



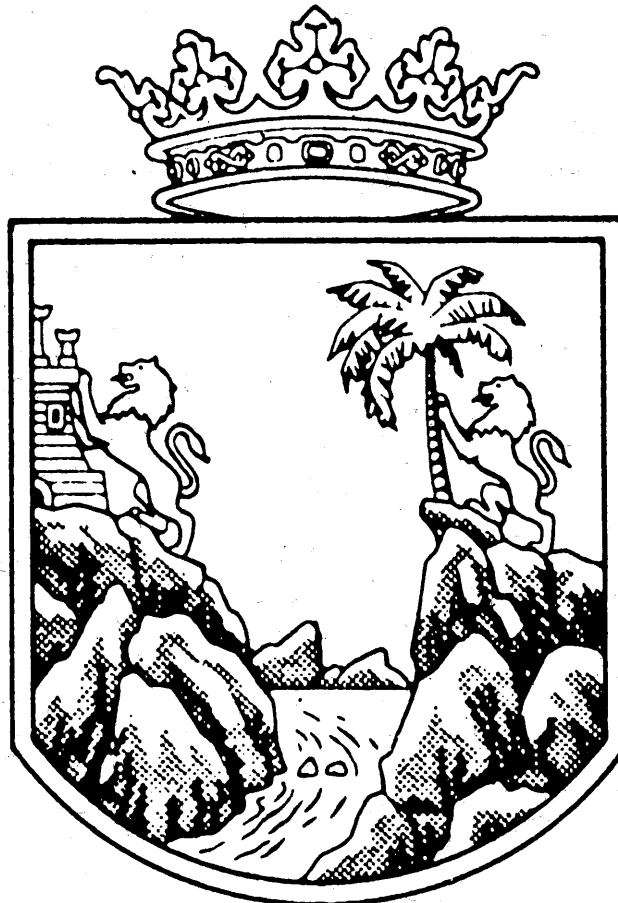
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CONQUEST CONTINUED

DISREGARD FOR HUMAN AND INDIGENOUS RIGHTS
IN THE MEXICAN STATE OF

CHIAPAS

October 1992



Minnesota Advocates
for Human Rights

6-16-92

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

October 1992

A Report By
Minnesota Advocates
for Human Rights*

* Formerly the Minnesota Lawyers International Human Rights Committee

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ISBN: 0-929293-13-4

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Printed in the U.S.A.

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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.¹

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*

** 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.

¹ 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."*² 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.

