, 1990.
5. In recent months Mexico has entered into negotiations with at least two countries to purchase military equipment. According to the Argentine weekly magazine, *Somos* (Pereyra, Hernán, "Dreams and Tanks: Sales to Iran and Mexico," February 21, 1990, reprinted in Foreign Broadcast Information Service (FBIS), Daily Report, Latin America, March 29, 1990.), Mexico is negotiating to buy 400 tanks from Argentina; U.S. officials confirm that Mexico also negotiated to buy between 200 and 400 excess NATO M60 A-1 tanks, but that the tanks were eventually sold to Egypt.

II. TORTURE AND EXTRAJUDICIAL KILLINGS BY POLICE
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II. TORTURE AND EXTRAJUDICIAL KILLINGS BY POLICE AND SECURITY FORCES

Torture and extrajudicial killings by federal and state police and the country's security forces are disturbingly frequent in Mexico. While such acts occur in the context of election-related violence and violence over land disputes, they are even more commonplace in the context of routine law enforcement, and especially in drug-related cases. In some cases torture and extrajudicial killings go hand in hand, and torture is the cause of death.

Torture is endemic in Mexico. It occurs in all parts of the country and is practiced by most if not all branches of the federal and state police, as well as by the armed forces. Methods range from beatings to death threats and other forms of psychological intimidation to sophisticated torture techniques designed to leave no lasting physical marks. The most frequently repeated of the latter techniques include putting a plastic bag over the victim's head or submerging it in water until near asphyxiation occurs; spraying mineral water, sometimes laced with chili peppers, into the nose; and electric shocks to sensitive parts of the body. Torture is not reserved for intimidating or punishing political opposition; in Mexico it is a law enforcement technique that is used to extract confessions, and, in some cases, to extort money from prisoners or their families.

Torture has a long history in Mexico. It was routinely used by the *Brigada Blanca* and other security forces during the Echeverría and López Portillo administrations against persons detained for alleged involvement in guerrilla organizations.¹ Following the September 19, 1985 earthquake, bodies of several prisoners showing signs of torture were uncovered during the excavation of the ruins of the headquarters of the office of the Federal District Attorney General. The bodies were identified as Ismael Jiménez Pérez, an accounting student at the National Autonomous University of Mexico (UNAM); Saúl Ocampo Abarca, a lawyer whose bound and gagged body was reported to have been found in the trunk of a vehicle in the building's parking lot; and Johnny Hernández Valencia, a nineteen-year-old Colombian accused of belonging to a criminal gang involved in a series of bank robberies and other crimes. According to the court testimony of Hernández's mother, Miriam Giraldo Valencia, who also had been detained, both she and her son were tortured with electric shocks and

beatings by the Federal District Judicial Police during incommunicado detention in the headquarters of the Attorney General.²

Torture is categorically prohibited by Article 22 of the Mexican Constitution which provides:

The penalties of mutilation and of infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, the confiscation of property, and any other unusual and excessive penalties are prohibited.

The discovery of the tortured bodies in the ruins of the Attorney General's headquarters stirred national outrage and prompted the government to take steps to strengthen the constitutional prohibition against torture. In early 1986, Mexico passed the Federal Law to Prevent and Punish Torture. Under this statute, torture by a public servant is punishable by up to eight years imprisonment together with a fine and permanent suspension from duties. The law is non-derogable; it recognizes the right of detainees to a medical examination by a doctor of their choice, and provides that no declaration obtained as a result of torture may be used as evidence in legal proceedings. Mexico also ratified the United Nations Convention Against Torture and the Inter-American Convention to Prevent and Punish Torture.

As many high level officials openly acknowledge, these steps to strengthen the law have made little difference in the incidence of torture. Manuel Villafuerte Mijangos, Director of Legal Affairs of the National Executive Committee of the PRI and a former senator from Chiapas, was quoted in a recent article in *Proceso* as saying: "The Federal Law to Prevent and Punish Torture... has been an ineffective remedy. Torture is deeply rooted in our country... It is ironic that, in many cases, it is the torturers who are charged with applying the law against torture."³

One of the reasons for the use of torture is to extract confessions. Under Mexican law, the first declarations of an accused are presumed to be made with greater spontaneity than subsequent declarations, and thus are considered by the courts to be the most reliable evidence of the truth. In addition, when a person who has "confessed" is unable to provide proof that he was the object of violence by a state body, his assertions of violence are deemed to be insufficient to overcome the presumption that his initial confession was valid.⁴ These legal rules encourage abuses of authority by police, who are poorly trained, poorly paid, and who would

otherwise have to conduct extensive investigations to compile the evidence needed for a conviction. Abuses include not only the use of torture and other forms of intimidation to obtain confessions, but the arrest and detention of persons against whom there is insufficient basis for arrest.

Mexican constitutional and penal code provisions apparently designed to protect the due process rights of prisoners in fact provide the window of opportunity during which almost all torture takes place. Under Article 19 of the Mexican Constitution, a person who has been arrested and detained must be brought before a judge within twenty-four hours. Within seventy-two hours of the arrest and detention, a judge must issue an order of imprisonment against the detainee, or set him free.⁵ While incommunicado detention is specifically banned under Article 20, Section II of the Constitution, this provision is commonly observed in the breach during the period before an order of imprisonment is issued. Almost all of the reports of torture brought to the attention of Americas Watch occurred while the prisoner was in incommunicado police detention during this initial three day period (or thereafter, if the three day rule was violated). In recent years various federal statutory and constitutional changes that would punish illegal detentions, and prohibit confessions made in police custody from being used as evidence in court, have been proposed but have failed. Efforts currently are underway in several states to achieve the same results at the state level.

The accounts of specific instances of torture and other abuses that follow are only a sampling of the cases reported to Americas Watch. Some are based on information received from state or federal government sources or Mexican human rights groups. Others derive from news media reports. Taken together, these cases highlight the extent of the use of torture nationwide. Wherever possible the status of federal or state prosecutorial investigations into these cases is reported; where omitted, it is because Americas Watch is not informed as to the status of the investigation into the case. In addition, many of these cases are being investigated by the office of Director General for Human Rights Luis Ortiz Monasterio, though his office has no power to initiate prosecutions.

Federal Judicial Police

The Federal Judicial Police, and particularly its anti-narcotics trafficking division, are implicated in many of the worst reports of torture and extrajudicial killing. Prosecutions of officers accused of torture or

extrajudicial execution are rare, and routine lesser misdeeds, including robbery and intimidation of suspects, are virtually ignored by government authorities.⁶

Some of the most flagrant abuses by the Federal Judicial Police have occurred in the northern states of Sinaloa, Durango, and Chihuahua, where drug trafficking is reportedly most active. Citizens, and even state and local officials in these states, are up in arms about the abuses, and state bar associations and human rights groups have taken the lead in trying to combat them. Events in Sinaloa illustrate the risks faced by those who take a stand against human rights abuses by the police in this part of the country.

Culiacán, Sinaloa: In 1984 lawyers and community activists in Sinaloa, concerned about reports of torture and mistreatment by the police in the area, formed the non-governmental Commission in Defense of Human Rights. The Commission has been active in a number of local cases including the 1984 arrest of two professors from Mazatlán accused of belonging to an urban guerrilla group, tortured, and then acquitted; the 1985 arrest of practically an entire community of Tarahumara Indians accused of being involved in drug-related activities, and the severe torture of a youth arrested on assault charges. On December 16, 1987, the co-founder and president of the Commission, attorney Jesús Michel Jacobo, was gunned down and killed. No one has ever been arrested for his assassination.⁷

After Jacobo's death, his co-founder, Norma Corona Sapién, assumed the presidency of the Commission. Ms. Corona, also an attorney, was a professor at the Autonomous University of Sinaloa. She was also president of the "Clemente Vizcarra Franco" Bar Association in Sinaloa. Despite the death of her colleague, Corona refused to be intimidated. She was a strong proponent of state penal code reforms to punish torturers. She was also an advocate for victims of torture and extrajudicial killing by the Federal Judicial Police.

On February 22, 1990, in the early morning hours, Federal Judicial Police officers arrested Mexican lawyer Jesús A. Guémez Castro and three Venezuelans, Julio Zuate Perasaque, José Amaury Glaciano, and José Vladimir Arzeola. Their tortured and bullet-riddled bodies were found in a shallow grave on March 11.⁸ On March 6, the Venezuelan Foreign Affairs Ministry stated that it had been notified by Mexican authorities that the

Venezuelans were being held by the Federal Attorney General on arms trafficking charges. The following day a spokesperson for the Attorney General's office denied the three were being held and suggested that they had probably been kidnapped as part of a vendetta involving drug traffickers.⁹ Later in March, Adolfo Lugo Cárdenas was arrested for allegedly taking part in the killings. At his public hearing, Lugo Cárdenas declared that he had been tortured and forced to confess to the killings, but that his only role in the affair was to drive one of the vehicles in which the Venezuelans were abducted.¹⁰ The judge in the case, Héctor Moisés Viñas Pineda, dismissed the conspiracy charges for lack of evidence, and jailed Lugo Cárdenas for marijuana possession.¹¹ Norma Corona was involved in the investigation of the death of Guémez Castro, the Mexican lawyer whose body was found with the Venezuelans. She accused members of the Federal Judicial Police, who she said were acting on behalf of drug trafficker Luis "El Güero" Palmas, of being responsible for the killings of the four men.¹² She subsequently received several death threats.

On May 21, at 7:20 in the evening, Corona was assassinated by three men who shot her three times with a .45 caliber pistol. Her murder occurred two blocks from the University, which is located in the center of the city. The three were seen driving away in a blue Chevrolet Cheyenne without license plates. To date, no arrests have been made, though Sinaloa Governor Labastida Ochoa promised at Corona's wake that the state would get to the bottom of the matter.¹³

Ceballos, Durango: On November 11, 1989, between thirty and sixty officers of the Federal Judicial Police's anti-narcotics squad occupied the small town of Ceballos (pop. 15,000). Fifteen of the officers set up headquarters in a local bar where they stole one million *pesos* from the cash register, helped themselves to beer, and beat and interrogated the customers. Similar scenes took place throughout the town, where cash was stolen from even the smallest candy stores, as were the possessions, jewelry and cash of many residents. Seven people were arrested, among them Luis Alfonso Willes Gonzalez. His wife said her husband was tortured so severely he could barely talk, was denied medical attention, and was "hung from a helicopter in flight."¹⁴

The community protested the abuses, the local press took up the story, and eventually the Congress and the Governor of Chihuahua presented

formal complaints to Attorney General Enrique Alvarez del Castillo, Secretary of Government Gutiérrez Fernando Barrios, and President Salinas. According to *Proceso*, Attorney General Alvarez del Castillo told Governor José Ramírez Gamero "...this is how [the Federal Judicial Police] work, and in case anything was lost... he should be notified and the value of the items quantified so that payment could be made...."¹⁵

San Francisco de la Joya, Chihuahua: Emiliano Olivas Madrigal was arrested by Federal Judicial Police officers on the morning of October 19, 1989 during an anti-narcotics campaign directed at a community of 3000 people in this poppy-growing region. He was taken to a hotel room rented by the officers. Emilina Gaxiola de Díaz, owner of the hotel, said that guests complained that they heard screams and blows that continued throughout that night. Olivas Madrigal died under torture. His body was thrown from a third-floor window of the hotel and was found the next morning.¹⁶ According to a National Public Radio report, three police officers have been arrested in connection with the murder though several others alleged to have been involved are still free.¹⁷

State of Mexico: At 7:00 a.m. on January 14, 1990, upwards of one hundred officers of the anti-narcotics division of the Federal Judicial Police surrounded the home of Francisco Quijano in Ojo de Agua, allegedly looking for his son, also named Francisco, who was accused of killing two Federal Judicial Police officers the day before. Two other sons, Jaime Mauro and Erick Dante, surrendered to the police and came out of the house with their hands up; they were shot and killed on the spot. A fourth son, Héctor, was arrested and died in police custody. The family has a post-mortem photograph of Héctor's tortured body which seems to show that one eye is out of its socket, that teeth are missing, that part of his tongue was cut out, and that his chest was burned with cigarettes.¹⁸ According to Rosario Ibarra, president of the National Front Against Repression, Héctor was shot to death in front of a fifth brother, Sergio Maximino, who is imprisoned in the Federal District's Reclusorio Norte.¹⁹ As of April 20, no legal action had been taken against any of the police allegedly involved.²⁰

Mexico City: Four Federal Judicial Police officers were arrested on January 15, 1990, and charged with gang rape, aggravated assault,

kidnapping, and robbery, following months of complaints and demands for justice by at least nineteen rape victims. Three of the men were personal body guards of Javier Coello Trejo, Mexico's Deputy Attorney General in charge of the Federal Judicial Police's anti-narcotics division. The officers were identified by victims in police line-ups on September 6, 1989, but were not relieved of duty or detained until January, during which time at least five other women were assaulted and gang-raped.²¹

According to *La Jornada*, the Federal District Judicial Police's investigation into the affair was plagued by resistance by the Federal Attorney General's office, including missing files, sudden dismissal of government employees working with the rape victims, threats against Federal District agents involved in the investigation, and a possible attempt on the life of María de la Luz Lima, the government official in charge of special agency programs including support for rape victims.²² Deputy Attorney General Coello Trejo continued to defend the men even after they were charged.²³ In late March 1990, the Federal Judicial Police arrested and charged four Mexico City Judicial Police officers with participating in the rapes. None of the 24 victims identified them in a line-up and those arrested said they had been tortured and forced to sign confessions.²⁴

Aguililla, Michoacán: On Saturday, May 5, 1990, anti-narcotics officers of the Federal Judicial Police apparently clashed with drug traffickers in the vicinity of the town of Aguililla, in the state of Michoacán. At least three and perhaps as many as five police officers and two peasants were killed in two separate incidents.

Later that night, about one hundred policemen descended on the town and arrested at least one hundred people, including women and children; confiscated some sixty vehicles and, without search warrants, raided close to one hundred homes.²⁵ The following day, Aguililla Mayor Salomón Mendoza Barajas, a PRD member who had previously led community protests against Federal Judicial Police abuses in Aguililla,²⁶ was arrested when he went to the police force's headquarters at the local military base to complain about the situation. According to Michoacán Senator Cristóbal Arias, the police bound, blindfolded, and beat Mendoza.²⁷ He was charged with the homicide of three Federal Judicial Police agents and possession of marijuana, cocaine and firearms. Similar charges were brought against ten other members of the PRD in Aguililla.²⁸ Mendoza's wife, María del

Carmen Contreras Cervantes, stated in an interview that Federal Judicial Police agents came to her house about four hours after her husband was arrested, and again the next day. On both occasions they planted weapons, ammunition, cocaine and marijuana in her house.²⁹

Contreras and Mendoza's sister, Teresa Mendoza Barajas, also alleged that Federal Judicial Police officers kicked a six-year old boy to death at the Cierro Prieto ranch for failing to tell them where his father was. They further alleged that on Sunday, May 6, 1990, officers seized a wounded man, a woman, and a wounded child who sought treatment at the Social Security clinic.³⁰ Five days after the police raid on Aguillila, 25 people were estimated to be missing.³¹

On May 9, 1990, PRD Congressman Leonel Godoy y Rangel, who participated in Mendoza's defense team, was abducted in Mexico City by four armed men driving a Ford Topaz. The men forced him to the floor of the Topaz and drove him around for about forty minutes, beating him and threatening him with a cocked firearm. They also stole his cash, credit cards, watch and coat, as well as documents about Federal Judicial Police abuses in Aguillila.³² The men then placed Godoy in the trunk of his own vehicle, and put a cushion under his head. One of the men pointed a gun at Godoy's head and said "Don't you think I could kill you here, like this with the cushion, and not make any noise? Nobody would know." The abductors then left Godoy in a vacant lot and told him to run for his life, as they were going to shoot him in the back.³³ Godoy's car was not returned.

