

THE RULE OF LAWLESSNESS IN MEXICO

HUMAN RIGHTS VIOLATIONS IN THE STATE OF OAXACA



MINNESOTA ADVOCATES FOR HUMAN RIGHTS

HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS

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ISBN: 0-929293-36-3
Library of Congress Catalog Card Number: 96-79325

The cover graphic is a scanned photograph taken by Clifford C. Rohde in the central square of Juchitán de Zaragoza, Oaxaca in July 1996. The banner was hung in memory of the 1978 disappearance of Víctor Pineda Henestrosa, whose case is described in this report. The banner's message reads: The struggle continues. We know that he is alive. We will find him. Víctor Pineda Henestrosa 18 years of his disappearance. Behind the drawing of the man is the symbol of the COCEI political party. Use of the cover graphic should not be construed as an endorsement of the COCEI or its policies.

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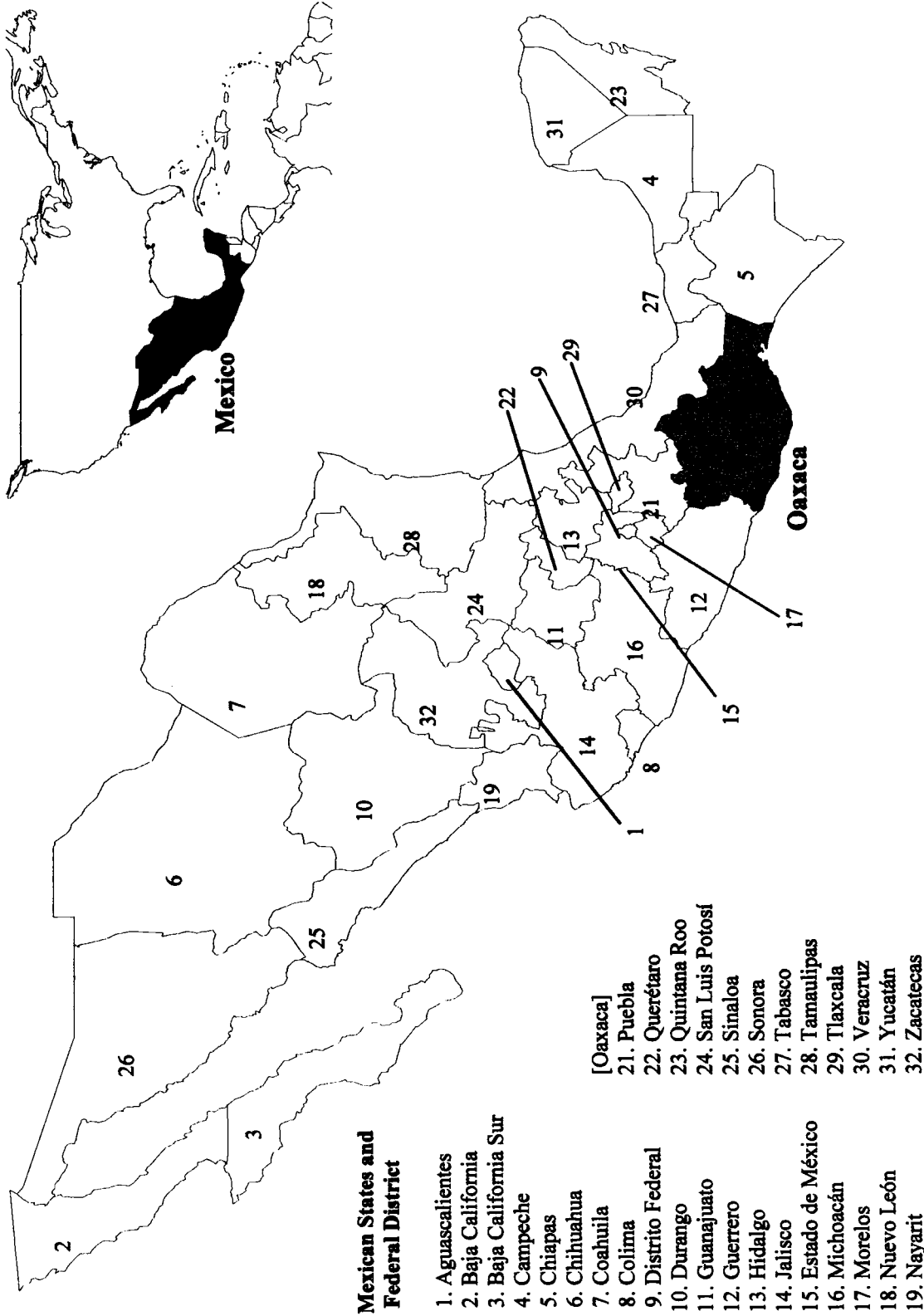


