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MEXICO

Under the shadow of impunity

INTRODUCTION

A serious deterioration in the human rights situation

Over the past five years Amnesty International has detected a serious deterioration in the human rights situation in Mexico. Torture, extrajudicial executions, “disappearances” and arbitrary detentions are widespread and the perpetrators frequently act with impunity. The legal mechanisms designed to protect victims of violations are simply ignored; duty defence lawyers (*abogados de oficio*) often fail to attend interrogations or fail to act when those they are supposed to be defending are subject to torture or ill-treatment. Similarly, non-Spanish speaking indigenous people are often denied their legal right to an interpreter. Judges systematically fail to investigate accusations of human rights violations and in cases of torture often accept confessions allegedly extracted under duress.

Many of the causes of human rights violations are systemic and occur nationwide, but the crisis is particularly acute in the southern states of Chiapas, Oaxaca and Guerrero where armed opposition groups are present. The army continues to participate in law enforcement, anti-narcotic and counter-insurgency operations and has frequently carried out human rights violations in the course of these operations. Particularly alarming has been the emergence in recent years of so-called paramilitary groups in the state of Chiapas, apparently operating with the collusion of the authorities.

The performance of the federal *Comisión Nacional de Derechos Humanos* (CNDH), National Commission for Human Rights, and its counterparts at state level, varies as they juggle their dual role of defending victims of violations and deflecting criticism of the Mexican authorities.

The *Procuraduría General de la República* (PGR), Attorney General's Office, faces a similarly contradictory dual role of prosecuting human rights violations while employing many of those accused of such violations.

The background to the current crisis

The crisis in human rights coincides with the emergence of armed opposition groups: the *Ejército Zapatista de Liberación Nacional* (EZLN), Zapatista National Liberation Army, in Chiapas, and the *Ejército Popular Revolucionario* (EPR), Revolutionary Popular Army, and *Ejército Revolucionario del Pueblo Insurgente* (ERPI), Insurgent People's Revolutionary Army, a split from the EPR, both of these principally in Guerrero and Oaxaca.

As the Inter-American Commission on Human Rights (IACHR) concluded in its country report published in September 1998, “the emergence of new dissident armed groups of various types has led not only to a resumption of measures of control by the security forces but also to the indiscriminate repression of social organizations and leaders. Several states have now been militarized on the grounds of the need to fight drug trafficking and crime. However, this military presence has led to an increase in complaints of violations of the human rights of the civilian population, including the right to life.”¹

Three major incidents have recently occurred, separated by less than seven months, in the context of counter-insurgency operations: the massacre of 45 unarmed, displaced, indigenous peasants by presumed paramilitaries in the community of Acteal, Chiapas state, in December 1997²; the joint police and military operation in the communities of Chavajeval and Unión Progreso in the municipality of El Bosque, Chiapas state, in June 1998, which left at least nine dead; and the incident at El Charco, Guerrero state, also in June 1998, in which 11 civilians, alleged by the authorities to have been guerrilla members, were killed as a result of a military operation (see below). None of the incidents has been satisfactorily clarified, particularly the alleged responsibility of the authorities in reported extrajudicial executions. The credibility of the Mexican state’s ability to administer justice is at stake in these cases.

¹ Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, September 24, 1998, paragraph 682.

² See Amnesty International, ‘Mexico: Amnesty International calls for genuinely independent investigation into Chiapas massacre and the involvement of paramilitary groups’, News Service 223/97, AMR 41/118/97, 24 December 1997; ‘Mexico: Spiralling violence in Chiapas and Guerrero could degenerate into human rights disaster’, News Service 113/98, AMR 41/29/98, 12 June 1998; and ‘Mexico: The Acteal massacre - one year on and still no justice’, News Service 248/98, AMR 41/43/98, 18 December 1998.

There are significant differences in the situations in Chiapas and the states of Guerrero and Oaxaca. In Chiapas state, where the EZLN launched military operations in early 1994, there have been increasing reports of the activities of so-called paramilitary groups with links to state authorities. Their possession of certain firearms restricted under Mexican law to the exclusive use of the armed forces, in areas with a significant police and army presence, points to collusion by the state with such paramilitary groups³. Numerous reports indicate an emerging pattern in different parts of Chiapas in which armed groups, often connected to landowners or local pro-governmental political leaders, are allegedly responsible for killings and other violent attacks. Their activities also appear to be aimed at intimidating pro-EZLN communities and have led to thousands of people being internally displaced within the state. There are many long-standing conflicts which divide some of the indigenous communities, particularly over land issues. However, the increasing military presence in the state seems to be encouraging those parts of the communities close to the ruling *Partido Revolucionario Institucional* (PRI), Institutional Revolutionary Party, to believe that they can act with impunity, an impression which is reinforced by the authorities tolerating their possession of restricted arms. In the case of Acteal it is clear that officials of the public security forces facilitated the arming of the group who carried out the massacre, at the very least by assisting in the transportation of weapons, and took no action against them when they conducted armed attacks in the period leading up to the massacre. The complicity of the authorities in this and other similar abuses is further underlined by their failure to address the problem. Even in the year since the Acteal massacre, they have failed to conduct a full inquiry into the organization and activities of so-called paramilitary groups in the state of Chiapas. They have failed to “develop coordinated strategies to effectively combat the proliferation of paramilitary groups (“white guards”) who are organized by landowners, to disband such groups, disarm its members, investigate the violations and to punish those persons whose responsibility has been established” as urged by the IACHR⁴.

The San Andrés Larráinzar accords of February 1996 between the federal government and the EZLN, which established the terms for integrating indigenous rights and customs into Mexican law, have not been implemented. It is in this context that the tensions over the issue of municipal autonomy have spilt over into violence in areas where there is strong civilian support for the EZLN. Peace negotiations between the EZLN and the government have been suspended and the *Comisión Nacional de Intermediación* (CONAI), National Mediation Commission, led by Bishop Samuel Ruiz, dissolved itself in June 1998. The authorities have carried out a number of large scale arbitrary detentions in communities thought to be sympathetic to the opposition. This reached a peak between April and June 1998, when over 200 people were arbitrarily detained in five separate incidents, apparently as collective punishment for their support for the EZLN. The overwhelming majority were released within hours.

³ According to the *Ley Federal de Armas de Fuego y Explosivos*, Federal Law on Firearms and Explosives, semi and fully automatic weapons are for the exclusive use of the armed forces.

⁴ Inter-American Commission on Human Rights, ‘Report on the Situation of Human Rights in Mexico’ OEA/Ser.L/V/II.100, 24 September 1998, paragraph 208.

