

MINNESOTA



ADVOCATES  
FOR HUMAN RIGHTS

## CIVILIANS AT RISK:

### Military and Police Abuses in the Mexican Countryside

August 1993

**CIVILIANS AT RISK:  
Military and Police Abuses  
in the Mexican Countryside**

Minnesota Advocates for Human Rights\*

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## EDITOR'S PREFACE

For most of this century, Mexico has been spared the degree of military intervention in domestic affairs that has afflicted most Latin American countries. There has been no coup d'état since the Mexican Revolution, and the last president to emerge from the ranks of the armed forces left office in 1946.

This is no accident. The disastrous effects of military rule in the 19th and early 20th centuries created a consensus that led to a constitutional prohibition of military involvement in domestic affairs. Article 129 of the Constitution specifies that "in time of peace, no military authority may exercise any functions other than those precisely related to military discipline."

To be sure, this prohibition has not always been respected, especially by Mexican presidents worried about losing their grip on power. In 1968, President Gustavo Díaz Ordaz ordered the army to suppress student demonstrators who were demanding a greater measure of democracy. Troops using tanks and automatic weapons attacked a large but peaceful gathering of students in Mexico City's Tlatelolco Plaza, killing several hundred. In the late 1960s and early 1970s, the military's *brigadas blancas* (white brigades) carried out "disappearances" of suspected dissidents in the cities, while the army waged a brutal counterinsurgency campaign in the rural state of Guerrero that made little distinction between combatants and civilians. Yet once the perceived threat to Mexico's political system subsided in the mid-1970s, so (for the most part) did the abuses under the presidencies of José López Portillo (1976-1982) and Miguel de la Madrid Hurtado (1982-1988).

It is therefore troubling to observe signs of renewed involvement of the military in civilian affairs during the administration of President Carlos Salinas de Gortari (1988-1994). That involvement began shortly after the new president's inauguration, and initially was aimed at reinforcing the strict controls over labor and elections by which the Institutional Revolutionary Party (PRI) has held a monopoly of power in Mexico for 64 years. In January 1989, President Salinas dispatched army units to Ciudad Madero in the northern state of Tamaulipas to arrest Oil Workers Union leader Joaquín Hernández Galicia ("La Quina"), who had broken ranks with the PRI by quietly supporting opposition leader Cuauhtémoc Cárdenas in the 1988 presidential election. In August 1989, the president sent five thousand troops to take over the Cananea copper mine in the northwestern state of Sonora; the preemptive seizure broke the back of the union as the government prepared to sell the mine to private investors.<sup>1</sup> In April 1990, Salinas ordered columns of tanks and armored personnel carriers into the central state of Michoacán (a Cárdenas stronghold) to dislodge citizens who had occupied town halls to protest fraud in state and municipal elections.<sup>2</sup>

More recently, the Salinas administration has been increasing its reliance on the military in its anti-narcotics campaign. The militarization of the drug war is, in large measure, a result of the government's inability or unwillingness

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1. The mine was sold to Jorge Larrea, a close friend of President Salinas.

2. "Militares y judiciales, juntos, evacuaron las alcaldías en Michoacán," *Proceso*, April 9, 1990, pp. 6-11.

to pursue serious reform of the police. The Federal Judicial Police, Mexico's counterpart to the FBI, has become doubly discredited by revelations that many of its top commanders have been working for the drug cartels, and by a pattern of serious human rights violations exposed by Mexican and international human rights organizations. Two earlier reports published by the North America Project -- *Justice Corrupted, Justice Denied* (Nov. 1992) and *Six Months After the U.N. Verdict* (May 1993) -- documented the continuing pattern of impunity for abuses of human rights by officials of the Federal Judicial Police.

There is by now reason to question the effectiveness of the military in its new assignment, particularly since there are indications the drug cartels have purchased influence there as well. One sign of that influence surfaced with the killing of seven Federal Judicial Police agents by an army unit at Tlalixcoyan, Veracruz, on November 7, 1991. The agents were in hot pursuit of a small plane laden with cocaine from Colombia. When the police plane landed at the clandestine airstrip after radioing its intentions to the military, its occupants were gunned down by soldiers as the drug traffickers escaped. Despite the presence of a refueling truck and the fact that two of the dead agents had been shot in the back, and one had powder burns in the mouth, the government persisted in presenting the incident as a case of confusion and mistaken identity.<sup>3</sup> Though a public outcry eventually led to the arrest of the commanding general on charges of homicide, the government avoided blaming the military for the massacre, and did not pursue the trail of evidence suggesting the army unit may have been preparing to refuel the smugglers' plane, and fired on the police to cover the smugglers' escape.<sup>4</sup>

Another disturbing development is the deployment of the army among the indigenous populations of southern Mexico -- especially in Chiapas -- where long-simmering land conflicts have been aggravated by the government's agrarian policy. In December 1991, President Salinas amended the Constitution, terminating the redistribution of land initiated after the Mexican Revolution, and allowing communal landholdings known as *ejidos* to be subdivided and sold. This policy has been resisted by communities of indigenous origin for two reasons. First, because it violates a centuries'-old tradition of communal landholding. And second, because these communities already felt betrayed by the government's unwillingness to enforce agrarian reform titles assigned to them many years ago, but held up by powerful landholders with close ties to the government. Symbolizing those close ties is Patrocinio González Garrido, who, as governor of Chiapas, developed a reputation for ruthlessness by imprisoning hundreds of members of indigenous communities, as well as federal employees and priests who have supported their cause.<sup>5</sup> In January of this year, President Salinas appeared to signal an intensification of hard-line policies in

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3. "Testimonios e investigaciones coinciden: los siete judiciales fueron acribillados a mansalva," *Proceso*, November 18, 1991, pp. 6-11.

4. "Six Indicted in Drug Agents' Deaths," *Washington Post*, January 14, 1992, A12.

5. See *Conquest Continued: Disregard for Human and Indigenous Rights in the Mexican State of Chiapas*, a report by Minnesota Advocates for Human Rights, October 1992. Also "Patrocinio liberará a 9 tzeltales, sólo si retiran la demanda ante la CNDH," *Proceso*, January 13, 1992, p. 31.

rural Mexico with the appointment of González Garrido as Secretary of Government, the federal cabinet post in charge of maintaining internal order.

The effect of these policies on human rights in rural Mexico is meticulously documented in the following report prepared by Minnesota Advocates for Human Rights. Based in Minneapolis, Minnesota Advocates has devoted special attention to Mexico, in recognition of growing ties with that country as its economy gradually becomes integrated with those of the United States and Canada. In previous reports, Minnesota Advocates has documented the routine use of torture in criminal investigations, as well as the use of covert agents (*madrinas*) by the police. In its last report, Minnesota Advocates argued the need for an independent system of human rights enforcement, and called on both Mexico and the United States to participate fully in the inter-American system of human rights.

After years of working in Mexico in collaboration with domestic human rights organizations, and extensive field work in Chiapas and Chihuahua in preparation for this report, Minnesota Advocates has established itself as one of the foremost authorities on the subject of human rights in Mexico. In the ensuing report, that expertise is manifest both in the thoroughness of the analysis and in the compelling logic of the conclusions and recommendations.

Underscoring the urgency of the proposed reforms is a late-breaking report of extrajudicial executions by the military in Chihuahua. According to witnesses, a unit of the "Marte" Task Force based in Badiraguato, Sinaloa, executed five men they had detained on an airstrip at Ciénega Prieta, Chihuahua, on June 23, 1993. The men had apparently been tortured for more than an hour before being shot, and their bodies were covered with bayonet wounds.<sup>6</sup>

Significantly, this is the first report by a human rights organization to focus on human rights abuses by the Mexican military. In so doing, it breaks Mexico's taboo on criticism of the military, second only to the taboo on criticism of the president and the presidency. If Mexico is truly to modernize and develop the vibrant civil society essential to the fulfillment of human rights, such taboos will have to be broken for good, so that no person or sector of society is beyond criticism -- and beyond the reach of the law.

Andrew A. Reding  
Director, North America Project

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6. Alejandro Gutiérrez, "No hubo enfrentamiento; en Mesa de la Guitarra fueron ejecuciones," *Proceso*, July 5, 1993, pp. 16-17.





## I. INTRODUCTION AND SUMMARY OF FINDINGS

This report documents human rights abuses by the Mexican military and police in rural areas inhabited by people of indigenous ancestry. It is the product of a seven-month study by Minnesota Advocates for Human Rights<sup>1</sup> that included on-site investigations in the Mexican states of Chihuahua in November 1992 and Chiápas in May 1993, as well as meetings with the Mexican National Human Rights Commission and with military officials.

The report documents a series of incidents that took place in the Mexican states of Chihuahua in autumn 1992 and Chiápas in spring 1993. In the week of October 26, 1992, following the killing of a soldier near Baborigame, Chihuahua, at least 25 soldiers engaged in a week-long campaign of arbitrary detention, beatings, and torture against indigenous Tepehuan residents.

In Chiápas, on March 28-29, 1993, following the disappearance and presumed killing of two soldiers, approximately 400 soldiers and a handful of police arbitrarily detained, searched, and beat civilians in two Tzotzil villages. Police tortured a number of those detained. On April 25, about 200 police returned to the same village, searched and looted homes, and again interrogated and tortured villagers. On May 8, some 400 police in at least 47 vehicles returned to the village, only to find it had been deserted. When the Minnesota Advocates' fact-finding team visited the village of San Isidro on May 25, it was still entirely deserted.

This report also documents a third incident that occurred while the Minnesota Advocates' fact-finding team was in Chiápas. On May 24, 500 to 1000 soldiers detained the entire Tzeltal population of Pataté Viejo for two hours while they conducted house-to-house searches. Villagers reported to Minnesota Advocates that eight unarmed residents were taken by the soldiers. These eight Mexicans were originally charged with possession of illegal weapons. The military subsequently claimed the detainees were arrested, while armed, fleeing from the scene of a shootout with soldiers. The military never contested that the detentions took place at least a full day after the alleged shootout. Several witnesses have contested the military version of events, saying the detainees were not armed when arrested, but were taken from their homes and work places in a military sweep of the Pataté community. Given the suspicious circumstances of their detention, Minnesota Advocates calls for the release of the detainees unless the authorities come forward with credible evidence against them.

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1. Minnesota Advocates for Human Rights, founded in 1983, is a nongovernmental organization of one thousand members that works to promote and protect international human rights. Given the close and growing connection between the countries of North America, Minnesota Advocates is particularly committed to documenting human rights conditions in Mexico. An overview of recent human rights issues in Mexico is included in the most recent Minnesota Advocates report, *No Double Standards in International Law: Linkage of NAFTA with hemispheric system of human rights enforcement is needed -- Canada, Mexico, and the United States must become full partners in the Inter-American System of Human Rights* (December 1992) [hereinafter *No Double Standards*].

Whether or not the military account of events in Ocosingo is correct, the detention of villagers and search of homes in Pataté was clearly illegal. The Mexican Constitution prohibits the military from any form of law enforcement involving the search of homes or detention of civilians.

Minnesota Advocates finds that lawless practices of the Mexican military have become increasingly tolerated at the highest levels of Mexican government. To date, there has been no official reprimand of the illegal military detentions in San Isidro or Ocosingo, let alone prosecution for criminal wrongdoing. Moreover, statements by the Secretary of Defense suggest that house-to-house searches of whole villages and the mass detention of civilians is now the officially sanctioned response to the threat of guerrilla activity.

The growing acceptance of lawless military involvement in detentions and searches among civilian populations is a dangerous development. This is especially true for people of indigenous ancestry,<sup>2</sup> because the power of the Mexican military is particularly pronounced in the rural areas where their numbers are greatest. As documented by Minnesota Advocates in the past, indigenous people in remote areas are often singled out for discrimination and abuse.<sup>3</sup> Violent land conflicts often pit these poor farmers against powerful landholders, and the authorities frequently side with the latter.<sup>4</sup> Indigenous people are particularly vulnerable to such abuse because they are poor and politically powerless, and have few independent institutions to defend their rights. Many indigenous people speak their native language rather than Spanish, and are cut off by lack of electricity or telephone links. When abuses occur, the authorities can usually count on word of the abuses not spreading.

