



NO DOUBLE STANDARDS IN INTERNATIONAL LAW

Linkage of NAFTA with Hemispheric System of Human Rights

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No Double Standards in International Law:

Linkage of NAFTA with hemispheric system of human rights enforcement is needed - Canada, Mexico & the United States must become full partners in the Inter-American System of Human Rights

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The North American Free Trade Agreement (NAFTA) creates new opportunities for hemispheric cooperation, including a new commitment to the existing hemispheric system of human rights enforcement. Minnesota Advocates for Human Rights¹ calls on Canada, Mexico and the United States to link the new international trade agreement with an agreement to enforce international human rights law.

A hemispheric international human rights enforcement mechanism is already in place: the inter-American system of human rights of the Organization of American States (OAS). In conjunction with the approval of NAFTA, Minnesota Advocates for Human Rights urges all three countries to insist on the full participation of each party in the inter-American system of human rights enforcement.²

Minnesota Advocates for Human Rights takes no position on the trade portions of NAFTA, but

¹ Minnesota Advocates for Human Rights, founded in 1983, is a nongovernmental organization of 1,000 members that works to promote and protect international human rights. The organization advocates against individual human rights abuses, works to strengthen institutions and laws that protect human rights, researches and investigates human rights conditions in the United States and other countries, and educates the public about human rights issues. Minnesota Advocates has published reports about human rights conditions in over fifteen countries including three previous reports on Mexico: *Conquest Continued: Disregard for Human and Indigenous Rights in the Mexican State of Chiapas*, 1992; *The Homicide of Dr. Victor Manuel Oropeza Contreras: A Case Study of Failed Human Rights Reforms in Mexico*, 1991; and, *Paper Protection: Human Rights Violations and the Mexican Criminal Justice System*, 1990.

² Full partnership includes: ratification of the American Convention for Human Rights, agreement to the unrestricted power of the Inter-American Commission to conduct human rights fact-finding missions in each state, and acceptance of mandatory jurisdiction of the Inter-American Court. The Inter-American system is described further in notes 15 to 17 and accompanying text.

it is our view that any trade agreement must take place in a hemisphere in which international human rights are enforced. This report is not intended to be for or against a trade agreement - free trade need not be incompatible with the protection of human rights. Warren Christopher as Deputy Secretary of State under President Carter pointed out that "[r]espect for human rights creates an atmosphere for stability in which business and investment can flourish."³

As an organization that has monitored human rights conditions in North America over the past several years, Minnesota Advocates for Human Rights finds that human rights abuses in North America have all too often inhibited political participation and chilled the atmosphere for the discussion of pressing social and political concerns. Furthermore, those abused have limited opportunities to seek redress through domestic courts.

This report sets out recent examples of such abuses in the United States and Mexico: violence against migrants on the Mexico-United States border by agents of the United States Immigration & Naturalization Service (INS); the lack of domestic remedies for such abuses in United States courts, and the failure of the United States judiciary to fully incorporate international human rights into United States law; ongoing electoral fraud in Mexico, police abuses and corruption within Mexico's judicial system, and the intimidation and abuse of Mexican human rights, labor, and environmental rights activists. The purpose of this report is not to catalogue all human rights abuses in North America. Rather, it is to demonstrate the link between human rights violations and the capacity of citizens in each country to respond to NAFTA through the political and judicial process.⁴

³ Warren Christopher, *Human Rights and the National Interest*, Department of State, Bureau of Public Affairs, Current Policy No. 206 (1980), cited in Frank Newman & David Weissbrodt, *International Human Rights: Law, Policy & Process*, 503 (1990).

⁴ This report does not mention human rights abuses in Canada or a host of other serious abuses in the United States and Mexico. The emphasis of this report is in part a reflection of the fact that Minnesota Advocates for Human Rights has for the past five years closely monitored human rights conditions in Mexico. Yet human rights abuses take place in all three countries, and with NAFTA these human rights violations become more inter-related.

Link between NAFTA and Protection of Human Rights

The NAFTA draft released by the Bush Administration on September 6, 1992, makes no provision for the enforcement of international human rights under the new regional system. Although United States "fast-track" legislation requires this draft of the agreement to be presented to Congress for a yes-or-no vote, President-elect Clinton has promised that he "will not sign legislation implementing the North American Free Trade Agreement until we have reached additional agreements to protect America's vital interests."⁵ In particular, Clinton suggested the establishment of commissions to set minimum environmental and labor standards to be enforced in each country, and a "supplemental agreement which would require each country to enforce its own environmental and worker standards."⁶ To assure the protection of citizen participation, Clinton added that "we ought to make sure that NAFTA, the trade agreement, doesn't override the democratic process."⁷

Mexican President Carlos Salinas de Gortari has endorsed the idea of establishing commissions to address problems that arise under NAFTA, including environmental issues.⁸ He added that such commissions must also examine other Mexican concerns, such as restrictions on the entry of Mexicans into the United States and better protection of Mexicans against abuse by United States authorities in the border region. President Salinas also asked for assurances that the United States not kidnap criminal suspects in Mexico for trial in the United States, as this is a violation of international law and an affront to Mexican sovereignty.⁹ Finally, President Salinas reiterated the promise he made in his recent State of the Union Address to ensure free elections through changes in Mexico's electoral laws.¹⁰

These promises by President-elect Clinton and President Salinas are important, but they can only be fulfilled by a new commitment to enforce international human rights law. Labor rights, environmental rights, the rights of migrant workers, and the many other pressing issues raised by NAFTA in all three countries cannot be examined in isolation. A guarantee of impartial and effective judicial process in each country is also essential, so that redress is available to any person whose internationally recognized human rights are violated under the new hemispheric system.

⁵ Governor Bill Clinton, *Expanding Trade and Creating American Jobs*, remarks, North Carolina State University, Raleigh, NC, October 4, 1992.