On May 13, Samuel I. del Villar, counsel for the PRD, announced that his party would sue Attorney General Enrique Alvarez del Castillo over the police abuses in Aguillila and the kidnapping of Congressman Godoy.³⁴

Other Federal Police

Other branches of the federal police including the Federal Highway Police and the Intelligence Division of the Ministry of Protection and Highways have also been accused of torture and political killing.

Topilejo, Distrito Federal: On November 20, 1989, Federal Highway Police officers stopped Fidencio Morones Chávez, Gerónimo Morones Chávez, Miguel Angel García Chávez and Arturo Monroy, the latter two minors, as they walked alongside a federal highway after a day of agricultural work. When they refused to give up their possessions, Fidencio Morones was shot and killed. The others were warned not to go

to his aid or they too would be shot. The remaining three were then beaten, threatened that they would be made to "disappear," and taken to the federal highway police station where they were beaten further, tortured with electric shocks, and forced to sign blank pieces of paper. All three were eventually released. The officers involved were arrested and charged with abuse of authority, but not homicide; they are free on bond.³⁵

Tlaxcoaque Abortion Cases: On March 16, 1989, eight women were abducted as they left an illegal abortion clinic. They were detained incommunicado for fourteen hours in a jail in Tlaxcoaque, near Mexico City, by agents of the Intelligence Division of the Secretariat of Protection and Highways. Also arrested was Dr. Joaquín Pastrana Reynoso who was accused of performing abortions. The women were stripped, pinched, kicked, insulted, and forced to watch while Dr. Pastrana was tortured by having his head dunked into water, all without regard to the fact that they were either pregnant or convalescing from surgery. Dr. Pastrana alleged that he was also beaten and tortured with electric shocks for five hours until he admitted performing abortions. He further claimed his abductors tried to extort from him 150 million pesos.³⁶

Armed Forces

While accounts of human rights violations by members of the armed forces are heard less frequently than they were in years past, a number of disturbing recent incidents suggest that torture and political killing are still institutionalized techniques in the military.

Oaxaca: Andrés Martínez Díaz, a 23-year-old fisherman from Río Grande, Tututepec, Juquila, Oaxaca was taken from his home at approximately 1:00 a.m. on February 8, 1989 by approximately 44 soldiers from the 54th Infantry Battalion based in Puerto Escondido, under the command of Sub-Lieutenant Gustavo Ruiz Bautista.³⁷ Witnesses reported that the soldiers were drunk. The family filed an application for *amparo* (an expeditious judicial review of administrative actions on constitutional grounds) but Martínez was not found in the local barracks. The case was investigated by the offices of Lic. Luis Ortiz Monasterio who sent an officer to Oaxaca to investigate the case. While in the area he walked to the beach where he stumbled over Martínez's badly decomposed body. An autopsy was performed but the cause of death was not determined. The

Mexican Academy of Human Rights reported that Martínez had previously been threatened by the State Judicial Police because of his alleged connection to a local drug dealer. The family has denied that Martínez had any drug connections.³⁸

In two unrelated incidents in Oaxaca, the Mexican Academy of Human Rights reported that on February 16, 1988, Mixe Indian Gregorio Castañón López was detained by the military, allegedly for drug possession. He was beaten and tortured until he "confessed," and the soldiers then turned him over to the Federal Judicial Police. Based on his confession, he was sentenced to seven years in prison. Castañón appealed and presented two medical certificates and two witnesses attesting to the fact that he had been tortured, yet his sentence was upheld.³⁹ And, on April 16, 1989, Crisóforo José Pedro, also a Mixe Indian from Buenavista in the municipality of Guichicovi, was killed by four men with one hundred machete blows. One of the killers was arrested, He identified Juan Abad Juan Valdespino, a soldier with the 6th Artillery Regiment stationed in Matías Romero, Oaxaca, as one of his accomplices.⁴⁰

Nayarit/Jalisco: Representatives of the Cora, Mexicanera, Tepehuana, and Huichola indigenous groups in the states of Nayarit and Jalisco declared at a government agency-sponsored conference on problems of indigenous people that, with the pretext of fighting drug trafficking, the military broke into their homes, and demanded food, pack mules, and guides from their communities. According to a spokesperson for the Indians, Juan Tomás González from Anexo del Salto was taken away as a guide in 1987 and was still missing in October 1989. The spokesperson added that armed forces personnel have also broken into ceremonial centers, destroyed utensils used by medicine men, suspended traditional rites, and ridiculed and detained people who practiced them.⁴¹

Durango: According to PAN State Legislator Leopoldo Ríos, on March 5, 1990, a local peasant, Alvaro Martínez Quiñones, was detained by the military in connection with an investigation into the sale of drugs. On March 9, after being informed by the military that Martínez Quiñones had been freed, his family found his dead body at the bottom of a ravine. When they demanded an explanation, they were told that Martínez had committed suicide. Ríos added that residents of the community of San Rafael are treated like slaves by the military and forced to carry soldiers on

their backs to cross the river.⁴²

State Police Forces

Reports of abuses by state police forces come from states in all parts of the country, and include a range of police units including state judicial police, state highway police, and state preventive police. In some states abuses are so flagrant that they have prompted an outcry from state government officials and political party leaders. In his first report, Aguascalientes Human Rights Ombudsman Miguel Sarre Iguíñiz reported on nearly fifty cases of torture, beatings, shootings, and incommunicado detentions by state police that had been referred to his office between May 1988 and December 1989.⁴³ Among the reported cases were two involving the torture of minors, and a third involving the shooting of a juvenile. Sarre complained that the state judicial police not only failed to heed his recommendations regarding specific cases but had impeded, at times physically, his ability to conduct adequate investigations.

In the State of Mexico, Perfecto Martínez Muñoz, the director of the Revolutionary Movement of Popular Defense of the PRI in the State of Mexico accused the state judicial police of "continuing to apply interrogation methods from the days of the inquisition to obtain declarations under torture and to manufacture criminals."⁴⁴

Tabasco: Jesús Manuel Martínez Ruiz was arrested with three other men by State Judicial Police on September 4, 1989 in Villahermosa, Tabasco. According to one of the survivors, the four were taken to the beach where their hands were handcuffed behind their backs. A piece of cloth was stuffed into their mouths and tied to their handcuffed hands, thus forcing them to bend over backwards. Their bonds were then connected by a rope to the vehicle driven by the police. The prisoners were forced to kneel in the surf; they were repeatedly thrown into the water and towed out by the vehicle. Martínez Ruiz died during this treatment and his body was unofficially buried at the local cemetery.⁴⁵ After Martínez's family recovered his body, an autopsy was performed. It was attended by numerous state and federal government officials from the Department of Health, the Tabasco Medical Association, and the Human Rights Department in the Ministry of Government, as well as by forensic doctors from the Attorney General's Office. The autopsy results indicated that Martínez Ruiz died of broncho-aspiration. A doctor commissioned by the

Human Rights Department indicated that there was no evidence of fractures or traumatic blows to the body.⁴⁶ Despite the eye-witness testimony of the survivors, state officials are treating the autopsy results as conclusive evidence that no criminal conduct was involved and have closed the case.⁴⁷

Tijuana, Baja California: Between January and March, 1990, Víctor Clark Alfaro, Director of the Binational Center for Human Rights in Tijuana (CBDH), collected tape-recorded testimonies of torture and mistreatment from seventy-five juveniles detained in the city's juvenile detention facility. Most of the youths, who ranged in age from eight to seventeen, told stories of torture that occurred during police custody before they were sent to the detention facility. A few also described beatings by guards at the center. Torture methods included electric shocks to sensitive parts of the body, submersion of the head in water, asphyxiation by placing a plastic bag over the head, pouring mineral water into the nose, beatings, and threats.⁴⁸ Torture took place in police vehicles as the children were being taken into custody, and in the offices and bathrooms of police headquarters. The State Judicial Police were alleged to be responsible in most instances, though Municipal and Federal Judicial Police were also implicated. In his report, Clark Alfaro, who did a similar study in 1987, concluded that torture is systemic and continues despite the fact that Baja California has had a change of government and is no longer governed by the PRI.⁴⁹

Clark Alfaro also reported that as of January 30, 1990, twenty-six minors were illegally incarcerated at La Mesa state penitentiary, and that two months later that number had increased.⁵⁰ In late May, Clark Alfaro told Americas Watch that he learned from inmates at La Mesa that three juveniles, two boys and a girl, were being held in the prison's "tombs" or punishment cells. Clark contacted a television news crew which went with him to the penitentiary to interview the youths. In the punishment cells in the women's section of the prison they found a 16-year-old girl who was two months pregnant and had a broken nose. She told Clark Alfaro she had been tortured by the Federal Judicial Police and that she was in the "tombs" because the director of the penitentiary put her there. The girl was removed from the "tombs" and placed with the women population in the prison immediately after Clark Alfaro's visit.

Clark Alfaro's report on torture of juveniles in Tijuana was made public

on April 18, 1990. Shortly thereafter, two of the psychologists at the juvenile facility were fired for not informing the facility's director of Clark's true motives for interviewing the children. Clark has also received veiled threats from Mexican government officials that the Binational Center for Human Rights would be closed. To date, a state investigation into the matter is underway, but no one has been arrested or relieved of duty in connection with the allegations.

Simojovel, Chiapas: On January 22, 1990, State Judicial Police detained and tortured five minors, Manuel Gómez Gómez, age 15; Ramón Ruiz Hernández, age 12; Oscar Ruiz Gómez, age 9; Guadalupe Gómez Hernández, age 8; and Blas Ruiz Gómez, age 7. The youngsters were from the nearby community of Lázaro Cárdenas, and had come to Simojovel to sell coffee. They were stripped naked, beaten and had their heads pushed into a toilet. The policemen pointed their revolvers and assault weapons at them and asked if anyone in their community had such weapons. They also asked the minors about the activities of the Independent Confederation of Agriculture Workers and Peasants, ("CIOAC") in the region and suggested the money the minors were carrying was from the sale of marijuana.⁵¹

Federal District: On October 11, 1989, Mexican businessman Juan Javier Macklis, an alleged associate of former Panamanian leader General Manuel Antonio Noriega, made a preliminary statement to judges in which he accused the police of extracting a statement from him as a result of torture. "I was savagely beaten at the Attorney General's Office and forced to sign a document that I never read. I do not know if it accused me of murdering President Lincoln," said Macklis.⁵²

Chapter Notes

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3. Monge, Raúl and Ramírez, Ignacio, "La tortura sigue como el más eficaz método de investigación policial," Proceso, No. 649, April 10, 1989.
4. *Tesis Jurisprudenciales de la Corte Suprema de Justicia de la Nación de los Fallos Pronunciados de 1917 a 1975, del Apéndice al Semanario Judicial de la Federación, Segunda Parte, Primera Sala*, Numbers 81 and 82, pp. 171-172, 175.
5. Under Article 107, Section XVIII, wardens and jailers who do not receive an authorized copy of the order of formal imprisonment within the seventy-two hour period prescribed in Article 19, must inform the judge, and if the order is not produced within three hours, must set the prisoner free.
6. According to Javier Treviño, the Mexican government's spokesperson at its embassy in Washington, D.C., 289 government officials have been dismissed and forty tried on abuse of authority or corruption charges since the Salinas administration took office. It is not clear what percentage of these officials are police accused of violations of human rights. Davis, Katie, "Mexican Police Human Rights," National Public Radio, Tape No. ATC 900402, April 20, 1990.
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16. Andazola, Juan Manuel, "Agentes de la PJF siembran el terror en la Tarahumara," *La Jornada*, October 22, 1989.

17. *National Public Radio*, *cit.*

18. *Id.*

19. *El Universal*, February 13, 1990.

20. *National Public Radio*, *cit.*

21. Lovera, Sara, "Toxicómanos, los agentes acusados de violación: peritos," *La Jornada*, January 24, 1990.

22. *Id.*

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24. García, Clara Guadalupe, "No reconocen las jóvenes violadas a los cuatro agentes de la PJDF," *La Jornada*, March 25, 1990.

25. Zamarripa, Roberto, "La militancia no es patente de corso en narcotráfico: Sauari," *La Jornada*, May 10, 1990.

26. According to *La Jornada*, on November 13 and 15, 1989, Federal Judicial Police agents "emptied" ten homes and stores in Aguililla; similar incidents occurred on February 19, 1990, in which cash and jewelry were taken from homes that were searched. Gurza, Teresa, "*Protesta ante la PGR por abusos de la PJF en Aguililla, Michoacán*," *La Jornada*, May 10, 1990.
27. Zamarripa, *cit.*
28. Matus, Jesús, "*Niega todos los cargos que se le imputan, Salomón Mendoza Barajas*," *EL Universal*, May 11, 1990.
29. Gurza, Teresa, "*Los agentes pusieron pruebas falsas, acusan en Aguililla*," *La Jornada*, May 11, 1990.
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46. Salinas Pérez, Eduardo, "*Tabasco: ratifican que la muerte de Martínez Ruiz no fue por tortura*," *ELNacional*, November 8, 1989.
47. Id.
48. In February 1990, Americas Watch delegates visited La Mesa prison, the state penitentiary in Tijuana. During the course of brief interviews with approximately twenty to twenty-five prisoners, we heard similar accounts of torture by State Judicial Police in Baja California.
49. Between May and September, 1987, the CBDH documented 108 cases of torture of minors in Tijuana. The incidence of this kind of abuse apparently decreased for some time thereafter, but seems to be on the rise again.

50. *Id.*, p. 12. Representatives from Americas Watch visited that prison in February 1990. At that time the prison's warden confirmed that there were 26 minors in the facility, in violation of federal constitutional law.

51. López Domínguez, José Dolores, "*Niños torturados en Chiapas*," *El Universal*, February 5, 1990.

52. "Alleged Noriega Associate Charges Police Torture," AFP, October 12, 1989.

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III. ABUSES IN THE CRIMINAL JUSTICE SYSTEM

In October 1989 and January 1990, Americas Watch representatives toured approximately a dozen Mexican jails, detention centers, and prisons. During those visits, which were organized by government officials responsible for Mexico's prison system, we conducted brief interviews with prisoners chosen at random about prison conditions and about the circumstances surrounding their imprisonment.¹ We conducted somewhat longer interviews during a separate visit to Tijuana's La Mesa Penitentiary in February 1990.² In addition, our representatives spoke with government officials, defense attorneys, human rights organizations, and clergy and lay volunteers who work with prisoners on prison conditions and abuses of due process in the Mexican criminal justice system.

Americas Watch will soon publish a comprehensive report on prison and jail conditions in Mexico. The report will concentrate on the problems created by severe overcrowding throughout Mexico's penal system,³ and will address physical conditions and the treatment of prisoners inside the prisons.

This chapter addresses some other recurring problems faced by defendants once they enter the criminal justice system that were reported to Americas Watch during the prison visits and related interviews. As noted previously, one common problem is the violation of the three day rule; that is, the rule that requires that an order of imprisonment must be issued for a defendant by a judge within seventy-two hours of arrest or the prisoner must be released. Another abuse is that arrests frequently are made without warrants. This practice violates Article 16 of the Mexican Constitution. In addition, Americas Watch is concerned about cases of prisoners who were arrested on minor charges but were not granted the right to bail as guaranteed by Article 20 (I) of the Constitution.

