



## Mexico

# Oaxaca – clamour for justice

31 July 2007

AI Index: AMR 41/031/2007



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In June 2006 widespread protests erupted in Oaxaca City, Mexico, triggering a major political and public security crisis. The response of local and federal authorities resulted in serious human rights violations. At least 18 people were killed in circumstances that remain unclarified, and scores more were injured. Human rights defenders and journalists were threatened. Hundreds of people were detained and ill-treated. Many were subjected to torture, fabricated charges and unfair trials.

*Oaxaca – clamour for justice* documents several cases of serious human rights violations and the failure of the authorities to investigate adequately or ensure those responsible are held to account. It shows how the response of the authorities to the demands for justice by those affected has been characterized by inertia, incompetence and obstruction.

Amnesty International takes no position on political conflict in Oaxaca. Its concerns focus on the duty of the authorities to prosecute those implicated in human rights violations. Amnesty International recognizes some protesters used violence and that the authorities have a duty to maintain public order and protect the public at large. However, such challenges should never become a justification for failing to uphold policing standards based on strict adherence to national and international human rights law. This report ends with a series of recommendations on how the authorities should fulfil their obligations and ensure justice for the victims of human rights violations.

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Title: Mexico: Oaxaca – clamour for justice  
AI Index: AMR 41/031/2007

Original language: English

Printed by Amnesty International, International Secretariat, London, United Kingdom

*Cover image: Federal Police in the Zocalo area of Oaxaca, November 2006. © Alan Goodin*



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# Mexico

## Oaxaca – clamour for justice

### Introduction

*“I was talking to my friends about where we should go when suddenly two trucks arrived at top speed with heavily armed police who pointed their guns at us... One grabbed me and threw me to the ground, shouting: ‘You thought you were a real revolutionary, no? A real rebel. Now you are going to know what that means, son of a bitch. What are you old whores doing round here?’ He hit me and I began to bleed from a cut in my forehead. Two other police officers approached and began to kick and beat me until I could no longer move. They shouted: ‘We are going to fuck you like we fucked the whores in Atenco.’ They then moved on to hit the others, some of whom were already unconscious and others were on the point of collapse because of the beatings. They came back to me and dragged me towards a heap of people.”*

Rosalba Aguilar Sánchez, who was detained on 25 November 2006 by Federal Preventive Police in central Oaxaca City

In June 2006 widespread protests demanding the resignation of the State Governor erupted in Oaxaca State. For several months Oaxaca City was brought to a standstill. The political turmoil lasted into 2007 and provoked a prolonged public security crisis. Most protests were peaceful. However, there were many violent clashes between sections of the opposition movement, the security forces and supporters of the local state government. At least 18 people were killed in circumstances that have yet to be clarified and many others were seriously injured. The majority of those killed were demonstrators, but at least two were opposed to the protest movement. The disturbances also resulted in significant damage to people’s livelihoods and property.

This report focuses on some of the serious human rights violations reported during the crisis, such as excessive use of force (including lethal force), arbitrary and incommunicado detention, ill-treatment and torture, threats, harassment of human rights defenders and journalists, and violations in due process and the right to fair trial. Municipal, state and federal police reportedly committed the majority of these abuses. In several cases uniformed police or groups of armed men operating in apparent coordination with the security forces were also responsible.

There is little evidence that state authorities have conducted serious and impartial investigations into these abuses. In most cases they failed to preserve crime scenes or gather and conserve evidence in a timely manner. Victims and relatives have been asked to provide evidence of abuses with limited or no professional input from official investigators. In many cases supporters of the opposition were detained and charged solely on the basis of statements by police or local officials. Statements from colleagues, family or other eyewitnesses were allegedly not sought or have been dismissed by prosecutors. No concrete steps have been

taken to establish credible and impartial mechanisms for investigating abuses. Investigations undertaken by the federal authorities into reports of abuses committed by federal officials have also so far failed to produce results.

National and international human rights organizations have documented some of the wide range of human rights violations that took place in Oaxaca and issued recommendations.<sup>1</sup> The National Human Rights Commission (CNDH) documented 15 deaths and received complaints from 304 detainees and 275 people who were injured.<sup>2</sup> In June 2007, the National Supreme Court (SCJN) decided to conduct an investigation into events in Oaxaca under its constitutional faculties to carry out ad hoc non-judicial enquiries into grave violations of individual guarantees.<sup>3</sup> However, at the time of writing the commission of judges instructed to carry out the task was waiting for SCJN to establish procedures for such investigations.

