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MEXICO

TORTURE AND OTHER ABUSES DURING THE 1995 CRACKDOWN ON ALLEGED ZAPATISTAS

Contents

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I. Summary and Recommendations

One year ago, less than two months after assuming the presidency, Ernesto Ponce de León ordered a crackdown on the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN). As the Mexican army fought to regain territory in which the EZLN had operated since January 1994, federal and state police worked in tandem to arrest men and women accused of leading or supporting the Zapatistas. On February 8 and 9, officials detained more than twenty alleged EZLN members in three states and the Federal District. During the operation, they committed serious violations of Mexican and international human rights standards, including torture, the extraction of confessions by force, and the disregard of due-process guarantees. Most of the alleged Zapatistas remain in jail, charged with crimes such as rebellion and sedition.

In a televised address from the presidential palace on February 9, 1995, President Zedillo informed Mexico that he had ordered the offensive to assist the Office of the Attorney General (Procuraduría General de la República, PGR) in carrying out arrest warrants against five alleged EZLN commanders, whose names he read on the air, including that of the EZLN's spokesman known as Subcommander Marcos. Explaining the motive for the crackdown, the president announced that his government had identified several EZLN leaders, discovered safehouses and weapons, and learned of guerrilla plans to commit acts of violence. Zedillo also spoke of the government's determination "not to remain indifferent to violations of the Constitution, which in this case clearly imply a threat against the people of Mexico and public order."[1] Within five days of launching the February offensive, the army had succeeded in retaking EZLN areas.

Since the beginning of the armed conflict between the Mexican Army and the EZLN, Human Rights Watch/Americas has documented violations of human rights and humanitarian law committed by both sides.[2] Human Rights Watch/Americas sent two fact-finding missions to Mexico to investigate the February 1995 detentions. Based on analyses of trial documents and interviews with eighteen of the detainees, Human Rights Watch/Americas has concluded that during and after the crackdown, the very officials responsible for protecting Mexican citizens committed serious violations of Mexican law and international human rights norms regarding due process and the treatment of detainees. Human Rights Watch/Americas did not attempt to ascertain the guilt or innocence of the accused, but rather the legality of the processes used to detain, investigate, and prosecute them, as well as the treatment they received in detention.

President Zedillo himself has publicly recognized the problems of human rights violations and impunity that exist in Mexico, and constitutional and legal reforms designed to protect human rights have been enacted in recent years. The cases documented in this report, however, make a powerful argument for the government of Mexico to undertake a concerted effort to convert formal human rights safeguards and official human rights policy statements into real human rights protections and the punishment of human rights violators. Existing Mexican safeguards designed to eliminate torture and forced confessions can only be effective if political leaders, including President Zedillo, issue clear directives to their subordinates that these laws must be followed and that any breach will be fully and immediately prosecuted. The Office of the Attorney General must investigate all allegations of torture and refuse to admit testimony provided under torture. As long as police, prosecutors, and judges see prohibitions of torture as rhetorical commitments by the government, state agents will continue to view torture and forced confessions as legitimate methods of conducting their work.

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[1] "President Ernesto Zedillo's Address on the Chiapas Situation," Mexico City, February 9, 1995, translation circulated by the Embassy of Mexico in Washington, D.C.

[2] See, for example: Human Rights Watch/Americas, *Mexico: The New Year's Rebellion: Violations of Human Rights and Humanitarian Law During the Armed Revolt in Chiapas*, Vol VI, No. 3, March 1, 1994; Human Rights Watch/Americas and Physicians for Human Rights, *Waiting for Justice in Chiapas*(December 1994); and Human Rights Watch/Americas, *Mexico: Army Officer Held "Responsible" for Chiapas Massacre: Accused Found Dead at Defense Ministry*, Vol. 7, No. 7, June 1995.

Among its findings, Human Rights Watch/Americas documented the following:

- Four of seven detainees arrested in Yanga, Veracruz, on February 8, 1995, and later interviewed by Human Rights Watch/Americas, reported being subjected to gross physical and psychological torture, including near drowning and electric shocks. They now face charges based, in part, on coerced confessions. The governmental National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) found that the Office of the Attorney General tried to cover up the abuses. Government prosecutors have failed to investigate the allegations of torture.

- Police severely beat the detainees from Cacalomacán, State of Mexico, on February 9; one reported to Human Rights Watch/Americas that officials tortured him by placing a plastic bag over his head. While in detention, officials blindfolded the detainees, deprived one with gunshot wounds of medical care for forty-eight hours, and forced them to sign confessions incriminating themselves. Military officials held one of the detainees incommunicado for fifteen days, in violation of Mexican law.

- Authorities subjected detainees to intimidating and harassing treatment, including blindfolding them and forcing them to listen to incessant noise in the form of radio music played at full volume, which prevented them from sleeping or resting.

- The procedures used by police to detain and transport suspects in these cases included blatantly illegal kidnaping-style practices, although in some cases officials evidently made efforts to maintain legal standards, at least for the sake of appearances. In the case of María Gloria Benavides, for instance, police obtained a search warrant for her house after a man claimed that someone had robbed him outside Benavides's home and that his assailant had entered her house. The man never appeared in court to ratify his complaint. In the case of the detainees in Yanga, police searched the house using a warrant obtained for a completely different case. Veracruz police effectively abducted Víctor Hugo García Santiago and his parents, Alejandro García and María de los Angeles Santiago, and held them for two and a half days in premises belonging to the state government, in order to bring pressure on their other son, Francisco, to turn himself in.

- In the Yanga, Cacalomacán, and Benavides cases, detainees may have been held and interrogated under army custody. Only the Office of the Attorney General is allowed under Mexican law to hold in detention and question suspects.

- Rather than ensure immediate and impartial investigations of allegations of torture, government prosecutors continue to press charges based on testimony obtained through torture or under duress or given by detainees without adequate legal defense. In the Yanga case, a judge ruled that evidence of torture, even if proven, would not invalidate the self-incriminating statements used as a basis for prosecution.

- Government and judicial authorities have failed to take proper steps to investigate the abuses, identify the state agents responsible, and enforce existing laws designed to protect citizens from abuses, such as the Federal Law to Prevent and Punish Torture. The law requires that allegations of torture be investigated, but even given CNDH documentation of torture in the Yanga case, no such investigation has been undertaken. In the Cacalomacán case, representatives of the Office of the Attorney General sought to interview the detainees regarding their allegations of torture, but, because the officials reportedly did not give prior notice to them or their lawyers, the detainees did not trust the investigators enough to grant the interviews.

- Members of the legal team defending the alleged Zapatistas, which is coordinated by the Miguel Agustín Pro Juárez Human Rights Center (Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," Prodh),[3] have received death threats.

- Charges have been dropped against two of the detainees, a positive step taken by the courts, which refused to continue the prosecutions based on the questionable or illegally obtained evidence presented by prosecutors. In one of these cases, that of María Gloria Benavides, the judge who threw out the case ruled that the government had illegally searched her home and, therefore, could not use the evidence it had gathered there against her. The judge also ruled that her own statements could not be used against her because they had been extracted by authorities who failed to respect her constitutional rights.

Recommendations

Human Rights Watch/Americas urges President Ernesto Zedillo to order the adoption of concrete and effective measures to eradicate the practices of torture and forced confessions, and to initiate immediately an investigation into the abuses committed during the detentions documented in this report.

Mexican legislation expressly prohibits and penalizes the use of torture and renders invalid legal statements made under torture. Nonetheless, these practices persist, pointing to the need for Mexico to adopt further legislation to end these abuses and adopt measures to ensure that officials comply with these laws and punish those who violate them. Further legislation should focus on eliminating precedents that give greater weight to the first official statement a detainee makes -- which is more frequently given under duress -- than to statements given before judges. Such reforms should also seek to establish greater independence between police investigations, prosecutors' development of charges, and judges' decisions to indict suspects. Allegations of torture should be quickly and thoroughly investigated in a way that gives victims confidence in the integrity of the investigation.

No legislation, no matter how well crafted or detailed, will end torture or the use of forced confessions if government officials do not prosecute those agents who engage in these practices. In all cases documented in this report, we urge that a detailed investigation by the Office of the Attorney General be undertaken to determine who is responsible for the human rights violations committed by federal and state officials. Further, the results of the attorney general's investigation should be made public and should be followed by the timely prosecution of state agents implicated in wrongdoing. The government of Mexico should begin a systematic review of allegations of torture or other cruel, inhuman, or degrading treatment, beginning with the detailed information on the issue gathered and analyzed by the National Human Rights Commission over the last five years. Those implicated in committing these abuses should be prosecuted and punished according to the law.

Regarding the detainees, information obtained through torture and other illegal practices should be disregarded by prosecutors and judges. Where such information forms the only basis for indictments, the accused should be immediately released without charges. Human Rights Watch/Americas recognizes and appreciates that in the case of María Gloria Benavides, a judge acquitted her in November on the grounds that the information the state had against her had been obtained illegally.

The Mexican government should immediately cease using unauthorized detention centers, such as the Campo Military No. 1 (Military Camp No. 1). The government of Mexico must make a concerted effort to ensure that, consistent with international guidelines, detainees are registered at their place of detention, reports of false or incomplete registration are immediately investigated, and authorities found responsible for violations are prosecuted. The government of Mexico should design and implement a program to modernize the registration process, so that

[3] The defense team is made up of Enrique Flota, Pilar Noriega, José Lavanderos, Digna Ochoa, and Víctor Brenes.

the names of detainees and their places of detention can immediately and accurately be obtained throughout the country by defense attorneys and government officials.

In 1995, as in previous years, the Mexican government rejected a request from the United Nations special rapporteur on torture, Nigel S. Rodley, to visit Mexico. The Mexican government should immediately and unconditionally permit the special rapporteur to visit Mexico. The special rapporteur should continue to pressure the Mexican government to allow him into the country.

The United States must make clear and public statements denouncing the serious human rights violations committed during the February 1995 offensive. The silence of the United States on human rights issues in Mexico, combined with its support for the Zedillo government and economic integration, send the unambiguous message that human rights abuses in Mexico are not of concern to the United States. Further, the United States and Mexico are currently reviewing the possibility of developing a training and exchange program for Mexican police, judges, and prosecutors. U.S. financial assistance for Mexican police and the administration of justice should be used by the United States as part of a broader strategy to promote human rights reforms in Mexico; the U.S. should include clear human rights goals in the exchange and training program. If Mexican officials fail to make demonstrable progress into investigating cases of abuse by police and prosecutors, such as the violations committed during the February 1995 crackdown, the United States should consider withdrawing such assistance.

The Inter-American Commission on Human Rights, which has been invited by Mexico to conduct a fact-finding mission, should meet with a range of nongovernmental human rights activists throughout the country and publish a detailed report on its findings. Planned for sometime in 1996, this will be the commission's first visit to Mexico; Human Rights Watch/Americas recognizes the importance of Mexico's invitation to the commission and urges that the mission proceed as quickly as is feasible.

II. Mexican and International Standards Related to Torture

Despite Mexican and international law designed to eliminate and punish torture, torture and impunity for torturers remain serious problems in Mexico. According to the National Human Rights Commission (CNDH), 103 of 952 recommendations that it issued between 1990 and August 1995 documented the use of torture.[4] The CNDH addressed the majority of its torture-related recommendations to the Office of the Attorney General, whose employees, particularly the Federal Judicial Police, it found to have been responsible for the violations.[5] Further, despite the high number of torture cases in Mexico in recent years and the detail contained in CNDH documentation, by August 1995 the CNDH had documented only four instances in which a court had found an agent of the

[4] Lic. Jorge Madrazo, "Logros de la CNDH en la Lucha contra la Tortura," speech delivered on August 10, 1995, reproduced in Comisión Nacional de Derechos Humanos (CNDH), *Gaceta*, #61, August 1995, p. 12.

[5] The Office of the Attorney General (Procuraduría General de la República) is the entity responsible for the investigation of crimes, the custody of suspects being investigated, the provision of public defenders, the solicitation to judges that suspects be indicted, and the prosecution of criminal suspects. Within the Office of the Attorney General, the Public Ministry (Ministerio Público) is the branch responsible for taking the testimony of suspects, developing charges, and prosecuting cases. Also within the Office of the Attorney General, Judicial Police work to investigate crimes, and specialists, such as forensic experts, work to gather evidence. There is a federal Office of the Attorney General that works on a national level, and each state and the Federal District have their own such offices that works on crimes within the state or Federal District jurisdiction. Once the Office of the Attorney General has established that a crime has taken place and has identified the probable guilty party, an agent of the office will request that a judge open a criminal case against the suspect. Agents of the Office of the Attorney General take initial testimony, or declarations (*declaraciones*), from detainees prior to their indictment or release without charges. Later, detainees will have the chance to make additional statements before a judge, who will rule on whether or not to indict the suspect.

government guilty of torture. The government of Mexico has refused to allow the United Nations special rapporteur on torture, Nigel S. Rodley, to visit the country.

Human Rights Watch/Americas is aware of governmental measures to combat torture in Mexico, including constitutional reforms in 1993 that prohibited the use as evidence of statements to the police made by detainees. Only statements made before agents of the Office of the Attorney General or a judge are now valid. In addition, a 1991 law, the Federal Law to Prevent and Punish Torture, prohibits and penalizes the use of torture. Further, the detainee's lawyer or a "person of confidence" must be present during the period that detainees give official statements or confessions to agents of the Office of the Attorney General.[6] These changes were made expressly to eliminate abuses committed by police and those committed by government officials who might have felt more free to force confessions or beat suspects who did not have legal representation or someone of their confidence who would witness any official statements made.[7]

The Federal Law to Prevent and Punish Torture holds, "No confession or information obtained through torture can be used as evidence."[8] While this law covers only federal employees, twenty-nine of Mexico's thirty-one states also have specific laws to eliminate and punish torture or penal codes that do so, according to the CNDH.[9] In a provision designed to eliminate torture, the Mexican Constitution also invalidates confessions obtained from detainees without the presence of a legal defender or "person of confidence."[10] International law also expressly forbids torture and the use of confessions obtained through torture, as established in the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.[11] The former holds that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" and to make sure that torture is considered a criminal act under its domestic legislation.[12] Further, it establishes, "Each State Party shall ensure that

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[6] Constitutional reforms in 1993 established the "person of confidence," who does not have to be a lawyer. The reforms gave detainees the right to have someone they trust present when they give official statements to agents of the Office of the Attorney General.

[7] One problem with these reforms has been that pressure against detainees can take place before he or she makes an official declaration to the agent of the Public Ministry, and, therefore, before a "person of confidence" or lawyer is present. The authorities responsible for investigating crimes, taking testimony from detainees, holding detainees in custody, and determining whether or not to seek prosecution are coordinated by the same government entity, the Office of the Attorney General. A detainee who has been intimidated and knows that, once the declaration is given, she or he will once again be alone in the custody of the same officials to whom the declaration was given, may well provide a false statement, even with a lawyer or "person of confidence" present at the time the statement is taken. Further, there is no guarantee that a "person of confidence" will be able to detect or protect against violations of the rights of detainees. This problem is complicated by the fact that, according to Mexican jurisprudence, the first declaration made to officials has more judicial weight than later declarations, so even if a suspect recants and tells the judge the she or he was pressured into signing a statement, the initial statement can be accepted as proof against the suspect.

[8] Ley Federal para Prevenir y Sancionar la Tortura, Article 8.

[9] Madrazo, "Logros de la CNDH en la Lucha contra la Tortura."

[10] "Confessions given before any authority other than one of the Public Ministry or a judge, or before them without the presence of his or her defender, will lack all value as evidence." Constitution of Mexico, Article 20(2).

[11] The Inter-American Convention to Prevent and Punish Torture entered into force on February 28, 1987; Mexico ratified it on June 22, 1987.