⁶ *Id.*

⁷ *Id.* Clinton suggested that the supplemental "agreement should contain a wide variety of procedural safeguards and remedies" to assure "access to the courts, public hearings, the right to present evidence, streamlined procedures and effective remedies."

⁸ Tim Golden, *Mexican President Seeks to Address Clinton's Concerns*, New York Times, A1, November 21, 1992.

⁹ *Id.* at A1-2. In 1991, the U.S. Supreme Court in *U.S. v. Alvarez-Machain*, ___ U.S. ___, 112 S.Ct. 2188, 119 L.Ed. 2d 441 (1992), upheld such a kidnapping in Mexico. This case is discussed below at note 29, and accompanying text.

¹⁰ *Id.* at A2. Tim Golden, *Mexico's Leader Cautiously Backs Some Big Changes*, New York Times, A3, November 2, 1992.

As NAFTA establishes common policies that affect labor, the environment, and a wide range of living conditions in each country, there is also a growing inter-relation of human rights conditions from country to country.¹¹ The need for a common human rights enforcement policy is a reflection of the growing global inter-relation of countries on every level - economic, political, social, and legal. NAFTA significantly speeds up this process and the need for full partnership in the inter-American system of human rights becomes ever more pressing.

NAFTA, as it is now proposed, creates a binding enforcement mechanism for violations of the new international trade law.¹² The agreement of Canada, Mexico and the United States to such binding enforcement mechanisms under NAFTA makes clear that enforcement of international law will be supported when governments have the political will to do so.

Canada, Mexico and the United States must now adopt a mechanism to enforce their international human rights obligations. To do otherwise would be to legislate a double standard within international law - violators of trade law would be sanctioned, violators of human rights law would not. In order to demonstrate a commitment to the enforcement of human rights, the North American partners should agree to the binding enforcement of international human rights law.

Inter-American System of Human Rights

There is no substitute for the enforcement of international human rights through domestic courts. Where domestic courts have failed to provide for redress of abuses, however, an international mechanism can provide the independent oversight needed to assure the consistent enforcement of international law. The inter-American system serves that need.

The cornerstone of the inter-American system is the American Convention on Human Rights, which guarantees the right of people in each country to "participate in public affairs, directly and through freely elected representatives."¹³ The American Convention also guarantees a full range of civil and political rights, along with an independent and effective system of judicial recourse for the violation those rights.¹⁴

¹¹ In anticipation of a much closer relationship between human rights conditions in Canada, the United States and Mexico under a new trade accord, human rights organizations in all three countries have already started working together to map out common strategies for the defense of human rights in North America. Human rights groups met in Reynosa, Mexico on September 11-13, 1992 to identify common human rights concerns and will continue this discussion under the rubric of the "Trinational Exchange on Human Rights." Interview with Mariclaire Acosta, Director, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, December 1, 1992.

¹² NAFTA, Chapter 20, "Institutional Arrangements and Dispute Settlement Procedures" (September 6, 1992 draft). There are a number of different dispute resolution mechanisms under the current NAFTA draft which would allow for the imposition of countervailing duties or fines for violations of the NAFTA trade law.

¹³ American Convention on Human Rights, art. 23(a).

¹⁴ *Id.* The Convention guarantees an effective system of accountability to protect the rights guaranteed in the treaty as well as the right to a fair trial and due process for those accused (*see* articles 1, 8 and 25).

In addition to guaranteeing international human rights, the inter-American system creates a mechanism to enforce them. Canada and the United States must first ratify the American Convention to participate in this system of enforcement.¹⁵ All three governments should then unconditionally accept the power of the Inter-American Commission on Human Rights to conduct on-site human rights investigations without restrictions within each country.¹⁶ Finally, each country should submit to the mandatory jurisdiction of the Inter-American Court, which will have the authority to issue binding decisions enforcing international law for the protection of human rights in the American hemisphere.¹⁷

The Record: United States

International human rights abuses occur within the borders of the United States. While domestic courts provide some relief for these abuses, adherence to the hemisphere-wide human rights enforcement mechanism would provide additional protection. The need for United States participation in the hemisphere-wide enforcement mechanism is illustrated by a case currently before the Inter-American Commission concerning human rights abuses against undocumented migratory laborers in the United States-Mexico border region.

Lack of domestic remedies for victims of border violence

Over the last four years, abuses by agents of the INS and the United States Border Patrol have been well documented by human rights groups in the United States and Mexico, including arbitrary detention, beatings, sexual abuse, and the use of excessive force in interrogations, which in some cases lead to death.¹⁸ According to official United States statistics, sixteen Mexicans were killed by United

¹⁵ As members of the Organization of American States (OAS), Canada, the U.S., and Mexico have all ratified the OAS Charter and are already part of the inter-American system in a limited way. The OAS Charter provides a legal framework for the Inter-American Commission to promote the observance and protection of international human rights. OAS Charter, art. 112. OAS members accept the American Declaration on the Rights and Duties of Man as a normative standard by which the Commission will adjudge the activities of all OAS member states. The American Convention binds States Parties to further international human rights standards and creates additional mechanisms for their enforcement. It grants greater powers to the Inter-American Commission to deal with private and inter-state complaints, and it allows States to submit to the jurisdiction of the Inter-American Court. See Thomas Buergenthal, *The Inter-American System for the Protection of Human Rights*, in *Human Rights in International Law: Legal & Policy Issues*, 439 (Theodor Meron, ed. 1984).

¹⁶ Articles 43 and 48 of the American Convention on Human Rights confer power on the Commission to carry out investigations within each State Party to the Convention. It is essential for the effective functioning of the Commission that States ratifying the Convention not make reservations limiting the authority granted to the Commission under these articles. Under article 43, States Parties "undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention." As article 48(d) provides, States Parties agree to furnish "all necessary facilities" to allow the Commission to "verify the facts" alleged in petitions or communications to the Commission.

