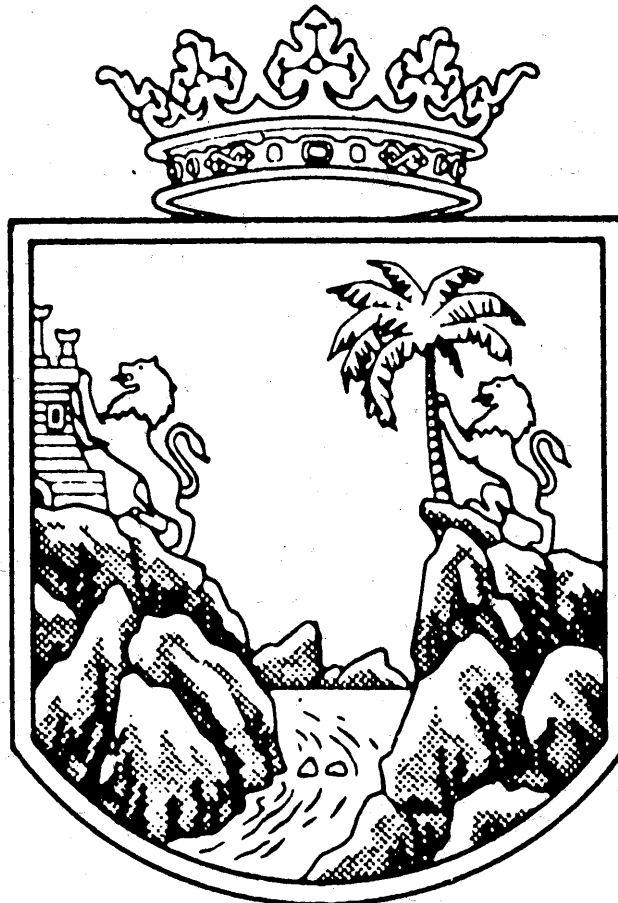


## CONQUEST CONTINUED

DISREGARD FOR HUMAN AND INDIGENOUS RIGHTS  
IN THE MEXICAN STATE OF

### CHIAPAS

October 1992



Minnesota Advocates  
for Human Rights

*6-16-92*



# CONQUEST CONTINUED

## DISREGARD FOR HUMAN AND INDIGENOUS RIGHTS IN THE MEXICAN STATE OF CHIAPAS

October 1992

A Report By  
Minnesota Advocates  
for Human Rights\*

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\* Formerly the Minnesota Lawyers International Human Rights Committee

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## PREFACE\*\*

The Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") has received numerous reports from Mexican human rights activists over the past several years indicating a worsening situation for the respect of human rights in the southeastern state of Chiapas. The state has long had a generally bad reputation for its human rights practices, and frequently has been described as backwards, isolated, and undeveloped. Specific documentation, however, on human rights conditions in Chiapas is relatively scarce in the international human rights community.<sup>1</sup>

Responding to this generalized concern in Mexico for the situation in the state, and the corresponding dearth of information, the Minnesota Lawyers Committee sent investigators Daniel L. Gerdts, Carla J. Hagen, and Polly A. Maier to Mexico from 6 to 22 March 1992 to investigate current human rights practices in the state of Chiapas.

During their fact-finding mission the investigators interviewed journalists, lawyers, human rights activists, peasant organizers, clergy, municipal mayors and judges, state government officials in Chiapas, detainees in four Mexican prisons, and many indigenous peasants alleging human rights abuses. Lawyers Committee investigators conducted visits and interviews in the cities of Comitán, Ocosingo, San Cristóbal de las Casas, San Juan Chamula, Tenejapa, and Tuxtla Gutiérrez, all in the state of Chiapas. Other interviews were conducted in Mexico City, and a Committee delegate also briefly joined a group of 300 indigenous peasants marching to Mexico City from Palenque, Chiapas, in protest of the government treatment of the indigenous population of the state.

This report is based on information gathered during those visits and interviews, on academic research, and on additional information supplied by the *Centro de Derechos*

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\*\* Minnesota Advocates for Human Rights (MAHR) was formerly the Minnesota Lawyers International Human Rights Committee. This report refers to the organization by its former name which was in use at the time the report was written.

<sup>1</sup> Amnesty International has documented conditions in some rural regions of the state. Its study was based largely on investigations conducted in March 1984. See AMNESTY INTERNATIONAL, MEXICO: HUMAN RIGHTS IN RURAL ZONES (1986).

*Humanos "Fray Bartolomé de las Casas."*<sup>2</sup> This report was written by Daniel Gerdts, Carla Hagen, and Polly Maier.

The Minnesota Lawyers International Human Rights Human Rights Committee gratefully acknowledges the receipt of a grant from the General Service Foundation which greatly facilitated this project.

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<sup>2</sup> The *Centro de Derechos Humanos "Fray Bartolomé de las Casas"* is a non-governmental human rights group based in San Cristóbal de las Casas, Chiapas. The *Centro* provides human rights defense and advocacy, preferentially on behalf of the poor, through investigation, analysis, and documentation of specific cases of abuse, and through community education, legal consulting, and networking with other organizations.



## SUMMARY

The Mexican state of Chiapas has long been noted for its physical beauty, natural wealth, and oppressed indigenous population. After the arrival of the Spanish, and their "conquest" over the indigenous inhabitants of the region, the native Indians suffered centuries of exploitation as a cheap labor force for their conquerors. A Central American province under Spanish colonial rule, Chiapas became a Mexican state in 1824, but the tradition of subjugating its indigenous population did not change.

Debt peonage became an economic institution in the state in the late nineteenth century. Mexico City newspapers even referred to Chiapas during this period as the "slave-state" of Mexico. Although Chiapas has made significant social and economic progress since that time, the state government has not succeeded in shedding its image as oppressor of its indigenous inhabitants and servant to the local interests of landholders and the local political bosses called "caciques." This report by the Minnesota Lawyers International Human Rights Committee largely confirms that image.

Based on its investigation, the Minnesota Lawyers Committee found repression of the indigenous population of Chiapas to be state policy — a policy which has changed very little since the arrival of the first conquering Spanish explorers. One indigenous peasant interviewed by the Minnesota Lawyers Committee cynically opined that the government of Chiapas views the state's indigenous inhabitants merely as decorative, folkloric objects, useful primarily for attracting tourists.

During the past twenty years, significant and sometimes violent social strife has erupted in Chiapas because of discontent with the political and social status quo. Much of the conflict arises from attempts by the indigenous population to recuperate its ownership of agrarian land, and to obtain improved social services and basic infrastructure such as schools, roads, and electricity. The tense social situation was exacerbated in the early 1980s by a heavy influx of peasant refugees from neighboring Guatemala, and by a serious volcanic

eruption in 1982.

The conflict in Chiapas has not ceased. The Indian population continues to demand land reform, self-determination, essential public services, and respect for its basic rights as humans and indigenous people. The government and the powerful elite of Chiapas, despite their protestations to the contrary — despite even their occasional sincere efforts at reform — continue to keep the indigenous population in a condition of poverty, hunger, illiteracy, and subservient dependency.

## FINDINGS

- **Landless Peasants and Agrarian Conflict**

The desperate need for agrarian reform, which in large part fueled the bloody Mexican Revolution of 1910, still exists today in Chiapas. Much of the social conflict in the state arises from disputes between indigenous peasants who attempt to extend their rights to suitable agrarian land and others — usually armed, large landowners — who claim that land as their own, and block efforts at reform. The procedures for resolving these disputes are abysmally slow and ineffective. Indigenous peasants have in recent years resorted to squatting on and tilling private land to feed themselves and their families. The response of the landowners and government has been the forcible eviction of hundreds of peasants, destruction of their dwellings, and incarceration of their presumed leaders.

- **Arbitrary Arrest and Detention**

The state government's principal means of maintaining control over its indigenous population — and over others who would advocate its interests — is arbitrary arrest and detention. Despite the illegality of the practice under both international and Mexican law, state security agents in Chiapas do not hesitate to arrest and detain priests, peasants, federal workers, and hundreds of peaceful protesters as a warning to refrain from any social or political activism. Although agents habitually carry out these arrests without the required authority of arrest warrants, state judges routinely ratify the arrests, even when essential evidence is lacking or exculpatory evidence is available. When the illegally detained regain their

freedom, they must bear the costs of the injustice without hope of compensation.

- **Aggressive Enforcement of an Oppressive Criminal Code**

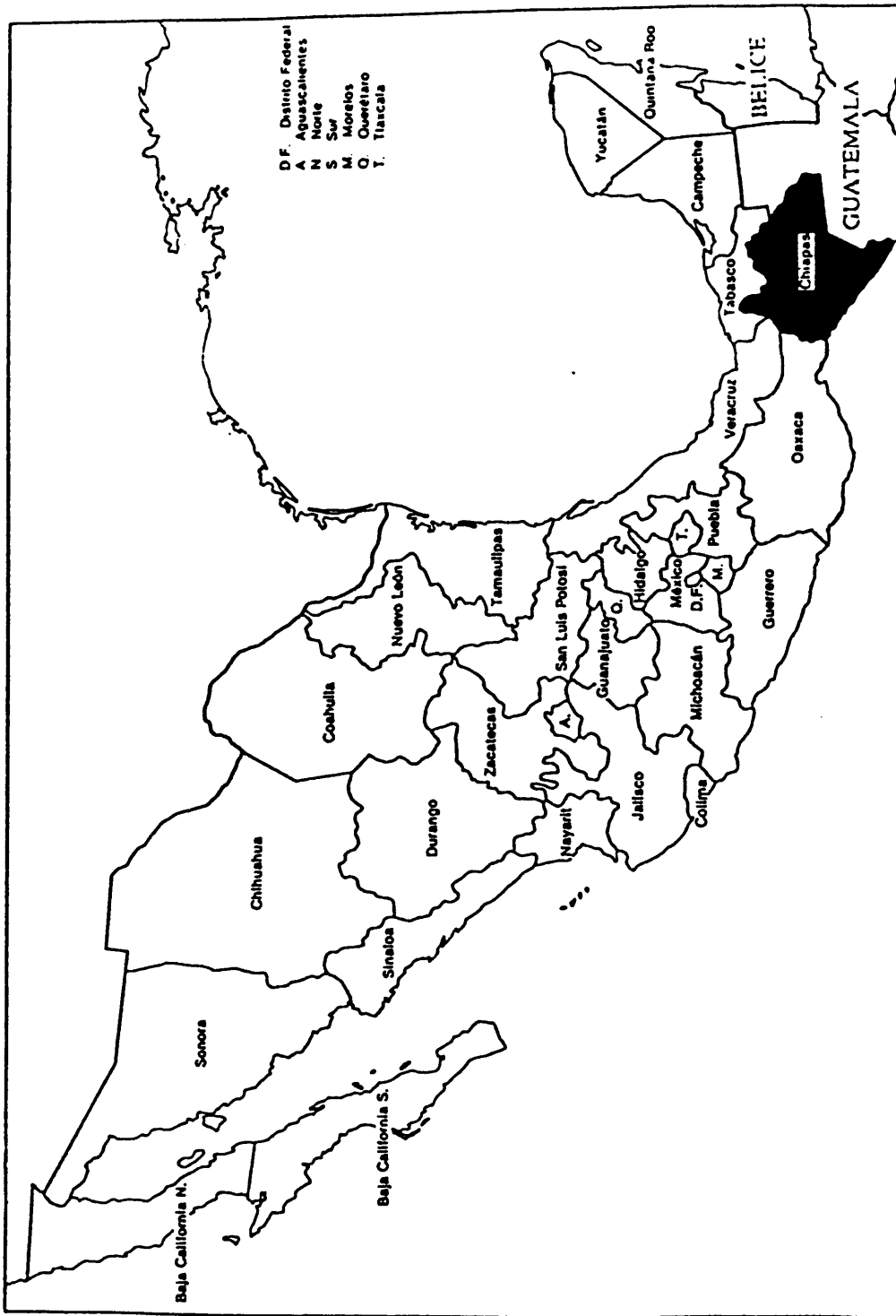
The new criminal code of the state of Chiapas has been used notoriously by the government to oppress its citizenry. The code provides for a variety of vaguely defined political offenses that state government officials have selectively enforced against dissident peasants or political opponents to maintain its tight control over the state population. The code's provisions may be interpreted to criminalize nearly every gathering of people who assemble publicly to protest governmental conduct or inaction. The State's enforcement of those provisions — against even peaceful protesters — has filled its overcrowded prisons with political prisoners.

- **Political Tyranny and Electoral Conflict**

The government's ruling political party, the *Partido Revolucionario Institucional* (the PRI), continues to dominate the political landscape of Chiapas. Charges of electoral fraud and imposition of PRI candidates into mayoral office are common. Regional and local political bosses still wield substantial power, and are reported to control elections and the local economies. Even the current state government admits that the social and economic systems of the state traditionally have been "semi-feudal" in nature. This situation has gravely frustrated the right of the people freely to choose their own leaders.

- **Religious Intolerance and Discrimination**

Although Chiapas shows substantially more religious pluralism today than in past decades, in some regions of the state persons still must keep their religious beliefs and practices secret for fear of ruthless reprisals that include incarceration, fines, and banishment. In municipalities such as San Juan Chamula thousands of indigenous peasants have suffered forcible eviction from their homes and communities ostensibly for not practicing the "correct" religious faith. Community leaders defend the practice of "expulsion" as necessary to preserve their traditional indigenous religion and culture.



## I. INTRODUCTION

"The Mexican Nation has a multi-cultural composition originally based in its indigenous peoples. The Law will protect and promote the development of their languages, cultures, rituals, customs, resources and specific forms of social organization, and will guarantee their constituents effective access to the jurisdiction of the State."

Mexican Constitution, Art. 4.<sup>3</sup>

"Chiapas is a state in which there is a large Indian population, the conditions under which they live are unimaginable, and these conditions are perpetuated by the caciques, who in turn serve the authorities and help control the people."

The PRD's Human Rights Commission, *The Political Violence in Mexico: A Human Rights Affair*.<sup>4</sup>

Chiapas, Mexico's southernmost state, lies on the Pacific Ocean and shares borders with Guatemala and the Mexican states of Oaxaca, Tabasco, and Veracruz. The state's largest city, and seat of state government, is Tuxtla Gutiérrez. Other important cities include Comitán, San Cristóbal de las Casas, and Tapachula. Most of the state is undeveloped and rural.

The state boasts high pine-covered mountains, chains of lakes, dramatic waterfalls, dense jungle, and a Pacific Ocean coastline. It has bustling historic

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<sup>3</sup> CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 4 (Mex.).

<sup>4</sup> HUMAN RIGHTS COMMISSION OF THE *PARTIDO DE LA REVOLUCIÓN DEMOCRÁTICO*, *THE POLITICAL VIOLENCE IN MEXICO: A HUMAN RIGHTS AFFAIR* 79 (1992).

cities with cobbled streets and sixteenth-century churches, as well as breathtaking Mayan ruins. The indigenous people who live in Chiapas are descendants of the Maya and speak Mayan languages, such as Tzotzil and Tzeltal. Since the early colonial period, when only Fray Bartolomé de las Casas argued they were human beings with souls, the native people of Chiapas have been subjected to economic, cultural, and political oppression.

Forced to labor as slaves for the Spanish conquistadors, the Indians of Chiapas also lost much of their land and their cultural and religious autonomy to the invaders. Missionaries viewed them as prime raw material for creating a Catholic empire in the New World. Despite the many pressures on them, Chiapas indigenous groups retained their languages, their dress, and many of their customs. They adopted a folk Catholicism, pairing traditional Christian saints with their ancestral gods of wind, rain, and fire.

As Chiapas became more populated by Europeans, its indigenous people eventually were viewed less as a fertile ground for religious conversion and more as an underclass work force. Viewed as stupid, backward, and unclean, they were scorned by the Europeans and *ladinos*<sup>5</sup> who used them as servants. The word *indio* became an insult.

When indigenous people attempted to claim their rights — usually to land — they were brutally repressed. Large landowners controlled most of the arable soil in the state, and they usually had the help of the army, police, or their own private security personnel to enforce and extend their hegemony.

The notorious injustice in Chiapas stirred a generation of journalists and writers. They created a school of prose called *indigenista* because it dealt with indigenous themes. Rosario Castellanos, for example, raised by an indigenous nurse in Comitán, Chiapas, wrote movingly of the class and race struggles in her native state.

According to census data, Chiapas's population in 1990 was 3,210,496.<sup>6</sup>

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<sup>5</sup> Mexicans of mixed European-Indigenous ancestry.

<sup>6</sup> See data of the *Instituto Nacional de Estadística, Geografía e Informática*.

As any visitor will note, indigenous people constitute the majority of the population in most parts of the state, though the census data indicate only approximately one fourth of the total population to be indigenous.<sup>7</sup> These indigenous peoples include Tzotziles, Tzeltales, Choles, Zoques, Tojolobales, and Mames. Other indigenous groups include the Mochós, Cakchiqueles, and Lacandonés, inhabitants of the jungle, whose dwindling numbers now put them in danger of extinction.<sup>8</sup> Most indigenous people continue to speak their own languages and nearly one quarter to one third of them do not speak Spanish.

A. Geographic Isolation and Political Feudalism

For analytical purposes, Mexico may be divided into three regions: the industrialized and economically advanced North; the agriculturally productive central region, which is also the political and governmental center of the country; and the undeveloped and largely indigenous South. Chiapas, part of Mexico's deep south, is also one of Mexico's most isolated states. This isolation contributes to its poor human rights record and makes reform more difficult.

The oppression of the indigenous inhabitants of the state has been organized for centuries by local caciques, or political power brokers, who wield control of much of the land and politics of the state. Landowners also are reported to hire their own private gunmen to maintain control when necessary. Even the current government of Chiapas admits the "permanence of an economic and social system of a semi-feudal nature" in Chiapas with "grave implications of marginalization and injustice," though, naturally, the government takes credit for what it suggests is a remarkable recent reformation of the system.<sup>9</sup> The investigation by the Minnesota Lawyers Committee, however, suggests that the momentum of that long historical tradition has not yet been arrested.

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<sup>7</sup> *Id.* The large concentration of Mexicans of European or mixed ancestry in the principal cities probably accounts for their predominance in state population as a whole.

<sup>8</sup> IV ENCICLOPEDIA DE MÉXICO 2052, 2065-2066 (1987).

<sup>9</sup> La Jornada, 30 June 1992, at 18, col. 1 (a two-full-page advertisement paid for by the government of the state of Chiapas).

B. The Failure of the Mexican Agrarian Revolution in Chiapas

Many of the social and human rights problems in Chiapas arise in the context of the loss of or attempt to recuperate land by the peasants. A fundamental issue in Mexico since the time of the conquest has been the division and ownership of land. Mexico's violent revolutionary struggle, set off in 1910 after nearly a century of independence, was fought in large part over the issue of equitable land distribution. Throughout the country's history, most of the productive land has remained in the hands of the few — first the Spanish *hidalgos*, then the independent Mexican elite, and today the *de facto* owners of illegally large landholdings.

Since pre-Hispanic times, many indigenous peoples in Mexico have worked and lived on communal village lands. The traditional village common, now called an "*ejido*," is held collectively by the community but distributed in parcels to individual *ejidatarios* and their families for cultivation.<sup>10</sup> A chief characteristic of the *ejido* traditionally has been that the *ejidatario* cannot sell or encumber it, but may only farm it.<sup>11</sup>

After Spain's conquest of Mexico, the Spanish rulers legally recognized the communal system, but melded traditional communal ownership of land with large, landed estates — *latifundia* — which usually took the form of rural ranches, or *haciendas*. It was typically the Spanish ruling class that owned the *latifundia*, either as individuals or families. Under the feudal structures created after the conquest, the *latifundistas* required the indigenous peoples to provide them with labor, but the peoples retained the right to cultivate their *ejido* land and consume or trade the proceeds of that land.<sup>12</sup> The Spanish also granted corporate status to existing indigenous peasant communities, and gave them inalienable rights to their common lands.<sup>13</sup>

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<sup>10</sup> Chevalier, *The Ejido and Political Stability in Mexico*, THE POLITICS OF CONFORMITY IN LATIN AMERICA 161, 162 (1967).

<sup>11</sup> But see Chapter VII *infra* and the recent amendments to constitutional article 27.

<sup>12</sup> Interview with Prof. Jeane H. DeLaney, in Minneapolis (26 May 1992).