The cases documented here are only a small sample of the many reported during the Oaxaca crisis. AI met victims, human rights organizations and lawyers as well as state and federal authorities during visits to Oaxaca in June and November 2006. During its research AI found that many victims of human rights violations feared that making an official complaint might result in reprisals. The authorities claimed that investigations have not progressed because “It is very difficult when the alleged victims don’t provide the evidence.”<sup>4</sup> The inertia of official investigations into reports of human rights violations stands in stark contrast to the burden placed on victims to identify perpetrators, get witnesses to testify and provide avenues of enquiry. This lack of due diligence on the part of investigators is a key obstacle to ending impunity which is widespread in Mexico’s public security and criminal justice system.<sup>5</sup>

AI takes no position on the political conflict in Oaxaca. Its concerns focus on the duty of the authorities to prosecute those implicated in human rights violations. AI acknowledges the difficulties faced by the authorities in complex public security environments where police may be subject to threats or violent attack and has the duty to maintain public order and protect the public at large. However, AI believes that safe and effective policing for all must be based on adherence to international human rights law, which is in large part reflected in Mexican domestic legislation. This report ends with a series of recommendations on steps the authorities should take to fulfil this obligation.

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<sup>1</sup> For example, the National Human Rights Commission (CNDH), the International Civil Human Rights Observation Commission, Comisión Civil Internacional de Observación de los Derechos Humanos (CCIODH), Servicio Internacional de la Paz (SIPAZ).

<sup>2</sup> CNDH Special Report on events in Oaxaca City between 2 June 2006 and 31 January 2007; Recommendation 15/2007 on the case of Section 22 of the National Union of Educational Workers and the Popular Peoples Assembly of Oaxaca; Mexico DF, 23 May 2007, [www.cndh.org.mx](http://www.cndh.org.mx)

<sup>3</sup> Constitution of the United States of Mexico, Article 97

<sup>4</sup> Interview with Miguel Alessio Robles, Interior Ministry (Secretaría de Gobernación) February 2007.

<sup>5</sup> Refer to AI reports: *Allegations of abuse dismissed in Guadalajara* (AI Index: AMR 41/034/2004); *Violence against women and justice denied in Mexico state* (AI Index: AMR 41/028/2006); *Laws without justice* (AI Index: AMR 41/002/2007).

## Background

In May 2006 the teachers union in Oaxaca State, Section 22 of the National Teachers Union, called a strike in support of annual negotiations on pay and conditions. Thousands of striking teachers occupied central Oaxaca City in support of their claim and held mass marches.

On 14 June 2006 following increasing tension and pressure on teachers to return to work, 700 state police officers attempted to remove them from the city centre. During the operation there were widespread reports of use of excessive force and several arbitrary detentions of union leaders. In response, protests grew and a loose coalition of teachers, local social and political organizations, students and others, called the Popular Assembly of the People of Oaxaca (Asamblea Popular del Pueblo de Oaxaca, APPO), was formed to support the teachers. The central demand of the APPO was the resignation of State Governor of the local governing party, the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI).



Demonstration in Oaxaca, November 2006 ©Uta Rossberg

people, several of whom were reportedly held incommunicado, ill-treated, tortured and charged, apparently on the basis of fabricated evidence.

Throughout September and October more than 1800 barricades and continuing demonstrations paralysed Oaxaca City. Negotiations between the state and federal government and the opposition movement to resolve the crisis collapsed and more than a million children remained without access to education. The state government repeatedly called for federal government forces to intervene to end protests.

On 27 October, at least four people were killed and many more seriously wounded in violent confrontations at barricades between APPO sympathizers, local state officials and supporters of the local government. On 29 October the federal government ordered 4,500 Federal Preventive Police (Policía Federal Preventiva, PFP) to end the protests and restore order. Over the next five days, at least one protester died as a result of the use of lethal force by the PFP and scores of arrests were made. Many of those detained reported that they were ill-treated

In July and August supporters of the opposition movement occupied several public buildings and principal local TV and radio stations. On at least three occasions, armed men, including state police, reportedly fired on unarmed demonstrators occupying TV and radio stations, resulting in at least one death on 21 August. APPO supporters mounted barricades preventing access to many parts of the city. As the security situation deteriorated, police detained a number of

and denied their right to due process. According to the federal authorities, 19 PFP officers also reportedly suffered injuries when some protesters threw stones, petrol bombs, catapults and firework rockets.<sup>6</sup>

On 25 November, there were violent clashes between state and federal police and some demonstrators resulting in serious damage to public buildings and 149 arrests. However, many of those arrested were not reportedly involved in the violence and in some cases had not participated in the demonstration. Many were held incommunicado and ill-treated or tortured. Almost all of those arrested were released during January, most subject to bail conditions pending prosecution for crimes such as sedition, criminal association, sabotage and criminal damage. When the new federal government took office on 1 December 2006, several leaders of the APPO were arrested by state authorities. At least eight APPO activists remained in custody at the time of writing.

### **Arbitrary detention, torture and fabricated charges**

UN human rights mechanisms and the Inter-American Commission on Human Rights have repeatedly documented arbitrary and incommunicado detention, ill-treatment and torture in Mexico. In Oaxaca the state and federal authorities have consistently denied this, claiming that people had either been caught while committing offences or detained after investigations



Ramiro Aragón, February 2007 ©AI

which produced sufficient evidence for an arrest warrant to be issued. However, in many cases documented by AI criminal charges were based on the statements of arresting officers. In a number of cases prosecutors and judges do not seem to have taken even steps to corroborate the statements or assess whether the suspect's involvement in offences has been adequately demonstrated.

