

# NEWS LETTER

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### SWEARING IN CEREMONY OF DR. JAVIER MOCTEZUMA BARRAGÁN AS EXECUTIVE SECRETARY OF THE CNDH.

The National Ombudsman, José Luis Soberanes Fernández, inaugurated the term of Doctor Javier Barragán, January 9th, 2006, as Executive Secretary of the CNDH, who replaces ambassador Salvador Campos Icardo.

Among the specific responsibilities of the Executive Secretary are those of proposing general human rights policies to the Advisory Council and to the President of the CNDH, which this organism must adhere to in dealing with governmental and non-governmental organisms, national and international as well as promoting and strengthening the National Commission's relationship between public, social and private organisms both in Mexico and abroad in the area of fundamental rights, and carrying out studies on the treaties and international conventions pertaining to the subject.

The new CNDH Executive Secretary promptly expressed his gratitude for the faith deposited in him in his ability for fulfilling the responsibility of his charge, in which he has offered to deliver clear reports.

Doctor Moctezuma Barragán is a graduate of the Escuela Libre de Derecho, has a Master's in Comparative Law from Georgetown University, in Washington, D.C., United States, and a Doctorate in Law from UNAM.

Among other noteworthy positions he has held are; deputy Minister of Population, Immigration, and Religious Issues of the Government Ministry; deputy Minister of Labour, and Mexican Ambassador to the Holy see from 2004 to 2005. As well, he has been head of Legal Issues and Third Secretary of the Mexican Embassy in the United States; is a career diplomat and has been a high official in the former Ministry of Energy, Mining, and parastate (industrias paraestatales) industries as well as General Legal Subdirector of the ISSSTE.

Among the attendees of the swearing in ceremony were Raúl Plascencia Villanueva, first general visitor, Susana Thalia Pedroza de la Llave, second general visitor, and Pablo Escudero Morales, Administrative Secretary.

## RECOMMENDATIONS

General Recommendation no. 11

January 25th, 2006.

On the Granting of early release to prisoners within reclusion centers in the Mexican Republic.

The CNDH issued the General Recommendation Number 11, addressed to the Ministry of Federal Public Security, governors of the federative entities and the head of the government of the Federal District, over the granting of early release to prisoners in the reclusion centers within the Mexican Republic, which are currently not granted within the framework of the law.

Within this General Recommendation, it is established that the increase in prison population, stemming from different causes, has brought with it not only an increase in the number of early release requests, but also an increase in the number of prisoners who have not achieved readaptation, and a severe detrimental impact on the quality of life among the interned prisoners.

During the supervisory visits undertaken between the years 2000 and 2005, the CNDH confirmed that the majority of prison centers of federative entities lack specific programs for the opportune detection and attention to candidates possibly eligible for early release as established by the respective laws, which results in executive authorities generally acting only after the the prisoners have surpassed the minimum prison time required for obtaining such benefits.

As well, it was detected that the majority of prison centers present deficiencies related to the insufficiency or lack of technical personnel necessary for applying individualized treatment required by each of the interned prisoners for their readaptation, as well as for the appropriate integration of an interdisciplinary technical council which, among others, carries the duty of conducting evaluations of those serving time within the center in a timely manner so they may benefit from the concession of early release.

The CNDH detected a serious lack of specification in the federal and state legislation, which give different treatments to the single issue of benefit of early release. In consequence, federal and local prisoners appear constantly before state human rights organisms to request intervention in cases of irregularities in the granting of this benefit.

For this reason, the CNDH requests the Ministry of Public Security of the federal government to formulate proposals for establishing criteria for granting the benefit of early release.

In the same fashion, the CNDH requests the Ministry of Public Security to promote the reglamentation of procedure and resolution regarding these benefits which the law contemplates in the Minimum Norms of Social Readaptation of Sentenced People and the Federal Criminal Code, with the aim of ending the character of discretionality associated with the granting process, thus avoiding human rights violations of the interned prisoners.

