



## **Uniform Impunity**

**Mexico's Misuse of Military Justice to Prosecute Abuses  
in Counternarcotics and Public Security Operations**

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## **Glossary**

<b>CNDH</b>	National Human Rights Commission (Comisión Nacional de los Derechos Humanos)
<b>IACHR</b>	Inter-American Commission on Human Rights (Comisión Interamericana de Derechos Humanos)
<b>PGJM</b>	Military Attorney General's Office (Procuraduría General de Justicia Militar)
<b>PGR</b>	Federal Attorney General's Office (Procuraduría General de la República)
<b>SEDENA</b>	Ministry of Defense (Secretaría de la Defensa Nacional)

## I. Executive Summary

“When one judges oneself, one always tries to find a justification. [Military officers] simply try to cover for one another.”

—Widow of a young man killed by soldiers explaining her doubts about the impartiality of the military justice system

Since taking office, President Felipe Calderón has relied heavily on the armed forces to fight serious drug-related violence and organized crime. The need to improve public security is clear. Mexico is facing powerful drug cartels that are engaged in violent turf battles, an influx of sophisticated weapons, a large number of kidnappings and executions in several Mexican states, and shocking forms of violence including beheadings. The competition and fighting among powerful cartels, as well as shootouts between cartel members and law enforcement agents, have resulted in the deaths of thousands of civilians, police, and members of the military. The numbers of victims have risen significantly since 2006, with the death toll reaching an estimated 6,000 in 2008.

Mexico has used its armed forces in counternarcotics and counterinsurgency operations for decades. But the visibility of the armed forces in law enforcement operations has increased dramatically under the Calderón administration, which has portrayed the deployment of the army as one of its key strategies to combat drug trafficking and increase public security. Thousands of members of the military have been incorporated into the federal police force, and more than 40,000 military and police officers have been deployed throughout the country. In very violent cities, such as Ciudad Juárez and Tijuana, local governments have appointed high ranking military officers to head the police forces. The Calderón administration has stated that the use of the army is temporary, but has yet to present even a provisional plan for withdrawal of the troops.

While engaging in law enforcement activities, Mexico’s armed forces have committed serious human rights violations, including enforced disappearances, killings, torture, rapes, and arbitrary detentions. The abuses detailed in this report include an enforced disappearance, the rape of indigenous women during counterinsurgency and counternarcotics operations in Southern Mexico, the torture and arbitrary detention of environmental activists during counternarcotics operations, and several cases of torture, rape, killings, and arbitrary detentions of dozens of people during public security operations

in various Mexican states in 2007 and 2008. Many victims of the abuses documented in this report had no connection to the drug trade or insurgencies.

Such horrific abuses directly undermine the goal of stopping drug-related violence and improving public security. The army is currently deployed in the areas of the country most torn by drug-related violence. It would be in the military's best interest to act and be seen to act in a manner that is professional and respectful of civilians and human rights. When soldiers commit serious human rights crimes, they damage that image, alienating civilians and generating distrust and fear of the army in populations that otherwise are best placed to assist law enforcement efforts. The abuses also run counter to one of the main purposes that the armed forces are charged with serving in public security operations: enforcing the law and protecting members of the public—not harming them.

An important reason such abuses continue is that they go unpunished. And they go unpunished in significant part because most cases end up being investigated and prosecuted by the military itself. By allowing the military to investigate itself through a system that lacks basic safeguards to ensure independence and impartiality, Mexico is, in practice, allowing military officers involved in law enforcement activities to commit egregious human rights violations with impunity.

The Mexican military court system is failing miserably to provide justice in cases involving military abuses against civilians. Although the opaque nature of the system and the fact that the authorities do not publicly report on the outcome of most cases obscures a complete picture of what happens in all cases, it is still evident that very few cases lead to convictions for the crimes committed.

When, in January 2009, Human Rights Watch asked senior Ministry of Defense officials for examples of serious human rights violations prosecuted by the military resulting in the conviction and imprisonment of military personnel, they said there were “many.” However, they were only able to recall one case from 1998. Despite repeated requests from Human Rights Watch, the Ministry of Defense has failed to provide a list of such cases. It also has yet to provide a copy of the decision in the 1998 case.

This report details 17 cases involving egregious crimes by soldiers against more than 70 victims, including several cases from 2007 and 2008. None of the military investigations of army abuses analyzed here has led to a criminal conviction of even a single soldier for human rights violations. A civilian investigation was conducted in one of the cases and led

to the conviction of four soldiers. Something is terribly amiss in how Mexico deals with allegations of serious human rights violations by the military.

Because the military justice system is failing to hold perpetrators accountable, it is essential that such cases be moved to the civilian justice system. This conclusion is fully supported by international law. International law is clear that serious human rights abuses must be subject to effective, independent investigation and prosecution, standards that the Mexican military justice system is manifestly not meeting. Authoritative commentary on international law, including decisions by the Inter-American Court of Human Rights, frowns upon military exercise of jurisdiction in such cases because military justice systems are often opaque and rife with potential conflicts of interest, the military sitting in judgment on itself. The Mexican system is no exception: it is not structured to ensure fair outcomes and, as the record to date amply illustrates, it is not providing such outcomes.

In Mexico, the secretary of defense wields both executive and judicial power over the armed forces. Military judges have little job security and may reasonably fear that the secretary could remove them or otherwise sideline their careers for issuing decisions that he dislikes. Civilian review of military court decisions is very limited. To make matters worse, there is virtually no public scrutiny of, or access to information about, what actually happens during military investigations, prosecutions, and trials, which can take years.

These structural flaws are borne out in practice. The Mexican Ministry of Defense limits excessively and without reasonable justification information the public's access to basic information on the status of army abuse cases still pending before the military justice system, making it extremely difficult to know with certainty to what extent members of the armed forces are, in fact, being held accountable. In many cases, witnesses and victims are reluctant to testify or participate, afraid of the future consequences of speaking about military abuses in front of military officials. Available information indicates that the likelihood of obtaining justice in such cases in the military justice system is very slim.

As noted above, none of the military investigations of army abuses analyzed in this report have led to a criminal conviction on human rights charges. In older cases, military investigations led to impunity. And in more recent cases of 2007 and 2008, the military criminal investigations have either been closed, or are being conducted in a manner that is likely to lead to impunity. Military prosecutors have, in several cases, closed investigations for lack of evidence in reliance on soldiers' testimony, ignoring independent, credible evidence that abuses in fact occurred. While the military has at times provided monetary



compensation to victims, such compensation does not make up for the lack of accountability in these cases.

Despite these compelling facts, the military has persisted in invoking the Code of Military Justice and a strained constitutional interpretation to justify continuing to investigate the cases. Civilian prosecutors have routinely accepted the military's jurisdiction grab with hardly a fight. This must end or impunity will continue to prevail, ultimately undercutting the success of the effort to curb drug violence and protect public security.

As detailed below, the military's main argument as to why it has jurisdiction in cases involving serious human rights violations against civilian victims is a constitutional provision that allows for military jurisdiction for "crimes and faults against military discipline." A key problem is that the Code of Military Justice, purporting to interpret the Constitution, establishes a very expansive notion of such offenses that includes "faults under common or federal law... when committed by military personnel in active service or in connection with acts of service." The military has interpreted this to mean that even egregious crimes such as rape and torture should be heard before military courts so long as the crimes are connected to a breach of military discipline.

But Mexico's Constitution and the Mexican Supreme Court do not prescribe this outcome. On the contrary, the text of the Constitution, its interpretation by constitutional law experts, and a recent Supreme Court decision favor civilian jurisdiction in such cases. Indeed, the military's practice should have been brought to an end by a 2005 Supreme Court ruling that is binding on all judicial authorities, including military ones. In its decision, the court limited the scope of the provision in the Code of Military Justice by defining "service" as "performing the inherent activities of the position that [he or she] is carrying out." While the court did not explicitly state that all military abuses against civilians should be sent to civilian prosecutors and courts, serious abuses such as rape and torture clearly cannot be considered "inherent activities" of the military.

The issue in Mexico is not the Constitution. It is the political will to ensure that cases of army abuses against civilians are heard where they belong: in civilian courts where the requisite of independence and public scrutiny help secure justice for the victims.

### **Note on Methodology**

This report's findings are based on extensive interviews conducted during four research missions to Mexico City and Coahuila state in September 2008, November 2008, and

January 2009, as well as prior and subsequent interviews by phone and email. Human Rights Watch carried out interviews and meetings with Supreme Court justices, representatives from local nongovernmental organizations, lawyers, journalists, scholars, state attorney generals, and leading members of Mexican civil society. In January 2009, the Ministry of Foreign Affairs organized a series of meetings for Human Rights Watch with senior government officials, including the military's attorney general, the head of the human rights office at the Ministry of Defense, and representatives from the federal Attorney General's Office, the Ministry of Foreign Affairs, the Ministry of Public Security, and the Ministry of the Interior.

The findings are also based on official responses to over 40 formal information requests that Human Rights Watch sent to the Ministry of Defense and the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) through Mexico's federal access to information law and its implementing regulations. Human Rights Watch requested information on the status of military investigations into army abuses documented by the CNDH, as well as copies of important documents that the CNDH cited as evidence in its reports documenting human rights violations.

The findings also draw upon the testimony of victims and relatives of victims of military abuses. Given the difficulty of gaining access to victims and the fact that many are understandably reluctant to testify repeatedly to what were often traumatic experiences, Human Rights Watch has also relied on official documentation that includes direct victim testimony. For example, Human Rights Watch reviewed documentation submitted by nongovernmental organizations representing victims to the Inter-American Commission on Human Rights (IACHR), listened to audio testimony given by victims before the commission, and analyzed the testimony that victims gave before prosecutors, which the CNDH cited in its reports. For this report, Human Rights Watch directly interviewed four victims of army abuse or members of their families, working closely with their legal representatives, and also drew on interviews we conducted with several Atoyac de Álvarez residents for a previous Human Rights Watch report.

Given the opaqueness of the military justice system, it is impossible to obtain complete information on the number, status, and outcomes of cases of human rights violations committed by the military against civilians that were investigated and tried by military courts. This report focuses on 17 cases that were either presented before the Inter-American Commission on Human Rights or documented by the CNDH and "accepted" by the Ministry of Defense. When the Ministry of Defense "accepted" the CNDH reports, it committed itself

to, among other things, investigating the abuses and sanctioning those responsible.<sup>1</sup> We have documented the cases and the military investigations through the interviews described above, as well as through a variety of official documents that were part of the IACHR or CNDH files, judicial rulings, sections of civilian and military judicial files, and reports by the IACHR and the CNDH. Human Rights Watch also interviewed senior government officials, who described their policies on the use of military jurisdiction to investigate and prosecute cases alleging military abuses against civilians. The officials, however, refused to discuss any of the cases documented in this report.

## Recommendations

### *To President Calderón*

When the Calderón administration adopted its “National Human Rights Program 2008-2012” in August 2008, it said it would promote reforms to ensure that the military justice system complied with Mexico’s international human rights obligations. Two months earlier, the Congress had passed a comprehensive constitutional reform aimed at overhauling Mexico’s dysfunctional criminal justice system, including the military justice system. The reform included basic due process guarantees in the Constitution and required the adoption of an adversarial justice system with oral hearings.

To implement the constitutional requirements, as well as to follow through on his own stated commitment to strengthening the justice system and the rule of law in Mexico, President Calderón, as head of the armed forces, should present a proposal to Congress to amend the military justice system. Specifically, the proposal should:

- Modify article 57 (II) of the Code of Military Justice so that it explicitly states that at least cases of alleged serious human rights violations committed by members of the armed forces against civilians, including enforced disappearances, torture, killings, arbitrary detentions, and rapes, may not be prosecuted by the military justice system and must be immediately sent to civilian state or federal prosecutors.
- Instruct military authorities to cooperate fully with civilian prosecutors in the investigation and prosecution of military abuses against civilians.

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<sup>1</sup> Human Rights Watch believes that when the CNDH documented egregious abuses by military personnel against civilians, it should not have asked the military to investigate itself. For an analysis of the CNDH’s failure to promote accountability for army abuses, see Human Rights Watch, *Mexico’s National Human Rights Commission: A Critical Assessment*, Vol. 20, No. 1 (b), February 2008, section V.

- Ensure that military judges and magistrates have security of tenure by establishing a specific period of time during which they will serve in their posts and clear reasons and mechanisms for their removal.
- Ensure that decisions adopted by military tribunals are subject to comprehensive review by civilian authorities by, for example, appointing independent civilian judges to the Supreme Military Tribunal, or allowing for substantive review of military decisions by federal courts.

While the Congress discusses and adopts these legislative measures, President Calderón should instruct the Secretary of Defense to ensure that:

- Military prosecutors and judges do not assert jurisdiction over cases alleging serious human rights abuses. They should, as well, be directed to immediately send existing relevant case files to state and federal prosecutors who should conduct the investigations. Once the cases are under civilian jurisdiction, military authorities should fully cooperate with the investigations.
- The Ministry of Defense increases the transparency of proceedings within the military justice system, fully implementing the federal law on transparency and Mexico's obligations under international law. Among other things, it should provide basic information to the public on the status of cases involving civilians; make it easy to obtain information on upcoming public hearings via the Ministry of Defense website; and facilitate public access to military installations where military cases are heard.

Finally, specifically in light of the crime of enforced disappearances, President Calderón should present a proposal to the Senate to withdraw the reservation the government of Mexico made when ratifying the Inter-American Convention on Forced Disappearance of Persons in 2002, and to immediately recognize the competence of the Committee on Enforced Disappearances established by the International Convention for the Protection of All Persons from Enforced Disappearance, which Mexico ratified in 2008.

Although the Inter-American Convention states that individuals accused of carrying out enforced disappearances should be tried by ordinary courts “to the exclusion of all other special jurisdictions, particularly military jurisdictions,” Mexico stated that its military justice system may prosecute and investigate crimes if members of the military commit them while on duty. Although the validity of this reservation has not yet been studied by international bodies, Human Rights Watch believes it contradicts the object and purpose of the treaty.

In relation to the International Convention for the Protection of All Persons from Enforced Disappearance, the Committee on Enforced Disappearances was established to receive and examine communications submitted by the victims of enforced disappearances or their families or representatives, but Mexico failed to recognize its competence at the time of ratification.

*To the Federal Attorney General*

The federal Attorney General's Office facilitates military jurisdiction by "automatically" sending all cases in which an active-duty member of the military is accused of committing a crime to military prosecutors.

To promote accountability for army personnel who violate the rights of civilians, the federal attorney general should instruct federal prosecutors to only send military prosecutors cases involving breaches of military discipline. All cases of alleged serious human rights abuses against civilians should be either investigated by federal prosecutors (if they involve the alleged commission of a federal crime) or turned over to state authorities (if they involve the commission of a state crime).

## II. Mexico's Laws on Military Justice

The Mexican military routinely asserts jurisdiction over cases involving allegations of serious violations of the rights of civilians. But Mexico's Constitution and the Mexican Supreme Court do not require this outcome. On the contrary, the text of the Constitution, its interpretation by constitutional law experts, and a recent and binding Supreme Court decision militate in favor of civilian jurisdiction in such cases. And, in fact, civilian authorities have successfully prosecuted military abuses, as attested to by the Castaños case, detailed in chapter V of this report. The military's practice of asserting jurisdiction in cases involving army abuses against civilians also disregards the recommendations of several international bodies that have specifically addressed the issue.

The assertion of military jurisdiction in these cases is problematic because of a built-in conflict of interest: the military is sitting in judgment on itself, and the Mexican military justice system is not structured to address alleged violations of the rights of civilians independently and impartially. The secretary of defense wields both executive and judicial power over the armed forces. Military judges have little job security and may fear that the secretary will remove them or otherwise sideline their careers for issuing decisions that he dislikes. Civilian review of military court decisions is very limited. To make matters worse, there is virtually no public scrutiny of, or access to information about, what actually happens during military investigations, prosecutions, and trials, which can take years.

### Overview of the Military Justice System

The military justice system consists of the Military Attorney General's Office (Procuraduría General de Justicia Militar, PGJM), the military's Public Defense Office, and military judicial bodies, which include judges, ordinary and extraordinary courts-martial, and the Supreme Military Tribunal (Supremo Tribunal Militar, STM).<sup>2</sup>

The PGJM is charged with investigating all cases that enter the military justice system. A military prosecutor may press charges (*ejercitar la acción penal*) against a member of the military or he may close the investigation and send it to the archives if there is not enough evidence to charge the accused with a crime—a decision that must be approved by the

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<sup>2</sup> Organic Law of the Mexican Army and Air Force (Ley Orgánica del Ejército y Fuerza Aérea Mexicanos), [http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986(1).pdf) (accessed February 2, 2009), art. 28. Code of Military Justice (Código de Justicia Militar), <http://www.cddhcu.gob.mx/LeyesBiblio/pdf/4.pdf> (accessed January 27, 2009), art. 1.

military attorney general.<sup>3</sup> Throughout the investigation and judicial process, a military public defender or a private lawyer, who can be a civilian, defends the accused.<sup>4</sup>

First instance tribunals may consist of military judges or “ordinary courts-martial,” which are collegiate bodies that determine if the accused is guilty but do not set the sentences.<sup>5</sup> Military judges carry out all procedural steps of the judicial investigation in every case.<sup>6</sup> If a military prosecutor accuses a member of the military of a crime or offense that is punishable with a sentence of two or more years in prison, the judge must ask his superior to convene an ordinary court-martial.<sup>7</sup>

Once the prosecutor has pressed charges, a military judge does a preliminary analysis of available evidence to decide whether there should be a judicial investigation.<sup>8</sup> If he thinks there is enough evidence, he must issue an arrest warrant (*auto de formal prisión*).<sup>9</sup>

The judge then conducts the investigation (*instrucción*) through written and oral proceedings. The written submissions are not public, but the oral proceedings include hearings that are open to the public.<sup>10</sup> However, in practice, access to military installations where these hearings take place is difficult.<sup>11</sup> Based on the evidence and arguments presented by the prosecutor and defender, the judge determines whether it is necessary to convene a court-martial. If he deems it is not, the judge will directly issue the ruling deciding the case.<sup>12</sup>

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<sup>3</sup> Code of Military Justice, art. 36.

<sup>4</sup> The Public Defense Office provides free legal defense to all members of the military accused of committing a crime, but the accused may choose to have his or her own defense attorney. *Ibid.*, arts. 50, 51, 98.

<sup>5</sup> All military judges must be lawyers, while an “ordinary court-martial” is formed by five military officers who are not required to be lawyers, but must have a higher rank than the accused. *Ibid.*, arts. 10, 14, 25.

Under exceptional circumstances, such as during a war or when the military is in an occupied territory, the military may convene an “extraordinary court-martial” to try members of the military who commit any crime. These extraordinary courts-martial are formed by five members of the military available in the area, who must have the same or higher rank than the accused, and follow similar proceedings as the ordinary courts-martial. These extraordinary courts-martial are very rarely used. *Ibid.*, arts. 16-23.

<sup>6</sup> *Ibid.*, arts. 617, 618.

<sup>7</sup> *Ibid.*, art. 627.

<sup>8</sup> *Ibid.*, art. 454.

<sup>9</sup> *Ibid.*, art. 515. If the crime for which the member of the military is being accused does not require being held in pretrial detention, the judge will issue an “order to subject [the accused] to criminal proceedings” (*auto de sujeción a proceso*). *Ibid.*, art. 516.

<sup>10</sup> *Ibid.*, art. 918.

<sup>11</sup> Human Rights Watch interview with Alejandro Carlos Espinoza, professor of military justice, Law School, National Autonomous University of Mexico (UNAM), Mexico City, February 4, 2009. Human Rights Watch email exchange with Santiago Aguirre, lawyer, Centro Prodh, February 10, 2009. A Mexican lawyer collaborating with Human Rights Watch went to military installations on February 18, 2009, and could only enter the Military Camp 1-A after showing her professional identification.

<sup>12</sup> Code of Military Justice, art. 623.

If an ordinary court-martial is convened, its members carry out a series of public and oral hearings during which they can review all the evidence that was previously submitted to the judge, and can accept new evidence if the president considers it necessary.<sup>13</sup> In the open hearings, the court-martial members cross-examine witnesses, and the accused may directly address the court-martial.<sup>14</sup> The court-martial then deliberates in closed sessions to decide on the culpability of the accused.<sup>15</sup> Based on the court-martial's decision, the judge will issue the ruling and determine the appropriate sentence.<sup>16</sup>

Military judges' decisions may be appealed to the Supreme Military Tribunal, which can review legal as well as factual issues.<sup>17</sup> That tribunal's decisions are subject only to very limited review by civilian courts, as described below.

### Applicability of Military Jurisdiction

The Mexican Constitution allows for military jurisdiction only for "crimes and faults against military discipline."<sup>18</sup> This provision makes sense and is consistent with international law, but only so long as breaches of military discipline are not defined so broadly that they include serious criminal acts against civilians, including rape, enforced disappearances, and related abuses. A key problem in Mexico is that the Code of Military Justice, purporting to interpret the Constitution, establishes a very expansive notion of such offenses that includes "faults under common or federal law... when committed by military personnel in active service or in connection with acts of service."<sup>19</sup>

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<sup>13</sup> Ibid., arts. 639, 649, 650, 698.

<sup>14</sup> Ibid., arts., 664.

<sup>15</sup> Ibid., arts. 633, 669, 671.

<sup>16</sup> Ibid., art. 677.

<sup>17</sup> Ibid., arts. 67 (III), 822, 823, 824.

<sup>18</sup> Political Constitution of the United States of Mexico (Mexican Constitution) (Constitución Política de los Estados Unidos Mexicanos), <http://www.scjn.gob.mx/PortalSCJN/RecJur/Legislacion/ConstitucionPolitica/ConstitucionPolitica.htm> (accessed January 27, 2009), art. 13: "No one may be tried under private laws or by ad hoc courts. No person or corporation may have any privileges nor enjoy emoluments other than those paid in compensation for public services and which are set forth by the Law. Military jurisdiction prevails for crimes and faults against military discipline; but under no cause and for no circumstance may military courts extend their jurisdiction over persons which are not members of the Armed forces. When a crime or a fault to military law involves a civilian, the case shall be brought before the competent civil authority."

<sup>19</sup> Code of Military Justice, art. 57(II)(a). The Code of Military Justice refers to two types of "service": "arms service," which is any assignment (*comisión*) that requires the use of firearms to fulfill it, and "economic service," defined as any assignment that does not require the use of firearms to fulfill it. Ibid., art. 434 (VII) and (VIII). Internal Rules for the Interior Service of the Units, Offices, and Installations of the Mexican Armed and Air Forces (Reglamento para el Servicio Interior de las Unidades, Dependencias e Instalaciones del Ejército y Fuerza Aérea Mexicanos), [http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEDENA/Reglamentos/28112005\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEDENA/Reglamentos/28112005(1).pdf) (accessed February 11, 2009).



Based on this broad definition, the Mexican military has expanded the scope of cases it asserts a right to investigate and prosecute to include serious human rights violations committed by the military against civilians.<sup>20</sup> According to the head of the PGJM, the military investigates all crimes—including serious human rights violations—that are somehow connected to a breach of military discipline, because they must maintain discipline within the Armed Forces.<sup>21</sup> The federal Attorney General’s Office (Procuraduría General de la República, PGR) effectively supports this view by “automatically” sending all cases in which an active-duty member of the military is accused of committing a crime to the PGJM.<sup>22</sup> As this report documents in chapters III and IV, the military has been allowed to initiate criminal investigations into even egregious abuses.