Another right that is often violated is the guarantee of a speedy trial. Under Article 20 (VIII) of the Mexican Constitution, a prisoner must be tried within four months for crimes for which the maximum penalty does not exceed two years imprisonment, and within one year if the maximum penalty exceeds that time. In our interviews with prisoners, a number told us that they had been detained for periods exceeding one year. While in some cases it appeared that appeals and other defense counsel strategies

for winning the release of the prisoner accounted for the delay, in others the delay appeared to be the fault of the prosecutor or the court. For example, one woman imprisoned in La Mesa penitentiary told us she had been in jail two years, but still has not been convicted of a crime. She told us that hearings on her case had been rescheduled several times because the arresting police officer had failed to appear in court. Human rights groups, defense attorneys, and lay workers who regularly visit prisoners confirmed that many prisoners had their cases pending for far longer than the permissible one year period. Some wardens expressed to us their frustration over the delays in trying prisoners and suggested that these delays contributed to the severe overcrowding of the prisons for which they were responsible.

This problem is especially prevalent in cases involving indigenous people who do not speak Spanish. Cultural and geographical barriers, in addition to linguistic barriers, often impede a fair trial in their cases. According to an official of the National Indigenous Institute (INI), which is pressing for better protection of constitutional rights for members of indigenous groups, trial delays beyond what is constitutionally required have the effect of breaking down Indian prisoners' community ties and cultural identity. Also, INI is working to overcome linguistic impediments to fair trials in criminal cases involving members of indigenous groups. Though Mexican law requires that translators must be provided in trials of persons who do not speak Spanish, this requirement is seldom met in trials of non-Spanish-speaking indigenous persons.⁴ In addition, there are reports that in some states with large indigenous populations, Indian prisoners are held beyond the expiration of their sentences. In these cases, it appears that the problem is bureaucratic and also reflects the fact that the Indians either do not know the length of their sentence or are unable, due to language constraints, to demand their release.

The problem of imprisoning people beyond the completion of their sentences also appears in other contexts. During a visit to Tepepan Prison for Women in Mexico City, Americas Watch representatives were informed by a guard that there were women in the psychiatric ward who should have been released long ago but had been abandoned by their families; they had no place to go after leaving Tepepan.

A number of steps could be taken to reduce these abuses within the criminal justice system. One is to punish police who make routine arrests without warrants. Another is to bar the admissibility of evidence based on

confessions to the police in the absence of the opportunity by defendants to exercise their right to counsel. Also, steps should be taken to ensure that the three day rule is adhered to strictly and that no prisoner is held incommunicado during that period. To ensure compliance with these requirements, courts should immediately free prisoners who are unlawfully arrested, tortured, or held incommunicado. Procedures that allow prisoners who allege torture or other forms of mistreatment to present complaints without fear of reprisals should also be established. Every allegation should be treated seriously and fully investigated; officers found to have practiced or ordered torture or other gross abuses should be prosecuted and punished.

Judges and magistrates should be required to assume greater responsibility for the safety and well-being of prisoners. Those judges who tolerate mistreatment of prisoners or abuses of due process should themselves be disciplined. Judges should also exercise greater care to ensure that their own actions do not lead to due process abuses; in particular judges should be monitored to ensure that they are setting bail when appropriate, providing translators in all cases in which a defendant does not speak Spanish, and completing trials within the time required by the Constitution. Furthermore, judges should be required to keep records on the release dates of prisoners they sentence, and to follow-up with prison authorities to make sure that prisoners are not held beyond the expiration of their sentences.

Absent a system in which officials are held accountable for abuses, it is difficult to envision any significant improvement in the Mexican criminal justice system.

Use of the Criminal Justice System as a Means of Political Control

Aside from the routine denials of due process that prevail in the criminal justice system, the system is also used at times in Mexico as a means of political control. In the context of violence associated with land disputes, baseless arrests by police with close ties to *caciques* are sometimes used to intimidate or punish peasants who are active in independent peasant organizations or outspoken in their demands for land. Such abuses may be effective even if the person is ultimately released, as judicial processes often drag out over several years; during this time the defendant is effectively out of commission. One particularly flagrant case

was that of Embocadero community activist Zósimo Hernández, who spent more than two years in prison for the murder of a local landowner before being released for lack of evidence.⁵

The criminal justice system is also used as a means of political control by corrupt local officials in drug producing areas. Peasants who grow marijuana and other banned crops are at the mercy of officials who engage in selective enforcement of the drug laws and raid and arrest anyone who engages in dissent. In the prison in Tepic, Nayarit, Americas Watch representatives encountered a group of peasants who had been hired to harvest the marijuana crop of a local land owner. As soon as the crop was harvested, the men were arrested on drug trafficking charges. Each was sentenced to seven years in prison. According to the prisoners, the land owner for whom they worked was not arrested.

The criminal justice system in Mexico has been used also as an instrument to intimidate the far left. The most flagrant recent example occurred following the early morning shooting deaths of two security guards at the Mexico City newspaper *La Jornada* on April 2, 1990. The two unarmed men were shot as they chased two men who delivered a packet containing propaganda of the Clandestine Underground Workers Revolutionary Party Union of the People ("PROCUP"). Two days later, the Federal District Judicial Police, including officers of the Special Immediate Response Group ("GERI") and Zorros from the Ministry of Protection and Roadways ("SGPyV"), together with agents from the National Security General Directorate ("DGSN"),⁶ raided sixteen to eighteen homes and offices of grassroots political groups and arrested at least 166 individuals, including small children.⁷ One hundred and forty-one were released within twelve to 24 hours; twenty-five remained in custody for longer.

Eight of the persons arrested were eventually charged with counts of murder, armed robbery, and property damage in connection with alleged crimes other than the killings of the *La Jornada* guards. The allegations against them included culpability for several Mexico City robberies committed in 1989, purportedly to finance a come-back by insurgent groups. The defendants each professed innocence in court, and stated that the confessions they gave to the police had been coerced. One of the defendants alleged that he had been tortured.⁸ Press accounts of the testimonies of those arrested indicate that they were interrogated about weapons and activism related to Central America. Also, press reports

indicate that the police were looking for ties to "disturbances in the municipalities of Michoacán and Guerrero."⁹

Although they were not arrested, two men, Andrés García and Alejandro Rodríguez were indicted for the *La Jornada* killings; a well-known radical leftist intellectual, Felipe Martínez Soriano, was indicted as well. Martínez Soriano gave an interview at *Proceso* two days after he was charged,¹⁰ professing his innocence and complaining that he had been watched and harassed for the previous three years. A few days later he held a press conference in a park in downtown Mexico City, but was not arrested by police.

Federal District Attorney General Ignacio Morales Lechuga was quoted in the press as saying that "all required arrest and search warrants have been covered." Nonetheless, many of those arrested said they were shown neither search warrants nor arrest warrants.¹¹ Regardless of whether warrants were obtained and presented, Americas Watch views the dragnet arrests of scores of people apparently because of their participation in leftist groups as an abuse of the criminal justice system. The fact that none of those arrested was charged with the killings of the *La Jornada* guards suggests that the aim of the round-up was to intimidate the left rather than to solve the murders.

Chapter Notes

1. Americas Watch representatives were accompanied by representatives from the Mexican government's Human Rights Directorate, its Foreign Ministry, and its Department of Prevention and Social Readaptation of Prisoners, as well as by prison officials and guards. While many interviews technically were conducted out of earshot of those accompanying our representatives, they were never completely private in that the identities of those we were talking to were known to the officials. In all but a few cases other prisoners were present. In addition, our representatives were under pressure to keep the interviews brief as many were kept waiting while the interviews were being conducted.
2. This visit was not organized through the government but rather was part of a preliminary investigation into human rights abuses on both sides of the United States-Mexico border. The visit was arranged through Miguel Pérez Boulirat, the prison's Director General.
3. Resolving the problem of prison overcrowding is one of the highest priorities of officials responsible for Mexico's prison system. Current efforts are directed towards new prison construction and early release programs.
4. INI is pressing for a constitutional amendment to the effect that Mexico is a multi-cultural society. This amendment, among other things, would guarantee indigenous defendants the right to a translator in all criminal cases.
5. See Chapter VI.
6. Cabildo, Miguel; Robles, Manuel and Vera, Rodrigo, "*Hasta ancianos y bebés detenidos en acciones llenas de arbitrariedades*," *Proceso*, No. 702, April 16, 1990.
7. The organizations raided include the National Coordinator of Indian Peoples (CNPI) and the magazine *La Trilla*. The individuals detained include dissident teachers of the National Coordinator of Education Workers ("CNTE"), activists from the Campamento 2 de Octubre squatters' settlement, the leader of a tenants' organization in Tlatelolco, members of the Union of Workers of the Autonomous Metropolitan University (SITUAM), and many former members of the guerrilla 23 September League and PROCUP, most of whom had sought and received amnesty in 1980. (On April 6, 1990, Federal District Attorney General Ignacio Morales Lechuga said, "There is no subversion, these are common crimes.... The 23

September League no longer exists.") Campa, Homero and Robles, Manuel, "*Los Principales acusados en el caso de 'La Jornada' eludieron las redadas de la Procuraduría,*" *Proceso*, No. 702, April 16, 1990.

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9. Camargo, Jorge and Aviña, José Carlos, "*Libres, 141 de los detenidos en las redadas; siguen buscando cabecillas,*" *EL Universal*, April 6, 1990.

10. Campa, Homero and Robles, Manuel, "*No soy del PROCUP, ni su dirigente ni nada, afirma Martínez Soriano,*" *Proceso* No.702, April 16, 1990.

11. "*Detenciones y cateos sin las órdenes respectivas,*" *La Jornada*, April 5, 1990.

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IV. DISAPPEARANCES

Disappearances During Prior Administrations

The subject of "disappearances" is a festering sore in Mexico. During the administration of President Luis Echeverría (1970-76), Mexico's army and police, with the support of U.S. advisors, engaged in counterinsurgency operations to eliminate several small leftist guerrilla movements that appeared in both urban and rural areas of the country. These efforts were continued by President José López Portillo (1976-82) during his term in office. According to Mexican human rights organizations, more than 500 people disappeared during that period. Their whereabouts are still unaccounted for.¹ Disappearances continued on a smaller scale during the de la Madrid presidency (1982-88). The whereabouts of nineteen people who disappeared during his administration are still not known.²

The disappearances in Mexico during this period followed a pattern similar to that in other countries of Latin America in the same years. Victims were abducted by armed forces personnel or police, including a clandestine police unit known as the *Brigada Blanca* (White Brigade).³ The perpetrators wore plain clothes, carried weapons, and drove vehicles without license plates.⁴ In many instances the abductions were witnessed by family members, neighbors, or other persons; in other cases, the circumstances suggested that the person had been detained by the security forces.

According to testimonies of individuals detained in this fashion who subsequently reappeared, prisoners were taken to secret detention areas in Military Camp No. 1 in the Federal District, or to other secret detention centers located in Oaxaca, Guerrero, and other parts of the country. Incommunicado detention in these facilities lasted from several days to many months during which prisoners were blindfolded, held in solitary confinement, and subjected to physical and psychological torture.⁵

There is evidence to suggest that prisoners detained in this fashion who did not subsequently reappear were killed.⁶ A former soldier in the Mexican Army, Zacarías Osorio Cruz, testified during asylum proceedings before the Canadian Immigration Board that he took part in executions ordered by senior Mexican Army and Air Force officials between 1977 and

1982.⁷ In his sworn testimony, Mr. Osorio stated that "the order I received was to make these people disappear."⁸ According to the New York Times, Mr. Osorio stated that he made several trips to at least five Mexican states to pick up some eighty hooded prisoners and guard them during return flights on Mexican military aircraft to Military Camp No. 1. The number of prisoners in each group ranged from eight to thirty. Among the places to which he claims to have been sent is Guerrero, where he says he picked up between twenty-five and thirty people.

Osorio further stated that he was a member of a three-man team that made between fifteen and twenty trips to a pair of military firing ranges north of the Mexican capital. On each trip he transported between four and seven hooded and handcuffed prisoners who were lined up and riddled with gunfire until "the bodies were practically torn apart."⁹

Despite pressure from the United Nations Working Group on Disappearances, international and domestic human rights organizations, and family members of the disappeared, the Mexican government has never undertaken a satisfactory investigation to determine the fate of the disappeared. Nor has anyone ever been convicted of participating in disappearances. To the contrary, until recently the Mexican government has gone to lengths to deflect attention from the issue. For example, after publication of the New York Times story on Osorio Cruz, President Salinas's Foreign Press Secretary wrote a letter to the Times blasting it for resurrecting the subject just days before scheduled meetings between the Attorneys General of the United States and Mexico concerning Mexico's foreign aid certification.¹⁰ The letter also attempted to discredit Osorio, who had admitted to being traumatized as a result of his experiences, and pointed out that the Canadian government "did not pass judgment on the substance of his claims." Notably, the Mexican government did not deny outright the veracity of Mr. Osorio's statement.

Recent Cases of Disappeared and Missing Persons

While the *Brigada Blanca*, as such, no longer exists, and Mexico is no longer blighted by a consistent pattern of politically-motivated disappearances, isolated cases of disappearances are known to have occurred in recent years. One well documented case occurring during the Salinas administration is that of José Ramón García Gómez, leader of a Trotskyist party cell in Cuautla, Morelos. (The party, the Revolutionary Workers Party (PRT), is the same one under whose banner human rights

activist Rosario Ibarra de Piedra twice ran for the presidency of Mexico.) García disappeared on December 16, 1988, while en route to a political meeting of leftist supporters of Cuauhtémoc Cárdenas. According to press accounts, a police agent told García's wife, Ana Santander, that he had been kidnapped by Morelos state police, and that he was tortured in jail in Cuernavaca.¹¹

To his credit, President Salinas has adopted measures to ensure that a thorough investigation into García Gómez's disappearance takes place. When it became clear that the investigations by Morelos state officials were inadequate, Salinas appointed a new special prosecutor, Sergio Vela Treviño, to pursue the case, and told Secretary of Government Fernando Gutiérrez Barrios to place at Vela Treviño's disposal all of the resources of the government to identify and prosecute those responsible for the disappearance, regardless of who they are.¹² President Salinas also named a federal commission to look into the matter. Members of the commission include Secretary of Government Gutiérrez Barrios, Luis Ortiz Monasterio, Federal Deputy Attorney General in Charge of Penal Procedures Luis Porte Petit, Jorge Carrillo Olea, Director of National Security in the Ministry of Government, the governor of Morelos, Rosario Ibarra, and members of the García family.¹³

Americas Watch is also concerned about the fate of persons who are reported missing after participating in election-related or land conflicts, or who are believed to be under suspicion for involvement in drug trafficking. For example, four PRD activists involved in the occupation of the municipal palace in Ometepec are still missing two and one-half months after the palace was cleared.¹⁴ Two persons who participated in the demonstration that led to violence in Zihuatanejo, Guerrero are also unaccounted for.¹⁵ Following the eviction of peasants from lands in Paso Achote, Chiapas, four children were reported missing. Local officials hindered all efforts by community members to locate the children and did not mount their own search. Fortunately, in that case, the children turned up.¹⁶

In addition, the whereabouts are unknown of Francisco Sahagún Baca, who allegedly was arrested on July 10, 1989, at a ranch in Michoacán on drug-related charges. Sahagún Baca was the former head of the Federal Government's Division of Investigations for the Prevention of Delinquency and a purported member of the *Brigada Blanca*. In response to an inquiry from Americas Watch, Lic. Ortiz Monasterio suggested that

Sahagún Baca may have struck a deal with the officers who arrested him, bought his freedom, and left the country. Another person whose whereabouts are unknown is Sergio Machi Ramírez. He allegedly was arrested by the Federal Judicial Police in Mexicali on drug trafficking charges in November 1989, and has not been heard from since.¹⁷

While the Salinas administration's efforts to find out what happened to García Gómez are praiseworthy, it should institute similar procedures to determine the fate of all other persons who disappeared in Mexico. The fact that most of the political disappearances occurred during prior administrations in no way lessens the responsibility of the Salinas administration to identify those responsible, inform the families of their loved ones' whereabouts or fate, and punish those responsible. By their nature, disappearances are continuing crimes and cases should not be considered closed until they are resolved and accountability has been established. If, as Rosario Ibarra de Piedra suggests, there are still civilian prisoners alive in Military Camp No. 1, they should be immediately released into civilian custody or given their liberty.