<sup>13</sup> *Id.*



After Mexican independence from Spain in the early nineteenth century, however, legal protections on the *ejidos* slowly eroded. The latifundium gained prominence during this same period, and many *ejidos*, viewed as an obstacle to the assimilation of the peasants into a liberal market economy, were absorbed by the large latifundia.<sup>14</sup>

The historic 1917 Constitutional Convention, which took place in the midst of revolutionary violence, resurrected the *ejido* system of communal landholding. Article 27 of the 1917 constitution gave the government broad powers to expropriate and redistribute land and resources.<sup>15</sup> It provided the legal basis for breaking up the large latifundia and dividing them among the peasants. Article 27 institutionalized the *ejido* as a form of collective land ownership, declaring *ejidos* inalienable to prevent their reabsorption into the latifundia.<sup>16</sup> *Ejido* land could not be transferred except through inheritance or through reallocation in cases where the *ejidatario* failed to cultivate it.<sup>17</sup> The constitution also recognized the legal ownership of small private properties (*la pequeña propiedad*), but set limits on how much land legally could be owned by the same person or entity.

Because of Chiapas's geographic isolation, however, it took little part in the violent revolutionary struggle that began in 1910. The reforms that followed the revolution, and the agrarian revolution in particular, also left Chiapas relatively untouched. Chiapas today is reported to have the highest level of pending petitions for land reform in the country.<sup>18</sup> Ownership of the most productive land in Chiapas is still in the hands of a small minority of the

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<sup>14</sup> Chevalier, *supra* note 10, at 161-162.

<sup>15</sup> CONST. preamble to art. 27 (Mex.).

<sup>16</sup> Chevalier, *supra* note 10, at 163.

<sup>17</sup> *Id.*

<sup>18</sup> Interview with Bishop Samuel Ruiz García, in San Cristóbal de las Casas (13 Mar. 1992). See also T. BENJAMIN, *A RICH LAND, A POOR PEOPLE: POLITICS AND SOCIETY IN MODERN CHIAPAS* 230 (1989) ("By the 1970s there were nearly 4,000 agrarian petitions pending, many decades old and apparently forgotten.").

population. Some of that minority own illegally large tracts of land which they disguise on the official registers by declaring relatives or in-laws as the *de jure* owners of numerous contiguous plots of legal-sized parcels.<sup>19</sup> Other landowners — of legal-sized small landholdings — regularly use plots of land contiguous to their own as if they were an extension of their legal property. The corresponding situation of many poor indigenous inhabitants of the state is that of resident laborer (*peón acasillado*) on the estate of a large land owner.

The glacially slow pace of land reform in Chiapas has generated considerable discontent among the peasants of the state, who also regularly protest the lack of basic infrastructure and social services in the indigenous communities. The indigenous peoples in Chiapas, with the help of opposition political parties and numerous peasant organizations, have begun over the past twenty years to assert their legal rights to land through a successful formula of filing petitions for legal land reform *and* applying political pressure by occupying the land in issue. Such occupations have not all been met kindly, however, and violence frequently has erupted, usually resulting in the forcible removal of the squatters. The indigenous inhabitants of the state also have started to use their political organizing skills to press for improvements or reform in other areas such as public services. Thus the increased political understanding and organization of the indigenous people and the vested interests of the landed elite increasingly have conflicted in recent years.

The current Governor of Chiapas, José Patrocinio González Garrido, came to office with the difficult task of maintaining social and political order in a state where these conflicts have generated considerable political tension. The negotiations for a North American Free Trade Agreement contribute to the problem by creating more political pressure for the governor to maintain social order.

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<sup>19</sup> These landholdings are called "disguised latifundia" ("*latifundios disfrazados*") by Mexicans.

C. Chiapas as a National Security Interest

Chiapas is considered a national security interest in Mexico. The state borders Guatemala, and is culturally, historically, and economically more Central American than Mexican. During the Spanish colonial period Chiapas was a Central American province. It was not until 1824 that Chiapas joined the Mexican federation, and then only after several years during which it alternately claimed allegiance to Mexico, declared itself a sovereign nation, and later again part of Guatemalan territory. Guatemala and Mexico nearly waged war over Chiapas.

During the 1970s and 1980s officials in the Mexican government worried that Central America's political turmoil would spill over into Chiapas. Guatemalan troops several times made incursions into Mexican territory in Chiapas in search of refugees thought to provide aid to Guatemala's rebels. These security concerns continue to contribute to the problems in the state by providing the justification for a greater military presence and a higher concentration of other federal and state security personnel. By 1987 approximately 4000 soldiers were stationed in Chiapas.<sup>20</sup> These were in addition to the Federal Judicial Police and the two state police forces, the Public Security Police and the State Judicial Police.

Among the tools used by the governor to maintain social order in this tense state is the new criminal code. The code, signed into law the day after the governor took office, allows the police to quell even peaceful protests and demonstrations without breaking the law — state law, at least. It provides the basis for government authorities to declare such gatherings illegal, and for arresting and prosecuting the organizers of these protests.<sup>21</sup>

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<sup>20</sup> BENJAMIN, *supra* note 18, at 237.

<sup>21</sup> For a legal critique of the criminal code *see infra* Chapter V.

## II. COLLECTIVE VIOLATIONS AGAINST INDIGENOUS PEOPLES

Many political problems and human rights abuses affecting indigenous people in Chiapas arise in the context of agrarian land tenancy disputes. Because these problems often involve *ejidos*, or indigenous communal landholdings, the resulting human rights violations sometimes affect entire communities.<sup>22</sup> Massive collective violations may also occur in non-agrarian cases where lack of basic social services or some other socio-political cause brings together large groups of indigenous people to petition for change. The official reaction to such demonstrations frequently is the arrest and detention of dozens, sometimes hundreds, of people.

Events in the lower northern region of the state of Chiapas figured large in the news during early 1992 because of conflicts between the indigenous population and the government. For many years the indigenous people of the region have petitioned the government for basic public services such as water, roads, and electricity. They also have protested the high tax on the farm land in the area around Palenque. The tax is high because the area is considered a "Touristic Zone." The indigenous peasants, however, have little to do with the tourists and consider the tax unjust.<sup>23</sup>

The government had issued arrest warrants against many of the Indians participating in the various protests in the region and three Indians reportedly were assassinated by government agents in the late 1980s.<sup>24</sup> A social justice

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<sup>22</sup> See *infra* Chapter VII.

<sup>23</sup> Interview with Oscar Rodríguez Rivera, representative of the *Centro de Apoyo para la Defensa de los Derechos Indígenas*, in Coatzacoalcos, Veracruz (20 Mar. 1992).

<sup>24</sup> Press conference statement by Efraín Gutiérrez Gómez, in Coatzacoalcos, Veracruz (20 Mar. 1992) (Gutiérrez Gómez reported the following deaths: Eugenio Aguilar, by agents of the State Public Security Police in 1989; José Daniel López Gómez, by municipal police in Palenque on 13 Mar. 1986; and José Morelo, by the Army in 1984).

movement of indigenous people in the north of Chiapas began after one of the assassinations in 1986.<sup>25</sup>

A. Mass Arrest in Palenque

"Everyone has the right to freedom of peaceful assembly and association."

Universal Declaration of Human Rights,  
Art. 20.<sup>26</sup>

"An assembly or meeting shall not be considered illegal, and cannot be dissolved, that has as its objective making a petition, or submitting a protest for some act, to an authority, if it does not slander the authority or make use of violence or threats to intimidate or obligate the authority to make a favorable resolution."

Mexican Constitution, Art. 9.

After years of unsuccessful petitions to the government for improvements in basic services, the indigenous peasants in and around Palenque began a peaceful sit-in, or "*plantón*," in the central square of Palenque calling upon the new municipal government to negotiate the old problems, such as the high tax on farms, the civil registration procedures, and the lack of interpreters in the prosecutor's office. The *plantón* began on 26 December 1991. Two days later, on 28 December at 11:00 p.m., 200 agents of the Chiapas Public Security Police and the State Judicial Police forcibly removed the 300 peaceful demonstrators from the square. Eight people suffered grave injuries and 103 were arrested as a result of the operation. The 103 arrested Indians were transferred to Cerro Hueco prison in Tuxtla Gutiérrez.

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<sup>25</sup> *Id.*

<sup>26</sup> Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A(III), U.N. Doc. A/810, art. 20 (1948).

Detainees allege they were held incommunicado and not provided with food or even water during the first three days of detention.<sup>27</sup> The state agents threatened the detainees with torture, suggesting they would drown the detainees in the river or would use electrical cables, Coca Cola, Tehuacán, and chile on them.<sup>28</sup> They interrogated the detainees with this psychological coercion, demanding that the detainees identify the organizers and leaders of the group.<sup>29</sup>

After three days, ninety-four of the detained were set free. The eight alleged to be the leaders were kept in custody at Cerro Hueco prison and charged with a series of crimes from the new criminal code including terrorism, criminal apology, sedition, and rioting.<sup>30</sup> A ninth detainee was transferred to Yajalón and accused of an unrelated homicide.<sup>31</sup> Arrest warrants were issued for three others, not rounded up in the initial mass arrest, accused of the same crimes.

In this case, as in the arrest of Father Joel Padrón described below, the state government attempted to negotiate a release of the detainees in exchange for concessions from opposition groups. One of the Government demands for their release was that the national press and human rights groups not become involved

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<sup>27</sup> Interview with Efraín Gutiérrez Gómez, in Coatzacoalcos, Veracruz (20 Mar. 1992). *See also* interview with Hugo Cameras Flores, in Coatzacoalcos, Veracruz (20 Mar. 1992).

<sup>28</sup> Tehuacán is a popular brand of carbonated mineral water which police have made famous as a tool of torture by forcing it up the nostrils of detainees — sometimes laced with hot chile. Coke is used in a similar fashion.

<sup>29</sup> Interview with Efraín Gutiérrez Gómez *supra* note 27.

<sup>30</sup> The charges were: *lesiones, apología de un delito, sedición, asonada o motín, and atentados contra la paz y contra la integridad corporal y patrimonial de la colectividad y del Estado* ("terrorismo" in other Mexican criminal codes). *Averiguación Previa Número 417/20/991*.

<sup>31</sup> Manuel Martínez Pérez, a Chol Indian, was actually a case of mistaken identity: he had the same name as the man accused of the murder. Nonetheless, though authorities were informed of their mistake (even the family of the victim visited the detainee and testified that he was not the man who killed their family member), they continued to hold him in the Yajalón jail until 1 April 1992.

in the case.<sup>32</sup>

The eight defendants remained detained at Cerro Hueco for thirty-three days, during which time, though not convicted of any crime, they were given abusive work assignments which sometimes required them to haul putrescent garbage with their hands or be drenched with sewage. At least one detainee understood this treatment as a warning to him and his indigenous companions to cease all public demands for improved services or governmental action.<sup>33</sup>

B. Response of the National Human Rights Commission

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

International Covenant on Civil and Political Rights, Art. 9 (5).<sup>34</sup>

The National Human Rights Commission (CNDH) received complaints about the mass arrest the day after it occurred, and conducted an investigation into the incident. Its investigation included an exhaustive analysis of the elements of each crime charged against the defendants and of the conduct of the protesters. The investigation of the CNDH concluded there was no *prima facie* case against any of the detainees for any of the charged crimes.<sup>35</sup>

On 28 January 1992 Dr. Jorge Carpizo, president of the CNDH, sent an official letter to Governor González Garrido that related the findings of the

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<sup>32</sup> Interview with Oscar Rodríguez Rivera *supra* note 23.

<sup>33</sup> Interview with Efraín Gutiérrez Gómez *supra* note 27.

<sup>34</sup> International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), 21 GAOR, Supp. 16, art. 9 (5), U.N. Doc. A/6313, *entered into force* 23 Mar. 1976, 999 U.N.T.S. 171, 6 I.L.M. 368.

<sup>35</sup> COMISIÓN NACIONAL DE DERECHOS HUMANOS, 92/19 GACETA 9, 10-12 (Feb. 1992).

CNDH investigation. Based on those findings, Dr. Carpizo suggested that all the detainees be released unconditionally, and that all arrest warrants issued in connection with the incident be quashed.<sup>36</sup> The detainees were released.

The CNDH did not, however, suggest that the state compensate the illegally detained individuals for the injustice they suffered — a conspicuously lacking element in virtually all the CNDH suggestions and recommendations. Nor did the CNDH question the constitutionality of the criminal code provisions, or make any note of the legal error of the state judges who, despite the lack of sufficient evidence, approved the arrests, ordered the continued detention of the eight detainees, and issued arrest warrants against others implicated by prosecutors.

In interviews with investigators from the Minnesota Lawyers Committee, state government officials said the release of the detainees was an adequate resolution of the matter.<sup>37</sup> No administrative or criminal charges have been brought against any of the agents responsible for the abuses. One official considered it of the utmost significance that the CNDH had not issued an official *Recommendation* on the case, but only wrote a letter. The officials defended the illegal arrests as appropriate, and none considered the arbitrary detentions to have violated the rights of the citizens jailed.

This case is representative of how the government of Chiapas abuses its criminal code and police power to maintain control over the indigenous population of the state. By making mass arrests, under the pretext of law enforcement, in situations where groups are gathered peacefully to exercise their freedoms of expression and association, the government effectively abridges the rights of its citizens, and quells dissident speech. By then later releasing the detainees without a conviction, or by arranging for a "suspended" procedure or sentence, the government can maintain it is acting in conformity with the law, and even treating its citizens with magnanimity. This governmental conduct is commonplace in

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<sup>36</sup> The text of this letter is reproduced *infra* as an appendix.

<sup>37</sup> Interviews with Filiberto Reyes Espinosa, Secretario Jurídico del Gobernador Constitucional del Estado de Chiapas, in Tuxtla Gutiérrez (17 Mar. 1992); and a high ranking official in the office of the State Attorney General who refused a "formal" interview, in Tuxtla Gutiérrez (17 Mar. 1992).



Chiapas, and highlights how the government stifles the rights of its citizenry with the ever-present threat of police arrest.

C. Xi'Nich' March

Although the events in Palenque were only more in a series of confrontations between indigenous people and the state government, they precipitated a renewed determination on the part of the indigenous population in and around Palenque to win governmental respect for its human and indigenous rights.

Indigenous leaders reported that in the past the governor had not listened to the Indians' demands.<sup>38</sup> When indigenous representatives sought negotiations, the Governor occasionally sent intermediaries, but the intermediaries never had the authority to negotiate adequate resolutions. After the mass arrest in Palenque, the Indians began negotiations with the state Congress, but congressional president Roger Grajales is quoted as telling them that human rights were only a "fashion," or a mere "hobby," and that *amparo* was the proper avenue for advancing their interests.<sup>39</sup>

With the assistance of nongovernmental organizations such as the *Centro de Apoyo para la Defensa de los Derechos Indígenas*,<sup>40</sup> several indigenous groups organized a "March for Peace and Human Rights of Indigenous

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<sup>38</sup> Interview with Oscar Rodríguez Rivera *supra* note 23.

<sup>39</sup> *Id.* The writ of *amparo* is a constitutional remedy of extraordinary importance in the Mexican juridical order. Its principal function is to provide federal court protection of individual rights guaranteed in the constitution. For more general information about *amparo*, see Fix Zamudio, *A Brief Introduction to the Mexican Writ of Amparo*, 9 CAL. W. INT'L L.J. 306 (1979).

<sup>40</sup> "Support Center for the Defense of Indigenous Rights." A representative of the *Centro de Apoyo* said it was organized because of "the now permanent situation of human rights abuses in the low jungle region of Chiapas." Interview with Oscar Rodríguez Rivera *supra* note 23.

Peoples."<sup>41</sup> The marchers set out from Palenque on a more than 700 mile trip to Mexico City to protest the treatment of indigenous people in Chiapas, to publicize the problems, and to get the support of the federal government. The march was nicknamed *Xi'Nich'* — Tzeltal for "ant" — chosen for the manner in which the state government traditionally treats the indigenous population of the state.<sup>42</sup>



*Indigenous Xi'Nich' marchers, en route to Mexico City,  
waiting for water in Coatzacoalcos, Veracruz.*

When an investigator from the Minnesota Lawyers Committee joined the

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<sup>41</sup> "*Marcha por la Paz y los Derechos Humanos de los Pueblos Indígenas.*"

<sup>42</sup> Interview with Oscar Rodríguez Rivera *supra* note 23.

march in Coatzacoalcos, Veracruz, there were approximately 300 indigenous peasants making the arduous hike to Mexico City. Among those present were representatives from the municipalities of Amatlán, Esquintla, Ocosingo, Palenque, and Salto de Agua in the state of Chiapas, and additional participants from Veracruz. The marchers had a list of twenty-one demands, addressed to Governor González Garrido, including: that the government recognize the judges and rural municipal agents elected by local communities according to their custom and tradition; that interpreters be present in prosecutors' offices to take statements from those Indians who do not speak Spanish; that civil registrars cease to extract bribes for issuing birth and marriage certificates; that farm taxes be reassessed; and that the state take a variety of actions to meet the social and political needs of the indigenous population.<sup>43</sup>

The marchers found great support from the people they met along the way and also learned that similar problems and abuses affected other indigenous people: very marginalized communities, lack of the most basic services, and governmental oppression in response to indigenous demands for appropriate improvements.<sup>44</sup>

National and international newspapers gave the march significant coverage.<sup>45</sup> The *Xi'Nich'* march halted in Mexico City after forty-eight days on the road and two days of intense negotiations with the federal Ministry of the Interior. In agreements signed by Federal Secretary of the Interior, Fernando Gutiérrez Barrios, the Chol, Tzeltal, Tzotzil, and Zoque Indians received promises that included freedom for ten jailed Indians, and assurances that 150 arrest warrants against indigenous protesters would be cancelled, that a commission would resolve more than 300 agrarian disputes, that interpreters

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<sup>43</sup> Letter to Governor Patrocinio González Garrido, from representatives of *Comité de Defensa de la Libertad Indígena, Unión de Comunidades Indígenas de la Selva de Chiapas, TSOBLEJ YU'UN jWOCOLTIC*, and *Centro de Apoyo para la Defensa de los Derechos Indígenas, A.C.* (20 Jan. 1992).

<sup>44</sup> Interview with Oscar Rodríguez Rivera *supra* note 23.

<sup>45</sup> See, e.g., *Excelsior*, 20 Mar. 1992, at 1, col. 1; *La Jornada*, 8 Mar. 1992, at 19, col. 3; 15 Mar. 1992, at 1, col. 2; and 21 Mar. 1992, at 10, col. 1; and the *Miami Herald*, 26 Apr. 1992, at 11A, col. 1.

would be installed in courts, and that resources would be provided for the installation of basic community services.<sup>46</sup> The Indians agreed not to proceed to the international cultural conference then taking place in Mexico City where the government's National Indigenous Institute was hosting 1,500 representatives from indigenous peoples all over the hemisphere.<sup>47</sup>

The agreements were not signed by representatives of the Chiapas government, however, and recent reports from Chiapas indicate the state government is not respecting the agreements.<sup>48</sup>

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<sup>46</sup> FILO ROJO, 25 May 1992, at 51; Miami Herald, 26 Apr. 1992, at 11A, col. 1.

<sup>47</sup> FILO ROJO, *id.*; Miami Herald, *id.*

<sup>48</sup> Telephone interview with Anastasio Gómez Encino, of the *Comité de Defensa de la Libertad Indígena*, from Palenque (13 July 1992).

### III. GOVERNMENT HARASSMENT OF TARGETED INDIVIDUALS AND INSTITUTIONS

"No one shall be subjected to arbitrary arrest, detention or exile."

Universal Declaration of Human Rights,  
Art. 9.<sup>49</sup>

"No one may be disturbed in his person, family, residence, papers, or possessions, except by virtue of a written order from the appropriate authority, that establishes and explains the legal basis for the procedure."

Mexican Constitution, Art. 16.

In addition to direct repression of the indigenous people of Chiapas, the Minnesota Lawyers Committee's investigation discovered a disturbing pattern of harassment and arbitrary arrest of non-indigenous individuals who work to benefit indigenous people. This pattern of persecution against individuals appears to be part of a larger campaign against the work of organizations or institutions that lend advice, organizing skills, technical expertise, and economic assistance to the Indians. Among those institutions recently affected are the National Indigenous Institute (*Instituto Nacional Indigenista* or "INI") and the Catholic Church.

The INI is a federal governmental agency formed to offer technical assistance and advocacy to indigenous peoples throughout Mexico. It has been active in Chiapas since the 1950s when it began a program in the Central Highlands of social and economic improvement. Although the Catholic Church played an early role in the oppression of America's indigenous populations, sympathetic clergy and other Church workers frequently have been among those

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<sup>49</sup> Universal Declaration of Human Rights, *supra* note 26, art. 9. *See also* International Covenant on Civil and Political Rights, *supra* note 34, at art. 9 (1).

who championed the cause of their indigenous parishioners. Fray Bartolomé de las Casas, the first bishop of the diocese now named San Cristóbal de las Casas, was among the first of these progressive clerics.

Although some indigenous rights activists consider any assistance from the Church or the INI to be unwanted patronization which further undermines their independence, others have welcomed the support. In today's Chiapas, however, whether one is a parish priest or a director of the INI, too much sympathy for the plight of one's indigenous parishioners or clients can put one at great personal risk of arbitrary arrest and incarceration.