[12] Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Articles 2(1) and 4. The Convention entered into force on June 26, 1987. Mexico ratified the Convention on January 23, 1986.

any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." The International Covenant on Civil and Political Rights also prohibits torture and forced confessions.[13]

The Mexican government's steps to ensure that the rights of detainees are respected have clearly been inadequate, as the abuses documented in this report attest. Nonetheless, leading human rights activists working for governmental institutions that have tracked cases of torture have identified positive, if insufficient, results from these measures. Dr. Luis de la Barreda Solórzano, the president of the governmental Human Rights Commission of the Federal District, argues in a recent book, *La lid contra la tortura* (*The Fight Against Torture*), that these initiatives have indeed constituted positive steps toward the eradication of torture, but that torture is still a problem.[14] Similarly, in a speech in August 1995, Lic. Jorge Madrazo, the president of the governmental National Human Rights Commission, recognized important gains made in fighting torture in Mexico, but called attention to the continuing use of torture by state agents who enjoy impunity for their crimes. Lic. Madrazo pointed out that, since 1990, the number of new torture cases documented by the CNDH had dropped, but emphasized that "a lot remains to be done to sensitize government officials to the importance of ensuring that torture is punished severely and in accordance with the law."[15]

The absence high-level political will to end impunity for the government agents who torture and the judiciary's continuing refusal to push prosecutors to eliminate torture constitute serious impediments to torture's eradication. Further, as long as judges continue to cite Mexican jurisprudence that establishes the "principle of procedural immediacy," which holds that a detainee's first statement to authorities has greater value than later declarations, detainees who give their first statements under duress will never be able to retract the self-incriminating statements tortured out of them. Established through Mexican jurisprudence, the "principle of procedural immediacy" could be changed through legislation.

III. Patterns of Abuse During the February 1995 Crackdown

During the 1995 crackdown, the Mexican government fell into several patterns of abuse, including the use of forced confessions; the attempt to disguise arbitrary action as legal procedure; the abuse of the system of public defenders and representatives known as the "person of confidence;" the blindfolding of detainees; the seemingly intentional failure of government officials to process complaints of physical abuse or the taking of actions to cover up such abuses; and the ill-treatment of detainees, including torture. Intimidation and physical and psychological attacks against the detainees were common. Police blindfolded the detainees in the Benavides, Yanga, and Cacalomacán cases, tortured detainees in Yanga, and beat the Cacalomacán prisoners and the father of detainee Francisco García.

In violation of Mexican and international law, authorities also forced confessions from detainees. In the cases of María Gloria Benavides, the seven Yanga detainees, and the eight Cacalomacán detainees, government

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[13] "No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited through acts of torture, and only as evidence that the accused obtained such statement by such means." Inter-American Convention to Prevent and Punish Torture, Article 10. "In the determination of any criminal charge against him, everyone shall be entitled . . . not to be compelled to testify against himself or to confess guilt." International Covenant on Civil and Political Rights, Article 14(3)(g). Article 7 of the Covenant prohibits torture. The Covenant entered into force on March 23, 1976. Mexico acceded to it on March 23, 1981.

[14] Luis de la Barreda Solórzano, *La lid contra la tortura* (Mexico City: Cal y Arena, 1995).

[15] Madrazo, "Logros de la CNDH en la Lucha contra la Tortura."

officials forced self-incriminating confessions. In the case of Javier Elorriaga, a state-appointed lawyer urged him to sign a statement that he did not have time to re-read, then officials altered the final version of the statement The International Covenant on Civil and Political Rights holds that no one be "compelled to testify against himself or to confess guilt,"[16] while the American Convention guarantees the right of the accused "not to be compelled to be a witness against himself."[17] In addition, the American Convention establishes, "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."[18] Mexico's Constitution and Law to Prevent and Punish Torture echo this standard.[19]

In the Benavides, Elorriaga, and Yanga cases, police and prosecutors violated due-process guarantees. In these cases, witnesses who testified against the alleged Zapatistas or the legal defenders assigned to the detainees could not be located by officials after they gave their initial statements or provided their "legal service," raising the troubling possibility that government officials falsified evidence and deprived detainees of their right to an adequate defense.[20] In addition, the defense could not cross-examine these witnesses and defenders. Arrest warrants were faulty or missing in these cases. Police did not even make a pretense of following standard legal procedure in the García case, in which they illegally detained the suspect's brother, mother, and father to force him to turn himself in.

Authorities also violated laws by holding detainees in unauthorized detention centers, incommunicado, or in unidentified locations. In the Benavides, Yanga, and Cacalomacán cases, the detainees reported being held in what they believed to be a military base, in violation of Mexican law that provides for the detention of suspects in facilities under the control of the Office of the Attorney General. In the Cacalomacán case, military officials held one suspect incommunicado for fifteen days, in violation of Mexican law that establishes that suspects be seen by a judge within 48 hours of their arrest. International standards establish that the government must clearly register all detainees. According to the United Nations' Standard Minimum Rules for the Treatment of Prisoners, "In every place where persons are imprisoned there shall be kept a bound registration book [including] the reasons for his commitment and the authority therefor; and the day and hour of his admission and release."[21] In the Yanga case, the lack of proper

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[16] International Covenant on Civil and Political Rights, Article 14(3)(g).

[17] American Convention on Human Rights, Article 8(2)(g). The Convention entered into force on July 18, 1978. Mexico acceded to the Convention on March 24, 1981.

[18] Ibid. Article 8(3).

[19] Constitution of Mexico, Article 20(2) and Ley Federal para Prevenir y Sancionar la Tortura, Article 8.

[20] According to the Mexican Constitution, a detainee has the right to an "adequate defense" provided by him or herself, a "person of confidence" who does not necessarily have to be a lawyer, a lawyer of his or her own choosing, or a state-appointed attorney. [Constitution of Mexico, Article 20(9).] The American Convention on Human Rights and the International Covenant on Civil and Political Rights also establish the right of the accused to be assisted by legal counsel of his or her own choosing, or to defend him or herself. [American Convention on Human Rights, Article 8(2)(d) and International Covenant on Civil and Political Rights, Article 14(3)(d).] Mexico's Constitution also requires that defendants be able to cross-examine their accusers in court. [Constitution of Mexico, Article 20(4).] This requirement is also found in international fair trial standards, including the American Convention on Human Rights, which guarantees "the rights of the defense to examine witnesses present in the court," and the International Covenant on Civil and Political Rights. [American Convention on Human Rights, Article 8(2)f) and International Covenant on Civil and Political Rights, Article 14(3)(e).]

[21] Standard Minimum Rules for the Treatment of Prisoners, Article 7. Although not a binding agreement, the Standard Minimum Rules for the Treatment of Prisoners is recognized as offering authoritative guidance as to binding customary international law and treaty standards on the treatment of prisoners.

registration has led to a situation in which it has been impossible to identify which police services were responsible for the torture inflicted on the detainees.

Detainees in need of medical attention should have received it. In the Cacalomacán and Yanga cases, however, detainees reported that they did not receive medical attention for days. In the García case, a government official appears to have intentionally failed to process complaints of physical abuse filed by García's father. In the Yanga case, authorities appear to have intentionally mis-recorded information about the detainees' medical conditions.[22]

As of the time this report went to press, government officials had begun to investigate only one of the cases of alleged torture, in Cacalomacán, State of Mexico, and they did not do so in a manner that gave the detainees sufficient confidence in the process so as to cooperate with the investigation. The other cases remain uninvestigated, adding to the long legacy of impunity for Mexican officials who violate human rights, and throwing into doubt the commitment of the Zedillo administration to confront and end human rights violations committed by the agents of his government.

IV. Torture and Other Abuses During the 1995 Crackdown

A) María Gloria Benavides Guevara[23]

Police arrested María Gloria Benavides, whom the government claims is Zapatista leader "Comandante Elisa," at approximately 4:15 p.m. on February 8, 1995, after they raided her home in Mexico City. Prosecutors charged her with rebellion, terrorism, criminal conspiracy, and possession of unauthorized weapons. On July 14, after a judge dropped the terrorism charge, Benavides left prison on bail. On November 1, a judge acquitted her of all charges, though the Mexican government has appealed the decision.

Prosecutors based the most serious charges against Benavides on questionable and illegally obtained evidence. Police justified the raid on her home on a complaint by a man named Odilón Hernández Flores, who reported to police that three well-armed men and an armed woman robbed him outside a home that turned out to be Benavides's in the morning of February 8. Hernández said that the assailants entered the house after the robbery.[24] According to Benavides, police did not show her a warrant, though they maintained that they had one.[25] The police gained entry to her home by pretending to be friends of her in-laws.

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[22] Mexican law requires that detainees in need of medical attention cannot have their medical needs overlooked while in detention. (Código Federal de Procedimientos Penales, Articles 188-192.) Further, the Federal Law to Prevent and Punish Torture requires that a doctor investigating torture must report his or her findings. (Ley Federal para Prevenir y Sancionar la Tortura, Article 7.) In addition, international standards provide guidance similar guidance. According to the Standard Minimum Rules, "The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to . . . the taking of all necessary measures" to treat the prisoner. (Standard Minimum Rules for the Treatment of Prisoners, Article 24.)

[23] María Gloria Benavides goes by the name "Elisa" Benavides. On the grounds that, during the search of her house, police found passports with other names but with her picture, court documents in the case make reference to her as "Elisa Benavides Alcocer, or Olivia Alcocer Ruiz, or Balbina Flores, or María Gloria Benavides Guevara."

[24] Sixth District Court of Criminal Matters of the Federal District, sentence in case No. 17/95, November 1, 1995.

[25] Human Rights Watch/Americas telephone interview with María Gloria Benavides, January 11, 1996.

In their investigation of the alleged robbery, police claimed that neighbors of Benavides, whom police said refused to provide their names to investigators, said that armed people frequently entered and left the Benavides home. Hernández gave police a false address for his residence; not only did the street number not exist, but Hernández gave the old name of a street whose name had changed.[26] After giving his initial complaint, the alleged robbery victim could not be located by the police to ratify the information he gave.[27]

Benavides said that police blindfolded her and took her to a building on which, through her blindfold and by the lights of the car, she saw the words "military prison." According to the account she provided to CNDH officials on February 14, a radio blasted at high volume during her interrogation and for the following day and a half, preventing her from sleeping.[28] Authorities forced her to undress for two medical examinations and made her sign a statement several pages in length that they did not permit her to read. Prosecutors denied her the right to have her own attorney present during judicial proceedings. Benavides told representatives of Mexican human rights groups that interrogators told her they also held her eighteen-month-old son, Vicente, and would harm him if she did not sign the confession.

The case reveals two other irregularities. First, the same "person of confidence," Antonio Alvarado Hernández, witnessed and countersigned statements made by Benavides and by a man named Salvador Morales Garibay, one of the main state witnesses against several of the alleged Zapatistas. It would appear, therefore, that after prosecutors denied Benavides the right to choose her own attorney, they assigned her the same "person of confidence" as had been assigned to a key state witness. Second, an additional statement attributed to Benavides, made in the afternoon of February 9, suggests that prosecutors fabricated testimony and disregarded Benavides's right to adequate defense. A state-appointed legal defender named Julián César García Aguilar purportedly witnessed this second declaration, but, as the CNDH has noted, García's signature also appeared on the declaration of another alleged Zapatista, Luis Sánchez Navarrete, whom police detained in Yanga, Veracruz, on February 8. According to the official copies of the declarations of Benavides and Sánchez, this legal defender signed both declarations at the same time on the same day, indicating that authorities may have fabricated one or both of the declarations. "This leads to the supposition," the CNDH wrote in its analysis of the Yanga case, "that the defense given to the [detainees] during the initial investigation (*averiguación previa*) was notoriously irregular and deficient, if it existed at all."[29]

On November 1, 1995, Judge Fernando Andrés Ortiz Cruz acquitted Benavides of all charges, arguing that the police did not have a valid search warrant and that the state never proved the existence of the alleged victim of the robbery outside Benavides's home. Judge Ortiz stopped short of reviewing the actual treatment received by Benavides, relying instead on jurisprudence from the First Court of the Sixth Circuit, which had defined a coerced statement as one given without the constitutional guarantees regarding search and seizure being met:

> By virtue of the reasoning presented above, one cannot but conclude legally that confessions provided by María Gloria Benavides Guevara. . . before the agent of the Federal Public Ministry were extracted though physical and mental pressure, because, in addition to the fact that she stated before this court that this was the case. . . , so has held the First Court of the Sixth Circuit. . . , which

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[26] Sixth District Court, sentence in case No. 17/95.

[27] Centro de Derechos Humanos "Miguel Agustín Pro Juárez," press release, May 8, 1995, and Sixth District Court, sentence in case No. 17/95.

[28] Comisión Nacional de Derechso Humanos, "Newsletter," No. 24, February 1995, p. 11.

[29] Comisión Nacional de Derechos Humanos, Recommendation 50/95, reproduced in *Gaceta*, No. 57, April 1995, p. 86.

has said, "A forced confession is one given by a detained person if the requirements of Article 16 of the Constitution have not been fulfilled."[30]

Regardless of the outcome of the pending appeal of the acquittal of Benavides, the Mexican government should investigate the mistreatment of Benavides, including the use of a blindfold on her; the possibility that she was held at Military Base No. 1; the denial of an adequate defense, including irregularities involving the "person of confidence" assigned to her; and the irregularities in the Hernández complaint, including what appears to be police fabrication of the complaint in order to justify the raid on Benavides's house. The government should prosecute those found responsible.

B) Javier Elorriaga Berdegué

Soldiers detained Javier Elorriaga Berdegué, a documentary film-maker and the husband of María Gloria Benavides, at the Ejido Gabino Vásquez, in Chiapas, at 8:15 a.m. on February 9. A helicopter belonging to the Office of the Attorney General flew him to Tuxtla Gutiérrez, Chiapas State, later that day. After an agent of the Office of the Attorney General questioned him, he was remanded into custody at the Cerro Hueco Prison in Tuxtla Gutiérrez on charges of sedition, mutiny, rebellion, terrorism, and conspiracy. On April 14, an appeals court judge dropped the "sedition" and "mutiny" charges. Elorriaga remains in Cerro Hueco Prison.

In an interview with Human Rights Watch/Americas in Cerro Hueco Prison on April 6, Elorriaga said that soldiers did not shown him an arrest warrant when they picked him up and that they denied him the right to contact a lawyer before questioning. According to defense attorneys working on the case, the official case file on Elorriaga does not contain an arrest warrant, though the CNDH notes that his arrest followed the issuance of a warrant.[31] Officials at the Office of the Attorney General did not allow him to read the statement they drew up, but they told him that in case of error, he would have an opportunity to correct and amend his statement when he appeared before the judge. His state-appointed attorney advised him to sign the statement, which he did. He subsequently discovered that several of his statements had been transcribed incompletely and gave a misleading impression. In his statement to the judge he denied the charges categorically. In January 1996, Elorriaga said that he had been working as an intermediary between Subcommander Marcos and President Zedillo at the time of his arrest.[32]

The evidence against Javier Elorriaga consists of the affidavit of Salvador Morales Garibay, Elorriaga's wife's forced confession, and his own declaration. On June 22, a judge ruled that Elorriaga would not be able to cross-examine one of the people alleged to have testified against him, his wife María Gloria Benavides, arguing that it was not possible to transport her from Mexico City, where she was in jail, to Chiapas.[33] On January 2, 1996, a judge ruled against Elorriaga's court challenge of the indictment against him.[34]

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[30] Sixth District Court, sentence in case No. 17/95.

[31] Comisión Nacional de Derechos Humanos, "Newsletter," No. 24, February 1995, p. 11.

[32] Telephone interview with the Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," January 10, 1996; telephone interview with Pilar Noriega, January 10, 1996.

[33] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," press release, June 29, 1995.

[34] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Servicio Diario de Información de Derechos Humanos," January 4, 1996.