¹⁷ Article 62(1) of the American Convention allows States Parties to "recognize as binding, *ipso facto*, and not requiring any special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention."

¹⁸ See, e.g., Americas Watch, *Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico* (May 1992) (hereinafter Americas Watch (1992)); Mexican National Human Rights Commission, *Report on Human*

States law enforcement officials from 1988 to 1990.¹⁹ Reports of beating and sexual assault are widespread, but these abuses are thought to be significantly under-reported by undocumented individuals who fear deportation.²⁰

In August 1992, the Center for Human Rights and Constitutional Law filed a petition before the Inter-American Commission on behalf of victims of border violence.²¹ The petition alleges that the United States Government has "tolerated and thereby encouraged shootings, improper use of firearms and other weapons, beatings, physical abuse and racially motivated verbal abuse of immigrants, refugees and United States citizens travelling across or in close proximity to the United States-Mexico border."²²

The Petition contains a disturbing litany of alleged abuses. It alleges, for example, that a Border Patrol agent restrained a pregnant Mexican woman by stepping on her stomach. Having done so, the agent then shot her husband twice when he attempted to protect her. The second shot hit the husband in the back while he was running away.²³ It further alleges that Border Patrol agents, after subduing a United States citizen who appeared to be Mexican, continued to strike him while he was on the ground, causing him to suffer serious permanent injuries.²⁴ It also alleges that INS agents failed to administer even rudimentary first-aid to a female Mexican detainee who displayed clear signs of physical and emotional distress, "manifested by difficulty in breathing, spitting up, loss of vision, incoherence, profuse sweating, and comments from her that she was dying."²⁵ Ten minutes later, the detainee went into cardiac arrest and died.²⁶

As the petition describes, Mexican nationals who seek redress for human rights violations in United States courts are confronted by a multitude of impediments. Many victims are deterred from

Rights Violations of Mexican Migratory Workers on Route to the Northern Border, crossing the Border and upon entering the Southern United States Border Strip (1991) (hereinafter CNDH (1991)).

¹⁹ CNDH (1991) at 56. As the CNDH noted, inadequate files in half these cases made it impossible to document the exact details surrounding these killings. In some cases, Mexicans were killed who appeared to be engaging in criminal acts or carrying firearms. In other cases, excessive force by Border Patrol agents and the lack of prompt response by U.S. authorities has been documented. *Id.* at 56 - 58. The undercover Border Crime Prevention Unit, which was involved in 19 killings between 1984 and 1989, was abolished after an incident in which two handcuffed men were shot. *Americas Watch* (1992) at 9.

²⁰ *Id.* at 35.

²¹ Petition to the Inter-American Commission on Human Rights of the Organization of American States (OAS Petition on Border Violence), August 12, 1992.

²² *Id.* at 3.

²³ *Id.* at 6.

²⁴ *Id.* at 8.

²⁵ *Id.* at 12-13.

²⁶ *Id.*

filing complaints or seeking redress through United States courts for fear of deportation (by the very INS agents who have abused them).²⁷ Others are unable to afford the high cost of litigation in United States courts.²⁸ If they pursue their claim, petitioners soon learn that INS and Border Patrol agents enjoy numerous statutory and judge-made "immunities" to liability for their acts.²⁹ Cumulatively, these impediments establish a virtually insurmountable obstacle to human rights protection for Mexican nationals via United States court action.

Unfortunately, even if the Inter-American Commission finds that the United States has violated its treaty obligations in this case, the Commission is not able to issue binding decisions. Since the United States has not ratified the American Convention and submitted itself to the mandatory jurisdiction of the Inter-American Court, that body, which does have the capacity to bind the parties before it, has no authority to rule on this case.

Failure to integrate international human rights law into U.S. jurisprudence: the Alvarez-Machain case

Many of the victims of abuse at the Mexico-United States border fear the United States legal system because of the danger that they will be repatriated if they attempt to take action against their abusers. But even if these claimants sought relief through the United States courts, the effectiveness of international human rights protections those courts will provide is debatable. The need for a new enforcement mechanism for international law is underscored by inadequate enforcement of international human rights law in United States Courts.

While the United States Constitution provides that international treaties are the "supreme law of the land,"³⁰ a recent decision by the United States Supreme Court, *United States v. Alvarez-Machain*,³¹ severely limits the protections available in United States courts for individual rights protected by international human rights treaties. The decision also upholds a United States policy of abducting criminal suspects abroad for trial in United States courts. The government of Mexico lodged a formal protest to the *Alvarez-Machain* decision as an affront to its sovereignty and a violation of international law. President Salinas has demanded a guarantee against future abductions of this kind.³²

²⁷ *Id.* at 21.

²⁸ *Id.* at 19. The Inter-American Court has issued an advisory opinion unanimously holding that, if indigence prevents a petitioner from "invoking the domestic remedies necessary to protect a right guaranteed by the American Convention, he is not required to exhaust such remedies." Advisory Opinion No. OC-11/90, *Exceptions to the Exhaustion of Domestic Remedies in Cases of Indigence or Inability to Obtain Legal Representation Because of a Generalized Fear Within the Legal Community* (August 10, 1990).

²⁹ *Id.* at 20.

³⁰ U.S. Const. Art. VI, ¶2.

³¹ ___ U.S. ___, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992).

³² Tim Golden, *Mexican President Seeks to Address Clinton's Concerns*, New York Times, A1, November 21, 1992.