Chapter Notes

1. Committee in Defense of Prisoners, the Persecuted, Disappeared Persons, and Political Exiles, "*Diez Años de Lucha por la Libertad*," 1987. 173 disappearances occurred in Guerrero in 1974. Others took place in nearly twenty other states as well as the Federal District.
2. Id.
3. This loosely organized unit was composed of agents from the *Dirección Federal de Seguridad*, the Federal Judicial Police, the *División de Investigaciones para la Prevención de la Delincuencia*, and the *División de Investigaciones Políticas y Sociales* of the Ministry of Government, in addition to agents from the armed forces and some state and municipal police forces.
4. Goldman, Robert K., Jacoby, Daniel, Report of the Commission of Enquiry to Mexico, International League for Human Rights, *Federation Internationale des Droits de l'Homme*, Pax Romana, December 1978, p. 13.
5. Id., pp. 13-19.
6. Rosario Ibarra de Piedra, who was president of the Committee and Defense of Prisoners, the Persecuted, the Disappeared Persons and Political Exiles, claims to have compiled evidence indicating that some of the disappeared may still be alive.
7. Osorio alleged that he deserted from the Mexican Army in 1982 because the execution duty troubled him and because three transfer requests had been denied. He further alleged that he made his way to the United States where he was an undocumented worker for several years before seeking and being granted asylum in Canada.
8. Rohter, Larry, "Former Mexican Soldier Describes Executions of Political Prisoners," New York Times, February 19, 1989.
9. Id.
10. Gómez, Adriana J., Letter to the New York Times, March 2, 1989.
11. Cortés, Esteban, "*Solicitan al Ejecutivo que Aclare el Secuestro de un*

Miembro del PRT" *EL Sol de Mexico*, February 22, 1990; Saldierna, Georgina, "Campana internacional para que liberen a José Ramón García," *La Jornada*, February 22, 1990.

12. Hernández López, Rogelio, "Asunto de 'Alta Importancia' oficial, la Desaparición de José Ramón García," *Excelsior*, January 26, 1990, p. 4.

13. According to news accounts, the Morelos state investigation, directed by Special Prosecutor Raul Carranza y Rivas (since resigned) and Investigative Police Chief Antonio Nogueta, focused on theories of self-kidnapping. One theory suggested that García, whose wife is Basque, joined the Basque separatist movement in northern Spain. Other theories have placed García in Atoyac and Juchitán, in the south of the country, or in Nicaragua. [The Nicaraguan government denied his presence. Hernández López, Rogelio, "Reinician el Caso del Unico Desaparecido en el Sexenio, J. García," *Excelsior*, February 14, 1990.] Still another plot theory spoke of a homosexual triangle that included other Cuautla PRT activists. Attempts have even been made to use García's disappearance to discredit leaders of the leftist political opposition. Faustino Martínez, a Cuautla lawyer falsely claiming to be a PRT militant, testified that just prior to García's "absence," he attended a meeting in a neighboring Mexico state where Cuahémoc Cárdenas and Rosario Ibarra planned the local leader's "disappearance." Martínez's story was given credence by state investigators until García's supporters remembered that Cárdenas was in the United States and Ibarra in France the day of the alleged meeting. The lawyer later publicly admitted that he had been pressured into testifying by Nogueta. Ross, John, "Mexico: Salinas acts on leftist's disappearance," *Latinamerica Press*, March 1, 1990, p. 5.

14. See Chapter V.

15. See Chapter V.

16. See Chapter VI.

17. Committee and Defense of Prisoners, the Persecuted, the Disappeared and Political Exiles list both Sahagún Baca and Sergio Machi Ramírez as "disappeared."

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V. ELECTION-RELATED CONFLICTS

The hotly contested national elections in July 1988 sparked a wave of election-related conflicts that left many dead and others seriously injured or missing. Much of this violence was precipitated by allegations of electoral fraud made by the Democratic Revolutionary Party ("PRD") against the ruling Institutional Revolutionary Party ("PRI") in both the national and subsequent state and local elections. The greatest number of deaths and acts of violence were reported from the states of Michoacán and Guerrero in the weeks and months following municipal elections. Activists from both political parties have been involved in the violence and number among the victims.

In most of the recent incidents of election-related violence, a measure of responsibility can be assigned to both sides of the conflict. Even the appearance of electoral fraud on the part of a government and its supporters will stir emotions that can lead to acts of protest and violence. On the other hand, leaders of the Mexican political opposition, while quick to protest acts of violence against their supporters, did not do as much as they could to prevent such acts from occurring. Cuauhtémoc Cárdenas's call for non-violence in the municipal palace evictions in Michoacán was heeded, and the evictions occurred without a single death. Earlier emphatic demands by the PRD leadership that protesters adopt non-violent tactics might have reduced the violence in other areas. In addition, where PRD activists were responsible for the violence, the party was not vociferous in condemning the acts of its members.

The feature of election-related violence that is of greatest concern to Americas Watch is the brutality and excessive use of force by government officials and police, particularly in Guerrero, to quell the opposition. In some cases, such as the harsh treatment of PRD supporters after they had been dislodged from the municipal palace in Ometepec, Guerrero on March 6, 1990, the violence appeared vengeful. In others, including the February 27, 1990 assault on demonstrators marching outside of Acapulco, police use of force was far out of proportion to what was required to maintain order. The fact that in that incident Guerrero Governor Ruiz Massieu drove past the demonstrators just moments before the police attack began, lends credence to PRD suspicions that the decision to break up the march was made at the highest levels of state government.

Both the PRD and the PRI have published lists of members who they claim were victims of election-related violence. The Ministry of Government has published official responses to each party's list. The responses outline the government's understanding of the details of the incident and the status of its investigation into the case. Most of the cases are so recent that it is premature to evaluate whether the investigations are adequate.

There have been many arrests of PRD activists who occupied municipal palaces or participated in "popular police" forces; though a lot of these individuals have since been released. Arrests of PRI supporters and police suspected of responsibility for killings or assaults on PRD activists have been far fewer. There has also been almost no progress in the government's investigations of some of the older cases, including the 1988 assassinations of presidential candidate Cuauhtémoc Cárdenas' close aide Francisco Xavier Ovando and his assistant Ramón Gil Heráldez, as they were driving in Mexico City on the eve of the federal election. These circumstances raise the concern that a policy of selective prosecution in cases of election-related violence may be taking hold.

Even if there is no deliberate policy of selective prosecution, the appearance of such a policy has outraged political opponents of the government. Former PRD human rights spokesman Humberto Zazueta has charged that there are cases in which the authorities know the identities and locations of killers but have not arrested them, and others in which warrants have been issued but not carried out. The PRD has also been highly critical of the government's response to the list it presented, and has blamed the government for failing to prevent further abuses.

Evictions of Protesters from Municipal Palaces

Some of the worst recent instances of election-related violence occurred in Guerrero on March 6, 1990 in the context of the forced removal of PRD activists who refused to accept balloting results and occupied local municipal palaces as a form of protest. Many of the protesters were armed, in some cases with high-powered weapons confiscated from the official police when the municipal buildings were occupied. Nonetheless, while a nuisance, most of the occupations were peaceful and state government officials failed to exhaust non-violent methods of settling the underlying conflict before ordering that the palaces be stormed.

The evictions took place without warning during the early morning hours when about 1,000 police from different forces were called in to remove protesters from eight communities. An estimated 150 people were arrested.¹ At least six others were killed and dozens were injured.

In some instances police efforts to dislodge them provoked violent responses from the demonstrators who must share responsibility for the killings and injuries that ensued. For example, in Cruz Grande, Guerrero, a handful of people are reported to have resisted for more than seven hours the efforts to dislodge them by between 100 and 600 state judicial and preventive police officers. By the time the municipal building was turned over to police at least four people were dead. Three were policemen: Eleuterio García Bustos, Javier Román Oropeza and Andrés Jarquín González,² and one was a PRD supporter, Leonel Felipe Dorantes.³ But elsewhere, a large part of the responsibility for the killings and injuries lies with the government for its surprise assault on the protesters before non-confrontational means of resolving the disputes were exhausted, and for failing to ensure that police officers behaved in a manner that would ensure that violence would be kept to a minimum.

Ometepec, Guerrero: One incident in which police violence far exceeded what was required by the circumstances occurred in Ometepec, Guerrero. Between 3:00 and 3:30 a.m. on March 6, 1990, about 300 state judicial and public security police entered Ometepec on buses to remove approximately fifty PRD protesters occupying the municipal palace.⁴ The police surrounded the building and used tear gas to force the protesters to leave. According to a witness, the police shot at the protesters.⁵ It is not clear if the protesters, who were armed primarily with sticks, shot back. One PRD supporter, Román de la Cruz Zacapela, died later of wounds received during the eviction.⁶ *EL Día* reports that a peasant named Miguel Sandoval also died as a result of the incident.⁷ Many others were wounded.

PRD acting municipal president, Eloy Cisneros Guillen, was captured during the operation. He was badly beaten, thrown face down into the back of a pick-up truck, and taken to Acapulco where he was detained. Many other PRD supporters, some of whom were wounded, were loaded onto the buses which were also bound for Acapulco. Most were forced off the buses at intervals along the route; only six arrived in Acapulco, two of whom were taken to the General Hospital.⁸ Most of the men eventually

made their way back to Ometepec. But the whereabouts of four *perredistas* believed to have been put on the buses are still unknown: Daniel López Alvarez, Andrés de la Cruz Zacapela, Miguel Esteban Silverio, and Vicente de Jesús Santiago.⁹ There is no evidence to suggest that these four arrived in Acapulco, and there is concern that they are no longer alive.

Far less violent evictions of protesters occupying municipal palaces occurred in Michoacán on April 5, 1990, ten days after Governor Genovevo Figueroa Zamudio warned the protesters that if they did not leave voluntarily, the state would intervene.¹⁰ The evictions were carried out by about one hundred state judicial police, and sixty to one hundred federal judicial police.¹¹ The police were accompanied by 500 to 1,500 military troops with tanks and other vehicles which were a visible presence while the evictions were occurring. Police removed the protesters, or the protesters left voluntarily in fourteen to sixteen municipalities. No deaths were reported,¹² though about 150 people were arrested, mostly on charges of carrying arms.¹³ All but thirteen have since been released.

Two features of the evictions in Michoacán distinguish them from the events in Guerrero: the use of the armed forces, and the fact that they were accomplished without bloodshed. Several factors apparently could account for this lack of violence: the protesters were warned by the governor of the impending evictions; the evictions occurred during the daytime instead of in the middle of the night; the evictions occurred after those in Guerrero, and PRD activists were thus aware of the likelihood of violence; armed forces intervention may have appeared to pose an even more serious threat of violence than police intervention and this may have deterred resistance; and PRD leader Cuauhtémoc Cárdenas, himself a popular former governor of Michoacán and highly respected in the state, urged party supporters not to confront the military.¹⁴

Violence Between Political Party Activists

Post-election violence between political party activists has been frequent. It typically involves local townspeople or hired gunmen killing activists from an opposing political party. Most of those killed were members of the PRD or one of the other leftist parties that existed prior to the formation of the PRD. The majority of the cases in this category took place from January to March 1990 in Guerrero, Michoacán and Oaxaca. In some cases, the confrontations involved government police forces who

clashed with "popular police" serving the protestors who occupied a municipal palace. The following examples are indicative of the violence occurring in many municipalities in the region; they do not constitute a comprehensive list of all cases about which Americas Watch is concerned.

Huandacareo, Michoacán: At about 7:30 p.m. on January 7, 1990, Ignacio Murillo Guzmán, a PRD candidate for town council in the community of Huandacareo, Michoacán, was shot and killed while walking home after standing guard at the municipal building. The municipal building in Huandacareo was occupied by the PRD on August 17, 1989.¹⁵ Prior to the shooting, a verbal confrontation broke out between PRD and PRI city workers who apparently were preparing for a local civic celebration. One local newspaper reported that Murillo had words with José María Campos Vargas, the town's former secretary and a PRI member, and that Campos Vargas shot Murillo. Another newspaper reported that Murillo was shot thirty minutes after the argument.¹⁶ A month later, the case was under investigation but no arrest warrant had been issued.¹⁷

Coyuca de Benítez, Guerrero: On December 31, 1989, local PRD activists who had taken over the town's municipal offices held a New Year's Eve party in the center of town. People came from many surrounding villages to celebrate. At midnight, those with guns shot them into the air to ring in the new year. According to witnesses there were thousands of people in town, many of whom were still there at 2:30 a.m.¹⁸

Two reputed local drug-traffickers, Pedro and Roberto Vargas Madero, spent New Year's Eve at the Coyuca de Benítez home of Andrés Berdeja. Berdeja's brother Francisco is a PRI activist and president of the town's electoral commission. Andrés Berdeja and another man who was at his home at the time of the incident, Ramiro Vásquez Ibarra, have been accused by the local PRD of participating in electoral fraud in Coyuca de Benítez.

As the Vargas Madero brothers drove away from the home, they encountered a barrier set up by the PRD to demarcate the area of town designated for the party. Three *perredistas* who were guarding the barrier were killed. They were: Bernabe Flores Salinas, who was shot and died a few minutes later; José Manuel Palacios Cárdenas, who was shot, run over with a car, and died instantly; and Clemente Ayala Torres, who was shot and taken to a hospital in Acapulco where he died a few hours later. Pedro

and Roberto Vargas were accused of the killings, but escaped.

At about 6:00 a.m., a group of PRD activists learned of Clemente Ayala's death and went to the General Hospital in Acapulco to retrieve his body. The hospital refused to turn it over to them and called the police. The *perredistas* then entered the hospital, removed the body, and took it back to Coyuca de Benítez.

Upon their return, a crowd of PRD supporters gathered near the site of the killings and shots were fired from Andrés Berdeja's home. A battle between those inside the house and the *perredistas* in the street ensued that lasted until 11:00 p.m. During the battle, the house was gutted with fire and those inside, including Berdeja's family and small children, were forced to move to an adjoining building. A fourth *perredista*, Roberto Díaz, died as a result of a gunshot wound sustained during the battle, and at least one other *perredista* was injured.

Around 11:00 p.m., the State Judicial Police, along with the State Attorney General, arrived in Coyuca. After negotiations, the *perredistas* agreed to allow the police to remove the people who had been in the house. Those removed were held in jail for a few days, but then released.¹⁹

As of late April, Roberto and Pedro Vargas Madero were being sought but had not been arrested. In its response to the PRD's inquiry about this case, the Ministry of Government said two other men were detained on February 7 for having covered up the escape of the Vargas Madero brothers.²⁰

Jacona, Michoacán: Following municipal elections in Jacona, Michoacán on December 3, 1989, the PRI candidate was declared the municipal president. PRD activists took over the municipal offices in protest and established a parallel government that included its own "popular police."²¹ On January 23, 1990, an employee of the constitutionally recognized PRI municipal government went to the town's market to collect taxes. He was accompanied by thirteen officers of the official police. Several women began shouting that people should not pay their taxes to him. Between fifteen and forty PRD supporters appeared on the scene and a battle broke out.²² The *Voz de Michoacán* identifies the *perredistas* involved in the conflict as the PRD "police."²³

According to *EL Sol de Morelia*, witnesses present saw Antonio Alvarez, a former PRD candidate for town council, shoot first, wounding a man named José García.²⁴ A PRI municipal policeman, Efraín Pérez

García, and a PRD "popular policeman," Javier Macias Salcedo, were killed. Four others were injured: two PRD supporters, one PRI supporter, and a bystander.²⁵ Following the incident a number of *perredistas* were arrested. Five of those arrested were released on bail. Those accused of murder, José Guadalupe Castro López and David Hernández Hernández were still being held in late March.²⁶

Confrontations Between Police and *Perredistas* During Demonstrations

Violence resulting in the deaths or injuries of PRD activists and police also has occurred in the context of marches and rallies to protest electoral fraud.