A. State Directors of the National Indigenous Institute

The government of Chiapas enforces control over its indigenous population in part through the overwhelming dominance of the ruling political party, the *Partido Revolucionario Institucional* (PRI), and its network of municipal caciques. This political control allows the government and its political allies to take credit for any economic or infrastructural improvements in the lives of the population, and — more importantly — to direct such improvements where and when it deems politically expedient. Independent economic organizing and other important forms of local autonomy are strongly discouraged. In contrast, the federal government's INI lately has worked directly with the indigenous populations to encourage their independence and self-reliance. The government of Chiapas recently took severe measures to thwart that work.

The State Director of the INI in Chiapas, Dr. Ricardo Paniagua Guzmán, reported to the Minnesota Lawyers Committee that Governor González Garrido personally had admonished him not to work with indigenous economic organizations because it did not fit the Governor's politics.<sup>50</sup> Paniagua reiterated in his interview that the work of the INI serves no political or ideological ends, but responds strictly to the practical needs of the indigenous population.

According to Paniagua, in 1990 the government of Chiapas began a

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<sup>50</sup> Interview with Dr. Ricardo Paniagua Guzmán, in Cerro Hueco Prison, Tuxtla Gutiérrez (15 Mar. 1992).

pressure campaign for the INI to change its work.<sup>51</sup> A crisis occurred in the summer of 1991 when the PRI and its official peasant organization (the *Confederación Nacional del Campesino*, or "CNC") conducted a "diagnostic analysis" in preparation for the state municipal elections of 18 August 1991. The diagnostic analysis demonstrated that the PRI was losing substantial political support among the indigenous peasantry. The state's PRI determined the cause of that trouble to be the economic and technical aid and mobilization that institutions such as the INI and the Church provided to the indigenous population.<sup>52</sup>

The PRI determined that it faced especially strong opposition in the district of Margaritas. The opposition movement there had been active for nearly twenty years, and the district was home to many independent indigenous organizations. The state government notified Paniagua on 2 August 1991 that the INI coordinator in Margaritas must leave the state or be arrested. Paniagua informed the Margaritas coordinator, Arturo Farrera González. He left immediately. In the Margaritas elections the PRI won a majority of only 11,000 votes compared to 9,000 for the principal opposition party, the *Partido de la Revolución Democrática* (PRD).

The INI had been assisting indigenous communities to organize regional "producers councils." It helped set up sixteen producers councils in Chiapas, and through them the INI was channelling federal money into the communities from an economic assistance program called *Pronasol* (*Programa Nacional de Solidaridad*). The councils had their own Executive, Finance, and Technical Committees who ran the organizations; the INI offered only advice and technical assistance. These organizations received twenty-five billion pesos through *Pronasol* — representing a tremendous loss of state control over the allocation of economic benefits.<sup>53</sup>

In December 1991 approximately twenty-five armed agents of the State Judicial Police went to the home of Sergio Ramos, the INI coordinator in

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Copainalá, Chiapas. Without warrants and with guns drawn, they broke into the house, arrested Ramos and three others, stole two pick-up trucks, and took everyone to Ocoatepec, Chiapas.<sup>54</sup> Paniagua made frantic calls to many officials, including the President and the state Secretary of Government. The detainees were freed half a day later, but the state authorities had made their point. Paniagua warned four other INI workers they were in danger. All four left the state.<sup>55</sup>

On 29 February 1992, Paniagua was to have attended a meeting in Chilón, Chiapas, with the Governor. He had instructions to meet the state government officials at the Government Hangar at the Tuxtla Gutiérrez airport at 8:00 a.m., and arrived ready for the meeting at the appointed date and hour.

The Secretary of Government, Juan Lara Domínguez, soon arrived at the hangar and made a phone call. The Chief of Police arrived shortly thereafter. Lara Domínguez then approached Paniagua, gave him a "hug of Judas," and the police arrested him. No one produced a warrant for his arrest. When Paniagua asked what the charges were, police told him the state auditor had discovered a problem, and they just wanted to ask some questions to clear it up.

Paniagua was held incommunicado and interrogated from 10:00 a.m. to 7:00 p.m. When his wife appeared at the Attorney General's office at 3:00 looking for him, she was told he was not there.<sup>56</sup>

During the same day, state police agents were arresting several other INI officials in diverse parts of the state. Alfredo Medina Hernández, INI accountant and executive secretary, was arrested, without a warrant, in Tuxtla Gutiérrez at about 12:00 noon. The police also took Medina's three minor children into custody and held them until 9:30 that night at the Attorney General's office. Medina's wife also came looking for him, but, "on orders of superiors," police

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*



denied the presence of both men.<sup>57</sup>

At about 7:00 p.m. that evening, agents also arrested Juan José Lau Sánchez, Assistant State Coordinator of the INI. Again they produced no warrant. In Chilón, where the meeting was to have taken place, agents arrested anthropologist Argimiro Cortes Esteban, director of the INI center in Ocosingo. After his warrantless arrest, police took him first to Palenque, and then to Ocosingo, all the while incommunicado. The next day he was transferred to Cerro Hueco prison.<sup>58</sup>

Also on 29 February, state agents arrested José Marcelino Carrasco Pérez, Chief of the INI Department of Programming, and María Eugenia Espinosa Hernández, in charge of the Operations Department. Espinosa was taken into custody at her house in Tuxtla Gutiérrez. Agents told her they were investigating blood stains on her car. When she came out of the house she was arrested, without a warrant, and taken to the Attorney General's office. Agents told her only that they were acting on orders of superiors. Espinosa was released shortly thereafter.<sup>59</sup>

Early the next morning, Sunday, 1 March 1992, at 6:00 a.m., state agents arrested Carlos Humberto Albores Sánchez in Ocosingo. He, too, was arrested without a warrant and told the agents were acting on orders of superiors.

State agents arrested a total of seven INI officials in the operation, in addition to two cattle sellers.<sup>60</sup> All except Espinosa were charged with "Fraud." The fraud was alleged to have occurred in a cattle purchasing program in which five indigenous communities were to have received Swiss-Zebu cattle. The charges allege the INI officials abused the ignorance of the Indians to force the

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> The press also reported the arrests. *See, e.g.,* La Jornada, 3 Mar. 1992, at 23, col. 1, and 6 Mar. 1992, at 14, col. 1; El Día, 6 Mar. 1992, at 11.

wrong breed of cattle on them.<sup>61</sup>

The original program called for 330 female calves and sixteen stud bulls, all of a Swiss-Zebu breed, to be purchased for the communities with the budgeted money. Instead, with the consent of the communities involved, according to the INI detainees, they used the same amount of money to buy animals of a pure Zebu breed.<sup>62</sup> They purchased 364 female calves, 100 cows, 100 yearlings, and twenty-one stud bulls (239 *more* animals than originally programmed, but of a different breed). The state prosecuting officials do not allege that money was fraudulently diverted to the pockets of any of the defendants; rather, the fraud appears to consist solely in using government funds to buy the wrong class of cow.

The "fraud" was well documented over the course of several months, and the result was the coordinated apprehensions of the INI Directors in diverse parts of the state. In interviews with state government officials, investigators from the Minnesota Lawyers Committee inquired why, if the alleged crime was so carefully documented, and the arrests so well-coordinated, the police did not even bother to obtain the arrest warrants required by the Mexican Constitution. Government officials responded only that they were unfamiliar with the details of the operation, or that the National Human Rights Commission, after all, had issued no recommendation on the case.<sup>63</sup> The same officials had no explanation for why it was necessary to hold the detainees incommunicado and without immediate assistance of counsel.

After the initial seventy-two hour period of detention, all remaining detainees were released except for three of the INI directors (Paniagua, Cortes Esteban, and Albores Sánchez) and one cattle seller (José Antonio Solórzano Oropeza). Paniagua alleges the judge to whom the case had been assigned did not appear at the arraignment to hear any of the defense evidence before signing the formal detention order for those still detained. The judge also refused to hear

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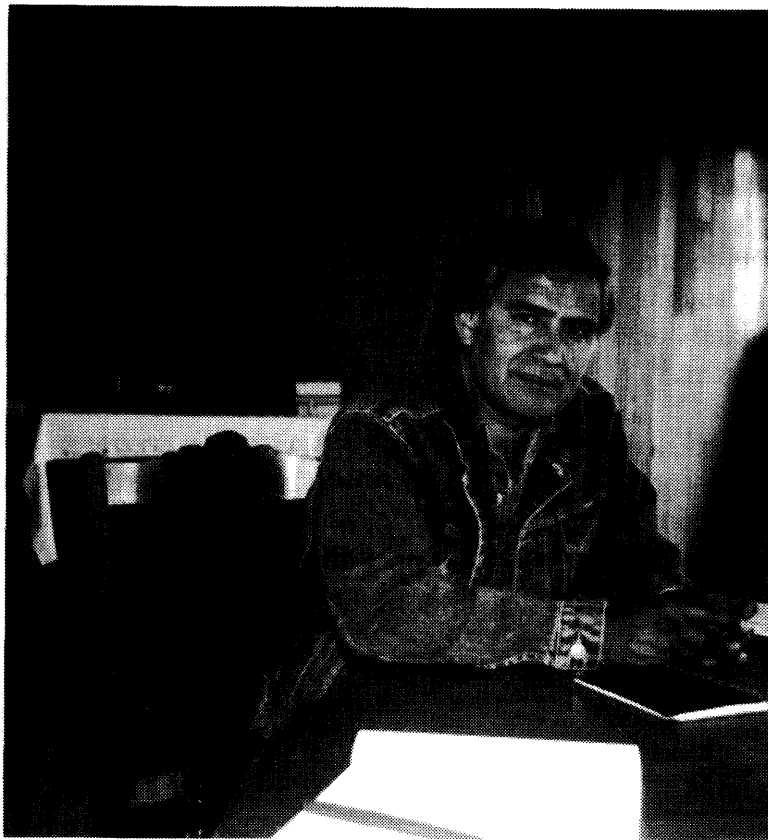
<sup>61</sup> Interview with Dr. Paniagua Guzmán *supra* note 50.

<sup>62</sup> *Id.*

<sup>63</sup> Interviews with Filiberto Reyes Espinosa *supra* note 37; and a high ranking official in the Office of the State Attorney General *supra* note 37.

the testimony of Indians — the alleged victims of the supposed fraud — who were present and prepared to testify on behalf of the defendants.<sup>64</sup>

It is reported that Paniagua and Cortes Esteban gained their provisional liberty on 14 April 1992 after depositing bail of more than a 160 million pesos each.<sup>65</sup> As of the time of this writing, their cases were still pending.



*Father Joel Padrón González*

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<sup>64</sup> Interview with Dr. Paniagua Guzmán *supra* note 50.

<sup>65</sup> La Jornada, 15 April 1992.

B. Father Joel Padrón González and the Catholic Church

Father Joel Padrón González has worked in the municipality of Simojovel, Chiapas, as a parish priest for many years. In an interview with an investigator from the Minnesota Lawyers Committee, Padrón described the normal pastoral work of the Church as naturally sympathetic to the situation of poor indigenous people. He considers the work on behalf of his indigenous neighbors especially important and necessary in Chiapas because of the manipulation and exploitation of those Indians.<sup>66</sup> Because of their support of the Indians, he and the Church now have become targets of repression by the state government.

Padrón reported being followed by an agent of the State Security Police from October 1990 until 14 September 1991.<sup>67</sup> On 13 September 1991 a group of twenty-three persons accused Padrón of organizing a land occupation. They accused him of leading a group of forty peasants to plunder the land using high-powered rifles and home-made bombs. He also was accused of stealing ten hens and a tape recorder.<sup>68</sup>

He was arrested on 18 September 1991 without a warrant — or even an oral explanation — and brought to Cerro Hueco prison in Tuxtla Gutiérrez. The formal charges against him included ten infractions from the new criminal code, including conspiracy, plundering, and possession of unauthorized weapons.<sup>69</sup> At Cerro Hueco he spent forty-nine days in a maximum security cell before a federal judge ordered his release.

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<sup>66</sup> Interview with Fr. Joel Padrón González, in San Cristóbal de las Casas (13 Mar. 1992).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> The charges were: *Asociación delictuosa, Pandillismo, Despojo, Robo, Daños, Amenazas, Provocación de un delito, Apología de un delito, Conspiración,* and *Armas prohibidas* (criminal association, gangsterism, plundering, robbery, vandalism, threats, criminal provocation, criminal apology, conspiracy, and illegal possession of firearms).

The parcel of land in question had been occupied by a group of indigenous squatters since 1989. The group had made a formal petition for the land through the appropriate legal channels but had not at that time received the proper state authorization. On 12 September 1991 a group of 100 peasants started to construct an office on a part of this land. The accusations against Padrón followed soon thereafter.

Padrón said he was held essentially as a political hostage.<sup>70</sup> The governor reportedly attempted to negotiate Padrón's release in exchange for concessions from the Church. There were five conditions to be met for his release:

- 1) that five specified parcels of land be vacated by peasant squatters;
- 2) that the Church formally condemn the taking of land by peasants;
- 3) that the Church declare there are no violations of human rights in the state of Chiapas;
- 4) that catechists cease to incite the taking of land by peasants; and
- 5) that Padrón immediately leave the state upon his release.<sup>71</sup>

Padrón's bishop categorically refused the offer, and demanded the unconditional release of Padrón.<sup>72</sup> On 5 November 1991, a federal judge granted Padrón's petition for the constitutional writ of *amparo*<sup>73</sup> — and thus his freedom — citing constitutional infirmities in his arrest. Padrón has not received

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<sup>70</sup> Interview with Fr. Joel Padrón *supra* note 66.

<sup>71</sup> *Id.*

<sup>72</sup> The bishop confirms the state's attempt to negotiate a release based on the cited conditions, and reports that his response was, "Either Joel will rot in jail for the rest of his life as an innocent man or he will be released *absolutely unconditionally*." Interview with Bishop Samuel Ruiz García *supra* note 18.

<sup>73</sup> *See supra* note 39.

any State compensation for the illegal arrest and incarceration.

Padrón reported continued harassment and criminal accusations since his release. He nonetheless perseveres in his work with the peasants in Simojovel. In Padrón's opinion, the governor has targeted the Church as a power to be confronted.<sup>74</sup> He thinks any organization that works with indigenous people not politically submissive to the state government runs the same risk of harassment and repression. Whether an organization advocates an opposition political opinion is irrelevant; its work is objectionable to the state government simply because it foments independence and, therefore, lack of state government control.<sup>75</sup>

Padrón also reported that agents of the police are visibly active all over the state, observing potential dissidents and taking notes (what he calls "psychological terror"). According to Padrón, "[t]he police are not here to maintain social order, but to terrorize the poor people."<sup>76</sup>

Press reports from as far away as Texas recently reported that death threats have been made against the Roman Catholic Bishop of San Cristóbal, Samuel Ruiz García, and several priests, including Padrón.<sup>77</sup> Governor González Garrido denounced the threats as part of a campaign of disinformation, but reportedly opened a thorough investigation into the source of the "rumors."<sup>78</sup> At the same time, ranchers and landowners in nine municipalities of Chiapas have denounced Bishop Ruiz and other clergy, and have asked high Roman Catholic officials to have them removed.<sup>79</sup> According to the ranchers and landowners,

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<sup>74</sup> Interview with Fr. Joel Padrón *supra* note 66.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *See, e.g.*, El Paso Times, 1 July 1992, at 10A, col. 2; and La Jornada, 30 June 1992, at 7, col. 1.

<sup>78</sup> La Jornada, 30 June 1992, at 7, col. 1; and *id.* at 18-19 (two-full-page advertisement paid for by the government of Chiapas).

<sup>79</sup> El Paso Times *supra* note 77; La Jornada, 30 June 1992, at 8, col. 1.

"we have testimonies that the pulpit has been used to harangue the peasants and Indians."<sup>80</sup>

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<sup>80</sup> La Jornada, 30 June 1992, at 8, col. 1, 4.

#### IV. ELECTORAL CONFLICT

"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Universal Declaration of Human Rights,  
Art. 21 (3).<sup>81</sup>

"In the final analysis, the government and its party in Chiapas simply impose their candidates without the slightest regard to local desires and demands. As a result, the PRI and even the postrevolutionary political system in Chiapas are losing legitimacy and increasingly govern Chiapas by force."

Thomas Benjamin, *A RICH LAND, A POOR PEOPLE*.<sup>82</sup>

##### A. Fraud and Popular Protest

Charges of electoral fraud and political repression have been levied against the government's ruling *Partido Revolucionario Institucional* (PRI) in all corners of Mexico. One of the principal opposition political parties, the *Partido de la Revolución Democrática* (PRD), reports that "[m]ost of the repression has been generated as a result of the attempts by the PRD to 'defend the vote,' after electoral fraud has occurred."<sup>83</sup> The PRD also reports 136 murders of its

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<sup>81</sup> Universal Declaration of Human Rights, *supra* note 26, art. 21 (3).

<sup>82</sup> BENJAMIN, *supra* note 18, at 237.

<sup>83</sup> HUMAN RIGHTS COMMISSION OF THE PRD, *supra* note 4, at viii.



leaders and activists since 1988, most of which occurred either as a direct consequence of protests against electoral fraud, or "as a result of the tensions created during the electoral and post electoral periods that leave negative marks on the community and create permanent enmities."<sup>84</sup>

In Chiapas, charges of electoral fraud have exacerbated an already high level of political tension in the state, sometimes resulting in serious human rights abuses. A frequent scenario, as reported by numerous interviewees, is the "election" of a PRI candidate for municipal president (mayor) through fraud, and a consequent protest by opposition groups. Some of the protests turn to violence,<sup>85</sup> but more common is a simple, peaceful occupation of the municipal palace, or a blocking of the door to prevent the new mayor from entering and officially carrying out the duties of the office.

The new Chiapas criminal code contains several provisions tailored specifically to quell this kind of protest by criminalizing any effort to prevent such newly "elected" officials from taking office. A provision on Rebellion, for example, makes it illegal to use force to attempt to "[r]emove any state or municipal public servant from office or prevent that official from carrying out the duties of that office";<sup>86</sup> the provision on Sedition provides that "[t]hose who, gathered tumultuously, but without arms, resist authority or attack it to impede the free exercise of its functions . . . commit sedition";<sup>87</sup> and yet another provision is aimed at "[t]hose who, under the pretext of exercising a right, gather tumultuously and . . . threaten authority, its agents or public servants, or who pose serious resistance when these are exercising or attempting to exercise the

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<sup>84</sup> *Id.*

<sup>85</sup> Benjamin reports, for example, that in the aftermath of the 1979 municipal elections several municipal palaces were burned down. BENJAMIN, *supra* note 18, at 236.

<sup>86</sup> Código Penal para el Estado Libre y Soberano de Chiapas (C.P. Chis.) art 216 (1990). For a more in-depth critique of this article and the Chiapas criminal code as a whole, see *infra* Chapter V.

<sup>87</sup> C.P. Chis. art. 222.

functions of their office."<sup>88</sup> In precise response to the popular kind of protest described above, the code even provides a specific penalty for "those who, under the pretext of exercising a right, gather tumultuously to take over buildings."<sup>89</sup>



*Indigenous residents of Tenejapa*

B. The Tenejapa Case

The Minnesota Lawyers Committee investigated the circumstances surrounding the recent electoral conflict in the municipality of Tenejapa, in the central

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<sup>88</sup> *Id.* art. 225.

<sup>89</sup> *Id.* (providing for up to five years imprisonment).

highlands of Chiapas. Tenejapa is a town of approximately 6000 primarily indigenous inhabitants (most of whom speak Tzeltal). Municipal elections were held in Tenejapa in August 1991. A PRI politician named Sebastián López Méndez allegedly won that election and is the current mayor. Opposition partisans allege he rose to the post through fraud and, because of a criminal background, should, in any case, be ineligible for the office.<sup>90</sup>

López Méndez's term as mayor was to begin officially on 1 January 1992. On 30 December 1991 he took the oath of that office and attempted on 1 January to enter the municipal offices and thus begin his term. He was unable to enter the building, however, as a large group of protesters had staged a sit-in in front of the door and refused to let him pass. López Méndez then traveled to Tuxtla Gutiérrez to meet with the State Attorney General and request assistance in the matter.<sup>91</sup>

The dissident protesters were partisans of the *Frente Cardenista de Reconstrucción Nacional*, an opposition political party. On 4 January they named their own municipal leaders, ended their demonstration, and returned to their villages and homes.

