

Acteal: Between Mourning and Struggle

Report by Fray Bartolome Human Rights Center, March 1999

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(Executive Summary)

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Chapter 1

The Group Las Abejas and the Massacre

The victims of the massacre in Acteal on the 22nd of December, 1997 were members of the pacifistic organization Las Abejas, which was founded in 1992 to defend their basic human rights. Some 325 members of this organization were displaced to Acteal after having fled the violence perpetuated by paramilitary groups in their communities since mid 1997. According to witnesses, on December 22 a large group of paramilitaries, wearing police-like uniforms, entered the community and started to shoot with high caliber weapons against the crowd which at that moment was fasting and praying for peace. None of the victims was armed, and when the shooting started they tried to flee. The result of this attack were 15 children, 21 women and 9 men killed and 25 wounded, some of them, seriously.

According to witnesses, the attack had been planned the night before in the community of Pechiquil by a group of paramilitaries that operates in the region. On the morning of the 22nd the CDHFBC[1] received the first reports that something was happening in Acteal. The governmental offices that were immediately informed did not act, the Subprocuradía de Asuntos Indígenas[2], because the people in charge were on vacation and the Secretario de Gobierno[3] because he did not consider the complaint important.

The 25 injured were taken to different hospitals where various problems arose in the treatment and rehabilitation of the patients. Deficiencies in medical attention, lack of interpreters, the fact the PGR[4] took declarations by the injured without the presence of their doctors or lawyers of their confidence, the repetitive denial to grant access to medical reports to their families and to the CDHFBC and finally, in the process of rehabilitation, the irregular manner in which payments and transportation were carried out, provoked the victims' and their families' indignation.

The guardianship of the minors who became orphans also showed complications because the government's attorney for the defense of the minor proposed that the DIF[5] of Chenalhó would take care of them, this meant giving the custody to the same authorities that were implicated in the massacre. The CDHFBC initiated the custody trials, finally obtaining that the orphans be given to the closest family members.

In Acteal part of the population belongs to the EZLN's support base that identify themselves with the autonomous municipality of Polhó. Because of numerous threats against them, this group decided to leave Acteal on the morning of December 22. The members of Las Abejas were convinced that being a pacifistic, unarmed organization, the threats could not be against them. The attack against this group was an indirect blow against the autonomous municipality and, after the massacre, the inhabitants of various communities decided to seek refuge in Polhó, the capital of the autonomous municipality, where 6 000 displaced people live up to this moment.

The situation in which thousands of internally displaced people live is critical, because of the total dependency on humanitarian aid from the outside. There have been cases of children and old people dying because of the unhealthy conditions, in spite of the solidarity of many non-governmental organizations and the Mexican Red Cross. There are denunciations that the Mexican Army is contaminating water sources and has blocked the access to the springs. The community reacted to the constant harassment, intimidation and threats by the Federal Army, located 200 meters from the community, by establishing a permanent guard at the entrance. This military presence causes the deteriorating of the social fabric with serious psycho-sociological impacts, altering the daily life in the communities identified as zapatista sympathizers.

After having pointed out 74 men as responsible for the massacre in December of 1997, in declarations that were taken directly in Polhó, the witnesses refused to continue the process when the judges asked to change the place to Tuxtla Gutiérrez[6]. Furthermore, they did not have confidence that this process would lead to the conviction of the guilty.

Chapter 2.

The Chiapas Government's Cynicism

Public Security police officers were present on the road only 200 meters away from the scene of the crime; they stayed at the local school all the time the massacre was taking place. Several people alerted early on about the shooting which could be heard in several communities and three witnesses were detained by the police when they tried to denounce it. However, Chiapas' secretary of state, Homero Tovilla, who was informed by the San Cristóbal Diocese at 11:30 in the morning, declared at 6:00 PM in that everything was under control and that only a "few shots in the air" had been heard. The undersecretary, Uriel Jarquín, made statements to the effect that he had notified the police and that there were no news or evidence of a confrontation. Days afterwards he still spoke of a confrontation, even when it was clear that the victims had been unarmed and that the great majority were women and children.

On the night of the 22nd a cover-up attempt was made when Lic. Jorge Enrique Hernández Aguilar, ex - State Attorney and Executive Secretary of the State Council for the Public Security Police, supervised the lifting of the bodies and gave instructions to "pick them up before the journalists get here" Uriel Jarquín was also present at that time.

In spite of all the evidence, the official declarations denied any responsibility of the crimes on the side of the State Government.

The CNDH[7] published their recommendation 1/98 on the January 7, 1998 in which 17 persons (including government officials and police and army officers) were held directly responsible for the massacre. Several among them were accused of covering up their responsibility. That same day the governor Julio Cesar Ruiz Ferro asked for leave and all

the implicated officials left their positions. However, up to the present date, only four of them have been turned over to the courts.

Roberto Albores Guillén substituted Ruiz Ferro as Chiapas Governor. During the first months of his administration, an unprecedented series of attacks took place against indigenous communities along with the resulting human rights' violations. Cases of torture, threats and harassment against campesino and indigenous leaders, house searches and arbitrary detentions were alarmingly frequent. He also attributed himself the international observers' arbitrary expulsions, even though this is a federal matter.

National and international organizations reacted with consternation and indignation to this state of growing human rights violations. Amnesty International's President and the Interamerican Human Rights Commission expressed their concern. The UN Subcommission of the for the Prevention of Discrimination and Protection for Minorities wrote a resolution asking the Mexican Authorities to guarantee the respect for the international instruments which Mexico has accepted.