In each of the incidents described, the stated reason for military action against civilians was that soldiers were investigating the killing of other soldiers. The military's official objectives -- monitoring drug trafficking, destroying drug crops, searching for guerrillas along the border with Guatemala -- are inherently dangerous and may lead to soldiers being fired upon or killed. Violence of this kind does not justify the suspension of the rights of civilians under international human rights law or under the Mexican Constitution. So long as the military is allowed to conduct arbitrary detentions of civilians and operate outside the bounds of Mexican law, operations in these remote regions pose a serious danger to the rights of the civilian population.

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2. People of indigenous ancestry are descendants of the population that inhabited Mexico before the European conquest. Many indigenous people have intermarried and become assimilated with descendants of the Europeans. These people of mixed ethnic ancestry are known as *mestizos*. An estimated nine percent of the Mexican population (about seven million persons) have not assimilated, however, and still speak their own indigenous languages. *Instituto Nacional Indigenista, Programa Nacional de Desarrollo de los Pueblos Indios 1991-1994*, 11 (1991). The ethnic groups represented in this report are the Tepehuan of southwestern Chihuahua and the Tzotzil and Tzeltal of Chiapas.

3. *Conquest Continued: Disregard for Human and Indigenous Rights in the Mexican State of Chiapas*, 1 (1992) (hereinafter *Conquest Continued*).

4. See discussion *infra*, p. 21.

In addition to these new findings regarding the military, this report also confirms a pattern of abuses already well documented by the United States Department of State,<sup>5</sup> the United Nations Committee Against Torture,<sup>6</sup> Minnesota Advocates for Human Rights,<sup>7</sup> and other non-governmental human rights organizations:<sup>8</sup> that the Mexican police engage in the systematic use of torture, and that a "culture of impunity" allows documented human rights abusers to go unpunished. Despite credible allegations by human rights groups of torture by soldiers in the region of Baborigame and police in the region of San Isidro, there has not to date been a single prosecution for torture in any of the cases documented in this report.

The Mexican government's National Commission on Human Rights (*Comisión Nacional de Derechos Humanos* or CNDH) has largely failed in its constitutionally mandated role as a check on official authority in the cases documented in this report. In Baborigame and San Isidro, the CNDH was presented with evidence of torture but did not call for its prosecution. The CNDH has shown particular deference to the military, absolving it of any wrongdoing in San Isidro despite the presence of hundreds of soldiers as abuses took place, and evidence suggesting their active involvement in detentions, interrogations, beatings, and other acts of intimidation.

The CNDH has also contributed to the hostile climate for independent human rights monitoring by repeating apparently unfounded military allegations that the Chiapas-based human rights group, the *Centro de Derechos Humanos Fray Bartolomé de las Casas*, coached witnesses to fabricate testimony. The CNDH also suggests the *Centro* is to blame for the illegal delay in the release of detainees from San Isidro by the Public Prosecutor. Minnesota Advocates' independent investigation corroborates many of the claims made by the *Centro* and finds the work of the organization generally thorough and responsible.

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5. "[T]here continue to be human rights abuses in Mexico, many of which go unpunished, owing to the culture of impunity that has traditionally surrounded human rights violators. These violations include the use of torture and other abuses by elements of the security forces. . . ." Comm. on Foreign Affairs, 103d Cong., 1st Sess., *Country Report on Human Rights Practices for 1992*, 440, 441 (1993).

6. U.N. Committee Against Torture, 9th sess., 131st mtg. at 2-6, U.N. Doc. CAT/C/SR. 131/Add.2 (Feb. 8, 1993).

7. Minnesota Advocates has published the following reports on abuses by Mexican law enforcement officials: *The Homicide of Dr. Victor Manuel Oropeza Contreras: A Case Study of Failed Human Rights Reforms in Mexico* (1991) [hereinafter *Oropeza Report*]; and *Paper Protection: Human Rights Violations and the Mexican Criminal Justice System* (1990). In an overview report on human rights conditions in Chiapas, abuses by law enforcement officials were also found to be significant. *Conquest Continued*, *supra* note 3, at 8.

8. *Human Rights in Mexico: Hearings before the House Comm. on Small Business*, 103rd Cong., 2nd Sess. \_\_\_\_ (June 29, 1993), statement of Juan E. Méndez, Executive Director, Americas Watch; Amnesty International, *Mexico: The persistence of torture and impunity* (June 1993); Red Nacional de Organismos Civiles de Derechos Humanos, *La Impunidad Persistente* (April 1993).

Minnesota Advocates calls on the military and the CNDH to issue public statements substantiating or retracting their allegations against this human rights organization.

The cases documented in this report demonstrate a fundamental lack of respect for the rule of law on the part of the Mexican military and police. The Mexican Constitution provides safeguards that would ensure the protection of international human rights -- if Mexican law were enforced. High level official tolerance for lawlessness on the part of the military and police demonstrates the need for a more fundamental commitment to the protection and enforcement of human rights at all levels of the Mexican government, the military, and the criminal justice system.

## II. FINDINGS<sup>9</sup>

### Chihuahua, Autumn 1992

On October 17, 1992, 2nd Lt. Miguel Angel García Bautista, of the infantry unit Force Tarea Marte XX based in Baborigame, was shot dead. According to military authorities, the unit was taking part in a campaign against drug traffickers in the region of Baborigame, in the southwest corner of the Mexican state of Chihuahua, and García Bautista was killed in the line of duty.<sup>10</sup> The military's prime suspect was Juan Chaparro Carrillo, an indigenous Tepehuan man allegedly found guarding a marijuana field. Chaparro Carrillo evaded capture and has never been brought to trial.

Following the murder of Lieutenant García, soldiers from Force Tarea Marte XX went on a rampage against the Tepehuan residents of six villages and isolated homes in the area around Baborigame. According to an official report submitted to the State Attorney General's Office of Chihuahua,<sup>11</sup> a report by the Chihuahua-based human rights group COSYDDHAC,<sup>12</sup> and a report by the

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9. Unless otherwise noted, the factual findings that follow are based on interviews by Minnesota Advocates for Human Rights with the individuals affected. Second-hand accounts of facts are included only when they are undisputed and do not conflict with official accounts of the situation.

10. National Ministry of Defense, *Press Release* (December 4, 1992) [hereinafter Military Press Release (December 4, 1992)].

11. Memorandum from Francisco Carlos Uranga Orona, Ministerio Público (agent of the State Attorney General) to Francisco J. Molina, State Attorney General, Chihuahua, Chihuahua (October 30, 1992) [hereinafter Memo to the State Attorney General].

12. Comisión de Solidaridad y Defensa de Los Derechos Humanos, A.C. (COSYDDHAC), *Informe de COSYDDHAC Sobre Violaciones a Derechos Humanos a Familias Indígenas Tepehuanes en Baborigame, Municipio de Guadalupe y Calvo, Sierra Tarahumara Región Sur, Estado de Chihuahua, México* (December 2, 1992) [hereinafter COSYDDHAC].

CNDH,<sup>13</sup> about 40 soldiers were engaged in a search for Chaparro Carrillo during which they interrogated, beat, and mistreated scores of Tepehuan villagers, arbitrarily detained residents, and destroyed at least seven homes.

From December 2-5, 1992, Eric Rosenthal, a representative of Minnesota Advocates, visited three of the affected villages and interviewed 16 victims of abuse, as well as local religious leaders, the commander of the military force in Baborigame, General Ricardo Maldonado, and the commander of a military force based in Sinaloa, General Elisalde. While Rosenthal was in the region, the army apologized for the incidents and offered to provide aid to those who had suffered abuse.<sup>14</sup> On December 3, Rosenthal witnessed the first stage of the military distribution of aid and met with General Javier del Real, chief of the military delegation sent from Mexico City.

The factual findings of the Minnesota Advocates investigation are consistent with those of COSYDDHAC.<sup>15</sup> Minnesota Advocates finds that at least 25 soldiers engaged in a week-long campaign of arbitrary detention, beatings, and torture. Minnesota Advocates also corroborates allegations that there was an initial military attempt to disrupt the gathering of evidence by human rights organizations and to intimidate witnesses.

#### Baborigame Incidents

The first incidents of abuse reported to Minnesota Advocates took place on October 26, 1992, in the village of Arroyo de la Huerta.<sup>16</sup> Miguel Chaparro (the suspect's brother) and his family were sleeping outside when 10 to 25 soldiers arrived. Miguel Chaparro and two other men were kicked and beaten with rifle butts as they were interrogated about the whereabouts of Juan Chaparro. Two of the men, Miguel Chaparro and Alejandro Quiñones, suffered serious injuries.<sup>17</sup> Three men and three boys were detained in army barracks overnight and interrogated. Two of the boys said they were tortured by

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13. Comisión Nacional de Derechos Humanos, *Recomendación 1/93* (Jan. 8, 1993), reprinted in 30 *Gaceta* 197 (January 1993) [hereinafter CNDH, Baborigame Report].

14. Military Press Release (December 4, 1992).

15. COSYDDHAC, *supra* note 12, at 1.

16. This was nine days after the killing of 2nd Lt. García Bautista. Some accounts placed other house burnings earlier than this, and Prosecutor (*Ministerio Público*) Uranga Orona reported in his memorandum to the State Attorney General that even before the killing there had been reports that the military had broken into homes and stolen possessions. Memo to the State Attorney General.

17. Miguel Chaparro reported to Minnesota Advocates that he suffered broken ribs, and Alejandro Quiñones reported he suffered a crushed windpipe. At the time of the interview with Minnesota Advocates on December 2, Quiñones was still unable to speak above a whisper, a condition he suffered since the incident. COSYDDHAC has collected medical documentation of these injuries. COSYDDHAC, *supra* note 12, at 11.

soldiers who forced alcohol up their noses.<sup>18</sup>

When Miguel Chaparro returned home after his release from detention, he found his home had been burned down and all his possessions destroyed. His cow pens had been opened, and the escaping cattle destroyed his entire crop of corn. Chaparro said several other homes were also destroyed.<sup>19</sup>

About 25 soldiers arrived in the village of Palos Muertos early in the morning of October 27 and ransacked several homes. Residents said soldiers stole money and destroyed household items. An elderly man, Juan Rivas, was humiliated by being forced to strip in front of the villagers. Twenty-five men were detained in a school for about four hours, and at least ten were beaten. They were interrogated about Chaparro Carrillo and the location of marijuana and poppy fields. As the men were being interrogated in the school, some women were beaten by soldiers in the village as the soldiers searched homes.<sup>20</sup>

On October 28, forty soldiers arrived in the village of Algarrobos.<sup>21</sup> Family members and neighbors of Chaparro Carrillo were detained in two small houses for over a week. One woman, Refugio Quiñones Carrillo, said she was held for eight days with her hands tied behind her back. Her husband was away when the soldiers arrived, so her six children were left under the sole supervision of her eldest daughter, age eleven.

The wife of suspect Refugio Zaldaña Carrillo said four individuals were also detained, tied, and held face down on the floor.<sup>22</sup> She reported that soldiers said they would kill ten villagers to avenge the lieutenant's killing.<sup>23</sup>

Minnesota Advocates also interviewed one family whose home was

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18. Minnesota Advocates interviewed Miguel Chaparro's son Benjamín, age 15, who reported abuse by the soldiers. Benjamín reported that as he was being interrogated, a soldier ran a knife across his back and then made him place his hands on a wooden table as a soldier stabbed the knife into the table between his fingers. Benjamín also said the soldiers forced alcohol up his nose.

19. Miguel Chaparro told Minnesota Advocates that six houses were burned down. A COSYDDHAC delegation found two burned homes. COSYDDHAC, *supra* note 12, at 6.

20. One woman, Loretta Rivas Vega, reported she was beaten when she could not understand a soldier's Spanish. As she told Minnesota Advocates: "At one point the soldiers came in and hit me with a rifle in the rib just because I did not understand what they were saying to me. This happened the same day as everyone else was beaten, October 27."

21. COSYDDHAC, *supra* note 12, at 6.

22. Memo to the State Attorney General at 2.

23. *Id.*

destroyed with no apparent connection to the search for Chaparro Carrillo.<sup>24</sup> Francisco Zuñiga and Jesusa Navarrete Carrillo (unrelated to Chaparro Carrillo), said their home in the area of Santa Rosa was destroyed in their absence. According to Zuñiga and Navarrete, all their possessions were destroyed, including corn and bean crops, several cows, and 20 chickens. At the time of the interview, the two would not return to their land for fear of the soldiers.