The prosecution's use of the testimony of Salvador Morales Garibay, who accused Elorriaga of heading the EZLN's Ideology Commission,[35] is a matter of serious concern to Human Rights Watch/Americas. The whereabouts of Morales have been a mystery ever since he gave his initial declaration in February 1995. On April 7, Morales failed to respond to a judicial summons to appear in court to ratify his declaration. Three days later, he failed to appear to face questioning by the defense. All told, he has failed to appear at least seven times for various court-related procedures. As a result, Elorriaga has been unable to challenge in court the evidence that led to the most serious charges against him, in violation of Mexican and international standards requiring the accused to be able to cross-examine, in front of a judge, anyone who testifies against him or her.

Further, the status of Morales and the nature of his testimony are in doubt. The Mexican government has given contradictory statements about Morales. Legal documents show that Morales testified to an agent of the Public Ministry, Lic. Eduardo Berdón, on February 8, 1995. However, according to lawyers consulted by Human Rights Watch/Americas, the form of the statement, in which Berdón first read Morales his rights under the Federal Code of Penal Procedures, is typical of a preliminary statement made by a criminal suspect in custody. A senior official of the Interior Ministry seemed to confirm this in a February 17 briefing for foreign reporters, stating that Morales was one of four top commanders of the Zapatistas, and that he had been detained.[36] On February 20, the attorney general, Antonio Lozano, contradicted this position, denying that Morales had ever been detained. He did so again on March 27 in Washington, D.C., at a meeting with Human Rights Watch/Americas and other human rights groups.

Morales's February 8 statement does not indicate that authorities questioned him about his own activities as an alleged EZLN member, and it gives no reason for his alleged defection. If Morales had been in detention when he gave his statement, he should have been available for court-ordered appearances, since Mexican law makes no provision for releasing confessed criminals, yet he did not appear.[37] This suggests that authorities did either of three things: through incompetence or deliberation, they released a confessed criminal; they did not believe Morales's statement but used it anyway against Elorriaga; or they fabricated the testimony altogether.

The Mexican government should initiate an investigation into the inadequate defense received by Elorriaga, the procedural irregularities in the case, and the possibility that the Garibay testimony was fabricated by prosecutors. Testimony used against Elorriaga that officials obtained illegally, such as that of his wife, María Gloria Benavides, should be disregarded by the courts. Any official found guilty of wrongdoing should be prosecuted.

C) Jorge Santiago Santiago

In his televised speech on February 9, President Zedillo declared Jorge Santiago Santiago to be a leader of the EZLN.[38] The director of the Chiapas-based Social and Economic Development for the Mexican Indigenous People (Desarrollo Económico y Social de los Mexicanos Indígenas, DESMI), Santiago was arrested the following day. The testimony of Salvador Morales Garibay constituted the only evidence against him. On April 14, the appeals court in Tuxtla Gutiérrez ordered the charges against Santiago dropped after accepting the defense argument that the government had not substantiated its case.

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[35] Agustín Ambriz and Ricardo Ravelo, "La PGR deja a Zedillo sin sustento jurídico en su decisión política de acusar y encarcelar a presuntos zapatistas," *Proceso*, April 10, 1995, p. 15.

[36] Tim Golden, "Mexican Rights Monitor Says Some Guerrillas Were Tortured," *New York Times*, February 21, 1995.

[37] No legal provisions exist in Mexico for plea bargaining or for the offer of complete or partial immunity from prosecution in return for confidential information likely to lead to the solution of crimes.

[38] Presidencia de la República, Boletín de Prensa No. 150, February 9, 1995, p. 4.

D) Eight Detainees from Cacalomacán, State of Mexico: Fernando Domínguez Paredes, Joel Martínez Hernández, Gonzalo Sánchez Navarrete, Celia Martínez Guerrero, Patricia Jiménez Sánchez, Ofelia Hernández, Brenda Rodríguez Acosta, and Gerardo López López.

Police arrested these eight detainees in Cacalomacán, State of Mexico, on February 9.[39] Acting with a search warrant, police attempted to gain entry to the suspects' house. According to the National Human Rights Commission, "While trying to fulfill the arrest warrant, on February 9, 1995, State of Mexico Judicial Police officers were received by the people in the house with gunfire, which lasted for almost three hours."[40] Several officers were wounded and one, José Manuel Sánchez, later died.

Police took the detainees to the State Office of the Attorney General in Toluca, State of Mexico, and then to what they believed to be a military base. The detainees' belief that they were held briefly at Military Base No. 1 was underscored by testimony from one of the arresting officers, who testified in court that he signed his declaration at the base, not at the State Office of the Attorney General, where he initially said he had given his declaration.[41] Two days after their detention, they were taken to the Reclusorio Norte, a detention center north of Mexico City. The detainees currently await trial in the Centro de Readaptación Social in Almoloya, in Toluca, State of Mexico, on charges of storing, possessing and manufacturing unauthorized weapons, terrorism, conspiracy, and homicide.[42]

The CNDH carried out medical examinations of the Cacalomacán prisoners on February 11, the day of their transfer to the Reclusorio Norte, finding that all of them had wounds that they attributed to the police. "Responsibility for the injuries caused to the detainees will have to be distributed among all of the public servants who participated" in the arrests, the CNDH determined.[43] According to the prisoners interviewed by Human Rights Watch/Americas, none of them received medical attention during the forty-eight hours of their police detention, although at the place they thought to be the military base called Campo Militar No. 1, they were made to strip several times for a medical examination. Despite these examinations, their injuries, which included, in one case, gunshot wounds, were reportedly not treated. In their declarations before a judge, several of the prisoners retracted parts of the statements they made to the Office of the Attorney General, saying they had been blindfolded and threatened or pressured into signing.

According to the Miguel Agustín Pro Juárez Human Rights Center, police have been unable to locate the state-appointed lawyers who assisted the detainees in giving their initial statements to officials of the Office of the Attorney General. In all but one case, the addresses they gave do not exist. The one state-appointed lawyer who has

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[39] Human rights groups, including the government's National Human Rights Commission, have been unable to determine all of the police forces that participated in the arrest, since police did not keep accurate records on the raid.

[40] Comisión Nacional de Derechos Humanos, "Informe Especial de la Comisión Nacional de Derechos Humanos sobre sus Acciones Realizadas en el Marco del Trastorno Interior del Estado de Chiapas, Entre el 9 y el 19 de Febrero de 1995," reproduced in *Gaceta*, No. 55, February 1995, p. 35.

[41] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Informe Narrativo sobre la Defensa Jurídica de los Presuntos Zapatistas Presos," September 25, 1995.

[42] On June 8, a charge of arms transporting was dropped.

[43] Comisión Nacional de Derechos Humanos, *Gaceta*, No. 55, February 1995, p. 36.

been located failed to respond to judicial summonses until January 19, 1996.[44] In addition, according to defense lawyers, the arms allegedly found at the scene of the detention were not catalogued on the spot, in violation of Mexican law, so there is no way to know what the police really encountered in the house. The defense also says that the number of bags of illegal material allegedly discovered at the house is variously reported in official documents as seven and eleven.[45]

Fernando Domínguez told Human Rights Watch/Americas during an April 4 interview that State of Mexico Judicial Police and public security officers participated in the operation, and that these authorities punched, kicked, and beat the suspects after they had surrendered. Police then blindfolded the detainees, removed their shoes, and threw them on top of one another in a van. Ofelia Hernández reported to Human Rights Watch/Americas:

> The police entered the house, beating, grabbing and dragging us. The police started to shoot at my husband. Then the police took us to a vehicle, threw us on the floor, and sat on top of us. When we arrived at a house, they covered our eyes. When we got down from the vehicle they threw us on the ground again. There, they took lots of photos, our fingerprints, and made us sign things that we didn't know what they were. Then they took us to another house, where they took off our clothes and kept us blindfolded. They asked me if I was a Zapatista and started to say that if I didn't answer correctly they would put me in a well; then they started to increase the volume of the music and started to shout a lot. Someone told us to get up and that if we didn't we would die. From there, we were taken to the Reclusorio Norte, where we were treated well.[46]

Domínguez said the police transported them to the Toluca Office of the Attorney General of the State of Mexico, where they were held for some two hours. After being questioned there, they were taken to a military establishment, which Domínguez believed to be Campo Militar No. 1 in Mexico City, where he said he was blindfolded, interrogated, and held without water or food while continuous loud music blasted. "Two people threatened me and put a plastic bag over my head. They wanted me to give them the addresses of other people," Domínguez told Human Rights Watch/Americas.[47]

Gerardo López López, whom Human Rights Watch/Americas interviewed on April 11, said that bullets hit him in the arm and both legs when police burst into the darkened house after the group had surrendered. A police officer opened fire with a machine gun as he lay on the floor. Although López bled, police gave him no first aid. Rather, they beat him, dragged him to a waiting vehicle, and threw him on top of the other prisoners. One of the police agents reportedly stood on his injured knee intentionally. Upon arrival at the Toluca headquarters of the Office of the Attorney General of the State of Mexico, López was registered, questioned intensely, and then put into a cell. There, he received no medical attention. At about 4:00 a.m. on February 10, he was taken by ambulance to a military hospital where he was admitted and treated, although the guards continued to insult him. During this period, he was held incommunicado for fifteen days.[48] The military hospital informed the Miguel Agustín Pro Juárez Human Rights

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[44] Letter from David Fernández, executive director of the Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," to Joel Solomon, January 28, 1996.

[45] Human Rights Watch/Americas interview with defense attorneys Pilar Noriega and José Lavanderos, Mexico City, August 28, 1995.

[46] Human Rights Watch/Americas interview, Reclusorio Norte, April 4, 1995.

[47] Ibid.

[48] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Informe sobre la Defensa Jurídica de los Presuntos Zapatistas," January 1996, p. 7.

Center that, on February 17, they transferred López from the military hospital to the civilian 20 de Noviembre Hospital, but the civilian hospital denied that they had accepted him as a patient. Five days later, on February 17, the CNDH located López at the civilian Hospital Juárez de Mexico, where he was kept under police guard. On March 7, after undergoing surgery, he was transferred to the Reclusorio Preventivo Norte.

On January 9, 1996, three representatives of the Office of the Attorney General visited the detainees to question them about their allegations of torture, in fulfillment of a judge's order issued eight months earlier, in May 1995. According to one of their defense attorneys, Pilar Noriega, the Office of the Attorney General did not notify the lawyers or the detainees of the impending interviews; her clients, who had been instructed by their lawyers not to talk to government officials about their case without their lawyers present, refused to speak to the investigators, whom the detainees reported were aggressive in their attitude.[49] A representative of the Office of the Attorney General told Noriega later that, after the detainees refused to give testimony, he said, in jest, "Do you want me to beat you into testifying?"[50] On January 10, 1996, a representative of the Office of the Attorney General interviewed Gonzalo Sánchez Navarrete, a minor, who is being held separately, about his allegations of torture. Pilar Noriega, who happened to be present at the time the investigator arrived, assured Sánchez that it was legitimate for him to cooperate.[51]

It was not surprising that these detainees, who have every reason to fear abuse from government representatives, were mistrustful of the investigators, especially as no effort was made to give them or their legal counselors prior notice of the investigation. Human Rights Watch/Americas recommends that investigators re-interview the detainees in the presence of their legal representatives and with advance notice.

Government officials should immediately undertake to determine which officials were responsible for the abuses in this case, including: the beatings and other abuses sustained by the detainees; the stripping and blindfolding of the detainees; the incommunicado detention under military guard of Gerardo López López; and the irregularities in the defense, including the inability of the government to produce the legal defenders it originally assigned to the detainees.

E) Seven Detainees from Yanga, Veracruz State: Ricardo Hernández López, Hilario Martínez Hernández, Martín Trujillo Barajas, Luis Sánchez Navarrete, Alvaro Castillo Granados, Rosa Hernández Hernández and Hermelinda García Zepahua.

Police from Veracruz arrested these suspects at about 5:30 p.m. on February 8, 1995, at a house in Yanga, Veracruz. The police, who had a warrant to detain three different men in connection with an unrelated crime, allegedly found unauthorized weapons and explosives in the house. On February 13, the sixth district judge in the Federal District, Lic. Fernando Andrés Ortiz Cruz, formally indicted the seven suspects on charges of criminal association, rebellion, and possession, storage, and transport of unauthorized weapons and explosives.

Police used a search warrant alleging a secret weapons cache in the house for a totally different criminal investigation at a different address and involving other suspects wanted for a crime dating from August 1991. The CNDH investigated the use of the warrant, declaring it "reprehensible that [through] fictitious reports and criminal investigations unrelated to the case in hand, attempts should be made to deceive the judicial authorities in the hope

[49] Human Rights Watch/Americas telephone interview with Pilar Noriega, January 10, 1996.

[50] Ibid.

[51] Ibid.

of remedying a deficient investigation and obtaining the necessary orders by these means."[52] In addition, the testimony from María Gloria Benavides, recognized later by the same court as having been given under pressure, forms part of the accusation against Marín Trujillo Barajas, identified in Benavides's testimony as someone who assisted the EZLN with the fabrication of arms.

Human Rights Watch/Americas interviewed the Yanga prisoners in the Reclusorio Preventivo Norte on April 5. According to the detainees, police tightly handcuffed them, kicked and beat them, moved them into a large van or truck, and took them to an airport. At least four of the detainees were tortured in the hours immediately after their detention. Alvaro Castillo told Human Rights Watch/Americas:

> Federal Judicial Police and maybe State Judicial Police participated in the arrest. I saw approximately twenty of them. They subdued us, handcuffed us, threw us on the floor, punched and kicked us, and beat us with boards and electrical cable. They took me out of the house with Martín Trujillo, with my head covered with a shirt. They put us in the back seat of a car and took us to a dead-end street. They covered my mouth with a rag and put mineral water up my nose.[53]

Later, at a location Castillo could not identify, police beat him, again forced mineral water up his nose, shocked him with an electric baton, and covered his head with a plastic bag, which almost asphyxiated him. Left alone in a room for several hours, Castillo could hear other people being tortured in an adjoining room; police told him that the sounds he heard were made by his friends. At the airport, an officer who was addressed as "colonel" put a pistol to Castillo's throat, questioned him, and threatened to apply the "law of the escapee," by which he apparently meant that he would shoot Castillo as if he were trying to escape. Blindfolded, the prisoners were taken by plane to a place they believed to be Campo Militar No. 1 in Mexico City, where they were held incommunicado.

According to Castillo, an official beat him and threatened him, saying that he would be released if he signed a statement but would be dunked in a tank of water if he did not. The interrogation lasted about one half hour. Officials took him to a large room that had a typewriter in it, removed his blindfold, and made him face the wall. He signed papers that he could not read and was taken back to his cell. When in his cell, loud music made it impossible for him to sleep. The detainees have recanted their initial statements, which they allege were obtained under force. On February 10, they were transferred to the Reclusorio Norte.

The prisoners denied receiving medical examinations prior to their arrival in Campo Militar No. 1, where they were made to strip and were given a cursory examination. Luis Sánchez, a metalworker who was disabled in both hands due to a soldering accident, told Human Rights Watch/Americas that he was given drops for an eye infection caused by his blindfold; Martín Trujillo, who had recently undergone abdominal surgery for cancer, was given two painkilling injections for pain from the partially healed surgical scar, on which he had been beaten. The detainees said they received their first thorough medical examination when they arrived at the Reclusorio Norte.

The information gathered by Human Rights Watch/Americas coincided with the detailed findings of the CNDH investigation in this case. The CNDH concluded that the detainees "were subject to physical and psychological torture designed to obtain information about the EZLN and to get them to sign self-incriminating declarations."[54] The CNDH also found *prima facie* evidence that four agents of the Office of the Attorney General failed to record the detainee's injuries when placed in their custody, and that a doctor from the Office of the Attorney

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[52] CNDH, Recommendation 50/95, p. 91.

[53] Human Rights Watch/Americas interview, April 5, 1995.

[54] CNDH, Recommendation 50/95, p. 84.

