

# NEWS LETTER

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### WORKSHOP ON SECURITY AND HUMAN RIGHTS

The members of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, gathered together in Cartagena de Indias, Colombia on the 2nd and 3rd of September 2003 in order to participate in the Workshop which the Network organized on "Security and Human Rights" with the patronization of the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and the kind offer of the Defender of the People of Colombia to host this meeting.

This Workshop, convoked and organized by the Mexican National Commission for Human Rights as Secretary pro tempore of the Network and with the collaboration of the Canadian Human Rights Commission, hosted representatives of the Human Rights institutions of: Argentina, Bolivia, Canadá, Colombia, Costa Rica, Ecuador, Guatemala, México, Panamá, Paraguay, Perú, República Dominicana, Venezuela, as well as the representative of the UNHCHR, the Ombudsman Association of the Caribbean and the Latin American Ombudsman Institute. Also were present experts on the subject from Colombia, Spain, United States and France, as well as the delegate from the UNHCHR in Colombia.

At the end of the meeting, the 35 representatives of the member institutions and observers of the Network approved the Conclusions whose text is reproduced in full as follows:

We, the members of the Network meeting in Cartagena de Indias, Colombia, on September 2 and 3, 2003, for the Workshop on Security and Human Rights:

We acknowledge and support the essential work of National Human Rights Institutions, the United Nations, the Organization of American States and other regional mechanisms for human rights, to maintain peace and security and ensure respect for human rights.

We also recognize the fundamental role that governments must play in protecting their people who live with the threat of violence.

We realize that violence in all its forms, as well as the security measures that governments take to oppose it, affect the enjoyment of human rights.

Therefore we have come to the following conclusions:

We call on states to ensure that security measures are compatible with international standards of human rights, even in times of emergency, considering the profound consequences that such actions have on the civilian population.

We consider that when a state of emergency is declared, the rules of international human rights law, including the requirements of proportionality and necessity, must be observed. In this respect, we recall the essential role that must be played by bodies that have the power of constitutional oversight, especially the judicial system.

We reiterate the fundamental principle of legality and the norms of international law, which assert that in all circumstances, including states of emergency, there are certain inalienable rights, including the right to life, not to be tortured, not to receive cruel, inhuman or

degrading treatment or punishment, the fundamental elements of due process, respect for human dignity and non-discrimination on the basis of race, religion, social origin or any other reason.

We call on governments to be precise in their legislation and in developing policies and security measures, and to avoid describing a priori any situation of conflict or social upheaval as terrorism.

We urge parties to armed conflicts to find a negotiated solution and to fully respect international humanitarian and human rights law.

We remind governments of countries in the region to fulfil their duty to guarantee integral security, to deal with the threat of violence in accordance with the international human rights regime and to act to solve the social, economic and political causes of violence in an environment of tolerance and dialogue.

We ask governments to give national institutions the resources that they need to do their work to promote and protect human rights.

We will work together with governments and civil society to preserve peace and the rule of law when emergency situations arise that endanger social stability.

We will review the security measures that governments take, thus ensuring respect for legal guarantees as well as for the human rights recognized universally in international instruments.

We will ensure that activities to promote and educate on human rights are carried out, including training the police and military who implement security measures that may affect the most vulnerable groups.

We call on states to promote human rights education from the first years of schooling until the advanced level, and to promote training programs for personnel responsible for human rights and the civilian population in general.

We ask international human rights organizations to cooperate in training and advising on "security measures."

We undertake to promote dialogue between the civilian population and governments on developing national security strategies and violence prevention measures.

We will continue to cooperate and share experiences on security and human rights issues.

We express our deep condolences on the death of Sergio Vieira de Mello, the United Nations High Commissioner for Human Rights, and other officials of the United Nations who died in the service of peace and who dedicated their lives to humanitarian work and human dignity.

We express our solidarity with the Human Rights Prosecutor of Guatemala, whose office was recently raided; we condemn these abusive acts and demand that they be clarified immediately.