#### Initial Military Efforts to Impede the Investigation

General Luis Montiel López, commander of the 5th Military Zone, responded to the initial allegations<sup>25</sup> of abuse in October 1992 by denying their veracity, and he reportedly claimed to be collecting affidavits from local residents to the effect that no abuses had occurred.<sup>26</sup> On November 23, COSYDDHAC responded by gathering an assembly of some two hundred local residents to substantiate its allegations.

Minnesota Advocates interviewed witnesses who said soldiers threatened and intimidated them to prevent them from reporting abuses at the November 23 assembly. Miguel Chaparro was warned immediately after his release from detention that the soldiers would "come back for me" if he told anyone about his detention or beating. Three villagers from Palos Muertos said they were stopped by soldiers on the way to the November 23 assembly and questioned. Loretto Carrillo Palma and Antonio Rivas independently stated they were stopped on the way to the assembly and given statements to sign denying any abuses occurred. Carrillo said the soldiers tried to coerce him into signing. Rivas said when he refused to sign, the soldiers suggested he was growing marijuana.

Jesusa Navarrete Carrillo also said the army tried to make her confess to growing drugs and to acknowledge that her house was used to dry marijuana. Allegations she insisted were untrue. She said when she returned home she found her house destroyed and marijuana scattered over the burned fields around her home. Upon arriving at the assembly on November 23, soldiers presented her with photographs of the marijuana by her home and asked her to sign a statement acknowledging it was hers. She refused. According to Sister Leovigilda López, the photograph showed stalks of marijuana standing beside her house in a way that did not seem authentic. The military denied a reporter's request to take a picture of the photo.

The military attempted to disrupt the November 23 assembly, according to

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24. According to the CNDH, this house was burned down on October 19, 1992, two days after the killing of García Bautista.

25. The first allegations of abuse by the military were collected in October 1992 by Father P. Francisco Chávez, a parish priest, and Sister Leovigilda López, mother superior of the *Hermanas Carmelitas del Sagrado Corazón* Convent, based in Baborigame. These allegations were corroborated by representatives of COSYDDHAC and by an agent of the Public Prosecutor of the region sent to investigate the killing of 2nd Lt. García Bautista. Memo to the State Attorney General, *supra* note 11, at 2.

26. COSYDDHAC, *supra* note 12, at 2.

COSYDDHAC, by objecting to the public format and insisting that witnesses speak in Spanish, rather than in their native Tepehuan.<sup>27</sup> In addition, military representatives reportedly harassed speakers and mocked their testimonies.<sup>28</sup> An army photographer was present and took photographs of each speaker,<sup>29</sup> adding to the fear of future reprisals on the part of those who spoke out.

After the November 23 assembly, Sister Leovigilda López, who reported the original allegations for COSYDDHAC, told Minnesota Advocates she was verbally accosted by soldiers who accused her of "aiding drug traffickers."

After meeting with COSYDDHAC legal counsel Teresa Jardí on November 29, the Mexican Department of Defense for the first time reversed the position of outright denial taken by General Montiel. The Department of Defense issued a press release stating it would investigate allegations of abuse and that violations of human rights would be "punished to the full extent of the law."<sup>30</sup>

### Prosecution of Soldiers

As described above, Minnesota Advocates found that at least 25 soldiers engaged in the arbitrary detention of villagers and destruction of homes. Minnesota Advocates interviewed two men who were severely beaten during interrogations by soldiers and one boy who had water forced up his nose -- behavior that constitutes torture under international human rights law.<sup>31</sup>

The soldiers involved in these abuses have not all been prosecuted. The CNDH has reported that four soldiers were to be prosecuted in a military court for crimes of "devastation, breaking and entering homes, and violence against people causing vexation."<sup>32</sup> None of the soldiers were charged with torture.

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27. Military Attorney Jesús Gerardo Tovar Medina objected to the collection of evidence in a public gathering, according to COSYDDHAC, arguing it should be collected individually so speakers would be unable to make up corroborating testimony. He also demanded that testimony be presented in Spanish rather than Tepehuan. Teresa Jardí, attorney for COSYDDHAC, answered that the event was organized by COSYDDHAC to substantiate its allegations. She pointed out that even if this were a formal judicial proceeding, Article 4 of the Mexican Constitution would protect the right of everyone to testify in their own language and to have an interpreter present. COSYDDHAC, *supra* note 12, at 8.

28. According to the COSYDDHAC report, "when a child said they (the army) had poured alcohol down his nose, a soldier said 'it was to disinfect' him." *Id.*

29. *Id.*

30. Secretary of Defense, Press Release (Nov. 29, 1992) cited in *Id.* at 10.

31. See discussion *infra* p. 23.

32. Infantry Lt. Pedro Pavón Fernández and 2nd Sgt. Rutilo Peñalver Vargas are reportedly charged with all three crimes; Cpl. Atanacio Díaz Romo is reportedly charged with devastation and breaking and entry; Cpl. Julio César Acosta Zárate is reportedly charged with breaking and entry. CNDH, Baborigame Report, *supra* note 13, at 14-15.



Minnesota Advocates has been unable to determine whether the cases against the four soldiers reported by the CNDH actually went forward or whether there have been any convictions.<sup>33</sup> Neither the Department of Defense nor the CNDH have responded to inquiries about the status of the prosecutions.

#### Military Provision of Aid to Affected Villagers

Secretary of Defense Antonio Riviello Bazán announced in the last week of November 1992 that the army would provide aid to the villagers against whom abuses occurred.<sup>34</sup> General Javier del Real visited Baborigame on December 3, and Minnesota Advocates witnessed the distribution of aid.<sup>35</sup>

Since December 1992, the military has instituted an economic development program for the area of Baborigame, and has provided building materials and architectural plans to begin the reconstruction of the homes destroyed in the actions of October 1992.<sup>36</sup> Local advocates have reported that the development program has had a positive effect on the Tepehuan communities in the area, and they have expressed hope the aid would continue.

While the distribution of aid by the army is important, there has been no official recognition of a right to compensation for those who suffered loss. As it made payments on December 3 to those who lost their homes, the army created the impression it was distributing aid, rather than providing compensation for loss or mistreatment to which the recipients may have had a right. In a speech he gave at each village, General del Real said the aid was a "gift from the Secretary of Defense in Mexico City." The general also told a reporter that the

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33. Since December 1992, when the Secretary of Defense said criminal action would be taken against those responsible, there have been no public statements about the status of these cases, and human rights groups in Mexico report they have no way of knowing the course of the prosecutions. Public information is limited because these prosecutions have proceeded through a military court. Letter from COSSYDDHAC (June 16, 1993).

34. Military Press Release (December 4, 1992).

35. Father Francisco Chávez, parish priest of Baborigame, provided the army with a list of residents of nine houses to receive such payments. Father Chávez identified 83 families in the affected villages to receive food, clothing, and blankets. Minnesota Advocates observed the December 3 distribution of aid to residents of the villages of La Quebrada, Los Algarrobos, and Palos Muertos, and witnessed distribution of cash payments equivalent to 1000 new pesos (approximately \$330) to three families whose homes had been destroyed.

36. Letter from COSYDDHAC (June 16, 1993). On January 9, Secretary of Defense Bazán visited the region and oversaw delivery of additional provisions and clothing and the equivalent of 2,000 new pesos to each of the families whose home was destroyed. Bazán told those who lost their homes that the military could not provide them with the 10,000 new pesos they had requested to make up their losses, but he promised additional aid.

distribution of aid did not constitute any admission of wrongdoing.<sup>37</sup>

None of those interviewed by Minnesota Advocates reported they had been informed of any legal rights they may have had, nor did the military make any individualized determinations of loss as it distributed aid.<sup>38</sup>

### Chiápas, Spring 1993

The following is an account taken primarily from interviews by a Minnesota Advocates fact-finding team that visited Chiápas on May 21-25, 1993. The Minnesota Advocates team also reviewed videotaped interviews with victims of abuse in San Isidro taken by the San Cristóbal-based human rights organization, *Centro de Derechos Humanos Fray Bartolomé de las Casas* (the "*Centro Fray Bartolomé*"), as well as videotaped interviews taken by the CNDH regarding the first incidents on March 28-29, 1992.<sup>39</sup> The videotaped interviews provide background and confirm the general findings of the independent Minnesota Advocates' investigation.

#### San Isidro Incidents

In a remarkable replay of the events in Chihuahua, the abuses in and around the village of San Isidro were sparked by the presumed killing of two soldiers. On May 20, 1993, Air Force Captain Marco Antonio Romero Villalba and Infantry Lieutenant Porfirio Millán Pimentel disappeared as they were traveling, off-duty, in the region of San Isidro el Ocotál. According to military sources, soldiers from the 31st zone of the 7th Military Region fanned through the area to undertake "intensive reconnaissance" in search of the missing soldiers.<sup>40</sup> San Isidro residents estimated that some 500 soldiers camped in and around the village of San Isidro for eight days.<sup>41</sup>

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37. Rosa Rojas, "In the case of Baborigame, still no indictment of those responsible for abuses," *La Jornada*, December 7, 1992.

38. On December 3, 1992, Minnesota Advocates interviewed three aid recipients whose homes had been destroyed: Miguel Chaparro, his wife Paula, and Jesusa Navarette. They said payments received as of that time would not fully compensate the loss of their homes and possessions. None of the recipients interviewed reported having been told that any more money might be available if the compensation was insufficient. Indeed, all three expressed considerable fear of the military and said they would be afraid to ask for more.

39. As a condition to being given access to the CNDH tapes, Minnesota Advocates agreed not to quote from them directly.

40. *Ejército Mexicano, Boletín de Prensa, Comandancia, VII Región Militar, 31/a, Zona Militar* (No Date).

41. Interview with Mariano de la Cruz López and Alberto Shilón (May 25, 1993). According to de la Cruz and Shilón, the soldiers camped in and around the village from May 22 to May 28. The Commander of the 7th Military Region, General Miguel Angel Godínez Bravo, confirmed that soldiers under his command conducted this investigation, but he stated that his soldiers never camped in the village of San Isidro. Interview with General Godínez (May 25, 1993).

On May 28, severely charred remains were found near the village of San Isidro. Military authorities announced they had found remains of the two soldiers, though the official autopsy later stated the bodies were destroyed beyond recognition.<sup>42</sup>

### March 28-30 Incidents: Summary of Findings

The *Centro Fray Bartolomé* and the CNDH accounts of the events that followed on March 28-30 differ substantially. According to the *Centro*, the army was directly involved in the detentions that followed, as well as in beatings and torture.<sup>43</sup> The CNDH report agrees with the *Centro Fray Bartolomé* that the warrantless searches and prolonged detentions were illegal.<sup>44</sup> The CNDH finds the Judicial Police were entirely responsible for these detentions, however, and absolves the army of any responsibility. The CNDH received reports of military participation in the detention and beatings, but it concluded the evidence was insufficient to call for their prosecution.<sup>45</sup>

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42. Minnesota Advocates for Human Rights obtained a copy of the autopsy report on these remains from the CNDH. The report was reviewed by Lindsey Thomas, Assistant Medical Examiner for Hennepin County, Minnesota. According to Dr. Thomas, the autopsy report generally presents the available evidence thoroughly and professionally. The report finds that the bones were human and belonged to two persons, one large and "corpulent," the other small. At minimum, the report disproves a claim by one of the residents of San Isidro that the bones were remains of his dog. Because of destruction by fire of soft tissue, bones, and even teeth, however, the forensic pathologists conducting the autopsy were unable to positively identify the remains as those of the missing soldiers. The report concludes these were the remains of the missing soldiers, but the only link to the soldiers is a gold ring inscribed "Josephine," the name of the wife of one of the soldiers. This ring was said to have been found with the remains, but there is no independent corroboration.

43. *Centro Fray Bartolomé, Boletín de Prensa* (March 31, 1993) [hereinafter *Centro Fray Bartolomé* (March 31, 1993)].