² 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**

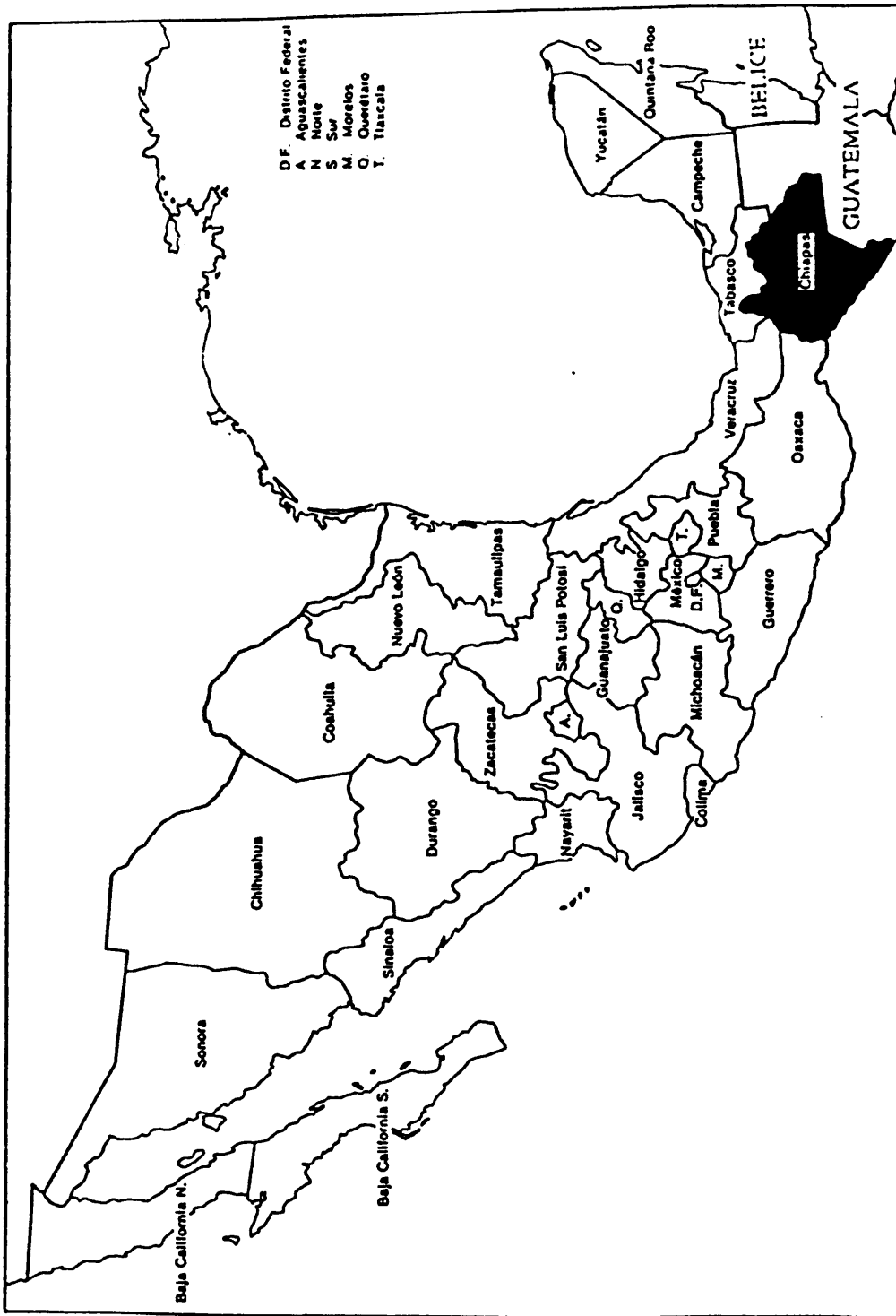
The new criminal code of the state of Chiapas has been used notoriously by the government to oppress its citizenry. The code provides for a variety of vaguely defined political offenses that state government officials have selectively enforced against dissident peasants or political opponents to maintain 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. 4.³

"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*.⁴

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

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

⁴ 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*⁵ 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 3,210,496.⁶

⁵ Mexicans of mixed European-Indigenous ancestry.

⁶ 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.⁷ 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.⁸ 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.⁹ The investigation by the Minnesota Lawyers Committee, however, suggests that the momentum of that long historical tradition has not yet been arrested.

⁷ *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.

⁸ IV ENCICLOPEDIA DE MÉXICO 2052, 2065-2066 (1987).

⁹ 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.¹⁰ A chief characteristic of the *ejido* traditionally has been that the *ejidatario* cannot sell or encumber it, but may only farm it.¹¹

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.¹² The Spanish also granted corporate status to existing indigenous peasant communities, and gave them inalienable rights to their common lands.¹³

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

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

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

¹³ *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.¹⁴

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.¹⁵ 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.¹⁶ *Ejido* land could not be transferred except through inheritance or through reallocation in cases where the *ejidatario* failed to cultivate it.¹⁷ 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.¹⁸ Ownership of the most productive land in Chiapas is still in the hands of a small minority of the

¹⁴ Chevalier, *supra* note 10, at 161-162.

¹⁵ CONST. preamble to art. 27 (Mex.).

¹⁶ Chevalier, *supra* note 10, at 163.

¹⁷ *Id.*

¹⁸ 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.¹⁹ 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.

¹⁹ 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.²⁰ 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.²¹

²⁰ BENJAMIN, *supra* note 18, at 237.

²¹ 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.²² 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.²³

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.²⁴ A social justice

²² See *infra* Chapter VII.

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

²⁴ 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 1986.²⁵

A. Mass Arrest in Palenque

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

Universal Declaration of Human Rights,
Art. 20.²⁶

"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.

²⁵ *Id.*

²⁶ 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.²⁷ 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.²⁸ They interrogated the detainees with this psychological coercion, demanding that the detainees identify the organizers and leaders of the group.²⁹

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.³⁰ A ninth detainee was transferred to Yajalón and accused of an unrelated homicide.³¹ 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

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

²⁸ 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.

²⁹ Interview with Efraín Gutiérrez Gómez *supra* note 27.

³⁰ 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*.