The fact that the men implicated in the Acteal massacre were affiliated with the PRI caused a great scandal in the country. Through various mass media, the attempt was made to change this negative image. The State Government contracted private lawyers to defend the priístas[8] who had been detained in relation to the case. The CDHFBC issued a press release questioning this action. Arely Madrid Tovilla, Secretary of State responded to it rebutting the information and accusing the CDHFBC of spreading false rumors. However, a few weeks later, one of the hired lawyers renounced, making public his repentance for having accepted to participate in "this dirty game".

On July 3, 1998, the State Supreme Court's President organized a press conference informing that the PGR had solicited arrest warrants against seven officials who, thanks to this opportune warning, were able to protect themselves against the pending arrest. Only one of them appeared on the CNDH list and he was the lowest level official among those who had been pointed out as having responsibility in the Acteal massacre.

On March the weekly Proceso[9] published new facts about the protection the Public Security Police had offered the paramilitaries. One witness clearly confirmed that the police remained only 200 metros away from the mass murder and accused the first officer Absalón Gordillo of having given orders not to arrest armed priístas.

The process of the indemnities

The CNDH recommendation to the State and Federal Governments included that the State Government has the responsibility to indemnify the victim's families and the injured, and also that the injured persons have the right to adequate medical attention. The State Attorney for the Defense of the Minor tried to make a public act out of the payments, when he invited the mass media without prior notification of the victims or the CDHFBC. Consequently the victims rejected the indemnity, prioritizing the aide for the injured people.

After this members of Las Abejas and representatives of the State Government met about 10 times to talk about the following topics:

- Identification of the children, women and men murdered in the massacre.
- Total payment of the indemnities to the family members of the dead as well as to the injured.
- Medical attention and rehabilitation for those who required it.
- Attention for the displaced communities.
- Investigation of the illegal acts in Chenalhó.

Although 33 persons who had lost family members received 35.000 pesos and the injured people between 10 y 25 thousand pesos each, still in October 1998 the Government refused to pay the costs of the first medical treatments. Other demands by Las Abejas, regarding the losses that had occurred in 1997, were sent to different institutions and finally, disillusioned about the stalemate of the process, the victims desisted from their denunciation.

Chapter 3

The Federation behind the Scenes

Contrary to what the CNDH wrote, that the government had information from the CISEN about the actions in Acteal, the Secretario de Gobernación[10], Emilio Chuayffet, expressed that the government could not be considered guilty, not even for omission. In a press conference he declared that he did know about the situation in Chenalhó, but denied that the federal government instigated the "armed civilian groups". He insisted in minimizing the conflict and denied that a counter insurgency strategy existed in the State. On January 3, Chuayffet renounced from his post and was substituted by Francisco Labastida Ochoa.

On December 23, 1997, the PGR took over the investigation of the case. According to their first report about the autopsies, the majority of the bodies showed bullet impacts from back to front and none of the persons had responded the fire. Jorge Madrazo Cuellar, the Federation's Attorney General, said in a press conference that these were not the first victims in this municipality, but he did not mention whether the State or Federal Government had taken any measures to stop or prevent the violence in the municipality. He defined the massacre as inter community or inter family conflicts that was worsened since the appearance of the autonomous municipality of Polhó. He did not mention paramilitary groups or their relations with the official municipality. This theory was disseminated throughout the year 1998 even though there existed no proof for it in the investigations.

On December 26, the federal public ministry decided to initiate penal action against 16 indigenous men from Chenalhó, accusing them of homicide in the first degree, damages

and criminal association. On December 27, the municipal president, Jacinto Arias Cruz was arrested for his presumed participation in the massacre. He accepted the charge of having given out weapons and instructions. He was substituted by the *priísta* Antonio Gómez Ruiz.

From December 29 on, the PGR, together with the National Army initiated the search for weapons in the municipal capital and, on December 30, 23 more indigenous people from Chenalhó were arrested. That same day the Bishop Raúl Vera was summoned by the PGR to declare and the PGR promised a profound investigation to prosecute both the material and the intellectual perpetrators.

By January 6, 60 officials from the Coordination of the State Police had delivered their declarations, among them mid level commanders, police officers and the Director, Jorge Gamboa Solís. For the State Government declared the Secretary of State, the Undersecretary, the State's Attorney for Indigenous Affairs and the officer from the Public Ministry.

After the massacre, a publicity campaign was started against the zapatistas as well as against the organization for mediation between the government and the EZLN. Also after the massacre a growing militarization was released in the highland region, especially in Chenalhó. 5 000 troops were added to the already strong military presence of 70 000 soldiers in the state. In some of the so-called conflict zones, which in the great majority are indigenous, there is one soldier for every three inhabitants. The National Army followed its manuals for the Irregular War, which teach the operations for the control of the civilian population and the counter guerrilla tactical operations. The three phases of control of the civilian population are preparation, declaration and execution. This includes the training of civilian, military and militarized forces. Added to this are psychological actions, social labor by the military and the elaboration of an information network. Under the pretext of the so-called social labor or the application of the Federal Law for Weapons and Explosives, new checkpoints were installed. Especially in the zapatista municipalities, soldiers and police searched houses, carried out arbitrary detentions, patrolled the villages and installed new military camps.