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GLOSSARY OF ACRONYMS

AI	Amnesty International
AMDH	Mexican Academy of Human Rights (<i>Academia Mexicana de Derechos Humanos</i>)
CAMPO	Oaxacan Popular Movement Assistance Center (<i>Centro de Apoyo al Movimiento Popular Oaxaqueño</i>)
CANICA	Support Center for Street Children (<i>Centro de Apoyo al Niño de la Calle</i>)
CEDH	State Human Rights Commission (<i>Comisión Estatal de Derechos Humanos</i>)
CEDIPIO	Diocesan Center for Indigenous Promotion of Oaxaca (<i>Centro Diocesano de Promoción Indígena de Oaxaca</i>)
CEJIL	Center for Justice and International Law
CERESO	Prison (<i>Centro de Readaptación Social</i>)
CMDPDH	Commission for the Defense and Promotion of Human Rights (<i>Comisión Mexicana por la Defensa y la Promoción de los Derechos Humanos</i>)
COCEI	Workers, Peasant, and Student Coalition of the Isthmus (<i>Coordinadora Obrera Campesina Estudiantil del Istmo</i>)
COMADH	Teachers Human Rights Commission (<i>Comisión Magisterial de Derechos Humanos</i>)
CNDH	National Human Rights Commission (<i>Comisión Nacional de Derechos Humanos</i>)
CNTE	National Education Workers Coordinating Committee (<i>Coordinadora Nacional de Trabajadores de la Educación</i>) (see also SNTE)
EPR	Popular Revolutionary Army (<i>Ejército Popular Revolucionario</i>)
EZLN	Zapatista Army of National Liberation (<i>Ejército Zapatista de Liberación Nacional</i>)
FEPAM	Office of the Special Investigator for Cases Involving Educators (<i>Fiscalía Especial para Asuntos Magisteriales</i>)
HRW/Am	Human Rights Watch/Americas
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICNL	International Center for Not-for-Profit Law
IEE	State Electoral Institute (<i>Instituto Electoral Estatal</i>)
INEGI	National Institute of Geography and Statistics (<i>Instituto Nacional de Estadística, Geografía e Informática</i>)
LCHR	Lawyers Committee for Human Rights
MA-HA	Minnesota Advocates for Human Rights and Heartland Alliance for Human Needs & Human Rights
MP	Public Ministry (<i>Ministerio Público</i>)
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OIDHO	Indigenous Organization for Human Rights in Oaxaca (<i>Organización Indígena de Derechos Humanos en Oaxaca</i>)

PAN	National Action Party (<i>Partido Acción Nacional</i>)
PDI	Special Attorney's Office for the Indigenous (<i>Procuraduría para la Defensa del Indígena</i>)
PGJE	State Attorney General's office (<i>Procuraduría General de Justicia del Estado</i>)
PGR	Federal Attorney General's office (<i>Procuraduría General de la República</i>)
PHR	Physicians for Human Rights
PJE	State Judicial Police (<i>Policía Judicial Estatal</i>)
PJF	Federal Judicial Police (<i>Policía Judicial Federal</i>)
PRD	Party of the Democratic Revolution (<i>Partido de la Revolución Democrática</i>)
PRI	Institutional Revolutionary Party (<i>Partido Revolucionario Institucional</i>)
PRODH	Miguel Agustín Pro Juárez Human Rights Center (<i>Centro de Derechos Humanos "Miguel Agustín Pro Juárez"</i>)
SNTE	National Education Workers Union (<i>Sindicato Nacional de Trabajadores de la Educación</i>)
UCIZONI	Union of Indigenous Communities of the Isthmus' Northern Zone (<i>Unión de Comunidades Indígenas de la Zona Norte del Istmo</i>)