General may have falsified information in a medical certificate issued on February 9 by failing to record injuries.[55] As this report went to press, the results of the State Office of the Attorney General's investigation into the coverup had not been reported by the state to the CNDH.[56]

In ordering that the seven detainees stand trial in February, the judge made two arguments to dismiss their retracted confessions and allegations of torture. First, he held that there was no proof that the injuries recorded in medical examinations were sustained while the seven were in custody. Second, the judge stated in ordering in his indictment that, even supposing that torture had taken place, the confessions would not be nullified. He cited Mexican jurisprudence in reaching this conclusion:

> In no way would they [sic] be sufficient to come to a conclusion other than the one arrived at. And if, as has been said, some of them showed signs of beatings on different parts of their body, this, given the accumulation of proof that exists against them, would not be at all relevant to destroying the causal link established between the conduct laid out and the criminal event of which they are accused. The retractions should not be given value on the basis of the alleged unconstitutional acts in which the apprehending agents probably engaged. Given the principle of procedural immediacy, their first depositions are the ones that should take precedence over their later ones, because they were given closer to the time of the facts and without sufficient time for thinking about them or electing what to say.[57]

On October 16, a different judge threw out the charges of terrorism, criminal association, and storing arms and explosives, arguing that the Office of the Attorney General had not proved its case.[58] The Office of the Attorney General has appealed the decision rejecting these charges, while the defense has appealed the decision inasmuch as the other charges were left intact. The National Human Rights Commission, which recommended that the state attorney general investigate the torture it documented, had no information that such an investigation had even begun by the time this report went to press.[59] According to the defense, neither the detainees nor their attorneys have been interviewed for such an investigation.[60]

The government of Mexico should investigate the torture and beatings reported by the detainees, the denial of medical treatment, and the possibility that they were held at Campo Militar No. 1. The government should also investigate the CNDH's findings that agents of the Office of the Attorney General tried to report the medical condition of the detainees. In addition, the government should draft legislation to ensure that testimony given under torture will be rejected.

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[55] Ibid.

[56] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan las recomendaciones 50/95, 132/95 y 158/95," January 15, 1996, p. 1.

[57] Auto de Formal Prisión (indictment), case No. 116/95, February 13, 1995.

[58] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Servicio Diario de Información de Derechos Humanos," October 18, 1995.

[59] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan . . . ," p. 1.

[60] Human Rights Watch/Americas telephone interview with Pilar Noriega, January 10, 1996.

F) Francisco Alejandro García Santiago

Police arrested Francisco Alejandro García Santiago on February 12 in Orizaba, Veracruz, but only after arbitrarily detaining his brother, mother, and father. At approximately 4:00 p.m. on February 10, three men who refused to identify themselves detained his brother, Víctor Hugo García Santiago, on a street in Orizaba. Víctor Hugo's father, Alejandro García Monterrosas, tried to prevent the abduction, but the men beat him on the face and body; the CNDH later verified his injuries. Immediately afterward, Alejandro García and his wife, María de los Angeles Santiago de García, denounced the events to the Orizaba Office of the Attorney General of the State of Veracruz.

Approximately four hours later on the same day, five plainclothes Judicial Police officers used force to enter the García home. They aggressively questioned Víctor Hugo's sister, Mónica García, about the whereabouts of her other brother, Francisco Alejandro, telling her that he was in serious trouble because of his "links with the EZLN." While the agents were still in the house, Alejandro García and María de los Angeles Santiago returned home. After a discussion, they agreed to accompany the agents to see Víctor Hugo.[61] Alejandro Garcia told the CNDH, however, that one of the police officers told him that if they did not agree to go with the police, they would be taken by force.[62] Before agreeing to accompany the police, however, they telephoned the Public Ministry, which assured them it was safe for them to go with the police.

The police took the couple to a modern building in the nearby resort town Fortín de las Flores, which the family members later identified as the Public Security Department of the state government, where they were interrogated in separate rooms. According to their testimonies, they were forced to sit for hours. "We asked if we had been brought there to see our son, to answer questions, or if we had been detained, but they didn't answer us," María de los Angeles Santiago de García told Human Rights Watch/Americas. "We were made to sit for a long time, and they didn't let us stand or go to the bathroom." The police held the couple at the Fortín de las Flores building for two and a half days. They were not held strictly incommunicado, since they were allowed to phone their home, but they were clearly held under duress.

On February 12, while the couple was still in police custody, the police prevailed on María Santiago to cooperate with them. She was told that, if she persuaded her son Francisco to surrender, she would be allowed to accompany the police agents to their home so that Francisco could see that she was all right. At about 10:00 p.m. she telephoned the house and implored Francisco to cooperate by letting the police in. She told him that she would accompany the police. Nonetheless, at about 10:30 p.m., two police agents forced their way into the house without either parent. According to the press, the CNDH, and García Santiago's defense, Francisco feared for his safety when he did not see his parents with the police, so he tried to kill himself by getting bitten by a viper he kept in the house as a pet.[63] The police officers arrested Francisco and were followed in a car by the family lawyer and two relatives who had witnessed the arrest. Police took him to the Escudero Sanatorium in Orizaba. At the hospital, he was interrogated and held under strict guard until February 15. On February 18, Francisco García was formally charged with sabotage for allegedly attempting to blow up an electricity tower.

According to an investigation by the CNDH, the complaint filed by Alejandro García regarding the beating he was given by police was never forwarded to the Office of the Attorney General, so a case against the police was never opened. The CNDH accused the agent responsible at the Public Ministry of acting in "bad faith" and "presumably with the intention of not continuing the investigation of the criminal acts denounced by Mr. García

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[61] Comisión Nacional de Derechos Humanos, Recommendation 132/95, reproduced in *Gaceta*, No. 63, October 1995, p. 95.

[62] Ibid.

[63] "Intentó suicidarse un implicado con el EZLN al ser detenido en Orizaba," *La Jornada*, February 12, 1995.

Monterrosas."[64] As of the time this report went to press, the governor of the state of Veracruz had failed to inform the CNDH of any actions taken to ensure that the beating case was opened or that the agent responsible for failing to open it in February was investigated, as per CNDH recommendation number 132/95, filed in October 1995.[65]

In a March 3 letter to the nongovernmental Mexican Commission for the Defense and Promotion of Human Rights (Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos), Lic. Humberto Fernández de Lara Ruiz of the Internal Investigations Department (Contraloría Interna) of the Office of the Attorney General stated that García had confessed to the judge that he had been a member of the EZLN and that he participated in the blowing up of two electricity pylons in the state of Veracruz and Puebla in January 1994. Fernández also denied that "the human rights of the García Santiago family had been violated at any moment." He said there were "no records of the detention of Víctor Hugo García Santiago, Alejandro García Monterrosas or María de los Angeles Santiago de García." The attorney general of Mexico, Lic. Antonio Lozano, met representatives of the Mexican Commission on February 13 and told them that neither the Office of the Attorney General nor the Federal Judicial Police had been responsible for the arrests, and that the authorities responsible were Veracruz state security forces.

The government of Mexico should undertake to investigate the violations in this case and punish according to the law those found responsible for: the detention of Víctor Hugo García, Alejandro García, and María Santiago; the beating of Alejandro García; and the failure of the Attorney General's office to open a case on the beating.

IV. Acknowledgments

Joel Solomon, Human Rights Watch/Americas research director, and Sebastian Brett, Human Rights Watch/Americas research associate, wrote this report based on information gathered during an April 1995 Human Rights Watch/Americas fact-finding mission to Mexico and additional information gathered in Mexico in August and September. The April mission was composed of Executive Director José Miguel Vivanco, Brett, and Helen Lang, a consultant. Solomon traveled to Mexico in August and September. Human Rights Watch/Americas Associate Steven Hernández formatted and prepared this report for press.

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Human Rights Watch/Americas

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[64] CNDH, Recommendation 132/95, p. 102.

[65] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan . . . ," p. 1.

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MEXICO

TORTURE AND OTHER ABUSES DURING THE 1995 CRACKDOWN ON ALLEGED ZAPATISTAS

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I. Summary and Recommendations

One year ago, less than two months after assuming the presidency, Ernesto Ponce de León ordered a crackdown on the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN). As the Mexican army fought to regain territory in which the EZLN had operated since January 1994, federal and state police worked in tandem to arrest men and women accused of leading or supporting the Zapatistas. On February 8 and 9, officials detained more than twenty alleged EZLN members in three states and the Federal District. During the operation, they committed serious violations of Mexican and international human rights standards, including torture, the extraction of confessions by force, and the disregard of due-process guarantees. Most of the alleged Zapatistas remain in jail, charged with crimes such as rebellion and sedition.

In a televised address from the presidential palace on February 9, 1995, President Zedillo informed Mexico that he had ordered the offensive to assist the Office of the Attorney General (Procuraduría General de la República, PGR) in carrying out arrest warrants against five alleged EZLN commanders, whose names he read on the air, including that of the EZLN's spokesman known as Subcommander Marcos. Explaining the motive for the crackdown, the president announced that his government had identified several EZLN leaders, discovered safehouses and weapons, and learned of guerrilla plans to commit acts of violence. Zedillo also spoke of the government's determination "not to remain indifferent to violations of the Constitution, which in this case clearly imply a threat against the people of Mexico and public order." Within five days of launching the February offensive, the army had succeeded in retaking EZLN areas.

Since the beginning of the armed conflict between the Mexican Army and the EZLN, Human Rights Watch/Americas has documented violations of human rights and humanitarian law committed by both sides.[2] Human Rights Watch/Americas sent two fact-finding missions to Mexico to investigate the February 1995 detentions. Based on analyses of trial documents and interviews with eighteen of the detainees, Human Rights Watch/Americas has concluded that during and after the crackdown, the very officials responsible for protecting Mexican citizens committed serious violations of Mexican law and international human rights norms regarding due process and the treatment of detainees. Human Rights Watch/Americas did not attempt to ascertain the guilt or innocence of the accused, but rather the legality of the processes used to detain, investigate, and prosecute them, as well as the treatment they received in detention.

President Zedillo himself has publicly recognized the problems of human rights violations and impunity that exist in Mexico, and constitutional and legal reforms designed to protect human rights have been enacted in recent years. The cases documented in this report, however, make a powerful argument for the government of Mexico to undertake a concerted effort to convert formal human rights safeguards and official human rights policy statements into real human rights protections and the punishment of human rights violators. Existing Mexican safeguards designed to eliminate torture and forced confessions can only be effective if political leaders, including President Zedillo, issue clear directives to their subordinates that these laws must be followed and that any breach will be fully and immediately prosecuted. The Office of the Attorney General must investigate all allegations of torture and refuse to admit testimony provided under torture. As long as police, prosecutors, and judges see prohibitions of torture as rhetorical commitments by the government, state agents will continue to view torture and forced confessions as legitimate methods of conducting their work.

Among its findings, Human Rights Watch/Americas documented the following:

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[1] "President Ernesto Zedillo's Address on the Chiapas Situation," Mexico City, February 9, 1995, translation circulated by the Embassy of Mexico in Washington, D.C.

[2] See, for example: Human Rights Watch/Americas, *Mexico: The New Year's Rebellion: Violations of Human Rights and Humanitarian Law During the Armed Revolt in Chiapas*, Vol VI, No. 3, March 1, 1994; Human Rights Watch/Americas and Physicians for Human Rights, *Waiting for Justice in Chiapas*(December 1994); and Human Rights Watch/Americas, *Mexico: Army Officer Held "Responsible" for Chiapas Massacre: Accused Found Dead at Defense Ministry*, Vol. 7, No. 7, June 1995.

- Four of seven detainees arrested in Yanga, Veracruz, on February 8, 1995, and later interviewed by Human Rights Watch/Americas, reported being subjected to gross physical and psychological torture, including near drowning and electric shocks. They now face charges based, in part, on coerced confessions. The governmental National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) found that the Office of the Attorney General tried to cover up the abuses. Government prosecutors have failed to investigate the allegations of torture.

- Police severely beat the detainees from Cacalomacán, State of Mexico, on February 9; one reported to Human Rights Watch/Americas that officials tortured him by placing a plastic bag over his head. While in detention, officials blindfolded the detainees, deprived one with gunshot wounds of medical care for forty-eight hours, and forced them to sign confessions incriminating themselves. Military officials held one of the detainees incommunicado for fifteen days, in violation of Mexican law.

- Authorities subjected detainees to intimidating and harassing treatment, including blindfolding them and forcing them to listen to incessant noise in the form of radio music played at full volume, which prevented them from sleeping or resting.

- The procedures used by police to detain and transport suspects in these cases included blatantly illegal kidnaping-style practices, although in some cases officials evidently made efforts to maintain legal standards, at least for the sake of appearances. In the case of María Gloria Benavides, for instance, police obtained a search warrant for her house after a man claimed that someone had robbed him outside Benavides's home and that his assailant had entered her house. The man never appeared in court to ratify his complaint. In the case of the detainees in Yanga, police searched the house using a warrant obtained for a completely different case. Veracruz police effectively abducted Víctor Hugo García Santiago and his parents, Alejandro García and María de los Angeles Santiago, and held them for two and a half days in premises belonging to the state government, in order to bring pressure on their other son, Francisco, to turn himself in.

- In the Yanga, Cacalomacán, and Benavides cases, detainees may have been held and interrogated under army custody. Only the Office of the Attorney General is allowed under Mexican law to hold in detention and question suspects.

- Rather than ensure immediate and impartial investigations of allegations of torture, government prosecutors continue to press charges based on testimony obtained through torture or under duress or given by detainees without adequate legal defense. In the Yanga case, a judge ruled that evidence of torture, even if proven, would not invalidate the self-incriminating statements used as a basis for prosecution.

- Government and judicial authorities have failed to take proper steps to investigate the abuses, identify the state agents responsible, and enforce existing laws designed to protect citizens from abuses, such as the Federal Law to Prevent and Punish Torture. The law requires that allegations of torture be investigated, but even given CNDH documentation of torture in the Yanga case, no such investigation has been undertaken. In the Cacalomacán case, representatives of the Office of the Attorney General sought to interview the detainees regarding their allegations of torture, but, because the officials reportedly did not give prior notice to them or their lawyers, the detainees did not trust the investigators enough to grant the interviews.

- Members of the legal team defending the alleged Zapatistas, which is coordinated by the Miguel Agustín Pro Juárez Human Rights Center (Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," Prodh),[3] have received death threats.

[3] The defense team is made up of Enrique Flota, Pilar Noriega, José Lavanderos, Digna Ochoa, and Víctor Brenes.

- Charges have been dropped against two of the detainees, a positive step taken by the courts, which refused to continue the prosecutions based on the questionable or illegally obtained evidence presented by prosecutors. In one of these cases, that of María Gloria Benavides, the judge who threw out the case ruled that the government had illegally searched her home and, therefore, could not use the evidence it had gathered there against her. The judge also ruled that her own statements could not be used against her because they had been extracted by authorities who failed to respect her constitutional rights.

Recommendations

Human Rights Watch/Americas urges President Ernesto Zedillo to order the adoption of concrete and effective measures to eradicate the practices of torture and forced confessions, and to initiate immediately an investigation into the abuses committed during the detentions documented in this report.

Mexican legislation expressly prohibits and penalizes the use of torture and renders invalid legal statements made under torture. Nonetheless, these practices persist, pointing to the need for Mexico to adopt further legislation to end these abuses and adopt measures to ensure that officials comply with these laws and punish those who violate them. Further legislation should focus on eliminating precedents that give greater weight to the first official statement a detainee makes -- which is more frequently given under duress -- than to statements given before judges. Such reforms should also seek to establish greater independence between police investigations, prosecutors' development of charges, and judges' decisions to indict suspects. Allegations of torture should be quickly and thoroughly investigated in a way that gives victims confidence in the integrity of the investigation.

No legislation, no matter how well crafted or detailed, will end torture or the use of forced confessions if government officials do not prosecute those agents who engage in these practices. In all cases documented in this report, we urge that a detailed investigation by the Office of the Attorney General be undertaken to determine who is responsible for the human rights violations committed by federal and state officials. Further, the results of the attorney general's investigation should be made public and should be followed by the timely prosecution of state agents implicated in wrongdoing. The government of Mexico should begin a systematic review of allegations of torture or other cruel, inhuman, or degrading treatment, beginning with the detailed information on the issue gathered and analyzed by the National Human Rights Commission over the last five years. Those implicated in committing these abuses should be prosecuted and punished according to the law.

