

NEWS LETTER

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THE BORDER WALL, INEFFECTIVE AND MORTAL

The CNDH laments the United States Congress' decision to approve, and President George Bush's to sign, a new packet of measures for strengthening its border with Mexico, which includes the construction of several stretches of wall with a total extension of 1,126 kilometers .

Through the years, the policy of hardening the border has been tested with well known results: migration has not been contained, networks of people smugglers are now more prosperous and powerful, and more than 4 thousand Mexican migrants have died.

The strategy of pushing migrants into assuming more extreme risks has been posed as a State policy. The right of the United States to take measures that it deems pertinent for protecting its borders is not being placed in doubt, but rather its recourse to do this by way of actions which have caused, directly or indirectly, the death of thousands of migrants.

A country with sustained and sustainable development, and workers with legal options for emigrating, are convergent measures which would contribute to making migration a legal option, and not a mortal destiny.

A decade of daily death at the border has not been sufficient for the governments of Mexico and The United States to commit to a bilateral understanding that recognizes migration as an economic and social phenomenon that must be attended to with sensitivity, intelligence, and effectiveness; in its stead, the radical line of rejection and xenophobia has been allowed to impose itself, the line that doesn't seek the security of peace but rather the security of force.

RECOMMENDATIONS

The following is the presentation of a synthesis of the recommendations issued by the CNDH during the month of October. The full version of these recommendations can be consulted on the webpage of this institution.

Recommendation 37/2006

October 11th, 2006.

Case: On the violent events occurred on April 20th, 2006 in Lázaro Cárdenas, Michoacán.

Addressee Authority: Federal Ministry of Public Security, Constitutional Government of the State of Michoacán.

On April 20th, 2006, elements of the Federal Preventive Police (PFP) of the Federal Ministry of Public Security (450 elements), the Ministerial Police of the Public Prosecutor's Office of the State of Michoacán (172 elements), the State Preventive Police (299 elements), the Special Operations Group (150 elements) and the Motorized Group "Lince" of the Subdirection of Transit of the State of Michoacán (30 elements) implemented an operation with the purpose of recuperating the facilities of the steel works company Sicartsa, in Lázaro Cárdenas, Michoacán, taken April 2nd of the year in course by workers of Section 271 of the National Syndicate of Mining, Metalurgic, and Related Workers of the Mexican Republic; nevertheless, the referred operation didn't manage to dissolve the blockade that the mining workers maintained and ended up with a toll of two persons who lost their lives and 54 others who suffered injuries, among them, 21 persons by fire arms.

From the analysis carried out, the CNDH accredited human rights violations of legality, judicial certainty, respect for physical integrity and life, committed against Héctor Álvarez Gómez and Mario Alberto Castillo Rodríguez, who lost their lives, as well as 54 others, who were affected in their physical integrity.

The CNDH alerted that neither the Federal Ministry of Public Security, through the PFP, nor the Government of Michoacán, were provisioned with a previous order of expulsion, issued by a jurisdictional body, during the operative on the April 20th, 2006.

In the same manner, the CNDH observed that the abovementioned authorities, upon presenting their report, contradicted the historical truth of the events, claiming that at the moment of the operative on April 20th, 2006, the elements of the PFP were only in possession of uniforms and organic anti-riot equipment, while there is sufficient evidence to determine that they were carrying fire arms and even used them.

The CNDH points out the lack of organization and coordination of the corps of federal and state public security during the development of the multicited operation as it had been agreed among themselves that they would not detain persons, limiting the action to withdrawing the miners from the place, nevertheless, the evidence shows that the diligence of the expulsion not only had as an objective to clear away the miners, but also execute orders of apprehension for the leaders.

For the CNDH, it was accredited that although it might be true that during the events, some miners surpassed the limits of their right to demonstration, it is also true that the public servants in charge of the operation went too far in the use of force and fire arms, at the moment that they attempted to subdue them, violating the fundamental rights relating to life, physical integrity, legality and judicial certainty.

The number of people who lost life (2) and who were wounded by fire arms (21), as well as the rest of the workers who also presented divers lesions (33), including intoxications of minors from tear gas, enables the claim that groups of public security, federal and state alike, made an inappropriate use of force and the fire arms.

The inappropriate integration of the preliminary investigations contributed to the failure in adequate law enforcement and that the crimes investigated were not accredited before the jurisdictional body.