In Guerrero and Oaxaca states, the army has carried out security functions, often with no police presence and without coordination with local civilian authorities. The armed opposition groups have carried out a number of attacks on the security forces. Often these have been followed by army sweeps through communities. Suspects have been detained and many held in unacknowledged detention and subjected to torture, typically in order to extract confessions or accusations against suspected supporters of the armed opposition. There is a pattern of intimidation against social organizations and individual leaders, including killing and death threats, and the system of military justice is used to provide impunity for the perpetrators

The failure of human rights protection measures

Abuses have occurred despite the adoption of a number of legislative and administrative measures to protect fundamental human rights. For example, in 1991 the 1986 *Ley Federal para Prevenir y Sancionar la Tortura*, the Federal Law to Prevent and Punish Torture, was reformed and in December 1998 Mexico recognized the jurisdiction of the Inter-American Court of Human Rights to deal with individual complaints. However, the government's lack of political will to take practical action to improve the situation of human rights, at best ambivalent and at worst negligent, is all too apparent. In October 1998, the government failed to attend a session of the IACHR which was to review the implementation of the recommendations it had previously made on three outstanding cases: those of the continuing imprisonment of Brigadier General José Francisco Gallardo⁵, the Ejido Morelia killings in Chiapas in 1994, and the massacre of 17 unarmed peasants in 1995 near the village of Aguas Blancas in Guerrero⁶. The government claimed that the cases were resolved. In fact it has so far failed to implement the IACHR's recommendations.

The international reaction

Increasing interest in Mexico's human rights situation has been shown by inter-governmental organizations. In January 1998 the UN Special Rapporteur on Torture concluded that "torture and similar ill-treatment are frequent occurrences in many parts of Mexico"⁷. The report followed his visit to Mexico in August 1997. Following the killings at El Bosque in June 1998, the UN High Commissioner for Human Rights reacted by offering technical assistance to the Mexican government.

⁵ See Amnesty International, '*Mexico: Silencing dissent - The imprisonment of Brigadier General José Francisco Gallardo Rodríguez*,' AI Index: AMR 41/31/97, May 1997; '*Mexico: General José Francisco Gallardo should be released immediately*,' News Service 109/98, AI Index: AMR 41/28/98, 9 June 1998; '*Mexico: General Gallardo - five years of unjust detention must come to an end*,' News Service 218/98, AI Index: AMR 41/40/98, 9 November 1998.

⁶ See Amnesty International, '*Mexico: Human Rights violations in Mexico - A challenge for the nineties*,' AI Index: AMR 41/21/95, November 1995.

⁷ United Nations Special Rapporteur on Torture, "Report of Visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 78.

In August 1998 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities called for the situation in Mexico to be considered by the Human Rights Commission session in March-April 1999, and called on the government “to combat the impunity of perpetrators of serious human rights violations, especially those suffered by numerous members of the indigenous populations”⁸.

In September 1998 the IACHR published its country report based on its on-site visit in 1996 and events since. The report was highly critical of the human rights situation in Mexico, made wide-ranging recommendations for improving it and urged the government amongst other things to “conduct meaningful, prompt and impartial investigations in all cases of disappearances that have not yet been resolved” and punish those responsible. The report also called for strategies to combat “the proliferation of paramilitary groups” and for measures to combat torture, including an end to the impunity enjoyed by torturers⁹.

1 THE JUDICIAL SYSTEM AND IMPUNITY

⁸ United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/4, 20 August 1998.

⁹ Inter-American Commission on Human Rights, ‘Report on the Situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, 24 September 1998.

Impunity for human rights violations in Mexico has become endemic. Several inter-governmental organizations have expressed concern about it and have called on the Mexican authorities to take steps to put an end to impunity¹⁰. The United Nations Committee against Torture found that in the period between June 1990 and May 1996 “only two convictions based on the Federal Act to Prevent and Punish Torture and five for homicide resulting from torture were handed down”¹¹. In April 1994, the United Nations Committee on Human Rights had concluded that “enforced or involuntary disappearances and extrajudicial executions are not systematically followed by investigations in which the perpetrators are identified, brought to justice and punished”¹². Despite such recommendations from international organizations, impunity for the perpetrators of human rights violations continues to prevail in Mexico.

There are two fundamental sources of impunity in Mexico: the way in which the civil justice system is currently structured and run and the fact that the cases of members of the Armed Forces implicated in human rights violations are handled by military courts.

¹⁰ United Nations, Committee against Torture, ‘Concluding observations of the Committee against Torture: Mexico’, UN document A/52/44, 2 April 1997, paragraphs 164 and 165; United Nations, Human Rights Committee, ‘Considerations of reports submitted by states parties under article 40 of the International Covenant on Civil and Political Rights - Comments of the Human Rights Committee,’ UN document CCPR/C/79/Add.32, 18 April 1994, paragraphs 7 and 14; United Nations, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/4, 20 August 1998, paragraph 1; United Nations Special Rapporteur on Torture, “Report of visit to Mexico”, UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraphs 82, 86 and 88; United Nations, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN document E/CN.4/1996/4, paragraph 321; and Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights in Mexico’, OEA/Ser.L/V/II.100, September 24, 1998, paragraphs 303 and 351.

¹¹ United Nations, Committee against Torture, ‘Concluding observations of the Committee against Torture: Mexico’, UN document A/52/44, 2 April 1997, paragraph 164.

¹² United Nations, Human Rights Committee, ‘Considerations of reports submitted by states parties under article 40 of the Covenant - Comments of the Human Rights Committee,’ UN document CCPR/C/79/Add.32, 18 April 1994, paragraph 7.

The *Ministerio Público*, Public Prosecutor's Office¹³, headed by the *Procurador General de la República*, Attorney General of the Republic, has sole power to investigate and prosecute all federal crimes in the courts¹⁴. Under Mexican law, the *Procuraduría General de la República*, (PGR), Attorney General's Office has extremely broad powers. It has sole responsibility for carrying out investigations and for indicting alleged criminals. This means that victims and their relatives are unable to bring a prosecution themselves and also that judges cannot take the initiative to open investigations. Officials of the Public Prosecutor's Office are appointed and removed by the Executive. The Attorney General of the Republic, who is appointed by the Executive and ratified by the Senate, can be removed at will by the Executive. The Public Prosecutor's Office's lack of structural autonomy from the Executive led the IACHR to recommend that the Mexican Government should review the situation and strengthen the "autonomy and independence of the Office of the Public Prosecutor"¹⁵.

Mexican legislation grants the PGR very broad powers with regard to investigations and detentions in both of which it is assisted by the *Policía Judicial* (PJ), Judicial Police. According to the IACHR, despite the fact that the Mexican Constitution contains an important series of judicial guarantees, including guarantees specifically relating to detention¹⁶, PJ forces, at both federal and state level, systematically carry out illegal detentions¹⁷.