It was also recommended that the Public Security Ministry should implement and systematize a permanent program for opportune detection of eligible candidates for obtaining early release, and to attend requests for this benefit expediently.

To the governors and the chief of government in the Federal District, it was recommended they should incorporate elements which permit the elimination of discretionality in those procedures and to strive for uniformity in the matter, that each prison center should have an interdisciplinary technical council, which contributes to the application of the adequate treatment for the social reincorporation of the criminal. The CNDH also proposes instituting programs for detection and analysis of candidates for the benefit of early release.

General Recommendation no. 12

January 26th, 2006.

On the illegitimate use of force and fire arms by functionaries and public servers encharged with law enforcement.

The CNDH issued the General Recommendation Number 12, addressed to the Secretary of Public Security of the Government of the Federal District, the office of the General Attorney's Office and Military Justice Prosecutor, Governors of the federative entities, Chief of Government of the Federal District, Public Prosecutors and Law Enforcement authorities in the federative and municipal entities.

This National Organism has observed with great concern over cases where functionaries or public servers uncharged with public security make illegitimate use of force and fire arms in detriment to those people they wish to detain, subdue, or capture.

The statistical data in possession of the CNDH, alerts to the fact that during the period spanning from June, 1990 to December 31, 2005, 3,928 complaints were received relating to the illegitimate use of force and fire arms.

Among cases known to CNDH, there have been instances observed where functionaries utilize illegitimate force while carrying out detentions, in cases of flagrancy, in dealing orders of apprehension, and when placing detainees in the hands of competent authorities, in that they cause injury to people showing no resistance to the acts of the authority, or beat them even when the detainees are already in custody.

With respect to the use of fire arms, the CNDH observes that they have been utilized against unarmed people, against people who commit misdemeanours, in gatherings, demonstrations, operations, or even, in cases of taking justice into one's own hands, which on occasion has lead to causing death.

In consequence, the CNDH formulated the recommendation of periodically capacitating and evaluating the functionaries responsible for law enforcement in the areas of the use of fire arms, self defense, first aid, detaining techniques, subduing, capturing, persuasion, negotiation, mediation, crowd behavior, non violent conflict resolution, techniques for limiting the use of fire arms, stress management; as well as imparting basic notions of criminal, administrative law, and human rights. In the same manner, it was recommended to provide the appropriate equipment in accordance with the nature of each group of the police force and the tasks that it must carry out, and to limit the authorization to bear arms to those elements who certify themselves in the corresponding evaluations.

In cases where people are injured or lose their lives as a consequence of the use of force or the use of fire arms by law enforcement functionaries, investigations and determinations must be carried out about the legal responsibilities which may result, and when appropriate, damages must be repaired.

The Governors of the federative entities, Chief Government of the Federal District, and the municipal public law enforcement officials are recommended to take necessary measures for the incorporation of both the Basic Principles of the Use of Force and Fire Arms for Law Enforcement Officials and the Code of Conduct for Law enforcement officials, adopted by the United Nations, into the laws and respective reglamentations, as well as including the circumstances in which the use of force or fire arms may be employed.

## NATIONAL ISSUES

Position of the CNDH on the death of migrants on the border.

The CNDH deplores the conduct followed by elements of the United States Border Patrol who shot at Mexican migrants, this past December 30th, causing the death of Guillermo Martínez Rodríguez when returning to national territory.

The National Commission considers that the discretionality with which the Border Patrol integrants acted implies a violation of human rights recognized by international instruments including those of which the United States is a part.

This National Organism manifests its indignation over the use of lethal arms against migrants by Border Patrol elements, instead of using other dissuasion methods.

In a meeting effectuated in the Central Border Patrol Office in San Diego, California, with the Border Patrol spokesperson, and the Chief Assistant of the San Diego sector of that corporation, it was confirmed to the personnel of the CNDH, headed by the Fifth General Visitor, that there is no written manual of procedures and were refused information about the capacitation and training processes, the utilization of methods of dissuasion, as well as any statistical data.