On 7 January hundreds of agents of the State Judicial Police and the State Security Police arrived in Tenejapa. With the support of these agents, PRI partisans, supporters of López Méndez, and municipal officials rounded up and forcibly detained eighteen residents of the municipality, reportedly entering private homes to make arrests. The authorities and citizens making the arrests even broke into a local monastery to arrest several individuals who were there

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<sup>90</sup> Interview with Juan Pérez Luna, Juan Girón López, Alonso Jiménez Santiz, and Alonso Jiménez López, in San Cristóbal de las Casas (12 Mar. 1992) [hereinafter interview with the Tenejapa Four].

<sup>91</sup> Statement of Sebastián López Méndez before Sergio Alfredo Corzo Lizaola, *Subdirector de Averiguaciones Previas de la Zona Altos*, Procuraduría General de Justicia del Estado, Averiguación Previa No. 059/CAJ4/1992, *acumulada a la 023/1992*, at 6 (8 Jan. 1992).

teaching catechism to children. They also apprehended several of the children.<sup>92</sup>

The detainees allege there were no search or arrest warrants, and official documents indicate none existed.<sup>93</sup> Most of the eighteen persons detained were taken to the town jail, but a few allege they were detained in the bathroom of López Méndez's house where they were held for a day. One interviewee said he was held there with a 14-year-old youth. The detainees also allege they were subjected to beatings at the hands of those who carried out the arrests.<sup>94</sup> Those arrested were all indigenous peasants who professed support of the *Frente Cardenista* political party.

Fourteen of those originally detained were transferred the following day to San Cristóbal de las Casas where they were presented to the prosecuting authorities. Of these fourteen, eleven were released, there being no evidence to support any charges against them. Four others had been taken to Tuxtla Gutiérrez where three later were released. The four who remained detained were charged with criminal apology, sedition, insurrection, and terrorism.<sup>95</sup> They were held until 30 January 1992, at which time they were provisionally released, and the case against them was suspended.<sup>96</sup>

In an interview with Mayor López Méndez, investigators from the Minnesota Lawyers Committee inquired about events leading up to the arrests, the legal basis for the arrests, and how the arrests were carried out. López

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<sup>92</sup> Interview with the Tenejapa Four, *supra* note 90. See also CENTRO DE DERECHOS HUMANOS "FRAY BARTOLOMÉ DE LAS CASAS," 6 HORIZONTES 26-31 (May 1992).

<sup>93</sup> Interview with the Tenejapa Four, *supra* note 90; Averiguación Previa No. 059/CAJ4/992, *supra* note 91.

<sup>94</sup> Interview with the Tenejapa Four *supra* note 90.

<sup>95</sup> Averiguación Previa No. 059/CAJ4/992, *supra* note 91, at 1. The names of those charged were Juan Pérez Luna, Juan Girón López, Alonso Jiménez Santiz, and Alonso Jiménez López. *Id.*

<sup>96</sup> Interview with the Tenejapa Four *supra* note 90. See also 6 HORIZONTES, *supra* note 92, at 30.

Méndez denied all allegations of fraud, abuse, and arbitrary arrest, and specifically denied that anyone had been beaten or incarcerated in his bathroom.<sup>97</sup> He said everything the "Cardenistas" alleged were lies and calumny, though the investigators from the Committee did not relate the substance of any allegations against him. López Méndez further asserted that Tenejapa was 100% "PRIísta" and that the whole population supported him.

López Méndez said the demonstrators and catechists were arrested because they were "agitators."<sup>98</sup> He said the people in Tenejapa simply could not take any more "provocations" and calumnies, and had to put an end to it.<sup>99</sup> He also cited threats and general social unrest in the community because of the "troublemakers." López Méndez repeatedly assured the Committee investigators that he wanted only peace and tranquility in Tenejapa.

López Méndez also explained that residents of Tenejapa had made the arrests themselves, and that they really had no need for the state police. He said the persons arrested were all transferred, that same day, to San Cristóbal — again by town residents — and that no abuses occurred.<sup>100</sup> He seemed eager to dissociate the state police agents from the incident, and assured the Committee delegates that Tenejapa had only a handful of regular police.

The detainees reported that they continue to receive threats and harassment, and that they also endure economic repression.<sup>101</sup> The catechists

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<sup>97</sup> Interview with Sebastián López Méndez, Mayor of Tenejapa, in Tenejapa (12 Mar. 1992).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* The documents of the prosecutor's office all show the receipt of the prisoners to have taken place the next day, 8 January 1992. See generally *Averiguación Previa No. 059/CAJ4/992 supra* note 91. López Méndez insisted, however, that the detainees were all transferred on the same day as their arrest, 7 January 1992.

<sup>101</sup> Interview with the Tenejapa Four *supra* note 90.

also reported that they now are forbidden to teach catechism.<sup>102</sup> The economic repression allegedly consists of tight control by López Méndez of the sale of their coffee harvest at below-market prices. Responding to this allegation, López Méndez — known as "Señor Pepsi" because of his lucrative control of the sole soft-drink distributorship in town — categorically denied all allegations of coffee market monopolization and said people could sell their harvests to absolutely anyone who wanted to buy it.<sup>103</sup>

The detainees also reported that everybody in the municipality of Tenejapa has been obligated to sign documents claiming allegiance to the PRI and López Méndez.<sup>104</sup> They also asserted that since the arrests on 7 January there have been daily roster counts of residents in some villages, and constant surveillance by agents of the State Public Security Police. They remarked that a garrison of agents has been camped just outside of town ever since 7 January 1992.<sup>105</sup> Indeed, the Committee investigators who visited Tenejapa observed an encampment of at least a dozen agents at the government food warehouse on the outskirts of Tenejapa.

Recent reports indicate that political tension and governmental abuses continue in Tenejapa. The most recent incident began on 15 July 1992. On that day over 400 Indians from thirty-seven communities in the municipality were gathered in the central square awaiting the arrival of a commission of congressional representatives from Mexico City to help resolve the political conflict in the municipality. At approximately 6:30 that afternoon between 200 and 300 agents of the State Public Security Police entered the square firing guns in the air and discharging tear gas bombs. The crowd fled and one woman was injured.<sup>106</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> Interview with López Méndez *supra* note 97.

<sup>104</sup> Interview with the Tenejapa Four *supra* note 90.

<sup>105</sup> *Id.*

<sup>106</sup> Communiqués from the Centro de Derechos Humanos "Fray Bartolomé de las Casas" (16 and 17 July 1992).

The reports charge that the next day supporters of López Méndez scoured the communities of Tenejapa, detaining and beating the dissatisfied dissidents, and incarcerating men, women, and children in a warehouse in Pocolum. Dozens of persons sustained injuries in the operation — many from knives and firearms — and there was one unconfirmed report of two homicides.<sup>107</sup> One hundred persons reportedly fled the municipality of Tenejapa seeking temporary refuge in the neighboring municipality of Chenalhó.<sup>108</sup>

The most recent report from Chiapas indicates that numerous Indians from Tenejapa opposed to López Méndez have organized an independent political opposition group, and on 20 July 1992 began a sit-in next to the central square of San Cristóbal de las Casas to protest the abuses of the López Méndez administration.<sup>109</sup> As of the time of this writing, the sit-in continued. They are demanding: the unconditional freedom of all the Indians imprisoned or charged in connection with the political conflict in Tenejapa, punishment for the aggressors, the immediate departure of the agents of the state police forces, and the resignation of the current administration of Tenejapa.<sup>110</sup>

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Communiqué from the Centro de Derechos Humanos "Fray Bartolomé de las Casas" (21 July 1992).

<sup>110</sup> *Id.*



*MLC Investigators Carla Hagen and Daniel Gerds with Sebastián López Méndez ("Señor Pepsi"), Mayor of Tenejapa.*



## V. THE CHIAPAS CRIMINAL CODE: LEGALIZING INJUSTICE

"The right of peaceful association or assembly for any legal objective cannot be restricted . . . ."

Mexican Constitution, Art. 9.

"The permanent violation of human rights [in Chiapas] is institutionalized in the recently reformed State Penal Code, in which the present Governor Patrocinio González Garrido, included laws that instead of opening the possibility for an advance towards democracy, have been designed as an instrument that serves to punish any effort that the authorities might consider threatening."

PRD's Human Rights Commission, *The Political Violence in Mexico: a Human Rights Affair*.<sup>111</sup>

Until recently, the caciques and landowners in modern Chiapas repressed the state's indigenous population with the tacit cooperation of authorities, but often not by legal means. The new state criminal code, however, signed into law one day after Governor González Garrido took office in December 1988, appears to have changed that situation. The criminal code ambiguously codifies as criminal activity much conduct — such as large public demonstrations — which otherwise would be guaranteed constitutionally to all Mexicans. The Minnesota Lawyers Committee heard many reports that the state government uses the code as a tool of oppression by enforcing its vague articles against political opponents or indigenous activists. The code was modified again in October 1990, but the offensive provisions were not removed.

The code has made it possible more effectively to prosecute and control

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<sup>111</sup> HUMAN RIGHTS COMMISSION OF THE PRD, *supra* note 4, at 79.

indigenous people, as well as various other interest groups (including trade unions and student organizations), by providing vaguely-defined political crimes and increasing the penalties of other offenses. Its overall effect is to criminalize most forms of political dissent. To those who had watched with alarm the brutal reality of Chiapas, the new code seems like a cruel joke: Chiapas, one of the most illegally repressive states in the Republic of Mexico, has now codified its means of repression.

#### A. Legal Overview

The criminal code of Chiapas embodies many of the general concepts of criminal justice in Mexico: an emphasis on society's rights as opposed to those of the individual; a prevalence of crimes against status, honor, or esteem; and penalties that require loss of legal status and privileges in addition to imprisonment. There also are some oddities in the code: Chiapas is the only state in Mexico to have decriminalized abortion; and while other state criminal codes criminalize the knowing transmission of contagious diseases,<sup>112</sup> the Chiapas code provides stiff sentences for the crime and also creates liability for hospitals or other medical treatment centers in which the disease is transmitted.<sup>113</sup>

The Chiapas code also includes ecological legislation. It provides criminal penalties, for example, for habitually polluting drivers and factories.<sup>114</sup> Related provisions outlaw the possession of manual and power saws except under special circumstances.<sup>115</sup> Although deforestation is a serious problem in Chiapas, and ecological laws like these are essential to the preservation of the state's diverse flora and fauna, critics charge that indigenous people are adversely affected because they depend on wood for warmth and cooking. Indeed, it is worth noting that under the Chiapas criminal code an indigenous peasant who possesses a hand

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<sup>112</sup> See, e.g., Código Penal para el Estado Libre y Soberano de Chihuahua (C.P. Chih.) art. 224 (1987).

<sup>113</sup> C.P. Chis. art. 285 (1990).

<sup>114</sup> *Id.* arts. 287 and 288.

<sup>115</sup> *Id.* art. 292.

saw without a permit is subject to greater criminal penalties than a drug trafficker caught in possession of an Uzi automatic rifle.<sup>116</sup>

The most controversial of the new criminal code provisions are the political crimes — some newly created or defined, and others that now carry increased sentences. The political crime provisions are alarming because they have been used to attack legitimate dissent. The increased sentences for some of the political crimes also are alarming because the immediate effect of the increase is merely to deprive those charged of their right to provisional freedom under bond.<sup>117</sup>

As in other Mexican jurisdictions, the code provides for a probationary sentence (*condena condicional*) that requires the defendant to post bond and refrain from the same or similar conduct during the period of probation.<sup>118</sup> Critics charge that the probationary sentence, as currently used, is not appropriate for the largely indigenous and rural population of the state. Because the probationary sentence allows incarcerated defendants their freedom (necessary for the survival of subsistence farmers), many otherwise defenseless peasants confess to guilt in exchange for probation. The result is a criminal record for otherwise innocent peasants, and the hardship of having to report to a government office as

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<sup>116</sup> See *id.* arts. 235 and 292 (possession of prohibited arms carries a possible prison sentence of three months to three years; possession of a hand saw without permission carries a possible prison sentence of two to five years — and five to eight years for recidivists).

<sup>117</sup> Under both the Mexican Constitution and the Chiapas Code of Criminal Procedure, a defendant has the right to obtain provisional freedom by posting bail bond or other security with the court if the arithmetic mean of the prison sentencing guideline for the offense charged does not exceed five years. CONST. art. 20, § I; C.P.P. Chis. art. 524. For example, if the criminal code specifies a sentencing guideline of three to six years for a particular crime, the defendant will have the right to provisional freedom under bond  $[(3 + 6) \div 2 = 4.5]$ ; if, however, the criminal code provides for between two and ten years of prison, the defendant loses his or her right to provisional freedom  $[(2 + 10) \div 2 = 6]$ .

<sup>118</sup> C.P. Chis. arts. 84-92. See also C.P.D.F. art. 90 (1989); and C.P. Chih. arts. 75-81 (1989).

often as once every eight days — an undue burden for peasants who live in the mountains, far from government centers, and who lack motorized transport.<sup>119</sup>

The new Chiapas code also introduces the controversial concept of a gubernatorial grant of liberty by virtue of a suspended procedure or sentence — a quasi-pardon that appears neither to terminate the prosecutorial process nor discharge the taint of guilt.<sup>120</sup> While other Mexican codes provide for the possibility of true amnesty and full pardon<sup>121</sup> — as does the Chiapas code<sup>122</sup> — this new provision allows the governor to appear magnanimous without extinguishing the apparently indefinite threat of renewed incarceration and prosecution for those accused of political crimes.<sup>123</sup> The potentially pernicious scenario is evident: organizers of anti-government demonstrations may be arrested and charged with political crimes that do not afford the possibility of liberty under bond; if significant popular protest results, or the prosecution appears difficult, the governor may "resolve" the matter by granting the defendant liberty under a "suspended procedure," thereby appearing benevolent, but legally retaining the threat of future detention and prosecution, even if the initial arrest were illegal or the original charges unfounded.

#### B. Political Crimes

At least six provisions in the Chiapas criminal code tend to criminalize political dissent. Although Mexican legal philosophy does not emphasize individual rights as much as some other legal philosophies, the Chiapas code — as it is currently enforced — abridges these rights in a truly draconian fashion not followed by other Mexican jurisdictions. Indeed, some Mexican states even criminalize the

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<sup>119</sup> See, e.g., interview with Fr. Joel Padrón González *supra* note 66.

<sup>120</sup> C.P. Chis. arts. 96-99.

<sup>121</sup> See, e.g., C.P.D.F. arts. 92-98; C.P. Chih. arts. 83-88.

<sup>122</sup> C.P. Chis. arts. 94-95.

<sup>123</sup> Article 98 suggests the provision was designed specifically for cases of "political" crimes.

knowing infringement of individual rights.<sup>124</sup>

Article 224 of the Chiapas code curiously designates most crimes in Title Nine of the code — including rebellion, sedition, and rioting — as "political" crimes.<sup>125</sup> This designation apparently is for the purpose of implementing other code provisions that allow for an executive suspension of procedure, or commutation of sentence, in cases of "political" crimes.<sup>126</sup> The designation of these crimes as political indicates that the state legislature and governor knew precisely under what circumstances the provisions would be enforced. The explicit designation, however, also implies that other crimes, such as terrorism, are not political — regardless of form or motive.

1. Attacks against Patriotic Symbols or National or State Historic Values

The first political crime provision — though not designated a "political" crime — is buried strangely in the Eighth Title, *Crimes Against Public Morals*, in a chapter with four unrelated criminal provisions proscribing obscene materials and prostitution. The provision forbids anyone to "attack patriotic symbols or national or state historic values." All five crimes in the chapter carry a potential sentence of three days to four years and a fine of ten to fifty days of salary. In the case of attacks against patriotic symbols or national or state historic values, however, it further provides that "the sentence will be increased somewhat more."<sup>127</sup>

The provision is odd for several reasons. First, it is hidden in a chapter of mundane crimes against public morals. Second, it vaguely provides for a stiffer penalty of unspecified proportion against violators. Third, its substantive

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<sup>124</sup> The Chihuahua criminal code, for example, prohibits anyone from obstructing another's free expression of ideas. C.P. Chih. art. 235.

<sup>125</sup> C.P. Chis. art. 224.

<sup>126</sup> See, e.g., *id.* arts. 76 and 98.

<sup>127</sup> *Id.* art. 207, § V.

language is exceedingly vague: what are "historic national and state values," and how are they violated? Even the phrase "patriotic symbols" is open to interpretation. By contrast, the federal criminal code, in a specifically worded provision, prohibits desecrating the national shield or flag.<sup>128</sup>

## 2. Rebellion

Article 216 of the code, *rebellion*, located in the section titled *Crimes Against the Interior Security of the State*, forbids anyone

who not being military personnel on maneuvers, with violence and the use of weapons, tries to:

- I. Abolish or reform the Political Constitution of the State or the Institutions that flow from it;
- II. Impede the election, renewal, functioning or integration of any of the officials of the State or Municipality, usurp their authority or prevent the free exercise of it;
- III. Remove any state or municipal public servant from office or prevent that official from carrying out the duties of that office; or
- IV. Subvert from governmental obedience all or part of any town of the State or any public security force.<sup>129</sup>

"Rebellion" would seem to be one of those dormant laws which, applying only to an organized, armed insurrection, rarely would be used. Legal criticism of this provision, however, characterizes it as an aggravated version of the former

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<sup>128</sup> C.P.D.F. art. 191.

<sup>129</sup> C.P. Chis., art. 216.

law that many hoped would be stricken from the 1990 revision of the code because of its "high level of unpopularity and the number of people who ended up in Cerro Hueco [prison] as a result of [it]." <sup>130</sup>

The Chiapas provision on rebellion is nearly identical to the federal crime of the same name except that the federal provision, in the subsection on removing officials from office or preventing the exercise of their duties, applies only to specific, "high functionaries," <sup>131</sup> while the Chiapas code applies to "any public servant." Moreover, according to Filiberto Reyes Espinosa, Legal Secretary to the Governor, violence can be "psychological" as well as physical. <sup>132</sup> The provision, therefore, could be used against any peasant who, brandishing a machete, stands in front of the municipal building and refuses to let enter the village clerk in protest of a recent electoral fraud — a frequent scenario in Chiapas.

That a state government enacts — and enforces — a law against "rebellion" with the same penalties as the corresponding federal offense, <sup>133</sup> and that applies to a wider range of circumstances, speaks tellingly of the insecurity of the Chiapas ruling class and its willingness to use the law as a tool of repression. To that end, of course, the Chiapas code also prescribes the same penalty for anyone who "provides the rebels with arms, munitions, money, supplies, transportation, or communication." <sup>134</sup> That is, in the same

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<sup>130</sup> Amado Avendaño Figueroa, *editorial*, *Tiempo*, 29 Feb. 1992, at 2, col. 7.

<sup>131</sup> C.P.D.F. art. 132, sub. III.

<sup>132</sup> Interview with Filiberto Reyes Espinosa *supra* note 37.

<sup>133</sup> The 1990 Chiapas code increased the sentence for Rebellion from two to four years to two to twenty years of prison — identical to the range for the corresponding federal offense. C.P. Chis. art. 216. The Chihuahua criminal code, in contrast, provides guidelines of from one to six years. C.P. Chih. art. 107. It should be noted that the immediate effect of this increase in the sentencing guideline was to preclude any person charged with Rebellion from the right to liberty under bail — probably the only reason for the change. *See supra* note 117.

<sup>134</sup> C.P. Chis. art. 217.

hypothetical suggested above, a penalty of up to twenty years, and no right to liberty under bond, for the peasant's spouse who provides the "rebel" with tamales for breakfast.

Likewise, the Chiapas code also provides for up to ten years of prison for anyone who, "[i]n any way or by any means invites a rebellion."<sup>135</sup> This vague article arguably could be applied to anyone who stands in the village square giving a speech calling for clean elections and political change.

### 3. Political Conspiracy and Sedition

The next chapter in the code, *Conspiracy, Sedition and Other Public Disorders*, contains several suspect provisions. Commenting on this chapter, lawyer Amado Avendaño Figueroa noted "the new Criminal Code aggravated and confused the crimes of conspiracy, sedition and other public disorders; with the State itself defining when popular actions are political in character."<sup>136</sup>

Conspiracy to commit political crimes (conspiracy for common crimes defined elsewhere<sup>137</sup>) exists "whenever two or more people resolve, together, to commit one of the crimes specified in this Title and agree on the means to achieve their determination."<sup>138</sup> The punishment for conspiracy to commit a political crime is two to seven years of prison or confinement for the same length of time and a fine of up to fifty days of salary.<sup>139</sup>

Sedition is defined very broadly: "Those who, gathered tumultuously, *but without arms*, resist authority or attack it to impede the free exercise of its functions, with any of the objectives referred to by article 218 [sic] of this code,

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<sup>135</sup> *Id.* art. 218.

<sup>136</sup> *Tiempo*, 29 Feb. 1992, at 2, col. 1, 3.

<sup>137</sup> C.P. Chis. arts. 11 and 12.

<sup>138</sup> *Id.* art. 221.