The *Alvarez-Machain* case arises out of the abduction in Mexico of Dr. Humberto Alvarez Machain by agents of the United States Drug Enforcement Agency (DEA) so that he could be tried in United States courts for his alleged involvement in the killing of a DEA agent. The Ninth Circuit Court of Appeals found that United States Courts lacked the jurisdiction to try the defendant because his abduction violated a United States-Mexico extradition treaty. The Government of Mexico protested the abduction as a violation of the treaty and an intrusion upon Mexico's sovereignty. The United States Supreme Court overturned the Ninth Circuit decision, finding that the abduction did not violate the extradition treaty because such actions were not specifically prohibited within the treaty.

In July 1992 the Permanent Council of the Organization of American States asked the Inter-American Juridical Committee to review the *Alvarez-Machain* decision.³³ The Inter-American Juridical Committee found that the "kidnapping [of Dr. Alvarez-Machain] constitutes a serious violation of international public law, because it constitutes a violation of Mexican territorial sovereignty."³⁴ As a result, the United States should not try Dr. Alvarez-Machain in United States courts, but is "obligated to repatriate" him. The Inter-American Committee also found that the United States Supreme Court's reading of the extradition treaty "disregards the precept according to which treaties are to be interpreted *pursuant to their objective and purpose and in relation to the applicable rules and principles of international law.*"³⁵ By adopting the principle that any action is permissible so long as it is not specifically prohibited by a treaty, the United States Supreme Court seriously limited the protections available to individuals under international human rights law. The Committee found that if the principles invoked by the Supreme Court were taken to their logical extreme, "the international legal order would irremediably break down..."³⁶

In its *Amicus Curiae* brief to the United States Supreme Court in *Alvarez-Machain*, Minnesota Advocates for Human Rights warned that "the breakdown of respect for the rule of law has resulted in kidnapping, torture, death and other suffering for thousands of innocent persons" throughout the hemisphere.³⁷ By failing to respect international human rights law in United States courts, the United States contributes to degradation of the law in the United States and throughout the hemisphere. The new United States administration can reverse this decline by ensuring that United States protection of human rights will be subject to review by the Inter-American Court.

³³ CP/RES. 586 (909/92), July 15, 1992.

³⁴ Inter-American Juridical Committee, "Legal Opinion Regarding the Decision of the Supreme Court of the United States of America," August 15, 1992.

³⁵ *Id.* (emphasis added).

³⁶ *Id.*

³⁷ Brief of *Amicus Curiae* Minnesota Lawyers International Human Rights Committee in Support of Respondent, at 3, *U.S. v. Alvarez-Machain*, ___ U.S. ___, 112 S.Ct. 2188, 119 L.Ed.2d (1992).

The Record: Mexico

The link between human rights protection and Mexico's participation in NAFTA is particularly clear, because human rights abuses in Mexico are closely linked with the functioning of the country's political process. Mexico's participation in the inter-American system of human rights enforcement would help ensure a more accessible political process within Mexico.

Electoral Fraud

Years of electoral fraud have limited participation by opponents of official government policies in the political system at the local, state, and federal levels. Since the outcry in Mexico over electoral fraud in the 1988 elections, the Partido Revolucionario Institucional (PRI) promised reforms.³⁸ In 1990, the Mexican government adopted a new federal election code ("COFIPE") and established a new Federal Electoral Institute (FEI) to monitor the electoral process.³⁹ At the same time the government created the Comisión Nacional de Derechos Humanos (CNDH) to address alleged abuses of human rights in Mexico.⁴⁰ However, issues of electoral fraud and labor unrest were specifically excluded from the areas over which the CNDH has jurisdiction.⁴¹

Since the electoral reform, the National Action Party (PAN) has won elections for governor in three of thirty-one states in Mexico (the first time in the last sixty years that any gubernatorial election has been won by a non-PRI candidate).⁴² Evidence from recent elections, however, demonstrates that the new law's effectiveness in reducing fraud has been limited. Independent electoral observers in Mexico have recently released reports documenting electoral fraud in the July and August 1992 elections in Michoacán⁴³ and in Veracruz.⁴⁴ In just over a year, five governors and governors-elect in Mexico have resigned after electoral fraud was alleged.⁴⁵

³⁸ Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C., *Elecciones en Mexico: La Sociedad Civil y la Defensa de los Derechos Humanos*, 12 (1992) (hereinafter CMDPDH (1992)); Department of State (1990), at 694.

³⁹ CMDPDH (1992) at 13.

⁴⁰ Ley Orgánica de la Comisión Nacional de Derechos Humanos (1990).

⁴¹ *Id.* at art. 16.

⁴² David Clark Scott, *Mexican President Backs Economic Over Political Reform*, *Christian Science Monitor*, 6, November 4, 1992.

⁴³ *Convergencia*, A Civil Organization for Democracy, *Report on the Electoral Observation, Michoacán* (July, 1992).

⁴⁴ *Convergencia*, A Civil Organization for Democracy, the Citizens Movement for Democracy, the Juvenile Movement for Democracy, and the Union of Residents of Veracruz, *Report on the Observation of the Electoral Process, District of Xalapa, Veracruz* (August, 1992).

⁴⁵ Damian Fraser, *Mexican ruling party pushed towards reform*, *Financial Times*, 3, October 15, 1992.

