



Centro de Derechos Humanos
Miguel Agustín Pro Juárez, A.C.

ONG con Estatus Consultivo Roster
en el Consejo Económico y Social de las Naciones Unidas
y Estatus Consultivo ante la Organización de Estados Americanos

(55) 5546 8217, (55) 5566 7854, (55) 5535 6892 Fax: ext. 108
www.sjsocial.org/PRODH/ e-mail: prodh@sjsocial.org
Serapio Rendón No. 57-b, Col. San Rafael, C.P. 06470, México, D.F.

Assault on the Defense of Migrants' Human Rights: Intimidation and punishment of Mexican and North American defenders who denounce abuses and provide humanitarian aid to undocumented migrants

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a) Introduction

We write to express our growing concern over the climate of intimidation facing Mexican human rights defenders who fight for the rights of migrants traveling through Mexico, generally en route to the United States. Equally concerning we find this same pattern on the United States' side of the border. Such human rights defenders have recently faced physical attacks, imprisonment, and other attempts by Mexican law enforcement agencies to discredit and stigmatize both them and the population whom they defend.

By way of background, as migratory flows through Mexico and into the United States have increased in the past few years, so too has the scale of systematic violations committed against migrants by a range of Mexican authorities. Migrants traveling north by train face physical violence and robbery at each point in their journey at the hands of the trains' private security guards, as well as aggression and extortion by police. Within the context of these systematic violations, numerous incidents of death, rape, and injury of migrants are reported.

Responding to these grave violations and the failure of the state to protect migrants' basic rights, individuals in Mexican communities bordering on migration routes have made it their work to denounce human rights violations by state agents, as well as to provide humanitarian aid to migrants who arrive in their communities without food, water, or a place to sleep. These human rights defenders are well-known in their communities and, through their work and their efforts to promote a culture of tolerance and respect for the rights of all individuals regardless of migratory status, they have prompted other community members to volunteer their time and aid as well.

By stepping forward to defend migrants' human rights, however, these defenders have themselves become targets of violations by Mexican authorities. Current Mexican law gives great authority and flexibility to law enforcement and the justice systems to punish not only migrants, but actors who merely have contact with migrants. Within this framework, state actors have subjected defenders of migrants' rights to arbitrary detention and unfounded accusations of involvement in human smuggling. The consequences of these violations resonate beyond the individual defenders, as entire communities have come to fear giving such basic aid to migrants or speaking out against police abuses. This chilling effect threatens to undo the work of human rights defenders who encourage communities to recognize migrants as human beings and to realize that defending this population is a legitimate activity, rather than an illegal act.

Below, we summarize three cases in which defenders of migrants' rights have suffered violations or may be at risk of future violations in retaliation for their work (these are cases documented directly by Centro Prodh and/or through secondary sources such as reputable newspapers). These cases highlight a troubling pattern of violations against defenders of migrants' rights in Mexico. Because part of the problem confronting these individuals is the state's implicit denial that they have the right to engage in their work, we specifically place the work of these defenders into the context of the Declaration on Human Rights Defenders, affirming that the victims have the right to engage in their activities in defense and promotion of migrants' rights.

b) Documented violations and intimidation against defenders of migrants' rights in Mexico

1) Father Alejandro Solalinde

Father Alejandro Solalinde runs a shelter (known as Brothers on God's Path) for migrants in Ixtepec, Oaxaca. In addition to providing migrants with food and medical attention, Father Solalinde is well known in his community for denouncing police violence and other abuses against migrants.

On January 10, 2007, Father Solalinde was beaten and detained while attempting to defend a group of migrants against violence by local municipal police in Ixtepec. The incident arose when approximately 100 migrants gathered to denounce the detention without charge of twelve of their companions, among them several young women, by judicial police. Father Solalinde arrived as these migrants were marching toward the building in which their companions were being detained, many of them carrying sticks in preparation to protest the detention. Soon thereafter seven vehicles arrived, bringing municipal and judicial police who surrounded the migrants. Seeking to avoid a confrontation, Father Solalinde told the migrants to drop the sticks that they were holding, which they did. However, the police began brutally beating the group of migrants and the priest. Father Solalinde made his way over to the chief of the municipal police and requested that he call off the attack. In response, the police chief had Father Solalinde placed under arrest. Video footage of the incident shows four police shoving the priest into the back of a pick-up truck. He spent the next several hours in jail along with many migrants. During this time, the town doctor signed a form for the police certifying that neither Father Solalinde nor any migrants had been physically attacked. These events have not been investigated by Mexican authorities.¹

2) María Concepción Moreno Arteaga

Mrs. María Concepción Moreno Arteaga, known as "Doña Conchi," is a 47-yr-old single mother of five and a housewife in the marginalized community of El Ahorcado, Pedro Escobedo municipality, state of Querétaro. Her community (and local authorities) know Mrs. Moreno Arteaga for her work defending migrants' rights and providing them with food, water, and shelter in her home. Mrs. Moreno Arteaga seeks to promote greater tolerance of migrants and to instill in those around her an attitude of respect for this population. Her leadership in providing humanitarian aid to migrants (many of whom are in dire need of such aid precisely because security guards and police have robbed them of their

¹ The information contained in this section is documented in Óscar Martínez, *Enfoques: Uniformados contra los mojadros*, LA PRENSA GRÁFICA, July 22, 2007, available at <http://www.laprensagrafica.com/enfoques/827473.asp>.

money) makes Mrs. Moreno Arteaga a recognizable symbol of peaceful opposition to the state discourse on migrants, which is one of criminalization and denial of basic protections.

On March 9, 2005 at approximately 7:00 pm, Mrs. Moreno Arteaga was preparing to share some food with a group of six migrants when four agents of the Federal Agency of Investigation arrived at her house. Cocking their guns, the agents beat the migrants and forced Mrs. Moreno Arteaga and several members of her family to kneel while they searched their home. The agents ultimately arrested Mrs. Moreno Arteaga without a warrant because she was “feeding a group of foreigners.”

Following her arrest, Mrs. Moreno Arteaga was placed in detention and tried before the Fourth District Court in the city of Querétaro (file number 15/2005) for the federal crime of violating article 138, paragraph 2 of the General Law of the Population since she was “harboring persons of irregular stay in the country with ends in human smuggling.” The prosecutor alleged that Mrs. Moreno Arteaga was the accomplice of a recently-arrested *pollero* (someone who transports undocumented migrants for profit).

Mrs. Moreno Arteaga’s trial was plagued with irregularities. The legal aid lawyer initially assigned to her case did not speak with her. The *pollero* with whom she was accused of collaborating denied knowing her and the primary witness who had declared against her retracted his statement three times, explaining that he had only implicated her because he had been threatened by state agents. The transcripts of other statements against her show a series of irregular features; for instance, two of them are identical in wording and spelling and others contain inexplicable gaps in information.

Despite these and other irregularities, Mrs. Moreno Arteaga was sentenced to six years in prison on October 31st, 2005. This decision was upheld on appeal on January 9th 2006. Following an *amparo* action by Centro Prodh, on August 31, 2007, the First Collegiate Court of the Twenty-Second Circuit rescinded her sentence, finding that she had not been given a fair trial.

Mrs. Moreno Arteaga is now free and has resumed her activities promoting the rights and well-being of migrants, after spending more than two years imprisoned for her work. However, many members of her community are now more fearful of aiding migrants in light of the arrest and imprisonment of Mrs. Moreno Arteaga.

3) Father Heyman Vázquez Medina

Father Heyman Vázquez Medina, of Arriaga, in the state of Chiapas, directs a shelter called Mercy House that receives thousands of migrants each year. He is a very outspoken member of the border community and is often involved in media interviews denouncing abuses against migrants by state authorities.² Earlier this year, Father Vázquez submitted a formal complaint to the National Human Rights Commission concerning a violent incident that occurred on February 9, when a group of 70 agents of the Federal Institute of Migration, together with agents from the Federal Agency of Investigation, forced a group of

² See, e.g., Father Vázquez’s denunciations of violations suffered by migrants in María de la Luz Tesoro, *Denuncia Heyman Vázquez: Frecuente, la violación de mujeres migrantes en la frontera sur*, CIMAC NOTÍCIAS, May 23, 2007, available at <http://www.cimacnoticias.com/site/07052302-Frecuente-la-viola.17718.0.html>; Conié Reynoso, *Migración mexicana vejó a guatemaltecos: Oficina de DD.HH. del país vecino censura abusos de funcionarios; señala agresión en reciente redada en Chiapas*, PRENSA LIBRE, Feb. 13, 2007, available at <http://www.prensalibre.com/pl/2007/febrero/13/163378.html>.

undocumented migrants off the roof of a train, leaving a number of people injured and one woman unconscious.³ Father Vázquez has also spoken out against human rights abuses committed by the Mexican army.

On April 27, 2007 at approximately 1pm, Federal Agent David Espejel arrived at Mercy House, asking to speak with Father Vázquez. He informed Father Vázquez that an anonymous report had been received via internet, accusing him of being a *pollero*, although the agent did not produce a copy of this report or its contents. Agent Espejel questioned Father Vázquez about his activities and about Mercy House. He also took photographs of the building and of Father Vázquez's personal vehicle. There were a number of other men, also federal agents, stationed in a van outside Mercy House during this incident. In response to inquiries by Centro Prodh and other organizations, the Federal Attorney General's office in Chiapas later reported that a federal investigation had indeed been opened against Father Vázquez, but that it was discontinued on May 2, 2007 because the agents who visited Mercy House could not find sufficient evidence of a crime.

Local human rights organizations (including the Fray Matias de Cordova Human Rights Center and the Fray Julián Garcés Human Rights and Local Development Center, both in Chiapas), who are familiar with the climate of hostility against human rights defenders and the tactics used by law enforcement personnel to intimidate them, believe that the above incident fits within the framework of intimidation toward defenders of migrants' rights in Mexico. We note, for instance, that the accusation against Father Vázquez of human smuggling, later determined to be unfounded, resembles the similar unfounded accusation made against Concepción Moreno Arteaga (*see* Section b.2 *supra*).

The National Human Rights Commission, upon receiving reports of the incident from NGOs including Centro Prodh, shared our concerns for Father Vázquez's safety to the extent that on May 8, 2007, it requested the Federal Attorney General to assign law enforcement officers to Mercy House to protect the life and safety of Father Vázquez. The Federal Attorney General's office in Chiapas denied these requests and additionally stated that the unit was not equipped with sufficient personnel to protect Father Vázquez. This is a troubling sign that such protection will not be available should it become necessary in light of further acts of intimidation in the future.

c) A pattern of violations and intimidation

The three cases highlighted above, as well as our observations of their effects on their respective communities, point to several common features that we believe form a larger pattern of human rights violations against defenders of migrants' rights who live along Mexico's migration routes.

First, these defenders are well-known figures in their communities. It is not credible that local authorities arrested, harassed, or investigated these individuals without knowing precisely who they were, the type of work they carry out in favor of migrants' rights, and the fact that other community members look to them as local leaders in this area. Second, law enforcement authorities have attacked not only the personal safety and well-being of these defenders, but in two of three cases have specifically attempted to discredit them by associating them with the crime of human smuggling. These considerations suggest that the violations and other acts documented above are targeted actions seeking to punish defenders

³ See Óscar Martínez, *Enfoques: Uniformados contra los mojados*, LA PRENSA GRÁFICA, July 22, 2007, available at <http://www.laprensagrafica.com/enfoques/827473.asp>.

for their work and to counteract these defenders' pro-human rights message in their communities. By projecting the message that it is a crime to defend migrants or provide humanitarian aid, Mexican authorities reinforce the discourse of undocumented migrants as criminals who are not entitled to human rights.

We note the specific use of human smuggling as an excuse to detain or harass defenders. In this regard, Mexico's vague legal framework around the subject of smuggling, exemplified by article 138, paragraph 2 of the General Law of the Population (criminalizing "harboring persons of irregular stay in the country with ends in human smuggling") give local authorities wide discretion in interpreting any contact with migrants as a crime. Given authorities' strong interest in protecting themselves from being denounced by of human rights defenders, we are concerned that this broad legal provision will continue to be used as a tool to repress and discourage human rights work in the communities in question.

In short, we believe that the above cases signal an assault not just on individuals, but on the concept that migrants have human rights regardless of nationality or documented status and that everyone has the right to defend these rights. In this climate of intimidation, it is vital that the value and legality of the work of human rights defenders be affirmed, giving them an added level of legitimacy and protection in their daily activities and preventing authorities from dividing and demobilizing communities who support migrants. With these factors in mind, we present below a summary of some of the provisions of the Declaration on Human Rights Defenders that apply to the work of defenders of migrants' rights in Mexico.

d) Similar patterns on the United States' side of the border

Background

More than 4000 people have died trying to cross the U.S.-Mexico border since 1994. A majority of these deaths occur in the Arizona desert, where severe conditions and isolated terrain claim more lives than other areas of the border. Many of these individuals die as a result of exposure to extreme temperatures.

Summer of 2005 Daniel Strauss and Shanti Sellz were volunteering in Arizona with the group "No More Deaths", a network of individuals and organizations who work to prevent deaths of migrants through direct humanitarian assistance in the desert.

On July 9, 2005 Daniel and Shanti evacuated from the desert three migrant men who were suffering from extreme dehydration and illness, with bloody diarrhea and persistent vomiting. The migrants had also developed severe, crippling blisters during their long walk which prevented them from continuing their journey. This is known to be a frequent cause of death in the desert. Daniel and Shanti drove the three men to receive medical treatment in Tucson, Arizona where they were stopped and arrested by the United States Border Patrol, and both charged with committing two felonies under federal law: transporting illegal aliens and conspiring to do so. They faced up to 15 years in prison and \$500,000 in fines.

Almost immediately, the two were offered plea bargains by the United States Government that if they denounced their actions, and the work of No More Deaths, the charges would be dropped. Shanti and Daniel refused to accept this offer, standing firm in their declaration that it can never be illegal to help another in need.

In response to these charges, No More Deaths launched the *Humanitarian Aid is Never a Crime* campaign, during which thousands of people around the world spoke out against the federal charges, and against the brutality that exists on the border. On September 1, 2006, after almost a year and a half of awaiting trial, a Federal Judge dropped the charges against Daniel and Shanti based on a motion to dismiss made by the defendants a year prior. Although the Judge ruled in favor of these two individuals in this situation, it was made very clear that no decision was being made on the legitimacy or legality of providing humanitarian assistance to those deemed to be undocumented.

The border remains an extremely dangerous and deadly place, and although groups like No More Deaths continue to work tirelessly to save lives, the death toll continues to rise every year. Many citizens are afraid to help someone they may see in distress in fear of possible prosecution.

- e) *Migrants' rights defenders as human rights defenders: an application of the Declaration on Human Rights Defenders to Mexican migration-route communities*

The right to defend human rights

Article 1 of the Declaration on Human Rights Defenders provides in pertinent part:

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms...

Article 12(1) adds:

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

The activities of individuals who denounce human rights violations against migrants or who, through their work within their communities, peacefully protest these violations, fall within this framework. It is also important to note that the right to defend human rights includes doing so *in association with others*. This provision contemplates that defenders may, *inter alia*, mobilize or cooperate within their communities, so that an entire community may engage in peaceful activities opposing human rights violations.

The rights to study human rights, impart pro-human rights views, educate others about human rights, and promote human rights

Article 6 of the Declaration provides, in pertinent part, that everyone has the right:

- (b) ...freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and... to draw public attention to those matters.

Article 16 specifies:

Individuals... have an important role to play in contributing to making the public more aware of questions relating to all human rights through activities... to

strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups...

The work of the defenders discussed in this report falls within several of these categories. These defenders set a visible example of tolerance, work to educate others that migrants have equal rights and human dignity, and peacefully provide a message countering government practices that have the effect of criminalizing contact with migrants. By imparting information and pro-human rights opinions in their communities, these individuals help to form communal bonds facilitating the promotion of human rights in association with larger groups and movements. Further, given the high levels of prejudice confronting undocumented migrants, the important role of individuals promoting tolerance and fighting against discrimination based on nationality or migratory status is clear.

In addition, several of the individuals discussed in this report dedicate themselves to documenting state agents' violations of migrants' rights. The need for this population of defenders in particular to exercise their activities unhindered is clear in light of the lack of systematic documentation of abuses against migrants traveling north through Mexico. The information that is available is due to the work of defenders such as Father Solalinde and Father Vázquez; if they are prevented from gathering and disseminating this information, there will be no way of monitoring the situation of these migrants.

The right to denounce violations to the press and to government authorities

Article 8 of the Declaration provides in pertinent part that everyone has the right:

Article 8

2. ...individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights...

Article 6(c), excerpted above, also provides that everyone has the right “to draw public attention” to the observance of human rights.

Defenders of migrants who denounce abuses through the press and through submissions to national government instances, therefore, fall squarely within these provisions of the Declaration. Indeed, denouncing abuses is one of the historical activities of human rights defenders in all areas of work.

Other relevant provisions: the right to protection against retaliation

Article 12 of the Declaration specifies:

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through

peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights...

We take note of these provisions insofar as the violations and acts of intimidation summarized in this report demonstrate a pattern of retaliation against defenders of migrants' rights, as well as a failure of the state to protect against such retaliation. Rather than protecting these defenders' right peacefully to oppose abuses, the acts of Mexican authorities seem aimed at delegitimizing and criminalizing their work.

f) *Request for inclusion of migrant rights' defenders in this year's annual report*

Based on the information presented herein, we respectfully request that the Special Representative on Human Rights Defenders look for patterns of violations against migrant rights' defenders in reports received from other organizations as well, so as to draw international attention to this phenomenon. We ask that this year's annual Report of the Special Representative to the General Assembly reiterate the legitimacy of defending the human rights of all vulnerable communities, including undocumented migrants.

Lauren McCulloch,
Coordinator of International Relations
Center for Human Rights
"Miguel Agustín Pro Juárez"
Serapio Rendón No. 57-B, Colonia San Rafael,
Delegación Cuauhtemoc, 06470, México D.F.
Internacional@centroprodh.org.mx
TELS: (+52) (55) 5546 8217
EXT: 107
FAX: ext 108

No Mas Muertes
No More Deaths
3809 E. 3rd Street
Tucson, Arizona 85716
USA
action@nomoredeaths.org
(520) 495-5583

Report directed to Hina Jilani, Special Representative to the Secretary General of the United Nations on the Situation of Human Rights Defenders

C.c. Jorge Bustamante, Special Relator on Human Rights of Migrantes for the United Nations