In virtually all cases documented by AI, the arrest, whether carried out with or without a warrant, was conducted in an arbitrary manner. In many cases police did not identify themselves, inform the suspect that they were under arrest or make them aware of their rights. They also often failed to ensure communication with family or grant immediate access to effective legal counsel and medical attention.<sup>7</sup>

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<sup>6</sup> Interview, November 2006, Ministry for Public Security (Secretaría de Seguridad Pública)

<sup>7</sup> The UN Human Rights Committee has characterised arbitrary arrests in terms of their "inappropriateness, injustice, lack of predictability and due process of law" *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. ICCPR/C/51/D/458/1991 (1994). Paragraph 9.8



According to the testimony of **Ramiro Aragón Pérez**, an ornithologist, his brother-in-law **Elionai Santiago Sánchez**, a teacher, and their friend **Juan Gabriel Ríos**, the three were detained on the night of 9 August 2006 in the northern suburbs of Oaxaca City by unidentified armed individuals. Ramiro Aragón Pérez was beaten, a cigarette was put out on his forehead, the back of his neck was cut and some of his hair was pulled out. The attackers also reportedly threatened to rape and kill his wife and children. Elionai Santiago Sánchez was partially strangled, beaten in the abdomen, ribs and face and his ear was cut. Juan Gabriel Ríos was also severely beaten. The assailants reportedly made phone calls to the authorities and half an hour later, the three men were handed over to Oaxaca State Police officers waiting in a side street. They were taken to Ejutla municipal prison where a doctor took their names, but did not provide any medical attention. The following morning, a doctor from the PGR examined them briefly, but failed to carry out a full interview or assessment of physical and psychological trauma as required by Federal Public Prosecutor's Office (PGR) procedures for cases of alleged torture.<sup>8</sup>



Elionai Santiago Sanchez,  
November 2006 ©AI

The three men were taken to the PGR office in Oaxaca City and charged with illegal possession of firearms. According to state police, they had been arrested while running away from a street fight and were carrying firearms. The three men denied the charges. The men informed the PGR that they had been tortured, but no action was taken.

Despite inconsistencies in the evidence presented by state police, there was no further investigation. Ramiro Aragón was remanded in custody and Elionai Sánchez and Juan Gabriel Ríos were released on bail pending trial. During his three months in custody in Zimatlán de Alvarez prison, Ramiro Aragón was never able to see or speak to the judge, reflecting a common pattern in Mexico in which judges are rarely present during court hearings, delegating these functions to court officials.

On 30 October, Ramiro Aragón and two other prisoners, Germán Mendoza Nube and Erangelio Mendoza González, were unexpectedly transferred by air to Mexico City and released in front of the official negotiating table between the federal Ministry of the Interior and the opposition movement. Ramiro Aragón has not received confirmation that charges against him have been dropped and the status of the case remains unclear. He fears that he may be attacked or arrested at any time if he returns to Oaxaca. AI is not aware of any investigation into the allegations of torture or into the manner of their detention.

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<sup>8</sup> PGR, Acuerdo Oficial A/05/2003

**Felipe Sánchez Rodríguez**, a founder of Calpulli, a community education organization which works with children in marginalized neighbourhoods of Oaxaca City, was reportedly arbitrarily arrested on 25 November 2006 and tortured by members of the PFP and State Judicial Police. He had participated in the APPO march earlier that day before the disturbances.

According to his testimony, as he was walking through central Oaxaca City with a friend, **Edgar Alejandro Molina**, they were stopped by armed men in civilian clothes travelling in a pick-up truck without number plates. One of the armed men cocked his pistol and hit Felipe Sánchez across the temple, grabbed his hair, hit him all over his body, and forced him into the back of the truck. The two men were made to lie on the floor of the truck and taken to an unknown location where Felipe Sánchez was made to strip to his underwear and interrogated about his knowledge of APPO leaders. His eyes were bound with tape and electric shocks were reportedly applied to his nose. His interrogators forced him to lie face down on the cement floor and threatened to cut off his thumbs, which were tied together behind his back. After a short while his arms were freed and he was ordered to dress and sit without moving. When the discomfort compelled him to change position, he was beaten on the head, ribs and legs. He was then forced to kneel facing the wall and was hit if he moved. Later he and Edgar Alejandro Molina and other detainees were transported to Tlacolula State Prison, where the tape was removed from their eyes and they were forced to pass through a line of police who beat and threatened them. According to Felipe Sánchez and other detainees, they were denied access to a lawyer of their choice.

Felipe Sánchez was among the 149 people reportedly detained in Oaxaca City by Federal Preventive Police and State Judicial Police after a peaceful APPO demonstration ended in violent clashes on 25 November. At least four of those detained were minors, who were subsequently passed to the juvenile courts and later released. Many of the detainees were reportedly ill-treated, tortured, and denied access to legal council and adequate medical attention before being transferred to federal prison in Nayarit State, 1,000 miles away, preventing lawyers and family from reaching them for several days. The National Human Rights Commission (CNDH) concluded that at least 13 of the detainees were tortured by State Judicial Police and Federal Preventive Police.<sup>9</sup> Felipe Sánchez was charged with criminal association, criminal damage and sedition. The last charge was dropped on the orders of a federal judge, but the prosecution for the first two charges was ongoing at the time of writing.