ACKNOWLEDGMENTS

This report was written by Clifford C. Rohde, Mexico Project Director of Minnesota Advocates for Human Rights. Barbara A. Frey, Minnesota Advocates Executive Director; attorneys Daniel L. Gerdts and Susan R. Gzesh; and Sid L. Mohn, President of Heartland Alliance for Human Needs & Human Rights, provided commentary and edits.

This document is based on investigations carried out in the state of Oaxaca in July 1996 by Rohde and Mexico Project legal intern Edward Rice (summer recipient of a grant from the Partners in Human Rights Education Project of Minnesota Advocates and the University of Minnesota Human Rights Center), in August 1995 by Rohde, Minnesota Advocates volunteer Abigail Wertz, and Lisa Kuhns and Guillermo Gomez of the Heartland Alliance for Human Needs & Human Rights; and in August 1994 by Wertz (then recipient of an educational grant from the University of Minnesota Human Rights Center and Minnesota Advocates joint Partners in Human Rights Education Project). Wertz also conducted valuable background research on Oaxaca. Aaron M. Strati, an intern sponsored by Notre Dame's Kellogg Institute, provided additional research assistance, as did Mexico Project intern Alba L. Pérez.

Minnesota Advocates and the Heartland Alliance wish to thank Oaxaca's Attorney General's Office, including its human rights department, for arranging and participating in numerous meetings in 1995 and 1996. We are grateful as well for the interviews granted by the director of the state's *Procuraduría para la Defensa del Indígena*.

We are especially grateful to Oaxaca's community of non-governmental organizations, without whose assistance collecting much of the information we did would not have been possible, and from whose insight we benefitted greatly. Those groups include (in alphabetical order): CAMPO, Centro de Derechos Humanos "Flor y Canto," Centro de Derechos Humanos "Los Príncipes," Centro de Derechos Humanos "Mahatma Gandhi," Centro de Derechos Humanos "Miguel Agustín Pro Juárez," Centro de Derechos Humanos "Tepeyac", Centro Regional de Derechos Humanos de la Mixteca, COMADH, OIDHO, Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos," and UCIZONI. Many other individuals provided valuable commentary and observations. All conclusions and any mistakes are our own.

We also acknowledge the generous support of the General Service Foundation, The John Merck Fund, and the European Human Rights Fund.

This report is dedicated to Oaxaca's victims of human rights abuse, many of whose accounts are described in this report, but most of whose, sadly, are not.

FOREWORD

Through this report our two organizations are providing an important glimpse into the quality of life in a previously unscrutinized state in Mexico's southern poverty belt. The Mexicans who reside in Oaxaca live in a state characterized by poverty, hunger, and lawlessness. Oaxaca is a state where teachers are killed, dissent is silenced, criminal cases go unsolved, and vigilantism reigns.

If Mexico is to become a regional and international leader, it must abide by the international commitments it has made to prevent and punish serious human rights violations, including torture and extrajudicial killings. The citizens of Oaxaca are crying out for such real leadership.

We have met the real leaders in Oaxaca and throughout Mexico, and we applaud them. They are working to bring about essential reforms that will create and sustain civil society and comprehensive democratization. We particularly recognize the sacrifices made by colleagues in the indigenous states of Mexico, sacrifices of life long commitment, and regrettably, at times sacrifices of life itself. It is these leaders who are doing the intrinsic work of human rights; we are merely reporting on their context and on their struggle.

We hope that our voice will provide an accompaniment to the words and actions of our Mexican colleagues and that the song of human rights will be heard throughout both our nations. It is to the eternal voices of the silenced and the still-struggling—and to the song of human rights—that we dedicate this publication.

Barbara A. Frey
Executive Director
Minnesota Advocates

Sid L. Mohn
President
Heartland Alliance

SUMMARY AND RECOMMENDATIONS

That the people and the government respect the rights of all, because among people as among nations, respect for the rights of others is peace.