According to the army's manual there are four surrounding operations for the destruction and annihilation of the guerrilla. The massacre of Acteal can be seen within this logic considering that troops of the Public Security police, commanded by the General Julio Cesar Santiago Díaz and stationed in Acteal's schoolhouse, were the blockage force to close the exit to the road, as described in one of the manual's diagrams, which is called "Enclosure Hammer and Anvil". The general accepted in his declaration that he had been close to the schoolhouse the whole time with some 40 police officers.

The Threats and Harassment continue

After the massacre, the threats and harassment by the paramilitary groups have not ceased in the Chenalhó municipality. Some persons who were *priístas* and who changed

affiliation to the group Las Abejas have been harassed and accused of pointing out paramilitaries. The meetings of priístas in which they agree on assaults and on impeding the free association of the organization Las Abejas represent another pattern of harassment. Cases range from threats, like the case of the priísta Antonio Gutiérrez Vázquez who received death threats after having informed on some of the men responsible for the massacre, to assassinations like the case of the 12 year old boy Elías Gutiérrez Ortiz, son of Agustín Gutiérrez Pérez, ex official of the municipality, who in February of 1998 had changed his affiliation to the group Las Abejas because the city council did not contribute to a dialogue. There are also cases of theft in houses that are abandoned since the flight of their owners, among other types of harassment.

We documented 88 military operatives in indigenous communities in the first one hundred days after the massacre. Afterwards the operatives were more coordinated with the Public Security Police. One pretext for many of these incursions was the application of the Federal Law for Weapons and Explosives as was the case in Nueva Esperanza, in Altamirano where the military entered, carried out illegal searches, plundered and beat one person. The same pattern was repeated in different municipalities with strong zapatista presence, including the community La Realidad[11] that caused great national and international alarm and was rebutted by the SEDENA[12] that accused the diocese of provocation for the denunciation it had disseminated. However, later on it was confirmed that there had been indeed an attempt to invade the community. In the municipality of Altamirano arbitrary detentions with violent interrogations about the zapatistas were carried out. In one of those operatives proof was found to accuse the Bishop Don Samuel Ruiz to be involved with the EZLN. The proof was some religious texts that were translated into tojolabal[13]. Another pretext for military incursions was the social labor, as was the case of Xoyep, where 1,300 displaced people strongly rejected the military's attempt to install a military camp. Only on the third attempt to oblige the people to accept the social labor the Mexican Army succeeded in installing a camp close to the water source used by the displaced.

The massacre caused great indignation all over the world, to which the government reacted with declarations that this was an internal affair of the country and therefore it would not accept any foreign intervention. This brought along a new anti foreigner campaign, expelling and threatening foreigners who, for instance, wished to visit the grave of the murdered. At the same time, however, the Secretary of State made declarations outside the country trying to minimize and distort the Acteal massacre to an inter community conflict.

Chapter 4

Other Measures

In the spring of 1997, the CDHFBC began to alert various instances, among them the

CNDH, about the situation of growing violence in Chenalhó. On December 2 of 1997, it asked the CNDH for cautionary measures for some 20 families held hostage in Pechiquil. That petition was not granted until the day after the massacre. In its preliminary report about the massacre, the CNDH mentioned that the State Coordinator and the Director of the Public Security police were informed at 10:30 a.m. about "some type of illegal activity" in Acteal and the director of the CNDH explained in a press conference that the bodies of the victims had been removed from the place where they had died, thus implicating the police. However, about the topic of paramilitary groups she declared that they had not "come across such a group".

The Red Cross, which was denied access to the community until the authorities arrived, witnessed how the bodies of the 45 victims were treated. However, they could not establish communication with their base, because that same night their radio repeater at Tzontehuitz had been stolen. Tzontehuitz is a hill, guarded by the army.

On December 24, the CIDH, upon a petition from Human Rights Watch/America and the Center for Justice and International Law, solicited security measures for the displaced people of Chenalhó from the Mexican Government to avoid further violent actions. That petition included:

1. Immediate and adequate medical attention for the injured survivors, with the necessary guarantees for their security.
2. Measures to assure the physical integrity of the survivors, witnesses and displaced in Chenalhó.
3. A profound investigation of the crimes and punishment for the guilty.
4. Measures, via the corresponding authorities, to prevent new violent acts in the region.

On December 31, the CIDH informed that the Mexican Government had contested the petition for cautionary measures and had submitted a report regarding the facts in Acteal, Chenalhó. In this report it informs about the actions taken by the Republic's President, such as instructions for the PGR and a call for reconciliation and dialogue, plus the actions taken by the PGR and the CNDH.

On January 5, the Government submitted a complementary report in which it explained that the conflicts in Chiapas were rooted in profound inequalities, in the historical marginalization of the indigenous communities, in the dynamic of expulsions due to different cultural identities and the socio-economic development of the country. It underlined the actions of the Mexican Army, which had given highest priority to Chiapas, and the fact that the state had received the largest proportion of the decentralized federal budget.

The CIDH then asked the petitioners for observations about the government's reports. These organizations, in coordination with the CDHFBC decided to respond only to the points concerning the Acteal massacre.

On February 13, 1998, the CIDH received the parts to hear allegations about the cautionary measures, and it was agreed upon that the government would inform the Commission on a monthly basis about the adoption of these measures.

After this resolution, the government only informed about the PGR, omitting any information about the other solicited measures.