³¹ 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.³²

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.³³

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).³⁴

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.³⁵

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

³² Interview with Oscar Rodríguez Rivera *supra* note 23.

³³ Interview with Efraín Gutiérrez Gómez *supra* note 27.

³⁴ 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.

³⁵ 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.³⁶ 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.³⁷ 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

³⁶ The text of this letter is reproduced *infra* as an appendix.

³⁷ 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.³⁸ 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.³⁹

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

³⁸ Interview with Oscar Rodríguez Rivera *supra* note 23.

³⁹ *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).

⁴⁰ "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."⁴¹ 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.⁴²



*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

⁴¹ "*Marcha por la Paz y los Derechos Humanos de los Pueblos Indígenas.*"

⁴² 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.⁴³

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.⁴⁴

National and international newspapers gave the march significant coverage.⁴⁵ 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

⁴³ 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).

⁴⁴ Interview with Oscar Rodríguez Rivera *supra* note 23.

⁴⁵ 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.⁴⁶ 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.⁴⁷

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.⁴⁸

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

⁴⁷ FILO ROJO, *id.*; Miami Herald, *id.*

⁴⁸ 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. 9.⁴⁹

"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

⁴⁹ 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.⁵⁰ 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

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

pressure campaign for the INI to change its work.⁵¹ 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.⁵²

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.⁵³

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

⁵¹ *Id.*

⁵² *Id.*

⁵³ *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.⁵⁴ 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.⁵⁵

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.⁵⁶

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

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

denied the presence of both men.⁵⁷

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.⁵⁸

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.⁵⁹

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.⁶⁰ 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

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 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.⁶¹

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.⁶² 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.⁶³ 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

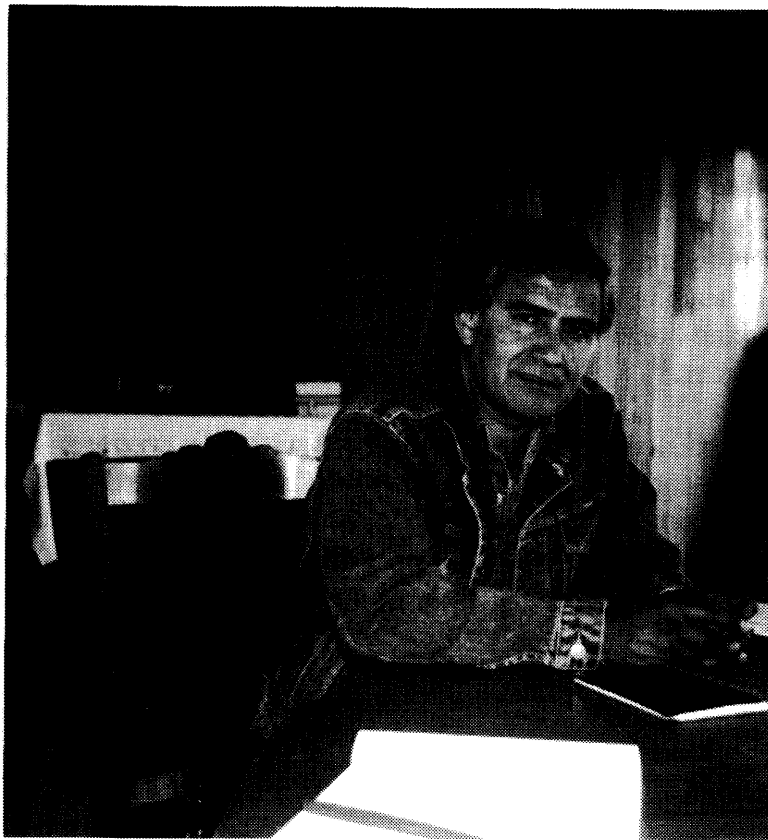
⁶¹ Interview with Dr. Paniagua Guzmán *supra* note 50.

⁶² *Id.*

⁶³ 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.⁶⁴

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.⁶⁵ As of the time of this writing, their cases were still pending.



Father Joel Padrón González

⁶⁴ Interview with Dr. Paniagua Guzmán *supra* note 50.

⁶⁵ 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.⁶⁶ 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 1991.⁶⁷ 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.⁶⁸

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.⁶⁹ At Cerro Hueco he spent forty-nine days in a maximum security cell before a federal judge ordered his release.

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

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 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).