

CALIFORNIA WESTERN  
INTERNATIONAL LAW JOURNAL

VOLUME 25

FALL 1994

NUMBER 1

NAFTA, THE CHIAPAS REBELLION, AND THE  
EMERGENCE OF MEXICAN ETHNIC LAW

JORGE A. VARGAS\*

INTRODUCTION

On January 1, 1994, coinciding with the entering into force of NAFTA,<sup>1</sup> an armed rebellion erupted in Mexico's southern state of Chiapas.<sup>2</sup> Thousands of impoverished and uneducated Mayan Indians, principally composed of members of the Tzotzil, Tzeltal and Tojobal indigenous peoples, rose in arms to demand an immediate response from the government of Mexico to their chronic and unanswered problems.

As the New Year dawned, Indians came out of the forests, down from the hills, and took over nine towns in Chiapas. They invaded town halls and burned the archives of their oppression. They destroyed the land deeds, the titles establishing ownership of what once had been theirs. They seized a hated former governor of the state. In the tourist-crammed mountain town of San Cristobal they made their way to the local paper—El Tiempo—that had always been friendly to indigenous people, and proclaimed their rising in the name of the Zapatista Liberation Army.<sup>3</sup>

---

\* Professor of Law, University of San Diego School of Law; Visiting Professor, Stanford Law School, Spring 1994. LL.B., *summa cum laude*, National Autonomous University School of Law, (UNAM), 1964; LL.M., Yale Law School, 1970; J.S.D. candidate, Yale Law School. Former member Mexico City Bar Association. Legal advisor to Mexico's Secretary of Foreign Affairs (SRE), 1964-1968; Professor at UNAM, Iberoamericana and Anáhuac Law Schools, 1973-1980. Founder and former director of USD's Mexico-United States Law Institute. The author is most grateful to his friend and colleague Professor Mary Jo Newborn Wiggins and to Ms. Janelle C. Johnson, LL.M., for their valuable editorial comments. The author is also indebted to Frank Weston, Margaret McDonald and, especially, Michael White, all of the Reference Department, Katherine M. and George M. Pardee Jr. Legal Research Center at the University of San Diego Law School. The author verifies the accuracy of the Spanish language cites and all English translations.

1. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 296 and 32 I.L.M. 605 (1993) [hereinafter NAFTA]. According to Article 2203 of NAFTA, this trilateral treaty entered into force on January 1, 1994. *Id.* at 702.

2. For information on Chiapas, see *infra* notes 45-60 and accompanying texts.

3. Alexander Cockburn & Kieran Murray, *A Fistful of Promises. Agreement Between Mexico and Zapatista Rebels*, NEW STATESMAN & SOCIETY, Mar. 18, 1994, at 21.

The Indians demanded improvement of their living conditions, better education for their children in rural and Indian communities, access to medical care, secure land ownership, respect for their unique ethnicity, fair political elections and the establishment of a truly democratic system in the country.<sup>4</sup> In a manifesto put out by the rebels these demands were summarized in the following ten points: (1) work, (2) land, (3) shelter, (4) nutrition, (5) health, (6) education, (7) liberty, (8) democracy, (9) justice, and (10) peace.<sup>5</sup>

The Chiapas rebellion represents Mexico's most serious armed insurgency movement in the last two decades,<sup>6</sup> since the Mexican Army violently crushed the guerrilla uprising of Lucio Cabañas in the State of Guerrero in the 1970s.<sup>7</sup>

The explosion of the Chiapas rebellion took Mexico, and the world, by surprise. When the administration of President Carlos Salinas de Gortari was preparing to initiate the official euphoria triggered by the legal arrival of NAFTA, the Indian rebellion in Chiapas instantly darkened the social and legal perspectives within that country, especially obscuring its political and economic image abroad. "Everything changed overnight. In 1994 we woke up in a new country, a country where we have to live in a different way, in confusion, sadness, anxiety, desperation, bursts of machine-gun fire; *la guerrilla*."<sup>8</sup>

The rebels named their movement "*Ejército Zapatista de Liberación Nacional*"<sup>9</sup> (i.e., Zapatista National Liberation Army, or EZLN).<sup>10</sup> This name was given in honor of the memory of the revolutionary hero from Morelos, Emiliano Zapata,<sup>11</sup> whose political philosophy, encapsulated in the motto "Tierra y Libertad" (Land and Freedom), nurtured the content of Article 27 of Mexico's 1917 Constitution.<sup>12</sup> This philosophy led Mexico's

---

4. For a more specific list of demands, see app. 2.

5. Cockburn & Murray, *supra* note 3, at 20.

6. Patrick McDonnell, *The Roots of the Rebellion*, L.A. TIMES SUNDAY MAGAZINE, Mar. 6, 1994, at 33.

7. *Id.*

8. McDonnell, *supra* note 6, at 32 (quoting Elena Poniatowska, *La Jornada*).

9. The most basic aspects of the *Ejército Zapatista de Liberación Nacional* (EZLN), such as its formation, structure, training, leadership, armament and financing, remain a mystery. See *supra* note 3.

10. Michael S. Serrill, *Zapata's Revenge*, TIME, Jan. 17, 1994, at 33.

11. Recently, Emiliano Zapata has been recognized among the truly remarkable figures in Mexico's history. Born in 1873 in San Miguel Anenecuilco, Morelos, Zapata became involved in the 1910 Revolution as an advocate in favor of agrarian reform, which fundamental principles he enumerated in his famous Plan de Ayala (For the content of this Plan, see *infra* notes 251-54 and accompanying texts). He was assassinated in Chinameca, Morelos, in 1919. For an excellent biography, see JOHN WOMACK, *ZAPATA AND THE MEXICAN REVOLUTION* (1970).

12. The tragic conditions of indigenous peoples in Mexico, comparable to servitude conditions, led to Mexico's armed revolution in 1910. The Constitution of 1917 was a product of this movement. Article 27 of this Constitution enshrines Mexico's legal philosophy regarding its natural resources and property questions, including land and water rights affecting indigenous peoples in rural communities. See MINNESOTA ADVOCATES FOR HUMAN RIGHTS, *CONQUEST*

official party, the Institutional Revolutionary Party, better known by its acronym "PRI," to establish agrarian reform and its program for the distribution of land among *campesinos*,<sup>13</sup> including indigenous peoples. Unfortunately, most of the demands advanced by Zapata early this century, especially those affecting indigenous peoples, remained unanswered.

For ten days, the Mexican Army launched a heavy military attack against the rebels. The Mexican military, apparently surprised by the unexpected rebellion, was forced to "abandon its traditional low profile and wage war through the jungles of southern Mexico; a job military experts say it was ill-prepared, underfunded and poorly equipped to take on."<sup>14</sup>

According to U.S. media reports, the Mexican Army utilized armored personnel carriers and U.S.-made Humvees which were diverted to Chiapas from other parts of Mexico.<sup>15</sup> However, the bulk of its fire power, consisting of "soldiers armed with German-designed G-3 automatic rifles. U.S.-made light helicopter gunships, believed to number fewer than two dozen, and three propeller driven planes armed with rockets,"<sup>16</sup> provided air cover for the infantry. Mexican soldiers

mounted a bloody offensive against the retreating rebels, sweeping through villages and arresting scores of peasants, most of whom protested their innocence. Helicopter gunships launched rockets and sprayed machine-gun fire on rural enclaves . . . . Official estimates put the death toll at about 100, though many believe it to be much higher—the evidence is concealed in common graves throughout the region. The Mexican Army, it appeared, was emulating the scorched-earth tactics so popular among nearby Central American regimes.<sup>17</sup>

The Mexican weekly *Proceso*, which has been reporting in detail the peasant uprising in Chiapas, provided:

A month after the armed conflict in Chiapas was initiated, the complaints against the Mexican Army for human rights violations include bombing of inhabited towns; illegal and arbitrary detentions; unconstitutional searches of homes; abuses of authority; intimidation and threats to individuals and groups; torture; forced and involuntary disappearances [of persons];

---

CONTINUED: DISREGARD FOR HUMAN INDIGENOUS RIGHTS IN THE MEXICAN STATE OF CHIAPAS 5 (1992) [hereinafter CONQUEST CONTINUED]

13. A *campesino* is a peasant, THE CONCISE AMERICAN HERITAGE SPANISH DICTIONARY 48 (1989).

14. Tod Robberson, *Mexican Army Short of Funds and Combat Experience*, WASH. POST, Jan. 19, 1994, at A-21.

15. *Id.*

16. The Washington Post reported that a U.S. official quoted by the Reuter news service said "the helicopters were sold to Mexico for drug interdiction and that after review of U.S. restrictions on the sale, *Mexican officials assured Washington that the craft had been returned to antinarcotics duty.*" *Id.* (emphasis added). This report suggests that Mexico used the helicopters in violation of the terms of the agreement entered into with the U.S. Drug Enforcement Administration (DEA). *Id.*

17. McDonnell, *supra* note 6, at 32.

homicide of civilians and summary executions.<sup>18</sup>

Probably as a reaction to mounting international pressure, President Salinas de Gortari reversed his militaristic policy on January 5, 1994. He offered the rebels a cease-fire and amnesty, calling for "an immediate end to hostilities, surrender of all weaponry, freedom for all persons kidnapped or taken prisoner and identification of all guerilla leaders and interlocutors."<sup>19</sup> He also appointed Manuel Camacho Solís to the position of Commissioner for Peace and Reconciliation.<sup>20</sup> Mr. Camacho and the rebels, represented by Subcomandante Marcos,<sup>21</sup> reached a tentative settlement on March 2, 1994,<sup>22</sup> utilizing the mediation services of the Catholic Bishop of San Cristóbal de las Casas, Samuel Ruiz.<sup>23</sup>

On March 2, 1994, the EZLN submitted to the federal government of Mexico a formal document containing thirty-four specific "Demands and Engagements to Achieve a Dignified Peace in Chiapas."<sup>24</sup> From a substantive viewpoint, these demands may be categorized into the following five general issues: political, legal, socio-economic, military, and women's.

The EZLN's main political demands were that the President of Mexico and other "State executives" (i.e. governors of states) resign and a "transition government" be formed immediately.<sup>25</sup> In essence, the EZLN implied

---

18. Guillermo Correa, et al., *En Chiapas, despues de las batallas: Narraciones de Como en Ejército ha asesinado, torturado, saqueado . . .*, PROCESO, Feb. 7, 1994, at 6 (translation by the author).

19. Tod Robberson, *Mexico Attacks by Air, Offers Terms to Rebels*, WASH. POST (Final ed.), Jan. 6, 1994, at A-12.

20. Manuel Comacho Solís was a former Mayor of Mexico City whom President Salinas failed to name as the next PRI presidential candidate. See Tod Robberson, *Mexico Declares Cease-Fire in Chiapas*, WASH. POST (Final edition), Jan. 13, 1994, at A-18. In this article, Robberson reports:

The [Mexican] President has been criticized for dispatching thousands of troops and heavy weaponry to the [Chiapas] region and allowing military aircraft to rocket civilian-inhabited areas in attacks against the rebels. . . Salinas had no intention of fighting a potentially lengthy jungle war. His peace offensive. . . was designed to escape the kind of military-based reaction that led to civil wars in nearby El Salvador, Nicaragua and Guatemala during the 1970s and '80s.

21. Tod Robberson, *Mexico's Ski-Masked Rebels Show Flair for Communicating*, WASH. POST (Final edition), Feb. 9, 1994, at A14; *A Cult Hero of Mexico's Revolution*, S.F. CHRON., Feb. 14, 1994, at A6.

22. Tod Robberson, *Mexican Insurgents Gain Leverage. Accord Allows Rebels to Keep Weapons Until Government Implements Political Reforms*, WASH. POST (Final edition), Mar. 6, 1994, at A-25.

23. Andrew A. Reding, *Rebellion in Mexico*, WASH. POST, Jan. 11, 1994, at A-19.

24. DIRECCIÓN GENERAL DE INFORMACIÓN, SECRETARÍA DE RELACIONES EXTERIORES, BOLETIN DE INFORMACION SEMANAL, No. 254, *Demandas y Compromisos para una Paz Digna en Chiapas* 48-69 (Mar. 5, 1994) (translation by the author) [hereinafter *Demandas y Compromisos*]. This document contains all EZLN's demands and the Mexican government's responses to them.

25. Demands 1 and 2. *Id.* at 49.

that the election of President Carlos Salinas de Gortari in 1988, and of some state governors, were not legitimate. Thus, the EZLN demanded the formation of a transition government to provide "equality and respect for all political trends."<sup>26</sup>

Of the ten legal demands specifically advanced by the EZLN, the most significant were: (1) to revise the text of NAFTA to incorporate the interests and needs of the indigenous peoples; (2) to amend Article 27 of Mexico's Constitution, so lands will be given to indigenous peoples and not to "large landholders;" (3) to be able to administer their own system of justice according to their customs and traditions, without the intervention of illegitimate and corrupt governments; and (4) to repeal the Penal Code of Chiapas.<sup>27</sup>

The socio-economic demands included: (1) hospitals with "specialized doctors;" (2) "houses with electricity, drinking water, roads, sewage, telephones, transportation;" (3) ending illiteracy; (4) "dignified jobs with a just salary;" (5) ending hunger and malnutrition; and (6) "peace and tranquility."<sup>28</sup>

The EZLN's military demands were: (1) that the Mexican government recognize the EZLN as a "belligerent force," thus protected by the applicable international conventions and treaties; (2) to obtain indemnification for the families whose shacks and belongings were destroyed by the bombings of the Federal Army; (3) to stop the expulsions of indigenous peoples from their communities conducted by "*caciques* supported by the State;" and (4) "[t]o respect the lives of all members of the EZLN."<sup>29</sup>

Finally, the EZLN included demands to address the special and urgent needs of indigenous women in that part of Mexico, such as: (1) "[m]aternity clinics with gynecologists;" (2) child care centers; (3) food for children; (4) kitchens and dining areas for children; (5) corn grinding and tortilla establishments; (6) rural farms to grow chickens, rabbits, sheep; (7) a bakery; and (8) handicraft shops.<sup>30</sup>

As a consequence of the shocking assassination of the PRI presidential candidate, Luis Donald Colossio,<sup>31</sup> the negotiations between the government of Mexico and the EZLN were immediately suspended. On May 4, 1994, as a result of a meeting held in Las Margaritas between Camacho Solís, Subcomandante Marcos and Bishop Ruiz, a joint communiqué was issued informing the Mexican people that the consultations between the

26. *Demandas y Compromisos*, *supra* note 24, at 48-49.

27. *Id.* at 52, 53, 56 and 59 respectively.

28. *Id.* at 56, 57, 60, 62 and 64 respectively.

29. *Id.* at 50, 63-64 and 67 respectively.

30. *Id.* at 65.

31. Geri Smith, *Mexico: Will Economic Reform Survive the Turmoil?*, BUS. WEEK, Apr. 11, 1994, at 24; Elías Chávez, *El Asesinato de Colosio Descompona al País*, PROCESO, Mar. 28, 1994, at 16; Martín Moreno, *Nadie cuidó su Espalda*, and *Tarde Trágica en Tijuana; se Consumó el Magnicidio*, EPOCA, Mar. 28, 1994, at 8 and 10, respectively.

EZLN and the federal government had been re-initiated.<sup>32</sup>

However, it appears that these consultations were destined to fail. Only a month after they were started, Mr. Camacho resigned as Peace Commissioner<sup>33</sup> because of a political clash with Dr. Ernesto Zedillo Ponce de León, the new presidential candidate appointed by the PRI to succeed Colosio.<sup>34</sup> This led President Salinas to appoint Lic. Jorge Madrazo Cuéllar, until then head of the government's National Commission on Human Rights (CNDH), as the new Commissioner for Reconciliation and Peace.<sup>35</sup>

Very little progress was accomplished by Lic. Madrazo as Peace Commissioner. Less than a week after he rendered the fourth annual report of the creation of the CNDH,<sup>36</sup> the EZLN rejected the proposals made by the Federal government.<sup>37</sup> In October of 1994, the peace negotiations broke off again.

As soon as he took office as President of Mexico on December 1, 1994, Dr. Ernesto Zedillo stated that he was "convinced that it is possible to begin a new peace negotiation in Chiapas."<sup>38</sup> However, on December 18, 1994, the EZLN mobilized its forces, occupying the town of Simojovel, in what was considered to be the most serious provocation since both sides agreed to a cease fire a year ago.<sup>39</sup> Two days later, the Mexico peso was devalued.<sup>40</sup> A few days later, Subcomandante Marcos agreed with the government to extend the cease fire.<sup>41</sup> Negotiations then began through the "National Commission of Arbitration and Mediation" (CONAI), headed by

32. G. Correa & J.C. López, *Se Reinician las Consultas Zapatistas*, PROCESO, May 9, 1994, at 40.

33. Mr. Camacho resigned as Peace Commissioner on June 17, 1994. In his letter of resignation to President Salinas, Lic. Camacho suggested that he could no longer contribute to the construction of the peace effort because Dr. Ernesto Zedillo had undermined his political ability to succeed in finding a peaceful solution to the conflict. Ted Bardake, *Negotiator Resigns in Mexico; Camacho Questions Party's Commitment*, WASH. POST, June 18, 1994, at A18.

34. *Id.* Until the tragedy of Tijuana occurred, Dr. Zedillo had been in charge of directing the presidential political campaign of Lic. Colosio. Dr. Zedillo had already been a close collaborator of President Salinas, serving in his administration as Secretary of Public Education (SEP). A Yale-educated economist, Dr. Zedillo distinguished himself within the ranks of the PRI. Charles Wilbanks, *A Technocratic Solution: Few Surprises as Salinas Chooses Former Education Secretary as PRI's New Candidate*, EL FINANCIERO (Int. ed.), Apr. 4, 1994-Apr. 10, 1994, at 14.

35. President Salinas appointed Lic. Madrazo on June 23, 1994, subject to the formality of obtaining the CNDH's Board of Directors' approval. *See New Peace Envoy Named in Mexico*, WASH. POST, June 24, 1994, at A32.

36. *See infra* note 370 and accompanying text.

37. *Id.*

38. Sallie Hughes, *A New President Takes Office*, EL FINANCIERO (Int. ed.), Dec. 5, 1994, at 14.

39. Michael Tangeman, *Zapatistas Coordinate Show of Force, then Vanish Without Firing a Shot*, EL FINANCIERO (Int. ed.), Dec. 26, 1994-Jan. 1, 1995, at 3.

40. Jo Bedingfield, *Peso Falls Against Dollar, Stock Market Sent Reeling, Interest Rates Up*, EL FINANCIERO (Int. ed.), Dec. 26, 1994-Jan. 1, 1995, at 1.

41. Michael Tangeman, *Breakthrough in Talks: Tensions Diminish in Southern Mexico, but Peace Seems Remote*, EL FINANCIERO (Int. ed.), Dec. 26, 1994-Jan. 1, 1995, at 3.

Bishop Samuel Ruiz.<sup>42</sup>

From an international law perspective, the EZLN rebellion in Chiapas offers two intriguing developments, unprecedented in the history of Mexico, namely: (1) its intimate relationship with NAFTA, an international trade instrument;<sup>43</sup> and (2) the focus of the EZLN's demands on the respect for human rights.

This article attempts to embrace a number of objectives. First, it provides information regarding the armed *campesino* uprising in Chiapas, exploring its genesis and giving special attention to the tragic conditions which affect the indigenous peoples in that part of Mexico. Second, it analyzes the main demands advanced by the EZLN. Third, it documents human rights violations committed by the Mexican Army, as reported by Mexican and international journalists, as well as by U.S. and Mexican human rights organizations. Fourth, it provides an analysis of the impact that the EZLN movement is likely to produce in Mexico, and abroad, in relation to certain political, legal, economic and cultural issues. And, finally, it discusses the effect of NAFTA on the promotion of human rights in Mexico.

## I. CHIAPAS, THE REBELLION AND NAFTA

### A. *The State of Chiapas*

*"The Mexican State of Chiapas has long been noted for its physical beauty, natural wealth and oppressed indigenous population."<sup>44</sup>*

Chiapas, Mexico's most southern state, borders Guatemala.<sup>45</sup> Not only physically, but politically and economically, Chiapas is a part of Central America. With a total population of 3.2 million, the indigenous population amounts to almost one million, most of them fluent in Mayan, although nine other autochthonous languages are also spoken throughout the state.<sup>46</sup> Two million residents have less than elementary school education, with an official

---

42. *Id.*

43. The rebellion started precisely on January 1, 1994, the official date of the entering into force of NAFTA. See NAFTA, *supra* note 1. In its document of formal demands, the EZLN expressly requested that NAFTA should be "revised" to incorporate the needs and interests of indigenous peoples. See *Demandas y Compromisos*, Demand No. 7, *supra* note 24, at 52.

44. CONQUEST CONTINUED, *supra* note 12, at vii.

45. Originally, Chiapas belonged to Guatemala. On September 12, 1824, by means of an "Act of Incorporation," the Province of "Chiapa" separated from Guatemala and united with the Republic of Mexico, as a result of a plebescite (96,829 in favor, 64,400 against). Two days later, on September 14, 1824, the Province of Chiapa was solemnly declared part of the Mexican Federation. Mexico's Federal government incorporated Chiapas as a state (i.e. "Estado de las Chiapas"), under the Federal Constitution of October 4, 1824. The first Constitution of the state was approved on November 19, 1825, and published on February 18, 1826. *Estado de Chiapas, Historia*, 3 ENCICLOPEDIA DE MEXICO 595-619 (Jose Rogelio Álvarez, Director 1977)

46. S. Lynne Walker, *Chiapas, Mexico, Too Little, Too Late: Rebel Uprising Exposes Holes in Salinas' Safety Net for the Poor*, SAN DIEGO UNION-TRIBUNE, Apr. 11, 1994, at A-8.

illiteracy rate recognized at 30%.<sup>47</sup> At least 1.1 million *Chiapanecos* live in communities without electricity, 1.3 million live in communities without running water, and 1.6 million in houses with dirt floors.<sup>48</sup> According to the Secretariat of Social Development (Sedesol), 2.5 million residents earn less than \$7 a day.<sup>49</sup> The World Bank figures place earnings of the Indian population of the state at \$350, or less, a year.<sup>50</sup>

Rebellions by indigenous peoples have been occurring in Chiapas since colonial times.<sup>51</sup> For historians, anthropologists and human rights advocates, the works of Fray Bartolomé de las Casas<sup>52</sup> epitomize the ardent defense of indigenous peoples.<sup>53</sup>

Chiapas is Mexico's poorest state for Indians, but a paradise for *caciques*.<sup>54</sup> Since early this century, *caciques* have been the most powerful people in Chiapas, both politically and economically.<sup>55</sup> From a political viewpoint, all of today's *caciques* in Chiapas are members of the PRI.<sup>56</sup> The PRI has long been in control of Mexico's political landscape.<sup>57</sup> Today, the PRI claims control of 90% of the votes in Chiapas.<sup>58</sup> As such, no authority, from a modest police officer to the Governor of the State, can serve in any public capacity at the municipal, state or federal level in Chiapas unless they are an official member of the PRI. Economically, *caciques* are the wealthiest individuals not only in Chiapas but in Mexico at large.<sup>59</sup>

Following a reputation dating back centuries, *caciques* have been engaged in dispossessing indigenous peoples of their lands using the most arbitrary, illegal and violent means. Jorge Castañeda, a political scientist at Mexico's National Autonomous University (UNAM), recently wrote: "For

---

47. *Id.* at 8.

48. *Id.*

49. *Id.*

50. Jane Bussy, *Mexico's Political System Under Siege*, SAN DIEGO UNION-TRIBUNE (Opinion), Feb. 22, 1994, at B-7.

51. An uprising was reported as early as 1527, six years after the Spanish conquest. Daniel Dombey, *Mexico Revolt Set to Go On. Uprising in Chiapas*, NEW STATESMAN & SOCIETY, Jan. 14, 1994, at 10.

52. See LEWIS HANKE, BARTOLOMÉ DE LAS CASAS: PENSADOR, POLÍTICO, HISTORIADOR, ANTROPÓLOGO (1949); RAMÓN MENÉNDEZ PIDAL, EL PADRE LAS CASAS: SU DOBLE PERSONALIDAD (1963).

53. Fray Bartolome de las Casas was the Dominican priest who became bishop of Chiapas in 1544 and spoke against the cruelties associated with the Spanish land-tenure system of *Encomiendas*. Known as "The Father of the Indians," De Las Casas became a celebrated author in sixteenth century Europe because of his book TRATADO PRIMERO: BREVISIMA RELACIÓN DE LA DESTRUCCIÓN DE LAS INDIAS (1552). For a modern version of this work, see BARTOLOME DE LAS CASES, TRATADOS (Lewis Hanke & Manuel Giménez Fernández, eds., 1966).

54. See CONQUEST CONTINUED, *supra* note 12, at 3.

55. MERILEE SERRIL GRINOLE, BUREAUCRATS, POLITICIANS, AND PEASANTS IN MEXICO 126 (1977).

56. *Id.*

57. *Id.*

58. *Id.* at 7.

59. *Id.* at 146.

decades, the local authorities and the army worked with the cattle ranchers in dispossessing the Indians of their communal lands; the ranchers got the land, while the Army and the police beat up, harassed and intimidated the previous owners."<sup>60</sup>

The strategy that *caciques* and ranchers have followed has been a relatively simple one. Over the years, in a gradual but undeterred movement, "the Indians have been driven across the state from the fertile lands along the Pacific coast to the central highlands and, finally, to the Lacandon rain forest in the east—the region in Chiapas least suited for agriculture."<sup>61</sup> According to June Nash, an American anthropologist who studies the Tzeltal group, even in the Lacandon rain forest, the interests of the Indians "have taken a back seat to commercial enterprises backed by the State. They would let the Indians move in and clear the land. Then, as soon as they got it in usable shape, the loggers and ranchers would force them out—without any compensation."<sup>62</sup> The Mexican government, instead of applying the law when landowners have pushed Indian communities off their land, "has turned a blind eye to the low-intensity violence. Torture, killings and illegal arrests in Chiapas and neighboring Oaxaca prompted Amnesty International to write its first report on the human rights situation in Mexico in 1986."<sup>63</sup> This explains why Chiapas, whose population accounts for a mere 4% of Mexico's population, is involved in 25-30% of Mexico's land disputes.<sup>64</sup>

Chiapas is endowed with vast natural resources. It supplies large amounts of oil, cocoa, beef, sugar, and coffee to the rest of the country. It is also the locale of a major hydroelectric project that provides electric power to a large portion of Mexico, and the site of intense geological explorations conducted by PEMEX, the federal parastate oil monopoly. However, until very recently, Chiapas has been economically abandoned by the federal government.

