

# NEWS LETTER

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### FIFTEENTH ANNIVERSARY OF THE MEXICAN NATIONAL COMMISSION OF HUMAN RIGHTS

On June 6 of 2005, upon the 15-year anniversary of the foundation of the National Commission of Human Rights (CNDH), National Ombudsman Dr. José Luis Soberanes Fernández, declared that, regarding basic rights, out the perspective of our country remains ambivalent, since old circumstances that undermine human rights are losing their power, while at the same time new circumstances, such as lack of security, are beginning to foreshadow their ominous nature.

After pointing out that the CNDH was created in the midst of fear and anxiety, when the procurement of justice would give way to the fabrication of guilty parties, as well as the impunity of criminals with a badge, while encouraging acts of torture, extrajudicial punishment and arbitrary detentions which translated into the impotence of the justice system, the National Ombudsman declared that from 1990 to this date, many things have changed, most of them in a positive manner, although the remains of an authoritative past still prevail.

"The Country made a peaceful transition towards electoral freedom and Mexicans have experienced and enjoyed a decisive expansion of our liberties. The problems we face in this day and age are not so much related to authoritative violence on the part of public officials, but are rather a result of the development of a democratic government under the difficult conditions of a country that suffers from severe social shortcomings and the imperious need to renew and strengthen not only affirmative activities but institutions as well," the National Ombudsman pointed out.

Soberanes Fernández declared that the problem is that our country is living in the midst of an as yet uncompleted democratic transition, which comes together with elements of social breakdown and manifests itself as the proliferation of morbid phenomena, such as the increasing wave of organized crime in the northern areas of the country; the heinous wave of feminicides in Ciudad Juárez, which has now taken a disturbing turn against little girls; the illegal trafficking of migrants and its aftermath in the form of personal tragedy; public corruption; insecurity; the prevailing practice of impunity, as well as discrimination, all clearly pathological phenomena which, should they fail to be understood or be ignored, may fortell a profound social breakdown. He reminded us that, not so long ago, he has been declared personanon grata by the authorities of Ciudad Juárez, as a result of his comments regarding the fact that the feminicides in that border town have become a national embarrassment. "We were asked to remain silent, implying that we were accusing the city and its population," he said.

He stated that the public is better informed and that it is aware that the CNDH not only defends the basic rights of the aggrieved parties, but it is also an important institution in terms of the maintaining a balance between powers, the submittal of accounts and the procurement of a greater degree of clarity in the relationships between State and Society. He added that the CNDH has fought battles to defend the freedom of expression as well as journalists who

have been victims of some type of attack; the institution has become involved in the investigation of the massacres of Aguas Blancas and Acteal; it has demanded justice and registered the cases of missing people in the "dirty war" (guerra sucia), which resulted in the creation of a special attorney's office for the investigation of those crimes. "The CNDH," he said "represented and voiced the legal demands of many people that have been affected by abuse, torture, arbitrary detentions, as well as cruel and degrading treatment".

After pointing out that the CNDH has established eight new offices in the northern and southern borders of our country, and that it created the Fifth Visitorship to focus on the national issue of migrants and their rights, it has additionally featured the creation of the Pro-Victim program, which promotes the delivery of justice to victims of crime, emphasizing that the institution will continue to defend the fundamental rights of Mexicans by denouncing and putting a stop to all forms of abuse of power.

RECOMENDATIONS

Recommendation 13/2005

June 10 of 2005

Case: Mr. Luis Lagunas Aragón, legal proxy of the publishing company Editorial Taller S. A. de C. V.

Addressee Authority: The Constitutional Government of the State of Oaxaca.

On December 6 of 2004, the CNDH received a written complaint submitted by Mr. Luis Lagunas Aragón, who denounced alleged violations of the rights to freedom of expression and freedom of information, committed by the Office of the Attorney General and the General Office of Public Security of the State of Oaxaca, as well as by the Attorney General's Office of the Republic as a result of the invasion of the premises known as "Granja del Carmen", in Santa Cruz Amilpas, Centro, in the State of Oaxaca.