44. CNDH, *Recommendation 88/93* (May 12, 1993) [hereinafter CNDH, San Isidro Report]. Page references in this report refer to the monograph released by the CNDH on May 12, 1993. The report has since been reprinted at 36 *Gaceta* 23 (July 1993).

45. The CNDH reviewed a number of declarations made by the detainees to the Public Prosecutor, and conducted an additional three interviews with the detainees. Among the nine declarations, the majority stated that soldiers were directly involved in the detentions and beatings. CNDH, San Isidro Report, *supra* note 44, at 31. According to the CNDH, the five individuals they interviewed said the soldiers were not involved in the detentions. Rather than stating the evidence was mixed or unclear, the CNDH concludes the army's behavior was "correct and respectful" from March 21-28. *Id.* at 29. The CNDH then finds that the individuals who said the army was not involved in the detentions on March 29 were more credible than those who said it was. For a critique of this analysis, see discussion in text accompanying note 112, *infra*.

As described below, Minnesota Advocates finds the army was present and facilitated the detentions, which almost certainly could not have taken place otherwise. In addition, there is considerable evidence that soldiers beat and tortured residents of San Isidro. The CNDH report cites declarations of at least six residents of San Isidro and Mitzitón who reported the direct participation of soldiers in detentions, beatings, or other acts of intimidation.<sup>46</sup> At least nine detainees said they were abused by either soldiers or the police.<sup>47</sup> Minnesota Advocates interviewed two individuals who said soldiers were directly engaged in searches and interrogations of detainees.<sup>48</sup> Minnesota Advocates also received reports that soldiers engaged in beatings of village residents, but Minnesota Advocates did not collect enough eyewitness accounts to determine whether this evidence is completely reliable.<sup>49</sup> Minnesota Advocates also received one credible account of torture by the police.<sup>50</sup>

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According to the CNDH report, the villages of San Isidro and Mitzitón

46. The six are Fausto González Hernández, Hermelindo Hernández González, Lorenzo González López, Manuel Hernández González, Ciro Gómez López, and Porfirio González Hernández. CNDH San Isidro Report, *supra* note 44 at 19-21.

47. The CNDH report on San Isidro cites declarations by nine detainees who were beaten or threatened in a manner apparently intended to force confessions or obtain information: Fausto González Hernández, Eraso González Hernández, Carmelino González López, Hermelindo Hernández González, Lorenzo González López, Marcelino Shilón de la Cruz, Manuel Hernández González, Ciro Gómez López, Porfirio González Hernández. CNDH, San Isidro Report at 19-21. Lorenzo González said, for example, that "the military stopped him and forced him to lie face down on the ground while they kicked him in different parts of his body in order to make him confess." In addition, the CNDH cites the case of Hermelindo Hernández González, who said two men took him to where the remains of the dead soldiers had been found, and "they forced him to lie face up, and they put a stone in each foot and hand; one of the soldiers was standing on his chest" while the other hit his testicles with a stick, "threatening him to tell what happened." *Id.* at 20. *Centro Fray Bartolomé* also interviewed detainees and received reports of torture. *Centro Fray Bartolomé, Boletín de Prensa* (March 31, 1993). At the CNDH Mexico City office on May 27, Minnesota Advocates reviewed a videotaped interview of one other resident of San Isidro who alleges torture. The CNDH did not cite this case in its report on San Isidro. CNDH representative Efren Gonzalez Pola told Minnesota Advocates he believed this report was untrue. Minnesota Advocates could find no reason to disbelieve the allegations from its review of the videotape.

48. Interviews with Alberto Shilón and Julio Pérez Díaz.

49. Alberto Shilón de la Cruz and Mariano de la Cruz López, both of San Isidro, said relatives and friends were beaten by soldiers on March 29. Neither actually witnessed the beatings, although both reported seeing many villagers badly bruised afterwards. Rafael Heredia López of Mitzitón said that while being detained at the office of the Public Prosecutor (*Ministerio Público*) in San Cristóbal, he saw a number of detainees from San Isidro who were bloody and badly bruised, as if they had been recently beaten.

50. Interview with Rafael Heredia López of Mitzitón, described below.

were targeted by military investigator Hans Karl Hahne Arias on March 28.<sup>51</sup> In addition, the CNDH report states that Hahne Arias informed the State Attorney General at 10 pm on March 28, 1993, that he had received "testimonies" identifying two individuals responsible for detaining, murdering, and incinerating the two soldiers.<sup>52</sup> Hahne Arias' report identifies these individuals as "Antonio," a resident of San Isidro, and "Rafael," a resident of the nearby town of Mitzitón, who reportedly owned a sawmill near San Isidro.

#### Mitzitón, March 28-29, 1993

The military and police entered the village of Mitzitón late on the night of March 28-29 and detained four residents. Minnesota Advocates interviewed two of the four detainees, Rafael Heredia López, age 39, and Julio Pérez Díaz, age 16. Both Heredia López and Pérez Díaz said they were awakened by knocks on their doors late on the night of March 28. They said that non-uniformed individuals entered their homes and dragged them outside. The men did not have arrest or search warrants, nor did they show identification of any kind.

Heredia López said six non-uniformed men made him lie face down on the floor as they searched his home, strewing his possessions around and breaking ceramic pots. They found and took his 22-caliber rifle, then dragged him outside by the hair before he had a chance to dress. Once outside, he saw that 30 to 40 heavily armed soldiers had surrounded his home.

Julio Pérez Díaz said men in plain clothes entered, searched, and ransacked his home, confiscating a handsaw. They kicked him in the back and dragged him outside. There men in plain clothes held him down while a soldier interrogated him about the killing and about what he knew about San Isidro, demanding to know "what crimes I had committed."

Both Heredia López and Pérez Díaz said they were taken in a white pick-up truck, along with two other villagers, to the Rancho Nuevo military base. There they were subjected to further interrogation under bright lights that prevented them from identifying their interrogators. Julio believed they were soldiers. After a brief stop at the military base, the men were taken to the police station in San Cristóbal. Both men reported being held incommunicado for twelve hours and without food for about twenty-four hours.

Heredia López said he was alternately accused of killing the soldiers and questioned about who committed the murder. He told them he knew nothing of the murders, nor had he ever been to the village of San Isidro, six hours away by foot. The police told Heredia López that "Andrés" (a man he did not know) had told them he was the murderer. When Heredia López refused to confess, the police made him lie in a large tire with his hands tied behind his back. They tipped his head back, forced open his mouth with a piece of wood, and poured

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51. CNDH, San Isidro Report, *supra* note 44, at 10.

52. As discussed above, Minnesota Advocates cannot state for certain that soldiers were involved in torturing residents of San Isidro. The fact that the military already collected what amounted to confessions at this time -- before it ever called in the police -- lends credence to reports that soldiers were involved in interrogating and torturing San Isidro residents.

water into his mouth, until he felt he would drown. They then placed the barrel of a rifle to the side of his head and told him to make a declaration.

After about 30 minutes' interrogation, Heredia López was taken to La Merced, an abandoned prison in San Cristóbal, along with three other men from San Isidro. They were met there by six or seven armed men in plain clothes who said they were going to kill him. Heredia López pleaded with them to get it over with quickly. Instead, they continued to interrogate him about the killing. When he failed to provide them with useful information, one man raised a gun to his head and pulled the trigger. The gun was not loaded.

Heredia López was held in a cell at La Merced for two to three hours, then returned to the Prosecutor's office. Both Pérez Díaz and Heredia López were held on Monday night, March 29, and released on Tuesday, March 30. Heredia López reported seeing a number of other detainees at the Prosecutor's office (in the same building as the police station and jail), who appeared to have been badly beaten. Heredia López and Pérez Díaz each said they made a statement saying they knew no one at San Isidro and had no involvement in the killing. All four detainees were released on March 30 without charges.

#### San Isidro, March 28-29, 1993

Minnesota Advocates interviewed Alberto Shilón de la Cruz, a resident of San Isidro, who was present on Sunday, March 28, when the army announced it had found the remains of the dead soldiers. He said hundreds of troops searching for the missing soldiers had camped in and around San Isidro without incident. After discovery of the remains on March 28, however, the soldiers began interrogating and threatening inhabitants. He estimated there were about 400 soldiers in San Isidro with at least 30 military vehicles.

Shilón said that on Monday, March 29, a small number of plainclothesmen joined the 400 soldiers in San Isidro, searched homes, and continued to interrogate residents. Minnesota Advocates reviewed several other reports collected by the *Centro Fray Bartolomé* and the CNDH stating that soldiers and police beat and threatened residents of San Isidro at this time.<sup>53</sup>

At 6 am on March 29, Shilón saw three persons being taken away in military vehicles (Erasmus González Hernández, Fausto González Hernández, and Carmelino González López). All three were returned to San Isidro at 10 am. Later that day, Shilón witnessed several other persons being detained and taken from the village.

A total of nine men from San Isidro and the surrounding villages, as well as the four from Mitzitón, were detained by the State Judicial Police without warrants on March 29.<sup>54</sup> Some of the detainees were held by the police for about 24 hours on March 29 before being turned over to the Public Prosecutor (*Ministerio Público*).<sup>55</sup> During this time, three detainees from San Isidro and one

53. See description *supra* note 47 and accompanying text.

54. CNDH, San Isidro Report *supra* note 44, at 11-12.

55. *Id.* at 35-36.

from Mitzitón (Rafael Heredia López) were taken to an abandoned prison, interrogated and tortured.<sup>56</sup>

#### San Isidro, April 25, 1993

Minnesota Advocates interviewed Shilón and Mariano de la Cruz López, also a resident of San Isidro, who were present when some 200 police returned to San Isidro on April 25. Most were Security Police in blue uniform, but they were accompanied by men in plain clothes claiming to be Judicial Police. Neither Shilón nor de la Cruz saw the police present any official identification, let alone search or arrest warrants.

Shilón and de la Cruz told similar stories of being detained by police and tortured. Each was kicked and beaten with guns while being interrogated about the killing. They were then taken to the hill behind the basketball court in the center of town. While flat on their backs, they had their mouths forced open, cloths placed over their heads, and 20-liter containers of water were poured over their faces. De la Cruz said the water filled his nose and mouth, and he believed he would die. He was then pulled up, interrogated again, and the process repeated. Both men said they were submitted to this treatment three times. Shilón's 17-year-old son Luis was also tortured.

Police also searched and ransacked homes. De la Cruz said they stole one million pesos, three land deeds, and his birth certificate from his home. Shilón said they removed two land deeds, as well as his and his childrens' birth certificates. They both reported that many other villagers also had their homes ransacked and their land deeds stolen.<sup>57</sup>

About seventeen persons were detained by the police in San Isidro on April 25, 1993, and taken to the Public Prosecutor's office in San Cristóbal.<sup>58</sup> Minnesota Advocates has not determined what the legal basis for the detentions may have been.<sup>59</sup> The seventeen were from San Isidro and the neighboring villages of San Antonio el Porvenir, Manzanillo, Betania, el Chivero, as well as from Ejido Flores Magón.<sup>60</sup> Some of the detainees were turned over to the

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56. *Centro Fray Bartolomé* (March 31, 1993). Minnesota Advocates interviewed Rafael Heredia López, as discussed above.

57. The *Centro Fray Bartolomé* collected extensive allegations of looting by police. A list of stolen items is found in *Centro de Derechos Humanos Fray Bartolomé de las Casas, Robos y Abusos de la Policía de Seguridad Pública cometida el pasado domingo 25 de abril de 1993 en perjuicio de la comunidad de San Isidro el Ocotil, municipio de San Cristóbal* (April 28, 1993).

58. Letter from Father Pablo Romo Cedano, *Centro Fray Bartolomé*, to Jorge Madrazo Cuellar, President of the CNDH (April 30, 1993) [hereinafter *Centro Fray Bartolomé* (April 30, 1993)].

59. On June 24, 1993, Minnesota Advocates requested information about these detentions from the governor and from the attorney general of Chiápas. Minnesota Advocates has not yet received a response to either inquiry.

60. *Centro Fray Bartolomé* (April 30, 1993).