In recent years, President Salinas de Gortari has targeted Chiapas as a major recipient of his anti-poverty campaign, known as Mexico's National

60. David Luhnow, *The Dispute over Land in Chiapas*, S. F. CHRON., Jan. 21, 1994, reprinted in MEXICO. A READER ON THE UPRISING IN CHIAPAS 104 (1994) [hereinafter THE UPRISING IN CHIAPAS].

61. *Id.* These human intrusions into the delicate habitat of the Lacandon rain forest and jungle, generally followed by a process of intense deforestation and colonization to open up areas for agricultural purposes, has led to the gradual but systematic destruction of the rain forest over the last two decades. Of the original 5,000-square miles of the *Selva Lacandona* in southern Mexico, only 30% remains, despite the enactment of underfunded and unenforced environmental protection decrees. Christine Toomey, *Viva Zapata! and Mexico Trembles*, SUNDAY TIMES Jan. 9, 1994.

62. Tod Robberson, *How Mexico Brewed a Rebellion, Economic 'Progress' Trampled Indian Farms*, WASH. POST., Jan. 9, 1994, at A-21.

63. Bussey, *supra* note 50, at B-7.

64. *Id.* Catholic Bishop Samuel Ruiz has stated: "The Indians have been forced—through bribery, trickery and outright thuggery—from their traditional lands into increasingly more marginalized lands. Now they have been forced into the jungle by the *caciques* and are fighting back." *Id.*

Solidarity Program.<sup>65</sup> Since taking office in December of 1988, after winning a highly contested presidential election, President Salinas channeled \$12 billion into this program to introduce basic services and some infrastructure works in Mexico's poorest states.<sup>66</sup>

The state of Chiapas, which is the poorest in the country, received approximately \$727 million to finance 8,869 public works "ranging from gravel roads to basketball courts."<sup>67</sup> However, these federally-funded social-oriented programs have been hampered by opposition from *caciques* and government officials, and by corruption.<sup>68</sup>

A confidential document written by highly-placed officials in the federal government, blamed the then governor of the state, Patrocinio González Garrido, "not only for permitting a feudal land system to persist but also for helping large landowners repress Indian peasants. . . . In 1992, he had ordered the arrest of three Solidarity officials on charges of fraud, embezzlement and corruption after they refused to let him administer federal anti-poverty funds," said Neil Harvey, an assistant professor of political science at Brown University.<sup>69</sup>

Recent reports indicate that the Solidarity program has been a failure in Chiapas. Several reasons appear to be associated with this failure. Such reasons include: the novelty of the program; its use to accomplish political gains; the construction of works with little or no interest to the local people; and corrupt practices.

However, the strongest opposition has been erected by President Salinas' natural political allies: the wealthy ranchers and *caciques* members of the PRI. These powerful political actors are by no means ready to change the conditions of oppression and injustice that they so successfully imposed for

---

65. Created on President Salinas' first day of his six-year tenure, the Solidarity Program (*Programa Nacional de Solidaridad*, or PRONASOL) is "an umbrella organization aimed at developing health, education, nutrition, housing, employment, infrastructure, and other productive projects to benefit 17 million Mexicans living in extreme poverty." PRONASOL has been described as "the core element of the Salinas administration's formula for maintaining political control." MIGUEL A. CENTENO, *DEMOCRACY WITHIN REASON. TECHNOCRATIC REVOLUTION IN MEXICO* 65 (1994).

66. Walker, *supra* note 46, at A1.

67. *Id.* at A1, A8.

68. *Id.* This article acknowledges that solidarity's effectiveness in Chiapas

has been hampered by opposition from local landowners known as *caciques*, who benefited from the poverty of peasants; by resentment by some governors to Solidarity's ability to build an alternative power base in their states; and by old-fashioned corruption. . . . The profound poverty of the region permitted *caciques* to put Indians to work as virtual slaves, giving them only room and board in exchange for their backbreaking labor on huge cattle ranches.

*Id.*

69. According to the confidential document, Chiapas Gov. González Garrido "allowed *caciques* to run peasants off their land, jailed entire villages when there was resistance and ordered the arrest of as many as 50 mayors in towns throughout the state." *Id.*

decades upon the poorest people of the state. This is especially so considering that their illegal and abusive practices were not secretly done. Such practices were conducted in an open and regular manner, with absolute impunity and political disregard from the federal government.<sup>70</sup>

### B. *The Roots of the Rebellion*

*"Time has stood still in Chiapas. It appears like a historic anachronism."*<sup>71</sup>

Hundreds, probably thousands, of journalistic accounts have been published throughout the world since the Chiapas rebellion started on January 1, 1994.<sup>72</sup> Most of these reports are in agreement in identifying the same factors as the roots of the uprising.

One factor contributing to the rebellion was the chronic conditions of abject misery and abandonment which prevail in villages and small towns where indigenous peoples live. In the words of Subcomandante Marcos, "[w]e have nothing, absolutely nothing. Not a dignified roof, nor work, nor land, nor health care, nor education."<sup>73</sup> In an article in the *New Statesman and Society*, one writer acknowledged: "[t]he Indians of Chiapas—Tzotziles, Tzetales, Choles, Tojobales, Mames, Zoques and mestizos—may have been driven to the very margins. But the fibre of their resistance across five centuries of terrible oppression, had remained strong."<sup>74</sup>

In San Cristóbal alone, where unemployment exceeds 60 percent, Mexican government census bureau statistics report that 78 percent of the population live in overcrowded shacks with dirt floors, 66 percent of which lack electricity, 40 percent lack sewers and water. More than 40 percent of the people are illiterate and 62 percent never completed sixth grade.<sup>75</sup>

Other causes of the rebellion were the constant abuses and repeated illegal acts committed for decades against indigenous peoples by *caciques*, cattle ranchers and public authorities, including the public authorities of the

70. In spite of the fact that President Salinas knew of the negative reputation associated with the then Governor of Chiapas, Patrocinio González Garrido, President Salinas rewarded Mr. González, a member of the PRI, by appointing him to the most powerful political post in the Mexican cabinet, Secretary of the Interior (*Secretario de Gobernación*). A few days after the uprising in Chiapas, González Garrido was forced to submit his resignation. Tod Robberson, *Mexican Cabinet Shake-Up Called Sign of Willingness to Talk with Rebels*, WASH. POST, Jan. 12, 1994, at A-13.

71. Monsignor Samuel Ruiz García, Bishop of San Cristóbal de las Casas, Chiapas. McDonnell, *supra* note 6, at 33.

72. Regarding the causes of the conflict, see McDonnell, *supra* note 6; Cockburn & Murray, *supra* note 3; Toomey, *supra* note 61; Susan Ferris, *Roots of Mexico Uprising: Poverty, Repression Spawned Revolt*, SAN FRANCISCO EXAMINER, Jan. 4, 1994, at A-1.

73. Michael S. Serrill, *Zapata's Revenge*, TIME, Jan. 17, 1994, at 33.

74. Cockburn & Murray, *supra* note 3, at 20.

75. Bill Coleman & Patty Coleman, *Government Blames Church for Chiapas: Mexican Uprising Fed on Poverty, Oppression*, NATIONAL CATHOLIC REPORTER, Jan. 14, 1994, at 6.

state and the Mexican Army. One writer noted, “[t]he problem is that the authoritarian, corrupt, oligarchical structures that have characterized Chiapas for decades were left untouched—or even were strengthened . . . . In fact, the main problem in Chiapas is not economic but political.”<sup>76</sup>

A third cause of the rebellion was the realization by indigenous peoples that the political, legal and economic systems established by the state in Chiapas, and in Mexico as a whole, are being utilized to exacerbate their exploitation and ignore their demands, possibly leading towards their eventual extermination. “Police, soldiers and landowners’ private militias ruthlessly enforce the will of cattle barons and other powerful interests—not infrequently including drug traffickers. As Mexico hurtles towards the millennium, Chiapas is mired somewhere in a feudal past.”<sup>77</sup> “[T]raditionally in Chiapas . . . the state government distributed the Solidarity funds for political reasons. . . . We have never seen the funds distributed in the communities for the purpose of eliminating poverty.”<sup>78</sup>

Finding a solution to these types of problems requires the creation of a new and complex policy with a proper mechanism for its effective implementation. The formulation of this policy should not be left solely in the hands of the government of Mexico but, rather, should be undertaken as a national commitment with the participation of all Mexicans.

This new policy has to take into account a number of guiding principles. First, indigenous peoples must be recognized as individuals endowed with constitutionally-protected rights, including human rights at the personal and collective level. This recognition should come both from the government and from mestizos alike.

Second, the new policy should include the dismantling of the traditional economic system as it exists in Chiapas today, and elsewhere in Mexico. The traditional economic system was constructed upon the negation of the rights and the exploitation of indigenous peoples. Third, the new policy must address the need to overhaul the court system in Mexico. In order to truly impart justice to indigenous people, the courts must sanction the abuses of authorities and wealthy Mexicans and, in particular, do away with its obsolescence, inefficiency and corruption.

Finally, the new policy should change the political landscape in Mexico. This change should not only address the elimination of fraudulent electoral practices, but should also promote the installation of true democracy.

### C. NAFTA and the Indigenous Peoples of Mexico

The rebels in Chiapas were against NAFTA because this trilateral

---

76. Jorge G. Castañeda, *The Other Mexico Reveals Itself*, L.A. TIMES (Op-Ed), Jan. 5, 1994, reprinted in *THE UPRISING IN CHIAPAS*, *supra* note 60, at 2.

77. McDonnell, *supra* note 6, at 32.

78. Walker, *supra* note 46, at A-8.

agreement was expected to destroy the existing economic system in rural areas, where most indigenous peoples are located. Consequently, the Mayan Indians of Chiapas identified NAFTA as the instrument likely to terminate their economic sustenance, their culture and, in one word, their existence.

According to this train of thought, NAFTA was created for the benefit of Mexico's political and business elite. The international agreement was negotiated by government officials who did not contemplate the interests, needs, and priorities of the Mexican indigenous peoples.<sup>79</sup>

In general, *campesinos* and *ejidatarios* in Chiapas have barely survived by cultivating small parcels of land, to grow corn, beans and vegetables using the most primitive technology. Those small parcels of land, known as *ejidos*,<sup>80</sup> were given to rural communities to use pursuant to Article 27 of Mexico's 1917 Constitution as a reaction against the vast land properties (*latifundios*), amassed by a few wealthy families during the Porfirio Díaz regime and in compliance with the goals advanced by Zapata.<sup>81</sup> However, as part of his overall economic policies, President Salinas proposed an amendment to Article 27 of the Constitution in 1992, in order to do away with *ejidos* and to encourage U.S.-style agri-business and new *latifundios* designed for export economy-mass production.<sup>82</sup> "Small farmers feared that cheap, mass-produced U.S. foodstuffs would overwhelm their meager production of corn and beans."<sup>83</sup>

Therefore, the indigenous peoples in Chiapas rose in arms as a symbolic cry to accomplish several objectives. One was to get the attention of the government of Mexico. A second objective was to appeal to other impoverished Mexicans in a similar situation. According to the World Bank, 32 million of Mexico's total population of 85 million "still live in poverty."<sup>84</sup> The Mexican government reports that

the wealthiest 10 percent of the population captures 38 percent of the national income, while the poorest 10 percent receives only 1.55 percent. . . . Mexicans living below the poverty line comprise 40 percent of the population. . . . the number of billionaires rose from two in 1988 to

---

79. McDonnell, *supra* note 6, at 33.

80. An *ejido* is a relatively small tract of land granted collectively to a group of *campesinos* (known as *ejidatarios*) who live in a given rural community. The *ejidatarios* work the land according to the decisions of the majority of *ejidatarios*, taken by an elected and representative body known as *Comité Ejidal*. See CONST., art. 27 (Mex.); ANTONIO LUNA ARRAJO & LUIS G. ALCERRERA, DICCIONARIO DE DERECHO AGRARIO 262-65 (1982).

81. McDonnell, *supra* note 6, at 33.

82. *Id.* For further discussion of the amendment to article 27, see *infra* section II.C.2.b.

83. McDonnell, *supra* note 6, at 33. A similar argument is advanced by Robberson, when he writes: "By forcing Mexico to phase out subsidies on the main cash crops here—corn, sugar and coffee—NAFTA's negotiators have cut off vital sources of support for indigenous farmers." Robberson, *supra* note 62, at A31. See also Anthony DePalma, *Mexicans Fear for Corn, Imperiled by Free Trade*, N.Y. TIMES, July 12, 1993, at A3.

84. Toomey, *supra* note 61.

thirteen last year, a 700 percent jump.<sup>85</sup>

A third objective was to send a message to other countries in Latin America. The unfair distribution of wealth and the systematic violation of human rights, especially those of indigenous peoples, is not the exception but the rule in most Latin American countries. For example, in Guatemala, a country of 10 million people, human rights groups report that "more than 100,000 people have been killed, 45,000 have fled refugee camps into neighboring Mexico and another 45,000 have disappeared . . . ."<sup>86</sup> A professor at the University of Los Andes in Bogotá, Colombia, pointed out that "Mexico is now a mirror for the rest of Latin America, showing the weaknesses of economic reforms that do not come accompanied by democratization or solutions for the masses."<sup>87</sup>

Finally, the rebels wanted to attract the interest and attention of the international community at large and the United States in particular. A couple of weeks after the rebellion started in Mexico, two Representatives from California sent a letter to President Salinas de Gortari asking him "to investigate possible human rights abuses by the [Mexican] Army in the Chiapas state revolt."<sup>88</sup> The letter was co-signed by more than twenty other congressional supporters of NAFTA and it urged the Mexican government to conduct the investigation rather than relying on Mexico's National Commission on Human Rights, "which has been criticized for failing to fairly investigate cases in the past."<sup>89</sup> In a similar vein, Human Rights Watch, citing violations of core political rights in Mexico, wrote to President Clinton in late 1993, urging him to address these and other human rights issues during trade negotiations with Mexico.<sup>90</sup>

## II. THE EZLN, ITS DEMANDS AND SUBCOMANDANTE MARCOS

### A. *The Chiapas Uprising was Obscured by NAFTA*

Guerrilla movements have not been officially recognized in Mexico during the last two decades.<sup>91</sup> However, rumors have been circulating for

---

85. Jane Bussey, *The Ghost of Zapata*, THE SACRAMENTO BEE, Feb. 20, 1994, at F-1.

86. Andy Messing, *Regional Turmoil in Guatemala*, WASH. TIMES, Mar. 29, 1994, at A-15.

87. David L. Marcus, *Troubles in Mexico Alarm its Neighbors to the South*, DALLAS MORNING NEWS, Mar. 27, 1994, at 31-A; see also Michael S. Serrill, *A Litany of Latin American Troubles*, TIME, Jan. 17, 1994, at 34.

88. Pelosi, *Eshoo Ask Mexico to Probe Army Tactics*, S. F. CHRONICLE, Jan. 17, 1994, at A-8.

89. *Id.*

90. 5 HUMAN RIGHTS WATCH, PUB. NO. B-510, HRW WRITES TO PRESIDENT CLINTON URGING NAFTA SUMMIT ON HUMAN RIGHTS 10 (1993).

91. Tod Robberson, *Bloody Indian Revolt Continues In Mexico. Government calls Rebels a Small Group of Provocateurs*, WASH. POST, Jan. 4, 1994, at A-1, A-13.

years concerning the presence of some guerrilla activity in southern Mexico.<sup>92</sup> U.S. military intelligence analysts prepared reports of guerrilla activity in Chiapas in the summer of 1993.<sup>93</sup>

Prior to the armed uprising in Chiapas, the policy of the Mexican government was principally directed at lobbying the U.S. Congress to secure the passage of NAFTA. Its aim was to promote Mexico as a politically stable country, interested in attracting foreign investment.

Therefore, the policy of the Mexican authorities was to simply deny, at the federal as well as the local level, the existence of guerrilla movements or to downplay the aggravation of *campesino* problems in the area. Thus, Chiapas Attorney General Joaquín Armendáriz told reporters in June of 1993, after a reported Army encounter with an armed group that “there are no guerrillas in this state. This alarm is definitely false and comes from people trying to discredit the government and create anxiety among its citizenry.”<sup>94</sup>

In early January, 1994, the U.S. Department of State denied reports circulating in Mexico that “the United States knew that a guerrilla force was growing up in the backlands of Chiapas.” A senior official added that “[t]he rebellion took us completely by surprise.”<sup>95</sup>

The highest political priority of the Mexican government during the second half of 1993, was securing the passage of NAFTA by the U.S. Congress. Thus, any negative publicity that could jeopardize the passage of NAFTA—such as the presence of armed guerrilla groups, unhappy with the government and likely to disrupt the image of a politically stable nation—was bound to be quickly suppressed by the Mexican authorities.

92. According to a journalistic report, a Mexican from Chiapas who is familiar with peasant organizations said that “the Zapatista army had trained for five years in a remote area and appeared to have ‘romantic’ ideas about its strength.” Susan Ferris, *Recipe for Rebellion*, THE GAZETTE (Montreal), Jan. 5, 1994, at A-1. Another report stated that “there were premonitions, sporadic armed struggles two years ago, and no one paid any attention.” Cockburn & Murray, *supra* note 3, at 21. The Mexico City magazine PROCESO reported in September of 1993 that “armed indigenous groups were training in Chiapas.” Robberson, *supra* note 91, at A-13.

93. The existence of such reports was disclosed by Robberson, *supra* note 14, at A-21. Col. Steve Wagner, a specialist on Mexico’s Army at the U.S. Military Academy in West Point, is reported in this article as saying that “he believed that . . . [the Mexican Army] was aware of guerrilla movements in the area but may have been blocked by the civilian leadership from taking action. The [Mexican] Army is well-read in what’s going on, he said. [T]hey have an informal intelligence network down there.” *Id.*

94. Robberson, *supra* note 14, at A-21. David Ronfeldt, a Rand Corporation analyst who specializes in the Mexican military, declared to The Washington Post that “signs of guerrilla activity had been apparent for several months, particularly after a widely-reported firefight last summer between the [Mexican] Army and unidentified guerrillas near the Lacandonan rain forest in eastern Chiapas.” *Id.*

95. John M. Goshko, *Balancing Trade Pact and Human Rights In Mexico: Mayan Rebellion in Chiapas could Bring Criticism of Clinton Administration Policy*, WASH. POST, Jan. 30, 1994, at A-30.

### B. *El Subcomandante Marcos*

Most of the communiqués distributed by the EZLN to the press are written by Subcomandante Marcos.<sup>96</sup> In the opinion of a U.S. writer, “[H]e has penned witty, brash and detailed correspondence, spicing political dogma with references to films, soap operas and books. Although he acknowledged that the Zapatistas cannot defeat the Army in a military faceoff, Marcos vanquished the government on the propaganda front.”<sup>97</sup>

The ideas and writings of Subcomandante Marcos are illustrated in the “Declaration of War,” issued by the EZLN:

To the Mexican people we are the product of 500 years of struggle. We say: enough! We are the descendants of the original conceivers of our common identity. We are the dispossessed mass, and we call to each of you to join in this single cause so that we may not starve to death under the 70-year-old dictatorship led by a self-appointed band of traitors.<sup>98</sup>

To the government it does not matter that we are dying of hunger and curable diseases; that we have nothing, absolutely nothing: a decent roof over our heads, nor land, nor work, nor health, food or education. Without the right to elect our officials freely and democratically. Without autonomy, peace or justice for our children. We are fully aware that the war we have declared is the last, yet the only, just measure we have.<sup>99</sup>

Later, in response to the formal offer of a pardon to the insurgents, made by the government of Mexico, Subcomandante Marcos wrote:

Why do we have to be pardoned? What are we going to be pardoned for? Of not dying of hunger? Of not being silent in our misery? Of not humbly accepting our historic role of being the despised and the outcast? Of having picked up arms after we found all other roads closed? Of not having paid attention to the Chiapas Penal Code, one of the most absurd and repressive in history? Of having demonstrated to the rest of the country and the entire world that human dignity still lives, even among some of the world’s poorest peoples? . . .<sup>100</sup>

The administration of President Salinas de Gortari, through the Secretariat of the Interior, in early January, 1994, denied that the rebellion is an indigenous movement or a peasant farmer action. Instead, it claimed the rebellion was the work of professionals who were manipulating the disaffected.<sup>101</sup> The government speculated that “foreigners—possibly Guatemalans and Salvadorans with experience in guerrilla warfare after lengthy civil wars

---

96. McDonnell, *supra* note 6, at 42.

97. *Id.*

98. John Santos, *Chiapas Revolt Spotlights Human Rights*, 30 NATIONAL CATHOLIC REPORTER Jan. 21, 1994, at 10. See also Serrill, *supra* note 10, at 32-33.

99. Toomey, *supra* note 61.

100. Cockburn & Murray, *supra* note 3, at 22.

101. Toomey, *supra* note 61.

in those countries—provided the training.”<sup>102</sup> However, there was no evidence to support these claims.

While attending the World Economic Forum at Davos, in Switzerland, President Salinas de Gortari described the rebellion as “a local problem in a region with deep poverty [involving] a well-trained and educated armed group with a radical ideology.”<sup>103</sup> He emphasized that Mexico was “determined to solve the problem through political means and not through force.”<sup>104</sup>

### C. *The EZLN and its Thirty-Four Demands*

Following the cease fire and the declaration of amnesty extended to the EZLN by President Salinas de Gortari on January 5, 1994, and the appointment of Lic. Camacho as Commissioner of Peace and Reconciliation,<sup>105</sup> both parties engaged in a series of intensive consultations.

The EZLN took the initiative by submitting to Lic. Camacho thirty-four “Demands and Engagements”<sup>106</sup> to be considered and answered by the government of Mexico. Once this document was studied by President Salinas de Gortari and his advisors, a press conference was held in San Cristóbal de las Casas on March 2, 1994, during which a specific answer was given by the Mexican government to each of the petitions advanced by the EZLN.<sup>107</sup> This official declaration is the most important document articulating the position of the negotiating parties.

A brief analysis of Mexico’s responses is indispensable both to reach an understanding of the political philosophy of each of the contending parties and to evaluate the concessions apparently extended to the EZLN by the government of Mexico. In order to proceed in a more systematic manner, the thirty-four demands advanced by the EZLN, and the respective answers given by the government, have been substantively divided into the following five large categories: (1) political; (2) legal; (3) socio-economic; (4) military; and (5) women’s demands.<sup>108</sup>

---

102. Eloy Cantú, an official of *Gobernación*, called the rebels “professionals of violence” and added that “many came from neighboring Guatemala. . . .” The Mexican authorities are reported as saying that “the well-organized and well-financed nature of the guerrilla movement suggested ties to arms and drug smugglers in the region,” blaming the “Roman Catholic radicals for inciting the peasants.” *Id.*

103. David Crane, *Mexico Pursues Aggressive Trade Strategy, Salinas Does Not Want to Depend on NAFTA Alone*, THE TORONTO STAR, Jan. 30, 1994, at A-16.

104. Robert Evans, *Salinas Tells Investors Mexico is Stable Despite Revolt*, THE REUTER EUROPEAN BUSINESS REPORT, Jan. 29, 1994.

105. Robberson, *supra* note 20, at A-18.

106. *Demandas y Compromisos*, *supra* note 24; app. 2.

107. *Id.*

108. *See supra* notes 24-30 and accompanying text.

## 1. Political Demands

The political demands are the most serious and delicate matters raised by the EZLN. These demands go to the core of Mexico's political system, characterizing it as illegitimate, corrupt and under the exclusive control of the PRI.<sup>109</sup>

First, the EZLN demanded that national elections be "truly free and democratic" with equal rights and obligations for political organizations seeking power and authentic freedom to choose one or the other proposition and respect for the will of the majority.<sup>110</sup> The implication of this demand is that national elections in Mexico have not been free or democratic, but manipulated by the PRI. As a consequence, the EZLN demanded an authentic election: truly free, fair and democratic.

Second, in order to have "truly free and democratic" elections, the EZLN demanded the resignation of the head of the Federal Executive and of the heads of the State executives that came to power through electoral fraud.<sup>111</sup> Their legitimacy, the EZLN added, does not come from the "respect for the will of the majority, but rather from its usurpation."<sup>112</sup> As a political *sequitur* of this demand, the EZLN considered necessary the formation of a government of transition to implement equality and respect for all political views.<sup>113</sup>

The EZLN implied that the election of President Salinas de Gortari in 1988 was not "truly free and democratic," but was possibly rigged by the government and the PRI, so these two entities could continue to keep their political control over Mexico. This is evident from the EZLN's demand for President Salinas de Gortari to resign, as well as the call for the formation of a transition government.

While recognizing the "large importance" attributed to these two issues, the government of Mexico, through its Commissioner for Peace and Reconciliation, asserted that they were "not subject to negotiation," characterizing them not as issues demanding an answer but rather as "rhetorical questions."<sup>114</sup> The official answer underlined the importance of the negotiations conducted at that time by the Secretary of the Interior (*Secretario de Gobernación*) with the representatives of the different political parties. The negotiations were to produce, as part of a gradual political

---

109. Due to space limitations, this section will only analyze the major demands advanced by the EZLN, and the corresponding government responses, in each of the enlisted five categories. Out of the 32 demands, the author has classified as eminently political the demands contained in paragraphs 1, 2, 4, 5, 23, 24, 30 and 32. *Demandas y Compromisos*, *supra* note 24, at 48-67; app. 2.

110. *Id.* at 48-49; app. 2.