“They pulled me by the hair, threw me to the ground and dragged me along the ground, kicking me and saying things like stupid bitch we are going to get you now”. **Aurora Ruíz García**, a 37-year-old teacher, stated that she was waiting for a taxi outside the Hotel Fortin Plaza in Oaxaca City on the evening of 25 November, when three PFP vehicles blocked the road and arrested her and others standing nearby. They were put in the back of the vehicle, beaten and then driven to El Llano Park where they were searched and registered before being

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<sup>9</sup> CNDH Recommendation 15/2007 on the case of Section 22 of the National Union of Educational Workers and the Popular Peoples Assembly of Oaxaca; Mexico, DF 23 May 2007. , (IV,F) [www.cndh.org.mx](http://www.cndh.org.mx)

taken to different locations around the city. She says the officers were abusive and threatened to rape and kill her. At Miahuatlán State Prison, representatives of the State Public Prosecutor's Office (PGJE) tried to get her to make her first statement without effective legal counsel and a doctor refused to attend to her injuries. The following day she was allowed to briefly speak to her family before being taken, with other detainees, to the airport and flown to the federal prison in Nayarit State. All the women detainees were forced to have their hair cut short. The non-governmental organization founded to support those detained, *Comité de Liberación 25 de Noviembre*, reported that many of the detainees were not allowed to communicate with their families for five days, were not informed of the charges against them and were forced to use state appointed lawyers.

In January 2007, in the face of legal challenges, the prisoners held in Nayarit State were returned to Oaxaca prisons and gradually released on bail pending prosecution and trial. The sole basis of the prosecution of those in detention or awaiting trial on bail appears to be a police report by the PFP which lists all those detained in connection with the violence that took place on 25 November. However, as the CNDH has noted, the PFP report does not list the specific acts of which each individual is accused, but contains only broad allegations of their involvement. Many of those detained on 25 November have stated that they were not involved in the demonstration or subsequent violence, but were trapped in the city centre and were arrested by police snatch squads without legal justification. AI is not aware of any steps taken by the federal or state authorities to effectively investigate the allegations of arbitrary detention, torture and fabrication of evidence.

According to reports, at 1.30 pm on 13 April 2007, **David Venegas**, a leading spokesperson for the APPO, was in El Llano Park in Oaxaca City with two acquaintances, including a human rights lawyer, when an unmarked pick-up truck pulled up and state police arrested him without identifying themselves or explaining the reason for his arrest. Police reportedly held him for several hours during which time he was interrogated about the APPO, threatened with rape and beaten. Police reportedly tried to force him to hold a packet of drugs in order to take incriminating photos. When he informed other police that he had been beaten, he was reportedly told that "that doesn't happen in this country anymore". When he tried to complain to a doctor about his treatment he was told to only answer questions about his alleged drug addiction.<sup>10</sup> At 7.30pm his detention was officially registered at the Joint Unit Attending to Street Drug Crimes and he was allowed to make a phone call. He was charged with federal drugs offences and remanded in custody in Tlacolula prison. He was subsequently charged with sedition, setting fire to public buildings and organized crime in connection with the events of 25 November 2006. In June 2006 a federal constitutional appeal court judge concluded there was insufficient evidence to charge him with the latter offences. He remains in custody on federal drug related offences. Amnesty international is not aware of any investigation into his allegations of arbitrary detention, ill-treatment or fabrication of criminal charges.

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<sup>10</sup> Oaxaca, un conflicto todavía abierto, Servicio Internacional para la Paz, Informe de la visita de SIPAZ a Oaxaca 20-27 de abril 2007.

### Deaths and unlawful killings

According to available information, at least 18 people were killed, many in disputed circumstances, during Oaxaca's political crisis. Of these, 13 were killed in and around Oaxaca City.<sup>11</sup> The deaths have not been effectively investigated and therefore the exact circumstances surrounding each death have not been established. However, AI's research suggests that at least one death was the result of the use of lethal force by the security forces and available information suggests that several other deaths were caused by firearms fired by security force personnel, unidentified gunmen or plain-clothes police during demonstrations. Further investigation is required to establish if these cases amount to unlawful killings. Those responsible for the killings have not been identified or held to account and official investigations have lacked the basic elements of due diligence required of criminal investigation into violent deaths.<sup>12</sup>



Florina Jimenez, November 2006 ©AI

On the evening of 10 August 2006 a mass demonstration was held in Oaxaca to demand the resignation of the State Governor and calling for the release of activists who had been detained (and who were rumoured to have been victims of enforced disappearance). **José Jiménez Colmenares**, a mechanic, and his wife, Florina Jiménez Lucas, a teacher, were taking part in the peaceful march, when shots were fired at demonstrators, reportedly from two opposite roof tops of buildings belonging to the Santa Maria Health