This practice, however, should have been brought to an end by a 2005 Supreme Court ruling that is binding on all judicial authorities, including military ones. Over 30 years ago, the Mexican Supreme Court issued several contradictory and non-binding decisions that did not clearly define when a crime could be committed during or in connection with “active service” and thus erratically sent cases involving civilian victims alternatively to military and civilian courts.<sup>23</sup> But in 2005 the court clearly limited the scope of the provision by defining “service” as “performing the inherent activities of the position that [he or she] is carrying out.”<sup>24</sup> The court did not explicitly state that all military abuses against civilians should be sent to

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<sup>20</sup> According to the Code of Military Justice, “the power to decide whether an act is or not a military crime belongs exclusively to military courts. They also determine if an individual is innocent or guilty and apply the corresponding sanctions.” Code of Military Justice, art. 435.

<sup>21</sup> The military applies the appropriate federal or state law to investigate federal or state crimes, but it carries out the investigations, prosecutes the cases, and tries them before military courts. Human Rights Watch interview with General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>22</sup> Human Rights Watch interview with Yessica de Lamadrid Téllez, general director of international cooperation of the PGR, and other PGR representatives, Mexico City, January 13, 2009. The interview was conducted at the Ministry of Foreign Affairs, during a meeting with senior officials of the PGR, the Ministry of Foreign Affairs, the Ministry of Public Security, and the Ministry of Interior.

<sup>23</sup> Under Mexican law, binding jurisprudence may be created in two different ways. The Supreme Court creates binding jurisprudence when it issues five consecutive decisions (called “thesis”) that reach the same conclusion or when it interprets a law that has been interpreted differently by lower level tribunals (called “contradiction of thesis”). Amparo Law (Ley de Amparo), <http://info4.juridicas.unam.mx/ijure/fed/19/default.htm?s=> (accessed February 2, 2009), art. 192. For example, in 1961 the Supreme Court ruled that civilian authorities may investigate a homicide in a case in which it had not been proven that the member of the military accused of the crime was “in service” when the homicide occurred. Supreme Court, Sixth Period, Thesis No. 258,081, *Semanario Judicial de la Federación*, vol. LIV, 1961, p. 175. The Supreme Court adopted other similar decisions. Supreme Court, Fifth Period, Thesis No. 384175, *Semanario Judicial de la Federación*, vol. CXXVI, 1955, p. 237; Supreme Court, Fifth Period, Thesis No. 278085, *Semanario Judicial de la Federación*, vol. CXXVI, 1955, p. 480; Supreme Court, Fifth Period, Thesis No. 294451, *Semanario Judicial de la Federación*, vol. CXXVI, 1955, p. 733. Also in 1961, the Supreme Court held that military courts were competent to investigate military abuses against civilians, as they had been committed while the accused was on duty. Supreme Court, Sixth Period, Thesis No. 804058, *Semanario Judicial de la Federación*, vol. XLI, 1961, p. 210.

<sup>24</sup> Mexican Supreme Court, Jurisprudence, “Contradiction of Thesis” (Contradicción de Tesis) 105/2005-PS, September 28, 2005. The original language in Spanish is: “realización de las funciones propias e inherentes al cargo que desempeña.”

civilian prosecutors and courts but serious abuses such as rape and torture clearly cannot be considered “inherent activities” of the military.

Mexican constitutional law experts also note that the Constitution clearly provides that civilian prosecutors should investigate cases when a civilian commits, or is a victim of, a crime.<sup>25</sup> The Constitution states that “under no cause and for no circumstance may military courts extend their jurisdiction over persons which are not members of the Armed Forces” and that “when a crime or a fault involves a civilian, the case shall be brought before the competent civil authority.”<sup>26</sup> While the language seems clear (and prominent constitutional law experts believe it to be so), the Supreme Court has equivocated. It has ruled that civilians who commit crimes must always be tried by civilian courts, but has not said the same when it comes to cases in which the civilian is the victim rather than the perpetrator.<sup>27</sup>

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<sup>25</sup> Jurists have offered several arguments in support of the view that, in light of an analysis of Article 13 of the Mexican Constitution as a whole, civilian courts have jurisdiction to address these cases.

The first is that the mere fact that the victim is a civilian is enough to prohibit the use of military courts to investigate these cases. Human Rights Watch interview with Miguel Carbonell Sánchez, constitutional law expert and researcher and coordinator of the Constitutional Law section, Institute of Juridical Investigations at the National Autonomous University of Mexico, Mexico City, November 19, 2008. Human Rights Watch email exchange with Diego Valades, constitutional law expert and permanent researcher at the Institute of Juridical Investigations at the National Autonomous University of Mexico, January 30, 2009. Human Rights Watch interview with Manuel Oropeza, magistrate, Federal Electoral Tribunal, Mexico City, November 18, 2008.

A second argument is that military courts may not exercise jurisdiction over civilian victims, since the Constitution was modified to recognize victims’ rights in its Article 20(C), and those rights cannot be adequately fulfilled in the military system. These rights include the right to be informed of the progress of the proceedings, to collaborate with prosecutors investigating the case (coadyuvancia), to receive urgent medical and psychological attention, and the possibility to appeal certain decisions adopted by prosecutors. Human Rights Watch email communication with Miguel Sarre, professor, Instituto Tecnológico Autónomo de México (ITAM), Mexico City, November 18 and 26, 2007.

A third argument is that “the nature of the offense” determines which justice system has jurisdiction to investigate a case, and whenever a case involves a common crime against a civilian (and not strictly a breach of military discipline), civilian courts have jurisdiction to address it. Human Rights Watch interview with Sergio García Ramírez, judge of the Inter-American Court of Human Rights and permanent researcher at the Institute of Juridical Investigations at the National Autonomous University of Mexico, Mexico City, January 12, 2009.

Finally, some practitioners argue that, since the Code of Military Justice did not go through the appropriate process for approval of legislation, the entire code is unconstitutional. (The Code of Military Justice was issued by General Abelardo L. Rodríguez, acting president in 1933, using extraordinary powers asserted by the executive at that time, and it was never approved by the Mexican Congress.) According to this view, since the code was not adopted by Congress, it should not be deemed a legally binding interpretation of Article 13 of the Constitution. Human Rights Watch interview with Fabián Aguinaco Bravo, constitutional law expert, Mexico City, January 13, 2009. Human Rights Watch interview with Francisco Garza Martínez, lawyer who defends members of the military before military courts, Mexico City, November 18, 2008.

See also Sergio García Ramírez, “Characteristics of the Mexican Criminal Law Trials” (Características del Enjuiciamiento Penal Militar Mexicano), *Estudios penales*, 1977, p. 7; Miguel Carbonell Sánchez, *Fundamental Rights in Mexico (Los Derechos Fundamentales en México)* (Mexico: PORRUA/UNAM, 2004); “Military Jurisdiction in Mexico: The Injustice of the Armed Forces” (El Fuero Militar en México: La injusticia en las Fuerzas Armadas), Manuel Oropeza, LASA, Puerto Rico, 2006, transcript on file with Human Rights Watch. Carlos Castilla, “Military Jurisdiction in Mexico: A Jurisdiction with no Limits in light of Human Rights” (El Fuero de Guerra Mexicano: Una Jurisdicción Extralimitada a la Luz De Los Derechos Humanos), *Revista del Centro Nacional de Derechos Humanos*, No. 9, 2009 (publication pending).

<sup>26</sup> Mexican Constitution, art. 13.

<sup>27</sup> Supreme Court, Seventh Period, Thesis No. 235143, *Semanario Judicial de la Federación*, vol. 91-96, Second Part, 1976, p. 33. Supreme Court, Fifth Period, Thesis No. 278082 *Semanario Judicial de la Federación*, vol. CXXVI, 1955, p. 468. Supreme Court, Sixth Period, Thesis No. 258679, *Semanario Judicial de la Federación*, vol. I, 1957, p. 75.

Indeed, the court has occasionally issued non-binding rulings allowing military courts to investigate cases involving civilian victims.<sup>28</sup>

Perhaps the best evidence that it is possible for military abuses in Mexico to be investigated by civilians is that, in fact, it has happened. This report examines in detail in chapter V a case in which soldiers who raped and sexually abused women in Castaños, state of Coahuila, were prosecuted by civilian prosecutors and sentenced by a civilian judge. The Coahuila state attorney general takes the view that federal prosecutors should investigate a case if a military official commits a crime against a civilian while on duty, given that soldiers are federal officials; state prosecutors should do so if a military official commits a crime against a civilian while off duty; and military prosecutors should only investigate cases in which soldiers who are on duty commit offenses strictly against military discipline.<sup>29</sup> Moreover, the government of Mexico has agreed to send specific cases of military abuses that had originally been investigated by military prosecutors to the civilian justice system after the victims and their families went to the Inter-American Commission on Human Rights (IACHR).<sup>30</sup>

Even if the Code of Military Justice suffered from some ambiguity regarding when military jurisdiction is applicable, it should be interpreted in light of Mexico's international

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<sup>28</sup> Between 1917 and 1988, the Supreme Court ruled in some cases that military authorities have jurisdiction to investigate the cases in which the victim was a civilian. For example, Supreme Court, Fifth Period, Thesis No. 278057, *Semanario Judicial de la Federación*, vol. CXXVII, 1956, p. 987. Supreme Court, Seventh Period, Thesis No. 235610, *Semanario Judicial de la Federación*, 1975, p. 34.

<sup>29</sup> Human Rights Watch interview with Jesús Torres Charles, Coahuila state attorney general, Saltillo, November 4, 2008. The Chihuahua state attorney general shares this view and has, as a result, sent several cases to the PGR. Human Rights Watch interview with Patricia González Rodríguez, Chihuahua state attorney general, Washington, DC, November 8, 2008. Some examples of recent complaints regarding military abuses against civilians, including beatings and illegal entries into homes, that the state attorney general's office sent to federal prosecutors are: Chihuahua State Attorney General's Office, Document No. 0361/2008, April 10, 2008; Chihuahua State Attorney General's Office, Document No. 0418/2008, April 28, 2008; Chihuahua State Attorney General's Office, Document No. 0592/2008, June 13, 2008; Chihuahua State Attorney General's Office, Document No. 0645/2008, June 27, 2008; Chihuahua State Attorney General's Office, Document number 0693/2008, July 11, 2008; Chihuahua State Attorney General's Office, Document No. 761/2008, August 13, 2008; Chihuahua State Attorney General's Office, Document No. 0708/2008, July 15, 2008; and Chihuahua State Attorney General's Office, Document No. 781/08, August 25, 2008.

Human Rights Watch has been unable to document whether these specific cases were in fact being investigated by civilian or military authorities. However, senior officials from the PGR told Human Rights Watch that they "automatically" send cases involving soldiers on active duty to the PGJM. Human Rights Watch interview with Yessica de Lamadrid Téllez, general director of international cooperation of the Procuraduría General de la República (PGR), and other PGR representatives, Mexico City, January 13, 2009.

<sup>30</sup> For example, military authorities investigated for years the case of Miguel Orlando Muñoz Guzmán, a military official who has been missing since 1993 and was last seen inside military installations. Yet in 2007, after a series of meetings between the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (the NGO that took the case to the IACHR) and government officials, the government of Mexico stated that the case was being investigated by state prosecutors. Letter from Santiago Canton, IACHR executive secretary, to Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and CEJIL, March 23, 2007. Another example is the case of the González Pérez sisters, analyzed in chapter III of this report.

obligations, which are clear.<sup>31</sup> The Mexican Supreme Court has ruled twice that Mexico is bound by its international obligations and that the provisions of treaties ratified by Mexico take precedence over federal and state statutory law (but not over provisions of the Constitution).<sup>32</sup> Therefore, if in doubt, courts must adopt an interpretation of federal and state laws that is compatible with international law, particularly in cases involving human rights.<sup>33</sup>

## Structural Deficiencies

The military justice system lacks the necessary safeguards to ensure judicial independence and impartiality, reliable investigations, and accountability.

### *The Military as Judge in Its Own Cause*

The military justice system is not part of the country's judiciary. The secretary of defense, a military officer appointed by the president, has both executive and judicial powers within the armed forces.

The secretary of defense is charged with directing the armed forces.<sup>34</sup> Soldiers must abide by due obedience rules.<sup>35</sup> And because of the military's command structure, the secretary of defense is ultimately responsible for soldiers' official actions.<sup>36</sup>

The secretary of defense also directs the military justice system.<sup>37</sup> The secretary appoints all military prosecutors, public defenders, and judges, who must all be active members of the

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<sup>31</sup> See chapter VI on Mexico's obligations under international law.

<sup>32</sup> Mexican Supreme Court, Full Chamber, Ninth Period, Thesis No. LXXVII/99, *Semanario Judicial de la Federación*, vol. X, 1999, p. 46. Mexican Supreme Court, Full Chamber, Ninth Period, Thesis No. P. IX/2007, *Semanario Judicial de la Federación*, vol. XXV, 2007, p. 6.

<sup>33</sup> A federal court has ruled that "when international treaties develop or broaden fundamental rights contained in the Constitution, they should prevail over federal laws which do not do so, especially when other federal laws complement them." Federal Circuit Courts, Ninth Period, Thesis I.40.A.440 A, *Semanario Judicial de la Federación*, vol. XX, 2004, p. 1896.

<sup>34</sup> The secretary of defense is in charge of "organizing, administering, and preparing the Army and the Air Force." Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*), [http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986(1).pdf) (accessed February 2, 2009), art. 29 (I).

<sup>35</sup> According to the Law on Discipline of the Mexican Army and Air Force, discipline is "the norm by which military officers must abide; it is based on obedience and a high concept of honor, justice, and morality and has as a purpose the truthful and accurate fulfillment of duties established in military laws and rules." Law on Discipline of the Mexican Army and Air Force (*Ley de Disciplina del Ejército y Fuerza Aérea Mexicanas*), <http://www.ordenjuridico.gob.mx/Federal/Combo/L-27.pdf> (accessed February 2, 2009), art. 3.

<sup>36</sup> The Law on Discipline of the Mexican Army and Air Force states that "the superior officer will be responsible for maintaining order in the troops under his charge, and for the fulfillment of the troops' obligations, without having the possibility to excuse himself if his officers carry out omissions or errors." Law on Discipline of the Mexican Army and Air Force, art. 7.

<sup>37</sup> Organic Law of the Federal Public Administration, art. 29(X).

military and are hierarchically below (and must respond to) the secretary.<sup>38</sup> The secretary also has the power to order a military prosecutor to close an investigation, and to issue military pardons when military courts convict soldiers.<sup>39</sup>

### *Lack of Security of Tenure*

Military judges and magistrates do not have security of tenure. The Code of Military Justice does not set a time frame for the appointment of military judges and magistrates. According to senior officials of the Ministry of Defense (Secretaría de la Defensa Nacional, SEDENA), judges and magistrates are, in practice, subject to a “high level of rotation” and usually remain in their posts between one and three years.<sup>40</sup>

Judges and magistrates are subject to the same administrative personnel policies as the rest of the members of the Armed Forces, and may thus be removed “in accordance with the current needs of SEDENA.”<sup>41</sup> And while in the federal and state civilian justice systems there are independent bodies, called judiciary councils (*consejos de la judicatura*), in charge of sanctioning judges, the Supreme Military Tribunal is in charge of this task within the military justice system.<sup>42</sup>

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<sup>38</sup> The secretary of defense appoints the military attorney general and all military prosecutors, who must be lawyers. *Ibid.*, arts. 39, 41, 42, 43, 44.

The secretary of defense appoints the head of the Public Defenders’ Office and all public defenders, who must be lawyers and have a lower rank than the sitting judge and, if applicable, than members of the court-martial. *Ibid.*, arts. 55, 97.

The secretary of defense appoints all military judges and members of the “ordinary courts-martial.” *Ibid.*, arts. 27, 13.

The secretary of defense appoints all members of the STM, with approval of the president of Mexico. *Ibid.*, art. 7. The STM is composed of a president, who does not have to be a lawyer, and four magistrates, who must be lawyers. *Ibid.*, arts. 3, 4.

Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>39</sup> Code of Military Justice, art. 36: “The military prosecutor’s office is the only one able to charge an individual with a crime and may not end an investigation unless it considers it necessary or by signed order of the Secretary of War and Marine [now Secretary of Defense] or by the person who substitutes him; order which may be given when the social interest requires it...” Organic Law of the Federal Public Administration, art. 29 (XI): “The Secretary of Defense is in charge of the following matters: ... (XI) intervene in the pardons related to military crimes.”

<sup>40</sup> Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>41</sup> *Ibid.* Code of Military Justice, arts. 87, 88, 89.

Although military personnel working within the military justice system are not transferred to other positions within the Armed Forces, there is no guarantee they would continue performing the same functions (i.e., as prosecutors, defense attorneys, or judges). A judge could be removed to become a prosecutor, a defender, or a member of a court-martial, according to the needs of SEDENA. Human Rights Watch interview with Alejandro Carlos Espinoza, professor of military justice, Law School, National Autonomous University of Mexico (UNAM), Mexico City, February 4, 2009.

<sup>42</sup> This role is fulfilled by the president of the Supreme Military Tribunal. Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009. Code of Military Justice, arts. 68 (VI), 67 (V).

According to the Code of Military Justice, “members of the military judicial service may sanction and arrest... their subordinates for the faults they commit when carrying out their functions. The Military Supreme Tribunal, the Attorney General, and the head of the Military Defenders Office may propose, also, to the [Secretary of Defense]... the change of

Under these circumstances, military judges work knowing they might be removed if they issue decisions or rulings that the secretary of defense dislikes.

### *Limited Civilian Oversight*

There is very limited civilian judicial review of decisions adopted by military prosecutors and courts. The military officer accused of committing a crime may request such a review, but is unlikely to do so in cases of grave human rights abuses, and will certainly not challenge decisions favoring him or her.<sup>43</sup> Victims of abuse—who have the clearest interest in moving cases of military abuses against civilians from military to civilian courts—have not been able to challenge the use of military jurisdiction.<sup>44</sup> So when military prosecutors and judges assert jurisdiction over a case of military abuses against civilians, in practice there is very little that civilian officials can do to move the case to civilian courts until the case is dismissed or a verdict rendered.

Senior SEDENA officials told Human Rights Watch that federal judges usually confirm decisions by military courts, arguing that this is a clear indication that the military justice system works.<sup>45</sup> But this argument fails to take into account that federal courts are usually not reviewing the question of whether there should be military jurisdiction in the first place.

In theory, a civilian judge could ask the Supreme Court to decide which court has jurisdiction if both civilian and military courts claim jurisdiction over a case. But this has not happened in recent years because civilian prosecutors routinely send cases to their military counterparts, preventing civilian judges—who do not even know about the cases—from claiming jurisdiction over cases in which serious human rights violations are alleged.<sup>46</sup>

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location of a judge, prosecutor and defender as part of the punishment. If this measure is not accepted by the superiors, a change of corrective measure may be taken.” Code of Military Justice, art. 92.

<sup>43</sup> A private lawyer who defends military officers, for example, explained to Human Rights Watch that there is “nothing” that would make him prefer civilian courts over military ones. The military justice system’s benefits for the accused include, according to the lawyer, much better prison conditions (“military prisons are a luxury”), lower sentences, higher chances of obtaining conditional liberty after paying bail, and the possibility of continuing to receive a salary as a member of the armed forces (even if a slightly lower one). Human Rights Watch interview with Francisco Garza Martínez, private lawyer, Mexico City, November 18, 2008.

<sup>44</sup> In cases in which civilian victims have challenged the use of military jurisdiction to investigate these cases, federal courts have thrown out their cases, arguing they have no standing. See chapter III (cases of Rosendo Radilla Pacheco, Inés Fernández Ortega, and Valentina Rosendo Cantú) and chapter IV (case of the killing of four civilians and abuse and arbitrary detention of four others in Santiago de Caballeros in Sinaloa state).

<sup>45</sup> Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>46</sup> Organic Law of the Federal Judicial Branch (Ley Orgánica del Poder Judicial de la Federación), [http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986\(1\).pdf](http://www.ordenjuridico.gob.mx/Federal/PE/PR/Leyes/26121986(1).pdf) (accessed February 2, 2009), art. 21.



The only remedy available to civilian victims is to request an injunction (*amparo*). But this remedy is only available in limited circumstances, such as when a military prosecutor closes an investigation or decides not to press charges against a member of the military accused of a human rights violation. And there is nothing the victim can do until the prosecutor formally closes the case, which can take years. In any case, federal courts cannot overturn a military prosecutor's decision; they can only ask military prosecutors to do their job right. The only way to ensure that military prosecutors comply with such a ruling is to file another request for an injunction, which will once again be sent back to military courts.

Finally, there is no real way to challenge, in civilian court, a Supreme Military Tribunal's ruling acquitting the accused. Neither military prosecutors nor victims may appeal such a decision.<sup>47</sup> Only the accused could file an injunction in such a case and he or she would be highly unlikely to challenge a decision benefiting him or her.<sup>48</sup>

### *Limited Transparency*

The general public has no way of accessing substantive information about military investigations and prosecutions of military abuses against civilians until there is a final ruling, and there is no way of knowing how long that will take.

The military justice system is mostly closed to the public.<sup>49</sup> Only those who are formally parties to the process—prosecutors, public defenders, the accused, and the victim if he or she decides to cooperate with prosecutors—have access to complete information on the case.<sup>50</sup> In theory, the public can obtain detailed information on the status of cases through victims or their legal representatives, but most victims deeply distrust the military justice system and in practice participate minimally, if at all, in the military proceedings.<sup>51</sup> Indeed, as several cases documented in this report show, many victims and members of civil society

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<sup>47</sup> According to article 10 of the Amparo Law, victims could, in theory, file an injunction against a conviction (but not an acquittal) only in relation to reparations. Supreme Court binding case law supports this view. Mexican Supreme Court, Jurisprudence, Contradicción de Tesis 152/2005-PS, November 22, 2005.

<sup>48</sup> Mexican Constitution, arts. 103, 107.

<sup>49</sup> Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>50</sup> *Ibid.* The law permits victims' participation in the process. Code of Military Justice, arts. 83 (XIV), 439.

<sup>51</sup> The director of SEDENA's human rights office says that they have invited civilian victims to cooperate with military prosecutors in their investigations and have even offered them transportation from their communities to military installations, but that civilians have systematically refused to attend. Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

organizations distrust military courts and do not want to “legitimize” the process by being part of it.

Military judges and ordinary courts-martial in theory hold “public” hearings, but there is no easily accessible information available on upcoming hearings, which makes it all but impossible for ordinary citizens and journalists to attend. There is no information available on SEDENA’s website as to which cases will be heard in public hearings, nor the dates and times when they will take place. Human Rights Watch called six SEDENA offices—including the PGJM, the Office to Assist Citizens (Oficina de Atención Ciudadana), military courts, and SEDENA’s human rights office—and no one provided specific dates and times of upcoming public hearings.<sup>52</sup>

SEDENA also applies confidentiality norms in a blanket fashion, denying access to meaningful information on the status of investigations into military abuses against civilians, even in the most well known cases. Human Rights Watch submitted 13 information requests to SEDENA on the status of several investigations into egregious human rights abuses documented by the CNDH in recent years. In its responses, SEDENA only provided information on whether an investigation was still open or had been closed. SEDENA provided no further information on the status of open investigations, arguing they are confidential, and refusing to provide even the most basic information, such as the types of crimes being investigated.<sup>53</sup> In some cases, SEDENA even failed to provide information it had

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<sup>52</sup> Representatives from the General Directorate of Military Justice (Dirección General de Justicia Militar), the PGJM, and the Office to Assist Citizens did not have the requested information. Human Rights Watch telephone interview with member of the military, General Directorate of Military Justice, Mexico City, February 16, 2009. Human Rights Watch telephone interview with member of the military, PGJM, Mexico City, February 16, 2009. Human Rights Watch telephone interview with member of the military, Office to Assist Citizens, Mexico City, February 16, 2009.

Representatives from the STM and the First Military Tribunal stated that the hearings are public but that a person who wanted to observe one should submit a specific request to obtain an authorization from SEDENA. Human Rights Watch telephone interview with member of the military, STM, Mexico City, February 16, 2009. Human Rights Watch telephone interview with member of the military, First Military Tribunal, Mexico City, February 16, 2009.