Detentions without judicial orders and not covered by legally established exceptions¹⁸ are widespread. These procedural irregularities are rarely taken into account by courts. Such detentions are often the start of a series of procedures which involve violations of the rights of those detained. Over 200 people, including four human rights promoters, were detained in five joint army and police operations in Chiapas between April and June 1998. Although most were subsequently released without charge, the operations in Taniperla, Diez de Abril, Amparo Aguatinta, Nicolás Ruiz, and El Bosque were apparently a collective punishment against the communities to discourage them from their alleged support for the EZLN. In the case of the community of Nicolás Ruiz, for example, 167 people were detained on the basis of arrest orders

¹³ In Mexico the Public Prosecutor's Office consists of a group of state bodies and officials whose main job is to investigate crimes and prosecute their perpetrators in the courts. The Attorney-General of the Republic is the most senior official in the ministry.

¹⁴ Political Constitution of the United States of Mexico, articles 21 and 102; Federal Code of Penal Proceedings, article 2.

¹⁵ Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraphs 66 and 730.

¹⁶ Political Constitution of the United States of Mexico, articles 13,14,16,17,18,19,20,21,22, and 23.

¹⁷ Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraph 219.

¹⁸ Mexican legislation authorizes detention without judicial order in exceptional cases such as *flagrante delicto* and 'urgent' cases where there is a reasonable risk that the presumed offender could escape.

against three individuals in an operation lasting six hours and involving hundreds of police and soldiers.

Torture is frequently used by Public Prosecutor's Office and PJ officials as a means to obtain confessions and statements. The IACHR noted that "most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offences. The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor..."¹⁹. Mexican law permits the Public Prosecutor's Office to receive statements from the alleged perpetrator of the crime as well as from witnesses²⁰. Despite a prohibition on using confessions and information obtained under torture as evidence²¹, statements and confessions obtained under torture are frequently recognized by the courts.

In its concluding observations, the Committee against Torture, (CAT), while considering the third periodic report of Mexico on April 1997 noted: "... the ineffectiveness of effort to put an end to the practice of torture is the result, *inter alia*, of the continuing impunity of torturers and the fact that the authorities responsible for the administration of justice continue to admit confessions and statements made under torture as evidence during trials, despite legal provisions explicitly declaring them inadmissible"²².

The acceptance by judges of confessions extracted under torture is well illustrated by the case of Manuel Manríquez San Agustín, a musician and member of the Otomí indigenous community of Ranchería Piedra Blanca, Tutotepec, in the State of Hidalgo²³. He was arrested by the Policía Judicial del Distrito Federal (PJDF), Federal District Judicial Police, in Mexico

¹⁹ Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraph 305; the same point is made by the United Nations Special Rapporteur on Torture, "Report of visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 79.

²⁰ Federal Code of Penal Proceedings, articles 2, 123, 124, 125 and 126.

²¹ Federal Law to Prevent and Punish Torture, article 8; United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, article 15 - ratified by Mexico on 23 January 1986; Inter-American Convention to Prevent and Punish Torture, article 10 - ratified by Mexico on 22 June 1987.

²² United Nations, Committee against Torture, 'Concluding observations of the Committee against torture: Mexico - subjects of concern', UN document CAT/C/34/Add.2, 2 May 1997, paragraph 163.

²³ See Amnesty International: "Mexico: The persistence of torture and impunity", AI Index: AMR 41/01/93, June 1993; Amnesty International: Urgent Action, 306/94, AI Index:: AMR 41/15/94, 19 August 1994; Amnesty International: and AI Index:: AMR 41/23/94, 19 December 1994; "Human rights violations in Mexico: A challenge for the 90s" AI Index: AMR 41/21/95, 15 November 1995; "Central America and Mexico: Human Rights Defenders on the Front Line" AI Index: AMR 01/02/96, 10 December 1996.

City on 2 June 1990. He did not speak or write Spanish at the time and remained incommunicado for four days under police custody. He was beaten, nearly asphyxiated with plastic bags over his head and had carbonated water with chili forced into his nose. He also suffered burns and electric shocks to sensitive parts of his body, and was forced to "sign" papers he could not understand.

He was accused of murder and brought before a judge who, based on his "signed confession", remanded him to the *Reclusorio Preventivo Norte*, a prison in Mexico City, on charges of murder. Despite the signs of injury consistent with torture – which were later certified by a prison doctor – and the lack of evidence to support the charges other than his signed statements made without the assistance of an interpreter, Manuel Manríquez San Agustín was sentenced in July 1991 to 24 years imprisonment. The sentence was confirmed on appeal on February 1992, despite the lack of any further evidence.

His case was also presented before the CNDH, which has issued a statement in March 1994 on his behalf acknowledging his torture, to no avail. In 1995, two police officers were charged with torture and one was found guilty, though he was able to pay a fine to avoid a prison sentence. The evidence of torture produced at the trial did not, however, lead to a reopening of the murder case against Manuel Manríquez. The confession extracted under torture was accepted both at the original trial and at the appeal. At the time of writing, Manuel Manríquez continues to be imprisoned in the *Reclusorio Preventivo Norte*.

As the IACHR has pointed out, this situation is not a matter of chance. It is largely due to the interdependence of the administrative and judicial authorities and this is one of the factors which has contributed to the systematic practice of illegal detention²⁴. The absence of a truly

²⁴ Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico',

autonomous and independent Public Prosecutor's Office has been an important source of impunity in Mexico. The fact that "the authority responsible for conducting the investigation and initiating criminal proceedings is the Public Prosecutor's Office [and]...[t]hus in many cases those investigating know the person or persons accused of the deeds"²⁵, is a serious obstacle to the right of victims and their families to seek effective remedies and encourages impunity for human rights violations.

The performance of the PGR, including the judicial police under its authority, in investigating human rights violations has not, on the whole, led to the facts being clarified or to those responsible being brought to justice. That was the conclusion reached by the IACHR²⁶. Many of the investigations carried out by the bodies in question did not meet the requirements laid down by international standards²⁷.

OEA/Ser.L/V/II.100, September 24, 1998, paragraph 219.

²⁵ United Nations Special Rapporteur on Torture, "Report of visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 48.

²⁶ Inter-American Commission on Human Rights, 'Report on the situation of Human Rights in Mexico', OEA/Ser.L/V/II.100, September 24, 1998, paragraph 367.

²⁷ United Nations, Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Execution, adopted by the ECOSOC, resolution 1989/65 of 24 May 1989; and United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly, resolution 47/133, 18 December 1992.

In the case of the incident at El Charco, Guerrero, in June 1998, victims and witnesses stated that several of those detained were tortured and that several of the deaths may have been extrajudicial executions. The PGR not only failed to investigate the acts of torture and possible extrajudicial executions carried out by members of the army, on the grounds that they fell under military jurisdiction, but, without carrying out any kind of investigation, also endorsed the army's version of events. The latter claimed that no extrajudicial executions or acts of torture had occurred during the incident at El Charco and that what had in fact taken place was a confrontation between the armed forces and members of an armed opposition group²⁸. In an interview in September 1998, an Amnesty International delegation was given the same version of events by officials from the PGR, that is to say that no case of torture or extrajudicial execution had been recorded during the incident at El Charco. The officials admitted, however, that since such issues fell under the jurisdiction of the *Procuraduría General de Justicia Militar*, (PGJM), Military Attorney General's Office, they had not carried out any investigations into the conduct attributed to members of the army.