We thank Kristi Rudelius-Palmer, Edward J. Flynn, Eric Lair, Román Ortiz, Mauricio García Villegas and Américo Incalcaterra, who shared their knowledge and enriched this workshop.

We express our deep gratitude to the Public Defender of Colombia for graciously offering to host this workshop in this friendly country, to Orest Nowosad and the national institutions team of the UNHCHR for their great support in presenting this event, to Mary Gusella, Chief Commissioner of the Canadian Human Rights Commission, and Dr. José Luis Soberanes Fernández, President of the National Human Rights Commission of Mexico and Secretary pro tempore of the Network, and his team for the great support and excellent work done to present this workshop.

Cartagena de Indias, Colombia; September 3, 2003.

## RECOMMENDATIONS

Recommendation 38/2003

September 10th, 2003

Case: Minor Gerardo Mora Santos

Authority addressed: General Director of the Mexican Social Security Institute (IMSS)

On March 20th, 2003, for reason of competency this Mexican National Commission received from the State Commission of Human Rights for the State of Morelos, the official complaint initiated in attention to the information which appeared on February 26th, 2003, at

9:30 p.m. on the "Televisa, Morelos", broadcast. The complaint was ratified on March 13rd, 2003, by Mr. Jesús Armando Mora Galván father of the injured minor, in which he manifested presumed violations to the Human Rights committed against his son, minor Gerardo Mora Santos, attributed to public servants of the Regional General Hospital No. 1 of the Mexican Social Security Institute of Morelos, consisting in medical negligence and inadequate rendering of the public health service, which brought about his death.

The minor Gerardo Mora Santos rightful claimant of the IMSS was attended on February 18th, 2003, in the Family Medicine Unit No. 3 of the IMSS, in the State of Morelos and sent, in order to discard appendicitis, to Regional General Hospital No. 1 in the same federative entity.

Due to the delay in diagnosing and surgical treatment of the pathology presented by the medical personnel who took care of him during his stay in the hospital, a ruptured appendix was provoked with a consequence of peritonitis which led to his death.

Due to the above, Mr. Jesús Armando Mora Galván father of the injured minor denounced the deeds before the social representation of the federation in that federative entity initiating the prior investigation where the inadequate medical attention was determined as was the irregular delivery of the body of the minor to the " Cuernavaca Undertakers".

From an analysis of the facts, elements were found which enabled the crediting of violations to the rights to the protection of health and of life of the injured minor. Therefore, on September 10th, 2003, this Mexican National Commission for Human Rights issued Recommendation 38/2003 addressed to the General Director of the IMSS, that he may authorize the Internal Control Organism of the Secretariat of Public Function in the IMSS, for the purpose of initiating and determining, according to Law, and administrative procedure against the public servants of the medical area of that Institute who participated in the events. Also, that this Internal Control Organism be intervened, that an administrative procedure be initiated and determined according to Law, against the administrative personnel of Regional General Hospital No. 1 of the IMSS which participated in the delivery of the body of minor Gerardo Mora Santos. Finally, that instructions be issued ordering and making payment by concept of the indemnity which may proceed in conformity with that disposed in articles 44 of the Mexican National Commission for Human Rights Law and 33 of the Federal Law of Responsibilities of the Public Servants.

Recommendation 39/03

September 11th, 2003

Case: Mrs. María Eugenia Durán Acosta

Authority addressed: General Director of the Institute of Safety and Social Services of State Workers. (ISSSTE)

On September 27th, 2002, this Mexican National Commission initiated file 2002/3052-1 motivated by the complaint presented by Mr. Evelio Ramírez Arroyo in which he pointed out events presumably violatory to the rights to protection of health and life, committed against Mrs. María Eugenia Durán Acosta by public servants of the ISSSTE.