Acapulco, Guerrero: On the afternoon of February 27, 1990, PRD supporters held a march outside Acapulco to protest electoral fraud. Prior to the march, an agreement was reached between the municipal president of Acapulco, René Juárez Cisneros, and state PRD leaders under which the protesters agreed not to block the road and to follow a pre-designated route from the outskirts of Acapulco to La Poza, a community near the airport.²⁷

Many of the marchers were peasants and carried sticks, and possibly other weapons such as machetes and rocks, despite pleas from state PRD leaders to put them down. State police from various units were involved in the violence that ensued.

As the marchers, who included old men, women, and children, passed the golf course of the Princess Hotel near La Poza, police blocked the road and began pelting demonstrators with rocks. Some fought back, and hand-to-hand combat ensued. Others tried to escape by jumping over the low wall that encircles the hotel and were pursued by police onto the golf course. Marchers interviewed by Americas Watch claim gun shots were heard that added to the panic, but they could not determine from where the shots were fired.²⁸

About 150 protesters took shelter in the hotel. Hotel employees did not turn them over to the police, and the hotel doctor cared for the injured.²⁹

Accounts of what triggered the violence vary; according to state government officials and press reports in newspapers with close ties to the government and the PRI, demonstrators blocked the road and attacked the

police.³⁰ The PRD and participants in the march deny this and say they were marching along the road as agreed. They further allege that the police attack began just after Governor Ruiz Massieu drove past them.

When it was over, one PRD supporter, Donaciano Rojas Lozano, had been killed. Fifty or more demonstrators and eight police were injured. According to a Guerrero physician interviewed by Americas Watch, two of the marchers sustained neurological damage as a result of head injuries. Thirty-six were arrested, though all have since been released.³¹ One of those detained for a longer period suffered two broken arms during the demonstration, but did not receive medical treatment until he had been in jail for fifteen days.³²

Zihuatanejo, Guerrero: On the same day, a violent conflict also broke out between police and marchers in Zihuatanejo, Guerrero. Two men died, Florentino Salmeron, a PRD supporter, and Eudocio García Andraca, a police officer. Two demonstrators from Teloloapan, Guerrero, Feliciano Cleto Villa and José Salgado Martínez, have been missing since the march.³³

Chapter Notes

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3. Caballero, Alejandro and Yáñez, Carlos, "*El Enfrentamiento en Cruz Grande Duró Más de 7 Horas*," *La Jornada*, March 8, 1990.
4. *Id.*; Campa, Homero and Campuzano, Andrés, "*Ruiz Massieu Negocia y Agrede, Pero No Acata Los Acuerdos en Gobernación*," *Proceso*, March 12, 1990.
5. Americas Watch interviews with Ometepec residents in Acapulco, April 19, 1990.
6. "*Clase Política*," *La Jornada*, April 10, 1990.
7. "*En Guerrero Dos Muertos Durante Los Desalojos*," *EL Día*, March 7, 1990.
8. *La Jornada*, March 8, 1990, *cit.*, *Proceso*, March 12, 1990, *cit.*; Americas Watch interviews with Ometepec residents.
9. Americas Watch interviews with PRD officials and with Ometepéc residents.
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11. *Id.*; Beltrán del Río, Pascal, "*Militares y judiciales juntos evacuarán las alcaldías en Michoacán*," *Proceso*, April 9, 1990.
12. *Id.*
13. Gurza, Teresa, "*Exige el PRD la liberación de cien detenidos en Michoacán*," *La Jornada*, April 7, 1990.
14. Americas Watch interviews with residents of Michoacán; *Proceso*, April 9,

1990, *cit.*

15. López Nolasco, Eduardo, "Asesinan al Candidato a Regidor por Huandacareo," *La Voz de Michoacán*, January 8, 1990.

16. "Reconstruyó la PGJ los hechos en Huandacareo," *La Voz de Michoacán*, January 9, 1990; "Una discusión móvil de la muerte del candidato a regidor del PRD," *EL Sol de Morelia*, January 9, 1990.

17. Document from the Ministry of Government in response to the PRD's presentation of 54 killings and other acts of violence against its members, February 1990.

18. Americas Watch interviews with residents of Coyuca de Benítez, April 18, 1990.

19. *Id.*

20. Ministry of Government's response to the PRD's list of 54 persons killed and other acts of violence against its members, February 1990.

21. Mena, Jorge Humberto, "PRI y PRD: Banderas en pugna por la alcaldía de Jacona," *La Voz de Michoacán*, March 18, 1990.

22. Torres, Martha Elba, "La violencia de perredistas cobra 2 víctimas más en Jacona," *EL Sol de Morelia*, January 23-4, 1990; "El PRI culpa al PRD de los hechos en Jacona," *La Voz de Michoacán*, January 24, 1990.

23. *La Voz de Michoacán*, March 18, 1990, *cit.*

24. *EL Sol de Morelia*, January 23-4, 1990.

25. *La Voz de Michoacán*, January 24, 1990.

26. *La Voz de Michoacán*, March 18, 1990.

27. Campuzano, Andrés and Vera, Rodrigo, "Los Ataques a Los Perredistas en Acapulco y Zihuatanejo, Preparados con Anticipación y Crueldad," *Proceso*,

March 5, 1990.

28. *Id.*; Váldez Reycen, Jorge, "Chocan PRD-Policías: Decenas de Heridos," *EL Sol de Acapulco*, February 28, 1990; Americas Watch interviews with marchers.

29. *Proceso*, March 5, 1990, *cit.*; Americas Watch interviews in Acapulco with marchers.

30. *EL Sol de Acapulco* reports that after the governor passed, Major Elías Oliva Pérez, director of the Preventive Police, gave the police the order to attack (*EL Sol de Acapulco*, February 28, 1990, *cit.*). Major Oliva Pérez is quoted as saying that "the marchers were blocking the road and we had to detain them." (*Proceso*, March 5, 1990, *cit.*). *EL Universal* reports that the police were trying to "persuade" the marchers to move into one lane and the marchers attacked the police. (Rivera, Rafael; de la O., Rosendo and Cervantes, Juan, "Chocan Perredistas y Policías en Acapulco y Zihuatanejo: Dos Muertos, Cien Heridos," *EL Universal*, February 28, 1990) *EL Financiero* reports that it appeared that one of the protesters shot at the police. (Vázquez, Saúl and Nava, Manuel, "Enfrentamiento entre militantes del PRD y la Policía en Acapulco, Guerrero; Dos Muertos," *EL Día*, February 28, 1990.).

31. Americas Watch interviews with Lic. José Salgado Soletto, Dr. Javier Mojica and other marchers; de la O., Rosendo, "La Policía Sólo Repelió la Agresión de Perredistas: Ramírez Guerrero," *EL Universal*, February 28, 1990; Carrillo Paredes, Roland; Soria Nolasco, Benito; Hernández Muñoz, Lucio and Hernández Meneses, Ignacio, "Inician averiguación previa por desórdenes; 5 detenidos al MP," *EL Sol de Acapulco*, March 1, 1990.

32. Americas Watch interviews with Dr. Javier Mojica and Lic. José Salgado Soletto.

33. Yáñez, Carlos; Benítez, José Manuel and Caballero, Alejandro, "Chocan en Guerrero Policías y Perredistas: Dos Muertos," *La Jornada*, February 28, 1990.

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VI. RURAL VIOLENCE

Rural violence is an unabating problem in Mexico. It grows out of long-standing disputes over land and out of frustrations by peasants and members of Indian communities over the inadequacies of Mexico's land reform program. The Mexican government responds as though the violence were an inevitable by-product of land-related tensions in the countryside, and rarely intervenes.

In 1986, Amnesty International published a report that examined rural violence in the states of Oaxaca and Chiapas. The report contained numerous accounts of killings and "disappearances" of peasants and members of Indian communities. In its report Amnesty International wrote:

The abuses appeared to have occurred as a result of the victims' activities in organizations engaged in land disputes with landowners and local and state authorities. In nearly all cases the killings were carried out by civilians, and not by members of the official security forces. However, Amnesty International was concerned that they had been carried out with the acquiescence of the authorities, to the extent that there had been a consistent failure to detain and prosecute those responsible.¹

Killings and disappearances of the type described by Amnesty International continue to occur, particularly in the poorer southern states where there are concentrations of peasants and Indians, and where the tradition of family farming is deeply entrenched.

In addition, the rural poor are subjected to a range of other abuses including forced evictions from land, frequently without advance notice, that leave families homeless, penniless, and battered from blows inflicted by their evictors; seemingly capricious arrests and detentions, often on trumped up charges, either connected to evictions or in retaliation for peasant group activities; and other forms of harassment and intimidation, such as death threats, aimed at discouraging peasants from insisting on their claims to land. The evictions and detentions are frequently carried out by state police and other state authorities acting in their official capacities.

Violence over land dates back to the earliest days of Spanish conquest and colonial rule; but modern rural violence has its roots in the Mexican Revolution and Article 17 of the 1917 Constitution, which guarantees to peasants the right to a piece of land. In the 1930s, President Lázaro Cárdenas, responding to mounting peasant frustrations over his predecessors' failure to implement meaningful land reform, instituted the *ejido* land system² and, despite strong resistance from large landholders, redistributed twelve percent of the country's land to 810,000 peasants.³ President Cárdenas was also responsible for the creation of the *Confederación Nacional Campesina* (CNC), the National Peasant Confederation, which is the peasant wing of the ruling PRI.

Subsequent Mexican presidents have shown far less enthusiasm for land reform. In 1947, President Alemán expanded the acreage private landholders were permitted to retain, thus reducing the amount of land available to be redistributed. While Alemán and his successors have redistributed millions of hectares, most of that land has been in areas unsuitable for growing crops. In addition, the Agrarian Reform Ministry charged with redistributing *ejido* land is so bureaucratic and inefficient that the average time peasants must wait between expropriation and land distribution is over fourteen years.⁴

Peasants, particularly in the central and southern states, have channeled their frustrations over land by uniting into independent peasant organizations that operate in opposition to the official CNC. These organizations support their members in a variety of ways including representing them in land negotiations with federal and state officials, campaigning for the restoration of lands that they claim private owners acquired illegally, encouraging them when they occupy disputed land, appealing for their release when they are arrested, and engaging in acts of protest such as marches and sit-ins. These groups have incurred the wrath of local *caciques* (landowners and other rural power bosses with considerable economic and political clout) who control the areas in dispute, as well as state and local government officials. Members of these groups are disproportionately represented among those who have been killed in the countryside in recent years. Many more are incarcerated for crimes against the persons or properties of the rural elite.

Not all killings of peasants or members of peasant organizations go unsolved. Occasionally the tables are turned and a *cacique* is convicted of the murder of a peasant activist. For example, on February 10, 1990,

Roberto Zenteno Rojas, an influential landholder from Chiapas, was sentenced to thirty years in prison for the assassination of peasant leader Sebastián Pérez Núñez, on December 29, 1988. Zenteno blamed Pérez Núñez, an ex-state legislator, for disputes involving his lands.

But the number of arrests and convictions for killings of peasant activists is token compared to the extensive efforts undertaken to resolve those acts of violence directed against more powerful figures. The structure of rural society facilitates government inaction with respect to the killing of peasants. For one thing, peasants often fail to register births with state civil registries; thus, as far as the state is concerned, many of these people do not exist. Moreover, the most extensive rural violence occurs in remote regions from which information is difficult to obtain. Many peasants are poorly educated and many Indians do not speak Spanish. Thus, if no one acts as an advocate on their behalf, information about land related violence in these communities is never publicized. Most of the independent peasant advocacy groups that do exist are commonly regarded as militant or aligned with the left. It thus becomes an easy task for government officials to dismiss their allegations as grandstanding or directed towards political ends.

Yet the most important reason why violence over land -- the most highly valued commodity in Mexico -- is ignored by government officials until publicity and other forms of pressure make it politically impossible to do so, is that the rural elite have long held very close ties to the PRI. The poorest rural areas with the highest levels of rural violence consistently deliver the votes required to keep the PRI in power. In exchange, the rural elite demand that their interests in land be protected, not by government intervention but by the government looking the other way when violent measures are taken to keep the peasant population in line, or to prevent peasants from exercising constitutionally guaranteed rights to land redistribution.

Rural Violence in Embocadero, Veracruz

The following case, from the state of Veracruz, is just one example of the violence faced by peasants and Indians in rural areas. The case was selected for discussion here because it is better documented than most instances of rural violence and because it illustrates how tensions over land result in violence that continues over time.

The Nahua Indian community of Embocadero, in the municipality of

Ilamatlán, is located in the mountainous Huasteca region in the northern part of Veracruz, some twenty hours from the state capital, Xalapa. The community originally consisted of approximately forty to sixty families who inhabited some of the richest land in the municipality. In 1934, during the administration of President Lázaro Cárdenas, communities in the region were granted land by presidential decree,⁵ though *caciques* and cattlemen illegally confiscated some of this land, often with the complicity of local and regional authorities.⁶

The Nahuatl farmers of Embocadero and the surrounding communities have long lived in tense co-existence with mestizo landowners who frequently encroached on communal lands and forced the Nahuas to work for them and/or rent land from them. When cattle ranching was introduced into the region in the 1950s the plunder of communal lands increased dramatically. Rival *caciques* fought among themselves as they dispossessed the Nahuas. In 1983, the *Diario de Xalapa* reported on the reign of terror in the area. Peasants were said to live "like slaves, humiliated by word and by fact" by local landowners. The article added that the population does not register births at the public registrar, so "they live and die in clandestinity, and are thus easily subjugated or killed, without major repercussions."⁷

The most powerful *cacique* in Embocadero, though he was a minor figure in the region, was Eloy Centeno Cordero. He acquired private ownership of much of the land in the area and enforced his power through intimidation and violence by hired gunmen.⁸

On August 26, 1984, between forty and fifty unidentified armed men attacked Eloy Centeno and his men and set his house on fire. Eloy Centeno, his nephew and hired gunman, Sixto Cordero, and his maid, Fructuosa Ramírez, were killed in the attack. In an interview published shortly afterwards, a major regional *cacique* who considered Centeno one of his "boys" (*muchachos*), reflected that the killing was carried out under orders of a rival landowner.⁹ But the widows of Centeno and Sixto Cordero drew up a list of suspects in the murders which included all the men in the community of Embocadero.¹⁰ At the same time, *caciques* and their allies in the area alleged that those responsible for the killings were guerrillas and called on the government of Veracruz to pay "immediate attention to the phenomenon of subversion...."¹¹ For the next few months, Embocadero was, for all practical purposes, occupied by the military and by agents of the state and federal judicial police.¹²

Ten months after the death of Eloy Centeno, bilingual teacher and community leader Zósimo Hernández was arrested and charged with the murder. In a prompt but abbreviated trial, he was sentenced to eighteen years in prison. Amnesty International investigated his arrest at the time it occurred and concluded that the charges against Hernández were unfounded; the organization adopted him as a prisoner of conscience. Mexican human rights lawyers and organizations as well as peasant and other community groups continued to protest trial irregularities including the absence of witnesses or evidence of guilt and, in 1987, Hernández was released for lack of evidence after spending two years and four months in prison.¹³

On April 1, 1986, Hermelindo Hernández and Ponciano Hernández Hernández were killed.¹⁴ Jaime Hernández Ramírez was killed on November 22 of the same year. According to his defense lawyer, Rosario Huerta, Zósimo Hernández's release outraged Centeno's widow and others who had been close to him, and a wave of further killings of members of the Embocadero community ensued. Miguel Olvera Lara, aged 80, was killed on September 6, 1987, and Eliodoro Cordero was killed on November 22, 1987. On August 3, 1988, Emilio Hernández Antonio disappeared.¹⁵

Nine people were shot to death in three separate incidents in the municipality of Ilamatlán on the morning of April 25, 1987. José Francisco Hernández and Fermín Ramírez Hernández were killed about 7 a.m., on a road from Embocadero to neighboring El Arenal. In San Gregorio Ilamatlán, men armed with rifles, pistols and machetes attacked a group of peasants who were working in the fields. Moisés Martínez, Bardomiano Ramírez, and Artemio Hernández were killed, and Fernando Hernández Sánchez was wounded. Five survivors, including the wounded man, witnessed the attack. At about 9:30 a.m., some twenty armed men attacked peasants working in a sugar cane field in the same area. Four were killed: José Francisco Hernández Ramírez, Pedro Miguel Hernández, Celedonio Alonso Hernández and Fidencio Hernández Sánchez.¹⁶ Five peasants were arrested and charged with the April 25, 1987 murders. On January 30, 1989, they were sentenced to eighteen years in prison, despite substantial evidence that they were not responsible.