The ongoing problem of electoral fraud is illustrated by the events during and after the summer 1992 gubernatorial election in Michoacán, in which PRI candidate Eduardo Villaseñor was challenged by Cristóbal Arias of the Revolutionary Democratic Party (PRD). The elections were monitored by *Convergencia*, a non-partisan coalition of Mexican groups which observed slightly more than 10% (375 of 3600) of the polling places.⁴⁶ According to *Convergencia's* report, the right to a secret ballot was violated in more than a quarter of voting booths, and coercion to vote for the PRI took place in 18% of the polling places observed.⁴⁷ There were fewer ballots than voters in 33.5% of polling places, and more ballots than voters in 17%. The Michoacán report also documented extensive violations of COFIPE before and after voting, including the use of state and federal resources to induce voters to choose the PRI candidate.⁴⁸

PRI candidate Villaseñor was declared the winner of the election, with the official tally showing that he received 418,000 votes to 290,000 for Arias.⁴⁹ Villaseñor was sworn in September 15, 1992 but was never able to enter the Governmental Palace due to the presence of crowds protesting the validity of his election. On October 6, 1992, the governor-elect stepped down for what he said would be a one year absence. PRI officials have not admitted any wrongdoing, and the State Congress named PRI member Ausencio Chaves as interim governor. Indeed, the President of the PRI's National Executive Committee, Genaro Borrega Estrada, released a statement that Villaseñor and the PRI won an "overwhelming victory in the gubernatorial elections, the people know that, and the [PRD party] also knows that."⁵⁰

The Government of Mexico has disregarded findings by the Inter-American Commission on Human Rights that its electoral laws violate the American Convention. In 1989-91, the National Action Party (PAN) brought a series of cases before the Inter-American Commission alleging electoral fraud.⁵¹ The Commission found that the 1987 electoral law of Nuevo Leon "does not fully and effectively protect the exercise of political rights and does not provide for simple, swift, and effective recourse to independent tribunals. Hence, it must be adjusted to conform to the requirements under the

⁴⁶ The number of polling places observed by *Convergencia* was reportedly limited by the fact that, in 15% of the installations, electoral observers were not allowed to enter the facility. *Id.* at 19. Findings of electoral fraud were confirmed by a 14 person international delegation, including Professor Robert W. Benson of the Loyola Law School. Robert Benson, *Michoacan Elections*, Letter to the Editor, Los Angeles Times, B7, October 17, 1992.

⁴⁷ *Id.*

⁴⁸ According to *Convergencia*, PRI agents offered voters construction and home improvement materials, corn grinders, milk, work permits, and cash on the condition that they sign a PRI voting member list and promise to vote for PRI. Those who refused to sign were threatened with having their *credenciales de elector* (voter registration) taken away or losing their union affiliation. *Id.* at 15. Altogether, the PRI is reported to have spent \$20 million on the campaign, 50 times that spent by the PRD. David Clark Scott, *Mexican President Backs Economic Over Political Reform*, Christian Science Monitor 6, November 4, 1992.

⁴⁹ UPI, *Mexican Governor Steps Down Amid Protests*, October 6, 1992.

⁵⁰ *Id.*

⁵¹ See cases No. 9768, 9780, and 9828, Inter-Am. C.H.R. 1989-1990 (May 17, 1990); Case No. 10.180, Inter-Am. C.H.R. 1990-91 (February 22, 1991).

Convention.⁵² Despite the unequivocal findings of the Inter-American Commission, elections under Nuevo Leon's Electoral Law were not voided and corrections of the law were not made. As one observer noted, "[s]ince the electoral law of Nuevo León is essentially identical to every other electoral law in the country, including the federal law enacted by President Carlos Salinas in 1990, the decision was in effect a judgment on Mexico's electoral system. Not surprisingly, Mexico lobbied vigorously to have the cases dismissed. Having lost, it refused to honor either judgment."⁵³ Indeed, the Mexican government refused to recognize the competency of the Inter-American Commission to examine petitions regarding "collective rights" such as the Convention's Article 23 guarantee of public participation and free elections under the American Convention.⁵⁴

In his annual State of the Union address on November 1, 1992, President Carlos Salinas de Gortari once again promised new electoral reforms to "guarantee the impartiality of the electoral process."⁵⁵ The government of Mexico could make good on Salinas' guarantee by bringing Mexico into full participation in the inter-American human rights system, including recognition of the competence of the Inter-American Commission to examine the enforcement of Article 23 of the American Convention.

Mexico now has an opportunity to adopt this new policy. The PRD has challenged the outcome of the July 1992 Michoacán elections in a case before the Inter-American Commission.⁵⁶ Minnesota Advocates for Human Rights calls on the government of Mexico to recognize the competence of the Inter-American Commission to conduct a full review of the Michoacán elections under Article 23 of the American Convention.

Chilling Effect of Human Rights Abuses

In addition to limiting citizen participation through the ballot box, the existence of serious human rights abuses against individual government critics -- including political killings, arbitrary detention, disappearances, torture, and forced confessions⁵⁷ -- creates a chilling effect on all citizen participation in matters of public concern.

⁵² Case No. 10.1891 at 250.

⁵³ Andrew Reding, *Bolstering Democracy in the Americas*, World Policy Journal 407 (Summer 1992).

⁵⁴ Secretary of Foreign Relations and the General Direction of Human Rights of the Secretary of Government, *Boletín de Prensa*, May 19, 1990; See discussion in Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C., *Informe Sobre los Derechos Humanos*, 18 & n.3 (September, 1992).

⁵⁵ *Mexico's Leader Cautiously Backs Some Big Changes*, New York Times, A3, November 2, 1992. President Salinas specified that he would support changes in the electoral law "making the sources of party financing transparent, placing limits on the cost of election campaigns, and working on the communications media and procedures that guarantee the impartiality of the electoral process." *Id.*

⁵⁶ Case No. 10.979, Inter-Am. C.H.R. (September 1, 1992).

⁵⁷ See Minnesota Advocates for Human Rights, *Conquest Continued: Disregard for Human and Indigenous rights in the Mexican State of Chiapas* (October 1992) (hereinafter Minnesota Advocates (1992)); U.S. Department of State, *Country Reports on Human Rights Practices for 1991*, 664 (1992); Human Rights Watch *World Report 1992*, 277 (1992); Amnesty International, *Mexico: Torture with Impunity* (1991).