Federal Judicial Police and charged with possession of weapons prohibited by Federal law. The Federal authorities released them immediately, finding the arms did not violate federal law.<sup>61</sup> The newspaper *La Jornada* reports that on April 25, four Tzotzil Indians were detained for stockpiling arms,<sup>62</sup> and that the four were subsequently released because authorities concluded the collection of arms confiscated was not large enough to constitute a stockpile.<sup>63</sup>

### San Isidro, May 8, 1993

On May 8, a contingent of some 200 to 400 police returned to San Isidro for a third time. A witness told Minnesota Advocates he counted 47 vehicles carrying policemen driving up the hill to San Isidro.<sup>64</sup> Upon arrival, the police reportedly found the town had been deserted. According to the *Centro Fray Bartolomé*, police confiscated axes, machetes, hand saws, hammers, lamps, and one million old pesos that had been left behind.<sup>65</sup>

The Minnesota Advocates fact-finding team visited San Isidro on May 25, 1993, and found the town still entirely deserted. Former San Isidro resident Alberto Shilón de la Cruz told Minnesota Advocates that the population had left for fear of further detentions by the military and police. The residents continue to live in the area, he said, and intend to return once they feel certain the police and military will not return.

### Ocosingo Incidents

Late on May 24, the Minnesota Advocates fact-finding team in Chiapas received reports of military action on several small villages in the region of Ocosingo. When the team arrived in the village of Pataté Nuevo on the evening of May 25, it found it deserted except for about fifty women and children and a few men gathered in the central church. The individuals in the church -- many of whom had fled their homes in the nearby town of Pataté Viejo -- said hundreds of soldiers had descended on villages in the area the day before. They were afraid to return home as long as the soldiers remained.

According to the refugees in the church, Pataté residents heard shots fired in the hills in the early morning of May 24. At about 9 am, hundreds of

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61. Interview with Pablo Romo (May 23, 1993).

62. According to *La Jornada*, the four detainees were Mariano de la Cruz López, Marcelino Shilón de la Cruz, Pablo Shilón Gómez and Alberto Shilón de la Cruz. Elio Henríquez, "Decomiso la Policía Judicial 22 armas a cuatro indios tzotziles," *La Jornada*, April 26, 1993, at 11. These four were among the seventeen detainees listed by *Centro Fray Bartolomé*.

63. Elio Henríquez, "Obtuvieron su libertad 4 tzotziles detenidos por acopio de armas," *La Jornada*, April 28, 1993, at 17.

64. The witness asked not to be identified by name in this report. This witness, from a neighboring village, reported to Minnesota Advocates that he evaded police who chased him when he was spotted on a nearby hill.

65. *Centro Fray Bartolomé, Boletín de Prensa* (May 10, 1993).



soldiers (some residents reported a thousand)<sup>66</sup> descended on Pataté Viejo. Between 10 am and noon, the entire population of the village (over a hundred individuals) was held on a basketball court in the center of town.<sup>67</sup> Women were forced to open their homes to the soldiers, who methodically searched the premises. Several villagers reported looting by soldiers.<sup>68</sup>

Many of the residents were accused of harboring guerrillas. According to members of the Pataté community, soldiers carried away eight men from among those gathered on the basketball court, after finding guns or knives in their homes. Yet, according to the villagers, nothing larger than a 22-caliber rifle, legal under Mexican law, was found in the village.

Residents of Pataté reported being misled by the soldiers about the detentions. The wife of one detainee said she was told by soldiers that her husband would be returned after fifteen minutes of questioning. As of 10 pm on May 25, none of those interviewed by Minnesota Advocates had been informed of the whereabouts of their husbands.

Villagers informed Minnesota Advocates of a large encampment of soldiers at the "Nazeret I" Pemex plant on a hill just outside town. The fact-finding team went to investigate and encountered a large force of soldiers (between 300 and 1000 soldiers, more than 22 personnel carriers, and several large trucks).<sup>69</sup> After asking for General Gastón Menchaca Arias, commander of the 31st Military Zone, the fact-finding team was met by a group of high level military officers, including General Menchaca and his superior, General Miguel Angel Godínez Bravo, commander of the 7th Military Region of Mexico. At least one other general of Menchaca's rank was present.

General Godínez confirmed that soldiers under his command detained not eight but ten civilians in the region (Minnesota Advocates later learned the army detained two Guatemalan men in another part of Ocosingo). He said they had been caught in "*flagrante delicto*" (in the act of committing a crime)<sup>70</sup> for possession of illegal weapons. General Menchaca said the detainees had been turned over to federal authorities.

General Godínez would provide no more information to Minnesota

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66. See also Elio Henríquez, "Un millar de soldados catean casas de tzeltales de Ocosingo," *La Jornada*, May 26, 1993, at 24.

67. The detention is also documented in Elio Henríquez, "Un militar muerto y dos heridos en Ocosingo, Chiapas," *La Jornada*, May 27, 1993.

68. Rosa Jiménez told Minnesota Advocates that the soldiers took cash from her home. A woman identifying herself as Michaela, daughter of detainee Tiburcio Ruiz Clara, also said cash was taken from her home. Others who asked not to be named said cash, knives, and radios were stolen from their homes.

69. *La Jornada* reported "at least 300" soldiers at "Nazeret I." Elio Henríquez, *Amplia operación militar en Chiapas*, May 31, 1993, at 1.

70. For a discussion of the legal meaning of this term, as used in the Mexican Constitution, see, *infra*, discussion in and accompanying note 125.

Advocates about the detentions, but defended his record in San Isidro and the region of Ocosingo. He denied that soldiers under his command had ever engaged in illegal activity. The general insisted he was on firm legal ground in conducting the detentions in Ocosingo, pointing out that the CNDH had absolved the military of any wrongdoing in the San Isidro incidents.<sup>71</sup>

General Godínez denied the military ever engaged in torture, but did not deny it interrogated civilians. Indeed, he appeared to admit to the use of force during interrogations of civilians when he asked rhetorically, "how do you expect us to get people to confess if we don't use force?"

According to reports in the Mexican press, military activities continued in the area through May 27. Reports cite accounts by Tzeltal Indians from Pataté Viejo of helicopters throwing "explosive objects in mountainous regions of the jungle" near the community.<sup>72</sup>

### New Military Account of the Detentions

Official explanations of the detentions changed substantially in the days following the Minnesota Advocates' departure. General Godínez originally told Minnesota Advocates that the detainees had been arrested for illegal possession of weapons. A spokesman for the Federal Attorney General's office in the State of Chiápas confirmed that soldiers detained ten civilians and confiscated weapons,<sup>73</sup> but, according to his statement, these individuals were detained on charges of attacking soldiers. The statement claimed one soldier was killed and two wounded in an attack on May 22 and 23.

On May 31 the Secretary of Defense issued a statement that soldiers were responding to attacks by guerrilla forces. According to the statement, soldiers responding to these attacks "in isolated areas of Ocosingo" detained ten civilians, and an "unidentified civilian lost his life" in the confrontation.<sup>74</sup> Eleven weapons were taken. On the same day, the Federal Prosecutor in Chiápas said the detainees would be charged with treason.<sup>75</sup>

The military detentions in the community of Pataté were followed by

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71. See CNDH, San Isidro Report, *supra* note 44, at 29.

72. Elio Henríquez, "Continúa el patrullaje militar en el municipio de Ocosingo," *La Jornada*, May 28, 1993.

73. The spokesman said the military "confiscated 11 weapons of different calibers, cartridges, and three civil band radios, as well as notes and subversive propaganda about Guatemalan guerrilla tactics." *Id.* He confirmed that eight Mexicans and two Guatemalans were detained and were being held in the Cerro Hueco prison in Tuxtla Gutiérrez. Elio Henríquez, "Un militar muerto y dos heridos en Ocosingo, Chiápas," *La Jornada*, May 27, 1993.

74. Guillermo Correa, "Infantería, tanquetas, helicópteros y paracaidistas, en los combates de Ocosingo," *Proceso*, June 7, 1993, at 18.

75. *Id.*

extensive protests.<sup>76</sup> After several weeks of protest and hunger strikes by members of the Tzeltzal community, charges of treason against the detainees were dropped.<sup>78</sup> In response to the protests, the Secretary of Defense issued another press release with a more detailed account of the events in Ocosingo.<sup>79</sup> According to this version, the soldiers attacked on May 22 and 23 were in "continuing pursuit of the attackers on May 24." The military claims to have detained these individuals while armed and attempting "to evade justice."<sup>80</sup>

Witnesses to the detention have contested the military version of events. Seven witnesses have come forward with affidavits stating the detainees were removed -- unarmed -- from their homes or work places.<sup>81</sup> These reports are consistent with the finding of Minnesota Advocates that the eight Mexican detainees were among the large number of villagers taken from their homes and workplaces to the basketball court in Pataté. As reported to Minnesota Advocates, the military conducted a sweep of the Pataté community, apparently looking for illegal weapons or whatever else they could find. The soldiers did not have arrest warrants, and did not appear to be looking for specific individuals. Indeed, this version of events is also more consistent with the original account provided by General Godínez to Minnesota Advocates on May 25 -- that soldiers detained residents on charges of possessing illegal weapons. General Godínez made no mention of any shootout or of the far more serious charges of homicide leveled against the detainees.

#### Harassment of the *Centro Fray Bartolomé*

In connection with its work on San Isidro and Ocosingo, the Chiápas-based human rights organization *Centro de Derechos Humanos Fray Bartolomé* has been subject to harassment and veiled threats by the military. General Godínez accused the *Centro* of spreading "odious lies" about the military and "defending criminals."<sup>82</sup> Godínez accused the *Centro* of

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76. These protests were also reportedly in response to subsequent detentions and expulsions by the police (described further below).

77. Carlos Montemayor, "La represión campesina en Ocosingo," *La Jornada*, July 7, 1993, at 1.

78. Interview with Pablo Romo (June 12, 1993).

79. "Precisiones de la Defensa Nacional sobre los hechos de Ocosingo," *La Jornada*, July 7, 1993, at 1.

80. *Id.*

81. *Acta D. Declaración por cada uno de los 8 detenidos del poblado Viejo Pataté* (July 9, 1993).

82. Letter from General Godínez to Bishop Samuel Ruiz García, Bishop of the Diocese of San Cristóbal de las Casas, Chiápas (March 31, 1993). In the May 25 meeting between Gen. Godínez, Minnesota Advocates, and Father Pablo Romo, Gen. Godínez again said reports of the *Centro Fray Bartolomé* were "all lies."

"obstructing justice" by interfering with the military's investigation.<sup>83</sup>

Harsh words have also been directed at Bishop Samuel Ruiz from other sources.<sup>84</sup> Cattle ranchers of the Las Cañadas region near Ocosingo also criticized the Bishop and blamed him for "all their misfortune," reporting that for years they have been asking a papal representative for Ruiz' expulsion.<sup>85</sup> These cattle owners claimed to have placed a price on the Bishop's head.<sup>86</sup>

Even the Mexican government's National Human Rights Commission has contributed to the atmosphere of hostility against the *Centro Fray Bartolomé*. The CNDH reports being told by the Attorney General for Military Justice, Brigadier General Mario Guillermo Fromow García, that during the investigations in San Isidro, Father Pablo Romo, the director of the *Centro Fray Bartolomé*, "in an illegal way" instructed the "murderers" to "establish alibis and avoid the vertical distribution of justice."<sup>87</sup> The CNDH repeats these allegations in its report, yet never says whether there is any factual basis for the charges.

The CNDH contributes to the implication of wrongdoing by the *Centro Fray Bartolomé* by mentioning a number of other areas in which it says the *Centro* acted improperly. In more than one place, the CNDH report states that on March 29, representatives of the *Centro Fray Bartolomé* "disrespectfully" solicited the freedom of the detainees.<sup>88</sup>

Perhaps most disturbing, the CNDH report appears to blame the *Centro* for the illegal delay before releasing the detainees. The CNDH states that "[i]f it is true that the interrogations were delayed about 24 hours, this was not attributable to the representative from the Public Prosecutor but to the conditions in which his work developed . . . in an environment of constant interruptions and diverse pressures . . . ."<sup>89</sup>

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83. *Id.*

84. *Id.* In the past, Bishop Samuel Ruiz has also received death threats. *Conquest Continued*, *supra* note 3, at 26.

85. Guillermo Correa, "Infantería, tanquetas, helicópteros y paracaidistas, en los combates de Ocosingo," *Proceso*, June 7, 1993 at 19.