Killings continued in 1989. On March 18, 1989, a group of men from Embocadero were ambushed. Three were killed: Ramón Hernández Hernández, his fifteen year old son Bonifacio Hernández Ramírez, and 76-

year-old Guadalupe Ramírez Hernández.¹⁷

Following the March 1989 killings, Pedro Hernández, an outspoken activist for the land rights of the Nahuas of Embocadero, traveled to Xalapa to denounce the killings and petition state authorities for protection. Along with Rosario Huerta, Zósimo Hernández, and a fourth person, Hernández was warned by Mario Ramírez Bretón, an official with the Agrarian Reform Ministry in Veracruz, that he would be killed if he returned to Embocadero.¹⁸ He did return and on June 7, 1989 he was assassinated by persons identified by his wife as *pistoleros* (hired gunmen of a *cacique*). His body was found two days later with machete wounds and 25 bullet-holes.

During the summer of 1989, when national publicity about the killings and other violence in Embocadero was at its height, officials from the Agrarian Reform Ministry went to Embocadero and announced a plan to redistribute 386 hectares of land to the peasants. In addition, officials from various state and national agencies promised community members a school, health services, electricity, and development projects. Six months later, when the land grants were due to go into effect, the Eloy Centeno murder case was re-opened. Seven men from Embocadero and two men from a neighboring community were arrested; most of the other men remaining in the community went into hiding to avoid arrest. When authorities from the Agrarian Reform Secretariat returned to Embocadero to distribute the land, they found only women and children waiting to receive it.¹⁹

Sócimo Hernández, no relation to Zósimo Hernández the teacher, was detained without a warrant on November 8, 1989. He was taken to Iamatlán where he was denied access to an attorney and tortured by having his head pushed under water until near asphyxiation and by blows to his genitals. He was forced to memorize a story in which he confessed to several homicides including the murders at the home of Eloy Centeno, and Pedro Hernández Hernández. He was first taken before a judge eight days after his arrest. He has since been released on bail.²⁰

On November 13, 1989, the judicial police came to Embocadero with arrest warrants for eleven residents accused of responsibility in the Centeno killings. Not all of the men showed up; several of the accused had been assassinated. Guilebaldo Centeno, Gonzalo Ibarra, José Melesio, Adelaido Melesio, Eusebio Ramírez Camilo, José del Angel, and Ruperto Ramírez were tied up and taken to Xalapa. Guilebaldo Centeno and

Gonzalo Ibarra were tortured en route and forced to "confess" to the slaying of Centeno and other crimes. At a press conference convened in Xalapa on November 14, 1989, the men were presented as members of a "multi-homicidal gang."²¹ On November 16, two other men, bilingual teacher José Luis Martínez and Quintil Quintero, a trader, were detained in connection with the Centeno murders. Quintero was detained in Xoxocapa by state judicial police and taken to Iamatlán. According to defense lawyers, he was held incommunicado and tortured with death threats, kicks to the abdomen, and near asphyxiation in water, after which he confessed to the murders.²² All nine men are being held in the Huayococotla jail awaiting trial, though defense lawyers contend that the government has so far produced no evidence connecting them with the 1984 killings.

Americas Watch is concerned that this latest wave of arrests is intended to punish local residents for drawing national and international attention to local problems and for winning the support of federal officials in their struggle to obtain *ejido* land.

Rural Violence in Chiapas

Violent evictions of peasant families are commonplace in Chiapas. The evictions typically occur with little or no warning, in the pre-dawn hours when most members of the community are still asleep. The number of police officers and private individuals used to carry out the evictions far exceed the number of men, women and children being evicted, and little respect is shown for the physical integrity of those being evicted or their personal property. Evictions are frequently accompanied by warrantless arrests of large numbers of community members, often on trumped up charges, and without regard for what will become of the persons being evicted. No steps are taken to ensure that evicted families are able to stay together, or even to make sure all members of the community are accounted for. The following cases from March and April 1990 illustrate the violent tactics used during evictions.

On April 11, in the early hours of the morning, without prior warning, some 600 state Public Security Police swept into three peasant communities, Paso Achiote, Unión y Progreso and Emiliano Zapata, in the vicinity of Chiapa del Corzo, Chiapas. They were accompanied by local *cacique* Isidro Flecha, and his private hired gunmen.

Paso Achiote is a community of approximately 150 persons residing in

45 family groups. The community had made substantial progress towards obtaining legal title to the lands on which members lived and farmed, and community members said they expected to receive title in the near future. The community was served by electricity and had a state kindergarten and school. Despite this progress, these peasants still did not hold title to the land and technically they were squatters. Americas Watch takes no position on whether this eviction, or the others that occurred in the neighborhood, were justified; however, we express serious concerns about the manner in which the evictions were carried out.

On the morning of the eviction, the peasants were awakened with orders to vacate their homes. They were permitted time to dress but not time to gather any personal possessions. Those who moved too slowly were beaten. Fourteen members of the community were arrested without warrants, though ten were released shortly thereafter. The remainder were herded onto trucks and driven to an intersection of two highways, where they were deposited along the roadside.

Some members of the community managed to flee into the surrounding countryside and remained hidden during the raid. Among them were four boys between the ages of five and seven. When their parents complained that the children were missing, they were denied permission to return to look for them and the police made no effort to find them. Although all four children eventually turned up (they had lived for some time in the open and had then taken shelter with families in nearby communities), their families suffered the anxiety of not knowing what had become of their children for approximately ten days.

A few of the men who fled reported that after the eviction they saw police, *caciques* and hired gunmen return to the community and strip it of all items of value.²³ Accounts varied as to who committed the theft; some men reported that the police stood by while the *caciques* and gunmen looted the community, others said the police took part.

A similar scene was re-enacted that same morning in neighboring Unión y Progreso. That community consisted of thirty families. In the course of their eviction ten persons were arrested. After the eviction, police, *caciques* and gunmen returned to loot the peasants' belongings; they then went a step further and burned the community to the ground. Peasants living in Emiliano Zapata were also forced from their homes during the sweep, but were not permanently evicted; spokespersons from the other two communities reported that they were eventually allowed to

return.

An Americas Watch delegation visited the residents of Paso Achiote and Unión y Progreso two weeks after their eviction. They were temporarily housed in two small school yards in Venustiano Carranza, approximately fifty miles from Chiapa del Corzo. Arrangements had been made for them by a local peasant organization, the Emiliano Zapata *Campesino* Organization ("OCEZ"), which also was providing community members minimal food supplies. Many of the children showed signs of fever and their parents reported that most of the children had diarrhea. One woman, who was eight months pregnant and was beaten on the back during the eviction, went into premature labor in the schoolyard. A midwife delivered the baby in the shed of a family that lived near the school. Another woman, who was two months pregnant and who also had been beaten on the back during the eviction, was lying on a piece of cardboard covered with a blanket. She told Americas Watch that the pain from the beating was so great she could not get up. Lying with her was a one-year-old child who looked feverish and dehydrated. As of the date of our visit, none had received medical attention.

The fourteen peasants who had been arrested during the eviction were taken to Cerro Hueco prison in Tuxtla Gutiérrez, Chiapas. As of April 24, 1990, they had not yet been informed of the charges against them, though a lawyer from the Fray Bartolomé de las Casas Human Rights Center was making inquiries on their behalf.

A similar eviction occurred on March 14, 1990, of members of the communities of Luis Echeverría Alvarez and Chalem del Carmen, in the municipality of Ocosingo, Chiapas. According to eye-witnesses, at approximately five o'clock in the morning three buses and some twenty pickup trucks filled with approximately 600 state Public Security Police descended on these communities and forcibly evicted 74 families from their homes. According to one account, the police were headed by members of the official peasant organization, the CNC. During the eviction shots were fired and at least one person was hit. The peasants were forced to disperse into the nearby countryside; those who resisted were beaten with rifle butts. Several were seriously injured and required hospitalization. According to some accounts, several women were raped. Once the population was dispersed, those who had carried out the evictions ransacked the community and carted off everything of value.

Five men and five women were arrested and detained including one

eighty-year-old man, Epitasio López Gómez, who stated to staff workers from the Fray Bartolomé de las Casas Human Rights Center: "they really let me have it.... I thought they were going to kill me. They hit me with the barrel of a gun.... I couldn't breathe, it was awful, they hit me hard, they fired four shots at me, they grabbed me... they dragged me across the river, they hit me with the flat side of a machete, I hurt a lot."²⁴ The prisoners were taken to a municipal jail where they were held in concrete holding cells with minimal light and fresh air.

The fact that in all of these cases police officers did not act by themselves but were accompanied by local landholders, hired gunmen and/or PRI-affiliated CNC activists, is of serious concern. It suggests that Chiapas police are at the service of local political forces. Their subsequent conduct, including the violations of due process and mistreatment that occurred during the evictions and the failure of the police to assist in any way those evicted, further suggests that the police are simply doing the bidding of local bosses. Such conduct constitutes an unconscionable breach of duty.

Chapter Notes

1. Amnesty International, Mexico: Human Rights in Rural Areas, London, 1986.
2. Under this system, which was adapted from the Indian tradition of communal farming, the state grants to peasants usufruct rights to land, but retains ownership.
3. Riding, Alan, Distant Neighbors: A Portrait of the Mexicans, New York, Vintage Books, 1984, p. 264.
4. Id., p. 267.
5. Rojas, Rosa, "*Desplazados, otomíes y nahuas desmontan bosques para sembrar*," La Jornada, July 17, 1989.
6. "INI Journal Reports on Huasteca Violence", La Jornada, June 26-7, 1989, citing a report of the Federal Planning and Budget Secretariat, reprinted in EBIS Daily Report, Latin America, September 7, 1990.
7. "*Impera el terror en Ilamatlán*", Diario de Xalapa, October 6, 1983.
8. Id.
9. "*Defensa del maestro Zósimo Hernández y situación de Ilamatlán, Veracruz.*" Document presented to the court by lawyers for Zósimo Hernández, p. 3.
10. "*Investiga Gobernación la matanza de campesinos en Embocadero, Veracruz*", EL Día, June 19, 1989.
11. "*Defensa del maestro Zósimo Hernández y situación de Ilamatlán, Veracruz.*" supra.
12. Id., p. 2
13. Mexican Academy of Human Rights, "*Tenencia de la tierra y derechos humanos en Veracruz*", Boletín, 7/8, April-May, 1988, p. 12.
14. *Solicitud de Seguridad y Tierra*, Embocadero, Ilamatlán, Veracruz, June 17, 1989. (Letter sent to President Salinas, the Governors and Attorneys General of the

states of Veracruz and Hidalgo.) The *Centro de Derechos Humanos "Fray Francisco de Vitoria, O.P."*, a Catholic human rights organization, reports that the date of Ponciano Hernández's death was June 18, 1986. *Justicia y Paz, No. Especial, Año IV, No. 1 y 2*. January-June, 1989, p. 42.

15. Id.

16. "*Exposición de los motivos por los que se solicita que se amnistie a los señores Juventino Hernández Hernández, Zenón Ramírez Agustín, Miguel Alonso Hernández, Alfonso Hernández Hernández y Benito Hernández Hernández.*" Document presented by defense lawyers, (date unreadable).

17. "*Investiga Gobernación la matanza de campesinos en Embocadero, Veracruz,*" *ELDía*, June 19, 1989.

18. *La Jornada*, July 27, 1989, p.11. In a March 28, 1990 letter to Americas Watch, Walter Astié-Burgos, Mexico's Charge d'Affaires at its embassy in Washington, D.C., denied that Ms. Huerta had been threatened. Americas Watch believes that Mr. Ramírez Bretón's warning was made in good faith to protect her welfare. We are concerned that the danger to Ms. Huerta, an attorney who represents clients in the Huayacocotla area, was sufficiently great that a government official felt obliged to warn her.

19. While Embocadero had approximately sixty families in 1985, it now has only 45, and only twelve or thirteen are headed by men. The others consist of women and children whose husbands and fathers died at the hands of local *caciques* and *pistoleros*. Amnesty International, "Mexico: Reported Human Rights Violations in Embocadero, State of Veracruz," AMR 41/01/90, March 1990.

20. "*Violaciones a los derechos humanos, en el municipio de Ilamatlán, Veracruz.*" Document submitted by defense lawyers for Embocadero men arrested in November 1989.

21. "*Piden grupos se libere a indígenas de Embocadero,*" *La Jornada*, December 1, 1989.

22. Document presented by defense lawyer Rosario Huerta to the Governor of

Veracruz, dated November 27, 1989.

23. The following items were reported stolen: 25 metal wheelbarrows, three rubber carts, twenty oxen yokes, 47 tape recorders, fifteen television sets, twenty stereo consoles, twenty blenders, fifteen irons, three refrigerators, one freezer, sixteen saddles, sixteen horse bits, 47 portable water pumps with copper plating, construction tools, nine bicycles, two typewriters, one Dodge pick-up truck, one corn grinding mill, one 12-horse power motor, school supplies, the community treasurer's safe which contained 1.5 million pesos, one fully equipped marimba, agricultural tools, 33 sacks of sugar, 94 tons of corn, 94 tons of fertilizer, twelve tons of beans, 1128 liters of gramaxone, 705 liters of esteron, 550 liters of gesaprin, 35 cows and calves, sixteen horses, nineteen donkeys, poultry, personal belongings, kitchen utensils, and cash.

24. Document of the *Centro de Derechos Humanos Fray Bartolomé de Las Casas*, March 28, 1990, p. 7.

VII. VIOLENCE AGAINST THE LABOR MOVEMENT

Organized labor in Mexico is facing a period of turmoil precipitated by Mexico's serious economic crisis and the government's efforts to bring about economic stability. In some instances, labor unrest provides a backdrop for human rights abuses.

The Confederation of Mexican Workers (CTM) is the backbone of organized labor in Mexico. Formed in the late 1930s, it subsequently became affiliated with the PRI and has been an integral part of the party and closely linked to the government ever since. Historically the CTM, which has been led for more than four decades by one man, Fidel Velázquez, has exchanged loyalty to the government for wage and other benefits to union members. The CTM has ensured the cooperation of individual unions in part by tolerating the corruption of union leaders. According to Alan Riding, "[p]art of the price of labor peace was that the leaders of CTM unions often became corrupt *caciques*, using their own thugs to suppress dissidence in the ranks and enriching themselves by selling out to factory managers."¹

Despite the CTM's historic dominance, there have been strong undercurrents of labor unrest in Mexico. Most Mexican workers are peasants or underemployed; many others belong to independent unions. Many CTM union members are unhappy about mandatory PRI affiliation that they must accept along with union membership. In the past few years workers' complaints about lack of union democracy, low salaries, unemployment, and attacks on collective bargaining agreements have been more audible. These grievances have been fueled by concerns that the Salinas administration's efforts to privatize major sectors of the Mexican economy and open up other sectors to foreign competition will lead to loss of jobs, lower salaries, and even fewer worker protections.