111. *Id.*

112. *Id.* at 49.

113. *Id.*

114. *Demandas y Compromisos* (Answers to Demands 1 and 2), *supra* note 24, at 49-50.

process, new electoral legislation which would guarantee democratic elections.<sup>115</sup> In his answer, Commissioner Camacho emphasized:

[T]o have clean elections, equitable propositions will be followed to ensure an impartial representation in the electoral organs, and the incorporation of citizens and groups of citizens whose impartiality and capability are more important than their political inclination, both in the formation of the electoral organs and in each step of the political process.<sup>116</sup>

## 2. Legal Demands

The legal demands may be divided into eight groups: (a) to revise NAFTA; (b) to amend Art. 27 of Mexico's Constitution; (c) to guarantee the right of indigenous peoples to "truthful information;" (d) to recognize all ethnic languages as official in Mexico; (e) to recognize the right of indigenous peoples "to have their own government with self autonomy;" (f) to recognize the right of indigenous peoples to have their own justice system, according to their customs and traditions, and "without the intervention of illegitimate and corrupt governments;" (g) that the government declare null and void "all debts arising out of credits, loans and taxes;" and (h) "to annul the Penal Code of Chiapas . . . because it punishes and suppresses any legal and peaceful fight."<sup>117</sup>

### a. To Revise NAFTA

In its seventh demand, the EZLN asserted that it was necessary to revise NAFTA since its current text does not consider the indigenous peoples and sentences them to death for they do not have any labor skills.<sup>118</sup> To the EZLN, NAFTA meant a death sentence for all indigenous peoples.<sup>119</sup>

NAFTA was designed to promote agricultural projects involving economies of scale, demanding capital-intensive technologies, a steady flow of investment (especially direct foreign investment from the U.S.), and efficient business management techniques.<sup>120</sup> Most of these agricultural projects were conceived as very large export-oriented projects to the United

---

115. These negotiations materialized in a number of major legal changes in the electoral process in that country. See generally *Código Federal de Instituciones y Procedimientos* (Federal Code of Electoral Institutions and Procedures) (Mexico).

116. *Demandas y Compromisos*, *supra* note 24, at 50.

117. *Id.* Nos. 7-8, 10, and 13-17, 21, 27, at 52-60; app. 2. The claims in paragraphs (c), (d), (e) and (g) will not be discussed in detail, but are to be addressed in a federal statute in order to give full legal implementation to Article 4 of the Mexican Constitution, which recognizes Mexico as a nation with "pluriethnic composition." For additional information, see *infra* notes 269-81 and accompanying text.

118. *Id.* at 52.

119. McDonnell, *supra* note 6, at 33.

120. See generally PHILIP L. MARTIN, TRADE AND MIGRATION: NAFTA AND AGRICULTURE (1993) [hereinafter TRADE AND MIGRATION].

States, embracing certain strategic agricultural produce such as tomatoes, cantaloupes, broccoli, oranges, lettuce, and strawberries.<sup>121</sup> Corn, green peppers, and beans, the basic agricultural produce used by most indigenous peoples as their food staples, were not even considered, since Mexico's production in these fields has been clearly deficient over the last twelve years.<sup>122</sup>

The government indicated that the Secretariat of Commerce and Industrial Development (SECOFI) will undertake "a careful evaluation" of NAFTA's impact upon "the different productive activities in the state of Chiapas, and especially upon its indigenous communities."<sup>123</sup> Taking this evaluation as a starting point, "special training programs will be designed to benefit those who may be affected in their productive activities and jobs."<sup>124</sup>

### *b. To Amend Article 27 of the Constitution*

The eighth demand, addressing the most serious problems associated with land tenure in rural areas, demanded the annulment of recent amendments to Article 27 of Mexico's Constitution and called for redistribution of land.<sup>125</sup> Article 27 of the Constitution constitutes the legal basis for any kind of property rights in Mexico, whether public or private.<sup>126</sup> This article was created by the Constitutional Congress which was held in the City of Querétaro in 1916-1917,<sup>127</sup> to respond to demands for land distribution.<sup>128</sup> In Article 27, Congress incorporated the *ejido*, first created in the "Law of Restoration and Donation of Ejidos" of January 6, 1915.<sup>129</sup> This action committed the government to start distributing rural lands among *campesinos* in that country.<sup>130</sup>

As described earlier, *ejido* land is a piece of rural property granted by the Federal government to a group of *campesinos* (known as *ejidatarios*) to work it as a collective.<sup>131</sup> No individual property is allowed within the *ejido*, which remains inalienable and protected by federal laws.<sup>132</sup> The

---

121. *Id.* at 127-28.

122. *Id.* at 97-99.

123. *Demandas y Compromisos*, *supra* note 24, at 52-53.

124. *Id.* at 53.

125. *Id.* app. 2.

126. CONST., art. 27 (Mex.); see also Gilberto Gutierrez Quiroz, *Investment in Real Property in Mexico: An Overview of Constitutional and Statutory Restrictions*, 12 ARIZ. L. REV. 270, 274 (1970).

127. SIR NICHOLAS CHEETNAM, *A SHORT HISTORY OF MEXICO* 232-34 (1970).

128. *Id.* at 218-34.

129. *Id.* at 228, 234.

130. *Id.*

131. See *supra* note 80 and accompanying text.

132. ANTONIO LUNA ARROYO & LUIS G. ALCERRECA, *DICCIONARIO DE DERECHO AGRARIO MEXICANO* 262-65 (1982)

political process of distributing this type of land by federal government officials to *campesinos*, which has lasted until today, led to the installation by the PRI of an official program called "Agrarian Reform."<sup>133</sup> However, the ejidos have not been productive.<sup>134</sup> Some *ejidatarios* voluntarily leave their lands, which have become poor and eroded, and move to urban centers (or to the United States) looking for brighter economic horizons, while others are violently expelled from their lands by *caciques*.<sup>135</sup>

*Ejido* lands have been a persistent source of very serious economic and political problems not only for the federal but also for state and local governments.<sup>136</sup> The chronic failure of *ejido* lands, on the one hand, and the prospects of large agricultural projects created exclusively to export to the United States as a result of NAFTA,<sup>137</sup> on the other, moved the administration of President Salinas to amend Article 27 of the Constitution to radically transform the *ejido* system.<sup>138</sup>

Two dramatic changes were introduced to the post-NAFTA version of the *ejido*: individual property is now permitted and *ejidatarios* are legally allowed to enter into commercial or industrial ventures<sup>139</sup> with individuals or legal entities, whether Mexican or U.S. citizens or Mexican or foreign corporations. These recent changes have been interpreted by the EZLN as the final blow that will cause the demise of the flimsy economic base that sustains the languid economic activities of indigenous peoples in rural areas throughout Mexico.

In its official document, the government started by recognizing that "[i]n Chiapas, the process of the agrarian reform as part of the Mexican Revolution is not fully completed." It added that this process is going to be implemented through the enactment of a General Act on the Rights of Indigenous Communities. This statute "is going to be formed based on the demands, opinions, concerns and political agreements reached by the indigenous communities in Chiapas and other indigenous communities" in other parts of Mexico.<sup>140</sup>

---

133. Wesley R. Smith, *Salinas Prepares Mexican Agriculture for Free Trade*, MEXICO TRADE AND LAW REPORTER 7 (October 1992) [hereinafter *Salinas Prepares*]; see generally RUIZ MASSIEU, *DERECHO AGRARIO REVOLUCIONARIO* (1987).

134. Nava, *Land Reforms in Mexico Will Affect the United States*, MAQUILADORA AND MEXICO BUSINESS REVIEW 20 (Dec./Jan. 1993).

135. *Salinas Prepares*, *supra* note 133, at 21; CONQUEST CONTINUED, *supra* note 12, at 61-65.

136. See generally *Salinas Prepares*, *supra* note 133.

137. See TRADE AND MIGRATION, *supra* note 120, at 97-105.

138. *Id.*

139. *Salinas Prepares*, *supra* note 133, at 19.

140. Commissioner Camacho indicated that the respective legislative bill, regulatory of Art. 4 of the Constitution, was to be submitted to the Federal Congress in April of 1994. *Demandas y Compromisos*, *supra* note 24, at 53.

*c. The Right of Indigenous Peoples to Have Their Own Justice System*

The Mexican government gave one of the most detailed answers to this demand. It asserted that it would “promote amendments” at the state level to the Constitution and the power of the judiciary and the police in order to create judicial districts coinciding geographically with indigenous communities.<sup>141</sup> These amendments would provide that the judges in these districts “may be Indians themselves or Mestizo professionals respected in indigenous communities; be familiar with Mexico’s positive law; and be willing to always take into consideration the [indigenous peoples] usages and customs in adjudicating their controversies.”<sup>142</sup>

The government also agreed to create special arrangements to treat indigenous peoples in a fair and adequate manner, in penal and labor proceedings, including the creation of a District Attorney’s Office for the Defense of Indigenous Peoples.<sup>143</sup> Finally, the Mexican government agreed “to proceed with an exhaustive inspection regarding the legal situation of those persons who are in jail as a result of social conflicts, as well as all the cases of indigenous peoples whose legal situation permits them to be freed soon.”<sup>144</sup>

*d. To Repeal the Penal Code of the State of Chiapas*

This is the most concise demand advanced by the EZLN. It calls for repeal of the Penal Code of Chiapas because it does not allow indigenous people to get organized save for the use of weapons, since any “legal and peaceful struggle is punished and repressed.”<sup>145</sup> Indeed, the Penal Code of Chiapas deserves to be included among the most repressive in Mexico and possibly in Latin America. This is not only because it lists a long enumeration of crimes against public authorities, public order, and the State itself, but also because of the imposition of very severe penalties for such crimes, which usually include imprisonment and stiff fines.

A rapid review of this Penal Code suffices to produce the following typical examples: Articles 120 through 149 enunciate numerous “Crimes against the Internal Security of the State,” such as rebellion, conspiracy, sedition, public disorder, prohibited weapons, terrorism, criminal associa-

---

141. *Id.* at 59.

142. *Id.*

143. In Spanish, the *Procuraduría de Defensa de los Indígenas*. This state office would be staffed with bilingual personnel and its head will be appointed by the State Congress by a qualified majority from proposals submitted by indigenous communities and after taking into consideration the opinion of the citizens. *Id.*

144. The amendments in question were to be submitted to the local Congress. *Id.*

145. *Demandas y Compromisos*, Demand No. 27, *supra* note 24, at 64.

tions and gangsterism.<sup>146</sup> Articles 150 through 173, titled "Crimes Against Authorities" enumerate crimes against public roads and highways, disobedience and resistance to public authorities, opposition to public works and crimes against public servants."<sup>147</sup>

However, some Articles merit special comment. The crime of sedition, detailed in Article 131,<sup>148</sup> applies to those who having gathered in large numbers, but without weapons, resist public authorities or attack it to impede the free exercise of its functions with the purpose of abolishing or amending the State Constitution, or to suspend or destroy public institutions, or public elections, or take public servants away from their jobs, or to subtract from the authority of the State a part of or the entirety of the State, or to deprive certain State powers of their functions. When the same activities take place in opposition to the government's institutions, then the crime of rebellion is committed.<sup>149</sup>

Article 135 defines a "riot" as a crime when a group of individuals are gathered in large numbers to disrupt the public order in order to exercise a right, or to pretend that they are using one, exercising violence upon individuals or property, or threatening public authorities, their agents or public servants, or seriously resisting them in the exercise of their functions, to intimidate said authority or to compel it to make a decision.<sup>150</sup>

It has been relatively easy for the Chiapas authorities and *caciques* to accuse any individuals, including foreigners, but especially members of indigenous peoples' communities, of the commission of these serious crimes. This takes place when groups of indigenous peoples gather, for example, in front of public offices, or when they organize public demonstrations in streets, markets or public squares, to protest the arbitrary or criminal acts committed by *caciques*, landholders, or even public authorities, including the police and the military forces. Most protests in Chiapas (and other rural States in Mexico) over the last decades have been organized by indigenous peoples' groups stemming from rural problems.<sup>151</sup>

---

146. *Códigos Penal y de Procedimientos Penales para el Estado de Chiapas*, Editorial Porrúa, México, at 37-45 (1993).

147. *Id.* at 45-50.

148. *Id.* at 40. This crime is sanctioned with imprisonment from two to four years, and a fine ranging between 50 and 100 times the minimum salary. Art. 132, *Id.*

149. Art. 120, *Id.* at 37. Those convicted of rebellion are imprisoned from 2 to 10 years, and their political rights are suppressed for 5 years. Art. 121, *Id.*

150. *Id.* at 40-41. The penalty consists of 2 to 4 years in a prison and a fine up to 50 times the minimum salary.

151. For example, THE AMERICAS WATCH REPORT stated in June of 1990:

[V]iolent evictions of peasant families are common place in Chiapas. The eviction typically occurs with little or no warning, in the pre-dawn hours when most members of the community are asleep. The number of police officers . . . used to carry out the evictions far exceed the number of [people] being evicted. Evictions are frequently accompanied by warrantless arrests . . . often on trumped charges, and without regard for what will become of the persons being evicted.

The Minnesota Advocates for Human Rights group is one of numerous nongovernmental organizations that have been conducting direct observations in Chiapas in recent years, investigating agrarian conflicts, religious intolerance, and human rights violations of indigenous peoples. Regarding the Penal Code of Chiapas, this group concluded:

The new criminal code of the state of Chiapas has been notoriously used by the government to oppress its citizenry. The code provides for a variety of vaguely defined political offenses that state government officials may selectively enforce against dissident peasants or political opponents to maintain its tight control over the state population. The code's provisions may be interpreted to criminalize nearly every gathering of people who assemble publicly to protest governmental conduct or inaction. The State's enforcement of those provisions—against even peaceful protesters—has filled its overcrowded prisons with political prisoners.<sup>152</sup>

The government of Mexico answered this EZLN demand by indicating that “[T]he current Penal Code will be repealed and that a new one will be enacted.” The new code will be oriented towards respecting constitutional (i.e. individual guarantees) and political rights, and will contain a new crime: the practice of rural evictions.<sup>153</sup>

### 3. Socio-economic Demands

These demands consist of a number of specific requests directed at the federal government to obtain hospitals, adequate housing, public transportation, schools, illiteracy programs, hunger and malnutrition programs, jobs with a fair salary, and live in peace and tranquility.<sup>154</sup>

Regarding hospitals and health care programs, the government indicated that a special effort would be directed at modernizing and rehabilitating those hospitals that already exist in indigenous communities. Construction of new hospitals in other parts of the state will be subject to “the best management of [the existing] resources.”<sup>155</sup> However, while this reorganization takes place, an “emergency program” will be launched. This program will be especially directed at providing care to “all the children in the state, including those who live in very distant communities.”<sup>156</sup> In addition, the

---

HUMAN RIGHTS WATCH, HUMAN RIGHTS IN MEXICO. A POLICY OF IMPUNITY 59 (June 1990) [hereinafter A POLICY OF IMPUNITY].

152. CONQUEST CONTINUED, *supra* note 12, at ix. See also *infra* notes 247-248.

153. *Demandas y Compromisos*, *supra* note 24, at 64. The addition of the crime of rural eviction addresses the EZLN's Demand No. 28 which seeks an end to the evictions of indigenous peoples from their communities by *caciques* supported by the State a guarantee of the free and voluntary return of all those expelled from their lands of origin and an indemnification for their lost assets.” *Id.*

154. See Demands 18, 26, app. 2.

155. *Id.* Demand No. 9, *supra* note 24, at 55.

156. *Id.*

government agreed that "traditional medicine (i.e. ancient, herbal medicine practiced by indigenous peoples) 'will be protected in the Regulations derived from Articles 4 and 27 of the Constitution.'"<sup>157</sup>

Regarding the construction of adequate housing and infrastructure works, the official document provided that the Secretariat of Social Development and Ecology (SEDESOL) will "formulate a special program to be submitted to the [indigenous] communities . . . and to initiate its first actions by the second semester of 1994."<sup>158</sup>

In the area of education, the government provided that it would endeavor to reach an agreement with the National Union of Teachers (SNTE) to introduce a program designed "to elevate the quality of public education in the [Chiapas] area."<sup>159</sup> Special emphasis was placed upon providing bilingual teachers and creating a scholarship program financed from public and private funds to benefit indigenous communities.<sup>160</sup>

#### 4. Military Demands

Four basic demands were advanced by the EZLN on military matters.<sup>161</sup> The EZLN demanded to be recognized "as a belligerent force" subject to the application of "all the international treaties that regulate armed conflicts."<sup>162</sup> The Mexican government responded that the EZLN was guaranteed dignified and respectful treatment, but that it was up to the EZLN to decide the type and nature of its social or political participation in the future. Because this participation must be within the purview of the Constitution of the Republic, the government offered to facilitate any legal registry to be requested by the EZLN or any of its members.<sup>163</sup>

Regarding the EZLN's other military demands, the government indicated that as a part of the peace agreements, monetary assistance will be given to victims, widows and orphans of the conflict.<sup>164</sup> The Mexican government answered the EZLN's demand for respect for the life of its members by stating that:

[Under] the peace agreement, the decisions included in this compromise and the guarantees established by the Amnesty Act, *not only will the life of all the members of the EZLN be respected but it is guaranteed also that no penal proceedings or repressive action against said EZLN members,*

---

157. *Id.*

158. *Id.* at 56, Demand No. 11.

159. *Id.* at 57, Demand No. 12.

160. *Id.*

161. *See supra* note 29 and accompanying text.

162. *Demandas y Compromisos*, Demand No. 3, *supra* note 24, at 50; app. 2.

163. *Id.*

164. *Id.* at 64, Demand No. 25.

combatants, sympathizers or collaborators will be taken.<sup>165</sup>

### 5. Specific Demands Advanced by Indigenous Women

EZLN's Demand No. 29 contained twelve specific petitions for the government to provide services ranging from maternity clinics and child care centers to farms and handicraft shops.<sup>166</sup> The government replied that "the improvement of the condition of peasant and indigenous women . . . is one of the most important changes advanced from Chiapas today."<sup>167</sup> Regarding the specific requests, the official document indicated that these demands will form a part of the contemplated health care and training programs. All the demands will be considered in the formulation of the respective programs, to be designed by SEDESOL, the federal agency for the Integral Development of the Family (Desarrollo Integral de la Familia or DIF) and the Secretariat of Health.<sup>168</sup>

Since these demands and official answers were made public to the people of Mexico by the Salinas administration on March 2, 1994, very little information has been provided by the government to validly assess the state of implementation of the proposed official actions. Short of a trip to Chiapas, it is difficult to know the state of progress of the numerous programs and actions proposed by the government or the financial allocations directed at implementing these official measures.

On June 12, 1994, the EZLN rejected the government proposals.<sup>169</sup> The EZLN's General Commanding Office stated that after conducting a direct consultation in all the villages, *ejidos*, ranches and *parajes*,<sup>170</sup> a total of 97.88% of the total voted to reject the government peace proposals. Regarding what steps to take if the proposal was rejected, the EZLN stated that 3.26% voted to "renew the hostilities" while 96.74% voted "for resisting and convoking a new national dialogue."<sup>171</sup> This formally ended the "dialogue" started by the peace negotiations at San Cristóbal de las Casas.

In their communiqué, the EZLN agreed to extend the cease fire, not to attack the armed forces and to allow the taking place of the forthcoming presidential elections. In the "Second Declaration of the Lacandona Jungle" they proposed the need for a new Constitution that will lead into another

165. *Id.* at 67, Demand No. 31 (emphasis added).

166. *Demandas y Compromisos*, *supra* note 24, at 65; app. 2.

167. *Id.* at 66.

168. *Id.*

169. *Comunicado del Comité Clandestino Revolucionario Indígena-Comandancia General del Ejército Zapatista de Liberación Nacional*, (Communication from the EZLN) June 10, 1994, reprinted in *EL FINANCIERO*, June 12, 1994, at 22 (translation by the author).

170. *Parajes* means a spot or area. *THE CONCISE AMERICAN HERITAGE SPANISH DICTIONARY* 209 (1989).

171. *Rechaza el EZLN las Propuestas del Gobierno*, *EL FINANCIERO*, June 12, 1994, at 22. *Comunicado del Comité Clandestino Revolucionario Indígena-Comandancia General del Ejército Zapatista de Liberación Nacional*, México, 10 de Junio de 1994.

form of nation in which indigenous peoples are taken into account.<sup>172</sup> The *caciques* and ranchers in Chiapas demanded that the government expel the squatters who invaded their lands.<sup>173</sup>

### III. HUMAN RIGHTS VIOLATIONS BY THE MEXICAN ARMY IN CHIAPAS

Mexico has a reputation for respecting human rights that is less than enviable. Mexico's reputation as a violator of human rights is not of recent origin. To the contrary, this negative fame may be traced back a few decades.<sup>174</sup> In recent years, a substantial increase in human rights violations has been attracting the growing attention of Mexican and international entities alike who are concerned with this alarming state of affairs.

Just during the last decade, a considerable number of journalists from both countries,<sup>175</sup> governmental agencies from Mexico<sup>176</sup> and the United States,<sup>177</sup> international organizations (i.e. the Organization of American

---

172. *Id.*

173. Augusta Dwyer, *Land Fever: Peasant Takeovers of Farmland Have Chiapas Ranchers Fuming*, EL FINANCIERO (Int. ed.), June 27, 1994-July 3, 1994, at 16.

174. Probably the most infamous incident associated with this type of violation was the massacre at Plaza de las Tres Culturas in Mexico City on October 2, 1968, and the suspects who were interrogated at the Army's Campo Militar No. 1. See ELENA PONIATOWSKA, *LA NOCHE DE TLATELOLCO* (Editorial Siglo XXI, México, 1978).

175. Tod Robberson (*The Washington Post*), Patrick J. McDonnell, Juanita Darling and Marjorie Miller (*The Los Angeles Times*), Anthony DePalma and Tim Golden (*The New York Times*), S. Lynne Walker (*The San Diego Union Tribune*), David Clark Scott (*The Christian Science Monitor*), et al.

In Mexico, Jorge G. Castañeda, Miguel Angel Granados Chapa, Adolfo Aguilar Zinser, Rodolfo F. Peña, Guillermo Correa, Salvador Corro, Julio César López, Elena Gallegos, Antonio Quevedo, Judith Calderón, Rosa Rojas, Pascual Salanueva, Sergio Aguayo, Rodolfo Stavenhagen, Mariclaire Acosta, etc., write regularly on human rights violations in LA JORNADA, UNO MÁS UNO, EL FINANCIERO, the weekly PROCESO, etc. For an excellent compilation of 85 newspaper and weekly's articles on the Chiapas insurrection, see THE UPRISING IN CHIAPAS, *supra* note 60.

176. In the late 1980s, some State governments started creating official structures in Mexico for the protection of human rights. This proliferation of protective agencies culminated in the creation of the Comisión Nacional de Derechos Humanos, by President Salinas de Gortari in 1990. See, e.g., the reports of *Dirección para la Defensa de los Derechos Humanos* (created in 1979); *Procuraduría para la Defensa del Indígena* (1986); *Procuraduría Social de la Montaña* (1987); *Procuraduría de Protección Ciudadana* (1988); *Dirección General de Derechos Humanos de la Secretaría de Gobernación* (1989); *Procuradurías de Pobres de San Luis Potosí* (1989); *Comisión de Derechos Humanos* (1989); *Comisión Nacional de Derechos Humanos* (Mexico City, 1990). JORGE CARPIZO, *DERECHAS HUMANOS Y OMBUDSMAN* 11-14 (1993).

177. The U.S. Department of State systematically monitors human rights developments in Mexico in general, as well as when they involve U.S. citizens. A "90-day report" submitted to the U.S. Congress, for example, states: "During the last reporting quarter the Embassy and our Consulates in Mexico have received notice of twenty-two crimes of violence against American citizens . . . . The Embassy is also concerned with an increasing number of reports from many parts of the country of serious abuse of authority by persons wearing the uniforms and claiming to be members of the Federal Judicial Police." THE 19TH 90-DAY REPORT OF MEXICO, *Current Developments in Mexico. Hearing before the Subcommittee on Human Rights and International Organizations, and on Western Hemisphere Affairs*, 101st Cong., 2d Sess. 24 (1990) [hereinafter *Current Developments*]. The general situation of human rights in that country is also reported annually in the State Department's "Country Reports on Human Rights Practices."

States and the International Red Cross) and non-governmental organizations (NGOs) from Mexico and the United States, have made statements, sent delegations to conduct direct investigations, or published reports alleging the systematic commission of human rights violation throughout the Republic of Mexico.

The overall impression to be deduced from the most recent reports on human rights violations in Mexico published by both official<sup>178</sup> and NGO's from Mexico<sup>179</sup> and the United States,<sup>180</sup> is that torture and extrajudicial killings by police and security forces, and rural violence are pervasive problems. Such actions were also committed by the Mexican Army in Chiapas. The unprecedented violence displayed by the Mexican Army to repress the Chiapas uprising, especially during the first ten days of the conflict, generated an immediate and growing concern among human rights activists both in Mexico and the United States.<sup>181</sup>

From a military viewpoint, the unexpected Chiapas rebellion represented not only an embarrassment for the Mexican Army and the government of President Salinas, but also a failure of its intelligence apparatus.<sup>182</sup> As noted earlier, the Secretary of the Interior<sup>183</sup> and the Governor of the State of Chiapas, were included among its very first casualties. Because of its stunning New Year's Day offensive, which allowed the peasant army to control four towns for twenty-four hours, an overhaul in the Mexican Army's

---

The U.S. Congress, through its *Subcommittee on Human Rights and International Organizations, and on Western Hemisphere Affairs*, conducts periodic hearings on human rights questions in Mexico.