<sup>139</sup> *Id.*



commit sedition."<sup>140</sup> By this definition, a group of teachers who hold a noisy demonstration in the square and refuse to leave, or a group of workers who stage a sit-in in a government building (thus temporarily halting activity inside) could be prosecuted for sedition.

The sentence for sedition is two to four years in prison, and it is twice that, plus a fine of fifty to one hundred days of salary, for the "intellectual authors" of the sedition.<sup>141</sup> Intellectual authorship — masterminding — is always difficult to prove, but even more difficult when the crime is by definition "tumultuous" and confusing.

#### 4. Rioting or Insurrection

Of all the crimes in the controversial chapter on conspiracy and sedition, article 225 is potentially the most dangerous. Under this provision, nearly all gatherings to express collective discontent become acts of civil disobedience. It reiterates first that it is a crime for citizens to gather together to exercise their freedom of expression unless authorities deem their group to be well-organized, non-violent, non-threatening to authority or public servants, and as not interfering with the duties of state or municipal officials:

Those who, under the pretext of exercising a right, gather tumultuously and disturb the public order with the use of violence against people or things, or who threaten authority, its agents or public servants, or who pose serious resistance when these are exercising or attempting to exercise the functions of their office, in order to intimidate the authority or to compel it to take some decision, are guilty of rioting or insurrection. This crime will be punished by two to four years of prison and a fine of twenty to fifty days of salary.<sup>142</sup>

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<sup>140</sup> *Id.* art. 222 (emphasis added).

<sup>141</sup> *Id.* art. 223.

<sup>142</sup> *Id.* art 225.

Political demonstrations, of course, rarely serve any other purpose but to insist that government officials take some determined course of action advocated by the group sponsoring the demonstration. Because the code does not define violence,<sup>143</sup> and because chants or speeches can interrupt official duties or be construed as threatening, this vague provision has far-reaching implications. But article 225 goes much further, making it a crime to participate in any demonstration, regardless of how peaceful, if it is "tumultuous" and obstructs the flow of traffic, occupies a building, or takes place in a public park:

Without taking into account other crimes they may have committed in each case, those who, under the pretext of exercising a right, gather tumultuously to take over buildings or public parks, or who obstruct ground, air or water routes of transportation, will receive an increased penalty of up to one fourth more than that specified in the preceding paragraph.<sup>144</sup>

A fair reading of this provision allows state government officials to incarcerate an entire crowd of disgruntled peasants or students for up to five years if the hapless protesters take over a public park in a state of confusion "under the pretext" of exercising their rights of free expression and association. Supporters or organizers of such gatherings run the risk of ten years behind bars: "Those guilty [of aiding, abetting, or conspiring] . . . will receive, *in addition to the penalty in this article*, a duplicate prison sentence and fine."<sup>145</sup>

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<sup>143</sup> When questioned about the broad and possibly unconstitutional sweep of this provision, Filiberto Reyes Espinosa, Legal Secretary to the Governor, emphasized that "moral violence," or psychological violence, can be as serious and damaging as physical violence. Interview with Filiberto Reyes Espinosa *supra* note 37.

<sup>144</sup> C.P. Chis. art. 225.

<sup>145</sup> *Id.* (emphasis added). The effect of the increased sentence in this provision again is to deny the accused the right to liberty under bond. *See supra* note 117.

5. Terrorism

Another broad and menacing provision is found in Title Ten, *Crimes Against Public Security*. The chapter with the long name of *Attacks Against the Peace and Corporal and Patrimonial Integrity of the Collective Good and of the State* contains only one provision:

Whoever commits acts against persons, things, or public services, using explosives, toxic substances, firearms, fire, flood or *any other violent method* that produces alarm, fear or terror in the population, or in a group or sector of it, in order to disturb the peace or to try to diminish the authority of the State or to pressure the State to take some decision will receive from ten to forty years of prison and a fine of up to one hundred days of salary, without taking into account the penalties that correspond to other crimes here enumerated.

Whoever has knowledge of the activities of a terrorist and of his identity and does not inform the authorities will receive from two to eight years of prison and a fine of up to sixty days of salary.<sup>146</sup>

Although this provision largely duplicates other crimes already defined in the Chiapas code, it does provide for the severe penalty of up to forty years imprisonment, which the other provisions do not. The federal criminal code contains an identical provision titled "terrorism,"<sup>147</sup> and such a provision might be a justifiable prosecutorial tool in cases of true terrorism. The government of Chiapas, however, has proved willing to define terroristic "violence" in the broadest terms, and has used this provision in such a way as to suggest it was renamed in the Chiapas code so it could be applied to a much broader range of circumstances. The Palenque case, described above,<sup>148</sup> is only one example of its use against peaceful protesters.

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<sup>146</sup> *Id.* art. 237 (emphasis added).

<sup>147</sup> C.P.D.F. art. 139.

<sup>148</sup> *See supra* Chapter II.

These provisions, taken together, and as currently enforced, create broad categories of political crimes which embrace every conceivable form of political protest, with the possible exception of the printed word. According to human rights workers in Chiapas, a proposed code article that would have instituted prior restraint was aborted because of the concerted and vociferous protests of journalists.<sup>149</sup> Under the new code, those journalists likely would have been considered criminals for their protests.

C. Overpopulation, Injustice, and Deplorable Conditions in Cerro Hueco Prison

"In imposing penalties laid down by general law on members of [indigenous] peoples account shall be taken of their economic, social and cultural characteristics.

"Preference shall be given to methods of punishment other than confinement in prison."

ILO Convention (No.169) Concerning  
Indigenous and Tribal Peoples in  
Independent Countries, Art. 10.<sup>150</sup>

One of the results of the aggressive enforcement of the new criminal code in Chiapas is a seriously overpopulated state prison system. A large proportion of the population of the prison system is indigenous political prisoners. Investigators from the Minnesota Lawyers Committee visited both the prison in San Cristóbal de las Casas and the Cerro Hueco prison in Tuxtla Gutiérrez to conduct interviews for this report. Many other interviewees had spent days and months in Cerro Hueco prison — seemingly the expected temporary residence of all dissident activists in the state. Cerro Hueco prison is located on the outskirts of

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<sup>149</sup> Interview with Martín de la Cruz López Moya, Executive Secretary of the *Centro de Derechos Humanos "Fray Bartolomé de las Casas,"* in San Cristóbal de las Casas (12 Mar. 1992).

<sup>150</sup> International Labor Organization, Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, *adopted* 27 June 1989, 28 I.L.M. 1382 (1989) [hereinafter ILO Convention No. 169].

Tuxtla Gutiérrez, just beyond the city's impressive zoological gardens. Minnesota Lawyers Committee investigators found the living conditions and services provided for the animals in the zoo to be better than those for inmates at Cerro Hueco prison.

The government's National Human Rights Commission (CNDH) visited Cerro Hueco prison in November 1991 and January 1992. During their visits, the CNDH investigators found that the section of Cerro Hueco reserved for convicted prisoners held 568 inmates — in a space built for a maximum capacity of 300.<sup>151</sup> The government investigators also found that the prison had no internal regulations, and lacked sufficient health care and medicine, appropriate space for sleeping, and sufficient work and educational facilities.<sup>152</sup>

The prison budget allots 3000 pesos (almost one dollar) per day for food for each prisoner, which is paid to the inmates monthly. Each inmate is expected to feed himself, and most rely on food brought to the prison by family members.<sup>153</sup> The CNDH investigators also found that waste rarely is hauled out of the prison but instead dumped in piles on prison grounds and allowed to decompose — attracting a proliferation of rats, cockroaches, and flies.<sup>154</sup>

These conditions and lack of services were part of the reason for a series of hunger strikes by dozens of prisoners incarcerated in Cerro Hueco. In addition, the hunger strikers have complained that inmates have remained illegally detained for years, and that others remain imprisoned who should have been released long ago. In one example, Pascaul Pérez Jiménez, who should have been released in August 1991, remained imprisoned until the hunger strike of April-May 1992 because the judge "had not had time" to sign his release

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<sup>151</sup> Comisión Nacional De Derechos Humanos, *Recomendación Número 23/92*, (24 Feb. 1992), *reprinted in 92/20 GACETA* 189 (Mar. 1992).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

form.<sup>155</sup>

The most recent hunger strike in Cerro Hueco, in which eighty-two inmates took part, was discontinued after forty days on 18 July 1992. The hunger strikers, in grave conditions of health, had claimed that agreements by judicial authorities to review the individual files of the detainees had been breached.<sup>156</sup> Others denounced multiple procedural irregularities in their cases, and confinement for as long as a year without any information about their cases or legal status. Others denounced the public defense system as dreadfully inadequate, and alleged multiple cases of confessions coerced by the judicial police through torture.<sup>157</sup>

It is reported the prisoners agreed to end their fast, and that the authorities promised to expedite governmental review of the prisoners' files, and to provide immediate medical attention for those in need.<sup>158</sup>

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<sup>155</sup> FILO ROJO, 25 May 1992, at 37.

<sup>156</sup> Communiqué of the Centro de Derechos Humanos "Fray Bartolomé de las Casas" (11 July 1992).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*; and Communiqué of the Centro de Derechos Humanos "Fray Bartolomé de las Casas" (31 July 1992).

## **VI. RELIGIOUS INTOLERANCE AND DISCRIMINATION IN SAN JUAN CHAMULA**

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Universal Declaration of Human Rights,  
Art. 18.<sup>159</sup>

"Every person is free to profess the religious belief he chooses, and to practice the corresponding ceremonies, devotions or rites, as long as they do not constitute crimes or misdemeanors prohibited by law."

Mexican Constitution, Art 24.

San Juan Chamula is a municipality in the highlands of Chiapas whose inhabitants are primarily indigenous people who speak Tzotzil. The town has become an international tourist attraction known mainly for its religiously very devout citizenry and its numerous and colorful religious festivals. There is, however, no separation between Church and State in this quaint town. Matters of faith are enforced as if they were matters of law, and the consequences for many of Chamula's inhabitants are devastating.

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<sup>159</sup> Universal Declaration of Human Rights, *supra* note 26, art. 18.

A. Expulsions and Book-burnings

The common practice of "expulsion" in Chamula began in approximately 1974. An expulsion is the physical banishment of a person or a family from the community. The expelled persons must vacate their homes and communities, often leaving their land, houses, and personal possessions behind.<sup>160</sup> Expulsions are reported to begin with threats and intimidation, and later include incarceration, beatings, and sometimes even rape before community leaders forcibly expel the victims.<sup>161</sup>

The ostensible basis for a person's expulsion almost always is that he or she is a practitioner not of the official religion of the community — an orthodox Catholicism modified with local indigenous rites — but of another Christian evangelical faith. Municipal leaders defend the expulsions as necessary to eliminate the risk of further apostasy, which they assert threatens the social harmony of the community, creating division and conflict, and endangering ancient customs and traditions.<sup>162</sup>

Although there may be genuine concern among some fanatical residents of Chamula for the purity of the community's religious faith, there are many reports suggesting that this concern is merely a pretext for achieving other economic and political ends.<sup>163</sup> Those who suggest that economic motives are behind the expulsions point out that many of the Christian evangelicals advocate that their faithful refrain from smoking and consuming alcoholic beverages. The caciques, however, have a monopoly on the sale of tobacco and liquor, and

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<sup>160</sup> Interview with Domingo López Angel, president of CRIACH (*Coordinadora Regional de Indígenas de los Altos de Chiapas*), in San Cristóbal de las Casas (13 Mar. 1992).

<sup>161</sup> See CENTRO DE DERECHOS HUMANOS "FRAY BARTOLOMÉ DE LAS CASAS," 3 HORIZONTES 9-10 (Mar. 1991).

<sup>162</sup> Interview with Antonio Hernández Ruiz, Municipal Judge, in San Juan Chamula (16 Mar. 1992).

<sup>163</sup> See, e.g., the public letter denouncing the expulsions (July 1992), reprinted as an appendix to this report; interview with Domingo López Angel *supra* note 160.



therefore view the evangelicals as an economic threat.<sup>164</sup> Other reports suggest that municipal leaders also have a monopoly on other commodities, such as candles, which the village faithful use in great quantities during religious rites of the municipally-approved religion.<sup>165</sup> One authority in Chamula also confirmed that Chamula was a *PRI*sta town, and that it was precisely when religious proselytes had come to town that other political parties also had started to take hold — suggesting that political motives may also be associated with the expulsions.<sup>166</sup>

Although expulsions have occurred in several communities in Chiapas, it is in the municipality of San Juan Chamula where they have had the most extensive effects and publicity.<sup>167</sup> During the early years of the practice in Chamula, dozens of persons may have been expelled in a day. The expulsions continue today in individual cases as the local caciques deem appropriate.<sup>168</sup>

Many of the expelled currently live in makeshift neighborhoods on the outskirts of San Cristóbal de las Casas. An investigator from the Minnesota Lawyers Committee visited one such neighborhood, named *La Hormiga*, where approximately 400 expelled persons live. Roughly 1,000 expelled persons live

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<sup>164</sup> Interview with Domingo López Angel *supra* note 160.

<sup>165</sup> *Id.* Indeed, when investigators from the Minnesota Lawyers Committee visited the village church in the center of Chamula, they noted that worshipers were burning dozens and dozens of candles. Soft drinks and certain alcoholic beverages also are reported to be used during religious rites in Chamula.

<sup>166</sup> Interview with Municipal Judge Antonio Hernández Ruiz *supra* note 162.

<sup>167</sup> The practice reportedly also occurs in the municipalities of Chalchihuitán, Chenalhó, Huixtán, Mitontic, Tenejapa, and Zinacantán. 6 HORIZONTES, *supra* note 92, at 53. In one recently reported incident in Zinacantán, Manuel Gómez Celestino was incarcerated, asked to renounce his Pentecostal faith, and obligated to accept the community charge of Churchwarden (*Mayordomo*). When Gómez later took ill, and left the town for ten days to seek medical help, he and his wife, Juana Gómez Pérez, were fined 600,000 pesos and expelled from the community. Their house was sealed shut with their personal possessions inside, which they were forced to abandon. *Id.* at 33.

<sup>168</sup> Interview with Domingo López Angel *supra* note 160.

in the near vicinity of *La Hormiga*, and many more live in other parts of San Cristóbal;<sup>169</sup> one report estimates nearly 15,000 indigenous people living in communities of the "expelled" in the state of Chiapas.<sup>170</sup>

In February 1992 Chiapas Governor González Garrido issued an order prohibiting the expulsions and warning that anyone responsible for an expulsion would be subject to appropriate penalties.<sup>171</sup> That order stirred considerable controversy in San Juan Chamula. Community members held town meetings to discuss the issue, and community leaders drafted responsive letters to the Governor. One such letter explained the community resolution that the one and only accepted religious practice in Chamula is the "Catholic" faith, and that the community under no circumstances would tolerate the practice of other religions or the return of those who had been expelled.<sup>172</sup> The community leaders also took the decision to maintain vigilance over persons in the community suspected of practicing a different religion so that their apostasy could be documented.<sup>173</sup>

When investigators from the Minnesota Lawyers Committee arrived in Chamula to investigate accounts of these municipally-ordered expulsions, they witnessed one such community meeting held in front of the municipal building in the town's main square. The meeting was attended by a garrulous crowd of local residents who were discussing the contents of one of these letters. Shortly after the discussion, the crowd in the square gathered around a pile of "evangelical" books and cassettes. Someone doused the pile with gasoline and set it afire while the mayor, the municipal judge, and the rest of the crowd watched. One delegate of the Committee expressed interest in taking a photograph, but immediately was

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<sup>169</sup> *Id.*

<sup>170</sup> 6 HORIZONTES, *supra* note 92, at 53. This number includes those forcibly expelled, their children born after the expulsion, and others who leave their communities in fear of imminent expulsion.

<sup>171</sup> Interview with Domingo López Angel *supra* note 160.

<sup>172</sup> Interview with Municipal Judge Antonio Hernández Ruiz *supra* note 162.

<sup>173</sup> Interview with Domingo López Angel *supra* note 160; 6 HORIZONTES, *supra* note 92, at 36.

informed by a local resident that taking a photograph was categorically prohibited.

Chamula Mayor Lorenzo Pérez Jolote repeatedly refused an interview with the investigators. Municipal Judge Antonio Hernández Ruiz, however, did agree to meet with the investigators from the Committee. During the meeting he assured the investigators that everyone was free to practice his own religion and to pray in whatever language he wanted. He immediately made clear, however, that the practice of religions other than the official Catholicism would not be tolerated in his community, and that believers of other faiths should think twice before coming to San Juan Chamula.<sup>174</sup>

Judge Hernández explained that the community wanted unity, tranquility, and peace, and would not abide dissent or the introduction of new ideas which would create social unrest and possibly result in violence. He expressed concern that the introduction of foreign religious ideas would create such social unrest that Chamula would lose its touristic attractiveness.<sup>175</sup>

#### B. Religious Violence

On 1 April 1992 violence broke out between thousands of Chamulan residents and the communities of expelled Chamulans living on the outskirts of San Cristóbal de las Casas. Ironically, Judge Hernández had specifically explained to investigators from the Minnesota Lawyers Committee only two weeks before the fighting that Chamula residents wanted to avoid the social unrest that might lead to another "Caste War."<sup>176</sup>

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<sup>174</sup> Interview with Municipal Judge Antonio Hernández Ruiz *supra* note 162.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* The relevance of his reference to the "*Guerra de Castas*" is not clear. Although there is some evidence that the 1869 "Caste War" arose, in part, from religious fanaticism, see IV ENCICLOPEDIA DE MÉXICO 2062 (1987), any connection to the present circumstances seems remote. Judge Hernández's comment sounded more like an admonition than an expression of concern.

Events leading up to the recent violence included two marches organized by the *Coordinadora Regional de Indígenas de los Altos de Chiapas* (CRIACH), held on 19 January and 21 March 1992. The marches, in which thousands of expelled Indians protested the practice of expulsion, took place in San Cristóbal de las Casas. On 31 March municipal authorities in San Juan Chamula ordered the detention of sixty-two persons from the Chamulan district of *El Pozo*. That evening a group of expelled Indians from *La Hormiga* retaliated by detaining three Chamulans, including the judge and the mayor's chauffeur. Thousands of Chamulans descended on the San Cristóbal the next morning to attempt to free the hostages. The expelled of *La Hormiga* detained twenty-seven more people.<sup>177</sup>

Negotiations that morning to exchange the prisoners appeared successful, and the exchange was to take place in San Juan Chamula that afternoon. Violence, however, broke out between the residents of the expelled communities in San Cristóbal and the thousands of Chamulan Indians who remained in town. The Chamulans attacked the *La Hormiga* and *Getzemaní* neighborhoods of expelled Indians with firearms, stones, and clubs. Beatings, arson, and pillaging followed. Fifty-three persons were gravely wounded in the incident, and many more suffered minor injuries.<sup>178</sup>

Although police did not intervene to prevent the violence, agents of the State Judicial Police that evening detained and arrested without a warrant Domingo López Angel, indigenous leader of CRIACH, whom the agents brought to Cerro Hueco prison in Tuxtla Gutiérrez.<sup>179</sup> San Juan Chamula Mayor Lorenzo Jolote Pérez remains at liberty.

### C. Religious Intolerance and Cultural Rights

Among the justifications for the practice of expulsion is the claim that it is necessary to implement the collective right of indigenous communities to preserve

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<sup>177</sup> 6 HORIZONTES, *supra* note 92, at 34-36.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

their traditional culture and customs. Community leaders argue that missionaries from the large economic powers of the world are again proselytizing their people, much like the forcible conversion of indigenous peoples to Catholicism during the Spanish conquest.<sup>180</sup> They assert that collective indigenous rights to autonomy and the preservation of their traditional cultures and religions not only permit but also require the draconian measure of expulsion.<sup>181</sup>

The emerging international law in the field of indigenous rights, however, does not support the violent practice of expulsion as an appropriate measure to preserve traditional cultures. The United Nations Economic and Social Council authorized its Subcommittee on Prevention of Discrimination and Protection of Minorities to establish a Working Group on Indigenous Peoples in 1982. That Working Group meets every summer for the two weeks immediately before the meeting of the full Subcommittee. It has been preparing a draft Declaration on the Rights of Indigenous Peoples since 1985. The Working Group presented the first draft in 1987.

The 1991 draft emphasizes collective rights such as self determination and the right "to be protected from cultural genocide, including the prevention and redress for . . . imposition of other cultures or ways of life"<sup>182</sup> It also specifically declares the right of indigenous peoples "to manifest, practice and teach their own spiritual and religious traditions, customs and ceremonies."<sup>183</sup>

In addition, however, the Declaration also specifically reserves to indigenous peoples the right "to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of

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<sup>180</sup> Interview with Municipal Judge Antonio Hernández Ruiz *supra* note 162.