An analysis of the circumstances reveals that, although it is true that the probable criminal acts can be attributed to civilians, it is also true that public servants of the General Attorney's Office of the State of Oaxaca, by not fulfilling their constitutional and legal duties and responsibilities and seeking to pursue, in this case, the alleged guilty parties and to place them under the custody of the corresponding legal authorities, and, as a result of their tolerance of the invasion of the premises and delay of the enforcement of justice, their non-compliance of public duties in the procurement of justice, this negligence might have an indirect effect on freedom of expression.

Therefore, on June 10 of 2005 the CNDH issued Recommendation 13/2005, addressed to the Constitutional Governor of the State of Oaxaca, requesting that the appropriate measures be taken in order to fully guarantee the ownership and use of warehouses; to take all necessary legal measures to protect the rights of the aggrieved; to draft orders to the Public Ministry requesting the restoration of damages that were inflicted on the complainant or the corresponding indemnity as a result of the omissions incurred by ministerial authorities, and which have given way to alterations to the property and the removal of several objects; to ensure that said authorities compile and determine the preliminary investigations initiated as a result of the crimes of dispossession and others, and to carry out the corresponding administrative investigation regarding these omissions as well as the delay and partial submittal of the requested information and documentation.

Recommendation 14/2005

June 16 of 2005

Case: Mr. Mario Gallegos Salas and others

Addressee authority: The Military Justice General Attorney's Office.

On November 17 of 2003, the CNDH received a written complaint submitted by Mr. Arturo Solís Gómez, President of the Border Studies and Promotion of Human Rights, A. C. Center (CEFPROD HAC), in Reynosa in the State of Tamaulipas, in which he explained that, on the 9th of the same month and year, a man by the name of Mr. Mario Gallegos Salas appeared at his office, indicating that, on October 30 of 2003, military personnel stationed in two control posts in the state of Guerrero committed acts which allegedly breached the rights to life and physical integrity of Mr. Prisciliano Miranda Maldonado (sic), of minor Rogaciano Miranda Gómez and of Mr. Gallegos Salas.

An analysis of the records that comprise the complaint file have established, before the CNDH, that on October 29 of 2003, Mr. Mario Gallegos Salas, Mr. Prisciliano Miranda López and, then minor Rogaciano Miranda Gómez, were traveling through the town of Mameycito, Petatlán, when, upon reaching the nocturnal control post established near that county, military personnel asked them to stop for inspection. They did not stop, and this refusal resulted in the death of Mr. Prisciliano Miranda López, who was riding in the passenger's seat, while minor Rogaciano Miranda Gómez was injured.

An analysis of the facts reveals that military public servants violated the rights to life, lawfulness and legal security of Mr. Prisciliano Miranda López, and the rights to lawfulness and physical integrity, as well as inflicting severe threat to the right to life to then minor Rogaciano Miranda Gómez. In addition, they employed excessive force and used firearms inappropriately while carrying out their duties.

Due to all of the above, on June 16 of 2005 the CNDH issued Recommendation number 14/2005, addressed to the Military Justice General Attorney, suggesting that he issues the appropriate commands in order to determine, as soon as possible, preliminary investigation SC/042/2005/III, by the third investigative agent of the Military Public Ministry assigned to the Preliminary Investigations Section of the General Attorney's Office for Military Justice, and, once this step has been completed, that he inform this National Commission regarding the activities that have been carried out from the beginning of its intervention until its conclusion. Said authority was asked to issue the necessary commands in order to ensure that the CNDH is maintained informed regarding the result of the administrative investigation process initiated by the Army's General Inspection and Comptroller's Office and Air Force, against the military personnel involved in the matters herein exposed; in addition, a request was made for this authority to open records for their review by the General Inspection and Comptroller's Office of the Army as regards the social representative involved in the comprisal of the document and who filed inquiry number 27ZM/35/2003. If the investigation should reveal behaviors that could be construed as criminal, they have been requested to begin the corresponding preliminary investigation; to draft orders to the appropriate individuals, in order to ensure that they will carry out the necessary formalities and to immediately pay the indemnity which, according to law, should be granted to Rogaciano Miranda Gómez and to the relatives of Mr. Prisciliano Miranda López, once they have confirmed their right to said indemnity, as well as to take the necessary measures so that members of the Mexican Army receive the appropriate education and training regarding the behavior they should display in order to respect the human rights of the population in the course of the performance of their assigned duties. In addition, they should receive the appropriate training as regards the use of force and firearms, as well as of persuasion, mediation, negotiation and non-violent conflict solution techniques.