Clinic. José Jiménez Colmenares was shot repeatedly and died shortly after in the health clinic of gunshot wounds to the head and chest. At least two other protesters were injured by gunshots. Marchers reportedly entered the buildings where the shots had been fired from. They found gun shell casings and a number of people they believed had helped the gunmen,

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<sup>11</sup> Those killed in Oaxaca City were Marcos García Tapia, Andrés Santiago Cruz, Pedro Martínez Martínez, Pablo Martínez Martínez, José Jiménez Colmenares, Lorenzo Sampablo Cervantes, Daniel Nieto Ovando, Jaime René Calvo Aragón, Alejandro García Hernández, Pánfilo Hernández Vázquez, Bradley Roland Will, Esteban Zurita López, Emilio Alonso Fabián, Lucio David Cruz Parada, Jorge Alberto López Bernal. Those killed in other parts of Oaxaca were: Andrés Santiago Cruz, Pedro Martínez Martínez, Pablo Martínez Martínez in Putla de Guerrero on 9 August; Arcadio Fabián Hernandez in San Antonio del Castillo de Velasco on 2 October; and Raul Marcial Pérez in Juxtlahuaca Santiago on 8 December. Eudacia Olivera Diaz also died in Oaxaca City on 27 October when the ambulance taking her to hospital was prevented from reaching hospital by barricades.

<sup>12</sup> The Inter-American Court on Human Rights has stressed that investigations of violent deaths should be consistent with the UN Manual for the Prevention and Effective Investigation of Extra-Legal, Arbitrary or Summary Executions. See, Inter-American Court of Human Rights, Case of Ximenez Lopes vs. Brazil, Judgment of 4 July 2006, Series C No149, para179.

including two state police officers. These were handed over to the local office of the PGR who passed them to the PGJE.

According to the family's lawyer, the PGJE failed to take statements and no measures were taken to preserve the crime scene or gather other potential evidence. The following day, the suspects apprehended were released for lack of evidence. According to the lawyer, there was no further investigation into the killing. The Oaxaca State Attorney General later reportedly informed newspapers that José Jiménez Colmenares had died in a drunken street brawl.

In November 2006 the State Attorney General informed AI delegates that the investigation was still open but that there had been no progress as demonstrators had destroyed evidence. When the new federal government took office, federal investigations into deaths during the demonstrations were opened. However, when federal investigators invited Florina Jiménez for an interview, she was reportedly told to return when she had evidence against those responsible. AI is not aware of any other advances in the investigation.

On the evening of 21 August, radio broadcasts announced that there would be a police operation to remove protesters from radio and TV stations occupied by protesters. Witnesses reported that on the same night a convoy of at least seven vehicles and five motorbikes, including municipal and state police cars and unmarked open pick-up trucks carrying men, mainly in police uniform, armed with automatic weapons and wearing balaclavas, drove through Oaxaca City streets. APPO radio broadcasts urged sympathizers to rally to protect those in the occupied buildings. At midnight, 51-year-old architect and father of four **Lorenzo**



Commemoration for Alejandro García Hernández, who was shot and killed on 14 October 2006 when providing food to demonstrators on a barricade in his neighbourhood, November 2006 © private

**Sampablo Cruz** responded to the call and went to the Radio Ley 710 with several neighbours. According to witnesses, as they approached the radio station in the city centre, the convoy of pick-up trucks, cars and motorcycles opened fire on reportedly unarmed protesters who were approaching the radio station near the city centre. Lorenzo Sampablo was apparently hit in the back as he took cover behind a tree, the bullet penetrated his chest and he died later in hospital of his wounds.

On 22 August, Lorenzo Sampablo's body was returned to his daughter. Days later she was

summoned by the PGJE to make a statement. However, a member of the family reportedly received a phone call from a representative of the PGJE telling the family not to pursue

investigations into the case. Fearful of reprisals, the daughter did not make a statement. The PGJE case file reportedly contains a brief record of the cause of death and copies of summonses to the daughter to make a statement and receive the body, but little else. In March 2007 the PGR reviewed the case and the daughter testified. However, the family is not aware of any other further advances in the investigation.

On 27 October, US video journalist **Bradley Roland Will** died in disputed circumstances of gunshot wounds and at least five other people were reportedly wounded in an outlying Oaxaca City municipality, Santa Lucia del Camino. He was shot while filming a confrontation between demonstrators and members of the community opposed to the protests assisted by local PRI officials and municipal police. According to reports, the gunmen had fired on the demonstrator's barricade. More demonstrators then gathered, forcing their opponents -- some of whom were subsequently identified in press photographs as municipal police in plain clothes and local PRI officials -- to withdraw through the surrounding streets. Video and still photographs show that plain-clothed officials had semi-automatic rifles and revolvers as well as pistols and appeared to fire indiscriminately at demonstrators. Media photo evidence also indicates that a number of demonstrators used pistols as well as rocks, homemade fireworks and catapults.