In June 1998 these precautionary measures expired and the petitioners considered soliciting the Commission to continue them, with the argument that existing conditions did not reflect total compliance.

On December 27, some 400 indigenous belonging to Las Abejas left their communities, Los Chorros and Pechiquil, in a joint action undertaken by the PGR, the Mexican Army and the Mexican Red Cross; this action had been solicited by this Center. These people had been virtually held as hostages, threatened and forced to work for their kidnappers, the paramilitaries. A 17 year old man tells that the people were obliged to steal, burn down houses and learn how to use weapons. When he refused to kill people, he was beaten and they pointed at him with a gun, identified as the kind whose used is reserved for the Mexican army.

That same day 3,500 people left their refuge in Xcumumal and arrived in Polhó, seat of the autonomous municipality.

Two days later, in a second joint action, 18 families were liberated who had been in the communities of Puebla and Yaxgemel.

After having visited Acteal, Polhó (Chenalhó) and Oventic (in the neighboring municipality of San Andrés) during the first days of January, various civilian and human rights organizations informed that the people in Oventic had fled and that the displaced in Polhó were lacking food, clothing and medicines. In Acteal the people lived in fear of the constant visits by militaries and men who claimed to belong to the PGR. The military presence had increased overwhelmingly, thus causing strong tensions and fear of attacks in the zapatista support base communities. The organizations made an urgent call to the International Red Cross to help the thousands of displaced people and demanded from the Federal Government respect for the Law for Dialogue and Pacification[14] in Chiapas.

The press also pointed out that the living conditions of the displaced presented yet another threat to the indigenous population.

In a letter from the community of Acteal, dated January 2, they gave thanks for the help they had received for the December 31st pilgrimage and for the humanitarian aid. They also stated that they would remain in Acteal as a Civilian Peace Camp because they

feared the police and the military, "[they] have two hearts that don't help the people, but only want to control". They wondered whether in 1998 there would still be life and hope for the Indians and whether the San Andrés accords would be taken into account.

Internally Displaced People in Chiapas

The displacement due to the violence in Chenalhó, started in April 1997. The total number of displaced persons is about 10,000, who live in 13 different camps in the same municipality and in San Cristóbal. 80% of them are zapatista support base and the rest belongs to the organization Las Abejas.

The reasons for the displacement are the constant threats, persecutions and the assassinations by paramilitaries in their home communities. They cannot return because the paramilitaries remain in the communities, backed up by the Public Security Police, and the opposition leaders are still being persecuted. The displaced are not convinced that the government wants to resolve the problem and do justice. The various aspects of the living conditions are deplorable. The displacement camps do not provide enough land and, although there are collective vegetable gardens, these cannot replace the parcels. There is not enough firewood or working tools.

The lack of corn and the replacing it with cornflour cause stomach ache and diarrhea and breastfeeding women and their babies are very weak. For example, in the Tzajalchen camp, a family receives 4 kgs. of beans, 1.5 kgs. of tomatoes, 1 kg. of rice, 1 kg. of potatoes and 7 carrots every 15 days, which is insufficient nutrition.

Also, there is a constant lack of water that creates an unsanitary environment and causes illnesses as diarrhea, fevers, gastrointestinal infections and dermatological problems among others and there are no medicines. These conditions and shame, sadness and fear have caused various deaths, indicating the impact the war has on the mental health of the tzotziles and tzeltales. Efforts have been made by Doctors of the World and sporadically by the Mexican Red Cross to capacitate health promoters.

The physical space in the camps is very reduced, the houses are improvised, letting the wind, cold and rain enter. For example in the camp in Xoyep eleven families have to share one house.

The continuity of education is not guaranteed, because the primary schools do not function and, because of the insecurity, parents don't want to send their children to the school in the municipal capital.

In the 20 communities that were affected by the violence between May 1997 and March 1998, the amount for damages is estimated to be \$47,269,618.00. Mexican Pesos . This includes damages for loss of houses, furniture, tools, harvests and animals. The total number of families with claims is 1,410. In the month of June the claimants formed a Commission for the Indemnities. The State Government informed them that it would only consider the indemnities if the CNDH made a recommendation to that effect. The

Commission solicited the Republic's President's intervention in the investigation of the conflict and the PGR's Special Prosecutor for the attention of the crimes committed in the municipality of Chenalhó to intervene in the investigation of the damages. The PGR remitted the denunciation to the State's General Attorney of Justice. The claimants ratified their denunciations:

In the months between May and December of 1997 hundreds of families fled from the communities of Yaxgemel, Yabteclum, Joveltic, Miguel Utrilla Los Chorros, Majomut, La Esperanza and Yibeljoj, because of threats, assassinations and attacks by paramilitaries, leaving behind all their belongings. In many cases their houses were plundered and afterwards burnt down. On December 7, in the community of Chimix, Mr. Agustín Vázquez Sucum was assassinated. His death, according to the official version, would be the motive for the Acteal massacre, as inter community vengeance.

After the massacre, dozens of families abandoned their communities out of the justified fear that they would suffer more attacks.

Damages of about 45,158,000.00 Mexican pesos are projected for corn, bean and coffee harvests of the 1998 seasons. Other affected communities are Yaxgemel Ch'uhchtik, Canolal, Polhó, Nueva Aurora, Pechiquil, Tzabalhó, Naranjaetik Bajo, Tzajalucum, Tzanembolón, Xcumumal, Chimix, Centro and Poblado Quextic.

Chapter 5.