The CNDH points to the urgent need for the full investigation and ascertainment of truth over the repeated acts of violence against migrants – executed by police elements and private integrants of the so-called operation California Minutemen alike – which have occurred in the recent months along the border.

In the same manner, this National Organism considers migration, a phenomenon of great social and economic complexity, to require agreements and negotiations among authorities and governments, and zero tolerance for illegal actions by public servers which tend to polarize the border and put the safety of people in risk.

The CNDH demands of the Mexican authorities a greater commitment and firmness in achieving swiftness from the United States government in the clearing up of the case, as well as the quick and expedient justice in favor of the victims and their kin.

The National Commission of Human Rights anticipates the risks for migrants entering the United States through indocumented means to increase in 2006, owing to the fact that the number of Border Patrol agents will increase from the 10 thousand agents which are currently present in the force to a figure superior to 12 thousand.

According to initiatives in discussion in the United States Congress, the Border Patrol has increased noticeably the number of elements with the aim of preventing terrorists and terrorist armament from entering the American Union. Nevertheless, the haste in which the new agents are hoped to be incorporated into the force allows only for a capacitation period of three months, a time insufficient for comprehending that massive migration is a labor necessity of the United States itself and in no way related to a desire of causing harm to another country or its inhabitants.

Based on information given to the CNDH from several non-governmental organizations, the expenditure on behalf of the United States government for reenforcing the anti-immigration measures along the border with Mexico rose from 580 million dollars in 1990 to 5

billion dollars in 2005. In parallel with the expenditure in anti-immigration measures, the number of deaths among migrants has also increased. Thus, while in 1995 there were 61, in 2005 there around 500 migrant deaths.

Several human rights defense organizations regard the case of the Mexican Guillermo Martínez Rodríguez not to be an isolated case but rather a recurring one.

Special Report of the CNDH on the Effective Exercise of Right to Public Security.

The National Ombudsman, José Luis Soberanes Fernández, publically presented on the 16th of January, 2006 the Special Report of the National Commission of Human Rights on the Effective Exercise of the Right of Public Security in our country. He manifested that confronting and defeating the lack of public security, with its sequels of impunity and corruption, has become the great national challenge which demands a vigilant and strict attitude for fulfilling laws and enforcing them for all people.

He stated that stopping the sudden rise in delinquency, reducing the high rate of violence, motivating victims to bring accusations before the Public Prosecutor's Office, combating impunity, preventing crime are and will be some of the greatest challenges any government will assume which resolves to confront the lack of public security of Mexico and fulfill this basic function for social harmony.

In the event held in the central patio of the old Mining Ministry Palace, he highlighted that in almost fifteen years the number of federal plans and programs for confronting the lack of public security has surpassed a dozen while at least half of these have been procedures tending to repair the open failure of those previous. He pointed to the fact that national conferences of the maintenance of justice have become customary since 1996 without a single integral evaluation of any of these efforts – of which there have been a total of 16, showing an achievement of real and significant reduction in the galloping increase in the incidence of crime and of its deteriorating effects on the social body.

"In the 11 years from 1994 to 2005- highlighted Soberanes Fernández- the federal budgets for this matter increased almost fifty times, rising from 276 million pesos in 1994 to 13 billion 451 million pesos in 2005, which makes it impossible for anybody in their right mind to state that today's situation of serious lack of public security in the country is due to low budgetary allotment".

The CNDH confirmed that one very important aspect in the phenomenon of impunity is seen in the disproportionate and alarming relation between the number of orders for apprehension issued and those actually executed or carried out. With respect to this discrepancy, there are estimations, he said, but no official figure exists in either local or federal levels, which is indicative of the fact that the authorities know the figures and don't publish them, or simply are unaware themselves.