Bradley Will was shot twice while filming the incident from amidst the APPO supporters. He died later as he was taken to hospital. After newspapers published photos of the incident, PRI officials and municipal police were identified firing on protesters with semi-automatic weapons and pistols raising national and international concern. The PGJE arrested and charged two of the officials with Bradley Will's murder. However, the PGJE investigation failed to gather evidence against the officials and they were released without charge. The PGJE investigation then claimed that technical evidence demonstrated the shots were fired at close range by an APPO supporter, and that he had been killed with a second shot while being transported to hospital by APPO supporters.

In November 2006 the PGJE published a summary of its preliminary conclusions that the APPO were responsible for Bradley Will's murder. However, two international forensic experts who examined the PGJE case file concluded that on the basis of the information contained in the file:

- reliable tests to establish the distance from which the shots were fired appeared not to have been carried out;
- the theory put forward by the prosecutor that the trajectory of the shots required them to have been fired from close range was not supported by the autopsy and was an unreliable means of determining shot distance;
- the clearest avenue of investigation -- that is to locate the weapons used by officials identified in photographs and to carry out thorough ballistics cross-checks with the bullets recovered in the autopsy -- was never pursued effectively, as only two official revolvers in the police station were checked, even though photo evidence indicated that at least one official was using a semi-automatic rifle.

- none of the weapons was ever adequately identified and the officials implicated were not effectively investigated.

In March 2006 the PGJE passed the investigation to the PGR to conduct a separate enquiry. However, AI is not aware of any advances in the federal enquiry and is concerned that the serious flaws and lack of impartiality of the original investigation may undermine efforts to conduct an effective investigation into Bradley Will's death. AI is not aware of any investigation into the handling of the state level inquiry.

**Alberto Jorge López Bernal**, a 30-year-old nurse, died on 29 October from the impact of a tear gas shell fired at close range by members of the PFP. At midday the PFP entered Oaxaca City with riot gear, water-cannon tanks, cranes, tear gas rifle launchers and batons. While the principal streets were cleared relatively rapidly, some protesters responded with slings, stones and petrol bombs. Several police and protesters were injured and more than 20 people were arrested. Alberto Jorge López Bernal was reportedly hit by a projectile during a clash with demonstrators near the Puente Tecnológico. He was taken to a nearby house where he later died of his wounds.

The official autopsy concluded that he was wounded by the discharge of a tear gas projectile that penetrated his chest injuring his heart and left lung. The canister, which was still embedded in his body when it was examined was inscribed with the reference: SPEDE — HEAT, CS, SHORTT RANGLER 75 YD. The official autopsy concluded it was a tear gas cartridge fired by riot police.

AI received a number of reports that some of the PFP officers had discharged tear gas launcher rifles at a flat trajectory directed toward demonstrators at close range, with a high risk of causing serious injuries or fatalities. However, the PFP stated that no abuses took place during the PFP intervention in Oaxaca and that information was not available on investigations into allegations of excessive use of force by officials during the operation.<sup>13</sup> The CNDH report concludes that Alberto Jorge López Bernal's death was the result of the use of disproportionate force by federal security officials.<sup>14</sup> AI is not aware of any progress in the official investigation into Alberto Jorge López Bernal's death.

### Threats and harassment

AI has documented threats, harassment and intimidation of human rights defenders and political dissidents in Oaxaca State over many years. Despite commitments by successive state governments to respect and protect the rights set out in the UN Declaration on Human Rights Defenders, harassment has continued and those responsible have not been held to

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<sup>13</sup> Meeting of AI delegation with Director of PFP, Secretariat for Public Security, November 2006.

<sup>14</sup> CNDH Recommendation 15/2007 on the case of Section 22 of the National Union of Educational Workers and the Popular People's Assembly of Oaxaca; Mexico, DF 23 May 2007, (IV, L), [www.cndh.org.mx](http://www.cndh.org.mx).

account.<sup>15</sup> The distrust of state police and judicial institutions, such as the PGJE, and the failure to guarantee an independent and effective state human rights commission in Oaxaca has also hampered the activities of local human rights organizations in assisting victims of abuses and their relatives to register their cases and pursue justice.

In the context of the Oaxaca crisis, local human rights organizations played a crucial role in documenting human rights violations and defending the role of civil society in holding the authorities to account. Local human rights organizations were often the first to receive complaints about arrests, tortures and ill-treatment, and incommunicado detention and visited prisons to determine the physical and mental condition of detainees and establish their legal status. Some individual human rights defenders participated directly in the protest movement; others were active in developing initiatives to address the root causes of the conflict. These human rights defenders played a vital role in making the outside world aware of the crisis and in filing human rights complaints with the CNDH and other authorities.

**Father Francisco Wilfrido Mayrén Peláez**, a Catholic priest and human rights defender with the organization "Bartolomé Carrasco Briseño" Human Rights Centre (Centro Regional de Derechos Humanos "Bartolomé Carrasco Briseño") received an anonymous telephone death threat on 19 October 2006. After the mass arrests of 25 November, Father Francisco Wilfrido Mayrén Peláez reported being followed on a number of occasions by cars without licence plates. A local pro-government newspaper, *El Imparcial* accused him of being "el padre guerrillero" (the guerrilla priest) and a pro-government pirate radio station, *Radio Ciudadana*, which broadcast throughout the crisis and incited attacks on APPO demonstrators and perceived opponents of the state government, accused him of "subversion" and protecting criminals.