86. *Id.* at 20.

87. CNDH, San Isidro Report, *supra* note 44, at 5.

88. At one point, the CNDH incorrectly identifies the lawyer Miguel Angel de los Santos as a member of the *Centro Fray Bartolomé*. Though he was a former employee of the *Centro*, de los Santos was not an employee at the time of these events. CNDH, San Isidro Report, *supra* note 44, at 13 and 18. The CNDH report also says 90 residents of the area interrupted the proceedings at the office of the Public Prosecutor. The report says these individuals were "in the company" of representatives of the *Centro Fray Bartolomé*, yet it provides no evidence that the *Centro* was responsible for their presence. *Id.* at 13.

89. *Id.* at 36.

In the context of threats against the *Centro Fray Bartolomé*, the CNDH report adds to the difficult circumstances under which the *Centro* operates. Indeed, by repeating military accusations that the *Centro* acted illegally, the CNDH appears to perpetuate the threat of official action against the *Centro*.

Since the May 24 incident in Ocosingo, federal law enforcement authorities have also taken action against the *Centro Fray Bartolomé*. Father Pablo Romo told Minnesota Advocates he has not been allowed into the jail to interview the detainees. Father Romo said this is highly unusual in his experience as a human rights advocate. Mexican law protects the right of detainees to receive visits from attorneys as well as other individuals.<sup>90</sup>

### Background of unrest and land conflict in Ocosingo

Minnesota Advocates has no information on whether there has actually been guerrilla activity in Chiapas. Yet there are several reasons why tensions may have been high in Chiapas at the time of the detentions. The coup in Guatemala took place on May 25, one day after the detentions, and armed resistance may have been expected. The killing of Cardinal Juan Jesús Posadas Ocampo took place on May 24, the same day as the detentions. Joaquín "El Chapo" Guzman Loera, the alleged drug trafficker said by Mexican authorities to have been the real target of the killing, is reported to have been operating from the Guatemalan border region in Chiapas and to have returned to Chiapas in the days immediately after the murder.<sup>91</sup> He was captured near the Mexico-Guatemala border on June 10.

The events in Ocosingo must also be understood in the context of the history of land conflict in Chiapas. As reported by Minnesota Advocates in its October 1992 report on Chiapas, *Conquest Continued*, there are frequent and often violent conflicts between landholders or ranchers and indigenous farmers.<sup>92</sup> The authorities usually side with the landholders, forcing the farmers off their land.<sup>93</sup>

Since the military actions in May, the Mexican press has reported extensive land conflicts and expulsions in the region. In June 1993, 200 Tzeltal Indians are reported to have been expelled from their land at the hands of

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90. Interview with Pilar Noriega, Frente Nacional de Abogados Democráticos (July 23, 1993).

91. Gregory Katz, "Man held in cleric's slaying case; Mexico officials call arrest breakthrough," *The Dallas Morning News*, June 11, 1993, at 1A.

92. In Chiapas there has been a long history of peasant petitions for land titles, which have been delayed in federal or state agencies for years. Because demands for land reform have not been met, indigenous groups have taken matters into their own hands and begun illegally to occupy the lands for which they have been petitioning. The result has been the use of brutal force and violent evictions by state and federal authorities to protect private property. *Conquest Continued*, *supra* note 3, at 59-62.

93. *Id.* at 61-62.

over 1,000 individuals in groups organized by cattle owners.<sup>94</sup> On June 6, 1993, over 800 members of Public Security and State Judicial Police in 100 trucks, accompanied by 100 mounted policemen and a helicopter, reportedly broke into homes, looted property, and violently detained residents without arrest warrants in the towns of El Carrizal, Chalam del Carmen, Nuevo Sacrificio, Edén del Carmen and Río Florida.<sup>95</sup> The police detained 24 individuals on "various charges," and some 116 families from the affected communities are reported to have fled to the mountains in fear of the police.<sup>96</sup>

A number of local and national interests have backed the recent military actions. The Ocosingo Ranchers Association applauded the military's actions as long overdue responses to the growth of armed indigenous groups.<sup>97</sup> The Ranchers Association is reported to have warned as early as 1987 that armed guerrilla groups were operating in the region, and has called repeatedly for the military to respond.<sup>98</sup> An editorial in *El Corporal*, the newspaper of the Regional Cattle Owners Union of Central Chiapas, recently suggested that investment in Chiapas under NAFTA would be limited as long as the region

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94. Carlos Montemayor, "La represión campesina en Ocosingo," *La Jornada*, July 7, 1993, at 1.

95. Elio Henríquez and Matilde Pérez U., "Se fue el Ejército; ahora le toca a Seguridad Pública del Estado," June 8, 1993, Press Release from *Centro de Derechos Humanos Fray Bartolomé de las Casas* (June 9, 1993), and Press Statement from *Organización Campesina Emiliano Zapata* (June 6, 1993).

96. Residents of communities in the municipality of Ocosingo said that when the police arrived "they threw us out of our homes . . . by yanking us and hitting us, and they gathered us on the basketball court of Chalam del Carmen. There they made us give our names . . . and they hit and threatened to kill the men who refused to give their names. Later they pulled out a list and detained those who appeared on it." Elio Henríquez, "Consignó la Procuraduría de Chiapas a 17 de los 24 campesinos detenidos en Ocosingo: Afirmaron que no regresarán a sus casas hasta que se libere a sus familiares presos," *La Jornada*, June 8, 1993, at 48. Women also claimed the police took clothing, domestic household goods, work tools, money, and food. They also said the Public Security Police forced the 24 detainees to pose with police weapons in order to "take pictures of them, accusing them of having good weapons and being inciters." *Id.* at 14. The police reported confiscation of weapons and explosives, including 22-caliber rifles, a 20-caliber shotgun, and 410-caliber guns, but the indians denied having these arms. Candelaria Rodríguez, "Consignó la Procuraduría de Chiapas a 17 de los 24 campesinos detenidos en Ocosingo: Deberán probar que machetes, hachas y cuchillos los usaban para labores de labranza," *La Jornada*, June 8, 1993, at 14.

97. Elio Henríquez, "Un militar muerto y dos heridos en Ocosingo, Chiapas," *La Jornada*, May 27, 1993.

98. Andrés Oppenheimer, "Reports of guerrillas create image problem for Mexico," *The Houston Chronicle*, July 3, 1993, at A23.

remained unsafe.<sup>99</sup> The well-respected national Mexican newspaper, *El Financiero*, joined in this sentiment, editorializing that "it is vital to pacify the region and eliminate conflicts that could scare away . . . investors in this . . . future market of North America."<sup>100</sup>

### III. HUMAN RIGHTS VIOLATIONS

#### 1. Failure to investigate and prosecute torture

The most serious allegations of abuses documented in this report involve the crime of torture. The Convention Against Torture, to which Mexico is a State Party, defines torture as "any act by which severe pain or suffering, whether physical or mental" is intentionally inflicted by a public official for the purpose of obtaining "information or a confession . . . or intimidating or coercing him . . ."<sup>101</sup> Mexican law defines torture similarly, including the recognition that torture may be "physical or psychological."<sup>102</sup>

Minnesota Advocates for Human Rights interviewed six individuals who provided credible reports of torture: three from Chihuahua,<sup>103</sup> one from

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99. José Reveles, "Create peace in Chiapas to put NAFTA back on the right track," *El Financiero*, June 10, 1993, at 46.

100. *Id.*

101. Article 1(1) of the Convention Against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind . . . ."

102. Mexican law states "The public servant commits the crime of torture who, because of his functions, inflicts on another person grave pain or suffering, be it physical or psychological, with the purpose of obtaining from the victim, or from a third person, information or a confession, or to punish him for an act that he has committed or is suspected to have committed, or to coerce him into performing or ceasing to perform a determined behavior." The Federal Law to Prevent and Punish Torture, Article 3 *in* Miguel Sarre Iguíniz, *Guía del Policía* (1992) at 40. Jorge Madrazo of the CNDH explained to Minnesota Advocates that the working definition of torture used by the CNDH is abuse during the course of an interrogation. Excessive force to effect an arrest, in contrast, would constitute abuse of authority rather than torture. Interview with Jorge Madrazo (May 27, 1993).

103. Minnesota Advocates interviewed Miguel Chaparro, his son Benjamín, and Alejandro Quiñones. For discussion of these cases see *supra* p. 5.

Mitzitón,<sup>104</sup> and two from San Isidro.<sup>105</sup> In each case, individuals were subjected to severe physical abuse in efforts to extract information or confessions. The CNDH report on San Isidro also cites nine individuals who testified they were abused by police or soldiers during interrogation, in attempts to extract confessions, or in efforts to cover up other crimes.<sup>106</sup>

The Convention Against Torture requires States Parties to prosecute crimes of torture under their criminal law.<sup>107</sup> Despite numerous, credible reports of torture by soldiers and police officers, there has not been a single prosecution for torture arising out of any of the incidents documented in this report.<sup>108</sup> Though the CNDH received allegations of torture in both their Baborigame and San Isidro investigations, neither report called for a full investigation or prosecution of those alleged to have committed these abuses.

Minnesota Advocates also finds the authorities failed to investigate allegations of torture thoroughly, as required by international human rights law.<sup>109</sup> In the absence of CNDH recommendations to prosecute police or soldiers

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104. Minnesota Advocates interviewed Rafael Heredia López. See discussion, *supra* p. 13.

105. Minnesota Advocates interviewed Alberto Shilón de la Cruz and Mariano de la Cruz López. For discussion of their cases see *supra* p. 15.

106. See CNDH, San Isidro Report, *supra* note 44, at 19-21. The CNDH report does not conclude anyone was submitted to torture, but provides details of cases that could meet the definition of torture under Mexican and international law if the pain and suffering in each particular case were sufficiently severe. Details of these cases are included in note 47, *supra*.

107. Article 4(1) of the Convention Against Torture requires that State Parties to the convention ensure that "all acts of torture are offences under its criminal law." Article 7(1) requires that violations of this law be submitted to "competent authorities for the purpose of prosecution."

108. The prosecutions of soldiers involved in the Baborigame incident is described, *supra*, at p. 8.

109. The Convention Against Torture requires that "competent authorities proceed to a prompt and impartial investigation, wherever there is a reasonable ground to believe that an act of torture has been committed . . ." Article 12. The Inter-American Court has found that States Parties to the American Convention on Human Rights have a similar affirmative duty to investigate:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.

*Case Velázquez Rodríguez*, Inter-Am. Ct. H.R. 35, para. 176, OAS/ser. L/V/III.19, doc. 13, app. VI (1988).



for acts of torture, state and federal authorities in Chihuahua and Chiapas, ultimately responsible for investigating these crimes, took the matter no further. No law enforcement official or authority other than the CNDH ever approached those interviewed by Minnesota Advocates, in Chihuahua or Chiapas, to collect evidence of torture -- or any other human rights violations -- after initial reports were publicized by human rights organizations.<sup>110</sup>

Torture is inherently difficult to prove, particularly after the use of techniques designed to leave little or no physical trace, such as water torture. Under international law, the obligation to provide the evidence necessary to assure a full investigation does not rest with the victims of abuse. Human rights law creates an affirmative obligation to ensure that there is an "effective search for truth by the government."<sup>111</sup>

The CNDH report is particularly disappointing in its failure to investigate allegations of torture effectively. In addition to evidence in videotaped interviews provided by the *Centro Fray Bartolomé*, the CNDH received allegations of torture in the declarations of nine individuals made to the Public Prosecutor. The CNDH staff interviewed only three or five of the detainees, who supposedly said the military's actions were proper throughout,<sup>112</sup> but Minnesota Advocates examined one of these videotaped interviews at the CNDH office in Mexico City, which appears to suggest the individual was tortured by soldiers.<sup>113</sup> The CNDH never even interviewed many of the individuals who alleged they had been tortured. Rather than say the evidence against the army is mixed or calling for further investigation, the CNDH declared in its final

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110. In Baborigame, an agent of the Public Prosecutor of the State of Chiapas was present during the initial investigation by COSSYDHAC. COSSYDHAC, *supra* note 12, at 1. The Chiapas police state that a doctor checked all detainees for signs of torture before release. CNDH, San Isidro Report, *supra* note 44, at 15. Despite allegations of torture brought before these authorities, Minnesota Advocates has found no evidence of official follow-up in either case.