Psychological-Social Impact of the Massacre

The massacre is an act within the context of the psychological warfare that intends to control the dissident population and has serious repercussions for the mental health of the survivors. The problems that have been detected in the months after the massacre were: confusion, disorganization, problems related to traumas, fear, and the mourning process. They experienced profound sadness, impotence to confront such terror and insecurity about the future.

The population is in a process of elaboration of the traumatic events. Included in the natural resources to elaborate traumatic events are the passing of time, security and affection. Apart from that, the Tzotziles in Acteal have their holistic cosmovision, their faith and ethical values. However, the situation of insecurity in the municipality complicates and threatens this process.

The Human Rights Center has started community diagnostics about the psychological effects in the affected population. It has lead mental health workshops in the course of which were detected a variety of symptoms and psychosomatic illnesses in both adults and children due to the trauma of the massacre and the situation of displacement.

Acteal reflects a deep communal pain. The displacement and especially the massacre

have generated radical changes in the way of life of the community. The injured survivors, the orphans, the widowers and widows showed these impacts with greater intensity.

Women play an important role in the rural family and with the death of the mother, the families suffer a misbalance, which generates conflicts. The grandmothers have to assume the role of the mother, which means a great effort for them, and anguish for not being able to share their life with the daughter or daughter-in-law. They suffer headaches, tiredness and fainting spells.

The widows assume the care taking of their children, which generates anguish due to the feelings of incompetence, especially when the child is injured and in recovering. The lack of and the change of food increase the worries because they fear that the children will be malnourished. They feel enclosed; they don't go out to work their land. The adults, trying to reorganize their lives, feel a work overload, which causes conflicts, tiredness, saturation and anguish.

The bad conditions as well as the space limitations in the displacement camps also cause conflicts.

The elders are a vulnerable population who now in the refuge feel useless and fearful of not surviving another attack because they would not be able to run away.

The Mourning

A violent death or death by medical negligence or precarious living conditions produces a feeling of injustice and indignation in the Tzotziles of Chenalhó. The relationship with the natural environment is very close in the Mayan culture, and therefore the process of mourning for multiple losses of loved ones, harvests, domestic animals etc. is very complex. It means losing control over their own life and confidence in the future. Their environment is hostile and uncertain and the end to this situation cannot be predicted. My Daughter did not die naturally, but because of the killing. (...) I suffer a lot.

Having to assume the double role of mother/father is painful for the widowers who express being worried about their children and difficulties to organize their lives. Manuel Méndez has to take care of his five children and he cries a lot for his wife.

Testimonies show death wishes, tiredness and weakness. While some are in a phase of depression, others are taking more control over their lives. However, this control is only relative because they still feel the paramilitary threat and their daily social context continues to be one of violence. Some seek relief in alcohol.

The children have the best possibilities for recuperation with the passing of time, although their immediate reactions have been continuous crying, fear, lack of appetite, rejection of play and rejection of the presence of many people. According to testimonies of the adults, the children are not like they were before. Just as us, they are like that because they saw the massacre. They are afraid.

The impact of the massacre affects all of the population, it is a mourning process in which the religious activities, as for example the memorials every 22nd of the month, and talking about their loved ones, play important roles in confronting this grief.

The Fear

There is a climate of distrust against the state authorities, police and military that supposedly are there to protect them, but the people see in a close relationship with the paramilitaries. Rumors, harassment and constant threats have produced a generalized fear, insecurity in their future and the feeling of defenselessness that paralyzes the population, especially the women. I feel sad; the people who died were friends. Now I am afraid because there is so much abuse.

Shortly after the massacre many witnesses spoke about an emotional saturation, the feeling of abandonment, of guilt for having survived, of worthlessness and incomprehension of the brutal deaths. These feelings confronted their identity as individuals, as a community and as an ethnicity. The loss of their ancestral heritage, the land; the separation from families and reference groups also have an impact on their cultural identity.

Various testimonies, especially those by the widowers, express the contained rage against the slowness of the judicial process, of the indemnities, the bad attention for the injured and the freedom of the paramilitaries. The reaction is to mobilize the population to follow closely every step of the legal process.

Chapter 6

Legal Approximation

Although a paramilitary group has been made directly responsible for the massacre, this term does not exist in any of the legal bodies in Mexico. What in legal terms is closest to the concept of a paramilitary group is a joining of four penal types: criminal association, coalition of public officials, improper exercise of public services, illegal carrying of fire arms and embezzlement. For as long as there are no penal reforms that integrate a specific penal type for paramilitary groups, it has to be treated within the existing internal Mexican laws.

The CIDH solicited a serious and exhaustive investigation, which to this moment is still deficient. Acteal is not simply a murder in the first degree. The Mexican government has investigated, on the one hand, about the material perpetrators and direct instigators and, separately, about the penal responsibility of public officials, which does not take into account the context of criminal phenomena in an integral manner.

The fact that the different elements are not presented together, impedes the otherwise

evident conclusion that the massacre is not just an isolated event but part of a criminal context. The decision by the judge of the Appeals Court in Tuxtla Gutiérrez, not to process the accused for the crime of criminal association, debilitates the demonstration of cause and effect of certain events, as for example, the crimes before the massacre, the various meetings by the aggressors to pressure people, the preparation meeting the night before December 22 and the protection by police officers. The refusal to join the processes and the revocation of the formal prison court orders for the probable crime of criminal association allows the state and federal governments to minimize the events and reinforce the denial to recognize their responsibility.