Many of these abuses stem from harsh government responses to those protesting electoral fraud.⁵⁸ The opposition party PRD charges that 162 of its leaders and activists have been murdered since July 1988 and that the rate of attacks in the last six months is almost double that of last year.⁵⁹ The CNDH has initiated investigations into 140 alleged abuses against PRD members, including 90 cases of murder, 17 cases of rape, and 12 cases of illegal arrest.⁶⁰ The CNDH has issued recommendations in 22 cases,⁶¹ but according to the PRD, only two of the CNDH recommendations have actually been executed.⁶²

Over the past five years, Minnesota Advocates for Human Rights has monitored Mexico's criminal justice system, with a particular focus on systems of investigating serious human rights abuses. This is particularly important because thorough investigation and proper prosecution of human rights abuses signal the commitment of the government to root out further human rights abuses.

In its 1990 review of the Mexican Criminal Justice system, Minnesota Advocates found that "police abuse of the average citizen was the most pervasive and chronic form of human rights abuse in Mexico. Arbitrary detentions and torture by local, state, and federal security forces were so widespread as almost to go unremarked."⁶³ These abuses are all the more disturbing, since they are systematically incorporated into the system of criminal investigation. Police routinely collect evidence through unofficial agents known as *madrinas*, who pay no heed to the constitutional rights or human rights of the individuals they are assigned to investigate or intimidate. Torture is used by the police to extract confessions, and the use of confessions as evidence at trial is commonplace.⁶⁴

⁵⁸ The opposition party PRD reports that "[m]ost of the repression has been generated as a result of the attempts by the PRD to 'defend the vote' after electoral fraud has occurred," Human Rights Commission of the PRD, *The Political Violence in Mexico: A Human Rights Affair* viii (1992), cited in, Minnesota Advocates, 29 (1992).

⁵⁹ From May to November, 1992, PRD alleges that 26 of its activists have been killed, compared to 23 in 1991. According to Isabel Molina Warner, the reason for this sharp increase is that 1992 is an election year. In the last election year, 1990, PRD alleges that 66 of its activists were killed, also a sharp increase over the previous non-election year rate of 27 in 1989. Molina Warner interview.

⁶⁰ As Jorge Madrazo of the CNDH told Minnesota Advocates, the disparity in PRD and CNDH figures is in part explained by the fact that the CNDH does not have competence to review cases that are currently pending in court and before the judge has issued a final decision. Interview with Jorge Madrazo, CNDH, December 1, 1992 (hereinafter Madrazo Interview); See also *Human Rights Commission to investigate Killings of PRD Activists*, Notimex Mexican News Service, September 1, 1992.

⁶¹ *Id.*

⁶² According to the PRD, both of these involved recommendations to reinvestigate due to "miscarriage of justice." None of the CNDH recommendations have resulted in criminal charges or convictions. Molina Warner Interview.

⁶³ Minnesota Lawyers International Human Rights Committee, *Paper Protection: Human Rights Violations and the Mexican Criminal Justice System*, ii (July, 1990) (hereinafter Minnesota Advocates (1990))

⁶⁴ *Id.* at 22.

Mexican law regarding the use of confessions has recently been amended to provide that a confession is admissible only if it is obtained in the presence of the presiding judge and a defense attorney, family member or friend of the defendant.⁶⁵ The lack of effective judicial review of police abuses of the investigative process, however, creates an incentive for continued corruption.

Despite these problems, many critics of the government remain outspoken and large numbers of independent human rights organizations do exist. Yet such activity clearly occurs at great personal risk to the individuals involved.

On May 21, 1990, the President of the Sinaloa Human Rights Commission, attorney Norma Corona Sapién, was assassinated.⁶⁶ The former commander of the Federal Judicial Police, Mario Alberto Gonzalez Treviño, was charged with masterminding her murder. As Treviño's trial is pending, three key witnesses have been killed, including one in the Mexico City East Prison. According to Jorge Madrazo of CNDH, the case against Treviño now hinges on the testimony of one remaining witness, one of the alleged gunmen, who is being held in a secret location by the Mexican government.⁶⁷ Minnesota Advocates has written to Attorney General Morales Lechuga asking that the trial against Treviño proceed in accordance with strict international standards of due process.⁶⁸

On July 3, 1991, Dr. Víctor Manuel Oropeza, a journalist and outspoken critic of police abuse and electoral fraud, was also killed.⁶⁹ Minnesota Advocates conducted an in-depth inquiry into the investigation of Oropeza's killing which reveals how the judicial system's tolerance for abuse fails to assure accountability for wrongdoers. Sergio Aguirre Torres and Marco Arturo Salas Sánchez, two young men, were detained and charged with murder based upon little evidence other than their confessions. Minnesota Advocates found that relevant medicolegal evidence in the case was not properly collected, and was therefore lost; Aguirre Torres and Salas Sánchez were denied access to counsel; and the confessions of Aguirre Torres and Salas Sánchez, which both defendants recanted, were coerced.⁷⁰ Following the release of Minnesota Advocates' report, Aguirre Torres and Salas Sánchez were exonerated. Charges of abuse of authority were brought against Special Prosecutor Rafael Aguilar Garcia, who conducted the original investigation of Oropeza's killing. On May 29, 1992 a federal judge in Juarez denied an order of arrest against Aguilar Garcia based on lack of "facts and documentation."⁷¹ According to the CNDH, an order of arrest for Aguilar Garcia on charges abuse of

⁶⁵ Federal Code of Criminal Procedure, art. 287, as amended (1990).

⁶⁶ Minnesota Advocates (1990) at 35. "At the time of her death, she was investigating the torture and murder of a Mexican lawyer and three Venezuelans. Her death followed the killing of the co-founder and former president of the Commission, Lic. Jesús Michel Jacobo, who was gunned down on 16 December 1987." *Id.*

⁶⁷ Interview with Jorge Madrazo, Visitador, CNDH, December 1, 1992.