111. The Inter-American Court stated in *Velázquez Rodríguez* that the duty to investigate "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." para. 177.

112. CNDH, San Isidro Report, *supra* note 44, at 31-32. The CNDH report is inconsistent and confusing on this matter. On p. 31, the CNDH report suggests the CNDH interviewed five detainees, and on p. 32 it states they interviewed three detainees. On p.33, the CNDH states it reviewed two videotaped interviews conducted by the *Centro Fray Bartolomé*.

113. The interviewee said soldiers were present during his torture and that soldiers interrogated him. The tape was unclear, so Minnesota Advocates is unable to determine the exact role of the soldiers in the torture. As a condition to reviewing the tape, Minnesota Advocates agreed not to cite the identity of the interviewee. The *Centro Fray Bartolomé* interviewed the same individual, however, who confirmed he was tortured.

report on San Isidro that "in no way was there any illegal act" by the soldiers from March 21-28 and that "their behavior was correct and respectful toward the inhabitants."<sup>114</sup>

The CNDH never fully explains why the allegations against the police do not amount to torture. The CNDH finds only that the police "physically mistreated" the detainees.<sup>115</sup> The declarations cited in the CNDH report indicate that the physical mistreatment was part of an effort to coerce or interrogate the detainees, behavior which constitutes torture under Mexican and international law. Indeed, Minnesota Advocates interviewed one of the same five interviewed by CNDH, Rafael Heredia López, who provided a detailed account of being tortured.<sup>116</sup>

The CNDH mentions findings of a medical report stating that no physical traces of torture were present. The medical report itself is hard to square with the CNDH's own findings -- that the Judicial Police used excessive force against 13 persons. Yet the CNDH never questions the independence of the medical report commissioned by the police, based on examinations at the police station, by an expert chosen by the police. Even more important, there is no reason to believe the most serious forms of torture alleged -- forced ingestion of water and mock executions with unloaded weapons -- would appear in a medical examination of this kind.

At the very least, the CNDH report should have reflected the need for further investigation of torture. The CNDH attributes its own inability to investigate, in part, to the desertion of the village of San Isidro.<sup>117</sup> As former residents reported to Minnesota Advocates, they will not return to the village for fear of further abuse. The success of the abusers in intimidating the entire population of this village should certainly not be an excuse for the failure of the Mexican authorities to investigate and prosecute crimes of torture fully.

#### Recommendations:

- (1) Minnesota Advocates calls on the CNDH to reopen the investigation into allegations of torture in the regions of Baborigame and San Isidro.
- (2) The CNDH, as well as appropriate state or federal authorities, should thoroughly and effectively investigate all allegations of torture, including common forms of torture that leave no physical evidence, such as death

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114. CNDH, San Isidro Report, *supra* note 44, at 29. This exculpatory language as concerns the military on March 21-28 presents a contrast with the somewhat more careful wording later in the report, which states that "it can be concluded that the only human rights violations that in this case have been authentically established are illegal and prolonged detentions as well as bad physical treatment of the 13 Tzotziles, carried out by the Judicial Police of the state of Chiapas." *Id.*, *supra*, note 44, at 37.

115. CNDH, San Isidro Report, *supra* note 44, at 37.

116. See discussion p. 13.

117. CNDH, San Isidro Report, *supra* note 44, at 31.

threats or water torture.

- (3) Whether or not the CNDH recommends additional prosecutions, sufficient evidence exists to warrant federal and state authorities to investigate allegations of torture by police and soldiers arising from the Baborigame and San Isidro incidents against the state authorities of Chihuahua and Chiápas.

## 2. Lawlessness on the part of the military

The Mexican military has made several claims to justify its actions in civilian areas: that they are legitimate death investigations; that they are a response to attacks by drug traffickers; or that they are required by threats of guerrilla activity. Even if these claims were true, none of these circumstances justify lawless behavior by the Mexican military outside the bounds of international human rights or Mexican law.

Under international human rights law there are some rights, including protections against arbitrary detention, that are derogable (subject to suspension or limitations) under conditions of "public emergency which threatens the life of the nation."<sup>118</sup> Even when circumstances constitute an emergency, however, they must be specifically declared by the government.<sup>119</sup> The government of Mexico has not declared such an emergency since the end of World War II.<sup>120</sup>

The involvement of the military in the law enforcement activity documented in this report takes place entirely outside the bounds of Mexican law. The Mexican Constitution specifically prohibits military involvement in civilian law enforcement, stating that "[i]n peacetime, no military authority shall exercise any functions but those strictly related to military discipline."<sup>121</sup>

The military has the authority under Mexican law to ensure "interior security and exterior defense,"<sup>122</sup> but this authority does not extend to law

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118. International Covenant on Civil and Political Rights, Art. 4(1). Other rights, including protections against torture or inhuman treatment, are not subject to derogation under *any* circumstances. *Id.*, Art. 4(2). The American Convention on Human Rights has almost identical provisions for suspending guarantees under Article 27.

119. *Id.* For an authoritative analysis of circumstances that could constitute an emergency under international human rights law see Special Rapporteur N. Questiaux, *Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency*, Commission on Human Rights, 35th Sess., Agenda Item 8, U.N. Doc. E/EN.4/1982/15 (July 27, 1982).

120. Interview with Miguel Sarre, CNDH, May 27, 1993.

121. Article 129, Constitution of Mexico.

122. Article 89, sec. VI, Constitution of Mexico.

enforcement among the civilian population.<sup>123</sup> Under the Constitution of Mexico, arrest and search warrants can only be granted by a judicial authority to the State or Federal Prosecutor (*Ministerio Público*) and the police.<sup>124</sup> Soldiers, like any other citizens, have the authority to detain civilians only under narrowly defined circumstances when they see a violation of the law in progress and it is impossible to summon the police in time (*flagrante delicto*).<sup>125</sup>

The military searches and detentions of civilians are thus not merely "excesses," as the Secretary of Defense described the abuses in Baborigame, because even a more "restrained" series of detentions would have been illegal. The detention of civilians and the search of homes by the military is categorically outside the bounds of Mexican law.<sup>126</sup> International human rights treaties, such as the American Convention on Human Rights, provide that

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123. As Mexican constitutional scholar Felipe Tena states: "We must not forget . . . that the use of the army must never exceed the limits imposed by the rights of the individual[. These protections] . . . assume singular importance when they preserve the individual's fundamental rights against military force, the government's most powerful instrument." Felipe Tena, *Derecho Constitucional Mexicano*, 16th ed., 1978, at 397.

124. Article 16 of the Mexican Constitution states that all search orders must be issued by judicial authorities. Article 21 states that "The prosecution of crimes is the duty of the Public Prosecutor and the judicial police, the latter will be under the authority and immediate command of the former." The Constitution specifically allocates the investigation and prosecution of federal crimes, such as the killing of a soldier, to these civilian authorities. Article 102 specifies "It is the duty of the Federal Public Prosecutor to prosecute, before the courts, all federal crimes; and it has the authority to ask for the arrest warrants against the accused, search and exhibit the evidence with which it may prove the guilt of the accused." This prohibition dates back to concerns, expressed at the 1916 Constitutional Convention, that the military not intrude on civilian control of government. See *Diario de los Debates*, Vol. I at 264.

125. Article 16 of the Mexican Constitution states: "No order of apprehension or detention can be issued that is not issued by the judicial authority, not preceded by a report, accusation, or complaint of a determined deed that is legally punishable with imprisonment, and not supported by a declaration, under oath, of a trustworthy person or by other facts which make it probable that the accused is responsible, with the exception of cases of *flagrante delicto*, in which any person can apprehend the delinquent and his/her accomplices, placing them, without delay, at the disposition of the immediate authority."

126. There does appear to be some understanding of the full Constitutional limit on military power among some military authorities. The current regional commander in Baborigame, General Maldonado, acknowledged to Minnesota Advocates that the investigation of the killing of the soldier should have been turned over to the Federal Judicial Police as soon as a civilian became the primary suspect. Interview with General Maldonado, December 3, 1993.

individuals may only be detained by procedures set forth in the law.<sup>127</sup> When the military detains civilians, it is therefore in violation of both Mexican and international law.

The incidents documented in this report (Baborigame, San Isidro, and Ocosingo) suggest there is growing official tolerance for arbitrary detention by the military. Secretary of Defense Bazán deserves credit for recognizing that abuses occurred in Baborigame. Unfortunately, his apology was limited to that case. He did not recognize that soldiers have no business detaining civilians.

In San Isidro, the situation is more complex because the military cooperated closely with the police. Despite the fact that the CNDH finds the detentions themselves to be illegal, and despite the fact that some 200 heavily armed soldiers stood guard over the villagers as a handful of police conducted house-to-house searches, the CNDH absolves the military of any responsibility.

It is apparent even from the CNDH report that the military did much more than stand by while the abuses took place. Apart from the evidence of active military participation in the detentions, the CNDH report mentions the fact that army investigators targeted San Isidro el Ocotal and Mitzitón for action and identified the specific individuals to be detained. Even if the searches and detentions were conducted by the few policemen on the scene, the presence of a large number of soldiers clearly facilitated the illegal acts of the police.

By absolving the army of any liability for the abuses in San Isidro, the CNDH gives a green light to the army to plan and facilitate large scale detentions and searches among the civilian population as long as they are careful enough to bring along a few police officers. Furthermore, by the precedent established in San Isidro, the fact that the police illegally detain civilians without warrants is not the concern of the military.

In Ocosingo, the military went one step further in violating the constitutional limits on its power. There, soldiers detained entire villages without any police presence. General Godínez took responsibility for the detentions in Ocosingo, justifying them on the grounds that he caught violators in *flagrante delicto*. If the power of the military to detain civilians in *flagrante delicto* is broadened to include situations like the one in Ocosingo, then the military has virtually boundless power to detain civilians and search homes. The CNDH specifically rejected this interpretation of a *flagrante delicto* search in San Isidro, finding that the warrantless search of homes could not be justified "because the deaths of the officers had occurred in the preceding days."<sup>128</sup>

Subsequent claims by the Department of Defense that the arrests took place while armed gunmen were escaping a shootout lack credibility and appear to be a face-saving way for the military to justify its illegal detention of

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127. American Convention, Article 7(2) states "no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." Article 21(2) states "no one shall be deprived of his property except . . . according to the forms established by law."

128. CNDH, San Isidro Report, *supra* note 44, at 34.

civilians. Even if the new account of events is correct, however, and the eight Mexicans and two Guatemalans were arrested while armed and "escaping" a shootout, the detentions are still illegal. These arrests took place one or two days after the alleged shootout, and the military had the opportunity to call in the police. Whether or not the arrests were legal, the detention of entire villages and the search of homes in Pataté Viejo and Pataté Nuevo were entirely outside the bounds of Mexican law.

Recommendations:

- (4) Unless the Federal authorities show credible evidence that the detainees were involved in a shootout with soldiers, the individuals illegally detained on May 25 in the region of Ocosingo should be immediately released.
- (5) To prevent arbitrary detentions in the future, Mexico should implement the protections already established under its Constitution: arrests should only be carried out pursuant to warrants issued by judicial authorities to authorized, civilian personnel. Exceptions for individuals caught in *flagrante delicto* violating the law should be limited to circumstances in which warrants are impossible and authorized civilian personnel are unavailable.
- (6) The Secretary of Defense should renounce the policy of detaining civilians and searching homes in pursuit of its otherwise legitimate effort to combat guerrilla activity.
- (7) The military should be made accountable to Mexican law. When soldiers illegally detain civilians or conduct searches under circumstances that do not truly constitute *flagrante delicto* violations of the law, soldiers should be criminally prosecuted for this wrongdoing.

**3. Failure to enforce victims' right to compensation**

International human rights treaties provide a right to compensation for those subjected to illegal taking of property,<sup>129</sup> arbitrary detention,<sup>130</sup> and torture.<sup>131</sup> States must ensure these rights are enforceable. The American Convention specifies that persons subjected to abuse have a right to effective recourse before a "competent court or tribunal."<sup>132</sup>

The military's efforts to remedy the destruction of houses and other property by soldiers in the region of Baborigame are in many ways impressive.