The right of victims and their relatives to an effective remedy²⁹ for human rights violations is not fully guaranteed by the Mexican legal system. Although victims and their relatives can file complaints about human rights violations, they cannot seek the prosecution of those allegedly responsible for the violations. Mexican penal legislation does not recognize the right of individuals to bring civil actions and the only possibility for the victims is to intervene in the criminal proceedings brought by the Public Prosecutor's Office³⁰, which means that they are totally dependent on that body to present their cases.

The Mexican legal system gives wide jurisdiction to military courts so that soldiers implicated in human rights violations are investigated and tried by military courts. The Military Justice Code grants the military courts jurisdiction over common crimes committed by soldiers while in service and when such crimes are committed as part of such service³¹.

The military court system consists of the Military Supreme Court, Ordinary Courts Martial, Special Courts Martial, military judges and the PGJM. All these bodies are made up of military officers in active service. The members of the Military Supreme Court, the Ordinary Courts Martial and the military judges are all appointed by the Executive. The PGJM reports to the *Secretaría de Defensa*, Ministry of Defence, and has sole responsibility for pursuing

²⁸ Statement made by the Deputy Attorney General of the Republic, Dr José Luis Ramos Rivera, in *La Jornada*, a Mexican newspaper, 19 June 1998.

²⁹ International Covenant on Civil and Political Rights, article 2,3 - ratified by Mexico on 23 March 1981; American Convention on Human Rights, article 8 - ratified by Mexico on 3 April 1982; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly, Resolution 40/34 of 29 November 1985; and Political Constitution of the United States of Mexico, article 17.

³⁰ Federal Code of Penal Proceedings, article 141.

³¹ Military Justice Code, article 57.

investigations and prosecuting before the courts any soldiers alleged to have committed a crime³². The Executive can order the PGJM to halt or withdraw prosecutions. The PGJM is assisted in its investigatory activities by a PJ body made up of commanders of military units. Civilian victims are excluded from participating in military trial proceedings. The primacy of the principle of military hierarchy and the extremely high dependency of the military justice system on the Executive are just two of the many factors which lead to the conclusion that these courts do not meet the requirements of an independent and impartial tribunal as demanded by international standards.

³² Military Justice Code, article 36.

In Mexico, soldiers implicated in cases of extrajudicial executions, “disappearances” and torture are investigated and tried by military courts. Even though torture is classed as a crime under the Federal Law to Prevent and Punish Torture, which means that it is categorized as a federal crime, the soldiers responsible for these acts are tried by military courts. Military judges have even cited the Federal Law to Prevent and Punish Torture in order to proceed with such hearings. This was noted by the Special Rapporteur on Torture³³, as a result of which he specifically recommended that acts of torture committed by soldiers against civilians should be brought under the jurisdiction of the civil courts³⁴.

³³ United Nations Special Rapporteur on Torture, “Report of visit to Mexico”, UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 70.

³⁴ United Nations Special Rapporteur on Torture, “Report of visit to Mexico”, UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 88 (j); For international standards which state that members of the security forces accused of human rights violations be investigated and brought to justice under the jurisdiction of independent civilian courts see: the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, article 16, and the Inter-American Convention on Forced Disappearance of Persons, article IX. The doctrine of international human rights organizations has long opposed the idea that soldiers responsible for human rights violations should be tried in military courts, since such trials have tended only to encourage impunity. See for example: United Nations, Human Rights Committee, ‘Considerations of reports submitted by states parties under article 40 of the covenant - Comments of the Human Rights Committee,’ UN document CCPR/C/79/Add.2, April 1994, paragraph 5; United Nations, Human Rights Committee, CCPR/C/79/Add.76, paragraph 18; United Nations, Human Rights Committee, UN document CCPR/C/79/Add.78, paragraph 10; United Nations Commission on Human Rights - Working Group on Enforced or Involuntary Disappearances, E/CN.4/1989/18/Add.1, paragraph 136; E/CN.4/1991/20/Add.1, paragraph 166; E/CN.4/1992/18, paragraph 90; E/CN.4/1993/25, paragraph 46, page 19; Inter-American Commission on Human Rights, OEA/Ser.L/V/II.66, paragraph 139; and OEA/Ser.L/V/II.84, Doc. 39 rev.

2 TORTURE

Amnesty International has received numerous reports which suggest that torture is practised routinely in many parts of the country, in cases of common crime, to obtain confessions and information and in lieu of police investigations. Among the most frequently reported torture methods are: electric shocks, semi-asphyxiation with plastic bags or by submersion under water, death threats, mock executions, beatings using sharp objects, sticks or rifle butts, rape and sexual abuse, forcing carbonated water up detainees' noses (a method known as "*tehuacanazo*"), and slapping both ears at once (the "*telephone*")³⁵.

Torture continues to be widely practised despite the adoption of legislation and ratification of international standards aimed at its elimination: Mexico ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN Convention against Torture) in January 1986. Since then the government has taken a number of preventive and punitive measures to curb the practice of torture and ill-treatment. Legislative initiatives include the 1991 reform of the 1986 Federal Law to Prevent and Punish Torture, thus establishing that confessions are only valid if given to the Public Prosecutor's Office or before the trial judge in the case and in the presence of the defence counsel or of a person who enjoys the trust of the accused. The reform also increased penalties for torture, introduced provision for payment of compensation to victims and the right to interpreters for non-Spanish speaking indigenous people. Amnesty International welcomes these provisions.

However, torture continues to be widespread. It is facilitated by:

- the fact that, as the UN Special Rapporteur on Torture concluded, "not only judges but also lawyers, the Public Prosecutor's Office and the Judicial Police itself are overloaded with work, which might explain the tendency to rely on confessions as a way of clearing up cases rapidly"³⁶. These shortcomings are compounded by the fact that the judicial police are inadequately trained to carry out their principal function, that of investigating alleged crimes. The present *Procurador General de la República*, Attorney General of the Republic, Jorge Madrazo de Cuéllar, acknowledged in February 1997 that the judicial police in Mexico "was not really trained to carry out (criminal) investigations" ("*no estaba verdaderamente preparada para hacer investigación*");
- the acceptance by trial judges of confessions obtained under torture and without the presence of defence counsel and interpreters as laid down in Mexican law. Often duty defence lawyers assigned by the PGR or its equivalent at state level are absent during interrogations, yet subsequently sign to assert that they were present. Thus in practice

³⁵ Amnesty International, *Mexico: Amnesty International's concerns regarding torture and ill-treatment in Mexico*, AI Index: AMR 41/17/97, 30 April 1997.