178. The official reports are: 1) *North American Free Trade Agreement-Mexico's Political and Legal Environment for Doing Business: Hearing Before the Committee on Small Business*, 103d Cong., 1st Sess. (1993); 2) Speech of Jorge Madrazo Cuéllar, President of the CNDH, at an official ceremony to present the Commission's annual report (May 1993-May 1994) at the presidential residence of "Los Pinos" in Mexico City on June 6, 1994; and 3) *Comision Nacional de Derechos Humanos, INFORME ANUAL, Mayo 1993-Mayo 1994, México, D.F., Junio de 1994.*

179. For a discussion on human rights in Mexico during the administration of President Salinas, see Mariclaire Acosta, *Los Derechos Humanos en México: Balance Sexenal*, EL NACIONAL (Suplemento Especial), June 12, 1994, at vi-viii.

180. The reports from the U.S. non-governmental organizations are: (A) AMNESTY INTERNATIONAL, USA, *Current Developments*, *supra* note 177, at 31 (statement of Rona Weitz, Deputy Director, Washington Office); (B) MEXICO: AMNESTY INTERNATIONAL DELEGATION IN MEXICO CONFIRMS REPORTS OF HUMAN RIGHTS VIOLATIONS DURING CHIAPAS UPRISING. (AI Index: AMR 41/WU) March 1994; (C) HUMAN RIGHTS WATCH/AMERICAS, VI(3) MEXICO. THE NEW YEAR'S REBELLION: *Violations of Human Rights and Humanitarian Law during the Armed Revolt in Chiapas, Mexico* (March 1, 1994); (D) MINNESOTA ADVOCATES FOR HUMAN RIGHTS, NO DOUBLE STANDARD IN INTERNATIONAL LAW: *Linkage of NAFTA with Hemispheric System of Human Rights* (Dec. 1992); (E) AMERICAS WATCH, UNCEASING ABUSES. *Human Rights in Mexico One Year After the Introduction of Reform* (Sept. 1991); and (F) A POLICY OF IMPUNITY, *supra* note 151.

181. For an account on the Mexican Army and the military theater of operations, see Robberson, *supra* note 14; Tim Golden, *Mexican Army is Said to Abuse Rebel Suspects*, N.Y. TIMES, Jan. 24, 1994, at A1; and Juanita Darling, *Mexican Army Under Fire From Two Sides*, L.A. TIMES, Dec. 25, 1993, at A10.

182. See Robberson, *supra* note 14, at A-21.

183. See Robberson, *supra* note 70, at A-13.

military command, and its mission, has been forecast.<sup>184</sup> It is expected that the Army will withdraw from its traditional roles of fighting drug traffickers and providing welfare services and concentrate, instead, on counterinsurgency activities.<sup>185</sup>

As soon as the Mexican Army moved into the zone initially controlled by the rebels, including the towns of Morelia, Las Margaritas, El Corralito, Rancho del Carmen de María, Altamirano, Ocosingo and, in particular, the city of San Cristóbal de las Casas, "a growing chorus of accusations of torture, beatings and illegal arrests,"<sup>186</sup> allegedly committed by the Army, were made by relatives of the victims, priests, peasants, civilians, and human rights organizations.

The Mexican Army violated a number of Mexican laws as well as international law conventions to which Mexico is a party, during the Chiapas rebellion. The evidence of these violations derives from journalistic reports from Mexico and the U.S., NGO reports, and the official reports of Mexico's National Commission on Human Rights (CNDH).

A most detailed report in *Proceso*, published on February 7, 1994, lists nine different types of criminal and/or human rights offenses committed by "elements of the Mexican Army" during the first weeks of the Chiapas conflict.<sup>187</sup> Most of the allegations made by *Proceso* have been backed up by the other sources, including the official CNDH.<sup>188</sup> However, some of the human rights and criminal law incidents reported in *Proceso*, and in certain NGO's publications, for example, were not reported in any of the CNDH's 1994, official reports.

Based upon the consulted reports, the violations of the Mexican Army committed against Mexican nationals, and in particular against indigenous peoples in Chiapas, appear to be numerous and diverse. Rather than

---

184. See Robberson, *supra* note 14, at A-21.

185. *Id.*

186. Golden, *supra* note 181, at A1.

187. See Correa et al., *supra* note 18 and the corresponding text. The human rights violations of the Army are summarized by PROCESO as follows:

1. Direct bombing of civilian towns and villages;
2. Illegal detention of persons;
3. Outright arbitrary searches and seizures of private house dwellings;
4. Abuses of authority;
5. Intimidation and threats, both to individual persons and to communities;
6. Torture;
7. Forced and involuntary disappearance of persons;
8. Homicide of civilians; and
9. Summary execution of civilians.

Correa et al., *supra* note 18, at 6.

188. See *Comisión Nacional de Derechos Humanos*, INFORME ANUAL: Mayo 1993-Mayo 1994, 620-47 (1994) [hereinafter INFORME ANUAL]. This annual report expanded upon the CNDH's *Special Report to the Public Opinion on the Activities and Considerations of the CNDH in the Case of the Highlands and the Jungle of Chiapas*, Gaceta 44, CNDH, Ciudad de México, Marzo 1994 at 17-23 (translation by the author) [hereinafter *Special Report*].

engaging in a detailed examination of each of the numerous violations allegedly committed by the Mexican Army during the Chiapas conflict, this section only addresses what may be characterized as the most egregious violations. These violations received special attention in the 1994 Annual Report of the National Commission and were discussed under the title: "Especially Important Cases."<sup>189</sup>

In its 1994 Annual Report, the CNDH reported 274 human rights violations affecting 889 persons (most of them indigenous peoples).<sup>190</sup> Out of this total, the Mexican Army is by far the worst offender with eighty-nine complaints, followed by thirty-one against the EZLN, twelve against Mayors of Chiapas' towns, and four against Mexico's Attorney General's Office.<sup>191</sup>

Of the 274 total violations, the following 154 attract immediate attention because of the egregiousness of the crimes: seventy-six cases of torture, sixty-four homicides, ten cases involving illegal deprivation of freedom,<sup>192</sup> and four aerial attacks.<sup>193</sup>

The violations committed by elements of the Mexican Army and by certain public authorities may be divided into the following two large categories: a) specific violations of constitutional rights; and, b) violations of specific statutes and codes, in particular the Federal Act to Prevent and Sanction Torture and the Penal Code of the State of Chiapas.<sup>194</sup>

### *A. Specific Violations to Constitutional Rights*

Chapter I of the Mexican Constitution contains an explicit enumeration of constitutional rights. The listing of these "garantías individuales," ranges from freedom from slavery, the right to a free education and legal equality for men and women, to freedom of ideas, freedom from censorship, the right of peaceful assembly, the right to have arms at home, and the right to travel throughout the territory of Mexico without the need of a security card,

---

189. Programa Permanente de la CNDH en los Altos y Selva de Chiapas, Section 9: "Casos Especialmente Importantes radicados en la Coordinación General para los Altos y Selva de Chiapas." *Id.* at 634-47. This section lists eleven "especially important cases" involving alleged violations committed by (1) elements of the Mexican Army, (2) the Secretariat of National Defense (Sedena), (3) the Attorney General's Office (PGR), (4) the First Federal District Judge in Tuxtla Gutiérrez and (5) the Mayor of San Juan Chamula. The CNDH does not explain why these cases are "especially important." These cases range from summary executions, aerial attacks and torture to attacks against journalists, burial of victims in illegal massive graves and violent expulsions of indigenous peoples. *Id.*

190. For a breakdown of the violations, see app. 1.

191. *Id.*

192. The CNDH has not provided a distinction between "illegal deprivation of freedom" and "arbitrary detentions."

193. INFORME ANUAL, *supra* note 188, at 621-24; see also app. 1. This enumeration does not include the 29 persons who are still missing, listed under the category of "[d]isappearances," initially reported as including 432 individuals by the CNDH.

194. Ordinary criminal offenses will not be addressed in this article. These crimes include, for example, homicide, theft, abuse of authority, illegal deprivation of freedom, damages to property, etc.

passport, safe conduct or other similar requirements.<sup>195</sup>

Regarding the Chiapas conflict, special attention should be given to a number of constitutional rights which appeared to have been violated by elements of the Mexican Army, as well as by certain government officials.

### 1. Freedom of Transit and Freedom of Peaceful Assembly

Since the beginning of the rebellion, the Mexican Army erected barricades and military check-points, closing a number of public roads and highways in the theater of military operations, thus suspending or impeding the traffic of persons and vehicles.<sup>196</sup>

Article 11 of Mexico's Constitution guarantees, as a constitutional right, the "freedom to travel throughout the territory" of that country without having to comply with any special transit requirements.<sup>197</sup> The erection of road blockades and military check-points by the Mexican Army in Chiapas is in clear violation of this constitutional precept. For example, no civilians were allowed to enter into the area demarcated by the Mexican Army as the theater of hostilities. Even travelling near that area, or fleeing from it, led to prolonged interrogation conducted by elements of the military.

It has also been documented that military elements did not permit civilians in towns or villages near the theater of military operations to publicly assemble for any reason, despite the tenor of Article 9 of Mexico's Constitution. This article provides that "[T]he right to assemble or associate peaceably for any lawful purpose cannot be restricted. . . ."<sup>198</sup> The Mexican Army, as well as municipal, state and federal authorities proceeded to disperse any groups of people, using violence in most cases, and subjecting a number of them to prolonged and sometimes brutal interrogations.

These constitutional rights violations should not be taken lightly, especially when the President decided not to suspend any constitutional rights in the country as a result of the Chiapas rebellion.<sup>199</sup> The deliberate

195. See CONST. arts. 2, 3, 4, 5, 6, 7, 9, 10, and 11 (Mex.).

196. The CNDH expressly recognized the existence of problems to the constitutional rights of transit and assembly. *Special Report, supra* note 188, at 17.

197. CONST., art. 11 (Mex.).

198. CONST., art. 9 (Mex.).

199. Article 29 of the Mexican Constitution provides that the suspension of constitutional rights may be ordered by the President of the Republic, "in the case of invasion, grave disturbance that alters the public peace or any other action placing the society in a situation of grave danger or conflict." This suspension may be applied nationally, or may be limited to a specific place, suspending those "constitutional rights that may be an obstacle for confronting the situation in a rapid and direct manner." However, the suspension should be for a limited period of time, established through general notices and not restrained to a specific individual. CONST., art. 29 (Mex.) (translation by the author).

The President of the CNDH asserted that: "[T]he President of Mexico ordered that the Mexican Army and the security forces conduct their actions in full compliance with human rights. And that the Presidency will investigate cases where these orders were not followed."

decision not to invoke the régime of exception provided by Article 29 explicitly recognizes that no violations to constitutional rights were to be tolerated. Otherwise, the official statement that “Mexico continued to apply the full panoply of the totality of its constitutional rights,” as expressed by the President of the CNDH,<sup>200</sup> is but a myth.

## 2. Violent Home Intrusions Without Search Warrants and Aerial Military Attacks

Articles 14 and 16 of Mexico’s Constitution, modeled on the Constitution of the United States, protect two of the most precious and fundamental rights in that country. Article 14 provides: “No person shall be deprived of life, liberty, property, possessions, or rights without a trial by a duly created court in which the essential formalities of procedure are observed and in conformity with laws enacted prior to the act.”<sup>201</sup>

Article 16 establishes:

No one shall be molested in his person, family, domicile, papers, or possessions except by virtue of a written order of the competent authority stating the legal grounds and justification for the action taken. No order or arrest or detention shall be issued against any person other than the competent judicial authority. . . . The authority that implements a judicial order of apprehension should place the accused under the judge’s authority, without delay and under his utmost strict responsibility. The contravention of this provision shall be sanctioned by penal law . . . No accused person shall be held by the Ministerio Público (i.e. Public Prosecutor) longer than 48 hours, within which period of time the accused must be freed or be placed under the competent judicial authority. . . . Any abuse . . . shall be sanctioned by the [applicable] penal law.<sup>202</sup>

During the initial days of the Chiapas rebellion elements of the Mexican Army and other public authorities violently intruded into private homes, not only breaking and destroying possessions and assets but stealing money, objects and other belongings<sup>203</sup> without any “written order” of any “competent authority,” in blatant violation of the Mexican Constitution.

In addition, the Mexican Army conducted sweeps in many cities, towns, villages and hamlets which resulted in massive arrests,<sup>204</sup> without the

---

*Special Report, supra* note 188, at 18.

200. *Id.*

201. CONST., art. 14 (Mex.) (translation by the author).

202. CONST., art. 16 (Mex.) (translation by the author).

203. In its Annual Report 1994, the CNDH officially acknowledges it received 274 complaints to human rights violations affecting 889 persons. The Commission reports 57 arbitrary detentions, 54 cases of injuries, 42 of abuse of authority, 13 of theft, 10 of damage to property and 2 illegal entry into homes, among other violations. See app. 1; INFORME ANUAL, *supra* note 188, at 621-624.

204. MEXICO: THE NEW YEAR’S REBELLION, *supra* note 180, at 11.

proper orders of detention or arrest being issued by competent judicial authorities.<sup>205</sup> Tim Golden reported such a sweep: "the troops surrounded their neighborhood and began searching house to house [in the town of Oxchuc]. Alicia López, a 28-year old woman with four children, said that her father, Feliciano, 50, and her brother Eliseo, 27, *were hauled away* as the soldiers rifled through the family's dirt-floor shack and that *she had not seen or heard from them since.*"<sup>206</sup> Golden also noted: "three men were taken away with thirty-six others who were arrested here that day . . . and have not been seen since. . . . *Soldiers have been accused of detaining suspected guerrillas without due process, beating or torturing them and threatening their lives.* At least a handful of people captured by the Army are also said to have disappeared."<sup>207</sup>

The violence and arbitrariness of these actions moved Human Rights Watch/Americas to write in a recent report:

Most of the Army sweeps, some of which were conducted in conjunction with officers of the PGR (i.e. Procuraduría General de la República, or Mexico's District Attorney's Office) resulted in *arbitrary arrests* in violation of international human rights norms. *Many villagers were taken from their homes without warrants or apparent probable cause* to believe that they were involved in the fighting . . . [T]he CNDH reported that it had established that 131 persons had been arrested. . . . The CNDH figures were based on court reports; they did not include persons arrested by the army who either were released or were never turned over to civilian authorities.<sup>208</sup>

In its 1994 Annual Report, the CNDH acknowledged that 149 persons were detained by the PGR or by the State's Attorney General's Office.<sup>209</sup> Out of this number, forty-one were criminally charged with federal offenses, and forty-two with ordinary crimes. Of the forty-one charged with federal crimes, only five remain in detention. The remaining thirty-six have been freed, including one who was a minor, two who were found "unimputable," two more who were put out of detention because "there were no sufficient elements to legally charge them," fifteen who were freed on bail and sixteen whose criminal proceedings were "dismissed" based on a recommendation of the CNDH.<sup>210</sup>

As the official report of the CNDH implies, most of the charges

---

205. The CNDH reported 461 disappearances, 57 arbitrary detentions, 37 cases of threats and intimidation, 10 of illegal deprivation of freedom and 2 kidnappings, among other violations. See App. 1; INFORME ANUAL, *supra* note 188, at 621-24.

206. Golden, *supra* note 181, at A7.

207. *Id.* at A1, A7.

208. MEXICO: THE NEW YEAR'S REBELLION, *supra* note 180, at 11 (emphasis added). For a detailed account of these abusive practices, see Section V: "Disappearances, Arbitrary Arrest and Detention, Torture, and Cruel Treatment in Detention".

209. INFORME ANUAL, *supra* note 188, at 625-26.

210. *Id.* at 626.

formulated by the federal prosecutor were legally unfounded. In the case of sixteen indigenous persons who had been accused of a number of "federal crimes," the charges were so unjust that the CNDH felt obligated to produce a recommendation to the Attorney General himself to free them.<sup>211</sup>

It remains to be seen whether the federal prosecutors who criminally charged these 16 indigenous persons will be investigated for false incrimination or whether any of these indigenous persons will be financially compensated by the Mexican government for having been wrongly detained, accused and jailed. It is also unclear whether any members of the Mexican Army will be investigated for violating Articles 14 and 16 of the Constitution.

The military violated Article 14 by conducting aerial military attacks on civilian towns and villages and thus arbitrarily depriving people of life, property and possessions. Tod Robberson, of *The Washington Post*, reported:

[A] diplomat [in San Cristóbal de las Casas] said at least seven civilians were killed by the military Wednesday outside Rancho del Carmen de María while fleeing a group of guerrillas that had entered the village, about 20 miles southeast of San Cristóbal. The diplomat said that according to his interviews with relatives of the dead civilians, Zapatistas had passed through the village while attempting to flee into heavily wooded mountains ahead of an advancing Army patrol. *Frightened by the guerrillas' presence, the villagers fled down a mountain path, where a military aircraft swooped down and strafed them, killing seven.*<sup>212</sup>

### B. Violations of the Federal Statute on Torture

In Mexico, the use of torture and extra-judicial killings have been well-known and well-documented for several decades.<sup>213</sup> While these acts have taken place in connection with political elections and with the violence that land disputes provoke in rural areas, torture and extrajudicial killings have been more clearly identified and associated more regularly with cases involving routine law enforcement practices and, in recent years, drug-related cases.<sup>214</sup>

Members of the Federal Judicial Police,<sup>215</sup> the State Judicial Police, the so-called "*Madrinas*," and elements of the Mexican armed forces are the

---

211. *Id.*

212. Tod Robberson, *Non-Indians Lead Mexico's Uprising, Says President Salinas as Rebels Flee*, WASH. POST, Jan. 7, 1994, at A-12 (emphasis added). See also text accompanying *supra* note 18.

213. A POLICY OF IMPUNITY, *supra* note 151.

214. *Id.* See also the statements made by the representatives of Amnesty International, Minnesota Lawyers' Human Rights Committee and the U.S. Department of State. CURRENT DEVELOPMENTS, *supra* note 177, at 3.

215. For an official opinion on the "mistreatment of detainees by Mexican police, particularly the Mexican Federal Judicial Police, or MFJP," see the testimony of Sally G. Cowal, Deputy Assistant Secretary of State, Bureau of Inter-American Affairs, U.S. Department of State. *Current Developments*, *supra* note 177, at (vi).

official actors who have been persistently associated with the commission of these acts. Torture has been so widespread in Mexico that it has been characterized as "endemic,"<sup>216</sup> "systematic" and "chronic"<sup>217</sup> by different entities on both sides of the U.S.-Mexico border.

According to Amnesty International, methods of torture range

from beatings to electric shocks to submerging the victim's head in water until near-suffocation occurs. A widespread and unique method of torture involves the introduction of mineral water laced with hot chili peppers into the nasal passages of the victim. The placement of plastic bags over the victim's head to the point of near-asphyxiation is another commonly employed form of torture. Rape and sexual abuse have also been reported. Detainees have also reported being blindfolded, stripped, and bound by the hands and feet and then tied to wooden planks. . . . Pregnant women have reported being beaten in the stomach. . . . Psychological torture is also common and takes the form of death threats and mock executions. These methods of torture are widely employed and are considered particularly effective in the eyes of law enforcement agents as they leave no discernible physical marks.<sup>218</sup>

It was not until 1992, that the administration of President Salinas decided to enact a federal statute to prevent and punish torture,<sup>219</sup> with the evident purpose of curbing, and hopefully eliminating altogether, this pervasive practice. Article 3 of this new statute defines the crime of torture as

committed by a *public servant* who, taking advantage of his/her official duties, inflicts pain or grave sufferings, whether physical or mental, to a person, with the purpose of obtaining . . . information or a confession, or to punish that person for an act committed . . . or to force [that person] to act, or not act, in a certain way. . . .<sup>220</sup>

Article 4 imposes a sanction of imprisonment ranging from three to twelve years, a fine between 200 and 500 days of minimum salary and denies access to public employment for twice as long as the term imposed by the convicting sentence.<sup>221</sup>

The statute provides, in Article 6, that the claim that there are "exceptional situations such as internal political stability, urgency in the investiga-

216. A POLICY OF IMPUNITY, *supra* note 151, at 9. "Torture and ill treatment are prevalent throughout Mexico. Most branches of the security forces at both the federal and state levels have been implicated. Torture is also practiced by the Intelligence Directorate, and to a lesser extent, by the municipal police and the armed forces." *Current Developments, supra* note 177 (Statement of Rona Weitz, Deputy Director, Washington Office, Amnesty International, USA).

217. *Current Developments, supra* note 177, at 87 (statement of Daniel Gerds of the Minnesota Lawyers International Human Rights Committee).

218. *Current Developments, supra* note 177, at 38.

219. *Ley Federal para Prevenir y Sancionar la Tortura* (i.e. Federal Act to Prevent and Sanction Torture), D.O. of December 27, 1991, amended by decree of D.O. of July 2, 1992 reprinted in LEGISLACIÓN SOBRE DERECHOS HUMANOS 87 (1993) [hereinafter LEGISLACIÓN].

220. *Id.* at 88. (translation and emphasis by the author).

221. *Id.*

tions or any other circumstance," are not exculpatory grounds for liability for commission of the crime of torture.<sup>222</sup> Furthermore, Article 10 provides that a person responsible for the commission of torture "is obligated to cover the expenses of legal counselling, medical doctors, funeral, rehabilitation or expenses of any other kind, incurred by the victim or his/her relatives, as a consequence of the crime. In addition, [the perpetrator] is obligated to repair the damage and to indemnify for the prejudices caused to the victim, or his/her economic dependents," in cases involving "loss of life; adverse health changes; loss of freedom; loss of economic income; labor incapacity; loss of property or property damage, and adverse impact on reputation."<sup>223</sup> The final paragraph of this article establishes that "the State is jointly responsible [with the convicted perpetrator] for the reparation of the damage."<sup>224</sup>

Probably the most recent and detailed description of the Army's torturing methods was made by the weekly Mexico City publication *Proceso*: "[T]orturing methods utilized by the Mexican soldiers included electric shocks to the testicles, hoods loaded with hot chili powder to asphyxiate the victim, burns inflicted with a lighter, skin cuts with knives and insertion of pins under the fingernails."<sup>225</sup> Tim Golden, from *The New York Times*, reported that

[O]n the morning of January 7, . . . hundreds of soldiers swept through the modest shacks of the 183 families that live here [in Morelia], rounded up the men and forced them to lie face down on the local basketball court with their hands behind their heads. While one soldier shouted that the town belonged to the rebel EZLN . . . other troops took three men to the office adjoining the adobe church and tortured them, twisting their arms and dunking their heads into a pail of liquid.<sup>226</sup>

Amnesty International also reported on the military's torturing of indigenous people. Morris Tidball-Binz, an investigator for Amnesty International, after interviewing some of the seventy suspected rebels held in the state prison, said: "*The great majority of those jailed appear to have suffered torture. . . . These people do not need an amnesty. . . . They need access to proper trials, and most of them would be released.*"<sup>227</sup>

In the section devoted to "especially important cases," the CNDH reports at least six tragic incidents involving torture and extra-judicial killings

---

222. *Id.* at 89.

223. *Id.* at 89-90.

224. *Id.* at 90.

225. PROCESO, *supra* note 18, at 6 (translation by the author).

226. Golden, *supra* note 181, at A1.

227. *Id.* (emphasis added). Gabriel Guerra Castellanos, a spokesman for President Salinas, declined to comment on various reports of abuses by the Army when asked by *The New York Times* reporter during his visit to Morelia, Chiapas. *Id.*

resulting in the deaths of thirty-six indigenous persons.<sup>228</sup>

Despite the mounting evidence asserting the direct involvement of members of the Mexican Army in the commission of such violence, official agencies of the government of Mexico, such as the PGR<sup>229</sup> and the CNDH<sup>230</sup> have systematically denied any participation by elements of the Mexican Army.

It has become evident that in politically sensitive cases (those affecting the President of Mexico, the PGR or the Mexican Army) the CNDH has shown political timidity to even suggest, let alone formally advance, charges against any powerful political entities in Mexico.<sup>231</sup>

Since President Salinas created the CNDH in 1990, and appointed its head, it is not surprising that the CNDH deferred to President Salinas. This self-imposed political limitation compromises the impartiality, objectivity and autonomy of the CNDH.<sup>232</sup>

#### IV. RESPECT FOR THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN MEXICO

##### A. *The Colonial Period*

Indigenous peoples in Mexico have been subjected to a system of subjugation and oppression since 1521, when the Spanish destroyed Tenochtitlan, the capital of the Aztec empire. Reports of the atrocities committed by the Spanish army are numerous and well documented, starting with the vivid descriptions written by Bernal Díaz del Castillo, a soldier-reporter and

---

228. INFORME ANUAL, *supra* note 188, at 634-647; *see also* app. 1. Given the peculiar way of drafting utilized by the CNDH to report these incidents, it is impossible differentiate between torture and summary execution cases. Most probably, the cases reported involved the commission of both crimes, although this is not officially acknowledged by the CNDH.

229. Regarding the executions of "at least five persons following a battle in Ocosingo. Between five and eleven persons were displayed after the battle. *Each had his hands tied behind his back and a bullet through the head.* [T]he Mexican Attorney General's Office quickly 'cleared' the military of any wrongdoing, but widespread criticism of the cover-up prompted the Army to begin its own investigation." Petition for Interim and Permanent Measures regarding the Systematic Violation of the American Convention on Human Rights and Other International Covenants in Chiapas, Mexico. January 1, 1994 to the Present 12 (Feb. 10, 1994).

230. The CNDH, in its 1994 Annual Report, reached the conclusion that the killings of the five persons executed in Ocosingo's municipal market "were the product of maneuvers of summary execution," the CNDH added that "[T]he PGR informed that no element of the Mexican Army had any involvement in said incidents," since in accordance with the PGR's investigations, "at the time of the death of these five persons the [military] actions were taking place outside the town of Ocosingo." *Id.* at 635.