A representative from the General Directorate for Human Rights (Dirección General de Derechos Humanos) stated he was not authorized to provide that information, and another representative held that he did not have the requested information. Human Rights Watch telephone interview with members of the military, General Directorate for Human Rights, Mexico City, February 16, 2009.

Through the telephone interviews with SEDENA representatives, Human Rights Watch was only able to confirm that hearings in Mexico City are held in the Military Camp No. 1-A. A Mexican lawyer went to the Military Camp No 1-A on February 18, 2009, to request information on public hearings and observe a hearing held that day. The lawyer was able to enter the military premises after showing her professional identification, and requested information on hearings occurring that day in six military courts. Only one military court had a board with information on hearings that would be held that week.

The only judge who had a hearing that day asked the lawyer where she worked, where she had studied, if she was a journalist, why she was interested in being present in a hearing, and if she had family members in the military. The judge stated that to observe an ordinary court-martial, it was normally necessary to obtain previous authorization from SEDENA, but authorized the lawyer to be present during a hearing before the judge that was going to be held that day. The hearing was cancelled at the last minute.

<sup>53</sup> See chapter IV, which analyzes recent military investigations into human rights abuses documented by the CNDH.



provided to the CNDH, and which the CNDH had published in its annual report.<sup>54</sup> (The CNDH itself also refused to grant Human Rights Watch access to information it has on the status of military investigations into these cases.)<sup>55</sup>

Finally, it is impossible to know when the public will learn more about the military investigations and prosecutions.<sup>56</sup> According to senior officials, SEDENA considers information on any case confidential until there is a final judicial ruling that is not subject to any appeal, and they have an “absolute prohibition” on providing information until then.<sup>57</sup>

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<sup>54</sup> SEDENA provided Human Rights Watch with partial or inaccurate information on the cases of military abuses documented by CNDH in 2007 and 2008. For example, in two cases, SEDENA responded to a specific request asking for the number of criminal cases that it had opened to comply with the CNDH’s reports, stating that no new investigations had been opened. However, the CNDH, in its 2008 annual report, said that SEDENA had stated that it had opened criminal investigations in both cases. (SEDENA opened investigation No. SC/206/2007/III with respect to CNDH *Recommendation 38/2008*, and investigation No. 9ZM/020/2008 with respect to CNDH *Recommendation No. 40/2007*.) SEDENA, Infomex file 0000700155208, January 7, 2009. SEDENA, Infomex file 0000700155408, January 15, 2009. CNDH, “Annual Report of Activities from January 1 to December 31, 2008, (Informe Anual de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>55</sup> Human Rights Watch submitted 25 information requests to the CNDH regarding the reports on army abuses it issued in 2007 and 2008. In 13 requests, Human Rights Watch specifically asked for updated information regarding the commission’s follow up after documenting egregious human rights violations committed by the military. The CNDH refused to provide information in all of these requests, despite the fact that SEDENA had “accepted” all the reports and their content had been made public on the CNDH’s website and in its annual reports. CNDH, File 2008/429-T, January 9, 2009. CNDH, File 2008/431-T, January 9, 2009; CNDH, File 2008/427-T, January 9, 2009; CNDH, File 2008/425-T, January 9, 2009; CNDH, File 2008/423-T, January 9, 2009; CNDH, File 2008/421-T, January 9, 2009; CNDH, File 2008/419-T, January 9, 2009; CNDH, File 2008/417-T, January 9, 2009; CNDH, File 2008/415-T, January 9, 2009; CNDH, File 2008/413-T, January 9, 2009; CNDH, File 2008/408-T, January 9, 2009; CNDH, File 2008/410-T, January 9, 2009; CNDH, File 2008/412-T, January 9, 2009.

Human Rights Watch documented in 2008 the CNDH’s failure to adequately follow up after it issues reports documenting abuses, and its failure to promote reforms, including of the military justice system. For more information, see Human Rights Watch, “Mexico’s National Human Rights Commission: A Critical Assessment,” Vol. 20, No. 1 (b), sections IV and V.

<sup>56</sup> According to the law, military prosecutors must press charges within 48 hours (Code of Military Justice, art. 80) and ask a judge to issue an arrest warrant within 72 hours (Code of Military Justice, art. 515). The accused is supposed to declare (give his or her preliminary statement) before the judge within 24 hours (Code of Military Justice, art. 491); and the judge must issue a ruling within four months to a year (Code of Military Justice, art. 616).

But, according to SEDENA officials, if the accused wishes to appeal a decision or offer more evidence, these time limits may be extended for an indefinite amount of time. Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>57</sup> Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

### III. A Pattern of Impunity

Military investigations into grave human rights abuses committed by the military over the past few decades have routinely failed to hold perpetrators accountable, contributing to a culture of impunity. When, in January 2009, Human Rights Watch asked senior SEDENA officials for examples of cases of serious human rights violations committed by the military that were dealt with by military courts and led to convictions, they said there were “many.” However, they were only able to recall one case from 1998.<sup>58</sup> Despite repeated requests from Human Rights Watch, SEDENA has failed to provide a list of such cases. It also has yet to provide a copy of the decision in the 1998 case.

The Mexican military is responsible for the vast majority of the abuses committed during the country’s “dirty war” in the 1960’s and 1970’s, including the torture and enforced disappearance of hundreds of civilians. But no member of the military has ever been convicted for these crimes.

An important reason for this impunity is that the Mexican military stonewalled civilian investigators and interfered with prosecutions by pressing charges in military courts against members of the military for the same crimes that federal prosecutors were handling. If the defendants were acquitted in military courts, they became immune from prosecution in civilian courts. Also, while SEDENA has declassified important documents from the “dirty war” era, it has done virtually nothing to help civilian investigators understand or locate evidence within the released files, or obtain information that appears to be absent from those files.<sup>59</sup>

A similar pattern is evident in military investigations into abuses committed during other major public security operations in the Mexican countryside. These include the use of the army to respond to the 1994 armed uprising of the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN), a guerrilla organization in the southern state of Chiapas, and government attempts to combat drug trafficking in Guerrero since the 1980’s. Military prosecutors investigating abuses committed in these two states—including torture, arbitrary detentions, and rapes—relied heavily on soldiers’ version of events, and

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<sup>58</sup> Human Rights Watch interview with senior SEDENA officials, including General Jaime Antonio López Portillo Robles Gil, general director of human rights, and General José Luis Chávez García, military attorney general, Mexico City, January 12, 2009.

<sup>59</sup> For a detailed analysis of the investigations conducted into abuses committed during Mexico’s “dirty war,” see Human Rights Watch, *Mexico – Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox*, May 2006, chapter IV.

failed to seriously consider the victims' testimonies and other independent sources documenting the abuses. The result, not surprisingly, was closed investigations and impunity.

## Enforced Disappearances during the “Dirty War”

### *The “Disappearance” of Rosendo Radilla*

Rosendo Radilla Pacheco was detained by soldiers on August 25, 1974, when he was traveling by bus with his 11-year-old son in the state of Guerrero. When the bus stopped for a second time at a military checkpoint, soldiers ordered passengers to get off. After three members of the military checked the bus and the passengers' belongings, they allowed everyone to return to their seats but told Rosendo that he was being detained for “composing *corridos*,” a type of popular Mexican music. Rosendo asked his son, who was allowed to go, to inform his family that he had been detained by the military.

Rosendo was last seen in military installations in Atoyac de Álvarez, Guerrero, in 1974. According to witnesses, soldiers blindfolded him and tied his hands, tortured and threatened him, telling him he would be “thrown to the water as food for the fish.”<sup>60</sup>

Rosendo's whereabouts remain unknown.

### The Military Investigation

“It has been [over] 30 years without an answer... I need to know what happened to him,” said Tita Radilla Martínez, one of Rosendo's daughters, with tears in her eyes. Her experience with the Mexican military justice system has led her to conclude that “so long as these cases remain with military prosecutors, nothing will be done ... We should not have to go to a military court.”<sup>61</sup>

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<sup>60</sup> IACHR, “Brief before the Inter-American Court on Human Rights against the United States of Mexico. Case 12.511. Rosendo Radilla Pacheco,” March 15, 2008, section C, para. 87.

<sup>61</sup> Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and Witness, “12.511. Rosendo Radilla Pacheco case. An Open Wound in Mexico's Dirty War,” (12.511 Caso Rosendo Radilla Pacheco. Herida Abierta de la Guerra Sucia en México), video, 2008. The original quote in Spanish is: “Son [más de] 30 años de no tener respuesta... Yo necesito saber qué paso con él... Mientras estén los casos en la procuraduría militar no se va a poder hacer nada. No tenemos porqué ir a un tribunal militar.”

The first official recognition that Rosendo had been “disappeared” came in 2001, more than 10 years after the Radilla family had asked the CNDH to look into the case.<sup>62</sup> The CNDH examined 532 cases and issued a non-binding report in 2001 concluding that there was sufficient evidence to establish that at least 275 individuals—including Rosendo Radilla—had been arrested, tortured, and “disappeared” by state forces during the “dirty war.” (It did not rule out the possibility that the other 257 individuals had also been “disappeared” during that time.)<sup>63</sup>

Civilian prosecutors only began investigating Rosendo’s case when, following the CNDH’s intervention, in November 2001 the government created a federal special prosecutor’s office to investigate and prosecute the “dirty war” crimes.<sup>64</sup> Until the commission’s report, there had been no serious criminal investigations, despite the Radilla family’s repeated requests that authorities initiate them.<sup>65</sup>

But the civilian investigations ended up in military courts. The special prosecutor filed “abduction” charges against General Francisco Quirós Herмосillo in August 2005. A civilian judge issued an arrest warrant, but then turned the case over to the military justice system, arguing Quirós Herмосillo was a military official and was accused of an act that he committed while on duty. The military judge that received the case accepted jurisdiction, but the military prosecutor who had to investigate it actually sought to return it to civilian authorities, arguing that he did not have jurisdiction to evaluate the retired general for these

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<sup>62</sup> They had asked the commission to investigate Rosendo’s case in 1990, soon after it was created. IACHR, “Brief before the Inter-American Court on Human Rights against the United States of Mexico. Case 12.511. Rosendo Radilla Pacheco,” March 15, 2008, section D.

<sup>63</sup> CNDH, *Recommendation 026/2001*, November 27, 2001.

<sup>64</sup> The executive order establishing this office specifically instructed SEDENA to turn over to the prosecutor’s office any information relevant to the cases to be investigated. Order of the President of the Republic, “Agreement by which various measures to promote justice for crimes committed against people related to social and political movements of the past” (Acuerdo por el que se disponen diversas medidas para la procuración de justicia por delitos cometidos contra personas vinculadas con movimientos sociales y políticos del pasado), November 27, 2001. The official name of the office was Special Prosecutor’s Office for Social and Political Movements of the Past (Fiscalía Especial para movimientos sociales y políticos del pasado, FEMOSPP).

In October of 2000, Tita Radilla Martínez filed a new criminal case before federal prosecutors in Chilpancingo, Guerrero, which was eventually investigated by the Special Prosecutors’ Office. Tita Radilla also filed another formal complaint with representatives of the Special Prosecutors’ Office in Guerrero in May 2002. IACHR, “Brief before the Inter-American Court on Human Rights against the United States of Mexico. Case 12.511. Rosendo Radilla Pacheco,” March 15, 2008, section D.

<sup>65</sup> Initially, due to fear of the consequences that they could suffer if they presented a formal complaint before government authorities, the Radilla family members limited their actions to trying to find Rosendo by visiting the state governor’s office, a family member who was a military official, and military installations in the area to inquire about Rosendo’s whereabouts, and by participating in demonstrations. Two of Rosendo’s daughters had asked federal and state prosecutors in 1992 and 1999 to investigate the case, but the investigations were closed due to lack of evidence to determine who could be responsible for the crimes. (One of Rosendo’s daughters, Andrea, brought the case to a federal prosecutor in Chilpancingo, Guerrero, in March 1992. Another one of his daughters, Tita, brought the case to a state prosecutor in Atoyac de Álvarez, Guerrero, in May 1999.) *Ibid.*, paras. 33, 64.

acts.<sup>66</sup> But in October 2005 a federal civilian court ruled once again that the case did in fact belong within the military justice system.<sup>67</sup>

The Radilla family unsuccessfully challenged the use of the military justice system to investigate and prosecute Rosendo's enforced disappearance. In September 2005 they presented an injunction (*amparo*) requesting that the case not be sent to military courts. The first instance judge rejected the request, arguing that Mexican law only gives victims of abuse standing to present injunctions in very specific circumstances, which do not include challenging the decision regarding which justice system should hear a case. A higher court confirmed this ruling in November 2005.<sup>68</sup>

Quirós Hermosillo was never tried nor convicted. In January 2006 a military judge determined there was no evidence to start investigating his criminal responsibility and set him free. Military prosecutors appealed the decision, which was upheld by the Supreme Military Tribunal. After the military prosecutors presented new evidence, another military judge issued a second arrest warrant, and in October 2006 Quirós Hermosillo was formally accused of illegally detaining Rosendo Radilla. However, the military judge closed the case in November 2006, after Quirós Hermosillo had died.<sup>69</sup>

This case is now pending before the Inter-American Court on Human Rights (IACHR), which has the power to issue a binding decision regarding Mexico's international responsibility for the detention, torture, and subsequent "disappearance" of Rosendo Radilla, as well as on the state's failure to hold those responsible accountable.<sup>70</sup>

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<sup>66</sup> The prosecutor argued that, although Quirós Hermosillo was a retired member of the armed forces, there was no evidence that this case constituted a breach of military discipline. Therefore, this was not a case that, under Article 13 of the Mexican Constitution, could be investigated and tried by the military justice system. The military judge thus asked the Supreme Court to determine which justice system should investigate this case, and the Supreme Court returned the case to a lower federal court for it to rule on the merits of the request.

<sup>67</sup> First Collegiate Tribunal in Criminal and Administrative Matters in the 21st Circuit (Primer Tribunal Colegiado en Materias Penal y Administrativa del Vigésimo Primer Circuito), Judge Xochitl Guido Guzmán, Jurisdictional Conflict 6/2005, October 27, 2005.

<sup>68</sup> IACHR, "Brief before the Inter-American Court on Human Rights against the United States of Mexico. Case 12.511. Rosendo Radilla Pacheco," March 15, 2008, para. 116.

<sup>69</sup> *Ibid.*, section D.

<sup>70</sup> Tita Radilla Martínez and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, a Mexican nongovernmental organization, took the case to the IACHR in November 2001. The IACHR admitted the case in 2005, and two years later concluded that Mexico was responsible for the detention, torture, and subsequent "disappearance" of Rosendo Radilla. The commission also stated Mexico had failed to inform Radilla's family of his whereabouts, and to adequately investigate the case and prosecute those responsible. Given Mexico's failure to, among other measures, conduct a thorough, impartial and prompt investigation into the case and determine Rosendo's whereabouts, the IACHR filed a case against Mexico before the Inter-American Court on Human Rights in March of 2008. *Ibid.*, pp. 4-7.

Within the context of the case before the Inter-American system on human rights, Mexico conducted excavations in approximately one percent of the area occupied by military installations in Atoyac de Álvarez. No remains were found.

## Undermining Accountability

When the military insists on carrying out these investigations, it effectively blocks any possibility that members of the military will be held accountable in civilian courts. If the military trials end in acquittals, a subsequent prosecution of these officers by civilians is barred under the principle of *non bis in idem*—the principle, known as “double jeopardy” in Anglo-American jurisdictions, according to which a person cannot be tried twice for the same crime.

The likelihood of such an outcome is increased by the fact that very few of the relatives and surviving victims in Guerrero have been willing to testify before the PGJM. As a result, the PGJM is unable to obtain evidence that may be necessary to secure convictions. The main reason for the victims’ refusal appears to be fear of the military. Several Atoyac residents told Human Rights Watch that they disregarded the request for testimony from the PGJM because they were scared of the army, and the one person Human Rights Watch spoke with who had provided testimony confirmed that most victims’ relatives she knew were too scared to do so.<sup>71</sup> Another woman who refused to testify explained that she could not believe that the military had any intention of conducting a serious investigation. “They ignored us back then,” she said, “why would it be different now?”<sup>72</sup> One man who reported having been tortured by soldiers, who also forcibly “disappeared” his son, said he would never go to the PGJM since it was the military that had harmed him.<sup>73</sup> Another woman asked rhetorically, “How am I going to go to the PGJM when I’m denouncing an army general?”<sup>74</sup>

## The Conflict in Chiapas

### *The Detention, Torture, and Rape of the González Pérez Sisters*

On June 4, 1994, approximately 10 members of the military arbitrarily detained Ana, Beatriz, and Celia Pérez—who were then respectively 20, 18, and 16 years old—and their mother, Delia Pérez de González, in the municipality of Altamirano, Chiapas, as they were returning from a nearby town where they sold their agricultural products.

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Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and Witness, “12.511. Rosendo Radilla Pacheco case. An Open Wound in Mexico’s Dirty War,” (12.511 Caso Rosendo Radilla Pacheco. Herida Abierta de la Guerra Sucia en México), video, 2008.

<sup>71</sup> Human Rights Watch interview with victims’ relatives, Atoyac de Álvarez, Guerrero, May 24-25, 2003.

<sup>72</sup> Human Rights Watch interview with victim’s relatives, Atoyac de Álvarez, Guerrero, May 24, 2003.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

The three sisters, who were members of the Tzeltal ethnic group and spoke little Spanish, were taken to a windowless one-room house where soldiers beat and repeatedly raped them while attempting to force them to confess they were members of the EZLN. A thorough medical examination showed that the three women had been sexually abused and had suffered severe physical and psychological harm as a consequence of these acts.<sup>75</sup> Their mother was forced to stay outside the house during the rapes.

According to the oldest sister's testimony, a soldier threw the three women onto the floor and hit them until "they could no longer defend themselves." While one soldier held her and took her clothes and underwear off, another man raped her. She testified she "felt great pain and felt as though [she] was dying and then passed out." When she regained consciousness, another soldier was on top of her. She tried to scream but the man pushed a handkerchief into her mouth and covered her eyes with a piece of cloth. She recalled that throughout the two hours in that room, the soldiers were laughing and saying that the Zapatistas were "delicious."<sup>76</sup> After the rapes, a military official threatened the four women saying that if they reported the incident they would be detained again, imprisoned, and maybe killed.<sup>77</sup>

As a consequence of the humiliation and the stigmatization created by these abuses, the González Pérez sisters and their mother left their community.<sup>78</sup>

### **The Military Investigation**

Three days after the González Pérez sisters reported the rapes to the PGR, the PGR turned the investigation over to military prosecutors, arguing it did not have jurisdiction to investigate it.<sup>79</sup>

A year later, the military closed the case. The military case file includes statements provided by several individuals who attest to the "good conduct" of the soldiers and deny that the rapes occurred, but it completely ignores the gynecological exam submitted by the González Pérez sisters to the PGR, as well as their testimonies. In fact, military prosecutors ordered another gynecological exam. When the sisters refused, the prosecutors closed the case in

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<sup>75</sup> IACHR, Report 53/01, Case 11.565, Ana, Beatriz and Celia González Pérez, April 4, 2001, paras. 34-37.

<sup>76</sup> *Ibid.*, para. 30.

<sup>77</sup> *Ibid.*, paras. 15, 51.

<sup>78</sup> *Ibid.*, para. 42.

<sup>79</sup> The women took the case to the PGR's office in San Cristóbal de las Casas on August 30, 1994, presenting a gynecological report as evidence supporting their testimonies. *Ibid.*, paras. 16, 65.

September 1995, arguing that there was “lack of interest of the victims and their representatives.”<sup>80</sup>

The González Pérez sisters took their case to the IACHR, which ruled in April 2001 that the Mexican government was responsible for the arbitrary detention, torture, and rape of the sisters, as well as for not conducting a thorough, prompt, and impartial investigation into what had happened.<sup>81</sup>

The Mexican government initially tried to justify using the military justice system to investigate and prosecute this case. Government representatives argued before the IACHR that this case *had* to be investigated by military prosecutors because the armed forces were carrying out public security activities in Chiapas and the soldiers were “on duty and never left the location, since the place where the alleged victims were taken for interrogation was within the radius of the area assigned for the performance of the activities.”<sup>82</sup>

In 2008 government officials and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), representing the victims, signed an agreement before the IACHR in which the CMDPDH agreed to work with military prosecutors to help them carry out three necessary steps within the military investigation, with the purpose of sending the case to civilian prosecutors.<sup>83</sup> Fourteen years after the rapes, the case appears finally to be heading to a civilian court.

## Militarization of Guerrero

### *Illegal Detention and Torture of Environmentalist Peasants*

On May 2, 1999, following a raid in Pizotla—a small village 10 hours by foot from the nearest road in the mountains of western Guerrero—soldiers detained Rodolfo Montiel and Teodoro Cabrera, two peasant leaders involved in environmental activism.<sup>84</sup>

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<sup>80</sup> *Ibid.*, paras. 66, 69.

<sup>81</sup> *Ibid.*, para. 94.

<sup>82</sup> *Ibid.*, para. 18.

<sup>83</sup> Human Rights Watch interview with Mario Solórzano and María Sirvent, lawyers, CMDPDH, Mexico City, September 9, 2008. Documentation in Human Rights Watch’s offices.

<sup>84</sup> CNDH, *Recommendation 08/2000*, July 14, 2000.

Montiel was a founding member of the organization of Peasant Environmentalists, formed in February 1998. With that organization, the two men had been engaged in efforts to bring an end to illegal deforestation in the region.

The army gave a different account of events in Pizotla. It claimed that soldiers on a counternarcotics patrol had learned of an armed band operating in the region. Arriving in Pizotla, they saw five armed men run out of a house and open fire on them. They returned the fire, killing one of the men, Salomé Sánchez Ortiz. The other four men fled. The soldiers were able to cut off



The military held them illegally for two days. On the morning of May 4 a helicopter took them to a military base in the town of Ciudad Altamirano, Guerrero, where they were kept for at least the rest of that day, before being turned over to the civilian authorities.<sup>85</sup>

When the soldiers finally presented them before civilian authorities, Montiel and Cabrera confessed to having been caught “in fraganti” with the illegal drugs and weapons that the soldiers claimed to have found on them. However, they later recanted these confessions before a judge, claiming they had been subjected to torture both in Pizotla and at the army base. The torture, they alleged, included beatings, electrical shocks, pulling their testicles, and shining a light into their eyes. The CNDH eventually found that the soldiers had planted at least some of the evidence that the two men later confessed to possessing, and concluded that both Montiel and Cabrera had been subjected to arbitrary detention and torture.<sup>86</sup>

A judge issued a guilty verdict against both men on drugs and weapons charges in August 2000.<sup>87</sup> Despite highly questionable assertions in the testimony provided by the soldiers who detained the two men, their version of events was granted the “presumption of good faith.”<sup>88</sup> Despite serious contradictions in the self-incriminating statements by the

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the escape of Montiel and Cabrera and, after a standoff of several hours, to force their surrender. The two were still armed when they were captured, and once in custody, Cabrera told them that he had a marijuana field five kilometers away. They found a gun at the side of the dead man, along with a sack containing marijuana and poppy seeds. First Tribunal of the 21st Circuit (Primer Tribunal Unitario del Vigésimo Primer Circuito), Toca Penal 406/2000, October 26, 2000, pp. 528-30.

If the army’s account of the events is true, the detention was legal: Montiel and Cabrera (and the dead man, Salomé Sánchez Ortiz) were caught “in fraganti,” shooting at the soldiers with illegal weapons. However, there is substantial evidence that, independently of what led to their detention, Montiel and Cabrera were subject to the human rights abuses described in this section.

<sup>85</sup> CNDH, *Recommendation 8/2000*, July 14, 2000. According to Montiel and Cabrera’s legal representatives, the two men stated that they had been detained until May 6, and that they were not presented before state prosecutors on May 4. Human Rights Watch email exchange with Santiago Aguirre, lawyer, Centro Prodh, February 9, 2009.