³⁶ United Nations Special Rapporteur on Torture, "Report of Visit to Mexico", UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 43.

they legitimize the extracting of confessions under torture, the opposite of their supposed role of defending the accused;

- the burden of proof that a confession was obtained under torture falling on the defendant who is attempting to retract that confession. According to Mexican jurisprudence, the initial statement of a detainee before the arresting authority carries more weight than subsequent statements. Criminal investigations are routinely restricted to the obtaining of an early confession from a suspect;
- doctors examining alleged victims of torture failing to report their findings fully.

In its report on the year ending May 1998, the CNDH set out its deep concern that the number of complaints relating to torture had risen from 46 in the previous year to 58. Information in the report indicates that often cases of torture are dealt with either by administrative measures or offenders are tried on other, often lesser, charges. Furthermore, Amnesty International knows of no cases where compensation has been paid to victims of torture as a result of judicial decision according to the law.

Most torture victims are common crime suspects arrested in urban areas. Others are targeted in the context of counter-insurgency operations. For example, on 28 May 1997 Martín Barrientos Cortés, a peasant activist, was abducted by members of the army, who then denied holding him, near his community in El Cucuyachi, Guerrero state³⁷. He remained “disappeared” until 9 June, when he was released without charge following a campaign on his behalf. During the time he remained “disappeared” he was tortured with beatings, electric shocks, semi-asphyxiation, in an attempt to make him confess to having links with the EPR. Like most victims here and in other parts of the country, he presented complaints to local authorities to no avail, and even the CNDH initially failed to acknowledge his complaints or to certify any injuries despite being presented with evidence consistent with his allegations of torture, including ruptured eardrums and burns resulting from electric shocks. According to Martín Barrientos, during his detention and torture the military attempted to force him to identify members of the opposition *Partido Revolucionario Democrático* (PRD), Revolutionary Democratic Party. They also threatened to kill him if he reported his “disappearance”. In October 1998 he was summoned but failed to appear before the *Procuraduría General de Justicia Militar*, (PGJM), Military Attorney General’s Office, in Chilpancingo, Guerrero State. One of the recommendations made by the UN Special Rapporteur on Torture in his January 1998 report was that “cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice”³⁸. No progress has been made on the complaint filed on the case with the PGR in 1997. Martín Barrientos has not returned to live in his community and his family have reported harassment by the authorities.

³⁷ See Amnesty International, Urgent Action, UA 157/97, AI Index: AMR 41/37/97, 4 June 1997; and AI Index: AMR 41/38/97, 6 June 1997.

³⁸ United Nations Special Rapporteur on Torture, “Report of Visit to Mexico”, UN document E/CN.4/1998/38/Add.2, 14 January 1998, paragraph 88.

In June 1998 Efrén Cortés Chávez and Erika Zamora Pardo, were detained after an army operation in the village of El Charco, Ayutla, Guerrero state, in the course of which 11 alleged members of the ERPI were killed. They claimed that they had been tortured while detained by the army³⁹. In September 1998 an Amnesty International delegation tried to visit them in order to investigate their claims but were repeatedly denied access to the *Centro de Readaptación Social* (CERESO), Social Readaptation Centre, in Acapulco, Guerrero, where they are being detained, despite assurances from federal officials that such a visit would be possible.

Erick Cárdenas Esqueda, aged 16, was detained in January 1997 by the municipal police in Nuevo Laredo, Tamaulipas, then transferred to a local police station. He was found dead two hours later in his cell and a medical examination the following day reported injuries consistent with torture. Despite this, the police claimed that Cárdenas committed suicide and the authorities have failed to fully investigate the death.

3 “DISAPPEARANCES”

In May 1998 Amnesty International published Mexico: “*Disappearances*”: *a black hole in the protection of human rights*”⁴⁰. The report documented a disturbing increase in the number of cases of “disappearance”. From 1991 to 1993, the organization documented no cases, while from 1994 to 1997 it had received reports of over 70 “disappearances”. While there appear to have been fewer cases in 1998, Amnesty International is concerned that there is a backlog of over 400 cases dating back to the 1970s and 1980s which remain unresolved. Amnesty International believes that there is a risk that unless the government shows clear political will to end the phenomenon, there could be a return to the widespread and systematic state-sponsored “disappearances” of the 1970s and early 1980s.

³⁹ See Amnesty International, ‘Mexico: Spiralling violence in Chiapas and Guerrero could degenerate into human rights disaster’, News Service 113/98, AI Index: AMR 41/29/98, 12 June 1998.

⁴⁰ See Amnesty International “Mexico: ‘Disappearances’ - A black hole in the protection of human rights”, AI Index: AMR 41/05/98, 7 May 1998.

In its report to the UN Human Rights Commission in 1998, the UN Working Group on Enforced or Involuntary Disappearances recognized the fact that new cases of "disappearance" were occurring and therefore called on the Mexican government to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance⁴¹. In reference to the large number of unresolved cases from previous years, the Working Group stressed "the need for more effective measures to clarify the so-called "old cases" which occurred in the 1970s, and reminded the Government of Mexico of its continuous responsibility to conduct thorough and impartial investigations into cases of disappearances for as long as the fate of the victim remains unclarified"⁴².

Most of the latest "disappearances" reported to Amnesty International took place in the context of counter-insurgency and anti-narcotics operations. Victims include members of peasant organizations, indigenous people, students, teachers, union leaders and businessmen. Many "disappeared" following their detention, in front of witnesses, by members of the armed and police forces. However, their detention was then repeatedly denied by the security forces and the Mexican Government. Following national and international campaigns on their behalf, some reappeared after weeks or months in unacknowledged detention, bearing injuries consistent with their having been tortured. In a small number of cases, the bodies of the "disappeared" were subsequently recovered with evidence indicating that they had been extrajudicially executed.

Neither the victims nor their relatives appear to have any effective recourse before the law in Mexico for seeking redress for these gross human rights violations, particularly when the armed forces are involved. The military jurisdiction under which these cases invariably fall when there is suspected army involvement has continued to provide a blanket of impunity for the perpetrators.

In the great majority of cases, none of those responsible have been brought to justice. The crime of enforced or involuntary "disappearance" does not exist in Mexico's Penal Code, although this does not exonerate the judicial authorities from investigating and punishing those responsible for the crimes of abduction and illegal detention. However, the PGR and the courts have consistently failed to press charges and try those responsible for "disappearances". Amnesty International has seen a draft law on "disappearances", drawn up by the CNDH. While this is a positive move, the draft fails to meet international standards in the definition of the offence, nor does it contain other important provisions, in particular those referring to the exclusion of military jurisdiction in cases of "disappearance". Mexico has yet to sign and ratify the Inter-American Convention on Forced Disappearance of Persons.

⁴¹ United Nations Working Group on Enforced or Involuntary Disappearances, 'Report to the 54th session of the United Nations Human Rights Commission', E/CN.4/1998/43, October 1998, paragraph 146.