129. The American Convention on Human Rights creates a right to "just compensation" for the taking of property. Article 21(2).

130. The International Covenant on Civil and Political Rights, Article 9(5) provides that "[a]ny one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

131. The Convention Against Torture provides that victims of torture shall have an "enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." Article 14(1).

132. Article 25(1), American Convention on Human Rights.

and it deserves credit for effort to alleviate the economic hardships of the Tepehuan community. Yet the army has sought to provide this aid outside the bounds of any legal process and without recognizing the victim's entitlement to compensation as a matter of right.<sup>133</sup> The army made no effort to make individualized determinations of loss, nor did it establish any mechanism through which victims could present claims. On the contrary, victims of abuse were discouraged from the view that they had a right to compensation by being told this was a "gift" from the Secretary of Defense.

Under its approach to compensation in Baborigame, the military could terminate its generosity at any point in the same way it was first provided: by a high level decision in the Department of Defense. In the absence of any individualized process, Minnesota Advocates cannot determine whether the aid provided by the military was sufficient to compensate losses suffered by victims of abuse. Without individualized determinations, it is also impossible to compensate appropriately for damages from arbitrary detention and torture.

In Chiápas, there has been no hint of compensation for damages incurred by illegal acts of the government. In San Isidro, police and military ransacked citizens' homes, stole their money and destroyed their possessions. Valuable personal documents such as land deeds and birth certificates were also removed. In Pátaté, several individuals reported that soldiers stole their cash. None of the individuals in any of these cases indicated that law enforcement officials documented their losses, and there has been no effort to provide these individuals with civil remedies for their losses.

The right to compensation for victims of torture presents a special problem, since the authorities never recognized the existence of torture in any of the cases documented herein. Until Mexico properly investigates torture, it cannot begin to meet its obligation to compensate torture victims as required by international human rights treaties.

#### Recommendation:

- (8) Mexico should enforce the right to compensation for individuals subject to property damage, arbitrary detention, or torture. To ensure these rights, law enforcement authorities must take affirmative steps to investigate these abuses. The responsible authorities should make opportunities available for individuals to present their claims.

#### **4. Improper death investigations**

It is ironic that the abuses documented in this report were justified by the military and police as legitimate acts in pursuit of a full investigation of the killings of soldiers. General Godínez justified the actions of the military under his command in San Isidro by stating that "the widows of the dead soldiers have human rights too."

International human rights organizations and the United Nations have long stressed the importance of thorough death investigations; without them there can never be effective protection against killings, either by government

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133. See discussion *supra* p. 9.

agents or other individuals. To this end, the United Nations adopted the "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions," internationally-recognized standards for thorough death investigations.<sup>134</sup> To supplement the Principles, Minnesota Advocates helped the United Nations develop the "Minnesota Protocol," a manual on the proper use of forensic evidence published by the U.N. in 1991.<sup>135</sup>

Minnesota Advocates has called on Mexico on more than one occasion to abide by internationally-recognized death investigation standards.<sup>136</sup> As the thorough and professional autopsy in this case demonstrates,<sup>137</sup> Mexico has the technical expertise to conduct comprehensive medico-legal investigations when it has the political will to do so.<sup>138</sup>

Important as it is to be thorough and complete, death investigations can never justify human rights abuses against witnesses and suspects. The U.N. Principles on Investigation state that witnesses "shall be protected from violence, threats of violence or any other form of intimidation."<sup>139</sup> Rather than creating exceptions to human rights protections for those accused of crimes, international human rights treaties recognize that the heightened tensions surrounding criminal investigations are a time of particular vulnerability for those accused. Thus, human rights treaties set out in detail a number of special rights for criminal suspects.<sup>140</sup>

#### Recommendation:

(9) The Mexican police should conduct death investigations in accordance with

134. E.S.C. Res. 1989/65; U.N. Doc. E/1989/INF/7, at 129-134 (1989); G.A. Res. 44/159 of Dec. 15, 1989; G.A. Res. 44/162 of Dec. 15, 1989 (hereinafter the "Principles on Investigation").

135. United Nations, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions*, U.N. Doc. ST/DSDHA/12, U.N. Sales No. E.91.IV.1 (New York 1991) [hereinafter "*Death Investigation Manual*"]. The Principles on Investigation are reprinted in the Manual at 41.

136. See e.g., *Oropeza Report*, *supra* note 7; *Conquest Continued*, *supra* note 3, at 83.

137. See discussion of autopsy *supra* note 42. Minnesota Advocates for Human Rights obtained a copy from the CNDH of the autopsy report on the remains found near San Isidro. The autopsy was thorough and professional.

138. As documented in Minnesota Advocates' report on the homicide of Dr. Oropeza, important physical evidence can be lost when there is not an adequate autopsy. As described above, the autopsy on the remains found near San Isidro was apparently conducted thoroughly and professionally by trained experts in forensic pathology. See discussion *supra* note 42.

139. Principles on Investigation, Principle 15.

140. See, e.g. International Covenant on Civil and Political Rights, Art. 14(2); American Convention, Article 8(2).



internationally accepted standards, as set out in the United Nations "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions."

#### 5. Intimidation of witnesses & harassment of human rights monitors

Through the intimidation of witnesses and harassment of human rights monitors, the military and police have limited the full investigation of abuses in Chihuahua, San Isidro, and Ocosingo. The Convention Against Torture specifies that witnesses be "protected against all ill-treatment or intimidation" resulting from their complaints or any evidence given.<sup>141</sup>

In Chihuahua, human rights activists were threatened with statements that they had "aided drug traffickers."<sup>142</sup> Rather than initiating a prompt and impartial investigation after the initial allegations were made, the military engaged in an attempt to intimidate human rights witnesses and to collect false testimonies denying that abuses had occurred.<sup>143</sup> Responsibility for these attempts to obstruct the investigation may go as high as the Commander of the 5th Military Zone, General Luis Montiel López, who claimed to be collecting evidence that abuses had not taken place.

In Chiápas, military efforts to threaten or intimidate human rights activists were more subtle than in Chihuahua.<sup>144</sup> Yet these threats are all the more intimidating, because in Chiápas, the *Centro Fray Bartolomé* operates in an environment where it receives threats from many sides.

The military claims the *Centro Fray Bartolomé* illegally coached witnesses into fabricating testimony about abuses. The CNDH lends credibility to these allegations by repeating them in its report, despite the lack of any evidence to support them, and by adding its own accusations that the *Centro* acted in a "disrespectful" manner. Even worse, the CNDH suggests the delay by the Public Prosecutor in releasing the detainees was caused by interruptions from persons connected with the *Centro*.

The independent investigation by Minnesota Advocates corroborates many of the abuses claimed by the *Centro Fray Bartolomé*, and Minnesota Advocates finds their work generally thorough and responsible.

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141. Convention Against Torture, Article 13.

142. Teresa Jardí, then counsel to COSYDDHAC, and Sister Leovigilda López, who reported the original allegations against the military for COSYDDHAC, received such threats. Military efforts to impede the investigation are described fully at p 7.

143. Loretto Carillo Palma, Antonio Rivas, and Jesús Navarrete Carillo and others from Baborigame told Minnesota Advocates that soldiers tried to get them to sign false statements absolving the military of wrongdoing. Upon release from detention, Miguel Chaparro was threatened that soldiers would "come back" for him if he told anyone about his detention or beating.

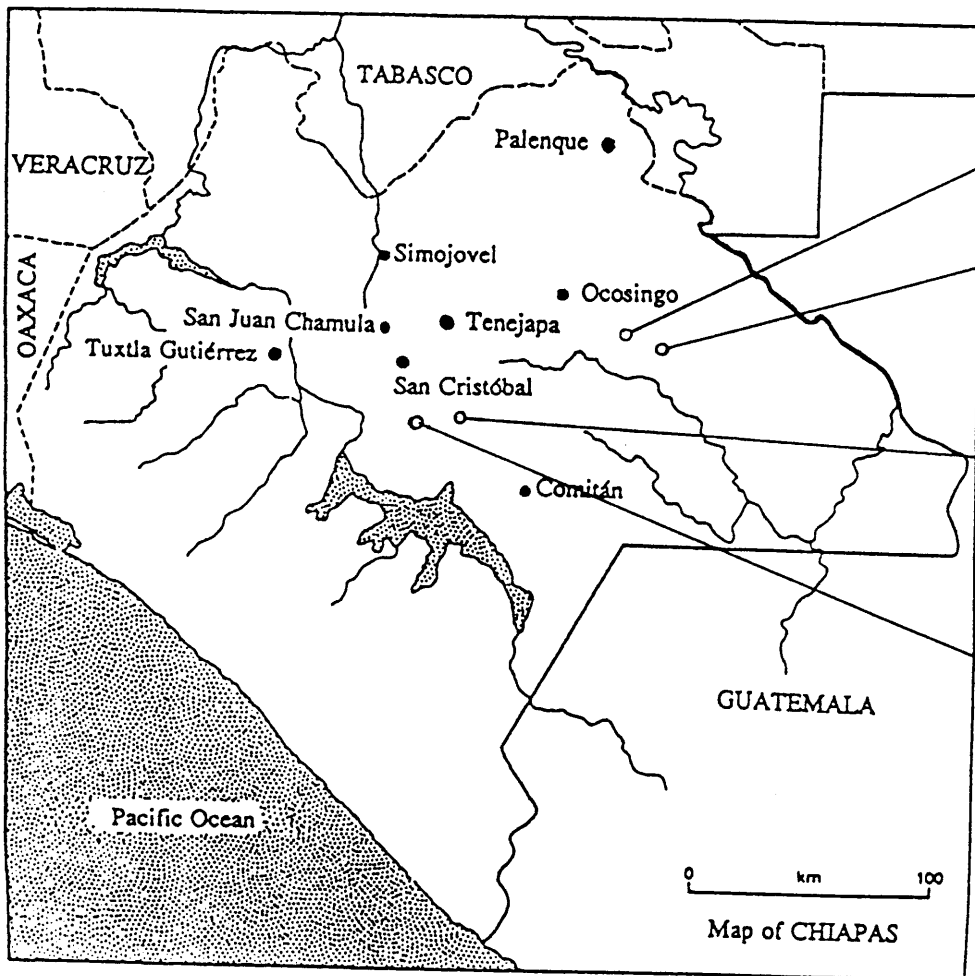
144. Threats against *Centro Fray Bartolomé* are described fully, *supra* p. 19.

property damage, arbitrary detention, or torture. In order to ensure these rights, law enforcement authorities must take affirmative steps to investigate costs associated with these abuses. The responsible authorities should make opportunities available for individuals to present claims.

- (9) The Mexican police should conduct death investigations in accordance with internationally accepted standards, as set out in the United Nations "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions."
- (10) Unless the military or the CNDH can provide evidence to support their allegations against the *Centro de Derechos Humanos Fray Bartolomé*, Minnesota Advocates calls on each of these authorities to issue a public retraction of their allegations against the organization and its representatives.
- (11) Representatives of human rights organizations, like all other citizens, should be allowed access to detainees. Representatives of the *Centro* should be given access to those detained on May 24 in the region of Ocosingo.
- (12) An international human rights enforcement mechanism is needed that is independent of the Mexican criminal justice system. Mexico should recognize the jurisdiction of the Inter-American Court of Human Rights to issue binding decisions on the enforcement of the American Convention.

Until true reform has taken place throughout Mexico's law enforcement mechanism, international and Mexican human rights groups must continue to pay close attention to the police and military human rights record in rural areas. In this case, the aggressive advocacy by religious leaders and human rights groups in Mexico such as COSYDDHAC and the *Centro Fray Bartolomé* can be credited with effectively bringing these abuses into public view and creating pressure for a response by the military authorities.

**APPENDIX: MAP OF CHIAPAS**



Pataté Viejo  
& Pataté Nuevo  
May 24, 1993  
Nazeret I  
Pemex Facility  
1,000 soldiers  
& 22+ trucks

Mitzitón  
March 28-29  
40-50 soldiers  
±6 police

San Isidro  
March 28-29  
400 soldiers  
±6 police  
April 25  
200 police  
May 8  
400 police