⁶⁸ Letter from Barbara Frey to Attorney General Morales Lechuga November 1, 1992.

⁶⁹ Minnesota Lawyers International Human rights Committee, *The Homicide of Dr. Victor Manuel Oropeza Contreras: A Case Study of Failed Human Rights Reforms in Mexico*, 5, December 1991 (the "Oropeza report.")

⁷⁰ *Id.* at 14.

⁷¹ Madrazo Interview. Minnesota Advocates has received conflicting information about the exact reasons for

authority and torture are expected before the end of 1992.⁷² Minnesota Advocates will continue to monitor this case closely to determine whether the investigation and prosecution proceed impartially and thoroughly. To date, however, no one has been charged with Dr. Oropeza's killing.

In October, November and December 1992, respected human rights attorney María Teresa Jardí received a series of death threats.⁷³ The first threat came two days after an announcement that Jardí would head the new Human Rights Department of the Archdiocese of Mexico.⁷⁴ At least one of the threats attacked Jardí for her role in the investigation of the murder of Dr. Oropeza. Although a high level investigation was initiated in October, the perpetrator of the death threats has still not been found, and Ms. Jardí is forced to live under 24-hour guard.⁷⁵

The climate of tension among human rights activists in Mexico has been raised even further by the killing of journalist Ignacio Castillo Mendoza on November 13, 1992.⁷⁶ Mr. Castillo Mendoza had long been a critic of corruption within the government of Quintana Roo, the judicial system, and the Federal Judicial Police.⁷⁷ The case is particularly disturbing for human rights activists, because Castillo Mendoza, who had received death threats, was given personal assurances of his safety from President Salinas and representatives of CNDH earlier on the day he was killed.⁷⁸

The evidence of abuse against human rights workers, and the failure of the government to root out this abuse does not bode well for the rights of environmental activists, independent labor leaders, and others who may oppose government policies under NAFTA. Individuals advocating better protection of environmental laws are reported to have been subject to threats and harassment by the government.⁷⁹ Unions are heavily regulated in Mexico, and the major ones are closely linked with the

the judge's refusal to order the request and is investigating this matter further.

⁷² Madrazo Interview.

⁷³ Interview with Maria Teresa Jardí, Director of the Human Rights Department, Archdiocese of Mexico (November 28, 1992) (hereinafter Jardí Interview).; see also Amnesty International Urgent Action UA 336/92, October 29, 1992.

⁷⁴ Notimex Mexican News Service, *Human Rights Leader Receives Third Death Threat*, October 29, 1992

⁷⁵ Jardí Interview; Interview with Alicia Ely-Yamin, assistant to Ms. Jardí (December 6, 1992).

⁷⁶ Interview with Amalia Zavala, assistant to the director of the CMDPDH. Tim Golden, *Slaying in Mexico Spotlights Press*, New York Times, A12, December 1, 1992.

⁷⁷ Marjorie Miller, *Killing, Threats Cause Concern in Mexico* 17, November 1992.

⁷⁸ *Id.* Mexico City police have arrested one suspect, Salvador Zarazua Ortega, who the police say owed Castillo Mendoza a personal debt and had no political motivation for the killing. Since Zarazua's arrest, the Mexico City Attorney General's Office is reported to have completely ruled out any political motive for the killing. Notimex Mexican News Service, November 30, 1992; Madrazo Interview.

⁷⁹ Human Rights Watch and Natural Resources Defense Council, *Mexico: Cutting Through the Haze in Defending the Earth: Abuses of Human Rights and the Environment* 65-76 (June, 1992).

ruling PRI party, substantially limiting their independence.⁸⁰ Official labor union leaders have often been accused by Mexican workers of acting more in the interests of foreign corporations than of their Mexican employees.⁸¹ There have also been repeated allegations that legitimate labor activists have been subjected to arbitrary detention and violence by police agents.⁸²

The need for public debate free from intimidation and human rights abuses is illustrated in the series of recent events concerning the state-owned *Petroleos Mexicanos* (PEMEX). Following the PEMEX disaster in April 1992,⁸³ the Salinas administration ordered a restructuring of PEMEX, including a layoff of some 15,000 workers this summer.⁸⁴ The plan to restructure PEMEX, an enormous and inefficient government monopoly, had been considered for some time.⁸⁵ Within the oil industry, the restructuring is widely thought to be the only way the company can remain competitive with United States oil companies under NAFTA.⁸⁶

⁸⁰ U.S. Department of State, *Country Reports on Human Rights Practices for 1991*, 675 (1992).

⁸¹ At the Volkswagen plant in Puebla, for example, workers went on strike on July 21, 1992 after the company announced that it would lay off 14,200 workers. The official labor union did not support the strike, and workers accused the union leaders of collaborating with Volkswagen by accepting employment terms for the rest of the work force far below what the strikers demanded. Without support from the union, the Mexican Federal Conciliation and Arbitration Board found that the strike was illegal and constituted "force majeure" by the workers, justifying a lock-out by company authorities. *Mexico: Mending the People's Car*, *The Economist* 43, August 22, 1992; Damian Fraser, *NAFTA Sets Mexico on the Path to Industrial Unrest* 6, August 19, 1992; Interview with Manuel Fuentes, National Association of Democratic Lawyers, December 1, 1992,

⁸² In 1991, the brother of a labor union protester, Braulio Aguilar Reyes, was arbitrarily detained and beaten by agents of the Federal Judicial Police. According to the Lawyers Committee for Human Rights, there is "evidence of police attempts to cover up the incident, and to coerce individuals into confessing to the crime." Lawyers Committee for Human Rights, *Critique* 226 (July 1992). See also discussion of the detention of labor lawyers Guadalupe Marín Sandoval and Julio Guillén Solís, in text accompanying note 83-85.