From an analysis of the evidence there are sufficient elements to establish the legal merits of the damages stated by the plaintiff, given that, upon not practicing on the plaintiff the radiological or ultrasound study because of the lack of the required equipment there was consequently a deficient medical evaluation which had resulted in adverse effects to her health, and therefore it is thought that institutional responsibility existed since that department must have the necessary equipment which ensures the opportune and efficient rendering of the services offered in those units. Due to the above, the CNDH issued the present Recommendation to the General Director of the ISSSTE, in which it is recommended:

FIRST. Issue their instructions so that authorization be made to the Internal Control Organism of the Secretariat of Public Function in the ISSSTE for the purpose of initiating and determining according to Law and administrative procedure against the physician who attended the present case and who is assigned to the Clinic Hospital of the ISSSTE in Celaya, Guanajuato.

SECOND. Payment be ordered and made by concept of the indemnity which may proceed, on the terms of the considerations presented in the body of the present document in conformity with that disposed by articles 33 of the Federal Law of Administrative Responsibilities of the Public Servants; 1915 and 1927 of the Federal Civil Code; and 44 second paragraph, of the Law of the CNDH.

THIRD. Issue his instructions so that the respective area give to the Clinic Hospital of the ISSSTE in Celaya, Guanajuato, of the necessary equipment in order to practice radiological and/or ultrasound studies to the patients who require them, the above, for the purpose of optimizing the medical attention which that hospital offers its rightful claimant.

Recommendation 40/03

September 12th, 2003

Case: Appeal presented by Mr. CML

Authority addressed: Substitute Governor of the State of Nuevo León.

On September 5th, 2002, this Mexican National Commission initiated file 2003/138-2-1 referring to the appeal placed by Mr. CML, over the refusal to accept Recommendation 53/2003 which the State Commission for Human Rights of the State of Nuevo León addressed to the Secretary of Public Education for the State on February 10th, 2003.

From a legal-judicial analysis of the documentation sent to this National Organism, it was deduced that the person in charge of the Direction of Work Relations of the Secretariat of Education for the State, removed the appellant from his work in Middle School No. 74 "Ignacio Manuel Altamirano" for being HIV positive, all the while that he considered this to be a contagious illness.

In this sense, this Mexican National Commission warned that the person in charge of the Work Relations of the Secretariat of Education for the State incurred violatory acts to the Human Rights of the appellant, specifically the right to equality and prohibition of discrimination for health motives, established in article 1 of the Political Constitution of the Mexican United States after having the object of discrimination for being HIV positive.

Owing to the above, on the 12th of September, 2003, this Mexican National Commission issued Recommendation 40/2003 addressed to the Substitute Governor of the State of Nuevo León in which Recommendation 53/2003 issued by the State Commission was confirmed, in order that the Secretary of Education of said entity be instructed to comply with the latter and instructions be given to the heads of the public department of the State of Nuevo León, and that they may know the contents of the Mexican Official Norm NOM-010-SSA2-1993. "For the prevention and control of the AIDS virus and abstain from discriminatory acts against anyone because of health reasons".

Recommendation 41/03

September 19th, 2003

Case: Mr. Lorenzo Miranda Martínez

Authority addressed: General Director of the Institute of Safety and Social Services of State Workers. (ISSSTE)

On June 2nd, 2003, this Mexican National Commission initiated file 2003/1713-1 due to the complaint presented by Mr. Lorenzo Miranda Ortiz in which he pointed out events presumably violatory to the rights of protection to health and life committed against his late father Mr. Lorenzo Miranda Martínez by public servants of the ISSSTE.

From an analysis of the evidence which integrate the file, as well as the medical opinion issued by personnel from the Coordination of Experts Services of this National Organism, sufficient elements are deduced to enable establishing legal provenance of the damages presented by the plaintiff.

Due to the above, the CNDH issued Recommendation 41/2003 addressed to the General Director of the ISSSTE in which it recommended the following:

FIRST. Payment be ordered and made by concept of the indemnity which may proceed to the relatives of Mr. Lorenzo Miranda Martínez.

SECOND. The necessary documentation be delivered to the Internal Control Organism of the State Branch of the ISSSTE in Zacatecas, so that the necessary investigation of the file be made, and the Internal Control Organism be instructed and authorized to analyze the irregularities in the integration of the clinical file, in attention to the consideration set forth in the chapter of Observations of this document.