Recommendation 15/2005

June 20 of 2005

Case: Mr. Fermín Luis Manuel Varea Falcón.

Addressee Authority: The Constitutional Government of the State of Morelos.

On November 12 of 1997, this National Commission received a written report denouncing the disappearance of Mr. Fermín Luis Manuel Varea Falcón. In said report, the complainant pointed out that, as of August 26 of 1997, the whereabouts of this individual were unknown. Consequently, the complainant carried out a series of investigations which revealed that the aforementioned individual had been arrested by agents of the Judicial Police of the State of Morelos and, possibly, of the Federal District, which was why the complainant appealed to the Office of the General Attorney of the State of Morelos to denounce said events. On November 26 of 1997, the preliminary investigation began and, on January 25 of 2000 the file was reported to be missing.

Investigations carried out by the CNDH allowed us to conclude that, at the end of the month of August of 1997, several members of the judicial police, as well as members of the Anti-abduction Group of the Judicial Police of the State of Morelos, took part in the arrest of Mr. Fermín Luis Manuel Varea Falcón, despite the fact that no arrest warrant had been issued by the relevant authorities, nor was this individual placed under the custody of the appropriate authorities. After this arbitrary arrest was carried out, the body of that person was found, on September 2 of 1997, in a spot between the State of Mexico and the State of Morelos. Further investigation revealed that he had lost his life as a result of several injuries inflicted by 28 firearm shots, and the time/death diagnosis established that the homicide occurred between August 30 or August 31 of 1997, a fact which was included in the records that comprise this preliminary investigation that was initiated as a result of that homicide by the Agency of Investigations of Chalco in the State of Mexico.

An analysis carried out on the evidence allowed this National Organism to confirm that Mr. Fermín Luis Manuel Varea Falcón was indeed the victim of an arbitrary detention on behalf of the public servants of the General Attorney's Office of the State of Morelos, among others, who, to this moment, still remain unknown and who infringed on the victim's right to personal freedom and appropriate defense, since they removed him from the protection of the law, thereby not allowing him to exercise his legal rights and the procedural warranties to which he was entitled, taking into consideration, in addition, that the period of time during which he was deprived of his freedom, he and his family were subjected to a great deal of pain.

In addition, the investigation allowed us to confirm that the agent of the Public Prosecutor, as the party responsible for compiling the preliminary investigation, incurred in an inappropriate activity in terms of his duties as a public servant in charge of the procurement of

justice, since on January 25 of 2000, it was reported that said inquiry was "missing", and the records which comprise it have as yet not been restored, thus incurring in further negligence by failing to adjust their performance to the principles of lawfulness, efficiency, professionalism, loyalty, impartiality and respect towards human rights. Also, the investigation has been suspended for more than five years, and with this act, the rights of the aggrieved party's relatives in terms of lawfulness, legal security and access to justice have been violated as well.

Taking all of the above into consideration, on June 20 of 2005 the CNDH issued Recommendation 15/2005, addressed to the Governor of the State of Morelos,– since the file of the preliminary investigation CT/1º/3396/97-11 continues to be missing to this date- urging him to take the necessary measures to restore the missing records and to provide an appropriate follow-up to the case until it is fully solved; and to promptly inform the CNDH regarding the measures that will be implemented. Said authority was further asked to issue orders to the Attorney General of the State of Morelos to ensure that he will request the head of its office to promptly deliver preliminary investigation number CHA/1/2135/97, which was initiated as a result of the aforementioned homicide by the Agency of Investigations of Chalco in the State of Mexico, so that it can be attached to inquiry CT/1º/3396/97-11. In addition, this authority was urged to issue the appropriate orders to the Attorney General of the State of Morelos to ensure that the latter will take all appropriate measures in order to prevent public servants of the General Attorney's Office from remaining above the law until it is determined what measures are in order based on the aforementioned preliminary investigation, as established by law. In addition, the relevant party should receive orders to allow the intervention of the Internal Control Organism, as well as that of the appropriate Social Representation Office, so that, within the fields of their respective functions, they may begin the necessary investigations and focus on defining the possible liabilities of the public servants who misplaced the preliminary investigation as well as of those who allowed this irregularity to occur and who failed to rectify it. In addition, once all of the above has been clarified, a timely report must be submitted to this National Commission as regards all the activities that have been carried out; furthermore, said authorities have been asked to analyze whether it is appropriate to offer indemnity payment for damages and injuries.