<sup>86</sup> Since military prosecutors did not provide the CNDH with the information included in their investigations of the alleged torture, the CNDH concluded that the military had not refuted Montiel and Cabrera’s allegations and thus concluded they had been tortured. The CNDH also concluded the two men were subjected to prolonged illegal detention since the military had failed to turn the prisoners over to civilian authorities as soon as they could. Article 16 of the Mexican Constitution provides that civilians detained “in fraganti” must be turned over to the public ministry “without delay.” The CNDH found that the army had violated that constitutional provision when it did not use helicopters it had at its disposal to transport Montiel and Cabrera from Pizotla on the day they were detained. CNDH, *Recommendation 8/2000*, July 14, 2000.

<sup>87</sup> The judge sentenced Montiel to six years and eight months in prison on one drugs charge and two weapons charges, and Cabrera to ten years in prison on one weapons charge. The conviction provoked an outpouring of complaints from local and international nongovernmental organizations. In January 2001 former President Fox responded to these complaints by promising that his government would conduct a thorough investigation of the case. After a federal court upheld the conviction of Montiel and Cabrera in July 2001, they remained in prison until November, when former President Fox issued an order for their release as a signal of his government’s commitment to human rights norms.

<sup>88</sup> The soldiers claimed, for instance, that Montiel had two guns in his possession when detained. However, the initial internal army report, issued by the commander of the 35th Military Zone out of which the soldiers operated on May 2, 1999, stated that Montiel had only one gun. The agent of the public ministry who conducted a visual inspection in Pizotla on May 5, 1999, did not report having seen any guns on Montiel. CNDH, *Recommendation 08/2000*, July 14, 2000.

defendants, these initial confessions were given greater weight than their later statements. And despite evidence of torture documented by Physicians for Human Rights-Denmark, the judge chose to rely on initial findings by the prosecutor's office, which reported finding no signs of recent physical abuse.<sup>89</sup>

### The Military Investigation

A federal prosecutor initiated an investigation into the torture allegations in October 1999, but the following month ceded jurisdiction to the PGJM.<sup>90</sup>

Montiel and Cabrera attempted—unsuccessfully—to cooperate with the PGJM. They repeatedly requested authorization to cooperate with prosecutors in the investigation (as “*coadyuvantes*”), and offered evidence for military authorities to take into consideration.<sup>91</sup> The two men also asked military prosecutors to send the case to civilian courts, arguing that the military courts lacked independence and impartiality to resolve the case.<sup>92</sup> According to the Centro Prodh, the nongovernmental organization that legally represented Montiel and Cabrera, they were never allowed to cooperate with the PGJM. In fact, they only learned what had happened with the military investigation in 2007 through information obtained from the IACHR.<sup>93</sup>

The PGJM closed the investigation and ordered that it be archived in November 2001, with a decision that arbitrarily dismissed the claims that Montiel and Cabrera's rights were violated.

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The soldiers also testified that the prisoners did *not* accompany the soldiers to the marijuana field, which raises the question of how they knew the marijuana field belonged to Montiel. The soldiers claimed that the prisoners had told them they were members of the EZLN, which seems suspect given that the EZLN did not operate in Guerrero. First Tribunal of the 21st Circuit (Primer Tribunal Unitario del Vigésimo Primer Circuito), Toca Penal 406/2000, October 26, 2000.

<sup>89</sup> In July 2000, doctors from the international nongovernmental organization Physicians for Human Rights – Denmark examined Montiel and Cabrera and determined that the two displayed physical symptoms that were “consistent with the allegations of the time and methods of torture suffered,” and, in each case “lead to the conclusion that the events must have taken place at the time and in the way described by the examinee.” Symptoms included difficulty urinating, shrunken testicles, and severe pain in the back and legs. Physicians for Human Rights – Denmark, Dr. Christian Tramsen and Dr. Morris Tidball-Binz, “The case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican peasants and ecological activists” (El caso de Rodolfo Montiel Flores y Teodoro Cabrera García, campesinos mexicanos y activistas ecologistas), unpublished document provided by Centro Prodh, the Mexican nongovernmental organization that represented Montiel and Cabrera, to Human Rights Watch.

<sup>90</sup> Human Rights Watch telephone interview with Santiago Aguirre and Jaqueline Sáenz, Centro Prodh lawyers, Mexico City, December 4, 2008.

<sup>91</sup> Montiel and Cabrera requested at least three times to collaborate with military authorities in November 1999, October 2000, and February 2001. Letter from Rodolfo Montiel Flores and Teodoro Cabrera Garcia to military prosecutor in case SC/304/2000/VII, February 10, 2001. Human Rights Watch email exchange with Santiago Aguirre, lawyer, Centro Prodh, February 9, 2009.

<sup>92</sup> *Ibid.*

<sup>93</sup> Human Rights Watch telephone interview with Santiago Aguirre and Jaqueline Sáenz, Centro Prodh lawyers, Mexico City, December 4, 2008.

The PGJM said it did not find evidence that Montiel and Cabrera had been arbitrarily detained, held illegally for two days, or tortured.<sup>94</sup> The decision sticks to the military's version of the events and uses it to rebut the CNDH's findings and dismiss the validity of the Physicians for Human Rights report. It completely fails to consider evidence offered by Montiel and Cabrera.

The case is now pending before the IACHR, which issued a report on the merits in November 2008.<sup>95</sup> At this writing, the report is not yet public.

### *The Rape of Inés Fernandez Ortega*<sup>96</sup>

On March 22, 2002, 11 soldiers arrived at the house of Inés Fernandez Ortega, an indigenous woman of the Tlapanec Me'paa people in Guerrero, who was at home with her four children aged three, five, seven, and nine. Three soldiers arbitrarily entered the house, asking Inés: "Where is your husband? From where did he steal the meat that you have on your patio?" The soldiers pointed their guns at her chest, grabbed her hands and threw her violently onto the floor, shouting at her, "Are you going to talk or not?" The children fled the house in fear and went to their grandfather to ask for help.

Inés could not answer the soldiers' questions because she does not speak Spanish, which infuriated the men. One of the soldiers grabbed her hands with his right hand, and with the other hand he removed Inés' underwear, pulled down his pants, and raped her for approximately ten minutes. When he finished, the soldiers left, stealing the meat Inés and her family had on their patio.

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<sup>94</sup> In June 2000, the military prosecutor in charge of the case had proposed closing the investigation but, in response to the CNDH's report, the PGJM decided not to do so. Human Rights Watch telephone interview with Santiago Aguirre and Jaqueline Sáenz, Centro Prodh lawyers, Mexico City, December 4, 2008.

Military prosecutors had decided not to press criminal charges "because there were not sufficient elements for presuming that a crime had been committed by any member of the Mexican army." Yet SEDENA returned the files of that preliminary investigation to the Inspection and General Control Unit of the Army and Air Force, which decided to reopen the investigation. IACHR, "Admissibility Report No. 11/04 on Petition 735/01," February 27, 2004, <http://www.cidh.org/annualrep/2004eng/mexico.735.01eng.htm> (accessed December 17, 2008).

The military prosecutor finally decided to close the case in November 2001. Military Decision, Justice Mayor Andres Cortes Rios, first investigative military prosecutor of the Investigations section of the PGJM, Case SC/301/2000/VIII-I, November 3, 2001.

Technically, the military attorney general should confirm a military prosecutor's decision to close a case and send it to the archives. Yet, according to the Centro Prodh lawyers, there are, in practice, no real chances that the military attorney general would modify such a decision. Since government officials do not have an obligation to notify victims and their legal representatives of these decisions, it is difficult for them to find out exactly when they are adopted. Human Rights Watch email exchange with Santiago Aguirre, Centro Prodh, Mexico City, November 26, 2008.

<sup>95</sup> Human Rights Watch email exchange with Santiago Aguirre, lawyer, Centro Prodh, February 9, 2009.

<sup>96</sup> IACHR, "Case 12.580 – Inés Fernández Ortega, Mexico," Audio testimony before the IACHR, Washington, DC, October 12, 2007, <http://www.cidh.org/Audiencias/130/ListEng.aspx> (accessed December 29, 2008).

After the rape, Inés' husband forced her to leave their home, and she has since been stigmatized by members of her community. Inés continues to be afraid of the military and constantly fears that she or her children could suffer similar abuses again.

### The Military Investigation

Two days after the rape, Inés lodged a formal complaint before the civilian state prosecutor's office in Ayutla de los Libres, Guerrero, asking state prosecutors to investigate the rape and illegal entry into her home. The state prosecutor determined he was not competent to investigate the rape, the robbery, or the illegal entry into Inés' home because "the individuals who are probably responsible [for the crimes] belong to the Mexican army." In May 2002 he sent the case to military prosecutors.<sup>97</sup>

Inés unsuccessfully challenged the use of military jurisdiction in her case before Mexican courts.<sup>98</sup> After military prosecutors rejected her request to refrain from asserting their jurisdiction over the case, she presented an injunction (*amparo*) before federal courts.<sup>99</sup> Both a first instance judge and a higher court rejected her appeal, arguing that Inés did not have standing to challenge a decision regarding which government authority was competent to investigate a case.<sup>100</sup>

The PGJM formally closed the case in March 2006, arguing that there was no evidence that members of the military were responsible for the rape or the illegal entry into Inés's home. The prosecutors based their decision on the testimony of the accused soldiers, who denied

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<sup>97</sup> The state prosecutor refused to assert civilian jurisdiction to investigate this case through official document "555" dated May 17, 2002, as cited in the PGJM files. PGJM, Document 0345 signed by Victor Hugo Hernandez Trujillo, military justice lieutenant and military prosecutor in the 35th military zone, April 20, 2003.

<sup>98</sup> IACHR, "Case 12.580 – Inés Fernández Ortega, Mexico," Audio testimony before the IACHR, Washington, DC, October 12, 2007, <http://www.cidh.org/Audiencias/130/ListEng.aspx> (accessed December 29, 2008).

<sup>99</sup> In March 2003, Inés requested that military authorities decline jurisdiction in this case and send the file back to civilian authorities. Letter from Inés Fernandez Ortega to the military prosecutor in Chilpancingo, Guerrero, requesting that the PGJM decline to exercise jurisdiction over her case, March 13, 2003.

The military prosecutors rejected her request. PGJM, Document 0262 signed by Victor Hugo Hernandez Trujillo, military justice lieutenant and military prosecutor in the 35th military zone, March 18, 2003.

<sup>100</sup> On April 9, 2003, Inés presented an injunction before federal courts challenging the military prosecutor's decision to retain jurisdiction in her case. Written appeal presented by Inés Fernandez Ortega before the First District Judge in the State of Guerrero. The document is dated February 9, 2003, but it was presented in April of 2003, according to Inés' written request to the IACHR. Letter from Inés Fernandez Ortega and her legal representatives to Santiago Canton, IACHR executive secretary, undated. The same date was included in the military prosecutors' response to the judges' request for information during the substantiation of the appeal. PGJM, Document 0345 signed by Victor Hugo Hernandez Trujillo, military justice lieutenant and military prosecutor in the 35th military zone, April 20, 2003.

A first instance judge rejected the injunction in September 2003. First district court of Chilpancingo, Guerrero. Rafael González Castillo, Case 405/2003, September 3, 2003.

Inés appealed the decision on September 19, 2003, and the denial was upheld in a November 28, 2003 ruling. Letter from Inés Fernandez Ortega and her legal representatives to Santiago Canton, IACHR executive secretary, undated.

the accusations, and on testimonies of other individuals who were not present at the time that the events took place.<sup>101</sup> They also argued that Inés had not provided enough information to identify the person responsible for the crime and that she had not participated in the military investigation, even though the CNDH documented how military prosecutors had not adequately notified Inés of the proceedings.<sup>102</sup>

According to government officials, the military investigation had been limited to analyzing if soldiers had committed a breach of military discipline, and civilians are investigating the rape.<sup>103</sup> However, the military decision in fact goes far beyond reviewing whether there was a breach of military discipline by, for example, analyzing whether the gynecological exam performed on Inés after the rape constitutes valid evidence. In any case, the civilian investigation is not likely to yield justice for Inés because, even though Inés had reported that she had been raped by soldiers, the PGJM sent the military file to civilian authorities so they could investigate “the possible participation of civilians in the case in which Inés Fernandez Ortega was a victim of abuse.”<sup>104</sup>

The case is now pending before the IACHR, which issued a report on the merits in November 2008.<sup>105</sup> At this writing, the report is not yet public.<sup>106</sup>

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<sup>101</sup> The PGJM had already initiated an investigation in March 2002, after reading about Inés’s case in a newspaper. SEDENA, military criminal investigation 35ZM/06/2002, initiated on March 27, 2002, p. 1.

In an initial assessment, the military prosecutor in charge of the investigation recommended closing the case, but the military attorney general rejected the recommendation and ordered the investigation to continue. PGJM, Document 0345 signed by Victor Hugo Hernandez Trujillo, military justice lieutenant and military prosecutor in the 35th military zone, April 20, 2003. CNDH, Recommendation 48/2003, November 28, 2003.

The PGJM finally closed the investigation in March 2006. Investigations Section of the PGJM (Sección de Averiguaciones Previas de la Procuraduría General de Justicia Militar). Maria de la Luz Rosario Juarez, military justice lieutenant and military prosecutor, Case No. SC/172/2005/XIV, March 28, 2006.

<sup>102</sup> CNDH, Recommendation 48/2003, November 28, 2003.

<sup>103</sup> IACHR, “Case 12.580 – Inés Fernández Ortega, Mexico,” Audio testimony before the IACHR, Washington, DC, October 12, 2007, <http://www.cidh.org/Audiencias/130/ListEng.aspx> (accessed December 29, 2008).

<sup>104</sup> Investigations Section of the PGJM (Sección de Averiguaciones Previas de la Procuraduría General de Justicia Militar). Maria de la Luz Rosario Juarez, military justice lieutenant and military prosecutor, Case No. File SC/172/2005/XIV, March 28, 2006.

<sup>105</sup> On June 14, 2004, Inés took her case to the IACHR, represented by the nongovernmental organization Centro de Derechos Humanos de la Montaña Tlachinollan, arguing that the government of Mexico is responsible for her rape, illegal detention, and torture, and for not adequately investigating these crimes. When admitting the case, the IACHR held that “the use of military courts to try the members of the Army allegedly implicated, (...) is not an appropriate venue and hence does not provide adequate recourse to investigate, try, and punish violations of human rights provided for by the American Convention.” IACHR, Admissibility Report 94/06 on Petition 540-04, October 21, 2006, para. 24.

<sup>106</sup> Letter from Santiago Canton, IACHR executive secretary, to Centro de Derechos Humanos de la Montaña Tlachinollan and CEJIL/Mesoamerica, Inés’s legal representatives, regarding the case 12.580, November 7, 2008.

### *The Rape of Valentina Rosendo Cantú*<sup>107</sup>

On February 16, 2002, Valentina Rosendo Cantú, a 16-year-old member of the Tlapanec indigenous community in Caxitepec, Guerrero, was washing clothes in a stream near her house when eight soldiers showed up.

When she was unable to respond to the soldiers' questions, two of them raped her. The soldiers surrounded Valentina and two of them walked up to her, asking angrily, "Where are the hooded [people]?" When she said she did not know, one soldier threatened to shoot her and, pointing his gun at her, asked her if she was from Barranca Bejuco, a nearby community. She was not. Another soldier showed her a picture and a list of names, asking her if she recognized anyone. She did not. A soldier hit Valentina in the stomach; she fell and passed out for a few minutes. When she regained consciousness, she sat down and one of the soldiers pulled her hair and violently asked her: "How come you don't know, aren't you from Barranca Bejuco?" Valentina explained she had only recently moved to Barranca Bejuco, after getting married. Two soldiers scratched her face, took her skirt and underwear off, and raped her, one after the other, while the other six men witnessed the rapes.

It took Valentina months to obtain adequate medical care. After the rape she got up and, practically naked, ran home. She went to a local hospital, where doctors refused to treat her saying they did not want "trouble" with the military and did not have adequate equipment. She then traveled eight hours by foot to another hospital in Ayutla, where a doctor determined she had been beaten in her abdomen, but did not provide any medicine or order the necessary lab exams. Only several months later, after her legal representatives intervened, did Valentina obtain adequate gynecological healthcare, including an operation.

After the rape, Valentina's husband left her and she lost the support of her community as a result of the stigmatization she suffered.

### **The Military Investigation**

On March 8, 2002, Valentina presented a formal complaint before state prosecutors in Ayutla de los Libres, Guerrero, stating she had been raped by soldiers. Two months later, the state prosecutor's office sent the case to military prosecutors, arguing they had jurisdiction

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<sup>107</sup> IACHR, Admissibility Report 93/06 on Case 972-03. Valentina Rosendo Cantú and Others, October 21, 2006, <https://www.cidh.oas.org/annualrep/2006eng/MEXICO.972.03eng.htm> (accessed December 29, 2008). IACHR, "Case 12.579 – Valentina Rosendo Cantú, Mexico," Audio testimony before the IACHR, Washington, DC, October 12, 2007, <http://www.cidh.org/Audiencias/130/ListEng.aspx> (accessed December 29, 2008). Letter sent by Valentina Rosendo Cantú and her legal representatives to the IACHR, undated.

to investigate the case because the accused were members of the military.<sup>108</sup> (The military had already initiated an investigation into the case, based on a news article accusing soldiers of raping and beating an indigenous woman).<sup>109</sup>

Valentina repeatedly—and unsuccessfully—challenged the use of military jurisdiction to investigate her case. She first refused to cooperate with the military investigation, and requested that the military prosecutor refrain from asserting jurisdiction in her case.<sup>110</sup> Subsequently, she filed several requests for injunctions (*amparos*) before federal courts challenging the assertion of military jurisdiction in her case, but civilian courts rejected her claims, arguing the accused were soldiers who were “on duty” when they committed the alleged crime, which made it a case of an alleged breach of military discipline.<sup>111</sup>

Valentina learned in October 2007—after a public hearing before the IACHR—that the military had closed its investigation more than three years earlier, in March 2004. The military argued that it had found no evidence to prove that Valentina had been raped by soldiers.<sup>112</sup>

The Mexican government says it is conducting a thorough investigation at the state level. At the international hearing—and more than five years after Valentina asked state authorities to investigate the rape—the Mexican government agreed to request that military prosecutors submit the information in their files to state prosecutors so they could investigate the rape.<sup>113</sup>

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<sup>108</sup> The state prosecutor who received the case sent it to another state prosecutor’s office in Morelos, Tlapa, on April 5, 2002. This office sent the case to military prosecutors on May 16, 2002. *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> Letter from Valentina Rosendo Cantú to Lic. Cesar A. Rivera Castillo, military prosecutor in the Military Zone 35/a, regarding military investigation 35ZM/05/2002, March 25, 2002.

<sup>111</sup> She first challenged the fact that the state prosecutors’ office had decided to send the case to military prosecutors. Both a federal judge and appeals court decided that there was nothing to challenge until the military prosecutors accepted jurisdiction to investigate the case. Rafael González Castillo, First District Judge in the State of Guerrero (Juez Primero de Distrito en el Estado de Guerrero), Injunction No. 603/2002-III (Amparo Numero 603/2002), August 30, 2002. Magistrate Margarito Medina Villafana, Injunction Review 148/2002 (Amparo en Revisión 148/2002), Decision by First Collegiate Court of the 21st Circuit (Acuerdo del Primer Tribunal Colegiado del Vigésimo Circuito), November 12, 2002.

When the military determined it had jurisdiction over the case, Valentina filed another request for an injunction in the civilian justice system, but a federal court held that the military did have jurisdiction to investigate Valentina’s case. B District of Injunctions in Criminal Matters in Mexico City (Distrito “B” de Amparo en Materia Penal en el Distrito Federal), Oscar Espinosa Duran Fifth Judge (Juez Quinto), April 29, 2003.

<sup>112</sup> Letter from Santiago Canton, IACHR executive secretary, to Valentina Rosendo Cantú, October 18, 2007. The letter forwards a copy of the information provided to the IACHR by the government of Mexico regarding the status of the military investigation. Also, letter from Ambassador Alejandro García Moreno, Mexico’s representative before the Organization of American States, to Santiago Canton, IACHR executive secretary, July 6, 2008.

<sup>113</sup> The Mexican government told the IACHR in a public hearing in October 2007 that state prosecutors “would request” the information the PGJM had in its files. IACHR, “Case 12.579 – Valentina Rosendo Cantú, Mexico,” Audio testimony before the IACHR, Washington, DC, October 12, 2007, <http://www.cidh.org/Audiencias/130/ListEng.aspx> (accessed December 29, 2008).



The military sent the files in January 2008, and the state prosecutors' office reopened the investigation in May.<sup>114</sup> Mexican officials say that the PGR then attempted to carry out procedural steps on behalf of the state prosecutors' office but Valentina repeatedly refused to cooperate with federal officials. They say that it is Valentina's failure to cooperate that is impeding justice in this case.<sup>115</sup>

However, Tlachinollan, the nongovernmental organization representing Valentina before the IACHR, told Human Rights Watch that they believe the 2008 investigation by the state prosecutors' office, which was reopened after years, is focused on the possible responsibility of civilians in Valentina's rape and is not seriously investigating the soldiers. At a minimum, this case demonstrates how the military's exercise of jurisdiction, and the lengthy delays that have accompanied it, have undermined the victim's trust, and thus, prospects for justice.<sup>116</sup>

The case is now pending before the IACHR.<sup>117</sup>

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The state prosecutors' office requested the file four days after the hearing. Letter from Jesús Alemán de Carmen, state deputy prosecutor of regional oversight and criminal proceedings (suprocurador de control regional y procedimientos penales), to General Gabriel Sagrero Hernández, military attorney general, October 16, 2007.

<sup>114</sup> Decision by Joaquín Díaz Terrero, state prosecutor from the General Directorate of Control of Investigations (Dirección General de Control de Averiguaciones Previas), May 15, 2008.

<sup>115</sup> Letter from Ambassador Gustavo Albin, Mexico's representative before the Organization of American States, to Santiago Canton, IACHR executive secretary, October 16, 2008.

<sup>116</sup> Human Rights Watch interview with Abel Barrera and other Tlachinollan representatives, Washington DC, October 20, 2008. Letter from Abel Barrera Hernández, Centro de Derechos Humanos de la Montaña Tlachinollan, Cuauhtemoc Ramirez Rodriguez, OPIT, Vanessa Coria, CEJIL, and Luis Diego Obando, CEJIL, to Santiago Canton, IACHR executive secretary, December 11, 2008.

<sup>117</sup> On November 10, 2003, Valentina took her case to the IACHR, arguing that the government of Mexico is responsible for her rape, illegal detention, and torture, and for not adequately investigating these crimes. When admitting the case, the IACHR held that "the use of military courts to try the members of the Army allegedly implicated, (...) is not an appropriate venue and hence does not provide adequate recourse to investigate, try, and punish violations of human rights provided for by the American Convention." IACHR, Admissibility Report 93/06 on Case 972-03. Valentina Rosendo Cantu and Others, October 21, 2006, <https://www.cidh.oas.org/annualrep/2006eng/MEXICO.972.03eng.htm> (accessed December 29, 2008), para. 28.



## IV. An Ongoing Practice

To this day the military justice system continues to assert jurisdiction over the most egregious abuses against civilians—including killings, torture, arbitrary detentions, and rapes—committed by the military during counternarcotics and law enforcement operations. SEDENA limits excessively and without reasonable justification basic information on the status of its investigations, so it is extremely difficult to know with certainty to what extent members of the armed forces are being held accountable. However, a review of available information about the military's handling of well known cases from 2007 and 2008 suggests that the likelihood of obtaining justice is slim.

First, none of the military investigations analyzed in this chapter, which involve 11 cases and dozens of victims, have led to a criminal conviction. The military has closed its investigation in four cases, saying it had found no evidence to charge soldiers with any crime or that the statute of limitations had expired. The other seven cases are still pending (most of them are still officially under investigation), in some instances almost two years after the abuses took place.