⁸³ An explosion at a PEMEX oil refinery in Guadalajara on April 22, 1992, wounded 1,400 and killed 200 people. The explosion was traced to gas leaks that had permeated the city's sewer system. A report by the Federal Attorney General of Mexico, Ignacio Morales Lechuga, blamed the explosion on a pattern of failure to enforce environmental laws governing the oil industry, as well as negligence by PEMEX officials who did not respond to reports of people who smelled the gas leaks. Since the incident, similar gas leaks were located in pipelines throughout Mexico. On November 29, 1992, Morales Lechuga announced that the PEMEX investigation was complete and that there would be no further charges brought as a result of the explosion. Agence France Press, *Pemex facilities in dangerous state of disrepair*, May 5, 1992; Bureau of National Affairs, *Fallout from the Guadalajara Explosions Expected to Impact Industry, Politics*, *Environment Daily*, May 5, 1992; *The News* (Mexico City), Nov. 29, 1992 at 1.

⁸⁴ Lucy Conger, *The PEMEX Paradox*, Institutional Investor, 99, (September 1992) (hereinafter Conger (1992)).

⁸⁵ Jane Baird, *Mexico's oil revolution: drastic restructuring, labor conflicts, and pressing cash needs are changing PEMEX, considered Mexico's "petroleum cow" and guardian of the nation's oil wealth*, *Houston Chronicle*, Business Section, 1, September 7, 1992.

⁸⁶ Conger (1992); Stephen Baker, *Free Trade Isn't Painless*, *Business Week*, 28, August 31, 1992; Damian Fraser, *North American Free Trade Agreement: Pemex Open Wider But Not For Sale*, *Financial Times*, 3, August 13, 1992.

The PEMEX restructuring, along with other moves toward economic liberalization, was accompanied by a summer of labor unrest in Mexico. Seven thousand current and former PEMEX workers conducted a 38 day sit-in at the National Palace in Mexico City to oppose further job cuts and demand better severance benefits.⁸⁷ They were joined by fishermen and farmers protesting the pollution of fishing areas and farmland by PEMEX.⁸⁸ In addition, former PEMEX workers staged protests at the PEMEX headquarters in Mexico City.

On October 21, 1992, twenty days after the demonstrations in Mexico city, police arrested two labor lawyers, Guadalupe Marín Sandoval and Julio Guillén Solís, who had been representing the PEMEX workers in the Mexico City protest. According to the National Association of Democratic Lawyers, the charges against Sandoval and Solís dated back to 1989 and were initiated following a complaint issued by PEMEX officials, suggesting that the timing of the arrest was an act of retaliation for their efforts to assist workers at the PEMEX plant.⁸⁹ In addition to the arrests of Sandoval and Solís, there have been reports that PEMEX workers involved in the protest were detained by the police without charge and were beaten and abused while in custody.⁹⁰

According to Jose Lavanderos, an attorney representing Sandoval and Solís, the two were held for longer than three days without being allowed to present a defense regarding the judicial finding of probable cause, in violation of article 19 of the Mexican Constitution; they were not informed of the charges against them and the facts supporting those charges, in violation of articles 14 and 20; and they were held without bail, in violation of article 20.⁹¹ Only after Sandoval and Solís initiated a hunger strike on November 21, 1992 were they released on bail with the charges still pending against them.⁹²

The controversy over PEMEX illustrates the need for Mexican participation in the inter-American system of human rights enforcement. The rule of law must be established so that concerned citizens may engage in public debate without fear. Partnership in the inter-American system would not excuse Mexico from the need to bring its domestic courts and criminal justice system into line with international standards, but it would help to ensure a mechanism of redress for those abused that is independent of domestic political forces.

⁸⁷ David Clark Scott, *Clearing Protest Off Capital's Central Plaza*, Christian Science Monitor, 3, September 8, 1992.

⁸⁸ *Id.*; Notimex Mexican News Service, *Protest Encampment Ends as Accord Reached with PEMEX*, September 7, 1992.

⁸⁹ Interview with Manuel Fuentes, National Association of Democratic Lawyers (Dec. 1, 1992).

⁹⁰ Report of Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C., June 11, 1992 (on file with Minnesota Advocates for Human Rights); Statement of Braulio Aguilar Reyes, April 29, 1991 (on file with Minnesota Advocates for Human Rights).

⁹¹ Interview with Jose Lavanderos (Dec. 1, 1992).

⁹² *Id.*

Conclusions and Recommendations

As this report describes, a new commitment to the inter-American system of human rights enforcement is needed. Ongoing violations are particularly disturbing because so many of the human rights violations have been well documented over the last decade. If Canada, Mexico and the United States are truly committed to international human rights, they must bind themselves to the enforcement of international human rights law.

Minnesota Advocates for Human Rights calls on the North American partners to link their commitment to free trade to a new commitment to the inter-American system of human rights enforcement. The three trade partners must become full partners in the inter-American system for the enforcement of human rights. To do so, the following steps must be taken:

1. Canada and the United States must ratify the American Convention for Human Rights;
2. Canada, Mexico and the United States must ratify the American Convention without limitations of the authority of the Inter-American Commission to conduct human rights fact-finding investigations in each country or to review domestic laws under the American Convention (including each country's electoral law);
3. Canada, Mexico and the United States must accept mandatory jurisdiction of the Inter-American Court under article 62 of the American Convention.

The adoption of these recommendations by all parties to the NAFTA would express a commitment to enforce international human rights law in North America as fully as trade law is to be enforced under the NAFTA. Important as it is to participate in the inter-American system, however, there is no substitute for the enforcement of domestic and international human rights protections through the courts of all three countries, as well. Full participation in the inter-American system of human rights is but the beginning of a renewed commitment to international human rights protection at all levels by the governments of Canada, the United States and Mexico.