Regarding the detainees, information obtained through torture and other illegal practices should be disregarded by prosecutors and judges. Where such information forms the only basis for indictments, the accused should be immediately released without charges. Human Rights Watch/Americas recognizes and appreciates that in the case of María Gloria Benavides, a judge acquitted her in November on the grounds that the information the state had against her had been obtained illegally.

The Mexican government should immediately cease using unauthorized detention centers, such as the Campo Militar No. 1 (Military Camp No. 1). The government of Mexico must make a concerted effort to ensure that, consistent with international guidelines, detainees are registered at their place of detention, reports of false or incomplete registration are immediately investigated, and authorities found responsible for violations are prosecuted. The government of Mexico should design and implement a program to modernize the registration process, so that the names of detainees and their places of detention can immediately and accurately be obtained throughout the country by defense attorneys and government officials.

In 1995, as in previous years, the Mexican government rejected a request from the United Nations special rapporteur on torture, Nigel S. Rodley, to visit Mexico. The Mexican government should immediately and unconditionally permit the special rapporteur to visit Mexico. The special rapporteur should continue to pressure the Mexican government to allow him into the country.

The United States must make clear and public statements denouncing the serious human rights violations committed during the February 1995 offensive. The silence of the United States on human rights issues in Mexico, combined with its support for the Zedillo government and economic integration, send the unambiguous message that human rights abuses in Mexico are not of concern to the United States. Further, the United States and Mexico are currently reviewing the possibility of developing a training and exchange program for Mexican police, judges, and prosecutors. U.S. financial assistance for Mexican police and the administration of justice should be used by the United States as part of a broader strategy to promote human rights reforms in Mexico; the U.S. should include clear human rights goals in the exchange and training program. If Mexican officials fail to make demonstrable progress into investigating cases of abuse by police and prosecutors, such as the violations committed during the February 1995 crackdown, the United States should consider withdrawing such assistance.

The Inter-American Commission on Human Rights, which has been invited by Mexico to conduct a fact-finding mission, should meet with a range of nongovernmental human rights activists throughout the country and publish a detailed report on its findings. Planned for sometime in 1996, this will be the commission's first visit to Mexico; Human Rights Watch/Americas recognizes the importance of Mexico's invitation to the commission and urges that the mission proceed as quickly as is feasible.

II. Mexican and International Standards Related to Torture

Despite Mexican and international law designed to eliminate and punish torture, torture and impunity for torturers remain serious problems in Mexico. According to the National Human Rights Commission (CNDH), 103 of 952 recommendations that it issued between 1990 and August 1995 documented the use of torture.[4] The CNDH addressed the majority of its torture-related recommendations to the Office of the Attorney General, whose employees, particularly the Federal Judicial Police, it found to have been responsible for the violations.[5] Further, despite the high number of torture cases in Mexico in recent years and the detail contained in CNDH documentation, by August 1995 the CNDH had documented only four instances in which a court had found an agent of the government guilty of torture. The government of Mexico has refused to allow the United Nations special rapporteur on torture, Nigel S. Rodley, to visit the country.

Human Rights Watch/Americas is aware of governmental measures to combat torture in Mexico, including constitutional reforms in 1993 that prohibited the use as evidence of statements to the police made by detainees. Only statements made before agents of the Office of the Attorney General or a judge are now valid. In addition, a 1991 law, the Federal Law to Prevent and Punish Torture, prohibits and penalizes the use of torture. Further, the detainee's lawyer or a "person of confidence" must be present during the period that detainees give official statements or confessions to

[4] Lic. Jorge Madrazo, "Logros de la CNDH en la Lucha contra la Tortura," speech delivered on August 10, 1995, reproduced in Comisión Nacional de Derechos Humanos (CNDH), *Gaceta*, #61, August 1995, p. 12.

[5] The Office of the Attorney General (Procuraduria General de la República) is the entity responsible for the investigation of crimes, the custody of suspects being investigated, the provision of public defenders, the solicitation to judges that suspects be indicted, and the prosecution of criminal suspects. Within the Office of the Attorney General, the Public Ministry (Ministerio Público) is the branch responsible for taking the testimony of suspects, developing charges, and prosecuting cases. Also within the Office of the Attorney General, Judicial Police work to investigate crimes, and specialists, such as forensic experts, work to gather evidence. There is a federal Office of the Attorney General that works on a national level, and each state and the Federal District have their own such offices that works on crimes within the state or Federal District jurisdiction. Once the Office of the Attorney General has established that a crime has taken place and has identified the probable guilty party, an agent of the office will request that a judge open a criminal case against the suspect. Agents of the Office of the Attorney General take initial testimony, or declarations (*declaraciones*), from detainees prior to their indictment or release without charges. Later, detainees will have the chance to make additional statements before a judge, who will rule on whether or not to indict the suspect.

agents of the Office of the Attorney General.[6] These changes were made expressly to eliminate abuses committed by police and those committed by government officials who might have felt more free to force confessions or beat suspects who did not have legal representation or someone of their confidence who would witness any official statements made.[7]

The Federal Law to Prevent and Punish Torture holds, "No confession or information obtained through torture can be used as evidence."[8] While this law covers only federal employees, twenty-nine of Mexico's thirty-one states also have specific laws to eliminate and punish torture or penal codes that do so, according to the CNDH.[9] In a provision designed to eliminate torture, the Mexican Constitution also invalidates confessions obtained from detainees without the presence of a legal defender or "person of confidence."[10] International law also expressly forbids torture and the use of confessions obtained through torture, as established in the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.[11] The former holds that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" and to make sure that torture is considered a criminal act under its domestic legislation.[12] Further, it establishes, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." The International Covenant on Civil and Political Rights also prohibits torture and forced confessions.[13]

The Mexican government's steps to ensure that the rights of detainees are respected have clearly been inadequate, as the abuses documented in this report attest. Nonetheless, leading human rights activists working for governmental

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[6] Constitutional reforms in 1993 established the "person of confidence," who does not have to be a lawyer. The reforms gave detainees the right to have someone they trust present when they give official statements to agents of the Office of the Attorney General.

[7] One problem with these reforms has been that pressure against detainees can take place before he or she makes an official declaration to the agent of the Public Ministry, and, therefore, before a "person of confidence" or lawyer is present. The authorities responsible for investigating crimes, taking testimony from detainees, holding detainees in custody, and determining whether or not to seek prosecution are coordinated by the same government entity, the Office of the Attorney General. A detainee who has been intimidated and knows that, once the declaration is given, she or he will once again be alone in the custody of the same officials to whom the declaration was given, may well provide a false statement, even with a lawyer or "person of confidence" present at the time the statement is taken. Further, there is no guarantee that a "person of confidence" will be able to detect or protect against violations of the rights of detainees. This problem is complicated by the fact that, according to Mexican jurisprudence, the first declaration made to officials has more judicial weight than later declarations, so even if a suspect recants and tells the judge the she or he was pressured into signing a statement, the initial statement can be accepted as proof against the suspect.

[8] Ley Federal para Prevenir y Sancionar la Tortura, Article 8.

[9] Madrazo, "Logros de la CNDH en la Lucha contra la Tortura."

[10] "Confessions given before any authority other than one of the Public Ministry or a judge, or before them without the presence of his or her defender, will lack all value as evidence." Constitution of Mexico, Article 20(2).

[11] The Inter-American Convention to Prevent and Punish Torture entered into force on February 28, 1987. Mexico ratified it on June 22, 1987.

[12] Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Articles 2(1) and 4. The Convention entered into force on June 26, 1987. Mexico ratified the Convention on January 23, 1986.

[13] "No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding except in a legal action taken against a person or persons accused of having elicited through acts of torture, and only as evidence that the accused obtained such statement by such means." Inter-American Convention to Prevent and Punish Torture, Article 10. "In the determination of any criminal charge against him, everyone shall be entitled . . . not to be compelled to testify against himself or to confess guilt." International Covenant on Civil and Political Rights, Article 14(3)(g). Article 7 of the Covenant prohibits torture. The Covenant entered into force on March 23, 1976. Mexico acceded to it on March 23, 1981.

institutions that have tracked cases of torture have identified positive, if insufficient, results from these measures. Dr. Luis de la Barreda Solórzano, the president of the governmental Human Rights Commission of the Federal District, argues in a recent book, *La lid contra la tortura* (*The Fight Against Torture*), that these initiatives have indeed constituted positive steps toward the eradication of torture, but that torture is still a problem.[14] Similarly, in a speech in August 1995, Lic. Jorge Madrazo, the president of the governmental National Human Rights Commission, recognized important gains made in fighting torture in Mexico, but called attention to the continuing use of torture by state agents who enjoy impunity for their crimes. Lic. Madrazo pointed out that, since 1990, the number of new torture cases documented by the CNDH had dropped, but emphasized that "a lot remains to be done to sensitize government officials to the importance of ensuring that torture is punished severely and in accordance with the law."[15]

The absence high-level political will to end impunity for the government agents who torture and the judiciary's continuing refusal to push prosecutors to eliminate torture constitute serious impediments to torture's eradication. Further, as long as judges continue to cite Mexican jurisprudence that establishes the "principle of procedural immediacy," which holds that a detainee's first statement to authorities has greater value than later declarations, detainees who give their first statements under duress will never be able to retract the self-incriminating statements tortured out of them. Established through Mexican jurisprudence, the "principle of procedural immediacy" could be changed through legislation.

III. Patterns of Abuse During the February 1995 Crackdown

During the 1995 crackdown, the Mexican government fell into several patterns of abuse, including the use of forced confessions; the attempt to disguise arbitrary action as legal procedure; the abuse of the system of public defenders and representatives known as the "person of confidence;" the blindfolding of detainees; the seemingly intentional failure of government officials to process complaints of physical abuse or the taking of actions to cover up such abuses; and the ill-treatment of detainees, including torture. Intimidation and physical and psychological attacks against the detainees were common. Police blindfolded the detainees in the Benavides, Yanga, and Cacalomacán cases, tortured detainees in Yanga, and beat the Cacalomacán prisoners and the father of detainee Francisco García.

In violation of Mexican and international law, authorities also forced confessions from detainees. In the cases of María Gloria Benavides, the seven Yanga detainees, and the eight Cacalomacán detainees, government officials forced self-incriminating confessions. In the case of Javier Elorriaga, a state-appointed lawyer urged him to sign a statement that he did not have time to re-read, then officials altered the final version of the statement. The International Covenant on Civil and Political Rights holds that no one be "compelled to testify against himself or to confess guilt,"[16] while the American Convention guarantees the right of the accused "not to be compelled to be a witness against himself."[17] In addition, the American Convention establishes, "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."[18] Mexico's Constitution and Law to Prevent and Punish Torture echo this standard.[19]

In the Benavides, Elorriaga, and Yanga cases, police and prosecutors violated due-process guarantees. In these cases, witnesses who testified against the alleged Zapatistas or the legal defenders assigned to the detainees could not be located by officials after they gave their initial statements or provided their "legal service," raising the troubling possibility

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[14] Luis de la Barreda Solórzano, *La lid contra la tortura* (Mexico City: Cal y Arena, 1995).

[15] Madrazo, "Logros de la CNDH en la Lucha contra la Tortura."

[16] International Covenant on Civil and Political Rights, Article 14(3)(g).

[17] American Convention on Human Rights, Article 8(2)(g). The Convention entered into force on July 18, 1978. Mexico acceded to the Convention on March 24, 1981.

[18] Ibid. Article 8(3).

[19] Constitution of Mexico, Article 20(2) and Ley Federal para Prevenir y Sancionar la Tortura, Article 8.

that government officials falsified evidence and deprived detainees of their right to an adequate defense.[20] In addition, the defense could not cross-examine these witnesses and defenders. Arrest warrants were faulty or missing in these cases. Police did not even make a pretense of following standard legal procedure in the Garcia case, in which they illegally detained the suspect's brother, mother, and father to force him to turn himself in.

Authorities also violated laws by holding detainees in unauthorized detention centers, incommunicado, or in unidentified locations. In the Benavides, Yanga, and Cacalomacán cases, the detainees reported being held in what they believed to be a military base, in violation of Mexican law that provides for the detention of suspects in facilities under the control of the Office of the Attorney General. In the Cacalomacán case, military officials held one suspect incommunicado for fifteen days, in violation of Mexican law that establishes that suspects be seen by a judge within 48 hours of their arrest. International standards establish that the government must clearly register all detainees. According to the United Nations' Standard Minimum Rules for the Treatment of Prisoners, "In every place where persons are imprisoned there shall be kept a bound registration book [including] the reasons for his commitment and the authority therefor; and the day and hour of his admission and release."[21] In the Yanga case, the lack of proper registration has led to a situation in which it has been impossible to identify which police services were responsible for the torture inflicted on the detainees.

Detainees in need of medical attention should have received it. In the Cacalomacán and Yanga cases, however, detainees reported that they did not receive medical attention for days. In the Garcia case, a government official appears to have intentionally failed to process complaints of physical abuse filed by Garcia's father. In the Yanga case, authorities appear to have intentionally mis-recorded information about the detainees' medical conditions.[22]

As of the time this report went to press, government officials had begun to investigate only one of the cases of alleged torture, in Cacalomacán, State of Mexico, and they did not do so in a manner that gave the detainees sufficient confidence in the process so as to cooperate with the investigation. The other cases remain uninvestigated, adding to the long legacy of impunity for Mexican officials who violate human rights, and throwing into doubt the commitment of the Zedillo administration to confront and end human rights violations committed by the agents of his government.

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[20] According to the Mexican Constitution, a detainee has the right to an "adequate defense" provided by him or herself, a "person of confidence" who does not necessarily have to be a lawyer, a lawyer of his or her own choosing, or a state-appointed attorney. [Constitution of Mexico, Article 20(9).] The American Convention on Human Rights and the International Covenant on Civil and Political Rights also establish the right of the accused to be assisted by legal counsel of his or her own choosing, or to defend him or herself. [American Convention on Human Rights, Article 8(2)(d) and International Covenant on Civil and Political Rights Article 14(3)(d).] Mexico's Constitution also requires that defendants be able to cross-examine their accusers in court. [Constitution of Mexico, Article 20(4).] This requirement is also found in international fair trial standards, including the American Convention on Human Rights, which guarantees "the rights of the defense to examine witnesses present in the court," and the International Covenant on Civil and Political Rights. [American Convention on Human Rights, Article 8(2)f) and International Covenant on Civil and Political Rights, Article 14(3)(e).]

[21] Standard Minimum Rules for the Treatment of Prisoners, Article 7. Although not a binding agreement, the Standard Minimum Rules for the Treatment of Prisoners is recognized as offering authoritative guidance as to binding customary international law and treaty standards on the treatment of prisoners.

[22] Mexican law requires that detainees in need of medical attention cannot have their medical needs overlooked while in detention. (Código Federal de Procedimientos Penales, Articles 188-192.) Further, the Federal Law to Prevent and Punish Torture requires that a doctor investigating torture must report his or her findings. (Ley Federal para Prevenir y Sancionar la Tortura, Article 7.) In addition, international standards provide guidance similar guidance. According to the Standard Minimum Rules, "The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to . . . the taking of all necessary measures" to treat the prisoner. (Standard Minimum Rules for the Treatment of Prisoners, Article 24.)

IV. Torture and Other Abuses During the 1995 Crackdown

A) María Gloria Benavides Guevara[23]

Police arrested María Gloria Benavides, whom the government claims is Zapatista leader "Comandante Elisa," at approximately 4:15 p.m. on February 8, 1995, after they raided her home in Mexico City. Prosecutors charged her with rebellion, terrorism, criminal conspiracy, and possession of unauthorized weapons. On July 14, after a judge dropped the terrorism charge, Benavides left prison on bail. On November 1, a judge acquitted her of all charges, though the Mexican government has appealed the decision.