Second, the limited information available about the investigations shows that they have suffered from serious problems. Military prosecutors have, for example, relied on evidence planted by soldiers to support SEDENA's allegations that the military had detained individuals "in fraganti," which would justify the detention. They have also failed to subject soldiers who were allegedly drunk to a timely alcohol test. Often, military prosecutors appear to have completely ignored evidence documenting the abuses, instead giving undue weight to the accounts of the military. In at least one case, the military has investigated soldiers for only minor crimes (e.g. "abuse of power"), failing to pursue an investigation for the more serious crimes that were allegedly committed. In another, victims have not participated in the investigations, mostly because the military failed to work with them.

While the military has at times provided monetary compensation to victims, such compensation does not make up for the lack of accountability in these cases.

### **Recent Abuses during Counternarcotics and Public Security Operations**

This section analyzes how the military justice system has addressed dozens of military abuses—including killings, arbitrary detentions, torture, and rapes—committed during law enforcement and counternarcotics operations in 2007 and 2008. The principal sources for

all of these cases are CNDH reports documenting the abuses, as well as evidence included in such reports. All of these cases received widespread attention in the media when the reports were made public. SEDENA “accepted” all of the CNDH’s reports, thereby committing itself to, among other things, investigate the abuses and sanction those responsible.<sup>118</sup>

### *Illegal Detention and Abuse of 36 Civilians and Rape of Four Minors*

After unknown individuals attacked members of the military, killing five soldiers on May 1, 2007, hundreds of soldiers went to the municipalities of Nocupétaro, Carácuaro, and Huetamo in Michoacán state seeking the aggressors. They committed dozens of abuses, including arbitrary detentions, illegal detentions at a military base, torture, beatings, rapes, and illegal entries into homes.<sup>119</sup>

During the two days that followed the ambush, soldiers arbitrarily detained 36 people, including five minors, holding most of them at the military base in the 21<sup>st</sup> Military Zone for up to 84 hours.<sup>120</sup> They repeatedly beat the detainees, tied their hands with tape or rope, and in some cases covered their heads with a plastic bag or cloth. One of the detainees had burns on his skin, and another reported that the soldiers had pushed his head into a container with water to force him to provide information. The soldiers kept the majority of the detainees incommunicado, and held four of them with their faces and eyes covered the whole time.

Four of the people detained for over 20 hours were girls under 18 years old at the time, who testified before federal prosecutors that soldiers repeatedly beat, sexually abused, and raped them with the purpose of obtaining information about their supposed links with armed groups and drug traffickers. The girls revealed how soldiers forced them onto a helicopter, where they then threatened and sexually abused the girls. One girl said that the

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<sup>118</sup> CNDH, “Annual Report of Activities from January 1 to December 31, 2007,” (Informe de Actividades del 1 de enero al 31 de diciembre de 2007), <http://www.cndh.org.mx/lacndh/informes/anales/informeAct2007/informe2007.htm> (accessed January 30, 2009), section II.2.B. CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), section II.3.C (p. 50); annex 4. “Ministry of Defense accepts recommendations of the National Human Rights Commission,” (La Secretaría de la Defensa Nacional acepta las recomendaciones de la Comisión Nacional de Derechos Humanos), SEDENA press release, July 11, 2008, [http://www.sedena.gob.mx/index.php?id\\_art=2068](http://www.sedena.gob.mx/index.php?id_art=2068) (accessed January 30, 2009).

Human Rights Watch believes that the CNDH should not request the military to investigate itself after documenting egregious human rights abuses. For an analysis of the CNDH’s failure to promote accountability for army abuses, see Human Rights Watch, *Mexico’s National Human Rights Commission: A Critical Assessment*, Vol. 20, No. 1 (b), February 2008, section V.

<sup>119</sup> CNDH, *Recommendation 38/2007*, September 21, 2007.

<sup>120</sup> The CNDH documented one case in which a person was held by the military for 84 hours. Twenty-three detainees were held at the military installations between 14 and 36 hours, and 12 others were detained by the military but there is no evidence that they were taken to military installations.

soldiers told them, “fucking human rights don’t exist, we will throw you in the sea and you will be food for the sharks.” Another stated that they forced her to keep her skirt up and her underwear down, while soldiers said, “fucking bitch, (...) this is what you like.” A soldier took a prayer card of the Virgin Mary that a third girl had with her, made a small ball out of it, and introduced it into her anus. According to the fourth girl, soldiers told her, “Not even the Virgin will get you out of this.” When they arrived at the military installations, they were forced to inhale a substance that made them sleepy, and awoke feeling terrible aches in their bodies, particularly in their lower abdomen. Some of the girls noticed they were spitting foam from their nose and mouth, and that a liquid was flowing out of their vagina, producing an itchy sensation.<sup>121</sup>

The soldiers also illegally entered over 30 homes, threatening the people inside with their guns, and stealing cash, cell phones, and jewelry.

### **The Military Investigation**

Almost two years after the events, the PGJM is still investigating soldiers’ responsibility for the abuses. The federal prosecutor, who began investigating the case, determined on May 30, 2007, that he lacked jurisdiction and sent it to military prosecutors.<sup>122</sup>

Initially, the PGJM only initiated a criminal investigation into the possible rape of the four girls. Despite the evidentiary value that a victim’s testimony has in any criminal investigation into a rape, SEDENA told the CNDH that it had completed “90 percent” of the investigation, before having even obtained the testimony of two of the girls.<sup>123</sup> In spite of their initial testimony describing the rapes and medical evidence analyzed by the CNDH supporting their claims, the PGJM said that two of the girls had told military prosecutors that they were not willing to press charges since they had not been raped, beaten, or mistreated by members of the military.<sup>124</sup> As of January 2009, the PGJM is still investigating the case.<sup>125</sup>

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<sup>121</sup> SEDENA acknowledges that the four girls were detained for six hours before being taken to military installations, where, SEDENA claims, the girls were detained for the next seven hours, examined by doctors, and later presented to civilian authorities. SEDENA, “Wireless message No. 13202” (Radiograma No. 13202), May 15, 2007.

<sup>122</sup> CNDH, *Recommendation 38/2007*, September 21, 2007.

<sup>123</sup> CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>124</sup> *Ibid.*

<sup>125</sup> SEDENA, Infomex file 0000700155208, January 7, 2009.

It is unclear whether the PGJM is investigating the rest of the abuses, and no substantive information on the status of such investigations is available. SEDENA told Human Rights Watch in January 2009 that it had not initiated any other criminal investigation as a consequence of the abuses documented by the CNDH.<sup>126</sup> However, it had previously informed the CNDH that it was investigating the “beatings and alleged acts of torture.”<sup>127</sup> Regarding the status of that investigation, SEDENA only stated that the PGJM had conducted “40 percent” of the investigation.<sup>128</sup>

### *Illegal Detention of Eight Civilians and Torture of Four, including a Child*

On May 7, 2007, soldiers from the 51<sup>st</sup> Infantry Battalion belonging to the Mixed Operations Base “Tierra Caliente” detained six men, a woman, and a child after a shootout between the military and alleged drug traffickers—which lasted over an hour and left several members of the military injured and four civilians dead—in the municipality of Apatzingán in Michoacán state. None of the detainees were involved in the shootout.<sup>129</sup>

When the shooting broke out, some of the detained individuals were in the area purchasing agricultural products, while others were inside their homes. The soldiers detained the eight people soon after the violence ended, and took them to military installations in the 43rd Military Zone, where the soldiers tortured four of them, including the child. The torture included beatings, kicks, placing their heads in black bags, which made it difficult for them to breathe, and forcing them to lie on the floor blindfolded, while soldiers asked “who they worked for.”

Although Mexican law states that individuals must be immediately presented before a judge, soldiers held the detainees for 15 hours in military installations, before taking them in front of a federal prosecutor. The soldiers argued that the detainees had been caught “in fraganti” and should be investigated for their responsibility in the shootout. But three days later, federal prosecutors determined there was no evidence to charge the eight people with any crime and set them free.

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<sup>126</sup> SEDENA, Infomex file 0000700155208, January 7, 2009.

<sup>127</sup> Ibid. CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>128</sup> Ibid.

<sup>129</sup> CNDH, *Recommendation 39/2007*, September 21, 2007. The names of the detainees are Bernardo Arroyo López, Raúl Zepeda Cárdenas, Alejandro Juvenal Guzmán Suastegui, Gustavo Orozco Villegas, Isaías Suastegui Ponce, Miguel Valerio Durán, and Teresa Valencia González. The CNDH withheld the name of the child to protect his identity. From available information, we know that his gender is male and he is under 18 years of age.

Other soldiers illegally entered nine homes in the area, allegedly damaging property and stealing cell phones, cameras, jewelry, and cash.

### **The Military Investigation**

SEDENA has closed one criminal and one administrative investigation, and sent them both to its archives. On May 15, 2007, the federal prosecutor who investigated the detainees' alleged responsibility in the shootout informed the PGJM that it should investigate the soldiers who had exceeded their functions.<sup>130</sup> In less than a month, the PGJM closed the only criminal investigation it had begun into a possible breach of military discipline in this case, arguing that there was no evidence that "the acts investigated by the military prosecutors' office ... constitute a criminal act."<sup>131</sup> From available evidence, it is unclear whether the military investigated the detention, the torture, or both. SEDENA also sent the administrative investigation it had begun to the archives, stating that the administrative bodies had no jurisdiction to investigate probable human rights abuses.<sup>132</sup>

### *Killing of Two Women and Three Children and Wounding of Three Others*

On June 1, 2007, soldiers who were stationed on the side of a road in the municipality of Sinaloa de Leyva in Sinaloa state, and were reportedly drunk and using drugs, opened fire on a truck transporting three adults and five children, killing a woman and a 3-year-old girl.<sup>133</sup>

SEDENA argues that the vehicle failed to stop at the soldiers' request, and the soldiers fired their guns to defend themselves, only after they heard shots (*fogonazos*). According to their account, once the shooting stopped, they found two individuals dead and six injured, and they provided first aid to the injured passengers. SEDENA says they found a sack of marijuana next to the truck.

However, evidence indicates that the soldiers opened fire without justification. For example, state prosecutors found that there were no signs warning drivers that the military had a checkpoint in the area and were thus required to slow down. There is no evidence to support SEDENA's claim that the civilian passengers had fired guns at the soldiers, but there is extensive forensic evidence demonstrating that the deaths and injuries were caused by guns

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<sup>130</sup> Ibid.

<sup>131</sup> The PGJM closed the investigation on June 6, 2007. SEDENA, Infomex file 0000700155308, January 15, 2009.

<sup>132</sup> Ibid.

<sup>133</sup> CNDH, *Recommendation 40/2007*, September 21, 2007. The deceased were Griselda Galaviz Barraza (age 27) and Grisel Adanay Esparza Galaviz (age 3).

fired by members of the military. Also, a soldier reported to military prosecutors that the soldiers had received orders to plant evidence (marijuana) next to the truck, which would enable them to argue they had caught the passengers “in fraganti” during the commission of a crime, and that their actions were therefore justified.

Soldiers allegedly delayed the injured passengers’ access to urgent medical care, which led to three more deaths.<sup>134</sup> When family members of the passengers arrived at the scene, soldiers told them that a helicopter was on its way to transport the injured people to a hospital. After waiting three hours for the helicopter, the family members decided to drive the injured passengers to the nearest hospital. During the trip they were detained by soldiers at three different check points, for a total time of nearly two hours, though they had informed the soldiers each time that they were transporting individuals in need of urgent medical care. At one location, a military vehicle escorted them at a very slow speed, further delaying their arrival at the hospital. Three passengers finally died in the cars. Red Cross ambulances then transported the three surviving, injured passengers to the nearest hospital.

In their testimonies before federal prosecutors and the CNDH, the family members who were transporting the injured passengers stated that soldiers detained them and forced them to stay all night—reportedly inside their cars with the dead bodies—on the premises of a military base. The following morning the soldiers told them that the bodies would be taken to a nearby hospital.

### **The Military Investigation**

The PGJM is still investigating the abuses, but available information indicates that the military has conducted flawed criminal investigations. The military has paid monetary compensation to the victims.

On June 1, 2007, federal prosecutors initiated a criminal investigation, and two days later, responding to a request from military prosecutors, sent the case to the PGJM.<sup>135</sup> The military prosecutors pressed charges against some of the soldiers who fired at the truck, and on June

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<sup>134</sup> The four men who transported the injured passengers were Omar Flores Sánchez, José Luis Flores, Gorgiono Flores Lara, and Mario Galaviz. During the trip, Gloria Alicia Esparza Parra (age 20), Eduin Uoniel Esparza Galaviz (6), and Juana Diosnirely Esparza Galaviz (1) died. The other injured passengers were Adán Abel Esparza Parra (29), Teresa de Jesús Flores Sánchez (16), and Josué Duvan Carrillo Esparza (7).

<sup>135</sup> A military prosecutor from the 9<sup>th</sup> Military Zone asked the federal prosecutor to declare he lacked jurisdiction to investigate the case. SEDENA, File No. 488, June 2, 2007, cited in CNDH, *Recommendation 40/2007*, September 21, 2007.

10, 2007, a military judge issued arrest warrants for 19 soldiers.<sup>136</sup> As of January 2009, the case was still pending before military courts.<sup>137</sup> An investigation into all the other abuses is also still pending.<sup>138</sup>

There are indications that the military's investigation has serious flaws. Despite evidence that seven soldiers had tested positive for marijuana use, and one had tested positive for methamphetamines and cocaine, military prosecutors failed to request that all the soldiers involved be subjected to appropriate and timely testing.<sup>139</sup> Military prosecutors failed to thoroughly investigate the allegations that the soldiers had planted evidence. Finally, PGJM had initially only investigated the soldiers who fired at the truck (and one captain for other crimes related to the CNDH findings), and apparently only included the other abuses in the investigation after the CNDH made its report public.<sup>140</sup>

Soon after military judges issued the arrest warrants, SEDENA agreed to pay monetary compensation to the victims and their families.<sup>141</sup> SEDENA refused to provide Human Rights Watch with a copy of the agreement, arguing that since it had not yet entirely complied with the CNDH's recommendations, the document containing the agreement was confidential.<sup>142</sup> However, it did give the CNDH the names of the victims receiving compensation, as well as the amount of Mexican pesos given to each person, and the CNDH published this information in its 2008 annual report.<sup>143</sup>

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<sup>136</sup> The accused are Guillermo Alejandro Velasco Mazariego, Arturo García Moreno, José Alejandro Zavala García, Enrique Galindo Ávila, Eladio Pérez Arriaga, Juan Carlos Maldonado Ramírez, Antonio Castillo Martínez, Ismael Ortega González, Gustavo Castillo Ramírez, Héctor Jiménez Centeno, Argenis Camarillo de la Cruz, Francisco Ramírez Jiménez, Francisco Vázquez Esparza, José Paulino Hernández, Calixto García Hernández, Cándido Alday Arriaga, Saraín Díaz Velásquez, Benito Sánchez Girón, and José Abad Vega Trujillo. Ibid.

<sup>137</sup> SEDENA, Infomex file 0000700155408, January 15, 2009.

<sup>138</sup> CNDH, "Annual Report of Activities from January 1 to December 31, 2008," (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>139</sup> CNDH, *Recommendation 40/2007*, September 21, 2007. SEDENA, Document No. DH-017357/806, June 22, 2007.

<sup>140</sup> SEDENA informed the CNDH that it had opened investigation 9ZM/020/2008 to look into the documented abuses, including the problems with the initial criminal investigation. But it did not provide any additional information, nor information on the status of the investigations of the 19 soldiers. CNDH, "Annual Report of Activities from January 1 to December 31, 2008," (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>141</sup> The payment was made on July 20, 2007 (before the CNDH report was issued). CNDH, *Recommendation 40/2007*, September 21, 2007.

<sup>142</sup> SEDENA, Infomex file 0000700155408, January 15, 2009. The CNDH provided Human Rights Watch a copy of the SEDENA document that describes when the compensation was paid, but the names of the victims and the amounts are crossed out. CNDH, Exp. 2008/424-T, January 26, 2009.

<sup>143</sup> CNDH, "Annual Report of Activities from January 1 to December 31, 2008," (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

### *Illegal Detention and Torture of José Fausto Galvez Munguía*

On June 7, 2007, José Fausto Galvez Munguía and two others were close to the U.S. border in the state of Sonora, waiting for a man who had promised to help them cross the border and travel to Phoenix, Arizona, when two Mexican Army vehicles, with personnel from the 40th Military Zone, arrived.<sup>144</sup>

The soldiers pointed their guns at the men, asking them who their boss was and “where the drugs” were. They tortured Galvez for four hours. When Galvez explained why they were there, a soldier kicked him in the ribs and another pulled his hair and ordered him to get into a military vehicle. The soldiers beat Galvez, threw him out of the car, and dragged him to a location where they forced him to drink an alcoholic beverage, which caused him to vomit. The soldiers inserted pieces of wood under his nails and moved them around to inflict pain, and then pulled out one of his nails.

The soldiers left Galvez lying unconscious in the countryside. When he awoke, Galvez managed to walk to a road, where a passerby picked him up and drove him to the nearest hospital.

### **The Military Investigation**

Galvez asked a federal prosecutor in Sonora to investigate his allegations of military abuse on June 15, 2007. The federal prosecutor sent the case to the state attorney general’s office, which had already started an investigation. But on February 5, 2008, the state prosecutor determined the case should be investigated by military prosecutors. As of January 2009, the PGJM was still investigating the case.<sup>145</sup> SEDENA paid monetary compensation to the victim before concluding the military criminal investigation.<sup>146</sup>

### *Illegal Detention and Torture of Oscar Cornejo Tello*

On June 13, 2007, Oscar Cornejo Tello was watching TV with two other people in a home in the municipality of Morelia in Michoacán state, when 15 members of the military illegally entered the house shouting, “Open the door, son of a bitch!”<sup>147</sup>

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<sup>144</sup> CNDH, *Recommendation 29/2008*, July 11, 2008.

<sup>145</sup> SEDENA, Infomex file 0000700155708, January 15, 2009. SEDENA informed the CNDH that it had also initiated an administrative investigation. CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>146</sup> SEDENA, Infomex file 0000700155708, January 15, 2009.

<sup>147</sup> CNDH, *Recommendation 30/2008*, July 11, 2008.



When Cornejo opened the door to let the soldiers in, they threw him on the floor and tortured him. The soldiers asked him if his nickname was “*Chino Güenses*,” and when he said it was not, they covered his head with a piece of cloth and then used it to choke him. The soldiers gave electric shocks to his testicles and kicked and beat him for approximately 30 minutes.

The soldiers took Cornejo in handcuffs to the 21st Military Zone, where he was detained for seven hours, until he was finally presented before a federal prosecutor. (SEDENA reported at the time that soldiers had detained Cornejo “in fraganti,” when he was driving a car, in which soldiers found weapons and drugs, contradicting the evidence gathered by the CNDH.)

### **The Military Investigation**

A federal prosecutor pressed charges against Cornejo for possessing drugs and illegal firearms, but he also determined that military prosecutors should investigate the possible responsibility of members of the military in the abuse of Cornejo.<sup>148</sup> The PGJM started investigating the possible “abuse of power” by members of the military on July 9, 2007, and as of January 2009, the case remains at the investigation stage.<sup>149</sup> SEDENA has already paid monetary compensation to the victim.<sup>150</sup>

### *Torture and Death of Fausto Ernesto Murillo Flores*

On August 3, 2007, soldiers detained three men in the municipality of Naco in Sonora state, but only presented two of them before the state prosecutor, accusing them of possessing illegal firearms. The body of the third man, Fausto Ernesto Murillo Flores, was found the following day on the side of a road in Sonora, showing signs of torture.<sup>151</sup>

According to a witness’s account, after detaining Murillo the soldiers beat him repeatedly, while asking him where they could find weapons and drugs. The witness heard that Murillo appeared to be drowning and heard the soldiers threatening to put alcohol in his nose. The witness also saw soldiers place a plastic bag over Murillo’s head. Soldiers continued to beat

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<sup>148</sup> On February 22, 2008, a first instance judge sentenced Cornejo Tello to 4 years and 8 months in prison and ordered him to pay 5,712 Mexican pesos (approximately US \$400). Cornejo Tello appealed the decision and, as of July 2008, when the CNDH issued its report, the higher court’s decision was still pending.

<sup>149</sup> SEDENA informed the CNDH it had opened an administrative investigation, despite the fact that it told Human Rights Watch that administrative agencies had no jurisdiction to investigate this case. SEDENA, Infomex file 0000700155608, January 15, 2009. CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>150</sup> *Ibid.*

<sup>151</sup> CNDH, *Recommendation 31/2008*, July 11, 2008.

Murillo until, stated the witness, “suddenly he was still; he no longer complained or said anything.”

SEDENA blamed Murillo’s health conditions for his “natural” death after being detained, contradicting the witness’s account, the autopsy, the CNDH’s findings, and SEDENA’s own initial account, according to which it had only detained the two other men (and not Murillo).<sup>152</sup> In its second report on the case, SEDENA said that Murillo had died when he was detained, and that the cause of death was a heart attack, which was the consequence of “addiction to cocaine and tobacco, obesity, and being sedentary.” However, according to documentation—including a medical forensic evaluation—analyzed by the CNDH, Murillo’s death was likely the consequence of asphyxia.

SEDENA’s second version, that Murillo had in fact been detained and died as a consequence of his health troubles, does not explain why his body was found on the side of a road.

### **The Military Investigation**

The day Murillo’s body was found, a state prosecutor in Sonora began investigating the homicide, but a few months later sent the case to military prosecutors, who were already investigating the case.<sup>153</sup> The PGJM pressed charges against six soldiers, accusing them of torturing Murillo.<sup>154</sup> But the military judge determined the statute of limitations on investigating the soldier’s probable responsibility for the crime of “desertion” had expired, and closed the case.<sup>155</sup> SEDENA informed the CNDH that it initiated another criminal investigation, but there is no information available on which crimes are being investigated or what the current status of the investigation is.<sup>156</sup> SEDENA paid the victim’s family monetary compensation.<sup>157</sup>

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<sup>152</sup> SEDENA, Document No. DH-026323/01560, October 3, 2007.

<sup>153</sup> CNDH, *Recommendation 31/2008*, July 11, 2008.

<sup>154</sup> The accused were José Roberto Lagunas Huitrón, Domingo Armando Calderón Ballina, César Miguel Palomares Flores, Gustavo Gil Lemus, Pánfilo Valenzuela Valenzuela, and Abenamar Jiménez Jiménez. *Ibid.*

<sup>155</sup> SEDENA, Infomex file 0000700155908, January 15, 2008.

<sup>156</sup> CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>157</sup> SEDENA, Infomex file 0000700155908, January 15, 2008. *Ibid.*

### *Illegal Detention and Torture of Jesús Picazo Gómez*

On the night of August 21, 2007, five members of the 37<sup>th</sup> Infantry Battalion of Zamora in Michoacán state—who belonged to the “Mixed Operations Base Uruapan”—detained Jesús Picazo Gómez when he was leaving his aunt’s house to buy food.<sup>158</sup>

For over 24 hours the soldiers illegally held Picazo incommunicado in military installations. Soldiers beat and kicked him, blindfolded him, and took him to a military base in Uruapan. There the soldiers placed a cloth bag on his head, threw him onto the floor, tied his arms and feet, and poured water on his face while they hit his abdomen and asked him for names of people in his community who produced and sold drugs. Picazo spent the night naked at the base.

The following morning, Picazo was taken to another military base where soldiers continued beating and throwing him against a wall, while they showed him pictures and asked if he recognized anyone. When he said he did not, the soldiers repeatedly forced his head into a container full of water, reportedly for periods of up to three minutes, and applied electric shocks to his stomach.