On the evening of 26 November, three unidentified individuals shot several times in the air as they drove past the Catholic church of Siete Príncipes in Oaxaca City, where **Father Carlos Franco Pérez Méndez** works. Shortly afterwards, Father Carlos Franco Pérez Méndez arrived in his van and parked it in front of the church. While he was in his office the same individuals returned, shot at the van several times and left. Father Carlos Franco Pérez Méndez may have been targeted because of the first aid he offered to people who were injured during the clashes between protesters and police. In the days before the incident, Father Carlos Franco Pérez Méndez had been denounced by presenters on *Radio Ciudadana*.

In December, reports were circulated that **Yesica Sánchez Maya**, President of the Oaxaca Office of the Mexican League for the Defence of Human Rights (LIMEDDH), and **Aline Castellanos Jurado** of the Committee for Parliamentary Dialogue and Equality (Consortio para el Diálogo Parlamentario y la Equidad) were to be arrested for their alleged involvement in the illegal occupation of the Canal 9 TV station on 1 August 2006. The evidence against

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<sup>15</sup> The full title is the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms approved by consensus by UN General Assembly resolution 53/144 on 8 March 1999



them was reportedly a statement by an unknown woman who alleged she had been assaulted. Both women denied the allegations and the director of the TV station subsequently told a human rights organization that no staff had been physically assaulted.<sup>16</sup> Lawyers filed three successful federal injunctions against the arrest warrant, including six witness statements contradicting the prosecution case. However, the state court judge reissued the warrant, with slight modifications, on each occasion and the warrant may be enforced at any time. Aline Castellanos's lawyer has recently filed a fourth injunction. On April 2007 Aline Castellanos' home was broken into while she was attending a meeting with women's organizations in what was believed to be an act of intimidation.

Several of the detainees arrested on 25 November 2006 who had signed a letter to the State Governor accusing Yesica Sánchez Maya of inciting violence and forcing them to support the APPO held a press conference on 31 December. At the conference they told the media that they had been coerced by officials into signing the letter in exchange for their release from detention.

On 27 November, presenters on *Radio Ciudadana* claimed that the offices of the human rights and community development organization Services for an Alternative Education (Servicios para una Educación Alternativa, EDUCA) were being used to manufacture petrol bombs and accused EDUCA's director **Marcos Leyva Madrid** of being responsible. The radio presenters reportedly incited the public to attack and set fire to the offices of EDUCA. During the same month *Radio Ciudadana* presenters reportedly also accused **Sara Méndez**, of the Oaxacan Network for Human Rights (Red Oaxaqueña de Derechos Humanos) of being part of the APPO and of "defending criminals". The CNDH noted the role of *Radio Ciudadana* in inciting violence against members of non-governmental human rights organizations.<sup>17</sup>

Despite the evidence of harassment and intimidation of human rights defenders, AI is not aware of any investigations undertaken by the authorities to hold those responsible to account or ensure that politically motivated criminal charges are not filed against human rights defenders to deter their legitimate activities.

### **Conclusions and recommendations:**

Serious human rights violations occurred in Oaxaca between June 2006 and April 2007. At least 18 people died in disputed circumstances and scores of people, including some minors, were arbitrarily detained and held incommunicado. There were numerous reports of torture and ill-treatment and of unfair trial proceedings and those seeking to defend and promote human rights were threatened and harassed. Some of these human rights violations were committed by police in civilian clothes and unidentified armed men operating with the apparent authorization, support, or acquiescence of the state authorities. Teachers and those

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<sup>16</sup> Comision Civil Internacional de Observación de los Derechos Humanos (CCIODH), Video of the fifth visit of the CCIODH, [http://cciodh.pangea.org/quinta/070303\\_video\\_cciodh.shtml](http://cciodh.pangea.org/quinta/070303_video_cciodh.shtml)

<sup>17</sup> CNDH Recommendation 15/2007 on the case of Section 22 of the National Union of Educational Workers and the Popular Peoples Assembly of Oaxaca; Mexico, DF 23 May 2007. , (IV,M) [www.cndh.org.mx](http://www.cndh.org.mx)

believed to be supporters of the APPO opposition protest movement were the principle victims of these abuses.

Officials and employees of state and municipal institutions -- including the state executive authorities, State Preventive Police, State Judicial Police, the State Public Prosecutor's Office, the state judiciary, the Public Defenders Office and municipal authorities allied to the local ruling party -- are believed to be implicated in many of the abuses. The federal authorities have also been implicated in both perpetrating serious human rights violations and failing to take action to prevent or remedy the situation when human rights violations were reported.