Prosecutors based the most serious charges against Benavides on questionable and illegally obtained evidence. Police justified the raid on her home on a complaint by a man named Odilón Hernández Flores, who reported to police that three well-armed men and an armed woman robbed him outside a home that turned out to be Benavides's in the morning of February 8. Hernández said that the assailants entered the house after the robbery.[24] According to Benavides, police did not show her a warrant, though they maintained that they had one.[25] The police gained entry to her home by pretending to be friends of her in-laws.

In their investigation of the alleged robbery, police claimed that neighbors of Benavides, whom police said refused to provide their names to investigators, said that armed people frequently entered and left the Benavides home. Hernández gave police a false address for his residence; not only did the street number not exist, but Hernández gave the old name of a street whose name had changed.[26] After giving his initial complaint, the alleged robbery victim could not be located by the police to ratify the information he gave.[27]

Benavides said that police blindfolded her and took her to a building on which, through her blindfold and by the lights of the car, she saw the words "military prison." According to the account she provided to CNDH officials on February 14, a radio blasted at high volume during her interrogation and for the following day and a half, preventing her from sleeping.[28] Authorities forced her to undress for two medical examinations and made her sign a statement several pages in length that they did not permit her to read. Prosecutors denied her the right to have her own attorney present during judicial proceedings. Benavides told representatives of Mexican human rights groups that interrogators told her they also held her eighteen-month-old son, Vicente, and would harm him if she did not sign the confession.

The case reveals two other irregularities. First, the same "person of confidence," Antonio Alvarado Hernández, witnessed and countersigned statements made by Benavides and by a man named Salvador Morales Garibay, one of the main state witnesses against several of the alleged Zapatistas. It would appear, therefore, that after prosecutors denied Benavides the right to choose her own attorney, they assigned her the same "person of confidence" as had been assigned to a key state witness. Second, an additional statement attributed to Benavides, made in the afternoon of February 9, suggests that prosecutors fabricated testimony and disregarded Benavides's right to adequate defense. A state-appointed legal defender named Julián César García Aguilar purportedly witnessed this second declaration, but, as the CNDH has noted, García's signature also appeared on the declaration of another alleged Zapatista, Luis Sánchez Navarrete, whom

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[23] María Gloria Benavides goes by the name "Elisa" Benavides. On the grounds that, during the search of her house, police found passports with other names but with her picture, court documents in the case make reference to her as "Elisa Benavides Alcocer or Olivia Alcocer Ruiz, or Balbina Flores, or María Gloria Benavides Guevara."

[24] Sixth District Court of Criminal Matters of the Federal District, sentence in case No. 17/95, November 1, 1995.

[25] Human Rights Watch/Americas telephone interview with María Gloria Benavides, January 11, 1996.

[26] Sixth District Court, sentence in case No. 17/95.

[27] Centro de Derechos Humanos "Miguel Agustín Pro Juárez," press release, May 8, 1995, and Sixth District Court, sentence in case No. 17/95.

[28] Comisión Nacional de Derechso Humanos, "Newsletter," No. 24, February 1995, p. 11.

police detained in Yanga, Veracruz, on February 8. According to the official copies of the declarations of Benavides and Sánchez, this legal defender signed both declarations at the same time on the same day, indicating that authorities may have fabricated one or both of the declarations. "This leads to the supposition," the CNDH wrote in its analysis of the Yanga case, "that the defense given to the [detainees] during the initial investigation (*averiguación previa*) was notoriously irregular and deficient, if it existed at all."[29]

On November 1, 1995, Judge Fernando Andrés Ortiz Cruz acquitted Benavides of all charges, arguing that the police did not have a valid search warrant and that the state never proved the existence of the alleged victim of the robbery outside Benavides's home. Judge Ortiz stopped short of reviewing the actual treatment received by Benavides, relying instead on jurisprudence from the First Court of the Sixth Circuit, which had defined a coerced statement as one given without the constitutional guarantees regarding search and seizure being met:

> By virtue of the reasoning presented above, one cannot but conclude legally that confessions provided by María Gloria Benavides Guevara. . . before the agent of the Federal Public Ministry were extracted though physical and mental pressure, because, in addition to the fact that she stated before this court that this was the case. . . , so has held the First Court of the Sixth Circuit. . . , which has said, "A forced confession is one given by a detained person if the requirements of Article 16 of the Constitution have not been fulfilled."[30]

Regardless of the outcome of the pending appeal of the acquittal of Benavides, the Mexican government should investigate the mistreatment of Benavides, including the use of a blindfold on her; the possibility that she was held at Military Base No. 1; the denial of an adequate defense, including irregularities involving the "person of confidence" assigned to her; and the irregularities in the Hernández complaint, including what appears to be police fabrication of the complaint in order to justify the raid on Benavides's house. The government should prosecute those found responsible

B) Javier Elorriaga Berdegué

Soldiers detained Javier Elorriaga Berdegué, a documentary film-maker and the husband of María Gloria Benavides, at the Ejido Gabino Vásquez, in Chiapas, at 8:15 a.m. on February 9. A helicopter belonging to the Office of the Attorney General flew him to Tuxtla Gutiérrez, Chiapas State, later that day. After an agent of the Office of the Attorney General questioned him, he was remanded into custody at the Cerro Hueco Prison in Tuxtla Gutiérrez on charges of sedition, mutiny, rebellion, terrorism, and conspiracy. On April 14, an appeals court judge dropped the "sedition" and "mutiny" charges. Elorriaga remains in Cerro Hueco Prison.

In an interview with Human Rights Watch/Americas in Cerro Hueco Prison on April 6, Elorriaga said that soldiers did not shown him an arrest warrant when they picked him up and that they denied him the right to contact a lawyer before questioning. According to defense attorneys working on the case, the official case file on Elorriaga does not contain an arrest warrant, though the CNDH notes that his arrest followed the issuance of a warrant.[31] Officials at the Office of the Attorney General did not allow him to read the statement they drew up, but they told him that in case of error, he would have an opportunity to correct and amend his statement when he appeared before the judge. His state-appointed attorney advised him to sign the statement, which he did. He subsequently discovered that several of his statements had been transcribed incompletely and gave a misleading impression. In his statement to the judge he denied the charges

[29] Comisión Nacional de Derechos Humanos, Recommendation 50/95, reproduced in *Gaceta*, No. 57, April 1995, p. 86.

[30] Sixth District Court, sentence in case No. 17/95.

[31] Comisión Nacional de Derechos Humanos, "Newsletter," No. 24, February 1995, p. 11.

categorically. In January 1996, Elorriaga said that he had been working as an intermediary between Subcommander Marcos and President Zedillo at the time of his arrest.[32]

The evidence against Javier Elorriaga consists of the affidavit of Salvador Morales Garibay, Elorriaga's wife's forced confession, and his own declaration. On June 22, a judge ruled that Elorriaga would not be able to cross-examine one of the people alleged to have testified against him, his wife María Gloria Benavides, arguing that it was not possible to transport her from Mexico City, where she was in jail, to Chiapas.[33] On January 2, 1996, a judge ruled against Elorriaga's court challenge of the indictment against him.[34]

The prosecution's use of the testimony of Salvador Morales Garibay, who accused Elorriaga of heading the EZLN's Ideology Commission,[35] is a matter of serious concern to Human Rights Watch/Americas. The whereabouts of Morales have been a mystery ever since he gave his initial declaration in February 1995. On April 7, Morales failed to respond to a judicial summons to appear in court to ratify his declaration. Three days later, he failed to appear to face questioning by the defense. All told, he has failed to appear at least seven times for various court-related procedures. As a result, Elorriaga has been unable to challenge in court the evidence that led to the most serious charges against him, in violation of Mexican and international standards requiring the accused to be able to cross-examine, in front of a judge, anyone who testifies against him or her.

Further, the status of Morales and the nature of his testimony are in doubt. The Mexican government has given contradictory statements about Morales. Legal documents show that Morales testified to an agent of the Public Ministry, Lic. Eduardo Berdón, on February 8, 1995. However, according to lawyers consulted by Human Rights Watch/Americas, the form of the statement, in which Berdón first read Morales his rights under the Federal Code of Penal Procedures, is typical of a preliminary statement made by a criminal suspect in custody. A senior official of the Interior Ministry seemed to confirm this in a February 17 briefing for foreign reporters, stating that Morales was one of four top commanders of the Zapatistas, and that he had been detained.[36] On February 20, the attorney general, Antonio Lozano, contradicted this position, denying that Morales had ever been detained. He did so again on March 27 in Washington, D.C., at a meeting with Human Rights Watch/Americas and other human rights groups.

Morales's February 8 statement does not indicate that authorities questioned him about his own activities as an alleged EZLN member, and it gives no reason for his alleged defection. If Morales had been in detention when he gave his statement, he should have been available for court-ordered appearances, since Mexican law makes no provision for releasing confessed criminals, yet he did not appear.[37] This suggests that authorities did either of three things: through incompetence or deliberation, they released a confessed criminal; they did not believe Morales's statement but used it anyway against Elorriaga; or they fabricated the testimony altogether.

The Mexican government should initiate an investigation into the inadequate defense received by Elorriaga, the procedural irregularities in the case, and the possibility that the Garibay testimony was fabricated by prosecutors.

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[32] Telephone interview with the Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," January 10, 1996; telephone interview with Pilar Noriega, January 10, 1996.

[33] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," press release, June 29, 1995.

[34] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Servicio Diario de Información de Derechos Humanos," January 4, 1996.

[35] Agustín Ambriz and Ricardo Ravelo, "La PGR deja a Zedillo sin sustento jurídico en su decisión política de acusar y encarcelar a presuntos zapatistas," *Proceso*, April 10, 1995, p. 15.

[36] Tim Golden, "Mexican Rights Monitor Says Some Guerrillas Were Tortured," *New York Times*, February 21, 1995.

[37] No legal provisions exist in Mexico for plea bargaining or for the offer of complete or partial immunity from prosecution in return for confidential information likely to lead to the solution of crimes.

Testimony used against Elorriaga that officials obtained illegally, such as that of his wife, Maria Gloria Benavides, should be disregarded by the courts. Any official found guilty of wrongdoing should be prosecuted.

C) Jorge Santiago Santiago

In his televised speech on February 9, President Zedillo declared Jorge Santiago Santiago to be a leader of the EZLN.[38] The director of the Chiapas-based Social and Economic Development for the Mexican Indigenous People (Desarrollo Económico y Social de los Mexicanos Indígenas, DESMI), Santiago was arrested the following day. The testimony of Salvador Morales Garibay constituted the only evidence against him. On April 14, the appeals court in Tuxtla Gutiérrez ordered the charges against Santiago dropped after accepting the defense argument that the government had not substantiated its case.

D) Eight Detainees from Cacalomacán, State of Mexico: Fernando Domínguez Paredes, Joel Martínez Hernández, Gonzalo Sánchez Navarrete, Celia Martínez Guerrero, Patricia Jiménez Sánchez, Ofelia Hernández, Brenda Rodríguez Acosta, and Gerardo López López.

Police arrested these eight detainees in Cacalomacán, State of Mexico, on February 9.[39] Acting with a search warrant, police attempted to gain entry to the suspects' house. According to the National Human Rights Commission "While trying to fulfill the arrest warrant, on February 9, 1995, State of Mexico Judicial Police officers were received by the people in the house with gunfire, which lasted for almost three hours."[40] Several officers were wounded and one, Jose Manuel Sánchez, later died.

Police took the detainees to the State Office of the Attorney General in Toluca, State of Mexico, and then to what they believed to be a military base. The detainees' belief that they were held briefly at Military Base No. 1 was underscored by testimony from one of the arresting officers, who testified in court that he signed his declaration at the base, not at the State Office of the Attorney General, where he initially said he had given his declaration.[41] Two days after their detention, they were taken to the Reclusorio Norte, a detention center north of Mexico City. The detainees currently await trial in the Centro de Readaptación Social in Almoloya, in Toluca, State of Mexico, on charges of storing, possessing and manufacturing unauthorized weapons, terrorism, conspiracy, and homicide.[42]

The CNDH carried out medical examinations of the Cacalomacán prisoners on February 11, the day of their transfer to the Reclusorio Norte, finding that all of them had wounds that they attributed to the police. "Responsibility for the injuries caused to the detainees will have to be distributed among all of the public servants who participated" in the arrests, the CNDH determined.[43] According to the prisoners interviewed by Human Rights Watch/Americas, none of them received medical attention during the forty-eight hours of their police detention, although at the place they thought to be the military base called Campo Militar No. 1, they were made to strip several times for a medical examination

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[38] Presidencia de la República, Boletín de Prensa No. 150, February 9, 1995, p. 4.

[39] Human rights groups, including the government's National Human Rights Commission, have been unable to determine all of the police forces that participated in the arrest, since police did not keep accurate records on the raid.

[40] Comisión Nacional de Derechos Humanos, "Informe Especial de la Comisión Nacional de Derechos Humanos sobre sus Acciones Realizadas en el Marco del Trastorno Interior del Estado de Chiapas, Entre el 9 y el 19 de Febrero de 1995," reproduced in *Gaceta*, No. 55, February 1995, p. 35.

[41] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Informe Narrativo sobre la Defensa Jurídica de los Presuntos Zapatistas Presos," September 25, 1995.

[42] On June 8, a charge of arms transporting was dropped.

[43] Comisión Nacional de Derechos Humanos, *Gaceta*, No. 55, February 1995, p. 36.

Despite these examinations, their injuries, which included, in one case, gunshot wounds, were reportedly not treated. In their declarations before a judge, several of the prisoners retracted parts of the statements they made to the Office of the Attorney General, saying they had been blindfolded and threatened or pressured into signing.

According to the Miguel Agustin Pro Juárez Human Rights Center, police have been unable to locate the state-appointed lawyers who assisted the detainees in giving their initial statements to officials of the Office of the Attorney General. In all but one case, the addresses they gave do not exist. The one state-appointed lawyer who has been located failed to respond to judicial summonses until January 19, 1996.[44] In addition, according to defense lawyers, the arms allegedly found at the scene of the detention were not catalogued on the spot, in violation of Mexican law, so there is no way to know what the police really encountered in the house. The defense also says that the number of bags of illegal material allegedly discovered at the house is variously reported in official documents as seven and eleven.[45]

Fernando Domínguez told Human Rights Watch/Americas during an April 4 interview that State of Mexico Judicial Police and public security officers participated in the operation, and that these authorities punched, kicked, and beat the suspects after they had surrendered. Police then blindfolded the detainees, removed their shoes, and threw them on top of one another in a van. Ofelia Hernández reported to Human Rights Watch/Americas:

> The police entered the house, beating, grabbing and dragging us. The police started to shoot at my husband. Then the police took us to a vehicle, threw us on the floor, and sat on top of us. When we arrived at a house, they covered our eyes. When we got down from the vehicle they threw us on the ground again. There, they took lots of photos, our fingerprints, and made us sign things that we didn't know what they were. Then they took us to another house, where they took off our clothes and kept us blindfolded. They asked me if I was a Zapatista and started to say that if I didn't answer correctly they would put me in a well; then they started to increase the volume of the music and started to shout a lot. Someone told us to get up and that if we didn't we would die. From there, we were taken to the Reclusorio Norte, where we were treated well.[46]

Domínguez said the police transported them to the Toluca Office of the Attorney General of the State of Mexico, where they were held for some two hours. After being questioned there, they were taken to a military establishment, which Domínguez believed to be Campo Militar No. 1 in Mexico City, where he said he was blindfolded, interrogated, and held without water or food while continuous loud music blasted. "Two people threatened me and put a plastic bag over my head. They wanted me to give them the addresses of other people," Domínguez told Human Rights Watch/Americas.