In Mexico's federal jurisdiction, a criminal association contains the following elements:

1. Who is part of an association or gang
2. of three or more people,
3. with the intent to commit crimes.

The federal law against organized crime contemplates the following elements to define the crime of criminal association:

1. When three or more people
 2. agree to organize or organize
 3. to carry out, permanently or reiteratively
 4. conducts that by themselves or together with others
 5. have the objective or result of committing one or several of the following crimes:
 1. (...)
 2. Stockpiling and trafficking arms, as described in the articles 83 bis and 84 of the federal law for firearms and explosives.

On December 21 of 1997, various people from different communities in Chenalhó met to agree on details about the attack against Acteal. An organizational structure existed, they agreed to commit a crime and to carry weapons, which their leaders would provide. This means that the accused and the men who have arrest warrants against them have to be processed for the crime of criminal association.

The crimes of criminal association, stockpiling and carrying weapons reserved for the Mexican armed forces, being a federal crime, have to be consigned together to the

district judges.

Elements of both crimes are clearly demonstrated in the declarations of the material witnesses. The accused were seen armed, burning and plundering houses and meeting to coordinate their actions before the massacre. Those who are now accused are indicated as probably responsible for the crimes of homicide, bodily harm and threats, some of which were perpetrated in organized groups with weapons of exclusive use by the armed forces which proves the permanence of criminal association and the reiteration of the criminal conduct.

The federal public ministry of the PGR, via the special prosecutor for the Acteal case can accuse them again for those crimes, even though the Appeals Court in Tuxtla Gutiérrez has revoked the accusation in some cases, because in the amendments of the declarations some criminal and reiterative acts by the aggressors have been shown more precisely. The mechanism would be an amendment of the consignment.

The crimes of coalition of public officials, improper exercise of public services, abusive exercise of functions, embezzlement (in the federal jurisdiction) or abuse of authority and crimes committed in the administration of justice (in the civil jurisdiction), are clearly shown in the testimonies and expert opinions in relation to the massacre and the criminal context of Chenalhó. It is evident that public officials tolerated civilians carrying weapons of exclusive use by the armed forces, that they used vehicles and public goods to transport armed civilians and that they did not provide security to other people and places.

However, the PGR has not consigned any police officer for his penal responsibility as a public official, even though they were on duty. They have been consigned for homicide by omission (as in the case of Gral. Julio Cesar Santiago Díaz, Roberto Martín Méndez Gómez y Roberto García Rivas) and for carrying firearms of exclusive use by the armed forces by omission (in the cases of the other police officers).

The PGR has not determined the probable penal responsibility of the Chiapan State Government officials. It has resolved against some former officials of the Attorney for Indigenous Justice (four public ministries, one director of prior investigations, one director of processes and one subattorney).

The investigation does not clarify with precision the intellectual authorship of the massacre. In spite of the theory sustained by the Republic's General Attorney, in the sense that the material and intellectual perpetration have been perfectly established, as well as the events that motivated the actions of the accused men - community vengeance - the way in which they were organized, determining hierarchies and structure, the fund raising, the stockpiling of weapons, have not been determined. Neither have the objectives of the organization been clarified, nor the manners of actions or the modus operandi in which the links between the criminal association, the police and the State Government were established.

There are several coincidences between a counterinsurgency policy and the public officials' responsibility, their relation with the existence of armed civilian groups and with the events themselves:

1) Chiapas' State Government was clearly informed about the crimes that were continuously committed in Chenalhó and about the displacement situation of thousands of people in the municipality.

2) The commander Felipe Vázquez Espinosa provided protection and allowed armed civilian priista groups in Miguel Utrilla-Los Chorros (Chenalhó).

3) A soldier of the VII military region, trained armed civilian groups during his "vacation", as well as another ex-soldier in Tzajalucum.

4) The General Julio Cesar Santiago Díaz (director of the Auxiliary Police and chief advisor of Jorge Gamboa Solís, Coordinator of the Public Security Police in the State) was in the place and at the time of the events, heard the shots and informed his superiors that everything was in order.

5) The same December 22 at 11:30 a.m., Governor Julio Cesar Ruiz Ferro's Cabinet was informed by the Vicar for Justice and Peace of the San Cristóbal Diocese, Gonzalo Ituarte, that there were disturbances in the community of Acteal and they only solicited information from José Luis Rodríguez Orozco (director of the Public Security police), from Gral. Julio Cesar Santiago Díaz and from the commander of the Majomut section, Roberto Martín Méndez Gómez.

6) General Jorge Gamboa Solís, during a cabinet meeting on December 22 at 13:30 p.m. disposed that a helicopter be prepared to fly over the region. He never gave the order for the flight.

7) The lifting of the corpses and the alteration of the traces was carried out against established Mexican law. It was carried out in a great hurry to end before dawn and to avoid the arrival of journalists.

8) The declaration by José Luis Rodríguez Orozco, ex-director of the State Public Security Police, about his knowledge that a Captain Parra, member of the Mexican army had returned a cuerno de chivo (AK47) and a R-15 (sic) to some indigenous "friends" and that he did not want to "get into trouble".[15]

9) The existence and probable application of the Manual for irregular warfare, counterguerrilla operations and restoration of order part II, edited by the National Defense Department in 1995.