It was not until 11 p.m. on the day after his detention that soldiers took Picazo before a federal prosecutor, arguing they had detained him “in fraganti” for possessing drugs and illegal firearms.<sup>159</sup> The prosecutor filed charges against Picazo, but the judge who heard the case ordered his immediate release, stating his detention had been illegal.

### **The Military Investigation**

After Picazo’s release, a federal prosecutor initiated a criminal investigation into the possible responsibility of two members of the military for the abuses.<sup>160</sup> Three days later he sent the case to a military prosecutor, who began investigating the case on September 20, 2007.<sup>161</sup> Despite the existence of medical exams by civilian authorities documenting the torture, eleven months later the PGJM closed the investigation, arguing that military

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<sup>158</sup> CNDH, *Recommendation 32/2008*, July 11, 2008.

<sup>159</sup> SEDENA, Document No. DH-26262/1499, September 26, 2007.

<sup>160</sup> The names of the accused are Francisco Soto Cristóbal and Pedro Govea Maravilla from the 37/o. Infantry Battalion.

<sup>161</sup> The federal prosecutor’s office sent the file to military prosecutors on September 6, 2007, and submitted additional information to the military prosecutor on May 12, 2008.

prosecutors did not find evidence that soldiers had committed a crime.<sup>162</sup> However, the military paid Picazo Gómez monetary compensation.<sup>163</sup>

### *Illegal Detention and Torture of Antonio Paniagua*

At 5 a.m. on October 7, 2007, soldiers from the 37<sup>th</sup> Infantry Battalion of the Mexican Army—belonging to the Mixed Operations Base in Zamora, Michoacan—illegally entered Antonio Paniagua Esquivel’s home while he and his family were sleeping.<sup>164</sup>

After entering Paniagua’s home, soldiers took him out of bed, threw him on the floor and started kicking and beating him. The soldiers took Paniagua to the second floor of the house, where they forced him to lie down facing upwards, blindfolded him, stepped on his hands, placed a towel with water on top of his face making it difficult for him to breath, and applied electric shocks to his genitals.

The soldiers then kept Paniagua at a military base for two hours. Finally, they presented Paniagua before a federal prosecutor, arguing that he had been detained “in fraganti” in possession of illegal firearms.<sup>165</sup> By then, eight hours had passed since the illegal entry into his home.

### **The Military Investigation**

A federal prosecutor pressed charges against Paniagua on October 12, 2007, accusing him of possessing weapons that may only be used by the armed forces. The same prosecutor determined that it was likely that members of the military had committed irregularities when they detained Paniagua, so he forwarded a copy of the investigation to the PGJM.<sup>166</sup> Military prosecutors closed the investigation on July 23, 2008, finding that there was no evidence that soldiers had committed any crime.<sup>167</sup> The military did, however, pay Paniagua monetary compensation.<sup>168</sup>

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<sup>162</sup> The PGJM closed the investigation on August 26, 2008. SEDENA, Infomex file 0000700156008, January 15, 2008.

<sup>163</sup> SEDENA, Infomex file 0000700156008, January 15, 2008. CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>164</sup> CNDH, *Recommendation 33/2008*, July 11, 2008.

<sup>165</sup> SEDENA, Document No. DH-35695/2098, November 6, 2007.

<sup>166</sup> The case was sent to a military prosecutor in the 21st Military Zone.

<sup>167</sup> SEDENA, Infomex file 0000700156108, January 15, 2008.

<sup>168</sup> *Ibid.* CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

### *Death of Victor Alfonso de la Paz Ortega and Wounding of Juan Carlos Peñaloza García*

On the evening of January 11, 2008, a soldier from the 12<sup>th</sup> Infantry Battalion of the Mexican Army opened fire on a car in the municipality of Huetamo in the state of Michoacán, killing 17-year-old Víctor Alfonso de la Paz Ortega.<sup>169</sup> When the driver, Juan Carlos Peñaloza García, 19, stopped the car after his friend had been killed, the soldiers forced him out of the vehicle, hit him with a gun, and kept him on the floor, facing downwards.

In its official response to the CNDH, SEDENA argued that a soldier shouted at the driver, asking him to stop, after the driver had failed to obey signs on the street warning drivers to reduce their speed.<sup>170</sup> According to SEDENA, when the driver did not stop, the soldiers were forced to react, since the man in the passenger's seat had a gun and they feared for their lives. A soldier fired a first shot in the air and when he saw that the car did not stop, fired two shots at the vehicle's wheels.

According to the information that the CNDH gathered when documenting the case, however, the soldier's reaction constituted an unjustified, excessive use of force. There were no clear "warning signs" on the street that demonstrated the military was present in that area of town or that would have indicated to the driver that he needed to slow down. Authorities found a plastic gun inside the car, but since the incident occurred at night and the car had tinted windows, it would have been nearly impossible for soldiers to see if the passenger had a gun. There was no forensic evidence of shots fired from inside the vehicle. There was evidence showing that the soldier had fired only three shots and there had been no first warning shot in the air.

#### **The Military Investigation**

SEDENA is only investigating some of the documented abuses, but has already decided to provide victims and their families monetary compensation.<sup>171</sup> The Michoacán State Prosecutor's Office immediately initiated a criminal investigation into de la Paz's death and sent it to the PGR, which, in turn, sent it to military prosecutors at the PGJM's request.<sup>172</sup> The PGJM initiated a criminal investigation into the probable responsibility of one soldier in the

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<sup>169</sup> CNDH, *Recommendation 34/2008*, July 11, 2008.

<sup>170</sup> SEDENA, DH-I-0127, January 22, 2008.

<sup>171</sup> SEDENA, Infomex file 0000700154808, January 7, 2009. CNDH, "Annual Report of Activities from January 1 to December 31, 2008," (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

<sup>172</sup> The PGR sent the case to military prosecutors on January 13, 2008.

homicide of de la Paz, but failed to investigate those responsible for beating Peñaloza García.<sup>173</sup> As of January 2009, the PGJM was still investigating the homicide.<sup>174</sup>

### *Killing of Sergio Meza Varela and Wounding of José Antonio Barbosa Ramírez*

On February 16, 2008, at least three soldiers, who wanted to stop a car in Reynosa in the state of Tamaulipas, opened fire on the vehicle without justification, killing Sergio Meza Varela and injuring José Antonio Barbosa Ramírez.<sup>175</sup>

Although SEDENA argued that the soldiers had opened fire to “repeal an aggression,” there does not appear to be any evidence that the men in the car had attacked the soldiers. When the state prosecutor and his staff arrived at the scene they searched the car in which Meza and Barbosa were traveling and did not find any firearms. Also, a general submitted a written document to the state prosecutor stating he had not “detected any firearm [held by] the civilians.” Finally, a test for gun residue found no evidence that either man had fired a gun immediately before the events, and there was no proof that anyone had shot from inside the car.

### **The Military Investigation**

The Tamaulipas Attorney General’s Office initiated an investigation into the probable responsibility of the soldiers, but four days later it determined it did not have jurisdiction to analyze the case and sent it to military prosecutors. As of January 2009, the PGJM was still investigating the case.<sup>176</sup> SEDENA has already paid victims and their families monetary compensation.<sup>177</sup>

### *Killing of Four Civilians and Abuse and Arbitrary Detention of Four Others*

At approximately 9:00 p.m. on March 26, 2008, six people were returning from a party near the community of Santiago de Caballeros, in the Badiraguato municipality of the state of Sinaloa, when a military truck began to pursue their car. Suddenly, the military truck pulled

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<sup>173</sup> CNDH, *Recommendation 34/2008*, July 11, 2008.

<sup>174</sup> SEDENA, Infomex file 0000700154808, January 7, 2009.

<sup>175</sup> CNDH, *Recommendation 35/2008*, July 11, 2008.

<sup>176</sup> SEDENA, Infomex file 0000700154908, January 7, 2009.

<sup>177</sup> *Ibid.* CNDH, “Annual Report of Activities from January 1 to December 31, 2008,” (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

alongside the vehicle and nearly crashed into it.<sup>178</sup> More than a dozen soldiers opened fire from close range without any apparent justification, killing four civilians. Two soldiers were also killed, reportedly by friendly fire.<sup>179</sup>

The driver was shot first and lost control of the car, while the passengers began to yell that they were unarmed and pleaded with the soldiers to stop shooting.<sup>180</sup> But the shooting continued and four of the passengers—including one man who was intellectually disabled — were killed.<sup>181</sup> Two passengers survived, but one was wounded. The soldiers also accidentally killed two of their own men who had been traveling inside the military truck.

The military found no weapons in the car, but they detained and beat the surviving passengers. Wilfredo Medina, who suffered a gunshot wound and several other injuries in the attack, said soldiers forced him and the other survivor to lie face down in the dirt with their hands on the back of their necks. When Medina moved his hand slightly to stop blood from running from a gash on his head, a soldier kicked him repeatedly in the face.<sup>182</sup> The soldiers also detained two other civilians who were traveling in a separate vehicle. The military forced them to lie face down in the dirt for seven hours, without any explanation as to why they were being held, and then released them without charge.<sup>183</sup>

At first, the military characterized the incident as a clash, rather than a one-sided attack. The day after the incident, three ranking military officers who were involved claimed that the civilian vehicle had fled, despite the military's order to stop. They also stated that the soldiers had opened fire only after they heard guns being fired by the victims, saying the

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<sup>178</sup> CNDH, *Recommendation 36/2008*, July 11, 2008. "Declaration of Suspect: Miguel Ángel Medina Medina," (Declaración del Indiciado: Miguel Ángel Medina Medina), Federal Attorney General's Office (Procuraduría General de la República), AP/SIN/CLN/298/2008/M-AR. (Culiacán: March 28, 2008).

<sup>179</sup> Daniel Guerrero Bojorquez and José Castro Nuñez, "Sodium Nitrate Test," (Dictamen Pericial: Rodizonato de Sodio), Office of Criminal Investigation and Expert Services, Sinaloa State Attorney General's Office (Dirección de Investigación Criminalística y Servicios Periciales, Procuraduría General de Justicia del Estado de Sinaloa), Folio 15740/2008. (Culiacán: March 28, 2008). The experts performed sodium nitrate tests on 16 military officers involved in the incident, thirteen of which tested positive on at least one hand, suggesting they had discharged their firearms. CNDH, *Recommendation 36/2008*, July 11, 2008.

<sup>180</sup> "Declaration of Suspect: Miguel Ángel Medina Medina."

<sup>181</sup> The deceased were the driver, Zenón Alberto Medina López (age 30), and passengers Manuel Medina Araujo (29), Edgar Geovanny Araujo Alarcón (28), and Irineo Medina Díaz (53), who was mentally handicapped.

<sup>182</sup> "Declaration of Suspect: Wilfredo Madrid Medina," (Declaración del Indiciado: Wilfredo Madrid Medina), Federal Attorney General's Office (Procuraduría General de la República), AP/SIN/CLN/298/2008/M-AR. Culiacán: March 28, 2008.

<sup>183</sup> The men, who were driving in an all-terrain vehicle (*un cuatrimoto*), had been returning from the same party as the victims. Upon their arrival at the scene of the shooting, they were immediately detained by the military. CNDH, *Recommendation 36/2008*, July 11, 2008, pp. 5-6.

military then “proceeded to repel the aggression.”<sup>184</sup> Early press reports cited official sources who described the incident as “an ambush that targeted the military as they carried out a sweep to search for drug plantations in the area” and described the victims as “four suspected assassins of the drug trade.”<sup>185</sup>

However, evidence that emerged from official investigations and witness accounts contradicts the military’s initial account. The two passengers who survived testified that no one in the vehicle had been carrying weapons or fired on the military vehicle.<sup>186</sup> This finding was confirmed by several government experts, including federal and state investigators, who found that all the bullets had been fired by the military and the civilians had been unarmed.<sup>187</sup> This evidence led the state prosecutor, who was reviewing the charges against the civilians for homicide and injuring soldiers, to conclude that their account of the events was more credible than the military’s, and the survivors were released.<sup>188</sup>

### The Military Investigation

As described in detail below, after persuading the federal prosecutor to turn over jurisdiction, the PGJM neglected to gather key pieces of evidence, raising doubts about its thoroughness and objectivity during the investigation. It also repeatedly failed to act in the interest of victims’ families, excluding them from the inquiry, denying them information about the case, and rushing them through a flawed compensation process.

Within hours of the incident, both the PGR and the PGJM had launched preliminary investigations into the events. Three days later, responding to a request from military authorities, the federal prosecutor refused to assert jurisdiction to continue investigating the

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<sup>184</sup> Victor Ruiz Martínez, Juan José Camacho Vega, and Antonio Rojas Reyes, “Subject: Complaint of Events,” (Asunto: Denuncia de Hechos), Mexican Army (Ejército Mexicano). (Culiacán: March 27, 2008).

<sup>185</sup> “Six people die in clash between the military and hired assassins” (Mueren 6 personas en enfrentamiento entre militares y sicarios), *El Financiero*, March 27, 2008. Javier Cabrera Martínez, “Two men detained for supposed confrontation with military officers in Culiacán” (Detienen a dos por presunto enfrentamiento con militares en Culiacán), *El Universal*, March 28, 2008.

<sup>186</sup> “Declaration of Suspect: Wilfredo Madrid Medina”; “Declaration of Suspect: Miguel Ángel Medina Medina.”

<sup>187</sup> A report by an expert criminologist from the PGR found no evidence of any firearms discharged from inside the civilians’ car. In addition, the report found that all the bullet holes in the car had penetrated the vehicle from the outside, whereas the bullet holes in the military truck were found to be left by bullets fired from the inside, demonstrating the shooting came only from the military. Antonio Macbeth Abel Cosío Ramírez, “Report in the Field of Criminology,” (Dictamen en Materia de Criminalística de Campo), PGR, Folio 1339. (Culiacán: March 28, 2008).

A report by the state Attorney General’s Office reached the same conclusion and conducted ballistics tests proving that 13 military officers had fired their weapons. Guerrero Bojorquez and Castro Nuñez, “Sodium Nitrate Test.”

<sup>188</sup> “Accord Granting Liberty Under Reservations of the Law,” (Acuerdo otorgando la libertad bajo reservas de ley), Federal Attorney General’s Office (Procuraduría General de la República). (Culiacán: March 29, 2008.)



case.<sup>189</sup> He effectively handed control over to the military courts, in spite of the fact that, by that time, preliminary investigations had proved the military officers' initial accounts of the incident to have been fabricated.<sup>190</sup>

The military prosecutor charged five officers with "violence against persons causing homicide and injuries," but conducted the investigation in a manner that raises questions about the military justice system's neutrality and thoroughness.<sup>191</sup> The military did not administer drug or alcohol tests to the soldiers, despite reports from residents in the village near the incident that the soldiers involved had been drinking since early in the afternoon and that they smelled of marijuana.<sup>192</sup> Such tests were, however, administered to the civilian passengers.<sup>193</sup> No military officers were charged with abusing or arbitrarily detaining civilians. Finally, military prosecutors charged only five of the 13 soldiers who had fired their weapons during the incident.<sup>194</sup>

In the course of the investigation, military prosecutors made little or no effort to contact the victims' families or collect their testimony. Initially, the family members were given no information about the incident or the preliminary investigations carried out by military or civil authorities.<sup>195</sup> Without information from the authorities, victims' families were left to

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<sup>189</sup> On March 29, 2008, the military prosecutor's office asked the federal prosecutor's office to declare that it was incompetent to investigate the case. Comunicado from Rafael Refugio González Cruz, Agent of the Military Prosecutor's Office, to Ernesto López Benítez, Agent of Public Prosecutor's Office, "Request for Claim of Competence," (Solicitud de reclamo de competencia), Culiacán, March 29, 2008.

The federal prosecutor responded the same day, conceding that the civil system provided an inadequate forum and framework to address the case and passing jurisdiction to the military system of justice. "Agreement with Request of Incompetence Due to the Subject Matter," (Acuerdo de consulta de incompetencia en razón de la materia), PGR. (Culiacán: March 29, 2008).

<sup>190</sup> Civil and military authorities made no effort to inform the survivors and victims' families that the case had been moved to the military system of justice. Human Rights Watch telephone interview with family member of victim (name withheld), Sinaloa, January 9, 2009.

<sup>191</sup> Four of those officers were also charged with accidental homicide and injuries inflicted on their fellow soldiers. The fifth officer was not charged in the deaths and injuries to fellow soldiers because, from where he sat in the vehicle, it would have been impossible for him to shoot the other officers. CNDH, *Recommendation No. 36/2008*, June 11, 2008, pp. 22-23. As of January 2009, the case was still pending before a military judge. SEDENA, Infomex file 0000700155008, January 7, 2009.

<sup>192</sup> Eduardo Valdez, "They Deal a Setback to the Army" (Dan revés a Ejército), *El Noroeste*, March 30, 2008. "CNDH Investigates Hypothesis that Two Soldiers Killed Two of Their Colleagues," (Investiga CNDH tesis de que dos soldados asesinaron a dos de sus compañeros), *La Cronica*, April 11, 2008. Jorge Carrasco Araizaga, "Killer Roadblocks," (Retenes asesinos), *Proceso*, No. 1641, April 13, 2008.

<sup>193</sup> "Toxicology Test for Abusive Drugs," (Dictamen Pericial: Toxicológico de Drogas de Abuso), Office of Criminal Investigation and Expert Services, State Attorney General's Office (Dirección de Investigación Criminalística y Servicios Periciales, Procuraduría General de Justicia del Estado de Sinaloa), Folio 15876/2008. The exams found that the passengers tested negative for marijuana, amphetamines and cocaine. One of the deceased (not the driver) showed traces of alcohol in his urine.

<sup>194</sup> Guerrero Bojorquez and Castro Nuñez, "Sodium Nitrate Test."

<sup>195</sup> One family member told Human Rights Watch she first heard about the incident the morning after it happened from one of the men who had been detained by the military, while driving near the scene of the incident. Over the course of March 27, the woman heard conflicting reports about the fate of her relative, and neither the military nor civil authorities made any effort to

piece together what had happened from press accounts, which in the first several days wrongly portrayed their relatives as “hired assassins” or drug runners. “I felt totally powerless,” said one widow, “because on top of the injustice they had committed, they were dirtying [the victims’] names.”<sup>196</sup> At no time before charging the five officers did the military prosecutor collect testimony from the two survivors or from the families of the victims.<sup>197</sup> This suggests that the military relied solely on the investigation of the crime scene and testimony from the soldiers—some of whom had fabricated earlier accounts—as its sources.

One of the victims’ relatives said she believed the soldiers would receive more lenient judgments in military courts. “When one judges oneself, one always tries to find a justification,” she said.<sup>198</sup> She also explained her doubts about the impartiality of the military justice system by stating that, “[military officers] simply try to cover for one another.”

Family members of the victims sought, on two separate occasions, to obtain an injunction (*amparo*) in civilian courts challenging the use of military courts to try the killings.<sup>199</sup> In both cases a military judge submitted arguments defending military jurisdiction, arguing that any time a soldier commits a violation in the act of service, it “invariably” affects military discipline, which is “the spinal cord of the armed forces.”<sup>200</sup> The two injunctions were rejected by lower courts, which ruled that the victims did not have legal standing to present

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contact her or the other relatives during that time. Human Rights Watch telephone interview with family member of victim (name withheld), Sinaloa, January 9, 2009.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid. Human Rights Watch interview with Santiago Aguirre, legal counsel to several victims’ families, Mexico City, January 14, 2008. Norma Alicia Sánchez, “Doubts Grow About Massacre in Badiraguato” (Crecen las dudas sobre masacre en Badiraguato), *Noroeste*, March 3, 2008.

<sup>198</sup> Human Rights Watch telephone interview with family member of victim (name withheld), Sinaloa, January 9, 2009.

<sup>199</sup> In their requests for injunctions, filed on April 24, 2008, the family members were assisted by two Mexican nongovernmental organizations, Centro Prodh and Frente Cívico Sinaloense. Two of those requests were admitted to the 12th Circuit Court and assigned to different judges: one by María Alarcon López, the mother of a victim (*amparo 336*), and another by Reynalda Morales Rodríguez, a victim’s widow (*amparo 332*). A third injunction request presented by Eloina Pérez was not admitted.

The two requests that were admitted argued that the Code of Military Justice was unconstitutional for several reasons. First they argued that the military code became a law through an unconstitutional process, because it was issued by the Mexican president without ever being approved by the nation’s legislative branch. Second, they contended that the Code of Military Justice—particularly article 57—violates article 13 of the Mexican Constitution, which clearly states that any violation by the military involving a civilian should be tried in civilian courts. Third, they argued that the military justice system lacks the proper foundation and motives to judge such cases, and that it is inherently biased. Fourth, they charged that the military justice system does not adequately protect the rights of victims. And fifth, they claim it violates international norms guaranteed by treaties Mexico has signed and ratified.

<sup>200</sup> The reports in both cases were prepared by Brigadier General of Military Justice Rogelio Rodríguez. They were submitted for appeals 336 and 332 on April 30 and May 22, 2008, respectively. Rogelio Rodríguez Correa. “Justified Report” (Informe Justificado), SEDENA, Military Judge, Military Camp No. 9B (Secretaría de Defensa Nacional, Juzgado Militar, Campo Militar No. 9. B), No. of Expedient 5024/M-4. (Mazatlán: May 22, 2008), p. 3.

such a request.<sup>201</sup> The victims' relatives have since appealed the decisions to higher courts, and have requested that Mexico's Supreme Court hear the cases, due to the "interest" and "transcendence" of their cases.<sup>202</sup> The Supreme Court decided in March 2009 to look into one of the cases, but have yet to rule on the merits at this writing.<sup>203</sup>

As civilian courts were reviewing the requests for injunctions, the military offered the families of the victims killed a one-time opportunity to obtain compensation. But the process left the civilians little time or leeway to review the content of the proposal, challenge its conditions, or consult with their lawyers. When the families arrived at a meeting scheduled the same day by state officials, members of the military's human rights office presented them with a pre-written compensation agreement and told them that they had until the end of the afternoon to accept or reject it. The victims' families' lawyer is based in Mexico City and could not attend the meeting because there was no advance notice.<sup>204</sup> The military representatives made clear that the offer would be their only chance to receive payment. "We felt pressured into deciding that day," one of the family members who attended the meeting told Human Rights Watch.<sup>205</sup> One of the terms of the agreement was that, by signing, family members would relinquish the right to pursue any legal action seeking further compensation for their losses. In the end, due in large part to financial burdens left by the loss of a wage earner and bearing funeral costs, the families decided to sign the agreements.<sup>206</sup>

Not only did the agreement fail to reflect the families' concerns, but it was not even executed as the victims had understood it would be. SEDENA informed Human Rights Watch that it had negotiated with the state government of Sinaloa for "the granting of scholarships for the

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<sup>201</sup> Decision by Jesús Machuca Montes, 10<sup>th</sup> Judge of the 12<sup>th</sup> Circuit, rendered on September 30, 2008 regarding *amparo 336*. Decision by Ruperto Triana Martínez, 8<sup>th</sup> Judge of the 12<sup>th</sup> Circuit, rendered on November 4, 2008 regarding *amparo 332*.

<sup>202</sup> Appeal (recurso de revisión) by María Alarcón López filed on October 14, 2008. Appeal by Reynalda Morales Rodríguez filed on November 20, 2008. Petition to the Supreme Court of Justice (Petición de ejercicio de la facultad de atracción) presented by Centro Prodh and Fundar, submitted on December 1, 2008.

<sup>203</sup> Centro Prodh, Press Release SC-03-09, March 9, 2009.

<sup>204</sup> The families consulted with their lawyer, Santiago Aguirre of the Centro Prodh, on the day of the meeting by telephone, but he did not have a copy of the agreement. Human Rights Watch telephone interview with Santiago Aguirre, Centro Prodh, Mexico City, January 14, 2008.

<sup>205</sup> Human Rights Watch telephone interview with family member of victim (name withheld), January 9, 2009.