Based on the above, the CNDH, on October 11th, 2006, issued Recommendation 37/2006, addressed to the Federal Ministry of Public Security and to the Governor of the State of Michoacán. To the former, it was recommended that they initiate the administrative proceedings against the functionaries that planned, coordinated, and executed, the operation on April 20th, 2006, with the inappropriate use of fire arms; that the federal social representation be notified so that the possible criminal conducts may be investigated on behalf of the public servants involved; that administrative proceedings may be initiated against the Chief of the Estado Mayor (presidential guardian body) of the PFP and the Coordinator of the Federal Support Forces of the PFP, for obstructing the investigation of the CNDH; to grant the reparations of damage and injury that proceed; to fulfill the General Recommendation 12, issued by the CNDH.

To the Governor of Michoacán, it was recommended to determined proceedings initiated against those presumed responsible in the homicide of Messrs. Héctor Álvarez Gómez and Mario Alberto Castillo Rodríguez, as well as proceedings that may be initiated against other public servants involved; to initiate an administrative proceeding against the then Minister of Public Security, as well as other public servants involved; to determine the administrative proceedings that the Public Prosecutor's Office initiated and register investigations against the distinct agents of the Public Prosecutor's Office that were in charge of the preliminary investigations 83/2006-III, 194/2006-IV and 199/2006-VII; that the persons who were affected in their physical integrity be granted the reparations of damage and injury that proceed; to fulfill the General Recommendation 12 issued by the CNDH.

Recommendation 38/2006

Octubre 16th, 2006.

Case: On the case of violent events occurring May 3rd and 4th, 2006, in the municipalities of Texcoco and San Salvador Atenco, State of Mexico.

Addressee Authority: Federal Ministry of Public Security, Constitutional Government of the State of Mexico, National Institute of Migration.

On May 3rd. 2006, the CNDH registered as its state-appointed function the complaint 2006/2109/2/Q integrated by more than 20,000 pages, motivated by the confrontation between forces of Federal, State, and Municipal Public Security with the inhabitants of the municipalities of Texcoco and San Salvador Atenco, State of Mexico.

On days 3rd and 4th of May, 2006, diverse police corps carried out a joint operation in order to clear out the inhabitants of the municipalities of Texcoco and San Salvador Atenco, who were found to be blocking the Lechería-Texcoco highway in both directions.

700 elements of the Federal Preventive Police (PFP) participated in the operation, 1,815 from the Agency of State Security (ASE) and at least nine municipal police from Texcoco and left a death toll of two persons, one of them a minor, and the detention of 207 persons who were placed at the disposition of the Public Prosecutor in Toluca, and later were forwarded to the Preventive Center and of Social Readaptation (CEPRESO) "Santiaguito" in Almoloya de Juárez, State of Mexico.

From the total of these persons, 6 are elderly; 10 minors (one woman and nine men); 50 women; 159 men, and five foreigners (four women and one man)

From the pool of evidence, it is inferred that some demonstrators infringed upon the law, nonetheless, these persons were treated aggressively at the moment of their detention. The human rights to life, physical integrity, legality and judicial certainty were violated in arbitrary detentions, illegal retentions, torture, entry of homes, robberies, isolation, cruel inhumane and/or degrading treatments, and irregular integration of the corresponding preliminary investigations.

1.Arbitrary detention.

Elements of the ASE and the PFP, detained persons who had not participated in the events, due to police reasoning of finding them in the site observing the incidents; 145 persons were detained in the interior of their domiciles, without competent orders of authority; 5 foreign persons were detained arbitrarily and with the use of violence and deprived of their liberty, confined to the CEPRESO "Santiaguito".

In the case of the foreigners, their immediate liberty was ordered, nonetheless, the director of the penitentiary mentioned held them inappropriately and put them under the disposition of the National Institute of Migration, who expelled them from the country.

2. Cruel, inhumane and/or degrading Treatment.

The detained persons were subjected to cruel and degrading treatments during their detention, and during their transportation to the Office of the Public Prosecutor and the CEPRESO "Santiaguito".

It is worth mentioning the information transmitted by the media, whose images showed that despite finding detained persons subdued, the police, for no reason at all, continued hitting them with their feet and sticks to satiety.

3. Unlawful Entry of homes.

Elements of the ASE and the PFP, carried out unlawful entries into diverse domiciles, as consequence 145 persons wound up damaged. It is appropriate to clarify that this figure does not represent the same number of domiciles.