The circumstances and elements that show the existence of different interrelated criminal actions (actions and omissions) analyzed comparatively with other cases present us with a picture that suggests the existence of "paramilitary groups".

The execution of the different arrest warrants against ex - officials, for omission and/or conducts with significance in the Acteal massacre still have to be carried out 100%. Until now these officials flee or promote constitutional trials to avoid being arrested, which suggests a filtration of information either by the investigating authority of the PGR, judicial authorities or judges which, in the case of being proven, has to be pursued as a crime against the procuration and administration of justice.

On January 16 of 1998, 26 Civil Human Rights Organizations presented a petition to the Nation's Supreme Court of Justice (SCJN), founded on the article 97 of the Mexican Constitution, which gives the Court the authority to investigate grave human rights violations, to carry out an impartial investigation of the events in Acteal. The Court refused, considering that the CNDH had already investigated and given recommendations. Also, according to the Court, the situation in Chenalhó was already changing.

We consider that the legal nature of the PGR, CNDH and SCJN are different and that they can carry out the investigations they consider necessary. This Center considers that carrying out various investigations about a complex case such as the Acteal Massacre can only contribute to better clarify the case.

Chapter 7

Considerations about Human Rights Violations

Based on the information contained in this report, the consummation of the acts in Acteal on December 22 1997, represents a non fulfillment by the Mexican government of its obligation to respect and guarantee the security of the victims. The Mexican government on its different levels (state and federal) is at least morally and politically responsible for the incapacity to guarantee their citizens the respect of their economic, social and cultural rights.

In terms of the configuration of Crimes Against Humanity, known as genocide, the juridical concept in international law understands by Genocide the intent to destroy totally or partially a national, ethnical, religious or racial group. In Mexican law, in the Penal Code, Genocide is specified in the same way.

According to national and international definitions, the concrete case of Acteal does not demonstrate genocide 100%. However, it is important to mention that the Abejas do conform a group of people, who besides being indigenous tzotzil, has a religious character (catholic). And certainly they suffered death, grave bodily and mental harm, conditions meant to produce their total or partial physical destruction.

However, in the case of Acteal elements for Genocide are lacking since the motive for the massacre was the political opinion of the victims. It is concluded that the acts and violations do not constitute, in legal terms, the crime of Genocide.

Conceptual references to the different Human Rights violations:

* The right to life: Previous to the Acteal massacre various federal government bodies were alerted to the risks the priista paramilitary groups meant for the displaced. They did nothing to avoid the massacre.

* The right to physical integrity and personal security: The injured survivors of Acteal suffered damage to their health due to the treacherous actions of others. The State has to take measures to prevent these cases.

* The right to protection of women and children in a state of emergency or armed conflict: In Chiapas an armed conflict clearly exists, there are two armies with legal status, the Mexican Government applies a counter insurgency plan and stations military personnel for the protection of the State, these carry out incursions in the communities. With these actions it confirms the existence of an armed conflict. For that reason, the Government has to respect the norms of international law, such as the Geneva Convention. Women and children are the most vulnerable in this situation and have to be specially protected.

* Rights of the children[16]: On December 22, 1997 in Acteal the fundamental rights of children were violated.

* Rights of women: The Mexican Government has to take into account the vulnerability to violence women suffer for reasons of their race, ethnicity, or being migrant, refugee or displaced.[17]

* Right to justice, judicial guarantees and judicial protection: After the tragedy of Acteal the courts in charge of procuring justice, as well as the public ministries have not complied with the Constitution. The material and intellectual perpetrators (among them some public officials) have not been called to justice to respond to the accusations. These instances have not acted in an impartial manner; they have done nothing to deactivate the paramilitary groups. And the group of the victims, Las Abejas has not enjoyed proper treatment or the reestablishment of normal living conditions.

* Right to well being, progress and development: The Mexican State has not been able to revert the subhuman and unconstitutional conditions of the displaced people, nor has it faced the grave accusation that it has concealed a fratricidal struggle with civil war characteristics. This implicates great

obstacles for an integral development of the human being.

* Rights of the indigenous people: The indigenous people have to be able to exercise their nationally and internationally recognized collective rights, as well as their right to development and ethnodevelopment, which establishes that every people has a right to freely choose their political status and the design of their economic, social and cultural development programs.

Typical configuration of criminal association and organized crime:

There is enough proof to conclude that the Acteal Massacre was a planned act within a counter insurgency strategy:

1. It was necessary to recruit, organize, train, give out weapons and/or permit the civilian armed groups to carry arms, as well as to permit them to execute the acts of harassment against the population. The counter insurgency plan which the Mexican Government implements in Chiapas via its Army is a criminal plan which requires a strategy and planning to carry it out.

2. Even in the case of omission, the government is implicated for tolerating the existence of the armed civilian groups with paramilitary functions.

3. Elements exist to consider the penal action of criminal association, contemplated in the article 164 of the Federal Penal Code, which describes: Criminal Association exists when a person meets with two or more persons with the objective to commit a crime in a group or gang. This leads to the conclusion that a criminal association exists as one of the phenomena that lead to the consummation of the acts.

4. Despite this, the Appeals Court judge denied the existence of a criminal organization arguing that there are not enough elements to demonstrate the crime.

Similarities in the cases of Taniperla, Nicolás Ruiz and El Bosque:

The principal motive in all these cases of Human Rights violations is the dissidence against the PRI hegemony, identifying the victims as victims of abuse of power.

Chapter 8.