<sup>206</sup> The agreements were approved by the director general of human rights for the SEDENA on June 4, 2008. The original agreement was made on April 30, 2008. SEDENA, document DH-IV-3114, in CNDH, *Recommendation 36/2008*, July 11, 2008, p. 26. CNDH, "Annual Report of Activities from January 1 to December 31, 2008," (Informe de Actividades de 1 de enero al 31 de diciembre de 2008), [http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades\\_2008.pdf](http://www.cndh.org.mx/lacndh/informes/anuales/InformeActividades_2008.pdf) (accessed February 2, 2009), annex 4.

minors who were left in a state of orphanhood.”<sup>207</sup> However, according to the victims’ families and their lawyer, only one scholarship has been awarded per family—forcing survivors to choose from among several children, which one will be able to go to school.<sup>208</sup>

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<sup>207</sup> SEDENA, Infomex file 0000700155008, January 7, 2009.

<sup>208</sup> One of the affected families had three children and the other had two, meaning only two grants were provided to the five children orphaned. Human Rights Watch telephone interview with Santiago Aguirre, January 14, 2009.

## **V. The Exception that Proves the Rule: The Castaños Case**

On July 11, 2006, municipal police officers detained a soldier who, dressed as a civilian, was causing trouble in a nightclub in the “red light district” of Castaños in the state of Coahuila. After, five other men who identified themselves as members of the 14<sup>th</sup> Motorized Regiment of the Mexican Army (14 Regimiento Motorizado del Ejército Mexicano) requested their colleague’s release. When the policemen released him, the soldiers threatened to come back. When they did, half an hour later, they insulted, threatened, beat, and sexually abused 14 women who worked in the nightclubs, and beat seven police officers.

Although far from perfect, the Castaños case stands out as an example of how criminal investigations into military abuses against civilians should be carried out in Mexico. The military investigated breaches of military discipline, sanctioning soldiers who abandoned their duties. And civilians investigated the crimes against civilians that soldiers carried out, obtaining convictions and substantial sentences against three members of the military who are now being held in state prisons (a fourth one was released on bail).

The military may have had no choice but to cede jurisdiction in this case because there was no possible argument that the abuses took place during the soldiers’ discharge of their duties. The incident occurred a few days after the controversial presidential elections of 2006, when the soldiers were supposed to be safeguarding electoral ballots held at a Federal Electoral Institute (Instituto Federal Electoral, IFE) office in Monclova, Coahuila. Instead, they were several kilometers away, drunk and abusing women in a nightclub in Castaños.

While the reasons for civilian jurisdiction in this case were unusually clear, the same approach is warranted wherever military personnel are alleged to have committed serious human rights violations. Acts of torture, rape, and unjustified use of lethal force against civilians should no more be considered part of soldiers’ discharge of their duties than should egregious criminal behavior in a nightclub.

A distinctive factor in the Castaños case is that all actors involved believed that these cases did not belong in military courts, and acted accordingly. The state prosecutor investigated the case, the lawyers representing the victims collaborated with the prosecutor’s office, and a civilian judge convicted four soldiers. The state human rights commission and civil society, including the Bishop of Saltillo, immediately called for civilian investigations into these cases. The local media covered the jurisdictional dispute extensively, publishing several

articles favoring civilian prosecutions. And military authorities collaborated with civilian ones.

The events in Castaños offer several important lessons. The first is that Mexican law, as it stands, does allow civilian authorities to prosecute military abuses against civilians. A second lesson is that consensus between government officials and nongovernmental actors on how these cases should be dealt with, together with extensive coverage in the media, helps push forward civilian investigations and convictions. Finally, this case shows that victims of abuses can play a critical role by speaking up against military abuses. It is extremely unlikely that victims would be willing to challenge their aggressors in this way before military prosecutors and courts, because of the widely shared perception—confirmed by decades of experience—that they will not find justice in military courts.

## **The Abuses**

At around 2 a.m., a group of 10 to 20 members of the military wearing uniforms arrived in official vehicles at “El Pérsico Dancing” and “Las Playas Cabaret,” two nightclubs in the “red light district” of Castaños. During the following three hours, soldiers subjected 14 women who worked at the clubs and seven policemen who were providing security in the area to intimidation and abuse.

The CNDH has documented that the soldiers verbally abused the women, forced them to dance at gunpoint, and forced them into rooms. The soldiers threatened the women, forced them to undress, raped them (on occasions, repeatedly), sexually abused them, made them masturbate in front of the soldiers, and/or forced them to perform oral sex. One woman became pregnant as a consequence of the rape, and another, who was already pregnant, had an abortion after that night.<sup>209</sup>

## **The Investigations**

Military and civilian authorities carried out two parallel, distinct investigations into these cases. The military investigated breaches of military duties, sanctioning soldiers who abandoned their duties, and civilians investigated the crimes against civilians.

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<sup>209</sup> For a detailed account of the abuses, see CNDH, *Recommendation 37/2007*, September 21, 2007.

The day after the soldiers committed the abuses, the PGJM initiated an investigation into nine soldiers' responsibility for "abandoning their service."<sup>210</sup> The military judge issued arrest warrants for all of them, but three soldiers were never subject to this criminal investigation because two deserted and one was dismissed from the armed forces.<sup>211</sup> One soldier was sentenced to two years in prison for "abandoning service."<sup>212</sup>

The civilian state attorney general, for his part, investigated the military abuses against civilians. Although military prosecutors initiated a criminal investigation into the abuses, they ceded jurisdiction to civilian authorities, arguing they had documented "conduct by members of the military outside their acts of service... which, since they are not typically military crimes, must be investigated by state authorities."<sup>213</sup> By mid-August 2006, the state attorney general had asked a judge to issue arrest warrants for 12 different soldiers.<sup>214</sup> A week later, the civilian judge authorized the indictment of eight of the 12 (four are at large).<sup>215</sup>

In October 2007, a civilian judge convicted four soldiers of the rape or sexual abuse of nine women and injuries to six police officers.<sup>216</sup> The judge held that four other soldiers were not guilty, and did not rule on the criminal responsibility of the four men that the victims held were guilty but who were not indicted and are at large.<sup>217</sup> Three of the convicted soldiers are

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<sup>210</sup> PGJM, File 6ZM/10/2006, initiated on July 12, 2006. Documentation included in judicial file that led to the civilian ruling against soldiers, provided to Human Rights Watch by Copprovi, the organization representing the women victims of abuse, November 6, 2008. This investigation became the criminal case No. 2526/2006 for "abandoning service."

<sup>211</sup> CNDH, *Recommendation 37/2007*, September 21, 2007.

<sup>212</sup> SEDENA, Infomex file 0000700155108, January 7, 2009.

<sup>213</sup> CNDH, *Recommendation 37/2007*, September 21, 2007. The original in Spanish states: "Conductas que fueron cometidas por personal militar fuera de actos de servicio y que al no constituir delitos típicamente castrenses, surte la competencia del fuero común en el estado de Coahuila", de conformidad con lo dispuesto en los artículos 13 y 21 de la Constitución Política de los Estados Unidos Mexicanos, 36, 57 y 58 del Código de Justicia Militar; 337, 376 y 384 del Código Penal para el estado de Coahuila; 10., 40. y 50. de la Ley Orgánica del Ministerio Público de dicha entidad federativa."

<sup>214</sup> Human Rights Watch interview with Jesús Torres Charles, Coahuila state attorney general, Saltillo, November 4, 2008. Human Rights Watch interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, November 6, 2008.

<sup>215</sup> The indictments were dated August 23, 2006. Human Rights Watch interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, November 6, 2008.

<sup>216</sup> Only six of the seven police officers presented formal complaints before the state prosecutor.

Juan Jose Gaytán Santiago was sentenced to 21 years in prison for sexually abusing or raping three women and injuring six police officers. Fernando Adrián Madrid Guardiola was sentenced to 31 years in prison for sexually abusing or raping two women. Omar Alejandro Rangel Fuente was sentenced to 41 years in prison for sexually abusing or raping four women, and injuring three police officers. Angel Antonio Hernandez Niño was sentenced to three years and nine months in prison for injuring five police officers. First instance in criminal matters of the judicial district of Monclova, Coahuila (Primera Instancia en Materia Penal del Distrito Judicial de Monclova), Hiradier Huerta, criminal case 220/2006 and others, October 1, 2007.

<sup>217</sup> The four soldiers who were found to be not guilty are Casimiro Ortega Hernández, Rosendo García Jiménez, Norberto González Estrada, and Norberto Carlos Francisco Vargas.

being held in the state prison, and one of them (who was convicted for beating five police officers, but not for rape or sexual abuse) was released on bail.<sup>218</sup>

Though the civilian investigation and the judicial ruling are important steps toward promoting accountability for military abuses, the CNDH noted several shortcomings in the prosecutor's and judge's work. It noted that the state prosecutor's office did not make use of all available witnesses and did not press charges for torture. Further, the CNDH emphasized that the judge's ruling did not address all of the abuses the commission had documented.<sup>219</sup>

The state prosecutor appealed the judicial ruling, requesting a higher court to reverse the non-guilty verdicts and impose higher penalties on those found guilty.<sup>220</sup> At this writing, the appeal is pending before the state's highest court.<sup>221</sup>

## The Consensus

The principal reason for the civilian prosecution of members of the military is probably the fact that there was total consensus in Coahuila—including among government authorities and civil society—that the military should not prosecute these cases.

The Coahuila state attorney general told Human Rights Watch that he did not ask the military for permission to analyze the case because he has the authority, as well as the obligation, to investigate it. According to the state prosecutor, civilian authorities must analyze any case in which a military official commits a crime against a civilian. If the crime or offense was committed off duty against a civilian, the case should be investigated by state authorities; and if the crime is committed while the soldier is on duty, the case should be investigated by federal authorities, given that soldiers are federal employees.<sup>222</sup> The first instance criminal judge who convicted the soldiers upheld the view that this case belonged in civilian courts.<sup>223</sup>

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<sup>218</sup> Human Rights Watch interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, November 6, 2008. Criselda Farías, "Military officer in Castaños case is set free" (Sale libre militar del caso Castaños), *Reforma*, October 23, 2007.

<sup>219</sup> CNDH, *Recommendation 37/2007*, September 21, 2007, section IV.B.1. CNDH, press release CGCP/141/07, October 3, 2007, <http://www.cndh.org.mx/comsoc/compre/compre.asp> (accessed December 15, 2008).

<sup>220</sup> Coahuila state attorney general, Jesús Torres Charles, Appeal 319/2008, April 4, 2008. Human Rights Watch interview with Jesús Torres Charles, Coahuila state attorney general, Saltillo, November 4, 2008.

<sup>221</sup> Human Rights Watch telephone interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, March 25, 2009.

<sup>222</sup> Human Rights Watch interview with Jesús Torres Charles, Coahuila state attorney general, Saltillo, November 4, 2008.

<sup>223</sup> Human Rights Watch interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, November 6, 2008. First instance in criminal matters of the judicial district of Monclova, Coahuila



Other actors also played important roles in pushing for civilian investigations. The Bishop of Saltillo openly spoke up about the case immediately after it took place.<sup>224</sup> The victims' lawyers collaborated with state prosecutors to build the cases.<sup>225</sup> The Coahuila State Human Rights Commission asked the CNDH, and all other state human rights commissions, to support its request to the Mexican president and the secretary of defense to present the soldiers involved in the abuses before state judicial authorities.<sup>226</sup> And the local media covered the case extensively, giving visibility to several arguments favoring civilian prosecutions.<sup>227</sup>

Even the military collaborated with civilian authorities by determining it had no jurisdiction to investigate the sexual abuses and the beatings. According to both the state attorney general and the civilian judge, military authorities have fully collaborated with them throughout the investigation.<sup>228</sup>

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(Primera Instancia en Materia Penal del Distrito Judicial de Monclova), Hiradier Huerta, criminal case 220/2006 and others, October 1, 2007.

<sup>224</sup> Human Rights interview with Raúl Vera, bishop of Saltillo, Saltillo, November 4, 2008. "Justice and solidarity in face of military abuses in Castaños" (Justicia y solidaridad ante el abuso de los militares en Castaños), Saltillo Diocese, July 19, 2006.

<sup>225</sup> Human Rights Watch interview with Sandra de Luna and Martha Castillon, Copprovi, Monclova, November 5, 2008.

<sup>226</sup> The exact same letter was sent to presidents of all state commissions and to the CNDH. Coahuila State Human Rights Commission, Document PCDHEC/662/2006, August 11, 2006.

Ten state human rights commissions and the president of the Mexican federation of ombudsmen publicly supported their request. The ten state human rights commissions were San Luis Potosí, Baja California, Sinaloa, Tlaxcala, Tamaulipas, Hidalgo, Mexico City, Nuevo León, Baja California Sur, and Guanajuato. Unpublished documentation provided to Human Rights Watch by Luis Fernando García Rodríguez. Human Rights Watch interview with Luis Fernando García Rodríguez, president of Coahuila's state human rights commission, Saltillo, November 4, 2008.

According to the Coahuila State Human Rights Commission, military jurisdiction is exceptional and only applies when soldiers infringe military discipline or are carrying out "acts of service related to their functions." Unpublished document summarizing the Coahuila State Human Rights Commission's findings on the "Castaños case," provided to Human Rights Watch by Luis Fernando García Rodríguez, president of the Coahuila State Human Rights Commission, on November 4, 2008. Mr. García Rodríguez informed Human Rights Watch that this summary was part of their 2007 annual report presented to the state legislature.

<sup>227</sup> For example, Lorenzo Carlos Cárdenas, "Congress urges pushing investigations into military abuses forward" (Urge Congreso agilizar investigación a militares), *La Palabra de Monclova*, July 22, 2006. María Eugenia Alvarado, "Vera requests sanctioning military attack" (Pide Vera castigar ataque de militares), *La Palabra de Monclova*, July 31, 2006. María Eugenia Alvarado, "They request sending members of the military to civilian and martial trials" (Piden llevar a militares a juicios civil y marcial), *La Palabra de Monclova*, August 1, 2006. Jesús Jerónimo García, "Members of the military will be tried under civilian laws" (Juzgarán a militares con estatutos civiles), *La Palabra de Monclova*, August 2, 2006. Walter Savage Landor, "Delaying Justice is Injustice" (Demorar la Justicia es Injusticia), *La Palabra de Monclova*, August 3, 2006. Perla Medina, "Mauro wants members of the military to be criminally prosecuted" (Quiere Mauro que se sentencien a militares por la vía penal), *La Voz*, August 10, 2006. (Mauro Zuniga Llanas was the mayor of Castaños).

<sup>228</sup> Human Rights Watch interview with Jesús Torres Charles, Coahuila state attorney general, Saltillo, November 4, 2008.

Human Rights Watch interview with Judge Hiradier Huerta, first instance judge in criminal matters of the judicial district of Monclova, Monclova, November 6, 2008.

Moreover, a military judge authorized that the soldiers who were held in a military prison be transferred to the state prison. CNDH, *Recommendation 37/2007*, September 21, 2007. Criminal causes No. 2526/2006 and 2611/2006, as cited by Judge Hiradier Huerta in judicial ruling resolving the criminal case against Juan Jose Gaytán Santiago, October 1, 2007.

## The Lessons of Castaños

The horrific crimes committed by soldiers in Castaños offer several important lessons regarding the use of military jurisdiction to investigate and prosecute military abuses against civilians in Mexico.

The first lesson is that the Mexican Constitution does not require the military to prosecute these types of crimes committed by soldiers against civilians.

Secondly, a consensus between government officials and nongovernmental actors on how these cases should be dealt with helps push forward civilian investigations and prosecutions, which are more likely to ensure accountability. Although civilian criminal investigations are far from perfect, the civilian justice system has basic safeguards to ensure impartiality and independence, which the military justice system lacks.

Finally, this case shows that victims of abuses play a critical role in these processes by speaking up against the military, which in turn helps them provide some degree of closure. Human Rights Watch interviewed three women involved in the criminal proceedings (one who was raped and impregnated by a soldier, another who was sexually abused, and a third who witnessed the events), and they all agreed that nothing will ever erase from their minds what happened to them.<sup>229</sup> However, they all felt “satisfied” when three men were convicted for these crimes, and encouraged other victims of military abuses to speak up.

It is extremely unlikely that victims would be willing to challenge their aggressors before military prosecutors and courts. For instance, two of the women interviewed by Human Rights Watch explained that they would not have felt comfortable participating in similar proceedings before military courts, since they did not trust they would be impartial. One of the women held that participating in the procedure was hard enough, “[so] imagine what it would have been like with someone who favors them.” Another woman added she also feared that military courts would be more worried about the military’s “image” than about procuring justice.

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<sup>229</sup> Human Rights Watch interview, November 6, 2008. (Additional information withheld to protect the victims’ identities).

## VI. Mexico's Obligations Under International Law

### Obligation to Investigate Abuses

Mexico is party to several international treaties that impose an obligation to respect, protect, and fulfill the human rights listed in the treaties.<sup>230</sup> Those same treaties also impose on the Mexican state the obligation to deter and prevent violations of those rights, and to investigate, prosecute, and remedy their abuses.<sup>231</sup>

This second set of duties is, in part, a corollary to the first, reflecting the view that effective protection and prevention require investigation and punishment. The Inter-American Court of Human Rights, for example, has held that “the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.”<sup>232</sup>

The duty to investigate and punish also derives from the right to a legal remedy that these treaties extend to victims of human rights violations. Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy—including justice, truth, and adequate reparations—after they suffer a violation. Under the International Covenant on Civil and Political Rights (ICCPR), governments have an obligation “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”<sup>233</sup> The ICCPR imposes on states the duty to ensure that any person shall have their right to an effective remedy “determined by competent judicial,

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<sup>230</sup> Parts of this section were previously published in Human Rights Watch, *Mexico's National Human Rights Commission: A Critical Assessment*, vol. 20, No. 1 (B), February 2008, section III.

<sup>231</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Mexico on March 23, 1981. American Convention on Human Rights (ACHR) (“Pact of San Jose, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), acceded to by Mexico on March 2, 1981. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Mexico on January 23, 1986, arts. 2(1), 11, 16. Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series No. 67, entered into force February 28, 1987, ratified by Mexico on February 11, 1987, arts. 1, 6. Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994), entered into force March 28, 1996, ratified by Mexico on February 28, 2002, art. 1.

<sup>232</sup> Inter-American Court of Human Rights, Paniagua Morales et al., Judgment of March 8, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 37 (1998), para. 173.

<sup>233</sup> ICCPR, art. 2(3)(a).

administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”<sup>234</sup>

At the regional level, the American Convention on Human Rights (ACHR) states that every individual has “the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”<sup>235</sup> The Inter-American Court has held that this right imposes an obligation upon states to provide victims with effective judicial remedies.<sup>236</sup>

There are also specific obligations on states to prevent and punish torture and enforced disappearances. These two heinous crimes have their own treaties, which codify the obligations of governments, to ensure that whenever an offense occurs there is effective investigation and prosecution and a proper remedy for the victim.<sup>237</sup>

## Obligation to Inform

In addition to the obligation to investigate and prosecute, states have an obligation to provide victims with information about the investigation into the violations.

Victims have a right to know the truth about violations they suffered. The UN General Assembly has endorsed the principle that victims’ right to remedies includes having access

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<sup>234</sup> ICCPR, art. 2 (3)(b). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d): “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below.”

<sup>235</sup> ACHR, art. 25. Similarly, the Inter-American Convention to Prevent and Punish Torture requires states to “take effective measures to prevent and punish torture” and “other cruel, inhuman, or degrading treatment or punishment within their jurisdiction” (Article 6). It also requires states parties to guarantee that “any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case,” and that “their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process” (Article 8).

<sup>236</sup> Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), paras. 166, 174, 176. Inter-American Court of Human Rights, Loayza Tamayo Case, Judgment of November 27, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 33 (1998), para. 169.

<sup>237</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly Resolution 39/46 of 10 December 1984, entry into force 26 June 1987, ratified by Mexico on January 23, 1986, arts. 4 -6, 12- 14. International Convention for the Protection of All Persons from Enforced Disappearance, adopted by General Assembly Resolution 61/177 of December 20, 2006, ratified by Mexico on March 18, 2008, arts. 3 – 12, 24, 25.

to relevant information concerning human rights violations.<sup>238</sup> International principles adopted by the former UN Commission on Human Rights state that “irrespective of any legal proceedings, victims, their families and relatives have the imprescriptible right to know the truth about the circumstances in which violations took place.”<sup>239</sup>

International human rights bodies have emphasized the state’s obligation to provide information to victims, particularly in cases of enforced disappearance. The UN Human Rights Committee has held that the extreme anguish inflicted upon relatives of the “disappeared” makes them direct victims of the violation as well.<sup>240</sup> To the extent the state fails to inform relatives about the fate of the “disappeared,” it fails to fulfill its basic obligation to bring an end to the violation.<sup>241</sup> The recently adopted International Convention for the Protection of All Persons from Enforced Disappearance (Convention Against Disappearances), which Mexico has ratified, sets out the right of each victim “to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.” The treaty requires each state party, including Mexico, to take appropriate measures in this regard.<sup>242</sup>

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<sup>238</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, paras. 11 (c) and 24. para. 11: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (c) Access to relevant information concerning violations and reparation mechanisms.” para. 24: “States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.”

<sup>239</sup> Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 3.

<sup>240</sup> The U.N. Human Rights Committee articulated this principle in the case *Quinteros v. Uruguay*, concluding that the mother of a “disappeared” person was entitled to compensation as a victim, for the suffering caused by the failure of the state to provide her with information. *Quinteros v. Uruguay*, U.N. Human Rights Committee, Case No. 107/1981: “The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of Article 7.”

<sup>241</sup> Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal*, No. 100 (1990). Naomi Roht-Arriaza (comment), “State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law,” *California Law Review*, No. 78 (1990). José Zalaquett, “Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints,” in *State Crimes: Punishment or Pardon* (New York: Aspen Institute Justice and Society Program, 1989).

<sup>242</sup> Convention Against Disappearances, art. 24 (2).

Similarly, the Inter-American Court has held that states' obligation to provide reparation to victims of abuses, translates into an obligation to provide family members with information about what has happened to people who have "disappeared."<sup>243</sup>

In addition to informing the victims and their families, the state has an obligation to inform society in general about human rights abuses, particularly when the violations are serious. This obligation derives partly from its duty to prevent future violations. According to the former UN Commission on Human Rights:

Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through systematic, gross violations of human rights, to the perpetration of heinous crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of violations in the future.<sup>244</sup>

Similarly, the IACHR has established that "[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future."<sup>245</sup>

The obligation to inform also derives from the right to "seek, receive, and impart" information, recognized in the Universal Declaration of Human Rights, the ICCPR, and the ACHR.<sup>246</sup> Although to date this has primarily been invoked to prevent states' illegitimate

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<sup>243</sup> The court has held that parents have a right to obtain reparation for suffering inflicted upon them by the forced disappearance of a child. This obligation is not satisfied with the offer to pay monetary damages. It must also include ending the state of uncertainty and ignorance regarding the fate and whereabouts of the "disappeared" persons. Inter-American Court of Human Rights, *Aloeboetoe Case, Reparations (Article 63.1 American Convention on Human Rights)*, Judgment of September 10, 1993, para. 76: "...it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child."

<sup>244</sup> Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 1.

<sup>245</sup> "Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights," Inter-American Commission on Human Rights, "Annual Report 1985-86," OEA/Ser. L/V./ II.68, Doc. 8, rev. 1, September 26, 1986, ch. V, p. 205. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, para. 24: "States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access..."