In the past few months there has been an upsurge in tensions in the labor sector. Union unrest in two plants, the Ford Motor Company plant in Cuautitlán and the Modelo Brewery in Mexico City, turned violent when the police and the CTM tried to quell worker discontent. At the Ford plant, CTM strikebreakers attacked workers; at the Modelo Brewery, police accompanied by CTM goons beat and robbed strikers. These acts are troubling not only because of the abusive tactics used, which in one

case led to the death of a worker, but because such acts of violence and intimidation infringe upon freedom of association and expression in the labor movement.

Ford Plant: On January 8, 1990, at least 100 men armed with clubs and firearms attacked Ford Motor Company workers inside the factory in Cuautitlán, a suburb of Mexico City. Nine workers suffered gunshot wounds. One of the wounded, Cleto Nigno Urbina, died two days later from gunshot wounds. The workers immediately charged that the attack was organized and led by CTM leaders, a charge CTM leaders vehemently denied. A few days later, CTM leader Guadalupe Uribe, his two sons, and nine associates were arrested and charged with responsibility in the attack.

Unrest at the Ford plant dates to mid-1988 when Héctor Uriarte, the Ford union's secretary general, who many workers view as pro-management and a CTM appointee, was re-elected. Subsequently an independent movement began to grow in the union. In December 1989, Ford management taxed the workers' Christmas bonuses; several workers were also fired. Workers protested these measures, calling for their full bonuses, rehiring of the fired workers, and Uriarte's resignation. The CTM blamed the PRD for the unrest, which it called politically motivated.

On the morning of Friday, January 5, 1990, some twenty armed men came to the plant and reportedly provoked an incident in which thirty workers were injured and thirty people were briefly detained.² Also that day, notices appeared in the lockers of some 130 workers. The notices directed the workers to go to the locksmith area of the plant on Monday. One of the ambushes that occurred that day took place in the locksmith area.³

Several workers stated that they noticed unusual movement and signs of danger at the plant on the morning of January 8 when they reported to work. Several buses from the CTM-affiliated "Gregorio Velásquez" company were parked outside, along with several Volkswagen vans which operate on CTM routes and a truck covered with a yellow canvas. Men wearing blue Ford uniforms entered the plant, showing employee credentials to security guards at the gates, and reportedly began taunting workers. Shooting broke out. One worker, Manuel Romero, told *Proceso* he saw a gunman shoot Cleto Nigno Urbina in the stomach at close range, causing him to fall to the ground. When Urbina tried to get up, the gunman reportedly held his gun with both hands and shot him

again. Romero said a supervisor helped him lift Urbina and take him to the infirmary. He added that the gunmen attempted to prevent the ambulance which came for Urbina from leaving.⁴ Urbina never recovered consciousness and died in the hospital.

When the attackers retreated they left behind three of their members, captured by workers, as well as two CTM buses and several Volkswagen vans. The three captured men, who reportedly stated they had been sent by Uriarte, were handed over to authorities.⁵ Workers denounced that they had seen Uriarte, Guadalupe Urbina, and Wallace de la Mancha commanding the attackers.⁶ The CTM and its president, Fidel Velásquez, immediately disclaimed any responsibility in the incident.⁷ According to workers, four days after the incident authorities had yet to visit the scene of the crime.⁸

On January 12, the trial judge (*juez primero penal*) of Cuautitlán indicted the three men captured in the Ford plant on charges of criminal conspiracy, assault, and possession of firearms. The three declared that they were hired by Héctor Uriarte and that he provided the uniforms and identification cards which enabled them to enter the Ford plant.⁹ On January 18, the CTM posted three million *pesos* (worth approximately \$1,111 at the time) bail for each and they were freed.

On January 22, while workers who had occupied the plant after the violent incidents were being evicted, Guadalupe Uribe, his two sons, and seven others were arrested for their role in the attack against the workers. The judge in charge of the case said he had requested an arrest warrant for Uriarte as well. The role of Wallace de la Mancha is said to remain under investigation.¹⁰ One of Uribe's sons was at the time secretary general of the Revolutionary Youth Front ("FJR") of the PRI in the state of Mexico.¹¹

The Modelo Brewery: In February 1990, some 5,000 workers of the Modelo Brewery went on strike over issues of retirement benefits. At 2:45 a.m. on March 16, as some 800 strikers guarded the plant, about 1,000 riot police and members of a special Mexico City police intelligence unit known as the *Zorros* arrived to evict them. The police are said to have lined up the strikers and systematically stripped them of their watches, jewelry and cash. The police also reportedly raided tents set up by workers sleeping at the plant, taking radios, heaters, clothing, blankets, and other items. Cars belonging to workers parked outside the plant gate were vandalized and stripped of stereos.

The security forces reportedly kicked the strikers, yanked their hair, and insulted them as they forced them on to buses.¹² The strikers were driven out to Mexico City exit roads, where they were dumped, penniless.¹³ One worker told *La Jornada*:

I felt a tremendous anger when they were putting us on the buses, hitting us with the billy club, ordering us not to look at them or talk to each other or we would get it. "You shouldn't turn around or talk, face down, or you are going to die, *cabrones*".¹⁴

During the operation, eight police patrol cars reportedly drove fifteen hooded men into the plant. Several workers reported seeing the face of one of the men, who kicked workers as they were loaded onto the buses, when his hood slipped. They identified him as Ignacio Ramírez, "El Gato," a former CTM leader who helped organize a group of strikebreakers to form a new union in the plant.¹⁵

One press account stated that a police helicopter arrived at 11 a.m. to pick up the hooded men, but did not land because of the presence of reporters and photographers.¹⁶

Chapter Notes

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VIII. SILENCING THE PRESS

Press censorship and intimidation of journalists is a recurring theme in Mexico. In July 1989, Article 19, a London-based anti-censorship organization that monitors freedom of expression worldwide, published a report on mass media and censorship in Mexico during the Echeverría (1970-76), López Portillo (1976-82), and de la Madrid (1982-88) administrations. That report documented fifty-one killings of journalists during the eighteen-year period. It also examined measures the Mexican government has used to control what appears in the media. Intimidation and censorship of the press has continued under the Salinas administration which took office in 1988.

The Mexican government is especially sensitive about stories that appear in the printed press, and of all the media, newspapers are the most tightly controlled.¹ Many newspapers are owned by the government or by private individuals with close ties to the government or the PRI. Others are pressured by the government to adopt self-censorship methods. The Mexican government supplies two-thirds of all advertising revenues and controls supplies of newsprint. The government has also coerced newspapers and their editors into toeing the line with threats of selective prosecution for tax violations and other infractions.

For example, in March 1989, the government coerced Manuel Becerra Acosta, Director General of the formerly independent national daily *Unomasuno*, to sell the paper. According to news accounts and sources close to the paper, President Salinas de Gortari was angry with Becerra for being the first to publicize the existence of the *Corriente Democrática*, the left opposition movement within the PRI that ultimately left the PRI with Cuauhtémoc Cárdenas to form the PRD. The government selectively pressured *Unomasuno* to pay its bills and back taxes. At the same time, financiers close to the PRI were positioned to purchase a substantial share of *Unomasuno's* corporate stock and refinance the paper. Once refinancing was in place, Becerra was offered one million dollars to quit the paper and leave the country. He was threatened with arrest for tax evasion if he refused. Becerra acquiesced and currently resides in Spain; the paper's editorial line now reflects the views of the government.

Journalists in Mexico are kept in line with a carrot and stick approach that rewards those who cover stories the government wants to appear and

punishes those who report stories the government declares taboo. Rewards to otherwise poorly paid journalists take the form of economic or political favors such as bribes, offers of lucrative government contracts for special writing projects, political appointments, government press officer appointments, or journalism prizes. Punishments range from having stories "spiked" (being severely edited or not appearing at all) to harassment and death.

In recent years, intimidation of journalists has been prevalent in three contexts: reporting on police corruption and misconduct, particularly related to narcotics investigations; reporting on political tensions in the context of election-related violence; and more general acts of intimidation aimed at forcing journalists and the news media to be more sympathetic to the interests of the government. In addition, journalists occasionally become victims of the more generalized violence in Mexican society.

Not all acts of intimidation directed against journalists in Mexico have been attributable to the government. In some instances, intimidation or violence is carried out or ordered by individuals or groups outside the government that have links with the government or the PRI. Other instances involve acts of violence by individuals with no ties to the government, but that the government has investigated inadequately or allowed to go unresolved. These cases are also of concern to Americas Watch. A free press requires more than that a government not kill or intimidate members of the press; governments also have the duty to protect journalists from private criminal acts so that they will be free to report all aspects of the news. The Mexican government's failure to safeguard journalists, as well its failure to establish, as a matter of high priority, a policy of vigorously investigating abuses and prosecuting those responsible, is an additional aspect of government suppression of the press.

Intimidation in the Context of Police Corruption and Abuse

The most notorious case of press intimidation related to reporting on police corruption and abuse, drug trafficking, and other sensitive subjects, was the May 30, 1984 killing of nationally known *Excélsior* columnist Manuel Buendía. Although allegations of high level government involvement in his killing were widely reported, the first concrete steps towards resolving the case did not come until June 12, 1989, when José

Antonio Zorrilla Pérez was arrested following a gun battle in Mexico City and charged with ordering Buendía's murder. Until 1985, Zorrilla had been the director of the Federal Security Directorate (DFS), a now defunct federal police unit. Both he and a DFS Special Brigade were at the site of the killing within twenty minutes after it occurred and were accused of removing files Buendía kept on numerous topics, including the DFS, Zorrilla, former DFS Director Nassar Haro, drug-trafficking, and the U.S. Drug Enforcement Administration. Zorrilla himself has been linked to drug kingpins Rafael Caro Quintero and Ernesto Fonseca Carrillo. Zorrilla's trial is now in progress; he is detained at Reclusorio Norte detention center in Mexico City.

A number of more recent killings of journalists are also linked to their coverage of police corruption and abuse, or police involvement in drug trafficking. On February 22, 1988, Manuel Burgueño Orduño, a columnist with the Mazatlán daily *EL Sol del Pacífico*, was shot to death in his home. Burgueño frequently wrote about the alleged ties between local and state officials and drug traffickers. Police detained a man whom they accused of being one of three assassins, but he later escaped.

On April 20, 1988, Héctor Félix Miranda, columnist and co-editor of the weekly *Zeta* in Tijuana, Baja California, was shot to death as he drove on a Tijuana street. Miranda, who used the nickname "Felix the Cat," was a nationally known humorist who regularly satirized the corrupt practices of local and state officials in his column. One favorite target was Tijuana race track owner Jorge Hank Rhon, son of current Agriculture Secretary Carlos Hank González. Authorities arrested Victoriano Medina Moreno, a security guard at Hank Rhon's race track, and said he had confessed to the murder. In court, Medina proclaimed his innocence and said he had been tortured into confessing.² Authorities also arrested another race track employee, Antonio Vera Palestina. While the government treats this case as solved, suspicions remain about whether investigation of the case was thorough and about the involvement of Hank Rhon and of local government officials in the murder.³

Not all acts of intimidation against journalists have resulted in death. According to an *EL Universal* account, on or about March 15, 1990, the home of María Luisa Mercado, a reporter for *EL Debate*, a local newspaper in Culiacán, Sinaloa, was ransacked by unidentified men who destroyed furniture and went through books and papers, but took only her press card. A few days earlier, four other Sinaloa journalists, Marcelo Arellano,

Eduardo Torres, Guillermo Tellaeché, and Juan de Dios Monteros, were held at gunpoint and had their cameras taken away by Federal Judicial Police who were searching homes in Colonia Las Huertas. Six months before that incident, a similar search was made of the home of *Proceso* correspondent Luz Aida Salomón; the only things taken were some cassettes in which opinions were expressed about the death of former PAN presidential candidate Manuel J. Clouthier. The *EL Universal* article concludes: "These incidents against journalists in Sinaloa presumably indicate escalating attacks with the purpose of intimidating journalists so they will not continue writing about acts of violence in which state and Federal Judicial police are involved."⁴

On February 19, 1990, the president of the Association of Journalists of Sinaloa, Jesús Fuentes Félix, accused agents of the government Information and Analysis Directorate (DIA) of intimidating and harassing reporters covering the issue of torture by the police forces. Fuentes stated that police agents posed as journalists to investigate officials and members of the private sector. He said that when lawyers held a press conference to denounce torture by the Judicial Police, agents from DIA were photographing and video-taping journalists.

Fuentes Félix also alleged that journalists as well as other citizens regularly have their phones tapped and conversations recorded.⁵

In an incident in Mexico City, Felipe Victoria Cepeda, a journalist and author of a book on the death of Manuel Buendía, was detained by thirty anti-narcotics agents of the Federal Judicial Police as he approached the *Procuraduría General de la República* (Attorney General's office) at 11:30 p.m. on January 13, 1990, to obtain information about a shooting of police officers.⁶ Victoria Cepeda states that he was handcuffed, kicked, hit in the stomach, and dragged into the building where he was held incommunicado until the following Monday evening. He was questioned about a weapon he carried, for which he had a permit. Once his captors found his press card for *El Sol de Mediodía*, they threatened him with death. Victoria Cepeda stated in an interview with a *La Tribuna* reporter that Coello Trejo, chief of the anti-narcotics division of the Federal Judicial Police, walked by him on Sunday evening and pretended not to see him.⁷

Intimidation in the Context of Political Conflict

While Americas Watch is not aware of any cases in which a journalist has been killed for reporting on political tensions, we have received a

number of accounts of intimidation of journalists, particularly from the states of Michoacán and Guerrero following hotly contested state and local elections.

In one case, Sara Lovera, a *La Jornada* reporter covering post-election violence in Guerrero, received veiled threats from *Antorcha Campesina* (Peasant Torch), a radical peasant organization with close ties to the PRI and a reputation for confrontation and violence. Accusations attempting to discredit Lovera appeared in an *Antorcha Campesina* paid advertisement in *Unomasuno* after Lovera reported that the municipality of Alcozauca, Guerrero was under siege by 125 armed members of *Antorcha Campesina* who threatened to kill Mayor Antonio Suárez Márquez and former Mayor Othón Salazar, both members of the PRD.⁸

Two other recent cases occurred in Uruapán, Michoacán. On February 13, 1990, twelve municipal police detained journalist Angel Sánchez Martínez and took away his camera for photographing their use of violence while shutting down a grocery store. Sánchez Martínez, who works for *La Opinión* of Michoacán and is also the Michoacán correspondent for *Excelsior*, was held at gunpoint and driven around for four hours in three different vehicles. He was threatened with jail if he published anything and later released.⁹

On March 22, 1990, soldiers at a teachers demonstration struck journalists with their weapons, apparently for having taken photographs of them. Three journalists were injured: Guillermo Cerda León, correspondent for *El Universal*, Gerardo Sánchez, who writes for the weekly *Imagen*, and Raúl Ramos, correspondent for *El Sol de Morelia*.¹⁰

Also in Michoacán, on January 2, 1990, Teresa Gurza, the regional *La Jornada* correspondent, was accused in public by PRI official Fausto Vallejo of receiving money from the PRI as a form of "putting a price on the truth." The statement was aimed at discrediting her vigorous coverage of political events in Michoacán. Vallejo retracted the accusation in a private telephone conversation with Gurza the following day.¹¹

Press Intimidation for Other Reasons

Press intimidation in Mexico occurs for other reasons as well. For example, on February 8, 1990, a group of thirty *Zorros*, a special police unit of the Mexico City police, travelled to Veracruz to pick up containers of weapons. They were confronted by journalists who photographed them. The *Zorros* responded by taking the journalists' cameras and roughing

them up. Apparently a major incident was created, with a stand-off lasting three hours between the heavily armed *Zorros* and the journalists. Finally, state and Federal Judicial police intervened and arrested the *Zorros*; twenty-eight were released right away, but commander Raúl Antonio Durán Cabrera and his second-in-command were charged with abuse of authority and damage to property.¹² The status of their cases is not known.