4. Illegal detentions.

The five foreigners were held in the CEPRESO until 02:20 hours on May 5th, 2006, where they were put under the disposition of the migratory authority, despite their freedom having been determined as of 11:55 hours on the 4th of the mentioned month and year.

5.Isolation.

The detained persons were not permitted to carry out personal or telephone communication at all, nor was information given to family members or friends of these people with regard to the physical, health, and legal situation that they were undergoing. The access to communication was not verified until the intervention of the National Commission.

6. Torture.

Over a period of approximately 4 hours, during the transportation of the detainees to CEPRESO "Santiaguito", these people received hits with feet and sticks in diverse parts of the body, particularly in the head; they were thrown to the floor of the buses in which they were transported; they were placed on top of each other without distinction between sexes, age, health or physical condition. The policemen responsible for their transportation told them constantly "that they would kill them, that they would throw them into the canal, that they would disappear them", among other threats and warnings; throughout this time, they were kept in a huddled position, head down, hands on the head, in a single position and upon the slightest movement, they were hit again, on occasions the bus was stopped and were told again, "It all ends here, here we will dump you." Once they arrived to the penal detention area, they were kept with the head bowed, some covered with their own clothing, and in this same place they were again reprehended with beatings.

The CNDH took a representative sample and carried out 26 studies (11 women and 15 men) applying the Istanbul Protocol upon them, determining the existence of acts of torture.

7. Violation of sexual liberty.

Among the declarations given by 26 women involved in the events, conducts against sexual liberty, perpetrated by police, were shown to have occurred during the detention and the transportation of these women to the CEPRESO "Santiaguito".

Based on the way in which their physical integrity was attacked, the accusations that were made against them, the serious threats, it is reasonable to sustain that the police elements wanted to humiliate and punish the women for their presumed connection with the events of violence.

There exist elements of a penal type of "attempted rape", on the part of the police that were in custody on board the bus, who obligated them to perform diverse acts.

8. Right to life.

The right to life of the minor Javier Cortés Santiago and the youth Ollín Alexis Benhumea Hernández was violated as well as the respect of their physical integrity, and the right to life was put in serious risk in detriment to the 207 detained persons, as well as those who without even having been involved in the mentioned events, owing to their momentary presence or transit through the place, were placed in a frank possibility of being attacked in the terms pointed out previously or wounded by fire arms.

The death of the minor Javier Cortés Santiago was a consequence of a shot from a fire arm, of the kind of pistols that are utilized in an official capacity by the police elements in that federative entity. There is no written certificate nor evidence in the CNDH that accredits that the demonstrators were carrying fire arms, while in the case of the police elements there is filmed evidence in which they appear carrying and making use of these against the demonstrators referred to.

In the case of the loss of life of the youngster Ollín Alexis Benhumea Hernández, 20 years old, he was injured by a projectile of tear gas at the moment in which elements of the PFP and the ASE entered San Salvador Atenco, which provoked a fracture in the cranium.

9. Rights of minors.

Public Servants from federal, state, and municipal police corporations, from the Public Prosecutor's Office of the State of México and from the Institute of Public Defenders in the State of México acted in the detriment of 10 victimized minors (one woman and nine men), the human rights to physical integrity, security, and personal liberty, legality, judicial certainty, and in the case of Javier Cortés Santiago, the right to life.

The previous is due to the fact that on May 3rd, 2006, eight minors were detained by elements of the PFP and turned over to elements of the ASE. The CNDH is in possession of evidence of the lesions and the cruel and/or degrading treatments of which the minors were subject during their detention and transportation to the facilities of the Public Prosecutor's Office of the State of México and later to the CEPRESO "Santiaguito".

10. Right to legality and judicial certainty.

During the investigation conducted by the CNDH acts were discovered in violation of constitutional principles, fundamentally committed or omitted by the Public Prosecutor's Office, the CEPRESO "Santiaguito" de Almoloya de Juárez, State of México, the National Institute of Migration, the Public Defenders of the State of México, the PFP, and whose evidence denote certain degree of rejection of the correct and precise application of the norm.

Due to the above, the National Commission of Human Rights, on October 16th, 2006, issued Recommendation 38/2006, which consisted of 1960 pages, addressed to the Federal Minister of Public Security, to the Constitutional Governor of the State of México and the Commissioner of the National Institute of Migration:

The Minister of Federal Public Security was recommended to initiate administrative proceeding against the public servants of the PFP and other elements involved; it was recommended that channels and actions be established for the prevention of cruel and/or degrading treatments, as well as torture, through training; to initiate the corresponding preliminary investigation; initiate administrative proceedings against the public servants that obstructed the investigation labors of the CNDH.

The Constitutional Governor of the State of México was recommended to initiate the administrative proceedings against the public servants of the ASE; follow through on the reparation payments for damage and injury or indemnization which proceeds; carry out a census of the 207 detained victims to verify and update their physical conditions and health, and to offer them specialized medical services; continue with the investigations of the mentioned homicides and sanction those responsible; investigate the director of the CEPRESO "Santiaguito" and the personnel in charge of the medical attention of the interned persons and determine the corresponding responsible parties; establish strategies and channels of action to prevent torture through training; continue with the investigation of those responsible for the injuries caused to the detainees and interned persons in the CEPRESO "Santiaguito" and establish the corresponding criminal responsibilities, including the investigation for the crime of torture; initiate the administrative investigation of the elements of the ASE in the use and application of tear gas, which brought about the death of Ollín Alexis Benhumea Hernández; study the possibility of creating a work group integrated by agents of the Public Prosecutor's Office of the State of México as well as the Attorney General's Office with the aim of advancing the investigations; send instructions to the effect that the General Direction of Responsibilities of the Public Prosecutor's Office of the State of México to incorporate and consider this recommendation in the preliminary investigation TOL/DR/1/466/2006 and open the criminal causes 59/06 and 79/06, registered before the Criminal Court of the First Instance of the Judicial District of the Tenango del Valle, the State of México; initiate the administrative proceedings against the public defenders that failed to fulfill their legal duty; issue directives with the objective that in those cases where detainees are taken into custody, held, and interned within the CEPRESO "Santiaguito", the alteration, destruction, disappearance of evidence

whatever their nature may be prevented, making extensive such directives to the rest of the penitentiary centers of the state.

Jointly, the Federal Minister of Public Security and the Constitutional Governor of the State of México should fulfill General Recommendation 12, issued by the CNDH and grant reparation of damage and injury which proceed.

The Commissioner of the National Institute of Migration was recommended to begin an administrative proceeding against the public servants of the Regional Delegation of the National Institute of Migration in the State of México and of the Direction of Control and Migratory Verification of the same Institute, for their probable administrative and institutional responsibility of initiating and carrying through an administrative proceeding for expulsion of foreigners beyond the framework of the Federal Constitution and the law pertaining to the subject; to restitute the foreigners for their violated rights and review the proceedings of expulsion.

INTERNATIONAL ISSUES

Annual Meeting of the Board of Directors of the International Ombudsman Institute.

On October 3rd and 8th, the Annual Board of Directors of the International Ombudsman Institute, of which José Luis Soberanes Fernández, Mexican Ombudsman, is Regional Vice-president of Latin America and the Caribbean, was held in Barcelona, Spain.

This meeting was attended by, among others: William Angrick, President of the IOI and Ombudsman of Iowa; Dr. Hayden Thomas, Vicepresident of the IOI Alice Tai, Minister and Ombudsman of Hong Kong; David Percy, Treasurer; Song Chul-Ho, Ombudsman of the Republic of Korea and Vicepresident of Asia; Bruce Barbour, Regional Vicepresident of Australasia and the Pacific, Ombudsman of South New Wales; Peter Kostelka, Regional Vicepresident of Europe and Ombudsman of Austria; Dr. Javier Moctezuma Barragán, Executive Secretary of the National Commission of Human Rights in representation of Dr. José Luis Soberanes Fernández; André Marin, Regional Vicepresident of North America; Alifa Farouk, Vicepresident of Africa and Ombudsman of Tunisia; Diane Callan, Administrator of IOI; Linda C. Reif, Editor; and as well as other Ombudsman like: Cheong U, Ombudsman of Macao; Thomas J. Frawley, Ombudsman of North Ireland; Mats Melin, Ombudsman of Sweden; Gord Button, Ombudsman of Alberta; Matjaz Hanzek, Ex

Ombudsman of Slovenia; Ila Geno, Ombudsman of Papua; and other guests like; Alejandro Carrillo, Director of the Ministry of the Special Fund for Ombudsman and National Institutions of Human Rights of Latin America and the Caribbean.

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