<sup>246</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." ICCPR, art. 19 (2): "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or

interference or restriction on individuals or the media accessing information that is available, there is growing international recognition that the right also encompasses a positive obligation of states to provide access to official information. Both regional and international organizations have held that the right of access to official information is a fundamental right of every individual. In the Americas, the Inter-American Court has held that Article 13 of the ACHR (on the right to freedom of expression) entails the right to receive information held by government offices, as well as these offices' obligation to provide it.<sup>247</sup>

According to the "Principles on Freedom of Information Legislation," endorsed by the UN and Inter-American human rights systems, the right of access to information is governed by the "principle of maximum disclosure."<sup>248</sup> In other words, the government is presumed to be under an obligation to disclose information, a presumption that can be overridden only under circumstances clearly defined by law, in which the release of information could

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through any other media of his choice." ACHR, art. 13 (1): "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

<sup>247</sup> Inter-American Court of Human Rights, *Marcel Claude Reyes and Others v. Chile*, Judgment of September 19, 2006, Inter-Am.Ct.H.R., (Ser. C) No. 151, paras. 76 and 77. Para 76: "In this regard, the Court has established that, according to the protection granted by the American Convention, the right to freedom of thought and expression includes "not only the right and freedom to express one's own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds." In the same way as the American Convention, other international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, establish a positive right to seek and receive information." Para. 77: "In relation to the facts of the instant case, the Court finds that, by expressly stipulating the right to 'seek' and 'receive' 'information,' Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State."

<sup>248</sup> Principle 1 of The Public's Right to Know: Principles on Freedom of Information Legislation holds that "[t]he principle that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances." The Principles on Freedom of Information Legislation were adopted in June 1999 by Article XIX, an NGO working on freedom of expression and access to information, in consultation with organizations in different countries (<http://www.article19.org/pdfs/standards/righttoknow.pdf>; accessed February 20, 2009). It was later endorsed by the U.N. and Inter-American systems on human rights. See, for example, IACHR, Report on Terrorism and Human Rights, OAS/Ser.L./V/II 116, Doc. 5 rev. 1 corr. 22, October 2002, para. 284: "As a fundamental component of the right to freedom of expression, access to information must be governed by the "principle of maximum disclosure. In other words, the presumption should be that information will be disclosed by the government. Specifically, as noted in the chapter on the right to personal liberty and security, information regarding individuals arrested or detained should be available to family members, counsel and other persons with a legitimate interest in such information." See also IACHR, "Annual Report 1999," vol. III; Report of the office of the special rapporteur for freedom of expression, OEA/Ser.L/V/II.111, Doc. 3 rev., vol. III, ch. 2; United Nations Commission on Human Rights, Resolution 1999/36, 56th Sess., E/CN.4/2000/63 (January 18, 2000), para. 43.



undermine the rights of others or the protection of national security, public order, or public health or morals.<sup>249</sup>

Judicial authorities, as part of government, are subject to these obligations. According to the U.N. special rapporteur on freedom of opinion and expression, the OSCE representative on freedom of the media, and the OAS special rapporteur on freedom of expression, “courts and judicial processes, like other public functions, are subject to the principle of maximum disclosure of information which may be overcome only where necessary to protect the right to a fair trial or the presumption of innocence.”<sup>250</sup>

## International Standards on Judicial Independence and Impartiality

Several international treaties, including the ICCPR and the ACHR, require that individuals be tried by “independent and impartial tribunals.”<sup>251</sup> A series of international principles set

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<sup>249</sup> ICCPR, art. 19(3): “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.” ACHR, art. 13(2): “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.”

The Declaration of Principles on Freedom of Expression states that the right may only be limited exceptionally and such limitations must “be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Principle 4 of the Declaration of Principles on Freedom of Expression, approved by the IACHR at its 108th regular sessions in October 2000, <http://www.cidh.org/Relatoria/showarticle.asp?artID=26&IID=1> (accessed February 20, 2009).

According to The Johannesburg Principles, restrictions must be “necessary in a democratic society to protect a legitimate national security interest.” Principles 1(d) and 11 of The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> (accessed February 20, 2009). The Johannesburg Principles were adopted on October 1995 by experts in international law, national security, and human rights, and were later recognized by the U.N. special rapporteur on freedom of opinion and expression and the OAS special rapporteur for freedom of expression. See U. N. Commission on Human Rights, Report of the special rapporteur on freedom of opinion and expression, Abid Hussain, pursuant to U.N. Commission on Human Rights resolution 1993/45, U. N. Commission on Human Rights, 52nd Sess., E/CN.4/1996/39 (March 22, 1996), para. 154; IACHR, “Annual Report 2003,” vol. III; Report of the special rapporteur on freedom of opinion and expression, OEA/Ser.L/V/II.118 Doc. 70 rev. 2, chapter IV.

<sup>250</sup> Joint Declaration by the UN special rapporteur on freedom of opinion and expression, Ambeyi Ligabo, OSCE representative on freedom of the media, Freimut Duve, and OAS special rapporteur on freedom of expression, Eduardo Bertoni, <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=87&IID=1> (accessed January 6, 2009).

Additionally, the 2008 “Principles on the Right of Access to Information,” issued by the Inter American Juridical Committee, state that “the right of access to information applies to all public bodies, including the executive, legislative and judicial branches at all levels of government.” Inter-American Juridical Committee, “Principles on the Right of Access to Information,” CJI/RES. 147 (LXXIII-O/08), August 7, 2008, [http://www.oas.org/cji/eng/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf) (accessed January 6, 2009), principle 2.

<sup>251</sup> ICCPR, art. 14(1): “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” ACHR, art. 8(1): “[E]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law.” International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18(1); art. 18 states that migrant workers and their families “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” European Convention on Human Rights, art. 6(1): “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” African Charter on Human and



criteria to determine whether any justice system—including a military one—is in fact independent and impartial:

- Judges must be free from constraints, pressures, or orders imposed by the other branches of government. According to the UN Basic Principles on the Independence of the Judiciary (UN Basic Principles), “[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary,” and the judiciary “shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”<sup>252</sup>
- Judicial decisions cannot be subject to change by authorities other than superior courts. The UN Basic Principles state that “[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.”<sup>253</sup>
- Judges should have security of tenure to avoid fear of being removed from their posts for the decisions they adopt. The UN Basic Principles state that “[t]he term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law” and that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”<sup>254</sup>

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Peoples’ Rights, art. 7(1) (b, d); art. 7 states that everyone shall have the “right to be presumed innocent until proved guilty by a competent court or tribunal” and the “right to be tried within a reasonable time by an impartial court or tribunal.”

<sup>252</sup> UN Basic Principles on the Independence of the Judiciary, arts. 1 and 2 (emphasis added), <http://www2.ohchr.org/english/law/remedy.htm> (accessed January 27, 2009).

The Bangalore Principles of Judicial Conduct (Bangalore Principles) further add that “[a] judge shall exercise the judicial function independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason” and that “[a] judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.” Bangalore Principles, arts. 1(1) and 1(3), [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) (accessed January 27, 2009).

The Council of Europe has stated that “[i]n the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” and that “[j]udges should not be obliged to report on the merits of their cases to anyone outside the judiciary.” Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/steering\\_committees/cdcj/cj\\_s\\_just/recR\(94\)12e.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/recR(94)12e.pdf) (accessed January 27, 2009).

<sup>253</sup> UN Basic Principles, art. 4. The Council of Europe makes a similar point when it stated that “decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law.” Council of Europe, principle I, art. 2 (a) (i).

<sup>254</sup> UN Basic Principles, arts. 11 and 12. Similarly, the Council of Europe says that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.” Council of Europe, principle I, art. 3. The Universal Charter stipulates that judges “cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure” and that they “must be

- Judges should have proper training and qualifications, which should be the basis of their appointments. The Universal Charter of the Judge points out that “[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.”<sup>255</sup>

## International Standards on Military Jurisdiction

The independence necessary to investigate and prosecute military abuses generally does not exist when military authorities investigate human rights violations committed by military personnel and prosecute them in military courts.

The only explicit prohibition in international law on military prosecutors investigating, and military courts trying, human rights cases is related to enforced disappearances. The Inter-American Convention on Forced Disappearance of Persons states that individuals accused of carrying out “disappearances” should be tried by ordinary courts, “to the exclusion of all other special jurisdictions, particularly military jurisdictions.”<sup>256</sup> (Mexico made a reservation when ratifying this treaty, stating that its military justice system may prosecute and investigate crimes, if members of the military commit them while on duty. Although the validity of this reservation has not yet been studied by international bodies, Human Rights Watch believes it contradicts the object and purpose of the treaty.)<sup>257</sup> The Declaration on the Protection of All Persons from Enforced Disappearances includes a similar provision.<sup>258</sup>

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appointed for life or for such other period and conditions, that the judicial independence is not endangered.” Universal Charter, art. 8.

<sup>255</sup> Universal Charter, art. 9. The UN Basic Principles state that “[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law” and that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives.” UN Basic Principles, art. 10.

The Council of Europe has also noted that “[a]ll decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency.” Council of Europe, principle I, art. 2 (c).

<sup>256</sup> Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M.1429 (1994), entered into force March 28, 1996, ratified by Mexico on February 28, 2002, art. 9: “Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions. The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.”

<sup>257</sup> “The Government of the United Mexican States, upon ratifying the Inter-American Convention on the Forced Disappearance of Persons adopted in Belem, Brazil on June 9, 1994 makes express reservation to Article IX, inasmuch as the Political Constitution recognizes military jurisdiction when a member of the armed forces commits an illicit act while on duty. Military jurisdiction does not constitute a special jurisdiction in the sense of the Convention given that according to Article 14 of the Mexican Constitution nobody may be deprived of his life, liberty, property, possessions, or rights except as a result of a trial before previously established courts in which due process is observed in accordance with laws promulgated prior to the fact.” This reservation was made upon deposit of the instrument of ratification on April 9, 2002, <http://www.cidh.oas.org/Basicos/Basicos7.htm> (accessed January 27, 2009).

According to the Vienna Convention on the Law of Treaties, a state is obliged to refrain from acts that defeat the object and purpose of the treaty that they have signed (art. 18) and states may present reservations when ratifying a treaty but these may

International human rights bodies have consistently rejected the use of military prosecutors and courts in cases involving abuses against civilians, by stating that the jurisdiction of military courts should be limited to offenses that are strictly military in nature.

The UN Human Rights Committee (HRC), which monitors implementation of the states' obligations under the ICCPR, has repeatedly called on states parties to subject military personnel, alleged to have committed human rights violations, to civilian jurisdiction.<sup>259</sup> According to the Committee, the "wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel ... contribute[s] to the impunity which such personnel enjoy against punishment for serious human rights violations."<sup>260</sup>

The IACHR has held that military jurisdiction is not appropriate for investigating, trying, and punishing violations of human rights, given that "when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised."<sup>261</sup> The result, concludes the commission, is "de facto impunity which

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not be "incompatible with the object and purpose of the treaty" (art. 19, c), [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (accessed January 27, 2009).

The Inter-American Convention on Forced Disappearances explicitly states in its preamble that it hopes that the Convention may contribute to "prevent, punish, and eliminate" forced disappearances, and includes in its Article 1 that the state parties undertake the obligation to "punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories" (art. 1, b).

<sup>258</sup> Declaration on the Protection of All Persons from Enforced Disappearances, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992), adopted by General Assembly resolution 47/133 of 18 December 1992, art. 16.

<sup>259</sup> For example, in its 1993 observations to Egypt, the HRC considered that "military courts should not have the faculty to try cases which do not refer to offenses committed by members of the armed forces in the course of their duties." UN Human Rights Committee, Comments on Egypt, UN Doc. CCPR/C/79/Add.23 (1993), para. 9. In 1997 it urged the Colombian government to take "all necessary steps... to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts," specifically recommending "that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian courts." UN Human Rights Committee, Comments on Colombia, UN Doc. CCPR/C/79/Add.76, (1997), para. 34.

<sup>260</sup> UN Human Rights Committee, Comments on Chile, UN Doc. CCPR/C/79/Add.104, (1999), para. 9. UN Human Rights Committee, Comments on Peru, UN Doc. CCPR/C/79/Add.67, (1996), para. 23. Similarly, the Inter-American Court has held that "[i]n a democratic State governed by the rule of law, the scope of authority of criminal military courts must apply on a limited and exceptional basis," and that "[m]ilitary officers must be prosecuted for the commission of only those offenses and infractions that, because of their nature, have an adverse effect on the assets of the military." Inter-American Court of Human Rights, *Durand and Ugarte v. Peru*, Judgment of August 16, 2000, Inter-Am. Ct. H.R., (Ser. C) No. 89 (2001), para. 117.

<sup>261</sup> IACHR, "Annual Report 1995," Report No. 10/95 (Case 10.580. Manuel Stalin Bolaños Quiñonez), Ecuador, para. 48.

See also IACHR, "Report 93/06, Petition 972-03. Admissibility. Valentina Rosendo Cantu et. al. Mexico," October 21, 2006, para. 28, <https://www.cidh.oas.org/annualrep/2006eng/MEXICO.972.03eng.htm> (accessed December 11, 2008); IACHR, "Report 94/06. Petition 540-04. Admissibility. Inés Fernandez Ortega et.al. Mexico," October 21, 2006, <https://www.cidh.oas.org/annualrep/2006eng/MEXICO.540.04eng.htm> (accessed December 11, 2008), para. 24.

In the Commission's view, basic characteristics of the military justice system impede access to an effective and impartial judicial remedy in this jurisdiction. These include that the military justice system is part of the executive branch and is composed of active duty members of the army who often feel compelled to protect their fellow officers. IACHR, "Report 2/06. Case 12.130. Merits. Miguel Orlando Munoz Guzman," February 28, 2006, <http://iachr.org/annualrep/2006eng/MEXICO.12130eng.htm> (accessed December 11, 2008), para. 83.

‘has a corrosive effect on the rule of law and violates the principles of the American Convention.’”<sup>262</sup>

The Inter American Court of Human Rights, for its part, has stated that military jurisdiction should have a “restrictive and exceptional scope.”<sup>263</sup> A “restrictive” jurisdictional scope would require that civilians be excluded and that military personnel only be tried by military tribunals when they are charged with crimes or offenses which “by [their] own nature attempt against legally protected interests of military order.”<sup>264</sup> Failure to transfer such cases to civilian jurisdiction results in a breach of the state’s guarantee to an effective recourse.<sup>265</sup> In 2007 the Inter American Court further developed its case law and concluded that “the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations.”<sup>266</sup> This view has been upheld in several subsequent decisions.<sup>267</sup>

The European Court of Human Rights (ECHR) has not ruled that military courts lack independence and impartiality *per se*, but has suggested certain instances in which military courts are not appropriate. For instance, in *Incal v. Turkey*, the ECHR held that a petitioner had not been given a fair trial because the military judge who had taken part in the trial was accountable to the executive and military authorities, and his superiors were in a position to advance his career.<sup>268</sup> In *Findlay v. United Kingdom*, the ECHR reasoned that for a ruling to be independent and impartial, it has to have some degree of finality. It found that a military court’s ruling was neither independent nor impartial, because the members of the court who

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<sup>262</sup> IACHR, “Annual Report 2000,” Report No. 53/01 (Case 11.565. Ana, Beatríz y Celia González Pérez), Mexico, para 81. [Citing IACHR, “Annual Report 1995,” Report No. 10/95 (Case 10.580. Manuel Stalin Bolaños Quiñonez), Ecuador, para. 48.]

<sup>263</sup> In 2000 the court stated that “[i]n a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces.” Inter-American Court of Human Rights, Durand and Ugarte v. Peru, Judgment of August 16, 2000, Inter-Am. Ct. H.R., (Ser. C) No. 89 (2001), para. 117.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*, para. 122.

<sup>266</sup> Inter-American Court of Human Rights, Rochela Massacre v. Colombia, Judgment of May 11, 2007, Inter-Am. Ct. H.R., (Ser. C) No. 163 (2007), para. 200.

<sup>267</sup> See, for example, Inter-American Court of Human Rights, Escue-Zapata v. Colombia, Judgment of July 4, 2007, Inter-Am. Ct. H. R., (Ser. C) No. 165, para. 105; Inter-American Court of Human Rights, Zambrano Velez v. Ecuador, Judgment of July 4, 2007, Inter-Am. Ct. H.R., (Ser. C) No. 166, para. 66.

<sup>268</sup> European Court of Human Rights, *Incal v. Turkey*, Judgment of June 9, 1998, 1998-IV, no. 78, <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=18515019&skin=hudoc-en&action=request> (accessed January 27, 2009). The Court gave “great importance to the fact that a civilian had to appear before a court composed, even if only in part, of members of the armed forces.” The Court finally concluded that the petitioner had a legitimate concern regarding the independence of such a tribunal. *Ibid.*, para. 72.

issued the decision were subordinates of the prosecuting officer, who had the authority to change any decision that the court made.<sup>269</sup>

Finally, sets of principles presented before the former United Nations Human Rights Commission, which are non-binding guidelines for states, also recommend that human rights cases be transferred to civilian courts. The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, presented before the commission in 2005, state that “the jurisdiction of military tribunals must be restricted solely to specifically military offenses committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”<sup>270</sup> Similarly, the Draft Principles Governing the Administration of Justice through Military Tribunals, presented to the commission in January 2006, state that “in all circumstances, the jurisdiction of military courts should be set aside in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.”<sup>271</sup>

## International Decisions on Mexico’s Military Justice System

Mexico violates its international obligations by allowing its military justice system to investigate, prosecute, and try members of the military accused of committing human rights violations. Over the last decade several United Nations rapporteurs and bodies, as well as the IACHR, have issued reports documenting the lack of independence and impartiality in Mexico’s military justice system, and the consequent impunity of human rights abuses investigated by military courts. Therefore, they have consistently called on Mexico to transfer human rights cases to civilian courts. These reports include:

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<sup>269</sup>European Court of Human Rights, *Findlay v. United Kingdom*, Judgment of February 25, 1997, paras. 74-77.

<sup>270</sup> UN Human Rights Commission, “Promotion and Protection of Human Rights. Impunity. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Addendum. Updated Set of principles for the protection and promotion of human rights through action to combat impunity,” E/CN.4/2005/102/Add.1, February 8, 2005, principle 29.

<sup>271</sup> UN Human Rights Commission, “Civil and Political Rights, Including the Question of Independence of the Judiciary, Administration of Justice, Impunity,” Report of the special rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, E/CN.4/2006/58, January 13, 2006, principle 9.

- A 1998 report by the UN special rapporteur on torture, which found that "[m]ilitary personnel [in Mexico] appear to be immune from civilian justice and generally protected by military justice."<sup>272</sup>
- A 1999 report by the U.N. special rapporteur on extrajudicial, summary or arbitrary executions, which determined that military courts in Mexico "do not conform to the Basic Principles on the Independence of the Judiciary," that "the military justice system is arbitrary, resulting in miscarriage of justice," and that "there is a reluctance on the part of the competent Mexican authorities to hold members of the military forces accountable for extrajudicial killings and other human rights violations."<sup>273</sup>
- A 2002 report by the U.N. special rapporteur on the independence of judges and lawyers, which found that "the public [has] no confidence in military courts" and thus "many prosecutions of military personnel accused of human rights violations before these tribunals are not pursued."<sup>274</sup> The rapporteur also expressed concern over "the want of impartiality of the military courts and the reluctance or unwillingness of civilian witnesses to appear before military courts to give evidence against military personnel."<sup>275</sup>
- A 2003 report by the office of the UN High Commissioner for Human Rights, which concluded that "given the imminently hierarchical structure of the Armed Forces,

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<sup>272</sup> UN Human Rights Commission, "Question of the human rights of all persons subjected to any form of detention or prison and, in particular, torture and other cruel, inhuman, or degrading treatment or punishment," Report of the special rapporteur on torture, Nigel Rodley, submitted pursuant to Resolution 1997/38 of the Commission on Human Rights, E/CN.4/1998/38/Add.2, January 14, 1998, para. 86.

The report recommended that "cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice." *Ibid.*, para. 88[*j*].

<sup>273</sup> UN Commission on Human Rights, "Civil and Political Rights, Including Questions of: Disappearances and Summary Executions," Report of the special rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35, Addendum, Visit to Mexico, E/CN.4/2000/3/Add.3, November 25, 1999, <http://daccessdds.un.org/doc/UNDOC/GEN/G99/161/43/PDF/G9916143.pdf?OpenElement> (accessed December 11, 2008), paras. 44 and 102.

The rapporteur thus recommended that Mexico "initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts." *Ibid.*, para. 107(f).

<sup>274</sup> UN Commission on Human Rights, "Civil and Political Rights, Including Questions of: Independence of the Judiciary, Administration of Justice, Impunity," Report of the special rapporteur on the independence of judges and lawyers, Dato'Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39, Addendum, Report on the mission to Mexico, E/CN.4/2002/72/Add.1, January 24, 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/Go2/103/44/PDF/Go210344.pdf?OpenElement> (accessed December 11, 2008), para 178.

<sup>275</sup> The rapporteur also recommended that "crimes alleged to be committed by the military against civilians should be investigated by civilian authorities to allay suspicions of bias." *Ibid.*, paras. 178 and 192 (b).

military courts lack total independence and impartiality due to the fact that its members ... report to higher ranking officers in the Army.”<sup>276</sup>

- A 2006 report by the U.N. special rapporteur on violence against women, its causes and consequences, which held that after asserting jurisdiction to investigate and prosecute cases in which members of the military had raped women in southern Mexico, “rather than carrying out full and impartial investigations, military investigators have reportedly delayed criminal proceedings and tried to disprove the allegations thereby placing the burden of proof on the victim.”<sup>277</sup>
- A 2006 report by the IACHR, which held that Mexican military prosecutors lack “by definition, the necessary independence and autonomy to carry out an impartial investigation of human rights violations allegedly committed by members of the armed forces.” The commission concluded that “the investigation by the [military prosecutor’s office] of human rights violations allegedly perpetrated by Mexican military personnel is itself a violation of the American Convention.”<sup>278</sup>
- A 2007 report by the United Nations Committee Against Torture, which “noted with concern” that “cases of torture committed by military personnel against civilians during the performance of their duties continue to be tried in military courts.”<sup>279</sup>

More recently, after a 2008 visit to Mexico, the UN High Commissioner for Human Rights also recommended that civilian courts try military officers engaged in law enforcement activities.<sup>280</sup>

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<sup>276</sup> The report recommended that the Mexican Constitution include the right of victims to have access to civilian courts in cases of army abuses. UN Office of the High Commissioner for Human Rights, “Diagnosis on the Human Rights Situation in Mexico,” February 2003, <http://www.hchr.org.mx/diagdh.htm> (accessed December 11, 2008), section 2.1.7.2.

<sup>277</sup> UN Commission on Human Rights, “Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women,” Report of the special rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61/Add.4, January 13, 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/Go6/101/95/PDF/Go610195.pdf?OpenElement> (accessed December 11, 2008), para. 37.

Consequently, the rapporteur recommended that Mexico “ensure, if necessary through legislative reform, that all cases of violence against civilians committed by military personnel are investigated by civilian authorities, prosecuted by civilian authorities and adjudicated by independent and impartial civilian courts.” *Ibid.*, para. 69 (a) (iv).

<sup>278</sup> IACHR, “Report 2/06. Case 12.130. Merits. Miguel Orlando Muñoz Guzman,” February 28, 2006, <http://iachr.org/annualrep/2006eng/MEXICO.12130eng.htm> (accessed December 11, 2008), para. 85.

<sup>279</sup> The report recommended that Mexico “ensure that cases involving violations of human rights, especially torture and cruel, inhuman or degrading treatment, committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related.” United Nations Committee Against Torture, “Consideration of Reports Submitted by States Parties Under Article 19 of the Convention. Conclusions and recommendations of the Committee against Torture,” CAT/C/MEX/CO/4, February 6, 2007, para. 14, [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2e3ffd18d95b0739c12572b30042e140/\\$FILE/Go740331.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2e3ffd18d95b0739c12572b30042e140/$FILE/Go740331.pdf) (accessed December 11, 2008).

<sup>280</sup> United Nations High Commissioner for Human Rights, “The High Commissioner ends her visit to Mexico” (La Alta Comisionada Concluye su visita a México), press release, February 8, 2008,



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