Conclusions and Recommendations

In the different levels of government that act in Chiapas, a logic of low intensity warfare

has been followed against any political adversary of the State or Federal Government. The objectives of this war are the control of the population, the wearing down of the people and the debilitation of opposition groups. This strategy started in 1996 in the northern region with the rising of Paz y Justicia[18] that had as a result the displacement of thousands of persons, action that served as justification for the Mexican Army to enter the communities.

This tactic is being followed in Chenalhó where the Army has entered in the displaced communities, which generally are opposition groups. At this moment, a third of the Chenalhó population lives in displacement camps, abandoning their land and houses and living in a state of constant harassment by the army which provokes psychological effects and a total dependency on outside assistance. At the same time the paramilitary groups are being strengthened by taking advantage of the abandoned land and by receiving various promises by the government.

The attack suffered by the members of the group Las Abejas has had a profound impact. Acteal reflects the communal suffering of abrupt changes in their daily routine; their pain is for the human losses as well as for the destruction of their unity with the mother earth.

The Government's explanations follow the same line of minimizing the problem in Chiapas; Acteal was an inter community or inter family affair, the indigenous kill each other, with these affirmations it follows a strategy of dehumanizing the indigenous and minimizing the repercussions the massacre could have in the public opinion.

Finally in Chiapas exists a very grave situation in relation to the violations of the right to life, however, the responsible people enjoy impunity, the paramilitary groups are one of the primary sources of violence, and the Mexican Government covers up and helps the development of these groups. Thus it is responsible for the aggressions and violations these groups commit. The conditions to carry out a true investigation into the crimes of the paramilitary groups do not exist thanks to the relation of complicity they maintain with the Government. The impunity generates more and more violence.

Chenalhó reflects the crisis of the institutions that exists in Mexico and in Chiapas, which produces the decomposition and legitimacy crisis of the government.

Recommendations

To the Federal Government:

1. Conclude the penal and administrative investigations of the Acteal case, executing penal action and the arrest warrants against the material and intellectual perpetrators; investigation and punishment of the State and Federal authorities involved by action or omission.
2. Withdrawal of the military presence in the rural indigenous communities, as well as

the investigation and sanction of those officers that have committed human rights violations.

3. We recommend the promotion and creation of a national Commission for Internally Displaced. This commission would be in charge of creating security conditions for the return of the displaced people.

To the State and Federal Governments:

We recommend:

4. The fulfillment of the San Andrés Accords.

5. To take effective measures to guarantee everybody the respect for their life, physical, psychological and moral integrity.

6. To reinforce the mechanisms to guarantee an adequate medical attention, treatment and rehabilitation for the injured survivors of the Acteal massacre.

7. To adopt measures to guarantee the protection of the most vulnerable population, women and children.

8. To adopt measures that take into account the situation of vulnerability to violence of the displaced women.

9. To adopt adequate and efficient measures to respect the rights of the children, guaranteeing them their right to education by their parents and to grow up in a safe and peaceful environment.

To the Congress of the Union:

10. We recommend considering legislation to classify the persecution of political groups as Genocide, based on the international obligations in human rights issues Mexico has underwritten.

11. We recommend reflecting about legislating the criminal typification of paramilitary groups.

To the Judicial Power of the Federation:

12. To remain on the margin of all politicization of the Acteal case.

13. We recommend the Supreme Court of Justice to carry out an investigation about the events that constitute grave violations of the individual guarantees.

14. To the First and Second District Courts and to the Appeals Court, both belonging to the 20th Judicial Circuit, we recommend a profound process analysis and to pronounce the sentences according to the law.

15. To the Judicial Power of the Federation to take into account in their processal

decisions on the case of Acteal, the indigenous peoples' judicial customs, both the offended's and the accused's.

To the political leaders of the political parties and civil, political and social organizations linked to the conflict in Chenalhó:

16. Directing the opinions and actions of their affiliates towards the respect and tolerance of the plurality of political opinions.

To the leadership and ministers of the different religious associations:

17. To direct the actions of their ministers and followers towards the respect of the plurality and freedom of conscience and beliefs.

Recommendations to the parts in terms of the process of the dialogue, conciliation and pacification in Chiapas:

18. We recommend the federal government and the EZLN to consider the establishing of mediation instances and commitments to security and mutual respect.

19. We recommend they consider signing an additional protocol to the general rules of the agenda, relating to the execution of the signed agreements. We suggest that the parts invite whomever they consider necessary to join the Commission of Follow up and Verification.

20. To the Commission of Concord and Pacification we recommend to maintain their disposition to help and facilitate the dialogue between the parts in conflict.

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[4] Attorney General of the Federation

[5] Desarrollo Integral de la Familia - Integral Development of the Family

[6] State Capital

[7] Comisión Nacional de Derechos Humanos - National Human Rights Commission

[8] PRI affiliates

[9] Weekly Magazine for political analysis

[10] Mexico's Secretary of State

[11] zapatista stronghold

[12] Defense Department

[13] one of the main indigenous languages in Chiapas

[14] Law of protection for the zapatistas while in proces of peace talks which was approved in March of 1995.

[15] Penal cause 27/98, part II. Second District Judge, Tuxtla Gutiérrez, Chiapas.

[16] Adopted in November of 1959

[17] As pointed out in the Interamerican Convention to prevent, sanction and eradicate the violence against women.

[18] Peace and Justice, a paramilitary group in the northern region of Chiapas