—Benito Juárez, 15 July 1867¹

Summary and Background

This report documents an array of human rights violations resulting from governmental act and omission in the state of Oaxaca, Mexico. It describes the converse of Juárez's maxim: where human rights are routinely violated, there is no peace.

Oaxaca (pronounced "wa-ha-ka" in English), in Mexico's deep south, is steeped in history and culture, populated with generous and hard-working people. Its varied geography is breathtakingly beautiful. Jagged and forested mountains give way to valleys and the Pacific Ocean. Oaxaca's crashing Pacific waves are to the world's surfers much as Oaxaca's cultures are to anthropologists and historians: rich sources of study. Indeed, when "surfing" the Internet, one might expect, after perusing the considerable tourist and cultural information available, that all is well and rich in Oaxaca.

Nothing could be less true. Caught between Guerrero to the west, and Chiapas to the east, Oaxaca is centrally located in Mexico's southern poverty belt. With those two states, Oaxaca leads the nation in negative statistics. It has alarmingly high rates of death by curable disease, unemployment, poverty, lack of access to potable water, electricity and roads, lack of formal education and health care, massive emigration, and the attendant social problems created by such despair.² As bad as things are for the Oaxacan population in general, the statistics are grimmer for the state's sizable indigenous populations. At least sixteen distinct indigenous groups reside in

¹"*Qué el pueblo y el gobierno respeten los derechos de todos, pues entre los individuos como entre las naciones, el respeto al derecho ajeno es la paz.*" From his *Manifiesto a la Nación*, quoted in Comisión Estatal de Derechos Humanos, *III Informe: Junio 1995-Junio 1996* (Oaxaca City: 1996) [CEDH Third Annual Report], p. 3. Benito Juárez, former president of Mexico, is Oaxaca's—if not Mexico's—favorite son. Born a poor Zapotec Indian, he became a noted lawyer, legal reformer, and leader of Mexico's nineteenth century reform movement.

²See, generally, INEGI, *Anuario Estadístico del Estado de Oaxaca*, Edición 1994 (Aguascalientes, Mexico: 1994). In response to Oaxaca's poor social and economic conditions, President Ernesto Zedillo announced in January 1996 that federal expenditure in the state would exceed an extraordinary eight billion *nuevos pesos* (more than US\$ 1 billion) in 1996. Néstor Martínez, "Se atenderá a los más pobres, especialmente indígenas: Zedillo," *La Jornada*, 18 Jan. 1996. President Zedillo reportedly stated in May 1995 that Oaxaca will determine "the success or failure of [his] social policy." Centro de Derechos Humanos "Miguel Agustín Pro Juárez," *La Violencia en Oaxaca* (Mexico City: Aug. 1996), p. 28.

Oaxaca, each with its own language.³ Together, the indigenous approximate half the state's 3.2 million residents.⁴

Adding to the state's social problems is the state's consistent disregard for Benito Juárez's words. Rampant human rights violations, and the state government's ineffectiveness at enforcing the law, define Oaxaca's rights situation. Despite a considerable and increasing police and military presence,⁵ Oaxaca is virtually lawless. Human rights violations and violence, and a failed state response to each, are systemic phenomena statewide.

Because of the state's violation of, and inability to guarantee, human rights in Oaxaca, both the state of Oaxaca and Mexico are breaching international obligations to ensure and respect human rights. That failure to guarantee basic rights and enforce the law, in turn, encourages Oaxaca's population to take the law into their own hands and mete out private justice. When the state does not enforce the law and individuals assume the role of private law enforcers, lawlessness and insecurity prevail. And further abuse of human rights results.