These authorities should also issue instructions to the Attorney General regarding offering training courses to the officers in charge of enforcing the law of that institution; to ensure that the appropriate measures are taken in order to assess the personality profile and knowledge in terms of Human Rights of the officers in charge of enforcing the law. Finally, they are to issue orders to the Attorney General of the State of Morelos so that he will promote, among all public servants, the pressing need for an institution such as the Public Prosecutor to strictly adhere to the guidelines established by the criminal legislations that regulate the Mexican Legal System.

#### Recommendation 16/2005

June 20 of 2005

Case: Appeal process by Mrs. Leonorilda Román Riestra

Addressee Authority: Constitutional Government of the State of Guerrero

On July 21 of 2004, the CNDH received an appeal submitted by Mrs. Leonorilda Román Riestra, in which she exposed the damage caused by the rejection of Recommendation 25/2004, issued by the Human Rights Defence Commission of the State of Guerrero, on May 20 of 2004 and addressed to the Department of Health of that federative entity.

The records that comprise this file reveal that, on August 29 of 2003, Mrs. Leonorilda Román Riestra was admitted into General Hospital "Doctor Jorge Soberón Acevedo" of the Department of Health of the city of Iguala in the State of Guerrero, presenting a 34-week pregnancy and torn membranes for a period of more than 24 hours. As a result, she was admitted into the hospital and remained there for 24 additional hours and received medication in order to counteract any infections. She pointed out that, on August 30 of the aforementioned year, her labor was induced and, on the following day, upon waking after the surgery and asking for her baby without receiving any type of information and only hearing a new-born cry continuously, she tried to locate the Director of the hospital in order to ask him to transfer her baby to a hospital that would be capable of increasing his chances for survival. Said request was ignored by the medical personnel of said institution and this refusal caused the new-born to lose his life as a result of not having received the appropriate medical attention and of not having been transferred to more appropriate facilities in a timely manner.

Taking all of the above into consideration, the CNDH amended the Recommendation issued by the Human Rights Defence Commission of the State of Guerrero and requested that the Governor of the State issue the necessary orders to ensure that Mrs. Leonorilda Román Riestra would receive payment in compensation; to take the necessary measures for the aggrieved party to receive reimbursement for all medical expenses incurred as a result of the medical attention she was receiving and that she might require in the future in order to treat the medical and psychological repercussions that she was suffering; to ensure that instructions would be issued in order to begin an administrative investigation process against the public servants specified in the Observations chapter of this Recommendation and, if it should be determined that a crime was indeed committed, to open the record for inspection by the Agent of the Public Prosecutor.

Recommendation 17/2005

June 30 of 2005

Case: Appeal submitted by Mrs. Vita Socorro Mendoza Moreno.

Addressee Authority: The Constitutional Government of the State of Querétaro.

On March 15 of 2004 the CNDH received an appeal submitted by Mrs. Vita Socorro Mendoza Moreno, the widow of Mr. José Jesús Ruiz Escobedo, as a result of the rejection of Recommendation number (150) 001/2004, issued by the Human Rights Commission of the State of Querétaro and addressed to the Attorney General and the Secretary of Citizenship Security (Department of Public Security), as well as the Secretary of Municipal Public Security.

The events that prompted the involvement of the Human Rights Commission of the State of Querétaro in this case were the result of a confrontation that occurred between neighbors of that vicinity and Public Security authorities of the State and that municipality, as well as members of the ministerial police of the Office of the Attorney General due to the occupation of the land used by the community as a sports field sponsored by a construction company. The aforementioned authorities restrained a group of people, among them, children and senior citizens, and applied public force measures in a disorganized manner. Despite the fact that the resistance of the inhabitants of the area had been anticipated, the appropriate prevention measures were not taken, resulting in the death of Mr. José Jesús Ruiz Escobedo due to the injuries he sustained during his detention.