231. PHYSICIANS FOR HUMAN RIGHTS AND HUMAN RIGHTS WATCH/AMERICAS, MEXICO: WAITING FOR JUSTICE IN CHIAPAS 116 (1994).

232. *Id.*

historian who accompanied Hernán Cortez in the conquest of Mexico.<sup>233</sup> From the victims' perspective, the works of the *Mexica* reporters, or *Icnocuícatl*, constitute the oldest testimony to provide a unique insight into the spiritual and religious reactions which the destruction and leveling of their beautiful city, and its inhabitants, produced at the time.<sup>234</sup>

During the colonial period (1521-1821), the oppression and exploitation of indigenous peoples was placed at the center of the economic and political system. The prevailing belief at the time was of the inferiority of the Indians, who were conceived as having, in the words of a religious writer of the epoch, "an inalienable right to be slaves."<sup>235</sup> From a legal and philosophical viewpoint, two schools of thought remained constant during this colonial period: those who advanced the most extreme views against the indigenous peoples, represented by Ginés de Sepúlveda, Solórzano Pereira and Tomás Ortiz, among others.<sup>236</sup> The central thesis of these authors is reflected by the ideas of Solórzano, who wrote:

God . . . wanted the Indians to be subjugated by the Spaniards and to be deprived of their kingdoms because of their numerous sins. . . . [T]he Indians, because of their lack of intelligence, have to be subjected to the Spaniards as provided by the Law of Nature, the Spaniards being the ones who will elevate them to a life of rationality. . . .<sup>237</sup>

The other school strongly defended the Indians, in the eloquent voices of Francisco de Vitoria, Antonio de Montesinos and, especially, Fray Bartolomé de las Casas, who advocated that

[T]he Indians, as creatures of God, share in all human attributes . . . having been endowed with intelligence. Because of this they are capable of having religious thoughts, virtues, and the right to live as free persons within a civil society and to own properties, to have laws and a legitimate government, as they have practically proven even before the arrival of the Spaniards.<sup>238</sup>

The Spanish government did not adopt a definite policy on this matter.

---

233. Bernal Díaz is famous for his *Historia Verdadera de la Conquista de la Nueva España* (The True History of the Conquest of the New Spain), written in 1568 and published in 1632. Simply written, this book is an eyewitness account of the invasion and conquest of Mexico narrated from a soldier's personal viewpoint.

234. See VISIÓN DE LOS VENCIDOS. RELACIONES INDÍGENAS DE LA CONQUISTA (Vision of the Vanquished. Indian Relations of the Conquest). Translated from the Náhuatl by Angel María Garibay and edited by Miguel León-Portilla. Universidad Nacional Autónoma de México, 1984.

235. See Guillermo Floris Margadant, *Official Mexican Attitudes Toward the Indians: An Historical Essay*, 54 TULANE L. REV. 964 (1980).

236. For a review of the ideas advanced by these authors, see Rodolfo Stavenhagen, *De Cómo Subyugar a los Naturales*, in DERECHO INDÍGENA Y DERECHOS HUMANOS EN AMÉRICA LATINA 13-22 (1988) (How to Subjugate the Naturals: Indigenous Law and Human Rights in Latin America) [hereinafter DERECHO INDÍGENA].

237. *Id.* at 16. (translation by author)

238. *Id.* at 17-18 (translation by the author).

Instead, its position fluctuated between these two extreme viewpoints, favoring one or the other, as dictated by its own practical interests.<sup>239</sup>

According to Silvio Zavala, when Alexander Von Humboldt visited New Spain at the end of the colonial period, he discovered that the Indians constituted "a separate nation, privileged by law but humiliated by everyone, with no communication with Spaniards or *mestizos* because of the laws."<sup>240</sup> However, the misery and abandonment of indigenous peoples that prevailed in colonial Mexico for three centuries would become radically altered, at least in theory, when Mexico acquired its independence in 1821.

### B. *The Independence*

As a new republic, Mexico, inspired by the political and legal system of the United States, and by the ideas of the French encyclopedists, promptly enacted legislation which introduced the unprecedented notion of legal equality designed to embrace all the new citizens of Mexico, whether they were *criollos*,<sup>241</sup> *mestizos*, Africans, or Indians.<sup>242</sup> However, this notion was nothing more than a legal fiction.<sup>243</sup>

The new notion of "legal equality" very soon started to produce negative consequences for most indigenous peoples who started rapidly losing their communal lands. Moreover, it has been suggested that this legal fiction was designed simply to serve as a tool to consolidate the political and economic power of the *criollos*. It has been advanced, for instance, that even those heroes who fought for Mexico to gain its independence already had in mind a system which was going to be created, and ruled, only by *criollos*, thus designed to impose the *criollo* predominance over the indigenous peoples.<sup>244</sup> Nahmad claims that the indigenous peoples were left unprotected since the enforcement of equality granted them by the law was left in the hands of the *criollos*.<sup>245</sup>

Concerned about this dichotomy, Tadeo Ortíz, an eminent humanist, wrote in 1822:

---

239. *Id.* at 17.

240. *Id.*

241. *Criollos* means native. THE CONCISE AMERICAN HERITAGE SPANISH DICTIONARY 74 (1989).

242. Prof. Margadant asserts that "[F]rom 1821 to 1910, after Independence but before the Mexican Revolution, the Indian was officially considered a citizen equal to all other in the eyes of the law . . . This egalitarian philosophy, however, did not guarantee the Indian a comfortable role in Mexican society, for the Indian remains politically and economically vulnerable." See *supra* note 235, at 964-65 (emphasis added).

243. See Salomón Nahmad, *Indigenismo Oficial y Luchas Indígenas en México*, (Official Indian Policy and Indian Struggles in Mexico), in *DERECHO INDIGENA*, *supra* note 236.

244. To support this assertion, Salomón Nahmad cites an 1811 decree issued by José María Morelos, in which "the most radical of Mexico's independence leaders" wrote: "that our system is only leading to the notion that the political and military government which resides in the Europeans, changes to the *criollos*. . ." *Id.* at 301.

245. *Id.*

I confess that I see no difference between the condition of the black slave [in the United States] and that of the Indians in our haciendas. The slavery of the first one is caused by the barbaric right of the strongest, whereas the slavery of the Indians is caused by fraud, the malice of landowners and the innocence of human beings almost incapable of free thinking. . . . And it is amazing that the Indian population of New Spain has lost, instead of gaining, in the Revolution of Independence, changing real privileges for abstract rights.<sup>246</sup>

The legal equality granted to indigenous peoples in Mexico at the time of its independence did not help improve the well-being of those autonomous groups economically, politically, culturally or legally. Philosophically, the granting of that legal equality may represent a progressive development in the legal system of the epoch, especially if compared with the meager rights the colonial system recognized in favor of the Indians. However, that legal equality turned out to be more symbolic, or aspirational, than practical, thus affirming the premise that the "legal solution" contained in the law books by no means corresponded to historic reality.<sup>247</sup>

The enactment of the Nationalization Act of 1856, to nationalize vast extensions of idle lands, produced catastrophic consequences among Indian communities. It appears that the process of "privatization" of these lands, rather than distributing the lands to individual owners, contributed to consolidate the Mexican *latifundio* in rural areas. The acts of arbitrary dispossession and other injustices committed on the Indians by *criollos* and *mestizos* as a result of these enactments triggered numerous violent Indian revolts in different parts of the country, especially in Chihuahua and Chiapas. In turn, these rebellions led the government to enact further legislation in order to pacify those "barbaric Indians" by the violent use of military force.<sup>248</sup>

### C. *The Revolution and the 1917 Constitution*

In theory, the Revolution of 1910 embraced the goals and aspirations advanced by the indigenous peoples of Mexico. In his Plan de San Luis Potosí,<sup>249</sup> which formally marked the initiation of the Revolution, Francisco I. Madero acknowledged that due to abuse of the law, "numerous small owners, most of them Indians, have been disposed of their lands, either by

---

246. *Id.* at 302.

247. *Id.*

248. *Id.*

249. The Plan of San Luis Potosí was issued on October 5, 1910. It contained eleven sections, proposing, *inter alia*: (1) That the Federal Constitution of 1857, and the principle of "Effective suffrage, no reelection," be declared the "Supreme law of the Republic"; (2) No recognition of President Porfirio Díaz' government; (3) Francisco I. Madero assumes the Executive Power of Mexico, as "Provisional President"; (4) That on November 20, 1910, all Mexicans "take the arms to expel out of power the current governing authorities." For the text of this proclamation, see FELIPE TENA RAMÍREZ, LEYES FUNDAMENTALES DE MEXICO, 1808-1991 732-39 (Ed. Porrúa, 16th ed., México, 1991) [hereinafter LEYES FUNDAMENTALES].

means of resolutions issued by the Ministry of Development, or by judgments rendered by the courts of the Republic."<sup>250</sup>

Another proclamation that advanced a rural program to favor indigenous groups was the Plan de Ayala,<sup>251</sup> enacted by Emiliano Zapata in the state of Morelos on November 28, 1911. Claiming that "the immense majority of peoples and Mexican citizens" have no land of their own, Zapata declared the right to "expropriate these lands, hills and waters . . . through proper indemnification to their powerful owners . . . so the peoples and citizens of Mexico can obtain *ejidos*, colonies, public lands for villages or [lands] for agricultural work . . . thus improving the prosperity and well-being of the Mexicans."<sup>252</sup>

Section 6 of this Plan may have inspired the leaders of the EZLN to trigger their armed rebellion in Chiapas. This section reads:

SIXTH.- As an additional part of this Plan, we submit: that the lands, hills and waters usurped by the *hacendados*, *científicos*<sup>253</sup> or *caciques* under the shade of tyranny and venal justice, will be given immediate possession over these immovable assets to the villages or citizens having the corresponding titles over these properties, from which they have been dispossessed in bad faith by our oppressors, maintaining in all instances, with the arms in our hands, the said possession, and the usurpers claiming to have a right over said properties will receive a judgment from the special courts to be established at the triumph of the Revolution.<sup>254</sup>

Mexico's Constitution of 1917, its first one of this century, must be included among the most important consequences generated by the Revolution.<sup>255</sup> However, most demands advanced by indigenous peoples were not specifically addressed in the new legal instrument but were included in a general and oblique manner. For instance, the right to possess land as a personal patrimony to be used for agricultural purposes, which most autochthonous groups had systematically advanced since colonial times, found only a brief and indirect reference in Article 27 of the Constitution.<sup>256</sup>

250. *Id.* at 736.

251. This Plan was formed by 15 sections. Basically, it was issued against the government of Madero and the proposals contained in the Plan de San Luis. For the text of Plan de Ayala, see LEYES FUNDAMENTALES, *id.* at 740-43.

252. Section 7, Plan de Ayala, *id.* at 742.

253. The term *científicos* (scientists) was used to refer to a very small circle of official advisors to President Porfirio Díaz, that gained notoriety during the Díaz dictatorship. In general, the *científicos* were very wealthy aristocrats, members of the cabinet, most of whom educated in France. LESLEY BYRD SIMPSON, MANY MEXICOS 261 (1952).

254. Section 6, LEYES FUNDAMENTALES, *supra* note 249, at 742.

255. Mexico's Federal Constitution, composed of 136 articles, was promulgated on February 5, 1917. The Constitution was produced by a Constitutional Congress (i.e. Congreso Constituyente) held in the city of Querétaro in late 1916 and early 1917. The Constitutional Congress started its work by discussing a Constitutional draft produced by President Venustiano Carranza. Amended some 365 times, the 1917 Constitution continues to be in force today. On this matter, see JORGE CARPIZO, LA CONSTITUCION MEXICANA DE 1917 (1980).

256. *Id.*

Thus, instead of distributing the land to individual land owners, this Article granted "communal lands to rural communities" in order to constitute collective *ejidos*. Yet, this Constitution did not even mention the words "Indian" or "indigenous peoples," or any similar reference to convey the idea that Mexico is composed of a variety of autochthonous ethnic groups.

Although the 1917 Constitution included the notion of "social rights,"<sup>257</sup> it did not embrace indigenous peoples, as an ethnic minority group, within this notion. The Mexican Constitution paid no attention to the territory occupied for centuries by the different indigenous peoples when it recognized the geographical boundaries of the twenty-nine States and two Territories referred to by Article 43 of President Carranza's Constitutional Draft.<sup>258</sup> Recently, anthropologists in Mexico have pointed out that "there is no State in Mexico whose formation responds to a criterion of ethnic identity of some indigenous group."<sup>259</sup> As a practical consequence, indigenous peoples in Mexico have no political representation or in the Federal Congress, and almost none in the State legislatures.<sup>260</sup>

In sum, Mexico's Constitution of 1917 virtually ignored the existence of indigenous peoples, their rights and their needs, both as individuals and as a social group. In light of other constitutions in Latin America, in particular those of Argentina of 1819,<sup>261</sup> Guatemala of 1985,<sup>262</sup> Nicaragua of

---

257. "Social rights" are those constitutionally recognized in favor of certain specific groups, such as laborers and *campesinos*, and more recently, consumers. This explicit recognition by the State has led to the conception of Mexican law as divided into three large branches: the traditional Public and Private law, widely recognized within the civil legal tradition, the emerging branch of "Social Law," formed by Labor law and Consumer protection law and, in recent years, Environmental law. *Id.* at 154-62. Article 123 of the Mexican Constitution represents the paradigm of said "Social rights." *Id.*

258. For the text of this article, see LEYES FUNDAMENTALES, *supra* note 249, at 775.

259. Nahmad, in DERECHO INDIGENA, *supra* note 236, at 304 (translation by the author).

260. *Id.*

261. Article 28 of the Argentinean Constitution of 1819 provides:

[T]he Indians, being equal in dignity and rights to the other citizens, shall enjoy the same privileges and shall be governed by the same laws. . . . The legislative body shall efficiently promote the well-being of the naturals through laws that will improve their condition until they are at the same level of the other classes of the State.

reprinted in Luiz Díaz Müller & Tania Carrasco, *El Derecho Indígena*, in DERECHO INDIGENA, *supra* note 236, at 48 (translation by the author).

262. The new Guatemalan Constitution of May 31, 1985, provides in its Article 66:

*Protection to Ethnic Groups:* Guatemala is formed by different ethnic groups, among them the indigenous groups of a Mayan origin. The State recognizes, respects and promotes their way of living, customs, traditions, forms of social organization, the use of indigenous costumes in men and women, languages and dialects.

This Constitution devotes Section III, Chapter II, Title I to "Indigenous Communities." *Reprinted in id.* at 56 (translation by the author).

1979,<sup>263</sup> Panama of 1972,<sup>264</sup> and Paraguay of 1967,<sup>265</sup> which explicitly recognize the existence and the special rights of indigenous groups, failure to include such a provision in the Constitution of Mexico, the country in this hemisphere with the largest autochthonous population, constitutes a paradoxical and painful omission.<sup>266</sup>

## V. INDIGENOUS PEOPLES AND THE MEXICAN LEGAL SYSTEM

### A. Mexico's Official Indigenous Policy

Despite the lack of an explicit reference to the rights of indigenous peoples in its 1917 Constitution, Mexico has been recognized as a country who first developed a national policy towards its indigenous peoples. As part of Latin America, Mexico has been characterized as "a pioneer in the promotion of a continental indigenous policy."<sup>267</sup>

In 1948, the government of Mexico created a National Indigenous

---

263. In July of 1985, the Sandinista government gave national circulation and discussed extensively the official document: "Principles and Policies for the Exercise of the Rights of Autonomy of the Indigenous Peoples and Communities in the Atlantic Coast of Nicaragua." Many of the principles contained in this document were incorporated in the new Constitution of Nicaragua, enacted on November 19, 1986. For instance, Article 8 of this Constitution reads: "The people of Nicaragua are of a multiethnic nature." and Article 11: "Spanish is the official language of the State. The languages of the Communities in the Atlantic Coast of Nicaragua shall also have official use in the cases established by the law." *Reprinted in id.* at 57-58 (translation by the author).

264. The Constitution of Panama (amended in 1978 and 1983) establishes: "The State shall guarantee to the Indian communities the amount of necessary lands and the collective property of the same to promote their economic and social well-being. . ." *Reprinted in id.* at 60 (translation by the author).

265. The 1967 Constitution of Paraguay refers to the "Statute on Indigenous Communities" (Ley Num. 904-1981). Its Article 1 recognizes the legal equality of the Indians in relation with the other citizens, and Article 50 consecrates the protection of the human rights of indians. *Id.* at 50.

266. If it is considered that the 1910 Revolution was initiated and fueled by the indigenous peoples of Mexico principally to obtain recognition from the government regarding rights they considered to be inherent (the rights to own land, to be recognized as a special ethnic community with its own language, culture and system of justice, and to enjoy basic constitutional rights); it is then paradoxical that in the final text of the 1917 Constitution, which was formulated as a consequence of the triumph of the revolution, no reference was made to any of the demands advanced by the indigenous peoples or even to their presence in Mexico as a part of that country's population. Since the Constitution was promulgated in early 1917 until 1992, when its Article 4 was amended, its text did not contain any reference to the existence of indigenous groups as a part of Mexico's population. The only indirect reference that the 1917 Constitution contained in that regard, was the following:

VII. - The legal personality of *groups of population in ejidos and communities* is recognized, and their land property for human settlements and for productive activities is hereby protected.

CONST. art. 27, para. VII (Mex.) (emphasis and translation by the author).

267. Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 300.

Institute<sup>268</sup> empowering it as the official organ to design and apply the indigenous policy in the country. However, it was not until 1992, when President Salinas de Gortari, in response to demands advanced by indigenous groups and mounting political pressure, amended Article 4 of the Constitution, to add the following initial paragraph:

The Mexican nation has a pluriethnic composition originally based on its indigenous peoples. The law shall protect and promote the development of their languages, cultures, uses, customs, resources and specific forms of social organization, guaranteeing to their individual members an effective access to the jurisdiction of the State. In the agrarian suits and proceedings in which those members are a party, their legal practices and customs shall be taken into account in the terms established by the law.<sup>269</sup>

The addition of this paragraph, at the time, was deemed a resounding political success for the Salinas administration and the PRI. In the history of the country, President Salinas was the first president to acknowledge the importance of indigenous peoples in the life of the nation, officially recognizing Mexico as a "pluriethnic society." The Mexican amendment appears to have taken part of its wording from the Constitution of Guatemala of 1985.<sup>270</sup>

Despite the recent change to the Constitution, the indigenous peoples of Mexico continue to wait for the enactment of domestic legislation which will detail their rights, both as individuals and as members of a number of ethnic minorities, regarding their own territory, language, culture, religion, justice system, economic base, and form of government.<sup>271</sup> The first formal request for this legislation was made at "First Congress of the National Council of Indigenous Peoples," in 1975.<sup>272</sup>

Partly because of the absence of such a legislation, and partly because of the official legal equality recognized in favor of indigenous peoples, there is no definition of what an "Indian person" is, or should be, under Mexican law. Mexico considers that since all Mexican nationals are the same before the eyes of the law, the law does not need to discriminate between Mexicans

---

268. *Id.* at 304.

269. CONST., art. 4 (Mex.) (translation by the author).

270. For the text of Article 66 see *supra* note 262. Other articles establish special protective measures and programs especially designed for the benefit of indigenous peoples, such as financial and technical assistance, bilingual education, legal title over lands that "historically belonged" to indigenous communities, land distribution and labor protections to individual members of indigenous groups when they work outside their own rural communities. See generally *id.*

271. Although Mexico's amendment to Article 4 of its Constitution was made in 1992, to date President Salinas has not enacted the corresponding "Ley Reglamentaria." It is up to the new administration of President Zedillo to introduce to Congress the pertinent legislative bill. Without the enactment of this implementing legislation, the content of article 4 is merely aspirational.

272. Nemesio Rodríguez, *Los Movimientos Indios y sus Planteamientos*, in DERECHO INDIGENA, *supra* note 236, at 163. Similar requests have been made in subsequent indigenous congresses without any results, so far.

for any reason, whether because they are poor or rich, young or old, Indian or *mestizos*.

The lack of a legal definition of an "Indian person" has had adverse effects upon indigenous peoples. For example, there is no accurate or current information regarding the number and types of indigenous peoples who live in Mexico. This lack of information has provoked a controversy among anthropologists, sociologists, attorneys, indigenous leaders and government officials, especially regarding the methodology that should be used to identify and define each of the current ethnic groups.<sup>273</sup> The National Indigenous Institute (INI) recognizes fifty-six different ethnic groups in Mexico.<sup>274</sup>

Given the drastic and painful inequalities that have prevailed in Mexico since early this century between the Indians and the *mestizos*, it is unquestionable that a new official indigenous policy is urgently needed today. However, no new official policy is likely to succeed unless it is based upon a new philosophy that recognizes the uniqueness of the value system of Mexico's indigenous peoples, acknowledges the vast and unfair treatment of Indians which reinforced the gulf of legal, social, economic, cultural and political factors between Indians and *mestizos*, and provides for an educational program to enlighten mestizo Mexicans about the value and uniqueness of their Indian co-nationals.

### B. Education and Culture of Indigenous Peoples

Probably, the areas where Mexico has focused the most regarding indigenous peoples are education and culture. Both are under the jurisdiction of the Secretariat of Public Education. Soon after the promulgation of the 1917 Constitution, the government of Mexico put in place a "Policy of Assimilation of Indian Communities." Initiated in 1917, this program formally lasted until the 1950s. Its official objective was to "incorporate the indigenous nucleus into the Mexican nationality."<sup>275</sup>

The "assimilation policy" was implemented through two approaches. In its early stage, the policy attempted to incorporate Indian children into the mainstream of Mexico's socio-economic and cultural life merely by teaching them Spanish.<sup>276</sup> Indian children had to go to schools and follow the regular academic program designed by *mestizo* bureaucrats to educate mestizo

---

273. Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 304.

274. The 56 indigenous peoples are: Amuzgo, Cochimí, Cora, Cucapá, Cuicateco, Chatino, Chihimeca, Chinanteca, Chol, Chontal-Maya, Chocho-Mixteco, Chuj, Driqui-Triqui, Guarojfo, Huave, Huasteco, Huichol, Hocano, Ixcateco, Kikapú, Kiligua, Kumial, Lacandón, Mame, Matlazinca, Maya, Mayo, Mazahua, Mazateco, Mixe, Mixteco, Motozintleco, Náhuatl, Ocuiteco, Otomí, Pai-pai, Pápago, Pima, Popoloca, Popoluca, Purépecha, Seri, Tarahumara, Tepehua, Tepehuano, Tlapaneco, Tojolabal, Totonaco, Tzeltal, Tzotzil, Yaqui, Yuma, Zapoteco and Zoque, Carlos Durán Alcántara, *Legislación en Materia de Poblaciones Indias*, in *DERECHOS CONTEMPORÁNEOS DE LOS PUEBLOS INDIOS* 100 (1992).

275. Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 313.

276. *Id.* at 315.

children, regardless of their Indian language or culture. Legally, Indian children were considered to be exactly the same as the *mestizo* children and, given the equality dictated by the law, teachers felt at the time that it was not only unnecessary, but even improper, to treat Indian children differently from the *mestizo* children. The second, later approach was more flexible. The Indian children were first educated in their own language, during the six years of elementary school. Subsequent studies (if any) were imparted in Spanish only.<sup>277</sup>

The policy of "assimilation" was criticized by educators and anthropologists, who have suggested since the 1970s that the government abandon that policy and adopt a "Bilingual-Bicultural Education" policy based upon the notion of "ethnic development."<sup>278</sup> The objectives of this trend, which influenced the current official policy towards indigenous peoples, include: recognition of Mexico as a pluri-ethnic nation; respect for indigenous languages and culture; strengthening of bilingual education during the elementary school cycle; and, development of academic programs and activities based on the ethnic components of a given Indian community. All this was to be accomplished without minimizing the importance of the Spanish language and the value of the concept of a Mexican national culture. However, "Bilingual-Bicultural Education" is not yet contained in any legislation.<sup>279</sup>

### C. Agrarian Law and Indigenous Peoples

As noted earlier, Article 27 of the 1917 Constitution by no means resolved those land disputes within rural communities.<sup>280</sup> Article 27 laid down novel legal principles, among them the *ejido* and the right of rural communities to possess land for agricultural and other commercial purposes, as guiding principles upon which to build a legal system devoted to the distribution of land in a fair and equitable manner. In essence, Article 27 established the foundation which would eventually lead to an elaborate body of administrative law involving rural questions, now known in Mexico as "Agrarian Law."<sup>281</sup>

---

277. *Id.* at 315.

278. *Id.*

279. *Id.* At the First Congress of the National Council of Indigenous Peoples in 1975 it was demanded that, through legislation, the President of Mexico should declare as official languages "the indigenous languages that exist in our country, especially if it is considered that until now those indigenous languages have been despised, reputing them as valueless since they do not fulfill a social function as vehicles or instruments of communication." (Translation by the author). *Id.* at 315. Regarding bilingual education for indigenous peoples in Mexico, see JULIO GARDUÑO CERVANTES, *EL FINAL DEL SILENCIO* (1983).

280. *See supra* note 256 and accompanying text.

281. The granting, holding and regulation of different types of agricultural lands, and the intense and persistent problems associated with this process, is at the core of Agrarian Law. Politically, this land program, and its impact upon indigenous communities, was turned into the most important rural program by the PRI, under the label of "Reforma Agraria" (i.e. agrarian reform). On these matters, *see* MARTHA CHÁVEZ PADRÓN, *DERECHO AGRARIO EN MEXICO* (Ed.

Problems associated with the holding and distribution of land were included among the major causes of the 1910 Revolution. In the southern States of Chiapas and Oaxaca, similar land problems continue today.<sup>282</sup>

The treatment and control of these rural problems has tended to be more political than legal, resulting in a series of a chronic and violent confrontations during which *caciques*, ranchers and sometimes even public authorities have displayed a pattern of abusive behavior in violation of the constitutional and human rights of indigenous peoples. These abusive practices have been so egregious that, in recent years, they have attracted widespread attention from Mexican<sup>283</sup> and international observers, particularly from NGOs in the United States.<sup>284</sup>

Under Agrarian Law, Mexican nationals, but in particular indigenous peoples and rural communities, have a constitutional right to obtain lands from the government by means of "restitution" or *ejidos*.<sup>285</sup> However, numerous land problems continue to plague indigenous communities. First, not all *campesinos* who have the legal right to a piece of land, and who have already applied for said lands, have received them.<sup>286</sup> Second, although *ejidos* in theory are communal lands for the collective use of a rural community, numerous *ejidos* have been appropriated by individual *ejidatarios*. This

---

Porrúa, México, 1993); RAÚL LEMUS GARCÍA, *DERECHO AGRARIO MEXICANO* (Ed. Limusa, México, 1992).