The circumstances surrounding the death of at least 18 people have not been clarified and virtually all those responsible have yet to be identified or made accountable. AI's research indicates that the principle reason for this is that very few human rights violations have been promptly, impartially and thoroughly investigated. The failure to secure crime scenes, investigate complaints, ensure all appropriate forensic tests are undertaken, gather available witness evidence and ensure the reliability of evidence, has seriously limited and even jeopardised future investigations.

Although federal, state and municipal authorities have formally agreed to implement the recent CNDH recommendation that allegations of abuses should be investigated; there is as yet no evidence of a determination on the part of these authorities to carry out effective investigations or to modify procedure and practice to prevent further violations.

AI recognizes that some of those acting in name of the protest movement may have been responsible for criminal offences, including the use of firearms, stones, petrol bombs and firework rockets. It also recognizes that the protests and barricades impacted on the rights to education and freedom of movement of the public at large and on public security in general and that they contributed to a complex political environment and a break-down in public order. Nevertheless, the efforts by the authorities to represent all of those who sympathized with the protesters as criminal and subversive are no more than a tactic for evading the responsibility to investigate. Such claims have also apparently been used as an excuse to justify serious human rights violations, such as possible unlawful killings, arbitrary and incommunicado detention, torture and ill-treatment, denial of fair trial and the failure to act on complaints of abuse.

AI recognizes the obligation of federal, state and municipal authorities to maintain public order and protect the right to security of all members of the community. However, widespread abuses committed during the crisis have violated international human rights treaties that Mexico has committed itself to uphold.<sup>18</sup> These require the state party to meet its treaty

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<sup>18</sup> For example the International Covenant on Civil and Political Rights Articles: 6 (right to life), 7 (prohibition of torture and ill treatment), 10 (humane treatment for those deprived of their liberty), 14 (fair trial), 21 (right to peaceful assembly), 22 (freedom of association) and 26 (equal protection of the law); and the American Convention on Human Rights Articles: 4 (right to life), 5 (humane treatment),

commitments in good faith and with due diligence. AI believes that the authorities have so far failed to live up to this obligation.

The CNDH recommendation once again exposes the weakness of accountability mechanisms in Mexico as state agencies primarily responsible for investigating abuses in Oaxaca are also implicated in human rights violations. At the same time the federal authorities have yet to demonstrate their willingness to ensure that effective and impartial investigations into all human rights violations take place; that those responsible are brought to book; and that public security and criminal justice practices are brought into line with international human rights standards.

AI hopes that National Supreme Court will promptly establish the procedures for undertaking the investigation into the events in Oaxaca and ensure that the enquiry and its results are impartial, comprehensive and independent and based on international human rights standards. Although this investigation does not replace the responsibility of the authorities to bring to justice those implicated in the abuses, it appears at present to offer the best hope for the victims and their families to access truth, justice and appropriate remedy.

Ensuring that impunity for human rights violations is not allowed to prevail is the best guarantee of preventing future abuses. It would also be a clear demonstration to Mexican society and to the international community that the government of President Felipe Calderón is committed to protecting, ensuring and fulfilling human rights.

### **Recommendations to the Mexican government, Oaxaca state government and the federal judiciary.**

- Ensure that the National Supreme Court enquiry is independent, impartial thorough and based on international human rights standards; that its findings are made public; and that evidence gathered can be used in prosecutions.
- Ensure that CNDH recommendation 15/2007 is implemented effectively and that all relevant authorities report on the measures taken to comply with it.
- Take steps to ensure the federal authorities conduct investigations into all allegations of human rights violations and the failure to prevent such violations, in Oaxaca during the crisis and report publicly on findings.
- Guarantee a prompt, full and impartial investigation into the role of unidentified gunmen or police operating in civilian clothes with the apparent authorization, support, or acquiescence of the state authorities and make the findings public.
- Establish clear and public procedures on the use of uniforms and identifying signs by members of the police and security forces and for investigations and sanctions against those who breach them.

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7 (personal liberty), 8 (fair trial), 15 (right to Assembly), 16 (freedom of association), 21 (right to property), 24 (right to equal protection) and 25 (right to judicial protection).

- Undertake full, active and impartial investigations to clarify the circumstances of the deaths that occurred during the conflict in accordance with the UN Manual for the Prevention and Effective Investigation of Extra-Legal, Arbitrary or Summary Executions and ensure that those responsible are held to account and that all relatives receive adequate reparations.
- Ensure full, impartial and prompt investigations into all allegations of arbitrary and incommunicado detention, torture and ill-treatment as well as violations in other due process rights.
- Ensure all victims of human rights violations receive reparations, including medical and therapeutic treatment where required.
- Impartially investigate all allegations of harassment, threats, attacks and politically motivated criminal charges against journalists and human rights defenders during the crisis and hold those responsible to account.
- Ensure that human rights defenders are able to carry out their activities without restrictions or fear of reprisals, as set out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.
- Ensure that those detained and facing trial in relation to crimes committed during the disturbances receive fair trials in accordance with international standards.
- Ensure that security forces, police, prosecutors, public defenders and judges are trained in international human rights law and principles and that they operate in accordance with these standards.