<sup>181</sup> *Id.*

<sup>182</sup> Draft Universal Declaration on the Rights of Indigenous Peoples, E/CN.4/Sub.2/1991/Rev.1, at 32 (operative paragraph 6) (1991) [hereinafter Draft Declaration].

<sup>183</sup> *Id.* at 33 (operative paragraph 8).

the United Nations and other international human rights instruments."<sup>184</sup> It also prohibits the use of its provisions to deny individuals those rights: "Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act contrary to the Charter of the United Nations . . . ." <sup>185</sup> The Charter of the United Nations requires the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>186</sup>

The proposition that expulsions are a legitimate exercise of the indigenous community's collective right to safeguard and promote its culture, religion, and identity is, at best, specious. At worst, it is a disdainful pretext for the ulterior purpose of advancing the economic and political interests of the caciques at the expense of the collective welfare. The municipal leaders of San Juan Chamula do not expel Europeans or North Americans for imposing on their community a foreign culture or way of life; they forcibly banish their own indigenous neighbors, ostensibly for exercising their universally protected freedom of religious belief. The practice of expulsions in Chiapas is a deplorable institution, sponsored and arbitrarily enforced by municipal government, which does not promote collective indigenous rights, but deprives its victims of their right against arbitrary deprivation of property, and their right to freedom of religion.<sup>187</sup>

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<sup>184</sup> *Id.* at 32 (operative paragraph 2).

<sup>185</sup> *Id.* at 34 (un-numbered operative paragraph).

<sup>186</sup> U.N. CHARTER art. 55 (emphasis added). *See also* the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, *adopted by* G.A. Res. 55, 25 Nov. 1981, 21 I.L.M. 205 (1982) ("Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.").

<sup>187</sup> Universal Declaration of Human Rights, *supra* note 26, arts. 17(2) and 18.

## VII. AGRARIAN CONFLICT AND CONSTITUTIONAL CHANGES

"Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent any interference with or encroachment upon these rights."

Draft Universal Declaration on the Rights of Indigenous Peoples, ¶ 15.<sup>188</sup>

Many current human rights issues in Chiapas in some way involve land disputes. Recent changes in the Mexican constitutional provisions governing agrarian law are eviscerating significant reforms that grew out of the Mexican revolution. Just when the largely indigenous population of the rural south is beginning to exercise long-standing constitutional rights to the land, those legal rights are evaporating.

### A. Conflicts Over Land Ownership

The reality of land ownership and use in Chiapas is governed less by the 1917 Constitution — and certainly the recent amendments — than by the historical realities of economic and ethnic conflict in the region. The agrarian reforms that drove the revolution and were institutionalized by the 1917 Constitution simply have not taken root in Chiapas.

The traditional lifestyle of the indigenous peasant in Chiapas has changed little since the post-conquest period. This way of life revolves around the peasant's relationship to the land. Many peasants work the land with their peers

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<sup>188</sup> Draft Declaration, *supra* note 182, at 34 (draft operative paragraph 15).

on communal *ejido* landholdings, which are increasingly too small to sustain the growing communities. According to historian Thomas Benjamin, "[a]lthough the ejidal sector increased its landholdings substantially, most ejidos [in Chiapas] were overpopulated by the 1960s. Many if not most ejidal parcels were too small to support a family . . . ."<sup>189</sup> Other peasants continue to live on and cultivate the land of boss-landlords for virtually no compensation, as did their parents and grandparents before them. The growing need of the *ejidos* for more arable land, and the need of the landless resident laborers for their own parcels, result in significant pressure for further land reform in the state.

### 1. Stagnant Land Reform

"Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."

ILO Convention (No. 169) concerning  
Indigenous and Tribal Peoples in  
Independent Countries, Art. 14(3).<sup>190</sup>

Although peasants may make legal petitions for land reform in Chiapas, as they can elsewhere in Mexico, the slow-moving state agrarian bureaucracy, aggravated by resistant landowners, combine to render these petitions ineffective. Frequently, peasant petitions for expansion of their small agrarian landholdings are delayed in a tangle of state and federal agencies for years. One group of Indian peasants in Chiapas, for example, is still trying to obtain approval on a request for a land extension that it made in 1942.<sup>191</sup> Accordingly, Chiapas has the highest number of pending petitions for land reform in the country.<sup>192</sup> Even

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<sup>189</sup> BENJAMIN, *supra* note 18, at 226.

<sup>190</sup> ILO Convention No. 169, *supra* note 150, art. 14(3).

<sup>191</sup> Interview with Martín de la Cruz López Moya *supra* note 149.

<sup>192</sup> Interview with Bishop Samuel Ruiz García *supra* note 18. See also BENJAMIN, *supra* note 18, at 230 ("By the 1970s there were nearly 4,000 agrarian petitions pending, many decades old and apparently forgotten.").



current Governor González Garrido admits that "[o]ur agrarian problems are, in number and complexity, the worst in the country."<sup>193</sup>

In addition to these delays, other problems may arise even for those who are able to obtain titles to parcels of land. The government, for example, is sometimes negligent in defining the boundaries of the plots of land it awards. This negligence often causes struggles among various indigenous groups with conflicting claims to the land.<sup>194</sup>

Attempts to reform the system in Chiapas have not succeeded. More effective than mere legal reforms have been direct actions by indigenous peasants combined with traditional legal petitions. Since the 1970s, when legal means for acquiring lands have become exhausted or ineffective, indigenous peasants have begun to occupy the lands for which they have petitioned, pending the regularization of their claims. Benjamin notes that these occupations are part of a "powerful and unorganized agrarian struggle" in Chiapas caused by "a complex conjunction of conditions that forced campesinos to take over private property to feed their families, seize control of local governments to break the link between landowners and public power, and stage demonstrations and marches to publicize their terrible problems."<sup>195</sup>

These methods have been costly for the Indians. State and federal authorities have used "the most brutal kind of repression" to protect private property and preserve the peace.<sup>196</sup> The current government of Chiapas concedes that in 1988 agrarian reform in the state was paralyzed and the absence of solutions generated daily conflicts in the Chiapas countryside with an unprecedented number of injuries, deaths, and incarcerations.<sup>197</sup> The conflict

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<sup>193</sup> GOVERNOR GONZÁLEZ GARRIDO, TERCER INFORME DEL GOBIERNO 57 (1991).

<sup>194</sup> Interview with Martín de la Cruz López Moya *supra* note 149.

<sup>195</sup> BENJAMIN, *supra* note 18, at 229.

<sup>196</sup> *Id.*

<sup>197</sup> La Jornada, 30 Jun. 1992, at 18, col. 1 (paid advertisement by the government of Chiapas).

and violence continue, however, and indigenous peasants who occupy land to feed themselves continue to be subject to violent evictions of their entire community — called "*desalojos*." State agents frequently carry out *desalojos*, sometimes with the assistance of private gunmen hired by the landowners. The agents routinely incarcerate the occupying Indians. In just the month and a half before the arrival of investigators from the Minnesota Lawyers Committee, it was reported that approximately sixty-eight Indian peasants were jailed in connection with disputes over land extensions.<sup>198</sup>

## 2. The Abasolo Case

The land tenancy problems experienced by the Abasolo *ejido*, in the municipality of Ocosingo, are illustrative of typical cases in the state. The *ejido* made a formal petition for a legal land expansion under Mexican federal law, and had taken all the necessary steps to clear the numerous bureaucratic hurdles. On 17 August 1988 the Agrarian Advisory Committee of the Federal Office of Land Tenancy approved the Judgment No. 813 that would extend the *ejido* property to several other specifically described parcels.<sup>199</sup>

The indigenous *ejido* leaders believed in good faith that the federal grant was sufficient authority for them to take possession of the land granted and that the grant would in due course be regularized by the appropriate Chiapas government authorities. Based on that good faith belief, several hundred Abasolo

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<sup>198</sup> Interview with Martín de la Cruz López Moya *supra* note 149.

<sup>199</sup> Interview with Nicolás Gómez López, *Presidente del Comisionariado Ejidal*, Gregorio López Hernández, *Consejo de Vigilancia*, and Martín Santis Jiménez, *Presidente del Comité Particular Ejecutivo Agrario*, in the San Cristóbal de las Casas Jail (12 Mar. 1992) [Private interviews were denied and thus these interviews were conducted in the presence of Adrián Herrera Masgriegos, Head of Prison Security] [hereinafter interview with Abasolo *ejido* leaders]; Comunicué No. 637393, of the Office of Agrarian Rights of the Office of Land Tenancy of the Federal Department of Agrarian Reform [*Oficio no. 637393 de la Dirección de Derechos Agrarios de la Dirección General de la Tenencia de Tierra de la Secretaría de la Reforma Agraria*] (relating the substance of *Dictamen* no. 813, 17 Aug. 1988, by the *Director General de Tenencia de Tierra*).

*ejidatarios* moved onto the new land on 29 August 1991 (three years after the federal grant was approved by the Agrarian Advisory Committee). The Abasolo *ejido* leaders informed the owners of the properties being occupied of their intentions and sought an amicable transition of ownership.

The owners of one parcel of that land, Elizabeth, Edna, and Daniel Calvo Meza, and Filadelfo Najera Montoya did not resist the occupation and, according to the detainees, even asked the *ejido* members to care for some livestock on the land until the owners could arrange to move it.<sup>200</sup> According to an agreement signed by the *ejido* leaders and the owners of the parcel of land, they had even agreed on a specific time frame in which the owners would remove their personal property from the land.<sup>201</sup> A later document, sent to the prosecutor in Ocosingo, confirms that the owners did in fact remove their belongings on 19 November 1991 with the exception of ten head of cattle and a horse.<sup>202</sup> The *ejidatarios* disclaimed any rights to or responsibilities for the remaining animals.<sup>203</sup>

Three of the *ejido* leaders later were invited, they thought, to negotiate a final resolution to the remaining land expansion issues at the office of the public prosecutor in Ocosingo on 19 February 1992. No negotiations took place and all

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<sup>200</sup> Interview with the Abasolo *ejido* leaders *supra* note 199.

<sup>201</sup> Private written agreement signed by Nicolás Gómez López, Martín Gómez Ramírez, Gregorio López Hernández, Martín Santiz Jiménez, Antonio Gómez Santiz, Daniel Baltazar Calvo Meza, Elizabeth Margarita Calvo Meza, and Filadelfo Najera Montoya (6 Nov. 1991) (*Stating*: that the owners will have fifteen days after 9 November 1991 to remove all personal possessions such as cattle, pigs, chickens, and various ranch items; and that the owners agree to remove the personal property, but that the status of the property is contingent upon a judicial resolution ("*por el momento son conformes con sacar sus pertenencias en el termino manifestado mas el predio quedara pendiente hasta una resolución Judicial . . .*").

<sup>202</sup> Letter to Lic. Edelman Citalan Moreno, *Agente del Ministerio Público*, from Nicolás Gómez López, Gregorio López Hernández, Martín Santiz Jiménez, Martín Gómez Ramírez, and Antonio Gómez Santiz (23 Nov. 1991).

<sup>203</sup> *Id.*

three were arrested by the State Judicial Police upon their arrival.<sup>204</sup> They were charged with four offenses each, based apparently on the occupation of the land and a complaint by the owners. The charges were cattle rustling, aggravated robbery, property damage, and plundering.<sup>205</sup> They were arraigned the next day in Ocosingo and transferred the following day, under heavy guard, to the San Cristóbal jail.

The detainees alleged they made every peaceful, amicable, effort to regularize their title to the land both with the landholders and the state, but made no progress.<sup>206</sup> They alleged the only evidence to suggest robbery or rustling is the unsubstantiated statement made by the landholders. They also claimed the allegedly stolen cattle continue to graze peacefully on the same parcel of land in issue.<sup>207</sup>

The Minnesota Lawyers Committee was not able to obtain a copy of the judicial order of formal detention, or of other arrest warrants issued in connection with this case. According to the detainees, however, the judge merely "rubber-stamped" the charges, and refused to review any exculpatory evidence, including the documentary evidence which was presented to him well within the procedural time limit.<sup>208</sup> At the time of their interview with the investigators from the Minnesota Lawyers Committee, the *ejido* leaders already had spent twenty-two days in jail.

These defendants placed much of the blame for land problems on the state

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<sup>204</sup> Interview with the Abasolo *ejido* leaders *supra* note 199 (the interviewees were the three arrested).

<sup>205</sup> *Abigeato, Robo con Violencia, Daños, y Despojo*. See criminal files nos. 7/992, 18/992, and 24/992; and letter to the President of the National Human Rights Commission (21 Feb. 1992).

<sup>206</sup> Interview with the Abasolo *ejido* leaders *supra* note 199.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* See also the letter written to the President of the National Human Rights Commission (21 Feb. 1992).

government and local caciques. They alleged that landholders in the state consider the Indians dumb and easy to manipulate, and take advantage of them because they know they can get away with it.<sup>209</sup> This case is only one among dozens in the state of a similar nature.<sup>210</sup> It illustrates how nearly impossible it is for the indigenous peasants of Chiapas to improve their dismal situation even when carefully abiding by legal procedures and seeking peaceful reform. The conduct of the landowners and the government makes clear why the peasants ultimately reach a furious frustration and take their complaints to the streets.

After failed negotiations with state officials, representatives from Abasolo joined the *Xi'Nich'* march to Mexico City to protest the injustice committed by the state officials.<sup>211</sup> The three defendants finally were released on 24 April 1992 by virtue of a "suspended procedure." The Minnesota Lawyers Committee has not received any information indicating that the *ejido* or its jailed leaders have received compensation for the injustice.

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<sup>209</sup> Interview with the Abasolo *ejido* leaders *supra* note 199.

<sup>210</sup> See also the case of the *Ejido Salvador Urbina*, CNDH Recomendación No. 90/92, reprinted in COMISIÓN NACIONAL DE DERECHOS HUMANOS, 92/23 GACETA 70 (June 1992).

<sup>211</sup> See *supra* Chapter II.

B. Constitutional Changes

"Procedures established by the [indigenous] peoples concerned for the transmission of land rights among members of these peoples shall be respected. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their community."

ILO Convention (No. 169) concerning  
Indigenous and Tribal Peoples in  
Independent Countries, Art. 17.<sup>212</sup>

Recent amendments to the Mexican Constitution have seriously eroded the protection of the relationship between Mexican peasants and the land. The most controversial amendment is the change to constitutional article 27 that now allows title to communal village lands, or *ejidos*, to be transferred.<sup>213</sup> The amendments also delete former restrictions on ownership of land by private corporations,<sup>214</sup> thereby creating a large new class of potential rural landholders. Mercantile enterprises, for example, may now own rural land under certain circumstances.<sup>215</sup>

The amendments also abolished former agrarian land transfer provisions, along with the pyramid of federal and local agencies charged with administering the transfers.<sup>216</sup> Mexican jurists report that these changes in article 27 are among the most radical of the over 300 amendments to the Mexican Constitution

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<sup>212</sup> ILO Convention No. 169, *supra* note 150, art. 17.

<sup>213</sup> CONST. art. 27, § VII (Mex.).

<sup>214</sup> *Id.* art. 27, § VI, ¶ 1 (1917).

<sup>215</sup> *Id.* art. 27, § IV (as amended 1992).

<sup>216</sup> *Id.* art. 27, § XI-XIV.

since 1917.<sup>217</sup>

The rhetoric supporting the amendments emphasizes the government's desire to grant the peasants and *ejido*-based communities greater freedom: the objectives include strengthening the decision-making capacity of the *ejidatarios*, and guaranteeing their freedom of association and rights over their parcels. President Carlos Salinas de Gortari has criticized opponents of the amendments and accompanying policies, characterizing the opposition as motivated by a desire to take advantage of the peasants and preserve old cacique structures.<sup>218</sup>

The overwhelming consensus among individuals interviewed by the Committee — including peasant leaders, indigenous representatives, non-governmental agencies, and clergy — was that the article 27 amendments and accompanying initiatives will not resolve the deep-rooted agrarian problems plaguing Chiapas. On the contrary, most expected the legal changes to worsen the already adverse situation of indigenous land tenancy.

The primary problem of the constitutional amendments, in the opinion of one indigenous advocate, is that the peasants, having lost the constitutional guarantee to their ownership of *ejidal* lands, will inexorably also lose their land — and thus their means of subsistence.<sup>219</sup> Critics worry that many hidden methods of dispossessing peasants of their *ejido* land will become prevalent after the amendments take effect.<sup>220</sup> They worry that high taxes on farm land in the state will create too much pressure to sell the land, or that private banks with bad loans secured by the land will force the peasants to relinquish title in payment for their debts.<sup>221</sup>

A principal concern raised by the reforms to article 27 is the potentially

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<sup>217</sup> PROCESO, 16 Mar. 1992, at 18, 19.

<sup>218</sup> PROCESO, 18 Nov. 1991, at 21.

<sup>219</sup> Interview with Oscar Rodríguez Rivera *supra* note 23.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

irresistible pressure to sell agricultural land to developers. Indeed, the President's constitutional reforms to agrarian land ownership already have been tested in Chiapas — and proved to be a social disaster — precisely for that reason.

During the governorship of Emilio Rabasa Estebanell (1891 - 1893), the governor enacted an agrarian reform law designed to divide the *ejidos* and increase private ownership of agrarian land.<sup>222</sup> Governor Rabasa thought this liberal reform would promote capitalist agriculture and make the state more productive and competitive. The law, called "*el reparto*," did indeed increase the number of private landholders in the state, and also increased the size of many large landholdings; but the *reparto* also destroyed many *ejido* villages and "forced more villagers into more exploitative and less secure work such as migrant labor, indebted servitude, [and] sharecropping."<sup>223</sup>

Governor Rabasa later admitted it was a mistake to permit parcel holders to sell their plots: "too many ended up without land."<sup>224</sup> In Rabasa's words, "the Indians sell their lots as soon as they have them."<sup>225</sup> The economic pressures on the very poor indigenous *ejidatarios* of Chiapas today likely will have a similar effect.

Many interviewees in Chiapas thought the negotiations for a North American Free Trade Agreement were strongly influential in bringing about these agrarian reforms. They theorized that President Salinas sponsored the changes to article 27 under pressure and for the benefit of the Free-Trade Agreement, so that the land could be made more productive.<sup>226</sup> Some thought a Free Trade Agreement probably would benefit most people in the North and Central regions

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<sup>222</sup> See BENJAMIN, *supra* note 18, at 48-50.

<sup>223</sup> *Id.* at 50.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 90 (*quoting from* LÓPEZ ROSADO, I HISTORIA Y PENSAMIENTO ECONÓMICO 210).

<sup>226</sup> See, e.g., interviews with Fr. Joel Padrón *supra* note 66; and Bishop Samuel Ruiz García *supra* note 18.



of the country, but that the South, with its slow progress and its cultural and political isolation, is not yet ready for free trade in the modern world.<sup>227</sup>

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<sup>227</sup> Interview with Bishop Samuel Ruiz García *supra* note 18.

## CONCLUSION AND RECOMMENDATIONS

The people of the Mexican state of Chiapas, particularly its indigenous population, suffer from grave and continuing governmental abuses of their basic human rights. These abuses include frequent cases of arbitrary arrest and detention, the infringement of their rights to freedom of assembly and freedom of speech, religious discrimination and persecution, and denial of the right to a freely chosen and representative government.

The indigenous population in particular also suffers from a need for minimal services such as native language interpreters in state court rooms and adequate health care and education. Indigenous peasants continue to work increasingly small plots of the poorest quality land in the state, and are brutally repressed when they attempt to extend their small landholdings.

Based on its investigation, the Minnesota Lawyers Committee makes the following recommendations to the Government of the State of Chiapas, and to the federal government where applicable:

1. Publish in all the local indigenous languages, and distribute widely, the constitutions of the state of Chiapas and the federal republic of Mexico, and the texts of the Universal Declaration of Human rights, the ILO Convention No. 169, and the Draft Universal Declaration on the Rights of Indigenous Peoples;<sup>228</sup>

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<sup>228</sup> See ILO Convention 169, *supra* note 150, art. 30 ("1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labor, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention. 2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples."). The government reportedly already has started to distribute translated copies of the constitutions.

2. Provide the economic resources and technical assistance to start up and operate independent, indigenous-language newspapers and radio stations in Chiapas;<sup>229</sup>
3. Provide competent interpreters, chosen with the participation of the local citizenry, in every police and prosecutor's office, and in every court room;<sup>230</sup>
4. Establish expedited procedures for processing peasant petitions for land reform, including enforceable deadlines which provide for automatic approval if the process is stalled beyond reasonable time limits;<sup>231</sup>
5. Where the complexity of the current legal status of land makes the regularization of land tenancy disputes and petitions impracticable within reasonable time limits, investigate and propose alternate temporary measures which impart a sense of justice and fairness for all concerned;<sup>232</sup>
6. Insure the participation of representatives of independent peasant organizations in promulgating any legislation which implements the amended constitutional article 27;<sup>233</sup>
7. Guarantee and protect the full liberty of all people in Chiapas to exercise their rights to free expression and association and to petition the government for redress of grievances;<sup>234</sup>

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<sup>229</sup> *Id.*

<sup>230</sup> See the International Covenant on Civil and Political Rights, *supra* note 34, art. 14, subd. 3(f).