282. In the most recent Americas Watch Report (June 1990), ch. VI, devoted to "Rural Violence" reads:

Rural violence is an unabating problem in Mexico. It grows out of long-standing disputes over land and out of frustrations by peasants and members of Indian communities over the inadequacies of Mexico's land reform program. The Mexican government responds as though the violence were an inevitable by-product of land-related tensions in the countryside, and rarely intervenes.

A POLICY OF IMPUNITY, *supra* note 151.

283. PRUDENCIO MOSCOSO PASTRANA, *REBELIONES INDIGENAS EN LOS ALTOS DE CHIAPAS* (1992); MARÍA DEL CARMEN LEÓN CÁZARES, *UN LEVANTAMIENTO EN NOMBRE DEL REY NUESTRO SEÑOR* (1988); GRACIELA FLORES LÚA *ET AL*, *LAS VOCES DEL CAMPO: MOVIMIENTO CAMPESINO Y POLÍTICA AGRARIA, 1976-1984* (XXX Editores 1988); Ana Bella Pérez Castro, *ENTRE MONTAÑAS Y CAFETALES: LUCHAS AGRARIAS EN EL NORTE DE CHIAPAS* (1989); ANA MARÍA SALAZA, *LA PARTICIPACION ESTATAL Y LA COMERCIALIZACION DEL CAFE EN EL ESTADO DE CHIAPAS* (1988). See also Rodríguez (Chap. VI) and *Violaciones a los Derechos Indígenas*, (Chap. VII) in *DERECHO INDIGENA*, *supra* note 236, at 145-206 and 207-216, respectively.

284. Some of the most recent publications include AMNESTY INTERNATIONAL, *MEXICO: LOS DERECHOS HUMANOS EN ZONAS RURALES: INTERCAMBIO DE DOCUMENTOS CON EL GOBIERNO MEXICANO SOBRE VIOLACIONES DE LOS DERECHOS HUMANOS EN OAXACA Y CHIAPAS* (1986) [hereinafter *DERECHOS HUMANOS EN ZONAS RURALES*]; A POLICY OF IMPUNITY, *supra* note 151; AMERICAS WATCH, *UNCEASING ABUSES: HUMAN RIGHTS IN MEXICO ONE YEAR AFTER THE INTRODUCTION OF REFORM* (Sept. 1991) [hereinafter *UNCEASING ABUSES*]; *CONQUEST CONTINUED*, *supra* note 12; and MINNESOTA ADVOCATES FOR HUMAN RIGHTS, *CIVILIANS AT RISK: MILITARY AND POLICE ABUSES IN THE MEXICAN COUNTRYSIDE* (Aug. 1993) [hereinafter *CIVILIANS AT RISK*].

285. Regarding the "restitution of lands and waters" under Agrarian Law, see Mario Ruiz Massieu, *DERECHO AGRARIO REVOLUCIONARIO*, 321-27 (1987).

286. Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 306.

common irregularity has created severe problems within rural communities, deeply straining the relations between the affected *ejidatarios*.<sup>287</sup>

A third problem derives from an arbitrary and illegal practice: a substantial number of *ejidos* have been allocated to individual owners by the Board of Directors who legally control the *ejido*. This allocation usually applies to the best lands, thus creating violent disputes among *ejidatarios*.<sup>288</sup> Finally, the administrative process established by Agrarian Law for the granting of lands to indigenous communities (i.e. "restitution of lands") is quite long and bureaucratic, taking some 15 years to be completed. As a result, when the lands are finally granted, the community that receives them is very different demographically. This chronological gap often creates severe problems between older and younger *ejidatarios*.<sup>289</sup>

Not surprisingly, the most volatile problem is when the *ejidatarios*, tired of waiting to obtain their lands and discouraged by official redtape, unanswered petitions, arbitrary acts by landowners and corruption, turn to violent and illegal means and "invade" lands in the vicinity physically possessed or legally owned by others. This triggers violent reactions from *caciques* and *rancheros* (i.e. cattle and plantation landowners).<sup>290</sup> These confrontations, which take place frequently in Chiapas and Oaxaca, often result in violence against the Indians by landowners whose lands were invaded,<sup>291</sup> or in the detention and criminal prosecution of Indians.<sup>292</sup>

Since 1929, the *Confederación Nacional Campesina* (National Peasant Confederation, or CNC) has been the PRI's rural arm in Mexico. The CNC plays a decisive role not only in electing the representatives in the *Comisariados ejidales* and the *Comisariados de Bienes Comunales*, whose intervention is essential in land reform allocation and restitution pursuant to Mexican Agrarian Law, but in mobilizing people for elections. The CNC mobilizes peasants and other members of rural communities to participate in the elections of municipal mayors, state governors, local legislators, federal deputies, and senators, and the president.<sup>293</sup>

---

287. *Id.*

288. *Id.*

289. *Id.* In a recent report produced at the end of a fact-finding mission "to investigate current human rights practices in the State of Chiapas," Minnesota Advocates for Human Rights (MAHR) concluded: "Where the complexity of the current legal status of land makes the regularization of land tenancy disputes and petitions impracticable within reasonable time limits, investigate and propose alternate temporary measures which impart a sense of justice and fairness for all concerned." CONQUEST CONTINUED, *supra* note 12, at 71.

290. Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 306-07. For a detailed account of the arbitrary and illegal acts committed against Indians in Chiapas, see *Agrarian Conflict and Constitutional Changes* (Chap. VII) CONQUEST CONTINUED, *supra* note 12, at 59-69.

291. CONQUEST CONTINUED, *supra* note 12, at 62.

292. *Id.*

293.

[T]he PRI has dominated Chiapas politics for more than six decades. Over the past several years, however, it has enjoyed such an impressive showing at the polls that

However, during the last two decades, indigenous peoples in Chiapas and Oaxaca, probably disillusioned with the failed promises made by the PRI to resolve chronic land problems, started creating rural organizations to support their land demands and to politically advance their cause.<sup>294</sup> These political associations arrange for *campesinos* with no lands to have access to rural lands in order to improve their labor conditions and raise their salaries.<sup>295</sup> To pursue their ends, these associations organize protests, marches and demonstrations, as well as illegal invasions of lands which usually lead to violent acts, including insults, rampage, thefts, battery and even murder.<sup>296</sup>

The increasing number of violent acts committed by activists from these organizations has resulted in a gradual escalation of the degree of violence utilized by CNC members, ranchers and their *guardias blancas*, as well as state and federal authorities, to repel these acts in the states of Chiapas and Oaxaca, during the last fifteen years.<sup>297</sup> As a consequence, leaders and activists from these organizations have complained that they have been subjected to numerous constitutional and human rights violations, such as harassment, intimidation, death threats, summary executions, disappearances, and torture at the hands of individuals who control the political, socio-economic, and legal institutions in that part of Mexico.<sup>298</sup> These charges have been documented by Amnesty International in two memoranda, one submitted in 1984 to the then-President Miguel de la Madrid Hurtado,<sup>299</sup> and the other to high officials of the government of Mexico at the federal and

---

critics have questioned the validity of the vote. In 1991, for example, the PRI won 100% of the vote in 50 municipalities, ranking Chiapas as its strongest State.

Walker, *supra* note 46, at A8.

294. Such groups include: Coordinadora Nacional Plan d Ayala (CNPA); Movimiento d Unificacion y Lucha Triqui (MULT); Coalicion Obrera Campesina Estudiantil del Istmo (COCEI); Organizacion Campesina Emiliano Zapata (CEZ); and Central Independiente de Obreros Agricolas y Campesinos (CIOAC). For a detailed description of each of these organizations, see DERECHOS HUMANOS EN ZONAS RURALES, *supra* note 284, at 18.

295. *Id.* at 19. The CIOAC was formed in 1975 and is affiliated to the Socialist Unified Party of Mexico (PSUM).

296. McDonnell, *supra* note 6, at 32.

297. See DERECHOS HUMANOS EN ZONAS RURALES, *supra* note 284, at 20-41.

298. *Id.*

299. For a reference to the content of this 45-page memorandum, dated October 31, 1984, see DERECHOS HUMANOS EN ZONAS RURALES, *supra* note 284, at 13. In this memorandum Amnesty International expressed its concern on certain reports indicating that "members of organizations and peasant groups of the opposition, implicated in land disputes for land tenure, had lost their lives in circumstances suggesting that they had been summarily executed. . ." In addition, it made reference to "cases of detentions not acknowledged [by the authorities] and torture in both states" [Chiapas and Oaxaca], and provided specific details in cases involving eight inmates criminally accused or convicted, but considered as prisoners of conscience by Amnesty International (translation by author).

state levels in 1985.<sup>300</sup>

#### D. Contemporary "Mexican Ethnic Law"

Mexico's civil legislation is contained in its Civil Code<sup>301</sup> and it applies to all Mexicans, regardless of their ethnic origin.<sup>302</sup> However, numerous indigenous peoples continue to regulate social relations within their communities in accordance with traditional rules and norms, which form a special type of customary law,<sup>303</sup> an unwritten law solely based upon custom and tradition.<sup>304</sup>

Anthropologists and social workers have documented that most ethnic groups in Mexico live by their own traditional rules and principles regarding marriage, adoption, treatment of children, adultery, inheritance, contractual arrangements, property, possession, etc.<sup>305</sup> However, Mexico's contemporary legal system has not provided for institutional mechanisms which would allow the application of indigenous customary law to specific cases involving members of ethnic groups.<sup>306</sup> Public authorities in Mexico apply the law which is contained in official legal enactments to all Mexican nationals without making distinctions based on ethnic origin. Therefore, indigenous

300. "Los Derechos Humanos en el Sureste de México. Conclusiones de una Investigación de Amnistía Internacional en torno a violaciones de los Derechos Humanos en los Estados de Oaxaca y Chiapas," November 22, 1985, *reprinted in id.* at 12-15.

301. Formally, Mexico has two civil codes: one federal, which applies throughout Mexico on federal matters and to the Federal District (Mexico City) on ordinary matters; and 31 state codes, one for each state forming the Republic of Mexico. Inspired by French, Spanish, German and Italian legal sources, this code is divided into four books: Persons, Assets, Succession and Contracts. It was published in Mexico's Official Daily (Diario Oficial or D.O.) on March 26, 1926, entering into force on October 1, 1932. It has been amended several times, most recently by decree published in *D.O.* January 7, 1988.

302. Article 10 of the Civil Code for the Federal District provides:

The Mexican laws apply to all persons located in the Republic [of Mexico], as well as to actions and [factual] happenings which have taken place within its territory or jurisdiction and to those [actions or happenings] which have submitted to said laws, save when these [laws] provide for the application of foreign law and save, further, what is provided in the treaties and conventions to which Mexico is a party.

CODIGO CIVIL PARA EL DISTRITO FEDERAL, 59th ed. (Editorial Porrúa 1991) (Mex.) at 42 (translation by the author).

303. *See Nahmad, in DERECHO INDIGENA, supra* note 236, at 309.

304. The conciseness of this note suggests the need of legal researchers in Mexico to identify and analyze the legal content of indigenous customary law—a true "Mexican Ethnic Law"—as well as to contribute to enrich this new law based upon the latest international trends in this field.

305. For some interesting cases involving the application of "indigenous customary law" in civil and penal areas, *see Nahmad in DERECHO INDIGENA, supra* note 236, at 309-12.

306. As previously reported, in response to the mounting political pressure that indigenous peoples have been exerting for decades upon the federal government, President Salinas de Gortari decided to amend Article 4 of Mexico's Constitution in 1992, adding a short paragraph to finally recognize some of the most fundamental rights of indigenous peoples. *See supra* notes 269-71 and accompanying text.

customary law or "Mexican Ethnic Law" is not officially recognized.

"Mexican Ethnic Law" can be defined as customary law created and derived from the culture and value system characteristic of a given ethnic community and is applied by certain indigenous peoples to regulate their social, economic, and cultural relations within that community. Anthropologists recognized that the existence and application of this "Mexican Ethnic Law" does not center exclusively on civil law but that it embraces other areas as well, such as penal and labor law.<sup>307</sup> Furthermore, this customary law has developed institutions for conflict resolution and justice within certain ethnic communities.<sup>308</sup> Generally, these mechanisms for conflict resolution are based upon an evaluation of the case and a decision rendered by a group of elderly or wise men, endowed with both civil and religious authority.<sup>309</sup>

Despite the fact that the existence of these peculiar but intriguing forms of Mexican Ethnic Law have been acknowledged virtually since the Spaniards arrived at what is now Mexico in 1519, very little research has been conducted in this field in recent times. Most modern works have been devoted to describing ancient "Mexican Ethnic Law," namely, the basic rules and principles of indigenous customary law as they were practiced by indigenous groups prior to the conquest of Mexico in 1521.

For instance, early this century, a number of eminent Mexican jurists continued the nationalist trend initiated in Colonial times by chronicists and priests<sup>310</sup> to document and revive interest in "Mexican Pre-Colonial Law" (*Derecho Precolonial Mexicano*). This academic effort to document the history of Mexican Law was led by Jacinto Pallares,<sup>311</sup> Toribio Esquivel Obregón<sup>312</sup> and Lucio Mendieta y Núñez.<sup>313</sup> However, contemporary

307. See generally Nahmad, in *DERECHO INDIGENA*, *supra* note 236, at 312 and 310 respectively. For example, certain indigenous groups engage in the practice of certain forms of collective work for the benefit of a given community; peasants help a campesino when the family members of the campesino family are not able to assist with the agricultural labor or when the campesino has no money to pay workers for these services. This collective form of labor assists in preparing the land for seeding, picking up the crops, and even building houses. *Id.* at 313.

In the penal law area, customary law among certain indigenous groups provides, for instance, that a member of a given indigenous community who murders another member contracts the obligation of providing sustenance to the victim's widow and children. *Id.* at 310.

308. See FERNANDO BENÍTEZ, *LOS INDIOS DE MEXICO* (1981).

309. Depending upon the ethnic group in question, these groups of elderly or wise men are known as "Los Mandones" or "Los Gobernadores." *Id.*

310. Some of these early scholars included Bernal Díaz del Castillo, Clavijero, Motolinía, etc. See GUILLERMO F. MARGADANT, *INTRODUCCION A LA HISTORIA DEL DERECHO MEXICANO* 9-26 (Ed. Esfinge, 6th ed., México, 1984); and María del Refugio González, *Historia del Derecho Mexicano*, *INTRODUCCION AL DERECHO MEXICANO* 11-108 (Instituto de Investigaciones Jurídicas, UNAM, 2d. ed., México, 1983).

311. Jacinto Pallares, *Historia del Derecho Mexicano*, *CURSO COMPLETO DE DERECHO MEXICANO* (Exposición Filosófica y Doctrinal de Toda la Legislación Mexicana) México, 1904.

312. TORIBIO ESQUIVEL OBREGÓN, *APUNTES PARA LA HISTORIA DEL DERECHO EN MEXICO* (Editorial Polis, México, 1937).

Mexican legal scholars have not shown the same interest in studying the content, institutions, and application of current Mexican Ethnic Law. Legal literature in this field is greatly needed and it should be produced throughout Mexico.<sup>314</sup>

## VI. UNITED STATES-MEXICO RELATIONS

Traditionally, diplomatic relations between the United States and Mexico have been sensitive and complicated. The origin of this sensitivity may be traced back to the war between these nations, which brought disastrous territorial and emotional consequences to Mexico. The military confrontation of 1846-48 has been characterized as a most arbitrary and unjust war, a clear interventionist policy designed by the United States with the exclusive purpose of severing from Mexico more than half of its vast but unpopulated territories, including the lands which later became the states of California, Arizona, New Mexico, Colorado, Nevada, and Utah.<sup>315</sup>

Despite the relatively long time that has elapsed since then, the traumatic consequences of that tragic war profoundly influenced, and sometimes even dictated, the bilateral policy that Los Pinos and Tlatelolco maintained with the U.S. during the last 140 years. The complicated nature of the relationship of Mexico with the United States does not originate exclusively from historic sources. Geographical contiguity, which fosters and facilitates growing interaction between the two nations, and the increasing economic importance of the relations between them, principally those associated with trade, investments and business, no doubt contribute to this complexity.

However, the administration of President Salinas de Gortari undertook a vigorous effort not only to change this traditional and long-held policy towards the United States, but to profoundly modernize his country in key areas of the social, economic, political and legal arenas.

Probably because of Mexico's keen sensitivity to foreign interference in its domestic affairs, especially when it comes from its northern neighbor, the government of the United States has customarily maintained a very low official profile in evaluating Mexico's human rights record. This low-key approach has produced some frustration among NGOs in this country. Human Rights Watch, for example, has charged that "[T]he United States

---

313. See LUCIO MENDIETA Y NÚÑEZ, *EL DERECHO PRECOLONIAL* (Editorial Porrúa. Cuarta edición, México, 1981).

314. The constitutional amendment to Article 4, made by President Salinas de Gortari in 1992, appears to have generated some interest among legal researchers on the topic of human rights of indigenous peoples in Latin America. See, e.g., *DERECHO INDIGENA*, *supra* note 236.

315. See the works of the eminent internationalist Cesar Sepulveda; in particular, *CHAPTER VII: EXPLIACION BAJO OTRO NOMBRE (1846-1848), LA FRONTERA NORTE DE MEXICO. HISTORIA, CONFLICTOS, 1762-975 57-80* (1976). See also GLEN W. PRICE, *ORIGINS OF THE WAR WITH MEXICO: THE POLK-STOCKTON INTRIGUE* (1967); CHARLES SELLER, JAMES K. POLK. *CONTINENTALIST, 1843-1846* (1966); RICHARD W. VAN ALSTYNE, *THE RISING AMERICAN EMPIRE* (1960) and Richard R. Stenberg, *President Polk and California: Additional Documents*, *PACIFIC HISTORICAL REV.*, June, 1941, at 217-20.

has a long-standing policy of ignoring human rights violations occurring in Mexico.”<sup>316</sup> The rationale behind this policy is thought to be based on the security, business and investment interests the U.S. has at stake in Mexico.<sup>317</sup>

Also, during the legislative process to appropriate funds to Mexico in the form of foreign aid or technical assistance, for instance, neither the Executive, nor the U.S. Congress tend to recognize the existence of any human rights concerns. This is done notwithstanding that U.S. domestic legislation prohibits the granting of military or economic assistance to foreign nations which engage in a “consistent pattern of gross violations of internationally recognized human rights.”<sup>318</sup>

However, the “U.S. Department of State 1993 Human Rights Report” (published in 1994), contains the following comment on Mexico:

In 1993 there continued to be widespread human rights abuses and a frequent failure to punish violators despite [Mexico’s] government efforts to do so. Important abuses included extrajudicial killings by the police, torture, illegal arrests, glaring prison deficiencies, and extensive illegal child labor in the informal economy. The [Mexican] government has made strong efforts to end the “culture of impunity” surrounding the security forces through reforms in the Office of the Attorney General (PGR), continued support to the National Commission for Human Rights (CNDH), and establishment in 1993 of state-level commissions for human rights. These actions together with increased public awareness of human rights concerns have brought about a noticeable decline in the incidence of violations in Mexico.<sup>319</sup>

The reasons for the U.S. government to maintain this policy vis-à-vis Mexico may not be as paradoxical as it may appear. The U.S. maintained similar policies regarding Chile during the Pinochet regime,<sup>320</sup> the Somoza government in Nicaragua,<sup>321</sup> and maintains a similar policy regarding the People’s Republic of China today.<sup>322</sup>

Some valid arguments may support this U.S. policy. First, this may be attributable to the unprecedented good relations which currently exist between

316. A POLICY OF IMPUNITY, *supra* note 151, at 83.

317. *Id.*

318. *Id.*

319. U.S. DEPARTMENT OF STATE 1993 HUMAN RIGHTS REPORT 2 (1994) (emphasis added). This official report comprises the following five sections: 1) Respect for the Integrity of the Person; 2) Respect for Civil Liberties; 3) Respect for Political Rights; 4) Governmental Attitude regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights; 5) Discrimination based on Race, Sex, Religion, Disability, Language, or Social Status; and 6) Worker Rights.

320. William Chapman, *End to Ban on Chile Aid Voted, Senate Would Allow Reagan to Resume Military Assistance; Senate Votes, 86 to 0, to Repeal Ban on Military Assistance to Chile*, WASH. POST, Oct. 23, 1981, at A1.

321. Alan Riding, *U.S. Loses Ground in Central America and Backs Changes in a Bid to Recoup*, N.Y. TIMES, July 9, 1980, at A10.

322. Paul Houston, *Senate Says No To Bush China Policy*, L.A. TIMES, July 24, 1991, at A1.

the two countries. In the words of Alexander F. Watson, Assistant Secretary of State, "never before in history has the United States enjoyed better relations with its neighbor to the south and third largest trading partner."<sup>323</sup> Second, the volume of U.S. trade investment, and business with Mexico grows substantially every year, and is likely to expand even further because of NAFTA.<sup>324</sup> Third, Mexico continues to show a high degree of commitment in the fight against drugs, in close coordination with the U.S.<sup>325</sup> And, finally, there is no question that, in the eyes of the government of the United States, Mexico is legitimately engaged in a strong and permanent campaign to eradicate human rights violations.<sup>326</sup>

The Salinas administration's efforts in favor of human rights are illustrated in the following sections.

### A. Changes in Governmental Agencies

These changes are taking place at the federal, state and local levels.<sup>327</sup> Federally, President Salinas has transformed the administrative structure and functions of the Attorney General's Office (*Procuraduría General de la República* or PGR), empowered to prosecute and investigate federal crimes, notably those which are drug related.<sup>328</sup>

For a number of years, the prosecution and investigation of certain crimes, in particular those associated with drugs, conducted by Mexico's federal judicial police, have been a constant source of human rights violations. As stated in a recent report of the Committee on Foreign Affairs of the House of Representatives:

Chief among our human rights concerns in Mexico is mistreatment of detainees by Mexican police, particularly the Mexican Federal Judicial Police, or the MFJP. The MFJP is the investigative arm of the Attorney General's Office and has traditionally enjoyed considerable immunity from prosecution for its human rights abuses. Furthermore, members of the

---

323. *Hearing Before the Subcommittee on Western Hemisphere Affairs, of the Committee on Foreign Affairs*, 101st Cong., 20th Sess. 1 (1994) (statement of Alexander F. Watson, Asst. Sec. of State) [hereinafter *Western Hemisphere Affairs*].

324. United States exports to Mexico rose 15.7 percent, to a record \$11.85 billion, seasonally adjusted, in the first quarter compared with the comparable quarter a year earlier, according to the Commerce Department. Imports from Mexico rose 22.5 percent, to a record \$11.29 billion. That narrowed the nation's quarterly trade surplus with Mexico by 45.1 percent, to \$560 million. Allen R. Meyerson, *U.S.-Mexico Trade Advances Sharply Under New Accord*, N.Y. TIMES, June 6, 1994, at A1.

325. *U.S. Says Mexico Vastly Improving Its Anti-Drug War*, U.P.I., Nov. 14, 1993, available in LEXIS, Nexis Library, UPI File.

326. See generally CARPIZO, *supra* note 176.

327. At the federal level, the restructuring of the Attorney General's Office and the creation of an Institute to train federal prosecutors deserves a special mention. The creation of state commissions of human rights, directed by a constitutional mandate, is a most significant development at the state level. On these matters, see *infra* notes 333-334 and accompanying text.

328. See *infra* notes 333-34 and accompanying text.

MFJP often employ what are called *madrinas*, or private agents to assist them in their investigations. Because there are no legal provisions governing their existence, the *madrinas* are even further beyond the reach of the law.<sup>329</sup>

The changes introduced in the Attorney General's Office, and in criminal procedure law, are progressive measures to do away with human rights violations and with the impunity traditionally enjoyed by the agents of the MFJP. The amendments to the Penal Code and to the Code of Penal Procedure were formally initiated in 1989,<sup>330</sup> in a legislative process which has continued until today.<sup>331</sup> Most of the procedural amendments introduced by President Salinas closely parallel the constitutional guarantees and other protections provided to criminal defendants in the United States.<sup>332</sup> Substantially, these procedural changes were made to expedite the rendering of penal justice, as well as to protect the fundamental rights of any person accused of a crime.<sup>333</sup>

Probably the most significant change in penal proceedings introduced by these amendments consists in not relying solely upon the confession of the accused as the only means to determine his or her guilt. Other probative elements must be utilized in criminal proceedings now. The Judicial Police has been legally deprived of what used to be its most feared function: to hear the confession of the accused. A new provision in the Code dictates that any confessions rendered to the Judicial Police have no probative value and are null and void.<sup>334</sup>

The following are now considered to be fundamental rights of the accused: (1) legal counsel should assist the accused (*el inculpado*) from the beginning to the end of penal proceedings; (2) the accused has the right to

329. *Western Hemisphere Affairs*, *supra* note 328, at 6.

330. The 1989 amendments to the Penal Code created a number of crimes when committed by policemen or by customs or immigration agents involved in an investigation, including certain types of behavior associated with any kind of public office (i.e. *Abuso de autoridad*). For an analysis of these amendments, see RUBÉN VALDEZ ABASCAL, *LA MODERNIZACION JURIDICA NACIONAL DENTRO DEL LIBERALISMO SOCIAL* 196-226 (1990).

331. See Decreto que enmienda, adiciona y deroga varios articulos delCodigo Penal para el Distrito Federal (Decree that amends, adds and repeals several articles of the Penal Code for the Federal District in Ordinary Matters and for the entire Republic in Federal Matters, of the Federal Code of Penal Procedure, of the Code of Penal Procedure for the Federal District, of the "Amparo" Act (derived from Articles 103 and 107 of the Federal Constitution), and other provisions, *D.O.* of January 10, 1994, Second Section, at 1-40 (translation by the author).