## DOMESTIC RELATIONS

### Religious intolerance in communities of Chiapas

In San Cristóbal de las Casas, Chiapas National Ombudsman Dr. José Luis Soberanes Fernández attended the presentation of the Bible in the Tzotzil of Chamula and Tzotzil of Chenalhó languages, as well as the document "Discover the Human Rights in the Bible".

During this act, Dr. Soberanes pointed out that religious freedom and freedom of cult must prevail over the culture of intolerance in which we Mexicans are formed. We must learn to respect he or she who is different emphasized the President of the CNDH.

The National Ombudsman lamented the evident reality of a grave religious intolerance amongst inhabitants of indigenous communities whose cultures should favor the coexistence in a fraternal and equal environment. Hopefully someday in Chiapas, de added, " religion will serve to unite and not to divide the people and the communities".

During this act, Dr. Soberanes Fernández was accompanied by the General Secretary of the Government of the State of Chiapas, the Sub-secretary of Religious Affairs of the Secretariat of State, the Bishop of San Cristóbal, amongst many others, and called upon those who feel that in Chiapas and its communities their rights are being violated through the actions of some authorities, due to cases related to religious intolerance or because of any other form of violation to the fundamental guarantees, or who find themselves threatened for practicing a different creed, to go to the Mexican National Commission and present the corresponding complaint.

The CNDH will use mobile units for attention to migrants.

For the purpose of bringing closer its services to attention to complaints and orientation in inhospitable and remote zones from the cities, the regional offices of the Mexican National Commission will have mobile units which will be located in crossing places and pathways in both Mexican borders and which also be able to take care of emergency situations in which the presence of visitors might be required.

Eight mobile units equipped with radio communications, global positioning system, office, bathroom, external lighting, audio and video equipment were delivered by the National Ombudsman to the delegates of the regional offices of the CNDH in Tapachula, Reynosa, Villahermosa, Ciudad Juárez, Tijuana, San Cristóbal de las Casas and Nogales.

As part of the project to bring the population closer to the services of the CNDH, telephone cards of 24 hours attention 365 days of the year for the public, will be given with the number 01-800-715-200 and with the telephone numbers of available attention in each one of the regional offices of the CNDH.

#### Training courses

In attention to the activities of promotion and diffusion of a Human Rights Culture, the Mexican National Commission for Human Rights, gave during the month of September a total of 51 courses, workshops and conferences addressed to system of basic, middle and higher education, groups in vulnerable situations, public servants and social organizations.

#### FOREIGN RELATIONS

The CNDH participated in the 24th Annual Conference of USOA.

An official from the Executive Secretariat of the CNDH participated in the 24th Annual Conference of the Association of United States of America, USOA, which was held in Honolulu, Hawaii from September 16th to 19th, 2003, with the subject " The Importance of the Ombudsman from the Public Sector".

The participation of the CNDH was dedicated to making known the characteristics of the Institution which besides carrying out functions of the Classic Ombudsman operates with a mandate of Human Rights.

#### PUBLICATIONS

Gaceta, Official publication of the Mexican National Commission for Human Rights, numbers 155, 156 corresponding to the months of June and July, 2003.

Program for the Strengthening for the family. Program and Application Manual, México, CNDH., September, 2003

Program for the Strengthening for the family. Family Human Rights, México, CNDH., September, 2003

Program for the Strengthening for the family. Childhood Human Rights, México, CNDH., September, 2003

Program for the Strengthening for the family. Woman Human Rights, México, CNDH., September, 2003

Program for the Strengthening for the family. Elderly Human Rights, México, CNDH., September, 2003

Program for the Strengthening for the family. Handicapped Human Rights, México, CNDH., September, 2003

EZLN: violence, cultural rights and democracy, México, CNDH., September, 2003

Human Rights of the Interns, México, CNDH., September, 2003

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