General Violence

Journalists are occasionally the victims of police abuse and harassment that affects Mexicans in all walks of life. On July 23, 1988, TV anchorwoman Linda Bejarano was killed in Ciudad Juárez along with two others when the car in which she was riding was sprayed by machine-gun fire. Men who identified themselves as police ordered the car to stop but Bejarano's husband, who was driving the car, said he refused because he was afraid the men were robbers. One federal police officer and three city police officers were arrested in the attack, and the head of the federal police in Juárez was suspended. The officers told police they had mistaken the victim's car for one linked to drug traffickers.¹³

In the early morning hours of December 23, 1989, three reporters, Elvira Marcelo Esquivel, a reporter for *EL Día*, Eduardo Valencia Barrera, a news reporter for TV Channel 11, and Israel Rodríguez Jiménez, a reporter for *EL Nacional*, were approached as they left a Christmas party by five uniformed police, who allegedly had been drinking. The reporters protested being stopped for no legitimate reason and a scuffle ensued. Ms. Marcelo Esquivel was shot by one of the police and died the following day. On December 29, the office of the Attorney General for the Federal District announced that three police rookies had been arrested for the killing. When the officer accused of firing his weapon, 20-year-old José Luís Silva Jiménez, appeared in court, he declared that he had not been involved in the incident and that his confession had been extracted under torture by the Judicial Police of the Federal District.¹⁴ Jaime Huitrón, director of the weekly *Tollan* in Tula, Hidalgo, was shot to death on March 10, 1990, when he did not stop at a roadblock set up by *granaderos* (anti-riot police). As these officers have no traffic control duties, there is a high probability that the purpose of the roadblock was extortion. Ten policemen involved in the incident were arrested, while four others escaped. Gun-powder tests run on the arrested officers apparently were negative, indicating that whoever fired the shot was among those who

escaped.¹⁵

Chapter Notes

1. Despite the proliferation of national and local newspapers in Mexico, most have small readerships. According to Article 19, Mexico has 531 daily newspapers with an estimated circulation of three million. By contrast, some fifteen to twenty million of Mexico's 83 million people tune in daily to one of the television news programs produced by Televisa, a privately owned corporation that is closely tied to the PRI.
2. According to a report in The New Yorker, Medina said "that after he was arrested the state police had blindfolded him and driven him around for a couple of hours, then stripped him and held his head down while pouring salt water up his nose. 'I screamed for them to kill me,' he said. He said that he was taken back to a substation in Tijuana, where he was beaten, and that mineral water laced with hot chili peppers was poured into his nostrils, whereupon, nearly mad with pain, he signed the confession." Murray, William, "To the Left of Zero," The New Yorker, July 31, 1989, p. 65.
3. Blancornelas, J. Jesús, "Double Talk," Zeta, December 29, 1989-January 5, 1990, p. 22A.
4. Cabrera Martínez, Javier, "Catean la casa de la periodista María Luisa Mercado, en Culiacán," ELUniversal, March 16, 1990.
5. Cabrera Martínez, Javier, "Repudian en Sinaloa la intimidación y hostigamiento contra periodistas," ELUniversal, February 20, 1990.
6. "Denuncia un periodista haber sido incomunicado por agentes de la PJJ," Unomasuno, January 18, 1990.
7. Tinoco, José Ramón, "Periodista torturado por agentes federales," La Tribuna, January 18, 1990.
8. Editorial, "Hostigamiento a Reporteros," La Jornada, January 6, 1990.
9. "Agreden 12 policías a un reportero de La Opinión por haber tomado fotografías," Excélsior, February 14, 1990; Pérez CH, Fernando, "Enérgica Protesta por la Detención de un Corresponsal de EXCELSIOR," Excélsior, February 14, 1990.

10. Roque, Ignacio, "Golpearon soldados a tres periodistas en Michoacán, por tomarles unas fotografías," *EL Universal*, March 23, 1990.
11. *La Jornada*, January 6, 1990, cit.
12. Armenta, Antonio, "Policías del DF, que recogían armas en Veracruz, agreden a reporteros," *EL Universal*, February 9, 1990.
13. *Los Angeles Times*, July 26, 1988.
14. Martínez, Irma R.; Mendoza, Diana A.; Aviña, José Carlos and Camargo, Jorge, "Agresión a tres diaristas; una reportera, gravísima," *EL Universal*, December 24, 1989; García, Clara Guadalupe, "Fui torturado para que me declare culpable: Silva," *La Jornada*, January 2, 1990.
15. "Periodista Hidalguense Asesinado por Granaderos," *EL Universal*, March 12, 1990.

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IX. U. S. - MEXICAN RELATIONS

The United States has a long-standing policy of ignoring human rights violations occurring in Mexico. This policy is based on political, economic, and geographical considerations. The United States regards good relations with Mexico as critical to its national security interests, even though historically such relations have been tense. Fear of the spread of communism following the Cuban and, later the Nicaraguan revolutions, heightened the United States' determination not to offend its buffer-state neighbor with which it shares a 1600 mile border. In addition, Mexico is the United States' third largest trading partner. Substantial business and investment interests are perceived to be at risk if Mexico, a nation that is highly sensitive to external criticism, is offended by U.S. pressure.

Since Presidents Bush and Salinas de Gortari came into office, relations between the two countries have been better than at any time in recent history. The two men apparently have developed a warm personal relationship and their governments are cooperating closely on two high priority issues: the renegotiation of Mexico's foreign debt and other measures aimed at stimulating Mexico's flagging economy, and efforts to curb drug trafficking. The relationship between the two governments continues to be strong even in the face of Mexican government criticism of the United States concerning mistreatment of Mexican nationals by the Immigration and Naturalization Service; Mexican resentment of the Drug Enforcement Administration's involvement in the kidnapping of gynecologist Humberto Alvarez Machaín; NBC's miniseries, "The Enrique Camarena Story," that showed Mexican police in a poor light; and the U.S. invasion of Panama.

Perhaps out of reluctance to cause further offense, the United States has been unwilling to criticize human rights abuses that occur in Mexico. Various U.S. laws prohibit military and economic assistance to countries that engage in consistent patterns of gross violations of internationally recognized human rights. The prevalence of practices such as torture in Mexico should raise questions as to whether these provisions of law should be invoked in the case of Mexico. While direct U.S. foreign aid to Mexico is slight compared to many other countries, no mention of human rights concerns was raised by either the executive branch or the Congress during the appropriations process.¹

The policy considerations supporting U.S. aid to Mexico for fiscal years 1990 and 1991 were set forth as follows by the Bush Administration:

A secure, stable and friendly Mexico is essential to U.S. national interests. Security assistance is designed to strengthen U.S.-Mexican military relations, assist the Mexican military with training and procurement of equipment for force modernization and expansion, and enhance the military's capability to operate more efficiently and effectively in the anti-narcotics arena. IMET is the primary avenue for military cooperation with Mexico and a large portion of this training is needed to prepare personnel to operate and maintain equipment used in anti-narcotics operations....²

With regard to fiscal year 1991, the Administration's request to Congress stated: "The proposed FY91 IMET program includes professional military education in management, technical training and anti-narcotics operations...."³ Americas Watch is concerned not only that U.S. military assistance to Mexico is provided without discussion of human rights conditions in that country, but that the United States is actively engaged in promoting increased militarization in Mexico. In the past, when the military has been brought in to resolve political and social problems in Mexico, levels of repression and rights abuses have increased. Moreover, in the anti-narcotics sphere, the United States should be encouraging civilian authorities in Mexico to gain control over and reform its police forces so that they are able to fulfill their function of stopping drug trafficking. It is not in the long-term interests of human rights in Mexico for the United States to be encouraging the Mexican military to step in to "solve" the drug trafficking problem.

Even when required by law to report on human rights violations in Mexico, U.S. administrations have spoken softly. In the Mexico chapter of the annual Country Reports on Human Rights Practices for 1989, the State Department accurately reported on the abuses described in this report. Yet the State Department managed to diminish the appearance of government responsibility for many acts of violence through the careful choice of examples, and by emphasizing statements by Mexican government officials decrying the violence and promising to investigate. This apparent

attempt to soften the report's impact is particularly conspicuous in the first few pages where a summary and the sections on the most violent abuses appear.⁴ Most news accounts customarily rely on these sections of the Country Reports.

For example, in the section on Political and Other Extrajudicial Killings, which appears on the second page of the chapter on Mexico, the problem of violence in the context of land disputes was raised, but only two incidents -- out of many possible choices -- were presented. The first was described as an apparent dispute over land in Pijijiapán, Chiapas between the Socialist party-affiliated Independent Confederation of Agriculture Workers and Peasants (CIOAC) and the PRI-affiliated CNC, in which eleven people died. According to the non-governmental Mexican Commission for the Defense and Promotion of Human Rights and press reports, nine peasant members of CIOAC were massacred by a group of CNC members who attacked them with automatic weapons. A few days later the attackers returned and burned the homes of 120 peasants who had requested more land.⁵ The description of this incident in the State Department Report concludes with a comment that "press reports cite police involvement in the incident, though no police have been charged with any crime." It also says that Chiapas's governor, as well as the CNC, have decried the Pijijiapán violence. These concluding words leave the casual reader with the impression that as there was no prosecution, there probably was no police involvement, and that state officials are concerned about the problem. Both of these impressions are misleading.

The second example concerned the killing of CIOAC activist and former legislator Sebastián Pérez Núñez by a Chiapas landowner. That case is one of the very few in which a *cacique* has been arrested and charged with killing a peasant activist. Accordingly, citing it as an example conveys the impression that the rule of law is working. Numerous other killings of peasants occurred in Chiapas and other states in 1989 without the state governments holding anyone accountable.

U.S. Violations of the Human Rights of Mexicans

In addition to failing to criticize Mexico for violating the rights of its citizens, the United States has committed its own share of human rights violations against Mexican nationals. In recent weeks the U.S. press has closely covered the trial of a group of defendants alleged to have been

involved in the torture and murder of Drug Enforcement Administration officer Enrique Camarena in 1985. One aspect of that case has been the kidnapping, organized by DEA operatives, of gynecologist Humberto Alvarez Machaín from his office in Guadalajara. Dr. Alvarez, who had previously been indicted for having been present when Camarena was tortured, was kidnapped by Mexican state and Federal Judicial police officers and transported to El Paso, Texas where DEA agents were waiting to arrest him. No warrant was issued for his arrest and the Mexican police acted outside the scope of their authority, apparently lured by the offer of a substantial reward. Several of the Mexican officers alleged to have participated in the kidnapping have since been arrested. Despite denunciations by President Salinas and other high-level Mexican government officials, Alvarez currently awaits trial in Los Angeles.

U.S. border control agents have committed many serious abuses against Mexican nationals. In recent years, in an effort to curb drug smuggling and illegal immigration, the United States has turned parts of the border into a quasi-militarized zone. Regular army troops are stationed along the Rio Grande near Laredo, Texas, and Marines are stationed in other parts of Texas and Arizona to provide back-up support to the border patrol in combatting drug trafficking. The National Guard plays a similar role in the San Diego area. Large spotlights have been erected on the border across from Tijuana to deter aliens from crossing, and the number of border patrol agents in the sector is slated to be increased from the present 750 to 1000 by August 1990. Border patrol agents are authorized to carry their personally-owned semi-automatic pistols provided the pistol meets government specifications and the officer is qualified to use it. According to the Border Patrol's Chief of Management Support, James Olech, somewhere between ten and fifty percent of border patrol agents now carry semi-automatic pistols.

In 1989, the American Friends Service Committee's U.S./Mexico Border Program documented the cases of five Mexicans who were killed and seven others who were wounded by Border Patrol agents in five separate shooting incidents in the Tijuana area. Some of the incidents involved only border control agents. Others involved the Border Crime Prevention Unit, a joint venture of the Border Patrol and the San Diego police. One of those killed was fourteen-year-old Luis Eduardo Hernández who was run over and killed by a Border Patrol vehicle on August 20, 1989. The following week fifteen-year-old Pedro García Sánchez was shot

in the back and wounded while trying to run back into Mexico. In December, officers of the Border Crime Prevention Unit shot and wounded another minor, Manuel Martín Flores, aged seventeen. Flores is now paralyzed from the waist down.

On May 25, 1990, a U.S. Border Patrol agent fired three bullets from his service revolver into a van transporting eleven suspected undocumented aliens as the vehicle tried to avoid a pre-dawn traffic stop on Interstate 5 in Chula Vista, California. A sixteen-year-old Mexican boy was hit in the neck and seriously injured, and a woman was hit in the arm by the gunfire.⁶

According to Roberto Martínez of the American Friends Service Committee in San Diego, "No Border Patrol agent has been prosecuted for any unjustified killing of an alien in the last five years." After the Flores shooting, the Border Crime Prevention Unit, which had been suspended several times in the past following accusations of misconduct, was disbanded. In February 1990, it was replaced with the Border Crime Intervention Unit, a smaller but similar SWAT team composed of Border Patrol agents and local police. So far the new team has not been accused of being involved in abuses of the magnitude of its predecessor.

In addition to violent acts of this type by Border Patrol and police officials, citizens along the border have waged a campaign of intimidation against Mexicans and other aliens trying to cross the border without authorization. Organized under the slogan "Light Up the Border," citizens in the San Diego area hold monthly rallies during which they drive their cars to the U.S. border and turn their headlights onto Mexicans and other aliens waiting to cross. Participants in the campaign blame undocumented immigrants for a variety of social ills, including the influx of drugs into their community.

A more serious menace is posed by gangs of white supremacist youths in the San Diego area who dress in combat fatigues, carry knives, bows and arrows, and high powered rifles, and have been responsible for assaults and killings of Mexican migrants. On May 18, 1990, twelve-year-old Hermilo Jiménez was killed by one such youth who was firing a high-powered rifle in a backyard. The youth, Leonard Paul Cuen, was taken into custody and booked on robbery charges pending the outcome of ballistics tests. Mexican migrants who witnessed the event said that at least one other person was with Cuen at the time of the shooting.

Mexican consulates in the border cities regularly call for

investigations when these incidents happen and, when the cases are especially egregious, the Mexican Government protests to the State Department. In addition, Mexican consulates have provided families of Mexicans killed or wounded by the INS or the vigilantes with legal assistance if they decide to bring civil actions. To date, these efforts by the Mexican government to assist Mexican migrants have not succeeded in putting an end to these incidents.

Chapter Notes

1. For fiscal year 1990, the United States appropriated for Mexico \$15 million in International Narcotics Control dollars which are part of foreign assistance funds administered by the Department of State. It also appropriated \$249,000 in aid for International Military Education and Training ("IMET"). These figures are to be increased to \$18.3 million for International Narcotics Control and \$400,000 in IMET appropriations in fiscal year 1991.

2. Department of State and Defense Security Assistance Agency, "Congressional Presentation for Security Assistance Programs, Fiscal Year 1991."

3. Id.

4. Department of State, Country Reports on Human Rights Practices for 1989, Washington, D.C., February 1990.

5. Mexican Commission for the Defense and Promotion of Human Rights A.C., "*Casos representativos de presuntas violaciones a los Derechos Humanos en Mexico*," July 1988-February 1990.

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HUMAN RIGHTS IN MEXICO

A Policy of Impunity

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