332. See, e.g., *Miranda v. Arizona*, 384 U.S. 436 (1966). See also *infra* note 347 and accompanying text.

333. The 1988 and 1989 amendments to the Code of Penal Procedure were directed at strengthening the prosecutorial functions of the Agente del Ministerio Público (i.e. Public Prosecutor) and to control and regulate the functions of the Judicial Police, who should "only assist" the Ministerio Público. As a result of these changes, the Judicial Police is no longer authorized to (1) subpoena persons to render declarations, (2) receive declarations, (3) conduct interrogatories, or (4) record in writing (i.e. *levantar actas*) any declarations, statements or interrogatories; all of these official functions are exclusively reserved to the Ministerio Público now. See ABASCAL, *supra* note 330, at 208.

334. *Id.* at 208-09.

be assisted by legal counsel when rendering a declaration; (3) legal counsel has the right to challenge any improper or legally unauthorized questions to be answered by the accused; (4) the accused has the right to know the criminal charges filed against him/her, as well as the name of the accuser, if any; (5) the accused has the right to contact any person immediately, and with his/her legal counsel; (6) to this effect, a telephone, or other adequate means, should be made available to the accused; (7) the defense counsel has the right to know the nature and the specific type of criminal charges filed against the accused; (8) the accused has the right to keep silent and not to incriminate him/herself; (9) a confession which does not comply with the "formalities established by the law" may not be utilized at all; such formalities include, *inter alia*, that the declaration should be rendered in the presence of the defense counsel or of a person trusted (*persona de confianza*) by the accused.<sup>335</sup>

In sum, the changes in governmental agencies, coupled with the profound transformation that is taking place in the Mexican legal system in areas associated with the protection of fundamental rights, have contributed to create a new climate that favors a modern and more expeditious system of justice, sanctions abusive practices of authorities (in particular those of the Judicial Police), and implements an enhanced respect of and recognition for human rights.

### B. Legislative Changes

President Salinas de Gortari has initiated a profound legal transformation of his country's legal system.<sup>336</sup> In the human rights area, those changes started at the highest level: by amending Mexico's 1917 Constitution.<sup>337</sup>

Article 4 of the Constitution was amended, as indicated earlier,<sup>338</sup> in order to recognize the existence of human rights in favor of the indigenous peoples. Articles 18 through 22 were also modified to expand the constitutional rights of accused persons in criminal proceedings,<sup>339</sup> including the

335. *Id.* at 211-212; RENÉ GONZÁLEZ DE LA VEGA, *LA JUSTICIA: LOGROS Y RETOS* (1993).

336. JORGE CARPIZO, *ESTUDIOS JURIDICOS EN TORNO A LA CONSTITUCION MEXICANA DE 1917 EN SU LXXV ANIVERSARIO* viii (1992) Dr. Carpizo wrote that since its promulgation in 1917, the Constitution of Mexico has been amended 375 times. During his tenure, President Salinas has amended the Constitution eleven times, for a grand total of 383 amendments.

337. Affecting the area of human rights, President Salinas has made amendments to the following ten articles of Mexico's 1917 Constitution: Articles 3, 4, 5, 14, 16, 24, 27, 31, 102, Section B; and 130. See JORGE MADRAZO, *DERECHOS HUMANOS: EL NUEVO ENFOQUE AT MEXICANO* 52, 91-101 (1993).

338. The addition to Article 4 of the Constitution, recognizing "[T]he Mexican nation as having a pluricultural composition, originally based in its Indigenous peoples," was accomplished by means of a Presidential decree published in *D.O.* Jan. 28, 1992, *supra* note 293 and accompanying text.

339. For more detailed information, see *infra* notes at 312-13 and accompanying text.

investigations and interrogatories conducted by the police.<sup>340</sup>

Other constitutional amendments with human rights consequences were made also to Articles 3, 31, 27, and 131. The changes to the first two articles enlarged the authority of the state in the area of public education.<sup>341</sup> Article 27 drastically transformed the ancient land institution of the *ejido*, legally allowing *ejidatarios* to hold individual title in *ejidos* and to transfer and alienate them.<sup>342</sup> Article 130 was amended to "modernize"<sup>343</sup> the relations between church and state, which had been a delicate question since the enactment of the *Leyes de Reforma*. Mexico now recognizes legal personality of churches; the right of religious associations to acquire real estate; the constitutional right of churches to conduct external religious ceremonies; non-religious education in public schools; a special personal legal status for religious ministers; and, the application of civil provisions to these matters.<sup>344</sup>

Federal and State codes of penal procedure,<sup>345</sup> as well as penal codes,<sup>346</sup> have been also changed to put them in symmetry with the new constitutional provisions. Most of the improvements introduced by these amendments, designed to guarantee the constitutional rights to the accused and to provide them due process, appear to have been inspired by U.S. law.<sup>347</sup> Furthermore, most of these procedural changes were formulated

340. For a comment on the effects of these amendments, see U.S. DEPARTMENT OF STATE 1993 HUMAN RIGHTS REPORT, *supra* 319, at 2-9; and *Current Developments*, *supra* note 177.

341. See MADRAZO, *supra* note 337, at 98. Based upon these amendments (*D.O.* of March 5, 1993), the government of Mexico, *inter alia*, is empowered to impart not only elementary education (as established since 1917) but also pre-school (kindergarten) and secondary education.

342. *D.O.* Jan. 6 and 28, 1992. For a commentary on these amendments, MADRAZO, *supra* note 337, at 95-96. Madrazo states that the amendments' objectives stemmed from "the necessity of expanding justice and freedom in the countryside . . . searching for a better legal certainty in the countryside, to capitalize it and to protect and strengthen the *ejido* and the communal way of living." MADRAZO, *supra* note 243, at 95. This change allowed, *inter alia*, civil and commercial corporations to operate in rural areas, provided said corporations complied with limitations imposed on the "small individual property." (translation by the author). MADRAZO, *supra* note 337, at 95-96.

343. See PRESIDENT CARLOS SALINAS DE GORTARI, THIRD STATE OF THE NATION REPORT. Presidencia de la República. Mexico, November 1, 1991, at 20.

344. *D.O.* January 28, 1992. See also MADRAZO, *supra* note 337, at 100-101.

345. Presidential decree amending several provisions of the Federal Code of Penal Procedure and the Code of Penal Procedure for the Federal District, *D.O.* January 8, 1991. For the respective texts, see MADRAZO, *supra* note 337, at 221-46 (translation by the author).

346. Presidential decree amending provisions of the Penal Code for the Federal District in ordinary matters and for the entire Republic on federal matters; the Federal Code of Penal Procedure, and the Code of Penal Procedure for the Federal District, *D.O.* December 30, 1991. For these texts, see MADRAZO, *supra* 337, at 247-63.

347. *Miranda v. Arizona*, 384 U.S. 436, 444, 478-79 (1966). Under *Miranda*, prior to any custodial interrogation, the person must be warned that: (a) he has the right to remain silent; (b) any statement he makes may be used as evidence against him; (c) he has the right to the presence of an attorney; and (d) if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Unless and until these warnings or a waiver of these rights are demonstrated at trial, no evidence obtained during the interrogation may be used against the accused. See also *Giordenello v. U.S.*, 357 U.S. 480, 485 (1958). According to the Court in *Giordenello*, a police officer who wishes to obtain an arrest warrant must present to a magistrate

and proposed to interested parties in Mexico, such as attorneys, legislators and the CNDH, by certain NGOs from the United States, in particular the Minnesota Lawyers International Human Rights Committee and Amnesty International U.S.A.<sup>348</sup>

### C. Conventional International Law

In conjunction with its foreign policy, the government of Mexico has adhered to the most important international human rights conventions, both at the universal and regional levels. However, actions of the Mexican Army during the Chiapas rebellion violated many of these conventions. These actions appear to be in contravention of the Universal Declaration of Human Rights,<sup>349</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>350</sup> the International Covenant on Civil and Political Rights,<sup>351</sup> the American Convention on Human Rights,<sup>352</sup> the Convention Against Torture

---

or judge a statement under oath setting forth the essential facts constituting the offense and the facts that led the officer seeking the warrant to believe that the defendant committed the act.

348. See the works of these NGO's cited in *supra* note 284. In addition, see JAIL CONDITIONS IN MEXICO Amnesty International, U.S.A.

349. G.A. Res. 217A(III), U.N. Doc. A/810 at 17 (1948).

350. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. At the time of depositing the instrument of adhesion (March 23, 1981), Mexico made a formal reservation in relation to Article 8 of the Pact, regarding the formation of unions and the workers' right to strike. Mexico's reservation provided that this article should be applied "under the conditions and in conformity with the proceedings established by the pertinent provisions of the Constitution and its complementary legislation" (translation by the author). For the text of the reservation, see *Pacto Internacional Derechos Economicos Sociales y Culturales*, D.O. of May 12, 1981, reprinted in LEGISLACIÓN, *supra* note 219, at 145-60.

351. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, 6 I.L.M. 368 (1967). Mexico made two formal reservations to Articles 13.1 and 25.1, para. (b) of the covenant, regarding the expulsion of foreign nationals (since Article 33 of Mexico's Constitution grants absolute power to the Mexican Executive to deport foreigners without any formal proceedings) and the right to vote in free elections since Article 13 of Mexico's Constitution provided (when the reservation was made) that the "ministers of cults have neither an active nor a passive vote, nor the right to associate for political purposes" (translation by the author). For the text of this Pact, and the reservations, see *Pacto Internacional de Derechos Civiles y Politicos*, D.O. May 20, 1981, reprinted in LEGISLACIÓN, *supra* note 219, at 161-86. For a discussion of the Mexican Army's actions violating the covenant, see PHYSICIANS FOR HUMAN RIGHTS AND HUMAN RIGHTS WATCH/AMERICAS, *supra* note 231, at 114.

352. American Convention on Human Rights, Nov. 22, 1969, O.A.S. Treaty Ser. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23 doc. 21 rev. 6 (1979). While depositing its instrument of adhesion (March 24, 1981), Mexico made a declaration and a formal reservation. See *Convencion Americana Sobre Derechos Humanos*, D.O. May 7, 1981, reprinted in LEGISLACIÓN, *supra* note 219, at 187-219. In its recent report, Human Rights Watch/Americas concludes: "Torture and cruel treatment, as well as prolonged detention in violation of Mexican law, were common features of Army detention." THE NEW YEARS REBELLION, *supra* note 180, at 2. In its formal petition before the Inter-American Commission on Human Rights of the Organization of American States, asserts that on March 31, 1993, the Centro de Derechos Humanos "Fray Bartolomé de las Casas" issued a public statement documenting the Mexican Army's involvement in detaining and torturing several local residents after two members of the military were killed by unknown attackers. Petition, *supra* note 229, at 5.

and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>353</sup> the Inter-American Convention to Prevent and Punish Torture;<sup>354</sup> the Convention of Rights and Duties of States in the Event of Civil Strife;<sup>355</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>356</sup>

#### D. Creation of the National Commission of Human Rights

As a corollary to this comprehensive effort, in June 1990, the President of Mexico created the National Commission of Human Rights (CNDH).<sup>357</sup> Furthermore, based upon another amendment to the Constitution,<sup>358</sup> it is now obligatory for every state in the Republic of Mexico, and for the Federal District, to create state commissions to guarantee the respect and promotion of human rights within their respective jurisdictions. In its 1993 Report, the U.S. State Department points out that these state commissions, which became operational in 1993, were established "by legislation, not executive order."<sup>359</sup>

In a ceremony to commemorate the CNDH's fourth anniversary in early June of 1994, President Salinas said:

During these years, Mexicans have undertaken a joint effort towards a better protection and defense of human rights, a task which is still unfinished. Because of this, we support with factual deeds the performance of the National Commission of Human Rights and, at the same time, we shall endeavor to make more efficient the work of the organs which impart justice.<sup>360</sup>

---

353. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984). Convencion Controla Tortura y Otros Tratos o Penas Cruels, Inhumanos o Degradantes, D.O. March 6, 1986, reprinted in LEGISLACIÓN, *supra* note 219, at 221-28.

354. Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S. Treaty Ser. No. 67, O.A.S. Doc. OEA/Ser. P/AG/doc.2023/85 rev. 1, at 46. D.O. of September 11, 1987.

355. Convention on the Rights and Duties of States in the Event of Civil Strife, Feb. 20, 1928, 46 Stat. 2749, 134 LNTS 45. Mexico adhered to this convention on February 6, 1929; D.O. of March 18, 1929.

356. International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195, D.O. of January 13, 1975 and January 18, 1975.

357. D.O. of June 6, 1990. On the origins and constitutionality of the CNDH, *see* Carpizo, *supra* note 326, at 115-34.

358. Presidential decree that amends Article 102 of the Constitution, D.O. January 28, 1992. For the text of this decree, *see* MADRAZO, *supra* note 337, at 127-29. *See also* CARPIZO, *supra* note 319, at 120-34.

359. U.S. DEPARTMENT OF STATE 1993 HUMAN RIGHTS REPORT, *supra* note 319, at 17 [hereinafter HUMAN RIGHTS REPORT].

360. Stenographic version of President Carlos Salinas de Gortari's speech, Segundo Informe anual de actividades de Jorge Madruzo Cuellar, Presidente de la Comision Nacional de Derechos Humanos, Leido durante la ceremonia efectuada en el Salon Manuel Avila Camacho de la Residencia oficial de los Pinos (Junio 1994) (translation by the author).

There is no doubt that the U.S. government could harden its policy towards Mexico on human rights questions, as it is being advocated by some of its critics.<sup>361</sup> However, the key question is whether this change of the U.S. policy is likely to produce the desired results in Mexico: namely, a consistent and institutional improvement in the overall protection of human rights. Human rights violations are among the most sensitive issues on the agenda of the government of Mexico. Because of its grave legal and political implications, the mere existence of this problem has not been officially recognized until most recently.<sup>362</sup>

In an article in Mexico City's daily *El Nacional*, Mariclaire Acosta, the President of the Mexican Commission for the Defense and Promotion of Human Rights, asserted that the Salinas administration is "the first one to recognize that this [persistent violation of human rights] is a grave problem."<sup>363</sup> Previous administrations did not acknowledge the existence of this problem, recognizing it only as minor and sporadic, notwithstanding the voluminous number of cases and incontrovertible evidence accumulated by NGOs.<sup>364</sup>

The intense controversy the negotiating process and final approval of NAFTA generated in the United States and Canada, was a key factor in the emergence, presence, and visibility of human rights, as a public topic. Had it not been for NAFTA, the question of human rights in Mexico would have taken considerably longer to make its public entry into that country's legal, political and cultural landscape.

A number of reasons explain why the Salinas administration officially recognized the importance of human rights in Mexico. Both domestic, as well as external, factors contributed to this recognition.<sup>365</sup> Domestically, this recognition came as a result of the "crisis of legitimacy" that his government confronted since its inauguration on December 1, 1988.<sup>366</sup>

---

361. See generally the organizations and reports mentioned in *supra* note 260, in particular AMNESTY INTERNATIONAL and HUMAN RIGHTS WATCH.

362. Alejandro Sobarzo, *Nafta and Human Rights in Mexico*, 27 U.C. DAVIS L. REV. 607-24 (Summer 1994). See this article for a pro-government review of the situation of human rights in Mexico. Dr. Sobarzo, a former Director of the PRI's Office of International Relations, currently is the Regional Delegate of Mexico's Secretariat of Foreign Affairs (SRE) in Sonora.

363. Acosta, *supra* note 179, at vi.

364. See, *inter alia*, A POLICY OF IMPUNITY, *supra* note 151, at 9-21; HUMAN RIGHTS REPORT, *supra* note 359, at 5-6; and Prepared Statement of Amnesty International, U.S.A., in *Current Developments*, *supra* note 177, at 35-68.

365. See ACOSTA, *supra* note 179, at vi.

366. Larry Rohter, *Can He Save Mexico?*, N.Y. TIMES, Nov. 20, 1988, § 6, at 34. It has been alleged that President Salinas, competing for the PRI, in fact lost the presidential election in 1988 and that the winner was Cuauhtémoc Cárdenas, the PRD candidate. The official final count gave 51% of the votes to the PRI and 49% to the PRD. The PRI publicly accepted that it had lost the election in Mexico City, that favored the PRD.

Salinas now finds himself with his own credibility in question. He won the July 6 election with an unprecedentedly low 50.7 percent of the vote, and that only after long delays in counting ballots—delays the opposition cited as proof of massive vote fraud.

Externally, the Salinas administration was virtually compelled to develop a "positive international image" for Mexico, indispensable to guarantee success in concluding NAFTA with the United States and Canada.<sup>367</sup> For example, the creation of the National Commission of Human Rights in Mexico City, in June of 1990, took place around the time when serious human rights violations of international consequences had been alleged,<sup>368</sup> as well as the presentation of America's Watch book *Human Rights in Mexico: A Policy of Impunity*.

The official U.S. policy with respect to human rights in Mexico has been deliberately timid and discreet. This policy centers upon a relationship of respect and non-U.S. intervention in Mexico's internal affairs, especially now that closeness, cooperation and cordiality tend to predominate in these bilateral interactions. If U.S. policy is hardened it is likely to have adverse effects on United States-Mexico relations and be counterproductive.

It is only logical, then, that the United States should adhere to a policy that fully respects the will of the Mexican people regarding human rights in their country. Now that the government of Mexico, and especially the Mexicans, are interested in the protection and dissemination of human rights, the U.S. should provide whatever encouragement and support are needed for this trend to continue.

At the non-official level, both individuals and institutions in this country, in particular NGOs and academicians, should be ready and willing to provide any needed information, assistance and cooperation to their counterparts in Mexico to enhance and strengthen the human rights cause.

In early June, the National Commission of Human Rights produced a report on the allegations of human rights violations committed as a result of the Chiapas conflict. In its recommendations, the CNDH expressly recognized that members of the Mexican Army, as well as public servants of the Attorney General's Office "physically mistreated" at least fifteen persons in Ocosingo, Chiapas, "denying them food and water," and charging them falsely.<sup>369</sup> On the question of massive expulsion of indigenous peoples, the

---

Cardenas, who was officially awarded 31.1 percent of the vote but claims he and his populist National Democratic Front were the true victors, charges that the election proves that the P.R.I. is hopelessly corrupt and incapable of reforming itself, and that Salinas has become the prisoner of the very forces he says he wants to supplant.

In its "Document of Demands for a Dignified Peace in Chiapas," dated March 1, 1994, the EZLN demanded the resignation of the Federal and State governments, claiming that they reached power through electoral fraud. Demand 2, app. 2; 254 BOLETIN DE INFORMACION SEMANAL DE LA SECRETARIA DE RELACIONES EXTERIORES, March 5, 1994, at 49 (translation and emphasis by the author).

367. See ACOSTA, *supra* note 179, at vi.

368. Acosta suggests that the CNDH's creation anteceded, by a few days, the killing of the human rights advocate Norma Corona and the death threats made against Jorge Castañeda. *Id.*

369. See CNDH Recomendación 53/94, dated April 14, 1994, at 2, 3, addressed to the Attorney General of Mexico. The CNDH recommends that the criminal charges filed before the First District Court in the State of Chiapas (Causa Penal 6/94) be dismissed for lack of merit. *It should be noted that the CNDH did not formulate any charges, nor did it request the conduct*

CNDH states:

The problem of expulsions has not been resolved after almost twenty years [have passed] since the first massive expulsion of Indians in San Juan Chamula in 1974 was recorded, and after almost four years since the CNDH received the first complaint . . . it is estimated that more than 15,000 Indians (although some estimates surpass 25,000) have been expelled from their locales and municipalities over the last 20 years, most of them in the municipality of San Juan Chamula [Chiapas]. . . . Expulsions are generally backed with physical and moral violence, jailing of men, women and children, raping of women, battery in front of the community (including the total undressing of women), plunder, destruction and burning of houses, [and] humiliations, among other mistreatments. The complainant pointed out to the municipal authorities as responsible for these violations, specifically the mayor of the village [Presidente municipal], the judge and the members of the city council [Regidores].<sup>370</sup>

### CONCLUSION

The range of contrasting interpretations of the Chiapas rebellion, most filled with emotional intensity, may be characterized as one of the most fascinating reflections of Mexico's modern schizophrenic personality. Some Mexicans were in favor of a military wipe-out, leading to the "complete annihilation" of the rebel forces, while few others favored a more rational approach. Whether on the side of emotion or rationality, the conflict of Chiapas placed on the negotiating table of Mexico's public opinion—for the first time in Mexican history—of the contrasting differences between indigenous peoples and *mestizos*, or probably more directly, the gulf between poor and wealthy Mexicans.

Philosophically, the rebellion in Chiapas touched upon one of the most hidden secrets that has been living in Mexico since times immemorial times: a pervasive racial discrimination directed against its own indigenous peoples. There is no doubt the fifty-six ethnic groups that have managed to survive in Mexico have suffered a constant but silent discrimination in cultural, legal, political, and economic sense. Today, it is becoming evident that the origin of this discrimination may be traced to racial considerations. The recent amendment to Article 4 of Mexico's 1917 Constitution, recognizing that

---

*of any investigation, against the members of the Mexican Army and the public servants of the Attorney General's Office for the "physical mistreatment" inflicted on the campesinos* (translation and emphasis by the author).

370. See CNDH Recomendación 58/94, April 14, 1994, at 5-7. Recommendation regarding the Case of Expulsions in Different Places of the Municipality of San Juan Chamula, Chiapas, addressed to the Governor of the State, the President of the State Legislature and the Mayor. These expulsions were conducted by municipal authorities and *caciques* because of religious persecution: the expelled persons were not of the Catholic religion but Evangelists. The CNDH states that neither an investigation, nor criminal charges were ever formulated against those presumed responsible, thus causing "a climate of impunity in the region or, worse, . . . a tacit invitation to the commission of illicit conducts, denying the imparting of justice to the most unprotected sector of our society: the Indians," *Id.* at 45. (Translation and emphasis by the author).

country's "pluriethnic composition" constitutes a small step in the right direction. However, despite the fact that this constitutional change was made three years ago, the corresponding federal statute needed to implement it at the domestic legal and judicial levels has not yet been enacted.

The Chiapas rebellion brought to the national attention of Mexico, albeit temporarily, the delicate and controversial question of whether the indigenous peoples have a right to their autonomy. In a recent essay on this question, the eminent philosopher Luis Villoro wrote:

Since the 16th century, for *creoles* and *mestizos*, indigenous peoples have been *outcasts*; *outcasts*, judged and manipulated for their exploitation or . . . for their redemption. It is we, the Non-Indians, who decide for them. It is we who utilize them, but also who imagine we are saving them. The marginality of the indigenous peoples is the work of the Non-Indians, but also the result of that indigenous-oriented policy that would help them be liberated . . . . The true liberation of the Indian is to recognize him as a subject, whose fate is in his own hands; a subject capable of judging us according to his own values, as we have always judged him; a subject capable of exercising his liberty without restraints, as we demand to exercise it. To be a complete subject is to be autonomous. The so-called "Indian problem" has one solution only: the recognition of the autonomy of the indigenous peoples.<sup>371</sup>

The slow but gradual recognition of the "pluriethnic composition" of Mexico, likely to be accelerated by the enactment of the domestic legislation to implement the change in Article 4 of its Constitution, as well as by the constant progress being made in human rights, is expected to bring about a stronger delineation of a new type of Mexican law generated in response to those specific cultural values and distinct interests characteristic of indigenous peoples. This special kind of a law, probably a hybrid combining customary and positive law with indigenous and mestizo legal notions, may be known as "Mexican Ethnic Law."

From the human rights perspective, the Chiapas rebellion left a tragic trail of violations. These violations were committed by members of the EZLN and by elements of the Mexican Army, and by public officials at the federal, state and local levels. Virtually nothing has been said about violations committed by members of the EZLN, especially since President Salinas enacted in early 1994 a federal statute granting a general amnesty to those civilians involved in the conflict.

However, the situation is quite different regarding the crimes and human rights violations committed by elements of the Mexican Army, and certain public officials. These crimes and violations consist of (1) direct bombing of civilian towns and villages; (2) illegal detention of persons; (3) arbitrary searches and seizures of private homes; (4) abuses of authority; (5) intimidation and threats; (6) torture; (7) disappearance of persons; (8) homicide of

---

371. Luis Villoro, *Los Pueblos Indios y el Derecho a la Autonomía*, NEXOS No. 197, May 1994 at 41-47 (translation by the author).

civilians; and (9) summary executions. Numerous human rights organizations within and outside Mexico are following very closely any developments associated with the handling of these crimes and violations. The reason is simple: the final outcome in these cases will offer a clear indication of whether the government of Mexico is legitimately committed to the protection of human rights.

The manner in which the CNDH conducted some of its investigations, in particular those involving the Mexican Army, the National Secretariat of the Defense (Sedena) and the Attorney General's Office (PGR), raise some questions about the Commission's independence and impartiality. It should be pointed out that this is not the first time that the CNDH's impartiality has been questioned.

However, considering the decisive role the CNDH plays in sustaining and advancing the cause of human rights within and outside Mexico. In particular in Latin America, special efforts must be made to administratively restructure the National Commission, so its impartiality and political independence are guaranteed. Securing the CNDH's impartiality and independence, probably by shielding its functions from the Executive (including the appointment of its director), may be necessary to endow the CNDH with the power and respect required to better promote the cause of human rights in Mexico.

A growing number of NGOs from the United States such as Amnesty International, the Human Rights Watch/Americas, the Center for Human Rights and Constitutional Law, and the Minnesota Lawyers Association, to mention a few, should continue to actively participate in the shaping and sharing of human rights in Mexico.<sup>372</sup> More importantly, it is expected that these and other entities will endeavor to provide their sustained advice and guidance for the benefit and proliferation of similar organizations in Mexico, particularly those interested in the dissemination, promotion and strengthening of this noble cause.