⁴² United Nations Working Group on Enforced or Involuntary Disappearances, 'Report to the 54th session of the United Nations Human Rights Commission', E/CN.4/1998/43, October 1998, paragraph 269.

Manuel Ramírez Santiago and Fermín Oseguera Santiago⁴³, chairpersons respectively of the *Comité de Defensa de los Derechos del Pueblo*, Committee for the Defence of the People's Rights, a civil rights organization, and the *Unión de Tablajeros A.C.*, a local workers union, were abducted on 22 October 1996 in the town of Tlaxiaco, state of Oaxaca. Although several witnesses identified the perpetrators as members of the *Policía Judicial Estatal* (PJE), State Judicial Police, the two remained "disappeared" until 1 November 1996, when they were released near the Nochixtlán district of Oaxaca state with their hands tied. Both activists claimed they were tortured while in captivity in what they believed to be military barracks. The torture included beatings, electric shocks and semi-asphyxiation while under interrogation concerning the activities of the EPR, suggesting that the abductors were members of the security forces working as part of a counter-insurgency intelligence operation⁴⁴.

Fredy Nava Ríos, aged 16, a student and army recruit attached to the 49th Infantry Battalion in Petatlán, state of Guerrero, was last seen on 25 May 1997⁴⁵. His family repeatedly asked for information concerning his whereabouts at the army barracks in Petatlán. They were initially told that Fredy Nava had asked for some free time and later that he was on leave. However, on 18 July 1997 the *Secretaría de la Defensa Nacional* (SEDENA), Ministry of National Defence, informed his father, Manuel Nava Baltazar, that an order had been issued for his arrest for his apparent desertion from the army, and denied that the military had detained him. However, a soldier informed Manuel Nava that his son had been held for four days at an army barracks in Atoyac, state of Guerrero, where he had been tied up, blindfolded and subjected to beatings, apparently in an attempt to implicate him in a confrontation that occurred between the army and the EPR on 27 May 1997. According to reports he was later transferred to the *Campo Militar No.1*, Military Base No.1, in Mexico City. As of the end of January 1999, his whereabouts remained unknown⁴⁶.

Gregorio Alfonso Alvarado López, a teacher, and leading member of the *Coordinación Estatal de Trabajadores de la Educación*, a teacher's union in the state of Guerrero, and of the *Consejo Guerrerense 500 Años de Resistencia Indígena, Negra y Popular*, a non-governmental indigenous rights organization, was abducted by an armed group in Chilpancingo, Guerrero, on 26 September 1996. Days after Gregorio Alvarado's "disappearance", a delegation consisting of his wife, Norma Lorena Valdez Santos, and members of the indigenous rights organization, presented an official complaint before the state interior minister about his abduction and "disappearance".

⁴³ See Amnesty International, Urgent Action 252/96, AI Index: AMR 41/68/96, 1 November 1996, and Urgent Action FU 252/96, AI Index: AMR 41/77/96, 19 November 1996.

⁴⁴ See Amnesty International, "Mexico: 'Disappearances' - A black hole in the protection of human rights", AI Index: AMR 41/05/98, 7 May 1998.

⁴⁵ See Amnesty International, Urgent Action 230/97, AI Index: AMR 41/61/97, 23 July 1997 and AI Index: AMR 41/77/97, 19 August 1997.

⁴⁶ See Amnesty International, "Mexico: 'Disappearances' - A black hole in the protection of human rights", AI Index: AMR 41/05/98, 7 May 1998.

The minister denied any involvement of the state authorities, and told members of the delegation that paramilitary groups beyond his government's control were operating in Guerrero. In January and, again, in August 1996, Gregorio Alvarado López had presented a number of complaints before the CNDH and its state counterpart, about being followed since November 1995 by unknown individuals in cars bearing number plates from the Federal District and the state of Guerrero. The occupants of these vehicles had reportedly taken pictures of Gregorio Alvarado, his house and his family, and had kept his family under surveillance. Investigations by the Public Prosecutor's Office in Guerrero have established that at least one of these vehicles belonged to the *Policía Judicial Federal* (PJF), Federal Judicial Police.

4 EXTRAJUDICIAL EXECUTIONS

Extrajudicial executions by the security forces are frequently reported and often those responsible are not brought to justice. These killings take place both in the context of common crime and counter-insurgency operations. Where those responsible are alleged to be members of the armed forces, the cases are heard under the jurisdiction of the military justice system.

On 28 June 1995, 17 unarmed peasants were massacred near Aguas Blancas, Guerrero, by members of the state motorized police⁴⁷. The peasants had been travelling to the town of Atoyac de Alvarez where they intended to demonstrate against the "disappearance" of Gilberto Romero Vásquez, when they were indiscriminately shot at close range. Despite the conclusion of Mexico's Supreme Court of Justice in April 1996 that the police were acting on instructions of high ranking state authorities, and that the state governor himself was implicated, to date there has been no full and independent investigation into their alleged involvement.

During September 1997 several high profile joint police and military raids took place in Mexico City, the capital, apparently in response to public concerns over rising crime levels. In this context six young men were seized in the Buenos Aires district of Mexico City by members of a combined army and police unit⁴⁸. The victims' bodies, discovered days later, revealed injuries consistent with having been tortured.

In December 1997, a military commando group carried out an operation in San Juan de Ocotán, Jalisco state. The soldiers, part of the *Grupo Aeromóvil de Fuerzas Especiales* (GAFE), Air-Mobile Special Forces Group, detained some 20 civilians, of whom several were reportedly tortured. One of the victims died, apparently as a result of the torture. Twenty-eight soldiers remained in military custody in relation to the incident, the case having been referred into the jurisdiction of a military court. By January 1999 none had been convicted.

⁴⁷ See Amnesty International, "Human rights violations in Mexico: A challenge for the 90s" AI Index: AMR 41/21/95, 15 November 1995.

⁴⁸ Amnesty International, Urgent Action 306/97, AI Index: AMR 41/89/97, 24 September 1997.

On 22 December 1997, 45 unarmed, indigenous men women and children were killed in the community of Acteal, municipality of Chenalhó, Chiapas state. Following the massacre, 97 people were detained including the *presidente municipal*, municipal mayor, and 11 members or former members of the security forces, including a former army brigadier general and a soldier. In December 1998, a *Fiscal Especial*, Special Attorney, appointed to investigate the massacre, published the *Libro Blanco Sobre Acteal*, White Paper On Acteal, Chiapas, which failed to fully clarify the circumstances of the killings or investigate the responsibility of state officials despite the negligence of some high authorities both on the day of the massacre and in the preceding year.