This state of affairs has even produced organized armed insurrection. Considerable public and private speculation in Oaxaca (expressed to MA-HA representatives in 1995 and 1996) that armed guerrilla groups operated in remote areas of the state proved to be true. The newly-active Popular Revolutionary Army (*Ejército Popular Revolucionario* or EPR) has attacked targets in more than one area within Oaxaca.⁶ The EPR's emergence has in turn provoked increased security force operations in the state.⁷

Human rights violations pervade Oaxaca, in numerous forms. Oaxacans' right to life, for example, is violated with disturbing frequency. In the context of land disputes, hundreds of killings, most often occurring when communities dispute territorial limits, have afflicted Oaxaca's country-

³Oaxaca's major indigenous groups include Zapotecos, Mixtecos, Mazatecos, Chinantecos, and Mixes.

⁴Estimates range from thirty-nine percent (from Mexico's official National Institute of Geography and Statistics (Instituto Nacional de Estadística, Geografía e Informática or INEGI) to perhaps eighty percent (popular perception). Numbers depend in large part on the definition of the term "indigenous" and who is doing the defining and counting. Regardless of the exact percentage, the indigenous population is considerable, and indigenous issues influence or dominate perhaps every important social theme in Oaxaca.

⁵For example, Minnesota Advocates representatives traveled approximately seventy miles in a bus between the Oaxaca-Chiapas border and Juchitán, Oaxaca during the early evening of July 12, 1996. Different security forces stopped and searched the bus five separate times. Soldiers also stopped the bus at a military checkpoint. Since the emergence of the EPR in Oaxaca, military and police activity in the state has increased.

⁶As was the case in Chiapas before the 1 January 1994 Zapatista uprising, and in Guerrero before the 28 June 1996 emergence of the EPR, government officials had denied the existence of organized, armed rebels in the state. State and federal officials continue to minimize the EPR's impact or importance, despite it demonstrated capacity to act in a number of Mexican states.

⁷See, for example, "Anti-rebel campaign provokes anger in Mexico," *Austin American-Statesman*, 21 Sept. 1996, reprinted in Documentation Exchange, *Mexico Newspak*, Issue 95, Vol. 4, No. 17, 9-22 Sept. 1996.

side. Both the state and national governments have responded principally with ignorance and neglect. Law enforcement rarely brings the killers to trial, and widows infrequently receive compensation. In some cases described in this report, decades of violence have slowly but effectively eliminated entire communities, as residents not murdered simply abandon their land, and become part of Oaxaca's population of internally displaced, or emigrate from the state.

Not all of Oaxaca's violence results from contact between private individuals. The hands of state and federal security force agents, including state police and the military, are also sullied with grave human rights violations. Agents of the state are responsible for numerous arbitrary executions, acts of torture, and other mistreatment. Law enforcement officials also possess the notorious tendency to arrest individuals arbitrarily within Oaxaca. For those reasons, many Oaxacans live in fear of the state's security forces.⁸

In addition to perpetrating acts that transgress human rights norms, Oaxacan state officials also violate basic human rights through their significant omissions. The chronic failure of Oaxaca's law enforcement apparatus to perform its duty to carry out the law is perhaps the principal method by which human rights guarantees are offended in the state. Criminal investigations, particularly if politically sensitive, are shelved, not pursued, and judicially-ordered arrest warrants exist for years without being executed. Such inactivity prevents prosecutions against presumed murderers and human rights violators. Even when the authorities do investigate, victims of human rights abuse as a rule do not receive adequate compensation through legally appropriate determinations of damages.

At least in part because of Mexico's inability to guarantee basic rights in Oaxaca, Oaxacans have with disturbing frequency decided to take the law into their own hands. Oaxacan-style private justice includes particularly gruesome methods of punishment, in which the basic rights of the individual are summarily denied. This report documents a number of cases where mobs have tracked down and murdered individuals they suspected of criminal activity. The state response to these communal