In his last State of the Union Report, on November 1, 1994, President Salinas recognized that:

The conflict has not been resolved, it has been contained. The cease-fire is still on, the violence has been halted and the intention to internationalize the conflict was dashed. The Chiapas electoral process was held throughout the State, and advancements have been made in the resolution of the basic problems. I issue here, before the Nation, a new call for a dialogue to negotiate terms to convert the conflict into a program of solutions based on respect, civility and progress. This is what the Mexicans want. Until the end of my mandate, I shall continue to promote a dignified peace for that

---

372. See Dinah Shelton, *The Participation of Non-Governmental Organizations in International Judicial Proceedings*, 88 AJIL 611 (1994).

region in Chiapas.<sup>373</sup>

How is the Chiapas conflict going to be resolved? Political pundits suggest that the new President of Mexico, Dr. Zedillo, is to appoint a new Commissioner for Peace and Reconciliation. Much depends upon the professional and political qualifications of the new Commissioner. Furthermore, it appears that the "solution" to the Chiapas conflict will consist of a continued outpouring of federal funds to the State of Chiapas under the Solidarity Program, expected to be continued by President Zedillo.<sup>374</sup>

The conflict of Chiapas is far from being resolved. No quick solution will remedy a complex and delicate problem that decades, if not centuries, of apathy and neglect gradually created. The risk of not finding a prompt and fair solution to the predicament in Chiapas opens the frightening possibility that this type of conflict will spread to other economically depressed areas in Mexico that have been culturally ignored and politically abandoned.

More than a socio-political phenomenon, Chiapas must be considered as a lesson. A lesson to all Mexicans, but especially to the political rulers and to the economically affluent. A lesson that speaks of justice and democracy, values ethnic and cultural diversity and, above all, promotes human rights and advances the cause for a better distribution of wealth on a national scale within the Mexican society.

Respect for indigenous peoples must embrace their culture, language, religion, usages and traditions, including their own customary law and their own system for imparting justice. The right that indigenous peoples have to possess their own political structures within their own communities, as well as the right to be politically represented in the local, state and federal organs, is probably the most important avenue that indigenous peoples have to secure their own existence and future survival.

The Chiapas uprising vividly brought to the attention of Mexicans the dissenting voice of an ethnic minority who challenged NAFTA's notion as an economic panacea. At the same time, the rebellion cast serious doubts on Mexico's image as a nation that had made substantial progress in becoming economically sound, politically stable, and well-prepared to receive a needed flow of permanent foreign investment.

Domestically, NAFTA is producing profound changes in Mexico to its economy, culture, legal system, and democratic process. Above all, NAFTA has been a powerful instrument to develop the notion of human rights in Mexico. For Mexicans, the prospects of a more fair and stable economic

---

373. SEXTO INFORME PRESIDENCIAL (Sixth State of the Union Report), delivered before the Federal Congress, San Lázaro Palace. Mexico City, November 1, 1994 (Mimeo version at 4) (translation by the author).

374. In his last State of the Nation Report, President Salinas indicated that: "Paradoxically, Chiapas is the State that has received the most federal support during my administration: 1,000 per cent more than in 1989. The aid has been used for health, education, electrification, drinking water, support for production and, for the indigenous peoples, new programs for financing land purchases, roads and highways." See SEXTO INFORME PRESIDENCIAL *supra* note 373, at 2.

order have contributed to the emergence of ideas in favor of democracy, economic equality, a clean environment, better education, an efficient and honest government, and national progress. In particular, Mexicans are aware now of the importance of ethnic diversity within their own country, a concept that simply did not exist a few years ago. At the international level, Mexico has initiated a new and closer relation with the United States. With respect to Canada, Mexico has discovered a new economic partner and a closer friend.

NAFTA will become a success only when democracy and freedom prevail, when there is a clear commitment for a more just distribution of wealth, a clean environment and a growing respect for human rights and individual dignity.

#### EPILOGUE

Since the EZLN made public its "Demands and Engagements" on March 2, 1994, a series of shocking events have jolted Mexico. These include political assassinations,<sup>375</sup> a presidential election,<sup>376</sup> and the latest devaluation of the peso,<sup>377</sup> immediately followed by the current economic crisis.<sup>378</sup> Although the gravity of these happenings has somewhat eclipsed the image of that turbulent Chiapas of a year ago, the EZLN has not gone away. It is present, strategically well-poised, and waiting.

During the dying days of the Salinas regime, the peace negotiations became unproductive and stale. The fact that Lic. Madrazo never held any personal conversations with Subcommandante Marcos clearly suggested that these consultations were destined to fail.<sup>379</sup> A legitimate forum for a frank dialogue, was never properly crafted. Therefore, the ascension to power of President Zedillo offers the best opportunity for finding a peaceful solution to the Chiapas predicament. A new presidential administration with new people, and especially with new ideas, must find the right approach to this complex and delicate problem.

As this epilogue is being written (January 17, 1995), Mexico's Secretary of the Interior, Lic. Esteban Moctezuma, is conducting peace talks with Subcommandante Marcos at an undisclosed location in the remote Lacandón

---

375. Jo Bedingfield, *Walking a Tightrope, Economic Shortfalls and Political Jolts Complicate Mexico's 1994 Recovery*, EL FINANCIERO, (Int. ed.), Dec. 26, 1994-Jan. 1, 1995, at 8.

376. *Id.*

377. *Id.*

378. *Id.*

379. Martin Langfield, *Chiapas Peace Envoy Steps Down, Urges Overhaul*, REUTERS, LTD., Nov. 28, 1994 available in LEXIS, News Library, World File.

jungle, assisted by Bishop Samuel Ruiz as mediator.<sup>380</sup> Hopefully, these conversations will eventually result in a just and prompt solution to the legitimate demands advanced by the indigenous peoples of Chiapas. Dr. Zedillo has strongly expressed his belief that this conflict is only to be resolved by peaceful means, based on an open and constructive dialogue.<sup>381</sup> There is no doubt that the road will be a long one, seeded with challenges. But there is hope. The first step in the right direction has been taken.

---

380. *Government and EZLN hold first direct talks "somewhere in the jungle"*, BBC SUMMARY OF WORLD REPORTS, January 18, 1995, available in LEXIS, News Library, World File.

381. *Mexican government, rebels meet in search of peace*, REUTERS WORLD SERVICE, January 16, 1995, available in LEXIS, News Library, World File.

## APPENDIX 1

CNDH'S PERMANENT PROGRAM IN THE HIGHLANDS AND  
JUNGLES OF CHIAPAS  
(JANUARY 1, TO MAY 31, 1994)

- I. 274 alleged violations to human rights affecting 889 persons.
- II. Partial breakdown of complaints

<u>Number of complaints</u>	<u>Type</u>
461	Disappearances
76	Torture
64	Homicides
57	Arbitrary detentions
54	Injuries
42	Abuse of authority
37	Threats and intimidation
17	False accusations
13	Theft
10	Illegal deprivation of freedom
10	Damage to property
5	Limitations to transit
2	Confiscation of assets
2	Kidnappings
2	Illegal entries to homes
23	Other violations <sup>382</sup>

<u>Number of complaints</u>	<u>Violator</u>
89	Mexican Army
31	EZLN
4	Attorney General's Office (PGR)
3	Chiapas' government officials and judicial agent
12	Mayors of Chiapas town: (1) San Cristóbal de las Cases; (2) Altamirano; (3) Las Margaritas; (4) Oxchuc; (5) San Juan Chamula; (6) Sitalá, and (7) Tenejapa
1	Former governor of the State of Chiapas
1	President of the State's Superior Tribunal of Justice

---

382. INFORME ANUAL, *supra* note 188, at 621-24.

1	Municipal Police of San Cristóbal de las Cases
1	Federal Police of Highways and Ports
16	Authority involved not yet determined <sup>383</sup>

### ESPECIALLY IMPORTANT CASES

1. Five persons “executed” in Ocosingo’s municipal market (No date)
  - A. After evaluation of existing evidence, the CNDH reached the conclusion that, “with a high degree of probability, the five subjects . . . were killed in maneuvers of summary execution.”<sup>384</sup>
  - B. Preliminary conclusion of the PGR: “The killings were the product of maneuvers of summary execution” but no members of the Mexican Army are implicated.<sup>385</sup>
2. Serial attacks in San Cristóbal de las Casas, Ocosingo, and Nuevo San Carlos. (no date)
  - A. Evidence found in San Antonio de Los Baños (a part of San Cristóbal): “craters produced by aerial attacks”.
  - B. Evidence found in Ocasingo: “aerial artillery impacts or mortar fire”.
  - C. Evidence found in Nuevo San Carlos: “an aerial attack operation was documented.”

The CNDH has technically determined that the projectiles used “correspond to those known as ‘rockets’ or missiles, whose destructive capacity, due to their expansive ware and expulsion of fragments (shrapnel), is less than bombs.”<sup>386</sup>
3. Incident in Rancho Nuevo involving a van used for public transportation (Jan. 4, 1994).
  - A. Soldiers of Mexican Army shot at van killing four male adults and one minor and injuring five people.
  - B. The CNDH concludes that “it is proven that the final position of

---

383. *Id.* at 622-623.

384. *Id.* at 635 (translation by the author).

385. *Id.* (translation by the author).

386. *Id.* at 636 (translation by the author).

the passenger [who was shot] was not the ultimate or final. . .” implying that the passenger in question had been shot while out of the van and then his body was placed back in the front passenger seat.<sup>387</sup>

4. Eleven bodies found in Ocasingo’s municipal cemetery (Jan. 3-4, 1994).

A. The CNDH reports that soldiers of the “Mexican Army bursted into the IMSS Hospital” in Ocasingo “with no apparent valid reason since the clinic was not under the EZLN’s control, nor were any of the EZLN’s members were hospitalized.”

B. Patients, their families, nurses, workers and medical doctors were detained for hours in the clinic’s back patio by soldiers of the Mexican Army, who interrogated them constantly. After sleeping in the hospital, this group (consisting of some 150 people) were “evacuated” by the Mexican Army and the hospital closed.<sup>388</sup>

C. The CNDH recognizes that out of the 11 bodies found, eight persons were killed at the hospital (presumably by members of the Mexican Army) on January 4, 1994, and their bodies removed “without knowing the cause of their deaths.”<sup>389</sup>

D. Out of eleven persons killed, the CNDH reports that two were civilians who died outside the clinic, five were relatives of patients, and two were patients (these two were killed by gunshots in the thorax). These nine bodies have been identified, the other two remained unidentified.<sup>390</sup>

E. The PGR and the Attorney General for Military Justice have initiated the corresponding inquiry.<sup>391</sup>

5. Two bodies found in Las Margaritas (Jan. 16 & 24, 1994).

A. These two persons were originally detained on Jan. 16, 1994 by the municipal police in Las Margaritas, and then put in jail. They were taken out of jail by “elements of the Mexican Army” and transported to El Progreso on January 24, 1994, their dead bodies were found in Agua Prieta.<sup>392</sup>

---

387. *Id.* at 635-37 (translation by the author).

388. *Id.* at 637.

389. *Id.* (translation by the author).

390. *Id.* at 638.

391. *Id.* at 638.

392. *Id.* at 639 (translation by the author).

6. Attacks against journalists (Jan. 7, 1994).

A. Three Mexican journalists alleged their human rights were violated on January 7, 1994, when they were attacked by gunshots from a Mexican Secretariat of National Defense (Sedenal) helicopter near San Cristóbal de las Casas, Cerro Tzontzehuit.<sup>393</sup>

B. Sedenal informed that on January 7, a military confrontation had taken place at Cerro de Tzontzehuit with EZLN forces, but “at no time were any journalists attacked.”<sup>394</sup>

C. A similar gunfire attack was reported by the CNDH involving a Mexican Army helicopter and four journalists when they were travelling from Las Margarita to Guadalupe.<sup>395</sup>

7. Finding of three human skeletal remains in the Ejido Morelia, Altamirano (Jan. 7-20, 1994).

A. During a military operation conducted by the Mexican Army on January 7, 1994 in the Ejido Morelia, the Municipality of Altamirano, three persons disappeared.<sup>396</sup>

B. The skeletal remains of three persons were found on February 11, 1994. *Physicians for Human Rights* is involved in this investigation.<sup>397</sup>

8. Shooting and killing of a person by elements of the Mexican Army near Rancho Nuevo (Jan. 3, 1994).

A. The CNDH reports that on January 3, 1994 a group of persons were riding a truck “when they were attacked by elements of 83rd Battalion of the Secretariat of National Defense . . . near Rancho Nuevo, Municipality of San Cristóbal de las Casas. As a consequence of this attack one person died and another one was arrested [by the Mexican Army].<sup>398</sup>

B. After investigating this case, the CNDH concluded that (a) the vehicle in question did not transport a group of armed persons (contrary to information released by Sedenal); (b) that the person in question was

---

393. *Id.*

394. *Id.* at 641 (translation by the author).

395. *Id.* at 641.

396. *Id.*

397. *Id.* at 642.

398. *Id.* (translation by the author).

shot while he was outside the vehicle; and, (c) that the murderer shot the victim at a very close range (at a distance of no more than twelve inches).<sup>399</sup>

9. The summary execution of fourteen people traveling in a van as a result of "military confrontation" (Jan. 2, 1994).

A. The CNDH reports that on January 2, 1994 an armed confrontation between elements of the Mexican Army and a group of people riding in a small bus took place near Rancho Nuevo, Municipality of San Cristóbal de las Casas. As a result of this confrontation fourteen civilians died. Allegedly, each of the fourteen victims received a coup de grace (i.e. a shot in the head).

B. There are two unconfirmed versions: One suggests that this was group of civilians in their way to Rancho Nuevo to pick up a coffin of a person who had died in Tuxtla Gutierrez, Chiapas. The second suggests that the members of the group were EZLN members on their way to free the inmates in the Centro de Readaptación Social No. 5. Neither version is conclusive.<sup>400</sup>

10. Illegal detention of twenty-one persons in Centro de readaptación Social No. 1 in Tuxtla Gutierrez. (No date).

A. According to the CNDH, probable human rights violations were committed against twenty-one persons under penal proceedings in Tuxtla Gutierrez. This group of people physically mistreated by "elements of the Mexican Army and public officials of the Attorney General's Office (PGR)" whom, without an adequate legal cause "illegally deprived these persons of their freedom."<sup>401</sup>

B. The CNDH sent a letter to the Attorney General of Mexico (PGR, Recommendation 53.94) requesting that the criminal charges against the 21 persons be dismissed since "the elements supporting [the charges] had disappeared."<sup>402</sup> On April 18, 1994, the PGR agreed to this and the penal judge in the case "decreed the freedom of the accused."

C. However, the CNDH clarified that "regarding the confusing circumstances of their arrest, their prolonged detention (sic), the evidence of violence shown by these persons and "that neither food nor

---

399. *Id.* at 653.

400. *Id.* at 643-44.

401. *Id.* at 644 (translation by the author).

402. *Id.* at 645 (translation by the author).

water was given to them” during their illegal deprivation of freedom. The CNDH added an exculpatory statement that given that there were intense military combats in Ocasingo, and that the Ministerio Publico was absent at that time, “this made very difficult, the immediate transfer of the detainers” given the unusual conditions at that time.<sup>403</sup>

#### 11. Violent Expulsions of Indigenous People in San Juan Chamula (No date)

A. The CNDH issued Recommendation 58/94 of April 19, 1994 stating that “the expulsions violated the constitutional right of religious freedom and indigenous customs in violation of human rights at the domestic and international levels.”<sup>404</sup>

B. In its Recommendation, the CNDH requested the President of the local State Congress to initiate the corresponding investigations, and added the Mayor of San Juan Chamula “to abstain from the continued injuring of assets and rights of the indigenous peoples in that town, and to respect the religious creeds and to guarantee the peaceful relations among [its inhabitants], impeding or not promoting new expulsions.”<sup>405</sup>

C. The CNDH received 263 complaints of indigenous peoples affected by these violent expulsions. A number who died were injured or disappeared according to the CNDH.<sup>406</sup>

---

403. *Id.* at 646 (translation by the author).

404. *Id.* at 646 (translation by the author).

405. *Id.* at 646-47 (translation by the author).

406. *Id.* at 647.

## APPENDIX 2

## DEMANDS AND COMPROMISES FOR A DIGNIFIED PEACE IN CHIAPAS SAN CRISTOBAL DE LAS CASAS, MARCH 2, 1994

**ONE:** We require that a truly free and democratic election should be held, with equality of rights and duties for the political organizations that seek power, with authentic freedom to choose one or the other proposition with respect for the will of the majority. Democracy is a fundamental right of all the people, indigenous or not. Without democracy, there can be no liberty, justice, or dignity, and without dignity, there is nothing.

**TWO:** In order to have truly free and democratic elections, it is necessary that the heads of the Federal and State governments that came to power through electoral fraud renounce their positions. Their legitimacy does not derive from the respect for the will of the majority but rather from its usurpation. Consequently, it is necessary that a government of transition be formed in order to implement equality and respect all political tendencies. The federal and state legislative powers, freely and democratically elected, should assume their true function of drafting fair laws for all and to supervise their enforcement.

**THREE:** We demand the recognition of the National Liberation Zapatista Army (EZLN) as a belligerent force and its troops as genuine combatants as well as the application of all the international treaties that regulate armed conflicts.

**FOUR:** A new pact among the components of the federation that will terminate centralism and allow regions, communities and municipal communities to be self-governing with political, economic and cultural autonomy.

**FIVE:** We demand to have general elections for the entire state of Chiapas with legal recognition of all the political forces in the state.

**SIX:** As a producer of electricity and oil, the state of Chiapas contributes to the federation without receiving anything in exchange. Our communities do not have electricity; the economy stimulated by the oil exports and the domestic sales have produced no benefits to the people of Chiapas. Therefore, it is essential that all the communities of Chiapas receive the benefit of the electric power and that a percentage of the economic income from the commercialization of the oil from Chiapas be applied to the industrial, agricultural, commercial and social infrastructure for the benefit of all the people of Chiapas.

**SEVEN:** Revision of the North American Free Trade Agreement signed with Canada and the United States, since in its actual wording, it does not take into account the indigenous peoples, sentencing them to death because of their lack of labor skill.

**EIGHT:** Article 27 of the Constitution should respect the original spirit of Emiliano Zapata: the land belongs to those who work it, the indigenous peoples and the farmers, and not to the large land holders (*latifundos*). We want the large land holdings which are in the hands of national or foreign land holders and other people who occupy large extensions of land who are not farmers, to pass to the hands of our people who are totally deprived of lands, such as provided by our revolutionary agrarian law. The land grants should include agricultural equipment, fertilizers, pesticides, credits, technical advice, improved seeds, and cattle. Fair prices should be given to basic products such as coffee, corn and beans. The land to be distributed must be of good quality and should include roads, transportation and irrigation systems. The peasants who already possess lands have the right to all the above mentioned benefits in order to facilitate the work in the agricultural fields and to improve productivity. New *ejidos* and communities should also be established. The Salinas amendments to Article 27 of the Constitution should be annulled and the right to land should once again be a part of our Constitution.

**NINE:** We demand that hospitals be built in the county towns; these hospitals should include specialized medical practitioners and be provided with sufficient medicine to take care of the patients. County clinics should be built in the municipalities, communities, and hamlets, with efficient training and fair income for health care personnel. Where hospitals already exist, they should be put into service as fast as possible and should include complete surgery services—Clinics should also be built in large communities which should also have doctors and medicine to take care of the people's needs.

**TEN:** The right to true and accurate information on events at a local, regional, state, national and international level should be guaranteed to the indigenous people through the establishment of an indigenous radio station to be independent from the government and directed and managed by the indigenous peoples.

**ELEVEN:** We want houses to be built in all the rural communities of Mexico which should include basic services such as: electricity, drinking water, roads, sewers, telephone, transportation, etc. And they should also have the advantages that the cities have, such as television, gas range, refrigerator, washing machine, etc. The communities should have recreation centers, for the healthy leisure of their inhabitants: sports and cultural events that dignify the human condition of the indigenous peoples.

**TWELVE:** We want the eradication of illiteracy among indigenous people. To achieve that, we need better elementary and secondary schools in our communities which include free pedagogical material, teachers with university degrees to be at the service of the indigenous community, and not only defend the interests of the wealthy people. There should be primary, secondary, and high schools in major towns. The government should give free school uniforms, shoes, food and all the necessary materials to students. In the central communities which are located in remote places, there should be boarding schools. Education should be totally free, kindergarten to university and should be granted to all Mexicans without regard to race, creed, age, sex or political affiliation.

**THIRTEEN:** That all ethnic languages should be made official, and that their study and teaching be mandatory at primary, secondary, high school, and university levels.

**FOURTEEN:** That our rights and dignity as indigenous peoples be respected, taking into consideration our culture and traditions.

**FIFTEEN:** We, the indigenous peoples, do not want to continue being subjected to discrimination and contempt, as has always been the case.

**SIXTEEN:** As the indigenous peoples that we are, we demand that we be allowed to organize and govern ourselves with autonomy, because we no longer want to be subjected to the will of those with power, whether they are nationals or foreigners.

**SEVENTEEN:** That justice be administered by our own indigenous peoples according to our customs and traditions, without the intervention of illegitimate and corrupt governments.

**EIGHTEEN:** We want always to have decent work with a fair salary for all rural and city workers in the Mexican republic so that our brothers will not have to be involved in bad things, such as drug trafficking, delinquency and prostitution, in order to survive. That the Federal Labor Act be applied to rural and city workers, with "Aguinaldos" (i.e. Christmas bonus), benefits, vacation and a true right to strike.

**NINETEEN:** We want a fair price for our agricultural produce; for this we need to have a free market to sell and buy, without being subject to coyotes.

**TWENTY:** That the looting of the riches of our Mexico be halted and, above all, that of Chiapas, which is one of the richest states of the republic but where hunger and misery abound every day.

**TWENTY-ONE:** We want the cancellation of all loans resulting from credits,

loans and taxes-with high interest because they can no longer be paid due to the great poverty of the Mexican people.

**TWENTY-TWO:** We want hunger and malnutrition to be halted because they have only caused the death of thousands of our brothers from rural and urban areas. In each rural community, there should be cooperative stores with fair prices, supported economically by the Federal or municipal governments. In addition, there should be transportation owned by the cooperatives, for the transportation of merchandise. Furthermore, the government should send free food to all children under 14 years of age.

**TWENTY-THREE:** We request the immediate and unconditional release of all political prisoners and of poor prisoners unjustly detained in all the prisons of Chiapas and Mexico.

**TWENTY-FOUR:** We demand that the Federal army and the public security and judicial police not enter rural zones, because their only aim is to intimidate, expel, rob, repress and to drop bombs on the farmers who organize themselves to protect their rights. For this reason our people are weary of the presence of the soldiers and the public security and judicial police, who are abusive and repressive. That the Federal government return to the Swiss government the Pilatus planes which are only being used to bomb our people, and that the money obtained in exchange for their return be applied to programs to improve the living of rural and city workers. We demand that the government of the United States of North America withdraw its helicopters because they are being used to repress the people of Mexico.

**TWENTY-FIVE:** The indigenous peoples in rural areas started the armed uprising because they had no more than their humble shacks; however when the Federal Army drops bombs on the civilian population it destroys these humble shacks and all of the belongings. For this reason, we demand that the Federal government indemnify the families who have suffered material damages caused by the bombing and by the actions of the Federal troops. Furthermore, we want indemnification for the widows and the war orphans, whether civilians or Zapatistas.

**TWENTY-SIX:** We, as indigenous peasants, want to live in peace and tranquility. And we want to be allowed to live according to our rights to freedom and to a dignified life.

**TWENTY-SEVEN:** That the Criminal Code of Chiapas be done away with since it does not allow us organize ourselves except with arms, because any legal and peaceful struggle is punished and repressed.

**TWENTY-EIGHT:** We request and demand the cease of the expulsion of the indigenous peoples from their communities by *caciques* who are supported

by the State. We demand the free and voluntary return of the land of their origin and that indemnification for the losses they have incurred be guaranteed.

**TWENTY-NINE:** Petition of the indigenous women. We the peasant indigenous women demand the immediate solution of our urgent needs, which the government has never solved:

- a) Maternity wards with gynecologists, so that the peasant women may receive necessary medical attention.
- b) That child care centers be built in communities.
- c) We demand that the government send sufficient food stuffs for the children of all the rural communities, such as: milk, maize, rice, corn, soy, oil, beans, cheese, eggs, sugar, soup, oats, etc.
- d) That kitchen and dining rooms for children be constructed in the communities and be provided with all necessary services.
- e) That mills for nixtamal and tortillerias be set up in the communities depending on the number of families who live there.
- f) We want these projects to be given to us: construction of barns for hens, rabbits, lambs, sheep, pigs, etc. which include technical assistance and veterinary services.
- g) We want a bakery with ovens and all necessary materials.
- h) We want handicraft workshops with machinery and raw materials to be constructed.
- i) There should be a market where handicrafts may be sold at fair prices.
- j) That schools be constructed where women can receive technical training.
- k) That preschool centers and elementary school be provided to rural communities where children may enjoy themselves and grow up in a healthy way, morally and physically.
- l) That we, as women, have adequate transport to get around and to transport our products from our different rural projects.

**THIRTY:** We demand the political trial of Mess Patrocinio Gonzales, Blanco Garrido, Absalon Castellanos Dominguez and Elmar Setzer M.

**THIRTY-ONE:** We demand respect for the lives of all the members of the EZLN and to receive guarantees that no criminal proceedings or repressive action may be directed against any of the members of the EZLN, combatants, sympathizers, or collaborators.

**THIRTY-TWO:** That all of the organizations and commissions in defense of human rights be independent, namely non-governmental, because those connected with the government only hide the arbitrariness of the government.

**THIRTY-THREE:** That a National Peace Commission for Justice and Dignity be formed mainly by people who do not belong to the Mexican government nor to any political party. And that this National Peace Commission for

Justice and Dignity be in charge of supervising the compliance with the agreements to be reached between the EZLN and the Mexican Federal government.

**THIRTY-FOUR:** That humanitarian help for the victims of the conflict be channeled through genuine representatives of the indigenous communities.

Liberty! Justice! Democracy!  
Respectfully,  
From the Mexican Southeast

Indigenous Revolutionary Clandestine Committee,  
General Commanding Post of the EZLN,  
Mexico, March 1994<sup>407</sup>

---

<sup>407</sup>. *Secretaria de Relaciones Exteriores*, 254 BULETIN DE INFORMATION SEMANAL 47-69 (D.F. Mar. 5, 1994).