The National Ombudsman stated that corruption and the abuse of power within the police force are fostered under the protection of weak inspection and supervision programs of members, slowness in bringing sanctions against infracting or negligent public servants, or from the absence of organisms which promote citizen participation in the task of crime prevention, as well as the lack of adequate attention to complaints. Recommendations, and criminal charges. As well, it is established that, with great frequency, the investigative procedures against public servants are characterized by their lack of impartiality, if not tolerance or outright complicity.

With the objective of effectuating the exercise of law in public law enforcement in our country, the president of the CNDH presented the following proposals: activate the participation of the crime victim, and the recognition of their rights, parallel programs for combating the causes that propitiate the criminality and its effects, publicize the results of the plans, programs, and work strategies based on knowledge of world-wide crime conditions, fulfilling the commitments arising from the National Conferences on the Protection of Justice, planning, determining, and supervising professionalization projects and programs, and training for law enforcement officials, information exchange programs within the three levels of government, so as to fulfill judicial and ministerial obligations, guarantee the

effective fulfillment of the recommendations issued by the CNDH and the State Human Rights Commissions, uphold the right of victims through integral attention and communication networks to provide emergency attention.

## Training Courses

The National Commission of Human Rights, in the institution's spirit of study, teaching, and outreach in Human Rights, carried out during the month of January, 2005, 39 training activities directed towards basic level students, groups of people in vulnerability, among them women, public officials in law enforcement, Justice officials, and personnel of public health institutions, non-governmental organisms, among others.

## INTERNATIONAL ISSUES

Gathering of the Governing Council of the Iberoamerican Ombudsman Federation (here in after FIO)

The 27,30, and 31 of January in Madrid, Spain, were the dates of the Gathering of the Governing Council of the FIO, of which Ombudsman José Luis Soberanes Fernández is the North American Regional Vice-president.

As an outcome of this meeting, the prelation of vice-presidencies and assignation of tasks were laid out and set in the following manner: Mexico, in the First Vice-presidency, with the theme of migrations; El Salvador, Second Vice-presidency, dealing with indigenous and women's themes, Ecuador, Third Vice-presidency, uncharged with groups of people in vulnerability, elderly and handicapped people; Paraguay, Fourth Vice-president, responsible for promoting the Ombudsman in other states, and lastly, Buenos Aires, Fifth Vice-president, with the theme of stimulus and development of state, provincial and automatic-regional defenders.

In the same manner, the defender from Venezuela presented the report of his work over the last two previous years as president of the FIO, highlighting the importance of strengthening the unity within the organization through the inclusion of new members. He urged that the FIO should create links with international organizations like the OAS, the Interamerican Commission and the Interamerican Court of Human Rights, so as to urge the United Nations to develop themes of international cooperation. He proposed joining the efforts of the FIO with the labours of the International Institute of the Ombudsman to this effect.

The meeting dealt with statutory reform, resolved to discuss the topic in an extraordinary general being held in Puerto Vallarta, Mexico from June 19 to 20 of the present year.

Those present at the gathering were Enrique Múgica Herzog, president of the FIO and defender of the Spanish people, Manuel Aguilar Belda, second adjunct to the defender of the Spanish people, Claudio Muekay, defender of the Ecuadoran people, Beatrice Alamanni de Carrillo, defender of the El Salvadoran people, Manuel María Páez Monger, defender of the Paraguayan people, and Germán Mundaraín, denfender of the Venezuelan people. In attendance for the Mexican National Commission of Human Rights were the National Ombudsman, Dr. José Luis Soberanes Fernández, Executive Secretary, Dr. Javier Moctezuma Barragán, and Coordinator of International Affairs, Ulises Ruiz-Iopart Espinosa.

## PUBLICATIONS

In the month of January, the following articles were published:

The XX Century. Between respect and violation of Human Rights.

Those Left out of globalization.

The fulfillment of economic, social and cultural rights.

Human Rights: from multiculturalism to interculturality.

Human Rights and sustainable development. The new challenges of globalization.

Terrorism and international policy.

International Instruments of Protection of Human Rights

Mechanisms of protection of Human Rights

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