Gerardo López López, whom Human Rights Watch/Americas interviewed on April 11, said that bullets hit him in the arm and both legs when police burst into the darkened house after the group had surrendered. A police officer opened fire with a machine gun as he lay on the floor. Although López bled, police gave him no first aid. Rather, they beat him, dragged him to a waiting vehicle, and threw him on top of the other prisoners. One of the police agents reportedly stood on his injured knee intentionally. Upon arrival at the Toluca headquarters of the Office of the Attorney General of the State of Mexico, López was registered, questioned intensely, and then put into a cell. There, he received no medical attention. At about 4:00 a.m. on February 10, he was taken by ambulance to a military hospital where he was admitted and treated, although the guards continued to insult him. During this period, he was held incommunicado for

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[44] Letter from David Fernández, executive director of the Centro para los Derechos Humanos "Miguel Agustin Pro Juarez" to Joel Solomon, January 28, 1996.

[45] Human Rights Watch/Americas interview with defense attorneys Pilar Noriega and José Lavanderos, Mexico City, August 28, 1995.

[46] Human Rights Watch/Americas interview, Reclusorio Norte, April 4, 1995.

[47] Ibid.

fifteen days.[48] The military hospital informed the Miguel Agustín Pro Juárez Human Rights Center that, on February 17, they transferred López from the military hospital to the civilian 20 de Noviembre Hospital, but the civilian hospital denied that they had accepted him as a patient. Five days later, on February 17, the CNDH located López at the civilian Hospital Juárez de Mexico, where he was kept under police guard. On March 7, after undergoing surgery, he was transferred to the Reclusorio Preventivo Norte.

On January 9, 1996, three representatives of the Office of the Attorney General visited the detainees to question them about their allegations of torture, in fulfillment of a judge's order issued eight months earlier, in May 1995. According to one of their defense attorneys, Pilar Noriega, the Office of the Attorney General did not notify the lawyers or the detainees of the impending interviews; her clients, who had been instructed by their lawyers not to talk to government officials about their case without their lawyers present, refused to speak to the investigators, whom the detainees reported were aggressive in their attitude.[49] A representative of the Office of the Attorney General told Noriega later that, after the detainees refused to give testimony, he said, in jest, "Do you want me to beat you into testifying?"[50] On January 10, 1996, a representative of the Office of the Attorney General interviewed Gonzalo Sánchez Navarrete, a minor, who is being held separately, about his allegations of torture. Pilar Noriega, who happened to be present at the time the investigator arrived, assured Sánchez that it was legitimate for him to cooperate.[51]

It was not surprising that these detainees, who have every reason to fear abuse from government representatives, were mistrustful of the investigators, especially as no effort was made to give them or their legal counselors prior notice of the investigation. Human Rights Watch/Americas recommends that investigators re-interview the detainees in the presence of their legal representatives and with advance notice.

Government officials should immediately undertake to determine which officials were responsible for the abuses in this case, including: the beatings and other abuses sustained by the detainees; the stripping and blindfolding of the detainees; the incommunicado detention under military guard of Gerardo López López; and the irregularities in the defense, including the inability of the government to produce the legal defenders it originally assigned to the detainees.

E) Seven Detainees from Yanga, Veracruz State: Ricardo Hernández López, Hilario Martínez Hernández, Martín Trujillo Barajas, Luis Sánchez Navarrete, Alvaro Castillo Granados, Rosa Hernández Hernández and Hermelinda García Zepahua

Police from Veracruz arrested these suspects at about 5:30 p.m. on February 8, 1995, at a house in Yanga, Veracruz. The police, who had a warrant to detain three different men in connection with an unrelated crime, allegedly found unauthorized weapons and explosives in the house. On February 13, the sixth district judge in the Federal District, Lic. Fernando Andrés Ortiz Cruz, formally indicted the seven suspects on charges of criminal association, rebellion, and possession, storage, and transport of unauthorized weapons and explosives.

Police used a search warrant alleging a secret weapons cache in the house for a totally different criminal investigation at a different address and involving other suspects wanted for a crime dating from August 1991. The CNDH investigated the use of the warrant, declaring it "reprehensible that [through] fictitious reports and criminal investigations unrelated to the case in hand, attempts should be made to deceive the judicial authorities in the hope of remedying a

[48] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Informe sobre la Defensa Jurídica de los Presuntos Zapatistas," January 1996, p. 7.

[49] Human Rights Watch/Americas telephone interview with Pilar Noriega, January 10, 1996.

[50] Ibid.

[51] Ibid.

deficient investigation and obtaining the necessary orders by these means."[52] In addition, the testimony from Maria Gloria Benavides, recognized later by the same court as having been given under pressure, forms part of the accusation against Marin Trujillo Barajas, identified in Benavides's testimony as someone who assisted the EZLN with the fabrication of arms.

Human Rights Watch/Americas interviewed the Yanga prisoners in the Reclusorio Preventivo Norte on April 5. According to the detainees, police tightly handcuffed them, kicked and beat them, moved them into a large van or truck, and took them to an airport. At least four of the detainees were tortured in the hours immediately after their detention. Alvaro Castillo told Human Rights Watch/Americas:

> Federal Judicial Police and maybe State Judicial Police participated in the arrest. I saw approximately twenty of them. They subdued us, handcuffed us, threw us on the floor, punched and kicked us, and beat us with boards and electrical cable. They took me out of the house with Martin Trujillo, with my head covered with a shirt. They put us in the back seat of a car and took us to a dead-end street. They covered my mouth with a rag and put mineral water up my nose.[53]

Later, at a location Castillo could not identify, police beat him, again forced mineral water up his nose, shocked him with an electric baton, and covered his head with a plastic bag, which almost asphyxiated him. Left alone in a room for several hours, Castillo could hear other people being tortured in an adjoining room; police told him that the sounds he heard were made by his friends. At the airport, an officer who was addressed as "colonel" put a pistol to Castillo's throat, questioned him, and threatened to apply the "law of the escapee," by which he apparently meant that he would shoot Castillo as if he were trying to escape. Blindfolded, the prisoners were taken by plane to a place they believed to be Campo Militar No. 1 in Mexico City, where they were held incommunicado.

According to Castillo, an official beat him and threatened him, saying that he would be released if he signed a statement but would be dunked in a tank of water if he did not. The interrogation lasted about one half hour. Officials took him to a large room that had a typewriter in it, removed his blindfold, and made him face the wall. He signed papers that he could not read and was taken back to his cell. When in his cell, loud music made it impossible for him to sleep. The detainees have recanted their initial statements, which they allege were obtained under force. On February 10, they were transferred to the Reclusorio Norte.

The prisoners denied receiving medical examinations prior to their arrival in Campo Militar No. 1, where they were made to strip and were given a cursory examination. Luis Sánchez, a metalworker who was disabled in both hands due to a soldering accident, told Human Rights Watch/Americas that he was given drops for an eye infection caused by his blindfold; Martin Trujillo, who had recently undergone abdominal surgery for cancer, was given two painkilling injections for pain from the partially healed surgical scar, on which he had been beaten. The detainees said they received their first thorough medical examination when they arrived at the Reclusorio Norte.

The information gathered by Human Rights Watch/Americas coincided with the detailed findings of the CNDH investigation in this case. The CNDH concluded that the detainees "were subject to physical and psychological torture designed to obtain information about the EZLN and to get them to sign self-incriminating declarations."[54] The CNDH also found *prima facie* evidence that four agents of the Office of the Attorney General failed to record the detainees' injuries when placed in their custody, and that a doctor from the Office of the Attorney General may have falsified

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[52] CNDH, Recommendation 50/95, p. 91.

[53] Human Rights Watch/Americas interview, April 5, 1995.

[54] CNDH, Recommendation 50/95, p. 84.

information in a medical certificate issued on February 9 by failing to record injuries.[55] As this report went to press, the results of the State Office of the Attorney General's investigation into the coverup had not been reported by the state to the CNDH.[56]

In ordering that the seven detainees stand trial in February, the judge made two arguments to dismiss their retracted confessions and allegations of torture. First, he held that there was no proof that the injuries recorded in medical examinations were sustained while the seven were in custody. Second, the judge stated in ordering in his indictment that, even supposing that torture had taken place, the confessions would not be nullified. He cited Mexican jurisprudence in reaching this conclusion:

> In no way would they [sic] be sufficient to come to a conclusion other than the one arrived at. And if, as has been said, some of them showed signs of beatings on different parts of their body, this, given the accumulation of proof that exists against them, would not be at all relevant to destroying the causal link established between the conduct laid out and the criminal event of which they are accused. The retractions should not be given value on the basis of the alleged unconstitutional acts in which the apprehending agents probably engaged. Given the principle of procedural immediacy, their first depositions are the ones that should take precedence over their later ones, because they were given closer to the time of the facts and without sufficient time for thinking about them or electing what to say.[57]

On October 16, a different judge threw out the charges of terrorism, criminal association, and storing arms and explosives, arguing that the Office of the Attorney General had not proved its case.[58] The Office of the Attorney General has appealed the decision rejecting these charges, while the defense has appealed the decision inasmuch as the other charges were left intact. The National Human Rights Commission, which recommended that the state attorney general investigate the torture it documented, had no information that such an investigation had even begun by the time this report went to press.[59] According to the defense, neither the detainees nor their attorneys have been interviewed for such an investigation.[60]

The government of Mexico should investigate the torture and beatings reported by the detainees, the denial of medical treatment, and the possibility that they were held at Campo Militar No. 1. The government should also investigate the CNDH's findings that agents of the Office of the Attorney General tried to report the medical condition of the detainees. In addition, the government should draft legislation to ensure that testimony given under torture will be rejected

F) Francisco Alejandro García Santiago

Police arrested Francisco Alejandro García Santiago on February 12 in Orizaba, Veracruz, but only after arbitrarily detaining his brother, mother, and father. At approximately 4:00 p.m. on February 10, three men who refused to identify themselves detained his brother, Víctor Hugo García Santiago, on a street in Orizaba. Víctor Hugo's father,

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[55] Ibid.

[56] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan las recomendaciones 50/95, 132/95 y 158/95," January 15, 1996, p. 1.

[57] Auto de Formal Prisión (indictment), case No. 116/95, February 13, 1995.

[58] Centro para los Derechos Humanos "Miguel Agustín Pro Juárez," "Servicio Diario de Información de Derechos Humanos," October 18, 1995.

[59] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan ...," p. 1.

[60] Human Rights Watch/Americas telephone interview with Pilar Noriega, January 10, 1996.

Alejandro García Monterrosas, tried to prevent the abduction, but the men beat him on the face and body; the CNDH later verified his injuries. Immediately afterward, Alejandro García and his wife, María de los Angeles Santiago de García, denounced the events to the Orizaba Office of the Attorney General of the State of Veracruz.

Approximately four hours later on the same day, five plainclothes Judicial Police officers used force to enter the García home. They aggressively questioned Víctor Hugo's sister, Mónica García, about the whereabouts of her other brother, Francisco Alejandro, telling her that he was in serious trouble because of his "links with the EZLN." While the agents were still in the house, Alejandro García and María de los Angeles Santiago returned home. After a discussion, they agreed to accompany the agents to see Víctor Hugo.[61] Alejandro García told the CNDH, however, that one of the police officers told him that if they did not agree to go with the police, they would be taken by force.[62] Before agreeing to accompany the police, however, they telephoned the Public Ministry, which assured them it was safe for them to go with the police.

The police took the couple to a modern building in the nearby resort town Fortín de las Flores, which the family members later identified as the Public Security Department of the state government, where they were interrogated in separate rooms. According to their testimonies, they were forced to sit for hours. "We asked if we had been brought there to see our son, to answer questions, or if we had been detained, but they didn't answer us," María de los Angeles Santiago de García told Human Rights Watch/Americas. "We were made to sit for a long time, and they didn't let us stand or go to the bathroom." The police held the couple at the Fortín de las Flores building for two and a half days. They were not held strictly incommunicado, since they were allowed to phone their home, but they were clearly held under duress.

On February 12, while the couple was still in police custody, the police prevailed on María Santiago to cooperate with them. She was told that, if she persuaded her son Francisco to surrender, she would be allowed to accompany the police agents to their home so that Francisco could see that she was all right. At about 10:00 p.m. she telephoned the house and implored Francisco to cooperate by letting the police in. She told him that she would accompany the police. Nonetheless, at about 10:30 p.m., two police agents forced their way into the house without either parent. According to the press, the CNDH, and García Santiago's defense, Francisco feared for his safety when he did not see his parents with the police, so he tried to kill himself by getting bitten by a viper he kept in the house as a pet.[63] The police officers arrested Francisco and were followed in a car by the family lawyer and two relatives who had witnessed the arrest. Police took him to the Escudero Sanatorium in Orizaba. At the hospital, he was interrogated and held under strict guard until February 15. On February 18, Francisco García was formally charged with sabotage for allegedly attempting to blow up an electricity tower.

According to an investigation by the CNDH, the complaint filed by Alejandro García regarding the beating he was given by police was never forwarded to the Office of the Attorney General, so a case against the police was never opened. The CNDH accused the agent responsible at the Public Ministry of acting in "bad faith" and "presumably with the intention of not continuing the investigation of the criminal acts denounced by Mr. García Monterrosas."[64] As of the time this report went to press, the governor of the state of Veracruz had failed to inform the CNDH of any actions taken to ensure that the beating case was opened or that the agent responsible for failing to open it in February was investigated, as per CNDH recommendation number 132/95, filed in October 1995.[65]

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[61] Comisión Nacional de Derechos Humanos, Recommendation 132/95, reproduced in *Gaceta*, No. 63, October 1995, p. 95.

[62] Ibid.

[63] "Intentó suicidarse un implicado con el EZLN al ser detenido en Orizaba," *La Jornada*, February 12, 1995.

[64] CNDH, Recommendation 132/95, p. 102.

[65] Presidencia de la Comisión Nacional de Derechos Humanos, "Situación que a la fecha guardan [illegible]," p. 1.

In a March 3 letter to the nongovernmental Mexican Commission for the Defense and Promotion of Human Rights (Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos), Lic. Humberto Fernández de Lara Ruiz of the Internal Investigations Department (Contraloría Interna) of the Office of the Attorney General stated that García had confessed to the judge that he had been a member of the EZLN and that he participated in the blowing up of two electricity pylons in the state of Veracruz and Puebla in January 1994. Fernández also denied that "the human rights of the García Santiago family had been violated at any moment." He said there were "no records of the detention of Víctor Hugo García Santiago, Alejandro García Monterrosas or María de los Angeles Santiago de García." The attorney general of Mexico, Lic. Antonio Lozano, met representatives of the Mexican Commission on February 13 and told them that neither the Office of the Attorney General nor the Federal Judicial Police had been responsible for the arrests, and that the authorities responsible were Veracruz state security forces.

The government of Mexico should undertake to investigate the violations in this case and punish according to the law those found responsible for: the detention of Víctor Hugo García, Alejandro García, and María Santiago; the beating of Alejandro García; and the failure of the Attorney General's office to open a case on the beating.

IV. Acknowledgments

Joel Solomon, Human Rights Watch/Americas research director, and Sebastian Brett, Human Rights Watch/Americas research associate, wrote this report based on information gathered during an April 1995 Human Rights Watch/Americas fact-finding mission to Mexico and additional information gathered in Mexico in August and September. The April mission was composed of Executive Director José Miguel Vivanco, Brett, and Helen Lang, a consultant. Solomon traveled to Mexico in August and September. Human Rights Watch/Americas Associate Steven Hernández formatted and prepared this report for press.

Human Rights Watch/Americas would like to thank the Centro para los Derechos Humanos "Miguel Agustín Pro Juárez" for its assistance.

Human Rights Watch/Americas

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MEXICO: HUMAN RIGHTS WATCH/AMERICAS URGES ZEDILLO TO COUNTER OFFICIAL ABUSES WITH PROSECUTIONS

Mexican police and prosecutors engaged in a pattern of human rights violations, including torture, during an offensive against alleged members of the Zapatista Army of National Liberation (EZLN) last year, according to Human Rights Watch/Americas. In a new study of cases from the crackdown, *Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas*, the New York-based rights group finds that government officials beat detainees, extracted confessions by force, disregarded due-process guarantees, and tried to cover up their abuses. Torture and forced confessions can only be eliminated in Mexico, the report argues, if political leaders, including President Ernesto Zedillo, ensure that such abuses are fully and quickly prosecuted. To date, the violations documented in the report remain unpunished.