⁸As this report goes to print, an episode involving the military and police agents is unfolding in the Loxichas region of Oaxaca. On 25 September 1996 a contingent of reportedly hundreds of soldiers and police agents invaded San Agustín Loxicha in search of alleged EPR members. Authorities cracked down on the communities after identifying Fidel Martínez, San Agustín's treasurer (on leave). Martínez reportedly was killed while he and other EPR members attacked a naval base in Huatulco on 28 August 1996. The military and police arrested virtually all of San Agustín's community leaders—nearly a dozen individuals—in the 25 September sweep, and subsequently moved the prisoners to jail facilities outside the state. Those arrested complained of being arbitrarily detained, beaten, threatened with death, and forced to confess to membership in the EPR. Another three individuals were detained by the military and state and federal police in San Francisco Loxicha on 15 October. See Pedro Matías, "Desde la cárcel, miembros del cabildo de San Agustín Loxicha denuncian: Nos torturaron para que aceptáramos ser del EPR," and Francisco Ortiz Pinchetti, "El 25 de septiembre, el pueblo de San Agustín Loxicha supo lo que significa una invasión militar," *Proceso*, No. 1040, 6 Oct. 1996; Julia Preston, "Mexico's Wary Crackdown on Rebels," *New York Times*, 16 Oct. 1996; Molly Moore, "Mexico's War on Rebels Gives Rural Towns the Jitters," *Washington Post*, 16 Oct. 1996; Víctor Ruiz Arrazola, "Fueron detenidos ayer en Oaxaca tres presuntos miembros del EPR," *La Jornada* website, URL: <http://www.nuclecu.unam.mx/~jornada/961017.dir/epr.html> (viewed 17 Oct. 1996).

crimes is again inadequate. Individuals responsible for the lynchings are not duly investigated and prosecuted.

This report also describes attacks against members of Oaxacan society who have been particularly singled out for attack. Oaxaca's teachers, for example, have over the last decade suffered dozens of killings, disappearances, assaults, and other intimidations, most likely because they have brought into communities ideas that challenge the traditionally hierarchical and rigid structure of Oaxacan social, political, and economic life. Like Oaxaca's teachers, other individuals and organizations who have actively challenged the system—human rights activists, leaders of civil society, investigative journalists, for example—have suffered attacks resulting in injury and even death. They also have suffered legal attack in the form of a law regulating non-governmental organizations (NGOs) that sets strict state control over the activity of private organizational activity. Though not always possible to link the physical attacks to state institutions or officials, the lack of an effective governmental response to them is telling. As the social situation in Oaxaca deteriorates, the danger of increased repression targeted at human rights activists and their colleagues is of particular concern.

The fear of increased repression is warranted in considerable part because of the consistent failure of the Mexican and Oaxacan governments to correct human rights violations in the state. It should be noted that small successes do exist. The Office of the Special Investigator for Cases Involving Educators (*Fiscalía Especial para Asuntos Magisteriales* or FEPAM) has had limited success resolving the attacks against the teachers movement. The Special Attorney's Office for the Indigenous (*Procuraduría para la Defensa del Indígena* or PDI) has provided some support to members of Oaxaca's indigenous communities. State officials have implemented some recommendations of the governmental National Human Rights Commission regarding Oaxaca. The state government also at least pays lip service to the concept of human rights.

But lip service is not enough, and the government's publicly positive attitude towards human rights appears to be mere window-dressing, aimed more at improving image and than at stemming rights abuse. The state's official human rights commission (CEDH), has barely affected human rights observance in the state. The human rights department of the state Attorney General's office is equally ineffective. The federal government, despite its international obligation to ensure and respect human rights throughout national territory, does not appear interested in the state's human rights situation. Indeed, strong words promoting the rule of law and condemning rights violations throughout Mexico regularly flow from the administration of President Ernesto Zedillo Ponce de León. Equally forceful actions against rights violators do not.

The severity and frequency of human rights violations committed in Oaxaca merit special attention by both the Oaxacan state government and the Mexican federal government. State and federal efforts need to be undertaken to redress past human rights violations and prevent additional abuse from occurring. To achieve those ends, and to see that Mexico conforms its human rights practices to the requirements of international human rights law, Minnesota Advocates for Human Rights and Heartland Alliance for Human Needs and Human Rights recommend the following:

Recommendations

To the Oaxacan state government

- The Oaxacan government should consider creating a special prosecutorial office or department to confront the violence associated with Oaxaca's numerous land conflicts. The principal goals of the agency should be to identify violent crimes committed as a result of land disputes; identify the victims; and identify, locate, and prosecute those individuals responsible for ordering and carrying out such crimes. Such an agency should complement and inform, not supplant, the work of the state attorney general's office. Special care needs to be taken to avoid creating simply another level of bureaucracy.
- The same office should work to identify, administratively sanction, and prosecute when appropriate those state officials who have failed to carry out their legal responsibilities to investigate and/or prosecute crimes related to land disputes.
- The office should also strive to identify and locate the thousands of widows, widowers and children missing a parent or parents that the violence over land has produced. Funds should be appropriated to assist these individuals obtain education, job-training, employment, and reasonable financial security.
- The government should enlist representatives of Oaxaca's non-governmental community to assist in carrying out the tasks needed to resolve issues related to land that have produced, or are likely to produce, violence.
- State law enforcement personnel, including trained Public Ministry agents, should be dispatched and maintain a presence in conflictive municipalities.
- With the appropriate federal government agencies, the state government should work diligently to resolve land disputes throughout Oaxaca. The state and federal governments should redouble efforts to bring different communities to the bargaining table and produce lasting agreements.
- If current resources allocated to the PGJE do not allow such emphasis on land-related crimes, additional state funds should be appropriated for such purpose.
- State authorities should expediently carry out all pending and future recommendations of the State Human Rights Commission (Comisión Estatal de Derechos Humanos or CEDH) and the National Human Rights Commission (Comisión Nacional de Derechos Humanos or CNDH).
- The CEDH should be an autonomous body. Resources allocated to the CEDH should be increased both to strengthen it and allow it greater investigative capacity. The CEDH should be headed by an independent and capable president.
- State agents allegedly responsible for committing, tolerating or encouraging human rights violations such as extralegal execution, torture, or arbitrary detention, should be suspended from their posts without pay, pending criminal investigation. Upon conviction, they should be immediately removed from their posts. Allegations of rights abuse committed by state agents should be investigated thoroughly and the responsible parties be prosecuted according to the law.

- State judicial and police agents should be given thorough human rights training by adequately trained professionals.
- Victims of human rights abuse should receive due compensation for the violations they have suffered. Individual assessments of due compensation need be made by relevant state and/or federal authorities.
- Provided adequate investigative advances continue, the state should extend the mandate of, and provided sufficient resources to, the Office of the Special Investigator for Cases Involving Educators (*Fiscalía Especial para Asuntos Magisteriales* or FEPAM) until the cases of violence targeted against teachers currently under investigation, as well as other cases that become part of the FEPAM docket, are successfully investigated and prosecuted.
- Because the FEPAM has enjoyed successes where the state Attorney General's main office (*Procuraduría General de Justicia del Estado* or PGJE) has not, the state should consider employing the FEPAM model to investigate other areas of violence and rights abuse. These could include, for example, the issues of violence related to land conflicts, the failure to execute arrest warrants and otherwise to investigate crimes, arbitrary detention, and attacks against leaders of civil society.
- In order to combat the continued use of torture by security forces, the Oaxacan government should strengthen its own 1993 anti-torture law to make it conform with the international Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Oaxaca anti-torture law should guarantee torture victims the right to fair and adequate compensation. It also should explicitly make mandatory criminal investigations into torture, and provide protection to torture victims in the event the victim complains of his or her torture.
- The law controlling Oaxaca's non-governmental organizations (NGOs) should be repealed, or substantially modified to loosen the control of the state government over non-governmental organizations. As it currently exists, Oaxaca's NGO law violates international freedom-of-association standards.

To the Mexican federal government

- To comply with its international obligations, the federal government should oversee all actions taken by the state government of Oaxaca to improve the human rights situation in the state, to ensure that such actions comply with international human rights standards.
- In the case of violence related to land conflicts, the Mexican government should, through the relevant authorities, place special emphasis on resolving territorial disputes in the state.
- Mexico's Supreme Court, which currently is reviewing a constitutional challenge to Oaxaca's NGO law, should find the law incompatible with international guarantees of freedom of association.
- Because of the continued and systematic failure of Oaxaca's State Human Rights Commission (CEDH) to protect human rights in Oaxaca, Mexico's National Human Rights Commission (CNDH) should utilize its power of *atracción* to take as its own cases under review by the