This is even more surprising given the fact that the report concludes that one of the causes of the massacre was “the absence of institutions for law enforcement and the indifference of the local authorities responsible for it”⁴⁹. While the report details the involvement of the local public security officers in the arming of the so-called paramilitary group with links to the authorities which carried out the massacre, it failed to address the question of how high up official responsibility lies for these links. Similarly, the report does not establish responsibility for the failure of the security forces on the ground to intervene to prevent the massacre which took place over a period of more than five hours. The unwillingness of the authorities to fully address the problem of paramilitary violence in Chiapas is further demonstrated by the fact that the events of 22 December 1997 have not led to an inquiry beyond the massacre itself and the incidents leading up to it in the previous year, despite the many calls after the massacre for an investigation into paramilitary activity in the state of Chiapas. In January 1998 the Attorney General of the Republic, Jorge Madrazo de Cuéllar, said on national television that the PGR had identified 12 armed groups in Chiapas, apart from the EZLN, and would investigate their funding and source of weapons. The lack of enthusiasm for addressing the problem is seen by Mexican non-governmental human rights organizations as evidence that paramilitary groups are part of an official strategy to create a counterbalance to the EZLN outside and in addition to the use of the army and police.

At least 20 people were left dead in two separate incidents in June 1998 involving the security forces at El Charco, Guerrero, and El Bosque, Chiapas⁵⁰. Some were allegedly extrajudicially executed. By January 1999, official investigations initiated into the killings had not yet identified the full circumstances, manner and cause of their death. The deaths of the 11 civilians in the incident in El Charco is being investigated by the Military Attorney General’s Office although it is not clear whether that inquiry will take in the accusations by two of those detained at El Charco that they were tortured by the military before being handed over to the PGR.

Indeed, it is worrying that in interviews with an Amnesty International delegation in September 1998, representatives of the PGR went so far as to claim that those who allegedly were tortured were never detained in military installations.

⁴⁹ White Paper on Acteal, Chiapas - 19 November 1998, page 90.

⁵⁰ See Amnesty International, ‘Mexico: Spiralling violence in Chiapas and Guerrero could degenerate into human rights disaster’, News Service 113/98, AI Index: AMR 41/29/98, 12 June 1998.

While the cases involving large numbers of victims have attracted most media and international attention, individuals are frequently extrajudicially executed by the public security forces or are killed as a result of excessive use of force.

Pedro Hernández Monjaras and Selerino Jiménez Almaraz, two indigenous *Zapoteco* peasants from the community of San Agustín Loxicha, state of Oaxaca, were abducted on 23 April and 9 May 1997 respectively, by members of the PJE⁵¹. Witnesses to the illegal detentions included Riquilda Hernández Martínez, the daughter of Pedro Hernández, and María Estela García Ramírez, the wife of Selerino Jiménez. In both cases, when the relatives requested information from the authorities, they were shown the bodies of the two men and told that they had been shot hours after they were last seen by their relatives, in an armed confrontation, despite witness reports that they were taken from their houses unarmed. No one has been brought to justice for their killings. These killings took place in the context of the mass arrest of more than 100 people between June 1996 and September 1997 as the authorities suspected inhabitants of the Loxicha region of membership or of collaboration with the EPR armed opposition group.

On 3 September 1997, Aureo Mendoza Rosales and Jesús Leyva were detained and allegedly tortured by members of the PJE in the municipality of Yautepec, Morelos State⁵². According to Jesús Leyva's testimony, both men were taken to a cell in the municipality of Yautepec and subjected to torture, including severe beatings and mock executions, by PJE officers. Aureo Mendoza Rosales' body was found in Cuautla, Morelos State days later. Jesús Leyva was released and threatened with death if he complained to anyone. On 6 November 1997, following a complaint by the wife of Aureo Mendoza Rosales, the CNDH, requested the exhumation of his body. The autopsy revealed the body to have more than 50 bullet wounds.

In February 1998 several peasants returning from giving evidence to a human rights delegation were ambushed in northern Chiapas. Survivors of the ambush, which occurred close to a post of the *Policía de Seguridad Pública*, (PSP), Public Security Police, accused members of *Paz y Justicia*, Peace and Justice, of shooting dead José Tila López, one of the peasants. *Paz y Justicia* is a group which claims to be a civil association with developmental aims but which is widely alleged to be an armed pro-PRI group with primarily paramilitary functions. Only one of the group accused of the attack was in detention as of January 1999, despite eye-witness identifications of others who were said to have participated in the ambush. According to press reports, information leaked by the police allowed the others to avoid detention⁵³.

⁵¹ See Amnesty International, Urgent Action 297/97, AI Index: AMR 41/83/97, 9 September 1997.

⁵² See Amnesty International, Urgent Action 229/97, AI Index: AMR 41/99/97, 30 October 1997 and Urgent Action FU 229/97, AI Index: 41/113/97, 11 December 1997.

⁵³ *La Jornada*, 10 March 1998; and *La Jornada*, 21 February 1998.

5 THE PERSECUTION OF HUMAN RIGHTS DEFENDERS

Mexican human rights defenders face repeated acts of intimidation and harassment on account of their activities to promote and protect human rights⁵⁴. Although seldom the victims of extra-judicial executions, “disappearances” or torture, Amnesty International has received numerous reports of human rights defenders receiving death threats, coming under armed attack and being arbitrarily detained.

Mexican human rights defenders also face numerous obstacles, and even deliberate blocking, to their legitimate efforts to promote and protect human rights. Most notably, their access to prisons is frequently denied.

Human Rights defenders working in remote parts of the country are particularly vulnerable to attack by so-called paramilitary groups. On 15 February 1997, members of the *Centro de Derechos Humanos “Fray Bartolomé de Las Casas”* (CDHFBC), Fray Bartolomé de Las Casas Human Rights Centre, in Chiapas, were fired at by members of *Paz y Justicia* as they tried to escape an apparent ambush in the municipality of Sabanilla. One member of the CDHFBC was shot in the arm and an international observer accompanying the delegation was wounded in the head with an axe. No full investigation by the authorities was known to have been conducted into the attack, nor was anyone brought to justice. Such incidents greatly restrict the movement of human rights defenders working in remote parts of the country who, in fearing for their safety, are hindered from travelling to attend to incidents of human rights violations.

In November 1997 Roman Catholic Bishops Raúl Vera and Samuel Rúa survived an armed attack by members of a paramilitary group while visiting Indian communities in Chiapas State. Bishop Samuel Ruiz had suffered previous death threats for his human rights advocacy⁵⁵.

Members of the human rights organization *Ciudadanos en Apoyo a los Derechos Humanos (CADHAC)*, Citizens for Human Rights, which works on cases of torture and ill-treatment of prisoners in the state of Nuevo León, have reported a series of death threats against them over a number of years. In June 1998, CADHAC’s president, Sister Consuelo Morales Elizondo, also reported police surveillance outside their offices. In December 1998, local government officials prohibited CADHAC members from carrying out prison visits⁵⁶.

⁵⁴ The current insecurity faced by Mexican human rights defenders prompted the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, to request that the Mexican government promote the work of human rights defenders and guarantee their safety. See resolution 1998/4, on 20 August 1998.