Once the evidence was analyzed, the CNDH realized that although it is true that the Recommendation, issued by the local Organism, was not accepted by the relevant authorities, it is also true that the Office of the Attorney General of the State acknowledged that it had complied with three of the points included in the Recommendation upon investigating the statements provided by the member of the Ministerial Police who arrested Mr. Ruiz Escobedo; in addition, they have continued pursuing investigations of those responsible for injuring and torturing that individual, as well as providing indemnity to their families.

In addition, the Department of Municipal Public Security acknowledged it had complied with the recommended points, since it had implemented training courses on human rights focused on the issues of the use of force and respect towards human rights, while the Department of Citizenship Security (Department of Public Security), also declared that it has implemented several measures focused on improving the level of professionalism of the security personnel working for the State, although it failed to submit evidence that would confirm the existence of these activities.

Taking all of the above into consideration, the CNDH confirmed on May 30 of 2005 the Recommendation issued by the State Commission on February 10 of 2004, in order to prevent arbitrary activities in state organisms, according to the following terms: to the Constitutional Governor of the State of the Querétaro: UNIQUE. To issue the necessary orders seeking to provide compliance with specific points numbers one, five, six, seven, eight, nine, thirteen, fourteen and fifteen of said Recommendation (150) 001/2004, issued on February 10 of 2004 by the State Commission of Human Rights of Querétaro, all of which have still not been complied with, even though they are all completely lawful.

To the members of Honorable City Hall of: UNIQUE. To issue the necessary commands in order to comply with the recommendations contained in the following points: ten, eleven, thirteen, fourteen and fifteen of Recommendation (150) 001/2004.

## INTERNATIONAL ISSUES

Meeting of the President of the CNDH with the United Nations High Commissioner for Human Rights

On June 29 of 2005, the President of the CNDH met with Mrs. Louise Arbour, United Nations High Commissioner for Human Rights.

On this occasion, Dr. Soberanes addressed the topic of the National Program of Human Rights developed by the Federal Government, in collaboration with a very limited number of civil groups. Therefore, it will in rare instances transcend beyond the current government administration.

The President of the CNDH informed Mrs. Arbour regarding the three main problems that our country is experiencing in terms of human rights and of the situation undergone by migrants, the growing public insecurity and the unresolved case of feminicides in Ciudad Juárez in the State of Chihuahua, which continues to be –he said—the most important problem in our country in terms of human rights violations.

Finally, the National Commission and the Office of the United Nations High Commissioner agreed to strengthen corrective measures and improve their critical analysis of the challenges and trials faced by the national institutions dedicated to the promotion and protection of human rights.

The President of the CNDH participated in the Fourth Inter-Committee Meeting of the human rights treaty bodies.

Invited by the Office of the United Nations High Commissioner for Human Rights, Dr. José Luis Soberanes, President of the CNDH, took part in the Fourth Inter-Committee Meeting of the human rights treaty bodies, and in the XVII Meeting of Presidents of the Human Rights Committees, from June 20 to the 22 at the Palais Wilson of the United Nations in Geneva, Switzerland.

Dr. José Luis Soberanes Fernández attended the event in his capacity of President of the CNDH, as well as Vice-President of the International Committee of Coordination of National Institutions for the Promotion and Protection of the Human Rights and as Secretary General of the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas.

During this meeting, the presidents of the seven Committees (Human Rights Committee; Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination against Women; Committee Against Torture; Committee on the Rights of the Child and the Committee of Migrant Workers) discussed, with the representatives of three National Institutions of Human Rights: Mexico, Uganda and Denmark, the role that National Institutions play in the follow-up and application of Recommendations developed by said organisms from each State.

## PUBLICATIONS

### CD-Rom System of the United Nations and Human Rights

In order to contribute to the promotion of human rights universal system, the CNDH, through the Executive Secretariat, produced the CD-ROM System of the United Nations and Human Rights.

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