"The profoundly troubling pattern in Mexico is that police torture or beat detainees, prosecutors illegally obtain confessions, and judges accept this process as valid," according to José Miguel Vivanco, executive director of Human Rights Watch/Americas. "We are also alarmed by the impunity for human rights violations in Mexico."

Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas tracks violations beginning in early February of last year, when newly elected President Ernesto Zedillo ordered the Mexican army to help the Attorney General arrest suspected EZLN leaders. For five days, the army fought to regain territory in which the EZLN had operated since January 1994, and federal and state police worked in tandem to arrest men and women accused of leading the armed movement. On February 8 and 9, officials detained more than twenty alleged EZLN members in three states and the Federal District. Most of the alleged Zapatistas remain in jail, charged with crimes such as rebellion and sedition.

Human Rights Watch/Americas notes in its report that Mexico's President Ernesto Zedillo has publicly recognized the problems of human rights violations and impunity that exist in Mexico The rights group argues strongly, however, that the government of Mexico must undertake a concerted effort to convert formal human rights safeguards and official human rights policy statements into real human rights protections and the punishment of human rights violators.

Among the findings of *Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas*, Human Rights Watch/Americas documents:

- Four of seven detainees arrested in Yanga, Veracruz state, on February 8, 1995, and later interviewed by Human Rights Watch/Americas, were subjected to gross physical and psychological torture, including near drowning and electric shocks. They now face charges based, in part, on coerced confessions. The governmental National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) found that the Office of the Attorney General tried to cover up the abuses. Government prosecutors and judges have failed to investigate the allegations of torture.

- Police severely beat the detainees from Cacalomacán, State of México, on February 9, 1995; one reported to Human Rights Watch/Americas that officials tortured him by placing a plastic bag over his head. While in detention, officials blindfolded the detainees, deprived one with gunshot wounds of medical care for forty-eight hours, and forced them to sign confessions incriminating themselves. Military officials held one of the detainees incommunicado for fifteen days, in violation of Mexican law.

- Government and judicial authorities have failed to take proper steps to investigate the abuses, identify the state agents responsible, and enforce existing laws designed to protect citizens from abuses, such as the Federal Law to Prevent and Punish Torture. The law requires that allegations of torture be investigated, but even given National Human Rights Commission documentation of torture in the Yanga case, no such investigation has begun In the Cacalomacán case, representatives of the Office of the Attorney General sought to interview the detainees regarding their allegations of torture, but, because the officials reportedly did not give prior notice to them or their lawyers, they did not trust them enough to grant the interviews.

Human Rights Watch/Americas urges the government of Mexico to take the following steps:

- Regarding the detainees, the information obtained through torture and other illegal practices should be disregarded by prosecutors and judges. Where such information forms the only basis for indictments, the accused should be immediately released without charges. Human Rights Watch/Americas recognizes that a judge ruled this way in November in the case of María Gloria Benavides, and dropped all charges against her, but notes that the government has failed to investigate the violations that led the judge to acquit her.

- Mexican legislation expressly prohibits and penalizes the use of torture and renders invalid legal statements made under torture. Nonetheless, these practices persist, pointing to the need for Mexico to adopt further legislation to end these abuses and adopt measures to ensure that officials comply with such laws and punish those who violate them. Further legislation should focus on eliminating precedents that give greater weight to the first official statements detainees make -- which are more frequently given under duress -- than to statements given before judges. It should also seek to establish greater independence between police investigations, prosecutors' development of charges, and judges' decisions to indict suspects. Allegations of torture should be immediately and thoroughly investigated in a way that gives victims confidence in the integrity of the investigation.

- If government officials do not prosecute those agents who engage in human rights violations, no legislation to end torture and forced confessions, no matter how well crafted or detailed, will succeed. Human Rights Watch/Americas urges that a detailed investigation by the Office of the Attorney General be undertaken to determine who is responsible for the human rights violations committed by federal and state officials. The results of the attorney general's investigation should be made public and should be followed by the timely prosecution of state agents implicated in wrongdoing. The government of Mexico should also begin a systematic review of allegations of torture or other cruel, inhuman, or degrading treatment, beginning with the detailed information on the issue gathered and analyzed by the National Human Rights Commission over the last five years. Those implicated in committing these abuses should be prosecuted and punished according to the law.

Human Rights Watch/Americas urges the government of the United States to take the following steps:

- The United States must make clear and public statements denouncing the serious human rights violations committed during the February 1995 offensive. The silence of the United States on human rights issues in Mexico, combined with its support for the Zedillo government and economic integration, send the unambiguous message that human rights abuses in Mexico are not of concern to the United States.

- The United States and Mexico are currently reviewing the possibility of developing a training and exchange program for Mexican police, judges, and prosecutors. U.S. financial assistance for Mexican police and the administration of justice should be used by the United States as part of a broader strategy to promote human rights reforms in Mexico; the U.S. should include clear human rights goals in the exchange and training program. If Mexican officials fail to make demonstrable progress into investigating cases of abuse by police and prosecutors, such as the violations committed during the February 1995 crackdown, the United States should consider withdrawing such assistance.

Copies of the report are available from the Publications Department, Human Rights Watch, 485 Fifth Avenue, New York, NY 10017 for $3.60 (domestic) and $4.50 (international). Visa and MasterCard accepted.

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HUMAN RIGHTS WATCH/AMERICAS INSTA A ZEDILLO A QUE RESPONDA ANTE LOS ABUSOS OFICIALES CON INVESTIGACIONES PENALES

La policía y los fiscales mexicanos cometieron graves violaciones a los derechos humanos, incluyendo la práctica de la tortura, durante la ofensiva contra supuestos miembros del Ejército Zapatista de Liberación Nacional (EZLN) el año pasado, según Human Rights Watch/Americas. En el informe titulado *Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas* (Tortura y Otros Abusos Cometidos Durante la Ofensiva de 1995 en Contra de Supuestos Zapatistas), que se publica hoy, se elabora un nuevo estudio de casos de violaciones vinculados a la ofensiva gubernamental. La organización de derechos humanos, cuya sede se encuentra en Nueva York, llegó a la conclusión que funcionarios gubernamentales golpearon a los detenidos, arrancaron confesiones, violaron garantías al debido proceso legal e intentaron encubrir sus abusos. La tortura y las confesiones forzadas sólo podrán ser eliminadas en México, sostiene el informe, si las más altas autoridades, incluyendo el Presidente Ernesto Zedillo, se aseguran que los responsables de tales abusos son procesados por sus crímenes. Hasta la fecha, continúa la impunidad en los casos documentados en el informe de Human Rights Watch/Americas.

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"Es muy preocupante que en México exista la práctica generalizada por parte de funcionarios estatales de torturar o golpear a los detenidos, fiscales que arrancan confesiones ilegalmente y jueces que admiten esta evidencia como jurídicamente válida," afirmó el Dr. José Miguel Vivanco, Director Ejecutivo de Human Rights Watch/Americas. "También estamos altamente preocupados por el nivel de impunidad por las violaciones a los derechos humanos que se siguen cometiendo en México."

El informe titulado. *Tortura y Otros Abusos Cometidos Durante la Ofensiva de 1995 Contra Supuestos Zapatistas* documenta violaciones a los derechos humanos cometidas a partir de febrero del año pasado, cuando el recientemente elegido Presidente Ernesto Zedillo ordenó al ejército mexicano colaborar con la Procuraduría General de la República para detener a los supuestos líderes del EZLN. Durante cinco días el ejército luchó para restablecer el control del territorio en el cual el EZLN había operado desde enero de 1994, y policías federales y estatales trabajaron coordinadamente para detener a hombres y mujeres acusados de ser líderes del movimiento armado. El 8 y 9 de febrero, agentes estatales detuvieron a más de veinte supuestos miembros del EZLN en tres estados diferentes y en el Distrito Federal. La mayoría de los supuestos zapatistas siguen encarcelados, acusados de crímenes tales como rebelión y sedición.

Human Rights Watch/Americas destaca en su informe, que el Presidente Zedillo ha reconocido públicamente la existencia de violaciones a los derechos humanos y la generalizada impunidad que reina en México. No obstante, la organización de derechos humanos critica con firmeza al gobierno mexicano por no trabajar eficaz y concertadamente para lograr que las garantías formales a los derechos humanos y las declaraciones oficiales sobre esta materia, se transformen en auténtica protección mediante el procesamiento de los responsables de estos abusos.

Entre las conclusiones alcanzadas en el informe *Tortura y Otros Abusos Cometidos Durante la Ofensiva de 1995 Contra Supuestos Zapatistas*, Human Rights Watch/Americas destaca las siguientes:

- Cuatro de las siete personas detenidas en Yanga, Estado de Veracruz, el 8 de febrero de 1995, y luego entrevistadas por Human Rights Watch/Americas, fueron objeto de graves torturas físicas y sicológicas, incluyendo sofocamiento y choques eléctricos. Ellos se encuentran actualmente procesados, en parte, debido a sus confesiones forzadas. La Comisión Nacional de Derechos Humanos (CNDH) concluyó que la Procuraduría General de la República había intentado encubrir estos abusos. Tanto los fiscales como los jueces a cargo de estos casos no han investigado estas denuncias de tortura.

- Agentes de la policía golpearon severamente a los detenidos en Cacalomacán, Estado de México, el 9 de febrero de 1995; uno de los detenidos informó a Human Rights Watch/Americas que agentes estatales lo habían torturado, colocando una bolsa de plástico sobre su cabeza. Los agentes vendaron los ojos de los detenidos, negándole a uno de ellos tratamiento médico para curar sus heridas de bala durante cuarenta y ocho horas, y los forzaron a firmar declaraciones auto-inculpatorias. Agentes del ejército mantuvieron a uno de los detenidos incomunicado durante quince días, en violación de la ley mexicana.

- Autoridades gubernamentales y judiciales no han cumplido con su obligación de iniciar investigaciones sobre estos abusos, identificar a los agentes del estado responsables de estos crímenes, y respetar las leyes diseñadas para proteger a los ciudadanos de estas prácticas, como la Ley Federal para Prevenir y Sancionar la Tortura. La ley exige que las denuncias de torturas sean investigadas. Sin embargo, a pesar de que la Comisión Nacional de Derechos Humanos ha documentado el uso de la tortura en el caso de Yanga, aún no se han iniciado dichas investigaciones. En el caso de Cacalomacán, funcionarios de la Procuraduría General de la República intentaron entrevistar a los detenidos que denunciaron torturas,

pero debido a que los agentes no habían dado aviso previo a los detenidos o a sus abogados, los prisioneros se negaron a cooperar por falta de confianza.

Human Rights Watch/Americas solicita al gobierno mexicano que adopte las siguientes medidas:

- Con respecto a los detenidos, la información obtenida mediante tortura y otras prácticas ilegales debe ser excluida del proceso por parte de los fiscales y los jueces que están conociendo de estos hechos. En casos donde dicha información constituye la única prueba en contra de los procesados, los acusados deben ser puestos en libertad inmediatamente. Human Rights Watch/Americas reconoce que, a lo menos, un juez actuó de esta manera en noviembre pasado en el caso de María Gloria Benavides, absolviéndola de todos los cargos. Sin embargo, Human Rights Watch/Americas lamenta que el gobierno no haya promovido una investigación acerca de las violaciones que motivaron la decisión del juez.

- La ley mexicana expresamente prohíbe y penaliza la tortura y declara que es nula toda información recibida bajo estas condiciones. Sin embargo, la tortura se sigue practicando, demostrando con ello que el gobierno de México debe promulgar legislación adicional para poner fin a estos graves abusos, adoptar medidas concretas para asegurar que los agentes del estado cumplan con su responsabilidad de acuerdo a la ley y castigar a aquellos que cometen estas violaciones. Nueva legislación es necesaria para modificar la tendencia de la jurisprudencia de los tribunales mexicanos, que se han caracterizado por otorgar más valor a las primeras declaraciones oficiales prestadas por los detenidos -- que a menudo se obtienen bajo coacción -- en lugar de las declaraciones prestadas con posterioridad ante los jueces. Igualmente, debe establecerse mayor independencia entre la etapa de averiguación previa conducida por la policía, la elaboración de la acusación por parte de los fiscales, y la decisión de los jueces de dictar auto de formal prisión. Denuncias de tortura deben ser rápida y exhaustivamente investigadas de manera que exista confianza en las víctimas acerca de la rectitud y seriedad de dicha investigación.

- Si las autoridades mexicanas no procesan a los agentes responsables de violaciones a los derechos humanos, ninguna legislación, por bien que haya sido diseñada, será eficaz. Human Rights Watch/Americas insta a la Procuraduría General de la República que emprenda una rigurosa investigación a fin de determinar la identidad de los funcionarios federales y estatales responsables de violaciones a los derechos humanos. Las conclusiones de la investigación de la Procuraduría General de la República deben ser publicadas y seguidas del procesamiento de los agentes responsables de estos abusos. El gobierno mexicano debe iniciar una exhaustiva y sistemática evaluación de las denuncias de tortura y otros tratos crueles, inhumanos, o degradantes, empezando con la detallada información recopilada y analizada por la Comisión Nacional de Derechos Humanos durante los últimos cinco años. Los acusados de violaciones a los derechos humanos deben ser procesados y castigados de acuerdo con la ley.

Human Rights Watch/Americas insta al gobierno de los Estados Unidos que tome los siguientes pasos:

- El gobierno de los Estados Unidos debe públicamente denunciar las graves violaciones a los derechos humanos cometidas durante la ofensiva gubernamental de febrero de 1995. El silencio de los Estados Unidos sobre la situación de los derechos humanos en México, combinado con el público apoyo al gobierno del Presidente Ernesto Zedillo y los programas integración económica, envían el inequívoco mensaje que a los Estados Unidos no les importa las violaciones a los derechos humanos que se cometen en México.

- Los gobiernos de los Estados Unidos y México están evaluando la posibilidad de desarrollar un programa de entrenamiento e intercambio de policías, jueces y fiscales mexicanos. Ayuda financiera estadounidense para la policía mexicana y para la administración de justicia debe ser utilizada por el gobierno de los Estados Unidos para promover una estrategia en favor de reformas sustanciales sobre derechos humanos en México; el gobierno de los Estados Unidos debe fijar objetivos concretos de derechos humanos en su programa de entrenamiento e intercambio. Si las autoridades del gobierno de México no demuestran progreso en investigaciones sobre violaciones a los derechos humanos cometidas por la policía y los fiscales, como los graves abusos cometidos en la ofensiva de febrero de 1995, el gobierno de los Estados Unidos debe considerar la suspensión de estos programas de cooperación.

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Human Rights Watch/Americas (anteriormente Americas Watch)

Human Rights Watch es una organización no gubernamental creada en 1978 a fin de vigilar y promover el respeto de los derechos humanos reconocidos internacionalmente en Africa, las Américas, Asia, el Oriente Medio, y entre los signatarios de los acuerdos de Helsinki. Kenneth Roth es el Director Ejecutivo; Cynthia Brown es la Directora de Programas; Holly J. Burkhalter es la Directora de Promoción. La división de las Américas fue creada en 1981 a fin de supervisar y promover el respeto de los derechos humanos en América Latina y el Caribe. José Miguel Vivanco es el Director Ejecutivo, Anne Manuel es la Subdirectora, Joel Solomon es el Director de Investigaciones, James Cavallaro es el Director de la oficina de Brasil, Sebastian Brett, Sarah DeCosse, Robin Kirk, y Gretta Tovar Siebentritt son los investigadores, Michael Bochenek es becario de Leonard H. Sandler. Steven Hernández y Paul Paz y Miño son los asistentes. Stephen L. Kass es Presidente del Directorio de Human Rights Watch/Americas y Marina Pinto Kaufman y David Nachman Vicepresidentes.