⁵⁵ See Amnesty International, ‘*Central America and Mexico: Human Rights Defenders on the front line*’, AI Index: AMR 02/01/96, 10 December 1996.

⁵⁶ See Amnesty International, ‘*Central America and Mexico: Human Rights Defenders on the front line*’, AI Index: AMR 02/01/96, 10 December 1996.

Indalecio Pérez Pascual has been harassed by Tabasco State authorities since mid-1996. In October this year, he was forced to flee to another part of the country due to a campaign to discredit him followed by an indictment of murder; investigations into this case appear to be riddled with bias.

Indalecio Pérez Pascual, a 36 year-old indigenous Chontal, married with five children, was an activist with the *Comité de Derechos Humanos de Tabasco A.C. (CODEHUTAB)*, Tabasco Human Rights Committee, and member of the *Comité de Derechos Humanos Indígena de Macuspana*, Macuspana Indigenous Human Rights Committee, municipality of Tabasco. As part of his work he often filed complaints regarding serious cases of human rights violations in the state of Tabasco.

Indalecio Pérez Pascual has apparently been the victim of misuse of the judicial system as well as a campaign to discredit him in the media by local politicians, who link him to the EPR. Subsequently, he was accused of killing a member of the PRD during a demonstration in July 1995. On 24 September 1996, the Villahermosa judge in the state of Tabasco, reportedly ordered his arrest without having fully examined the Public Ministry's inquiry. Since then, Indalecio Pérez has tried to prove his innocence using whatever legal recourse available, but in vain.

The CNDH concluded on 31 August 1998, that the investigation undertaken by the Public Prosecutor's Office lacked impartiality as it omitted a number of procedures requested by Indalecio Pérez, ignored testimonies he supplied and accepted accusatory testimonies that had clearly been fabricated. The Commission also noted that the investigating attorney committed serious errors by delaying recovery of ballistic evidence and by failing to exhaust investigations into other individuals accused of the crime. It also concluded that Indalecio Pérez's complaint against the Tabasco State Human Rights Commission was founded on the grounds that the Commission had failed to deal with his complaint regarding irregularities in the investigations.

The CNDH recommended that the governor of the state of Tabasco send its conclusions to the Attorney General's Office in Tabasco in order to determine whether, with the new information supplied by the Commission, it would dismiss the case against Indalecio Pérez. It also recommended that the behaviour of several officials in the Macuspana Public Ministry, and the Tabasco Attorney General's Office be investigated, and sanctions applied where necessary. By the end of 1998 it appeared that the authorities in the state of Tabasco had not accepted the recommendations of the CNDH.

Further information indicates that the case of Indalecio Pérez is not isolated and that there seems to be a pattern of harassment against members of CODEHUTAB. In the most recent incident, Francisco Goitia Prieto, priest and president of the organization, was accused of murder following a traffic accident in November 1997. He was also publicly discredited, at the same time as the victim's brothers filed a complaint regarding pressure by members of the judicial police to press charges against the priest.

In the months following the Acteal massacre in December 1997, and in an apparent attempt to reduce international observation of the deteriorating situation in Chiapas, the

government expelled from Mexico dozens of foreign observers monitoring the human rights situation in Chiapas. Those expelled were denied the right to a judicial hearing or appeal.

Amongst those expelled was Father Michel Chanteau, a French priest who had been living and serving as a parish priest in Chiapas for 32 years and who was active in the defence of human rights. Detained in Chiapas on 26 February 1998, Father Chanteau was transferred to Mexico City and was held for seven hours without access to legal counsel while being questioned.

While he was held, the *Instituto Nacional de Migración* (INM), National Immigration Institute, refused to provide information on his whereabouts or legal status to his diocese or to human rights NGOs. At the time of his expulsion, Father Chanteau had a complaint pending with the PGR over alleged death threats he had received from the then municipal mayor of Chenalhó just one month before the Acteal massacre. The mayor of Chenalhó was subsequently charged with homicide and assault and firearms offences in connection with the Acteal massacre.

The expulsion of Thomas Hansen, the former director of Pastors for Peace, a USA-based NGO, also in February 1998, followed his detention for 24 hours without access to legal counsel. He was then deported without the right to be heard or the right to review by a competent authority. Subsequently, the expulsion was successfully challenged in the courts and the ban on his returning to the country was lifted. The government appealed the ruling but by the end of the 1998 it was still awaiting judicial decision.

In May 1998 the Ministry of the Interior introduced visa requirements for foreign human rights observers to visit the country⁵⁷. These made it more difficult for individuals representing human rights organizations to promote and monitor human rights due to delays in obtaining visas, restricting visits to 10 days except in extraordinary circumstances and requesting detailed information about the places and organizations to be visited, thereby jeopardizing the confidentiality of victims, relatives and witnesses giving testimonies.

Amnesty International recognizes the right of the authorities to control the access of foreign visitors to Mexico. However, these new visa requirements, insofar as they limit those in Mexico to unhindered access to competent international human rights bodies, would appear to run counter to the spirit and intent that lie behind article 9.4 of the United Nations Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998. Article 9.4 states:

"...everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms".

⁵⁷ See Amnesty International, 'Mexico: New visa requirements jeopardise work of human rights defenders', News Service 101/98, AI Index: 41/27/98, 29 May 1998.

6 RECOMMENDATIONS

Amnesty International welcomes the measures which the government of Mexico has taken over recent years to protect human rights. Despite these measures, however, the widespread violation of human rights continues with impunity.

Amnesty International recommends to the Government of Mexico that it:

- Ensure the full and effective investigation of all allegations regarding torture, extrajudicial execution, and “disappearance”, that the findings are made public and those responsible are brought to justice. All officials implicated in these violations should be suspended from their duties pending the results of an independent investigation and the conclusion of judicial procedures against them.
- Approve legislation which ensures that cases of torture, extrajudicial execution and “disappearance” under civilian jurisdiction. The crime of “disappearance” should be introduced into Mexican law in accordance with international standards.
- Ensure that law enforcement officials adhere to the relevant articles of the UN International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), including Article 9 (1) of the ICCPR and 7 (3) of the ACHR prohibiting arbitrary arrest or detention.
- Ensure that law enforcement officials fully respect human rights in accordance with international standards, including the UN Code of Conduct for Law Enforcement Officials.
- Take measures to ensure the independence of the judicial authorities, including judges and prosecutors, in accordance with the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.
- Ensure the full respect for the rights of national and international human rights defenders to carry out their legitimate activities in accordance with the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Visa regulations currently in force for international human rights monitors to visit Mexico should be brought into line with this Declaration.
- Implement the recommendations made by the UN Human Rights Committee, the UN Committee Against Torture (April 1997), the UN Special Rapporteur on Torture (January 1998), and the Inter-American Commission on Human Rights (September 1998), and invite visits to Mexico by the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers.