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Oral Presentation on FIDH mission on Migration in the US and Mexico

by Claire Tixeire, FIDH Liaison Officer with the UN in New York

Crossing the Border in the United States

The United States, by militarizing the border, in particular in urban areas, by building walls and by dramatically increasing the number of Border Patrols (B.P.) deployed, have deliberately increased the risks of crossing the border, and are forcing hundreds of thousands of undocumented migrants to cross through the dangerous deserts and mountains of Arizona and Texas, which has resulted in the deaths of thousands. The number of undocumented men, women and children dying while crossing the border in the U.S. has doubled since 1995, to reach 4,000. Yet, because most of the deaths occur in the desert, officials and humanitarian workers agree that this number ought to be tripled, as it is impossible to find all dead bodies.

Last March, we went out twice to the desert in Arizona, accompanying humanitarian workers maintaining emergency water stations for migrants, as deaths are mostly caused by dehydration. The desert of Arizona, where temperatures can reach the upper 40's degree Celsius in the summer time, has become the most deadly route for migrants. While we were driving through this desert, we ran into a young Mexican migrant who was lost and who was so distressed and desperate that when we approached him to give him water and food, he first cried for many minutes before being able to speak. Because his knees were hurting him, he could not walk fast and he was simply abandoned by the *coyote* and his group, in the middle of the desert. This is an illustration of how risky it is to cross the desert and how you cannot count on the smugglers taking you through it. Smuggling of human beings has become a prosperous business which is increasingly organized and controlled by criminal networks. But in this case, the young migrant we ran into was lucky to be alive and to have found a road.

We were very concerned to discover that humanitarian workers trying to help out dehydrated or dying migrants in the desert are struggling to have their legitimate role recognized by the US. Two of them were recently sued by the State for medically evacuating dying migrants and charged with "conspiracy." While the judge ruled in their favor last September, it was a very fragile victory. The U.S. Congress's House of Representatives in December 2005, voted in favor of a legislation criminalizing humanitarian workers or churches assisting undocumented migrants crossing the border. The bill didn't pass the Senate then, but similar debates are currently taking place again in the newly elected Congress.

The humanitarian crisis at the border is very serious, and it is the product of more than twelve years of U.S. border enforcement strategy officially called "prevention-through-

deterrence.” Instead of securing the border, the U.S. enforcement strategy is directly leading to massive violations of migrants’ fundamental human rights, starting with their right to life, and is ironically contributing to the criminalization of the region by attracting criminal networks. Efforts spent militarizing the border must instead be spent ensuring true border security and respect for human and civil rights of all non-citizens, but also of border communities.

Arrests by the Border Patrol

The amount of spending on border enforcement has increased more than five-fold since 1994 in the United States. Therefore, today, to “catch” border crossers, the B.P. is equipped with significant infrastructure, including mobile watchtowers, helicopters, infra-red cameras, ground sensors, and so on. Since 94, the Border Patrol has made more than 15 million arrests nationwide, including more than a million last year.

Reports of abuses by B.P. agents during arrests have been reported over the years, ranging from physical abuse, unlawful temporary detention to psychological or verbal abuse. Our main concern, though, is with regards to excessive use of armed force. B.P. agents do carry firearms, including hollow point bullets, expanding wounds to 160% of their original size, usually resulting in death. A strict scale of escalation of force is supposedly in place. However, we were explained by El Paso B.P. Sector Chief that throwing rocks at agents *is considered dangerous enough* to justify the use of firearms. This is how, as recently as last February, a B.P. agent going for a coffee break in Arizona, shot a man who was about to throw a rock at him. A month earlier, a 22-year-old Mexican was shot dead by a B.P. agent, only 150 yards north of the border. He was unarmed. And it is very concerning that there is a lack of systematic and meaningful prosecutions of such abuses, a lack of independent oversight and accountability to the community, which provides a ripe environment for abuse.

There is a crucial need to establish an independent entity to proceed to such investigations and ensure that prosecutions take place in the US.

Another issue linked to arrests of migrants is racial profiling. Up to 77% of border community residents believe that racial profiling happens in their community. Hispanic communities are targeted by the B.P. and repeatedly stopped despite the fact that they are U.S. citizens.

Deportation

The majority of undocumented immigrants caught in the United States near or at the Mexico border will either be returned home “voluntarily,” mostly when they are Mexican nationals. Voluntary return is not a deportation. Migrants are not prosecuted and there are no penalties such as re-entry bans, so it is a very important alternative to removal. Non-Mexicans, however, are usually placed into “expedited removal,” mandatory procedure where migrants caught within 14 days of entry and 100 miles from the border are sent back to their home country, without a hearing before an immigration judge and are ineligible for most relief. While this procedure is justified by lawmakers for reasons of rapidity, effectiveness, and reduction of costs, its failure to provide for basic due process

protections is extremely disconcerting. An expedited removal order has the same impact as would one issued by an immigration judge. The difference is the order has been issued without the individual being entitled access to family support, or to legal help, and there is no judicial review of the decision. According to the rights groups and federal defenders we met, this procedure is an example of the government's reactionary laws against immigrants that go too far.

Expedited removal also puts asylum seekers at risks of being sent back to their country. A 2005 official study found that immigration officers routinely short-cut required procedures aimed at protecting the rights of asylum seekers.

Detention of Undocumented Immigrants

Since the 1980's, detention is a central U.S. enforcement strategy to deter the so-called "illegal" immigration. The Department of Homeland Security applies a policy of quasi-systematic detention of all arrested immigrants, which created an explosive growth in detention centers. In this year 2007, the U.S. detains more than 26,000 immigrants a day, and plans on detaining even more in the next few months.

Despite our frequent requests to tour immigrant detention centers, we were expressly denied access for visits, except to a local jail housing immigrants living in the US and convicted of criminal offenses.

Immigrants arrested for crossing the border without papers are not guilty of any crime or are not detained for criminal purposes. They should therefore be protected from punitive detention conditions without due process of law, but they are not. They are put in penal-like facilities. They are often not distinguished from the criminal population, especially when they are detained in local jails. Their due process rights are minimized and sometimes nonexistent, especially for immigrants placed under expedited removal.

To prevent the abuse of immigrant detainees, 36 detention standards were adopted regarding the detainees' living conditions, access to health care and to legal materials, but there is no legal avenue or effective procedures to hold facilities accountable for failing to respect these standards. Very recent officials and NGOs reports have shown that detention conditions are far from satisfying the most basic standards such as being free from guards' abuses, having access to legal help, to telephone, and to adequate health care. We met lawyers in Arizona telling us of a detainee being given painkillers for his tongue cancer, and of mentally ill detainees put in segregation units, unclothed, for weeks at a time, and who end up killing themselves. Another important issue is the detention of families: there are no detention standards on families, who are kept in seriously punitive, prison-like facilities.

Regarding these concerns, we believe that it is fundamental that an independent entity be created in the United States to investigate and prosecute all allegations of violations of these standards; that detention of immigrants for civil offenses be only used as a last resort and not as a deterrent – like it currently is; and all possible humane alternatives to detention must be implemented by the US Department of Homeland Security.