<sup>231</sup> See ILO Convention No. 169, *supra* note 150, art. 14(3).

<sup>232</sup> See *id.*

<sup>233</sup> See *id.* art. 17.

<sup>234</sup> See Universal Declaration of Human Rights, *supra* note 26, arts. 19 and 20.

8. Promulgate, and effectively and timely enforce, state and federal laws which provide for adequate government compensation for any person who is deprived of his or her liberty in violation of constitutional guarantees, or for any other person whose fundamental rights have been violated — including those who have suffered "expulsion";<sup>235</sup>
9. Respect and fulfill all the agreements reached by *Xi'Nich'* and the federal Ministry of the Interior;
10. Refrain from interfering with the work of National Indigenous Institute in Chiapas, and resolve all conflicts with INI personnel through federal agencies;
11. Provide safeguards against attacks on all church workers in Chiapas;
12. Categorically condemn and criminalize the expulsion of indigenous people from their communities;<sup>236</sup>
13. Establish frequent periodic meetings between representatives of independent indigenous organizations and state government officials where solutions to on-going problems may be resolved;<sup>237</sup>
14. Enforce criminal code provisions against demonstrators or protestors only

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<sup>235</sup> See International Covenant on Civil and Political Rights, *supra* note 34, art. 9 (5) ("Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."); Universal Declaration of Human Rights, *supra* note 26, art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.").

<sup>236</sup> See Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief, *supra* note 186, art. 4 ("All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief . . . . All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination . . . .").

<sup>237</sup> See ILO Convention No. 169, *supra* note 150, arts. 6 and 7.

as a measure of last resort, when physical violence or the threat of such violence is employed, or when absolutely necessary to maintain essential public order.

15. Allow provisional freedom under bond for all political offenders, and promulgate legislation which favors appropriate non-custodial punishments for indigenous people who are criminally convicted.<sup>238</sup>

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<sup>238</sup> *See id.* art. 10 ("In imposing penalties laid down by general law on members of [indigenous] peoples account shall be taken of their economic, social and cultural characteristics. Preference shall be given to methods of punishment other than confinement in prison.").

## APPENDICES

A draft copy of this report was sent to Governor González Garrido on 17 July 1992, requesting any comments he or his government would like to make regarding the situation of human rights in Chiapas. A copy of the letter transmitting that draft is reproduced as one of these appendices on pages 75-76.

On 30 July 1992 the Minnesota Lawyers Committee received the government's response in the form of various government publications, including the Governor's three State of the State reports. The cover letter transmitting those reports is reproduced on page 77. On pages 78-80 the reader of Spanish will find the Governor's typical comments regarding human rights in Chiapas. These comments are reproduced from pages 20-22 of the Governor's Third State of the State Report in 1991.

The other appendices are:

Other correspondence from the Minnesota Lawyers Committee to Governor González Garrido . . . . . pp. 81-84

The official letter from Dr. Jorge Carpizo, President of the National Human Rights Commission, to Governor González Garrido, regarding the case in Palenque (reproduced from CNDH 92/19 GACETA 9-13) . . . . . pp. 85-89

A Public Declaration, signed by thousands of Mexican citizens, against the expulsion of indigenous people as today occurs in municipalities such as San Juan Chamula . . . . . pp. 90-92

**MLIHRG**

Minnesota Lawyers International Human Rights Committee

*A private, nongovernmental organization of lawyers, jurists  
and other individuals committed to the promotion and  
protection of human rights worldwide.*

17 de julio de 1992

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**POR DHL**

Lic. Patrocinio González Garrido  
Gobernador Constitucional del Estado de Chiapas  
Palacio del Gobierno  
Avenidas Central y Primera Oriente  
29009 Tuxtla Gutiérrez, Chiapas  
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Presente

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Barbara A. Frey

Director, Refugee  
and Asylum Project  
Nancy Amison

Legal Director  
Sonia A. Rosen

Legal Fellow  
Daniel L. Gerds

Development  
Director  
Mary B. Foster

Muy Estimado Señor Gobernador:

Por medio de la presente, en nombre del *Comité de Abogados de Minnesota Pro Derechos Humanos* ("el *Comité*"), tengo el honor de presentar para sus observaciones copia del borrador del informe preparado por el *Comité* sobre derechos humanos en el estado de Chiapas.

El *Comité* se formó en 1983 y ahora cuenta con más que mil miembros. Es un organismo independiente, internacional, no-gubernamental que tiene como meta la promoción y protección de los derechos humanos en todas partes del mundo. El *Comité* no tiene ninguna afiliación con movimientos políticos, instituciones religiosas, o gobiernos. No acepta fondos gubernamentales. Aunque el *Comité* sea basado en los Estados Unidos de América, no tiene ninguna laza con el gobierno estadounidense y se mantiene exclusivamente por contribuciones particulares.

Como parte de la misión de promover y proteger los derechos humanos, los abogados del *Comité* han investigado normas de derechos humanos en más que quince países, incluyendo Albania, Arabia Saudita, Argentina, Australia, República de Corea, Guatemala, Haití, Israel y los Territorios Ocupados, Kenya, México, las Filipinas, Rumania, Túnez, los Estados Unidos de América, y Uruguay, entre otros. Miembros del *Comité* han presentado resultados a la Organización de las Naciones Unidas, han presentado autos de habeas corpus de parte de personas desaparecidas, y han escrito normas para la investigación de casos sospechosos de homicidios arbitrarios.

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Lic. Patrocinio González Garrido  
17 de julio de 1992  
página 2

Le escribo para proporcionar su gobierno la oportunidad de examinar y hacer observaciones sobre el borrador del informe anexado. El *Comité* lo haremos público el 31 del mes en curso.

Durante las dos semanas siguientes el *Comité* seguirá de revisar y corregir el borrador. Toda sugerencia u observación de usted será bien recibida. Si recibimos de usted una respuesta antes del 30 del mes en curso, el *Comité* se esforzará por reflejar sus observaciones lo más completamente posible en nuestras investigaciones sobre Chiapas.

Sin otro particular, aprovecho la oportunidad de reiterar mi más distinguida consideración.

Atentamente,



Lic. Daniel L. Gerds

Anexo





Tuxtla Gutiérrez, Chiapas., Julio 23 1992.

7951

Lic. Daniel L. Gerdtz  
Legal Fellow  
Minnesota Lawyers International  
Human Rights Committee.  
400 Second Avenue South  
Suite 1050  
Minneapolis MN 55401.  
U. S. A.

En relación a su comunicación de fecha 17 de julio de -  
1992, le remito documentación informativa, contenida en  
12 volúmenes.

ATEMENTE

LIC. FIDIBERTO REYES ESPINOSA  
SECRETARIO JURIDICO DEL EJECUTIVO.

FRE/ilm\*

**6.- DERECHOS HUMANOS.**

El respeto a los derechos humanos es uno de los requisitos esenciales para lograr la transformación de nuestra sociedad. Sólo así será posible la convivencia armónica de sus componentes tan plurales y contradictorios, sólo así podremos lograr que de esa diversidad surja la fuerza de la unidad, que con libertad y justicia haga posible la grandeza que estamos empeñados en construir como destino de Chiapas.

Los derechos humanos en México no existen al margen, ni por encima de nuestro orden jurídico y por ello debe de estar muy claro para todos que sólo son aquellos que nuestra Constitución Política consagra como garantías individuales, derechos sociales y derechos económicos, que para nuestro orgullo en su alcance rebasan a lo enunciado por la Declaración Universal de los Derechos Humanos.

Su respeto debe tener la más alta prioridad y para lograrlo es importante poder formar la conciencia individual y social de que esos derechos corresponden por igual a todos, que no hay diferencia de grado o valor, porque el actor de la violación, o el sujeto del derecho violado, tengan determinadas características étnicas, sociales, económicas, culturales, religiosas, gremiales o políticas.

Se trata de los derechos de los humanos y punto. No puede haber mayor derecho para unos y menor para otros. Tampoco puede haber derecho para unos a costa del derecho de otros, aunque sean diferentes en lo étnico, social, económico, cultural, religioso, gremial o político. Pretender esas diferencias es atentar contra los derechos humanos, es tomar la bandera de valor universal, para convertirla en disfraz para causas de tipo particular o de grupos.

Por ello es preocupante que se pretenda etiquetar a los derechos humanos, porque eso equivale a fraccionarlos, a ir en contra de su valor de universalidad.

Se pretende hablar de los derechos humanos de los indígenas, pero en contra o ignorando los de los mestizos. De los derechos humanos de los pobres, pero en contra o ignorando los de aquéllos que no lo son. De los derechos humanos de los solicitantes de tierras, pero en contra o ignorando los de la propiedad legal y así se sigue en un manipuleo sin fin. Esas actitudes, producto del desconocimiento o mala fe, son las que en la realidad atentan contra la formación de una conciencia general y solidaria respecto de la igualdad de los humanos frente a sus derechos.

ChiapasTercer Informe de Gobierno

El Gobierno de Chiapas se ha comprometido con el respeto a los derechos humanos y podemos afirmar, categóricamente, que se observa una actitud ejemplar en esta materia y así lo hemos acreditado y lo podemos probar de la siguiente manera:

La vigencia de los derechos humanos no se mide ni por el número, ni por el ruido de las denuncias, porque sólo tiene dos formas objetivas para ser medida y ellas son el Juicio de Amparo y las recomendaciones de la Comisión Nacional de los Derechos Humanos.

En los tres años del Gobierno actual y en relación con el tema que nos ocupa, se han promovido 196 amparos en contra de actos de las autoridades administrativas del Estado, de los cuales sólo se han concedido 4, es decir, apenas el 2%.

La recaudación interna se ha incrementado en casi doce veces y sin embargo la Procuraduría Fiscal de la Federación destaca como hecho singular, que durante este año sólo se han promovido dos juicios de nulidad en contra de actos del Gobierno estatal, mismos que fueron sobreseídos.

En el ámbito de Procuración de Justicia se han interpuesto 2 mil 449 amparos, de los cuales se han sobreseído o negado 2 mil 324, que es el 94 %, se tienen pendientes 117 que representan el 4.77 % y sólo se han concedido 8 que dan un promedio del 0.34 %.

En el campo del Poder Judicial del Estado, no obstante que no existe rezago en ninguna instancia los amparos concedidos en el período de 1989 a 1991, ascienden al 1 % de las resoluciones dictadas por las salas.

Esta es la evidencia de los hechos, que no se puede cuestionar con denuestos o publicidad.

La Comisión Nacional de Derechos Humanos ha recibido múltiples denuncias en relación con supuestos actos o hechos suscitados en Chiapas. La verdad es que hasta la fecha sólo nos ha formulado una recomendación y esta fue de inmediato cumplimentada. La Comisión, en su primero y segundo informes semestrales ha hecho reconocimiento al Gobierno del Estado por su celo y empeño al informar, facilitar accesos y auxiliar en todo lo que es posible para esclarecer los hechos de las denuncias presentadas y así facilitarle el desempeño de sus tareas.

Ni la justicia federal, ni la Comisión Nacional de Derechos Humanos señalan al Gobierno de Chiapas como violador de los derechos humanos y por ello sostenemos que faltan a la verdad quienes lo afirman sin base ni fundamento.

Qué bueno que no existan requisitos ni limitaciones para ejercer el derecho de la denuncia, por la jerarquía del valor que se pretende proteger, pero qué pena que al amparo de ello se abra el espacio para la calumnia, porque de ella algo queda y eso es lo que persiguen, quienes con fines de carácter político o religioso pretenden anular el ejercicio de las funciones de Gobierno, al atribuir a cada acto que no es de su complacencia, una violación a los derechos humanos.

Su idea es clara, convertir el tema de los derechos humanos en patente de impunidad para lograr sus objetivos y por eso no es extraño que actúen en cascada, es decir, la denuncia de uno la siguen los demás, sin consulta ni averiguación, aspirando a que la movilización y la estridencia puedan llegar a influir y a pesar más que el imperio de la ley.

Por ello es que quienes denuncian violaciones de los derechos humanos en Chiapas nunca solicitan información, ni consideran el derecho de otras partes involucradas en el caso y mucho menos valoran la circunstancia legal en que se desarrollan los hechos. Cuando se les informa deciden que las leyes son injustas, o que las evidencias no tienen valor, y sólo dan crédito a lo que conocen de oído, ya que para ellos lo importante es hacer presencia política o sectaria mediante la denuncia, entendiéndolo que usan la palabra denunciar porque suena mejor que calumniar, aunque sea esto último lo que realmente estén haciendo.

Atacar al Gobernador es derecho que todos tienen, pero mentir para denigrar a Chiapas no es función que dignifique a nadie.

Por la importancia del tema los chiapanecos vemos con interés la transformación jurídica propuesta para la Comisión Nacional de Derechos Humanos, porque así habrán de tener un mayor sustento para el desempeño de tan compleja tarea, quienes hoy la ejercen con honestidad y autoridad moral y por ello han logrado que arraigue en la conciencia popular.

En diversos temas de este capítulo existe una relación de coordinación con la Secretaría de Gobernación, a quien expresamos nuestro reconocimiento y gratitud, por su colaboración y franco y decidido apoyo.

Minnesota Lawyers International Human Rights Committee

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29 July 1992

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Gobernador Constitucional del Estado de Chiapas  
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29009 Tuxtla Gutiérrez, Chiapas  
MÉXICO

FAX NO. 011-52-961-2-09-17

Dear Governor González Garrido:

The Minnesota Lawyers International Human Rights Committee (the "Committee") has received disturbing reports of a suspicious death near Palenque, Chiapas, that appears not to have been investigated properly.

According to reports received by the Committee, Italian national Paulo Rubeno discovered the body of a man in the jungle near Palenque while hiking with a companion on 12 July 1992. The body reportedly was tied to a tree by the neck, with its hands tied behind the back. In addition, one leg was missing, and the body was disemboweled. An inscription carved into the tree above the body reportedly was: "Evil Devil Mark Duval." Rubeno reportedly also found a pair of eyeglasses not far from the body and a United States passport with the identification pages removed.

Rubeno reported the macabre discovery to the police in Palenque. According to the report received by the Committee, Police in Palenque classified the death as a "suicide."

The Committee expresses great concern about the inadequacy of the police investigation into this heinous crime. How the police in Chiapas could have classified a death under the reported circumstances as a probable suicide is uncertain. The Committee urges you to take the steps necessary to clarify the circumstances of this report, and to ensure that proper and thorough police investigations are routine for Chiapas police in any suspicious homicide case.

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Governor González Garrido  
29 July 1992  
page 2

I have taken the opportunity also to send you a copy of the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* ("Manual"), under separate cover, with a copy of this letter. The Manual, prepared by the Committee and now published by the United Nations, is being used the world over to establish uniform procedures for the effective prevention and investigation of suspicious deaths. I hope you will find it informative and useful.

Yours truly,

A handwritten signature in black ink, appearing to read "Daniel L. Gerds", with a long horizontal flourish extending to the right.

Daniel L. Gerds  
Staff Attorney

cc

**MLIHRC**

Minnesota Lawyers International Human Rights Committee

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and other individuals committed to the promotion and  
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■ OFFICERS

13 de mayo de 1992

*President*  
Louis N. Smith

Lic. Patrocinio González Garrido  
Governador Constitucional del Estado de Chiapas  
Palacio del Gobierno

*Vice President*  
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*Development  
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Mary B. Foster

Estimado Señor Gobernador:

El *Comité de Abogados de Minnesota pro Derechos Humanos* quiere expresar su preocupación por la salud de los presos indígenas ahora en huelga de hambre en la cárcel de Cerro Hueco. Pedimos que reciban la atención médica necesaria y que se negocie una solución a sus demandas.

Los huelguistas indígenas están denunciado, entre otras cosas, haber sido víctimas de detenciones ilegales y tortura, la falta de intérpretes al ser detenidos y al rendir sus declaraciones, defectos y obstáculos en los procesos jurídicos, y carencia de instalaciones y servicios adecuados al interior del penal. Además, demandan el regreso de los 19 presos indígenas de los altos de Chiapas quienes fueron trasladados el pasado 25 de abril a la colonia penal de Islas Marías, sin haberse notificado a los familiares de los presos.

Asimismo, el *Comité* tiene ansia por lo que parece una abundante cantidad de actuaciones arbitrarias del gobierno de Chiapas en contra de la población indígena y en contra de los quienes están prestando servicios técnicos y económicos a favor de los intereses de los indígenas.

El *Comité de Abogados de Minnesota* quisiera saber cuales son las medidas que el gobierno estatal está tomando para encontrar la solución a la huelga de hambre y, en forma más general, para resolver la situación de los indígenas en todo el estado, particularmente la situación de los indígenas sujetos a proceso penal.

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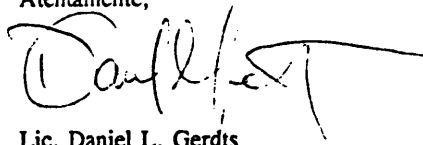


Gobernador González Garrido  
13 de mayo de 1992  
Página 2

Pedimos respetuosamente el favor de una respuesta. Gracias de antemano por lo que pueda hacer respecto a esta situación inquietante.

Sin otro particular, recibe un saludo cordial.

Atentamente,

A handwritten signature in black ink, appearing to read "Daniel Gerds", with a long horizontal stroke extending to the right.

Lic. Daniel L. Gerds

C: Dr. Jorge Carpizo, Presidente de la Comisión Nacional de Derechos Humanos



## COMUNICADO AL GOBERNADOR CONSTITUCIONAL DEL ESTADO DE CHIAPAS

México, D. F., a 28 de enero de 1992

C. Lic. Patrocinio González Garrido,  
Gobernador Constitucional  
Estado de Chiapas,  
Presente

Muy distinguido Sr. Gobernador:

El día 29 de diciembre de 1991, la Comisión Nacional de Derechos Humanos recibió el escrito de queja suscrito por el Comité de Defensa de la Libertad Indígena (CDLI), la Unión de Comunidades Indígenas de la Selva Chiapaneca (UCISECH) y la TSOBLEJ YU UN JWOCOLTIC, al tenor del cual expusieron lo que consideraron hechos violatorios de los Derechos Humanos cometidos en perjuicio de los indígenas Choles y Tzeltales que se encontraban en un plantón en el parque central de Palenque, Chis., desde el día 26 del mismo mes y año. El 28 de enero los manifestantes fueron desalojados en un operativo en el que participaron, a decir de los quejosos, alrededor de 200 policías de Seguridad Pública y judiciales del Estado, quienes a bordo de 20 camionetas oficiales y particulares desalojaron en forma violenta a los manifestantes y se llevaron detenidos a 103 indígenas. Estos fueron trasladados a la Ciudad de Tuxtla Gutiérrez, lugar en donde fueron interrogados, quedando detenidas 8 personas y una más fue trasladada a Yajalón, Chis., acusada de homicidio.

Radificada la queja de referencia, se le asignó el número de expediente CNDH/122/91/CHIS/CO4258.001, calificándola como presuntamente violatoria de Derechos Humanos y, consecuentemente, se acordó solicitar al C. Procurador General de Justicia del Estado un informe sobre los hechos constitutivos de la queja, constancias médicas de los detenidos, copia de la averiguación previa correspondiente y todo elemento que permitiera a esta Comisión Nacional normar su criterio sobre el particular.

Además, con este mismo propósito, el 16 de enero de este año, 2 abogados de esta Comisión Nacional se trasladaron a la ciudad de Palenque, para entrevistarse con los agraviados y recabar testimonios relativos a los hechos motivo de la queja. El 18 de ese mismo mes, estos funcionarios se entrevistaron con el Subprocurador de Justicia del Estado, licenciado Antonio Tiro Sánchez, con el fin de conocer la versión oficial de los hechos y recordarle el envío de la información y documentación arriba mencionada, mismas que fueron recibidas en la Visitaduría, mediante oficio número 010/92, hasta el 24 de enero.

- I. En el proceso de integración del expediente esta Comisión Nacional se allegó las siguientes evidencias:

## GACETA

- a) Copia de la causa penal número 1/992, radicada en el Juzgado Segundo del Ramo Penal en Tuxtla Gutiérrez, Chis.
- b) Dictamen médico emitido por la doctora Margarita Franco, médico forense, asesora de esta Comisión Nacional, en la cual constan las lesiones inferidas a varias personas durante el desalojo del día 28 de diciembre de 1991.
- c) Testimonios aportados por seis vecinos del lugar que presenciaron los hechos. Los datos personales y las declaraciones respectivas se encuentran grabadas en video y audio cassettes, en poder de esta Comisión Nacional.

## II. Del análisis de la información antes referida, se puede desprender lo siguiente:

1. El 30 de diciembre de 1991, la Procuraduría General de Justicia del Estado consideró que estaba integrada la averiguación previa número 417/20/991; ejerció la acción penal por los delitos de lesiones, apología de un delito, sedición, asonada o motín, atentados contra la paz y la integridad corporal y patrimonial de la colectividad y del Estado y dejó a disposición del órgano jurisdiccional del ramo penal, por la comisión de dichos delitos a los CC. Lorenzo Gómez Jiménez, Francisco González Gutiérrez, Sebastián González Cruz, Samuel Benito Pérez, Ramón Parceró Martínez, Tolentino Gómez Cruz, Efraín Gutiérrez Gómez y Víctor Méndez González. Asimismo solicitó a dicho órgano girara orden de aprehensión en contra de los CC. Hugo Camero Flores, Mario Landeros Cárdenas y Víctor Pérez (N); como presuntos responsables de los delitos arriba señalados.
2. El 4 de enero de 1992, el Juzgado Segundo del ramo penal dictó el auto de formal prisión a las ocho personas señaladas.
3. El 6 de enero del mismo mes y año, el Juez Mixto de Primera Instancia del Distrito Judicial de Catazajá, Chis., libró las órdenes de aprehensión solicitadas por la Procuraduría General de Justicia del Estado.

## III. Esta Comisión Nacional realizó un riguroso análisis jurídico de los tipos penales de sedición, motín o asonada, apología de un delito y atentado contra la paz y la integridad corporal y patrimonial de la colectividad y del Estado, regulados por el Código Penal del Estado de Chiapas. A partir de ello se puede señalar que durante el plantón realizado en la ciudad de Palenque del 26 al 28 de diciembre, en ningún momento fueron materializados los hechos previstos en los tipos legales referidos, de acuerdo a las siguientes consideraciones:

- a) Las conductas observadas por los procesados durante el plantón, no encuadran dentro de los elementos objetivos y subjetivos requeridos por el artículo 222 del Código Penal del Estado de Chiapas, que regula el delito de sedición. En efecto, la exigencia legal de que en el caso concreto se de una reunión tumultuaria, implica el hecho de que la reunión se realice de manera confusa, alterada, agitada o des-

ordenada, situación que no coincide con la forma pacífica y concertada en que transcurrió el plantón referido en la ciudad de Palenque, Chis.

En la indagatoria del Ministerio Público se señala que las personas a quien se les dictó auto de formal prisión pretendían, entre otras cosas, impedir que tomara posesión de su cargo el Presidente Municipal Electo de Palenque, el cual asumió formalmente sus funciones el 30 de diciembre de 1991. Es decir, que en las fechas en que se celebró el plantón, dicho funcionario aún no tomaba posesión del cargo; por lo tanto, los manifestantes no podían haberseles resistido o impedido el libre ejercicio de las funciones que aún no asumía.

- b) Por lo que hace al delito de asonada o motín, su materialización también implica la reunión tumultuaria, elemento que como ya se ha señalado, no se presentó en el caso concreto.
- c) El artículo 237 del código penal referido, regula el delito denominado "atentado contra la paz y la integridad corporal y patrimonial de la colectividad y del Estado", tipo penal regulado en otros códigos penales bajo la denominación de terrorismo. Aquel artículo contiene una serie de elementos fácticos, normativos y subjetivos que sólo en aquellos excepcionales hechos en que claramente concurren podrá integrarse la conducta terrorista, sin valerse de analogías, deformaciones o distorsiones.

Los manifestantes no utilizaron explosivos, sustancias tóxicas, armas de fuego, no realizaron incendios, inundaciones, ni se valieron de algún otro medio violento en contra de las personas, cosas o servicios públicos, ni produjeron alarma, temor o terror entre la población, en un grupo o sector de ella, "para perturbar la paz pública o tratar de menoscabar la autoridad del Estado" o presionar a éste para que tomara una determinación.

Vale la pena agregar que en el operativo realizado el 28 de diciembre no se aseguró ningún instrumento que pudiera producir alarma o terror o ser utilizado contra las personas y cosas o servicios públicos, tal como lo señala el artículo 237.

- d) Por lo que hace a los tipos penales de provocación de un delito y apología de éste, tampoco se encontraron elementos suficientes para afirmar la existencia del cuerpo del delito, en razón de que en ningún momento se prueba, en las actuaciones realizadas por el Ministerio Público, el elemento subjetivo atribuido a los procesados de haber convocado a un grupo de personas con la intención de cometer alguna conducta ilícita, ni se precisa el tipo de conducta delictiva a que se incitaba. Además, de los documentos y testimonios que obran en poder de esta Comisión Nacional no se desprende que alguno o algunos de los manifestantes convocaran o incitaran a la comisión de algún delito.

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Respecto al delito de lesiones en agravio de elementos de la Policía Judicial del Estado, si bien es cierto que en la averiguación previa se acredita el cuerpo del delito, los presuntos responsables no fueron identificados por ninguno de los elementos de aquella corporación. Es pertinente aclarar que en el plantón se encontraban más de 100 personas y que posiblemente algunas de ellas causaron las lesiones referidas; sin embargo, esto no justifica jurídicamente la atribución de la probable responsabilidad a ocho personas que nunca fueron señaladas en forma directa.

- IV. El día 13 de enero los representantes de los indígenas Tzeltales y Choles solicitaron a la CNDH que ofreciera sus buenos oficios con el fin de reanudar el diálogo con las autoridades del Estado. Además de solicitar la presencia de un representante de esta Comisión Nacional con carácter de observador en las pláticas correspondientes. En atención a ello, el día 19 de enero, 2 representantes de esta Comisión Nacional se entrevistaron con el Presidente del Congreso local, licenciado Roger Grajales.

La CNDH lamenta que problemas de comunicación entre los representantes de los indígenas y las autoridades hayan impedido que las pláticas se celebraran en Palenque, el día 25 de enero, como se tenía previsto.

Sin embargo, ve con optimismo la información proporcionada por el Presidente del H. Congreso del Estado, en el sentido de que existe disposición al diálogo y de que éste se celebrará en la ciudad de Tuxtla Gutiérrez, en el día y la hora que, de común acuerdo, establezcan los representantes de las organizaciones indígenas y el Presidente del Congreso local, licenciado Roger Grajales.

- V. Como es de su conocimiento, señor Gobernador, no todas las quejas son resueltas por esta Comisión Nacional a través de Recomendaciones. La utilización de los mecanismos de la amigable composición, inherente a todo *Ombudsman*, dada la agilidad y sencillez del procedimiento, hace que la CNDH recurra a ella con insistencia. En la última conversación que sostuvimos recientemente, usted me señaló que vería con optimismo el que varias de las quejas correspondientes al Estado de Chiapas se resolvieran por esta vía. Por ello es que en este documento no se profundiza, como se acostumbra en las Recomendaciones, en todas las evidencias con que cuenta esta Comisión Nacional y en todos los aspectos jurídicos de este caso, sino únicamente resalta algunos de ellos que les permiten sugerir a Usted los aspectos primordiales de esta amigable composición, la cual se hace pública en virtud de que Usted manifestó, también de manera pública, que aceptaría una solicitud por parte de esta Comisión Nacional.

Por todo lo antes expuesto, y en vía de amigable composición, me permito sugerir, señor Gobernador, que de conformidad con la legislación vigente del Estado de Chiapas y de acuerdo con los procedimientos que correspondan se tomen las siguientes medidas:

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 12 CNDH
 

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GACETA

- a) SE PROMUEVA LA LIBERTAD ABSOLUTA E INCONDICIONAL DE LOS CC. EFRAIN GUTIERREZ GOMEZ, RAMON PARCERO MARTINEZ, FRANCISCO GONZALEZ GUTIERREZ, SEBASTIAN GONZALEZ CRUZ, SAMUEL BENITO PEREZ, LORENZO GOMEZ JIMENEZ, TOLENTINO GOMEZ CRUZ Y VICTOR MENDEZ GONZALEZ.
- b) SE DEJEN SIN EFECTO LAS ORDENES DE APREHENSION EN CONTRA DE LOS CC. HUGO CAMERAS FLORES, MARIO LANDEROS CARDENAS Y VICTOR PEREZ (N).

Esta Comisión Nacional hace reserva del caso del señor MANUEL MARTINEZ PEREA, actualmente preso en Yahalón, Chis., en virtud de que a la fecha no cuenta con elementos que le permitan llegar a la convicción sobre su inocencia o culpabilidad en la comisión del delito de homicidio por el cual se le procesa. Además de que es indispensable aclarar que este último delito no está directamente relacionado con los hechos del día 28 de diciembre de 1991, en la ciudad de Palenque, Chis.

La CNDH tiene conocimiento de que en el plantón participaron personas que tenían reclamos de orden político, aunadas a las demandas sociales contenidas en el pliego petitorio. Respecto de los planteamientos político-electorales que pudieran haberse presentado, esta Comisión Nacional no puede hacer pronunciamiento alguno, en virtud de que jurídicamente es incompetente para ello.

Me es grato saludarlo muy atentamente,

El Presidente de la Comisión Nacional

## **DECLARACIÓN CONTRA LAS EXPULSIONES INDÍGENAS**

Los abajo firmantes, hombres y mujeres preocupados por la situación en Chiapas de creciente violación a los derechos humanos, expresamos a la opinión pública nuestro repudio por las constantes expulsiones de familias indígenas que en los Altos de Chiapas se vienen cometiendo desde hace años.

Grupos de poder al interior de las comunidades indígenas, apoyados por diversas instancias gubernamentales y funcionarios públicos han pretendido mantener el control absoluto de algunas comunidades y municipios indígenas, en nombre de la defensa de la costumbre, ejerciendo diferentes tipos de monopolios sea del orden político, económico o social. Las expulsiones que se han cometido tienen como fin desterrar de las comunidades originarias a todos los disidentes, encubriendo las violaciones a los derechos humanos que esto conlleva con argumentos de conflicto religioso.

Las expulsiones van acompañadas de una serie de delitos, tales como la tortura, el despojo, la privación ilegal de la libertad, la violación, el saqueo y otros que atentan contra los derechos más elementales de la persona humana. Delitos todos ellos tipificados en las leyes que nos rigen como ciudadanos mexicanos y contemplados en el Código Penal del Estado de Chiapas. Nos causa sorpresa la iniciativa de ley propuesta por el Ejecutivo del estado en la que se pretende tipificar el delito de expulsión, como si se tratara de hacer leyes especiales para mexicanos "especiales". Iniciativa que además contiene una serie de ambigüedades que, de ser aprobadas, propiciarían una serie de abusos contra la población de esos municipios. En un estado de derecho lo que es fundamental es el reconocimiento de la igualdad de todos ante la ley.

Manifestamos nuestro profundo respeto y admiración por las culturas de los pueblos indígenas de Chiapas, que a pesar de casi cinco siglos de dominación, imposición y menosprecio han sabido resistir y transformarse en un mundo siempre cambiante para poder así enfrentar los retos que cada momento histórico les ha planteado y mantener identidades indias específicas que con su diversidad

nos enriquecen a todos los mexicanos. Participar libremente de la cultura, recrearse en ella y contribuir a su enriquecimiento es un derecho humano fundamental. Por ello vemos con honda preocupación la iniciativa reciente del Sr. Diputado Mariano Gómez López, para reglamentar las culturas indígenas en Chiapas. Volver mediante la ley obligatorias ciertas tradiciones y costumbres, reglamentar los contenidos de una cultura es pretender fosilizarla, quitarle su vitalidad y capacidad de adaptación y renovación, y condenarla a mediano plazo a una muerte segura.

Por todo ello reiteramos lo que en el Foro convocado por el H. Congreso del Estado de Chiapas se manifestó por la gran mayoría de los ponentes: el respeto de los derechos humanos de todos y de cada uno de los mexicanos. Derechos fundamentales como la igualdad, la libertad de pensamiento, conciencia, religión, opinión, reunión, asociación, circulación y disidencia, el libre tránsito, el respeto a la integridad física. De igual manera nos pronunciamos por la irrenunciable necesidad de hacer justicia para con aquellos que han sido víctimas de las expulsiones en estos últimos años. Derechos que les han sido violados y que no han sido restituidos, tales como el derecho a las tierra y la restitución de los bienes perdidos.

Se requiere de la voluntad política de todas las autoridades implicadas para que se ejerza una justicia imparcial y expedita que llegue a la solución del problema de las expulsiones. Y creemos, según se expresó en el Foro citado, que un mecanismo indispensable para el cese definitivo de las expulsiones es propiciar un diálogo amplio con los grupos indígenas implicados.

**San Cristóbal de las Casas, Chiapas. Julio 1992**

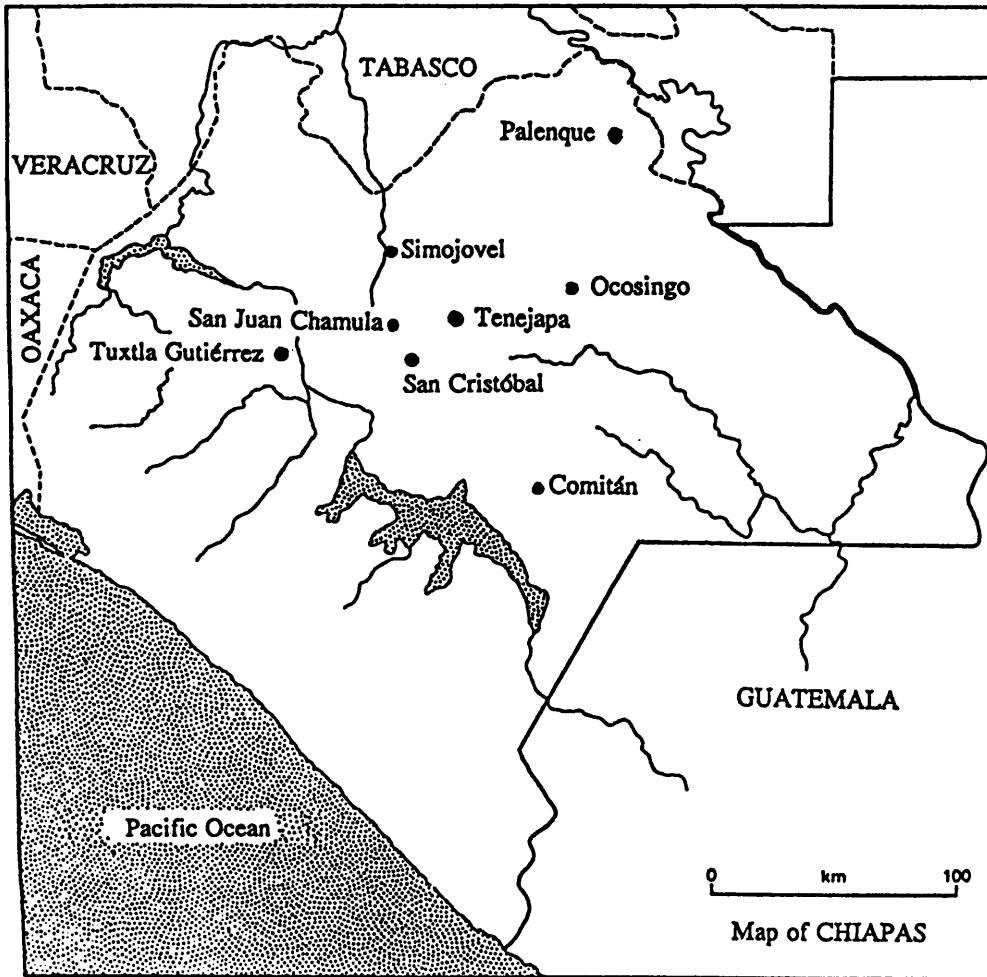
A T E N T A M E N T E

Juan Pedro Viqueira, Dolores Aramoni, Jan De Vos, Samuel Ruiz García, Arturo Lona Reyes, Martín de la Cruz López Moya, Gaspar Morquecho, Andrés Aubry, Juan Carlos Martínez, Domingo López Angel, Sergio Aguayo, Miguel Concha Malo, Ana María Vera Cid, Pascuala Jiménez Patishtan, Manuel Díaz Teltuc, Mateo Santis Capish, María de Monserrat Díaz, Jesús Acosta Maldonado, Armando Váz Garibay, Juan Leyba D., Juan Morales Vázquez, José Santos, Angélica Inda, Verónica Burge Viver, Mariclaire Acosta, Gabriel García Salgado,

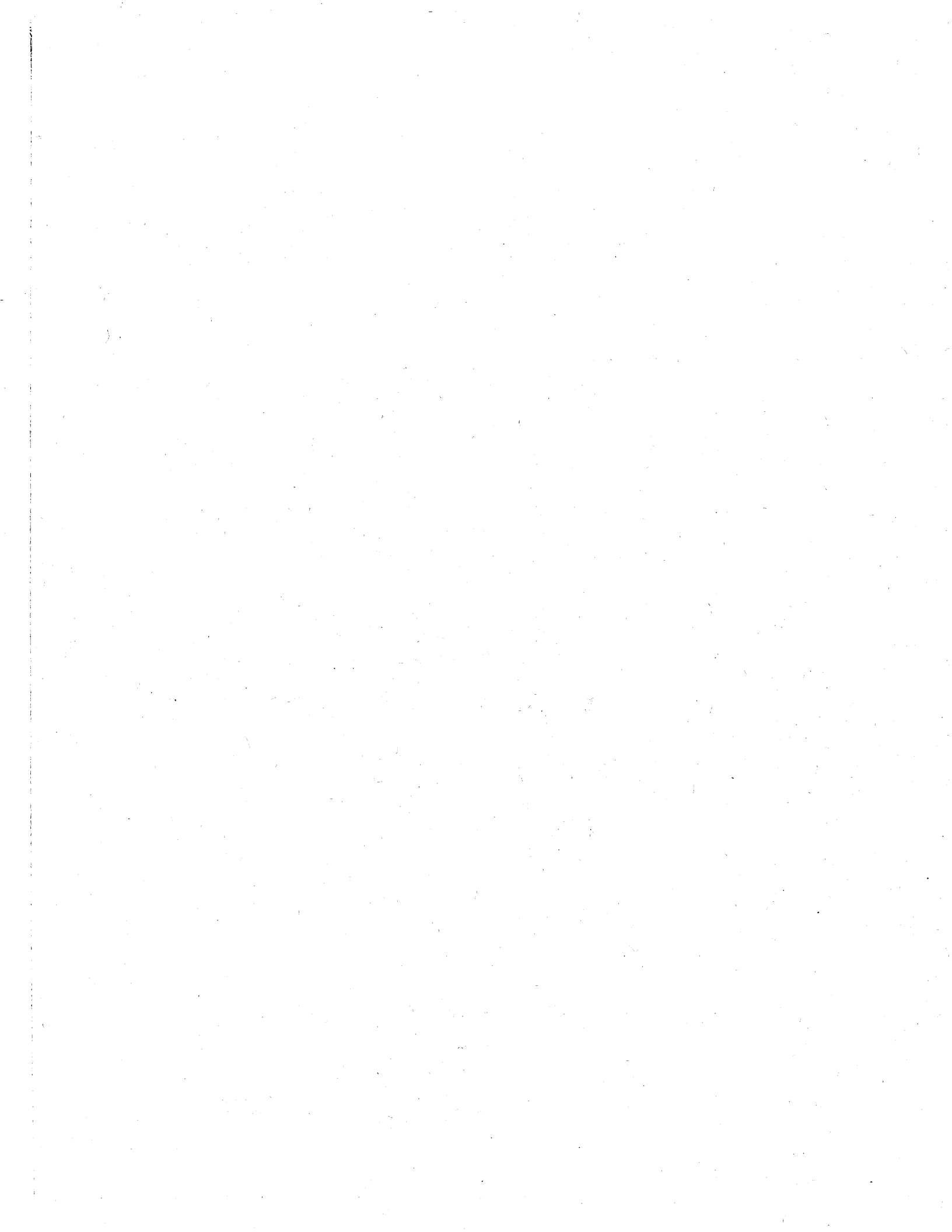
José Pérez Arias, Margarita Hernández, Julian Cruzalta, María Gómez Collazo, Rosa Méndez Chijbac.

Suscriben este documento otras 4,055 firmas. Se encuentran entre éstas las de mismos afectados, miembros de organizaciones no gubernamentales, periodistas, estudiantes, campesinos, amas de casa, entre otros.









*The Minnesota Lawyers International Human Rights Committee, founded in 1983, is a nongovernmental organization of 1,000 members that works to promote and protect international human rights. The Committee advocates against individual human rights abuses, works to strengthen institutions and laws that protect human rights, researches and investigates human rights conditions in the United States and other countries, and educates the public about human rights issues. The Committee has published reports about human rights conditions in over fifteen countries.*

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